ABSTRACT

MARTIN, ELIZABETH MAE-CARR. “The Extremest Necessity:” Lincoln’s Policies on Civil Liberties and Citizen Responses, 1861-1865. (Under the direction of Susanna Lee).

Abraham Lincoln has been viewed alternately as a hero of the Union or a tyrant who abused his power. This debate stems in part from Lincoln’s actions regarding civil liberties. Lincoln authorized the suspension of habeas corpus and the military arrest of civilians in his efforts to preserve the Union and prosecute the Civil War. These actions specifically impacted the residents in the Border States of Maryland and Missouri. Not only are Lincoln’s actions a reflection of his personal constitutional philosophy, the subsequent reaction by citizens reveals the popular constitutionalism of the people impacted by the policies. Citizens reacted to Lincoln’s policies along regional lines and the issues raised by citizens of the North, South and Border States provide insight into the political and legal debate surrounding the issue of civil liberties during the Civil War. An analysis of the citizen reactions to Lincoln’s civil liberty policies further explores the relationship of dissent and loyalty during wartime.
“The Extremest Necessity:” Lincoln’s Policies on Civil Liberties and Citizen Responses, 1861-1865

by

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DEDICATION

To my husband, Andy, for his love and support.

To my first and most consistent teachers, Mom and Dad, for everything.

Solo Deo Gloria. (To the glory of God).
BIOGRAPHY

Elizabeth Martin was born and raised in Michigan, where her parents and teachers encouraged her early love of learning and interest in history. She graduated summa cum laude from Bob Jones University in Greenville, SC with a B.S. degree in Composite Social Studies Education in May 2000. After pursuing a career in teaching for several years, she returned to school to further her education. She received her M.A. Degree in History from North Carolina State University in May 2010.
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Introduction

Historically, Abraham Lincoln’s legacy has been evaluated in one question: was Abraham Lincoln a despot or a patriot? From the Civil War to the present day, writers, historians, and citizens concerned with civil liberties have focused on Lincoln and classified him in one of those two categories. On April 7, 1863, The Charleston Mercury, a Confederate newspaper from South Carolina, published an article entitled “Suspension of Habeas Corpus.” In this article, the writer declared the Union government a despotism: “By the suspension of this writ, President Lincoln can arrest and cast into prison any citizen he pleases, and there is no power by which the citizen can be released, but his arbitrary will. This power makes President Lincoln a Despot, and his Government a Despotism.”¹ A different viewpoint emerged from a Northern paper. The New York Times published an article entitled “Habeas Corpus- The President and the Judges,” on November 3, 1861. In this article the author concluded, “We have given much study and reflection to the constitutional and military power of the President, and we affirm . . . that the President, in arresting the habeas corpus in martial cases, has acted patriotically within the powers conferred on him as President and Commander-in-Chief.”² These Civil War newspapers started the discussion of President Lincoln’s record regarding civil liberties. Civil liberties are rights granted to American citizens in the Constitution, particularly the rights that protect each citizen from abuse by the government. Did the President have the power to suspend

habeas corpus? Did Lincoln act constitutionally? Was he acting to save the Union? Was he truly a despot? Citizens in the North, South, and Border States offered distinct perspectives on Lincoln’s policies and debated the nature of government, their relationship to the administration, and the role of dissent during war. In the process, this debate revealed how Civil War era Americans understood the Constitution, and the limitations and guarantees of that document.

The bulk of the scholarship regarding civil liberties in the Civil War era focused on the constitutionality of Lincoln’s actions. Historians have grappled with Lincoln’s record on civil liberties and judged him as either a patriot or a tyrant because of those actions. Much has also been written about the opinions of the Supreme Court, the major political parties and what the key figures at the time thought or decided about Lincoln’s actions. Missing from the historiography is how the people themselves viewed their civil liberties and how this influenced their relationship to the President, government, Constitution and war effort.

The work done by historians regarding Lincoln and civil liberties falls into two major categories: an analysis of the constitutionality of Lincoln’s actions with a focus on Lincoln himself and a more recent intervention which evaluates the popular constitutionalism of the people in response to Lincoln’s actions. The former has received the most attention, with many of the earliest works focused on Lincoln. As noted earlier, Lincoln’s contemporaries were writing as early as the Civil War with their opinions and thoughts about his record on civil liberties. One of the first books on the subject came just after the war ended when John A. Marshall published *American Bastile* in 1869 and wrote it as a Democratic critique of
Lincoln. Historian Mark Neely comments that *American Bastile*: “Was essentially a book of martyrs, offering its readers dozens of sketches of Northern Democrats arrested by military authority during the Civil War.”\(^3\) *American Bastile* stood alone in its evaluation of Lincoln until the 1920s when the debate shifted to a traditional “top-down” analysis of constitutional issues surrounding Lincoln and civil liberties.

Historian James Randall published the first major scholarly work on Lincoln and civil liberties entitled *Constitutional Problems Under Lincoln* in 1926. Randall’s most important intervention is that he set up a seminal interpretation of Lincoln: he establishes Lincoln as a “benevolent dictator.”\(^4\) This was a foundational definition in Lincoln historiography. Other historians have continued to debate whether or not Lincoln acted as a dictator. Historian Herman Belz in his book, *Abraham Lincoln, Constitutionalism and Equal Rights in the Civil War Era*, published in 1998, devoted the opening chapter to a discussion of the question, titling it “Lincoln and the Constitution: The Dictatorship Question Reconsidered.” Belz argues that the image of Lincoln as a dictator is misleading and misrepresents how Lincoln acted as President. “Lincoln was neither a revolutionary nor a dictator, but a constitutionalist who used the executive power to preserve and extend the liberty of the American Founding.”\(^5\) Belz goes on to argue in other parts of his book how closely Lincoln relied on the Constitution to justify his actions in office. Belz paints Lincoln as more of a strict constructionist than as any type of a dictator. Lincoln scholar Phillip Shaw Paludan revisited

the dictator question again in 2007 in an article entitled “‘Dictator Lincoln’: Surveying Lincoln and the Constitution.” In this article Paludan argues that Lincoln was a complex leader, one who used the Constitution “flexibly,” but also respected it. “Lincoln clearly had enough respect for the Constitution that he cited it often and claimed to be following it.”

The analysis of Lincoln’s record on civil liberties and the way he governed throughout the War has also prompted works dedicated to assessing Lincoln’s personal constitutional philosophy. This portion of the historiography started as early as the Lincoln presidency and continues through the present day. In the historiography on Lincoln’s constitutional philosophy, the aforementioned works by Randall, who argues that Lincoln was a benevolent dictator, and Belz, who counters that Lincoln was a strict constructionist, are critical pieces to note, but several other historians have contributed specifically to the topic of Lincoln and his constitutional philosophy. Judge and Lincoln Historian Frank Thomas argues in his work Judging Lincoln (2002) that Lincoln should be viewed as “the lawyer-president” in his constitutional philosophy. Thomas states that Lincoln understood the Constitution in light of his legal training and Lincoln was successful because of his “constitutional flexibility, which allowed [Lincoln] to bend the Constitution within the framework of its intent without breaking it.” Thomas further argues that this flexibility worked the greater good of preserving the Constitution and that was always Lincoln’s

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8 Thomas, Judging Lincoln, 77.
Another work which comments on Lincoln’s Constitutional philosophy is *Act of Justice: Lincoln’s Emancipation Proclamation and the Law of War* (2007) by Burrus M. Carnahan. Carnahan concentrates on the legal ramifications of the Emancipation Proclamation and does not deal with civil liberties, but his work argues that Lincoln did have a coherent Constitutional philosophy. Carnahan, like Thomas, believes that Lincoln relied heavily on his training as a lawyer to guide his decisions as President. Furthermore Carnahan states that Lincoln, when dealing with controversial matters, such as the Emancipation Proclamation, relied exclusively upon the “law of war as a source of executive power.” This thesis argues that Lincoln’s Constitutional Philosophy had much to do with his roots as a Whig politician and that Lincoln believed crises should be dealt with practically and Constitutionally.

In the case of civil liberties in the civil war era authors have more recently shifted the approach to the popular constitutionalism of the people. Historian Michael Vorenberg makes an essential methodological contribution in his work *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment*. Vorenberg analyzed the shifts in how Americans viewed the Constitution and their overall Constitutional philosophy in regard to the passage of the Thirteenth Amendment. Vorenberg details what can be described as the “popular constitutionalism” of the American people. This thesis similarly looks at popular notions of Constitutional rights and owes much to Vorenberg’s methodology. Although

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*Final Freedom* does not correspond with the Lincoln civil liberties historiography, Vorenberg’s use of newspapers, letters and diaries and his analysis of how those sources revealed American perceptions of the Constitution gave me a critical starting place for my own work.

The popular constitutional approach is applied specifically to Lincoln and civil liberties by historian Mark Neely. Neely’s major work, *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (1991), is a social history of the civilians arrested during the Civil War. Neely does not focus on whether or not Lincoln acted constitutionally, but rather examines arrest records to determine the reason of the arrests and who was arrested and analyzes how the arrests affected Lincoln’s reputation. Neely argues that Lincoln acted as a practical politician and a statesman and that the arrests were not done to exact vengeance on political enemies.

Another historian who shifted the focus back to Lincoln’s contemporaries and their discussion of his record on civil liberties was Jennifer Weber in her book *Copperheads: The Rise and Fall of Lincoln’s Opponents in the North* published in 2006. Weber disputes previously held theories that the Copperheads were a myth manufactured by Republicans and instead argues that the Copperheads were a strong presence in the North, as well as in the entire country. Weber’s attention to Copperheads’ constitutional philosophy is most relevant to this thesis. The motto of the Copperheads was “the Constitution as it is, the

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12 Neely, *The Fate of Liberty*, xi.
13 The Copperheads were the members of the Democratic party in opposition to Lincoln. The term Copperhead and Peace Democrat is used interchangeably to describe this group.
Union as it was” and they were strict constructionists in their view of the Constitution. Weber identifies that the main stage of Copperhead growth was due to a reaction to civil liberties abuse and out of a protest of Lincoln’s suspension of habeas corpus, and argues it is necessary to identify what they saw as harmful to the Constitution in order to understand their popularity in the North. The Copperheads played a key role as dissenters during wartime and defenders of civil liberties. Although Weber’s focus is on the growth of the Copperhead movement, her discussion of the Peace Democrats’ relationship to the Constitution adds to the overall understanding of how various citizens viewed the Constitution.

Mark Neely makes another addition to the historiography with his 2002 publication of The Union Divided: Party Conflict in the Civil War in the North. This book is an analysis of the two-party system by those who were living it at the time and this book argues against the popular “two-party-system” theory; which argues that the North had a distinct advantage over the South during the Civil War because it had a thriving two-party system. Neely finds this was not the case. Dissent from the Copperheads gave Lincoln and the Republicans much trouble at a time when prosecuting a war was trouble enough. “The party system itself made no marked contribution to Union victory, and at a few dangerous moments its accustomed operation threatened political suicide.”¹⁵ Neely analyzes the dissent from the Democratic Party and the ramifications of that dissent to the war effort. Neely’s discussion about the practical impact of dissent and the harm of dissent to a constitutional system are important to...

¹⁵ Mark E. Neely, Jr., The Union Divided: Party Conflict in the Civil War North (Cambridge, Massachusetts: Harvard University Press, 2002), 201.
this thesis. *The Union Divided* raises important questions with regard to civil liberties during the War. Just how destructive were the Copperheads to the overall war effort? Would the key issues over civil liberties have become the great issues they became if the two-party system was not operational? Certainly one of the major court cases, that of the Peace Democrat, Vallandigham, would not have become as widely known if the two-party system had not been operating in the North. Neely introduces this book by stating “I mean mostly to replace pat answers with questions and to stimulate debate.”\(^\text{16}\) His intervention in the historiography does just that. Neely’s argument that the party system and the dissent of the Democratic Party during the Civil War hurt the Union war effort is a compelling thesis. Also Neely declares that “nothing shaped the Civil War more than the United States Constitution.”\(^\text{17}\) The fundamental contribution of the Constitution to the War and people’s perceptions of it is an asset to this thesis.

Historians such as Randall, Belz, Thomas and Carnahan grappled with Lincoln and the Constitutionality of his actions. Like Thomas and Belz this thesis views Lincoln as a politician who was not a dictator, but rather a President who took the Constitution seriously albeit used it broadly. The contributions of Thomas and Belz, Neely, Weber, and Vorenberg have shifted the analysis of Lincoln away from statesman toward what the people of the day thought regarding Lincoln. These social historians make arguments about dissent and its effects during wartime. This thesis will further test these concepts in the setting of the

\(^{16}\) Neely, *The Union Divided*, 6.

\(^{17}\) Neely, *The Union Divided*, 118.
Border States and reveal the feelings of the citizens of the North, South and Border States in regard to dissent and loyalty.

This thesis seeks to reveal the constitutional views of the citizens of the United States during the Civil War, specifically in relationship to civil liberties. The unique role of Lincoln, as president during the Civil War, and more broadly in American history shapes how the popular constitutionalism of the people is demonstrated. Lincoln was a lightning rod and a polarizing figure at the time of his election. Many citizens, both in the North and the South, viewed Lincoln as the embodiment of an ideology, a man who personified the ongoing debate and struggle in the nation over the role of government, the meaning of the Union, and the idea of freedom. For this reason, this thesis, begins with a “great man” focus. Because the people themselves adopted a “great man” focus. People reacted for and against Lincoln himself, not just his politics. Lincoln was synonymous with his policies. Therefore to determine the constitutional philosophy of the people and what they were reacting to, it is necessary to analyze Lincoln the man and politician. An understanding of Lincoln’s constitutional philosophy and his own policies in the Border States, enables a greater understanding of what the people in the North, South and Border States were protesting or cheering and what they viewed as significant.

Beyond Lincoln’s specific actions and his Constitutional philosophy, this thesis argues that citizens of the North, South and Border States created their own constitutional philosophy and used their personal views of the Constitution to evaluate Lincoln’s record on civil liberties. Both Lincoln’s contemporaries and subsequent historians have written and
analyzed his record on civil liberties. This work will focus that debate in the setting of the Border States of Maryland and Missouri, and analyze how the citizens of those states and how Lincoln himself viewed their civil liberties during the Civil War. Maryland and Missouri experienced similar chronologies in their civil liberties. The Lincoln administration suspended *habeas corpus* and arrested civilians to keep peace in both states. Also Maryland provides the first instance in which the Lincoln administration suspended *habeas corpus* and Missouri became the first state to experience military trial of civilians; therefore these states are analyzed to discover the immediate reactions of citizens to these civil liberties issues.

Maryland and Missouri provide a narrow focus on the specific civil liberties of civilians during the Civil War. On its face “civil liberties” is a broad and encompassing term. This thesis focuses on these two states in order to dissect the meaning of civil liberties in relationship to the suspension of *habeas corpus* and the military arrest and trial of civilians. These two states demonstrate a compelling conflict between pro-Union and pro-Confederate groups. Regardless of the opposing sides in Maryland and Missouri both states decided to stay in the Union. It is this rivalry between opposing forces that coexisted in these Border States that caused Lincoln to intervene in the first place and it was this rivalry that provides the variety of voices discussing the meaning of dissent and the limits of liberty under the Constitution in such a turbulent time.

The Border State of Kentucky is excluded from this thesis for several reasons. First Kentucky provides a separate chronology because the authorities of the state initially attempted to stay neutral. Evidence also indicates that the discussion in Kentucky focused
more narrowly on emancipation and not on civil liberties of civilians. Furthermore, Lincoln did not officially suspend *habeas corpus* in Kentucky until July 5, 1864.\(^\text{18}\) By 1864 suspension of the writ became accepted Union government policy and objections had already been voiced much earlier in the War. Additionally, since Lincoln did not suspend *habeas corpus* in Kentucky until so late it is possible that the conflict between pro-Union and pro-Confederacy forces in that state were not as threatening to the Union as the clashes in the other Border States. Kentucky is thus excluded from this study because Lincoln’s approach to civil liberties differs from that of Maryland and Missouri.

