Judicial Impotency: The Empowerment of Federal Judiciary during Reconstruction

by James Egan

On a November night in 1867, military officers under orders from General Edward C. Ord, commanding military officer of the Fourth Military District, arrested William H. McCardle, a newspaper editor for the *Vicksburg Times*, who had been critical of both General Ord and the military occupation of Southern states after the Civil War. Charged with disturbing the peace, inciting rebellion, libel, and impeding reconstruction acts within the state of Mississippi, McCardle petitioned a federal circuit court for a writ of habeas corpus on the grounds that he had been illegally arrested. When his petition was denied, McCardle sought redress from the United States Supreme Court, which agreed to hear the case. Prosecutors for the government argued that the Supreme Court did not have jurisdiction to review the case because McCardle was in military custody charged with military offenses.[1] The Court disagreed with the government's arguments over jurisdiction,[2] setting the stage for the biggest battle between Congress and the Supreme Court in this nation's history, when Congress would for the first and only time remove the Court's jurisdiction to hear a case.

This paper traces the increased jurisdiction in the Federal Judiciary through Reconstruction. It has been argued erroneously by historians that the Reconstruction Era was a period of judicial impotency.[3] This paper will show that in the years following the Civil War, Congress greatly expanded the jurisdiction of federal courts. From the Judiciary Act of 1789 to the suspension of habeas corpus, Congress slowly increased the power of United States judges, but it was not until the era of Reconstruction that federal courts were given complete supremacy to safeguard the individual liberties of all citizens in the country through the Fourteenth Amendment and the expanded power of habeas corpus.[a] And while the increase of federal jurisdiction was not without conflict, these points of contention between Congress and the Supreme Court do not go to bolster claims that the will of Congress weakened or pacified federal courts but instead prove the increased importance and potency of the federal judiciary.

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[1] D. F. Murphy, *Argument of Honorable Lyman Trumbull in the Supreme Court of the United States* (Washington: GPO, 1868) p. 9.

[2] Ex Parte McCardle, 73 U.S. 318 (1867).

[3] Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York: Alfred A Knopf, 1941) pp. 326-327.
Charles Warren, *The Supreme Court in United States History*, vol.2 (Boston: Little, Brown and Company, 1926) chapters 29 and 30.
William A. Dunning, *Essays on the Civil War and Reconstruction*, (New York: Peter Smith, 1931), 121-122.
W.R. Brock, *An American Crisis: Congress and Reconstruction 1865-67*, (New York: St. Martin's Press Inc., 1963), 262-4.
Kenneth M. Stampp, *The Era of Reconstruction 1865- 1877*, (New York: Alfred A Knopf, 1965), 146.

[a] Neither of these safeguards allowed for the complete protection for citizens. It would be almost another one hundred years before the full might of the Fourteenth Amendment would come to fruition through the application of the Incorporation Doctrine.

The Expansion of Federal Jurisdiction to 1867

Section 14 of the Judiciary Act of 1789 gave federal courts very limited use of habeas corpus enumerating that federal courts can issue writs of habeas corpus only for the "exercise of their respective jurisdiction" and only to test the pre-trial confinement of citizens. [4] A writ of habeas corpus is a constitutional right of anyone accused of a crime to have their arrest and detention reviewed by a judge to ensure that a person's confinement is not illegal.[5] These provisions drastically limited the power of federal courts. No matter how blatantly state courts abridged the rights of citizens, no matter how well citizens were protected by federal laws against similar trials, national courts could not review the trails of citizens in state courts under habeas corpus. Also under section 14, habeas corpus could only be used to review the legality of an arrest and not the conviction of a citizen after trial.

The Supreme Court in *Martin v. Hunter's Lessee* (1816) addressed the possibility of injustice in state courts when they declared that a citizen could be tried by a state for laws in violation of the U.S. Constitution and the federal government would have no recourse to right the wrong. The Supreme Court, through its opinion in this case, petitioned Congress to expand the federal court's jurisdiction so that these injustices could be remedied.[6] But with only two exceptions, Congress failed to provide a solution to such glaring constitutional problems. Only Reconstruction could provide an impetus to expand the role of federal courts.

Congress did expand the role of federal courts through the Force Act of 1833 and the "*Caroline* Act" of 1842. But these increases in the jurisdiction of national courts were limited and provided by Congress to ensure the safety of revenue collection and to protect federal officers in carrying out their duties from state courts.[7] However, these limited increases in judicial authority show Congress and the courts working together to circumvent hostile state courts.

By 1860, limitations on the jurisdiction of federal courts seemed set in concrete, and federal judges were unable to issue writs of habeas corpus to rescue prisoners wrongfully held under state authority.[8] The ability of federal courts to free themselves from the shackles of section 14 were stymied by the United States Constitution by Article 1, Section 9, Clause 2, which enumerated only the circumstances under which the government could suspend writs of habeas corpus.[9] This provision of the Constitution offered no means by which the scope of habeas could be increased. Only through acts of Congress could the power of federal courts be expanded.

