

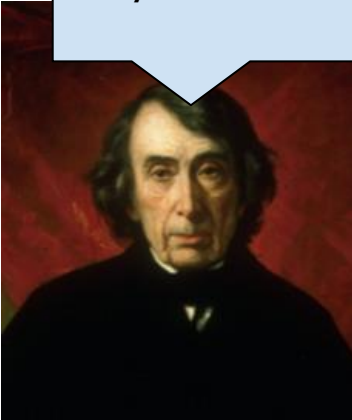
Decision #3: Civil Liberties

One week after the war begins, a pro-Confederate mob attacks Union troops in Baltimore. Four soldiers and a dozen citizens die in the rioting. The city's unrest and secessionist sentiment are putting the capital at risk, especially since Maryland is a border state located just north of the capitol in DC. It's not clear at all that Union troops can arrive here safely on the rail lines to defend Washington.

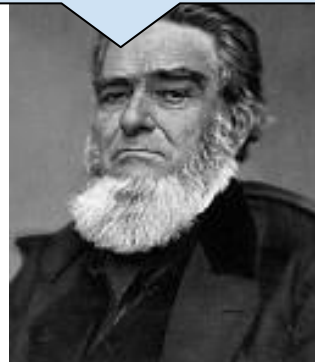
Article I of the Constitution states that "the privilege of the writ of habeas corpus" could be suspended by Congress "in cases of rebellion and invasion the public safety may require it." Because Congress was not in session, Lincoln suspended the writ of habeas corpus himself. To restore order, he sent troops to occupy Baltimore and suspended the writ of habeas corpus, meaning authorities could arrest rebels or people who were hurting the war effort without being brought before a judge or telling them why they were being arrested. General-in-Chief Scott was authorized to arrest and detain Maryland citizens and legislators in jail without trials because they were suspected of participating in the rebellion. Militia officer John Merryman, who was charged with directing acts of sabotage as well as recruiting and training Confederate sympathizers, was one person arrested during this time.

Merryman's lawyer petitioned for a writ of habeas corpus, requiring that his arrest be justified in court. On May 26, Chief Justice Roger B. Taney stated that the power to suspend civil liberties, including habeas corpus, belongs to Congress, not the president, and that Lincoln could not continue his actions in suppressing the border states.

The provision authorizing the suspension of the writ appears in Article I of the Constitution, specifying the powers of Congress. "The President ... cannot suspend the privilege of the writ of habeas corpus nor authorize a military officer to do it." -Chief Justice Taney



"The President has the legal [authority] to arrest and imprison persons who are a danger to national security and threaten the nation with rebellion. He is fully justified in refusing to obey a writ of habeas corpus." -Attorney General Edward Bates



Do you advise Lincoln to (circle one):

- A. Obey the Order: It's unconstitutional for the President to suspend the writ of habeas corpus (arrest/jail people without telling them why)
- B. Ignore the order and continue suspending habeas corpus: The President has the legal authority to arrest and imprison people who are a danger to national security during war.

What really happened:

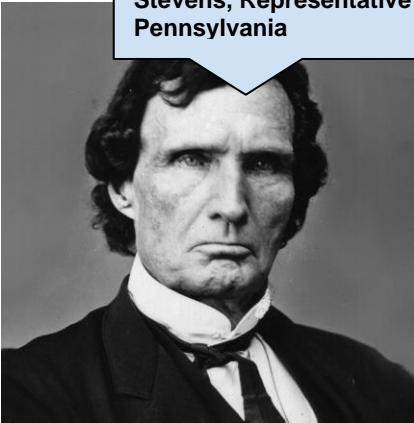
Decision #4: Declaring the Purpose of War

By July of 1861, the war has officially started, and it is clear that it will not be a short war. Congress is back in session, and they decided to adopt a resolution (a formal statement) about the purpose of the war. This resolution blamed the secessionist states for the war and stated that the object of the war was not the subjugation of those states, but the defense of the Constitution and the preservation of the Union. Once that was accomplished, the war would end: "This war is not waged...for the purpose of overthrowing or interfering with the established institutions of those States, but to maintain the States unimpaired; and that as soon as these objects are accomplished the war should cease." The vote on the resolution was 117 in favor to 2 opposing in the House and 30 in favor to 5 opposing in the Senate.

