

Unprecedented To Win A War: The Civil War Presidential Powers of Abraham Lincoln Versus Jefferson Davis

By Gilda Bour

Independent Historian

ABSTRACT

Abraham Lincoln and Jefferson Davis were both presidents during wartime and challenged by extraordinary circumstances that demanded action. Their nation faced wartime pressures that demanded they respond beyond the laws enjoyed by peaceful nations. President Davis took steps such as suspending *habeas corpus* multiple times for short periods, mustering the military, and conscription. He was condemned for not respecting states' rights and was reluctantly provided the support of the Confederate States of America Congress. President Lincoln instituted military detainment and trials, suspended *habeas corpus*, and issued the Emancipation Proclamation. He was also criticized for his actions and had to work to obtain the support of the United States of America Congress, often provided after his actions. Both presidents exercised extreme presidential powers, facing incredible challenges and pressures that demanded wartime success.

Keywords: Abraham Lincoln, Emancipation Proclamation, *habeas corpus*, conscription, Jefferson Davis, wartime president, John Merryman, martial law, military detainment and trials, presidential powers

Ganar una guerra sin precedentes: Los poderes presidenciales de Abraham Lincoln en la Guerra Civil versus Jefferson Davis

RESUMEN

Abraham Lincoln y Jefferson Davis fueron presidentes durante tiempos de guerra y se vieron desafiados por circunstancias extraordinarias que exigieron acción. Su nación enfrentó presiones en tiempos de guerra que exigieron que respondieran más allá de

las leyes de las que disfrutaban las naciones pacíficas. El presidente Davis tomó medidas como suspender el hábeas corpus varias veces por períodos cortos, reunir al ejército y realizar el servicio militar obligatorio. Fue condenado por no respetar los derechos de los estados y recibió a regañadientes el apoyo del Congreso de los Estados Confederados de América. El presidente Lincoln instituyó detenciones y juicios militares, suspendió el hábeas corpus y emitió la Proclamación de Emancipación. También fue criticado por sus acciones y tuvo que trabajar para obtener el apoyo del Congreso de los Estados Unidos de América, a menudo otorgado después de sus acciones. Ambos presidentes ejercieron poderes presidenciales extremos, enfrentando desafíos y presiones increíbles que exigieron éxito en tiempos de guerra.

Palabras clave: Abraham Lincoln, Proclamación de Emancipación, hábeas corpus, servicio militar obligatorio, Jefferson Davis, presidente en tiempos de guerra, John Merryman, ley marcial, detenciones y juicios militares, poderes presidenciales

史无前例地赢得战争：内战时期亚伯拉罕·林肯与杰斐逊·戴维斯的总统权力

摘要

亚伯拉罕·林肯和杰斐逊·戴维斯都是战时总统，他们都面临着需要采取行动的特殊情况所带来的挑战。他们的国家面临着战时压力，要求他们在“和平国家所享有的法律”之外作出响应。戴维斯总统采取了短期多次暂停人身保护令、召集军队和征兵等措施。他因不尊重各州权利而受到谴责，并勉强获得了美利坚联盟国国会的支持。林肯总统实行了军事拘留和审判，暂停了人身保护令，并发布了《解放黑人奴隶宣言》。他也因其行动而受到批评，并且不得不努力获得美利坚合众国国会的支持，而国会通常是在他采取行动后提供支持。两位总统都行使了极端的总统权力，面临着难以置信的挑战和一系列要求战时成功的压力。

关键词：亚伯拉罕·林肯，《解放黑人奴隶宣言》，人身保护令，征兵，杰斐逊·戴维斯，战时总统，约翰·梅里曼，戒严法，军事拘留和审判，总统权力

The Civil War presented unique constitutional challenges to the Presidents of the Union and the Confederacy. Both Abraham Lincoln and Jefferson Davis were wartime presidents who took extraordinary measures to ensure the success of their respective sides. The measures included controversial actions such as the suspension of the writ of *habeas corpus*, draft and conscription acts, and the Emancipation Proclamation. Their actions earned them both criticism for being unconstitutional and an overreach of presidential powers.

