Abraham Lincoln papers

From Abraham Lincoln to Erastus Corning and others [Draft][1], [June] 1863

1 This is a draft of Lincoln's carefully deliberated response to resolutions passed by a meeting of Albany, N. Y. Democrats, who were protesting the military arrest and trial of dissidents and the suspension of the writ of habeas corpus. The resolutions were forwarded by former Democratic Congressman Erastus Corning and others on May 19. The resolutions are not in this collection but they are contained in *American Annual Cyclopedia* (New York: D. Appleton and Co., 1863), 799-800. Lincoln 's reply is ostensibly addressed to these resolutions and their authors. But Lincoln was aware that such a letter on controversial public policy was a ready avenue to a broader audience, and he clearly used the occasion and his letter to speak beyond the Albany meeting and to address the public at large.

The draft is undated but was probably begun in late May. On June 5, according to Secretary of the Navy Gideon Welles' diary, “The President read to-day a paper which he had prepared in reply to Erastus Corning and others. It has vigor and ability and with some corrections will be a strong paper.” *Diary of Gideon Welles*, ed. Howard K. Beale, 3 vols., New York, 1960, 1:323) Welles' remarks suggest that the draft was still being revised, as does Montgomery Blair's reference to it in a letter to Lincoln of June 6 (*q. v.*). When completed, it was sent to Corning with a cover letter dated June 13 (*q. v.*), and a copy was probably also sent directly to the New York *Tribune*, where it duly appeared on June 15.

Corning and his associates had issued what Lincoln called “a declaration of censure upon the administration for supposed unconstitutional action such as the making of military arrests,” to which Lincoln responded with a stout defense of the government's actions generally, and in particular, of its actions in the case of Clement Vallandigham, a Democratic politician from Ohio, whose arrest and incarceration by the military had been singled out for criticism. (For another letter in defense of his administration's actions with respect to Vallandigham, see Abraham Lincoln to Matthew Birchard and others, June 29, 1863.)

There is clear evidence in Lincoln's manuscript — such as changes in the size of the lettering, the varying the color of the ink, and in the pagination — that this defense of the administration's actions was written at different intervals. Lincoln himself reportedly said the letter incorporated material written earlier in anticipation of such an occasion. (See Don E. and Virginia Fehrenbacher, eds., *Recollected Words of Abraham Lincoln* (Stanford, 1996), 500-01.) What is clearly confirmed by this manuscript evidence is that Lincoln took considerable pains in drafting his response.

Much of the annotation calls attention to the evidence in the manuscript supporting the conclusion that Lincoln composed this document at different times. This was in keeping with his practice of writing out memoranda on controversial or troublesome issues as a way of clarifying his thinking and preparing his own defense. This collection contains several sets of draft material, of which the letters to Corning and James C. Conkling are the most conspicuous, that seem to have been prepared in part from memoranda written out in advance and in anticipation of a suitable occasion for airing their contents.

Albany letter Manuscript

& something about Proclamation.[2]

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2 This is Lincoln's handwritten inscription on a large envelope in which he presumably kept the manuscript of his letter to Erastus Corning and others. The document or notes that Lincoln refers to as “something about the Proclamation,” being absent, cannot be identified with certainty. For a possible candidate, see Abraham Lincoln, Memorandum on Reunion, [1863?].

Executive Mansion

Washington [blank space] 1863.

Hon. Erastus Corning & others

Gentlemen

Your letter of May 19th inclosing the resolutions of a public meeting held at Albany, N. Y. on the 16th of the same month, was received several days ago—

The resolutions, as I understand them, are resolvable into two propositions — first, the expression of a purpose to sustain the cause of the Union, to secure peace through victory, and to support the administration in every constitutional, and lawful measure to suppress the rebellion; and secondly, a declaration of censure upon the administration for supposed unconstitutional action in such as the making of military arrests.

And, from the two propositions a third is deduced, which is, that the gentlemen composing the meeting are resolved on doing their part to maintain our common government and country, despite the folly or wickedness, as they may conceive, of any administration— This position is eminently

patriotic, and as such, I thank the meeting, and congratulate the nation for it. My own purpose is the same; so that the meeting and myself have a common object, and can have no difference, except in the choice of means or measures, for effecting that object.