In March of 1863, President Lincoln suspended the writ of habeas corpus. A suspension of habeas corpus would seem to limit the jurisdiction of federal courts, but quite the opposite occurred. In passing The Habeas Corpus Act of 1863, Congress built into the act safeguards to

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[4] Richard Peters Esq., *Statutes at Large, Treaties, and Proclamations, of the United States of America, from 1789 to March 3, 1845,* (Boston: Charles C. Brown and James Little, 1845), 81-82.
[5] Bryan A. Garner, *Black's Law Dictionary*, 7th Ed. (St. Paul, Minn.: West Group, 1999), 715.
[6] *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816) United States Supreme Court.
[7] William M. Wiecek, "The Reconstruction of Federal Judicial Power, 1863-1876," in *American Law and the Constitutional Order* ed. Lawrence M. Friedman and Harry N. Scheiber (Cambridge, Mass.: Harvard University Press, 1978), 239.
[8] Ibid. 241.
[9] United States Constitution, Article 1, Section 9, Clause 2. "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

protect against possible abuses of authority. Section 2 of the act required that a list of all those arrested under military or civilian authority would have their names forwarded to federal judges within the district of the arrest. A grand jury was to assemble and indict the detainee. If the grand jury failed to bring back an indictment, the person would be released immediately. To ensure the safety of the judicial process, federal judges were given the power under this act of Congress to supervise the indictment process. If any lower court failed to release the detainee, having not obtained an indictment, federal judges were empowered to try and convict any officer refusing to follow the law under this act.[10] Under section 5 of this act, if a state took action against a federal officer fulfilling his duty under any federal act he would be protected under an expansion of federal court jurisdiction. Any case against an officer of the United States arising out of a state court could be removed into a federal court protecting federal officials from the power of state governments that attempted to thwart federal law.[11] Thus even in a time that would seem to be a nadir in the power of federal courts, their jurisdiction was increased, but it would take the impetus of the Reconstruction to fully expand the power of United States courts.

When Congress ratified the Thirteenth Amendment abolishing slavery in February of 1865, Republicans were well aware that southern states might not recognize the rights bestowed upon freedmen. Moreover, southern states might attempt to prosecute federal agents, whose duty it was to safeguard those rights, in order to deny the guarantees of the Thirteenth Amendment. In order to secure these rights, Congress enacted the Separable Controversies Act of 1866. This expanded the jurisdiction of federal courts, allowing any person involved in a case in a state that they did not reside in to have the case removed to a federal court. In 1867, Congress passed the Local Prejudice Act. Under this act, any citizen in the country could remove a state case against him or her and have the case tried in a federal court by simply filing an affidavit "stating that he has reason to, and does believe that, from prejudice or local influence, he will not be able to obtain justice in such state court."[12] In May of 1866, Congress made its first steps to providing national rights to citizens of every state within the Union by allowing the U.S. Circuit to hear cases coming out of state courts.[13] Through these acts, Congress relied on the federal judiciary to provide a neutral forum for justice when state courts proved incapable or unwilling. Through this partnership between the legislative and judicial branches of government the national policy of Reconstruction was allowed to go forward.

While the jurisdiction of federal courts had been expanded, the writ of habeas corpus was still constrained by the handicaps of the Judiciary Act of 1789. The writ was still only a method for pre-trial detention. And that method of relief was still confined to federal cases and could not be used to interfere with state court proceedings. It would be up to Congress to amend the writ of habeas corpus and allow the full force and power of the federal judiciary to impose the rights of the U.S. Constitution upon state governments.

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[10] George P. Sanger, *Statutes at Large, Treaties, and Proclamations, of the United States of America, from December 5, 1859 to March 3, 1863,* (Boston: Little Brown and Company, 1863), 755.
[11] Ibid. 757
[12]William M. Wiecek, "The Reconstruction of Federal Judicial Power, 1863-1876," in *American Law and the Constitutional Order* ed. Lawrence M. Friedman and Harry N. Scheiber (Cambridge, Mass.: Harvard University Press, 1978), 241.
[13] George P. Sanger, *Public Laws of the United States of America passed by the first session of the 39th Congress,* (Boston: Little Brown and Company, 1866), 46.

The Habeas Corpus Act of 1867

Congress would take up the challenge by passing the Habeas Corpus Act of 1867, out of the fear that Southern courts would ignore the liberties given to freedmen. But because of congressional wrangling the final bill made no mention of its purpose to protect former slaves. Rather the bill gave an expansion of habeas corpus to all citizens. Under this act the jurisdiction of federal courts was greatly expanded. The bill was touted as enlarging "the privilege of the writ of habeas corpus and [making] the jurisdiction of the courts and judges of the United States coextensive with all the powers that can be conferred upon them. It is a bill of the largest liberty…." [14] But the bill not only increased the jurisdiction of federal courts it also changed the very nature of the writ. Before this act the writ applied to only detention before convictions, now the writ was a means of finding post-conviction relief. Moreover, the act allowed federal courts to supervise "the administration of criminal justice in state courts." Now U.S. judges could assert their authority into all decisions relating to individual liberty, including those arising out of state courts.[15] Congress, in this act, remedied the problem the Supreme Court alluded to in *Martin v. Hunter's Lessee*. But the expansion of federal jurisdiction by Congress would not be without points of contention.

Ex Parte Milligan

Lamdin P. Milligan was arrested in 1865 for planning an insurrection against the United States. Milligan was a leader in a secret society known as the Order of American Knights or Sons of Liberty[16] that planned to open another front in Mid-Western states to distract Sherman's march through the South and aid the Confederacy. The government's evidence was damning, for the United States had infiltrated the secret organization and had obtained evidence that Milligan was the ringleader of the society. The government moved to try Milligan under a military commission, but council for Milligan objected and filed a writ of habeas corpus with the Federal District of Indiana on the grounds that the military commission had illegally imprisoned Milligan. The appellate court consisted of two judges, one who was a Supreme Court Justice. Not being able to reach a decision on the matter, the case was referred to the United States Supreme Court.[17] Milligan was not a citizen of a rebellious state. He was not a prisoner of war and had never served in the military. The question before the court was whether a military tribunal could try Milligan. The Supreme Court reviewed the case, and concluded that Milligan could not be tried by a military commission because "Martial rule can never exist where courts are open, and in their proper and unobstructed exercise of their jurisdiction."[18] In declaring that military tribunals could not function in areas of the country where civil courts were functioning effectively, the Supreme Court asserted itself as the final arbiter in matters of law.

