





Trial by Combat

Lawyers on the Battlefields of the Civil War

By Peter Drymalski

Common Destinies, Common Pasts

On June 29, 1863, William Colvill was in a foul mood, which was only partly due to the hot, humid weather typical of Middle Atlantic summers.

Colvill, a 6'5" husky man and the colonel commanding the 1st Minnesota Infantry Regiment, had risen swiftly through the ranks. Yet he had just been arrested by one of Union General Winfield Scott Hancock's staff officers. Hancock was in a tearing hurry to move his Second Corps of the Union Army of the Potomac north from Frederick, Maryland, to Gettysburg, Pennsylvania, where cavalry scouts had just located the main body of General Robert E. Lee's invading troops, the Army of Northern Virginia. Colvill was holding him up. Hancock had forced his troops to march up to 34 miles that day alone, and Colvill's crime was to have allowed some of his men to halt long enough at a river to take off their shoes to keep them dry before they waded across. As a penalty, Colvill had to march on foot at the rear of his regiment, eating its dust.¹ In three days, though, the arrest would be forgotten. Colvill would be at the front of his men and lead them to fame.

On a collision course with Colvill, Confederate Colonel William Forney of the 10th Regiment, Alabama Infantry was marching east from the mountains to Gettysburg. His men had been on the move for weeks as Lee's army invaded the North after Lee's magnificent victory at Chancellorsville, Virginia. Like Colvill, Forney began the war as a captain and was promoted three times in two years to the head of his regiment.

From all points of the compass, officers high and low were converging on Gettysburg. Union Major John Beveridge's 8th Illinois Cavalry Regiment was among them – his men would soon set off the battle by firing the first shots at Rebel General Joe Davis' Mississippi Brigade. Colonel Edward Salomon's 82nd Illinois Infantry marched north with the unlucky and despised Eleventh Corps and would shortly encounter Confederate Major General Jubal Early's hard-charging division, which was supported by the 1st Virginia Artillery Battalion of 20 cannons led by Captain Willis Dance.² Farthest away was the 7th Virginia Infantry under Colonel Waller Patton in General George E. Pickett's division. More elevated were Union Major Generals Dan Sickles and Henry Slocum, commanding two of the seven corps of the Union Army, the Third and Twelfth, which were hastening to the town. And near the bottom of the command ladder, Lieutenant Frank Haskell of Milwaukee, formerly of the fabled Iron Brigade and now a staff officer in Hancock's Second Corps, was also riding north.

These men, and many others in the two colliding armies, had something in common besides their destiny at Gettysburg – they were all lawyers.

Who Were These People?

As a student of the Civil War, I was intrigued by the frequent references in the histories to officers who had been lawyers before the war and wanted to know to what extent the legal profession was represented in the armies of the day, but I could not find any research on this topic. I decided to look into it myself and, as a case study, focused on the biographies of the officers who commanded regiments, brigades, divisions, corps, and armies at the Battle of Gettysburg, which took place July 1–3, 1863.

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The results were surprising. Of the 388 Union officers commanding regiments or larger units in the Army of the Potomac, no fewer than 77, or 20%, had been lawyers when the war started. This is higher than the number of career army officers, which was 61, or 16%. On the Confederate side, in the Army of Northern Virginia, the results were even more astonishing: 86 of that army's 277 field officers had been lawyers, a ratio of over 30%. The number of lawyers in the Confederate army, 30, or 11%, was almost three times that of its professional officers. Lawyers commanded infantry, cavalry and even artillery in both armies; many were killed or severely wounded in the battle.

There is no reason to think that Gettysburg was unique. Lawyers commanded entire armies – such as Benjamin Butler and Nathaniel Banks for the North and Jubal Early for the South. At the bloody battle of Shiloh, in 1862, the climactic Confederate charge was led by three generals, two of whom had been lawyers before the war. When Major General William T. Sherman began his March to the Sea in 1864, a lawyer commanded one of his two armies, and other lawyers commanded two of his four corps.

Armies commanded by lawyers sometimes clashed with each other. At the Battle of the Monocacy, near Frederick, Maryland, in July 1864, former prosecutor Jubal Early's Army of the Valley defeated the much smaller force led by Indiana attorney Lew Wallace (later the author of *Ben Hur*). Two years before that, a tiny army commanded by former lawyer and Confederate Colonel William Scurry was narrowly defeated by an equally tiny Union army under the command of Union Colonel John Slough (a former lawyer) at the Battle of the Glorieta Pass in New Mexico.³

Among the South's most famous cavalry commanders was attorney John Mosby, whose Rangers were the scourge of Union troops in northern Virginia. The South's most famous naval officer, Captain Raphael Semmes, who commanded the Confederate raider *Alabama* and sank 87 Yankee merchant ships, had practiced law before the war and would resume his practice after it.⁴

If Gettysburg is a fair example, lawyers served in the officer corps disproportionately to their numbers in the general population, as well as to their numbers among all those employed in occupations and professions. According to the 1860 Census, there were 33,000 lawyers in the

entire United States out of a total population of more than 31 million people (including 4 million slaves); and there were 8 million people, mostly men, employed in more than 580 different fields.⁵ Lawyers counted for only 0.12% of the total population (1 lawyer for every 818 people), or 0.4% of the workforce, yet they made up about 25% of the higher officers of the two armies at Gettysburg.

