Manuscript: In the Footsteps of the Lincolns (newspaper series), Chapter XLII, King Lincoln

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Chapter XLII - "King Lincoln"

1. Gideon Wells, secretary of the Navy through the Lincoln and Johnson Administrations. Beginning in August 3, 1863, Mr. Wells set down almost every night after his family was in bed his views of the moment's happenings. This Diary was first published in 1911 and at once took the place as one of the most valuable guides we have to the men and policies of the Civil War.

2. Edwin M. Stanton appointed Secretary of War by Mr. Lincoln in January 1863. Mr. Stanton's free and not too careful use of his power of military arrest was responsible for much of the criticism of Lincoln in the troubled months we are following here.

3. Punch continued to gloat throughout 1863 over every task set to the northern army and navy. The failure in April of a movement against Charleston brought into the above cartoon.

4. The arrest of Vallandingham was spread before the country by the illustrated papers. This print is copied from Frank Leslie's weekly of May 23 with the permission of the Judge Leslie Company.

5. The cartoons made much of Lincoln's order to turn Vallandingham over to the Confederates. This is the way Frank Leslie's Weekly saw the incident. By permission of the Judge Leslie Company.
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See Vol 2, Pulnair p 304

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IN THE FOOTSTEPS OF ABRAHAM LINCOLN

CHAPTER XLII

"King Lincoln"

The charge of despotism hurled at Lincoln continuously in the dark and doubtful days between Antietam and Gettysburg was based on three counts: the first, his action in regard to slavery — it was arbitrary and unconstitutional. Lincoln's reply to this charge was quoted in our last chapter, where we also glanced at some of the fresh difficulties that the action brought him.

The second count on which he was found guilty was what he characterized as his "arrests, banishments and assessments." To understand his reasons for permitting these, the condition of things at the start of the Rebellion must be recalled. When one remembers that no one in the new administration had any adequate idea of the extent to which the government departments, the army and navy were shot through with treason—that every day persons in trusted positions went over to the Confederacy, carrying valuable information with them; that throughout the North there was a rapid organization of societies publicly or secretly in sympathy with the South — remembers, too, the uncertainty as to how far the people of the Border States would support the Union and how far they were working to undermine it, he can more readily understand that a defensive system of some kind was essential.
Suspicion and fear were active from the start in meeting treason. There was little inclination to wait for "evidence". Everything and everybody that was not loudly loyal was in danger of attack. One of the first demands of those concerned with public safety was that the Maryland legislature should not be allowed to assemble, because it was feared that it would arm the people of the state against the United States.

Mr. Lincoln was quite clear that this would be a mistake. They had a legal right to assemble, he told Gen. Scott, who was for their suppression. Nobody could tell in advance whether their action would not be lawful and peaceful. At all events, if they arrested them, they could not be long held as prisoners, and when they were liberated they would immediately reassemble and probably, because of their arrest, would be the more dangerous. This disposed of the case of the Maryland legislature; but it did not dispose of many persons believed to be hostile, scattered through the state, so that 12 days after the firing on Sumter, the President suspended the writ of habeas corpus between Washington and Philadelphia. A little later this suspension was applied to Florida, and then extended as far as New York City; later still, to Bangor, Maine.

Of course there was a loud outcry against this use of power. Here was a president who had laid repeated emphasis on the oath that he had taken that the laws be faithfully executed, violating the law, his critics said. His defense was one of his
characteristic balancing of a situation. Should all the laws but one go unexecuted and the government itself go to pieces lest that one be violated? In such a case would not the official oath be broken if the government should be overthrown, when it was believed that disregarding a single law would tend to preserve it? However, he did not believe, he declared, that the law had been violated. The Constitution provided that the writ of habeas corpus could be suspended if, in case of rebellion or invasion, the public safety required it. It did not say, however, who should suspend it, that is: it did not declare in so many words that Congress and not the President had the power. For his part, he could not believe that the makers of the Constitution intended that a "dangerous emergency" should run its course until Congress could be called together. That would be the orderly procedure of peace but War is not an orderly business; it creates its own necessities. He was sworn to protect the Union, he must do it in the ways he thought best, doing as little harm as possible in the process.

