Abraham Lincoln and the U.S. Constitution
ABOUT CONSTITUTION DAY

In 1952, President Harry S. Truman signed a bill that moved I Am an American Day from the third Sunday in May to September 17. Truman did so in order for the holiday to coincide with the date of the signing of the U.S. Constitution in 1787. Congress renamed the holiday Citizenship Day. A joint resolution passed in 1956 requested that the president proclaim the week beginning September 17 and ending September 23 each year as Constitution Week.

In 2004, Senator Robert C. Byrd of West Virginia entered an amendment to the Consolidated Appropriations Act of 2005 to change the name of the September 17 holiday to Constitution Day and Citizenship Day. The purpose of Constitution Day and Citizenship Day is to commemorate the creation and signing of the supreme law of the land and to honor and celebrate the privileges and responsibilities of U.S. citizenship for both native-born and naturalized citizens.

Byrd’s amendment, known as Public Law 108–477, requires that all schools receiving federal funds hold an educational program for their students on September 17 of each year. This lesson, which is adapted from curricular materials on the Constitution produced by the Center for Civic Education, is designed to assist schools and federal agencies to meet the requirements of the law.
Abraham Lincoln’s political career and presidency were defined and marked by the constitutional issues of the young republic. This lesson traces Lincoln’s political life during a time of constitutional crisis. It examines Lincoln’s ideas and decisions regarding slavery and the use of presidential power to preserve the Federal Union during the Civil War.

When you have completed this lesson, you should be able to analyze and evaluate President Lincoln’s decisions in response to the critical constitutional issues of his time.

Abraham Lincoln (1809–1865), the sixteenth president of the United States, is a symbol of democracy. His stirring story of hard-won achievements occupies a primary place in America’s heritage. Born in Kentucky on February 12, 1809, Lincoln’s family moved north across the Ohio River when he was seven years old, acquiring 160 acres of land in the wilderness of southern Indiana. Lincoln’s mother died in 1817, and his father married Sarah Bush Johnston, a widow from Kentucky, who nurtured her stepson’s ambitions. In March of 1830, when Lincoln was twenty-one years old, his family went west again in quest of a better life. The destination this time was the fertile farmland near Decatur in Macon County, Illinois. Lincoln, however, soon moved away from his family to New Salem, Illinois, where he studied law by reading legal texts on his own, pursued political interests, and won election to the Illinois state legislature in 1834. He served four two-year terms.

In 1846, Lincoln won election to the U.S. House of Representatives. However, his outspoken criticism of President James Polk for leading the nation to war with Mexico turned public opinion against him. So he left Congress at the end of his two-year term and temporarily withdrew from politics.

National controversy over the 1854 Kansas-Nebraska Act brought Lincoln back to intense political activity. This federal statute overturned the Missouri Compromise of 1820, which had permitted Missouri to enter the Federal Union as a slave state and banned slavery in territories north of a line extending westward from the southern boundary of Missouri. Thus, the Kansas-Nebraska Act gave the people within certain western territories the right to choose, by majority vote, whether or not slavery could lawfully exist among them. Senator Stephen A. Douglas of Illinois called it popular sovereignty. But to Abraham Lincoln, it seemed more like popular tyranny, providing
the possibility that majority rule could be used to establish slavery within territories from which it had been legally and justly prohibited by the federal government. Lincoln adamantly opposed the westward extension of slavery.

Lincoln joined the new antislavery Republican Party, which nominated him to oppose Douglas, the Democratic Party’s incumbent candidate, in the 1858 Illinois senatorial election. The seven Lincoln-Douglas debates, highlights of a fiercely contested campaign, catapulted Lincoln into the national spotlight. The issues were profound, pertaining to slavery, states’ rights, individual rights, and popular sovereignty. So the Illinois senatorial campaign attracted a national audience, including many who either passionately supported or derisively opposed Lincoln, mainly because of his position on slavery. Douglas won election to the Senate in 1858, but Lincoln won the presidential election in 1860. After gaining the Republican Party’s presidential nomination, he defeated three rivals, including Douglas. Slaveholders in the southern states, greatly disturbed by Lincoln’s election to the presidency, considered drastic options, including withdrawal from the Federal Union forged by the 1787 Constitution.