And here I ought to close this paper, and would close it, if there were no apprehension that more injurious consequences, than any merely personal to myself, might follow the censures systematically cast upon me for doing what, in my view of duty, I can could not forbear— The resolutions promise to support me in every constitutional and lawful measure to suppress the rebellion; and I have not knowingly employed, nor shall knowingly employ, any other. But the meeting, by their resolutions, assert and argue, that certain military arrests and proceedings following them, for which I am ultimately responsible, are unconstitutional. I think they are not. They The resolutions quote from the constitution, the definition of treason; and also the limiting safe-guards and guaranties therein provided for the citizen, on trials for treason, and on his being held to answer for capital or otherwise infamous crimes,[3] and, in criminal prossecution, his right to a speedy and public trial by an impartial Jury. They, proceed to resolve "That these safe-guards of the rights of the citizen against the pretentions of arbitrary power, were intended more especially for his protection in times of civil commotion" And, apparently, to demonstrate the proposition, the resolutions proceed "They were secured substantially to the English people, after years of protracted civil war, and were adopted into our Constitution at the close of the revolution" Would not the demonstration have been better, if it could have been truly said that these safe-guards had been adopted, and applied during the civil wars and during our revolution, instead of after the one, and at the close of the other— I too am devotedly for them after civil war, and before civil war, and at all times " except when, in cases of Rebellion or Invasion, the public Safety may require" their suspension— The resolutions proceed to tell us that these safe-guards "have stood the test of seventysix years of trial, under our republican system, under circumstances which show that while they constitute the foundation of all free government, they are the elements of the enduring stability of the Republic." No one denies that they have so stood the test up to the beginning of the present rebellion if we except a certain matter at New-Orleans hereafter to be mentioned; nor does any one question that they will stand the same test much longer, after the rebellion closes— But these provisions of the Constitution have no application to the case we have in hand, because the arrests complained of were not made for treason — that is, not for the treason defined in the Constitution, and upon the conviction of which, the punishment is death — ; nor yet were they made to hold persons to answer for any capital, or otherwise infamous crimes; nor were the proceedings following, in any Constitutional or legal sense, "criminal prossecutions." The arrests were made on totally different grounds, and the proceedings following, accorded with the grounds of the arrests.

Let us consider the real case with which we are dealing, and apply to it the parts of the Constitution plainly made for such cases—[4]

3 Two lines of text — “and, in criminal prossecution, his right to a speedy and public trial by an impartial Jury. They, proceed to resolve “That these safe-guards” — were squeezed in here at the bottom of the page.

4 This paragraph ends well before the bottom of the page, suggesting that it was written as an insert. Indeed, the three pages of text that follow — from “May I be indulged” to “weakens the Union cause as much as” — may well have been part of a memorandum to himself. As such, it would be one of a number of such memoranda on controversial issues that Lincoln frequently prepared to clarify his own thinking and use as circumstances dictated.

May I be indulged to submit a few general remarks upon this subject of arrests? Prior to my instalation here it had been inculcated that any state had a lawful right to secede from the national Union; and that it would be expedient to exercise the right, whenever the devotees of the doctrine should fail to elect a President to their own liking. I was elected contrary to their liking; and accordingly, so far as it was legally possible, they had taken seven states out of the Union, had seized many of the United States Forts, and had fired upon the United States' Flag, all before I was inaugerated; and, of course, before I had done any official act whatever. The rebellion, thus began soon ran into the present civil war; soon followed;[5] and, in certain respects, it began on very unequal terms between the parties— The insurgents had been preparing for it more than thirty years, while the government had made no preparation taken no steps to resist it them.[6] The former had carefully considered all the means which could be turned to their account. It undoubtedly was a well pondered reliance with them that in their own unrestricted effort to destroy Union, Constitution, and law, all together, the government would, in great degree, be restrained by the same Constitution and law, from arresting their progress. Their sympathizers pervaded all departments of the government, and nearly all communities of the people. From this material, under cover of “Liberty of speech” “Liberty of the press” and “Habeas Corpus” they hoped to keep on foot amongst us a most efficient corps of Spies, informers, supplyers, and aiders and abettors of their cause in a thousand ways. They knew that in times such as they were inaugerating, by the Constitution itself, the “Habeas Corpus” might be suspended; but they also knew they had friends who would raise a squabble make a question as to who was to suspend it; meanwhile their spies and others might remain at large to help on their cause. Or if, as has happened, the executive should suspend the writ, without ruinous waste of time, instances of arresting innocent persons might occur, as always do in [7] are always likely to occur in such cases; and then a howl clamor could be raised in regard to this, which