But he did not like it, and in February of '62, just after Stanton came in as the head of the War Department, withdrew the order and declared a general amnesty to political prisoners. He did it because he believed there had been a change of public opinion, that the line between loyalty and disloyalty had been plainly defined, and there need be no longer fear of treasonable practices in the North. In the months that followed this general release of political prisoners things grew worse as we have seen.
There was the defeat of the armies, there was his failure to persuade the Border States to adopt compensated emancipation; a new and more vigorous policy was necessary and as a first measure he issued his preliminary emancipation proclamation, the first act that brought upon him a serious charge of unconstitutionality and earned him the title of "King Lincoln".
Two days after the Emancipation Proclamation, came a sweeping suspension of the writ of habeas corpus as long as the insurrection should endure. The reason given was that it had become necessary to call into service not only volunteers but also portions of the militia of the states by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, from giving aid and comfort in various ways to this insurrection."

This drafting of men into service was the third count against Lincoln — to many minds the most despotic of the changes in his policy he was making, in order to secure a more vigorous and effective prosecution of the war. These measures alarmed many of his friends because they seemed to over-ride civil liberty. They of course aroused the bitter protest of his enemies, and what better material for the use of Southern sympathizers?

Lincoln had no doubt believed through the first year of the war that there would never be a necessity of raising armies by drafting; but the weariness and disgust that McClellan's failure in the Peninsula caused had its effect on the army. Volunteering ceased. Desertions increased. The need of more and more troops became urgent, and several of the states in which volunteering was lagging, tried drafting in order to make up their quotas. Congress and the administration began to discuss the advisability of making a national law, and as early as August of '62
Lincoln wrote to a foreign correspondent and sympathizer, not to be alarmed if he heard that the North had resorted to a draft. "It seems strange even to me," he said, "but it is true that the government is now pressed to this course by a popular demand. Thousands who wish not to personally enter the service are nevertheless anxious to pay and send substitutes, provided that they can have assurance that unwilling persons, similarly selected, will be compelled to do likewise. Besides this volunteers mostly choose to enter newly formed regiments while drafted men can be sent to fill up the old ones wherein, man for man, they are quite doubly as valuable."

But if there was a popular demand for the draft, there was protest. A louder popular cry against it and the adoption throughout the summer and fall of '62 all sorts of interferences and outbreaks occurred. In Pennsylvania the malcontents went so far as to attempt to prevent drafted men who had themselves accepted the situation from leaving their homes.

This open interference was of course met by wholesale arrests and imprisonment, allowed by the suspension of the habeas corpus writ.

Now, if Lincoln himself could have applied the proclamation, then, decided who should and should not have been arrested, we can believe that there would have been few punishments. Both his
understanding of men and his sense of values were such that if
every prisoner could have been passed before him, we can believe
there would have been few mistakes. But it was not Abraham
Lincoln who was arresting men; it was Secretary Stanton, it was
the military commanders. Stanton was suspicious, hot tempered,
vindictive, and where he found any trace of disloyalty, he was
quick to order a man behind the bars. There were many of the
generals whose loyalty was of the same passionate kind. There
were others with an over-grown sense of power and a joy in exer-
cising it. And in many places factions were at work, willing to
use the power of arrest and punishment in order to get a rival out
of the way, to discredit opponents.

A new burden was put on Lincoln's shoulders by these
foolish, personal and vindictive applications of the law; many
cases were put before him so unwise, if not unjust, that he had
to interfere. There was the case of one Captain Schaad, dis-
missed by his commanding officer because he refused to sanction a
resolution endorsing the Emancipation Proclamation. Lincoln would
not approve - the man was of good character, candid and manly, an
efficient officer. He could not allow an officer to be dismissed
because he would not endorse the Proclamation. That in itself did
not prove disloyalty.