This thesis begins with an analysis of Lincoln’s personal constitutional philosophy. Lincoln’s philosophy guided his decision making throughout his political career and it allowed him to make the decisions on civil liberties that people in the North, South, and Border States reacted to during the War. Following an analysis of Lincoln’s constitutionalism, his actions in Maryland and Missouri are described and assessed. Once Lincoln’s actions are evaluated the last few chapters delve into the regional discussion of Lincoln’s actions. These chapters focus on the reaction of Northern, Southern and Border State citizens to the suspension of *habeas corpus* and the military arrest and trial of civilians. This thesis argues that Lincoln’s policies forced the citizens of the North, South and the Border States to debate the nature of government, the role of executive power and the loyalty of citizens during wartime. Additionally this thesis analyzes the ongoing tension between the ends and the means: was Lincoln justified because he preserved the Union? Does the

\(^{18}\) Neely, *Fate of Liberty*, 91.
Constitution allow flexibility in national emergencies that restrict liberty during the emergency but ultimately allow for the expansion of liberty after the difficulty has passed?
Chapter 1—“Firm, United Let us Be, Rallying Round Our Liberty”: Lincoln’s constitutionalism and Border States Policies

A president’s constitutional philosophy does not garner much attention if it is not tested. This is perhaps why some of the more obscure commanders-in-chief have been able to waltz through history with barely a mention of their treatment of the Constitution. Not so with the sixteenth president. Abraham Lincoln’s philosophy was tested and tried in one of the nation’s greatest trials, the Civil War, and his relationship to the Constitution became a matter of continued historical debate. Lincoln is a national icon, a larger than life image who looms over American history as “The Great Emancipator” and the president who preserved the Union. In order to save the Union, Lincoln took extraordinary steps, particularly in the arena of civil liberties. Lincoln utilized his constitutional philosophy to face political and national challenges throughout his career and particularly during his presidency; he specifically used his constitutional philosophy to guide his decisions on civil liberties. This chapter analyzes Lincoln’s constitutional philosophy from his earliest days as a politician through the Civil War.

Lincoln’s constitutional philosophy guided his early political life and his critical decisions about civil liberties during the Civil War. Lincoln believed in a broad interpretation of powers granted by the Constitution. Lincoln’s belief manifested itself in his broad readings of the Constitution and in his understanding that the Constitution was...
sufficient to deal with the practical and political concerns that the nation faced. Additionally, he returned to the ideals of the founding to link the Constitution to tenets of freedom, equality and liberty.

Broad powers in the Constitution provided a cornerstone of Lincoln’s political thought. This can clearly be seen during the Civil War, but evidence exists from earlier in his political career. Before Lincoln was a Republican, he was a member of the Whig party and Whigs believed in a broad grant of government powers, including internal improvements for transportation. During the Internal Improvement Crisis in 1848, Lincoln opposed the Democrats who in their party platform declared “the constitution does not confer upon the general government the power to commerce, and carry on a general system of internal improvements.” Lincoln’s response to the matter, in speaking about the crisis in the House of Representatives, was that “no man, who is clear on the questions of expediency, needs to feel his conscience much pricked upon this.” He argued that it was not an unconstitutional reach of federal power for the internal improvements to go forward. He did not believe in the necessity of an amendment to grant the power of the government to accomplish these improvements because the power was already granted in the document. Lincoln referred to Kent’s 1844 Edition *Commentaries on American Law* to justify improvements to transportation.

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extrapolated the clauses in the Constitution which allowed for Congress to raise taxes and regulate commerce to apply to additional improvements for the general good of the nation. Thus by reading the enumerated powers of the Constitution to Congress found in Article I Section 8, as all encompassing, the Illinois lawyer cemented his belief that the words of the Constitution contained an innate flexibility. Lincoln established that he was not a “strict constructionist” in the purest sense. If a matter was necessary for the betterment of the country and appropriate justification could be found in the Constitution, then Lincoln agreed with the policy. This is critical to understanding Lincoln’s later moves during the Civil War.

Lincoln extended this argument of broad powers in the Constitution as President when he acted to suspend certain civil liberties. Lincoln’s actions, controversial and still debated, were tied to his brand of constitutionalism. When he suspended the writ of *habeas corpus*, he went directly to the text of the Constitution to justify his actions. Lincoln recognized the unusual circumstances under which he operated as President and initially did not want to suspend *habeas corpus* in Maryland, the first state in which he suspended the writ. In a letter to General Scott, who urged the President to arrest all Maryland Legislators considering secession in April 1861, Lincoln refused to arrest the legislators and expressed concern regarding the writ of *habeas corpus*:

I therefore conclude that it is only left to the commanding General to watch, and await their action, which if it shall be to arm their people against the United States, he is to adopt the most prompt, and efficient means to

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counteract, even, if necessary, to the bombardment of their cities- and in the extremest necessity, the suspension of the writ of *habeas corpus*.\(^{24}\)

The commander-in-chief believed suspending *habeas corpus* should be taken only in the “extremest necessity.” The suspension of the “great writ” Lincoln deemed equivalent to bombing cities. When Lincoln finally suspended the writ in Maryland, to allow federal troops to proceed safely to Washington, D.C. without the threat of violence, he used a belief in a broad grant of power under the Constitution to justify his actions. In his speech to Congress in July 1861, the President detailed why he suspended *habeas corpus*.

> 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. Now it is insisted that Congress, and not the Executive, is vested with this power. But the Constitution itself, is silent as to which, or who, is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot 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.\(^{25}\)

Lincoln directly cited the text of the Constitution and the *habeas corpus* clause and surmised that it was his role as the executive to put down the rebellion. This justification of the suspension of *habeas corpus* followed Lincoln’s lengthy description on the execution of all the laws of the land. In this same message to Congress, Lincoln queried “To state the question more directly, are all the laws, but one, to go unexecuted, and the government itself

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\(^{24}\) Neely, *The Fate of Liberty*, 6-7.
go to pieces, lest that one be violated?" Lincoln pointedly addressed the issue in this question by rationalizing that if he only preserved *habeas corpus* the very foundation of that writ and source of its power—the Union—might be destroyed. The President believed in an expansive grant of powers under the Constitution that allowed him to preserve the Union. In July 1863, Lincoln explained his views on the Constitution during the War: “the constitution is different, *in its application* in cases of rebellion or invasion, involving the public security, from what it is in time of profound peace and public security.” Lincoln thus justified suspending the writ of habeas corpus or instituting martial law or allowing citizens to stand trial in military courts because he believed the War gave him power under the Constitution that he would not otherwise have. In a letter written in 1864, Lincoln explained: “measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the constitution, through the preservation of the nation.” The broad grant of power served a higher purpose: preserving the Union and upholding the Constitution.

Lincoln’s application of the text of the Constitution and his analysis of legal commentaries, such as Kent’s, highlighted his respect for the Constitution itself. If Lincoln had rejected the Constitution, or merely wrapped himself in it without referencing any of the document’s specific language to argue his case, then he could be criticized for devaluing the Constitution and being a rogue leader. However, although his application of the broad use of power range from minor, in the case of internal improvements, to major, such as suspending

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*habeas corpus*, Lincoln justified himself by the Constitution and rejected extra constitutional arguments.

Lincoln’s constitutionalism embraced the idea that the Constitution adequately provided the means to solve practical and political concerns. Abraham Lincoln, the politician, always balanced political concerns and weighed political options in his career. This idea that the law and the Constitution could be used to address practical concerns asserted itself early in Lincoln’s political life. In one of his earliest public speeches, delivered to the Young Men’s Lyceum of Springfield Illinois in 1838, a twenty-eight-year-old Lincoln declared his views on the Constitution and the rule of law.

... As the patriots of seventy-six did to the support of the Declaration of Independence, so to the support of the Constitution and Laws, let every American pledge his life, his property, and his sacred honor; ... Let reverence for the laws be breathed by every American mother, to the lisping babe, that prattles on her lap—let it be taught in schools. And, in short, let it become the *political religion* of the nation.  

Lincoln gave this speech in response to an incident of mob violence in St. Louis, in which a free black man had been killed. The address went on to urge “a reverence for the constitution and laws” against the wild, unreasoned passions of mob rule. Lincoln’s statement underscored his respect for the Constitution as well as the practical nature of the document. The young Illinois lawyer stated his view that the law and the Constitution could be used to address the problem of mob violence. A political concern, that of mob rule could be practically dealt with via the proper application of the Constitution and the law.

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Lincoln rejected policies he considered unconstitutional. Lincoln demonstrated his opposition to policies that violated the Constitution in his objections to the Mexican War. Lincoln believed the war to be both “unconstitutional and unnecessary.” “The war was unnecessary ‘inasmuch as Mexico was in no way molesting, or menacing the U.S.’ and unconstitutional ‘because the power of levying war is vested in Congress, and not in the President.’”

To start the Mexican War, President Polk orchestrated a coordinated action between American troops and naval ships to invade and surround territory claimed by Mexico in 1845. When Mexico refused to sell what is present-day California, New Mexico and Arizona to the United States, Polk sought and received a declaration of War by Congress, after a fight between Mexican and American troops in a disputed territory resulted in the death of U.S. soldiers. Polk pushed the boundaries of his role as commander-in-chief and disregarded congressional war power.

Polk’s actions in going to war violated his constitutional powers. In his analysis of Lincoln’s constitutionalism, Herman Belz describes Lincoln’s attitude toward the Mexican war by stating: “Lincoln said that to allow the President to invade a neighboring nation in order to repel invasion is to allow him to make war at pleasure, in contradiction of the constitutional provision giving the power to declare war to Congress.”

Lincoln’s chief objection to the Mexican War was that President Polk went outside the framework of the Constitution to justify the war. The lawyer from Illinois preferred that the President respect the powers established in the Constitution and governed within that framework. This may seem to contradict Lincoln’s later actions during the Civil

31 Neely, *The Fate of Liberty*, 213.
War, when it is argued by Democratic detractors, Confederate citizens and some modern day historians that he overstepped his Constitutional authority as President. When put in the framework of the practical politician, Lincoln’s objections make more sense. Lincoln never sought to use the Constitution to run rough shod over the American democratic system or to turn himself into a permanent dictator. Lincoln’s chief aim throughout the War was the preservation of the Union and he believed a broad interpretation of executive powers allowed him to do that. Lincoln also believed that the Constitution could be used to solve problems facing America. He felt that Polk simply abused power and created a problem where one had not existed. No matter how broadly one read the Constitution, Lincoln could not find justification for a War against a power that had not harmed the United States.

To Lincoln, the circumstances of the Civil War differed from the Mexican War significantly. Polk’s orchestration of a conflict with another nation was dissimilar to an armed rebellion in which half of the country attempted to breakaway and form a separate nation and Lincoln dealt with the situations differently. Lincoln used a similar line of reasoning in objecting to John Brown’s raid on Harper’s Ferry. “We have a means provided for the expression of our belief in regard to Slavery- it is through the ballot box- the peaceful method provided by the Constitution.”34 The citizens of the United States were provided the appropriate means to solve the contentious issue of slavery in the Constitution. The people ought to vote to transform the nation and solve the contentious issues of the times. Lincoln emphasized respect for the Constitutional process and the rule of law to make changes. The

law and the Constitution, read and interpreted broadly, could be used to find solutions to the most pressing needs of the nation.

Lincoln’s consistently objected to policies that could not properly be justified by the Constitution. His disapproval of the Supreme Court’s decision in the case of *Dred Scott v. Sandford* illustrated Lincoln’s dedication to the language of the Constitution to dictate governmental actions and decisions. Lincoln’s chief objection to the *Dred Scott* decision issued by the United States Supreme Court in 1857: the inappropriate use of the Constitution to solve a political problem. In the decision, Chief Justice Taney reasoned that the “right of property in a slave was ‘distinctly and expressly affirmed in the Constitution.’”35 Lincoln responded to this argument by stating: “I believe the Supreme Court and the advocates of that decision may search in vain for the place in the Constitution where the right of property in a slave is distinctly and expressly affirmed.”36 Lincoln placed the priority upon the actual text of the document and the powers expressed in the Constitution. The basis for Chief Justice Taney’s decision was not to be found in the Constitution; therefore, Lincoln found it lacking. As a Republican opposed to the expansion of slavery, Lincoln would have objected to the *Dred Scott* decision based on his party’s stance; nevertheless he still appealed to Constitutional principles to argue against the decision.

Many other Republicans agreed with Lincoln’s criticism of the *Dred Scott* decision. In this particular case, Lincoln is a prime example of Republican constitutional thought. Republicans looked to the words of the Constitution to settle the issue of slavery. Not only had Chief Justice Taney inserted meaning into the Constitution, according to Republicans he

twisted the meaning of the words that were there to define citizenship. While Taney rejected that state and national citizenship were equivalent, in a dissenting opinion Benjamin R. Curtis disagreed and believed that the privileges and immunities clause, “citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states,” plainly meant that a citizen of a state also held national citizenship. Republicans embraced Curtis’ dissent as a correct interpretation of the Constitution and placed the fault for the corrupt decision at the feet of the Court and not the Constitution. Lincoln’s view that the Constitution sufficiently spoke to the problems facing the nation and that its words should be applied to correctly solve even controversial issues gels with the views of other Republicans of his era.

In his political career, Lincoln consistently chose to practically apply the law to a thorny political situation rather than forge an extra constitutional solution to the problem. Following his 1860 election as President, Lincoln needed to reach out to the Southern states, who viewed him as a threat to their rights as slaveholders. Lincoln received only 40 percent of the popular vote in the general election, and white Southerners regarded him as a President who would attempt to abolish slavery. Lincoln knew of the political turmoil in the country at the time of his election and upon his inauguration seized an opportunity to once again put the Constitution to practical use. In his first inaugural address, Lincoln sought to reassure the Southern states that he would enforce all laws, including the ones to protect slavery. “I therefore consider that in view of the Constitution and the laws the Union is unbroken, and to the extent of my ability, I shall take care, as the Constitution itself expressly enjoin...”

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37 Vorenberg, Final Freedom, 16.
38 Vorenberg, Final Freedom, 16.
that the laws of the Union be faithfully executed in all the States.”  

In addressing the Southern states specifically he stated “I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.”  

Lincoln emphasized to the citizens of the Southern states that his opposition to slavery would not override his adherence to the Constitution. He went on to put the full weight of the Constitution behind his assurances to the American people: “I add too, that all the protection which, consistently with the Constitution and the laws, can be given, will be cheerfully given to all the States when lawfully demanded, for whatever cause- as cheerfully to one section as to another.”  

The Constitution was the law of the land and Lincoln would uphold that law as President. The most serious political threat the new President faced was the threat of secession. Lincoln, the politician, understood his role as the President to uphold the Constitution, but also believed the Constitution could be used to solve political problems and so he attempted to woo the South to stay in the Union by giving them assurances from the Constitution. Despite the failure of Lincoln’s words to keep the South in the Union, Lincoln nevertheless did not operate out of political expediency at the beginning of his Presidency, and he rejected an opportunity to use his position as President to advance an unconstitutional action, the abolition of slavery, that appealed to his personal political beliefs.

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The Emancipation Proclamation is the chief example of Lincoln’s use of the Constitution to deal with a political concern. Slavery had been an issue in American politics since its founding and was the chief cause of the Civil War. Lincoln himself hesitated about how to deal with the matter and proposed many policies, including compensation for slaveholders and state by state emancipation actions to end slavery.\textsuperscript{42} By 1862 it was clear that these proposals were not going to end slavery and that Southern slaveholding states would not volitionally free their slaves. Lincoln faced a political and moral dilemma. He turned to the Constitution and the broad war powers he found there to practically solve this dilemma.

Now therefore I . . . by virtue of the power in me vested as Commander-in-Chief of the Army and Navy . . . in time of actual armed rebellion . . ., and as a fit and necessary war measure for suppressing said rebellion, do . . . order and designate . . . the following [as rebellious districts], to wit:

Arkansas, Texas, Louisiana [except certain designated parishes], Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia [except ‘West Virginia’ and certain other designated portions].

And . . . I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

[The President then enjoins orderly conduct upon freedmen and offers to receive them into the armed service for garrison and naval duty.]

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.\textsuperscript{43}

\textsuperscript{42} Randall, Constitutional Problems Under Lincoln, 377.
\textsuperscript{43} Randall, Constitutional Problems Under Lincoln, 372-373.
Lincoln issued The Emancipation Proclamation under his power as commander-in-chief and he justified his actions as a military necessity. The issue of slavery was a political concern and Lincoln found a way, under the Constitution, to provide a degree of solvency to the issue during wartime. Lincoln placed the Constitutional ramifications of the Emancipation Proclamation in the forefront, when in the preliminary draft of the Proclamation he stated that the purpose of the act was to “[restore] the constitutional relation between the United States, and each of the states, and the people thereof.”44 This preliminary Emancipation reveals Lincoln’s thought process behind the Proclamation. He believed that the constitutional relationship- the bond that connected the States to the Union, and individual citizens to the Union- was damaged, and a legal and constitutional remedy could be used to fix it. The President realized that the Emancipation Proclamation did not provide a long term solution to slavery: the status of freed slaves following the war was in jeopardy as was the status of slaves in the Border States. After the War, slavery found its permanent resolution through the Thirteenth Amendment, which also was a Constitutional remedy to right the broken relationship between people, States and the Union. The Emancipation Proclamation serves as a prime example of Lincoln using the Constitution to solve a political concern.