Of course, the law and the military were not the only professions represented in the opposing armies. The Army of the Potomac was an exceptionally diverse group of men, with field officers from no fewer than 79 professions and occupations.

The Army of Northern Virginia was notably different. Not only did lawyers constitute a much higher percentage of the officer corps, but only 29 different occupations were represented among the ranking officers, barely a third of that in the Union army, a clue to the contrasting natures of the North and the South.

Probably no other factor had more influence on the composition of the Civil War armies and their officer corps than the way they were created. These armies were primarily composed of volunteers, not draftees; they were men who signed up because their friends were doing so, and because they believed in the cause.

This is also reflected in the regional nature of the armies, which were composed of regiments from distinct sections of each state. All the volunteer regiments raised in the South, and almost all those of the North, were sponsored by the state governments. The governors called for volunteers and also allowed individual citizens to sponsor their own regiments.

Why Did So Many Lawyers Rise So High in the Ranks?

The wealthy Chicago lawyer and politician John Farnsworth, who had a country house in St. Charles, Illinois, advertised for volunteers to form a regiment of cavalry. More than enough men came from the towns near St. Charles to establish the 8th Illinois Volunteer Cavalry Regiment; Farnsworth was appointed its first colonel.⁶ Similarly, Colonel Friedrich Hecker, a former lawyer and revolutionary from Germany, then a farmer near Chicago, founded the 82nd Illinois Volunteer Infantry. One of its companies was composed entirely of Jewish Chicagoans, sponsored and funded by the city's synagogues; its other companies were formed from German, Scandinavian,



and Swiss immigrants. The 82nd was led to Gettysburg by the 27-year-old former Chicago attorney and Jewish politician Colonel Edward Salomon.⁷ The 6th Wisconsin Infantry was recruited from several of that state's southern towns, and the names chosen for its companies show their birthplaces: the "Sauk County Riflemen," the "Lemonweir Minute Men," the "Milwaukee Citizens Corps," and the "Buffalo County Rifles."

As was the prevailing custom in both North and South, the men of each company of the 6th Wisconsin elected their own officers, one of whom was Milwaukee lawyer Frank Haskell (although he was chosen as a mere lieutenant).⁸ Overall, this system guaranteed that politics as much as or more than merit would influence the governors' decisions. This was perhaps especially true in the South, where so many of the lawyers were themselves politicians. But it was also a factor that weighed heavily with President Lincoln, who appointed prominent politicians, such as Benjamin Butler (Democratic congressman from Massachusetts), Nathaniel Banks (Republican governor of Massachusetts), and Dan Sickles (Democratic congressman from New York City) to high military positions, despite the fact that none of them had any significant military experience.

Lawyers had other advantages. Many of them, like Farnsworth, were wealthy enough to sponsor and pay for the outfitting of a regiment or a company. Also, they not only were literate, but they were trained in logical thought and thus, perhaps, were able to learn more easily the rudiments of military organization and tactics. Another factor was that lawyers tended to be men of importance in their communities, and other citizens tended to look to them for guidance on public matters. And it may well be that the legal profession is one of the few that are uniquely capable of creating officers, for it is a short step from advocacy to leadership.

It was relatively easy for an ambitious man to become a lawyer and to use the profession as a stepping-stone to a political career. There were few law schools, and in many states there were outbreaks of egalitarianism resulting in the abolition of formal requirements to practice law.⁹ Even William T. Sherman, he of the March to the Sea, when casting about for a career after he resigned from the Army a few years before the Civil War, flirted with the Jealous Mistress:

[Sherman] traveled to Kansas to become a lawyer but began to wonder about the standards of the bar when he was admitted to practice on the grounds of basic intelligence alone. "If I turn lawyer, it will be bungle, bungle from Monday to Sunday," he wrote home. "But if it must be, so be it." He stuck with the bar long enough to bungle a few cases, then quit.¹⁰

The Experience of Battle

Civil War officers were expected to share the hardships of army life with their men and most did so, enduring heat, dust, mud, rain and snow. Many were injured by

accidents or sickened by disease. They nonetheless fared better than their men, most of the time. The leading study on Civil War casualty rates, William Fox's *Regimental Losses in the American Civil War 1861-1865*, found that almost twice as many men died of disease during the war as were killed in action or died of their wounds, and that for every officer who died of disease, 66 enlisted men went to their graves.¹¹

This ratio may reflect the fact that officers had somewhat better field housing than the enlisted men and could afford to purchase better food than the army provided. Enlisted men tended to be crowded together in tents or huts, which facilitated the spread of diseases, and their standard fare was salted pork or beef, hardtack (a large, hard cracker), flour, and beans, few of which are foods high in vitamins.