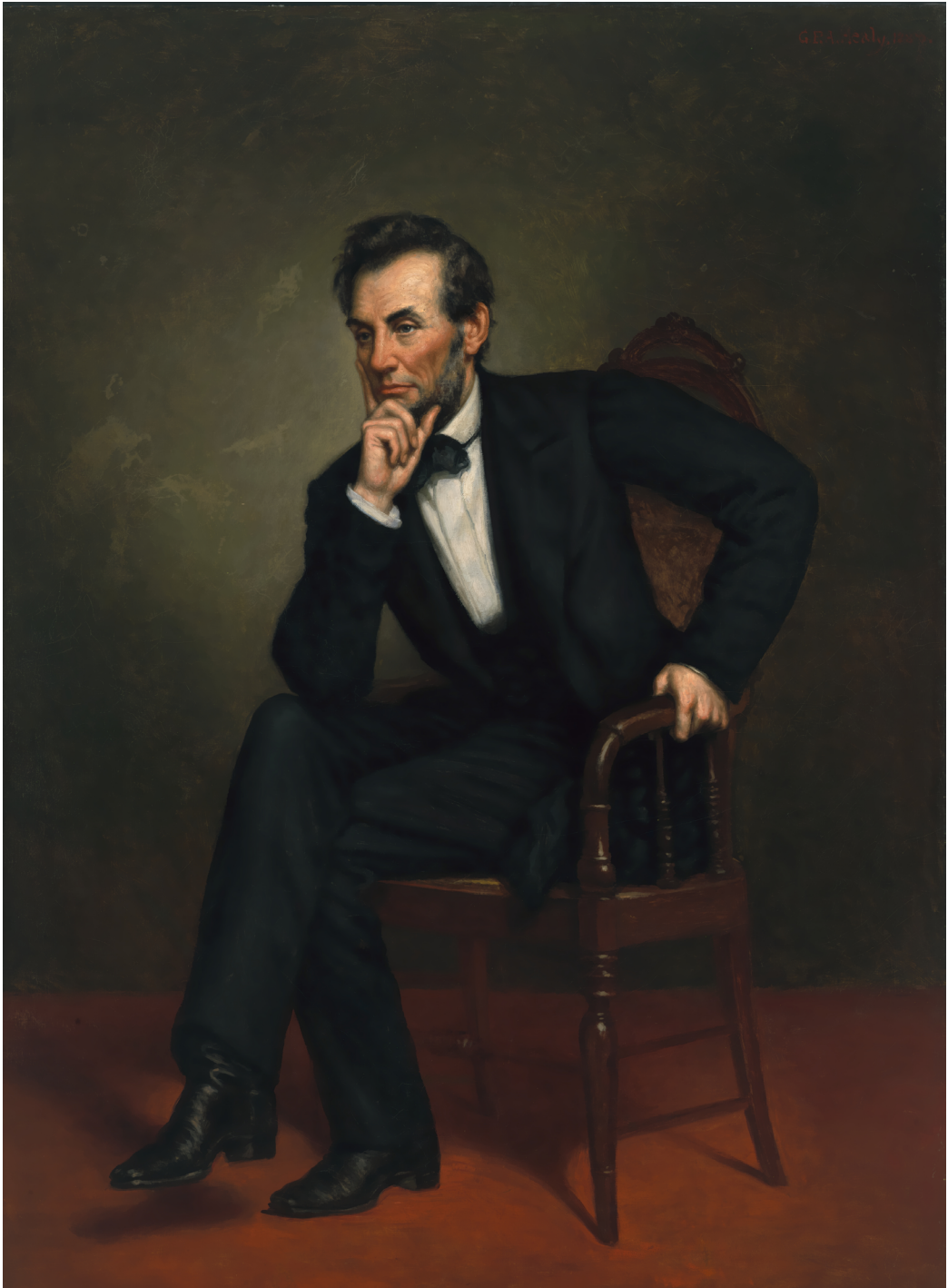
Abraham Lincoln and Jefferson Davis were both presidents facing wartime tensions that demanded actions that went beyond the scope of laws of nations at peace. President Davis took extraordinary steps such as suspending *habeas corpus* multiple times for short periods, mustering the military, and conscription. While he had the reluctant support of the Confederate States of America (CSA) Congress, he was heavily criticized for expanding federal power and not respecting states' rights. President Lincoln instituted military detainment and trials, suspended *habeas corpus*, and issued the Emancipation Proclamation. He did not always have the United States of America Congress's immediate support and was criticized for his actions. Both presidents exercised extreme presidential powers, facing incredible challenges and pressures that demanded wartime success.

Fort Sumter was the end of one era—when the Confederacy opened fire on April 12, 1861, and launched

an attack against federal property that belonged to the United States—and the beginning of another. Some Southern states had seceded at this point, and were in open rebellion with this defining action that began the Civil War. Lincoln was faced with the challenge of how to proceed and took multiple executive actions. By Executive Order, he issued a call for 43,034 volunteers for a period of three years, rather than the standard 90 days, and increased the army's size to 22,714 men and the navy to 18,000 men.¹

This was done even though the Constitution outlines that in Article I, Section 8, Congress has the power to raise and support armies and to raise and maintain a navy, and not the President.²

Another action that Lincoln took was to issue a proclamation of a naval blockade against the seceded states. Again, this appeared to violate the Constitution as only Congress had the authority to declare war, as outlined in Article I, Section 8.³ A blockade is considered an act of war.⁴ Yet Congress was not in session when these actions needed to occur. Due to the electoral calendar, Congress would not meet again until December of the following year, 13 months away.⁵ A delay of this length against taking any action could have been catastrophic for a nation at war or suppressing a rebellion. Lincoln also ordered the treasury to advance two million dollars for arms and vessels, paid to three private citizens.⁶ This went against the stipulation in the Constitution in Article 1, Section 9, that “No Money



Sixteenth president, 1861–1865. Abraham Lincoln, a self-educated frontier lawyer from Illinois, faced one of the greatest challenges as president: preserving the Union. [George Peter Alexander Healy, artist. National Portrait Gallery, Smithsonian Institution; transfer from the National Gallery of Art; gift of the A.W. Mellon Educational and Charitable Trust, 1942]

shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.⁷ Congress had passed no law to appropriate this money for arms and vessels.

