

LESSON WRITER: Anthony C. Polvino

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COURSE/GRADE: 9th-12th grades

UNIT: Introduction to People's Law; Civil War or other discussion of wartime on the homefront

LESSON TITLE: Habeas Corpus in Crisis Times

TIME NEEDED: One 45-minute class period

LESSON OVERVIEW:

Students will explore original source materials illuminating the suspension of the writ of habeas corpus during the Civil War. Students will examine Lincoln's suspension of the writ of habeas corpus and the non-judicial detention of Southern sympathizers during the Civil War. Students will need direct instruction prior to this lesson on the meaning and history of the writ of habeas corpus and the vocabulary words set out below and on the basic facts of occurrences in April, 1861. This direct instruction should include all of the following material. *Limit this mini-lesson to a firm 5 minutes.*

- Habeas corpus is often called the Great Writ. A writ is a formal court order. In this case, it is an order from a court to some officer, usually from the Executive Branch of government, to justify holding a particular individual in custody. It is considered the citizen's great protection against arbitrary arrest by government agents because government officials must either obey the court or look like they are disrespecting the rule of law.
- The U.S. Constitution provides, in Article I, section 9, "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."
- On April 15, 1861, Confederate forces in Charleston, S.C., opened fire on Fort Sumter, forcing its surrender. President Lincoln immediately called for the states to send troops to join the army to put down the armed rebellion of the Confederate states. On April 19, 1861, a riot broke out in Baltimore when part of a regiment of Massachusetts troops arrived by train in Baltimore and attempted to march through the city by way of Pratt Street on their way to Washington, D.C. Many of the leading people in Baltimore either failed to control the rioters or actively assisted them, including the city's mayor and the head of the police commission. Partly in response to this, President Lincoln on April 27, 1861, issued an Executive Order authorizing General Scott, the Chief of Staff of the Army, or any officer General Scott might designate, to suspend the writ of habeas corpus in order to protect the rail line leading from the north through Baltimore to Washington.

OUTCOMES: At the end of this lesson, students will be able to assess the impact of governmental action during military crises on American concepts of civil liberties and on habeas corpus, in particular.

OBJECTIVES:

Focus Question for the Lesson: Was the rule of law and the Constitution respected in the Union during the Civil War?

Historical Thinking Skill Targeted:

Standard 3.A Compare and contrast differing sets of ideas

Standard 3.B Consider multiple perspectives

VSC Content Objectives

U.S. History Middle School Grade 8: 1.A.2.a Evaluate the power and authority of the government on individuals.

Government: 1.2.3 The student will evaluate the impact of governmental decisions and actions that have affected the rights of individuals and groups in American society and/or have affected maintaining order and/or safety.

VSC Skills and Processes Objectives

6.B.1.a Select and use informal writing strategies...Journal writing, note taking and graphic organizers to clarify, organize, remember and/or express new understandings

6.G.3.e Use media resources to deliberate and advocate issues and policies

6.F.1.c Analyze a document to determine point of view

MATERIALS: One each per student

Sufficient copies of Newspaper source analysis tools, Manuscript source analysis tools for classroom use; chart paper & colored markers, together with appropriate copies of Primary Sources listed below.

PRIMARY SOURCES:

1. "Local Matters *The Habeas Corpus Refusal*" May 6, 1861 *The Baltimore Sun*, Maryland State Historical Society
2. Leonis, Maj. W.W., Letter to Judge William Fell Giles, May 6, 1861; Ms 1977, Maryland Military Affairs Documents 1818-1887, Folder 1860's, Doc. C and transcription, Maryland State Historical Society

Additional Documents for Teachers:

Lincoln's Order suspending the writ of habeas corpus, 27 April 1861, found at <http://www.presidency.ucsb.edu/ws/index>

SELECTED VOCABULARY:

***Habeas Corpus*—The Great Writ—a court order to an individual having custody of a prisoner to prove that the individual is properly imprisoned**

***Perfidiously*—Acting in a way that is treacherous**

***Assemblage*—A collection of people or things, in this case, a gathering**

***Abrogating*—Abolishing or doing away with especially by authority**

PROCEDURE:

1) Motivation: Discussion question for class opening; **Should people have the same rights to protest and disagree with the government in a time of war as in a time of peace?** *Allow 5 minutes for this discussion. If students bring up present events, encourage them to hold those thoughts for later. Students may talk about absolute rights or limits on protest itself or about differences in time/place/manner restrictions.*

2) Guided Practice

Students will be divided into heterogeneous cooperative groups of three. Students will each receive a copy of the **Newspaper source analysis tool** and a copy of the **Local Matters** article for analysis. Teacher will guide the class by column on the analysis tool to extract the meat from this article. *Allot no more than 10 minutes, firm, out of 45 for this portion of the lesson.*

Please Note: The teacher should note the appearance of the photocopy. Note that there are no illustrations. Note also that this is a photocopy out of the center of the page but that the type size and column size are accurate. Among the **style and appearance questions** should be “Why are there no illustrations.” “Would you have expected to see photographs in a newspaper in 1861?”