But the figures change dramatically for deaths in combat. Fox calculated that 1 officer was killed or mortally wounded for every 16 enlisted men. (In the cavalry and artillery, it was worse: 1 officer for every 15 men.) At Gettysburg, 27% of the officers were killed or wounded, compared to 21% of the enlisted men. An officer's chances of being shot in battle were therefore 28% higher than for the men he led. Similarly, at the Battle of Shiloh, a year earlier, 21% of the officers became casualties compared to 18% for the enlisted men.¹²

As Fox explained, the officers "were not more brave [than the enlisted men] but their duties required them to expose themselves."¹³ Before the invention of wireless radios, an officer had to depend on the power of his voice and upon signals carried by bugle or drum to direct his troops; therefore, he had to be close enough for them to hear his orders and for him to observe what was happening. Officers' uniforms and weapons were different from those of the enlisted men; and they were frequently on horseback in order to move quickly from one part of their command to another as well as to better see the fighting. The best officers made it their business to be where the action was, but it also made them better targets for the enemy.

Not everyone could do it. At Shiloh, Colonel David Stuart of the 55th Illinois Infantry, a Chicago lawyer, was able to inspire his men to fight throughout the day; but his neighbor attorney in the same brigade, Colonel Rodney Mason of the 71st Ohio ("that globule of adipose pomposity," according to one of his men), disappeared at the first sound of shooting, leaving his regiment without a leader and causing its almost instant collapse and retreat.¹⁴

What could make a man who might never have been in battle before the war stand and endure the enemy's fire without flinching (too much) and, without seeking cover, lead his men in a long march toward the enemy's firing line?

In *The Face of Battle*, John Keegan, an eminent British military historian, wrote about the Battle of Waterloo and

the motivations of the British officers there, who had to face similar conditions. Quoting from their postwar letters, he noted their fascination with, and respect for, their fellow officers who were wounded or killed:

Here we approach perhaps as close as we are going to get to the officer's central motivation. It is the receipt of wounds, not the infliction of death, which demonstrated an officer's courage; that demonstration was reinforced by his refusal to leave his post even when wounded, or by his insistence on returning as soon as his wounds had been dressed; and it was by a punctiliousness in obeying orders which made wounds or death inevitable that an officer's honour was consummated. Officers, in short, were most concerned about the figure they cut in their brother officers' eyes. Honour was paramount, and it was by establishing one's honourableness with one's fellows that leadership was exerted indirectly over the common soldiers.¹⁵

I think the inspiration for American officers, North and South alike, was quite different and grew out of the much different nature of American society. Most of the officers of these volunteer regiments were not military professionals who would move on to other assignments after the war, but members of the same local communities from which the regiments' companies were drawn and to which most of them would return after the war. Their motivation was less to earn the admiration of their fellow officers than the respect of their fellow citizens.

One example involves the recruitment of the 24th Michigan Infantry, later to become part of the Iron Brigade, which fought stubbornly at Gettysburg. In 1862, the mayor of Detroit sponsored a recruitment rally at which the state's best-known citizens and politicians made patriotically heroic speeches. One of them, Judge Henry Morrow, started his speech but was soon interrupted by some rude heckler who yelled, "Are YOU going?" Morrow replied, "I have said I would! The government has done as much for me as for you, and I am ready to uphold it!"¹⁶ (The judge did go, and he commanded the regiment at Gettysburg.) Another example involves Colonel Stuart's behavior at the beginning of the Battle of Shiloh. Winston Groom describes the scene:

In 1855, Stuart had moved his law practice from Detroit to Chicago, and in a short time he became one of the city's wealthiest and most socially prominent citizens. Then, in 1860, he became entangled in one of the most notorious divorce cases of the century, which ruined him socially and politically, and when the war broke out the following year, he saw it as the only way to redemption.

....
[Stuart's] men respected him, even though they all knew about his disgrace because so many of them were from Chicago where it had been front page news for months. It was this kind of closeness that allowed Stuart to give his noncommissioned officers what must surely rank as one of the strangest speeches in military history. Shortly after they encamped [near Shiloh],

Stuart minced no words: "I am a man of somewhat damaged reputation, as you all well know. And I came into the army solely to retrieve that reputation, and I depend on this regiment to do it."