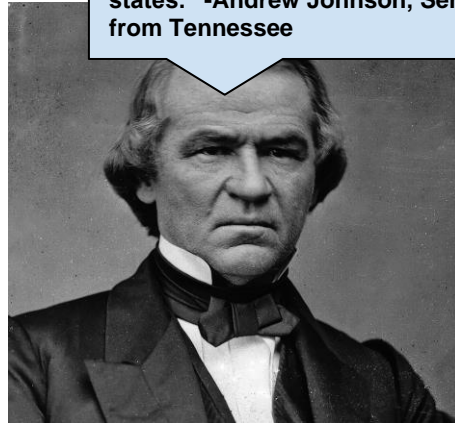
Lincoln was concerned that the slave states of Missouri, Kentucky, and Maryland in the crucial upper south might leave the Union to join the Confederate States of America. If Maryland were lost, Washington, D.C. would be entirely surrounded by Confederate territory. Both Missouri and Kentucky were slave states of questionable loyalty to the Union that bordered on important Union territory and were needed for access to the Mississippi River..

Abolitionists and the more radical members of Lincoln's Republican Party see the war as an opportunity to abolish slavery. However, Lincoln is afraid of angering the border states (slave states that remained in the Union)-- Delaware, Kentucky, Maryland, and Missouri. They might secede and join the Confederacy if they think the war will be fought to abolish slavery. In addition, many northerners, including Union soldiers, are not willing to fight a war to free slaves. They might not support slavery, but they also do not think it is worth a war and thousands of deaths. Should Lincoln sign the resolution?

"In war, Congress and the President have the right to take any step which would subdue the enemy. free every slave—slay every traitor—burn every rebel mansion, if these things are necessary to preserve the Union." --Thaddeus Stevens, Representative from Pennsylvania



"Our goal since the outbreak of this war has been to preserve the Union. We have no legal authority to attack slavery, and doing so would endanger the security of the border states. We should aim simply to end the rebellion, reunite the southern states." -Andrew Johnson, Senator from Tennessee



Do you advise Lincoln to (circle one):

- A. Sign the resolution as is. The goal of the war should be to preserve the Union and end the rebellion in the South.
- B. Demand a revised resolution that includes the abolition of slavery as a goal of the war.

What really happened:

Decision #6: Emancipation?

Lincoln has been doing everything in his power to maintain the allegiance of the slave states that remained loyal to the Union when the South seceded (border states) – Delaware, Kentucky, Maryland, and Missouri. If those states join the Confederacy, the Union might lose the war. Lincoln has tried to convince those states to voluntarily emancipate their slaves. In Delaware, he proposed a plan of emancipation: all slaves over the age of 35 would be freed immediately and all others would be freed by 1872. Slave owners would be compensated \$500 per slave and freed slaves would be sent to colonies the Caribbean. However, by the summer of 1862, it's becoming clear they will not go along. If Delaware, the slave state with the smallest slave population, won't accept emancipation, will any of the other slave states?

By the fall of 1862, Lincoln has become convinced that emancipating the slaves is both a political and military necessity. Lack of military success, a need for more recruits and manpower, changing northern public opinion, personal beliefs, and the calculation that making slavery a target of the war effort would counteract sentiment in Britain for recognition of the Confederacy all contribute to Lincoln's acceptance of emancipation. Lincoln stuns his cabinet by announcing his plan to issue an **Emancipation Proclamation**, or an official document stating that the slaves are "henceforth and forever free." However, there are several issues Lincoln must decide before he can issue the proclamation:

1. WHEN to issue the proclamation
 - a. After the devastating Union loss at the Second Battle of Bull Run, British Prime Minister Lord Palmerston declares that in late September, Britain should mediate between the North and South to end the war. If the US refused, Britain would recognize the Confederacy and potentially aid them in securing independence. However, Secretary of State Seward warns that Lincoln might seem desperate if Lincoln issues the proclamation now. He advises waiting for a military victory. Finally, waiting just means more time the Confederacy can use slave labor to aid its army and free its labor force to fight the war.
2. Where/whom the proclamation will affect
 - a. The border states of Maryland, Kentucky, and Missouri are critical to the Union. If he frees all the slaves, these three states may decide to join the Confederacy. On the other hand, if Lincoln frees only the slaves in the South, the abolitionists will be outraged and he may lose much of your support in the North. 1864 is a reelection year.
3. What specific provisions will be included regarding the nature of freedom and the status of freedmen
 - a. Even some abolitionists do not think that blacks and whites are equal. Lincoln himself is unsure and has always favored colonizing slaves in the Caribbean. Should slaves be freed and given citizenship? And should they be allowed to fight for the Union? Black troops could greatly boost the Union Army's enlistment and reduce the need for the very unpopular draft, but many white soldiers might be unwilling to fight a war for black freedom and alongside blacks.

