

study, readers will indeed think twice before celebrating a sexual revolution in the Court.

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Stephanie Carvin, *Prisoners of America's Wars from the Early Republic to Guantanamo*, New York: Columbia University Press, 2010. Pp. 256. \$32.50 (ISBN: 978-0-231-70156-3).

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Stephanie Carvin tells the story of the United States' engagement with the laws of war, with special attention to its treatment of prisoners of war (POWs). Her ultimate goal seems to be a descriptive one, that "[w]e can better understand Abu Ghraib if we understand what came a decade or even a century before." Rather than focusing on the existing laws, doctrines, and legal interpretations as a lawyer might, this book adds a significant historical and political perspective to current debates over prisoners of war. Carvin contends that cultural equality, the role of ideology, and the legalistic American culture are all important factors in appreciating why the United States behaves the way it does. Although this work fits safely within a long-standing perspective that politics writ large mostly determine how states deploy and enforce international law, her close study within the context of POWs is an important contribution to this literature.

Prisoners of American Wars divides American history into four major time periods: the early republic; modern warfare from the Civil War to Korea; Vietnam and its aftermath; and post September 11th conflicts. Carvin employs existing academic sources to provide a concise and illuminating narrative of American behavior in early conflicts such as the Seven Years' War, the American revolution, the War of 1812, and skirmishes with Native Americans (to whom she refers as First Nations people). She uses these conflicts to identify factors that drive various sides into substandard or inhumane treatment of POWs. These factors include fear about the continued survival of the state; concern for legitimizing the other side's government or irregular fighters; existence of different cultural norms regarding the conduct of fighting; and possibilities for leveraging the prisoners with various audiences. She also describes some factors that point in the opposite direction, such as the need for military discipline and the occurrence of quick and relatively costless battles. Carvin also notes the roles of key decision makers and how these individuals may push in either direction for POW treatment in any given conflict,

although they succeed more often when these larger concerns point in the same direction.

Against the backdrop of emerging international treaty-based laws of war, the next section evaluates American behavior from the Civil War to the Korean conflict. Similarly to the prior section, the book nicely identifies relevant actors and considerations that influence American decisions on how to treat POWs. At times, however, her focus on prisoners fails to provide readers with a broader sense of how the United States' rules and practices fit within the larger context of the laws of war. For instance, her rosy view of the Lieber Code's provision for POWs is consistent with prevailing academic wisdom, but misses out on the ways in which these provisions contributed to a larger package that may have provided some major military benefits to Northern forces. This is a minor quibble, however, as this book mainly intends to illuminate why the United States treats POWs as it does, not how those policies it adopts might also be part and parcel of achieving larger independent aims.

Carvin moves into the modern era by discussing the United States' legal and moral failings in its conduct during the Vietnam War, and the legal revolution such atrocities precipitated. She is on well-trod ground when she notes the various reasons for laws of war violations including: inadequate training, general lack of military discipline, pressures for a high body count, and the uncertainty of rules to be followed in guerilla warfare. Although covered in less detail, readers may find her discussion of military operations in the 1980s of greater interest, as a non-specialist audience is less likely to be aware of the treatment of POWs during this time period. Moreover, Granada and Panama serve as strong evidence that lawyers achieved a post-Vietnam revolution in the military's approach to the laws of war by replacing Caribbean forces in charge of detention facilities with specially POW trained American troops, and including judge advocates in all stages of operations planning. Carvin concludes this section by describing the culmination of this revolution with the high water mark of the Gulf War. During this conflict, lawyers were increasingly "in the room" and part of the conversation pertaining to all aspects of military operations.

The final chapters of the book deal with the United States' efforts to draw back from this institutionalization and broad adherence to the laws of war in the aftermath of September 11. In describing the factors motivating this deinstitutionalization, Carvin positions herself between international law absolutists, who assume that any violation of international law is "a betrayal of humanity as a whole," and New Sovereignists who "are, perhaps, only too willing to dismiss international law as vague and without substance." Her statement that the opponents in the war on terror debate present "international law [as an] all or nothing phenomenon" is a nice hook for the book, but also misleadingly simplistic. It ignores the scholars and political actors who have developed more nuanced positions over the last decade. For example, the vigorous public discourse and academic commentary about whether to provide

hearings for detainees to determine their legal status, reflects a concern that the United States follow both international and constitutional law but do so in a way that not unduly burden national interests.