More than one general used his authority at this period
to arrest ministers for sermons that they had preached, particular-
ly in the territory of the Border States. Under the protection
of the church they criticized the war and the method of its prosecution. Lincoln dismissed more than one of these suspensions, generally because he sensed that it was often a case of a divided church - divided, to be sure, on the matter of the war. In the case of a St. Louis church, where the minister had been removed by the General in command, Lincoln wrote him "The United States government must not by this order undertake to run a church. When an individual in a church or out of it becomes dangerous to the public interest, he must be checked, but let the churches as such take care of themselves. It will not do for the United States to appoint trustees, supervisors or other agents for the churches."

In the case of the minister removed here, Mr. Lincoln found by personal interview that he did sympathize with the rebels but that he had taken the oath of loyalty, that there was no proof that he had violated the oath that he had done nothing to interfere with the safety of the Government, that the order had been passed purely upon a suspicion of his secret sympathies. Later it came out that this was one of the frequent cases to which I have alluded, where a faction of the church, probably an aggressively loyal faction, knowing of the minister's Confederate affiliations, had succeeded in arresting him. It really was a quarrel between rival trustees, spurred of course by antagonistic views on the question of the war.

Although there were many thousand military arrests during the war, just how many has never, so far as I know, been
satisfactorily settled, the only really spectacular case was that of Clement L. Vallandigham of Ohio. Vallandigham was a leader of that branch of the Democratic party that took pride in its title of "Copperhead" and wore that vindictive emblem on the lapel of its coat. He was in Congress when the Emancipation Proclamation was signed, and celebrated the event by one of his bitterest speeches that was made by the opposition. He believed honestly enough that the South could not be conquered, that the war for the Union, as he said, was a bloody and costly failure. His cry was to make an armistice, accept foreign mediation, secure peace. Then, as he proclaimed, the Union would be the Union as it was.
Vallandingham's bitterness was intensified by the adoption by Congress in March of '63 of a law giving the government the power to raise an army directly, that is, not through the States as so far had been the practice. The act declared that all "able-bodied" male citizens between the ages of twenty and forty-five, and persons of foreign birth who had declared their intention to become citizens, could be called by draft into the army. It arranged that the draft should be enforced by a new bureau in the War Department, at the head of which the President was to place a provost-marshal general. The country was to be divided into districts, with the proper enrolling officers in each.

The debate that had preceded the passage of the law had been hot and angry in both houses. Vallandingham had been among its most impassioned opponents.

It was a law, however, and the President arranged for its enforcement. Those who opposed its operation could of course be taken care of summarily because of the suspension of the writ of habeas corpus. When the Thirty-seventh Congress adjourned in March of '63, Vallandingham went back to Ohio where he had a big following and began an active and bitter campaign against the administration. Now, his state, along with Indiana and Illinois was included in the military Department of the Ohio which, at the moment, was under the direction of General Ambrose Burnside.
From the start Burnside had been violent in his opposition to all forms of Copperheadism. Treason would not be tolerated in his department, he said. He would not allow anyone to declare sympathy for the enemy. This policy of Burnside's was well under way when at the beginning of '63 a Democratic mass meeting was held at Mt. Vernon, Ohio with Vallandigham the chief speaker.

Burnside, knowing of the meeting, sent two officers in civilian clothes to take notes. What they brought back convinced the general that there had been treasonable utterances, and without consultation with any authority he sent a company of soldiers on a special train to Dayton where Vallandigham lived, and ordered his arrest. A military trial of an irregular sort was held, and Vallandigham found guilty of "publicly expressing sympathy for those in arms against the government of the United States." His sentence was close confinement during the continuance of the war.

