

September 2012

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### Recommended Citation

Young, Elizabeth D. (2012) "Lincoln and the Constitution," *Saber and Scroll*: Vol. 1: Iss. 3, Article 5.  
Available at: <http://digitalcommons.apus.edu/saberandscroll/vol1/iss3/5>

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## Lincoln and the Constitution

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Elizabeth D. Young

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Following the events at Fort Sumter in April 1861, which began the American Civil War, Abraham Lincoln began to circumvent the Constitution, basing his actions on what he considered necessity and on his views concerning judicial review. Many of his decisions, however, stretched the Constitution further than the Founders would have envisioned and some violated central tenets of the document. Lincoln stretched the limits of constitutional provisions by raising

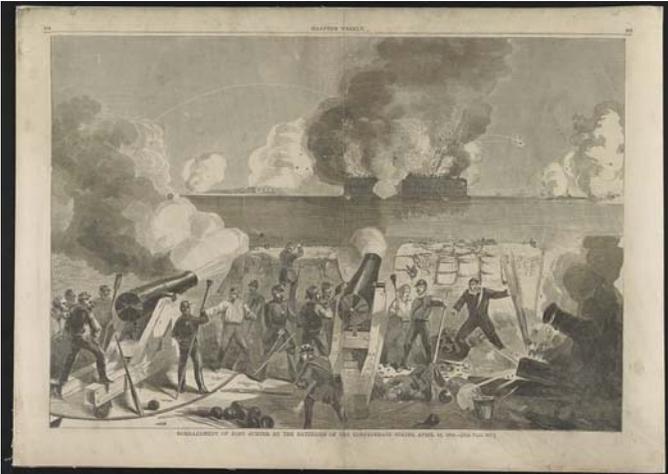


Figure 1 *Bombardment of Fort Sumter by batteries of the Confederate States, April 13, 1861.* Wood engraving, c. 1861. Library of Congress.

troops and spending treasury money without congressional approval, through censoring the press, suspending the writ of habeas corpus, again without congressional approval, issuing the Emancipation Proclamation, and in other ways, such as partitioning Virginia and suspending free elections. Many of the actions Lincoln took still affect the United States today.

Lincoln promised repeatedly that he was not planning to re-provision Fort Sumter, but he sent a naval force to do just that in April 1861. In doing so, he maneuvered the South into firing the first shots of the Civil War.<sup>1</sup> General in Chief Winfield Scott and all but one of the members of the cabinet advised Lincoln to pull out, as did his friend, Stephen Hurlbut. Even the Union surgeon at Fort Sumter called the continued occupation “suicidal.”<sup>2</sup> Later, Lincoln would say he was holding Sumter until time could settle the dispute, but time saw the North

becoming increasingly aware of the loss of their tariff protection and revenue.<sup>3</sup> Thus, Northerners began to lean on the administration and the Cabinet to re-supply the fort with an armed fleet of ships and soldiers. On April 12, 1861, knowing the supply ships were nearing the harbor, Confederates, under the command of General P. G. T. Beauregard, who had allowed Union forces to come ashore and purchase food or sent boats to the fort to provision them so that they were in no need of re-supplying, fired on Fort Sumter.<sup>4</sup> Under orders from Lincoln not to surrender, the outnumbered Federals battled on for over thirty hours, surrendering only when they ran out of ammunition. Not a man on either side died. The Confederates allowed their opponents safe passage from the harbor and north to their homes.<sup>5</sup>

The day after the surrender of Fort Sumter, Lincoln called for Congress to meet in special session, but not until July 4, 1861. Meanwhile, for the next ten weeks, he acted alone, collapsing the Constitution's three branches of government into one.<sup>6</sup> The first thing he did was to call out 75,000 members of the states' militia to put down what he called a Southern insurrection. According to Article 1, Section 8 of the Constitution, however, it is the duty of Congress to take this action.<sup>7</sup> The President may direct troops, but only Congress has the power to call new troops into service.<sup>8</sup> Lincoln was preparing for war, something the Founders wanted to make difficult, provisioning Congress, not the executive, with the power to "declare war" rather than "make war." They intended to preclude an aggressive war such as the one Lincoln was instigating.<sup>9</sup>