The President and National Crisis: Did President Lincoln Overstep His Executive Authority?

By the time Lincoln arrived in Washington, D.C., for his inauguration on March 4, 1861, seven slave states had seceded from the United States to form the Confederate States of America. President Lincoln’s First Inaugural Address offered reconciliation to states that had left the Union to form the Confederate States of America, and warned of dire consequences if they persisted in secession. He claimed the Union was perpetual and “that no State, upon its own mere motion, can lawfully get out of the Union.” And he pledged to faithfully carry out “the declared purpose of the Union that it will constitutionally defend and maintain itself.” Nearly six weeks later, from April 12 to 14, 1861, Confederate soldiers attacked and forced the surrender of federal forces at Fort Sumter in the harbor of Charleston, South Carolina. President Lincoln responded forcefully to oppose insurrection and to fulfill his oath of office to “preserve, protect, and defend the Constitution of the United States.” Four more slave states joined the Confederacy. The Civil War had begun.

Lincoln acted quickly and strongly. He called up 75,000 soldiers from the state militias, requested 42,000 volunteers to the United States military for a three-year term of duty, suspended the writ of habeas corpus to curb anti-Union activity by disloyal citizens, ordered a naval blockade of the Confederacy, and authorized the borrowing and spending of money by the federal government to pay for the war.
Lincoln acted without prior approval from Congress. His very broad and extraordinary interpretation of the president’s constitutional war powers was based on necessity, not precedent. Critics complained the president had acted unconstitutionally, that he had usurped power expressly granted to Congress by the Constitution. So Lincoln called a special session of Congress on July 4, 1861, to justify his actions and to seek legislative endorsement of them. Lincoln’s “Message to Congress” emphatically expressed the president’s determination to defend the Union against insurgency. After reviewing the causes of armed conflict, he concluded that “no choice was left but to call out the war power of the Government; and so to resist force employed for its destruction by force for its preservation.” Lincoln claimed that his actions were necessary to save the Union and the Constitution and asked Congress to support his policies. Congress quickly enacted laws, on July 13, to approve the president’s strong and expansive use of war powers, to greatly enlarge the Union’s military forces, and to appropriate funds in support of the war. A short time later, on August 5, a supermajority of Congress voted for a bill that said, “all the acts, proclamations, and orders of the president” since his inauguration “respecting the army and navy of the United States, and calling out or relating to the militia or volunteers from the States, are hereby approved and in all respects legalized and made valid...as if they had been issued and done under the previous express authority and direction of the Congress of the United States.”

On September 22, 1862, Lincoln publicly announced his “Preliminary Emancipation Proclamation.” It warned the rebels that unless they rejoined the Union by the first day of 1863, a final proclamation would be issued to free all slaves within the seceded states. Lincoln had been considering this decision for several weeks before choosing to announce it shortly after the Union army’s victory at Antietam, Maryland. He waited for a military victory in order to act from strength on this sensitive matter, which the president believed would weaken the Confederacy and thereby help “to save the Union.”

What were the consequences of President Lincoln’s Emancipation Proclamation?

The rebels ignored Lincoln’s threat, so on January 1, 1863, he issued an Emancipation Proclamation to abolish slavery in the rebellious states. The president announced “that all persons held as slaves” in states or parts of states still in rebellion “shall be then, thenceforward, and forever free.” Lincoln claimed his proclamation “to be an act of justice, warranted by the Constitution, upon military necessity.” The Emancipation Proclamation did not apply to slavery in the “border states” that remained loyal to the Union. It also exempted areas of the Confederacy already controlled by the Union. However, after January 1, slaves were
freed in the wake of Union military advances into the rebellious states. Many emancipated slaves joined the Union army and navy, as authorized by the president’s proclamation.

Abolitionists were disappointed by the limited scope of Lincoln’s order. They recognized, however, that it gave an inspirational moral purpose to the Union war effort. In the mid-year turning point battles of Vicksburg and Gettysburg, Union soldiers won decisive victories.

