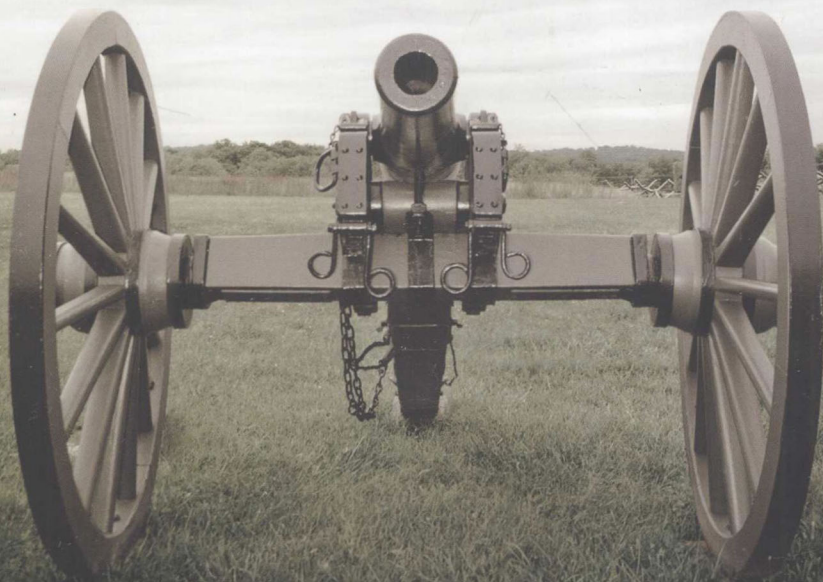


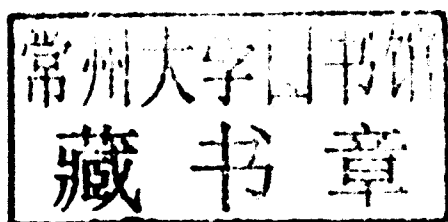
*The Laws of War in
American History*

LINCOLN'S CODE

JOHN FABIAN WITT



Lincoln's Code



About the Author



JOHN FABIAN WITT is the Allen H. Duffy Class of 1960 Professor of Law at Yale Law School. He has taught at Columbia University, Harvard Law School, the University of Leiden in The Netherlands, and the University of Tokyo. His work has appeared in the *New York Times*, *Slate*, the *Harvard Law Review*, the *Yale Law Journal*, and numerous other scholarly journals. He is the author of two books published by Harvard University Press: *Patriots and Cosmopolitans: Hidden Histories of American Law* (2007), and *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (2004). In 2010, Witt was awarded a Guggenheim Fellowship for his work on the history of the laws of war. He lives with his wife and children in New Haven, Connecticut.

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John Fabian Witt

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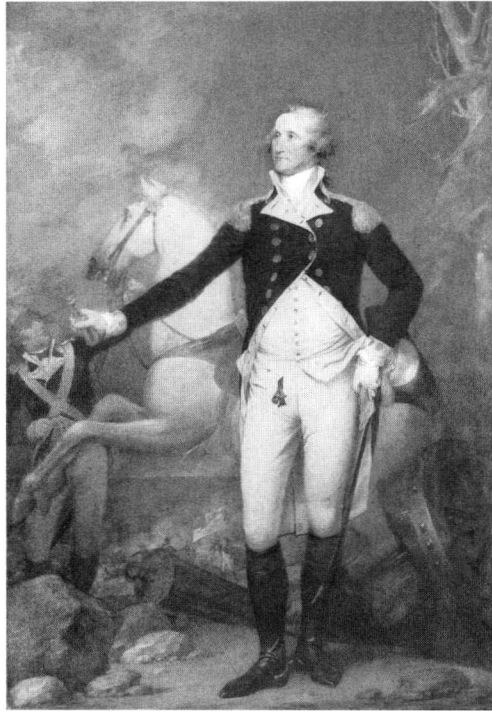
ALSO BY JOHN FABIAN WITT

