

Lincoln's Proclamation: Emancipation Reconsidered

Edited by William A. Blair and Karen
Fisher Younger

University of North Carolina Press, Chapel Hill,
NC, 2009. 233 pages, \$30.00.

REVIEWED BY HENRY COHEN

The subtitle of this book, *Emancipation Reconsidered*, describes its eight essays better than does its title, *Lincoln's Proclamation*, because the essays concern many aspects of the emancipation of African-American slaves in addition to the Emancipation Proclamation. The first essay, however, by Paul Finkelman, provides an excellent history of the proclamation. Lincoln read a draft of the Emancipation Proclamation to his cabinet on July 22, 1862. At that meeting, Secretary of State William H. Seward advised Lincoln that, to announce the proclamation then, in the wake of the defeat at the end of June of George B. McClellan's army, would look like a sign of weakness; it would be better to wait for a military victory by the Union. Lincoln took his advice. On Sept. 22, after the Union victory at Antietam, Lincoln announced the preliminary Emancipation Proclamation. It stated that, on Jan. 1, 1863, all slaves in any state that remained in rebellion against the United States "shall be then, thenceforward, and forever free."

William A. Blair, in his essay in *Lincoln's Proclamation*, tells us that "black and white abolitionists held 'watch nights' on December 31, 1862, in order to keep tabs on whether Lincoln would fulfill his promise to issue the proclamation." Lincoln fulfilled it, after keeping people in suspense. Lincoln, Blair writes, "did not sign the proclamation until mid-afternoon, and it took even longer for the news to reach places such as Boston. When it did, abolitionists—often in biracial groups—greeted the news with resounding cheers. In many places cannons fired, bells rang, and people sang hymns, delivered orations, or listened to readings of the Emancipation Proclamation."

Were these resounding cheers warranted, in light of the fact that the

Emancipation Proclamation did not apply in the border states—Maryland, Delaware, Kentucky, and Missouri—that had not seceded and did not apply in parts of the Confederate states that were occupied by Union forces or deemed loyal to the Union? This limitation arose from the fact that Lincoln believed that the Constitution did not authorize him to free slaves except pursuant to his war powers to deprive the Confederacy of their labor. Thus, he could free the slaves only in states that were in rebellion—states where, as a practical matter, he was unable to free the slaves. But, as Paul Finkelman writes, "As the armies of the United States moved deeper into the Confederacy they would bring the power of the proclamation with them, freeing slaves every day as more and more of the Confederacy was redeemed by military success." In addition, the Emancipation Proclamation prompted numerous slaves to flee their plantations, depriving the Confederacy of their labor. Many of the slaves who fled joined the Union Army, which the Emancipation Proclamation authorized them to do. The Emancipation Proclamation was vital to the Union's success and consequently to freeing all the slaves.

On Aug. 14, 1862, between the cabinet meeting at which Lincoln read a draft of the Emancipation Proclamation, and his announcement of the preliminary Emancipation Proclamation, Lincoln met with a delegation of free blacks. He urged them to support the voluntary colonization of American blacks in a foreign country, which Lincoln suggested be in Central America. In his essay in *Lincoln's Proclamation*, Mark E. Neely Jr. writes, "a consensus seems to be forming among historians [that] the colonization plea to the African American delegation ... constituted a matter of preparation for the emancipation policy to come, a subtle political reassurance to an overwhelmingly white electorate and their kin that the president was working on a policy to get African Americans to depart the United States forever. ..."

Neely challenges this consensus, because he thinks that Lincoln likely believed in colonization, and that not

enough other people did so for Lincoln's support of it to have benefited him politically. Support for colonization, incidentally, did not necessarily reflect racism. It could also have stemmed from pessimism about the prospects of African-Americans in the United States, even if slavery were to end. Or it could have been an attempt to make emancipation more palatable to racist whites, particularly those in the border states, whose support was crucial to the success of the Union. Neely, however, does not analyze Lincoln's racial attitudes, although he does note that Lincoln's talk to the African-American delegation was "patronizing, unfeeling, misleading, and insulting." Lincoln reportedly said, for example, that, "your race suffer very greatly, many of them by living among us, while ours suffer your presence," and that, "[b]ut for your race among us there could not be a war."

