

CHOOSING WAR: THE LOST CHANCE FOR PEACE AND THE ESCALATION OF WAR IN VIETNAM¹

REVIEWED BY MAJOR FRANCIS DYMOND²

*To argue that American leaders could have withdrawn or had the opportunity to begin disengagement from Vietnam at various stages is not sufficient. Of course, they could choose, but that does not mean they possessed real choice.*³

Frederick Logevall introduces previously unreviewed evidence and offers an historical interpretation of it in the latest round of arguments against America's 1965 escalation to war in Vietnam.⁴ Logevall, who was born in the early 1960's, rebuts the common current view that the United States lacked the "real choice" necessary to disengage from military intervention. Logevall uncovered a plethora of primary sources—including international diplomatic documents and recently declassified U.S. records—to paint a clear and damning picture of both ambivalent and "pig-headed" U.S. decision-making concerning Vietnam. His conversational style, combined with his original assessment of the international diplomatic and domestic political climate of the era, add significant weight to his argument that America *could* have negotiated disengagement during what Logevall calls "the Long 1964."⁵ But in rebutting the inevitability doctrine, he distorts his work by alleging that America's leaders committed immoral or criminal acts when they squandered such opportunities.

The portrait of "the Long 1964" is skillfully drawn through logical chronological segments of the period beginning 29 August 1963 and end-

1. FREDERICK LOGEVALL, CHOOSING WAR: THE LOST CHANCE FOR PEACE AND THE ESCALATION OF WAR IN VIETNAM (1999).

2. United States Army. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. LOGEVALL, *supra* note 1, at xvi-xvii (quoting LESLIE GELB & RICHARD K. BETTS, THE IRONY OF VIETNAM: THE SYSTEM WORKED 244 (1978)).

4. See, e.g., DAVID KAISER, AMERICAN TRAGEDY: KENNEDY, JOHNSON, AND THE ORIGINS OF THE VIETNAM WAR (2000); MICHAEL LIND, VIETNAM THE NECESSARY WAR: A REINTERPRETATION OF AMERICA'S MOST DISASTROUS MILITARY CONFLICT (2000); ROBERT McNAMARA, ARGUMENT WITHOUT END (1999).

5. LOGEVALL, *supra* note 1, at xiii. For a brief review commenting on Logevall's "brilliant" use of these sources to frame the international stage during this period, see Kai Bird, *The Weapons in the Wings*, WASH. POST, Apr. 30, 2000, at X04.

ing in July 1965. Starting briefly from 1954, Logevall sets out a measured tale of interaction among the key international participants (South and North Vietnam, France, Britain, Canada, Russia, and China), the domestic political participants (primarily key policy- and law-makers), and the media. 29 August 1963 was a critical turning point, he argues, as it represents the point when French President General Charles de Gaulle elevated Vietnam to the political front burner for President John F. Kennedy, Jr. For a variety of reasons, de Gaulle “believed that a major crisis threatened in Vietnam.”⁶ He became one of a growing number of protagonists questioning the use of military force to resolve the Vietnam problem.

The level of difficulty for achieving political and military success in South Vietnam then rose quickly. Consequently, both Presidents Kennedy and Lyndon Johnson confronted waning support for and general challenges to the U.S. military policy. Against this backdrop, Logevall exemplifies the historian by elucidating three key themes connecting these challenges.⁷ First, Logevall demonstrates how fluid the global and domestic political positions were regarding any particular means or method of stopping communist aggression in Southeast Asia. Second, he paints a sympathetic but shameful picture of the ambivalent and rigid thinking of America’s leaders that drove their political maneuvering on Vietnam. In particular, Logevall patiently displays subtle shifts in these leaders’ standards for success as they became more desperate to shore up successively weaker South Vietnamese governments.⁸ Third, Logevall faults his protagonists and—minimally—the Ho Chi Minh government for failing to successfully urge Kennedy and Johnson to consider some kind of negotiated settlement by presenting viable peaceful solutions.

In under 400 pages, Logevall artfully weaves these themes into a summary of eighteen months worth of international and domestic diplomatic, political, media, research, personal, and deliberative documents. For example, he intimates a level of certainty in the meaning of events through frequent inferences and conversational phrases. Likewise, his use of a droll sense of humor, a pleasant side effect of his personal motivation behind the work, highlights the absurdity we can now see in the politicking behind U.S. policy-making. The reader can even detect an effective level of sarcasm to this end. Logevall effectively applies all three techniques when describing Washington’s efforts to decry the lack of west-

6. LOGEVALL, *supra* note 1, at 1.

7. *Id.* at xvi.

8. *Id.* at 99, 205, 318.

ern support for its Vietnam policies in mid-1964 and its reaction to British hints of fostering negotiations.⁹ He observes that Washington did not view these matters as reasons to examine the fundamentals of America's objectives, but, rather, as representative of "merely another problem to be addressed" in carrying out the "single-minded"¹⁰ military policy. When Washington accused de Gaulle and the American media "Cassandras" of conspiring to cause these problems, Logevall retorts that such a "belief was erroneous, of course—the British and Canadians, for example, were coming to their interpretations on their own, thank you—but it was wrong."¹¹

Presidents Kennedy and Johnson played successive leading roles in deciding to stick with the military solution, roles commonly ascribed to the other key participants: Secretary of State Dean Rusk, Secretary of Defense Robert McNamara, and National Security Advisor McGeorge Bundy. Logevall portrays the two leading actors as men who avoided fundamental analysis of the situation in favor of short-term political preservation.¹² Kennedy "like many politicians . . . liked to put off difficult decisions for as long as possible,"¹³ and wanted to avoid stirring the issue either internationally or domestically before his reelection. This played out in three ways during his tenure. First, Kennedy failed to take sides with the ruling Ngo brothers, for fear of signaling endorsement of their appeasement with the communists; conversely, he failed to openly support a military coup against them, for fear that he appear too hawkish in advancing a more vigorous prosecution of the war.¹⁴ Second, Logevall describes Kennedy's "complete rejection of exploring the possibilities for a political solution to the conflict" and his consequent work to quell de Gaulle's and the United Nations Secretary General's efforts to initiate peace talks.¹⁵ Last, Kennedy refused to change the military advisor strategy in South Vietnam, except to apply inconspicuous "selective pressures" on South Vietnamese leaders to win and then steadily increase America's commitment of advisors from about 3,000 in 1961 to over 16,000 at the time of his assassination.¹⁶

When Johnson succeeded Kennedy a year before the 1964 election, he too faced the dilemma of defeating (or, at least not losing to) the com-

9. *Id.* at 172-73.

10. *Id.* at 105.

11. *Id.* at 173.