When Congress convened in a special session, Lincoln sent them a letter explaining his actions and why he invoked war power to preserve the government. Then, he addressed Congress on July 4, 1861, and was careful to explain his actions concerning the need for public safety in response to the attack at Fort Sumter:

The provision of the Constitution that “the privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it” is equivalent to a provision—is a provision—that such privilege may be suspended when, in cases of rebellion or invasion, the public safety does require it. It was decided that we have a case of rebellion and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made.⁸

The Constitution does not explicitly outline war powers for the executive branch as Lincoln described. It appears that Lincoln not only created the term war power but also created the use.⁹ Under Article 1, Section 9, Clause 2, he responded to an act of rebellion and used his authority to protect the public safety.¹⁰ While Lincoln did admit that his actions increasing the navy and

army and calling for volunteers might not have been legal, Congress remedied the murky legal status of the President’s executive orders. It appeared that they agreed with the assessment of war powers and passed near-unanimous legislation that authorized these executive orders and use of war powers, and with “previous express authority and direction of the Congress.”¹¹

The beginning of the Civil War was unique in that it was not necessarily a domestic rebellion, or an international war, but laws pertaining to both were utilized. This was determined two years after Congress authorized the executive use of war powers. Cases that arose from the blockade, when the navy seized merchant ships and cargo for attempting to evade the blockade, helped to determine this argument. It was argued that the blockade was illegal because it was ordered before Congress declared hostilities in July 1861.¹² The cases went to the Supreme Court as the Prize cases. The question before the court was whether the President was acting within executive powers as outlined in Article 2 of the Constitution when he ordered the blockade without a formal declaration of war.¹³ The Supreme Court ruled the President had the authority to act because a “state of Civil War existed de facto after the firing on Fort Sumter.”¹⁴ The Prize Supreme Court case that upheld the naval blockade on Southern Ports helped to define both international war law and domestic law.

Another tool that Lincoln wielded as presidential power was the Emancipation Proclamation. While he’d been

contemplating it for a while, he did not have the opportunity until the Union claimed victory at Antietam. If he had declared the Emancipation Proclamation before this occasion, it would have been seen as a losing nation grasping at desperate measures to win. The Union had suffered multiple defeats, and the war had become long. In a carriage ride back from a funeral, Lincoln presented Secretaries Welles and Seward an idea that he “had about come to the conclusion that we must free the slave or ourselves be subdued.”¹⁵ Weeks after that carriage ride, he held a meeting with his cabinet, where he presented them with the proclamation. He wanted their input on when to declare the proclamation, but he was not seeking input on alterations that would significantly change it.¹⁶ His advisors in his cabinet had cautioned him to hold and declare it when the opportunity was right. On September 22, 1862, Lincoln issued the Emancipation Proclamation.¹⁷ He justified it as a “fit and necessary war measure for suppressing said rebellion” and, in doing so, further defined executive war powers.¹⁸

The Emancipation Proclamation declared enslaved people in rebellious states forever free. It also enabled the freed people to join the armed forces of the Union.¹⁹ The proclamation changed the scope of the Civil War as there could no longer be a negotiated peace “because the issues over which it is fought—Union vs. Disunion, Freedom vs. Slavery—proved to be non-negotiable.”²⁰ It was also a measure meant to best subdue the Confederate states by undermining their economic base. The

proclamation also had an international effect, making European powers’ recognition of the Confederate states almost impossible. As a pro-Union British MP Richard Cobden stated, “Recognition of the South, by England, whilst it bases itself on Negro slavery, is an impossibility.”²¹

As expected, Jefferson Davis reacted angrily to the Emancipation Proclamation and condemned it. His response was to threaten to execute officers and enslave enlisted men. He stated, “henceforth captured Union officers would not be treated as prisoners of war but would instead be turned over to state authorities for punishment as criminals engaged in inciting servile insurrection.”²² Although this was threatened, this did not occur. Lincoln countered the threat Davis made with retaliation in kind in July of 1863. The cruel treatment of black prisoners of war by the Confederacy caused Lincoln to take action and issue a staunch order, in which he stated: “It is therefore ordered that for every soldier of the United States killed in violation of the laws of war, a rebel soldier shall be executed; and for every one enslaved by the enemy or sold into slavery, a rebel soldier shall be placed at hard labor on the public works and continued at such labor until the other shall be released and receive the treatment due to a prisoner of war.”²³

While this order and policy were meant to prevent the mistreatment of soldiers, it had a depressing effect on the prisoner exchange practiced to this point in the war. The Union and Con-

federacy had traded enlisted men in equal numbers and officers by equal rank.²⁴ Lincoln postponed the prisoner exchanges as a “necessary preparative to meet the threatened purpose of Mr. Davis.”²⁵ The Confederacy wanted to continue the prisoner exchange based on the need for fresh soldiers and dwindling rations and supplies. Those prisoners kept captive, especially those held by the Confederacy, suffered terrible conditions and poor health. Conditions as camps such as Andersonville and Salisbury were deplorable. Camps designed to hold 2,500 swelled to hold 9,000, mortality rates were high, and there were periods of violence and executions of prisoners attempting escape.²⁶ Not until February of 1865 did prisoner exchanges resume when General Grant brokered an exchange in North Carolina.

