

Lincoln's Response to Congressⁱ

Abraham Lincoln, [May-June 1861] (Message to Congress, July 4, 1861, Handwritten Draft)

Soon after the first call for militia, I felt it my duty to authorize the Commanding General, in proper cases, according to his discretion, to suspend the privilege of the writ of habeas corpus -- or, in other words, to arrest, and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety. At my verbal request, as well as by the Generals own inclination, this authority has been exercised but very sparingly-- Nevertheless, the legality and propriety of what has been done under it, are questioned; and I have been reminded from a high quarter that one who is sworn to "take care that the laws be faithfully executed" should not himself be one to violate them-- So I think. Of course I gave some consideration to the questions of power, and propriety, before I acted in this matter--

The whole of the laws which I was sworn to see take care that they should be faithfully executed, were being resisted, and failing of execution to be executed, in nearly one third of the states. Must I have allowed them to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their execution, ~~some provision of one single law, made in such extreme tenderness of the citizens liberty, that more rogues than honest men practically more of the guilty than the innocent, find shelter under it, should, to a very limited extent, be violated?~~ some single law, made in such extreme tenderness of the citizens liberty, that practically, it relieves more of the guilty, than the innocent, should, to a very limited extent, be violated? To state the question more directly, are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one law be violated? Even in such a case I should consider my official oath broken if I should allow the government to be overthrown, when I might think the disregarding the single law would tend to preserve it-- But, in this case I was not, in my own judgment, driven to this ground-- In my opinion I violated no law-- 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. I decided that we have a case of rebellion, and that the public safety does require the qualified suspension of the privilege of the writ of habeas corpus, which I 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 plainly was made for a dangerous emergency, I can not bring myself to believe that the framers of that 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, and in as was in- of which might be prevented, as was intended in this case, by the rebellion--

I enter upon no more extended argument; as an opinion, at some length, will be presented by the Attorney General--

Whether there shall be any legislation upon the subject, and if any, what, I submit entirely to the better judgment of Congress--

ⁱ Abraham Lincoln Papers at the Library of Congress. Transcribed and Annotated by the Lincoln Studies Center, Knox College, Galesburg, Illinois.