12. *Id.* at 108, 389.

13. *Id.* at 73.

14. *Id.* at 72.

15. *Id.*

16. *Id.* at 69.

munists in South Vietnam without changing the policy he aided in creating.¹⁷ But with an impending socio-political collapse in South Vietnam, he would desperately escalate to war fifteen months later. Logevall portrays Johnson as a man with a simplistic and limited foreign policy mindset who attempted to forestall criticism and military defeat with traditional political intimidation tactics and increasingly more aggressive military tactics.

Specifically, Logevall argues that Johnson's use of these tactics in 1963 and 1964 helped him to win election. Johnson used old-fashioned dirty American politics to defeat his hawkish opponent, Barry Goldwater. He combined campaign statements against expansions of American involvement in the conflict with flag-waving retaliations against North Vietnam for its provoked attacks on U.S. destroyers in the Gulf of Tonkin.¹⁸ Then, for the three months after his election, Johnson fell into the best settlement position of all U.S. presidents. Unfortunately, Johnson refused to reexamine Vietnam. He grew incensed at growing criticism of his anti-communist convictions and the growing disinterest and political discord among South Vietnamese. He covered up his worries about Vietnam and secretly predicted war despite assurances that he would adhere to his pre-election statements against war. After letting the biggest pool of political capital in American history slip through his fingers, internal South Vietnamese dysfunction in late spring of 1965 forced Johnson to put into action his aids' secret plans¹⁹ for escalation.

Logevall portrays Kennedy's and Johnson's intellectual rigidity and defensiveness with a level of detail that makes this aspect of his historical rendering compelling. Also complete are his accounts of Rusk, McNamara, Bundy, and their other deputies, who he portrays as cow-towing, political hacks overseeing institutions that were equally rigid in upholding the "simple-minded" ideology. But Logevall's effort to paint a picture of immoral or criminal deceit that drove a nation into an unnecessary war²⁰ for personal gain is undermined by the primacy he gives to dirty politics as a motive for action. Logevall gives no or only cursory consideration to other possible motives. He makes light use of other evidence

17. *Id.* at 78.

18. *Id.* at 200. Logevall makes a persuasive argument for this version of the Gulf of Tonkin incident.

19. *Id.* at 273.

20. A recent work furthers the argument that the United States needed to remain in Vietnam. LIND, *supra* note 4.

bearing on assessments of geo-strategic, legal, ideological, or military factors.

Logevall immediately stumbles in his account by unnecessarily offering—and confusing—his anti-war protagonists’ mantra as the ultimate interpretation of the period: “That the American decision for war was the wrong decision is today taken as axiomatic by a large majority of both lay observers and scholars, [Logevall] included, who see the U.S. intervention as, at best, a failure and a mistake, at worst a crime.”²¹ For, in the end, “there was no good reason why” soldiers continued to be asked to kill and be killed there.²² Logevall taints his interpretation of the period with this premise.

His most important personal reason for publishing this work was to discover “why [the two leaders chose] war?”²³ Of course, because Logevall begins with the conclusion that the war was wrong, he is compelled to find immoral or criminal motives. His ultimate answer is that Kennedy, Johnson and their key deputies each sought to uphold their personal credibility and that each reluctant step toward escalation was measured by the effect the step would have on their respective egos and legacies. To this end, he erroneously quotes recent Vietnam apologies provided in the memoirs of key principals—for example, McNamara’s 1995 acknowledgement that “we were wrong, terribly wrong”²⁴—to bolster his claim of immoral or criminal motive instead of errors in geo-strategic, legal, ideological, or military judgment. He does not examine relevant theories in these disciplines that support the merit of U.S. actions. For example, he acknowledges only in passing that the military believed victory was possible if certain political limitations were removed.²⁵ His primary evidence against the merit of U.S. policy is the sheer volume and rate of growth of contrary sentiment and opinion.

Logevall condemns the principals by implication for their lack of vision—their inability to objectively set aside their convictions to more “fundamentally analyze” the protagonists’ understanding of the projected outcome and their inability to see European inclination to accept murkier solutions. He does so by discounting the merit of America’s broader anti-communist role in the world and the ideological fervor with which its lead-

21. LOGEVALL, *supra* note 1, at xiii.

22. *Id.* at 413.

23. *Id.* at 387. *See also id.* at xiv.

24. *Id.* at xiii.

25. *Id.* at 404.

ers' supported that role. Logevall dispenses with Michael Hunt's application of America's post-World War II anti-communist ideology as an overly simplistic slippery slope.²⁶ Without any detailed analysis or reference to other such work,²⁷ Logevall concludes, in condescending tones, that America's acceptance of the Soviet Union as legitimate by the early 1960's should have forced a public acknowledgement of the end to that ideology. Accordingly, the U.S. should have sought rapprochement with Russia and China. Former U.S. Ambassador to the Soviet Union, Jack F. Matlock, Jr., notes in his review of *Choosing War* that this is "an exercise in fantasy."²⁸ Indeed, how can an historian condemn actors as criminals because they failed to acknowledge the erosion of an underlying assumption of their widely shared belief system?

Logevall also dismisses economic theories as explanations for America's actions. "In high-level policy deliberations of 1964-1965 concerns for the fate of world capitalism appear to have been entirely absent"²⁹ Yet, he quits this potential explanation because arguments for the significance of America's "capitalist world framework" are "not very helpful."³⁰ He goes further to create his own new theory, based on the inertia of state action, entitled the "phenomenon of escalation."³¹ This theory posits that decisions of predecessors will widen in effect unless successors recognize the fundamental errors and change course. This vague descriptive theory provides no useful analytical insights, especially compared to Secretary McNamara's most recent work that sets out specific criteria to assess interventions.³² It also fails to take into account other actors to whom he otherwise devotes considerable time and criticism in his work and other external contingencies.

Logevall comes only slightly closer to providing adequate contextual explanations for Kennedy's and Johnson's generally accepted intimidation tactics and political maneuvering as pure personal motives. Here, he fails to consider that such tactics were an accepted method in American politics to implement ideological conviction.³³ Incidents are replete throughout

26. *Id.* at 385.

27. *See, e.g.*, KAISER, *supra* note 4.

28. Jack F. Matlock, Jr., *Why Were We in Vietnam?*, N.Y. TIMES, Aug. 8, 1999, § 7, at 11.

29. LOGEVALL, *supra* note 1, at 386.

30. *Id.* at 386.

31. *Id.* at 387.