Lincoln held a second significant meeting between the July 22 cabinet meeting and issuing the preliminary Emancipation Proclamation. This meeting, with two Protestant ministers from Chicago on Sept. 13, 1862, is the subject of Richard Carwardine's essay in *Lincoln's Proclamation*. The ministers encouraged Lincoln to issue an emancipation proclamation, but Lincoln concealed from them his plan to issue the preliminary Emancipation Proclamation as soon as the Union had a military victory, saying only that he would "hold the matter under advisement." Nevertheless, Carwardine argues, the encounter between Lincoln and the ministers was significant in the context of Lincoln's broader dialogue with church communities—Catholics and Jews as well as many Protestant denominations. Lincoln's contacts with these groups was significant both in helping Lincoln to read public opinion and in assisting Lincoln, as Carwardine puts it, "in his own ruminations on the theological meaning of the conflict."

Lincoln was sensitive to public opinion. He said that, "had the proclamation been issued even six months earlier than it was, public sentiment would not have sustained it." He knew that the Chicago ministers were, in Carwardine's words, part of a trend

of “emancipationist voices [that] had moved from the antebellum margins to command the wartime Protestant mainstream.” Carwardine concludes that Lincoln’s meeting with the Chicago ministers reassured him that he could rely on mainstream Protestant churches to support the Emancipation Proclamation. In addition, Carwardine writes, the ministers’ support “encouraged secular Republican-Unionist presses to present what was technically a weapon of war and an administrative measure as a moral initiative and evidence of the Union’s righteousness.”

As for Lincoln’s theological ruminations, although Lincoln never joined a church, during the Civil War he came to believe, he said, that “the issues of our great struggle depended on the Divine interposition and favor.” But he never assumed that God was on his side, and, in a private conversation, he once said, “suppose God is against us in our view on the subject of slavery in this country, and our method of dealing with it.”

Steven Hahn’s essay, “But What Did the Slaves Think of Lincoln?,” answers that question briefly: Lincoln “came to embody the [slaves’] greatest hopes and expectations, in good measure because slaveholders made such dire predictions as to what his presidency would bring: warning of abolition,” among other eventualities they regarded with horror. Hahn contends that these hopes and expectations prompted about a half-million slaves to flee to Union lines during the Civil War. In fact, as Michael Vorenberg writes in his essay in this book, “many slaves had watched secession back in 1860 and 1861 with a better sense than white politicians that events were building toward war; thus scores of slaves arrived at Union forts in the South even before the firing on Fort Sumter had begun.”

During the Civil War, some slaves fled to Union lines and were freed under Gen. Benjamin Butler’s “contraband” policy or under the First Confiscation Act or the Second Confiscation Act. The reasoning behind freeing these slaves was to deprive the Confederate government of their labor and to benefit the Union forces by employing them. In her essay, “War, Gender, and Emancipation in the Civil War South,” Stephanie McCurry observes that this

reasoning applied only to male slaves, and reminds us that female slaves also fled to Union lines, sometimes with their children, and something had to be done with them and their children, too. The solution was to grant freedom to the wives and children of freed slaves who worked for the Union. The problem with this solution, however, was that slaves could not legally marry, and many of the women who made it to Union lines had come on their own or with their children, but not with a man. “Women not recognized as wives but trying to reach male family members were repeatedly driven out of Union army camps, denied rations and benefits, and left in destitution.”

After the Emancipation Proclamation, slaves could join the Union army and were often forced to join it. Such coercion might occur after the Union Army occupied Southern territory, plantation owners fled, and slaves stayed behind. The Union would then force male slaves into the military and force female slaves to work for Northern lessees of the abandoned plantations. “In one three-month period in 1864,” McCurry writes, “the superintendent of freedmen sent 12,700 freedpeople, the majority of them women, from contraband camps and shantytowns around Vicksburg to work on plantations.” Thus, women “made the transition to freedom not as soldiers of the republic but as laborers on Union-held plantations or as unwelcome dependents in contraband camps or freedmen’s villages, clinging to the authority and protection of the Union army.” In March 1865—the month before the war ended—even the Confederacy agreed to grant slaves their freedom in exchange for military service. If this plan had been implemented, McCurry writes, it is not clear whether freedom would have been extended to such slaves’ families.

