

LINCOLN'S WAR: THE UNTOLD STORY OF AMERICA'S GREATEST PRESIDENT AS COMMANDER IN CHIEF¹

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*The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states*³

*The Congress shall have the power to . . . declare war.*⁴

I. Introduction

When waging war, the President wields a powerful influence. In the Korean War, President Harry S. Truman dismissed General Douglas MacArthur for threatening to defy his authority,⁵ and in the Vietnam War, President Richard Nixon's "Madman Theory" made his personality a strategic linchpin.⁶ To some extent, the limits of this power are repeatedly challenged: in 1967, several draftees filed a petition against President Lyndon B. Johnson regarding his authority to *coerce* participation in an offensive attack that Congress did not approve;⁷ in 1990, fifty-four members of Congress filed suit seeking to prevent President George W. Bush from deploying forces without prior Congressional approval.⁸

In *Lincoln's War*, Geoffry Perret, author of previous presidential biographies and military history books,⁹ argues that President Abraham Lincoln unalterably expanded the President's role as Commander in Chief, and in doing so, directly contributed to the Union's victory. Possibly, the book's title, *Lincoln's War*, is intentionally subtly ambiguous: in the possessive sense, the title hints at the figurative war Lincoln waged on Congress, the military command, and political parties; in the descriptive sense, the title attributes much of the literal war's outcome to Lincoln.

Lincoln's War primarily presents the Civil War from Lincoln's point of view. It chiefly describes events chronologically, but also occasionally topically.¹⁰ Though *Lincoln's War* is not a novel, Perret personalizes Lincoln by interjecting descriptions of Lincoln's personal feelings and by citing anecdotal stories.¹¹

While Lincoln's role as Commander in Chief indeed warrants study,¹² as the topic is significant and remains relevant today, critics have noted numerous factual errors in *Lincoln's War*.¹³ This review argues, however, that *Lincoln's War* is more seriously flawed. In Perret's enthusiasm for emphasizing Lincoln's role as Commander in Chief, he offers an exaggerated view of Lincoln's war powers and the effect of Lincoln's military decisions on the outcome of the Civil War. The book also fails to convince the reader that Lincoln's primary role in the Civil War was not that of a politician.

¹ GEOFFRY PERRET, *LINCOLN'S WAR: THE UNTOLD STORY OF AMERICA'S GREATEST PRESIDENT AS COMMANDER IN CHIEF* (2004).

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³ U.S. CONST. art. II, § 2.

⁴ *Id.* § 8.

⁵ JOHN COSTELLO, *THE PACIFIC WAR: 1941-1945*, at 604 (1982).

⁶ STANELY KARNOW, *VIETNAM: A HISTORY* 597 (1983).

⁷ See *Mora v. McNamara*, 389 U.S. 934 (1967) (failing to rule on the legality of the war).

⁸ *Dellumes v. Bush*, 752 F. Supp. 1141 (D.D.C. 1990) (ruling that the matter was not ripe for judgment); see also DENNIS R. HUNT, DONALD N. ZILLMAN, MICHAEL F. NOONE JR. & POUL A. CAPFARI, *CONSTITUTIONAL LAW FOR THE CITIZEN SOLDIER* 160 (2d ed. 1993) (providing background information on this judgment).

⁹ See, e.g., GEOFFRY PERRET, *OLD SOLDIERS NEVER DIE: DOUGLAS MACARTHUR* (1996); GEOFFRY PERRET, *ULYSSES S. GRANT: SOLDIER AND PRESIDENT* (1998); GEOFFRY PERRET, *JACK: A LIFE LIKE NO OTHER* (2002).

¹⁰ See PERRET, *supra* note 1, at 144-55 (describing Lincoln's fascination with weapons).

¹¹ See *id.* at 334 (describing Lincoln accepting visitors with ink on his fingers and a hole in his sock); *id.* at 281 (Lincoln writing an angry letter to a disappointing general and filing it away); *id.* at 167 (Lincoln crying miserably over the death of Willy, his eleven years old son).

¹² See, e.g., David Herbert Donald, *Lincoln and Davis as Commanders in Chief*, in *THE LINCOLN ENIGMA: THE CHANGING FACES OF AN AMERICAN ICON* 72-85 (Gabor Borrit ed., 2002).

¹³ James M. McPherson, *Top Gun*, *NATION*, June 14, 2004, at 36, 36-38.