Shortly after the battle began, Stuart's inexperienced troops became nervous and began to edge backwards. Stuart rode among them, swearing at and encouraging them.

... Even the dimmest among [his men] must have felt a sense of loyalty to the man, some kindle of his authority and his magnetic personality that caused them to rally upon him, otherwise they simply would have kept on running. "If Stuart had died then," the regimental biographer wrote, "he would have been canonized in the hearts of his men."¹⁷

Lawyers as Leaders at Gettysburg

It is impossible in an article like this to present the battlefield performances of all 164 lawyers holding field commands, so I will describe just a few examples from each day of the battle.

Day 1

The first day, July 1, is famous for the defense of the Yankee cavalry against a much larger Rebel force, the troopers buying time for the rest of the Union army to come up and take the hills near the town. That day also saw the "Last Stand of the Iron Brigade" (which would lose 65% of its men in a few hours, including Judge Morrow, who was wounded). Unfortunately, it was far less glorious for the unlucky Eleventh Corps, which, greatly outnumbered by the Confederate troops attacking it, soon collapsed.

At least one lawyer was partly responsible for the debacle. He was General Francis Barlow, a darling of Manhattan's high society and commander of an Eleventh Corps division.¹⁸ Arriving on the field, Barlow saw a hill north of town (now called Barlow's Knoll), which he decided was an ideal defensive position, and ordered his division to take it. Barlow failed to take into account that once he was on the hill, his division was out of touch with the rest of the Eleventh Corps. Confederate General Early, however, quickly noticed Barlow's error and sent troops around both ends of Barlow's division, placing it in imminent danger of being captured. Barlow ordered a retreat, which soon degenerated into a confused and unstoppable rout.

Now, Early proceeded to shatter two more Union brigades and overwhelm the Union right flank, including the 82nd Illinois under Colonel Edward Salomon who, despite having two horses killed under him, appeared to his men as the epitome of nonchalance. His brigade commander later wrote that Salomon "was the only soldier at Gettysburg who did not dodge when Lee's guns thundered; he stood up, smoked his cigar and faced the cannonballs with the sang froid of Saladin." Sangfroid was not enough, however, and Salomon's regiment was driven back past Gettysburg.

The first day ended with the Union troops forced out of Gettysburg but holding on to high ground south of it. Lee planned a major attack for the next day in which half of his troops would attempt to get around and behind the left end of the Union army and crush it regiment by regiment.

That end of the Union line was held by General Dan Sickles' Third Corps. Sickles had briefly worked in the New York City Corporation Counsel's office but found it too dull and went into politics, where he became notorious. He would soon have all the excitement he could handle.

Vincent said, "I will take the responsibility of taking my brigade there."¹⁹

Vincent's timely decision brought his brigade to the undefended hill just as the Confederates were about to attack it. After a long, hard fight, his brigade saved Little Round Top from being captured and prevented the Confederates from getting to the rear of the Union army, but Vincent was badly wounded.

At about the same time, Colonel Colvill entered the picture. His commander, Hancock, had been dashing about to prevent the Union left from being overrun and had ordered a good part of his own Second Corps to save

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Day 2

Ordered to defend a line that ended at an important hill called Little Round Top, Sickles, on July 2, much like Barlow the previous day, saw a nice hill, or plateau, in front of his lines. Exercising his initiative, and leaving his part of the line undefended, he moved his troops forward to the plateau, leaving Little Round Top undefended and creating an awkward, L-shaped line that was not connected to Hancock's Second Corps north of him. Lee's attack caught Sickles unready and came from an angle that Sickles' troops were not prepared to defend. Though Sickles and his men fought bravely, they too were overwhelmed and forced to retreat with heavy losses, including Sickles himself, whose leg was shattered by a cannonball. The destruction of Sickles' corps created a huge gap in the Union lines, and the Confederates were seen to be massing their regiments and preparing to charge straight through it.

Into this hole stepped two lawyers whose conduct helped to prevent disaster. One was Colonel Strong Vincent, a Massachusetts attorney just 26 years old, now commanding a brigade of men from New York, Pennsylvania, Michigan and Maine. As Vincent's brigade was arriving at Gettysburg, everyone could hear the roar of the fighting. Vincent spotted a courier riding urgently from the front lines and must have sensed that a crisis was impending. He stopped the courier, and the following hasty conversation took place:

"Captain, what are your orders?"

The Captain replied, "Where is General Barnes?"

Vincent said, "What are your orders? Give me your orders."

"General Sykes told me to direct General Barnes to send one of his brigades to occupy that hill yonder [Little Round Top]."