32. For a good contrast between the lessons drawn from these two works, see Matlock, *supra* note 28.

the record of Johnson hearing, considering, rebutting, and rejecting various protagonists' views. As Undersecretary of State George Ball acknowledged after this period, these leaders "still tenaciously believed that we did not dare negotiate" ³⁴ That no one was successful in changing Johnson's convictions to join in what was then the American minority view only means that he found no compelling reason to change his beliefs, regardless of how he acted on them politically. Finally, Logevall's conversational style and glossing reference to volumes of research in this area amplify the weaknesses in this section of his book and reveal his lack of experience ³⁵ and depth of thought in the relevant disciplines. For example, he gives more historical relevance to Oliver Stone's movie *JFK* and the "incipient-withdrawal" theory as a basis for Kennedy's assassination ³⁶ than he does the effect of American casualties and prisoners of war on Johnson's convictions. ³⁷ His somewhat clinical analyses of individuals and key events contrasts with his conversational tone, serving to undermine the inferences he draws. For example, Logevall comments on the initial effect of the American retaliatory bombings of Hanoi after the Gulf of Tonkin incident, but fails to demonstrate how such effective military tactics could lead to victory if properly executed. To an extent, he assumes the reader has a certain level of knowledge and interest in these disciplines vis-à-vis Vietnam and that they agree with his premise that U.S. policy lacked any merit.

Logevall fails to prove that Kennedy and Johnson committed immoral or criminal acts by drawing America into a war primarily for personal gain. He also fails to convincingly disprove reasons put forth from other disciplines to justify America's involvement in Vietnam. In total, however, Logevall is artful in his broader contextual rendering of "real choice" throughout "the Long 1964." *Choosing War* will be helpful to those who try to objectively assess the overall importance of Southeast Asia to freedom's cause and to those who are interested in the messy realities of politics and war.

33. He attributes this to a "permissive context" within domestic politics. LOGEVALL, *supra* note 1, at 400.

34. *Id.* at 245.

35. Ambassador Matlock found that the work is "thorough and nuanced, and expressed with admirable clarity. . . . One who lived through the period as an attentive adult will, however, detect at times a failure to understand fully the spirit of the age." Matlock, *supra* note 28, at 11.

36. Logevall, *supra* note 1, at 69-71.

37. *Id.* at 398.

FLAGS OF OUR FATHERS¹REVIEWED BY MAJOR W.G. PEREZ²

For me, a middle child among eight, the mystery was tantalizing. I knew from an early age that my father had been some sort of hero. My third grade school teacher said so; everybody said so. I hungered to know the heroic part of my dad. But try as I might I could never get him to tell me about it . . . "The real heroes of Iwo Jima," he said once, coming as close as he ever would, "are the guys who didn't come back."³

James Bradley's *Flags of Our Fathers* chronicles the lives of the six service members who raised the U.S. flag on Mount Suribachi on the island of Iwo Jima during World War II. Bradley's book explores the impact of the famous photograph of that event, and it delves into how the image affected the lives of the surviving flag raisers and the nation. The book is well researched. Bradley spent several years on the project, to include interviewing surviving family members of the six flag raisers: Mike Strank, Harlon Block, Franklin Sousley, John Bradley (the author's father who was a Navy Corpsman assigned to the Marines at Iwo Jima), and Ira Hayes. Additionally, Bradley used personal letters written by the flag raisers, military records, police records, and other primary sources of information.⁴

Bradley begins his book with a visit to Iwo Jima where he and his family honored the flag raisers by placing a plaque on Mount Suribachi. His book then provides a brief biography for each of the flag raisers, covering their lives from the days before they entered military service until their deaths. The book next discusses the training that prepared the participants for the invasion, and it describes the actual battle of Iwo Jima, to

1. JAMES BRADLEY, *FLAGS OF OUR FATHERS* (1999).

2. United States Marine Corps. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. BRADLEY, *supra* note 1, at 4.

4. *Id.* note section (providing a listing of some of the documents Bradley reviewed).

include the flag raising. Bradley concludes the book by addressing how the flag raising affected the lives of the surviving flag raisers.

Every judge advocate should read *Flags of Our Fathers*. This book review addresses the two primary strengths of the book: its detailed information about the preparation for the invasion and the invasion itself, and the discussion on the relationship between the media and the military regarding the famous photograph. This review also addresses the main weakness of the book: Bradley's attempt to rationalize the brutality committed by Japanese soldiers on prisoners of war during the Iwo Jima campaign.

Bradley offers an exceptional glimpse into the training that led up to the invasion. In Chapter Five of his book, Bradley covers the agonizing and sometimes tedious challenge of taking thousands of men and forging them into one cohesive unit prepared to accomplish a mission. The six flag raisers arrived to Camp Pendleton along with 21,000 other Marines. They were to be transformed from "standard issue fighting men to an elite, interdependent martial society."⁵ The six flag raisers became members of "E" Company, 2d Battalion, 28th Regiment, part of the newly created 5th Marine Division. The 28th Regiment was named as the "spearhead" charged with leading the assault on Iwo Jima. Their primary mission was to take the high ground (Mount Suribachi).

The 28th Regiment prepared for their mission in stages. The first stage was learning fire and maneuver, which developed teamwork. Bradley provides insightful narration on the level of effort and choreography required in maneuvering men while fellow Marines provide covering fire. The fire and maneuver training was described as "tedious, long and repetitive."⁶ This training was done under the most difficult conditions to simulate actual combat. The goal of the first stage of the exhaustive training was repetition until these combat skills were so ingrained that they would be performed automatically on the battlefield.⁷ The second stage of training combined small unit fires and maneuvers with supporting arms. The third stage of training involved coordinated mock amphibious assaults on

5. *Id.* at 102.

6. *Id.* at 106.

7. *Id.*

San Clemente Island (off the coast of California) and on the beaches of Camp Pendleton.

The six flag raisers spent six months on Camp Pendleton training for the assault. They departed on 19 September 1944 and set sail for Hawaii. Upon arrival to Hawaii, the 28th Regiment stayed at Camp Tarawa, described as: “a miserable place, with those lava rocks and constant dust. The Red Cross judged it unfit to hold prisoners, so it was perfect for the Marines.”⁸ The Marines honed their skills for four months while at Camp Tarawa. In all, the Marines prepared and trained as a unit for ten months. They constantly rehearsed for the invasion and used so much live ordnance at Camp Pendleton that they set off countless prairie fires.