In 1864, Lincoln wrote, “I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I cannot remember when I did not so think, and feel. And yet I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling.” Thus, Lincoln justified his Emancipation Proclamation as an act of military necessity, based on power granted through the Constitution to the president in his capacity as commander in chief of the armed forces. He believed this was the best he could do within the limitations imposed by the Constitution. Lincoln understood that a constitutional amendment was required to abolish slavery immediately and everywhere in the United States. So he advocated an anti-slavery amendment to the Constitution. Congress moved slowly to propose the amendment, but Lincoln continued to recommend it. The required two-thirds vote of members of both houses of Congress was achieved by January 31, 1865. Lincoln, however, did not live to see this work completed. The requisite three-fourths of the states did not ratify the proposed Thirteenth Amendment until December 6, 1865.

The President and the Individual Rights of Citizens: Were the Individual Rights of Citizens Violated?

The Prize Cases, which came before the Supreme Court in 1863 (67 U.S. 635), posed another constitutional test of Lincoln’s use of war powers during an emergency. On April 19, Lincoln had proclaimed a blockade of ports in the Confederate states. Four owners of ships seized by U.S. naval forces claimed the president had exceeded his executive authority under the Constitution by blockading seaports without a declaration of war by Congress. The Court decided (5 votes to 4) against the petitioners and concluded that the president had constitutionally used his war powers in a moment of crisis to oppose an insurrection.

The Court’s slim majority and dissenting opinions in the Prize Cases mirrored the public controversy about Lincoln’s wartime decisions. In particular, critics claimed Lincoln’s strong use of executive power to maintain national security had produced unconstitutional violations of individual rights. Lincoln perceived the constitutional dilemma posed by his need to simultaneously exercise and limit...
his executive power in order to preserve the Union and its Constitution.

At the outset of the war, Lincoln suspended the privilege of the writ of habeas corpus and approved military trials for civilians accused of aiding or abetting the Confederacy in certain areas of the country. More than 12,000 civilians were arrested and held by the military during the Civil War.

Chief Justice Roger B. Taney’s opinion, in a District of Maryland Circuit Court case (Ex parte Merryman, 1861), rebuked the president for unconstitutionally suspending the writ of habeas corpus. Lincoln’s decision enabled military commanders to indefinitely imprison persons suspected of disloyalty to the Union without producing evidence in a court of law to justify their detention.

Article I, Section 9 of the U.S. Constitution says, “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.” Chief Justice Taney held that the president did not have authority to suspend the writ of habeas corpus without the consent of Congress. The habeas corpus clause, said Taney, appeared within Article 1 of the Constitution, pertaining to the powers and duties of Congress. Finally, Taney ordered the release of John Merryman from the military prison in Maryland, where he had been detained for alleged pro-Confederacy actions.

In his July 4, 1861, speech to Congress, Lincoln disputed Taney’s charge that the Constitution had been violated. He noted that the habeas corpus clause in Article I, Section 9 of the Constitution “is silent as to which, or who, is to exercise the power [of suspension]; and as

the provision was plainly made for a dangerous emergency, it cannot be believed that the framers of the 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, as was intended in this case, by the rebellion.” The president in 1862 issued a new executive order to increase the areas of the country where military commanders could suspend the writ of habeas corpus. Lincoln’s proclamation also authorized trials by military tribunals or commissions of all “rebels and insurgents, their aiders and abettors within the United States, and all persons discouraging voluntary enlistments, resisting military drafts, or guilty of any disloyal practice, affording aid or comfort to rebels against the authority of the United States.” Congress then enacted the Habeas Corpus Act of 1863, retroactively ratifying the president’s decisions to suspend the writ of habeas corpus. Military trials of civilians, however, were judged constitutional only if they occurred in areas of warfare or imminent threat of armed conflict in which the civil courts were not functioning. Nearly one year after the Civil War ended, on April 3, 1866, the Supreme Court unanimously decided that a civilian, Lambdin Milligan, should not have been tried and convicted by a military court in a state, Indiana, where the civil courts were open and operational (Ex parte Milligan, 71 U.S. 2).
As we celebrate Constitution Day this September, we recall that 2009 is the bicentennial of Abraham Lincoln's birth. To use the tumultuous era of his presidency to study the Constitution seems fitting. This lesson looks at crucial issues involving executive power during a time of rebellion. It recalls constitutional issues the country faced as it expanded and wrestled with different philosophies and ideologies of the populace with respect to the future of the country and its character.