Sickles' Third. Now Hancock was almost out of troops, and he could see another Confederate battle line of well over a thousand men, including Colonel John Forney's 10th Alabama Infantry, forming up to charge through the large hole in the lines created by the retreat of the Third Corps. Hunting for reinforcements, riding out of the smoke he found the 1st Minnesota, which, having fought since 1861, now was reduced to 262 officers and men.

"My God!" [Hancock] exclaimed. "Are these all the men we have here? What regiment is this?"

"First Minnesota," answered Colonel William Colvill. In a fight, Winfield Hancock was not one to waste words. Pointing to the flag of the enemy force that had fired on him, he barked, "Advance, Colonel, and take those colors!"²⁰

Colvill immediately gave the order to advance.

The veterans of the 1st Minnesota, that state's one regiment in the Army of the Potomac, had fought at First Bull Run and in every campaign since and they knew a forlorn hope when they became one, yet they fixed bayonets and charged anyway. Their swift, bold move took the Rebels by surprise and sent them scrambling backwards.²¹

But the Rebels soon recovered and held their ground, trading rifle fire with the Minnesotans at close range. There were at least four of them for every Yankee. Casualties among the Minnesotans mounted rapidly, and soon almost all its officers were shot, including Colvill. The regiment slowly retreated to its hill. Within 15 minutes, 215 of its 262 men, or 82%, were killed or wounded, the highest casualty rate suffered by a single regiment in a single charge in the Civil War.²² (By comparison, the famous charge of British Light Brigade a few years earlier had suffered losses of 43%.) But the Confederates, having

beaten back the little regiment's charge, seemed stunned and did not pursue their own attack immediately; in the 15 minutes of grace granted to him, Hancock found enough reinforcements to rebuild and hold his lines.²³

Day 3

The second day of the battle, like the first, had ended with the Union army again narrowly avoiding disaster and still holding the high ground. Lee, however, was not ready to give up. Impressed by the collapse of the Eleventh Corps on the first day, Lee concluded that the Union army's morale was poor and that it would retreat again if he could hit it hard enough. And so he ordered General James Longstreet, commanding the Confederate First Corps, to plan a decisive charge for the third day, which would include a big, newly arrived division composed entirely of Virginians and led by General George Pickett. Pickett's division of Virginians included three brigadier generals and 13 colonels, eight of whom had been lawyers before the war.²⁴ The attack would be aimed at the center of the Union army, where Lieutenant Frank Haskell happened to be stationed.

The attack opened at 1:00 pm on July 3 with a furious artillery bombardment of the Union lines designed to unnerve the Yankees on the ridge ahead. Union artillery replied, and the field was soon blanketed with smoke, blasted with explosions and filled with thunder. Perhaps as many as 300 cannons were at work on a battlefield a mile wide. Finally, after about an hour, the firing slackened, and three Confederate divisions, including Pickett's, about 12,000 to 13,000 men altogether, came out of the woods lining the battlefield. It was a climactic moment in the war and perhaps its turning point.

Haskell was there to watch it, and in a long letter to his brother, written shortly after the battle, he described it in words no historian or novelist has ever matched:

None on that crest now need be told that the enemy is advancing. Every eye could see his legions, an overwhelming resistless tide of an ocean of armed men

sweeping upon us! Regiment after regiment, and brigade after brigade, move from the woods and rapidly take their places in the lines forming the assault. Pickett's proud division, with some additional troops, hold their right; Pettigrew's (Worth's) their left. The first line at short interval followed by a second, and then a third succeeds; and columns between, support the lines. More than half a mile their front extends; more than a thousand yards the dull gray masses deploy, man touching man, rank pressing rank, and line supporting line. The red flags wave, their horsemen gallop up and down; the arms of eighteen thousand men, barrel and bayonet, gleam in the sun, a sloping forest of flashing steel. Right on they move, as with one soul, in perfect order, without impediment of ditch, or wall or stream, over ridge and slope, through orchard and meadow, and cornfield, magnificent, grim, irresistible.²⁵

As the Confederate line neared the Union defenders, the rifle fire reached a crescendo. Haskell noted a battlefield phenomenon indicative of the depth of the primitive passions now provoked:

The jostling, swaying lines on either side boil, and roar, and dash their flamy spray, two hostile billows of a fiery ocean. Thick flashes stream from the wall, thick volleys answer from the crest. No threats or expostulation now, only example and encouragement. All depths of passion are stirred, and all combatives fire, down to their deep foundations. Individuality is drowned in a sea of clamor, and timid men, breathing the breath of the multitude, are brave. The frequent dead and wounded lie where they stagger and fall – there is no humanity for them now, and none can be spared to care for them. The men do not cheer or shout; they growl, and over that uneasy sea, heard with the roar of musketry, sweeps the muttered thunder of a storm of growls.²⁶

Haskell was no mere observer. Watching Pickett's men approach the Union line, Haskell saw with horror that some of the defenders were about to turn and run, and he personally led reinforcements into the fight.