The Accidental Republic
Patriots and Cosmopolitans

For Gus and Teddy

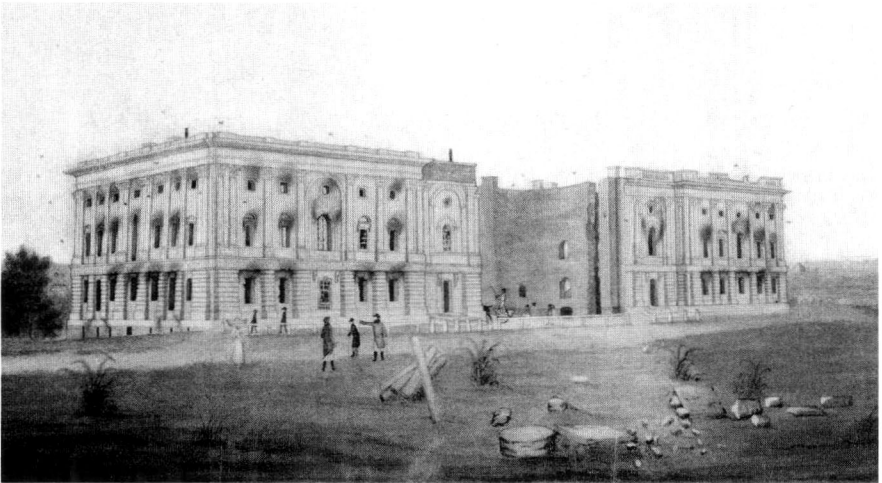
and for

Private John C. Crowe
74th New York Infantry and
40th New York Infantry,
October 1861–June 1865



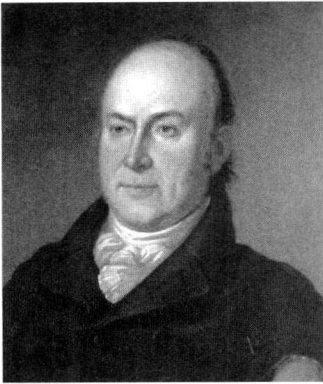
1

George Washington strove to be the embodiment of civilized conduct in the War of Independence after being accused of atrocities twenty years before. He is depicted here by John Trumbull as the calm before the storm.



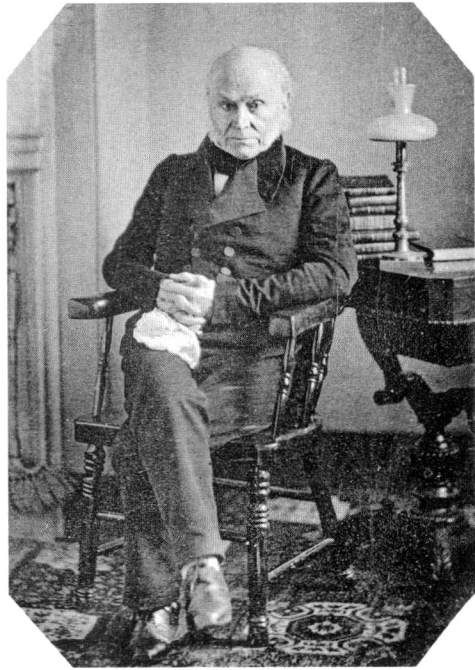
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An artist's rendering of the Capitol building after it was burned by the British in 1814; President James Madison accused the British of violating the "rules of civilized warfare."



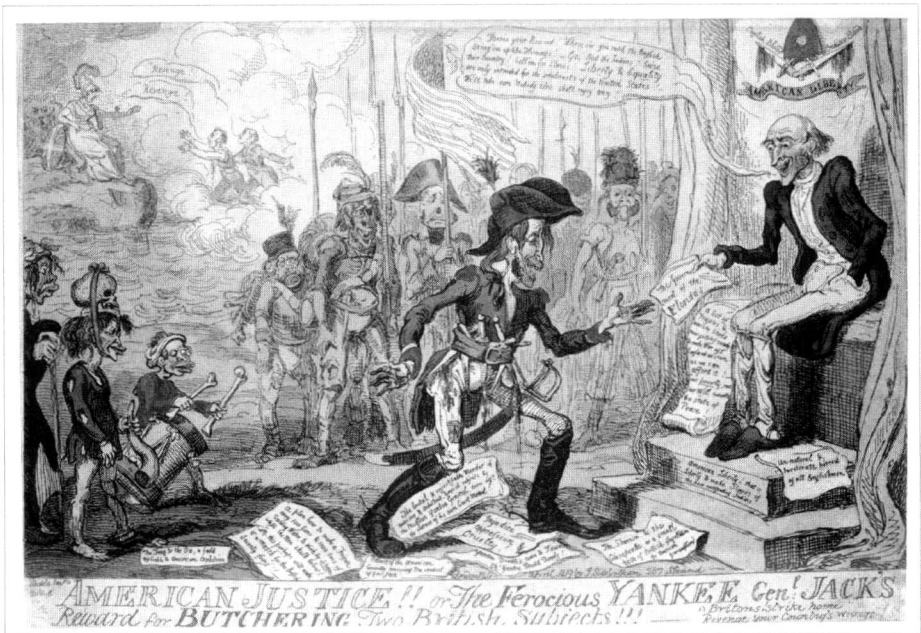
3

From 1815 to 1828, as the U.S. minister in London, as secretary of state, and then as president, John Quincy Adams insisted that it was unlawful to carry off enemy slaves in wartime.



