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War and Our Civil Liberties: Lessons from Lincoln

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WAR AND OUR CIVIL LIBERTIES: LESSONS FROM LINCOLN; Perspective

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Body

Perspective

In time of war, our nation's leaders seek extraordinary authority to combat the enemy and pursue victory at any cost. Pledging victory over terrorists, President George W. Bush has dispatched troops, created an office of homeland security, sent FBI agents to college campuses and proposed secret military tribunals. Amid widespread fears for safety at home, some Americans have gingerly raised the issue of our civil liberties. Exactly how much freedom should we give up in response to a national threat that has already taken thousands of lives?

Abraham Lincoln, whose birthday is tomorrow, led the nation through a wartime crisis 140 years ago. He is justly honored as our greatest president, who succeeded in winning a war, keeping the nation together, preserving democratic government and ending the institution of slavery. It is instructive to consider how he struck the balance between the need to protect the nation from its enemies and the need to preserve fundamental civil rights.

President Lincoln's best-known decision restricting civil liberties was his suspension of the writ of habeas corpus. Over the course of his Administration, some 15,000 persons were arrested and detained by

military authorities, without resort to the ordinary forms and processes of law, as President Lincoln put it in a message to Congress on July 4, 1861.

At first, the writ was suspended only in portions of Maryland, where subversive activities by Confederate sympathizers posed a direct threat to the national capital. In a formal proclamation in 1862, President Lincoln expanded the suspension to cover the entire country, reaching parts of the nation far from the front lines. He further empowered military commissions to try aiders and abettors of the rebellion, including all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice.

Dissident newspapers in New York were a particular target of public officials angered by criticism of the war. The Postmaster General even refused mail service to five newspapers. One editor was told the price of restoring service was to sell his newspaper (which he did).

Pulitzer Prize-winning historian James McPherson tells us that most of those arrested had in fact engaged in activities with military significance, such as guerrilla attacks on Union soldiers, burning of bridges, blowing up supply dumps, espionage and the like. But he adds that there were a fair number of citizens whose only crime was to oppose the Administration's policies and voice their dissent. One of the most prominent was Clement Vallandigham, the Democratic candidate for governor of Ohio, who was tried by a military court and ordered imprisoned for his speeches against the war. President Lincoln did not know of the arrest in advance and probably regretted it. But he supported his commanding general and did not countermand the conviction. Perhaps showing his discomfort with the case, Mr. Lincoln commuted the sentence to banishment (sending the candidate off to the Confederacy).

Others in civilian life suffered from the overzealous use of the arrest power, including a Virginia reverend who was arrested in his pulpit for failing to include a blessing for the president in his service.

A year after the end of the war, the U.S. Supreme Court reviewed the Lincoln Administration's policies in the case of an Indiana citizen named Lamdin P. Milligan. Mr. Milligan was tried by a military commission in 1864 for engaging in disloyal activities and was sentenced to death. He challenged the legality of trial of a citizen by the military. The Supreme Court rejected the government's argument that military tribunals

could supplant civil courts in wartime, in a state not in rebellion. In its opinion, the Court broadly proclaimed that the Bill of Rights was still the law of the land, in war as well as peace.

The Civil War Experience

Out of the Civil War experience, a few things become clear. Certainly in times of crisis, real threats exist from persons within the country. During the dark days of war, pressures mount to do whatever seems necessary to advance the government's war effort. Leaders suggest significant incursions on civil liberties, and it is difficult to question even the strongest measures they propose. Later, in retrospect, things look different, and the Constitution again emerges as a bulwark of liberty.

If even Abraham Lincoln yielded to the pressure to excessively curtail civil liberties, what can we expect of President Bush and Attorney General John Ashcroft? They will be sorely tempted to assume ever greater power. Time-honored notions of privacy, due process of law and limits on police interactions with citizens will be claimed incompatible with public safety. If we heed the lessons of the past, we will grant them less power than they demand, preserving our liberties while meeting the legitimate exigencies of the time.

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