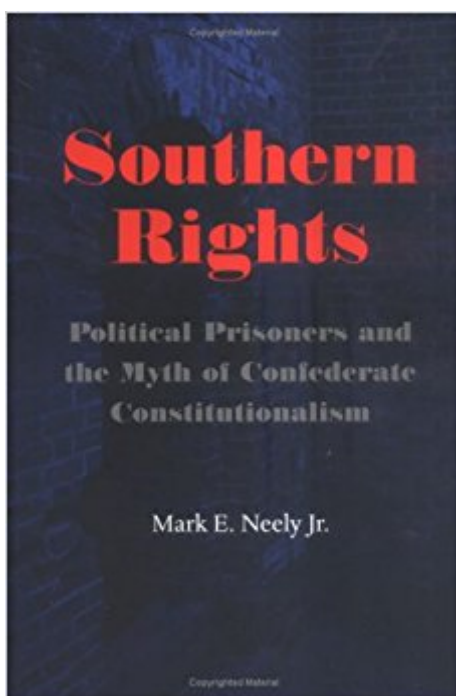


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# Southern Rights: Political Prisoners And The Myth Of Confederate Constitutionalism



## Synopsis

On the day Fort Sumter surrendered to Confederate authorities, General Braxton Bragg reacted to a newspaper report that might have revealed the position of gun emplacements by placing the correspondent, a Southern loyalist, under arrest. Thus the Confederate army's first detention of a citizen occurred before President Lincoln had even called out troops to suppress the rebellion. During the civil war that followed, not a day would pass when Confederate military prisons did not contain political prisoners. Based on the discovery of records of over four thousand of these prisoners, Mark E. Neely Jr.'s new book undermines the common understanding that Jefferson Davis and the Confederates were scrupulous in their respect for constitutional rights while Lincoln and the Unionists regularly violated the rights of dissenters. Neely reveals for the first time the extent of repression of Unionists and other civilians in the Confederacy, and uncovers and marshals convincing evidence that Southerners were as ready as their Northern counterparts to give up civil liberties in response to the real or imagined threats of wartime. From the onset of hostilities, the exploits of drunken recruits prompted communities from Selma to Lynchburg to beg the Richmond government to impose martial law. Southern citizens resigned themselves to a passport system for domestic travel similar to the system of passes imposed on enslaved and free blacks before the war. These restrictive measures made commerce difficult and constrained religious activity. As one Virginian complained, "This struggle was begun in defence of Constitutional Liberty which we could not get in the United States." The Davis administration countered that the passport system was essential to prevent desertion from the army, and most Southerners accepted the passports as a necessary inconvenience, ignoring the irony that the necessities of national mobilization had changed their government from a states'-rights confederacy to a powerful, centralized authority. After the war the records of men imprisoned by this authority were lost through a combination of happenstance and deliberate obfuscation. Their discovery and subtle interpretation by a Pulitzer Prize-winning historian explodes one of the remaining myths of Lost Cause historiography, revealing Jefferson Davis as a calculated manipulator of the symbols of liberty.

## Book Information

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## Customer Reviews

Mark Neely's *Southern Rights* is a work of major significance that revises many traditional views about civil liberties in the Confederacy. By carefully analyzing the previously ignored arrest records of more than 4,000 political prisoners in the Confederacy, Neely demonstrates that in crucial ways the regulation of dissent was simultaneously more sweeping and less controversial in the Confederacy than in the Union, and in the process effectively calls into question the standard paeans to Confederate constitutionalism. Neely's careful scholarship reveals how little we knew previously about the formulation of Confederate policy on this issue or how Confederate laws and policies were actually enforced at the local level. This is a stimulating and provocative work that asks new questions, challenges many reigning beliefs about southern society and values, and points Confederate scholarship in new directions. With implications far beyond its particular subject, *Southern Rights* is one of the most original and important books on the Confederacy ever published. (William E. Gienapp, Harvard University)

Mark E. Neely Jr., McCabe-Greer Professor of Civil War History at the Pennsylvania State University, won a Pulitzer Prize in history for his book *The Fate of Liberty: Abraham Lincoln and Civil Liberties*. He is also author of *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America*.

In this work Pulitzer prize winning historian Dr. Mark Neely, through diligent original research of the archives, greatly expands our knowledge of the Confederacy's civilian/political prisoners. He has found records of 4,108 civilians east of the Mississippi held at one time or another, and mention of an unidentified 266 on a given date in the trans-Mississippi Dept. On a per capita population basis, these numbers are essentially the same as that of the much maligned Lincoln Administration. Neely

