**An “Unconstitutional” Act? The Suspension of the Writ of Habeas Corpus during the American Civil War**

**[BACKGROUND from Edsitement](http://edsitement.neh.gov/lesson-plan/abraham-lincoln-and-wartime-politics" \l "sect-thelesson)**

While fighting raged on the battlefields of Virginia, Tennessee, and elsewhere, there were other important battles occurring in Washington, DC. Both in the North and in the South, various political issues had a direct impact on the war.

Immediately upon assuming office, President Abraham Lincoln faced the unprecedented challenge of the secession of the Southern states. Equally distressing, but often not as open, were the vocal protests of some in the North against the war. Some of these opponents sought to undermine the war effort by interfering with recruitment and encouraging soldiers to desert. One of Lincoln's most controversial tactics in dealing with these protesters was his suspension of the right of habeas corpus. Habeas corpus is the right to appear before a judge in a timely manner in order to prevent illegal imprisonment. Lincoln's suspension of the writ of habeas corpus, permitted officials to arrest suspected Confederate agents and hold them indefinitely without formal charges being filed against them. Lincoln defended this suspension by citing Article I, Section 9 of the Constitution, which states that "in cases of Rebellion or Invasion the public safety may require" the writ to be suspended. However, this did not quiet his critics. During the course of the war over 14,000 citizens were arrested. Most of those arrested were from the Border States, especially Maryland, the home state of Chief Justice Roger B. Taney, and were detained for trading with the enemy, evading the draft, or running the Union blockade of southern ports. When Taney suggested that Lincoln did not have the constitutional authority to suspend the writ of habeas corpus, Lincoln threatened to jail Taney and neutralize the Supreme Court itself.

In addition to suspending the writ of habeas corpus, the question of slavery also plagued Lincoln's administration from the start of the war. Not only was this a sensitive subject for the nation, but for Lincoln as well. Although Lincoln personally detested the "peculiar institution," he recognized that the federal government did not have the constitutional authority to abolish it where it already existed. This was a matter left to the states. Additionally, Lincoln saw his primary goal of the war to preserve the Union, not to free the slaves, although saving the Union offered the possibility that slavery could be ended. At the end of 1862, Lincoln decided to attack the South's social system, which, among other things, supported the Confederate war effort. After all, slaves were used to build fortifications, repair roads, and grow food for the rebel forces. Lincoln came to the conclusion that a constitutionally acceptable way to attack the Southern social and economic system was to invoke his authority as commander in chief and emancipate slaves in rebel states. This decision also played a strategic role in thwarting the Confederacy's attempt to achieve foreign recognition. For instance, by issuing the Emancipation Proclamation, Lincoln hoped to discourage Great Britain, where slavery had been abolished in 1833 and where there was strong abolitionist sentiment, from supporting the Confederacy. Emancipation was both a moral issue and a weapon of war.

Another important issue was whether or not to arm the slaves freed by Union forces as they invaded the South, as well as freedmen in the North. The decision to do so was a controversial one, as many whites—no matter what their view of slavery—did not relish the thought of blacks bearing weapons, fearing reprisals from armed former slaves resentful for their previous forced servitude. Some of Lincoln's opponents suggested that Lincoln had only issued the Emancipation Proclamation in order to use freed slaves to reinforce his dwindling army.

As the material and human costs of the war mounted, there were those in the North who began to clamor for peace. Some Northern Democrats, whom Republicans called "Copperheads" after a particular species of venomous snake, advocated peace with the South, even at the cost of recognizing the independence of the Confederacy. A few, such as Ohio congressman Clement Vallandigham, ended up in jail for urging Union soldiers to desert. Throughout the war, however, Lincoln refused to consider peace on any terms short of complete restoration of the Union.

In the midst of this bloody war, the United States held one of the most momentous elections in its history. If Lincoln won a second term, he would have an opportunity to fulfill his wartime goals of restoring the Union and the freeing the slaves. However, a victory for his challenger, George B. McClellan (former commander of the Union's armies), would most likely have brought about some sort of negotiated settlement with the South—one that almost certainly would have involved legal protections for slavery. The heavy losses suffered by Union forces in recent months, as well as the failure to take Richmond, led many Northerners to consider voting for McClellan. However, the fall of Atlanta in September 1864 gave Lincoln a much-needed boost, and on Election Day he won with 55 percent of the vote. The Republican Party interpreted this victory as a mandate to end slavery, not only in the states in rebellion, but in all of America. In early 1865 Congress passed the Thirteenth Amendment, which outlawed the "peculiar institution" once and for all. For more information about the Election of 1864.

**[Habeas Corpus Primary Source Activity from Gilder Lehrman](http://www.gilderlehrman.org/history-by-era/american-civil-war/resources/\“unconstitutional\”-act-suspension-writ-habeas-corpus)**

**Essential Question:**

Based on the rights guaranteed in the Constitution, did Lincoln commit an unconstitutional act by suspending the writ of habeas corpus?

1. Read Problems in Maryland Document Packet Part one
   1. analyze the documents
   2. identify the problem(s) for the Union government
   3. Determine if the Constitution provides information concerning how this problem can be handled.
      1. See specifically Article 1 Section 9 and the Bill of Rights.
2. Read part two of the Problems in Maryland Document Packet
   1. in May 1861, Abraham Lincoln decided to suspend the writ of habeas corpus. Vote by show of hands determining if Lincoln had committed an “unconstitutional act.”
3. Half the class will analyze Lincoln’s argument and half will analyze Chief Justice Taney’s
   1. Fill out “My side” document analysis
   2. Write your key points on the board and be prepared to present