Some of Pickett's division did break through the Union lines, but they were too few to hold what they had gained, and counterattacks quickly surrounded and captured them. Almost two-thirds of the men in Lee's three attacking divisions were killed, wounded or captured, and the great attack was over. It had lasted barely an hour.

The next day, Lee began the long retreat to Virginia. From then on, the Confederacy would be on the defensive on all fronts (with the brief exception of Early's grand raid the following year), and the Confederacy would shrink at a rapidly increasing rate.

The Measure of Their Devotion

In hindsight, Gettysburg seems to have been ordained by shadowy Fate. Neither army commander wanted to fight there, and the officers and men arrived on the field at times and places determined purely by chance. Some



lawyer-officers, like Barlow and Sickles, arrived in time to be placed in crucial positions where their military decisions, however well intentioned, were almost disastrous. It was likewise chance that chose when and where other lawyer-officers like Vincent and Colvill would arrive and redeem with their own blood the errors of their colleagues.

Yet we should not be too critical of our professional colleagues who erred in their military judgments. Worse mistakes were made in the battle (and in many other battles) by military professionals of more experience and higher renown. Perhaps the greatest mistake was Lee's, when he ordered the grand charge of the third day across a mile of open ground and against good troops who had had plenty of time to prepare.

Most of the lawyers at Gettysburg had no opportunity to exercise their judgments in a way that would be decisive to their cause. Like Pickett's eight lawyer-officers and Colvill, these men only had the chance to do what they were ordered to do although they knew the risks.

Of those mentioned in this article, Vincent would die of his wounds shortly after the battle; Haskell survived the battle, was promoted to colonel of a brigade; he would be shot in the head at the Battle of Cold Harbor a year later. Sickles lost his leg; Patton's jaw was shot off and after weeks of pain he too died;²⁷ Barlow was severely injured, and Colvill was shot three times, but both returned to service. Forney, whose unit received Colvill's charge, was shot four times leading his men that day but would survive as well. Beveridge and Salomon survived unhurt and were promoted. Judge Morrow's wound was light, and he would continue serving with a much-reduced Iron Brigade for most of the war. Early also survived unhurt; he succeeded to command of Lee's Second Corps and went on to lead a small Rebel army through Virginia and Maryland to attack Washington, D.C., in July 1864.

And this is only a small part of all that happened and of all that these men and their 160-odd fellow lawyers did in those three crucial bloody days.

The Aftermath

The war affected the survivors differently. After the war, many, like Colvill and Barlow, resumed their law practices (Colvill became Minnesota's attorney general and Barlow became New York's), while Sickles returned to his political career.²⁸ Salomon became governor of the Washington Territory and later the assistant district attorney for San Francisco.

Some Confederates preferred to ignore the present and fixed their gaze firmly on the past. Early, who eventually resumed his law practice, wrote extensively about the Confederate side of the Civil War, eulogizing Lee and condemning Lieutenant General James Longstreet, Lee's subordinate, for his disagreements with Lee. Confederate General John B. Gordon, a lawyer-officer in Early's

division, was elected a U.S. Senator and, later, governor of Georgia; he is believed to have become the chief of the Georgia Ku Klux Klan.

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Others accepted the result of the war and moved on. Mosby became a Republican and staunch supporter of President Grant (as did Longstreet); and Amos Akerman, a former slaveowner and Confederate officer from Georgia, became President Grant's attorney general and prosecuted the federal civil rights laws against the KKK and others more vigorously than any of his successors for the next 100 years.²⁹ Many others would become governors, senators and congressmen. Two of them, lawyers and generals James Garfield and Rutherford B. Hayes, would be elected president of the United States. Some would not recover, such as Colonel Stuart of Shiloh, who never felt redeemed and killed himself in 1868. But perhaps the lawyer-soldier who found the most enduring meaning in his war experiences was Oliver Wendell Holmes, Jr.

Holmes was only 20 when the war broke out and not yet a lawyer. He enlisted in the 20th Massachusetts Infantry, which was called the "Harvard Regiment" because so many Harvard graduates joined it. He was soon promoted to lieutenant, wounded in the chest at the Battle of Ball's Bluff, near Leesburg, Virginia, the first battle of the war in the East. He was shot in the neck at the Battle of Antietam in 1862 – the bloodiest single day in American history – recovering in time to take part in the opening skirmishes of the Battle of Chancellorsville, Virginia, in 1863, when shrapnel from a cannon shell almost tore off the heel of his foot. He missed the rest of that battle as well as the Battle of Gettysburg two months later, but, having since been promoted to captain, returned to the army in time to serve in the defense of Washington against Early's army in July 1864.³⁰

After the war, he completed his legal studies, became a lawyer, a renowned legal scholar, the Chief Judge of the Supreme Judicial Court of Massachusetts, and, eventually, a Justice of the U.S. Supreme Court, on which he served until 1932.

