control over the economy, and a smaller federal bureaucracy meant fewer patronage jobs at the PRI's disposal. In this unprecedented context of a fair market for votes, the PRI lost its controlling position in Congress in 1997 and, in 2000, lost the presidency. Greene argues that Mexico has transitioned from a dominant party authoritarian regime to a fully competitive democracy.

Why Dominant Parties Lose offers an essentially top-down perspective on democratic transition, focusing on resources available to dominant parties at the national level. This suggests that Mexico's economic "performance debacle" in the 1980s (20), the revival of civil society, institutional engineering, and other factors are of secondary importance, at best. These are the focus of the work of many others. For instance, in *Electoral Competition and Institutional Change in Mexico* (University of Notre Dame Press, 2003), Caroline Beer analyzes the bottom-up dynamics of Mexico's democratization and makes the case that democratic openings at the state and local levels affected national politics in significant ways. As opposition parties and democratic enclaves spread geographically, she argues, authoritarian spaces (along with the PRI's reach) necessarily shrunk. Other analysts have shown how the election of opposition party members in some key municipalities enabled them to challenge centralized control over resource distribution and political careers. From the vantage point of the municipality, the unevenness of the transition is evident. These very different perspectives on Mexico's transition point to the rich and lively discussion to which Greene has added an important work.

Greene offers a cogent and compelling argument, supported by statistical analysis, mathematical models, and in-depth interviews. He organizes his book such that "less technically inclined readers" can skim short sections yet grasp how the formal models contribute to his argument (28, 34, 37). The author's methodology and writing style—which, though clear, is fairly dense—may limit the book's interest to undergraduates. Nonetheless, it is a significant volume for graduate students and faculty who are interested in Mexico, the other countries analyzed (Italy, Japan, Malaysia, and Taiwan), political parties, or the burgeoning literature on democratization.

–Lynda K. Barrow

MILITARY NECESSITY AND THE DEMANDS OF JUSTICE

Burris M. Carnahan: *Act of Justice: Lincoln's Emancipation Proclamation and the Law of War* (Lexington: The University Press of Kentucky, 2007. Pp. 202. $40.00.)

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This book is a historical-analytical account of the legal basis on which Lincoln issued the Emancipation Proclamation. Burrus M. Carnahan, a scholar of international law, says that while previous scholarship has explored the

constitutional context, "the rest of the proclamation's legal context remains largely uncharted territory." Carnahan defines the inquiry: "What was the president trying to communicate when he invoked the 'law of war,'" in a public letter to a Republican mass meeting in Springfield, Illinois, August 26, 1863, as an explanation of "the legal principles underpinning the Emancipation Proclamation?" (1–2). Lincoln's legal construction was decisive inasmuch as all subsequent war presidents "have invoked the international law of war as a measure and source of their powers as commander in chief of the armed forces" (2). In the broadest sense, therefore, Carnahan's subject is the relationship between the U.S. Constitution and the law of nations.

The standard narrative of the Civil War treats secession as treason and rebellion against the United States. Rebellion is war, and the southern rebellion was projected on such a scale as practically to require recognition of the Confederate States of America as a belligerent under the law of nations. Within this interpretive framework, Carnahan describes the evolution of Union war strategy based on political, legal, and military considerations. His principal claim is that the policy of military emancipation was based on the law of war.

All knew that in some sense slavery was the cause of the war. At the highest levels of government, however, it was difficult to know how to recognize and take this fact into account in light of Lincoln's constitutional determination that secession was rebellion. Carnahan argues that the exigencies of suppressing the rebellion forced the Lincoln administration to shift the principal legal horizon of the war from the U.S. Constitution to the law of war under the law of nations. The paradigm shift is disclosed in communications between Union political officers, who were either ignorant of or ambivalent about the law of nations, and Union military commanders, whose training and experience disposed them toward reliance on the law of war. For example, Carnahan says that in proclaiming a blockade of southern ports, Lincoln, who is quoted as saying, "I don't know anything about the law of nations," "inadvertently accorded the Confederacy the status of belligerents in international law," a mistake he wished to avoid a second time (173 n., 38).