It is difficult for judge advocates, especially those not assigned to operational units, to appreciate the amount of time, effort, and sweat invested to prepare for real-life operations. Because Bradley goes to great lengths to explain this extensive training, he places the conduct of the battle in perspective for the reader. In Chapters Six through Thirteen, Bradley then covers the battle in a quick-paced, clear, and graphic narrative. Bradley makes it obvious to the reader that, but for the frequent and grueling rehearsals, the battle for Iwo Jima would have been lost. The combat statistics are staggering. In the 2nd Battalion alone, “1,688 Marines and sailors . . . landed on Iwo Jima [and] 1,511 had been either killed or wounded. Only 177 walked off the island and of those . . . 91 had been wounded at least once and returned to battle.”⁹ Bradley does an exceptional job, not just in presenting the raw numbers, but in humanizing the loss. He writes:

Nineteen year old Corpsman Danny Thomas hit the beach at 10:15 a.m. several paces behind his best buddy, Chick Harris. In training camp Thomas and Harris were called the Buttermilk Boys, because they were too young to drink on liberty. “I was charging ahead and saw Chick on the beach facing out to sea, his back to the battle,” Thomas recalled. His buddy was in a strange posture; his head and torso were erect as though he let himself be buried in the sand from the waist down in some bizarre prank. As Thomas rushed by him, he yelled a greeting and Chick’s hand and eyes moved acknowledging him. Then Thomas glimpsed something else that made him fall to his knees in the sand, vom-

8. *Id.* at 116.

9. *Id.* at 246.

iting. The something else was blood and entrails . . . [He] realized that Chick had been cut in two.¹⁰

Bradley provides further illustrative passages of the horrors of combat. As judge advocates we should be prepared to face such horrors and appreciate the importance that effective peacetime training has in disciplining the mind so that it is not overwhelmed by these horrifying scenes.

Three weeks before the Marines secured Iwo Jima, the famous photograph was taken. Of the six flag raisers—Strank, Sousley, Block, Bradley, Gagnon, and Hayes—only Bradley, Gagnon, and Hayes would survive. The other three men died in the final three weeks of fighting on the island. There were actually two flag raisings. In the first, the commanding officer of 2d Battalion sent a platoon up Mount Suribachi with a small American flag. Their ascent up the mountain went unopposed, although the men felt they were on a suicide mission due to the lack of cover or concealment during the climb. After a quiet, forty-minute ascent, the platoon from 2d Battalion raised the flag. Photographers were present, but none of their photographs become famous.

The second flag raising occurred after the 2d Battalion commander learned that the Secretary of the Navy wanted the first flag raised over Mount Suribachi. Because the battalion commander felt the first flag belonged to the unit, he ordered a platoon to conduct a second flag raising using a larger flag. That flag would later be sent to the Secretary of the Navy. This time, Joe Rosenthal, a photographer for the Associated Press, accompanied the platoon performing the flag raising honors. When the platoon reached the top of the mountain, two ceremonies occurred: the taking down of the first flag and the raising of the second. These ceremonies occurred simultaneously. The Marines involved thought the second flag raising ceremony was “no big deal.” In fact, Rene Gagnon would remark later in life to his son that, “the [second] flag raising was as significant as going to the mail box.”¹¹ Bradley effectively documents the Marines’ belief that the real heroism occurred on the battlefield, and that there was nothing heroic in their second flag raising. Bradley also clearly demonstrates that the media did not share this belief.

The final chapter of Bradley’s book explores the relationship of the media, the military, and the surviving service members—Bradley, Gagnon,

10. *Id.* at 158.

11. *Id.* at 334.

and Hayes. In this relationship, the media distorted the facts, manipulated the public, and capitalized on the newly created heroic myth. Bradley blames the media for this “travesty of the accuracy.”¹² He opines that the media created the story of a fierce firefight during the ascent to create heroes who would help sell newspapers. He excuses the military and the surviving Marines as having nothing to do with this distortion of the truth. However, this absolution is not supported by Bradley’s own research. Bradley’s reliance on the former Commandant of the Marine Corps (General Krulak) offers one possible explanation for this. The former Commandant arranged, among other things, for Bradley and his family to travel to Iwo Jima. Clearly, without the Commandant’s assistance Bradley would have had difficulty completing his book. It is apparent that Bradley’s deference to the Marine Corps and the military was influenced by his friendship with the former Commandant. Regardless of this deference to the Marines, however, Bradley’s book makes a strong case that the military was also guilty of a “travesty of accuracy.”

Specifically, the department of defense ordered the return of the surviving service members so they could tour with the final war bond campaign, “the Mighty 7th War Bond Campaign.” The military realized it was going to be difficult to get the American populace energized for another war bond campaign. The military needed a hook and they found it with the media-created “heroes of Iwo Jima.” This war bond campaign had to raise fourteen billion dollars. Not only did it raise that amount, but also doubled it to twenty-eight billion dollars. The campaign was a nation-wide tour bordering on a Broadway show, complete with reenactments, musical groups, singers, and actors. The surviving flag raisers were thrown into this media-exploitation frenzy after leaving the scenes of horrifying combat just weeks earlier. The military was bent on using the famous photograph and media-created heroes to push the sale of war bonds, and nothing was going to interfere with this effort. In fact, when surviving Marine Ira Hayes noticed that the image of Harlon Block in the photograph was originally identified as Hank Hansen, he tried to correct it. A Marine public affairs officer told him that it was too late, because the inaccurate report had already been released.¹³ This error was eventually corrected but only after the intervention of the Commandant of the Marine Corps. Therefore, although Bradley grants great deference to the military and the Marine

12. *Id.* at 224.

13. *Id.* at 275.

Corps, his own research supports the conclusion that the military and the media both benefited from the creation of the heroic myth.

Bradley fails to condemn the military and the media for their treatment of the surviving flag raisers during the war bond campaign. However, he alludes to the fact that the three survivors were likely suffering from post-traumatic stress disorder (PTSD).¹⁴ The survivors' unique heroic welcome home and participation in the war bond campaign may have worsened the effects of their PTSD, concludes Bradley. However, he acknowledges that, in reaching this conclusion, he has the luxury of hindsight and fifty years of psychological innovation and research.

Bradley does provide significant evidence that Ira Hayes dealt with extreme PTSD and survivor's guilt. Bradley points out the correlation between Ira Hayes' increase in destructive alcoholism and his participation in the war bond campaign. Although Bradley finds that Hayes' alcoholism cannot be attributed to a single event or cause, the war bond campaign made it easier for Hayes to indulge in his addiction. Eventually, this addiction contributed to Hayes' death. Rene Gagnon and John Bradley handled their PTSD and fame in different ways.

Rene Gagnon began to accept the hero moniker and to believe that his life was set owing to his newfound status. He eventually learned that promises made during wartime are quickly forgotten once the shooting stops. His dreams of joining the state police force or of being hired for jobs just because of his hero status, even though he was not otherwise qualified, quickly faded. Gagnon ended up working as a janitor and, at the age of 53, died of a heart attack while at work.