When a male slave fled his servitude and joined the Union Army, he sometimes left a wife and children behind, against whom the slaveholder could retaliate. The former slave—now soldier—however, was in a stronger position to protect his family than he had been as a slave. In his essay in *Lincoln’s Proclamation*, Louis Gerteis quotes two letters that such African-American sol-

diers wrote to their former masters, letters that cannot help but give the reader pleasure. One of them said:

I want you to remember this one thing that the longer you keep my Child from me the longer you will have to burn in hell and the quicker you get there for we are now making up about one thousand black troops to come up through ... Glasgow [Missouri] and when we come woe be to Copperhead rebels and to Slaveholding rebels. ... I want you to understand ... that where ever you and I meets we are enemies to each other. ... I have no fears about getting mary out of your hands this whole Government gives cheer to me and you cannot help yourself. **TFL**

Henry Cohen is the book review editor of The Federal Lawyer. He reviewed other books on the Emancipation Proclamation in the September 2004 and September 2006 issues of The Federal Lawyer.

Woodrow Wilson: A Biography

By John Milton Cooper Jr.

Alfred A. Knopf, New York, NY, 2009. 720 pages, \$35.00.

REVIEWED BY CHRISTOPHER C. FAILLE

This book about Woodrow Wilson includes a brief but substantive discussion of the banking reform bill that created the Federal Reserve System. It contains no mention whatsoever, though, of Jekyll Island, Ga. That is an important omission, to which we will return.

But let us begin with Nicolas Biddle. He was the president of the Bank of the United States when Andrew Jackson destroyed that bank. Despite its official-sounding title, Biddle’s bank was a private institution, though it served as the depository of the federal government’s revenues from 1816 to 1833. This status made it central to the rest of the banking industry throughout the country.

For decades after Jackson’s “Bank War,” the Democratic Party saw Biddle’s

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defeat as a crucial part of its own heritage—a defining moment. But through those same decades, and in part due to the fiscal and monetary pressure generated by the Civil War, the banking system again fell into the hands of a few—people like Jay Gould and J.P. Morgan, who over time came to be known disparagingly as the “money trust.”

Though the relationship between the money trust and the U.S. government was always less formal than had been that of Biddle to the U.S. government before the Civil War, by the end of the 19th century it was a constant working relationship all the same. Politicians would run against the “money trust” but then sigh in relief as Morgan arranged the financing that eased the crises of 1893 and 1907.

A Gathering at a Social Club

In 1910 (here’s the part that probably should have been in Cooper’s story), several important bankers gathered together at a social club on Jekyll Island, Ga., to discuss the future of their industry. There is nothing especially invidious about this, of course: shoe manufacturers, software retailers, and dental-equipment warehousemen all no doubt also have conclaves in comfortable places to discuss their respective industries. Anyway, the attendees at this 1910 meeting included Benjamin Strong, a close associate of J.P. Morgan’s; Frank Vanderlip, the president of the National City Bank of New York; and Paul Warburg, a partner in Kuhn, Loeb & Co. It was at Jekyll Island that these men hammered together a plan that they would present to Congress that would, in essence, bring back the Bank of the United States, with the understanding that this would stabilize their industry and make unnecessary the sort of ad hoc intervention that Morgan had had to make in the two preceding crises. Unsympathetic observers such as G. Edward Griffin have said that they wrote a bill to make themselves a cartel and to create government sponsorship for the management of that cartel.

What is not controversial is that, in January 1912, with 14 months left of the Taft presidency, a Republican senator, Nelson Aldrich, who had also attended

the Jekyll Island gathering, introduced a bill that incorporated the ideas developed on Jekyll Island—calling for the creation of a National Reserve Association that would make emergency loans to members and generally act as the fiscal agent of the U.S. government. The Aldrich bill went nowhere in that session of the legislature, but it did stimulate a lot of debate. The Democratic Party, in the course of the convention that nominated Woodrow Wilson, drafted a party platform calling for reform of the banking system while at the same time denouncing “the so called Aldrich bill for the establishment of a central bank.”

Cooper’s Tale

Of course, Cooper’s particular tale is the life of Woodrow Wilson. And, as Wilson was neither at Jekyll Island nor directly involved in the debate over Nelson Aldrich’s plan, I can understand why Cooper stints on these points. Still, they would have provided valuable context.

The first mention of banking reform as an issue that we get from Cooper comes when his protagonist accepts the Democratic Party’s nomination for President on Aug. 7, 1912. Wilson said at the time that banking reform is a “complicated and difficult question” and that he did not yet “know enough about this subject to be dogmatic about it.” But he also said that he would preside over an “un-entangled government, a government that cannot be used for private purposes, either in business or in politics ...” —words that surely may have been thought to have a bearing on the Aldrich plan.