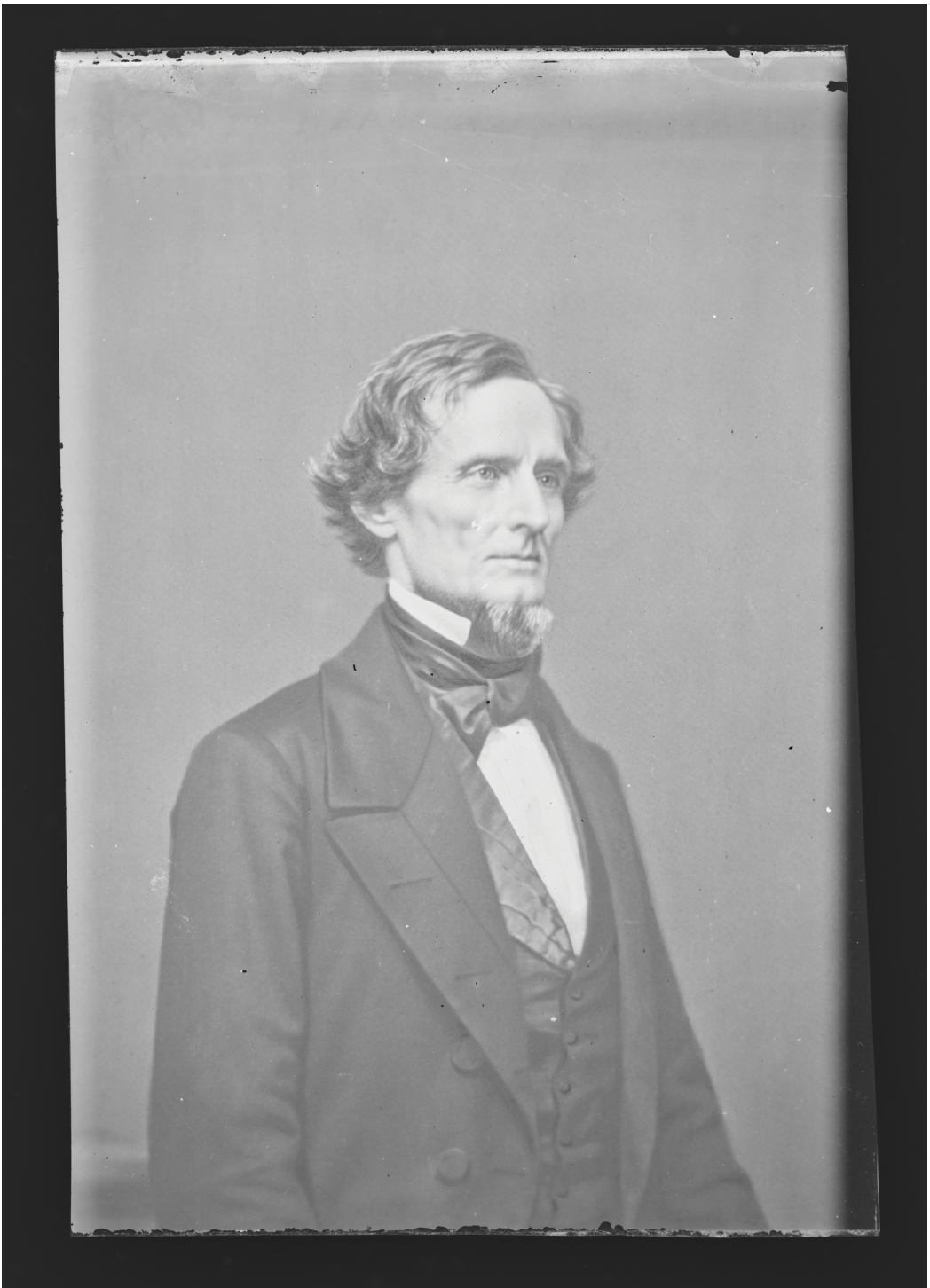
Both Davis and Lincoln carried out more controversial actions with the periodic suspension of *habeas corpus*. While the Constitution provides the fundamental right of protection against unlawful and indefinite imprisonment, it also provides the ability to suspend this writ. Article 1, Section 9 states, “the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”²⁷ Lincoln drew upon this when he authorized General Winfield Scott to suspend the writ of *habeas corpus* in 1861, on April 27, near railway lines between Washington, D.C., and Philadelphia.²⁸ As pro-secessionists continued to attack Union soldiers after the Baltimore Riots on April 19th, this action was taken to potentially prevent

rebellion from occurring in Maryland and becoming a risk to Washington.²⁹ Lincoln considered the Civil War an act of rebellion, thus enabling the detention of those who would assist the rebellion in the interest of public safety.

Not quite a month later, federal troops arrested and detained a man named John Merryman at Fort McHenry on the suspicion that he was part of a secessionist conspiracy. He was a lieutenant in a secessionist cavalry company that tore down telegraph lines near Baltimore, and was a threat due to his not only his actions but his influence.³⁰ From his confinement, Merryman petitioned the federal court for a writ of *habeas corpus*. The senior judge, Chief Justice Roger B. Taney, ordered the commanding officer to bring John Merryman and show the reason for his arrest. However, the commanding officer refused this request based on Lincoln’s suspension of *habeas corpus*.³¹

This caused a showdown between Lincoln and Taney. Justice Taney issued a ruling that stated that only Congress had the power to suspend *habeas corpus* writ, not the President. Lincoln ignored the ruling, and Taney could not enforce it.³² Instead, in a special session with Congress, Lincoln addressed the decision. He explained that Confederates had surrounded and threatened the capital, and in the case of rebellion, his actions were not a violation of the law. He said,

Now it is insisted that Congress, and not the Executive, is vested with this power; but the Constitution itself is silent as to which



Jefferson Davis, c. 1860-70. [Mathew Brady Studio, active 1844 – 1894, photographic negative. National Portrait Gallery, Smithsonian Institution; Frederick Hill Meserve Collection]

or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it can not be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion.³³

In the event that his actions were a violation of the law, Lincoln also uttered his now-famous line: "Are all the laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated?"³⁴ Lincoln felt his constitutional duty was to preserve the nation. Had he preserved the Constitution, he might have very well lost the nation.