Democrats and some Republicans debated the Constitutionality of the Emancipation Proclamation. Democrats believed Lincoln disregarded the Constitution for his own purposes. Democrats appealed to racial prejudices and prophesied that freed slaves would “overrun” the citizens of the North.45 Lincoln and Republicans countered this position by acknowledging the possibility of colonization to remove freed slaves from American shores.

45 Vorenberg, Final Freedom, 28.
Some Republicans calmed fears of any major change in the status quo by stating that the Proclamation was simply a war time measure, which would be null and void once the war ended.\footnote{Vorenberg, \textit{Final Freedom}, 31.}

The Civil war provided Republicans with appropriate Constitutional grounds to justify actions such as the Emancipation Proclamation. Because the Constitution granted war powers they felt that that were acting within the bounds of the document. Lincoln carefully utilized the war powers granted to him as commander-in-chief to issue the Emancipation Proclamation thereby staying within Constitutional limits, but also within mainstream Republican thought at the time.

Lincoln advanced the ideals of the founding in his constitutional philosophy. References to freedom, equality and union mark Lincoln’s speeches and writings. The Declaration of Independence served as Lincoln’s main vehicle for appealing to America’s highest purposes. It is important to note the frequency with which Lincoln referred to the Declaration and the way in which he elevated it in the national rhetoric. In the contentious years preceding the Civil War, Lincoln appealed to the ideals found in the Declaration of Independence to argue against the expansion of slavery. \textquote{The theory of our government is Universal freedom. ‘All men are created free and equal,’ says the Declaration of Independence.\textquote{}}\footnote{Lincoln, \textit{“Speech at Springfield, Illinois,”} in \textit{The Collected Works, Vol.2}, 246.} Lincoln made this statement in response to the Kansas-Nebraska Act of 1854, which opened western territories to slavery and Lincoln used the rhetoric of the Declaration of Independence to protest against this act. He found inspiration in the Declaration and declared in 1854 that Thomas Jefferson, as the author of the Declaration,
“the most distinguished politician of our history.”48 Lincoln utilized words and heroes from the founding to argue his positions and focus attention on important ideals.

In speeches, Lincoln made linkages between the Declaration and the Constitution. In a speech in New Jersey in February 1861 Lincoln connected both documents together: “I am exceedingly anxious that this Union, the Constitution, and the liberties of the people shall be perpetuated in accordance with the original idea for which that struggle was made.”49 The Revolutionary War, the Declaration of Independence, the Constitution, and the Union were a continuous chain and must be maintained. This was a great chain that the Illinois statesman welded together from the Revolution of the Founders to the Union of the Civil War. Lincoln also believed the Union needed to be preserved because the Declaration gave hope to all: “but something in that Declaration giving liberty, not alone to the people of the country, but hope to the world for all future time.”50

The purpose of the Revolution, stated in the Declaration, later became embodied in the Constitution and the Union. Since equality and liberty are so plainly stated in the Declaration, it provided a solid foundation from which Lincoln could argue against slavery. He used the document from 1776 to bolster his objections against Nebraska and to strengthen his own Republican Party platform.51 Although Lincoln did not elevate the Declaration above the Constitution, he regarded the elements contained in the Declaration of Independence as foundational to the Union. Historian Herman Belz states it thusly: “The inference can be drawn that Lincoln viewed the Declaration of Independence as the nation’s

51 Neely, The Fate of Liberty, 216.
primary constitutive document, and as the source of the substantive principles of the Constitution.52 Therefore, Lincoln felt it necessary to uphold liberty and equality, key elements expressed in the Declaration, as part of his Constitutional principles. At a time when some abolitionists viewed the Constitution as inherently pro-slavery, it became important to have a document, and indeed a law with more noble ideals to appeal to in order to justify Emancipation. It is possible that Lincoln also held the Declaration of Independence in such high esteem because of his desire to preserve the Union that the Declaration had helped to found, or at least had helped to “declare.” As a founding document, untainted by the issue of slavery, harboring key ideals to the Union, Lincoln could easily appeal to it and hearken back to the founding of the nation and the most noble ideas that the Union should strive for. Lincoln used notions of freedom, liberty and equality in concert with his broad view of powers to interpret the Constitution.

Abraham Lincoln’s constitutional philosophy guided his Presidency. He believed in a broad interpretation of powers granted by the Constitution and that problems, political and practical, could be solved via that broad grant of powers. Lincoln also appealed to the noblest ideals found in the Declaration of Independence and linked it with the Constitution to achieve his political goals. As a President, Lincoln faced complex problems, perhaps the most complex problems of any president. The sixteenth president used his Constitutional philosophy to justify his policy regarding civil liberties and also his Emancipation Proclamation. This philosophy also preserved the Union that Lincoln loved. Lincoln once declared that “I claim not to have controlled events, but confess plainly that events have

52 Belz, Abraham Lincoln, Constitutionalism and Equal Rights in the Civil War Era, 87.
controlled me." Lincoln did not choose the particular events that shaped his presidency, but his actions in Maryland and Missouri indicate that he did not stand back and allow the War to completely control him. Lincoln utilized his constitutional philosophy to shape the events and the nation that he governed.

Chapter 2- Lincoln’s Policies in Maryland and Missouri

An analysis of Lincoln’s actions in Maryland and Missouri reveals how his brand of constitutionalism kept the Border States in the Union. Lincoln interpreted the Constitution broadly and used an expanded view of executive power to deal with the rebellion of the Southern states. Lincoln’s belief in the Constitution’s sufficiency, broad powers and even its power as a document to protect and preserve the Union and the freedom of the Union revealed itself in his actions against civil liberties. Lincoln’s treatment of the writ of habeas corpus and the arrests of civilians in Maryland and Missouri are a case study of Lincoln’s overall Constitutional philosophy.

During the Civil War, Maryland became one of the battlegrounds for civil liberties. As a Border State that also surrounded the capitol of Washington D.C., Maryland was a strategic center in the fight for the Union. As W.M. Brewer notes in his article “Lincoln and the Border States”: “Here geography alone warranted extreme precautions which were somewhat different though not altogether less significant than in the case of each of the other four Border States.”

Because of Maryland’s strategic placement and Lincoln’s measured response, the policies of the administration in Maryland toward civil liberties are largely viewed as a success. If Lincoln had failed to act decisively in the case of Maryland, or if, as was a real possibility in the beginning of the War, that Maryland had seceded, the capitol of the United States would have been surrounded by slaveholding Confederate territory. Losing the ability to travel in or out of D.C. without having to cross enemy lines early in the War would have been a significant strategic concession, not to mention a defeat to the morale.

of the Union. Lincoln’s swift decisions protected the capitol and ensured the safety of Washington.

Lincoln suspended *habeas corpus* first in Maryland and justified this action because of the upheaval in the state. Lincoln’s deliberate actions regarding *habeas corpus* demonstrate his belief that the Constitution granted broad powers. On April 19, 1861, soldiers attempting to travel from Massachusetts through Baltimore to protect the nation’s capitol were prevented from doing so by a mob. It was at this point President Lincoln inquired about suspending civil liberties in the state in order to protect Washington, D.C. The initial questions regarded not the suspension of *habeas corpus* but whether or not martial law ought to be enforced. The legal opinions at the time came to one clear conclusion: the President could enforce military law, which was applicable only to members of the armed forces, but the questions swirling around martial law remained murky. Meanwhile, the situation in Maryland grew increasingly tense, and on April 19, 1861, key railroad bridges in Baltimore were burned by locals who were afraid of revenge-seeking Union troops. It was not until a special session of the Maryland legislature was called by Governor Thomas Hicks on April 26 that the first mention of the writ of *habeas corpus* was made. Union Generals, including General-in-Chief Winfield Scott believed the army should arrest any Maryland legislators who were voicing support for secession at the April 26 session. Lincoln responded with the following:

The Maryland Legislature assembles to-morrow . . . and, not improbably, will take action to arm the people of that State against the United States. The

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55 Neely, *The Fate of Liberty*, 4.
56 Neely, *The Fate of Liberty*, 5.
question has been submitted to . . . me, whether it would not be justifiable . . . for you . . . to arrest, or disperse the members of that body. I think it would not be justifiable; nor efficient for the desired object.

First, they have a clearly legal right to assemble; and we can not know in advance, that their action will not be lawful, and peaceful. And if we wait until they shall have acted, their arrest, or dispersion, will not lessen the effect of their action.

Secondly, we can not permanently prevent their action. If we arrest them, we can not long hold them as prisoners; and when liberated, they will immediately re-assemble, and take their action. And precisely the same if we simply disperse them. They will immediately re-assemble in some other place.

I therefore conclude that it is only left to the commanding General to watch, and await their action, which if it shall be to arm their people against the United States, he is to adopt the most prompt, and efficient means to counteract, even, if necessary, to the bombardment of their cities- and in the extremest necessity, the suspension of the writ of habeas corpus. 57

Lincoln’s letter indicated that the suspension of habeas corpus was considered an “extremest necessity.” The gravity of the matter caused Lincoln to weigh his actions carefully and initially he found the suspension not justifiable, presumably Lincoln could not find a Constitutional reason at this point to use his powers to arrest the Maryland legislators. This letter also displayed Lincoln’s measured response to the events in Maryland. The President did not wish to rush in and arrest the Maryland legislators; he reasoned that would be inappropriate and would not accomplish anything. Lincoln instead adopted a watch and wait attitude and then turned to what was a justifiable solution: the suspension of habeas corpus. In lieu of wholesale arrest of political enemies, the use of the suspension of habeas corpus, which was spelled out in the Constitution was deemed an appropriate response to the gathering crisis. The Maryland legislators voted against secession during the April 26th

57 Neely, The Fate of Liberty, 6-7.
session and Lincoln’s directive proved to be correct. However, it was not clear that the
capitol was protected and that troops would freely be able to come into Washington. General
Scott still believed the capitol to be in considerable danger and warned that it could be
attacked, even after a small group of 1600 troops arrived on April 25. Based on Scott’s
concerns Lincoln issued the suspension of the writ of habeas corpus for the first time on
April 27:

You are engaged in repressing an insurrection against the laws of the
United States. If at any point on or in the vicinity of the military line, which is
now being used between the City of Philadelphia and the City of Washington,
via Perryville, Annapolis City and Annapolis Junction, you find resistance
which renders it necessary to suspend the writ of habeas corpus for the public
safety, you, personally or through an officer in command at the point where
the resistance occurs, are authorized to suspend the writ.58

The first time the writ of habeas corpus was suspended it was done so in response to a threat
on the capitol of the United States. It is clear that this suspension was done in order to allow
federal troops to proceed without impediment to Washington D.C. and not as a political
measure because it was not issued against the Maryland legislators. The suspension of the
writ was also done initially in a very limited fashion, as the President’s order indicates, and
with the clear purpose of protecting public safety. The President read into the Constitution a
broad grant of powers and believed that in a time of rebellion he had the right to suspend
habeas corpus.

Lincoln acted in concert with his personal constitutional philosophy in the suspension
of habeas corpus. Lincoln believed that the Constitution provided the means to deal with

58 Neely, The Fate of Liberty, 8.
problems, and he turned to it during this national crisis. Furthermore, the *habeas corpus* clause of the Constitution, interpreted broadly, allowed for a suspension of the great writ in times of rebellion. Lincoln judged there to be a rebellion and therefore acted to suspend the writ. All dimensions of his constitutionalism were in play in the decision to suspend *habeas corpus* in Maryland. Lincoln’s own personal view of liberty and Union played into this decision as well. The Union, as set forth in the Constitution, had to be preserved in order for the ideals of liberty and freedom to survive. Secession threatened the Union and its inherent liberty. Thus, Lincoln defended his actions with his own brand of constitutionalism.

Lincoln’s opponents did not share his belief that he acted rightly and constitutionally in the suspension of *habeas corpus*. Arising out of the suspension comes one of the most famous cases of the Civil War, *Ex Parte Merryman*. John Merryman was arrested in Maryland on May 25, 1861, for his pro-Confederacy actions. Merryman actively recruited men to serve in the Confederate Army.\(^59\) Officially, Merryman was charged with treason. The treason charge would not stand up in court, therefore, Merryman was held under the suspension of *habeas corpus*. The Constitution specifically defines treason and its penalty: execution. Due to the specific definition of treason and the general unwillingness of the Lincoln administration to potentially execute thousands involved in rebellious activities, the suspension of *habeas corpus*, was a more workable solution. Under the suspension, citizens could be held without charge and, in the view of the Union government, would be prevented from causing further trouble as they waged the war. The counsel for John Merryman

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immediately sought a writ of *habeas corpus*, and went directly to Chief Justice Taney with the petition for the writ because the local military commander had ignored a similar writ issued by District Judge William F. Giles.\(^6^0\) The Chief Justice was sitting on the Circuit Court in Baltimore at this time and from there issued his opinion on the case. Chief Justice Taney disagreed that the President had the power to suspend the writ of *habeas corpus*, regardless of the circumstances, and stated his legal disagreement strongly in his opinion.\(^6^1\) Taney’s main argument was that the power to suspend *habeas corpus* was listed among the legislative powers in the Constitution.\(^6^2\) Taney’s opinion analyzed Merryman’s case from many legal angles, but did not address the fact that the nation was involved in a Civil War.\(^6^3\) Taney failed to make a distinction between the powers of the President during peace time and war time and did not note the strife in Maryland.\(^6^4\) Taney did not discuss the fact that an armed insurrection against the government of the United States was occurring that might warrant this action. Not only did the Chief Justice write an opinion against the President’s suspension of *habeas corpus*, his actions following his decision indicated that he wanted a showdown between the executive and judicial branches of government on this issue. “Before an amazed and crowded courtroom Taney declared that he would write out his opinion fully, have it delivered to the president, and call on him ‘to perform his constitutional duty to enforce the laws. In other words, to enforce the process of this Court’.”\(^6^5\) Once the opinion

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\(^6^2\) Randall, *Constitutional Problems Under Lincoln*, 120.

\(^6^3\) Halbert, “The Suspension of the Writ of Habeas Corpus By Lincoln,” 100.


was completed, Taney made sure multiple copies were distributed widely and the decision was greeted with criticism for both Taney and Lincoln, along party lines. Supporters of Lincoln believed he had appropriately used power to curtail the spread of secession. Detractors in the North upheld Taney as a hero and an example of true strict constructionist and opponents of Lincoln in the South believed Taney handed the entire region an important moral victory. 66

Disregarding Taney’s posturing; Lincoln ignored the opinion and later justified his reasons for suspending the writ of *habeas corpus* in an emergency session of Congress in July of 1861. In the address to Congress, Lincoln admitted that “it was considered a duty . . . to suspend the privilege of the writ of *habeas corpus*” but that “this authority has been exercised but very sparingly.” 67 Lincoln never mentioned the *Merryman* case by name, but addressed the issues raised by the case in the rest of his speech:

The whole of the laws which were required to be faithfully executed, were being resisted, and failing of execution, in nearly one-third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear, that by the use of the means necessary to their execution, some single law, made in such extreme tenderness of the citizen’s liberty, that practically, it relieves more of the guilty, than of the innocent, should, to a very limited extent, be violated? To state the question more directly, are the laws, but one to go unexecuted, and the government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken, if the government should be overthrown, when it was believed that disregarding the single law would tend to preserve it? 68

68 Neely, *The Fate of Liberty*, 12.
The President went farther in the address proclaiming, “But it was not believed that this question was presented. It was not believed that any law was violated.” Lincoln asked what was more important: the preservation of government or the violation of one citizen’s liberties. He then answered that the preservation of the government was more important. As the President he had to execute all of the laws to the best of his ability and in the extreme circumstances of Civil War, the suspension of habeas corpus allowed him to best execute the bulk of the laws of the land in order to preserve the Union and so the action was justified. Lincoln believed the circumstances warranted the measures taken. In 1863, Congress passed the Habeas Corpus Act, which granted the President the power to suspend the writ of habeas corpus. Congress at the time felt that by passing the Habeas Corpus Act they were putting their stamp of approval on Lincoln’s earlier wartime measures.

In the case of Maryland, the President’s measured response successfully protected the capitol of the United States while restricting civil liberties on a limited basis.

The case of civil liberties in Missouri stands in sharp contrast to that of Maryland. Due to unique problems, such as guerrilla warfare, civil liberties suffered abuse from the very start of the conflict. Geography played a key role in Missouri’s fate. Due to its position in the west, Missouri was ignored by President Lincoln, who focused his early attention on the problems in Maryland and the battles in the east; as a result Missouri was largely under the control of generals who acted without supervision.