After his election, banking reform was one of the issues about which Wilson had to begin formulating policy, even before his inauguration, and despite a cold that afflicted the President-elect that December. Cooper tells us that Carter Glass, the chairman of the House Banking Committee, visited Wilson on Dec. 26, 1912, and found him in bed, but looking over a draft plan for “some body of supervisory control” over the banks. That plan had been drawn up by Professor H. Parker Willis of George Washington University. Between that time and June of the next year, Wilson continued to ponder the

issue, and complained to a friend that the issue was so difficult “it is hard to keep one’s heart from failing.”

There were, as Cooper outlines it, four contending positions, because there were two distinct entangled issues at stake in the debates of the time. The first issue was whether banking ought to be centralized. The second was whether it ought to be under more or less rigorous governmental supervision or control. William Jennings Bryan, who served as Wilson’s first secretary of state, was famously passionate about matters of money and credit. Bryan wanted a system of decentralized banks subject to public control. Carter Glass, by contrast, favored a banking system that was both decentralized and private. Nelson Aldrich (and the folks who had gathered on Jekyll Island) wanted a private and centralized system—they wanted to be, collectively, the next Nicholas Biddle. Louis Dembitz Brandeis, one of the leading progressive activists of the day and a future Supreme Court justice, urged Wilson to create a centralized board that would be free of control by the banks, to hold the “money trust” accountable to the public.

Cooper would have us see the struggle for Wilson’s mind, and a little later the struggle in the House of Representatives (which passed the Federal Reserve bill on Sept. 18, 1913) as a thrashing-out of these four positions that reached a point at dead center. The result was that “[p]ublic control prevailed, though not totally, while centralization and decentralization each found a place.”

But the result still had to get through the Senate. And, on Oct. 23, 1913, three dissident Democrats and one Republican presented an alternative plan. This was known as the Vanderlip plan, after its Republican sponsor, Frank A. Vanderlip, veteran of Jekyll Island. Cooper is not very clear on the differences between this plan and the one the House had just passed, but his own view is that Vanderlip was trying to split progressive support by outbidding the House bill on the issue of public control. In other words, this proposal offered the U.S. government more control over banking than the House bill did, not because Vanderlip wanted that

but because he hoped to fight fire with fire. Cooper says that Vanderlip's plan "immediately attracted support from some progressives, who warmed to the government control feature" and may have found it odd that they were allied with the president of the National City Bank of New York.

The final stages of this legislative drama played themselves out in the days before Christmas, 1913. On December 19, the Senate defeated the Vanderlip bill, 44 to 41. The Senate then voted for a slightly modified form of the House bill, 54 to 34. A conference committee quickly worked through the differences, and the House and Senate approved the final bill on December 22 and December 23, respectively. Wilson signed it within hours of the final vote, calling it "a work which I think will be of lasting benefit to the business of the country."

The New York Fed

If we take Cooper's account at face value, we might well conclude that there was good reason he didn't mention the Jekyll Island meeting. Why mention a conspiracy that failed? Its immediate consequence was the Aldrich bill of January 1912. But what ended up becoming law nearly two years later, and over Vanderlip's opposition, was very different—right?

Matters are not that simple. Indeed, in the third paragraph after Cooper tells us what Wilson said when he signed the Federal Reserve Act into law, Cooper writes, "Even the apparent losers in this fight—advocates of a privately controlled central bank—came out well: financial necessity dictated that one of the regional banks be located in New York, on Wall Street." Is he saying that Wall Street ended up regulated by Wall Street after all? In one of his endnotes, he mentions that, within a decade, "the Federal Reserve Bank of New York would effectively become the nation's central bank" and that the governor of the New York Fed (Benjamin Strong, who became the first head of the New York Fed in October 1914 and remained in that post until his death in 1928) came to act like "a European-style central banker."

Why does this matter? Well, because Strong, like Vanderlip and Aldrich, attended the Jekyll Island meeting. All

roads seem to lead back there. A group of powerful New York bankers met, decided that they needed government approval for the cartelization of their industry, and in time their industry was cartelized, under the leadership of one of that meeting's attendees. A suspicious person might see cause and effect here. Indeed, a suspicious person might think that the Vanderlip plan, and its supposed opposition to the bill the Wilson administration was then pushing, was decorative—a false alternative to a bill that in the eyes of the Jekyll Island group seemed perfectly acceptable.