II. Legal Aspects

“Are all the laws, but one, to go unexecuted . . . lest one be violated?”¹⁴

In shaping the role of Commander in Chief, Lincoln relied on vague constitutional phrasing and altered the accepted separation of powers between the President and Congress. Legal issues, therefore, are inseparable from Perret’s theme. As *Lincoln’s War* is a general history text, Perret is warranted in omitting detailed legal analysis. He does so to such an extent, however, that readers are likely to develop an exaggerated sense of Lincoln’s war powers and an erroneous perception of Lincoln’s views on the rule of law. For the sake of brevity, this review discusses below only some of the more striking examples of such omissions.

A. Blockade Declaration

In 1861, Lincoln declared a naval blockade of Confederate ports, primarily aimed at hampering the Confederacy’s cotton exports and arms imports.¹⁵ Although Congress subsequently ratified the blockade, it did not *a-priori* approve it. Under international law, a blockade amounts to a war declaration.¹⁶ The Constitution, however, grants Congress, not the President, the authority to declare war.¹⁷ In the milestone *Prize Cases*, Lincoln’s blockade declaration was legally challenged.¹⁸

Perret’s description of the Court’s ruling focuses on the legal question of blockading Confederate ports without recognizing the Confederacy as a belligerent state.¹⁹ Perret’s description, however, omits an important point: while the Court ruled that the President is authorized to take means in order to repel an invasion or insurrection, it explicitly upheld the authority of Congress alone to initiate or declare war.²⁰ This limitation on the President’s war powers is not conveyed to Perret’s readers.

B. Expansion of the Regular Army and Disbursement of Funds

In the course of the war, Lincoln expanded the regular army, established a volunteer’s army, and disbursed funds to support them.²¹ The Constitution authorizes Congress, not the President, “to raise and support armies,”²² and further states “No money shall be drawn from the treasury, but in consequence of appropriations made by law.”²³

Perret’s discussion of Lincoln’s actions gives the impression that Lincoln considered himself to have legal power to take emergency actions contrary to legal mandates.²⁴ It does not explain Lincoln’s actual view that in the given emergency state he was effectively powerless to simultaneously uphold all laws. It does not mention precedent and the actions of former Presidents Washington and Jefferson. And it does not explain Lincoln’s belief, and Congress’s subsequent ratification thereof, that his actions were for the public good and *a-priori* on behalf of Congress.²⁵

¹⁴ Message to Congress in Special Session (July 4, 1861), in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 430 (Roy P. Basler ed., 1953-55).

¹⁵ See PERRET, *supra* note 1, at 380.

¹⁶ See *The Brig Amy Warwick (The Prize Cases)*, 67 U.S. 635 (1863).

¹⁷ See U.S. CONST. art. II, § 2 & § 8.

¹⁸ *The Prize Cases*, 67 U.S. 635.

¹⁹ See PERRET, *supra* note 1, at 381-82.

²⁰ *The Prize Cases*, 67 U.S. at 668-69. The Court’s majority opinion, by a five to four vote, distinguished the power to *initiate* a war from the power to *respond* to one. It stated that the blockade did not amount to recognition of the Confederacy as a belligerent state, since a *de facto* state of war already existed. See also DANIEL FARBER, *LINCOLN’S CONSTITUTION* 139-40 (2003) (explaining the Court’s ruling).

²¹ See PERRET, *supra* note 1, at 31-33, 41-47.

²² See U.S. CONST. art. I, § 8.

²³ See *id.* § 9; see also *id.* art. II §§ 2, 8 (stating that Art. II, generally vesting the president’s authority as Commander in Chief, does not override the explicit phrasing of Art. I).

²⁴ See PERRET, *supra* note 1, at 47.

²⁵ See FARBER, *supra* note 20, at 192-95 (describing these three points, based also on Lincoln’s Message to Congress in a special session (July 4, 1861), *supra* note 14, at 429-30).