John Bradley handled his PTSD through denial. He attended mortuary school, became a mortician, and finally a funeral director that opened up his own funeral home. He was successful, raising a large family and becoming a prominent member of the local community. He rarely gave interviews to the media about his involvement in the flag raising and sparingly spoke to his children about the war. It is ironic that John Bradley, who was a corpsman during the war, chose to be a funeral director in civilian life. His occupation choice gives the reader some insight into his personality. He was a man who chose to be surrounded by death even after he left the war. The younger Bradley never tells us why his father chose to be a mortician. All the author provides by way of explanation is that his father

14. *Id.* at 289.

wanted to be a mortician even before the war started. But the author should have explored his father's true motivation further. Nevertheless, Bradley does a good job of recounting the events of his father's life after the war.

The main weakness in Bradley's book is his rationalizing of the war atrocities committed by the individual Japanese soldiers during the war. Bradley provides the reader with some information dealing with Japanese war crimes that occurred during the occupation on Nanking.¹⁵ He also describes the torture and eventual death inflicted on American prisoners of war (POWs), but his explanation for such acts rings hollow.

For example, one graphic description of POW executions involved Ralph "Iggy" Ignatowski, a good friend of John Bradley. When his body was discovered by Bradley, the Japanese had "gouged out his eyes, cut off his ears and nose, stabbed him multiple times and cut off his penis and stuffed it in his mouth."¹⁶ Despite these unjustifiable acts, Bradley rationalizes the behavior of the individual Japanese soldier by concluding that his actions were due to the Japanese government's perversion of the tradition of the ancient samurai and the Bushido code. Bradley then explains his rationale in detail.

Bradley provides a two-part rationalization for the horrors committed by the ordinary Japanese soldier. First, he suggests that they were uneducated simpletons, not comprehending the illegality of their acts. This logic fails since it suggests that a high level of reasoning and education are required to realize that torturing and killing noncombatants is unlawful. Second, he offers that the Japanese government, through the perversion of the Bushido code, brutalized its own soldiers. This perversion of the code, Bradley opines, broke down the Japanese soldier's concern, not only for the lives of noncombatants, but also for his own life. To the Japanese soldier, surrender meant dishonor and death was preferable. By Bradley's logic, POWs were dishonorable and, therefore, the killings of POWs were justified. This second part of his rationalization may explain the motive for the criminal acts, but it does not in anyway excuse those acts.

Bradley's rationalization for the Japanese conduct during the war may be his attempt to reconcile his personal experiences in Japan with the historical record. As we learn later on in his book, Bradley lived and studied in Japan for several years. He found the Japanese people shared the same

15. *Id.* at 65.

16. *Id.* at 334-35.

attributes that his father demonstrated: quiet, polite, honest, honorable, simple, and devoted to family. Undoubtedly, Bradley's explanation of the war atrocities committed by Japanese soldiers during the war is his way of reconciling these two disparate facts in his mind. What is clear from the historical record, however, is that Japanese soldiers consistently committed war crimes during the war.

In spite of these weaknesses, *Flags of our Fathers* is a book well worth reading. It provides the judge advocate great insight to the conduct of major campaigns. It also captures the unique relationship that the military and the media have, and how that relationship can have unintended consequences for the lives of ordinary Americans. The research is extensive, and the pace and detail of the book make for an exciting and informative read. In the end, the reader is left with two distinct feelings: one of gratitude for the heroic sacrifices made by these service members, and one of sadness because the surviving flag raisers never had a chance to live a normal life after the war.

GUARDIANS OF EMPIRE¹REVIEWED BY MAJOR JAMES W. HERRING, JR.²

Today's Army is unquestionably in a period of transition. One cannot escape the parade of newspaper headlines announcing the exodus of junior officers, the debate over what the Army's mission should be, and the movement to a lighter, more mobile force to name just a few current issues. Commanders are often heard voicing their concern that resources do not mesh with the assigned mission. All this could easily lead today's officers to question their career choice or yearn for less turbulent times.

It is somewhat comforting to learn that we have been here before. To gain some perspective in these times of change, all one has to do is read Brian Linn's *Guardians of Empire*.

Guardians of Empire examines the United States Army in the Pacific from the conclusion of the Spanish-American War until the outbreak of World War II. The Army at the turn of the twentieth century was also a force in transition. Having spent many years as the protector of America's continually advancing western border, by 1902 the Army found itself with responsibility for guarding a Pacific empire, a mission for which it was neither trained nor equipped. Adding to the turmoil was the pressure to become a modern force able to hold its own against Europe's large and increasingly mechanized armies. These demands pulled the Army in opposite directions. The Army that was needed to hunt down insurgents in the mountains and jungles of the Philippines and to secure Hawaii from attack bore little resemblance to the Army needed to counter modern European forces.

In addition to these conflicting goals facing the Army as a whole, the Army in the Pacific faced its own peculiar challenges. Commanders could not decide if their focus should be on the external threat (Japan) or the internal threat (uprisings by Filipinos or ethnic Japanese). It was difficult to defend against the external threat if commanders did not have confidence in their ability to devote local manpower and resources to the

1. BRIAN M. LINN, *GUARDIANS OF EMPIRE: THE U.S. ARMY AND THE PACIFIC, 1902-1940* (1997).

2. Judge Advocate General's Corps, United States Army. Currently assigned as an Assistant Professor at the United States Military Academy, West Point, New York.

defense of the Philippines and Hawaii. On the other hand, the large coastal defense batteries and aircraft needed to defend against invasion were of little use in maintaining internal control of these possessions.

Linn finds that in the aftermath of both the Spanish-American War and World War I, the Army “endured major structural changes without the necessary manpower, finances, or political support.”³ At the end of the Spanish-American War, Secretary of War Elihu Root wanted to modernize the Army. He emphasized the need for officer education in such areas as tactics, military history, and international law.⁴ However, Secretary Root’s attempts to implement these and other changes met resistance from senior officers who believed it was “wrong to overturn a system tested and proven in the Civil War.”⁵ The conclusion of World War I spawned additional issues. Commanders in the Pacific Army found that they could not get the equipment they requested. Instead, surplus World War I equipment was supplied despite its incompatibility with the needs of the Pacific forces. As a result these supplies sat in dockside warehouses in Manila and Honolulu rotting in the tropical climate.⁶

Like the Army of today, the Pacific Army was plagued with a high turnover of officers and enlisted soldiers. Between 1900 and 1907, for example, officer resignations increased five-fold.⁷ Discipline problems within the ranks rose as fast as officer resignations. Linn notes that some commands averaged one court-martial per soldier. Enlisted soldiers left the Army at the earliest opportunity, leaving many units dangerously under strength. Unskilled laborers in the civilian market earned as much as five times what a private was paid in 1907.⁸ The demands of providing manpower to guard America’s new possessions, Linn concludes, “stretched the nation’s military to the breaking point.”⁹

Of particular interest to judge advocates are the court-martial statistics Linn compiles from Army records. Many crimes of violence in the Pacific forces had their roots in what Linn terms “the competition for eligible females.”¹⁰ By the 1930s the Army in Hawaii inspected and

3. LINN, *supra* note 1, at 55.

4. *Id.* at 54.