might be, at least, of some service to the insurgent cause. It needed no very keen perception to discover this part of the enemie's programme, so soon as by open hostilities were commenced. their machinery was farily put in motion. Yet, thoroughly imbued with a reverence for the guarrentied rights of individuals, I was slow to adopt the strong measures, which by degrees I have been forced to regard as being within the exceptions of the constitution, and as indispensable to the public Safety.[8] Nothing is better known to history than that Courts of justice are utterly incompetent to such cases. They Civil Courts are organized chiefly for trials of individuals, or, at most, a few individuals acting in concert; and this in quiet times, and on charges of crimes well defined in the law. Even in times of peace, bands of horse-thieves and robbers frequently grow too numerous and powerful for the ordinary Courts of justice. But what comparison, in numbers, have such bands ever borne to the insurgent sympathizers even in many of the loyal states? Again, a jury can scarcely be empannelled, that will not too frequently have at least one member, more ready to hang the panel than to hang the traitor. And yet again, he who dissuades one man from volunteering or induces one soldier to desert, weakens the Union cause as much as he who kills a union soldier in battle.[9] Yet this dissuasion, or inducement, is may be so conducted as to be no defined crime of which any civil court would take cognizance.

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5 Lincoln originally wrote: “The present civil war soon followed;”

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6 Lincoln first wrote: “The insurgents had been preparing for it more than thirty years, while the government had made no preparation to resist it.”

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7 The striking of “in” appears to have been done at the time of first composing the sentence, so that before revision, the sentence read: “Or if, as has happened, the executive should suspend the writ, without ruinous waste of time, instances of arresting innocent persons might occur, as always do in occur in such cases; . . .”

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8 This sentence originally ended “which by degrees I have been forced to regard as indispensable.”

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9 The phrase “or induces one soldier to desert” was added later, and this sentence may have had a different ending, as “he who kills a union soldier in battle” begins a new page in a noticeably different ink and size of script.

Ours is a case of Rebellion — so called by the resolutions before me — in fact, a clear, flagrant, and gigantic case of Rebellion; and the provision of the Constitution that “The previlege 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 the provision which specially applies to our present case. This provision plainly attests the understanding of those who made the Constitution that ordinary Courts of justice are inadequate to "Cases of Rebellion" — attests their purpose that in such cases, men might may be held in custody in spite of the courts, and whom the courts if allowed acting on ordinary rules, would release. discharge. Courts, or Habeas Corpus, does not discharge men who are proved to be guilty of defined crime; and its suspension is allowed by the constitution on purpose that, men may be arrested and held, who can not be proved to be proved to be guilty of defined crime, "when, in cases of Rebellion or Invasion the public Safety may require it." This is precisely our present case — a case of Rebellion, wherein the public Safety does require the suspension. Indeed, arrests by process of Courts, and arrests in cases of rebellion, do not proceed altogether upon the same basis. The former is directed at the small percentage of ordinary and continuous perpetration of crime; while the latter is directed at sudden and extensive uprisings against the government, which, at most, will succeed or fail, in no great length of time. In the latter case, arrests are made, not so much for what has been done, as for what probably would be done. The latter is more for the preventive, and less for the vindictive, than the former— In such cases[10] the purposes of men are much more easily understood, than in cases of ordinary crime. The man who stands by and says nothing, when the peril of his government is discussed, can not be misunderstood. If not hindered, he is sure to help the enemy. Much more, if he talks ambiguously — talks for his country with "buts" and "ifs" and "ands" — Of how little value the constitutional provision I have quoted will be rendered, if arrests shall never be made until defined crimes shall have been committed, may be illustrated by a few notable examples. Gen. John C. Breckienridge, Gen. Robert E. Lee, Gen. Joseph E. Johnston, Gen. John B. Magruder,[11] Gen. William B. Preston, Gen. Simon B. Buckner, and Comodore [blank space] Buchanan,[12] now occupying the very highest places in the rebel war service, were all within the power of the government since the rebellion began, and were nearly as well known to be traitors then as now. Unquestionably if we had seized and held them, the insurgent cause would be much weaker. But no one of them had then committed any crime defined in the law. Every one of them if arrested would have been discharged on Habeas Corpus, if were the writ were allowed to operate.[13] In view of these and similar cases, I think the time not unlikely to come when I shall be blamed for having made too few arrests rather than too many.