Left to deal with battlefield exigencies, military officers employed law-of-war practices. They took prisoners of war, detained rebels and disloyal persons, used military tribunals to dispose of detention cases, and seized rebel property. The strategic rationale shifted toward conducting the war under the law of nations. As it did, Lincoln learned not to let municipal property law impede suppression of the rebellion. Referring to the seizure in 1862 of a privately owned riverboat in Tennessee, Carnahan observes: "The armies of the Union would respect private property as far as they could, but when there was a clear conflict between property rights and military effectiveness, the president had already made his choice. In a sense, this is the seed from which the Emancipation Proclamation grew" (48).

Although Lincoln overruled slave emancipation orders issued by Union generals John C. Fremont in September 1861 and David Hunter in May

1862, he reserved the power to determine when military necessity would justify a strategy of military emancipation. The critical moment came in July 1862 with the failure of the Peninsula campaign. Carnahan provides a synoptic, if somewhat hypothetical, analysis of the factors involved in adopting the new strategy, including law-of-war reasoning, the constitutional power of commander in chief, congressional policy in the Second Confiscation Act, and a prospective Supreme Court decision on the constitutionality of an executive emancipation order. In Carnahan's view, the doctrine of military necessity is the key to understanding the intentionality of the Emancipation Proclamation as a policy measure based on the law of war. Newly introduced into the law of nations, the doctrine expressed the idea that private property should be protected in time of war, unless military necessity justified its seizure.

Carnahan tracks Lincoln's conversion to law-of-war thinking. His first draft of the Emancipation Proclamation declared emancipation of slaves to be "a fit and necessary military measure" for restoring the constitutional relation between the federal government and the rebellious states. The Preliminary Emancipation Proclamation, September 22, 1862, omitted reference to military necessity and cited the Second Confiscation Act as relevant authority. Without mentioning the Confiscation Act, the final Proclamation declared the emancipation of all slaves in designated states, the people of which were in rebellion against the United States, to be both "a fit and necessary war measure for suppressing [the] rebellion," and "an act of justice, warranted by the Constitution, upon military necessity." Later, and in Carnahan's view more conclusively, Lincoln in the Springfield public letter of August 26, 1863, defended the Emancipation Proclamation on law-of-war grounds. He said, "I think the constitution invests its commander-in-chief, with the law of war, in time of war." Lincoln added, "The most that can be said, if so much, is that slaves are property. Is there—has there ever been—any question that by the law of war, property, both of enemies and friends, may be taken when needed? And is it not needed whenever taking it, helps us, or hurts the enemy?" (1)

Carnahan defends Lincoln against the charge of being a reluctant emancipator by emphasizing the radicalism of military emancipation based on the law of war. Lincoln "tried to do something that no other military commander ever had—the Emancipation Proclamation purported to take enemy property that was not yet under his control" (137). Moreover, Carnahan finds in the law-of-war literature a moral justification of Lincoln's "radical recognition of freedom." The Proclamation was "an official refusal to recognize the legitimacy of enslaving a whole people, and an encouragement for them to resist" (142) "By declaring that the U.S. government immediately recognized the freedom of all slaves in the Confederacy, Lincoln dealt with them as an oppressed people, rather than as property, and appealed for their support as humans" (141). Carnahan believes the magnanimity of the Proclamation connects it with contemporary emancipations based on international law.

Although provocative and illuminating, *Act of Justice* is undertheorized as a consideration of the relationship between the U.S. Constitution and the law of war. A premise of the study is a distinction between constitutional context and legal context. Carnahan makes no effort, however, to define the constitutional context or to explain how it has been adequately explored in relation to the Emancipation Proclamation. More to the point, the nature and content of the law of war is more elusive and indeterminate than appears in this account. Carnahan seems to treat the law of war and the Constitution as analogous sources of law. And while he may regard the matter as self-evident, his discussion obscures the fact that the principle of territorial national sovereignty is the basis for the law of war. The latter is binding and obligatory, therefore, only to the extent that sovereign nations choose to regard it as such. Rather than analogous, it would seem that the Constitution is a superior source of legal authority, as reflected in the fact, for example, that it confers on Congress of the power "to define and punish Offenses against the Law of Nations" (Art. I, sec. 8).