In March of 1863, the Habeas Corpus Suspension Act was passed by Congress. This act authorized the President to suspend the right of *habeas corpus* as long as the Civil War was occurring.³⁵ It also had a provision for the release of prisoners in section two of the act. The Secretaries of War and State would provide circuit and federal judges a list of names of those being held as political or state prisoners, not as prisoners of war.³⁶ If those listed swore an oath of allegiance and promised not to aid the rebellion, they would be set free. The act also provided limitations for how military and civilian officials could be sued and the time limits for doing so.

Six months later, Lincoln found the need to utilize this act and suspend *habeas corpus* again.³⁷ Congress had

passed a law the previous July that altered the time that those called to serve in their state militias served from 90 days to nine months. There was resistance to this draft, and while Secretary of War Stanton had been issuing orders to suppress the dissent to this draft, it resulted in sometimes unreasonable and indiscriminate arrests.³⁸ Nevertheless, he did so as was authorized by the Militia Act of July 17, 1862.³⁹

Lincoln issued a proclamation suspending habeas corpus.⁴⁰ The aim was to help organize the rules coming from the War Department, but it also had a very chilling effect on freedom of speech. Many editors worried they might be arrested, and private citizens began to guard their words in private letters.⁴¹ However, the proclamation did assist with muting dissatisfaction with the Emancipation Proclamation.

Jefferson Davis faced his own *habeas corpus* challenges. Like the United States Constitution, the Confederacy Constitution also prohibited suspension of *habeas corpus* unless it was required for public safety.⁴² It presented a problem for Davis, as there was a need to respond to activities of disloyalty to ensure the security of the Confederacy as a nation. Rather than issue proclamations suspending the writ of *habeas corpus* himself, Davis worked with the Confederacy Congress to achieve the suspension of civil liberties as needed. At the beginning of the war, military and civil authorities in the Confederacy arrested and charged many people with treason for potentially "aiding and abetting the enemy."⁴³ Some commanders



The First Reading of the Emancipation Proclamation before the Cabinet. [Alexander Hay Ritchie, artist. National Portrait Gallery, Smithsonian Institution; transfer from the National Gallery of Art; gift of Mrs. Chester E. King]

declared martial law in separate parts of the Confederacy, which led to an uneven application of civil liberties.

In response, the Confederate Congress provided President Davis in February of 1862 with the authority “to suspend the privilege of the writ of *habeas corpus* in such towns, cities, and military districts as shall in his judgment be in such danger of attack by the enemy as to require the declaration of martial law for their effective defence.”⁴⁴ Davis took decisive action with this power immediately. He placed under martial law the Virginian cities of Norfolk, Richmond, Petersburg, and Portsmouth, and a few months later added

additional parts of Virginia, South Carolina, and East Tennessee.⁴⁵ As a result, civil jurisdiction ended, and military control was established for most matters. In addition, there was a suspension of court trials and military detention, and military trials were held.

While some Confederate politicians supported the suspension of *habeas corpus* and the declaration of martial law not all were supportive, and some spoke out against Davis and the central government’s perceived overreach. Texas Senator Oldham was critical and spoke against the authority of the President to suspend the writ.⁴⁶ Because both Davis and Congress were

careful to maintain balance and wanted to strike a balance between the need for national security and the preservation of liberty, Congress provided an expiration of the writ of *habeas corpus* 30 days after the beginning of the next session of Congress.

The Confederate Congress also feared that martial law might lead to unchecked military power. To determine how this should be addressed, the Confederate Congress convened a committee in the fall of 1862. A report was provided that recommended that martial law over the people would only be defined in a manner consistent with the Confederate Constitution. The power of the President to suspend *habeas corpus* would be limited to crimes against the Confederacy, and Congress would be careful with its legislative authority.⁴⁷ The Confederate Congress debated the recommendations and passed a bill with the recommendations in October of 1862. The bill Davis signed provided the authority for the President to suspend *habeas corpus* in all parts of the Confederacy for “arrests made by the authority of the Confederate Government, or for offences against the same.”⁴⁸ While this provided the explicit authority of the central government to do this, many Confederate states’ government courts did not agree with this expanded power of the President. In North Carolina, Justice Richmond M. Pearson used the writ of *habeas corpus* to “discharge men from the conscription enrollment.”⁴⁹

As the war wore on in the fall of 1863, and conditions in parts of the Confederacy became a risk to nation-

al security, Jefferson Davis petitioned Congress for another act to suspend the writ of *habeas corpus*. People were declaring disloyalty, spies were giving information to the North, and there were reports of treasonous meetings. Davis felt such actions required extraordinary steps to preserve security for the public. While the Confederate Congress debated the need and ability, they authorized Davis with authority to suspend the writ.⁵⁰

The opposition to this bill and suspension of *habeas corpus* was the strongest in Georgia. Confederate Vice President Stephens also spoke out against the suspension act and called it unconstitutional. The opposition in Congress pushed for resolutions to be passed against the suspension act, and they were passed, but at the same time, a resolution affirming confidence in Davis was also passed.⁵¹ This became known as the Georgia triumvirate, which has been referred to as weakening the Confederate government in lieu of states’ rights.⁵² Even though the dissenters were vocal, the measure was lauded as effective in suppressing potential insurrection.

Not long after the expiration of the last suspension authority act, Davis approached Congress once again for additional authorization to suspend *habeas corpus* due to fierce resistance to the draft. Congress debated and provided Davis with this authority in February of 1864, with the expiration set for the end of July.⁵³

The need to suspend *habeas corpus* arose again in the spring of

1864. Davis petitioned for another bill to suspend the writ. The Confederate Congress debated but could not pass another suspension bill. Thus, the Confederacy ended without Davis being authorized again for suspension by his Congress. He was only given authorization three times and used the power sparingly each time due to the strong opposition. Davis did not need to utilize the authority as much as it was required in the North due to the less hostile captured territory and lesser need to secure such areas.⁵⁴

The conscription and draft of soldiers both presidents took to build armies for their respective governments were seen as an overreach of power by the central governments. Neither the Union nor the Confederacy had large armies at the beginning of the war. As a result, each side needed to build up to fighting forces, and once the initial period of volunteer service ended, they were challenged with the difficulty of replenishing armies with men.