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[14] William M. Wiecek, "The Great Writ and Reconstruction: The Habeas Corpus Act of 1867." Journal of Southern History vol. 36 (1970): 538-540.
[15] Ibid. 532.
[16] *Ex Parte Milligan, The Supreme Court of the United States*, 71 U.S. 2; 18 L. Ed. 281; 1866 U.S. Lexis 861; 4 Wall. December, 1866, Term http://www.psci.unt.edu/mootcourt/ex_parte_milligan.htm
[17] Harold H. Burton, *The Occasional Papers of Mr. Justice Burton*, (Portland, Maine: The Anthoensen Press, 1969), 115-118.
[18] Robert Fridlington, *The Reconstruction Court 1864-1888*, (New York: Grolier Educational Corp., 1995), 78.

Ex Parte McCardle

Past historians have seen the Reconstruction Era in American history as a period of judicial weakening at the hands of Congress and specifically cite *Ex Parte McCardle* as an example; this contention is unfounded. The process of Congress bestowing upon federal courts more and more power through an expansion of their jurisdictions came to a temporary halt with the case of *Ex Parte McCardle*. However, this case alone does not justify the argument that Congress severely curtailed the power of federal courts in the years following the Civil War. The historical record shows that the Supreme Court in the McCardle case was simply interpreting constitutional law correctly in acknowledging the power of Congress to make exceptions to the Court's jurisdiction.

In March of 1867, Congress, over the veto of President Johnson, passed a series of Reconstruction acts dividing the South into five military districts, each of which was commanded by a major general. General Ord was in charge of the military district encompassing the state of Mississippi. William H. McCardle, editor of the *Vicksburg Times*, had written editorials in his paper damning the military government under General Ord and had called on the people of Mississippi to not vote in the constitutional state convention.[19]

On November 8, 1867, a military commission arrested William H. McCardle and charged him with disturbing the peace, inciting rebellion, libel, and impeding reconstruction. McCardle petitioned the federal circuit court for a writ of habeas corpus, alleging that he had been illegally detained. The circuit court denied his petition and McCardle appealed to the United States Supreme Court under the act of 1867.[20] The government argued that the Supreme Court did not have jurisdiction because "the Circuit Court cannot take jurisdiction of a case where a party is in military custody charged with a military offense." [21] Congress had declared that there were no legitimate governments in the South. The government of Mississippi was one of Congressional creation. Therefore, the Supreme Court had no right to interfere with the powers of Congress to do what was necessary to establish republican forms in formally insurrectionist states.[22] Council for the appellant argued that regardless of whether Mississippi was a state in the Union, the people of any state have rights under the United States government and "therefore, the petitioner, McCardle, is entitled to his release from the military commission which presumed to sit in judgment of him."[23]

The Supreme Court rejected this argument, declaring the Court had jurisdiction in the McCardle case because the Habeas Corpus Act of 1867 was legislation "of the most comprehensive character. It brings within the *habeas corpus* jurisdiction of every court and of every possible case of privation of liberty contrary to the National Constitution, treaties, or laws. It is impossible to widen this jurisdiction."[24] In this opinion the Court stated that the jurisdiction of federal courts was absolute and—with the writ of habeas corpus—all encompassing to include every other court of the land. But out of fear that the Supreme Court might strike down acts of Reconstruction, Congress took measures to remove the Court's jurisdiction.

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[19] Sever Landon Eubank. "An Abstract of the McCardle Case." PhD diss., Colorado College, 1954. Pg. 3
[20] Robert Fridlington, 92.
[21] D. F. Murphy, *Argument of Honorable Lyman Trumbull in the Supreme Court of the United States*, (Washington: GPO, 1868), 9.
[22] Ibid. 25-29.
[23] D.F. Dudley, *Supreme Court of the United States in the Matter of William H. McCardle, ex parte, Appellant.* (New York: V. Skinner Law Printer, 1868) 65-66.
[24] Ex Parte McCardle, 73 U.S. 318 (1867).

On March 27, 1868, Congress amended the Habeas Corpus Act of 1867:

> That so much of the act approved February 5, 1867, entitled An act to amend 'An act to establish the Judiciary Courts of the United States, approved September 24th 1789' as authorizes an appeal from the judgment of the circuit court to the Supreme Court, or the exercise of any such jurisdiction by said Supreme Court, which have been or may hereafter be taken, be, and the same is, hereby repealed.[25]

This act became known as the "McCardle repealer." The wording of this act is important not only because it removed the Supreme Court's jurisdiction in *Ex Parte McCardle* but because it *only* removed the Supreme Court's jurisdiction. Leaving the appellate jurisdiction of lower federal courts intact, the actions of Congress only affected the jurisdiction of the Supreme Court in appeals involving writs of habeas corpus.