Furthermore, the right to emancipate enemy slaves under the law of war was not as clear in 1861 as this account suggests. Carnahan sides with John Quincy Adams and Civil War radical Republicans in appealing to the law of war as a means of overcoming the constitutional incapacity of the federal government to interfere with slavery in states where it existed. Carnahan notes that Adams, as secretary of state, denied the right of enemy slave emancipation in arbitration proceedings with Great Britain in 1818. However, Carnahan fails to explore the reasoning of Adams's denial, an egregious omission considering that Adams's argument was "the closest thing the United States had to an 'official' position on the issue" (23). The question of slave emancipation was controversial in the Civil War, as in the arbitration with Great Britain, because considerations of national sovereignty and interest were deeply involved.

The law of war aside, the president as commander in chief had authority under the Constitution to adopt a policy of military emancipation. The strategy of the Emancipation Proclamation was based fundamentally on the principle of national sovereignty. In this decisive respect, it was consistent with the theory of the legal nature of the war as unjustified rebellion. As an act of the executive power, the Proclamation distinguished between slaves in states where the people were in rebellion and states where they were not. The constitutional and strategic aim of the United States was not conquest of a foreign enemy. It was, in Lincoln's words, "the re-inauguration of the national authority" in that part of the country where states were "out of their proper practical relation with the Union" (*Collected Works of Abraham Lincoln*, vol. 8, p. 400). In declaring secession to be a constitutional nullity, Lincoln persevered in maintaining the responsibilities of the Union with respect to the seceded states. Contradictory and self-defeating in the view of radical law-of-war advocates, Lincoln's conviction of constitutional perseverance kept the war from degenerating into a "remorseless revolutionary struggle" (*Collected Works of Abraham Lincoln*, vol. 5, p. 49).

Finally, it is a stretch to say that the Emancipation Proclamation presented itself as "an act of justice" in virtue of the right of emancipation of an oppressed people under the law of war. Vattel gave the example of a Swiss canton liberated from the house of Austria and admitted into the Helvetic confederacy. It is doubtful that the history of American slavery, conceptually and empirically, is intelligible in the terms of law-of-war doctrine. The Declaration of Independence remains the political and legal horizon upon which the Emancipation Proclamation presents itself as "an act of justice, warranted by the Constitution, upon military necessity."

–Herman Belz

GOING BEYOND THE CLICHÉS

Peter Judson Richards: *Extraordinary Justice: Military Tribunals in Historical and International Context* (New York: New York University Press, 2007. Pp. 266. $45.00, cloth.)

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The author presents a timely and promising study. Responding to the decision by President George W. Bush on November 13, 2001, to authorize the creation of military commissions to try those associated with the 9/11 terrorist attacks, Peter Judson Richards examines tribunals in four modern conflicts: the American Civil War, the British experience in the Boer War, the French tribunals of the "Great War," and allied practices during the World War II. The author brings important credentials to the task. He served on active duty in Europe and America in the U.S. Air Force Judge Advocate General's Corps and has taught in the Departments of Law and Political Science at the USAF Academy.

The dust jacket explains that Richards's study "seeks to fill an important gap in our understanding of what military tribunals are, how they function, and their relative successfulness in rendering justice in the extreme conditions occasioned by war, by placing them in comparative and historical context." The book presents, in fact, two separate parts: the first on the four comparative studies and the second on the Bush tribunals. The reader discovers that the first part has little to do with the second. Whatever lessons might be gained from the comparative studies are rarely applied to the Bush administration.

Richards correctly objects to the platitudes that greeted the Bush experiment: "star chambers," "juntas," "rubber truncheons," and "kangaroo courts" (ix). Critics resorted to clichés instead of informed and reasoned analysis. Richards adds that his experience as a judge advocate in the military courts "led me to believe that such images frequently carry little or no connection to actual experience" (ix). The problem, as he knows, is that there is little