Lincoln acted under the provisions of a 1795 Act of Congress, giving him authority to call the militia, but Congress had meant the act to be temporary, used only in cases of emergency, needing congressional approval, as the Constitution requires. Lincoln's call for Congress, however, had a ten-week delay. By then, the war was in full operation and Congress could do little but sanction his action. In fact, by the time they finally convened, Lincoln had called for more troops—asking for enlistments in the regular army, another prerogative of Congress, for three-year terms.<sup>10</sup> Lincoln himself would frankly admit that this call for enlistments overstepped his authority, giving rise to charges of a "military dictatorship."<sup>11</sup>

On April 19, Lincoln ordered the blockade of Southern ports, part of Scott's Anaconda Plan, to strangle the Southern economy.<sup>12</sup> Confederates viewed this as unmistakable aggressive intent and as an effective declaration of war, as it almost incapacitated a region already deficient in manufacturing capacity.<sup>13</sup> The blockade was so severe that it prohibited even drugs and medicines from

importation into the Southern states. Despite the fact that imposing a naval blockade is an act of war requiring congressional approval, and is permitted constitutionally only in time of war with belligerent foreign powers, the military carried out Lincoln's orders.<sup>14</sup> In 1863, by a vote of 5 to 4, the Supreme Court upheld the blockade, somehow reaching this conclusion without conceding that the Confederacy was a belligerent foreign power. Lincoln had won because three of the five justices in the majority were his appointees.<sup>15</sup>

Further appropriations violations of the Constitution occurred in the weeks before Congress convened. On April 21, he ordered the navy to purchase five warships and authorized Treasury Secretary Salmon P. Chase to spend money for defense, up to \$2,000,000 for military equipment. Article I, section 8 clearly states that only Congress has the authority to provide for the navy and that money spent on defense must have the approval of Congress. Finally, in July, when Congress gathered, Lincoln provided his argument, "whether strictly legal or not, [the actions] were ventured upon under what appeared to be a popular demand and a public necessity; trusting then as now that Congress would readily ratify them."<sup>16</sup> Later, he further declared, "I conceive that I may, in an emergency, do things on military grounds that cannot be done constitutionally by Congress."<sup>17</sup> In effect, he gave himself broad and innovative authority to pass laws, which he believed Congress would later approve, or that he felt must pass, regardless of whether or not they were constitutional.<sup>18</sup>

Perhaps Lincoln's boldest move was suspending the writ of habeas corpus, on April 27, for the area between Philadelphia and Washington, DC. Riots had occurred in Maryland, a Union state with strong Southern sympathies, resulting in civilian and military casualties.<sup>19</sup> Lincoln decided the country needed a severe crackdown on political opposition, a crackdown that allowed him to order the military to arrest and imprison anyone who disagreed with his policies.<sup>20</sup> He issued the order surreptitiously, for a loyal state, and assumed a power that experts said Lincoln did not have, usurping a right belonging only to Congress and only then in cases of rebellion or invasion, neither of which existed in the area in April of 1861.<sup>21</sup>

The Magna Carta, England's charter of freedom, embodied the writ of habeas corpus. It requires a legitimate law enforcement officer issue a warrant before an arrest, prohibits the accused being jailed without being charged with a crime, and does not allow the holding of a person indefinitely without being brought

before a legally convened court.<sup>22</sup> Under the Constitution, Americans have the right, when accused of a crime, to a speedy public trial by an impartial jury, to know the cause and nature of the accusation, to hear witnesses against them, bring witnesses in their favor, and have legal counsel, but Lincoln decided these freedoms were unnecessary.<sup>23</sup> Appealing to Congress in July, Lincoln argued that violations of particular constitutional clauses could be justified in the name of saving the constitutional order.<sup>24</sup>

Before Lincoln made this claim, however, there was the arrest, in Maryland, of John Merryman. Because two Pennsylvania officers made vague claims that Merryman had “uttered and advanced secession doctrines,” General George Cadwalader arrested him, locked him up in Fort McHenry, and refused to turn him over to civil authorities.<sup>25</sup> Being a prominent citizen, having served as president of the Maryland State Agricultural Society, Merryman sought legal assistance and found it in Roger B. Taney, a federal district judge in that circuit and also Chief Justice of the Supreme Court.<sup>26</sup> Taney promptly issued a writ of habeas corpus, ordering Cadwalader to release Merryman and explain his detention. Citing Lincoln’s suspension of the writ, Cadwalader refused, and Taney penned an opinion, known as *Ex parte Merryman*, which he delivered directly to Lincoln, informing the President that he, not Merryman, was breaking the law and going against the Constitution.<sup>27</sup>