The teacher should ask **content questions**, such as:

- “The text between the lines in the article is the actual text of Judge Giles’ formal ruling and supporting argument in this case. What is he ordering?”
- “To whom is the order directed?”
- “The judge says there is ‘...no state of affairs existing as would authorize its suspension...’ Does that give you any idea as to his thoughts about the Civil War?”
- “What ‘...more immediate action...’ is the judge hinting he might take?”
- “Why do you think the newspaper printed the whole decision? Do you think the editors of the paper agreed with the judge? Do you think they favored the South or the North?”
- “What can we not learn from this source?”
- “In column 3 of your Newspaper source analysis tool you are asked what other information you would like to have to better understand this story. Write out a question you think a reader in 1861 would want answered and then another question that we want answered in 2010.”

Finish this portion of the lesson by calling for responses from column 3 and writing them on the board.

3) Independent Practice

Each group of three students is given a packet containing Major Leonis’ letter to Judge Giles, together with the Manuscript source analysis tool. Students will then take about 5 minutes to perform an initial analysis of the primary source document assigned.

At about the five minute mark, check for student understanding and ability to mine the document for information. At that time, offer copies of the transcripts of the letter and allow another five minutes to complete analysis of the content.

At the completion of this second five minutes with the Leonis letter, do a round-robin report out for all three columns. Look to get at least three items highlighted for each column. Students will also need to have their own notebooks to make notes on the findings of the other students that were not discovered in their own groups.

Be certain that student analysis has included understandings of:

Who the author of the letter is, an officer in the U.S. Army;

Why he wrote to the judge:

What this document tells us about the times and about the author;

Limits of this document; what it does not tell us and why it may not be completely reliable

4) Assessment

Write a BCR on the prompt: **Judge Giles and Major Leonis disagreed over the question ‘Whether the civil rights guaranteed in the Constitution may be set aside in times of emergency?’ Who had the stronger argument? Support your answer by referring to specific language in the documents.** Turn this in with your Manuscript and Newspaper source analysis tools.

5) Closure

Do you believe this restriction on civil liberties was unique to the Civil War? What other occasions in American History do you know of where similar or related restrictions occurred?

ACCOMODATIONS: Students with literacy deficits should be allowed to begin with the typed excerpts rather than with the photocopies of the originals.

LESSON EXTENSIONS: Is there a parallel to this situation in today’s “War on Terrorism”? *Compare* Ex parte Merryman 17 F. Cas 144 (1861) *with* Hamdan v Rumsfeld 548 US 557 (2006) *with* Korematsu v US , 323 US 214 (1944).

Students may assess the use of Merryman as precedent to Korematsu and both of these as precedent to Hamdan. Students may choose to compare the severity of the crisis as perceived at the time for two or all of these cases. Students may also be asked to reflect forward to 2060 and consider what historians at that time may say about our society’s perception of crisis today.

Rubric

5. The response makes an election of one argument over the other. The response evaluates the strong and weak points of both arguments and demonstrates an understanding of the need to balance public security versus personal freedom. The response makes specific reference to both documents and references prior knowledge. The response is factually accurate.
4. The response makes an election of one argument over the other. The response *identifies* the strong and weak points of both arguments and demonstrates an understanding of the need to balance public security versus personal freedom. The response makes ~~specific~~ reference to both documents and references prior knowledge. The response is factually accurate.
3. The response makes an election of one argument over the other. The response *identifies* the strong ~~and weak~~ points of both arguments and demonstrates an understanding of the need to balance public security versus personal freedom. The response makes ~~specific~~ reference to both documents and references prior knowledge. The response has no major factual errors.
2. The response fails to makes an election of one argument over the other. The response *identifies* the strong points of one argument but fails to demonstrates an understanding of the need to balance public security versus personal freedom. The response makes reference to only one document and does not reference prior knowledge. The response has no major factual errors.
1. The response fails to makes an election of one argument over the other. The response *identifies only some* points of one argument and fails to demonstrates an understanding of the need to balance public security versus personal freedom. The response makes little or no reference to the documents and does not reference prior knowledge. The response has factual errors.
0. The response lacks major elements, is wholly erroneous or there is no response.

Habeas Corpus Pre/Post Test

1. What is the protection offered by the writ of habeas corpus?
 - A. It provides for identification of witnesses against the accused.
 - B. It compels the Executive Branch to answer to the Judicial Branch why it is holding a person in custody.
 - C. It guarantees the accused the right to a speedy and public trial
 - D. It guarantees the accused a second trial if s/he is convicted at the first trial.

2. Who may suspend the right to the writ of habeas corpus?
 - A. The President of the United States.
 - B. The Congress of the United States.
 - C. The Supreme Court of the United States.
 - D. The Joint Chiefs of Staff of the Armed Forces.

3. Under what circumstances can the writ of habeas corpus be suspended?
 - A. If a prosecutor thinks it would be useful.
 - B. If there is a natural disaster like a hurricane.
 - C. If there is a problem with a presidential election being challenged.
 - D. If there is a situation of war or rebellion and public safety is threatened.

4. If the privilege of the writ of habeas corpus is suspended by Congress, can that suspension be challenged?
 - A. No, not at all.
 - B. No, until after the emergency is over.
 - C. Yes, because all acts of Congress can be challenged in the courts.
 - D. Yes, because no law can take effect until the Supreme Court approves it.

5. Who can hear a challenge to the suspension of the writ of habeas corpus?
 - A. Only the Supreme Court of the United States.
 - B. Any justice of the Supreme Court of the United States.
 - C. Any federal court judge.
 - D. Any judge with jurisdiction where the person challenging their confinement is located.