In the spring of 1862, when the 12-month enlistment of soldiers was ending, Jefferson Davis proposed what would become the first Conscription Act.⁵⁵ Cries of government overreach came from the citizens and politicians of the Confederacy. The Georgia governor said only Congress could call “forth the militia to execute the laws of the Confederate States, suppress insurrections, and repel invasions.”⁵⁶ Davis responded to this with the argument that the Confederate Constitution gave the government the power to defend the nation, and was therefore constitution-

al. This did not appease the governor of Georgia or others who believed Davis guilty of grabbing power and stepping on states’ rights.⁵⁷ On April 16, 1863, the Confederate Congress passed the first American Conscription law.⁵⁸ It applied to all able-bodied white men between 18 and 35 years of age to serve for a period of three years.

The Conscription Act was highly unpopular due to the unfairness it allowed between the wealthy and poor. Those conscripted could hire a substitute exempted from service to serve in their place. Older men—or those who were not citizens—could serve as substitutes. It led to substitutes deserting and rehiring themselves, and substitute brokers cropping up to allow rich men to buy their way out of the war.⁵⁹ The conscription act also created a period of 30 days during which men could volunteer rather than be drafted to avoid the stigma of being drafted and coerced.⁶⁰ Of all the acts of the Confederate government, the Conscription Act Davis signed into law was the most unpopular.

The Enrollment Act of 1863, which went into effect in March of 1863, was the first national Union conscription law, passed by Congress and signed by Lincoln.⁶¹ It replaced the Militia Act of 1862. There was a lot of discontent with this act, which also correlated to the Emancipation Proclamation. Men were reluctant to be drafted to fight for an act they resented.⁶² All men that were between the ages of 20 and 45 had to register. If the federally mandated quota of volunteers were not met within spe-

FROM WASHINGTON.
—
**Another Proclamation of
the President.**
—
**Martial Law for those who Dis-
courage Enlistments,**
—
Habeas Corpus Suspended
—
Harper's Ferry Officers Arrested
—
**The President Serenaded—A
Characteristic Speech.**
—
Speech of Sec'y Chase.
—
NEWS FROM THE SOUTH.
—
Rebel Loss in Maryland.

From Washington. Another Proclamation of the President. ["From Washington. Another Proclamation of the President." *The Weekly Pioneer and Democrat*. October 3, 1862.]

The Writ of Habeas Corpus Suspended.
HEADQUARTERS, ATLANTA, GA., }
September 9, 1862. }
For the information of all concerned, the following Special Order, from the War Department, is published.
G. W. LEE,
Commanding Post and Provost Marshal.
—
[EXTRACT.]
ALJ'T & INSPECTOR GEN.'S OFFICE, }
Richmond, September 3, 1862. }
SPECIAL ORDERS, No. 206:
XXII.—The privilege of the *Writ of Habeas Corpus* is suspended in Atlanta, and for five miles around its corporate limits.
By command of the Secretary of War
JOHN WITHERS,
Assistant Adjutant General.

The Write of Habeas Corpus Suspended. ["The Write of Habeas Corpus Suspended." *Southern Confederacy*. September 14, 1862.]

cific regions, a draft would ensue. Like the Confederate Conscription Act, this Union law also had exemptions. A man could pay another to go in his place and then be exempt from further conscription. Because this could be abused, the government set a commutation fee of three hundred dollars, payable to the government.⁶³ Once this fee was paid, the man was free from conscription but risked being redrafted in further drafts. Again, like the Confederate Act, this fee was a hefty sum and out of reach of many common laborers. The affluent were able to pay their way out of fighting easily, which caused a lot of discontent at the unfair practice that favored the wealthy.

In some areas, resentment of the draft and Lincoln and the government's perceived overreach escalated into violence. After a draft in the summer of 1863, riots broke out in the poorer Irish district of New York.⁶⁴ Mobs terrorized and killed blacks and police officers and set fires to buildings, including an orphanage for black children. Troops from the Army of the Potomac had to be brought in to help suppress the riots.⁶⁵ The Union soldiers saw those who rose up against the Union as disloyal, and they were brutally effective in quelling the riots.

Discontent and resistance to the conscription of soldiers flared at the political level also. General Burnside issued General Order Number Thirty-Eight on April 13, 1863.⁶⁶ This order stated, "The habit of declaring sympathy for the enemy will not be allowed in this department. Persons committing such offenses will be at once arrest-

ed with a view of being tried ... or sent beyond our lines into the lines of their friends. It must be understood that treason, expressed or implied, will not be tolerated in this department."⁶⁷ Two weeks later, on May 1, 1863, a former Congressman and Peace Democrat held a rally to denounce the order. Clement Vallandigham spoke out against President Lincoln, and said of the order that he "despised it, spit upon it, trampled it under his feet."⁶⁸ He also encouraged other Peace Democrats to defy the order and General Burnside openly. Officers under Burnside had attended the rally and reported back news of the event. On May 5, Vallandigham was arrested for violating the order and brought to Cincinnati for a military tribunal. Vallandigham put up little defense, believing the military had no jurisdiction to try him.⁶⁹ Despite his belief, the tribunal found him guilty and sentenced him to prison for the remainder of the war. He appealed, but the judge agreed with Burnside that military authority was constitutional during a time of war and upheld the prison sentence. Fearing the Peace Democrats would further cause trouble to support Vallandigham, Lincoln commuted Vallandigham's sentence and exiled him to the Confederacy.⁷⁰ General Burnside sent Vallandigham to the Confederacy on May 25, 1863. Vallandigham's exiled stay was short in the Confederacy; they did not want him, though they reluctantly took him. After a brief civil but unwelcome stay, he departed for Canada in mid-June.⁷¹