In an extensive and stern opinion, Taney pointed out that in Article I, section 9 of the Constitution, such action is limited to the legislative branch of government and does not apply to the executive. In England, only an act of the legislature permitted suspension of habeas corpus, so Taney argued that the Founders, when writing the Constitution, would never have allowed a President “more legal and absolute power” over a citizen’s personal liberties than the king of England enjoyed, especially not in the wake of the long war from which they had just emerged.<sup>28</sup> He went on to argue, citing John Marshall and Joseph Story, that even if Congress supported the suspension, that would not justify holding a citizen indefinitely without a trial.<sup>29</sup> Lincoln must follow the normal judicial process. If not, “The people of the United States are no longer a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army official in whose military district he may happen to be found.”<sup>30</sup>

Refusing to obey Taney’s order, Lincoln issued a warrant for his arrest, but the federal marshal declined to have it served.<sup>31</sup> Lincoln believed, and continued to

believe, that he had legitimate constitutional authority to suspend the writ and that suspension was necessary for the defense of Washington.<sup>32</sup> Taney was wrong, Lincoln claimed; he had done nothing “beyond the constitutional competency of Congress.”<sup>33</sup> Surely, he could not sit idle and let “the government go to pieces” for fear of violating the particulars of the document. According to Lincoln, the ambiguity of the text left it to circumstance to decide who could suspend the writ.<sup>34</sup> While congressional suspension was the best policy, constitutional silence gave room for executive action. It left Lincoln free to act as he wished, and explained why he called Congress to convene in April but postponed that convening for ten weeks, and established that neither Congress, the Supreme Court, nor the Constitution would prevent actions he alone thought best for the country.<sup>35</sup>

In 1862, two days after signing the Emancipation Proclamation, Lincoln suspended the writ of habeas corpus throughout the United States, authorizing military trials for “all rebels and insurgents, their aiders and abettors, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice.”<sup>36</sup> Over the course of the war, authorities arrested at least 15,000 civilians, and held many of them for months without bringing charges. All arrests of Northerners where the civil courts were functioning violated the law, but Lincoln claimed they were too slow handling cases in this emergency.<sup>37</sup>

After the war, the Supreme Court decided the case of *Lambdin Milligan*. Because Milligan, an Indiana resident, associated with the wrong people and may have indulged in some idle, incautious talk, authorities arrested him, and a military tribunal tried, convicted, and sentenced him to death for plotting raids on Union interests. The trial, in a military court, put Milligan at a disadvantage; only a simple majority was required to convict him, and only needed a two-thirds majority for the death penalty. In a civilian court, Indiana residents would have tried him and a unanimous verdict would have been necessary for conviction. The Supreme Court ruled unanimously that the military trial was invalid because the Indiana civil courts were operational and Milligan was not a prisoner of war accused of a war crime. Further, the Habeas Corpus act required authorities bring detainees before a grand jury and charge them within a reasonable time or set them free. They never brought Milligan forth. This decision was a defeat for the administration but came too late to check Lincoln’s power.<sup>38</sup>

Lincoln continued to assault civil liberties through his suppression of the First Amendment’s right to free speech and free press. In April 1861, the

government took control of telegraph lines radiating from Washington, and in February 1862, the President ordered military supervision of all telegraph lines in the United States.<sup>39</sup> Soon after, Lincoln started shutting down newspapers for merely questioning the right to engage in a civil war. The *Chicago Daily Times* found its presses sealed for raising such a legitimate question, and Lincoln closed scores of other papers throughout the Union for expressing views contrary to his administration.<sup>40</sup> As citizens became upset over the press shutdown, Secretary of State William Seward and his secret police began arresting the editors of papers, having them imprisoned, and replacing them with administration loyalists. The administration also looked the other way when Federal soldiers tarred and feathered editors of papers critical of Lincoln.<sup>41</sup> In the latter part of 1861, Postmaster General Montgomery Blair excluded certain papers from the mail. They did not take such action because they printed objectionable material, but withheld papers from districts on the grounds of their disloyalty. State and War department officials also detained and opened letters at various times during the war, further violating citizens' First Amendment rights.<sup>42</sup>