C. Suspension of Habeas Corpus

In the early stages of the war, Lincoln suspended a writ of habeas corpus, the Constitutionally-protected right of a detainee to argue the detention's legality in court.²⁶ He did so in response to mob attacks on Union Soldiers and supporters throughout Maryland, including in the city of Baltimore.²⁷ The Constitution does not specify whether Congress or the President has the authority to suspend the writ of habeas corpus.²⁸

Perret mentions this episode as another example of Lincoln's expansion of presidential authority and correctly notes the severe implications for civil rights (*e.g.*, life, liberty and freedom of speech).²⁹ The *Ex parte Milligan* ruling,³⁰ however, held that the habeas suspension applied to detention, but not to punishment; furthermore, it limited this power to military operation theatres, but not to locations where the courts are functioning. As Perret does not mention this ruling, the Court's distinctions and the resulting limitations on war powers are lost on Perret's readers.³¹

Perret mentions Lincoln's disobedience of a direct order from Chief Justice Roger B. Taney finding the habeas suspension unconstitutional,³² giving the impression that Lincoln believed he could second-guess judicial orders. Here, too, the author omits the points previously raised in this review. Perret also omits discussion of the validity of the Court's jurisdiction following the authorized suspension of the habeas writ.³³

III. Political-Military Aspects

"My policy is to have no policy"³⁴

In accordance with his main theme, Perret emphasizes Lincoln's greatness in his role of military leader³⁵—issuing orders. He does not convince the reader that Lincoln's greatness did not lie primarily in his role of politician, maneuvering and compromising in the face of opposition.³⁶

Other authors³⁷ emphasize Lincoln's crucial role as a pragmatic politician: his maneuvering between the Union's different political parties, his postponing emancipation until the right political moment, his implementing of policy on slave-holding in border states, his decisionmaking on amnesty and reconstruction in Louisiana and Missouri, and his skilled negotiating with Cabinet officers. It is especially important to note the political climate that surrounded the 1862 elections—the Democrats planned a call for immediate cessation of hostilities if they had won. Lincoln's major political victory in these elections, even carrying the border states, largely ensured the war's continuation.³⁸

²⁶ A habeas corpus petition is a "writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal." BLACK'S LAW DICTIONARY 716 (7th ed. 1990). See also U.S. CONST. art. I, § 9.

²⁷ See FARBER, *supra* note 20, at 16-17 (describing the historical background of the suspension of habeas corpus).

²⁸ As Congress subsequently ratified the writ suspension, the question is restricted to Lincoln's initial actions. See *id.* at 158.

²⁹ See PERRET, *supra* note 1, at 300-305.

³⁰ *Ex parte Milligan*, 71 U.S. 2 (1866) (ruling, after the end of the war, that the habeas suspension was unconstitutional); see FARBER, *supra* note 20, at 164-67 (describing the case in detail).

³¹ Recently, in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004), the Court awarded Hamdi, an American citizen detained as an Afghani "enemy combatant" for two years without trial, a due-process ruling. Although both the President and Congress agreed on habeas suspension, the Court decided that the detainee was entitled to an opportunity to rebuff the Government's factual assertions concerning him. It rejected the Government's position limiting the Court's role in wartime circumstances.

³² See PERRET, *supra* note 1, at 301 (failing to refer to the primary source of Chief Justice Taney's ruling: *Ex parte Merryman*, 17 F. Cas. 144, 148 (C.C.D. Md. 1861) (No. 9,487)).

³³ See FARBER, *supra* note 20, at 176-95 (discussing Lincoln's views on the rule of law and specifically addressing his response to Judge Taney's ruling).

³⁴ Encyclopedia Americana: The American Presidency, Abraham Lincoln, <http://ap.grolier.com/article?assetid=0247400-00templatename=/article/article.html> (last visited Oct. 23, 2005); see also KEITH D. DICKSON, THE CIVIL WAR FOR DUMMIES: A REFERENCE FOR THE REST OF US! 312 (2001).

³⁵ See PERRET, *supra* note 1, at 334-35, 340-42, 358, and flap cover.

³⁷ See David Herbert Donald, *Abraham Lincoln and the American Pragmatic Tradition*, in LINCOLN RECONSIDERED: ESSAYS ON THE CIVIL WAR ERA 121-32 (David Herbert Donald ed., 3rd ed. 2001); see also McPherson, *supra* note 13, at 38 (arguing Perret did not link the military strategy with national strategy and that "Lincoln had an intuitive grasp of the integral relationship between these two forms of strategy.").

³⁸ See DICKSON, *supra* note 34, at 265.

Lincoln's War focuses on the military effects of Lincoln as Commander in Chief in determining overall strategy, raising armies, raising funds, and determining command. Perret largely exaggerates these effects and ignores their political considerations.

