



# When Lincoln suspended judicial rights

In *Ex parte Milligan*, the U.S Supreme Court supported defendants' habeas corpus rights denied them during the Civil War.

The case's impact resonates today in the war on terrorism. | By Tom Graves

During the American Civil War, Lambdin P. Milligan was a farmer and lawyer practicing near Fort Wayne, Indiana. He frankly and openly protested the war against the Confederacy and was recognized among his friends and colleagues as a segregationist and sympathizer with Confederate causes.

Suspected of contact with Confederate spies, he was arrested on Oct. 5, 1864 and tried by a military tribunal. The accusations against him and four other defendants stemmed from a plan to steal weapons and release Confederate prisoners of war from a prison camp.

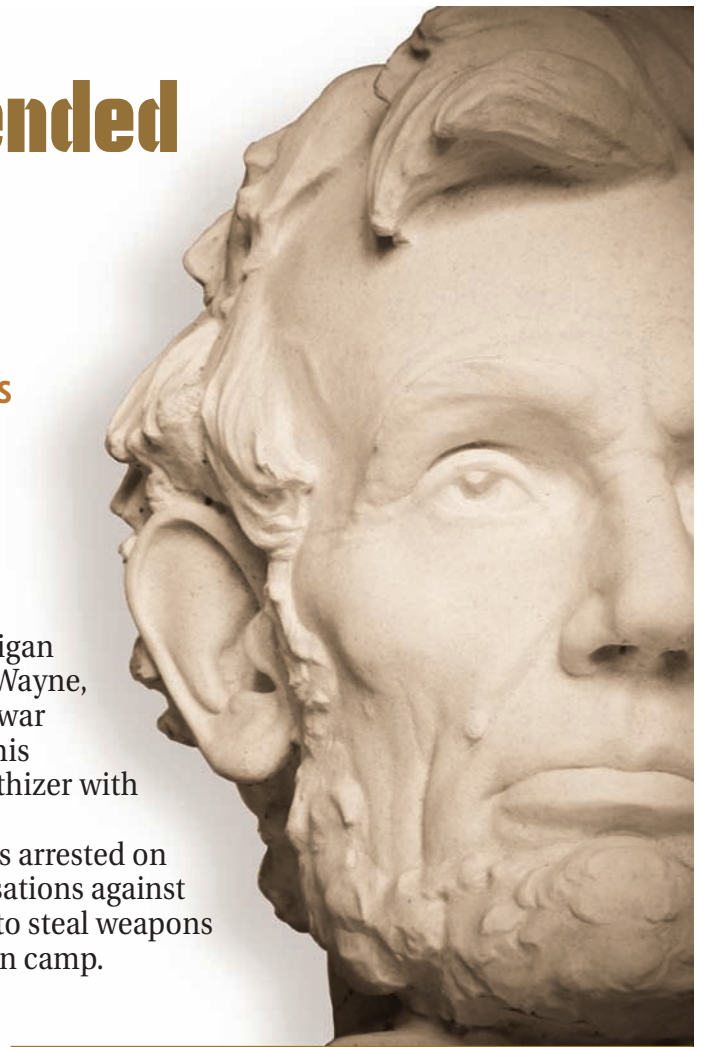
All five defendants were found guilty and sentenced to death. One later escaped and fled to Canada. Milligan and the other three appealed, arguing that they should have been tried in civil court, not a military tribunal.

Two days before they were scheduled to hang, Abraham Lincoln's successor, President Andrew Johnson, commuted their sentences to life in prison. One year later, on April 3, 1866, the U.S. Supreme Court led by Chief Justice Salmon P. Chase ruled in *Ex parte Milligan* that the defendants should be released, saying that their habeas corpus rights had been denied. By the way, one of Milligan's defense attorneys was future president James A. Garfield.

A landmark decision, *Ex parte Milligan* represented affirmation of Constitutional rights during a time of war. Habeas corpus literally means "bring the body forth," and supports the idea that a defendant has the right to have his case heard in court and charges against him delineated.

Habeas corpus rights stem from British law outlined in the Magna Carta, yet American colonists saw such rights usurped by the British military, leading to unrest that was one of the causes of the Revolutionary War.

While Lincoln got Congress to agree with his declaration of martial law, the Supreme Court's ruling noted that jurisprudence remained the domain of civil courts as long as they



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were open to hold trial.

The Court decreed in *Ex parte Milligan*, that the Constitution is a "law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

Yet the circumstances in Lincoln's decision to declare martial law were dire. Riots and bridge burning in Baltimore were threatening commerce by ship and rail along the states bordering Confederate states.

Conflict among abolitionists and Confederacy supporters throughout the Union, especially in Indiana and Ohio, was rampant. Troop mobility was threatened, as was mail delivery.

Lincoln suspended the writ of habeas corpus in an order to Union Lt. General Scott on April 27, 1861.

This desperate measure was an attempt to keep the United States from falling apart. But what *Ex parte Milligan* proved in court was that a military tribunal, in which the defendant is required to prove innocence, is not appropriate while civil courts remained open.

The case of *Ex parte Milligan* resonated with controversy in Lincoln's era and still does today. The legal infrastructure to

repel and defeat “enemy combatants” at home or abroad remains ill defined. Procedures for checks and balances of executive and judicial power regarding domestic terrorists, including related conditions by which a president can declare martial law, defy clarification.

When Middle Eastern prisoners suspected of being al-Qaeda or Taliban fighters held in Guantanamo Bay were held without charges filed, critics said President George W. Bush’s actions could be upheld by neither the Constitution nor the Geneva Conventions.

Indeed, the question of how to handle due process for the prisoners of Guantanamo Bay became less clear over time as the Bush administration offered few answers, choosing to keep the prisoners where they were, without charges filed.

The big questions remained: were the prisoners to be tried, in what venue should they be tried and on what charges, aside from being arrested as suspected enemy combatants?

“The enemy combatant designation ... exists in a legal limbo where no court, civil or military, has clear jurisdiction and thus opens the door to valid concern about due process,” wrote Thomas F. Powers for the Weekly Standard in April 2004. “Institutional reforms are needed to resolve these questions and signal clearly to Americans and a watching world that due process, even for terror suspects, matters to our government.”

Two Supreme Court cases limited Bush’s prerogative to indefinitely incarcerate enemy combatants in June 2004. In one decision, conservative justice Antonin Scalia wrote, “The very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the executive.”

The closing of Guantanamo Bay became an electoral touchstone during the 2008 presidential campaign.

Both Republican nominee John Mc-

Cain and Democratic nominee Barack Obama said during their campaigns said they would close the prison at Guantanamo Bay.

A year and a half after the election, the prison at Guantanamo Bay is still operational.

As for Lambdin P. Milligan, he was released from prison in 1866 and resumed his law practice and farming. He sued his arresting officer, General Alvin P. Hovey, for false imprisonment, conspiracy, and libel, asking for \$500,000 in damages.

The New York Times of March 23, 1868 reported that he won his case, but his awarded settlement was reduced by the court. Milligan received a settlement of \$5.

*Nick Miller conducted some research for this article. Miller is a senior at Virginia Commonwealth University majoring in homeland security and emergency preparedness.* 