5. *Id.* at 55.

6. *Id.* at 76.

7. *Id.* at 57.

8. *Id.*

9. *Id.* at 59.

10. *Id.* at 125.

approved brothels that competed with lower-priced but more troublesome off-limits establishments.¹¹ Commanders also struggled with the age-old discipline problems related to alcohol. Prohibition only aggravated alcohol's disruptive influence as soldiers were forced off post to find libations of questionable origin. Linn notes the popularity in Hawaii of a particular local drink called "okolehao" because of its reputed ability to supply two drunks for the price of one. Soldiers found they could drink until intoxicated, sleep it off, and then get intoxicated again by quickly drinking water.¹² With the end of prohibition and the return of on-post drinking establishments, alcohol-related prosecutions decreased. Linn's examination of courts-martial shows that illegal drugs, although readily available in both Manila and Honolulu, did not pose the same problems for the command as alcohol.

One Pacific Army court-martial found its way to the United States Supreme Court. While on guard duty in 1904, Private Homer Grafton shot and killed two Filipinos. Grafton claimed he was being attacked by these two individuals and fired in self-defense. He was tried by court-martial and found not guilty. The local Philippine prosecutor, not pleased with the outcome of the court-martial, filed his own charges against Grafton. Private Grafton was convicted by the Philippine court and sentenced to twelve years confinement. In 1907, the United States Supreme Court heard Grafton's appeal and ruled that his Filipino conviction was unconstitutional.¹³

Surprisingly, a legal opinion of The Judge Advocate General played a significant role in the Pacific Army's lack of preparedness. The 1920 Defense Act created an Enlisted Reserve Corps in response to the Army's manpower shortages. In 1921, The Judge Advocate General opined that this Act applied only to American citizens, thereby excluding Filipinos from enlistment in the reserves.¹⁴ Although there was no legal issue as to Hawaii's participation in the enlisted reserve, a lack of financial support

11. *Id.* at 128.

12. *Id.* at 134.

13. *Id.* at 27. Grafton's case was appealed to the United States Supreme Court from the Supreme Court of the Philippine Islands. The Court set aside his Filipino conviction on double jeopardy grounds. The Court's reasoning was that the same sovereign, the United States, created the court-martial and the Filipino court. Therefore, Grafton's subsequent conviction was barred by his earlier acquittal. *Id.* (citing *U.S. v. Grafton*, 206 U.S. 333 (1907)).

14. *Id.* at 150. The Philippine Department repeatedly asked the War Department to challenge this opinion.

combined with the racial prejudice against Hawaii's many ethnic groups kept an effective reserve from being established in the islands.¹⁵

Linn's exhaustive research of the Pacific Army is impressive. He leaves no aspect of this force untouched. Athletic activities, social life, family life, career concerns, interaction with the local populations, and the often strained relations with higher headquarters in Washington are all discussed in entertaining detail. Polo, teas, and dances were major distractions. Families struggled with the decision to store their household goods or have them shipped in the care of the Quartermaster Corps, a sure promise of significant damage. Officers in the Pacific Army were expected to spend lavishly on uniforms, in some cases requiring as many as three different uniforms in one day.¹⁶ Boxing, as made famous in the novel *From Here to Eternity* and its classic movie adaptation, attracted great interest and command support. Overall, the Pacific Army took on its own persona and exhibited, in Linn's view, "an almost insubordinate independence."¹⁷

One of the more interesting aspects of Linn's book is his examination of the relationship between the Army and the local populations in Hawaii and the Philippines. There was a greater degree of tension in the Philippines, as would be expected in the aftermath of the Filipinos fight for independence. Charges of war crimes violations, many of which proved true, plagued the Army during the Philippine campaign.¹⁸ Tensions with the Army remained even after some Filipinos were organized into the Philippine Scouts. For example, in 1924 over 600 Philippine Scouts refused to drill in protest over their pay and treatment. After being warned by their officers of the seriousness of their actions, almost 400 Scouts returned to duty. The remaining Scouts were tried by court-martial, convicted, and received sentences ranging from five to twenty years.¹⁹

In Hawaii, the multicultural, multiethnic population of the islands proved problematic for military commanders. The ethnic Japanese were

15. *Id.* at 152.

16. *Id.* at 73.

17. *Id.* at 108.

18. One of the most famous of these, not mentioned by Linn, was the court-martial of General Jacob Smith. On taking command on the island of Samar, General Smith instructed his subordinates to turn the island into a "howling wilderness." They apparently did their best to comply with this order, much to the detriment of Filipinos in the region. See Captain Paul Melshen, *Hero or Butcher of Samar?*, U.S. NAVAL INSTITUTE PROCEEDINGS, Nov. 1979, at 42-48.

19. LINN, *supra* note 1, at 148.

of special concern. Commanders debated whether troops should be stationed near Honolulu to guard against any mischief by the Japanese population or in a more central location from which they could move to counter any attempted landings.

Much of Linn's research focuses on the central question of why the Pacific Army was so unprepared for an attack that it had been anticipating for almost forty years. Japan was the at the center of U.S. military planners' attention in the Pacific throughout this period. In 1923 Brigadier General Billy Mitchell prepared a report predicting a Japanese aerial attack on Pearl Harbor. However, his prediction was a little off on the details. Mitchell concluded the threat was not aircraft carriers, because they could not possibly launch a sufficient number of aircraft. He envisioned the Japanese building a secret air base on the secluded Hawaiian island of Niihau. They would use this base to launch the attack using aircraft ferried to the island by Japanese submarines. Japanese bombers from Midway Island, once that American outpost was captured, would also join in the attack.²⁰

There was certainly no lack of plans and theories on how to defend these possessions. In the Philippines, the debate ranged from those who believed that the archipelago could be successfully defended from invasion to those who believed the islands should be abandoned in the event of war. Some officers believed that the Philippine garrison served a purpose because its mere presence would require an enemy of the United States to expend significant resources to secure the islands.