The Supreme Court waited until its next session to declare its opinion, and while the Court could have simply stated that the appeal of the petitioner is dismissed for want of jurisdiction, the Justices took the opportunity to detail the constitutionality of Congress's actions. The Court, in its opinion, declared, "that the appellate jurisdiction of this court is not derived from Act of Congress. It is strictly speaking, conferred by the Constitution. But it is conferred 'with such exceptions and under such regulations as Congress shall make'"[26] The exceptions and regulations the Court pointed to come from Article 3, Section 2, Clause 2 of the U.S. Constitution. Under the Constitution, Congress may amend the Supreme Court's power to decide most cases. Furthermore, Congress bestowed upon the Court its jurisdiction in the Habeas Corpus Act of 1867 to hear such cases as *Ex Parte McCardle*, and therefore Congress may take away what jurisdiction it has given to the Supreme Court. However, the Justices, in a possible act of defiance, pointed out that the Court's jurisdiction in cases of habeas corpus had not been completely removed. According to the *United States Supreme Court Reports*, "The Act of 1868 does not except from that jurisdiction any case but appeals from circuit courts under the Act of 1867. It does not affect the jurisdiction which was previously exercised."[27] In ending its opinion in this fashion, the Justices made it clear that Congress had not moved the Court to a position of irrelevancy as past historians have argued. The Justices would again assert their relevancy in the case of *Ex Parte Yerger*.

In its decision on *Ex Parte McCardle* the Court presented not an act of capitulation, but rather a well thought out constitutional argument. While Congress under the Constitution may repeal judicial authorization to hear types of cases, the ability of the Supreme Court to strike down laws as unconstitutional is not specified in the U.S. Constitution. Rather, the power of the Court to do so is declared in case precedent from *Marbury v. Madison*. The Constitution is the supreme "Law of the Land," and overrides case precedent law. Therefore, the legislature may revoke the Court's jurisdiction at the onset of the Court declaring an act of Congress unconstitutional. The power of Congress in these matters comes from a higher source of authority than does the Court's. Thus, the Supreme Court in *Ex Parte McCardle* had acted not in

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[25] George P. Sanger, *Statutes at Large, Treaties, and Proclamations, of the United States of America, from December1867, to March 1869,* (Boston: Little Brown and Company, 1869), 44.
[26] Stephen K. Williams, LLD, *United States Supreme Court Reports*, (Rochester, N.Y.: The Lawyers Co-operative Publishing Company, 1884), 265.
[27] Ibid. 266.

a spineless fashion, but in a rightful constitutional manner. Any questions of cowardice on the part of the Court are dispelled in the Court's decision in *Ex Parte Yerger.*

Ex Parte Yerger

On June 8, 1869, Edward M. Yerger was arrested for stabbing an army officer appointed mayor of Jackson, Mississippi and held by military commission on the charge of murder. Yerger followed the same process as William McCardle, except that Yerger did not rely on the Habeas Corpus Act of 1867.[28] Instead, the council for Yerger took the advice of the Supreme Court in *Ex Parte McCardle* and petitioned the Court for a review, arguing that the Act of 1867 was an amendment to the Judiciary Act of 1789. The council for Yerger continued the argument that when Congress amended the Act of 1867, it did not affect the original jurisdiction of the Supreme Court to hear cases arising out of habeas corpus claims. This was basically the same argument the Court had made in *Ex Parte McCardle*, and the Court agreed to review the case.[29] Again, the government argued that the United States Supreme Court had no jurisdiction, but the Justices decided against the government's arguments boldly stating "That this court is one to which the power to issue writs of habeas corpus is expressly given by the terms of this section [Judiciary Act of 1789] has never been questioned."[30] Chief Justice Chase writing the opinion of the Court declared, "the general spirit and genius of our institutions has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States; except in one recent instance [*Ex Parte McCardle*], has been constant and uniform." The Court declared that it had jurisdiction to hear the claim of Yerger through a writ of habeas corpus. Agreeing with the petitioner, the Court found that the military commission of Mississippi had illegally held Yerger. Furthermore, the Court ordered that Yerger be tried in a civil court in Mississippi.[31] The Yerger case shows that the Supreme Court was not willing to capitulate to Congressional threats to remove the courts jurisdiction. Rather the Court asserted its position as the highest guardian of civil liberties.

The Reaction of States to the Expanded Jurisdiction of Federal Courts

Ex Parte McCardle proved to be only a minor impediment in the development of habeas corpus in federal courts. The Habeas Corpus Act of 1867 only applied to the jurisdiction of the Supreme Court and not to any other federal court. The opinion of the Court in *Ex Parte McCardle* left a backdoor open to similar suits and thereby allowed the Court to review *Ex Parte Yerger*. Together these two cases circumvented congressional attempts to pacify the Supreme Court. However, as further proof of the federal Courts expanded role in state criminal proceedings, state courts began to resent the federal power to have state Supreme Court decisions reviewed and overturned by even the lowest of federal courts as citizens convicted in state courts

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[28] Charles Fairman, *The Oliver Wendell Holmes Devise: History of the Supreme Court of the United States Reconstruction and Reunion 1864-88 vol. 6, Part One.* (New York: The Macmillan Company, 1971), 564-5.
[29] *Ex Parte Yerger*, 75 U.S. 85 (December 1868 Term).
[30] Ibid.
[31] Charles Fairman, 589.

began to seek relief by obtaining reviews in federal courts. To remedy this problem, Congress in 1885, repealed the "McCardle repealer", thereby allowing state Supreme Court decisions to be overturned by federal courts to be appealed all the way to the Supreme Court of the United States.[32]

Conclusion

The Judiciary Act of 1789 limited the use of writs of habeas corpus by federal courts, allowing state courts to abridge the rights of citizens in violation of federal law, and federal courts were at first powerless to remedy the problem. The Reconstruction Era provided incentive to expand the jurisdiction of federal courts and the writ of habeas corpus. Congressional Republicans, worried that Southern states might attempt to thwart national reconstruction plans increased the power of federal courts to supervise and administer justice though all levels of the judiciary. In expanding the jurisdiction of habeas corpus claims, Congress changed the nature of habeas corpus. But cooperation between the Judiciary and Congress during Reconstruction did not pass without conflict, as *Ex Parte Milligan*, *Ex Parte McCardle,* and *Ex Parte Yerger* demonstrate. Historians have long regarded *Ex Parte McCardle* as proof that the power and prestige of the federal courts declined during Reconstruction, but this belief is in error. The opinions of these cases show a resolute Federal Judiciary that eluded the laws enacted by Congress.