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10 The fact that these three words are followed by nearly half a page of empty paper and begin a sentence that continues at the top of the next page would seem to indicate that the foregoing passage — beginning "he who kills a union soldier in battle" — was written as an insert.

11 John B. Magruder, or "Prince John" distinguished himself against General McClellan in the Peninsular Campaign.

12 Commodore Franklin Buchanan commanded the Confederate ironclad *Virginia* when it sank two Federal warships in Hampton Roads on March 8, 1862. On August 5, 1864, he was forced to surrender to Admiral Farragut at the Battle of Mobile Bay.

13 A change in the color of the ink at this point may indicate that what follows, continuing until "the dangers of Rebellion or Invasion," was written at a different time.

By the third resolution the meeting indicated their opinion that military arrests may be constitutional in localities where rebellion actually; exists; but that such arrests are unconstitutional when in localities where rebellion, or insurrection, does not actually exist. They insist that such arrests shall not be made "outside of the lines of necessary military occupation, and the scenes of insurrection"[14] In asmuch, however, as the constitution itself makes no such distinction, I am unable to believe that there is any such constitutional distinction. I concede that the class of arrests complained of, can be constitutional only when, in cases of Rebellion or Invasion, the public good Safety may require it them; and I insist that in such cases, they are constitutional wherever the public safety does require them — as well in places to which they may prevent the rebellion extending, as in those where it may be already prevailing — as well where they may restrain mischievious interference with the raising and supplying of armies, to suppress the rebellion, as where the rebellion may actually be — as well where they may restrain the enticing men out of the army, as when they would prevent mutiny in the army — equally constitutional at all places where they will conduce to the public Safety, as against the dangers of Rebellion or Invasion—[15]

14 This sentence was written later, squeezed in between lines.

15 That this sentence ends only about one third of the way down the page indicates that it belongs to a passage inserted later.

Take the particular case mentioned by the meeting. They assert in substance that Mr. Vallandigham was by a Military Commander, seized and tried "for no other reason than words addressed to a public meeting, in criticism of the course of the administration, and in condemnation of the Military orders of that general" Now, if there be no mistake about this — if this assertion is the truth and the whole truth — if there was no other reason for the arrest, then I concede that the arrest was wrong. But the arrest, as I understand, was made for a very different reason. Mr. Vallandigham avows his hostility to the war on the part of the Union; and his arrest was made because he was laboring, with

some effect, to prevent the raising of troops, to encourage desertions from the army, and to leave the rebellion without an adequate military force to suppress it. He was not arrested because he was damaging the political prospects of the administration, 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 the nation depends. He was warring upon the military; and this gave the Military Constitutional jurisdiction to lay hands upon him. If Mr. Vallandigham was not damaging the military power of the Country, then his arrest was made on mistake of fact,[16] which I would be glad to correct, on reasonably satisfactory evidence.

16 The balance of this sentence from this point on was added later.

I understand the meeting, whose resolutions I am considering, to be in favor of suppressing the rebellion by military force — by armies. Long experience has shown that armies can not 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 wiley agitator who induces him to desert,?[17] by This is none the less injurious when effected by getting his 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 contemptable 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. and a great merit.

17 This famous sentence was originally much longer: “Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wiley agitator who induces him to desert, by getting his 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 ina bad cause, for a wicked administration of a contemptable government, too weak to arrest and punish him if he shall desert.”

If I be wrong on this subject, 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 it's 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 measure 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 emetics while temporarily sick during temporary illness, as to persist in feeding upon them through the remainder of his healthful life.