Among the many plans considered for the defense of the main Hawaiian island of Oahu was a plan calling for the use of poison gas against attackers. This resulted in Oahu becoming, by the 1930s, the home of one of the largest supplies of chemical warfare agents in the world.²¹ The impact these agents could have had on the civilian population and on the environment received little attention from planners. The use of gas also figured prominently in defense plans for the Philippines. Unlike Hawaii, however, the War Department refused to supply sufficient chemical agents

20. *Id.* at 214.

21. *Id.* at 198.

and protective equipment to the Philippines to make gas a viable defensive option.²²

After reviewing numerous war plans and their changes throughout the period, Linn concludes that several causes contributed to the American Army's inability to defend America's empire in the Pacific. One major cause was the failure of commanders to decide exactly what enemy they were defending against. Another key factor was the lack of resources to support any of the plans for defense of the Philippines or Hawaii. A final contributor was the lack of coordination between the Army and the Navy, particularly in the case of Hawaii. The fact that it was never decided which service bore responsibility for long-range reconnaissance had disastrous consequences at Pearl Harbor.²³

Linn's *Guardians of Empire* provides an informative and engaging look at the military force that bore the brunt of the American's entry into World War II. It also shows the potential consequences of allowing a force to be under-manned, under-equipped, and unfocused for years. This is the real lesson of the Pacific Army that those in positions of authority today should take to heart.

22. *Id.* at 197.

23. *Id.* at 213.

ALL THE LAWS BUT ONE¹REVIEWED BY MAJOR JAMES M. LANGHAM²

*The Constitution has not greatly bothered any wartime President. That was a question of law, which ultimately the Supreme Court must decide. And meanwhile—probably a long meanwhile—we must get on with the war.*³

This insightful comment by Francis Biddle, Attorney General under Franklin D. Roosevelt, captures the underlying thesis of Chief Justice William Rehnquist's book about civil liberties in wartime: of necessity, those rights may be secondary to the national interest.

Chief Justice Rehnquist has created an engrossing treatment of civil liberties in wartime that reads more like a novel than a historical treatise. His simple organization and easy style make this work not only good constitutional history, but good storytelling. Even though his thesis is not explicitly stated at the outset, it is developed throughout the story and surfaces in the final chapter, where he poses some thought-provoking questions that all students of constitutional law and history should consider.

The Chief Justice's underlying thesis is that civil liberties will, and perhaps should, take a back seat to national security during wartime. This thesis will no doubt be unpopular with civil libertarians, but it shows the reasonable and pragmatic approach the Chief Justice takes based on his study of constitutional history and his nearly thirty years on the United States Supreme Court.

Chief Justice Rehnquist takes us through a snapshot history of three major wars, the Civil War, World War I, and World War II. But this book is not a history of war; it is a history of the law. *All the Wars but One* focuses on the legal issues that arose during these wars. Although Chief

1. WILLIAM H. REHNQUIST, *ALL THE LAWS BUT ONE: CIVIL LIBERTIES IN WARTIME* (1998).

2. United States Army. Written while assigned as a student, 49th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia.

3. REHNQUIST, *supra* note 1, at 191-92.

Justice Rehnquist provides sufficient facts to set the stage for each legal battle, he does not overburden the reader with superfluous facts about each war. His use of detail is artful, giving the reader not only a sense of history, but also a sense of character. His brilliant portrayal of historical events and characters brings them to life for the reader.⁴

Chief Justice Rehnquist devotes nearly four-fifths of the book to cases arising during the Civil War era. The twentieth century cases are covered in just a few chapters at the end of the book. As a result, the book seems a bit lopsided, with the modern cases appearing somehow less significant. In his book the Chief Justice never explains this disparity. However, in a later interview, he said he intended to write a book about the Civil War, but then briefly included the twentieth century cases when he did not have enough Civil War material to complete the book.⁵

In that first four-fifths of the book, Chief Justice Rehnquist recounts the legal battles surrounding President Lincoln's suspension of the Writ of Habeas Corpus and other infringements on civil liberties. The Chief Justice describes the tension this raised between national security and civil liberties. This marked the first time in U.S. history that these two fundamental concepts were at odds. He uses major Civil War cases⁶ to skillfully illustrate this tension, and he points out that the disaccord continued, in one form or another, throughout World War I and World War II.

During World War I, the government had to contend with adverse public sentiment because it was not a popular war. With this backdrop, Congress passed the Espionage Act, which prohibited certain activities

4. For instance, he describes Justice Felix Frankfurter as "a brightly plumaged bird who never gave up his professorial mien in his battles for judicial restraint." REHNQUIST, *supra* note 1, at 194.

5. Justice Rehnquist said,

At first I thought it would be just a book about civil liberties in the Civil War, but then it turned out that didn't have quite enough material—(laughs)—for an entire book, and I got interested in carrying it forth—you know, carrying it forward into World War I and World War II.

Thomas E. Baker, *At War with the Constitution: A History Lesson from the Chief Justice*, 14 BYU J. PUB. L. 69, 71 n.9 (1999) (book review) (citing Interview by Brian Lamb with Chief Justice William H. Rehnquist, United States Supreme Court, Book TV on C-SPAN 2 (Oct. 25, 1998) [hereinafter Lamb Interview]).

6. *Ex parte Merryman*, 17 Fed. Cases 144 (Cir. Ct. Md. 1861); *Ex parte Vallandigham*, 1 Wallace 243 (1864); *Ex parte Milligan*, 4 Wallace 2 (1866).

that would normally be protected as civil liberties. In 1917, Eugene V. Debs was convicted for violating the Espionage Act by presenting a speech opposing the war at a political rally. The Supreme Court upheld the jury finding that the speech was designed to obstruct recruitment. In 1919, the Supreme Court also upheld Charles Schenck's conviction for violating the Espionage Act. Mr. Schenck printed and distributed to draftees leaflets that encouraged draft resistance.⁷ He unsuccessfully claimed that the Act violated the First Amendment right to a free press.

Chief Justice Rehnquist effectively uses these cases to underscore the tension between national security and civil liberties that continued to exist throughout World War I and World War II, with civil liberties taking second chair. Unlike the Civil War period, however, the government during World War I relied more on legislation to curtail civil liberties, rather than bare presidential authority. He uses this point to expound on a nuance of governmental power that many citizens probably do not realize: the executive's power is at its zenith when coupled with a legislative mandate. The author gives the reader several such "mini-government lessons" in *All the Laws but One*. Undoubtedly most readers will come away from this book knowing more about governmental workings.

During World War II, the evacuation and detention of thousands of "persons of Japanese origin"⁸ from strategic areas of the West Coast and the imposition of martial law in Hawaii also tested the limits of First Amendment jurisprudence, all in the name of military necessity. Four notable cases came out of these evacuations and detentions.⁹ The court upheld the convictions in these cases without any attempt at a separate inquiry into the bases for the claims of military necessity. The Court simply bowed to the military's judgment in determining military necessity.