[32] William M. Wiecek, "The Reconstruction of Federal Judicial Power, 1863-1876," in *American Law and the Constitutional Order* ed. Lawrence M. Friedman and Harry N. Scheiber (Cambridge, Mass.: Harvard University Press, 1978), 242.

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Pueblo Indian Neophytes during Early Spanish Rule in New Mexico

by Amanda Zeddy

The social atmosphere in Spain during the Fifteenth Century was one of passionate religious zeal brought about by centuries of Christian-Muslim conflict. The Spanish brought with them this fervor as they colonized the recently discovered "New World." After the triumph of the Protestant Reformation in northern and central Europe, mission work was perceived as a way of restoring the Roman Catholic Church's prominence in the world. The Americas provided an ideal venue as it housed millions of "pagan" natives, supposedly ready and waiting for Catholic salvation.[1] The Pueblo Indians of New Mexico were one of the Spaniards' targets for conversion. The Spanish began the conversion of the native immediately following conquest; they subdued the Indians with "a sword in one hand and a bible in the other." They employed many methods to convert the natives, but a vast number of Indians converted not because of true piety or direct force exerted by the Spanish. Most converted to simply survive in the new environment that the Spanish had created. The Pueblos of New Mexico converted to Catholicism primarily out of necessity, not because of genuine religious devotion or from Spanish military might.

The Pueblo Indians were groups of natives in central New Mexico and northeast Arizona that resided in permanent stone or adobe dwellings. The term "Pueblo" refers to a cultural classification, which disregards language and tribal lines that separate the various Pueblo groups. The Pueblo were mainly agricultural, growing principally beans and corn along with pumpkins, cotton, and tobacco. Despite the arid weather, the Pueblos were assiduous farmers and thrived agriculturally. The natives did some limited hunting, mostly for jackrabbits. Crafts such as weaving, pottery, and basket production were fashioned with skill and artistry. Women crafted pots, made bread, and were the owners of the homes and gardens, as familial descent was usually traced through the mother's line. Men and women shared in activities such as basket and cloth weaving, basket, building houses, and farming. Individual "pueblos" were independent identities that had connections to other pueblos through related customs and languages.

Pueblo religion consisted in a form of animism. The religion included various ceremonies that were believed to have powers over the weather, the harvest, war, and hunting.[2] Religious myths for the Pueblos expressed ideals and values that they held in high esteem. These myths aided in organizing and giving their society purpose. The Western concept of linear time was foreign to the Indians. They believed that time was cyclic, or as "eternally returned." Particular events were not seen as unique. For example, a seed that sprouts into a plant, produces fruit, and then dies is reborn into another seed and the cycle is repeated.[3]

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[1] Cleve Hallenbeck, *Spanish Missions of the Old Southwest*. (Garden City, New York: Doubleday, Page and Company, 1926) p. 5.

[2] James Mooney, Trans. By M. Donahue, "Pueblo Indians." 29 Nov. 2002. [cited 29 Nov. 2002]. http://www.newadvent.org/cathen.12554b.htm. pp. 1, 9-11.

[3] Ramon A. Gutierrez, *When Jesus Came the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846*. (Stanford University Press: Stanford, 1991) pp. 7-8.

The history of the Spanish contact with the Pueblo Indians began in 1539. Rumors of "great cities in the North" enticed the Franciscan monk, Marcos, di Niza, to make an expedition to the region of the Zuni Indians. Initially, relations were friendly but the Spanish proved capricious. Immediately following Marcos di Niza, a substantial expeditionary force was organized by Francesco Vasquez de Coronado to conquer the area. In the summer of 1540 de Coronado's forces reached and seized the principal Zuni village. The party also penetrated into the Tiguex province on the Rio Grande, which held twelve pueblos with a population of approximately eight thousand.

Native insubordination was overcome with Spanish brutality that included being burnt at the stake or shot. Genuine campaigns of conquest did not occur until both 1598 and 1599 by Juan de Onate of Zacatecas with a force that included four hundred men and ten Franciscans. They quickly organized forms of government in the region that included a priest in each district to control the Indians. The Spanish altered and virtually destroyed the Publo's way of life. Abuses towards the Indians continued after Juan de Onate; on January twenty-fourth, 1599, the residents of the cliff village of Acoma were massacred after a Spanish detachment was slain in that locale.[4]

Converting the Indians through mission efforts became an integral goal and desire of Spanish colonization. Indian conversion not only fulfilled the religious fervor of the Spanish, but had other goals as well. With few colonists in New Mexico, there was a shortage of labor. The natives were the obvious choice of cheap labor for the Spanish missionaries. The Franciscan missionaries were to convert the Pueblos to Christianity, and also to instruct the Indians on Western methods of farming, building, and mechanics.[5]