In giving the resolutions that earnest consideration which you request of me, I can not overlook the fact that the meeting speak as “Democrats”; nor Nor can I, with full respect for their known intelligence, and the fairly presumed deliberation with which they prepared their resolutions, be permitted to suppose that this occurred by accident, or in any way other than that they preferred to designate themselves “democrats” rather than “American citizens.” In this time of national peril I would have preferred to meet you upon a level one step higher than any party platform; because I am sure that from such more elevated position, we could do better battle for the country we all love, than we possibly can from those lower ones, where from the force of habit, the prejudices of the past, and selfish hopes of the future, we are sure to expend much of our ingenuity and strength, in finding fault with, and aiming blows at each other. But since you have denied me this, I will yet be thankful, for the country's sake, that not all democrats have done so— He on whose discretionary judgment Mr. Vallandigham was arrested and tried,[18] is a democrat, having no old party affinity with me; and the judge who rejected the constitutional view expressed in these, resolutions,[19] by refusing to discharge Mr. V. on Habeas Corpus, is a democrat of better days than these, having received his judicial mantle at the hands of President Jackson. And still more, of all those democrats who are nobly exposing their lives and shedding their blood on the battle-field, I have learned that many who approve the course taken with Mr. V. while I have not heard of a single one condemning it. I can not assert that there are none such. (* Insert 17 1/2 & 17 1/2 & 17 3/4)[20]

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18 Ambrose E. Burnside

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19 Ohio Federal District Judge Humphrey H. Leavitt refused to issue a writ of habeas corpus, permitting the military to proceed with Vallandigham's case.

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20 This is an instruction for inserting the text on two additional pages at this point. The two page numbers (17 1/2 is inadvertently repeated) refer to these two pages, which contain the text that follows here, ending “subsequent approval by the American Congress.”

And the name of President Jackson recalls a bit of pertinent history. After the battle of New-Orleans, and while the fact that the treaty of peace had been concluded, was well known in the City, but before official knowledge of it had arrived, Gen. Jackson still maintained martial, or military law. Now, that it could be said the war was over, the clamor against martial law, which had existed from the first, grew more furious. Among other things a Mr. Louiallier,[21] published a denunciatory newspaper article— Gen. Jackson arrested him— A lawyer by the name of Morel,[22] procured the U. S. Judge Hall[23] to order a writ of Habeas Corpus to release Mr Louaillier. Gen. Jackson arrested both the lawyer and the judge— A Mr. Hollander ventured to say of some part of the matter that "it was a dirty trick." Gen. Jackson arrested him— When the officer undertook to serve the writ of Habeas Corpus, Gen. Jackson took it from him, and sent him away with a copy. Holding the judge in custody a few days, the general sent him beyond the limits of his encampment, and set him at liberty, with an order to remain till the ratification of peace should be regularly announced, or until the British should have left the Southern coast— A day or two more elapsed, the ratification of the treaty of peace was regularly announced, and the judge and others were fully liberated— A few days more, and the judge called Gen. Jackson into Court and fined him a thousand dollars, for having arrested him and the others named— The general paid the fine, and there the matter rested for nearly thirty years, when Congress refunded principal and interest. The late Senator Douglas, then in the House of Representatives, took a leading part in the debate, in which the constitutional question was much discussed. I am not prepared to say whom the Journals would show to have voted for the measure.

21 The underscoring has been stricken by pencil marks.

22 The underscoring has been stricken by pencil marks.

23 Federal District Judge Dominick A. Hall

It may be remarked: First, that we had the same constitution then, as now. Secondly, that we then had a case of Invasion, and that now we have a case of Rebellion, and: Thirdly, that the permanent right of the people to public discussion, the liberty of speech and the press, the trial by jury, the law of evidence, and the Habeas Corpus suffered no detriment whatever by that conduct of Gen. Jackson, or its subsequent approval by the American Congress.

And yet, let me say that in my own discretion, I do not know whether I would have ordered the arrest of Mr. V. While I can not shift the responsibility from myself, I hold that, as a general rule, the commander in the field is the better judge of the necessity in any particular case— Of course I must practice a general directory and revisory power in the matter.

One of the resolutions expresses the opinion of the meeting that arbitrary arrests will have the effect to divide and distract those who should be united in suppressing the rebellion; and I am specifically called on to discharge Mr. Vallandigham. I regard this as, at least, a fair appeal to me, on the expediency of exercising a Constitutional power which I think exists. In response to such appeal I have to say it gave me pain when I learned that Mr. V. had been arrested, and that it will afford me great pleasure to discharge him so soon as I can, by any means, believe the public safety will not suffer by it. I further say, that as the war progresses, it appears to me, opinion, and action, which were in great confusion at first, take shape, and fall into more regular channels; so that the necessity for arbitrary dealing with them gradually decreases. I have every reason to desire that it would cease altogether; and far from the least is my regard for the opinions and wishes of those who, like the meeting at Albany, declare their purpose to sustain the government in every constitutional and lawful measure to suppress the rebellion—