exposes the façade that had been maintained during and after the war denying the existence of such a major suspension of civil liberties by the Confederate govt. Davis said one thing while doing essentially the same as Lincoln. Both men did so as a matter of wartime pragmatism. Neely provides a blistering condemnation of the postwar obfuscation by Davis on the matter, as well as at least one commissioner who had reviewed cases for Davis and wrote scathing criticism of Lincoln's similar acts without ever mentioning that he had been involved in doing exactly the same thing. Neely used the correspondence and notes of these previously unknown commissioners to compile his list. Neely doesn't spare criticism of modern authors who in his view have misinterpreted the prior existing record and failed to appreciate the gaping holes in the image of the Confederacy as constitutional defenders of white civil liberties. He points to examples where they neglected to identify discrepancies in the wartime and post-war statements, with the actual wartime record of actions. He examines modern historians' lack of discussion of and understanding of the CSA's Alien Enemies Act. He notes how docilely the Confederate populace accepted or even requested restraints on their civil liberties, all in the effort to maintain order. The travel pass system is reviewed, which applied a system previously reserved for slaves and free blacks. Demands by civilians for temperance and martial law don't reconcile with the claimed libertarian proclivities of the Southern populace. Similarly there was the complete conscription system adopted (and enforced by suppressing writs of habeas corpus.) Neely reviews the relative absence of the state judiciaries in challenging Confederate suspensions of habeas corpus. Since the Confederacy never created a Supreme Court, the state courts could have created a real crisis. Neely reviews many of the individual cases and the regional matters from which they arose: particularly unionist East Tennessee and western Virginia. These created problems and actions similar to those of the Federals in Missouri and Kentucky. One of the key things that emerges is how frequently the voting patterns of the prisoners formed part of the scarce record, and factored into how their cases were handled. This illustrates the political nature of the Confederate civilian prisoners--a magnitude beyond that in the north. The solution the Confederates sought in many cases was conscription of the disloyal, yet many preferred to remain imprisoned instead. A reader might wonder why I deducted one star in this review, despite agreeing with much of what the author has written. My concerns were the often strident and subjective tone which I believe undermine an otherwise sound collection of arguments.

This companion work to Neely's *The Fate of Liberty* continues the investigation of the incarceration of prisoners, this time in the South. Gleaned from very obscure records by a man with the patience of Job in finding them, *Southern Rights* provides a unique glimpse into the South and how it treated

civil liberties during the war. We have heard so much about Lincoln's dealings in this area but little about Jefferson Davis's. You will be surprised. I find Neely's writing engaging, although you should have an interest in the topic first. Casual reading for the uninitiated it is not. But it does avoid the turgid rhetoric that is far too common in academic works. Highly recommended and different.

Gift for my son-in-law. He is a high school history teacher who loves this period. He was very thrilled with it.

In the 1990s, historian Mark Neely spent six years tracking down 4,108 records of Confederate political prisoners. The result was this nine-chapter (therefore somewhat slender) book. The nine chapters are scattered across four parts: "Liberty and Order," "The Confederate Bench and Bar," "Dissent" and "Jefferson Davis and History." The book's principal weakness is that the chapters were clearly separately written papers rather than parts of a coherent whole, for which I deduct one star. Whole chapters are devoted to the special cases of Arkansas and East Tennessee, with another chapter lumping together western Virginia and North Carolina. I especially appreciated the chapter on East Tennessee as the only one of my ancestors whom I can prove served in the Civil War, James H. Galbraith, was from there. He joined a Union mounted infantry unit at the very end of the war. I have long been curious what he did between the start of the war and then. If Neely is to be believed, he either fled North at the outset or (more likely, given that he did not sign up immediately) was held as a prisoner by the Confederates for his Unionism until all of Tennessee was overrun. Most of those in their twenties and thirties who did flee north joined the Union Army almost immediately; Neely argues that in this region, non-participation in the war was not a viable option. Chapter 8 deals among other things with historic peace churches in the Confederacy and their efforts to avoid conscription of their adherents. Such movements were typically also antislavery and thus suspect to Confederate authorities. Chapter 8 also provides most of the more colorful incidents described in the book, such as a runaway slave being hanged by Union troops (!) for providing false information and British permanent residents realizing their choices (and especially their ability to avoid conscription) were very limited after British consuls were expelled (!! ) from Southern cities in late 1863. Chapter 9 personalizes the war by showing what Jefferson Davis did about civil liberties and is therefore the most readable chapter. It makes the very important point that success or failure in the war hinged on control of the Border South which, after Fort Sumter and the call for volunteers, was evenly divided between the Confederacy and the Union. Even more important, however, is the simple fact that Jefferson Davis was constrained by circumstances just as

Lincoln was. The following long quote closes out the chapter: "Historians could not help but notice the differences in Confederate and Union ideologies and policies -- the Union restricting liberty from the earliest moment to the very end of the war, while the Confederacy made a great point of its maintenance of civilian rights in the midst of war almost to the very end. Dwelling more on what the presidents said than what they did, historians assumed that Confederates valued white civil liberties more than Northerners did and that Confederate leaders had more reverence for the constitution. Such a conclusion ignores behavior and the realities of power. Actually, Jefferson Davis and Abraham Lincoln acted alike as commanders in chief when it came to the rights of the civilian populace. Both showed little sincere interest in constitutional restrictions on government authority in wartime. Both were obsessed with winning the war. Both ultimately obeyed their great national mandates to hold on to the territory they had." This false assumption about more reverence being placed on white civil liberties by the Confederacy is an all-too-common mistake in studying the Civil War and made this book necessary. I will concede that the Confederacy was the last attempt to erect an actual government on Jeffersonian principles but the exigencies of war permitted very little difference between Jeffersonians and Hamiltonians in relationships with actual citizens, especially those who were not entirely behind their respective sides. Four stars.

Neely, who also wrote "The Fate of Liberty" which was highly critical of Lincoln's use of Presidential powers, looks at Davis' evolution from a champion of the both the U.S. and Confederate Constitutions to an executive willing to allow even worse excesses than Lincoln as the Civil War dragged on. A great read.

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