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70 Halbert, “The Suspension of the Writ of Habeas Corpus by President Lincoln,” 113.
71 Neely, *The Fate of Liberty*, 32.
One of the first problems to arise in Missouri was the imposition of martial law by generals. In the state, groups of Confederate guerrillas arrested and robbed Union soldiers and sympathizers.\textsuperscript{72} Due to this conflict, civil liberties began to break down. In August 1861, Ulysses S. Grant was in charge of troops at Jefferson City, Missouri and gave the following order to a captain under his command:

\textit{You will march your men through the country in an orderly manner. Allow no indiscriminate plundering-but everything taken must be by your direction, by persons detailed for the particular purpose, keeping an account of what taken, from whom, its value, etc. Arrests will not be made except for good reasons. A few leading and prominent secessionists may be carried along, however, as hostages, and released before arriving here. Property which you may know to have been used for the purpose of aiding the Rebel cause will be taken whether you require it or not. What you require for the subsistence of your men and horses must be furnished by people of secession sentiment, and accounted for as stated above. No receipts are to be given unless you find it necessary to get supplies from friends.\textsuperscript{73}}

Grant followed this order with an order on the next day for another officer to go to “E.B. McPherson, a true Union man, who will show you a copy of the ‘Booneville Patriot.’ Bring all the printing material, type &c with you. Arrest J.L. Stevens and bring him with you, and some copies of the paper he edits.”\textsuperscript{74} In these orders Grant used “hearsay evidence” to arrest civilians and charge them with disloyalty.\textsuperscript{75} Grant’s order jeopardized the freedom of the press and the freedom of citizens of Missouri who could be arrested if anyone questioned their loyalty to the Union. Property could also be confiscated from those with questionable allegiance to the United States. Civilian arrests, suppression of newspapers

\textsuperscript{72} Randall, \textit{Constitutional Problems Under Lincoln}, 171.
\textsuperscript{73} Neely, \textit{The Fate of Liberty}, 33.
\textsuperscript{74} Neely, \textit{The Fate of Liberty}, 33.
\textsuperscript{75} Neely, \textit{The Fate of Liberty}, 33.
and confiscation of property by the military paint a grim picture for what was to come in Missouri. Generals were enforcing the “law” as they saw fit and this led to an infringement of civil liberties for the citizens in Missouri.

In an attempt to gain control of the situation in Missouri and to respond to the controversy, Grant’s superior officer, General John C. Frémont, imposed martial law, first in St. Louis County on August 14 and then expanded martial law statewide on August 30, 1861. Frémont took martial law a step further to include emancipation of slaves in Missouri and proclaimed that confiscation of property and freedom to the slaves “of all persons in the State of Missouri who shall take up arms against the United States, or who shall be directly proven to have taken an active part with their enemies in the field,” It was this act of military emancipation and not the imposition of martial law or the tensions in the state that finally got the attention of Washington. Lincoln responded promptly to Frémont’s emancipation order, fearing the order would upset the tenuous political situation in the other Border States. Lincoln dismissed Frémont’s emancipation order in September 1861 when the Border State of Kentucky registered their disagreement over it to the President. Lincoln did not want slave holders in the Border States to have reason to bolt to the Confederacy; at this point in the War emancipation of slaves was not his chief goal and he needed to put an end to Frémont’s order. Lincoln’s response to Frémont makes no mention of the imposition of martial law or the suppression of the liberties of the citizens of the state; it only expresses

76 Neely, The Fate of Liberty, 34.
77 Randall, Constitutional Problems Under Lincoln, 354.
concern that the order would lead to increased conflict in the state. Additionally, Lincoln rejected extra-constitutional actions throughout his political career. The actions of Frémont fell outside of the Constitution: there was no clear indication that the Constitution allowed for a general to free enslaved persons at his own will. The war powers did not give that kind of power to a general. Lincoln’s practical decision, to void Frémont’s emancipation order in order to stop a larger conflict, also evidences Lincoln’s belief that the Constitution could and should be used to resolve difficulties.

Martial law was not the only problem in conflict-laden Missouri during the Civil War: Missouri was the site of the first trials of civilians by military commission and many military arrests of civilians. Prior to the Civil War military commissions were used to impose justice on U.S. troops in enemy territory, but during the Civil War these commissions were used to try civilians who were not granted all of the Constitutional rights they had in peacetime. The legality of these commissions was not decided by the Supreme Court until 1866, in the case *Ex parte Milligan*. Until that time, military commissions operated throughout the war, trying civilians for various crimes, including treason. Treason is defined by the Constitution: “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.” However, during the early years of the war in Missouri, the constitutional definition of treason was overlooked and some civilians were charged with

79 Neely, *The Fate of Liberty*, 34.
80 Neely, *The Fate of Liberty*, 41.
treason for having “an attitude of open rebellion.” Frequently law breakers, who had vandalized property would additionally be charged with treason. The military law provided a loophole to those who plead guilty to treason because then the guilty party could be considered a prisoner of war and avoid being executed. It was because of this loophole that treason cases stopped being tried by military commissions after 1862. Mark Neely argues that although military commissions were troublesome to civilian populations, justice was still the goal of these trials. Neely relates the following statistics:

In fifty-four trials by military commission that occurred before June 1862 but after the treason-charge difficulty had been cleared up, thirteen, or 24.1 percent, of the accused parties pleaded guilty to all or some of the charges or specifications. Leaving aside these cases involving admissions of guilt by the defendants, six of the remaining forty-one, or 14.6 percent, were acquitted. Of the remainder, sixteen had their sentences mitigated upon routine review by higher officers, and ten who were sentenced to be executed had their sentences approved.

These statistics indicate that justice was served by the military commissions. The question that remains was should these cases have even been tried in a military commission? Or should they have been handled by a civil court? In the decision for Ex Parte Milligan the Supreme Court decided that when civil courts were operational, military commissions should not be used to try civilians. There is the risk that when the civilian is taken out of realm of civil justice the rights granted to him in the Constitution will be taken away. That is the mystery behind the Missouri cases. It is not known if the cases were all done properly and if all Constitutional rights were granted to the civilians involved.

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82 Neely, The Fate of Liberty, 42.
83 Neely, The Fate of Liberty, 43.
Aside from the military commissions, Missouri also had a tremendous number of civilian arrests by the military. The available statistics are well documented by Mark Neely and he acknowledges that the records are difficult to trace due to incomplete and duplicate records. Conservatively though “[the records] for Gratiot Street prison for the period from April 1862 through October 1863 indicate that at least 2,014 different civilian prisoners entered, passed through or remained in that military prison in that nineteen-month period.”

To put these figures in perspective “Union authorities thus locked up as prisoners of state well over one out of every one hundred males in the state of Missouri in Gratiot Street prison, not to mention the thousands of Missourians held as prisoners of war.” This is a staggering number of prisoners and the records largely do not indicate the reasons why the prisoners were incarcerated. It is possible that many deserved to be in prison, but it is just as likely that some innocent civilians were locked up as well. Due to the upheaval in the state and the overall freedom of generals to attempt to control this contentious border state, civil liberties were not secure in Missouri.

A final indicator of the problems in Missouri was the issuance of General Order No.11 on August 25, 1863. In an attempt to curtail guerrilla warfare in the state, Brigadier General Thomas Ewing issued the infamous order, which “ordered the evacuation of four counties in Western Missouri.” This order came on the heels of Confederate guerilla warrior William Quantrill’s sack of Lawrence, Kansas. Following the destruction of Lawrence, Quantrill’s raiders retreated into western Missouri. Ewing believed that issuing an

84 Neely, The Fate of Liberty, 46.
85 Neely, The Fate of Liberty, 46.
86 Neely, The Fate of Liberty, 47.
evacuation order would prevent a retaliatory raid by the people of Kansas into the district he controlled in Missouri. Quantrill’s raid was only the catalyst for the evacuation, however, because Ewing contemplated evacuating Southern sympathizers in Western Missouri even before the event. “Order No.10, issued 18 August 1863, three days before the raid was similar in policy to order No. 11 . . .Ewing wrote Colonel C.W. Marsh on 3 August 1863, that he believed the only possible way to curtail guerrilla activities was to remove the guerrillas and their families. Ewing’s action was an expansion of Order No. 10 but much harsher.”

Order No. 11 created at least 20,000 refugees and allowed the civilians affected only 15 days to attempt to secure their livelihood before they were forcibly evacuated. Complicating the situation further, troops from Kansas were called on to enforce the order, which led to widespread looting and destruction of property. The troops from Kansas were motivated by vengeance for the sack of Lawrence and the ongoing border conflict between the two states; Order No.11 gave these troops an opportunity to exact revenge on the civilian population. It must be remembered that the people evacuated were United States citizens, not citizens of the Confederacy, and they were not threatening secession. Although the guerrilla warfare needed to be curtailed, other means might have been found to stop it, the least of which may have been to use troops from states other than Kansas to enforce the order. Furthermore, Order No. 11 has been documented to have been ineffective in stopping guerrilla warfare. The evidence suggests that the guerrillas simply moved into central

88 Mink, “General Orders, No.11: The Forced Evacuation of Civilians During the Civil War,” 132.
89 Mink, “General Orders, No.11: The Forced Evacuation of Civilians During the Civil War,” 132.
Missouri and continued their strategies.\textsuperscript{90} It appears then that civilians had their homes and lives destroyed for naught.

What was the response by the President to such an order? The President gave his approval:

Under your recent order, which I have approved, you will only arrest individuals, and suppress assemblies, or newspapers, when they may be working \textit{palpable} injury to the Military in your charge; and, in no other case will you interfere with the expression of opinion in any form, or allow it to be interfered with violently by others. In this, you have a discretion to exercise with great caution, calmness, and forbearance.\textsuperscript{91}

With the matters of removing the inhabitants of certain counties \textit{en masse}; and of removing certain individuals from time to time, who are supposed to be mischievous, I am not now interfering, but am leaving to your own discretion. . . But, in like manner, you will repress assumptions of unauthorized individuals to perform the same service; because under pretense of doing this, they become marauders and murderers.\textsuperscript{92}

President Lincoln approved the order, but recognized the potential for the military to become as destructive as the guerrilla warriors they were trying to flush out. In Lincoln’s commentary it is noted that the President chose not to interfere with what happened in Missouri. This policy of “non-interference” was the chief problem with civil liberties in Missouri. Generals acted without clear direction from Washington and Washington appeared only reactive. What is unfortunate is that more careful consideration of the problems in Missouri does not seem to have taken place. Even as late as 1865 the problems remained in that state and Lincoln was without a solution to the crisis. He wondered if peace would come

\textsuperscript{90} Mink, “General Orders, No.11: The Forced Evacuation of Civilians During the Civil War,” 136.
\textsuperscript{91} Neely, \textit{The Fate of Liberty}, 48.
\textsuperscript{92} Mink, “General Orders, No.11: The Forced Evacuation of Civilians During the Civil War,” 134.
as a result of telling “the people to go to their homes, and let one another alone, recognizing as a full right of protection for each.”  

Lincoln went so far as to call for gatherings: “Let neighborhood meetings be everywhere called and held, let all such meet and waiving all else pledge each to cease harassing others.” He hoped that at these meetings “old friendships will cross the memory; and honor and Christian Charity will come in to help.”

Lincoln appeared to be frustrated at the problems in the state of Missouri and did not have a concrete solution. Calling for neighborhood meetings and hoping for old friendships to heal wounds does not appear to be a strategic plan for solving problems in a crucial Border State.

Lincoln’s policy seemed poorly planned in Missouri. This stands in marked contrast to his policy in Maryland. In Maryland, Lincoln felt justified in his actions because he protected the capitol and there was a clear military strategy involved. On the other hand, Lincoln ignored Missouri which fell victim to multiple orders and policies by a variety of generals trying to contain a highly volatile situation. Inattention to the problems in Missouri led to the trampling of the civil liberties and no clear solution as to how to fix any of the ongoing problems, even near the end of the War. Lincoln’s own constitutional philosophy allowed him to act in Maryland and to defend his actions. Missouri proved to be a confused maze of conflicting orders from different generals. The problems posed by Missouri were thorny and Lincoln’s broad interpretation of powers caused him to approve measures that generals had imposed; however, the President did not give a strong defense of his policies in Missouri and citizens suffered as a result.

94 Dirck, *Lincoln and Davis: Imagining America, 1809-1865*, 228.
95 Neely, *The Fate of Liberty*, 49.
The President’s broad interpretation of the Constitution and his practical application of the law to political problems led to completely different results in the Border States of Maryland and Missouri. In Maryland the suspension of *habeas corpus* allowed federal troops to more easily come through Baltimore to protect the capitol of Washington, D.C. thereby securing the government of the United States. Bringing calm to that Border State was seen as a success and helped to end the threat of secession surrounding the nation’s capitol. Furthermore, Lincoln’s desire to preserve the Union and protect the ideas of the founding was seen in his actions in Maryland. In Maryland, suspension of *habeas corpus* was the constitutional solution that allowed for the preservation of the Union and it best tenets, including liberty. In Missouri, Lincoln’s inattention allowed Generals to implement policies which imposed harsh penalties on innocent civilians. While strategic and legal justification can be found for suspending *habeas corpus* when the capitol is in danger, making 20,000 citizen refugees for the sake of stopping guerrilla warfare was not justifiable. Missouri is a sad comment on Lincoln’s record of civil liberties during the Civil War.

As the citizens of Missouri and Maryland had their civil liberties infringed upon the entire nation entered into a conversation about the meaning of these actions. Lincoln justified his policies, but the perception of citizens in the South, Border States and the North varied based on their relationship to the Union and the President. The suspension of *habeas corpus* and arrest of civilians caused citizens to question the role of government, the nature of executive power and the loyalty of citizens during wartime. Additionally, citizens reacted to Lincoln’s application of his constitutional philosophy. Lincoln’s belief in broad powers
would be viewed by some as despotism, but by others as heroic. Lincoln’s confidence that the Constitution could solve the problems the Union faced was greeted with skepticism by critics or denied by those who felt he acted extra constitutionally. Finally Lincoln’s appeal to the ideals of the founding underscored many of his moves, but detractors accused him of destroying the very Union he preserved. This conversation between critics and supporters took place in Civil War newspapers, letters and diaries and revealed how citizens viewed their civil liberties and their Constitution.
Chapter 3- “The Despot’s Heel is On Thy Shore”: Southern Reaction to Civil Liberties Violations in the Border States

Lincoln’s policies in Maryland and Missouri provided a platform for Southern citizens to express their own constitutional philosophy. Confederates’ carefully articulated Constitutional philosophy centered on the protection of slaveholder rights. Once the War began, the Confederacy expanded their conversation of rights in order to contrast their newly formed government with the Union government. The Border States were critical strategically to both sides during the War. Confederates viewed Maryland, Missouri and other Border States as potential members of the Confederacy and used rights violations there to tempt the Border States to join the Confederacy and to convince themselves that secession had been the appropriate solution to their problems. In this setting, Southern state residents attacked Lincoln’s violations of the Constitution, expressed the rightness of their cause, and argued about the role of government. Confederates thus avoided a continued argument over the polarizing issue of slavery while it simultaneously prolonged a discussion about rights and freedom. As a way to further their discussion on the nature of the Constitution, Confederate citizens reacted to civil liberties violations in the Border States of Maryland and Missouri.

Southern citizens created a coherent Constitutional theory leading up to the Civil War. John C. Calhoun put forth the guiding Constitutional philosophy of many white Southerners in his South Carolina Exposition written in 1828. Calhoun argued that “the

This chapter title is a phrase taken from the state song of Maryland entitled Maryland, my Maryland. This song was written as a protest song against the actions of the Union in Maryland.
actual sovereign power, resides in the several States, who created it, in their separate and distinct political character.”

Calhoun stated that the federal government and the states were equally sovereign. Many Southern leaders and citizens embraced Calhoun’s ideology and believed that their civil liberties were violated any time the government attempted to limit slavery. Furthermore, secessionists expanded this philosophy during the secession crisis to mean that because the states were sovereign they could leave the Union freely, just as they had freely joined it, if the federal government violated their rights. In her book *The Counterrevolution of Slavery*, Manisha Sinha argues that Calhoun greatly expanded states rights theory: “states’ right was replaced by an unprecedented conception of state power that implied virtual independence.”

Secessionists discarded the concept of the federal system, which they replaced with equal sovereignty for states and the federal government. If states held as much power as the federal government, a state could dictate rights, particularly and most importantly to Southern planters and political class, the right to slavery. Any federal infringement upon slavery was a violation of the sovereignty of that state. The right to own slaves and to uphold the slavery system, even to expand it into the territories dominated the Southern discussion on civil liberties prior to the Civil War. With the election of Abraham Lincoln, many in the South believed that slavery was threatened and Lincoln would act to deny them their “rights.” Despite Lincoln’s promises to keep slavery intact, 11 states seceded from the Union and continued to view Lincoln and the Union government as a

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government that abandoned its promises and violated their rights, primarily their rights as slave owners. The civil liberties conflicts in Maryland and Missouri fit neatly into the discussion of Lincoln and the Union as deniers of civil liberties. Following Lincoln’s election the language of rights and civil liberties became a catch all phrase. Southerners painted Lincoln as a rights violator- even though initially they referred to slavery, once Lincoln acted on other civil liberties Southern citizens could evoke sympathy from non-slaveholders by focusing broadly on other rights that had been abused. This was the tactic employed in their reaction to the civil liberties violations in the Border States. Not only were the Border States viewed as potential members of the Confederacy, but the violations of civil liberties with the suspension of habeas corpus and the military arrest of civilians reinforced Southern philosophy that the Union had abandoned its Constitutional principles and focused on denying citizens their rights.