When the news of his high-handed performance reached the cabinet in Washington, there was general dismay. Secretary Welles set down in his Diary that everybody considered the proceedings arbitrary and injudicious. "It gives bad men the right of questions", he commented, "an advantage of which they will avail themselves. Good men who wish to support the administration find it difficult to defend these acts, and yet the responsibility is here or it is unless they are disavowed and Burnside called to account, which cannot be done." That the cabinet, the President included, disapproved, reached Burnside's ears, and, sensitive as
he was because of his removal from the Army of the Potomac, he offered at once to resign. Something of Lincoln's irritation at the whole situation shows in his answer:

"When I wish to supersede you, I shall let you know.

All the cabinet regret the necessity of arresting Vallandigham, some perhaps doubting there was a real necessity for it, but being done all were for seeing you through with it."

The way that he saw Burnside through with it was to commute the sentence which had been pronounced upon Vallandigham. "The President directs", he wrote Burnside, "that without delay you send C. L. Vallandigham under secure guard to the headquarters of General Rosecrans, to be put by him beyond our military lines."

And this was done. Lincoln realizing that Vallandigham would be a most uncomfortable martyr to deal with in a United States prison, had sent him to those for whom he had professed sympathy. It was a turn to the unfortunate case which aroused the humor of the country and made it difficult for Vallandigham's party to make

as capital of it.

There was of course strong protest. It found its best expression in a series of resolutions passed at a mass meeting held in June in Albany. They upheld the Union but they asserted that military arrests, for which the President was ultimately responsible, were unconstitutional. Lincoln said in response, "I think they are not."
"If I be wrong on this question of constitutional power, my error lies in believing that certain proceedings are constitutional when, in cases of rebellion or invasion, the public safety requires them, which would not be constitutional when, in absence of rebellion or invasion, the public safety does not require them; in other words, that the Constitution is not in its application in all respects the same in cases of rebellion or invasion involving the public safety, as it is in times of profound peace and public security. The Constitution itself makes the distinction and I can no more be persuaded that the government can constitutionally take no strong measures in time of rebellion, because it can be shown that the same could not be lawfully taken in time of peace, than I can be persuaded that a particular drug is not good medicine for a sick man because it can be shown to not be good food for a well one. Nor am I able to appreciate the danger apprehended by the meeting, that the American people will by means of military arrests during the rebellion lose the right of public discussion, the liberty of speech and the press, the law of evidence, trial by jury, and habeas corpus throughout the indefinite peaceful future which I trust lies before them, any more than I am able to believe that a man could contract so strong an appetite for erotica during temporary illness as to persist in feeding upon them during the remainder of his healthful life."

One adroit argument that he made was that under the head of "liberty of speech", "liberty of the press" and "habeas corpus" the Confederates had hoped to keep on foot in the North an efficient corps of spies, informers, suppliers, aiders and abettors of their cause in a thousand ways. "Of course", he went on, "they knew that habeas corpus might be suspended, but they also knew that if it was, their friends in the north would make a question of this suspension. It was a part of their program and a part that he had got to meet and make ineffective. Civil courts could not do the work, they never
had in case of war. Even in times of peace," he said, "bands of 
house-thieves and robbers frequently grew too numerous and powerful 
for the ordinary courts of justice. But what comparison in numbers, 
have such bands ever borne to the insurgent sympathizers found in 
many of the loyal states?"

That which took hold of the people most strongly in his 
argument was not any argument of constitutionality or unconstitution-
ality: it was his touching reference to the effect that such agita-
tion as Vallandigham was carrying on had had upon the soldiers.

"Vallandigham was not arrested", he told the protestants, 
because he was damaging the political prospects of the administra-
tion or the personal interests of the commanding general, but because 
he was damaging the army upon the existence and vigor of which the 
life of this nation depends."