The Civil War was a supremely important event in Holmes' life. He wrote poems about it and often gave lectures in honor of his fellow veterans. In 1884, Holmes delivered a Memorial Day address to a convention of Civil War survivors:

[Memorial Day] embodies in the most impressive form our belief that to act with enthusiasm and faith is the

condition of acting greatly. To fight out a war, you must believe something and want something with all your might. . . . I think that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived. . . . [T]he generation that carried on the war has been set apart by its experience. Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing. . . . [T]he one and only success which it is [a man's] to command is to bring to his work a mighty heart.³¹

We are the spiritual heirs to those lawyers who, 150 years ago, left their quiet, safe offices to take up a life of hardship and danger. They lived in atrocious conditions; they were frequently exposed to extremes of weather, their clothes were often filthy and infested with lice, their food was usually miserable. And then, to the beat of the drums and the calls of the bugles, they marched to hundreds of battlefields, great and small, and put their own lives at risk. Whether they fought for the North or the South, they all participated in the great challenge of their time.

We cannot share what Holmes called their “great good fortune,” but we can be proud of our professional forebears for what they accomplished. And we can take inspiration from their examples and seek to participate in some effort, some movement, something worthwhile, that helps to make our own lives worth the living. ■

1. Harry Pfanz, *Gettysburg: the Second Day 18* (Univ. of N.C. Press 1987).
2. The egregiously misnamed Jubal (Jubilee) Early was one of the important military figures of the Civil War. A former prosecutor in Rockingham County, Virginia, he was renowned for his sour temper. He fought under Stonewall Jackson, and Lee eventually promoted him to high command. In the summer of 1864, he led his army on a long raid that almost culminated in the capture of Washington, D.C. Such a victory would have had serious consequences for the 1864 elections, including Lincoln's own re-election campaign. The Battle of the Monocacy stalled him for a full day, and allowed Grant to rush reinforcements to the city in time to man its forts and discourage Early from pressing his attacks. Early was also a lifelong bachelor who fathered two families.
3. Scurry would be killed in action in 1864; Slough would survive the war to become Chief Justice of the Supreme Court of New Mexico. If you wonder why the Civil War was fought in New Mexico, it was because the cash-starved Confederacy was trying to capture the gold and silver mines of Colorado.
4. John Bowman, *Who Was Who in the Civil War 183–84* (World Publications, 1998).
5. The 1860 Census is online at <http://www.census.gov/prod/www/decennial.html>. This list of occupations is, by itself, a fascinating clue to life in the United States; it includes apiarists, axle makers, bobbin makers, calico printers, feather dressers, ice dealers, moulders, ostlers, rag collectors, sail makers, shepherds, warpers and wigmakers.
6. The 8th Illinois Cavalry would be ordered to Washington D.C., where it would compile a distinguished record, including dueling with Mosby's Rangers in Virginia. Mosby himself would later call it the best cavalry regiment in the Union Army. No fewer than six generals came from this regiment alone. Abner Hard, M.D., *History of the Eighth Cavalry Regiment Illinois Volunteers I* (reprinted by Morningside Bookshop, 1984).
7. Eric Benjaminson, *A Regiment of Immigrants: The 82nd Illinois Volunteer Infantry and the Letters of Captain Rudolph Mueller*, <http://dig.lib.niu.edu/ISHS/ishs-2001summer/ishs-2001summer137.pdf>. Salomon was an immigrant from Schleswig-Holstein and one of the youngest alder-

men ever elected in Chicago (he was 24 years old at the time). Two of his cousins (Charles and Frederick) also served in the Union Army, and all three became generals. Frederick was promoted to major general and was probably the highest-ranking Jewish soldier in either the Confederate or the Union Armies. (A third brother of this remarkable family was the wartime governor of Wisconsin.)