A. Determining Overall Strategy

As Perret describes, at the war's outset, General in Chief Winfield Scott and General Irvin McDowell proposed conflicting strategies to win the war.³⁹ General Scott's strategy consisted of a western offensive operation along the Mississippi River to physically split the Confederacy, coupled with an eastern defensive action and a naval blockade.⁴⁰ This plan was strategically sound: the Union could both economically strangle the Confederacy in an "anaconda-like" grip and obtain a base for subsequent offensive operations.⁴¹ General McDowell's strategy consisted mainly of a thrust to Richmond, the Confederate capital. His strategy ignored the Confederacy's advantages in defending Richmond and did not include a strategic alternative in the event the Confederacy relocated its capital.⁴²

Lincoln chose General McDowell's seemingly more speedy and aggressive plan over General Scott's more passive "Anaconda Plan." Although Perret claims that Lincoln's "Forward to Richmond!"⁴³ strategy finally succeeded,⁴⁴ he does nothing to convince the reader that this was a militarily sound plan that a Commander in Chief should have chosen. Rather, the benefits of this plan were political. The press and the public derided General Scott's "Anaconda Plan"⁴⁵ and were enthusiastic about General McDowell's plan,⁴⁶ possibly due to the romanticized view of war's nature, which was colored by images of Tennyson and Napoleon's Grand Armée⁴⁷. While Lincoln's decision lay strictly within his role as Commander in Chief—overriding subordinates—his decision more clearly illustrated his role as a politician whose ear is attuned to public opinion.

B. Choice of Generals

Perret stresses Lincoln's role as Commander in Chief in dismissing and appointing generals throughout the war. In many cases, Lincoln's command choices were influenced by public opinion or contained political considerations, such as the dismissal of General McDowell,⁴⁸ the removal of General Samuel Curtis,⁴⁹ and the appointments of General Franz Sigel, General Carl Schurz,⁵⁰ and General Benjamin Butler.⁵¹ The appointment of Ulysses S. Grant as the head of the Army of the Potomac only followed Lincoln's conviction that Grant would not challenge him as a presidential nominee.⁵²

C. Raising Armies

Clearly, the Union's overwhelming manpower advantage was crucial to its victory.⁵³ Perret stresses Lincoln's role as Commander in Chief in translating the numerical superiority of the Union's population into a numerical superiority in the

³⁹ See PERRET, *supra* note 1, at 55-60.

⁴⁰ See DICKSON, *supra* note 34, at 71.

⁴¹ See *id.*; see also PERRET, *supra* note 1, at 57-60.

⁴² See PERRET, *supra* note 1, at 59.

⁴³ *Id.* at 60.

⁴⁴ *Id.* at 410.

⁴⁵ See *id.* at 57-60 (containing the mocking newspaper cartoon of the "anaconda plan").

⁴⁶ *Id.* at 57-60.

⁴⁷ BRUCE CATTON, *THE CIVIL WAR* 33 (2001).

⁴⁸ PERRET, *supra* note 1, at 71 (explaining that McDowell was dismissed due to political considerations).

⁴⁹ *Id.* at 266 (explaining Curtis was dismissed because he did not get along with a governor).

⁵⁰ *Id.* at 266-67 (explaining the effect on the German immigrant population of appointing German-born (inept) commanders Sigler and Schurz).

⁵¹ *Id.* at 386 (describing the political implications of appointing Butler, a Democrat).

⁵² *Id.* at 390-91.

⁵³ See DICKSON, *supra* note 34, at 328.

Union's armies: raising militia and regular army Soldiers, declaring a draft, and using the Emancipation Proclamation to enlist and arm African-Americans.⁵⁴

In reality, the Union's manpower superiority does not seem to follow quite as dramatically from Lincoln's actions as Perret argues. On many occasions, Congress called for more men than Lincoln requested.⁵⁵ As noted earlier in this review, Lincoln argued that in enlarging the regular army he had merely acted on behalf of public opinion and Congress. Also, the overwhelming majority of Union Soldiers were volunteers and not draftees.⁵⁶ Finally, the aura of racism dictated the assignment of African-American regiments largely to quiet areas.⁵⁷

D. Raising Funds

Perret stresses Lincoln's role in the issuing of greenbacks: "No major war is won without money. Lincoln created his own."⁵⁸ This is another example of Perret overrating Lincoln's actions—issuing greenbacks was the action of Congress. Also, Perret does not mention actual sums. Greenbacks accounted for only four hundred fifty million dollars, whereas loans, bonds, and taxation accounted for over two billion dollars, the majority of the sum raised to finance the war.⁵⁹

IV. General Criticism

Lincoln's War is also flawed in problematic referencing, omission of relevant background, and insufficient analysis of critical battles.

