

anced hearing he gives to contending views and theories. He implicitly invites readers to reconsider their views and attempt to bring some organization to their own thoughts about the constitutional order and the attacks mounted against it.

JOHN E. SEMONCHE

University of North Carolina at Chapel Hill

HERMAN BELZ, *Abraham Lincoln, Constitutionalism, and Equal Rights in the Civil War Era*. New York: Fordham University Press, 1998. xi, 265 pp. \$32.00 (cloth). \$18.00 (paper).

Did the Civil War and Reconstruction result in a constitutional revolution? Was President Lincoln a revolutionary leader? Did wartime emancipation, the abolition of slavery, and the Fourteenth Amendment "revolutionize the constitutional system" (p. 13)? With these questions, Herman Belz, noted expert on the constitutional history of the Civil War era, introduces this collection of essays, most of which were published previously and revised for this volume. Belz's answer to each question is a resounding no, and in several respects his position will be found provocative.

Belz proceeds from the premise that there is in fact no such thing as a "constitutional revolution"; this is, for him, an oxymoron. Essentially, he rejects the use of the term revolution to describe change in the political system and social structure, no matter how vast, if change comes about according to the "prescribed forms and procedures" of the Constitution (p. 14). Further, there is no revolution, in his view, if its putative agents do not see themselves as revolutionary.

This definitional approach raises interesting questions about constitutional change in the Civil War era. Such an inquiry is topical, in light of the reinvigorated examination of constitutional transformation engendered by the recent work of Bruce Ackerman, to cite one example.¹ Actually, Belz's essays, written over the past quarter-century, address several other issues while touching on the overarching question of constitutional revolution to varying degrees.

The book divides into three parts. In the first, centering on Abraham Lincoln, Belz disputes the idea that the President was a constitutional dictator, assesses Lincoln as a political thinker, and analyzes his conception of the Constitution. Since the original publication of the essays, Belz has added some discussion to show that Lincoln was not a "revolutionary constitutional innovator" (p. 41). Taken altogether, what emerges is the author's interpretation of an assortment of issues that Lincoln brings up for constitutional scholars—the scope of presidential power, the capacity of the Constitution to guide action in times of crisis, the relationship between Union and Constitution, the idea of equality, and Lincoln's understanding of the Declaration of Independence.

The focus shifts to congressional Republicans in the middle part of the book. Here Belz surveys policies and attitudes regarding emancipation, equal pay for black soldiers, and the establishment of the Freedman's Bureau. These essays perform a useful service in drawing attention to the variety of questions about slavery and equality confronted in the legislative process shortly before the adoption of

1. Bruce Ackerman, *We the People: Transformations* (Cambridge, Mass.: 1998); Symposium, "Moments of Change: Transformation in American Constitutionalism," *Yale Law Journal* 108 (1999): pp. 1917-2349.

the Thirteenth Amendment, formally abolishing slavery.

Finally, Belz turns to Reconstruction. These last essays are sure to invite debate. His discussion revolves around his concern over civil rights policies today. Belz takes on scholars who, in his view, have misconstrued the history of Reconstruction to justify affirmative action and Congress's power to combat racial discrimination by private parties. He finds this "litigation-driven neo-abolitionist" perspective in the work of such prominent historians as Eric Foner, Harold M. Hyman, and William M. Wiecek (p. 208). Belz's approach consists mainly in asking what was the conception of equality held by the Republicans who crafted the Reconstruction amendments. He concludes that the framers of these amendments did not intend to target private discrimination and that they had in mind a principle of color-blindness which is contravened by the use of color-conscious remedies in affirmative action programs. More generally, Belz argues that the Republicans' notions of equality and liberty during Reconstruction were largely the same as those held by the founders of the Constitution in 1787.

Leaving others to contend with the controversial question of how the history of Reconstruction should be applied to current problems in civil rights, I find myself in disagreement with the thrust of this last point, which runs throughout the book. In contesting the use of the term "revolution" to describe constitutional change during the Civil War era, Herman Belz characterizes the Reconstruction amendments as a "nonrevolutionary extension to black persons of guarantees of liberty and equality contained in the original Constitution" (p. 13). I would have structured the analysis differently, focusing on the seismic repercussions stemming from the redefinition of who was a rightful member of the American political community and how the answer given to that question affected prevailing views of liberty and equality.

STUART A. STREICHLER
University of Miami

CHRISTOPHER WALDREP, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80*. Urbana and Chicago: University of Illinois Press, 1998. xiv, 267 pp. \$45.00 (cloth). \$18.95 (paper).

During the last few decades historians of the American South have devoted considerable attention to the relationship between popular justice and formal law. In *Roots of Disorder*, Christopher Waldrep makes an important contribution to this literature, using lower-court records to explore race and criminal justice in Warren County, Mississippi, from 1817 to 1880. Whereas some scholars have minimized the role of the criminal justice system in the South, arguing that the region's honor-based value system stunted the development of legal institutions, Waldrep describes a criminal justice system that operated at the core of local political culture. Dependence on the law, however, proved to have ironic and unintended consequences. As white society became more cohesive during the postbellum period, popular justice triumphed over formal law in Warren County.

In early nineteenth-century Warren County, formal law and popular justice coexisted. Designed as a mechanism to bolster racial control, the legal system encouraged slave owners to rely on self-help on the plantation. Off the plantation, the conduct of slaves often entailed complicated issues relating to the property rights of slave owners, and thus, formal law operated in cases involving slaves in