4

Serving in the Congress in the 1830s and 1840s, Adams reversed his position and predicted that slavery would end in a terrible war laying waste to the South.



5

The London press lampooned Andrew Jackson as a bloodthirsty butcher leading a Tennessee militia of desperate savages. President James Monroe is seated at right.



6

A young Charles Sumner condemned the laws of war as legitimating lawless violence. By 1861, he defended a war against slavery and helped introduce Lincoln to John Quincy Adams's late-career arguments about the fate of slavery in wartime.



7

The first week of the war presented President Abraham Lincoln with a crisis in the laws of war at sea; controversy dogged his decision to blockade the South and treat Confederate privateers as pirates.



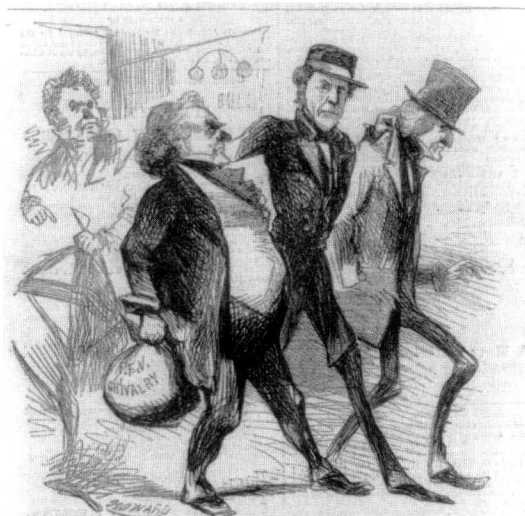
8

Secretary of State William Henry Seward (seated with hat on knee) used social occasions with the European diplomatic corps to craft the Lincoln administration's distinctively pragmatic approach to the laws of war.



9

The Union blockade of southern ports was notoriously porous, but its basis in the laws of war helped accomplish the crucial goal of holding off European intervention in the war. Alfred Waud's Civil War sketch for *Harper's Weekly* captured the life of the blockade that Lincoln, Seward, and Secretary of War Gideon Welles constructed.



POLESMAN WILKES, noticing by the last Number of *Harper's Weekly*, that the well-known Rogues, MASON and SLIDELL, were about to Pawn some of their late Employer's Property at Messrs. Bull, Chopard & Co.'s Shop, kept a bright look-out forward, and nabbed them in the nick of time.

10

Captain Charles Wilkes seized Confederate diplomats Mason and Slidell from a British vessel in November 1861. This early controversy over neutral and belligerent rights at sea nearly brought Britain (depicted as the angry John Bull in the rear) to war against the Union.



11

At the outset of the war, Francis Lieber was teaching the laws of war at Columbia College in New York City after living in South Carolina for two decades.



12

When Lincoln elevated the bookish Henry Halleck to general-in-chief in 1862, he brought an expert on the laws of war into the Union high command.



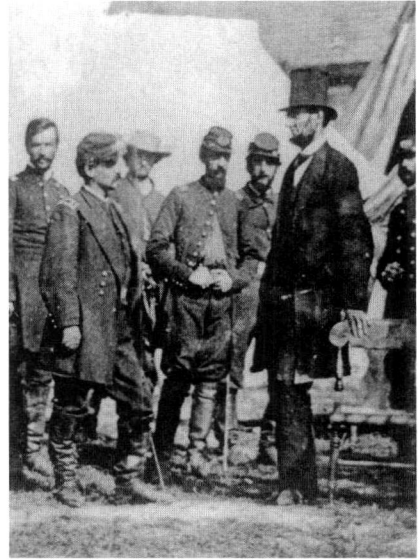
13

Fugitive slaves streaming into Union lines forced the issue of slavery onto the Union agenda.