During the Civil War, a transformation occurred between presidential

power and the civil liberty of the people. During the Civil War, the civil liberties one enjoys in times of peace, such as a right to *habeas corpus* and freedom from conscription, were traded for national security. Both Abraham Lincoln and Jefferson Davis found themselves making these difficult decisions as presidents leading nations at war. Their responses had to consider the importance of both and find the best solution at the time, as not to risk losing one for the other. As they exercised executive authority to meet emergencies, they were met with checks and balances from the judicial and legislative branches. Davis worked more cautiously with the Confederacy Congress to ensure that he balanced national security with the Confederate Constitution and states' rights. He signed the first conscription act and suspended *habeas corpus* multiple times. Abraham Lincoln was bolder, and creating and expanding the war powers of a President of the United States forever. He suspended *habeas*

corpus multiple times, oversaw drafts, and issued the Emancipation Proclamation, which signaled that the practice of chattel slavery would be ended when the Union won the war.

Presidential powers depend on the nation's situation, and both presidents faced unprecedented challenges. Abraham Lincoln and Jefferson Davis both took actions during their terms as president to solve the challenges they faced. They were criticized for these controversial actions for overreach of power and violating their respective Constitutions. Both presidents suspended *habeas corpus* multiple times and enacted drafts and conscription. In addition, Lincoln issued the Emancipation Proclamation, which changed the scope of the war—not only keeping the Union together, but making it about slavery also. Lincoln and Davis each needed to balance national security with civil liberties and do what was best for their sides to win the war.

Bibliography

Carroll, Thomas F. "Freedom of Speech and of the Press during the Civil War." *Virginia Law Review* 9, no. 7 (May 1923): 516-51. <https://doi.org/10.2307/1065306>.

"Constitution of the Confederate States." Avalon project - Constitution of the confederate states; March 11, 1861. Accessed August 17, 2021. https://avalon.law.yale.edu/19th_century/csa_csa.asp.

"The Constitution of the United States: A Transcription." National Archives and Records Administration. National Archives and Records Administration. Accessed September 25, 2021. <https://www.archives.gov/founding-docs/constitution-transcript>.

Cooper, William James. *Jefferson Davis and the Civil War Era*. Baton Rouge, LA: Louisiana State University Press, 2009.

Donald, David Herbert. *Lincoln*. New York, NY: Simon and Schuster, 1995.

“The Emancipation Proclamation.” National Archives and Records Administration. National Archives and Records Administration. Accessed August 15, 2021. <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation#:~:text=Espa%C3%B1ol,and%20henceforward%20shall%20be%20free.%22>.

Farber, Daniel. Lincoln, Presidential Power, and the Rule of Law, 113, *Northwestern University Law Review*, Rev. 667 (2018).

Fonvielle, Chris E. “Welcome Brothers!” The 1865 Union Prisoners of War Exchange in North Carolina.” *The North Carolina Historical Review* 92, no. 3 (July 2015): 287-311.

“Habeas Corpus.” Legal Information Institute. Legal Information Institute. Accessed September 25, 2021. https://www.law.cornell.edu/wex/habeas_corpus.

Klement, Frank L. “Clement L. Vallandigham’s Exile in the Confederacy, May 25–June 17, 1863.” *The Journal of Southern History* 31, no. 2 (May 1965): 149-63.

Lincoln, Abraham. “July 4, 1861: July 4th Message to Congress.” Miller Center, February 23, 2017. <https://millercenter.org/the-presidency/presidential-speeches/july-4-1861-july-4th-message-congress>.

Lincoln, Abraham. “Proclamation 104-Suspending the Writ of Habeas Corpus Throughout the United States.” Proclamation 104-Suspending the Writ of Habeas Corpus Throughout the United States | The American Presidency Project, September 15, 1863. <https://www.presidency.ucsb.edu/documents/proclamation-104-suspending-the-writ-habeas-corpus-throughout-the-united-states>.

Lincoln, Abraham. “Order by the President.” President Lincoln’s Order of Retaliation, July 30, 1863. Accessed September 25, 2021. <http://www.freedmen.umd.edu/retal.htm>.

Lincoln, Abraham. “Letter by Abraham Lincoln To Erastus Corning.” Abraham Lincoln Online: Speeches & Writing. Accessed September 25, 2021. <http://www.abrahamlincolnonline.org/lincoln/speeches/corning.htm>.

Lincoln, Abraham. “Transcript of the Proclamation.” National Archives and Records Administration. National Archives and Records Administration. Accessed

September 25, 2021. <https://www.archives.gov/exhibits/featured-documents/eman-cipation-proclamation/transcript.html>.

McPherson, James. *Battle Cry of Freedom: The Civil War Era*. New York, NY: Oxford University Press, 1988.

McPherson, James M. *This Mighty Scourge: Perspectives on the Civil War*. New York, NY: Oxford University Press Inc, 2009.