After nearly two years of war, Lincoln, interpreting Article II, section 2 of the Constitution broadly, used his war powers to issue the Emancipation Proclamation. "The Constitution invests its Commander-in-Chief with the law of war, in time of war. By the law of war, property, both of enemies and friends, may be taken," he said.<sup>43</sup> By appropriating the property of the South—the slaves—he was taking a military step. Slaves could be useful in defending the South; by liberating them, he denied the enemy's possession of militarily useful property.<sup>44</sup> Hence, the proclamation was a "fit and necessary war measure," used to sidestep constitutional concerns.<sup>45</sup>

Lincoln, however, in his First Inaugural, took the position that the Constitution protected the institution of slavery. He believed that each state could permit or forbid slavery as it chose, and that the North had a responsibility to enforce the Fugitive Slave Act.<sup>46</sup> In the summer of 1861, he matched his deeds to his words, nullifying John Fremont's proclamation that freed slaves in Missouri, whose owners resisted Federal occupation. David Hunter also stopped similar efforts to free slaves in Union-held territory in Georgia, Florida, and South Carolina. Slaves taken through the confiscation acts passed by Congress in the early years of the war were, despite abolitionist intentions, put to work in the Federal army doing the unpleasant tasks in and around army encampments.<sup>47</sup>

Lincoln further expressed his views on emancipation in a letter to *New York Tribune* editor Horace Greeley in 1862, saying, “If I could save the Union without freeing any slave I would do it; and if I could save it by freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because it helps to save the Union.”<sup>48</sup> Notably, Lincoln contradicts his inaugural statements that he has no authority under the Constitution to disturb slavery. He is now willing to ignore the Constitution if it helps him maintain the Union; but before he issues the official Emancipation Proclamation, he will try other means to deal with the black population.<sup>49</sup>

During his debates with Stephen Douglas, his Illinois senatorial opponent, Lincoln’s views on blacks became public knowledge. He said that there were physical differences between the races that would preclude them living together equally and that whites enjoyed a position of superiority over blacks. He also talked of plans to deport blacks to their native land or to some other place outside the United States. Lenore Bennett, Jr. wrote that Lincoln called for the deportation of blacks, publicly and officially, in five major policy declarations and on countless other occasions.<sup>50</sup> In 1862, Lincoln proposed a compensated emancipation bill combined with a colonization plan, but the man who previously seemed to brook no opposition from Congress, yielded this time to their refusal to pass his bill.<sup>51</sup>

With the coming of the New Year 1863, came the official Emancipation Proclamation, a step Lincoln viewed as forced by necessity. One that he hoped would shorten the war by taking the heart out of the Southern cause and by adding strength of numbers to the Union, thereby reducing the expenditure of blood and money.<sup>52</sup> The Proclamation, however, did not free a single slave. Even though Union forces occupied large parts of the South, including most of Tennessee and much of Virginia, it applied only to rebel territory and exempted by name the Federally occupied states of Maryland, Kentucky, and West Virginia as well as thirteen parishes in Louisiana. The *New York World* stated that Lincoln “has proclaimed emancipation only where he notoriously has no power to execute it,” and called the proclamation “not merely futile, but ridiculous.”<sup>53</sup>

Seward mocked the Proclamation, abolitionists saw it as a fraud, the Democratic leadership and the army hated it, and Europe looked upon it with horror.<sup>54</sup> Why did this document stir up so much anger among those that favored emancipation? Seward thought Lincoln showed sympathy to slavery “by emancipating slaves where we cannot reach them and holding them in bondage

where we can set them free.”<sup>55</sup> Abolitionists called it an illusion because it applied in territory where the North had no control, and Democrats believed it called for a servile insurrection; indeed, Lincoln had deleted language from an earlier draft that called for such a violent uprising.<sup>56</sup> A desertion crisis appeared in the Northern army as the men professed to feeling betrayed, believing the purpose of the war had changed from saving the Union, for which they were willing to die, to obtaining black freedom. At least 200,000 soldiers deserted, 120,000 evaded conscription, close to 90,000 fled to Canada to evade the draft, and thousands more hid in the mountains. In addition, there was seething resentment to the idea of the use of the draft to emancipate slaves. Consequently, draft riots occurred in New York City with Federal troops killing between 300 and 1,000 civilians, hunting down rioters, and murdering dozens of innocent blacks.<sup>57</sup> Europeans also feared a massive slave uprising and talked of intervening due to the slaughter such an event could produce. Charles Dickens and historian Sheldon Vanauken agreed that the only possible effect of the proclamation would be “a slave rising or nothing.”<sup>58</sup>