14

The long history of slave rebellions in wartime led to widespread beliefs in the North and South alike that freeing the slaves would produce indiscriminate bloodshed and terrible atrocities, like those in Haiti shown here.



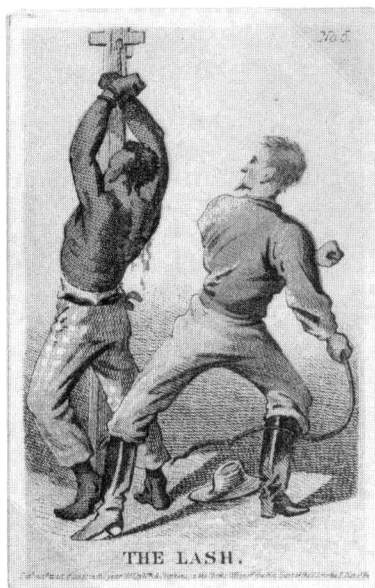
15

By the fall of 1862, when Lincoln traveled to the battlefield at Antietam in Maryland, he had announced Emancipation. He is pictured here with Major General George B. McClellan, who bitterly opposed freeing slaves as a dangerous and uncivilized step in warfare.

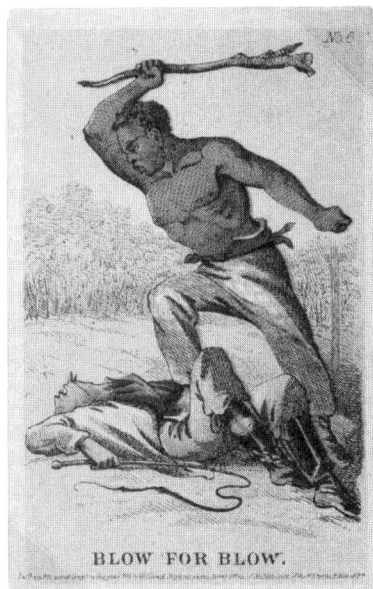


16

Southern sympathizer Adalbert Johann Volck's cartoon depicted leading Union men as infidels justifying Emancipation by the terrible motto inscribed on the altar of Negro Worship: "The End Sanctifies the Means."
Photograph © Museum of Fine Arts, Boston.



17



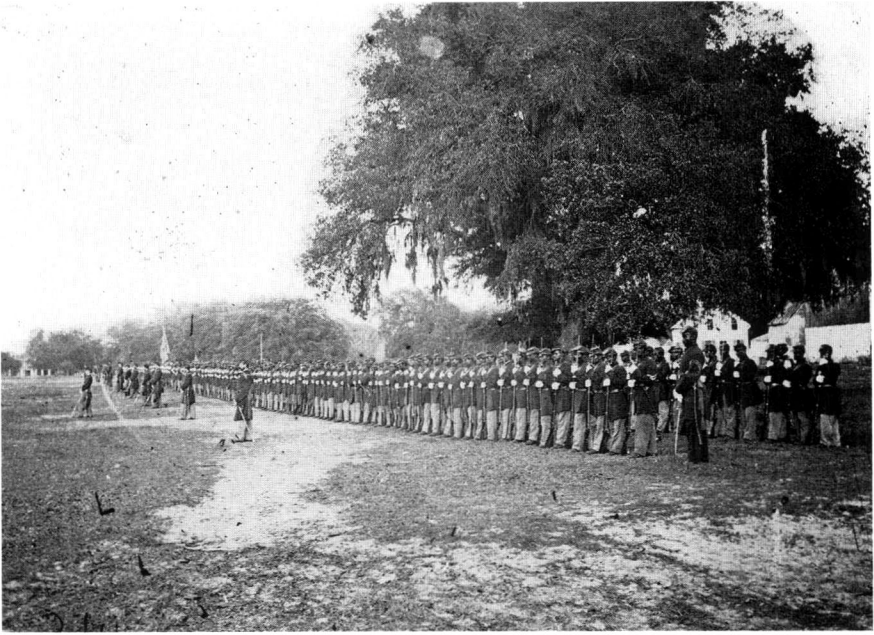
18

With the decision not only to emancipate the slaves behind Confederate lines but to enlist them and other blacks into the Union Army, it seemed that the Civil War had turned the violence of slavery upside down.



19

By late 1862, when he began work on a code for the laws of war, Francis Lieber had lost one son killed fighting for the Confederacy and seen a second gravely injured while fighting for the Union. The costs of the war are etched on his face in this grave portrait for the Columbia College 1862 class book.