Most missionaries did not know the native language, which resulted in miscommunication between the Spanish and the Indians. Due to the lack of communication, the Indians did not fully understand or accept the basic tenets of Christianity until the missionaries finally learned their language or, more likely, the natives learned Spanish. Baptism was considered enough to temporarily save a native's soul, even if the "converted" Indian had little or no understanding of Christianity. The natives' temporary salvation through baptism was conditional; the natives were to understand that the "padre" through the Sacrament of Penance ultimately decided whether the Indians would enter heaven or purgatory. This blackmail gave a considerable amount of influence to the padres over their neophytes.[6] By 1617, there were eleven Franciscan churches in New Mexico and fourteen thousand Indians had been baptized. These figures expanded even further as the Spanish gained more influence through military force and with the efforts of the missionaries to forty-three churches and thirty-four thousand natives baptized in 1627.[7]

The arrival of Juan de Onate and the Spanish brought confusion and chaos into Pueblo society. The Spanish disturbed agricultural practices and trading networks among the Pueblos of New Mexico. They seized Pueblo food supplies, which in turn ruined trade between the Pueblos and the nomadic Apache and Navajo tribes.[8] In addition, the Pueblos were required to pay "tributes" to their new Spanish governor in the forms of clothing and maize. In the arid environment in which the Pueblos lived, these necessities were not in abundance. Thus, the New

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[4] Mooney, pp. 3-4.
[5] Hallenbeck, p. 11.
[6] Hallenbeck, pp. 85-86.
[7] Mooney, pp. 4-5.
[8] Andrew L. Knaut, *The Pueblo Revolt of 1680: Conquest and Resistance in Seventeenth Century New Mexico*. (University of Oklahoma Press: Norman, Oklahoma, 1995) p. 54.

Mexican natives found their culture dependent upon the Spanish for subsistence, even though the Spanish were the very ones that threatened their survival.[9] The "tribute" payments began when Juan de Onate and his expedition first came to New Mexico. They lacked their own provisions, so they forced the natives to give them their own.[10] The brutality that the Spanish displayed when collecting tribute from the Indians was especially callous and unfeeling, as mentioned by the Spaniard Fray Lope Izquierdo in 1601:

> Our men, with little consideration, took blankets away from the Indian women, leaving them naked and shivering with cold. Finding themselves naked and miserable, they embraced their children tightly in their arms to protect them, without making any resistance to the offenses done to them, for they are a humble people, and in virtue and morality the best behaved thus far discovered.[11]

Worse than the clothing tributes were the food tributes exacted by the Spanish. Harvests could not be counted on every year to yield the same amount. Drought and natural disasters occurred frequently, which resulted in the Pueblos storing and preserving food each year in expectation of an unfruitful harvest. The Spaniards' demands for the natives' food supplies annihilated the balance that the Pueblos had maintained with their environment for countless generations.[12]

By ruining the Pueblo's harvesting techniques, the Spanish also devastated the trading networks between the Pueblos and other native groups. Trade had been a means of survival to groups who suffered poor harvest years. A group would trade their goods for another village's foodstuffs, ensuring survival. When the Spanish seized and demanded provisions, these connections were destroyed.[13] Relations between the Pueblos and the nomadic Navajo and Apache tribes suffered, not only from the disrupted trading patterns, but also because of a newly-introduced means of raiding the Pueblos: the horse. In the horse, the Apache and Navajo groups were not limited to travel by foot, and had an advantage of speed and a means of carrying away lager amounts of plunder. The Navajo and Apache bands now attacked the Pueblos with added frequency, more speed, and greater efficiency.[14] The Pueblos became completely dependent on their Spanish invaders for the essentials of life, clothing, food, and protection.

The Indians were forced to convert to Roman Catholicism in order to survive under the conditions that the Spanish had created for them. Conversion to the Pueblos was simply a practical ploy for survival; they still practiced their traditional religion, though concealing their genuine religious beliefs and practices from the missionaries.[15] In exchange for converting to Christianity, the Indians received food, clothing, and protection from the Spanish. The natives' situation was so desperate that some even gave themselves as servants to the Spanish in hopes of obtaining maize or other foods.[16] The friars realized that the Catholic faith had little appeal to the Indians. Fray Francisco de Zamora describes why:

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[9] Knuat, p. 57.
[10] Ibid., p. 58.
[11] Ibid., p. 59.
[12] Ibid.
[13] Ibid., p. 61.
[14] Ibid., p. 69.
[15] Ibid., p. 53.
[16] Knaut, p. 65.

> [The Spaniards] took away from them by force all the food that they had gathered for many years, without leaving them any for the support of themselves and their children, robbed them of the scanty clothing they had to protect themselves…causing the natives much harm and wounding their feelings. This brought great discredit to our teaching, for they said that if we would are Christians caused so much harm and violence, why should they become Christians?[17]

Loyalty among the natives towards the Spanish was scant due to this hypocrisy and cruelty. Spanish military might drove more Indians to convert for the sake of protection against the Apache and the Navajo. Evidence that conversion was not complete among the Pueblos also emerged in forms of resistance. By maintaining their traditional religious practices in secret, the Indians resisted full acceptance of Western religious thought and belief. Resistance also culminated in violent resistance movements against the missionaries.

The Pueblo Indians of New Mexico faced the decision to either convert to Christianity, or subject themselves to hunger, the elements, and the threat of other hostile native groups. Their choice to convert to Roman Catholicism originated from despair and necessity, not from sincere religious devotion or even directly due to Spanish military force. Evidence that the Pueblos were not true Christian converts culminated in 1680 with the Pueblo War of Independence. The Indians revolted against the oppressive missionaries that had stifled their religious practices, seized their food, demanded their labor, and abused Indian women. The Pueblo population had also plummeted drastically due to the diseases brought by the Spanish. The Pueblos placed the blame on the Spanish for their hardships, who had ended the natives' religious ceremonies that the Pueblo believed kept the world in balance. The resulting revolt of 1680 returned New Mexico to the Pueblos as well as liberated them from the Spanish for twelve years. With the reconquest of the Pueblos by Diego de Vargas in 1692 came more tolerant relations towards the Indians.[18] Though smaller revolts continued to occur, the more lenient treatment made the Indians more apt to accept Spanish religion and customs, and culminated in a culture that was a mixture of the two societies, allowing the Pueblos more freedom to practice their traditional and unique religion.

