

# Debates on Lincoln’s Suspension of Habeas Corpus— A Primary Sources Activity

Prepared by Charlotte C. Anderson (based on an outline by Rebecca Lacquey)

*For use in conjunction with “Ex parte Merryman and Debates on Civil Liberties During the Civil War,” by Bruce A. Ragsdale, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.*

## Activity Objectives

Through analysis of documents written in support and in opposition to President Lincoln’s authorization of the suspension of habeas corpus, students will learn about the civil liberties protected by the writ of habeas corpus and understand the debates over access to the writ during the Civil War.

## Essential Questions

- According to the Constitution, when can the privilege of the writ of habeas corpus be suspended? Who is authorized to suspend the writ?
- What was the military’s authority over the civilian population in the North during the Civil War? How was that authority of the military challenged in the civilian courts?
- What did Lincoln identify as the most important civil liberties, and what did he do to protect them?

## Legal Issues Raised by *Ex parte Merryman*

Merryman’s petition for a writ of habeas corpus presented the federal courts with questions about constitutionally protected civil liberties during the Civil War and prompted the first of many debates on the authority of the civilian federal courts in the midst of domestic military conflict.

## Estimated Time Frame

Four to five 50-minute class periods.

## Recommended Prep Work

Students will need a basic familiarity with the debates over civil liberties during the Civil War and the circumstances surrounding the arrest and detention of John Merryman. Teachers should review “*Ex parte Merryman* and Debates on Civil Liberties During the Civil War,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.

Make copies of the following six documents, with the descriptive note, for all students in the class.

1. *Ex parte Merryman*, opinion of Chief Justice Roger Taney (pp. 33–35)
2. Lincoln’s Message to Congress, July 4, 1861 (pp. 37–39)
3. Opinion of Attorney General Edward Bates (pp. 39–40)
4. Edward Ingersoll, Personal Liberty and Martial Law: A Review of Some Pamphlets of the Day (pp. 42–43)
5. *New-York Daily Tribune*, May 30, 1861, “Martial Law—Habeas Corpus” (p. 47)
6. *New York Weekly Journal of Commerce*, June 6, 1861, “Habeas Corpus” (excerpt) (p. 48)

(Note: Page numbers refer to the PDF version of “*Ex parte Merryman* and Debates on Civil Liberties During the Civil War,” by Bruce A. Ragsdale, available online at <http://www.fjc.gov/history/home.nsf>.)

## Description of the Activity

### *Introduction*

Prior to looking at the documents, students will need an introduction to the *Merryman* case and the significance of the writ of habeas corpus. Distribute “*Ex parte Merryman: A Short Narrative*” (pp. 1–9). This can be a homework assignment followed by in-class review.

### *Group Work and Discussion*

*Class period 1:* Present the class with the three excerpts of Lincoln’s orders on habeas corpus (p. 36).

Ask the students to describe what Lincoln authorized, and under what conditions. What do these documents tell us about Lincoln’s attitude toward the writ of habeas corpus? What threats to national security and domestic peace did Lincoln identify?

Then proceed to the activity by presenting the question: “Was President Lincoln justified in suspending the writ of habeas corpus during the Civil War?”

Assign half the class to prepare arguments in support of the suspension and the other half in opposition. Distribute copies of the six documents. Instruct students to read all of the documents and identify three that will best support their position.

Distribute the documents selection worksheet to be completed for individual homework.

*Class period 2:* Form pairs or small groups of those in support and those in opposition. These pairs/groups should (1) compare document selections from their homework and (2) develop a consensus selection and complete a group report.

*Class period 3:* Merge all pairs/small groups supporting each position. These two groups should follow the same procedure as above: (1) compare document selections and (2) develop a consensus selection and complete a final group report. Additionally, each group should identify three students to represent their position in a “fishbowl” discussion.

*Class period 4:* The “fishbowl.” Follow the traditional fishbowl strategy by forming an inside circle of chairs for the spokespersons, plus one empty chair, and an outside circle for the rest of the students. Tell students that the spokespersons are going to have a conversation about their opposing views. As the conversation proceeds, any student from the outside circle can take the empty seat to present an argument and evidence. After this student has presented a position and received a response from the group, the student should go back to the outside circle to provide opportunities for others to get involved. Restate the question. Instruct the spokespersons to respond to the question by restating their position and to support that position by identifying information from a supporting document. After the first student has responded, subsequent speakers will want to state why they support or oppose the position just stated, citing information from a document.