In disparaging Lincoln’s civil liberties policies, Southern citizens rejected Lincoln’s constitutional philosophy. As stated earlier, Lincoln believed in a broad interpretation of his powers. The Confederate writers promoted limited government power. According to the Confederate view, Lincoln stretched the Constitutional powers of the President beyond its limits. This again established the Confederacy as superior to the Union, as the Confederacy was better able to maintain an appropriate constitutional system. The Confederate Constitution was almost an identical copy to the U.S. Constitution. The powers and privileges of the Confederate President in the Confederate Constitution were stronger than those in the original U.S. Constitution. The difference was found in the execution of the
expressed powers. Confederate citizens were confident that their system limited the President and that Lincoln, as President of the Union, went far beyond the power granted to him by the U.S. Constitution. Confederate writers therefore labeled Lincoln a tyrant or a despot, because he believed in a broad interpretation of powers in the U.S. Constitution.

Confederate citizens rejected Lincoln’s linkage of the ideals of the founding with the Union. Lincoln called frequently on liberty, equality and Union to justify his actions and encourage those in the North. Confederate citizens dismissed Lincoln’s reading of the founding. George Fitzhugh, a Southern nationalist and expositor of states’ rights theory, stated after the war that the “Southern Revolution of 1861” was “a solemn protest against the doctrines of natural liberty, human equality and the social contracts taught by Locke and the American sages of 1776.”\(^98\) Lincoln believed the Union should be preserved and that its preservation meant the continuation of freedom and liberty. Confederate commentators thought he was wrong. In his “Cornerstone Speech” Alexander Stephens, the Vice-President of the Confederacy remarked on the many flaws in the U.S. Constitution. One problem Stephens noted was that the U.S. Constitution rested on “the assumption of the equality of the races.”\(^99\) Southerners dismissed Lincoln’s vision of the preserved Union, providing freedom and equality to all.

Confederate authors invoked the founding to emphasize that Lincoln failed the founder’s vision. In addition to comparing Lincoln to Napoleon, the article the “Tyranny of


Lincoln,” from *The Charleston Mercury* in 1863 also insinuated that if the founding fathers had known someone would “suspend this writ and play the tyrant by seizing innocent citizens in loyal States, they would never have formed the Union.”

Confederate writers often referred to the founding of the United States in order to justify their cause. Typically the founding provided evidence that the States controlled the nature of federalism and that the Confederacy could break away from the Union and in doing so restore the Union to its original principles. They argued that Lincoln diverged from the themes associated with the founding fathers: He completely ruined the government to an extent that the founding fathers would reject the creation of the United States if they knew the future abuse some of the citizens would endure.

Once the Southern States seceded from the Union, Confederates looked for ways to strengthen their position and justify their cause. If the Border States joined the Confederacy it would provide the South with additional soldiers and resources to fight the War. Members of the Confederacy attempted to convince citizens of the Border States to unite with them. Historian Charles B. Dew notes in his work *Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War* that Confederate commissioners worked to convince the legislatures of the Border States that those states should also secede. The commissioners emphasized that the rights of the South and the supremacy of the white race

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were at stake in a decision for or against the Union.\textsuperscript{102} Confederate citizens focused on the commonality of slavery that bound the Border State residents with the Confederacy. For example, the Border States were depicted as blocks in the pillars that uphold the new Southern Republic in a banner that hung at the South Carolina secession convention, emphasizing slavery as the tie that bound these states together.\textsuperscript{103} Confederate citizens used newspapers and letters to express their concern for the Border State residents and to share their desire that these wayward brothers would join them in fighting the Union. Lincoln’s civil liberties policies provided the South with a way to raise doubt about the Union government and to express how Lincoln violated the Constitution he claimed to uphold. The Border States proved fertile ground for discussion and debate regarding the righteousness of the Confederacy and the evils of the Union.

Southerners failed to realize that the Border States had more in common economically with the North than they had with the South.\textsuperscript{104} Furthermore, the institution of slavery did not dominate Maryland and Missouri. In the years leading up the Civil War, slave populations decreased in both states and the free black population increased.\textsuperscript{105} With the institution of slavery in decline in these Border States, the “Slave Power” of the Deep South states had a diminished effect. Confederate confidence in the sympathies of Maryland and Missouri was misplaced. In his work, \textit{The South vs. The South: How Anti-Confederate Southerners Shaped the Course of the Civil War}\textsuperscript{106} (Oxford: Oxford University Press, 2001), 23.

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\textsuperscript{102} Dew, Apostles of Disunion, 54.
\textsuperscript{103} Sinha, \textit{The Counterrevolution of Slavery}, “South Carolina Secession Convention Banner,” reprinted illustration, flyleaf.
\textsuperscript{105} Freehling, \textit{The South vs. The South}, 24.
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Southerners Shaped the Course of the Civil War, historian William W. Freehling reveals that the number of loyal Unionists in the Border States belie this belief of Confederates. Freehling comments that Maryland’s economic link with the North strongly connected this Border State with the Union and Maryland’s lack of continued upheaval beyond April 1861 prove its loyalty. 106 Missouri also demonstrated loyalty because the pro-Union forces voted to keep it in the Union. Freehling believes this is partly an economic decision. Freehling argues, “Missouri, with under 10 percent of its population enslaved . . . decided for the Union as quickly as Delaware.” 107 The Border States of Maryland and Missouri had a small population of slaveholders and consequently were not as heavily invested in the continuance of slavery as the Confederate States with greater numbers of slaves. In The South vs. The South Freehling argues that Missouri’s pro-slavery forces were a vocal minority, not the majority. 108 Additional proof of the loyalty Border States to the Union is found in the failure of Lee’s invasion into Maryland to whip up support for the Confederacy. There is no indication that a large number of citizens aided Lee or viewed him as finally freeing them from the oppressive Union when he arrived. In Missouri the presence of constant guerilla warfare was the result of an organized minority who opposed the outcome of the vote against secession, not the attempt of a majority to thwart the Union. While the citizens at the time of the Civil War truly felt that the Border States ought to be part of the Confederacy and would have been if Lincoln had not oppressed them, the historical record proves this assertion to be simply wishful thinking.

106 William W. Freehling, The South vs. The South, 52.
107 Freehling, The South vs. The South, 54.
108 Freehling, The South vs. The South, 54.
The Confederacy recognized the importance of the Border States and used the issue of civil liberties to justify their cause. *The Richmond Enquirer* on April 11, 1861, in its article “Lincoln Policy Defined” mentioned the “Tyranny at Washington” and ended with this pronouncement: “We say, that the war declared by the Lincoln administration against the Southern Confederacy necessitates the withdrawal of the border slave States from the abolitionized Union.”\(^{109}\) Here, even before the firing on Fort Sumter, Confederates argued that Lincoln’s policies meant that the Border States should leave the Union. It is important to note that Lincoln had not made any major moves against civil liberties and the Emancipation Proclamation was years away, so the Confederacy presumed that the election of Lincoln would bring forth policies that would cause the Border States to join the Confederacy. On August 28, 1861, *The Charleston Mercury* gave a detailed report about the trouble in Maryland. This article, entitled “Our Richmond Correspondence,” mentioned the people of Maryland left their homes as “unhappy fugitives.” The article further charged that “the accounts they give of the espionage, terrorism and violence reigning in the lower counties of Maryland are fearful.”\(^{110}\) The article concluded that “the people of Maryland living in the border counties along the Potomac appear to be especially selected as the victims of Yankee vindictiveness.”\(^{111}\) The article implied that the “Yankees” jeopardized the rights of citizens of Maryland by spying on them and committing acts of violence against them. The author foreshadowed that this is only the beginning of limitations on rights. The opinion of *The

Charleston Mercury was that these rights violations proved their point that the Union government endangered the rights of Border States citizens and that the Confederacy was superior.

Even after the Border States chose not to secede, citizens of the Confederacy maintained that the states were being forced to remain in the Union. In her diary in 1863, Confederate woman Judith White Brockenbrough McGuire stated “Maryland was at the threshold [of secession], but held back by a strong hand.” McGuire indicated that Maryland’s leadership decided to stay in the Union against the wishes of the citizenry. Julia Waitz, a resident of Maryland who spent most of the war in New Orleans, commented in 1863 “Maryland, after the seizure and imprisonment of her Legislature, which would have carried the State out of the Union, sent other members to the Federal Congress.” Waitz also concluded that popular opinion favored secession, but that the government of the state thwarted the will of the people. Furthermore, this diarist argued that only the inappropriate imprisonment of pro-secession officials enabled Maryland to stay in the Union. The citizens of the Confederacy consistently emphasized the fact that the Border States truly sided with them but outside forces (like the Lincoln administration or pro-Union state Governments) were the enemies. The actions of the Lincoln administration in the arena of civil liberties played directly into this argument. As indicated by one diary above, the Confederate citizens

deemed the arrest of civilians and others as the only way the Border States remained “loyal” to the Union. If citizens in states like Maryland and Missouri believed the Southern cause legitimate then Lincoln’s suspension of habeas corpus and other civil liberties violations were particularly nefarious, as they prevented more help from coming to the Confederate side.

Confederate writers also contended that Border States citizens were truly loyal to the Union and this latent loyalty deserved Confederate sympathy. A North Carolinian Confederate soldier reinforced this notion in a letter home from Maryland in 1862: “The Citizens heare are fighting among themselves. 600 Marylandors came to our flag since we came to this Place. This is a Delightful country. We find many Friends heare.”¹¹⁴ This soldier noted the absence of hostility he felt in Maryland. The divisions between Union loyalists and Confederate sympathizers in the Border State were on display, but the friends and help he received convinced this soldier that Maryland’s people were not the enemy. The belief that the Border State citizens were truly on the side of the Confederacy also led to continued sympathy with the trials of the citizens in Maryland and Missouri. Julia Waitz commented frequently about “Poor old Maryland”¹¹⁵ while Judith McGuire wrote “I feel so much for the Southerners of Maryland; I am afraid they are doomed to persecution.”¹¹⁶ She stressed that there were true Southerners in Maryland who needed sympathy. Waitz further

noted that “the people of Maryland have been treated in the most tyrannical manner”\textsuperscript{117} and Catherine Edmondson in her diary stated “No news from Maryland, she being so crushed by the ‘despot’s heel’ that she exhibits no feeling whatever.”\textsuperscript{118} These writers attributed action and willful choice only to the Union government. In contrast, the Border State residents had no real choice in their actions and their true feelings were with the South and loyalty was thrust upon them. Additionally, these accounts do not have the harsh tone toward the Border States that was generally used when disparaging “Yankees” or Lincoln. Many in the South believed the citizens in places like Maryland and Missouri deserved sympathy; they were being persecuted and oppressed much like the citizens of the Confederacy. As such Southern writers classified the Border States citizens as would-be members of the Confederacy and not as enemies. The Southerners viewed Border State residents as fellow-slave holders who were forced into maintaining their ties to Union and not as part of the government that was waging war on the South. Many writers also maintained that the oppressive policies of Lincoln took the “fight” out of the Border State residents and they could not join in to help the South or even themselves.

The trouble in the Border States provided another justification for the Confederacy because Southern writers believed they had established a superior government that maintained liberty. Lincoln destroyed the personal liberties of the citizens of these


slaveholders and the Confederacy would never do such a thing. On June 5, 1861, an article entitled “The Constitution of the United States” appeared in The Charleston Mercury and proclaimed that the South was right to secede because of the policies of Lincoln. “The people of the Confederate States, threw off the Government of the United States, upon the election of Mr. Lincoln, because they thought it established over them a sectional despotism. . . Time has proved the truth, and more than the truth of this assertion.”119 This article described how Lincoln blockaded ports, enforced martial law and suspended habeas corpus. The perceived abuse of civil liberties by the President was seen as justification for secession from the Union. None of the abuses of civil liberties occurred until all of the Southern states seceded from the Union, but this line of reasoning was still used to glorify the Confederacy. While the abuse of civil liberties was neither the only nor the most important reason the South seceded, Confederate writers employed it to reinforce the notion that Lincoln was bent on destroying liberty. The issue of civil liberties was used to convince Confederates that they had been right to secede and to maintain sympathy for the Border States.

Confederate citizens condemned Lincoln’s civil liberties violations as a violation of proper government. In the creation of the Confederacy, white southerners attempted to clarify the problems they had with the nature of the Union government. The Confederacy argued that the States should have more rights than the Federal government and that sovereignty should belong to the States. The Union contended that the Federal government was sovereign over the States and the Federal government could exercise great power. Civil

liberties played into this argument. The Confederate writers described how Lincoln reshaped the nature of government in three main ways: they declared Lincoln to be a tyrant, compared his government to that of various dictators and emphasized that as President he violated the principles of free government.

Many wrote that Lincoln’s policies on civil liberties proved that he destroyed free government and he became a “tyrant” or a “despot,” two terms frequently linked with his name. In his diary, John Samuel Apperson, a hospital steward in Stonewall Jackson’s brigade, called Lincoln a “despot” and in contrast labeled Confederate President Jefferson Davis “Old Jeff” indicating that he had a familiar and agreeable view of Davis. On April 7, 1863, \textit{The Charleston Mercury} in the article “Suspension of Habeas Corpus,” declared that Lincoln was a despot. Julia Waitz wrote in 1863 that “Lincoln was endowed with every power of dictator” in connection with a discussion of \textit{habeas corpus}. By labeling Lincoln a despot, these writers revealed their belief that he abused power and thwarted the true nature of a republic.

Many Southern writers also compared the Lincoln administration’s actions to that of various historical tyrants. John Apperson wrote in his diary about the nature of the Constitution and then later warned that Lincoln’s inauguration will be akin to the “Ides of

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\footnote{120} John Herbert Roper, ed., \textit{Repairing the ‘March of Mars’: The Civil War Diaries of John Samuel Apperson, Hospital Steward in the Stonewall Brigade, 1861-1865} (Macon, Georgia: Mercer University Press, 2001), 34, 49.
\footnote{121} Suspension of Habeas Corpus,” \textit{The Charleston Mercury}, April 7, 1863, The Civil War Collection, Accessible Archives, \url{http://www.accessible.com} (accessed November 17, 2008).
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March” for Julius Caesar.  

Even before Lincoln was President, Apperson believed Lincoln was a Caesar and ought to be assassinated. In an article entitled “The Tyranny of Lincoln” dated January 17, 1863, The Charleston Mercury, a newspaper from South Carolina, suggested that Lincoln’s policies were worse than those of Napoleon’s and specifically mentioned the suspension of habeas corpus. “The President never had the right to suspend the writ of habeas corpus.”

Confederate diarist Catherine Edmondston declared that Lincoln’s administration was equivalent to czarist Russia and believed Lincoln should be called “Czar Lincoln.”

By making historical comparisons to tyrants, Confederate citizens demonstrated the gravity of the crisis. Lincoln could not be viewed as a Republican who exemplified a change in politics and policies, but instead to many Southern citizens he was the equal to any number of abhorrent dictators. Lincoln could not possibly stand for liberty and freedom when he so obviously took his cues from known despots who hated freedom.

Many declared that Lincoln’s actions violated the principles of free government. Catherine Edmondston wrote of a friend who reported “a most terrible picture of the oppression & tyranny exercised by the Northern governt, spies everywhere, arrests, searching for clothing & supplies for the Confederate army, insults to women, imprisonment without charges & the writ of Habeas Corpus suspended- seizure of private papers & all the machinery of a despotic government suddenly developed full grown & in its most odious

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123 Roper, Repairing the ‘March of Mars’, 34, 49.
Lincoln’s broad interpretation of powers resulted in absolute tyranny in Edmondston’s view. There could be no freedom in a country if people were arrested, searched and in general lived without an assurance of their rights.