20

Two hundred thousand black men served in the Union armed forces, including the 29th Connecticut (Colored) Regiment, shown here in Beaufort, South Carolina.



21



22

Despite fears that the former slaves would fight with lawless ferocity, most black regiments performed impeccably in the face of grave provocations. A Philadelphia lithographic card from 1863 and an Alfred Waud sketch capture the fascination with the black soldier as the Civil War entered its climatic phase.



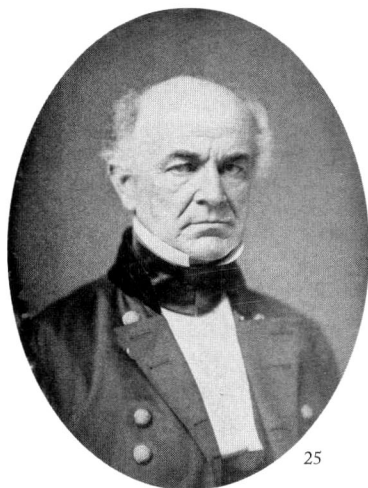
23

William Tecumseh Sherman's "hard hand of war" put into action the Union's uncompromising 1863 instructions for the laws of war. He is shown here outside Atlanta in 1864.



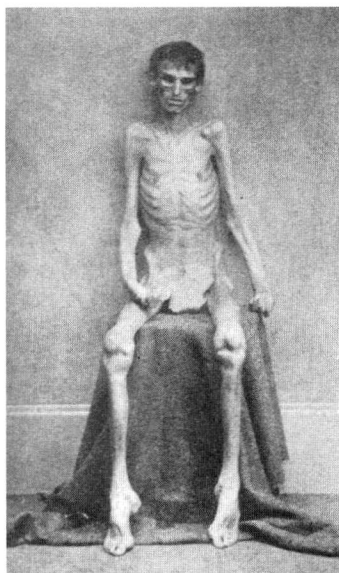
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Sherman defended his shelling of Atlanta by arguing that short and sharp wars were more humane than the drawn-out tepid conflicts imagined by the jurists of the eighteenth century. The shell-damaged Ponder House in Atlanta bore the effects of Sherman's barrage.



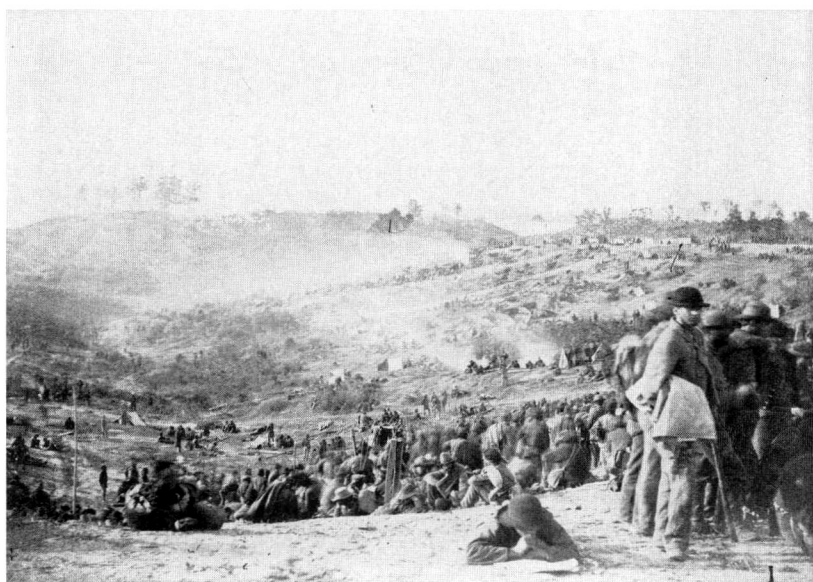
25

Ethan Allen Hitchcock, the grandson of Revolutionary War hero Ethan Allen, used the Union's code to insist that captured black Union soldiers be treated as prisoners of war regardless of race.



26

Images of emaciated Union prisoners made their way to the public in 1864 after the Union's insistence on equal treatment of black soldiers helped bring an end to prisoner exchanges.



27

Union camps for southern prisoners swelled with new detainees after the end of prisoner exchanges. Though less notorious than the southern camps, they were nearly as deadly as their Confederate counterparts. Confederate soldiers here await transportation at Belle Plain Landing, Virginia.