Upon completing the lesson, students should be able to do the following:

- Identify the constitutional issues that led to and arose during the civil war
- Describe how Lincoln reacted to those issues prior to becoming president
- Analyze and evaluate Lincoln's decisions with respect to critical constitutional issues during his presidency

### TEACHING PROCEDURES

**Introducing the Lesson**

Begin the lesson with a brainstorming activity. On the board or on chart paper, list all the words or phrases students think of when they hear the name “Abraham Lincoln.” There are no right or wrong answers, and all suggestions should be included. Keep the list available for the rest of the lesson. Students should then read the Purpose of the Lesson. Ask students to define the terms constitutional issue and constitutional crisis. Looking at the list from the brainstorming activity, ask students if any of the words or phrases pertain to a specific constitutional issue or crisis. Circle those the students indicate. Refrain from correcting students or adding missing items to the list at this time.

**Learning about Lincoln and the Constitution**

Have students read the three segments of the student lesson, either to themselves or aloud as a group. Each student should compile a list of the constitutional issues or crises referred to in the segments. When this is completed, divide the class into three groups, one for each segment:

- Political Background: From the Statehouse to the White House
- The President and National Crisis: Did President Lincoln Overstep His Executive Authority?
- The President and the Individual Rights of Citizens: Were the Individual Rights of Citizens Violated?

Each group should compare the constitutional issues and crises they have identified pertaining to their assigned segment and make a comprehensive list. Once the group has completed its
Additional Activities

- Ask students to complete the crossword puzzle provided.
- This lesson begins with the statement, “Abraham Lincoln (1809–1865), the sixteenth president of the United States, is a symbol of democracy.” Ask students to write a short position paper agreeing or disagreeing with this statement based on their knowledge of U.S. history, the U.S. Constitution, and the life and work of President Lincoln.
- Look at the final section below, titled “Abraham Lincoln: In His Own Words.” Choose one of the following activities for students to complete.
  - Ask students to read through the quotations and write an essay about what they reveal about Abraham Lincoln as a man and as a president.
  - Randomly assign a quotation or two to small groups of students. Ask them to analyze the content and explain its relevance to our country and our lives today.

Abraham Lincoln: In His Own Words

“A capacity and taste for reading gives access to whatever has been discovered by others.”

ADDRESS BEFORE THE WISCONSIN STATE AGRICULTURAL SOCIETY, SEPTEMBER 30, 1859

“At what point shall we expect the approach of danger? By what means shall we fortify against it? Shall we expect some transatlantic military giant, to step the Ocean, and crush us at a blow? Never! All the armies of Europe, Asia
and Africa combined, with all the treasure of
the earth (our own excepted) in their military
chest; with a Buonaparte for a commander,
could not by force, take a drink from the Ohio,
or make a track on the Blue Ridge, in a trial
of a thousand years. At what point then is the
approach of danger to be expected? I answer,
if it ever reach us, it must spring up amongst us.
It cannot come from abroad. If destruction be
our lot, we must ourselves be its author
and finisher. As a nation of freemen, we must
live through all time, or die by suicide.”

ADDRESS BEFORE THE YOUNG MEN’S LYCEUM
OF SPRINGFIELD, ILLINOIS,
JANUARY 27, 1838

“The probability that we may fall in the struggle
ought not to deter us from the support of a cause
we believe to be just; it shall not deter me.”

SPEECH ON THE SUB-TREASURY,
HALL OF THE HOUSE OF REPRESENTATIVES,
SPRINGFIELD, ILLINOIS,
DECEMBER 26, 1839

“Let us re-adopt the Declaration of Independence,
and with it, the practices, and policy, which
harmonize with it.”

PEORIA SPEECH
AGAINST THE KANSAS-NEBRASKA ACT,
PEORIA, ILLINOIS,
OCTOBER 16, 1854

“A house divided against itself cannot stand.’
I believe this government cannot endure,
permanently, half-slave and half-free. I do not
expect the Union to be dissolved—I do not
expect the house to fall—but I do expect it
will cease to be divided. It will become all one
thing or all the other.”