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[17] Ibid., pp. 65-66.

[18] Colin G. Calloway, *First Peoples: A Documentary Survey of American Indian History*. (Bedford/St. Martin's: Boston, 1999) p.

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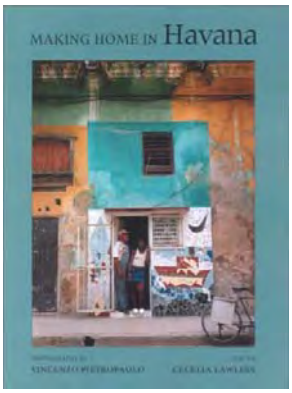

Making Home in Havana. **By Vincenzo Pietropaolo and Cecelia Lawless.**
(New Brunswick, New Jersey: Rutgers University Press, 2002. Pp. 115. $44.95.)

Making Home in Havana combines the prose of Cecelia Lawless, a senior lecturer at Cornell University, and the exquisite photography of Vicenzo Pietropaolo, celebrated for his documentary work. The book is essentially a philosophical and sociological study of the concept of home and its significance to ordinary people, with Havana as the rich historical backdrop. As Lawless writes in the preface, "A home embraces the concept of community conveyed by family, religion, pets, domestic tasks, and upkeep. But when your house is in ruins, how can you still maintain that feeling of home" (p. vii)?

The body of the book begins with a black-and-white photograph of a very ornate cast iron gate. The text in the body is composed of the quotes and sentiments of Habaneros interviewed or encountered by Lawless and Pietropaolo, and often, but not always, the text has been derived from the person in the photo. However, the style of writing, perhaps in an attempt to capture the flavor of Havana, is more literary than scholarly, and it is initially unclear whether the words are those of Lawless or of her subjects. For example, above a photo of an elaborate but decaying stairwell, the first paragraph of text asserts in an analytical and scholarly manner: "The home represents the realization of people's inner desires" (p. 12). Juxtaposed is the text—written in the first person—on the following page, beneath a black-and-white photo of a young Afro-Cuban woman bottle-feeding a baby girl (p. 13). The paragraph is apparently a quote from the woman in the photograph, but Lawless never uses quotation marks, nor does she describe her subjects or give background of the situations depicted in the photographs.

The photography is superb and the real star of this book. Pietropaolo brilliantly and beautifully captures a wide range of feelings emanating from Havana—the decayed grandeur, the beauty, the spirit, the poverty, the pride, the hardship, and the warmth. Almost any of these photographs could handsomely adorn the walls of a prestigious museum or art gallery.

Permeating *Making Home in Havana* is a strong sense of the revolution having failed. One homeowner laments the deterioration of his house over the last thirty years because it is impossible to obtain enough money to make sufficient repairs (p. 36). Another photo captures the irony of the Cuban situation with two girls on a sidewalk beneath pock-marked murals of poet José Martí and revolutionary Che Guevara on the stucco of a run-down building. Another resident bemoans not having a refrigerator and says, "This is a tragedy...the daily struggle is not easy" (p. 56). The buildings pictured from Havana are very often beautifully designed works of art, the likes of which are typically only found in the wealthiest or most historic neighborhoods in the United States; however, nearly without exception, they are in utter disrepair. In this way,

Havana resembles Roman ruins or European castles—but the change in Havana has taken place only in a few generations. In the words of one Habanero, "Look, when we came here to Havana in 1952, this building was a thing of beauty....But as time passed, and the system changed, it's another story" (p. 100).

The epilogue is a fitting poem by Alex Fleites, the first line of which is "We have spent our whole lives waiting for a train" (p. 113). Indeed, this is the sense that one absorbs when reading *Making Home in Havana*. As visual history, this book is solid and recommended to anyone interested in historical photography or post-revolutionary Cuba.

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***The Last Lion: Winston Spencer Churchill: Visions of Glory, 1874-1932, Vol. 1*. By William Manchester. (New York: Bantam Doubleday Dell Publishing Group, 1983. Paperback, Pp. 925. $21.95.)**

One is not likely to find a more thoroughly well-told story in all of historical literature. Without a doubt, William Manchester is one of the best writers ever to tackle biography, and the endlessly interesting life of such a brilliant and dynamic figure as Winston Churchill provides the perfect subject to complement Manchester's engaging and insightful style.

Unlike so many biographers, Manchester does not begin his narrative with the name, place, and date of birth of his subject. Instead, he uses a lengthy preamble that begins with the Allied evacuation of France in World War II—the so-called "Miracle at Dunkirk" (pp. 3-4). He then relates the story of how Churchill, after a career of rising to dizzying heights only to fall off of the political map, finally became Prime Minister (pp. 4-5). Next, Manchester tells a series of stories and significant facts about Winston Churchill, fleshing out his personality and psychological make-up. This attempt to acquaint the reader with Winston Churchill as a complex human being is remarkably successful.

After the preamble, Manchester uses a prologue of some 65 pages to set the historical and familial backdrop of Churchill, who was an aristocratic child of the Victorian Age. A child of privilege as well as power, his father, Lord Randolph, was a very successful politician, at one point becoming Chancellor of the Exchequer, and his mother, Jennie, was a rather flirtatious American debutante.