"Long experience has shown that armies cannot be 
maintained unless desertion shall be punished by the 
severe penalty of death. The case requires, and the law 
and the Constitution sanction, this punishment. Must I 
shoot a simple-minded soldier boy who deserts, while I 
must not touch a hair of a wily agitator who induces him 
to desert? This is none the less injudicious when effect-
ed by getting a father, or brother or friend into a public 
meeting, and there working upon his feelings till he is 
persuaded to write the soldier boy that he is fighting in 
a bad cause, for a wicked administration of a contemptible 
government, too weak to arrest and punish him if he shall 
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."
There was the practical man. No man more for law or Constitution than he in times of peace, but when law and the Constitution themselves were over-ridden, then he must do what was necessary to save them, whether it was written into the document or not. He had turned the tables on Vallandigham in a way that had won the public, and his vigorous answer to the criticisms of his enforcement of his new policies had an immediate and admirable effect. It was a sound, sensible, practical point of view, the common man said.

He was no less successful a little later in the adroit way in which he handled a group of Vallandigham’s political supporters in Ohio. A big committee was formed there—a man from every congressional district—which had come down to Washington to argue further with him about the futility of his ways. He referred them to his letter replying to the Albany resolutions, and then gave, straight from the shoulder, his judgment of the effect on the raising of troops that Vallandigham’s activities had had.

“We all know that combinations, armed in some instances, to resist the arrest of deserters began several months ago; that more recently the like has appeared in resistance to the enrolment preparatory to a draft; and that quite a number of assassinations have occurred from the same animus. These had to be met by military force; and this again has led to bloodshed and death. And now, under a sense of responsibility more weighty and enduring than any which is merely official, I solemnly declare my belief that this hindrance of the military, including maiming and murder, is due to the course in which Mr. Vallandigham has been engaged in a greater degree than to any other cause; and it is due to him personally in a greater degree than to any other one man.”
"These things have been notorious, known to all, and of course known to Mr. Vallandigham. Perhaps I would not be wrong to say they originated with his special friends and adherents."

In spite of this, however, he told the gentlemen that he would release Vallandigham, without asking any pledge if the members of the committee that had come to him would put their names to three propositions, duplicate copies of which he sent to each one. These propositions were:

"1) That there is now a rebellion in the United States, the object and tendency of which is to destroy the National Union; and that, in your opinion, an army and navy are constitutional means for suppressing that rebellion;

"2) That no one of you will do anything which, in his own judgment, will tend to hinder the increase, or favor the decrease, or lessen the efficiency of the army or navy while engaged in the effort to suppress that rebellion; and

"3) That each of you will, in his sphere, do all he can to have the officers, while engaged in the effort to suppress the rebellion, paid, fed, clad, and otherwise well provided for and supported."

As soon as they had endorsed the above he proposed to publish them and that publication, he told them, would be a revocation of the order in relation to Mr. Vallandigham.

Here was a dilemma! Whichever horn of it they took, the President won - refuse to sign it and they wrote themselves down as against the vigorous prosecution of the war; sign it and they admitted that the President's position in regard to military arrests was correct. The people saw the point, applauded its humor and its wisdom. These propositions to Vallandigham's supporters, coupled with the reply to the Albany resolutions, did
much for Lincoln. It was common sense, people said, you could not get around it. It was a strong element in bringing about the overwhelming defeat of the sympathizers of Vallandigham in the next Ohio election.

What we may call Lincoln's "fighting intellect" was never in better form than in the documents setting forth his arguments against the three great features which as military necessities he introduced into his policy for conducting the war in the fall of '62. He never argued more clearly or more practically, he never assumed positions more daringly or defended them more frankly and convincingly. These letters defending the Emancipation Proclamation, sent to the mass meeting in Springfield, Ill., and from which I quoted in our last article; the reply to the Albany resolutions and to the Ohio committee are among his greatest political expressions. They are the honest thinking of a man who has the responsibility put upon him of saving his country by war, who wants to do it as nearly as he can according to the letter of the law, but who realizes that war itself is in essence a thing without the law, that when you go into it you must do what you must do — one of the strong arguments against war itself. These letters were a strong force in turning the tide — that tide which had been so strong against him, but which by the summer of '63 had begun to turn. That turn of the tide was rushed ahead in July by the one thing which he had needed most from the start, and that was brilliant military victories. It is to the story of these victories
and what they meant in clinching the plan of military operations that we take up in our next chapter.