HOUSE DIVIDED SPEECH,
SPRINGFIELD, ILLINOIS,
JUNE 16, 1858

“I have never said anything to the contrary,
but I hold that notwithstanding all this, there is
no reason in the world why the negro is not
entitled to all the natural rights enumerated in
the Declaration of Independence, the right to
life, liberty and the pursuit of happiness. I hold
that he is as much entitled to these as the white
man. I agree with Judge Douglas he is not my
equal in many respects—certainly not in color,
perhaps not in moral or intellectual endowment.
But in the right to eat the bread, without leave
of anybody else, which his own hand earns, he is
my equal and the equal of Judge Douglas,
and the equal of every living man.”

FIRST DEBATE WITH STEPHEN A. DOUGLAS
AT OTTAWA, ILLINOIS,
AUGUST 21, 1858

“Those who deny freedom to others, deserve
it not for themselves; and, under a just God,
can not long retain it.”

LETTER TO HENRY L. PIERCE,
APRIL 6, 1859

“I have never had a feeling politically that
did not spring from the sentiments embodied
in the Declaration of Independence.”

ADDRESS AT INDEPENDENCE HALL,
PHILADELPHIA, PENNSYLVANIA,
FEBRUARY 22, 1861

“My paramount object in this struggle is to save
the Union, and is not either to save or to destroy
slavery. If I could save the Union without
freeing any slave I would do it, and if I could
save it by freeing all the slaves I would do it: and
if I could save it by freeing some and leaving
others alone, I would also do that.”

LETTER TO HORACE GREELEY,
AUGUST 22, 1862
“I have here stated my purpose according to my view of official duty; and I intend no modification of my oft-expressed personal wish that all men everywhere could be free.”

LETTER TO HORACE GREELEY, SEPTEMBER 22, 1862

“The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew, and act anew. We must disenthral ourselves, and then we shall save our country.”

SECOND ANNUAL MESSAGE TO CONGRESS, DECEMBER 1, 1862

“Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal….

[RESOLVE THAT THESE DEAD SHALL NOT HAVE DIED IN VAIN—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.”

GETTYSBURG ADDRESS, NOVEMBER 19, 1863

“Both parties deprecated war, but one of them would make war rather than let the nation survive, and the other would accept war rather than let it perish, and the war came.”

SECOND INAUGURAL ADDRESS, MARCH 4, 1865

“With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation’s wounds; to care for him who shall have borne the battle, and for his widow and his orphan—to do all which may achieve and cherish a just and a lasting peace among ourselves, and with all nations.”

SECOND INAUGURAL ADDRESS, MARCH 4, 1865
Across
5  Human bondage
6  1863 speech delivered at Civil War battleground site
12  Supreme Court case stemming from Lincoln’s blockade of Confederate ports
16  Declaration of 1863 freeing slaves in the seceded states
17  Sixteenth president of the United States
18  Supreme Court case regarding constitutionality of military trials of civilians

Down
1  Agreement passed in 1820 regulating slavery in new states
2  Doctrine of placing ultimate political authority in the people
3  Political party of Abraham Lincoln
4  Federal law allowing people within a territory to decide the issue of slavery
7  Supreme Court case regarding the suspension of habeas corpus
8  To formally withdraw from an organization or federation
9  The group of eleven Southern states that seceded from the United States
10  Lincoln’s political opposition party
11  Another way of saying “executive power”
13  The fight between the Union and the Confederacy
14  Latin: “You shall have the body.”
15  Document embodying the supreme law of the United States
LINCOLN AND THE CONSTITUTION CROSSWORD PUZZLE KEY

M I S LAVERY O P R GETTYSBURG ADDRESS S
O U P U C N X E
U L B O S P A A E
R D A L N S R D
I R I F P N T E
C M S C THE PRIZE CASES
O O A D E B M
M C V N C E S R E
P R H E P I R I A R
R A A R A V A D S R C
O T B E R I C E K Y O
M I E I T L Y N A M N
I C A G Y W T A A
S P S N A I C N
E M A N C I P A T I O N PROCLAMATION I
R O Y L T
T R P
Y P A B R A H A M L I N C O L N T
U W E T
S O
E X P A R T E M I L L I G A N
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