Southern writers asserted that the Union denied liberty and in doing so destroyed democracy. *The Charleston Mercury* in January 1863 printed an article that quoted a northern Congressman’s comments about civil liberties and at the end of the article pushed for armistice to be called.\(^{127}\) The contention was that the suspension of *habeas corpus* destroyed the very fabric of democracy and Lincoln set himself up as the enemy of liberty. The newspaper from the South argued that the federal government under Lincoln was destroyed and the Confederacy was a legitimate alternative to protect civil liberties. In another article from *The Charleston Mercury*, “The Difficulty of Maintaining Free Governments,” from August 23, 1862, the link between civil liberties and the nature of government was even more pronounced. The article asserted: “A practical despotism has thus been established on the other side of the Potomac.”\(^{128}\) It also stated this despotism existed because Lincoln put citizens into prison and “the writ of Habeas Corpus and trial by jury are gone.”\(^{129}\) Furthermore the “whole fabric of free government, reared by the

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Constitution of the United States, has tumbled into ruins.” This Confederate newspaper tied Lincoln’s policies on civil liberties to the nature of government. The article stated that Lincoln did not uphold civil liberties and therefore did not truly maintain a free government. The writer clearly stated that eliminating civil liberties weakened the Constitution. This is an ironic argument coming from a Confederate newspaper, but it was used to establish the rightness of the Confederate cause. The argument that the abuse of civil liberties destroyed the nature of free government was again raised by The Charleston Mercury on April 7, 1863 in the article “Suspension of Habeas Corpus.” The paper commended another Confederate newspaper, The Richmond Enquirer, for proclaiming the Union government a “despotism.” The article then asked what makes the government a despotism: “One thing, and one thing alone- the suspension of this writ Habeas Corpus. By the suspension of this writ, President Lincoln can arrest and cast into prison any citizen he pleases, and there is no power by which the citizen can be released, but his arbitrary will. This power makes President Lincoln a Despot, and his Government a Despotism.” Again the abuse of civil liberties was linked with the type of government that the Union operated. The perception of the South, as seen through these newspaper articles, was that the abuse of civil liberties weakened the Constitution, established the President as a tyrant and destroyed a free government. The Charleston Mercury made pains to establish the Confederacy as a government that protected the rights of its citizens, although it did not address the issue of slavery and rights. From the perspective of the South, the nature of government and civil liberties was very closely linked.

The Confederacy used the discussion of civil liberties in the Border States to highlight the righteousness of their own cause. Secession was justified in part because of Lincoln’s policies on civil liberties. Additionally the citizens of the Border States wished to be part of the Confederacy and because of this they deserved the sympathy of the South. The true enemies of the South were Lincoln and those like him, not fellow slave holders forced into the Union. Confederates also argued about the nature of government and the important role of the Border States. This conversation revealed the constitutionalism of citizens in the South. These writers desire a limited government. Lincoln’s broad interpretation of powers and his actions under those sweeping powers garner sharp criticism from Confederate citizens. To them, a president who broadly destroys rights for certain individuals could not be trusted to uphold any rights for any one. Before the war, Southern slaveholders were chiefly concerned with maintaining their rights as slave-owners. After the war began, these same individuals denounced Lincoln for destroying the civil liberties, and “rights,” of Border State residents. As slaveholders, their rights were jeopardized by Lincoln and they painted Lincoln as a tyrant who destroyed all freedoms and could not be trusted.
Chapter 4- “The Union Forever, Hurrah, Boys Hurrah”: Northern Reaction to the
Question of Civil Liberties

Lincoln’s actions on civil liberties caused a debate in the North. Citizens in letters and diaries expressed their views about the events in the Border States. Also newspapers, both for and against Lincoln, criticized or justified Lincoln’s policies. The debate in the North centered around the ability of Lincoln to preserve the Union and how actions against civil liberties helped or hurt that main goal. Those in the North who agreed with Lincoln additionally reveal their acceptance not only of his policies, but also of his constitutional philosophy. While many in the North supported Lincoln, others stood in opposition to the President. The Democratic Party provided Lincoln’s main source of opposition in the arena of civil liberties. The “Peace” Democrats or the Copperheads routinely criticized the Lincoln administration about the abuses they perceived that he inflicted on the Constitution. The Peace Democrats demonstrate their own strain of Constitutional thought in their disagreement with Lincoln. The Northern debate on civil liberties covered such topics as the nature of government, the war powers of the President and the overall use of the Constitution in governing.

To citizens of the North, the Border States warranted attention because these states were important to the war effort. First, Maryland and Missouri were strategically important.

The title of this chapter is taken from the popular Civil War Song Battle Cry of Freedom. Many in the North emphasized the importance of the Union and defended Lincoln because he worked to preserve the Union.
The geography of these states and the location of military and politically significant cities and waterways focused Northern attention on them. Second, these States were ideologically important. Just as the South used the Border States to launch a discussion on their own views of federalism and the Constitution, so too did the North. The Border States become proof of Lincoln’s success in governing and his ability to hold the Union together. Also by commenting on events in Maryland and Missouri, Northern proponents of Lincoln signaled their endorsement of his constitutionalism while Lincoln’s opponents challenged it.

The events in the Border States compelled citizens in the North to respond because these states were critical to the Union’s war strategy. Citizens in the North expressed an understanding of the critical role the Border States might play in the conflict and exhibited a desire to see these states remain in the Union. In a letter in 1861, Sarah Roberts, a Welsh immigrant who was pro-Union wrote about the number of states that seceded and expressed concern that “Missouri, Kentucky and Maryland are not much better.”\(^1\) Elizabeth Lee, a Union wife whose husband served in the Navy, wrote with apprehension that “Secessionists are making a great rush at Missouri” and “if Missouri votes down Secession all of our family concerns are out of the ditch of disunion & confines that disease to the yellow fever region.”\(^2\) Lee also wrote about the hope she had that there would be peace in the Border States. These excerpts display a Northern concern that the Border States would remain in the Union and fear if they would join the Confederacy. An article in the *New York Herald* in April 1861

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expressed frustration that the Lincoln administration was not doing enough to keep the Border States in the Union and argued that: “Virginia will secede and she will bring the other border States close behind her, including Maryland; and what then? Why, then the issue will, perhaps be one of war, to wit- whether the Confederate States or the United States shall occupy the Capitol at Washington.” ³ The fact that the Capitol of the Union could fall into enemy territory was of grave concern to this author. If Washington D.C. became surrounded by Confederate territory it would have been a logistical nightmare and a blow to Northern morale. In another article in January 1861, the New York Herald proclaimed that the preparations for war were propelling the Border States out of the Union.⁴ As the New York Herald reported one concern of Border State secession was that the capitol would be in enemy territory.

Northern writers also raised ideological objections to secession. Lee wrote in her letter that secession was a “disease,” indicating an overall disagreement with the Southern philosophy of secession. This demonstrates that the Border States and their standing in the Union was not simply a Southern concern. The North understood the importance of these states from a strategic standpoint and wished for the Border States to remain in the Union. Furthermore, when these states demonstrated their loyalty to the Union this caused Union citizens to rejoice. After the Battle of Antietam, Anna Ferris, a woman from Delaware, wrote: “the best part of our success is, that the loyalty of Maryland is proved by the ’Rebel

Raid.” Ferris went on to comment that the South will no longer describe Maryland as their own and pity the state. Anna Ferris delighted in the fact that Maryland proved itself as a loyal member of the Union. This also speaks to the ongoing hope of the Confederacy that the Border States would side with them. Northerners knew that Confederates wished for the Border States to join them and believed that a loyal Maryland dealt a blow to the Confederacy.

The discussion on civil liberties in the Border States reveals the ideological differences between the North and the South. Both the Union North and Confederate South argued on ideological grounds throughout the war. In her book *What this Cruel War Was Over: Soldiers, Slavery and the Civil War*, Chandra Manning evaluates why soldiers fought in the War. Manning argues that “the Civil War was nothing less than a clash between competing ideas about how Americans should interpret and enact their founding ideals.”

Although Manning focuses her work on how slavery was the root of the discussion, the difference over ideology manifested itself in the conflict over civil liberties. Manning argues that Southern and Northern conceptions of liberty form the basis of this clash. While in the South liberty was narrowly defined in terms of personal rights of white men, in the North many believed liberty to be universal.

Furthermore, to citizens in the North the only way to perpetuate liberty was through the Union. Therefore Lincoln acted bravely to

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7 Chandra Manning, *What this Cruel War was Over: Soldiers, Slavery and the Civil War* (New York: Vintage Civil War Library, 2007), 21.
8 Manning, *What this Cruel War was Over*, 40.
preserve the Union and to ensure the continuance of what was believed to be the ultimate experiment in self-government. Northern nationalism hinged upon the preservation of the Union and so if Lincoln acted to stop secession and secure states in the Union he was justified. Although to those in the South, suspending *habeas corpus* and arresting civilians proved that Lincoln was the ultimate tyrant, in the North it meant he used his appropriate power to preserve America and its best and founding ideals.

Northerners also believed that civil liberties played a key role in the nature of the government; however Northern newspapers argued that the Lincoln administration’s policies protected the Union. In these expressions, the pro-Lincoln papers embraced Lincoln’s broad interpretation of powers in the Constitution. Even some Democratic papers wrote articles that validated Lincoln’s policies. For example, *The New York Herald*, a newspaper that was typically a voice for the Democratic Party in the North, put out several articles discussing Lincoln’s policies on civil liberties. In an article published in the *Herald* on June 9, 1861 entitled “The Alleged Unconstitutional Acts of President Lincoln,” the status of civil liberties in the Border States are specifically mentioned and excused as necessary. This article denounced Chief Justice Taney’s decision in the *Merryman* case because he failed to acknowledge the state of emergency in the country. The article posited that had President Lincoln waited for Congressional approval of his extraordinary uses of power “we should be, now, without any legitimate government, - very probably, in a state of anarchy, or under the rule of a military despotism. Secessionist invaders would have swept over the District of Columbia and Maryland, with the suddenness of a tropical hurricane, and the mischief to the
country would have been irremediable.” 9 The phrase despotism again appears, but this time the newspaper stated that had Lincoln not acted the Union would have devolved into a despotism. The sentiment in the North was that Lincoln’s use of power preserved the very nature of the government. This article praised Lincoln’s actions to maintain the American Republic. Furthermore, this writer also asserted that Lincoln acted within his constitutional powers, hence the title “The Alleged Unconstitutional Acts . . .” (emphasis mine); the author framed his entire argument in the title and stated that Lincoln acted in concert with the Constitution. Unlike the newspapers in the South, these Northern papers did not believe Lincoln acted unconstitutionally; this is a key difference in the interpretation of the President’s actions between the North and the South. Southern authors wrote that Lincoln acted as a dictator and violated the Constitution; however Northern writers contended that Lincoln acted within the powers granted to him as President to respond to a national emergency.

Many Union writers expressed the idea that Lincoln did use extraordinary power, but this was an appropriate response to the extraordinary challenge that the country faced. These writers focused on the necessity of Lincoln’s actions and thereby found the actions constitutional. This indicated that these citizens endorsed Lincoln’s practical application of the Constitution to solve political problems. One such example from The New York Herald that expressed this view on Lincoln’s policies was published on March 6, 1863. In this article, “The Duty of the President and the People,” the author stated that the incredible

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powers given to the President were necessary for the preservation of the Union. The author described the powers given to the President, including the power to suspend *habeas corpus* and the power to control the liberties of the people and then the article asserted that “President Lincoln is now in effect a temporary dictator,” but “is not the Union worth the price of a temporary dictatorship?”

The writer deliberated further that the duty of the people and true patriots would be to support the President in order to preserve the Union. The policy pursued by Lincoln regarding civil liberties was viewed as necessary by the author of this article. As opposed to the aforementioned *Herald* article in which a despotism is denied, this article states a temporary dictatorship was the price of freedom. Both Northern newspapers approved of Lincoln, but took slightly different views on his use of power. On June 5, 1861, *The New York Herald* published an article with a similar thesis entitled “Our Southern Insurrection- The Constitution and the Exigencies.” In this article the author listed the extraordinary powers that Lincoln claimed to prosecute the war: raising armies, blocking ports, and suspending *habeas corpus*. The author acknowledged that typically these powers belonged to Congress, but “the President, in assuming the responsibilities of this crisis, to the extent of anticipating the action of Congress, has pursued the only policy under which his administration, the constitution and the country could have been saved from absolute destruction.”

It is clear from this article that the nature of government and the role of civil liberties were viewed differently in the North as opposed to the South. In the South the policies of Lincoln were seen as tearing down the Constitution.

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and destroying free government; whereas, in the North it appears that these policies were viewed as necessary to preserve the Union. Civil liberties were an issue during the Civil War because they spoke to the nature of government. Was the federal government going to exert ultimate sovereignty or were the states to have “states rights”? This was a question that the War itself would decide in favor of the Union; however as the War was raging civil liberties were used on both sides to assert that their side had the correct form of government. The Confederates particularly asserted that Lincoln was destroying free government and the Unionists maintained this extraordinary use of powers was necessary to preserve the Union.

Northern states went further in their analysis of Lincoln and stated their belief that the crisis of the War justified the administration’s policies on civil liberties. In 1864, Harper’s Weekly published an article entitled “The Value of Character” which dismissed the criticism against Lincoln. “The chief charge against the Administration, thundered in every key, is its despotism.”12 The article chastised famous anti-war activists, such as Charles Vallandigham and then proclaimed Lincoln’s love for the Union. “The conservative power and influence of pure and lofty personal character, in a time of great national peril, was never more signally illustrated than in the official career of Abraham Lincoln.”13 The perspective from this pro-Lincoln paper was that Lincoln’s great love of the Union and his personal character helped to save the country. These two qualities overshadowed any extraordinary use of power by Lincoln. These same sentiments are revealed in the articles in The New York Herald quoted earlier. The extreme circumstances of the War were viewed as legitimate reasons for the

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President to use his power to suspend civil liberties. According to these papers, the end justified the means. *The New York Times* viewed the suspension of civil liberties as necessary for prosecuting the war. In the article, “Habeas Corpus-The President and the Judges,” published on November 3, 1861 the *Times* accused judges of helping the cause of the Confederacy. The article then delivered its own justification as to why President Lincoln could suspend *habeas corpus*. Finally the *Times* article concluded: “We have given much study and reflection to the constitutional and military power of the President, and we affirm, … that the President, in arresting the *habeas corpus* in martial cases, has acted patriotically within the powers conferred on him as President and Commander-in-Chief.”

This article cited not only the exigency of War as reason to suspend *habeas corpus*, but detailed the belief that the judges, particularly Chief Justice Taney interfered with the Union cause and so the President did what was necessary for the country. Lincoln was deemed a patriot and not a despot in the opinion of these Northern writers. Some in the North believed that all of the steps he took: suspending *habeas corpus*, arresting civilians and trying them in military court, were not the actions of a tyrant, but were the policies of a patriot who did all he could to save the country. These reactions displayed an endorsement of Lincoln’s reading of the Constitution. The Northern papers that defended Lincoln’s policies acknowledge that the Executive branch was allowed broad powers under the Constitution.

This is not to say that in the North President Lincoln was without criticism. An article appeared in *Harper’s Weekly* on December 6, 1862, and detailed the problems with

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civilians hurt the war effort in the North. The article argued that “great bulk [of arrests] were foolish and injurious” and “many were unjustifiable, and very few of them really did good to the cause which they were intended to serve.” The article did not lament that the arrests trampled on the liberties of individuals as much as the arrests did not serve any practical purpose. The recurring theme in the Republican papers was that if the actions could be justified because they helped preserve the union then the actions were approved. The concept of Lincoln as a practical politician is not a new invention but can be found in Northern newspaper articles displaying a pragmatic approach to the Lincoln administration’s policies on civil liberties. If the Southern refrain on civil liberties was that Lincoln was a despot, than the Northern refrain was that Lincoln was justified because he preserved the Union.

The sharpest criticism of Lincoln in the North came via the Copperhead, or Peace Democrat, movement. This group protested the War and led Lincoln to state in 1863 that the greatest threat to the Union was not the Confederacy, but rather the “fire in the rear,” or the movement known as the Copperheads. The Copperheads’ main objection to the War rested on Constitutional grounds: they believed the Constitution to be a limited document and expanding federal power to fight the war violated the Constitution. The Peace Democrat’s motto “the Constitution as it is, the Union as it was” summarized the goals of the group.

16 Weber, Copperheads, ix.
17 Weber, Copperheads, 14.
These anti-war Democrats desired a strict constructionist interpretation of the Constitution, beyond that the Civil War should be solved via a peace agreement that returned the Union to its antebellum days. The Copperheads looked to the Crittenden Plan, proposed by Senator John J. Crittenden of Kentucky in 1860, as the best solution to the Civil War. Crittenden proposed a Constitutional Amendment to protect slavery and to restore the old Missouri Compromise line in order to divide slave and free territory in the country.\textsuperscript{18} Due to their belief in a strict interpretation of the Constitution, the Peace Democrats also expressed concern over civil liberties violations during the War. The Copperheads viewed civil liberties violations in the Border States as indicative of Lincoln’s weakening of the Constitution. Lincoln’s suspension of \textit{habeas corpus} caused Peace Democrat Representative George H. Pendleton of Ohio to reason that if the President could disregard the Constitution in one area then “the President may supersede entirely the Constitution and the laws.”\textsuperscript{19} The Peace Democrats followed a slippery slope argument: Lincoln’s suspension of \textit{habeas corpus} and arrest of civilians was the first step down the slippery slope of a complete abandonment of Constitutional principles. These opponents rejected the notion that a broad view of power and a pragmatic approach could coexist with a strict constructionist view of the Constitution. The Copperheads believed it was only a matter of time before Lincoln destroyed the Constitution and by default the Union as they knew it.