Lincoln himself admitted that the original proclamation had no legal justification and was simply a war measure and not a genuine attempt at emancipation. In calling it a war measure, he seems also to acknowledge that it was unconstitutional.<sup>59</sup> Whatever his reasoning, Lincoln demonstrated no concern for the effects his measure may have, writing that should the slaves be freed, “They had better be set to digging their subsistence out of the ground.”<sup>60</sup> When asked near the end of the war what would become of the freedmen, Lincoln replied, “Root, hog, or die.”<sup>61</sup>

Union success in the summer of 1861 in western Virginia brought another political consequence that saw Lincoln disregard constitutional stipulations. For decades, some of the residents of this area, aligned economically and culturally with the Northern states of Ohio and Pennsylvania, had complained of over-taxation and under-representation in the state government. When Virginia seceded, these people began to demand to do the same, but from Virginia. They held a convention in June, voting themselves the legitimate government of Virginia. Later, this convention called a constitutional convention to meet in November 1861 to create a new state, but in the referendum to call this convention, only those who took a Unionist oath could vote. In May 1862, this Unionist “legislature,” representing the western counties, approved creation of the new state in violation of Article IV, section 3 of the Constitution which states that no new state is to be

formed within the boundaries of an existing state without consent from the state's legislature, meaning the legislature of the whole state, not just a portion.<sup>62</sup>

Despite the irregularity of these proceedings, the Union Congress approved admission of the state of West Virginia in 1863, requiring the abolition of slavery within first. Nearly half of the fifty counties in the new state, however, probably had a pro-Southern majority that would have voted to remain part of Confederate Virginia if allowed.<sup>63</sup> Lincoln did not oppose the secession of western Virginia, because it served his political purposes, providing men for the Union army. His own Attorney General, Edward Bates, tried to tell him it was unconstitutional, arguing that a truly free state can only be created by its people, not Congress, which was theoretically what had been done.<sup>64</sup> Fellow Republican Thaddeus Stevens considered the argument of constitutionality, advanced by those who favored creation of the new state, a "forced argument to justify a premeditated act," but voted for the bill anyway based on the laws of war, saying, "I will not stultify myself by supposing that we have any warrant in the Constitution for this proceeding."<sup>65</sup>

By September 1861, Lincoln held the state of Maryland under complete Union military occupation, but with the legislature scheduled to meet, he was taking no chances that they would discuss secession or even vote to remain neutral. He did this through military force.<sup>66</sup> Secretary of War Simon Cameron ordered General Nathan Banks to arrest "all or any part of the legislative members" to prevent secession.<sup>67</sup> Accordingly, he arrested all Maryland state legislature members suspected of Southern sympathies, as well as other influential citizens, in the darkness of night, and locked them up in Fort McHenry. In all, he arrested fifty-one citizens.<sup>68</sup> In addition, under Lincoln's orders, the military sealed off the town of Frederick, where the legislature was to meet, and searched house-by-house for those unfriendly to the Lincoln administration.<sup>69</sup>

In late September, the pace of arrests accelerated, and the charges grew increasingly capricious. Arrests for disloyal statements spread deep into the interior of loyal states with island forts in various Northern harbors filling up with citizens confined because of their opinions; in many cases, no one knew why the prisoners were accused. General Banks took travelers into custody on the simple assumption that they might cross the Potomac River and communicate with the enemy. He arrested one man just for writing a letter to his father in Virginia, even though the letter contained no political or military subjects.<sup>70</sup>