Perhaps the problem with the Aldrich bill of 1912 was simply that it was too obvious a grab for a lawful cartel. A less obvious grab would work within the framework created by an incoming administration, led by a man who came to the office with no strong opinions on the matter. Yet for such a plan to work, the would-be masters of this cartel had to appear to be against it, lest they waken the suspicions of their long-term foe William Jennings Bryan.

Am I advancing a conspiracy theory here? The term "conspiracy" suggests a crime, and it is not a crime to lobby the government for help in cartelizing an industry. Further, the term "theory" suggests something stronger than what I would advance. I offer merely a plausible hypothesis. The hypothesis is that the powerful would-be cartelizers who gathered at Jekyll Island got what they wanted because they outmaneuvered a President who didn't really know what he was getting into.

This hypothesis may be wrong. I have no great attachment to it. But I do think that there is enough to it so that Cooper should really have mentioned the gathering and its bearing on the tale he tells.

Admiration and Neutrality

Cooper plainly admires his subject. He admires Wilson as a man whose instincts were right: "one of the most careful, hardheaded, and sophisticated idealists of his time." He admires especially Wilson's conduct in attempting to keep his country at peace in a time of war. With reference to the protests he sent Germany in connection with the sinking of the *Lusitania*, Cooper writes that Wilson "still wanted to foster a

nonpunitive outcome to the dispute and build a better world, and remaining neutral would put him in a position to achieve those goals."

Because he admires his subject as he plainly does, it is understandable that Cooper might fail to see Wilson as the dupe of the "money trust" he had sought to tame. But I submit on the basis of recent headlines that it has turned out that the Federal Reserve is a big part of the problem it was supposed to cure. Historians should help us understand why. That is their job. **TFL**

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Slavery's Constitution: From Revolution to Ratification

By David Waldstreicher

Hill and Wang, New York, NY, 2009. 195 pages, \$25.00.

REVIEWED BY CHARLES S. DOSKOW

Arguing against ratification of the Constitution in 1788, Samuel Bryan, an abolitionist and anti-Federalist, argued that the participation of the Southern states had been "purchased too dearly." The ratification debates put the compromises with the slave interests at the Constitutional Convention under a microscope, as does much of this fine book.

That the Constitution is a slave document has long been a given. The three-fifths compromise, which distributed votes in the House of Representatives on the basis of slaves who could not vote; the fugitive slave clause, which required that runaway slaves be returned to their owners; the decision to have two senators per state, which protected Southern interests; the continuation of the slave trade for 20 years—all these provisions of the Constitution were concessions to the slave interests. So insistent were the slave states on protecting the peculiar institution that, without these concessions, there would have been no Constitution.

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Many Northern delegates opposed slavery and accepted the accommodations only with reluctance. But they did accept them, and the Constitution defined the positions of the North and the South in a manner that could be resolved only by civil war.

In *Slavery's Constitution*, David Waldstreicher takes the many compromises leading to adoption of the Constitution well beyond the common understanding. In a scholarly and readable manner, he details the extent to which slavery as an institution dominated the relations between the Colonies and the mother country in the years before the Revolutionary War and influenced both the drafting and ratification of the Constitution. Waldstreicher divides his slim volume into three parts: pre-Revolution, the Constitutional Convention, and ratification.

England viewed the colonies' talk of freedom as hypocritical in light of the presence there not only of slaves, but of indentured servants and convict laborers—both of the latter groups bound to involuntary labor for terms of years. This view played a role in Parliament's insisting on greater control of colonial matters and on treating the colonists as subjects rather than as citizens. The Declaratory Act of 1766 asserted parliamentary power over all aspects of colonial life and law. It was a statement of England's power to destroy the Southern economy and society.

Central to this historic theme was what Waldstreicher calls the "Mansfieldian moment." In the *Somerset* case in 1772, Lord Mansfield, the chief justice of the Court of King's Bench, held that a slave brought from the colonies to England became free upon arrival. Although Mansfield's decision was simply that slavery could not exist in England without parliamentary authorization, the decision contained strong anti-slavery language, including a reference to slavery as "odious." It was widely perceived as a rejection of slavery in England, and this perception was critical in the decision of the Continental Congress to move toward independence. The North, led by John Adams, was initially far more convinced that independence was necessary than was the South. But the *Somerset* decision, writes Waldstreicher,

"demonstrated that slaveholders had at least as much to fear from parliamentary sovereignty as did merchants."