McPherson, James M. *Tried by War: Abraham Lincoln as Commander in Chief*. New York, NY: Penguin Group, 2008.

Neely, Mark E. *The Fate of Liberty: Abraham Lincoln and Civil Liberties*. New York, NY: Oxford University Press, 1991.

“Prize Cases.” Oyez. Accessed September 25, 2021. <https://www.oyez.org/cases/1850-1900/67us635>.

“Thirty-Seventh Congress-Second Session.” *The Philadelphia Inquirer*, March 3, 1863.

Robbins, John B. “The Confederacy and the Writ of Habeas Corpus.” *The Georgia Historical Quarterly* 55, no. 1 (1971): 83-101.

Woodworth, Steven E. *This Great Struggle: America’s Civil War*. Lanham, MD: Rowman & Littlefield Publishers, 2012.

Endnotes

- 1 James M. McPherson, *Tried by War: Abraham Lincoln as Commander in Chief* (New York, NY: Pen-guin Group, 2008), 23.
- 2 “The Constitution of the United States: A Transcription,” National Archives and Records Administration (National Archives and Records Administration), accessed September 25, 2021, <https://www.archives.gov/founding-docs/constitution-transcript>.
- 3 The Constitution of the United States.
- 4 McPherson, 23.
- 5 Ibid.
- 6 McPherson, 24.

- 7 The Constitution of the United States.
- 8 Abraham Lincoln, "July 4, 1861: July 4th Message to Congress," Miller Center, February 23, 2017, <https://millercenter.org/the-presidency/presidential-speeches/july-4-1861-july-4th-message-congress>.
- 9 McPherson, 24.
- 10 The Constitution of the United States.
- 11 James M. McPherson, *This Mighty Scourge: Perspectives on the Civil War* (New York, NY: Oxford University Press Inc, 2009), 212.
- 12 Ibid.
- 13 "Prize Cases," Oyez, accessed September 25, 2021, <https://www.oyez.org/cases/1850-1900/67us635>.
- 14 Ibid.
- 15 David Herbert Donald, *Lincoln* (New York, NY: Simon and Schuster, 1995), 362.
- 16 Ibid., 365.
- 17 Steven E. Woodworth, *This Great Struggle: America's Civil War* (Lanham, MD: Rowman & Littlefield, 2012), 161.
- 18 McPherson, 158.
- 19 Abraham Lincoln, "Transcript of the Proclamation," National Archives and Records Administration (National Archives and Records Administration), accessed September 25, 2021, <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html>.
- 20 McPherson, 168.
- 21 Ibid., 160.
- 22 James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York, NY: Oxford University Press, 1988), 566.
- 23 Abraham Lincoln, "Order by the President," President Lincoln's Order of Retaliation, July 30, 1863, accessed September 25, 2021, <http://www.freedmen.umd.edu/retal.htm>.
- 24 Chris E. Fonvielle, "Welcome Brothers!" The 1865 Union Prisoners of War Exchange in North Carolina," *The North Carolina Historical Review* 92, no. 3 (July 2015), 279.
- 25 Ibid., 280.
- 26 Ibid., 286.
- 27 "Habeas Corpus," Legal Information Institute (Legal Information Institute), accessed September 25, 2021, https://www.law.cornell.edu/wex/habeas_corpus.

28 Ibid., 27.

29 Donald, 298.

30 Ibid.

31 Ibid.

32 Ibid., 28.

33 Ibid., 29.

34 Ibid.

35 “Thirty-Seventh Congress-Second Session,” *The Philadelphia Inquirer*, March 3, 1863, 2.

36 Ibid.

37 1. Mark E. Neely, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York, NY: Oxford University Press, 1991), 52.

38 Donald, 380.

39 Ibid.

40 Abraham Lincoln, “Proclamation 104-Suspending the Writ of Habeas Corpus Throughout the United States,” Proclamation 104-Suspending the Writ of Habeas Corpus Throughout the United States | The American Presidency Project, September 15, 1863, <https://www.presidency.ucsb.edu/documents/proclamation-104-suspending-the-writ-habeas-corpus-throughout-the-united-states>.

41 Donald, 380.

42 John B. Robbins, “The Confederacy and the Writ of Habeas Corpus,” *The Georgia Historical Quarterly* 55, no. 1 (1971), 84.

43 Ibid., 84.

44 Ibid.

45 Ibid., 85.

46 Ibid., 86.

47 Ibid., 88.

48 Ibid., 89.

49 Ibid., 90.

50 McPherson, 435.

51 Robbins, 94.

52 Ibid.

53 McPherson, 435.

54 Ibid.

55 William James Cooper, *Jefferson Davis and the Civil War Era* (Baton Rouge, LA: Louisiana State University Press, 2009), 37.

56 “Constitution of the Confederate States,” Avalon project - Constitution of the confederate states; March 11, 1861, accessed August 17, 2021, https://avalon.law.yale.edu/19th_century/csa_csa.asp.

57 Cooper, 38.

58 McPherson, 430.

59 Ibid., 432.

60 Ibid.

61 Woodworth, 237.

62 Ibid., 236.

63 Ibid., 237.

64 Ibid., 238.

65 Ibid.

66 Ambrose Burnside, “General Order No. 38,” General Order No. 38 - Ohio History Central, accessed September 25, 2021, http://ohiohistorycentral.org/w/General_Order_No._38.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

71 Frank L. Klement, “Clement L. Vallandigham’s Exile in the Confederacy, May 25–June 17, 1863,” *The Journal of Southern History* 31, no. 2 (May 1965): 149–63, 162.