## Debrief and Wrap-up

Conclude this activity by exploring the following:

- What do the students think is the strongest argument made in these documents to support each position?
- Why did the suspension of the writ generate such vitriolic attacks and heated support? What was at stake at this time?

## Assessment

Students can write short essays that include a position thesis or statement of their personal response to the question: “Was President Lincoln justified in suspending the writ of habeas corpus during the Civil War?”

Collect the individual and group worksheets.

## Alternative Modalities and Enrichment Activities

1. Ask students to write a short paper comparing Lincoln’s July 4, 1861, message to Congress (pp. 37–39), with his public letter to Erastus Corning, June 12, 1863 (pp. 43–44). Had Lincoln’s attitude toward suspension of the writ of habeas corpus changed after two years of Civil War?

2. Ask students to read about other federal court decisions related to habeas corpus during the Civil War era, such as one of the decisions in the cases on pp. 16–21. What would the authors of the six examined documents say about each of these decisions?
3. Write a short drama about a personal meeting between President Lincoln and Chief Justice Taney.

### Involving a Judge

Invite a judge to discuss how a writ of habeas corpus is enforced in the current courts. How might Chief Justice Taney have enforced an order in the *Merryman* case?

### Standards Addressed

#### *U.S. History Standards (Grades 5–12)*

##### Era 5—Civil War and Reconstruction (1850–1877)

*Standard 2B:* The student understands the social experience of the war on the battlefield and home front. . . The student is able to evaluate the Union’s reasons for curbing wartime civil liberties.

#### *Standards in Historical Thinking*

##### *Standard 2: Historical Comprehension*

- A. Identify the author or source of the historical document or narrative and assess its credibility.
- C. Identify the central question(s) the historical narrative addresses.
- D. Differentiate between historical facts and historical interpretations.

##### *Standard 3: Historical Analysis and Interpretation*

- A. Compare and contrast differing sets of ideas, values, etc.
- B. Consider multiple perspectives.
- E. Distinguish between unsupported expressions of opinion and informed hypotheses grounded in historical evidence.

##### *Standard 5: Historical Issues-Analysis and Decision-Making*

- A. Identify issues and problems in the past and analyze the interests, values, perspectives, and points of view of those involved in the situation.
- F. Evaluate the implementation of a decision by analyzing the interests it served; estimating the position, power, and priority of each player involved; assessing the ethical dimensions of the decision; and evaluating its costs and benefits from a variety of perspectives.

### Individual Document Selection Worksheet

Question: “Was President Lincoln justified in suspending the writ of habeas corpus during the Civil War?”

Check the position you have been assigned:

- YES (support)
- NO (oppose)

Read the six documents listed below and choose three that help support your position on the above question:

1. *Ex parte Merryman*, opinion of Chief Justice Roger Taney (pp. 33–35)
2. Lincoln’s Message to Congress, July 4, 1861 (pp. 37–39)
3. Opinion of Attorney General Edward Bates (pp. 39–40)
4. Edward Ingersoll, *Personal Liberty and Martial Law: A Review of Some Pamphlets of the Day* (pp. 42–43)
5. *New-York Daily Tribune*, May 30, 1861, “Martial Law—Habeas Corpus” (p. 47)
6. *New York Weekly Journal of Commerce*, June 6, 1861, “Habeas Corpus” (excerpt) (p. 48)

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List the three documents you have chosen, and explain how each supports your position.

#### Document 1

Title: \_\_\_\_\_

How does this document support your opinion? What information does it provide? What argument does it present?

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*Document 2*

Title: \_\_\_\_\_

How does this document support your opinion? What information does it provide, what argument does it present?

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*Document 3*

Title: \_\_\_\_\_

How does this document support your opinion? What information does it provide? What argument does it present?

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## Group Report

### Document Selection

Question: “Was President Lincoln justified in suspending the writ of habeas corpus during the Civil War?”

Check the position your group has been assigned:

YES (support)

NO (oppose)

List the three documents your group agrees help support your position. Include the title of each and provide your group’s best argument for choosing each document.

#### *Document 1*

Title: \_\_\_\_\_

*Our group’s best argument.* How does this document support your opinion? What information does it provide? What argument does it present?

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#### *Document 2*

Title: \_\_\_\_\_

*Our group’s best argument.* How does this document support your opinion? What information does it provide? What argument does it present?

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*Document 3*

Title: \_\_\_\_\_

*Our group's best argument.* How does this document support your opinion? What information does it provide? What argument does it present?

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