8. Alan Nolan, *The Iron Brigade: A Military History* 4, 14–16 (Macmillan, 1961).
9. According to the 1850 Census, p. 144, there were 16 law schools in the United States, with 35 professors and just 532 students (a ratio of just 1:16, so those really were the “good old days” for law students). No similar educational statistics were collected in the 1860 Census.
10. H.W. Brands, *The Man Who Saved the Union: Ulysses Grant in War and Peace* (Doubleday 2012); Bowman, *supra* note 4, pp. 189–90.
11. Fox's *Regimental Losses* was published in 1889 and is now online at <http://archive.org/stream/reglossescivilwar00foxwrich#page/n5/mode/2up>.
12. *Id.* at pp. 25–40.
13. *Id.* at p. 38.
14. Winston Groom, *Shiloh, 1862* 254–59 (Nat'l Geographic 2012).
15. John Keegan, *The Face of Battle: A Study of Agincourt, Waterloo, and the Somme* 189 (Vintage, 1977).
16. Nolan, *supra* note 8 at 149–50.
17. Groom, *supra* note 14 at 258–59.
18. Barlow would later be immortalized in Winslow Homer's famous painting of the Civil War, *Prisoners From the Front* (1866), in which a Union officer inspects three defiant prisoners against the background of a blasted landscape. Eleanor Harvey, *The Civil War and American Art* 169–71 (Smithsonian, 2012).
19. Pfanz, *supra* note 1 at p. 208. Note what happens here. Vincent has the perception to tell that there is a crisis; he does not play it safe by simply passing the message to General Barnes and waiting for orders. He persists in learning what the message is and takes the initiative by responding immediately. (Vincent's brigade included the now-famous 20th Maine Infantry Regiment led by Colonel Joshua Chamberlain, the hero of the novel *The Killer Angels* and of the movie based on the book *Gettysburg*, in which Vincent is also portrayed.) The Confederate regiment that repeatedly attacked, and came closest to defeating, Chamberlain's 20th Maine was the 15th Alabama, led by former lawyer Colonel William Oates.
20. Pfanz *supra* note 1 at p. 410.
21. Stephen Sears, *Gettysburg* 320–21 (Houghton-Mifflin 2003).
22. Pfanz *supra* note 1 at pp. 413–14.
23. The Minnesotans were neither down nor out. The 47 survivors were later joined by two of their companies (about another 100 men), which had been on duty as military police, and the next day they took their revenge by participating in the repulse of Pickett's Charge, capturing more than 1,000 Confederates and causing an uncounted number of casualties.
24. Of these eight officers, three would be killed or die of their wounds in Pickett's Charge (Allen, Williams and Patton), and the other five wounded (Kemper, Hunton, Carrington, Mayo and Aylett).
25. Haskell's *Account of the Battle of Gettysburg* at Par. 101 (The Harvard Classics, 1909–1914), at <http://www.bartleby.com/43/3501.html>.
26. *Id.* at Par. 104. Haskell criticized the performance of some Pennsylvania troops, leading to a denunciation published by the survivors of the Philadelphia Brigade in 1910 titled *The Battle of Gettysburg: How General Meade Turned the Army of the Potomac Over to Lieutenant Haskell*.
27. Five of Patton's brothers also served in the Confederate Army. One of them was Colonel George S. Patton, Sr., also a lawyer and already a father, who would be killed in 1864. His grandson would be General George S. Patton, Jr., of World War II fame.
28. New Yorkers Barlow and Sickles had interesting, if contrasting, post-war careers. Barlow blamed the collapse of his division entirely on its

immigrants, mostly Germans, and got himself transferred to the Second Corps. He was a noteworthy prosecutor and a founder of the American Bar Association. Sickles, on the other hand, took credit for his unauthorized advance, claiming that by doing so he saved the rest of the army and helped to win the battle. A lot of historians are still puzzling over whether this is true. Sickles had a long post-war career as an army officer, diplomat, congressman, sheriff, politician and public servant, wafting the aroma of scandal almost everywhere he went. His final scandal was to embezzle the money raised for his own memorial that was to be placed in a New York monument at Gettysburg. The monument stands today but without Sickles' bust in it. http://en.wikipedia.org/wiki/Daniel_Sickles.

29. Brands, *supra* note 10.

30. There is a legend that Holmes was on duty at Fort Stevens while Early's Confederates were preparing to attack it. President Lincoln drove up from the White House to see a real battle in person and was standing on the parapet of the fort, a conspicuous target (Lincoln was 6' 4" and even taller with his stovepipe hat). An officer next to Lincoln was shot and killed, and Holmes yelled at Lincoln (perhaps not realizing who he was), "Get down, you fool!" Lincoln obeyed and commented to Holmes, "Captain, I'm glad you know how to talk to a civilian." (Catherine Drinker Bowen, *Yankee From Olympus* 194 (Atlantic, Little Brown 1944).) By this time, many soldiers of Holmes' age were colonels or even generals, and it is odd that Holmes did not reach higher rank than captain after three years of service. The answer is probably that his wounds required lengthy convalescences, which kept him from exercising leadership and catching the eyes of his superiors; but it may also be that Holmes' genius was more of the observer and thinker rather than that of the leader.

31. Max Lerner, *The Mind and Faith of Justice Holmes* 16 (Little, Brown & Co., 1943).

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