Similar oppression occurred, again in Maryland, in November 1861, with Banks instructed to ensure the election of only Union people. Electioneers were requested not to allow any vote for a candidate that opposed the war, and members of the federal armed forces voted, even though they were not residents of Maryland.<sup>71</sup> They placed posters at polling booths encouraging citizens to point out anyone suspected of disloyalty. This proved an easy task, as anti-administration ballots were a different color from those of the loyal party.<sup>72</sup> Other voters had to pass through platoons of Union soldiers with bayonets fixed on their rifles. Suppression of free elections occurred in most other Northern states as well, but this did not stop the Maryland House Committee on Federal Relations from issuing a courageous proclamation declaring, “The war now waged by the government of the United States upon the people of the Confederate states is unconstitutional in its origin, purposes, and conduct.”<sup>73</sup>

In Federal elections in 1862, Republicans also resorted to unlawful practices to ensure victory for pro-Lincoln candidates. They shut down newspapers by the hundreds; imprisoned individual opponents, often without trials or even charges; prohibited anti-Republican voters from voting; and arrested candidates across the North. The Republican Party carried out a multifaceted campaign to prevent the election of Democrats that further included throwing Democratic commissioners delivering ballots to soldiers in the field into prison. At times, they discarded, did not count, or replaced Democratic soldiers’ votes with Republican ballots. Such tactics led to otherwise inexplicable favorable Republican results in the border states, saving the Republican majority in the House of Representatives.<sup>74</sup>

Tactics such as these may also have saved Lincoln’s presidency in 1864. Prospects in late August for reelection seemed so gloomy that the editor of the *New York Times* wrote, “The tide is setting strongly against us,” and Lincoln himself wrote a note, which he had his entire cabinet sign, stating, “It seems exceedingly probable that this administration will not be reelected.”<sup>75</sup> Early fall victories by Union forces turned the tide and Lincoln won, but a close examination of the results is illuminating. Lincoln did no better in the non-border Northern states than he had in 1860, but he improved astronomically in the border states where most of the suppression and arrests took place. The vote of soldiers made the difference in many states; in fact, if there were a shift of 38,000 votes, less than 1% of the total vote, the Democrats would have won. It is almost certain that many votes were the result of mischief; the question is, how many, and was it enough to change the outcome?

Also interesting to consider is that several of the federally occupied seceded states had organized loyal governments under Lincoln's plan for Reconstruction, but because of Lincoln's veto of the Wade-Davis bill, radicals refused to recognize them and refused to count their electoral votes in the 1864 election.<sup>76</sup>

The case of Clement L. Vallandigham illustrates the lengths the Lincoln administration went to in order to suppress dissent. As a member of the House of Representatives, Vallandigham was a thorn in Lincoln's side for almost two years, criticizing his policies and introducing a bill to have him jailed if he continued arresting and imprisoning people through military tribunals. The administration introduced no less than seven resolutions calling for Vallandigham's expulsion, but all were defeated, so in the elections of 1862, the pro-Lincoln Ohio legislature gerrymandered his district, adding a Republican county and ensuring his defeat.<sup>77</sup>

Vallandigham's troubles began in earnest when he made the decision to run for governor in his native Ohio. In a series of speeches, he condemned Lincoln for his "persistent infractions of the Constitution," including the quartering of soldiers in private homes, the suppression of free speech, and the repeated infringement of the people to keep and bear arms for their defense.<sup>78</sup> Lincoln's agenda, according to Vallandigham, was not to free the slaves or save the Union but to establish a strong, centralized Federal government.<sup>79</sup> These speeches violated General Ambrose Burnside's Military Order #38, aimed specifically at Vallandigham, declaring the arrest of anyone who declared sympathy for the enemy.<sup>80</sup>

On May 4, 1863, at 2:30 in the morning, Burnside dispatched Federal troops to Vallandigham's home where they kicked open the door, hauled him out of bed, and threw him into prison. On May 6, a military tribunal found Vallandigham guilty of treason and condemned him to prison for the remainder of the war. Vallandigham, however, continued to speak out from prison, and after several weeks, Lincoln ordered him exiled to the South. From there, he went to Canada and eventually returned to Ohio in disguise.<sup>81</sup>

Vallandigham petitioned for a writ of habeas corpus, but by this time, the administration had told and threatened the judges of the consequences if they were to issue such a writ.<sup>82</sup> Democrats, and even some Republicans, denounced the whole affair calling the actions of the government "cowardly, brutal, infamous."<sup>83</sup> In 1864, the case came before the Supreme Court, a rubber stamp operation after the departure of Taney, who, in effect, ruled that the military was above the