In addition, Carvin may overplay her hand when she suggests that New Sovereignists, who tend to claim that international laws of war prohibitions do not bind the United States or ought to be narrowly constrained, ignore the link between effective fighting, policy, and law. Whereas this may accurately describe some New Sovereignists who reject these limitations as at odds with the United States' constitutional structure, others seem quite attuned to the possible tradeoffs involved in an aggressive approach to detention and interrogation policies, and simply resolve them differently than Carvin might. Although the introduction and conclusion tend toward these slight overstatements, the chapters actually dealing with this material present a much more balanced view and acknowledgement of the various strands within the New Sovereignists and their different reasons for skepticism about international law. Probably the most valuable contribution of these last chapters is an identification of the various actors who play a role in this debate (international law lawyers, military lawyers, various lawyers within agencies) and the role of institutional competition when various actors choose to ask for legal guidance.

Looking more holistically, one of the major points of Carvin's historical analysis is that culture matters. When she discusses different cultures, however, it seems not to be so much the culture overall, but the failure to respect reciprocity on POW norms that causes the United States to provide less than adequate protection. Such a point is largely consistent with the observations and conclusions of many of the international law skeptics she seems to seek to debunk. In assigning the culture of war-fighting a high priority in determining the United States' behavior, Carvin sometimes overlooks the material constraints of keeping and caring for POWs in her overall analysis. Although she frequently acknowledges resource limitations in the details of individual conflicts and situations, she fails to emphasize them in her overall conclusion, which calls for more education and a better military ethos regarding prisoners and the laws of war more generally. Another notable omission in this regard is her discussion of President Obama's failure to close Guantanamo within the one-year deadline. The difficulty in finding states willing to take detainees seems likely to be a major contributing factor, rather than simply a desire to maintain former President Bush's approach clothed in new rhetoric. Perhaps the willingness of states to invest resources in proper treatment of prisoners is part and parcel of the same overall debate about when and why states value compliance with international law norms regarding prisoners; however, at times the desire to comply and the willingness to invest in compliance may diverge. For example, in the conclusion to the book, Carvin suggests that a dualistic approach to implementation of the laws of war is based on an enemy's willingness to engage in civilized warfare that coincided with the

United States' norms. But in using the example of the Union's treatment of the Confederate Army as evidence that shared norms yield good treatment, she elides the ways in which she earlier explained how resource constraints forced the Confederate Army to lodge Union soldiers in prisons with conditions resembling concentration camps. All that said, her point that reciprocity in war-fighting culture matters to prisoner treatment is an important one, albeit one that ought not to overshadow some other factors that get less attention.

Carvin also emphasizes the role of American exceptionalism in its willingness to behave differently than other countries, but many of the observations she makes seem to apply equally well to other countries over various points in history. There is always a danger in calling a state unique in certain behavior without simultaneously engaging in some form of comparative study. Therefore, although the claim that the United States is "greatly influenced by the idea of American exceptionalism" is a robustly defensible one, the claim that "ideology . . . makes America unique in the world and there is an imperative that the United States should act in accordance with its ideological vision of itself. Surely this is true of the way it has interacted with . . . the law or war" is more problematic. To take one example, Israel also often attempts to act in accordance with its ideological vision of itself. It, too, is selective about membership in laws of war and human rights treaties, but once it has joined them, it generally claims to adhere and when it fails to do so, it often claims that the conflict falls outside of the parameters of its treaty commitments. Many of its deviations occur in situations such as those identified in the book in which the state believes it faces an existential threat and that those that it fights do not share the same cultural norms of war-fighting. Moreover, many of the observations Carvin makes about how the Supreme Court has reined in expansive executive power in the area of detention, and how the Peers Report sparked a post-Vietnam legal revolution, might have parallels in Israel with its Supreme Court ruling on the case of the Public Committee Against Torture in Israel and the Landau Commission on torture.

Overall, *Prisoners of America's Wars* is a smart, concise history for lawyers and other non-historians who are interested in tracing back the larger context of laws of war history. In addition to discussing the major conflicts, Carvin captures the importance of some of the less emphasized episodes to the development of POW behavior. She provides a succinct analysis of the role that the United States played and continues to play in the development of POW doctrine both domestically and internationally. Although some of her analysis paints her view as a somewhat obvious middle point between two hyperbolic or caricatured extreme positions, her insight that international law matters as a weight pushing in a normatively desirable direction, is a valuable one.

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