With these cases as a backdrop, Chief Justice Rehnquist poses two thought-provoking questions. First, in discussing the reluctance of courts to decide a case against the government on an issue of national security during a war, he asks, "Is this reluctance a necessary evil—necessary

7. REHNQUIST, *supra* note 1, at 174.

8. *Id.* at 190.

9. *Id.* at 193 (citing *Ex parte Endo*, 323 U.S. 283 (1944) (challenging the propriety of continued detention); *Korematsu v. United States*, 323 U.S. 214 (1944) (violating a military exclusion order and remaining at home); *Yasui v. United States*, 320 U.S. 390 (1943) (curfew violations); and *Hirabayashi v. United States*, 320 U.S. 81 (1943) (failure to report for evacuation)).

because judges, like other citizens, do not wish to hinder a nation's "war effort"—or is it actually a desirable phenomenon?"¹⁰

This question has far reaching implications for governmental control and oversight. The U.S. Constitution establishes separate branches of government to provide checks and balances that protect the citizenry from governmental abuse. Regardless of how the question is answered, the judiciary is placed in an awkward position. An affirmative answer to the question would remove the courts as a check on the exercise of executive power. The courts, by their own inaction, would subjugate themselves to the executive. A negative response could have grave implications for overall national security during wartime. This places the judiciary in a precarious position. As the Chief Justice said, perhaps judges, "like other citizens, do not wish to hinder a nation's 'war effort.'"¹¹ As admirable as this sentiment is, judges are not like "other citizens." They are entrusted with the daunting task of balancing the exercise of executive power with judicial restraint. Judges should not have the luxury of non-action enjoyed by other citizens.

Chief Justice Rehnquist eventually answers his own question and gives another "mini-government lesson" by explaining how such judicial reluctance is manifested. A court may simply avoid deciding a constitutional question during a war. A court may also decide in favor of the government during a war and yet decide the same issue against the government in time of peace.¹² Either way, the Supreme Court has shown its reluctance to decide against the government under these circumstances. Chief Justice Rehnquist seems to believe that this judicial reluctance is inevitable, even desirable. He criticizes some of the earlier Court decisions as flawed, yet does not harshly criticize the presidential actions infringing civil liberties.¹³ "In defense of the military, it should be pointed out that these officials were not entrusted with the protection of anyone's civil liberties; their task instead was to make sure that vital areas were as secure as possible from espionage or sabotage."¹⁴ This statement underscores the basic premise of the *All the Laws but One*: sometimes civil liberties may have to take a back seat to national security.

Recognizing that judicial reluctance is inevitable during wartime, Chief Justice Rehnquist poses his second question. "If, in fact, courts are

10. *Id.* at 221.

11. *Id.*

12. *Id.* at 221-22.

more prone to uphold wartime claims of civil liberties after the war is over, may it not actually be desirable to avoid decision on such claims during the war?"¹⁵ This question strikes to the very heart of judicial lawmaking. If the premise of *stare decisis* is to create a body of law from which to draw precedent, then deciding important civil liberty cases in favor of the government at one time yet against the government at another creates a disparate body of law. As a matter of constitutional principle, the law governing a particular set of facts should be the same whether in war or peace. Such uniform treatment would create a coherent body of law. If the courts are prone to judicial reluctance during wartime, then perhaps it would be better to withhold a decision until after the war when the court would be more inclined to follow judicial norms.

Chief Justice Rehnquist answers these questions with ease. He takes the reader through his reasoning and helps the reader see his viewpoint without any heavy handedness. He is clear in his message that civil liberties will be treated differently during time of war. He makes no apologies for his message.

In any civilized society the most important task is achieving a proper balance between freedom and order. In wartime, reason and history both suggest that this balance shifts to some degree in favor of order—in favor of the government's ability to deal with conditions that threaten the national well being. It simply cannot be said, therefore, that in every conflict between individ-

13. Baker, *supra* note 5, at 74 n.27 (citing Lamb Interview, *supra* note 5).

C-SPAN: What do you think you would have done back then, if you had been in a leadership position? Justice Rehnquist: Oh, I think one of the most difficult things in the world to do, is to second-guess people who were in leadership positions at that time. You know, it's very easy, in the atmosphere of the late 1990s, to say something was a very bad thing to have done. That doesn't mean that it was not a very bad thing to have done. But so far as criticizing people who were in leadership positions at that time, you've got to realize they operated under the ethos and the standards of the times in which they lived."

Id. In response to the question, "What do you think of what Abraham Lincoln did with the writ of habeas corpus during the war?," Chief Justice Rehnquist confessed, "I think, if I'd been president, I would have done exactly the same thing." *Id.* at 81 n.83 (citing Lamb Interview, *supra* note 5).

14. REHNQUIST, *supra* note 1, at 204.

15. *Id.* at 222.

ual liberty and governmental authority the former should prevail.¹⁶

This is a bold statement from the Chief Justice of the Supreme Court.

Some may contend that *All the Laws but One* lacks substantive legal analysis.¹⁷ Perhaps this is the case; however, this is not a legal textbook.¹⁸ It is a historical work from a gifted amateur historian. Chief Justice Rehnquist's audience is the general public. In this work, he has admirably contributed to the national debate in the area of civil liberties. His finely honed analytical skills allow him to take complex issues and distill them to their bare essence. In exemplary fashion, he walks the reader through the intricacies of legal decision making in a manner that anyone can follow.

Legal issues involving civil liberties are not decided lightly. Chief Justice Rehnquist gives his reader the feel and flavor of these decisions and their interplay with national security. With his unique insight, he provides a solid lesson in constitutional history. His pragmatic approach is one that many readers will appreciate. Along with showing his pragmatism, his final words in the book give us all a profound point to consider. In summarizing his view of the past and the future state of civil liberties in wartime, Chief Justice Rehnquist concludes:

[I]t is neither desirable nor is it remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. But it is both desirable and likely that more careful attention will be paid by the courts to the basis for the government's claims of necessity as a basis for curtailing civil liberty. *The laws will thus not be silent in time of war, but they will speak with a somewhat different voice.*¹⁹

16. *Id.*

17. Margaret A. Garvin, *Civil Liberties During War: History's Institutional Lessons*, *All the Laws but One: Civil Liberties in Wartime*, 16 CONST. COMMENTARY 691 (1999) (book review).

18. In the acknowledgement section of the book, Chief Justice Rehnquist credits both his daughter and his editor for making him sound less like a lawyer. They have done an admirable job.

19. REHNQUIST, *supra* note 1, at 225 (emphasis added).