The most famous Copperhead, Clement Laird Vallandigham, a representative from Ohio, became a lightning rod and emblematic of civil liberties abuses in the North.

\textsuperscript{18} Vorenberg, \textit{Final Freedom}, 19. \\
\textsuperscript{19} Weber, \textit{Copperheads}, 32.
Throughout the War, Vallandigham expressed opposition to the Union government’s policies and to the War itself. In a speech on May 1, 1863, Vallandigham accused the administration of lying about the War and encouraged those listening to commit treason, desert the army and resist the draft.\textsuperscript{20} As a result of the speech General Ambrose Burnside arrested Vallandigham on May 5. Vallandigham applied for a writ of \textit{habeas corpus} and his request was denied. Vallandigham’s arrest sparked protests by other Copperheads and shined a light on the \textit{habeas corpus} issue. Although Vallandigham’s arrest occurred outside the Border States, his case gave a platform for those who criticized Lincoln to look at the arrests in the Border States as well. This is an early example of a celebrity using their fame to draw attention to a particular issue. The reaction to Vallandigham’s case was widespread and critiques of Lincoln regarding \textit{habeas corpus} and the arrest of a prominent civilian appeared in newspapers and forced Lincoln to defend his policy.\textsuperscript{21} Lincoln summarized his defense of his suspension of \textit{habeas corpus} by asking, “Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wiley agitator who induces him to desert? I think that in such a case, to silence the agitator, and save the boy, is not only constitutional, but withal, a great mercy.”\textsuperscript{22} Lincoln asked those protesting against the arrest of Vallandigham to evaluate the equity of punishing soldiers who listen to anti-war sentiments while not punishing those who make the anti-war statements. In a practical move to deal with the Vallandigham firestorm, Lincoln chose to exile him to the Confederacy, thereby disabling Vallandigham’s ability to become a martyr as he wasted away in prison and simultaneously

\textsuperscript{20} Weber, \textit{Copperheads}, 95.
\textsuperscript{21} Neely, \textit{The Fate of Liberty}, 67.
\textsuperscript{22} Neely, \textit{The Fate of Liberty}, 68.
preventing him from becoming a hero by freeing him. The Confederacy did not embrace Vallandigham; however, because he insisted that after the 1864 elections, his Peace Democrats would return the nation to *status quo antebellum*, but due to the bitterness of the War by 1863, this was not a popular solution in the South. Vallandigham left the Confederacy for Canada where he mounted an unsuccessful campaign to become the governor of Ohio. Despite losing his governor’s bid, he continued through the Democratic National Convention of 1864 to protest the Lincoln administration. Due to military successes on the battlefield, Lincoln was reelected and the Republicans enjoyed great success in the 1864 elections and this marked the end of the Copperhead movement. In 1864, the Supreme Court decided in *Ex Parte Vallandigham* that the Union government correctly handled the Vallandigham case. Although Vallandigham lost his Supreme Court case and failed to galvanize his Copperhead movement to any success after his arrest, his case demonstrates the complicated nature of civil liberties in the North during the Civil War. Vallandigham brought focus to the military arrest of civilians and the suspension of *habeas corpus*. His arrest and subsequent protest forced Lincoln into defending his civil liberties policies. More than anything, Vallandigham exemplifies that the North did not follow Lincoln in lockstep over the issue of civil liberties and that a vocal minority in the North protested Lincoln’s actions.

In the North and the South the issue of civil liberties in the Border States provided a context to comment on the overall nature of government, the justification for the War and the importance of loyalty to one side or the other. In both the North and the South, residents

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viewed the Border States as critical to their side. Confederates attempted to bring the Border States into the Confederacy and when that failed they continued to define Border States residents as sympathetic figures. In the North the loyalty of the Border States was also important. The North further used the issue of civil liberties to issue their own approval of their leader, Abraham Lincoln. Just as Lincoln became the object of anger and a hated figure in the South, in part due to his policies on civil liberties, so in the North he became a hero and justified in his actions. Lincoln’s status as a hero and savior of the Union was not accepted by all in the North, as the Copperhead movement and case of Vallandigham demonstrate. Both sides used these states to demonstrate the righteousness of their cause. While in the North and the South the Border States became a source of discussion and an object of concern, the citizens of these states also responded to their treatment during the war. The citizens of Maryland and Missouri reflected not only on the theoretical, such as the nature of government, but commented on the issues that affected their everyday lives.
Chapter 5- “She is not dead, nor deaf, nor dumb:” Border State Residents Respond to Civil Liberties Violations

The citizens of the North and the South debated Lincoln’s actions in the Border States, but those living in Maryland and Missouri vocalized their opinions regarding habeas corpus, military arrest of civilians and the impact of civil liberties as well. Lincoln’s civil liberties policies immediately impacted the people who lived in these Border States. Due to the fact that the residents of Maryland and Missouri experienced arrests and the suspension of habeas corpus their reactions were personal and not as theoretical as reactions from citizens of other regions. Furthermore, these Border State citizens maintain a unique place in the dialogue on civil liberties: they proclaimed their loyalty to the Union while questioning its policies. The debate among Border State residents revealed particular beliefs about the Constitution, specifically writers from Maryland and Missouri grappled with the limits of dissent and the importance of freedom as they pledged to stay in the Union.

It is clear that the people in both Maryland and Missouri were aware of their status as Border State citizens and of the critical importance that the Border States played in the war. In newspaper articles and diaries, authors identified themselves as being from a particular state, but also acknowledged the fact that they were part of the Border States. An article published in the St. Louis Missouri Democrat on April 19, 1861, queried: “What attitude the

The title of this chapter is taken from Maryland, My Maryland. In the song this phrase refers to Maryland’s ability to defend itself from Northern aggression, but it was chosen for this chapter because it also indicates that Border State residents were aware of the controversy in their states and did not react passively, but actively to the issues.
border States will assume in the present crisis of national affairs is a matter of earnest speculation here.”\(^1\) George Brown, the Civil War era mayor of Baltimore, wrote in his account *Baltimore & The Nineteenth of April, 1861*, that after some states seceded “the Border States were as yet on debatable ground.”\(^2\) There are frequent newspaper accounts in Missouri about events in Maryland and Kentucky. When writing about the possibility of any of the Border States seceding George Brown listed Delaware, Maryland, Kentucky and Missouri.\(^3\) The citizens living in these states knew of their status as Border State citizens and realized the impact they would make upon the Union or the Confederacy. The importance of the Border States was not one contrived by Washington D.C. politics at the time or a construction of historians after the War, but is one that the people themselves understood.

Due to their position in the Border States, the citizens realized that they could have a great impact on either the Union or the Confederacy. Although there were Southern sympathizers in both Maryland and Missouri, many in these states were careful to point out their loyalty to the Union. On April 18, 1861, *The St. Louis Missouri Democrat* proclaimed “There is no doubt of the loyalty of a majority of the citizens of Maryland.”\(^4\) In a similar story from the same day, entitled “The Effect in Baltimore,” *The St. Louis Missouri Democrat* reported: “We have been accosted by thousands of those who speak out boldly and fearlessly, but calmly, for the maintenance of the Constitution and the support of the

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\(^3\) George William Brown, *Baltimore & The Nineteenth of April, 1861*, 34.

government of the United States, while a few, we regret to say, keep marked silence.”5 The reporter summarized that most of the people of Baltimore were loyal and the silent few were the Southern sympathizers. The writer drew a direct correlation between the Constitution and the Union: loyalty indicated support for both the Union government and for the Constitution. Those in Baltimore who spoke out in support of the government simultaneously endorsed the Constitution. Another report followed on April 19th, when the Missouri Democrat stated that in Baltimore “There was, however, but little animosity or ill feeling displayed among the disputants, and whatever might occur in other states, the sentiments of peace and good will seemed to predominate here.”6 Baltimore’s mayor George Brown addressed the loyalty issue by stating “no doubt a large majority of [Baltimore’s] people sympathized with the South; but even had that sentiment been far more preponderating, there was an underlying feeling that by a sort of geographical necessity her lot was cast with the North . . . Delaware and Maryland were the only Border States which did not attempt to secede.”7 Even though there were Southern sympathizers, Brown emphasized that Maryland remained loyal and did not attempt to leave the Union. In Missouri a similar picture is painted by the historical record. The St. Louis Missouri Democrat urged the loyalty of Missouri in an article entitled “The Courage of Missouri” published April 22, 1861. In this article the editors of the Missouri Democrat argued against a pro-Confederacy position taken by the editors of the St. Louis Missouri Republican newspaper and urged that Missourians take a strong stance in defense

7 George William Brown, Baltimore & The Nineteenth of April, 1861, 34.
of “perpetual Union.”

A convention met in Missouri to discuss secession in 1861, but secession was defeated by an overwhelming majority of those in attendance.

Though newspapers protested loyalty, this issue was not as clear cut among the citizens. *The Baltimore Sun* commented on the fine line between loyalty and disloyalty on May 7, 1861: “A natural and irrepressible sympathy with the cause of Southern rights is constantly and willfully misinterpreted as a spirit of secession. In this thing very great injustice is done to our citizens.”

This article indicated that sympathy for the Confederate cause was not an indication that Maryland supported secession. The author indicated that sympathy with the South could coexist with loyalty to the Union, and indeed the Border State residents were misunderstood. Many in the Border States urged a peaceful separation from the South and this put their own loyalty in question. One such person was Governor Hicks of Maryland. In a rally on April 19, 1861, Hicks attempted to assuage the fears of Maryland slaveholders and stated “If separate we must, in God’s name let us separate in peace, for I would rather this right arm be separated from my body than raise it against a brother.”

This quote would be used against Hicks to question his devotion to the Union later during the War, despite clear evidence of his opposition to secession. In response to split sympathies in the state, one newspaper, the *Frederick Herald* desired a neutral Maryland: “Though Maryland should assume a position of neutrality, it should be one of armed neutrality.”

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10 Mitchell, ed., *Maryland Voices of the Civil War*, 64.

the start of the War, neutrality seemed to some to be a plausible solution that would appease the minority of slaveholders in these Border States, but also allow these States to maintain their relationship with the Union. Neutrality as a solution was short-lived as this compromise dissatisfied many and even brought rebuke from the President himself. As a concept, however, the desire for neutrality indicated an attempt to walk that tightrope between the North and South.

Many who did sympathize with the Southern cause were frustrated at the loyalty shown by Maryland. John Roberts, a Baltimore businessman who traveled South in 1861 to find new customers wrote home to protest, “I regret the position of Maryland- the people here complain bitterly of her position.” Roberts wrote in another letter home “What will Maryland do? Where will she be found when our rights are trampled upon? Your Union meetings answer with the Black Republicans. Would to God it were otherwise, for to day I am in Georgia & for the first time in my life am ashamed to say I am a Marylander.”

Roberts repeated the Confederate claim that staying in the Union was equivalent to abandoning rights, but in terms of loyalty his loyalty was with his state and Roberts desired that Maryland secede from the Union. Roberts revealed in his letters that he embraced the Southern conception of states’ rights: that the state trumps the federal government.

Roberts’s chief problem with his home state was its insistence on staying in the Union. William Wilkins Glenn was a Baltimore lawyer and expressed support for the South. Glenn published a pro-Confederate newspaper in Maryland that led to his arrest in 1861; however

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he was released after two months and launched a campaign to aid the Confederacy. Like Roberts, Glenn hoped Maryland would leave the Union, but realized the loyalty of most in the State was with the Union: “Subsequent events convinced me that the majority of the people of the State were by no means ready for separation. They were opposed to coercion and clung to the Union.”\textsuperscript{14} Glenn, like Roberts expressed frustration that more in Maryland could not be convinced to join the Confederacy. Once his newspaper shut down, Glenn worked to smuggle fellow Southern sympathizers into the Confederacy and also entertained visitors from England; whom he also try to influence for the Confederacy. Glenn and Roberts exemplify the pro-Confederate minority in the Border States: they attempted to persuade others to agree with them but were ultimately on the losing side within their state.

There were citizens of the Border States who sympathized with the South. There were even men and women, like Roberts and Glenn, who urged secession; however, the outcome of the votes on secession and the climate at the time indicate that the majority of the citizens of the Border States were loyal to the Union.

In their criticism of the Union, political prisoners indicated their belief that the government overstepped the limits on its powers. One such example is Eugenia Levy Phillips, who wrote a diary while imprisoned in Maryland in 1861. Phillips never detailed the reason for her arrest, but revealed her belief that the Union government sunk to a new low when it arrested women. In one passage Phillips wondered what Daniel Webster would think if “he had been further told that women, virtuous, refined, pure-minded women, would be

\textsuperscript{14} Mitchell, ed., \textit{Maryland Voices of the Civil War}, 35.
arrested, searched, shipped, shut up as prisoners in the custody of men, attended as prisoners by armed men, precisely as if they were men themselves?”

Phillips believed that the government went beyond its power in searching and arresting women. In another diary entry, Phillips implied that Lincoln punished those who spoke freely against the government: “How long, oh Lincoln, will honest men be permitted to speak honest thoughts? Think you the indignities heaped upon us will make us love our tyrants more or hate them less?”

Phillips believed Lincoln abused his powers, so she labeled him a tyrant and she believed that the imprisonment of women proved the depravity of the Union government policies. As a female prisoner, Phillips’ viewpoint is unique. Her overall message that the Union government overstepped its bounds in arresting civilians of the Border States however is echoed by other political prisoners from the Border States. Phillips rejected Lincoln’s broad interpretation of powers and clearly felt that the Government should limit its intrusion into the lives of civilians.

The citizens of the Border States recognized their role as part of the Union and then disparaged Lincoln’s abuse of powers. The Border States citizens’ criticism of the Lincoln administration lies between the feelings of the citizens of the North and the South. The writers from Missouri and Maryland attacked Lincoln’s abuse of executive power, but this did not propel these citizens out of the Union. The citizens of the Border States identified

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that the abuse of civil liberties was an abuse of executive power. The Border States records do not share the same vitriol as the information coming out of the Southern newspapers at this time. The Border States papers were quick to point out that Lincoln overstepped his boundaries, but they also blamed others in high office. The Baltimore Sun, a newspaper that was opposed to the Lincoln administration, frequently denounced the policies on civil liberties, but did not use the labels of despot and tyrant as often as did the newspapers of the Confederacy. This again displayed the tight rope of loyal dissenters. The Border State residents believed that although they rejected Lincoln’s broad interpretation of powers they did not reject the Union. In an article entitled “Suspension of Habeas Corpus” published in The Baltimore Sun on June 3, 1861, the writer argued that Lincoln had no power to suspend habeas corpus and that only Congress could do it. This article spent most of the time explaining the Constitutional right of habeas corpus and at the end called out another Baltimore paper for defending Lincoln: “One more word upon the Intelligencer’s very weak potation. It speaks of the President’s ‘high prerogative.’ It should blush with shame to use such an expression. ‘Prerogative!’ What’s that! the boast of tyrants.”\textsuperscript{17} The paper did not immediately blast Lincoln as a tyrant, as the Southern papers typically did, but claimed that if he used his “prerogative” then he acted as a tyrant. The Sun in two other articles regarding the suspension of habeas corpus one entitled “The Message-The Habeas Corpus Act” published on July 9, 1861, and another entitled “The President and the Purposes of the Union” published on July 20, 1861, listed how the President violated the Constitution and disregarded the Supreme Court in abusing his power, but never called Lincoln a tyrant or

\textsuperscript{17} “Suspension of the Writ of Habeas Corpus,” The Sun, June 3, 1861, America’s Historical Newspapers, \url{http://infoweb.newsbank.com} (accessed March 3, 2009).
despot. It would seem that a paper opposed to Lincoln would denounce him vehemently with as much force as the Confederate newspapers did, but that was not the case. These papers instead rejected Lincoln’s constitutionalism, but maintained their loyalty to the Union and continued to embrace the Union. These Border State sources served as the voice of dissent within the Union. They did not act as the Confederate papers and dismiss Lincoln as a tyrant bent on destroying the nature of government, nor did they cheerlead as some of the Northern papers did. Instead these Border State papers juxtaposed the two positions: the loyal citizens critical of certain government policies, in this case the policies regarding civil liberties.