On a matter that remains controversial among historians, Waldstreicher does not go as far as Alfred and Ruth Blumrosen did in their 2005 book, *Slave Nation*, in connecting slavery and independence. The Blumrosens found a direct link to the colonies' revolt in 1774 conversations at the Continental Congress between John Adams, who was representing Massachusetts, and Southern delegates who were less supportive of independence. The Southerners were convinced by those conversations that Adams would not commit a revolutionary government to the abolition of slavery if the nation became independent. Waldstreicher recognizes these facts but treats the issue as far more complex than do the Blumrosens.

Many accounts of the Constitutional Convention deal in simplistic terms with the compromises that held it together. Waldstreicher points out that the three-fifths compromise involved more than simply representation in the House of Representatives, an issue that had held up the Convention for six weeks. The three-fifths formula was attached to taxation as well as to representation. "From the beginning of the convention, the great issues of representation and state sovereignty became entwined with the question of slaves as taxable wealth and as persons in, but seemingly not of, the polity," writes Waldstreicher. But there were also slavery issues beyond representation and taxation. The Constitutional Convention had to deal with the slave trade (protected by Article I, section 9 until 1808) and the return of fugitive slaves (guaranteed by Article IV, section 2), while looking over its shoulder at the Continental Congress in New York. That body at the same time was adopting the Northwest Ordinance, which banned slavery north of the Ohio River.

Slavery had to fit into a scheme for republican government. Madison, Waldstreicher writes, brought up slavery to get the delegates "to work through the intertwined issues of nationhood, sovereignty, representation, and property in people." And, all the while, he kept the word "slavery" out of the Constitution.

Northerners who had long opposed slavery were persuaded that a strong union was a priority. Alexander Hamilton had been a member of the New York Manumission Society for many years, but he was one of the foremost advocates of ratification. During the Constitutional Convention, George Washington decided that slavery was wrong and shortly thereafter prepared a will freeing his slaves. "That President Washington decided that slavery was wrong yet felt bound by the Constitution to do nothing about it," Waldstreicher points out, "captures the main effects that the Constitution had on slavery and American politics."

The ratification debates turned on many issues, the dominant one being the nature of the new government and its relationship to the states. Slavery could cut both ways, with opponents of ratification in the North arguing against the Constitution's protection of slavery and opponents of ratification in the South arguing that the provisions protecting slavery were inadequate.

Thus, we reach the question: How did a nation dedicated to freedom emerge from a slave document? Waldstreicher concludes that there existed a subtext of freedom left over from the Revolutionary War that survived the Constitution. "Antislavery survived the post-Revolutionary backlash epitomized by the Constitution because some Americans refused to believe that the Constitution, or even America, was the ultimate source of their cherished ideals. Some standard outside the nation, one that did not require a benediction from the founding fathers, ought to be the source of legitimacy, a polestar in making political judgments."

The founders created a nation based on a republican model; compromise with the slave interests was the price. But the abolitionists of the 19th century held convictions that could not be realized short of war, and it took a great President and the Civil War to scrub the record of the compromises that created the nation. **TFL**

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American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia

By Joan Biskupic

Sarah Crichton Books, New York, NY, 2009.
434 pages, \$28.00.

REVIEWED BY JOHN C. HOLMES

Joan Biskupic, a journalist with a law degree from Georgetown University, has covered the U.S. Supreme Court since 1989. In *American Original*, she relates Justice Antonin Scalia's life and judicial philosophy, focusing on his "originalism" and on his opinions for the Supreme Court.

Born in 1936 in Trenton, N. J., Scalia was the only child of Salvatore Eugene Scalia and the former Catherine Panaro, both immigrants from Italy. Biskupic attributes Scalia's keen intelligence and disciplined scholarship to his father, who, after arriving in the United States with little knowledge of English, earned a Ph.D. at Columbia University and taught Romance languages at Brooklyn College for more than 30 years. Scalia's passion and exuberance Biskupic attributes to his mother.