A. Problematic Referencing

Perret supports nearly all of *Lincoln's War's* facts through references. Unfortunately, in many cases when referring to legal issues, he does not refer to primary legal sources,⁶⁰ which is possibly the root of some of the problems noted in Section II of this review. Also, previous critics have argued that Perret refers to questionable secondary sources.⁶¹

B. Omission of Background

As outlined in this review, many of Lincoln's decisions were political in nature. Clearly, to understand these decisions, the reader must first understand the political context in which the decisions were made. Perret merely mentions that Lincoln headed the newly-formed Republican Party.⁶² Perret neither explains the party's origins,⁶³ nor mentions Lincoln's Whig roots and their significance to his views on legal issues.⁶⁴

C. Insufficient Analysis of Critical Battles

Lincoln's War omits significant Civil War battle details, fails to clearly group battles into campaigns, and hampers the visualization of each battle by including only a single map to accompany a variety of tactical and strategic battles. It is difficult to understand any aspect of the war, Lincoln's role included, without understanding its campaigns and battles. For the sake of brevity, only some striking examples are listed below.

⁵⁴ See PERRET, *supra* note 1, at 31-33, 41-47.

⁵⁵ See *id.*

⁵⁶ See DICKSON, *supra* note 34, at 317.

⁵⁷ See *id.* at 328.

⁵⁸ See PERRET, *supra* note 1, at 202.

⁵⁹ See DICKSON, *supra* note 35, at 312-13.

⁶⁰ See, e.g., *id.* at 301 (Chief Justice Taney's decision), 380-82 (the Prize Cases); 303-05 (the "Valladingham case").

⁶¹ See McPherson, *supra* note 13, at 36-39.

⁶² See PERRET, *supra* note 1, at 15.

⁶³ See DICKSON, *supra* note 34, at 22-23.

⁶⁴ See FARBER, *supra* note 20, at 119 (explaining that the Whig party was formed largely in opposition to President Jackson's aggressive use of presidential power, which they viewed as a threat to democracy).

Perret omits the masterful stealth maneuvers of General Stonewall Jackson's Valley Campaign and does not even mention General William T. Sherman's March to the Sea.⁶⁵ It is difficult to understand Lincoln's frustration with his generals' ineptitude, such as General Ambrose E. Burnside at Fredericksburg,⁶⁶ without comparing these generals to their more gifted contemporaries, such as General Jackson. It is also difficult to understand the Confederacy morale without knowledge of General Sherman's scorched-earth policy, which caused large-scale civilian devastation unseen since the seventeenth century.⁶⁷

In a larger sense, it is difficult to understand from *Lincoln's War* the reasons for the Union's victory. Diversion, stealth, reconnaissance, and morale are generally considered important military tactics.⁶⁸ Nearly eight decades after the Civil War, however, Japanese General Isoroku Yamamoto predicted the inevitability of Japanese defeat in World War II due to overwhelming U.S. industrial superiority.⁶⁹ Possibly, Perret's opinion is that the Civil War's outcome was inevitable for the same reason. *Lincoln's War*, however, does not provide insight into his opinion.

V. Conclusions

Lincoln's War exaggerates Lincoln's admittedly important role as Commander in Chief and downplays his role as a politician. The book's structure and style obscure the key points Perret attempts to make. A military lawyer looking for the legal lessons of Lincoln's Civil War actions⁷⁰ has better alternatives than *Lincoln's War*. Following a dramatic introduction, the book is essentially a lengthy and detailed transcript of Lincoln's Civil War activities, written without sufficient structure, clear statements of main points, or a cogent summary.

⁶⁵ See DICKSON, *supra* note 34, at 123-32, 265-68.

⁶⁶ See PERRET, *supra* note 1, at 235.

⁶⁷ See PAUL K. DAVIS, 100 DECISIVE BATTLES: FROM ANCIENT TIMES TO THE PRESENT 133 (2001).

⁶⁸ See SUN-TZU, THE ART OF WAR, 192, 202, 231, 173 (Sawyer trans., 2002).

⁶⁹ See COSTELLO, *supra* note 5, at 81.

⁷⁰ Farber's *Lincoln's Constitution* provides a thorough and interesting review of the constitutional aspects of Lincoln's actions and discusses related modern constitutional issues. See FARBER, *supra* note 20.