Constitution, a law unto itself.<sup>84</sup>

Lincoln's interpretation and application of his powers under the Constitution led him to carry executive authority to its fullest extent, extending the power of the federal government, an effect still felt today. In 1860, the only contact with the federal government most citizens had was mailing a letter at the post office, but by 1865, every citizen felt the influence of the federal government, primarily through economic policies.<sup>85</sup> Lincoln's First Inaugural Address promised the military invasion of the South when he said it was his duty "to hold, occupy, and possess the property . . . to collect the duties and imposts."<sup>86</sup> He promised to wage war on states that would not collect the tariff, which had just doubled, thus saying to the South, who paid 83% of this, that if they refused to pay, they would face invasion. In this light, it is no wonder the Confederates felt compelled to stop the re-provisioning of Fort Sumter; they and the other seceded states had adopted a free trade policy.<sup>87</sup> In destroying the South's right of secession, Lincoln opened the door for the centralized, unrestrained state that the United States has become. He effectively overturned the great principle of the Declaration of Independence that governments derive their powers from the consent of the governed.<sup>88</sup>

The fact that Lincoln would trample a main precept of the Declaration of Independence is striking, because in his rhetoric, Lincoln thrust the Declaration to the fore while downplaying federal law and the Constitution. In 1861, Lincoln likened the Declaration to the apples of gold in Proverbs 25:11. To his thinking, the Constitution was dispensable, but he must remain faithful to the verities of the Declaration of Independence.<sup>89</sup> The Gettysburg Address, which begins, "Four score and seven years ago" evidenced this.<sup>90</sup> Simple arithmetic dates this to 1776 with the signing of the Declaration, a document that contains no endowment of governmental power and creates no government. When he delivered the speech, Northern newspapers criticized him, as did others, for his "gross ignorance or willful misstatement."<sup>91</sup> In effect, Lincoln had pulled the rug of legitimacy out from under his own office. Speaking as president, an office created by the Constitution, he went on to advocate the principle that all men are created equal, and to claim that the nation was born committed to this principle, yet he spoke of a time before the creation of the government for which the Union troops died. Even earlier, the Emancipation Proclamation referred to the independence of the United States as occurring eighty-seven years before it went into effect. For Lincoln, there was no dissonance between relying on the birth of the nation in 1776 and acting in an office created in 1787.<sup>92</sup>

Lincoln's actions weakened the laws protecting citizens from oppression by increasing the executive branch's power at the expense of the legislative and judicial branches.<sup>93</sup> Using this power, he increased the size of the army and navy, spent public money, and suspended the writ of habeas corpus, all without congressional approval. He merely permitted Congress to ratify the measures or else adopt the futile alternative of refusing consent to an accomplished fact.<sup>94</sup>

Early on, Lincoln ignored Chief Justice Taney when he made an effort to curb him. The Courts, in fact, did not serve as a significant check on Lincoln's power, and he ignored them if they did not serve his purpose. In the wake of the Dred Scott ruling, in 1857, Lincoln announced his views on judicial authority, saying, "The Congress, the executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others."<sup>95</sup> He echoed this sentiment in his First Inaugural Address where he argued that in deferring to the Court people give up their capacity of self-government.<sup>96</sup> Given Lincoln's view, it is not surprising that there is such a contrast between the number of arbitrary arrests and completed judicial actions for treason, conspiracy, and draft obfuscation. Instead of the rule of law prevailing, they imprisoned men outside the law, independently of the courts, while government officers enjoyed a privileged position above the law.<sup>97</sup> As for why the Supreme Court did not get involved more and why it went along with Lincoln's actions, J.G. Randall says that the Supreme Court is not an effective barrier against executive usurpation and that questions of this nature are political, creating a situation in which the attitude of the court is necessarily that of acquiescence.<sup>98</sup>

Today, the United States is Abraham Lincoln's creation, an outworking of his vision for it. His administration brought about the devolving of governmental power from the states to the national government and an unprecedented transfer of power from the individual and his community over his own money, property, labor, and person, to the government.<sup>99</sup> America will always know Lincoln as the Great Emancipator, but more accurately, they should think of him as the Great Centralizer.<sup>100</sup>

## Notes

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13. Marvel, 38, 44.
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