Scalia was valedictorian at Xavier High School, a Jesuit school in Manhattan, and was first in his class at Georgetown University and magna cum laude at Harvard Law School. At Harvard, he met Maureen McCarthy, a Radcliffe student and, like Scalia, a devout Catholic. They married and traveled throughout Europe on a scholarship of Scalia's. They had nine children, all of whom have had successful careers. Biskupic writes that Maureen, going against the tide of women choosing careers before marriage, has never regretted her decision not to use her Radcliffe education to pursue a career.

Antonin Scalia began his legal career with Jones, Day, Cockley and Reavis, a prominent Cleveland law firm, where he worked successfully from 1961 to 1967. He would likely have made partner and enjoyed the accompanying financial benefits, but he opted to teach at the University of Virginia Law School. In 1971, after four years in Charlottesville, the restless Scalia landed a job as general counsel for President Nixon's

newly established Office of Telecommunications Policy. Then, in 1972, he became chairman of the Administrative Conference of the United States, a small independent agency that strove to improve management of the federal bureaucracy. After Nixon's resignation, President Ford appointed Scalia to head the Office of Legal Counsel at the Department of Justice. That position became increasingly important, as Scalia gave legal advice to the President during the turbulent aftermath of Watergate, defending executive privilege and providing firm, bold defenses of executive authority.

After Ford's defeat by Jimmy Carter in 1976, Scalia returned to teaching at the University of Chicago Law School. When Ronald Reagan was elected in 1980, Scalia interviewed for the position of solicitor general, but was turned down, and then himself turned down a seat on the U.S. Court of Appeals for the Seventh Circuit. Scalia turned it down because he hoped to be offered a seat on the U.S. Court of Appeals for the District of Columbia Circuit, which handled more regulatory matters, and, in 1982, he was, and was confirmed by the Senate.

Scalia relished his dissents on the D.C. Circuit, where the majority opinions were often written by liberal judges J. Skelley Wright, David Bazelon, and Ruth Bader Ginsburg. Despite their contrasting personalities and judicial philosophies, Ginsburg and Scalia formed and, on the Supreme Court have maintained, a strong friendship.

President Reagan's first appointment to the Supreme Court, Sandra Day O'Connor, fulfilled his commitment to appoint the first female justice. In 1986, a second vacancy arose with the retirement of Chief Justice Warren Burger, and Reagan nominated Scalia. Biskupic writes that the Senate was unusually docile in its questioning of Scalia, and that Scalia was unusually reticent in his testimony, resulting in a 98-0 confirmation. Senate Democrats were far less charitable with Reagan's next nominee, Robert Bork.

Biskupic recognizes Scalia's contribution to the jurisprudence of "originalism" in interpreting the Constitution. Relying on the text of the Constitution and the framers' intent, Scalia has almost single-handedly established originalism

as a counterweight to the "living Constitution" approach, which emphasizes the need to adjust to modern developments and attitudes in interpreting the Constitution. Biskupic quotes Scalia: "I used to be able to say, with a good deal of truth, that you could fire a cannon loaded with grapeshot into the faculty lounge of any law school in the country and not strike an originalist. That no longer is true. Originalism—which was once orthodoxy—at least now has been returned to the status of respectability."

Biskupic devotes a major part of the book to Scalia's opinions in particular Supreme Court cases, which this review lacks the space to discuss; in any case, readers of *The Federal Lawyer* may be presumed to know that Scalia favors greater deference to the powers of the President, permitting more governmental support for religion, fewer procedural protections for accused criminals, and so forth. Biskupic also discusses Scalia's personal characteristics, such as his outspoken and even bombastic language, as well as his charming and entertaining personality. During oral arguments at the Court, he asks more questions and elicits more laughter than any other justice. In his written opinions, by contrast, he often sharply attacks opponents' views and scoffs at or belittles their reasoning.

Unlike most justices, Scalia participates in and enjoys the Washington, D.C., social scene. He is a frequent and sought-after speaker and lectures at universities both in the United States and overseas; in his lectures, he encourages the give-and-take of his audiences. He was an early supporter of and continuing participant and favorite of the Federalist Society, which is the leading legal debating organization with conservative and libertarian leanings. His boundless energy and exuberance are highly unusual in a Supreme Court justice.