Finally, after more than one hundred pages of valuable and entertaining background, the reader is introduced to the newly-born Winston Churchill, but Manchester still deftly avoids obviously stating the date and place of Churchill's birth, choosing instead to relate a humorous story about how Churchill's mother was likely two months pregnant when she and Lord Randolph were wed. Churchill would later famously remark on the questionable circumstances of his birth, saying, "Although present on the occasion, I have no clear recollection of the events leading up to it" (p. 108).

The rest of the book reads like a novel, and all of the major subjects in Churchill's life—from his escape from a Boer POW camp to his marriage and life-long romance with Clementine Hozier to the invention of the tank, through the Admiralty and the Chancellery, and to the Gallipoli debacle, which eventually caused a long period of political exile—are covered extensively with grace, humor, and panache. However, Manchester also makes astute analyses of the life and times of Winston Churchill and of human nature in general. For example, after becoming a Major and later a Lieutenant Colonel in the British Army during WWI, Churchill enjoyed the combat situations, which has caused some to accuse him of being a war-lover. Manchester writes: "And yet…The mind-set of the warrior is rigid, inflexible, fiercely

intolerant…any suggestion that his own view of war may be even slightly flawed is both provocative and profoundly resented. Churchill did not fit that mold at all. He was, in fact, its obverse" (580).

Many scholars have disparaged Manchester as a popular historian (like many biographers, began his career as a journalist and does not hold a Ph.D.) and have written *The Last Lion* off as "excessively adulatory," in the words of R.R. Palmer and Joel Colton (*A History of the Modern World*, p. 1201). However, Manchester does not shy from presenting in full honesty the unpleasant aspects of Winston Churchill, from arrogance and habitual inconsiderateness to racial bigotry.

All told, *The Last Lion, Vol. 1* is a marvelous testament to the art of history and a definite must-read for any student of history, particularly of Britain in the Victorian, WWI, and post-war eras.

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***The Wars of the Ancient Greeks*. By Victor Davis Hanson.**
(London: Cassell P L C, 2002. Pp. 224. Paperback, $14.95.)

One of the most renowned historians of ancient Greece, Victor Davis Hanson superbly relates the story of Greek warfare and how it has shaped world history. Professor Hanson contends that the warfare of the Ancient Greeks was both an expression of Greek values and an enormous influence on every aspect of Greek civilization, from religion and philosophy to democracy. He also argues that, for a time, Greek warfare worked towards "the preservation of an agrarian middle class" (p. 66).

The wars of Greek hoplites—a term probably derived from *hopla*, the Greek word for battle armor—originated with middling yeoman farmers seeking to defend their farms from neighboring Greeks or to expand the holdings of their own community. War was short. Battles would only take place during summer, before the harvest, and would usually only last for a few hours. Troops were rarely marched more than three days from their homes. Opposing sides, as Hanson describes them, were cordial. In formal pitched battle, each party agreed to fight on the most level terrain and notified of their opponents of their intentions. Pursuit of the losing side was outlawed. With a thick bronze breastplate, bronze-covered wooden shield, and a large spear, a hoplite "was the most cumbersome, slow—and best protected—infantryman in the entire history of western warfare" (p. 61). Causalities were usually fewer than ten percent. Hoplites almost always fought in phalanx formation, usually eight "shields" deep, with each man literally standing shoulder-to-shoulder with his comrades. Unity was emphasized, as were personal bravery and strength. However, the heroism of one man above others was not particularly encouraged, and hoplite generals took their places in the battle lines with the rest of the soldiers.

Despite their simple tactics—usually consisting of a phalanx line charging an enemy line—hoplite armies were virtually invincible when faced with non-hoplite opponents. In 40 BC, a Persian army, purportedly numbering a million men and under the leadership of King Xerxes—whose father Darius I had invaded Greece with a much smaller army and been repelled—invaded Greece and was stopped by a hoplite army numbering only 50,000 men.

However, cracks began to appear in the yeoman hoplite system after the Battle of Salamis, in which the Athenian navy, powered by lower-class oarsmen, proved decisive. The agrarian middle class was then forced to open democracy to the lower class men who had made the victory at Salamis possible, lest the new backbone of Greek naval defense be discontent. The assembly of voting Athenians became increasingly warlike and expansionistic, until eventually the Peloponnesian War erupted between Athens and the militaristic Spartans. Far from the civility of previous hoplite conflicts, in this war, armies pursued the annihilation of their enemy.

Finally, it is with Philip of Macedon and Alexander the Great that the Greek hoplite phalanx becomes obsolete. The Macedonian phalanx, a professional army equipped with longer

spears and lighter body armor, and supported by strong cavalry and reserves, obliterated the Greek phalanxes. In a few years, Alexander the Great killed more hoplites than had ever previously been killed in history, and he slaughtered civilian populations by the tens of thousands. Hanson, rather than praise Alexander's genius and charisma as many historians have done, blisters him as a "megalomaniac" whom he likens not to Napoleon or Caesar, but to Hitler.

The Wars of the Ancient Greeks is highly readable and very well-written. Extensive and well-chosen maps, photographs, and other illustrations of pertinent materials add valuable visual information to Hanson's appealing prose. Hanson incorporates solid analyses that go to the heart of why the West has, more often than not, dominated in warfare. He also shows how Greek warfare was an expression of Greek society and demonstrates the evolution of Greek warfare beginning with the middling yeoman farmers that he believes represent the ideal and ending with the murderous Asian campaigns of Alexander the Great. This book is a modern classic and a must-read for any student of Ancient Greece or western warfare.

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