The Border State citizens went farther in their critique of the governmental abuse of power and blamed not only Lincoln for the violations of civil liberties but also many others in high power. The diary of Lawrence Sangston, a Maryland legislator who was arrested, imprisoned and never charged with a crime is such an example. Sangston’s diary never once mentioned Lincoln, but rather blamed Lincoln’s Secretary of State Seward for abusing civil liberties. In Sangston’s entry on October 13, 1861 he referenced a letter written by a woman who supported the political prisoners “[She] wrote a letter to Seward in which she insisted on knowing whether, after having suspended the Habeas Corpus, the Constitution and the Laws of the country, it was a part of his policy to suspend the Laws of Humanity.” Sangston recounted how the prisoners celebrated the Christmas of 1861 by putting Seward on trial for treason because he “abolished the Constitution and the Laws and usurped the Government.”

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18 Lawrence Sangston, The Bastiles of the North (Baltimore: Kelly, Hedian & Piet, 1863), 46.
19 Sangston, The Bastiles of the North, 120.
Sangston and his fellow prisoners felt that it was Seward and not Lincoln who deserved punishment for the way they were being treated. Not only did Sangston blame others in government for overreaching their powers, he underscored the idea that abuse of civil liberties weakened the Constitution and the rule of law in the Union. More than just a rebuke of a disgruntled prisoner, Sangston demonstrated his understanding of the proper role of power and how the Constitutional limits of power ought to be enforced.

Not only did political prisoners express displeasure at the overreach of power by governmental officials, but the Press and other writers in the Border States registered similar complaints. The *Baltimore Sun* was quick to point out that it was not just Lincoln who was at fault, but noted the Generals who were working in cooperation with Lincoln. “The National Intelligencer of Thursday last contained an article upon the late suspension or resistance to the habeas corpus on the part of Gen. Cadwallader, by authority of the President.”20 According to the *Sun*, the chain of command broke down as the generals perpetuated the violations of civil liberties put in place by the President. In the journal of Franklin Archibald Dick, a pro-Union lawyer living in St. Louis during the Civil War, an analogous theme emerged. Dick had trouble with both Lincoln and with General Frémont, finding both men inadequate to cope with the problems in Missouri.21 The Border State sources recognized that Lincoln was not the only one directing policy. It is possible that they were willing for the sake of loyalty to not fully blame Lincoln for all that was happening. It

is also likely that since they were close to the Generals issuing the orders, these were the people they had more immediate interaction with and so they wanted to place the blame there as well. For whatever reason, the Border State citizens did not view Lincoln as the lone figure responsible for quashing of their liberties, but rather see Seward and Union generals equally to blame. The Border State sources fully blamed the entire federal government and not just Lincoln for the violation of their civil liberties.

The Border State papers also took a critical view regarding specific Lincoln policies, particularly the issue of arrests of civilians. The arbitrary arrest of civilians was frequently depicted as unjust, unfair and unnecessary. This stemmed from the fact that many of those arrested believed they were loyal to the United States. Lawrence Sangston proclaimed his loyalty to the United States in his journal,\textsuperscript{22} and the journal of Baltimore socialite Madge Preston reveals that the arrest of many was unjust and their release was “received with joy.\textsuperscript{23}” Some prestigious citizens, including Johns Hopkins, Enoch Pratt, Reverdy Johnson and John P. Kennedy of Baltimore, wrote to President Lincoln protesting the arrest of Mayor Brown and attested to Brown’s loyalty:

“We, the undersigned, citizens of Baltimore, declaring our absolute and uncompromising loyalty, fidelity and attachment to the Government of the United States, respectfully represent to your Excellency;

That we have heard, with the deepest pain and regret, of the arrest by the Federal Authority of our esteemed fellow citizen, George William Brown, Mayor of the City of Baltimore;

\textsuperscript{22} Sangston, \textit{The Bastiles of the North}, 88.
That from our knowledge of his private and official character and conduct, we unhesitatingly declare our conviction that he is a man incapable of treason or conspiracy:

That we most earnestly believe that, in all his intercourse with the officers of the Federal Government, he has been guided and governed by a most conscientious regard for the obligations of his official oath, and never by treasonable or hostile design against the Government.”

Mayor Brown’s fellow citizens believed there was no reason that he should have been arrested. Brown was a loyal citizen of the United States. In their letter to the President they underscored their own loyalty and the incapacity of Brown to commit treason. Brown’s supporters noted that he guided his behavior by his oath to the Constitution. Brown served as an example of a loyal Union man arrested unfairly. Even some in authority who had been involved in arresting civilians began to wonder if the arrests were all necessary. This was the case with General Dix, who reported the following in October, 1861:

I have become somewhat suspicious of charges against individuals unless they are well supported by statements by reliable sources. I arrested in an interior county and brought to this city two men charged with open acts of hostility to the Government on testimony vouched by the U.S. marshal, and yet they turned out to be two of the most consistent and active Union men in the neighborhood.

In the Border States the line between dissent and loyalty became blurred and those who supported the Union risked arrest and imprisonment. Many of those imprisoned proclaimed that they were loyal and indeed refused to take loyalty oaths in order to be released, believing this would verify previous disloyalty. Such was the case with Lawrence Sangston. Others did accept this as a way out, such as Russ Winans:

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25 Mitchell, ed., *Maryland Voices of the Civil War*, 244.
The Lieutenant-General desires me to add that he has just been instructed by highest authority to cause Mr. Ross Winans, of Baltimore, now a military prisoner at Fort McHenry, to be liberated on condition of his written parole, to this effect: ‘I solemnly give my parole of honor that I will not openly or covertly commit any act of hostility against the Government of the United states pending existing troubles or hostilities between the said Government and the Southern seceded States or any one of them.”

The way to get out of prison was to declare loyalty to the United States, but many of those arrested believed they had been loyal and should not have been jailed. This is not to say there were not any Southern sympathizers in these Border States. The riots in Baltimore in April of 1861 and the continuous guerilla warfare in Missouri prove that there were hostilities and pro-Confederacy feelings in these states. The journals of those arrested indicate that many believed they were loyal and many innocent people were caught up in the desire to keep these states in the Union.

Border States residents criticized the application of the administration’s policies. The greatest outrage is reserved in the sources for the imprisonment and abuse of citizens deemed loyal. Outcry over the arrest of civilians occurred when respected loyal citizens, such as Mayer Brown were affected, not when some pro-Confederate people were arrested, such as William Wilkins Glenn. This is a parallel between the Northern writers and the Border State citizens: the writers displayed an acceptance of the necessity of the suspension of *habeas corpus* to the extent that action protected the Union and punished those who worked against the Federal government. However, these residents believed that the implementation of the policies ran amok and went beyond the appropriate limits of federal power.

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The discussion of civil liberties in the Border States is one that is critical of the nature of government and the abuse of executive power. These citizens spoke from personal experience and registered their complaint regarding arbitrary arrest of loyal citizens stemming from the suspension of *habeas corpus*. These writers expressed dismay that the policies targeted civilians and pushed appropriate limits of federal power. They did not leave the Union but by staying in serve as loyal dissenters. These writers also demonstrated an understanding of the rule of law and the Constitution.
Conclusion

In 1861 a writer for the New York Times stated “We have given much study and reflection to the constitutional and military power of the President.” 181 Throughout the course of the Civil War and since, many citizens spent time studying and reflecting upon President Lincoln’s constitutional and military power. Lincoln is incessantly evaluated because the Civil War was a turning point in American history. Lincoln faced an unprecedented threat to the Union: its dissolution and the possible end of the American experiment. As Lincoln faced this tremendous task he authorized and implemented extreme actions. Because the Civil War tested the Union and the strength of its founding document, many have evaluated what Lincoln did to preserve the Union. The Supreme Court, senators, others in high office judged Lincoln’s actions, but they were neither the only, nor first ones to do so. Average citizens, whose names go unnoticed by history, not only judged Lincoln, but also developed their own ideas about the Constitution that Lincoln claimed to uphold.

Lincoln took extraordinary measures in response to the secession of the eleven Confederate States. Due to violence in Maryland and in order to protect the nation’s capitol, Lincoln suspended the writ of habeas corpus.  This suspension allowed for citizens to be arrested and jailed for an unlimited amount of time without trial. Although unprecedented, Lincoln first narrowly applied it and operated within his own constitutional philosophy to justify his action. To fight guerrilla warfare and to prevent the small pro-Southern minority to overrun the state of Missouri, Lincoln allowed Union Generals to impose martial law.

This combination of extreme measures led to both protests against and approval for Lincoln’s actions.

The suspension of *habeas corpus* and the arrest of civilians and the trial of civilians caused citizens in the South, Border States and the North to debate the nature of government, the limits of executive power, the role of dissent during war and the meaning of civil liberties. The country was split on these questions during the Civil War along geographic lines, as it was split over many issues. The citizens in the Border States were the first to experience the limits on civil liberties and personally wrote of their encounters. These sources indicted the President and others in high office, but also acted as voice of criticism in the midst of a loyal population. The Border States did not leave the Union, but were critical of the President’s actions. The Southern states viewed civil liberties as another justification for secession and a further reason to distrust the federal government under Lincoln. Additionally Confederate writers believed Lincoln was a true tyrant who destroyed free government. Some Northern papers excused Lincoln and ultimately pointed to the preservation of the Union for proof that his actions were right. Others in the North embraced a strict constructionist view and rejected that Lincoln had the power to act as he did. In these responses the people of the United States revealed their own constitutional philosophy and their personal understanding of the limits of power and the relationship of power and liberty.

The debate over civil liberties during the Civil War underscores the importance of the Constitution in American life. While Constitutional history is often viewed as an exercise in recalling the significance of select Supreme Court cases, as this thesis shows, it is important to broaden that definition to include the popular notion of the meaning of the Constitution to
every citizen. Those who supported Lincoln looked to the Constitution to validate their claims; those who disagreed with Lincoln looked to the Constitution to preserve their rights. The Constitution is not a document stashed in an archive that is not given much thought, but is part of the political consciousness of America. The Constitution is invested with meaning by everyday Americans and the diaries, letters and newspaper articles from the Civil War bear witness to this. One unique aspect of this thesis is the use of sources from women. Women at the time of the Civil War were not considered independent citizens of the United States, rather they derived their citizenship status through their husband or a father. As this thesis demonstrates, women still expressed clear ideas about government, the role of the state in their lives and their relationship to power. Women demonstrated a constitutional philosophy. This is an area that could be expanded upon and analyzed deeper in other works. The ideas swirling about the Constitution was not limited to one particular class or gender, but was broadly American. This thesis is an attempt to contribute to the understanding of popular constitutionalism and to encourage others to do so in other time periods.

Civil liberties violations in the Civil War brought to the forefront the implications of freedom of speech and the role of dissent in America. The Copperheads of the North exercised their freedom of speech and served as dissenters in that region, but many viewed those Democrats as disloyal. Despite the failure of their movement, the Copperheads represent the ability of dissenters to bring to light important issues and to act as a counterpoint to the majority opinion. Dissenters inform the majority about the minority and shed light on the plight of minority groups and give voice to those concerns. The Copperheads specifically speak to the limits of free speech in a democracy. The
Copperheads galvanized a movement and spoke openly about their opposition to Lincoln, but their speech was reigned in once leaders began to threaten the war effort. The Copperheads caused Americans then and now to wonder about the appropriate limits on free speech. In the Border States, citizens employed free speech to stress their loyalty to the Union, but voiced their displeasure at their treatment. This shows the possibility that disagreement with those in power is possible while still being part of governmental system. Border State residents did not believe, like the South, that because they were not heard or because they disagreed with the Administration they had to secede. Rather Border State writers displayed that a critical voice had a place in the government. Even in more modern conflicts free speech and dissent during wartime is fertile ground for debate. Dissent is a necessary part of a healthy democracy: it fosters debate and aids in creating the all important “consent of the governed” mentioned in our Founding documents. Dissent during wartime is a particularly thorny issue, but as those civilians arrested in Baltimore and Missouri attested they can be loyal citizens and properly express a different view than the majority. The lesson from the Copperheads and those in the Border States is that free speech is necessary to criticize and shed light on potential abuse by the federal government.

Ultimately this thesis raises the issue of the role of pragmatism in fostering democracy. Is curtailment of liberty (particularly free speech) necessary to save liberty (the larger republican experiment)? Lincoln believed that his extreme measures were justified because the Union was preserved. Others wrestled with that justification and wondered if the Union would be damaged by an excess of Presidential power. This issue also begs the question: what defines Presidential power? How limited is this power and does a national
emergency change it? In the South, Lincoln’s election signaled a shift in Presidential power. To Southern citizens, Lincoln’s rise to the highest office in the land indicated an end to their “rights”: chiefly the right to own slaves. Southerners expanded their view of the sovereignty of states and seceded from the Union. With the firm belief that Lincoln embodied tyranny and represented limited rights, the discussion shifted in the South from only a discussion of slavery to all rights that Lincoln violated. The suspension of *habeas corpus* and arrest of civilians proved that Lincoln disregarded the Constitution. Confederates revealed that they believed the President should be limited in his power and issues of rights and liberty should be defined by the State. In the North and in the Border States parallel arguments resulted from the discussion of Presidential power. Most in the North and the Border States remained loyal to the Union and acknowledged that serious and difficult decisions were necessary to preserve the Union. In the North, some excused all of Lincoln’s actions as correct and used any number of justifications for his policies. In both the North and the Border States, there were groups that objected to Lincoln’s use of power. The Copperheads in the North believed that the Constitution should be strictly interpreted and Lincoln did not do that. In the Border States, victims of arrest maintained that they were loyal and inappropriate targets of an Administration that overstepped and co-opted too much power. Ultimately Lincoln’s success in maintaining the Union overshadowed the intricacies of the debate. During the War, the answers varied according to region and experience; however, this conflict from history has fascinating implications for current and future generations. As long as a nation exists it will face trials and difficult periods and defining how the President leads and how much power he has is crucial to outline.
The impact of the civil liberties debate on wartime morale and nationalism is an additional salient point. To the Confederacy, Lincoln’s abuses of civil liberties fueled their nationalism and their belief in their new government at the start of the War. Those in the South believed in the superiority of their cause and used Lincoln’s actions to argue that they truly upheld rights. This boosted their morale and their sense of Confederate pride; however, this boost was short-lived. Jefferson Davis suspended habeas corpus in the South by 1862 and acted similarly to Lincoln in the arena of civil liberties. Although Davis has largely escaped the criticism of historians on this point, his actions led to a sense of betrayal by Confederate citizens. The role of civil liberties became increasingly complicated for Southern writers as Davis committed the same “despotic” acts as Lincoln. Due to Davis’ actions, Southern nationalism and morale was not consistently fueled by outrage over civil liberties throughout the war, although it did impact the earliest arguments over rights at the start of the War. In the North, the issue of civil liberties enabled pro-Union supporters to engage in arguments about the importance of preserving the Union, regardless of inconvenient sacrifices. In that way, Northern nationalism and morale, for those who agreed with Lincoln was improved by the civil liberties issue. In the Border States themselves the issue of nationalism and morale is complex. The Border State residents expressed concern over the abuse of power by the Union government, thus leading to a qualified support of Lincoln. Overall, civil liberties played into larger issues that fueled both Union and Confederate nationalism and morale. Ironically, the same actions increased feelings of nationalism and bolstered morale on both sides at the beginning of the War. However, the debate over civil liberties did not independently sway people for or against one side, nor
should it be viewed as one of the single largest contributors to positive morale or a surge in nationalistic feelings on either side.

The questions that the Border States and civil liberties raise are important to consider. Lincoln suspended *habeas corpus* and authorized martial law in actions that simultaneously enlarged executive power, limited freedom, and also worked to preserve the Union. These expansive actions caused citizens to respond. Civil War era Americans demonstrated that dissent and free speech served a positive role in questioning the power of the government. This debate also thrust the complicated nature of dissent to the forefront. Dissent and free speech could damage the Union and threaten its security. The Union provided Americans with Democracy and prosperity. Lincoln and the citizens of the North and Border States weighed the costs involved in preserving the Union, while citizens of the South asserted the Union was destroyed. Could the Union have been preserved without Lincoln’s measures? If the Union failed what form of government could ensure freedom? These were the complicated issues that Civil War era Americans wrestled with. Due to Lincoln’s success in preserving the Union many believed that the ends justified the means. Ironically the ability of civilians then and now to debate Lincoln’s actions rely on the Union and specifically the freedoms preserved in the Constitution. Perhaps the most enduring lesson from the Border States and civil liberties is that in uncertain times extreme measures are taken which may limit liberty or work to preserve it. The unsettling lesson is that it is impossible to know whether these actions will do the former or the latter until after the fact. Liberty is the essence of Democracy and balancing power and liberty is a challenge that any healthy Democracy must face, whether in war or in peace.
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