Biskupic presents a mostly objective account of Scalia's jurisprudence, although admirers of Scalia will want to screen out her subtle and not-so-subtle criticisms advanced through the use of pejorative adjectives, faint praise, and quoting critical comments made by others. Biskupic devotes a chapter to Scalia's refusal to recuse himself from

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a case involving Vice President Cheney even though Scalia had gone on a hunting trip with Cheney mere weeks before the oral argument in the case. She suggests that Scalia's support for "race neutrality" may disguise a lack of sympathy for African-American interests. Biskupic is also highly critical of Scalia's role in *Bush v. Gore*, arguing that, in order to reach the result he sought, he abandoned his support for state supremacy under the Constitution in matters not assigned to the national government.

In writing *American Original*, Biskupic relied not only on the written record, but held extensive interviews with Scalia and others. She has produced a well-written, highly readable book that describes in interesting detail the people, policies, politics, and nuances of the higher judicial and political arena. **TFL**

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Methland: The Death and Life of an American Small Town

By Nick Reding

Bloomsbury Publishing, New York, NY, 2009.
272 pages, \$25.00.

REVIEWED BY ELIZABETH KELLEY

In 1902, Clarence Darrow spoke to the inmates of the Chicago jail. His words on the occasion, like all of Darrow's words, were passionate and powerful.¹ He asserted that the reason that virtually every one of the inmates had fallen into crime was that he or she felt driven to it by economic necessity. Of course, crimes arise from other causes as well, such as mental illness. But a century later, Darrow's statement retains much validity.

Methland: The Death and Life of an American Small Town portrays the tragic connection between economic despair and drug addiction. Over the years, Nick Reding, a journalist, had noted the rise

of methamphetamine addiction and the prosecutions that resulted from it. More importantly, he recognized that meth—or "crank"—was a small-town drug rather than a big-city drug. In *Methland*, he uses the town of Oelwein, Iowa, for a case study of the matter.

Oelwein, with a population of 6,672, was once a prosperous middle-American town out of a Norman Rockwell painting. Its residents worked as farmers or in blue collar jobs such as meatpacking, which paid a living wage. But, as agribusiness began to swallow up family farms and as factory jobs moved overseas, Oelwein's economy began to decline. A vicious cycle began. Young people moved away because there were no jobs. The tax base eroded. And meth, with its ability to provide superhuman energy when taken and economic riches when sold, was not merely a drug that enabled the unhappy to self-medicate and dull their pain. It filled a void.

Meth did not appear out of nowhere. Reding provides a history of the drug, which was first synthesized by a Japanese chemist in 1893. In the 1930s, the pharmaceutical giant Smith, Kline & French began marketing the drug under the name Benzedrine. Methamphetamine was prescribed for narcolepsy, weight gain, and as a treatment for 33 illnesses, including schizophrenia, depression, anxiety, the common cold, hyperactivity, impotence, fatigue, and alcoholism. In addition, in a world in which the success of a community was determined by the speed with which it could industrialize, meth suppressed the need for sleep, food, and hydration, all the while keeping workers "peppy," as the ads read.

Until the early 1980s, meth was what could be called a respectable drug. Truck drivers, construction workers, soldiers—anyone who engaged in hard physical labor and kept long hours—might take meth to enhance his or her performance. However, the drug began to be manufactured and distributed illegally, and those who trafficked in it became wealthy. This coincided with the decline of the traditional economic base in middle America.

Reding tells the stories of people

whose lives have been destroyed by meth. One is Roland Jarvis, a meatpacker who originally began using meth in order to keep longer hours. Years of use ruined his health and his life:

At thirty-eight, Jarvis had become a sort of poster boy around Oelwein for the horrific consequences of long-term meth addiction. ... In two months, Jarvis was going back to jail, this time for possession of drug paraphernalia. (His sixty-year-old mother would be joining him in the lockup for the same offense.) He wore warm-up pants and wool socks. He was always cold, he said, and hadn't slept more than three hours at a time in years. His skin was still covered in open, pussing sores. He had no job and no hope of getting one. The last time he "went uptown," as he calls going to a Main Street bar, was eighteen months earlier. That night he was in his old hangout, the Do Drop Inn, when another customer hit Jarvis in the face because he wanted to know what it was like to slug a man with no nose.

In light of the current economic downturn, this is a timely book. People debate about whether treatment or intercepting the supply is key to winning the war on drugs. As *Methland* makes plain, however, economic development—with the promise of jobs that pay a living wage—is also key to winning the war on drugs, and ultimately, to the reduction of our prison population. This is as true today as it was in Clarence Darrow's day. **TFL**

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Endnote

¹For text of this address, see www.bopsecrets.org/CF/darrow.htm.