Consider the advice on the following page on whether to issue an emancipation proclamation, when to issue one, and whether blacks should be given citizenship and be allowed to serve in the army. Then, come up with your recommendation to Lincoln.

Make your recommendations to Lincoln on the next page.

When do you advise Lincoln to issue an emancipation proclamation? (or should he issue on at all?)

Where should the proclamation take effect? Just the Confederate states, or all states, including border states?

What should be the status of freedmen? Should they get citizenship or just freedom? Should blacks be allowed to serve in the army and, if so, should they be integrated with regular troops or kept in segregated units?

What actually happened:

Text of the Emancipation Proclamation - 1863

- 1) "I, Abraham Lincoln. . .do designate [name] the following States as being in rebellion: Arkansas, Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia.
- 2)On the first day of January, in the year of our Lord, 1863, all persons held as slaves within said states in rebellion against the United States, shall be forever free; and the Executive Gov't of the United States, including the military and naval authority, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom...
- 3)And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States [in rebellion]...are forever free...And I hereby ask them to abstain from all violence, unless necessary for self-defense, and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages... And I further declare and make known that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places within the army or navy...
- 4) This act, I sincerely believed to be an act of justice, warranted [justified] by the Constitution by military necessity..."

Analysis Questions

1. **The Emancipation Proclamation did not free all slaves, but it did free some. According to the proclamation, where were slaves "forever free?" Why do you think Lincoln only freed slaves in these areas and not everywhere, especially the border states?**
2. **How did Lincoln address the newly freed slaves? What two things did he ask them to do?**
3. **How did Lincoln justify the proclamation? In what ways was it a war strategy?**

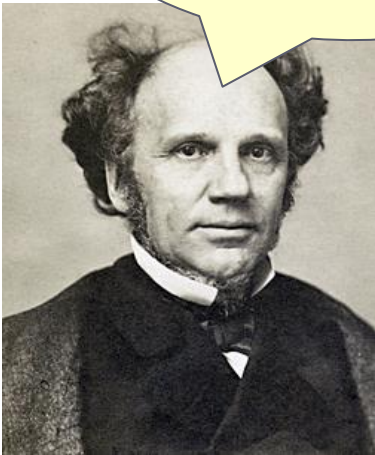
Decision #7: To Draft or not to Draft? Summer, 1863

At the start of the Civil War, men on both sides rushed to sign up for the army. But as the war has dragged on, the number of volunteers has steadily dropped. Large payments of money, called “bounties”, have been offered to men enlisting or re-enlisting for military service. However, more soldiers are desperately needed.

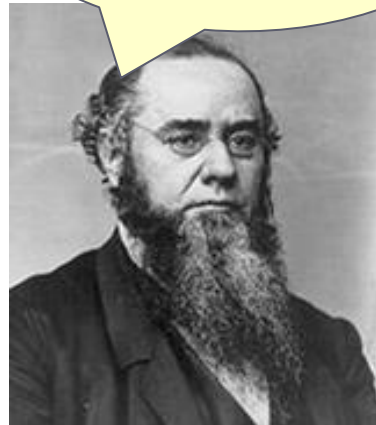
To maintain the Union Army’s strength, Congress in March 1863 imposes a national draft, the first in our nation’s history. Men between the ages of 25 and 40 would be forced to serve in the army. Those who are drafted, may, if they can afford it, hire substitutes. They can also avoid military service altogether by paying the government \$300. Only the wealthy can afford this price. People are complaining that this is a “rich man’s war and a poor man’s fight.” Reaction is violent. That July in New York, a week of rioting claims more than 100 lives and destroys buildings and property.

The Draft bill is very unpopular in some sections of the North. The United States has never drafted men before. Many are unwilling to risk their lives to free blacks who might eventually take away their jobs. The rioting in New York is out of control and could spread to other states. However, more soldiers are needed to win the war, and Lincoln feels the Constitution allows Congress to institute a draft.

“The right of this Government to enforce military service in any other mode than that pointed out by the Constitution cannot be established...the recent Conscription Act is



“It is absolutely necessary that efficient means be taken...to keep the army up to its strength, and restore the losses sustained by casualties in the field. A draft is necessary not only for sustaining the army but also



Do you advise Lincoln to (circle one):

- A. Allow the Supreme Court to decide if the Conscription Act is Constitutional. In the meantime, stop enforcing it so that the riots will cease.
- B. The draft is Constitutional; the Supreme Court does not need to weigh in on it. Send federal troops to New York to enforce the draft and put down the riots.
- C. The draft is too controversial. Rescind it.

What actually happened: