

Fire in the Rear: An Assessment of Copperhead Influence and the Forfeiture of  
Civil Liberties

Tucker Monsour

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Dr. Aaron O'Connell  
History  
Supervising Professor

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Dr. George Forgie  
History  
Second Reader

## **ABSTRACT**

Author: Tucker Monsour

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Supervising Professors: Dr. Aaron O'Connell, Dr. George Forgie

The Civil War's unique circumstances granted President Abraham Lincoln unprecedented powers when it came to persecuting the war; however, these increased powers for the president came at the expense of Americans' civil liberties. During the war, those who criticized the government could be tried for treason, and those accused of this crime were not tried in civilian courts, but in military tribunals.

This paper will focus on how these unchecked powers led to a situation where minority factions like the Copperheads could be tried not out of military necessity, but for political expedience. In looking at the cases brought against notable Copperheads Clement Vallandigham and Lambdin Milligan, it becomes apparent these men and their actions posed little threat to the war's prosecution. This unfortunate forfeiture of civil liberties sets a poor precedent for maintaining these rights when the nation is at war.

Thank you Mom and Dad for always supporting me and loving me unconditionally.

Also, a special thanks is warranted for my supervisor, Dr. Aaron O'Connell. Thank you for guiding me through this process—this paper could not have come together without your help.

Contents

I.	Introduction.....	5
II.	Who are the Copperheads?.....	11
III.	Vallandigham’s Arrest and Trial .....	24
IV.	Milligan Military Tribunal and the Case for Political Expediency.....	44
V.	Lincoln’s Unchecked Executive Authority.....	55
VI.	Conclusion.....	59
VII.	Bibliography.....	60

## I. Introduction

In the summer leading up to the presidential election in 1864, President Lincoln confided his fears to Republican Senator Charles Sumner, and stated he feared the “fire in the rear more so than [the Union’s] military chances” in the field. The fire in the rear Lincoln was fearful of was a North West secession conspiracy and his own reelection prospects in November. For the past year and a half, the Lincoln administration had been receiving intelligence reports detailing how secret Copperhead organizations were starting riots and planning to free Confederate prisoners of war and lead the North West to secede from the Union. Additionally, former Union Army of the Potomac General George B. McClellan, who was still popular among the public and army, had signed on to head the Democratic presidential ticket. The summer of 1864 had seen the war’s highest casualties, and the nation was suffering from war weariness—many Americans wanted the war to end, and the Democratic ticket was a ticket of peace. With conspiracies circulating throughout the North and his reelection hopes taking a hit every day the casualty report was printed, Lincoln was right to fear this fire in the rear more so than General Robert E. Lee’s army; however, the reports detailing Copperhead secret societies and draft riots were largely overblown.

Lincoln combatted this perceived fire in the rear by implementing many unprecedented executive measures during the war. He suspended habeas corpus, imposed martial law outside the immediate zone of military conflict, and tried dissenters for treason. Lincoln claimed he was entitled to such authority by the war powers clause within the Constitution. The Constitution offered the President more power during times of insurrection, and Lincoln defended his use of power by citing that his actions were necessary for the war effort. Under closer examination, there was no real military necessity for these executive measures. In fact, it appears the military

tribunals, set up to try civilians with treason, were more a means for political expedience than military necessity. Two trials from the Civil War make this clear: the trials of Congressman Clement L. Vallandigham and Lambdin P. Milligan. Vallandigham was tried for speaking out against the draft, and Milligan was arrested for his alleged association in a plot to free Confederate prisoners of war. This paper will argue executive authority during the Civil War operated outside the responsibilities granted to it in the Constitution. With the Supreme Court unable to lawfully review any military commissions during the "temper of the times," the President was left unchecked to illegally suspend civil liberties and try dissenters and political opponents for treason. The Lincoln Administration's example sets a poor precedent for securing American civil liberties during wartime.

Before considering the cases brought against both Vallandigham and Milligan, this paper will describe who these Copperheads really were during the Civil War. Three different theses will be discussed, and each provides an explanation for why Copperhead opposition to the war was so widespread in certain areas. However, there is a fourth theory that I will propose: fear of government overreach united these people in the North. Before the war, most rural Americans only interacted with the federal government when they received mail from the post office and voted in elections. The draft and military provost marshals who supervised it became the first large-scale domestic intelligence agency in the United States, and had unprecedented power to directly intrude on people's personal lives. This fear of a growing centralized authority exercising unchecked power throughout the war's course caused many Americans to band together to defend their rights. The Hoskinsville Rebellion is a great example of Americans doing just this. Copperheads like Vallandigham spoke for these people in particular, and challenged Lincoln's executive measures with their legislation and speeches.

Congressman Clement Vallandigham would eventually be arrested for criticizing the draft and General Burnside's General Order 38, which essentially imposed martial law over Ohio's inhabitants. Vallandigham was tried for treason under a military tribunal, and this trial was later declared unconstitutional because Vallandigham was a civilian tried by the military. Vallandigham's case also highlights how the definition of treason changed during the Civil War, and, in many cases, changed in order for dissenters like Vallandigham to be tried. Vallandigham did not actively encourage draft resistance; instead, he was encouraging people to vote for the Democratic ticket if they already opposed the draft. The draft was unprecedented and unpopular; criticizing it should not be grounds for arrest. Furthermore, the draft resistance was born from racial, cultural, and economic reasons. Vallandigham did not make the draft unpopular; he simply used its unpopularity to his advantage.

Lambdin P. Milligan's trial is another example of how Lincoln's measures set a bad precedent for civil liberties during wartime. Milligan was a member of a secret society, the Sons of Liberty, whose leader concocted a plan to free Confederate prisoners of war; yet, the plan never went in to affect. The society's leader mentioned the plan to others in the group, but was quickly shut down and cooler heads prevailed. The damage was done, though, and Indiana Governor Oliver P. Morton had all the men arrested when he caught wind of the plot from a double agent within the secret society. Though no plan ever went in to affect, the conspirators were charged with treason. The Supreme Court overruled these charges following the war because martial law should only be confined within the scope of immediate military conflict. Under a closer investigation, it appears these secret societies posed little threat to the war effort.

The *Drueker v. Salomon* case is also important to consider because this case serves as an example for how treason cases *should* be tried. Drueker actually incited a draft riot, made a flag,

and encouraged others to loot and burn down properties. This action was truly detrimental to the war effort and worthy of being tried as treason against the United States, but how does Vallandigham's speech merit the same charge? The differences in these two cases emphasize how treason's definition changed during the course of the war—civilians could now be tried for Constructive Treason, or advocating treasonous activities without actually committing them themselves.<sup>1</sup> The military tribunals that tried Vallandigham and Milligan cannot be supported by claims of military necessity because these two individuals posed no threat to the war effort. Instead, there was a political reason for trying these men.

By analyzing how Governor Morton and the military used these secret societies to portray Democrats in a poor light, it becomes apparent charging political opponents with treason was a viable tactic for Republicans during the war. General Carrington's reports on the Knights of the Golden Compass' activities reveal the true conspiracy in the North West was the fabrication of these secret societies between the military and state government. Carrington reported that low draft numbers and riots were all caused by this society that never even existed—it was a roaming charlatan's Ponzi scheme from before the war. Also, reported secret society activity, interestingly enough, coincided with Indiana's state elections. Furthermore, many of those tried alongside Milligan were prominent Indiana Democrats. If there was no real necessity for trying these individuals, how was the Lincoln Administration able to continually ignore long held American civil liberties for political expedience?

The answer lies in the fact the Civil War's unique circumstances allowed for treason's definition to expand and led to a situation where the executive branch had no feasible check to its authority. By following the growth of Lincoln's executive powers throughout the war, it

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<sup>1</sup> J. G. Randall, *Constitutional Problems Under Lincoln* (New York: D. Appleton and Company, 1926) 76.



becomes apparent the only check to Lincoln's power was the Supreme Court, who declined to rule on necessity until after the war. In other words, one man's definition of necessity could take away the rights of millions of Americans, even if it was unconstitutional.

This paper's arguments and topics are relevant within the Civil War's current historiography because the paper focuses on a minority faction and is geographically interested in mainly the North West. Most Civil War studies focus on the war's military and social aspects, namely emancipation, and are geographically interested in mainly the eastern seaboard. Within the current discourse on the Copperheads, this paper is also relevant. Copperhead historians usually disagree on whether the Copperheads posed a significant threat to Lincoln's War effort, and this investigation supports historian Frank Klement's estimation that they their perceived threat was no more than a paper tiger.<sup>2</sup> However, most Copperhead studies do not include any legal investigation as to how these trials came to be, and fewer consider this minority group within the greater scope of Lincoln's executive measures during the war. For these reasons, this paper is a worthwhile contribution to the existing Civil War and Copperhead literature.

In short, this investigation is centered on answering who these Copperheads were, were they truly a threat, and how these unconstitutional actions were allowed to happen. After all of these considerations, it appears Vallandigham and Milligan's arrests were not necessary. Instead they were unconstitutional and politically expedient. This sets a poor precedent for American civil liberties in present wars, because the questions surrounding whether the court should directly intervene have never been answered. Today, with the United States engaged in conflicts with non-state actors, the delineation between what is within the scope of military conflict and what is not is made even blurrier. With this in mind, the unconstitutional military tribunals that

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<sup>2</sup> Frank L. Klement, *The Limits of Dissent: Clement L. Vallandigham and the Civil War* (Lexington: University Press of Kentucky, 1970). 59.

tried both Vallandigham and Milligan should stand as a reminder for how quickly civil liberties can be trampled on during times of war.

## II. Who Were the Copperheads?

This investigation will focus on a minority political faction in the North: the Copperheads. The term Copperhead was a pejorative term for any Democrat seeking an end to hostilities and recognition of the Southern states. The term's origin comes from Republicans likening these Peace Democrats to the poisonous copperhead snake; however, these Peace Democrats liked the name Copperheads and, in response, wore copper pennies on their jackets.<sup>3</sup> Democrats, specifically Peace Democrats, were united in partisan opposition to the draft, emancipation, and Lincoln's military courts. These opponents of the war came in many shapes and sizes, and ranged from southern born farmers in southern Indiana to German and Irish Catholic immigrants in New York City. Three theories will be discussed on why Copperheads opposed the war, but a fourth theory, that they were all fearful of an unchecked and expanding central government, seems more appropriate in describing every Copperhead in the North. Fearful their country was irrevocably changing, their slogan was "the Constitution as it is, the Union as it was."<sup>4</sup>

Historians explaining how there was such large support for the Democratic party in parts of the North often cite three possible reasons: the migration thesis, socio-economic thesis, and racial thesis. Illinois historian Viktor Hicken posits migration from the South before the Civil War led to the large number in the North West who rejected Lincoln's emancipation policy. Historian Frank L. Klement, possibly the leading historian on all things Copperheads, claims socio-economic factors united rural farmers and blue-collar workers against the Lincoln administration. The third and final explanation for significant Copperhead support throughout the

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<sup>3</sup> Jennifer L. Weber. *Copperheads: The Rise and Fall of Lincoln's Opponents in the North*. (New York: Oxford University Press, 2006), 4

<sup>4</sup> Weber, *Copperheads*, 5.

North is the racial element. Historian Jennifer Weber points to emancipation being the straw that broke the camel's back for many Democrats who were on the fence on denouncing the war.

These Copperheads believed the war's aims had shifted, and that the war had gone from preserving the Union to freeing the blacks. An analysis of these three theories reveals each to be inadequate in some form or the other on describing why *all* Copperheads from across the North opposed the war. If demographics, socio-economics and race all fail to account for why all Copperheads opposed the Lincoln administration, perhaps the one strain united them all: a fear of the central government's unprecedented authority during the war.

When the war began, there was initially little resistance from the Copperheads in the North. The *rage militaire* spread across the North as the nation prepared for the Civil War to come, and support for the war at this point was largely bipartisan. The North's most influential Democrat, Abraham Lincoln's former political adversary, Senator Stephen A. Douglas decreed, "There can be but two parties, the party of patriots and the party of traitors. We [Democrats] belong to the former."<sup>5</sup> However, Democratic support for the war had one caveat: the war's only aim should be to reunify the country. Any other stipulations, namely emancipation, were not what this war was being fought over. While it would seem like political suicide to denounce the war before any significant battle was fought, the first outspoken Copperheads began to rear their heads at the war's outbreak. Those who decried at the war at this point can be imagined as the first wave of Copperheads. Vallandigham agreed with secession's legality and fellow hardliner New York City Mayor Fernando Wood put forth a motion for New York City to secede from New York State.<sup>6</sup> Supporting his move to secede from the Abolitionists in Albany, Wood stated,

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<sup>5</sup> Weber, *Copperheads*, 15.

<sup>6</sup> Weber, *Copperheads*, 16.

“It behooves every distinct community, as well as every individual, to take care of them selves.”<sup>7</sup> His movement inspired by overt sectionalism failed, but Wood’s reasoning encapsulates how the Copperhead faction formed in the war’s early stages. Copperheads were not just farmers from the Mid West, and the Copperhead rhetoric appealed to many other distinct communities in the North as well.

The first theory that fails to account for all Copperheads is the migration thesis, which centers around a distinct community called the Butternuts. They were pejoratively called Butternuts because their clothes were dyed in natural beiges as was customary in the South.<sup>8</sup> These Butternuts were people born in the South who moved to the Mid West. They mainly populated Ohio, Indiana, and Illinois’ southern frontiers and were agrarian. In analyzing the 1860 United States Census, historian Jennifer L. Weber contends that in Indiana and Illinois, ten to twelve percent of the population were born in the South. With six percent and eight percent of the populations in Ohio and Indiana, respectively, being born in the South as well, a considerable portion of the Mid-West’s population was sympathetic to the South, and, likewise, the Peace Democrats.<sup>9</sup> The area was called Western Egypt because of its black soil and countless fields; this agrarian region would experience the most violent anti-war protests and use of military force. The migration thesis is centered on these Butternuts, and contends that when southerners moved to the North West before the war, they brought their conservative political beliefs and pro-slavery temperament along for the ride. The southern parts of these states were “settled by immigrants who streamed northward out of the Carolinas, Tennessee, and Kentucky... [and] their reaction to the [emancipation] proclamation was, in many cases, positively explosive.”<sup>10</sup>

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<sup>7</sup> Weber, *Copperheads*, 16.

<sup>8</sup> Weber, *Copperheads*, 17.

<sup>9</sup> Weber, *Copperheads*, 18.

<sup>10</sup> Victor, Hicken, “Illinois in the Civil War,” (Urbana: University of Illinois Press, 1966, 1991), 128-29.

Southern roots probably played a role in Butternuts denouncing the war, but their loyalty to the South did not drastically affect their participation in the war. Political allegiance did not affect participation in the Union war effort. Democratic leaning Massac County “enlisted five-sixths of its entire voting population”<sup>11</sup> in to the Union Army. Southern heritage alone did cause these people to become Copperheads.

Historians Richard O. Curry and Eugene H. Roseboom dispute Hicken’s migration thesis and instead consider citing southern origins as a major factor in determining Copperhead support a “generalization that [does] not seem to withstand the challenge of critical revisionism.”<sup>12</sup> Curry argues support for the Copperheads was found in counties that had historically voted Democrat in the past. Massac County, which had the largest percentage of Southern migrants in Southern Illinois, fell from voting Democrat at an eighty-one percent clip to a measly twenty-two percent clip by the war’s end.<sup>13</sup> While changes in the war’s outlooks played a part in the decline, a nearly sixty point drop in votes shows Southern heritage alone did not factor in to the Copperhead support in the North.

Another explanation for the ardent Copperhead support in North can be the socio-economic realities war caused in the North West. This second thesis is proposed by historian Frank L. Klement, and suggests that areas of poor soil fertility (the black soil that gave Western Egypt its name) and the loss of southern markets caused an agrarian radicalism that precipitated the Copperhead movement. Under this theory, severing the region’s economic ties to the South was the leading determinant for Copperhead affiliation. Klement supports this argument by stating, “hundreds of commercial houses had a vested interest in the Mississippi River trade.

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<sup>11</sup> Hicken, “Illinois in the Civil War,” 5.

<sup>12</sup> Richard O. Curry, “The Union as it Was: A Critique of Recent Interpretations of the ‘Copperheads,’” *Civil War History* 13 (Winter, 1967): 34.

<sup>13</sup> *Illinois Elections, 1818-1990*, 144-145, 150-51, 154-55.

Southern bonds underwrote some of the paper money circulating in the upper Middle West. A portion of the farm surplus of Ohio moved southward, either to a consumers' market or to the New Orleans outlet. A dozen Cincinnati industries depended on, in large measure, Southern buyers."<sup>14</sup> These economic facts were true, but only at the war's outbreak. Democrats seized on this initial economic depression and raised old fears that the war would turn North Westerners in to "slaves and serfs of New England"<sup>15</sup> and that New England's "hoops of steel"<sup>16</sup> would encircle and choke the North West's economy. The Democrats were placating fears that were not without basis. North Western ties to New England were already growing because railroad expansion had linked the North West to the Atlantic markets in 1850's.<sup>17</sup> Democrats were stoking fear this inevitable industrialization would place industrial and moneyed interests above the interests of Mid Western farmers.<sup>18</sup> Under closer examination, these socio-economic realities have been overblown.

Klement cites Cincinnati as a prime example of socio-economics fostering Copperhead support. Cincinnati is an interesting case study for evaluating how the war directly affected the North West economy because it was linked to both New Orleans and New York in 1860. The war's first year did see economic downturn for Cincinnati because 77% of ale, 63% of whiskey, 71% of candles, 85% of furniture, and 60% of sundry merchandise were all sent south.<sup>19</sup> The Union blockade caused "the bankruptcy of those commercial houses which specialized in the southern trade."<sup>20</sup> However, Klement has overlooked that Cincinnati's trade with New Orleans

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<sup>14</sup> Klement, *Limits*, 59.

<sup>15</sup> *Crisis* 31 January 1861.

<sup>16</sup> *New York Tribune* 14 April 1861.

<sup>17</sup> Charles R. Wilson, "Cincinnati, a Southern Outpost in 1860-61" *The Mississippi Valley Historical Review* 24, no. 4 (1938): 464.

<sup>18</sup> Weber, *Copperheads*, 28.

<sup>19</sup> Wilson, "Cincinnati, a Southern," 480.

<sup>20</sup> Wilson, "Cincinnati, a Southern," 480.

was not access to Southern markets, but for foreign export to the Gulf of Mexico.<sup>21</sup> These products could still reach their Latin American markets, albeit, with a significant upcharge through New York City. While the New Orleans blockade caused some commercial houses to flounder, historian Charles R. Wilson contends the loss of southern trade was actually menial to Cincinnati's economic woes. In fact, he claims "by the hogshead the South took 42% of the shipments, by the pound it took 40%, by the box it took only 1.7%."<sup>22</sup> The box Wilson is referring to the dollar amount southern shipping counted toward Cincinnati's economy. In all, "the city's imports were off about 13% and her exports only about 11%."<sup>23</sup> Loss of southern markets did not impact the agricultural output either. As the war continued, bumper crops and demand for North West grains actually led to economic posterity for many farmers in the North West. Historian Emerson D. Fite found that Chicago's corn export, which, "before 1860 never above 11,000,000 bushels, averaged during the war 25,000,000 bushels."<sup>24</sup> Soon, the North West "became a granary for Great Britain, and to a small extent, the Continent [of Europe]."<sup>25</sup> Although the war's onset caused economic ruin for many in the North West, generally farmers fared well during the war.

The third and final reason historians offer for the growing Copperhead support throughout the war is racial prejudice. The greatest overarching political issue shared by Copperheads was opposing Lincoln's Emancipation Proclamation, and emancipation combined almost all of Copperhead fears into one nightmare: free blacks taking their jobs and a tyrannical government working outside the confines of the Constitution. Historian Jennifer L. Weber notes

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<sup>21</sup> Joseph Nimmo, *Report on the Internal Commerce of the United States, 1880-81*, House Exec. Docs., 46 Cong., 3 Sess., XVI, no. 7, pt. 2, pp. 76-77.

<sup>22</sup> Wilson, "Cincinnati, a Southern," 481

<sup>23</sup> Wilson, "Cincinnati, a Southern," 481

<sup>24</sup> Emerson D. Fite, "The Agricultural Development of the West During the Civil War" *The Quarterly Journal of Economics* Vol. 20, No. 2 (Feb., 1906), pp. 260.

<sup>25</sup> Fite, "The Agricultural Development," 162.



Copperheads were known for the “depth and virulence”<sup>26</sup> of their racism. Racial prejudice drew many different people to the Copperhead cause. Irish and German immigrants feared they would lose their jobs to newly freed blacks and many in the North simply regarded blacks “as inferior beings who were best off in bondage.”<sup>27</sup> Race, clearly had a large role in Copperheads gaining support during the war.

Playing on fears that freedmen would come north and take their jobs and their women, Copperhead leaders and newspaper editors made emancipation the war’s chief political debate.<sup>28</sup> Before the war, only the fringe Radical Republicans supported abolition, and supporting abolition outside of New England was to make oneself a political pariah. For just this reason, as a candidate for President, Lincoln’s presidential campaign did not support emancipation, but called instead for impeding the spread of slavery into the new territories won in the Mexican-American War (1846-48). Until Lincoln emancipated the slaves in 1862, Copperhead criticisms were chiefly against Lincoln not abiding by the Constitution. Now, harkening back to Stephen Douglas’ assertion the war should only be fought for reuniting the country, the Copperheads had the political firepower they needed to amass more support throughout the North.

Copperheads had always opposed the war, but Lincoln’s Emancipation Proclamation in 1862 brought other Democrats to join their side and contributed to the Copperheads gaining the majority of the Indiana state representative. Race, along with not many significant Union victories, clearly influenced the election. Combatting emancipation became the calling cry for Copperheads across the North. The Copperhead newspaper *Age* contended the President’s unconstitutional attempt to free the slaves was not a question of law, but a “question of

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<sup>26</sup> Weber, *Copperheads*, 23.

<sup>27</sup> Weber, *Copperheads*, 23.

<sup>28</sup> “George Templeton Strong: Diary July 13-17, 1863,” 382.

anthropology, a question of science, which cannot be determined by Presidential dictum”.<sup>29</sup> James Gordon Bennett of the *New York Herald* wrote, “If this is a war of ideas then let the abolitionists fight for their ideas, and let the others stand back.”<sup>30</sup> This sentiment is significant because it struck a chord with many in the North who supported the war for reuniting the country, but not for freeing the slaves. Moves toward emancipation validated their initial belief abolitionists from New England had started the war by threatening to do the very act Lincoln just proclaimed in to law. Copperheads were now vindicated in their belief the Southern states knew what was coming and left. Back in the North West, feelings against abolitionists ran so high abolitionist Wendell Phillips was egged during his speech in Cincinnati during 1862.<sup>31</sup> Leading Copperhead Ohio Congressman Clement L. Vallandigham asserted that the war was being fought “for the purpose of crushing out liberty and erecting a despotism; a war for the freedom of the blacks, and the enslavement of the whites.”<sup>32</sup> Emancipation made the Copperheads and Peace Democrats a popular ticket for racists and immigrants in the North who disliked blacks and feared they would take their jobs; yet, many in the north harbored these beliefs, and not all of them joined the Copperhead cause.

The soldiers were split on emancipation. Historian Chandra Manning argues that soldiers were “intensely ideological,”<sup>33</sup> and the relationship between slavery and the Civil War was not lost on any of them. Manning contends most Union soldiers saw themselves as the world’s

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<sup>29</sup> J.H. Hunter and Ray H. Abrams. “Copperhead Newspapers and the Negro.” *Journal of Negro History* 20 (1935): 133.

<sup>30</sup> Weber, *Copperheads*, 23.

<sup>31</sup> Weber, *Copperheads*, 21.

<sup>32</sup> “Harper’s Weekly: The Arrest of Vallandigham,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:226.

<sup>33</sup> Chandra Manning. *What this Cruel War Was Over: Soldiers, Slavery, and the Civil War*. (New York: Alfred A Knopf, 2007) 18.

stewards for “liberty, equality, and self-government.”<sup>34</sup> However, this sentiment was not shared by all Union men. Union General Fitz-John Porter voiced the proclamation “prompted disgust, discontent, and expressions of disloyalty”<sup>35</sup> among the men. Sergeant Ezra Bowlus in the 9<sup>th</sup> New Jersey similarly recorded “there is scarcely a man in the ranks of our army who approves of [emancipation].”<sup>36</sup> Though sizable amount in the Union army were opposed to emancipation, they still supported the war to unify the United States. Also, in anti-black bastions such as Southern Illinois, drops in Democratic votes do not support the theory all racists voted for the Democratic ticket. In other words, while every Copperhead was a racist, many Republicans were racist as well in the North. As historian Richard O. Curry puts it, “while Democrats, not Republicans attempted to make political capital by exploiting Negrophobia during war, unenlightened racial attitudes [...] were not monopolized by the Democratic party.”<sup>37</sup> Emancipation was an even an issue within the Republican party.

These three theories for why Copperheads enjoyed, at times, widespread support across the North help illustrate just who these people were during the Civil War. Some were Butternuts from Western Egypt whose parents were born in the south. Others were Irish and German immigrants who feared freed blacks taking their jobs. But many Copperheads did not fall in to these categories. Economic sectionalism, racial prejudice, and demographics do not adequately explain the significant and virulent opposition Copperheads posed for the Lincoln administration during the war. While all these factors surely played a role, something much more profound must have driven Copperheads across the north “to pick up the ballot, the pen, or the rifle to oppose

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<sup>34</sup> Manning, *This Cruel War*, 6.

<sup>35</sup> Weber, *Copperheads*, 67.

<sup>36</sup> Ezra Bowlus to Samuel E. Williar, February 8, 1863, Ezra Bowlus Civil War Letters, folder 3, IHS.

<sup>37</sup> Curry, “The Union as it Was,” 33.

the war and the Lincoln Administration.”<sup>38</sup> For many of these Copperheads, the country they had been raised in was becoming unrecognizable, and many felt their lives were endangered by the war and the Lincoln Administration’s policies. Before the Civil War most people only associated the postal service and presidential elections with the federal government. Now, the federal government had invaded every American’s life. Under Lincoln, the country’s first draft was issued, military tribunals tried civilians outside the theatre of war, and the first federal income tax was implemented. Democratic newspapers were being mobbed by Unionists, or censored by the military. Democrats often had to take oaths of allegiance to Union troops on leave, and many were arrested for simply criticizing the war. Weber comments, “the Civil War has often been called a brothers’ war, but... in the North it was a neighbors’ war as well.”<sup>39</sup> In states, such as Illinois, where Lincoln won by the narrowest of margins, it was no surprise that towns were split down the middle in support for the war. For this reason, many Copperheads took up arms in denouncing the war effort, not because they wanted to secede, or hinder the draft, but because many were scared for their personal safety.

A good example that explains how many Copperheads feared their rights were being taken away by the Lincoln Administration is the Hoskinsville Rebellion. The incident that sparked the rebellion began when seventeen-year-old Tertellus W. Brown wrote his nephew to come home and desert from the army. The letter never reached Brown’s nephew; instead, it was intercepted and its contents read by some army official, who notified the military provost marshal in Cincinnati. Corporal Davidson and U.S. Marshal Alexander Sands were then issued a civil warrant for Brown’s arrest and on March 9, 1863, an expedition of 150 men was dispatched

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<sup>38</sup> Micheael Kleen, “The Copperhead Threat in Illinois: Peace Democrats, Loyalty Leagues, and the Charleston Riot of 1864.” *Journal of Illinois State Historical Society* (1998-), Vol. 105, No. 1 (Spring, 2012), pp.69-92.

<sup>39</sup> Weber, *Copperheads*, 2.

to arrest the seventeen year old Brown.<sup>40</sup> That evening, the expedition went to Brown's home. When he was not there, they seized his father as a hostage until the younger Brown was found. The next day, the company of Union soldiers made its way in to town and was met with armed resistance. Word had spread Union soldiers had taken Brown's father hostage, and around one hundred armed men confronted the soldiers. No shots were fired and the soldiers retreated and were reinforced with another company of 150 men. The next day he soldiers arrested sixteen of these men from Noble County and returned to Cincinnati.

Tertellus Brown was never found and charged. During the entire rebellion not one soldier or Noble County civilian was killed. The incident, however, became a national headline. The New York Tribune's headline exclaimed "Small Speck of War in Ohio," and later alleged the insurrections were "the first results of the Copperhead doctrines preached throughout Ohio and Indiana."<sup>41</sup> Furthermore, "The Noble County Republican reported that men engaged in protecting the Hoskinsville deserter had passed one resolution 'recommending the raising of money by contribution for the purchase of arms to enable them successfully to resist a draft, should another be ordered.'<sup>42</sup> This did not happen. These men had arms, as evidenced by their opposing the Union troops, and did not need to pass a resolution to procure more. Furthermore, resisting the draft was not the issue at hand, these men were defending one of their own, a seventeen year old boy, from an entire company of soldiers. Historian Wayne Jordan asserts, "if they were insurgents, their insurgency had far more kinship with western Pennsylvania's Whiskey Rebellion of an earlier day than it had with Southern Secession."<sup>43</sup> The news coverage continued to inflate the details. The Cincinnati Daily Gazette reported "the proportion of Union to Secesh

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<sup>40</sup> Wayne Jordan, "The Hoskinsville Rebellion," *Ohio State Archeological and Historical Quarterly* 47 (October 1943): 319

<sup>41</sup> *New York Tribune*, March 23 1863

<sup>42</sup> Jordan, "The Hoskinsville Rebellion," 328.

<sup>43</sup> Jordan, "The Hoskinsville Rebellion," 338.

inhabitants was one to twenty” and that those loyal to the Union lived in “a state of continual fear.”<sup>44</sup> This is a truly amazing report granted the county “voted for Lincoln in 1860 and ... had given Tod (Republican) 1,650 votes to Jewett’s (Democrat) 1,292 in the state election of 1861.”<sup>45</sup>

The whole Hoskinsville incident, under closer examination, reeks of Union aggression against Copperheads in Noble County and validates many of their fears the government’s power was growing at the expense of their rights. Yes, Brown had encouraged a soldier to desert, but, he was a concerned boy writing to his loved one. Clearly, the letter never influenced the nephew because it never reached him it. Also, an entire company of soldiers to arrest a seventeen-year-old boy seems a little heavy handed. An entire company of men descending on a town at night looking for a boy appears to be “well calculated to excite suspicion and create alarm.”<sup>46</sup> Historian Wayne Johnson concludes his paper by stating, “while regretting any action that ran athwart the administration’s purpose of preserving the Union, one may at this distance applaud the zeal in behalf of civil rights.”<sup>47</sup> This instance was not the first time Union soldiers on leave had provoked civilians in the North West, and it would not be the last.

The residents of Hoskinsville embody the feelings that united all Copperheads in the north: a genuine fear of their government bearing down on them unlawfully. Known Democrats had to swear oaths of allegiance in the north, and when Union soldiers on leave harassed Copperhead towns like Hoskinsville, Copperhead fears of government encroachment in to their daily lives proved to be valid.

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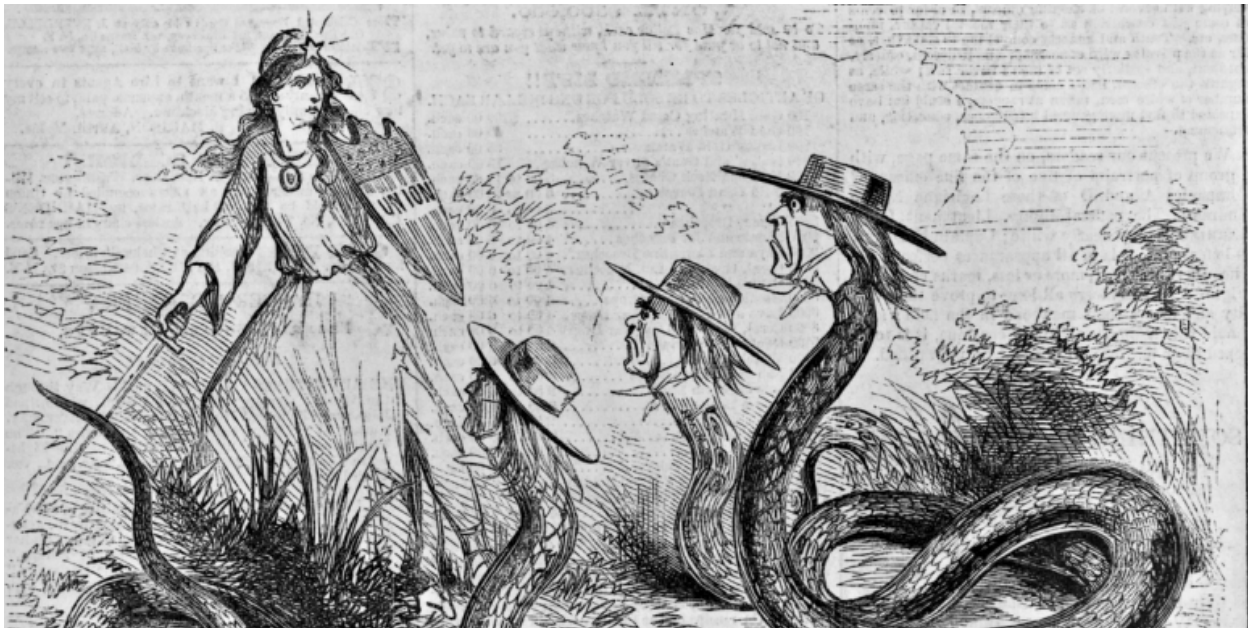
<sup>44</sup> *Cincinnati Daily Gazette* March 20, 1863

<sup>45</sup> Jordan, “The Hoskinsville Rebellion,”332.

<sup>46</sup> *Cincinnati Enquirer*, April 4, 1863

<sup>47</sup> Jordan, “The Hoskinsville Rebellion,”353.

The following sections will discuss two clear instances of when this unchecked central government disregarded the constitution. In analyzing the military arrests of Milligan and Vallandigham, it is apparent that the fear many in the north had of their government was well-founded. With each case, this paper will seek to answer was their arrest truly necessary to the prosecution of the war, and, as claims of necessity are again and again disproved, it will ask what affect did these arrests actually produce? Historians disagree on how much effect the Copperheads had on the administration's ability to prosecute the war. Weber contends the Copperheads indeed posed a threat, while Klement paints the Copperheads to be a paper tiger the Administration and Republican press played up to discredit the Democratic Party. As will be discussed in the following section, the actual military threat was largely insignificant; however, the political threat loomed large for the Lincoln Administration. Labeling and trying prominent Copperheads as traitors was politically expedient, not militarily necessary.



"The Copperhead Party" *Harper's Weekly*

## II. Vallandigham's Arrest and Trial

Rumors Vallandigham would be tried for treason circulated through Dayton, Ohio since as early as 1861. In the early hours of May 5 1863, he was finally arrested in his own home after denouncing Union General Ambrose Burnside's controversial General Order 38, which essentially outlawed any criticism against the Union war effort. Union Captain Charles G. Hutton and his entire company of 150 men arrived at Vallandigham's house to arrest the notorious Copperhead. Vallandigham initially resisted the arrest on the grounds no military officer possessed the right to arrest him. Vallandigham called from his window for the police, but it was to no avail. Eventually, the soldiers broke down the door and stormed in to the residence. Against the backdrop of his wife and sister-in-law shrieking, Vallandigham submitted to the soldiers and surrendered to Captain Hutton by uttering, "You have now broken open my house and overpowered me by superior force, and I am obliged to surrender."<sup>48</sup>

What could Vallandigham have said in his speech to warrant being arrested? He was ultimately locked up for "publicly expressing, in violation of General Order 38 ... sympathies for those in arms against the Government of the United States, declaring disloyal sentiments and opinions, with the object and purpose of weakening the power of the Government in its effort to suppress the unlawful rebellion."<sup>49</sup> Luckily, we have a transcript of most of his speech from the trial. The transcript reads:

[Vallandigham] did publicly address a large meeting of citizens, and did utter sentiments in words, or in effect as follows, declaring the present war "a wicked, cruel and unnecessary war;" "a war not being waged for the preservation of the Union;" "a war for the purpose of crushing out the liberty and erecting a

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<sup>48</sup> Entry of 5 May 1863, Daniel Read Larned, "Journal," Daniel Larned Papers, Library of Congress

<sup>49</sup> "Proceedings of a Military Commission, Convened in Cincinnati, May 6, 1863," Citizens' File, 1861-1865, War Department Collection of Confederate Records, National Archives.



despotism;” “a war for the freedom of the blacks and the enslavements of the whites;” stating “that if the Administration had so wished, the war could have been honorably terminated months ago;” that “peace might have been honorably obtained by listening to the proposed intermediation of France;” that “propositions by which the Northern States could be won back, and the South guaranteed their rights under the Constitution, had been rejected the day before the battle of Fredericksburg, by Lincoln and his minions,” meaning thereby the President of the United States and those under him in authority; charging that “the Government of the United States was about to appoint military marshals in every district, to restrain the people of their liberties, to deprive them of their rights and privileges;” characterizing General Orders No. 38, from Head-quarters Department of Ohio, as “a base usurpation of arbitrary authority,” inviting his hearers to resist the same, by saying, “the sooner the people inform the minions of usurped power that they will not submit to such restriction upon their liberties, the better;” declaring “that he was at all times, and upon all occasions, resolved to do what he could to defeat the attempts now being made to build up a monarchy upon the ruins of our free government;” asserting “that he firmly believed, as he did six months ago, that the men in power are attempting to establish a despotism in this country, more cruel and more oppressive than ever existed before.”<sup>50</sup>

These words, besides outlining what the tribunal viewed as traitorous, also represent many of the beliefs Copperheads held. Vallandigham was eventually found guilty of treason against the

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<sup>50</sup> *Military Commission*, 32.

United States for these exact words, and was exiled to the Confederacy. With Vallandigham out of the country, the Lincoln Administration had silenced one of their loudest opponents.

Was this arrest was truly necessary, and, if it was, should every U.S. citizen fear being arrested for criticizing the nation during times of war? While these initial charges seem quite vague, President Lincoln clarified what Vallandigham had actually done wrong by writing, “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.”<sup>51</sup> Preventing the raising of troops is a serious offense, but after a close reading of Vallandigham’s remarks it appears he never directly advocated his supporters not enlisting, he just criticized the draft itself. Furthermore, there are many reasons people did not enlist in the war, and these draft riots Republicans cite as being caused by Copperhead rhetoric had many other contributing factors. His words and actions had little to no effect on the Union’s ability to effectively prosecute the war. But, before answering this question, it is important to consider just who Clement Vallandigham was, and what threat he could potentially pose to the Lincoln Administration and the war effort.

If the Copperhead movement had a poster child, it would be Congressman Clement L. Vallandigham. During the war years he was a vocal conservative voice in Congress and resisted the changes the Civil War was imposing on the country, namely “the ascendancy of industrialism, [...] centralization of the government,”<sup>52</sup> and Lincoln’s Emancipation Proclamation. For these reasons he was a champion of Butternuts in the North West and Irish and German immigrants across the north. He was also an ardent racist who viewed the war as

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<sup>51</sup> “Lincoln’s letter the Erastus Corning,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:254.

<sup>52</sup> Klement, *Limits*, 315.

abolitionists imposing their political views on the entire country, but his most vicious attacks against the Lincoln Administration were based on the disregard Lincoln held for civil liberties. Vallandigham “even introduced a resolution calling for the arrest of President Lincoln if the rights of citizens continued to be violated.”<sup>53</sup> Vallandigham was most incensed about the administration’s military arrests of citizens, and his reaction in many ways is warranted, given his eventual fate. During the Civil War “at least thirteen thousand civilians were held under military arrest,”<sup>54</sup> and while most of these arrests were against deserters, draft dodgers, blockade-runners, and people trading with the Confederacy, some were tried for disloyal speech and criticizing the government.

Some of these arrests for disloyal speech seem inconsequential to the war effort at large. The draft was controversial, and compulsory service under arms “had never been applied by national law”<sup>55</sup> in the United States. Surely, questioning the legality of an unprecedented draft and denouncing it is not treason? One of the most important aspects of Vallandigham’s case is what preventing the raising of troops truly entails. Both Lincoln and the military tribunal accused Vallandigham of declaring disloyal sentiments that affected the war effort, but these charges actually entail the crime of treason.

Treason, prior to the Civil War, was commonly understood and defined within the Constitution as consisting of one crime and punishment, but this definition was inadequate within the context of the Civil War. Lincoln wanted to unite the nation, and he could not achieve this goal if he had to hang every traitor in the Confederacy. In order to adapt to the Civil War’s unique parameters, the definition of treason became more malleable, and the punishment, less severe.

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<sup>53</sup> Klement, *Limits*, 314.

<sup>54</sup> Daniel Farber, *Lincoln’s Constitution* (Chicago: University of Chicago Press, 2003) 144.

<sup>55</sup> Randall, *Constitutional Problems*, 240.

One of the only crimes the Constitution clearly defines is treason, which emphasizes just how severe a charge it is. The Constitution's definition of treason reads as follows, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."<sup>56</sup> After defining the crime itself, the Constitution outlines the necessary proof to justify a conviction:

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life person attainted.<sup>57</sup>

By the time the Civil War began in 1861, judicial interpretations surrounding treason's principles were clearly defined. Constitutional law historian J.G. Randall comments, "'Constructive Treason' was eliminated. There must be an actual levying of war. A mere plotting, gathering of arms, or assemblage of men is not treason."<sup>58</sup> An example of Constructive Treason "is holding a man as traitor for advising treason when no levying of war has actually taken place."<sup>59</sup> Before the war, the consensus among legal experts was that uttering treasonous sentiments did not constitute a crime because no such levying of war had occurred. No forcible action had been committed against the U.S., and no assistance had been provided. Furthermore, what constituted providing the enemy aid and comfort was clearly defined as well. Providing aid and comfort consists "in furnishing military supplies, food, clothing, harbor, or concealment; communicating information; building, manning, and fitting out vessels; sending arms; contributing funds; and doing other

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<sup>56</sup> Randall, *Constitutional Problems*, 74.

<sup>57</sup> Randall, *Constitutional Problems*, 74.

<sup>58</sup> Randall, *Constitutional Problems*, 75.

<sup>59</sup> Randall, *Constitutional Problems*, 76.

similar things.”<sup>60</sup> In short, Randall summarizes providing aid and comfort as “a man levies war [or provides aid and comfort] when he acts with those who have had set it on foot.”<sup>61</sup> If Vallandigham had truly provided aid and comfort, then he would have to actively aiding Confederate troops, or actual rioters. Before the war, Vallandigham would not, and could not have been tried for treason.

Through the war’s course, the legal language surrounding treason’s scope would change. Once the war commenced, special legislation was passed to shape the law of treason to fit the new emergency. The first piece of this legislation was the Conspiracies Act of July 31, 1861, and the law allowed the Lincoln Administration to try civilians under a new crime very similar to, but, not exactly, treason. This law was passed because the original punishment for treason was death, and this punishment would be too severe for men the administration wanted to charge for semi-treasonable acts. The new law proposed a fine and imprisonment for those who conspired “to overthrow the government of the United States or to levy war against them, or to oppose by force the authority of the government.”<sup>62</sup> The wording is almost identical to how treason is defined in the constitution. The minority opinion, also advocated by Vallandigham, was that this new law violated the constitutional provision whose purpose was, “to restrict the power of Congress in the creation of a political crime kindred to treason.”<sup>63</sup> Treason was clearly defined in the Constitution by its framers, and there was even a clause that outlined the limits a legislative act could have on the law itself. In treason’s original definition as defined within the Constitution, “Congress shall have the power to declare the punishment of treason, but no

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<sup>60</sup> Randall, *Constitutional Problems*, 77.

<sup>61</sup> Randall, *Constitutional Problems*, 77.

<sup>62</sup> Randall, *Constitutional Problems*, 78.

<sup>63</sup> *Congressional Globe*, 37 Cong , 1 sess, p 233.

attainder shall work corruption of blood”.<sup>64</sup> Congress’ inability to attainder treason through legislative acts is the clause the minority party cited that called in to question the Conscription Law’s legality.

The legal ramifications of the constitution mentioning attainder in treason’s definition have one important implication: treason can only have one definition and one punishment. Attainder is the English Common Law term for inhibiting someone charged with treason from passing on his titles to his heirs. Because of its severe consequences, attainders of English noblemen were an effective means for the English crown to dissuade treason. For this reason, the Constitution’s framers protected American citizens from attainder by placing the responsibility to thwart attainder within the judicial branch. In this case, “the words ‘attainder of treason’ in the above-quoted clause relate, therefore, to attainder connected with a judicial sentence for treason, and not to attainder by legislative act.”<sup>65</sup> Randall later simplifies what this distinction entails by writing, “While Congress, through its delegated powers, is enabled to define various crimes against the United States and provide for punishment, these specific constitutional limitations touching the particular crime of treason must not be overstepped.”<sup>66</sup> In other words, while Congress can define various crimes and provide punishment for them, treason, the one law defined in the Constitution, is the exception. The clause entails that Congress does not have the authority to define another crime as treason because there is the possibility, because Congress can also provide punishment, that Congress could theoretically create another law, name it, perhaps, disloyal activities, and make the punishment for disloyal activities be attainder. This part of treason’s definition is significant because it outlines the two pre-war principles of treason:

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<sup>64</sup> Randall, *Constitutional Problems*, 74.

<sup>65</sup> Randall, *Constitutional Problems*, 75.

<sup>66</sup> Randall, *Constitutional Problems*, 75.

treason can never be punished by attainder, and treason must have *one* definition and *one* punishment, and it is outside the legislature's power to change any one of the principles.

In 1862, Congress proceeded much farther in modifying the law of treason, and passed the second Confiscation Act. The new act “[provided] the court with an alternative and a power of discrimination as between the weightier and the lesser cases”<sup>67</sup> of treason. Now, persons convicted of treason will either “suffer death...or, at the discretion of the court, he shall be imprisoned for not less than five years, and fined not less than ten thousand dollars.”<sup>68</sup> Finally, the second Confiscation Act provided another provision for treason that was “particularly designed for the existing emergency.”<sup>69</sup> The second section states:

If any person shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall engage in, or give aid or comfort to, any existing rebellion or insurrection, and be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have; or by both of said punishments, at the discretion of the court.<sup>70</sup>

The only notable addition to this definition of treason is the word *incite*. Inciting rebellion or insurrection again falls under the requirement that the person still forcibly incite others to levy war against the United States. In addition to adding *incite*, the second Confiscation Act also prohibited anyone accused of treason from holding elected office. The last additions to what constituted treason during the war came under sections 24 and 25 of the Conscription Act of

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<sup>67</sup> Randall, *Constitutional Problems*, 80.

<sup>68</sup> *U. S. Stat at Large*, XII, 589.

<sup>69</sup> Randall, *Constitutional Problems*, 80.

<sup>70</sup> Interpreted in *Opns. Attys Gen*, X, 513

March 3, 1863. This act added a provision for those resisting the draft. Now, “enticing to desert, harboring or aiding the escape of deserters, resisting the draft or counseling such resistance, or dissuading from military duty” were all considered disloyal practices and warranted treason.<sup>71</sup>

Treason’s definition had changed and it appears the definitions added by the Conscription Act of 1863 were used to try dissenters like Vallandigham. The military tribunal’s transcript fails to mention Vallandigham stated, during the same speech, “the remedy” for all “the evils” mentioned in his speech was the “the ballot-box,” and that the “ballot-box” alone was the only means to hurl “King Lincoln” from his throne.<sup>72</sup> These statements clarify what Vallandigham meant by “the people [informing]”<sup>73</sup> the government they no longer agreed with their attacks on civil liberties. He asked his supporters to vote for the Democratic ticket; not openly resist the draft. The question still remains, were Vallandigham’s words detrimental to the Union’s ability to effectively prosecute the war?

Before answering this question, it might prove helpful to look at a case where treason, as originally defined within the constitution, was actually committed against the United States. *Drueker vs. Salomon*, a case from Wisconsin, is an example of how a draft resistor should be tried. In this case, Drueker appealed the ruling under grounds of false imprisonment for his crime of “levying war”<sup>74</sup> against the United States. In the U.S., one of the two charges that fall under treason is levying war against the U.S.<sup>75</sup> Drueker was charged with leading the resistance against government officials implementing the draft in Ozaukee County. In the court documents Drueker admitted he had made a flag, which said “No Draft,” and helped organize the mob that attacked the draft officials. When he led the mob in destroying houses in the town, Drueker hallooed

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<sup>71</sup> *U. S. Stat. at Large*, XII, 731, secs. 24, 25

<sup>72</sup> *Mount Vernon Democratic Banner*, 9 May 1863.

<sup>73</sup> *Military Commission*, 32.

<sup>74</sup> *Drueker vs Salomon*, 21Wis. 628

<sup>75</sup> Randall, *Constitutional Problems*, 74



“Hurrah boys! I have got news from Milwaukee that they can’t draft there; and if they can’t draft there, they can’t draft here. Go on boys.”<sup>76</sup> While Drueker denied inciting the crowd, many eyewitnesses testified he had, indeed, encouraged the crowd. It is clear Drueker made a conscious effort to resist the draft, but how the court found him guilty is especially important when considering Vallandigham’s case.

Drueker’s appeal was granted in order to answer whether the draft was legally authorized, and whether “he or those resisting the draft committed any crime against the laws of the United States.”<sup>77</sup> The court agreed the draft was legal, but their argument on why Drueker committed the crime is important. The judge’s opinion held that levying war is the highest crime in the United States, and follows:

The settled interpretation is, that the words ‘ levying war ’ include not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the United States, if accompanied or followed by an act of forcible opposition to such law, in pursuance of such combination. The following elements therefore constitute this offense: 1st. A combination or conspiracy, by which different individuals are united in one common purpose. 2nd. This purpose being to prevent the execution of some public law of the United States, by force. 3rd. The actual use of force by such combination, to prevent the execution of such law. [...] Although there must be force used, it is not necessary that there should be any military array or weapons. The crime may be committed by those

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<sup>76</sup> *Drueker*

<sup>77</sup> *Drueker*

not personally present at the immediate scene of violence, if they are leagued with the conspirators, and perform any part, however minute.<sup>78</sup>

Levying war, thus, depends on *forcible* opposition, and preventing the execution of some public law *by force*. Druker was part of the mob that day in Ozaukee County, Wisconsin, and was forcibly preventing the execution of the Conscription Act of 1863, a U.S. public law. The judgment even included that force can be exerted by those not personally present at the scene of the crime, for instance, if they are in some way conspirators. This caveat, while expanding force's scope beyond a physical action, still entails a causal relationship from the accused to the action itself. For instance, had he just painted the flag and not participated in the mob, his assistance, "however minute"<sup>79</sup> would still fall under the charge levying war because he was present, and provided assistance.

In the military case against Vallandigham, the presiding adjutant general would not charge Vallandigham with levying war, but, instead, with expressing sentiments, which "did aid, comfort, and encourage those in arms against their government."<sup>80</sup> Many people in the North disagreed and instead saw Vallandigham's arrest as illegal. These sentiments were expressed in Erastus Corning's letter to Lincoln and the Albany Resolves. At a Democratic rally in Albany, conservative Democrats such as Erastus Corning made a strong stand against Vallandigham's arrest, and ratified ten resolutions which presented a case against the Lincoln Administration. The Albany Resolves affirmed civil liberties must be honored and constitutional government maintained at all costs; arbitrary military arrests and military tribunals went against the principles of military government; Vallandigham was arrested simply for words uttered in public; Lincoln

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<sup>78</sup> *Druker*

<sup>79</sup> *Druker*

<sup>80</sup> "Proceedings of a Military Commission, Convened in Cincinnati, May 6, 1863," Citizens' File, 1861-1865, War Department Collection of Confederate Records, National Archives. 32.

must honor the Constitution, and must “maintain the rights of the States and liberties of the citizens.”<sup>81</sup>

The arrest itself was causing waves of discontent across the North, and it was one of the more publicized events from the war. Kentuckian George Richard Browder even mentioned the arrest in his diary, and even adds that, on the same day as Vallandigham’s arrest, in “[Kentucky] a man was arrested—taken to Louisville & imprisoned by military for speaking disrespectfully of the President!—but was released.”<sup>82</sup> Vallandigham quickly became a household name, and for many Americans he became a martyr for defending the civil liberties. Over 13,000 northerners were imprisoned during the war, which is approximately one out of every 1,692 Americans in the north. Almost every American knew someone, or knew of someone directly who had been tried under military tribunals, and these arbitrary arrests were, fittingly, decried by northern Democrats.

Lincoln, reacting to the public outcry expressed across the nation, penned his response to these Albany Resolves in a letter addressed to Erastus Corning and others. In his letter, Lincoln lays out his case in support for the military trials. Lincoln begins his response by admitting that these arrests “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.”<sup>83</sup> Lincoln continues his defense by stating that civil liberties should be maintained; “except when, in the case of rebellion or invasion, the public safety may require their suspension.”<sup>84</sup> Lincoln’s entire defense rests upon this line, and it is referred to as the doctrine of necessity. In times of insurrection, where the

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<sup>81</sup> “The Albany Resolves” *The Political History of United States ... during the Great Rebellion* (Washington D.C., 1864), p. 163.

<sup>82</sup> George Richard Browder: Diary, May 17-26, 1863,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:222.

<sup>83</sup> “Lincoln’s letter to Erastus Corning,” 254.

<sup>84</sup> “Lincoln’s letter to Erastus Corning,” 255.

public safety might require such action, “arrests are made, not so much for what has been done, as for what probably would be done.”<sup>85</sup> On whether military commissions have constitutional authority to try citizens where rebellion does not exist, the President again cites that these trials can be conducted if, anywhere in the United States, public safety is concerned. Preserving public safety could mean “[preventing] the rebellion extending,” “[restraining] mischievous interference with the raising and supplying of armies,” and even “[restraining] the enticing men out of the army.”<sup>86</sup> Lincoln puts to rest the argument Vallandigham’s arrest was politically motivated by writing, “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 of which, the life of the nation depends on.” Finally, Lincoln provides one of his most famous aphorisms from the war, “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?”<sup>87</sup>

The letter is one of Lincoln’s most famous pieces of correspondence from the war, and outlines his argument that the war powers in the Constitution gave him wide legal authority on matters of preserving public safety. In his letter, Lincoln cites preventing the rebellion from spreading as one justification for his wartime measures. If Lincoln’s defense is to be considered valid, then desertion and draft dodging must have been exceedingly rampant in areas with high levels of Copperhead support. Furthermore, the threat of the rebellion spreading to the North West must be credible. Upon further analysis, Lincoln’s claims of necessity do not hold water.

Lincoln’s claims that Vallandigham’s rhetoric damaged the army by prompting soldiers to desert ignores the fact a multitude of factors cause desertion, namely the army’s living

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<sup>85</sup> “Lincoln’s letter the Erastus Corning,” 255.

<sup>86</sup> “Lincoln’s letter the Erastus Corning,” 260.

<sup>87</sup> “Lincoln’s letter the Erastus Corning,” 260.

conditions, poor morale following defeats, the issue of emancipation, and a bounty system that encouraged Union men to desert in order to be paid again upon reenlistment. The living conditions in the Union army were abhorrent, and more soldiers died of disease than lead.

Massachusetts volunteer Charles Harvey Brewster wrote that farmers in his hometown “would call it cruelty to animals to keep their hogs in as bad a place as we have to live and sleep.”<sup>88</sup>

Furthermore, the Union armies, especially in the East, were not enjoying much success against their rebel counterparts. Summarizing the military ineptitude of the Union general staff before Grant assumed command could fill volumes, but defeats at the First and Second Bull Run and Chancellorsville lowered morale. Even when the Union won a battle like Antietam, there were significant missed opportunities because confederate General Robert E. Lee’s Army of Northern Virginia was able to escape. Also, upon hearing about the massive casualties, concerned family members wrote for their boys to come home. A concerned uncle from McDonough County wrote his nephew, “Richard, take a fool’s advice and come home if you have to desert... you will be protected—the people are so enraged that you need not be alarmed if you hear of the whole of the North West killing off abolitionists.”<sup>89</sup>

A third factor shaping desertion was Lincoln’s own decision to emancipate the slaves. Historian Jennifer Weber argues Copperhead rhetoric did, in fact, encourage desertions; however, her argument assumes soldiers operated in a political vacuum, where, without Copperhead criticisms of the Emancipation Proclamation and Democratic news outlets, soldiers would never question the controversial proclamation. Weber writes that “dissidents’ resistance to conscription and their encouragement of less ideologically minded Americans to dodge the draft or desert the army forced the military to divide its attention and at times send troops home to

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<sup>88</sup> Weber, *Copperheads*, 46.

<sup>89</sup> Weber, *Copperheads*, 92.

keep order there.”<sup>90</sup> As has been previously stated, not all soldiers in the Union army supported the Emancipation Proclamation, and some vehemently opposed it. Many Union soldiers would come to accept emancipation as necessary to ending the war and reuniting the nation, but some could not. Both Democrats and Republicans volunteered for the war, and to think only Copperhead rhetoric turned soldiers sour on the Emancipation Proclamation ignored the reality that soldiers from the north all had different and individual political leanings before the war.

Some soldiers, like Corporal John J. Barney, seem to advocate Weber’s line of reasoning, though, by echoing the one of the reasons men deserted was because the Northern press was “howling about the emancipation proclamation and fighting to ‘free niggers.’”<sup>91</sup> Claiming the Democratic press in the North made soldiers’ decisions for them is absurd; if the press is blamed for soldiers deserting then couldn’t those who passed the controversial measure the press and soldiers were complaining about be held responsible too? Interestingly enough, in Copperhead hotbeds such as southern Illinois, “some counties in ‘little Egypt’ over-subscribed their quotas by nearly fifty percent.”<sup>92</sup> Draft numbers did not drop in the Copperhead counties. Furthermore, Massac County on the Illinois border with Kentucky, “enlisted five-sixths of its entire voting population.”<sup>93</sup> Despite resistance to the draft across Illinois, only .013 percent of the 259,092 Illinoisans serving in the Union army were drafted.<sup>94</sup>

This statistic is a little misleading; the draft itself was more of a means to coerce volunteers than anything else. Volunteers received bounties, or more money. Draftees did not, but, still, in a region known for its virulent Copperheads, the statistics indicate draft resistance was not a significant issue and the supply of more men appears unobstructed. The bounty system

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<sup>90</sup> Weber, *Copperheads*, 2.

<sup>91</sup> Weber, *Copperheads*, 84.

<sup>92</sup> Hicken, “Illinois in the Civil War,” 5.

<sup>93</sup> Hicken, “Illinois in the Civil War,” 5.

<sup>94</sup> Kleen, “The Copperhead Threat in Illinois,” 75.

was one of the leading causes of desertion in the war, and historian Judith Lee Hallock attributes this to the fact that it encouraged less wealthy men to desert in order to work the system.<sup>95</sup> Bounties would slow enlistments because cities and towns offered more money for volunteers. Such a system encouraged men to “enlist, claim the bounty, and leave the area without ever showing up for muster.”<sup>96</sup> Once one town was duped, these men would simply go to the next town and repeat the process. Finally, the government allowed those with the means to pay 300 dollars for a draft substitute. If the life of the nation truly depended on the army being amply supplied with men, substitution raises questions as to whether Lincoln’s doctrine of necessity to the war effort applied to *all* Americans.

The draft had many issues that attributed to it not being a success, but Vallandigham’s rhetoric was not one of these. While it is impossible to gauge how many more men volunteered rather than being drafted, the draft made sure the Union never had a lack of manpower to prosecute the war. Of the 76,829 men who were drafted, only 46,347, roughly sixty percent, actually showed up. The situation did not improve as the war went along. 13.5 percent of draftees failed to report in July 1863. In July 1864, during the grueling overland campaign against Lee, which saw the war’s highest sustained rate of casualties, 28.5 percent of draftees failed to show up.<sup>97</sup> If these figures are indicative of any conclusion, it is that the Union’s military prospects influenced those resisting the draft most heavily. If Weber and Lincoln still maintain Copperhead rhetoric significantly impacted the draft, then they are both complicit in providing the Union army its scapegoat for military failures, high casualty rates, and controversial proclamations.

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<sup>95</sup> Judith Lee Hallock, “The Role of Community in Civil War Desertion,” *Civil War History* 29 (1983).

<sup>96</sup> Weber, *Copperheads*, 90.

<sup>97</sup> Peter Levine, “Draft Evasion in the North During the Civil War, 1863-1865,” *Journal of American History* 67 (1981): 817-21.

Weber also notes the government had to divert resources to maintain order and quell draft riots, and claims this fact gives credence to Lincoln's doctrine of necessity. Under closer examination, draft riots were actually quite infrequent in the north, and were sometimes caused by the Union army itself. The Hoskinsville Rebellion is a perfect example of how the Union Army sometimes provoked these riots. Also, the news reports chronicling the Hoskinsville Rebellion show a Republican tendency to embellish riots to paint Democrats in a poor light. As explained in the previous section, there really was no riot. With the Hoskinsville Rebellion in mind, Union reports of rampant riots need to be taken with a grain of salt.

Another notable draft riot was the riot in New York City, and this was the deadliest riot from the war. This riot is often the one cited for having the most Copperhead influence, mainly because of New York Mayor, and ardent Copperhead, Fernando Wood's speeches. Before the Civil War even began, Democrats had warned immigrants "If Lincoln is elected to-day, you will have to compete with the labor of four million emancipated negroes."<sup>98</sup> However, while the Democrats pandered to immigrants in the hopes of getting re-elected, the Catholic Archbishop of New York also opposed the war because he did not want to see Catholic Irish and German workers out of work.<sup>99</sup> While Copperheads profited from these fears in the form of votes, the underlying cause of the riots was based upon race, and, to some extent religion. While the Republican Party embraced abolition, it had a history of harboring resentment for Catholics. The combination of Union defeats, the draft, emancipation, and longstanding hostilities toward black laborers in the city finally boiled over on July 13<sup>th</sup>. Copperhead rhetoric, while clearly stoking

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<sup>98</sup> *Herald*, November 6, 1860.

<sup>99</sup> Albon P. Man, "Labor Competition and the New York Draft Riots of 1863." *The Journal of Negro History* 36, no. 4 (1951): 381.



the flames, could not cause or exacerbate a riot that had clearly outlined cultural and racial causes that predate the Copperhead movement.

These riots need to be considered under a lens that critically analyzes how much influence Copperheads actually had on these riots taking place because if rhetoric did not incite these riots, then the case against Vallandigham does not hold water. In some cases the underlying causes for these riots were decades in the making. In the case of the Hoskinsville Rebellion, the Union Army itself instigated the entire altercation. For many in the North West, the draft symbolized everything they considered wrong with the country, namely an expanded central government and a war fought for emancipation. Accusations that politicians such as Vallandigham played a part in encouraging these riots ignore the facts that racism existed in the North West before the term Copperhead was even coined.

Judge Leavitt's opinion on Vallandigham's case casts some more doubts on whether Lincoln's doctrine of necessity was warranted. Vallandigham, after being tried and found guilty of encouraging draft resistance by the military tribunal, looked to the courts to be his savior. Hon. Judge George E. Pugh "moved for a writ of habeas corpus on behalf of Mr. Vallandigham before Judge Humphrey H. Leavitt of the United States Court for the Southern District of Ohio."<sup>100</sup> Although Congress had authorized the president to suspend habeas corpus throughout the nation, he had not yet suspended it in Ohio. Leavitt tipped off General Burnside of the pending writ, and Burnside doubled down and asserted it was his legal and constitutional right to arrest Vallandigham. General Burnside, as the commander of the Department of Ohio, characterized the lands north of the Ohio River "a vast army camp,"<sup>101</sup> and every soldier and civilian was under his authority. General Burnside's modesty in describing the extent of his

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<sup>100</sup> Klement, *Limits*, 168

<sup>101</sup> 28 Federal Cases 923 (1863).

domain perhaps gives more weight to the argument Vallandigham was imprisoned for “[damaging]... the personal interests of the commanding general”<sup>102</sup> than hindering the prosecution of the war. Pugh defended Vallandigham and Cincinnati attorney Benjamin F. Perry defended General Burnside. Perry argued the doctrine of necessity supported General Burnside’s actions, while Pugh affirmed, “We cannot move a single step but we do not see with what jealous care our fathers handcuffed military power.”<sup>103</sup>

Leavitt did not grant the writ, on grounds of moral guilt. This treason did not exist in the law, or the constitution. In fact, prior to Leavitt’s opinion in 1863, this form of treason had never existed in recorded history. In his ruling, Leavitt surmised that those who criticize a government during times of strife “should expect”<sup>104</sup> to be treated arbitrarily. Leavitt finally ruled that, “The sole question is whether the arrest was legal;... its legality depends on the necessity which existed for making it, and of that necessity... this court cannot judiciously agree.”<sup>105</sup> Essentially, Leavitt admits that the legality of Vallandigham’s arrest depended on whether it was a military necessity to arrest him in the first place. Leavitt, opting to dither rather than be decisive, made no effort to define what constitutes necessity and ruled the powers that be define necessity. In this case, the powers that be are solely the Lincoln Administration and the military. The judiciary’s power during the Civil War simply could not extend to these military tribunals. Why the judiciary could not even rule on military matters will be discussed in the section on Lincoln’s executive powers. Necessity ruled the day, and no one besides Lincoln himself could define it.

The threshold that must be breached for criticism to become treason is intentionally not defined in this ruling, and it remains so to this day. Under treason’s previous interpretations,

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<sup>102</sup> “Lincoln’s letter the Erastus Corning,” 260.

<sup>103</sup> 28 Federal Cases 923 (1863).; *Cincinnati Daily Gazette*, 16 May 1863

<sup>104</sup> 28 Federal Cases 923 (1863).

<sup>105</sup> 28 Federal Cases 923 (1863).

Vallandigham's speech, that day, would have had to start a riot that impeded the draft for him to be found guilty. Vallandigham's case represents two glaring conclusions: his arrest was a not a military necessity, and, during times of crisis, there is no safeguard for executive overreach. Lincoln's redefining of what constitutes treason was not born from malicious intent. Treason could only be sentenced with death as its punishment before the Conspiracy Act and the subsequent acts that followed. While Lincoln expanded treason's scope to allow for more lenient sentencing, this expansion allowed for semi-treasonous activities to fall under these new laws of treason. Lincoln was right in his letter to Corning, this was not your father's treason law from the past. By redefining treason, Lincoln changed the definition to suit his immediate needs. Via this process, Constructive Treason became synonymous with treason. Though civilians were not tried under the treason defined in the constitution, when they were read their sentences, the military judge still charged them being guilty of treason.

#### **IV. Milligan's Military Tribunal and the Case for Political Expediency**

Like Vallandigham, Milligan was also unlawfully tried in front of a military tribunal. Milligan was arrested in connection to a secret society called the Sons of Liberty, and the society's leading members were all arrested for a shelved plot to free Confederate prisoners of war. This conspiracy seemingly validated Lincoln's fear of a fire in the rear in the North West, and explains why he wanted "to prevent the rebellion extending."<sup>106</sup> However, the matter of whether these secret societies posed any real threat to the war effort remains. Under closer examination, it appears that not only that the military threat these secret societies posed was overblown, but also that it was overblown for political reasons.

Any book or article discussing the Copperheads during the Civil War will without a doubt mention these secret societies, and historians disagree as to how significant a threat they actually posed. Copperhead historian Frank Klement concludes these secret societies were nothing more than a paper tiger to paint the Democrats in a negative light, but historians Robert Churchill and Jennifer Weber argue these Copperhead secret societies did pose a threat. By considering these secret societies within the context of Illinois politics during this time, it appears their true character was misrepresented for political gain. This section's discussion will focus primarily on the Milligan Case and the Sons of Liberty conspiracy in the North West. The Order of the Golden Circle will also be discussed, and the lies about this order will help suggest there was some political gain to be had in exaggerating these secret societies. Because this section is focused on whether there was any political motive trying these orders, the Indiana Election in 1864 will be considered, as well as the presidential election of the same year.

First off, these secret societies were largely joined for protection, as well as fulfilling a social and political function. The North West during the Civil War did experience a lot of

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<sup>106</sup> "Lincoln's letter to Erastus Corning," 260.

neighbor on neighbor violence. Some counties were evenly divided between Democrats and Republicans, and these secret societies served the function of policing political disputes between the two parties. The Copperheads were not the only faction with secret societies; the Republican Party also had its own Union League. The main purpose of these societies was for self-defense, and “[Copperheads] took precautions against the perceived threat of their Unionist neighbors by banding together in mutual protection societies.”<sup>107</sup> Union soldiers on leave sometimes harassed these Butternuts, and vice versa. Furthermore, “over the winter of 1864, mobs, often spearheaded by soldiers on leave, sacked the offices of half a dozen newspapers in the West.”<sup>108</sup> J. Frederick Bollmeyer, Vallandigham’s friend and editor of the Dayton Daily Empire, “had been shot by a Republican neighbor during a personal argument.”<sup>109</sup> These were violent times, and joining these societies could provide safety.

These Copperhead societies provided safety, but they were not a fighting force. Weber describes these Copperhead secret societies as being “paramilitary [organizations] modeled after secret fraternal orders that were so popular in the antebellum United States.”<sup>110</sup> Labeling these secret societies as paramilitary organizations is an unwarranted classification. The term “paramilitary” conjures images of the Contra Rebels, or the Mujahedeen. The Sons of Liberty and Knights of the Golden Circle, as will be later shown, do not make the cut. These secret societies served as social groups too, and were largely comprised of farmers who supplied their own arms and met probably twice every month. In short, anyone who truly believed these conspiracies of a North Western Confederacy were realistic held these groups in to high regard.

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<sup>107</sup> Weber, *Copperheads*, 27.

<sup>108</sup> Weber, *Copperheads*, 128.

<sup>109</sup> Klement, *Limits*, 114

<sup>110</sup> Weber, *Copperheads*, 25.

If these societies did not pose that great a threat, militarily, why were there so many fears surrounding them and their conspiracies? In short, reporting on secret Democratic societies trying to break away from the Union and free prisoners of war was great propaganda to paint the Democratic party in a poor light, and details from the Milligan case and other secret societies help affirm this fact. The Milligan case is significant in that it was later decided trying Milligan under a military tribunal was unconstitutional, but, in regards to the whether these arrests had a political element attached to them, this case sheds light on how easy it was for Republicans like Governor Morton to try their political opponents with treason.

The military and Republican conspiracy to embellish these secret societies to the public and the War Department finds its origins with the Knights of the Golden Company (KGC) and, then, Colonel Carrington. The KGC were founded by “charlatan extraordinary and whimsical wanderer”<sup>111</sup> George W. L. Bickley. With his pen and his imagination, he hoped to get rich quick by selling ten dollar membership fees to his new secret organization. The clubs stated aim was to “colonize and finally annex northern Mexico to the Dominion of the United States.”<sup>112</sup> In 1859 Bickley traveled all around the nation to try and swindle more people in to joining his organization, and eventually ended up in Texas. Having failed in getting enough money from new members, Bickley picked up on the growing secession sentiment and “tried to transform his paper based society into an organization dedicated to repelling a Yankee invasion and guaranteeing Southern rights.”<sup>113</sup> In Kentucky he lied that he had eight thousand members, and the Order gained national attention as being dangerous organization. Democrats in the North West, seeking to use the hype surrounding the Order, penned exposes that characterized the

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<sup>111</sup> Frank Klement, “Carrington and the Golden Circle Legend in Indiana during the civil war,” *Indiana magazine of history* 61 (March 1965) : 32.

<sup>112</sup> Klement, “Carrington,” 32.

<sup>113</sup> Klement, “Carrington,” 33.

Order as traitorous organization. Yet, during this whole time no order existed. In time, the name recognition of the order would prompt Republicans to fabricate KGC reports to discredit Democrats in Michigan and Illinois.<sup>114</sup> Republican editors ran with the secret society craze and soon, another offshoot of the KGC emerged: the treacherous Mutual Protective Society.<sup>115</sup>

The Republican interest in propagating KGC headlines was clearly politically motivated, and the Report of the United States Grand Jury for the District of Indiana clearly shows this. More than a hundred citizens were tried in front of this grand jury for crimes ranging from corruption to murder to disloyalty. Forty-seven indictments, none mentioning the KGC, were returned. Following the indictments, “the juryman attached an *obiter dictum* of their own creation”<sup>116</sup> which dealt with the KGC’s activities in Indiana. The report detailed how the KGC and other secret societies had fifteen thousand members throughout Indiana, and how many Confederate prisoners at Camp Morton were belonged to the order.<sup>117</sup> Coincidentally, the report was published while the Democrat State Convention was being held.<sup>118</sup> The allegations of conspiracy fell on deaf ears, and the Democrats “elected nine of the fourteen members of Congress and secured control of both houses of the state legislature.”<sup>119</sup> Governor Morton, realized something had to be done in the wake of Democrat victories and continued the policy he was most familiar with: fabricating conspiracies and secret societies. Morton “marshaled a coterie of aids”<sup>120</sup> including Colonel Carrington, the adjutant general of the State of Indiana, and

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<sup>114</sup> Klement, “Carrington,” 35.

<sup>115</sup> Indianapolis *Daily Journal*, Dec. 30, 1861

<sup>116</sup> Klement, “Carrington,” 37.

<sup>117</sup> Report of the United States Grand Jury in District Court of the United States, for the District of Indiana, May term, 1862,” in “United States District Court Order Book, May 21, 1860 to November 24, 1863,” Federal Building, Indianapolis, 224-48.

<sup>118</sup> Indianapolis *Daily State Sentinel*, Aug. 5, 6, 1862

<sup>119</sup> Klement, “Carrington,” 38.

<sup>120</sup> Klement, “Carrington,” 39.

the editor of the Indiana Daily Journal, and formed, as Klement scathingly labels them, the “Indianapolis Junta.”<sup>121</sup>

Up until this point the KGC had only been used to affect local politics in the North West, but once Carrington got involved, Secretary of War Edwin Stanton began receiving letters about “A secret society [existing] in this vicinity to incite desertion of soldiers with their arms, to resist arrest of deserters, to stop enlistments, to disorganize the army, to prevent further drafting—in short, a distinct avowal to stop this war.”<sup>122</sup> Stanton, as Secretary of War, was probably flooded with information every day on enemy activity, but it appears these reports from Carrington and Morton held considerable sway over how the Administration viewed opposition to the war effort in the North West. These correspondences began in 1862, and these false reports do make it appear, on the surface, that the North West was teetering on the edge of seceding, or if not seceding, increased resistance to the war effort. On January 14, 1863, Carrington sent another five-page report directly to President Lincoln himself, advocating for firmness and force to crush treason in the North West.<sup>123</sup> All of these reports from the field indicating treasonous activities had to be taken seriously hundreds of miles away in Washington D.C. Carrington eventually fell out of favor with the War Department, perhaps due to his persistent reports of the looming KGC threat.

In all, Carrington and Morton’s fabrication suggest that painting these Copperheads as traitors in secret societies could serve two distinct purposes: vilify Democrats and justify the Lincoln Administration’s arbitrary arrests. Weber does not seem to care whether reports of a North West Conspiracy were true or not, and instead argues “what is most important is that

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<sup>121</sup> Klement, “Carrington,” 39.

<sup>122</sup> Henry B. Carrington to Edwin M. Stanton, Dec. 22, 1862, Official Records, Ser. 2, Vol. V, p. 108.

<sup>123</sup> Henry B. Carrington to Abraham Lincoln, Jan. 14, 1863, Robert Todd Lincoln Papers, Manuscript Division, Library of Congress, Washington.



contemporaries heard these stories, believed them, and made decisions based on that belief.”<sup>124</sup>

She argues that both Lincoln and Confederate President Jefferson Davis believed these reports and acted on them, and, in reviewing Lincoln’s redefinition of treason in the 1863 Conscription Act, it is likely Lincoln had Carrington’s fanciful report in the back of his mind while authorizing it. However, Weber is missing the significance of what the lies created by Carrington and Morton truly entail.

Under military tribunals, civilians were not tried in front of their peers, and, as seen in the Vallandigham case, even where writs of habeas corpus could be granted, Judge Leavitt could not adjudicate a military tribunal because he could not legally determine what constituted necessity. Therefore, under the new definitions of treason implemented by the administration in which disloyal sentiments could now be construed as counseling resistance, any association with an actual secret society in the North West could warrant arbitrary arrest because secret societies had now become synonymous with establishing a North West Conspiracy. Though the Knights of the Golden Circle were a Republican fantasy, who, amidst the fog of war, could delineate whether these plots existed, or not. The political advantage of portraying Democrats in a poor light coupled with ability to arbitrarily arrest any citizen creates a circumstance where it is politically expedient to try Copperheads, like Vallandigham and Milligan as traitors.

The Knights of the Golden Circle only existed in the minds of Republicans who either invented these false reports, or Republicans who believed they existed. Hopefully, this secret order’s discussion supports one conclusion: the reports issued to both Lincoln and Stanton show that both government and military officials, working together, in Indiana fabricated threats of treason to vilify their political opponents. The Sons of Liberty were another secret society in

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<sup>124</sup> Weber, *Copperheads*, 81.

Indiana, and unlike the Knights of the Golden Circle, this group was real. At the height of their activity the Sons of Liberty had 18,000 members in the North West.<sup>125</sup> This is the secret society Milligan belonged to. The Sons of Liberty failed to live up to their billing as a secret society; their “secrets and proceedings were never successfully concealed.”<sup>126</sup> Governor Morton and, now, General Carrington had double agents within the society and knew what the Sons of Liberty were going to do before many of the members were even informed.

Harrison H. Dodd, the secret society’s leader, decided, with the Union gaining the advantage more and more every day, it was time to act. On August 2, 1864 he divulged his plan to his most trusted members, Carrington’s spy being one of them. Now, two years later, it seemed real Copperheads were finally realizing Carrington’s fantasies of the KGC liberating Camp Morton and establishing a North Western Confederacy. It might seem interesting that the plan proposed by the Dodd is the same one imagined by Carrington years earlier, but, for Copperheads in Indiana, liberating Camp Morton was the only viable option for affecting the war in any significant way. Dodd ended up sharing his plan with J.J. Bingham, editor of the Indianapolis Sentinel and chairman of the Democrat State Central Committee. Bingham refused to cooperate and instead notified fellow notable Democrats in the state of Dodd’s plan. These leading Democrats, knowing how bad this conspiracy would make their party look, made Dodd swear the plan would be abandoned.<sup>127</sup> Thus, endless rumors that secret societies would ignite an armed rebellion in the North West amounted to aborted plans and Republican imaginations. While Dodd’s plans would be shelved for the time being, Morton’s was just beginning to take shape.

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<sup>125</sup> Kenneth M. Stampp, “The Milligan Case and the Election of 1864 in Indiana” *The Mississippi Valley Historical Review*, Vol. 31, No. 1 (1944) 45.

<sup>126</sup> Stampp, “Milligan Case and the,” 46

<sup>127</sup> Stampp, “Milligan Case and the,” 50.

On the night of August 20, 1864, military authorities raided Dodd's printing house and found ammunition and four hundred revolvers.<sup>128</sup> During the raid they also discovered a member list for all the society's prominent members, and, to Morton's delight, several Democratic candidates for state offices were named. For Morton, nailing Dodd was just the beginning. The governor of Indiana intended for the entire Indiana Democratic Party to go up in flames. Morton wanted to try the leaders but his loyal lackey, Carrington, for once, did not share his enthusiasm. General Carrington, after years of publishing make-believe partisan tales of treachery, did not want to go through with actually charging the leaders because he believed he did not possess the legal right to try these individuals while the regular courts remained open. Morton pressed on with the charges, believing that an immediate trial was "essential to the success of the National cause in the autumn elections."<sup>129</sup> The fact that Morton notified Stanton of his plan makes the Administration complicit at this point for using the military tribunals for political purposes. Morton's letter to Stanton in this instance shows that the Administration knew all too well the power afforded to it under the doctrine of necessity, and utilized this power to exact political gain before the crucial election of 1864.

The election of 1864 was on the mind of every Republican in the nation, and perhaps the fear the Democrats could win prompted more of these tribunals. The election would go down in history as the first and only democratically held election while a nation was engaged in a civil war. Though this paper is concerned with Lincoln's appropriating too much power within the executive branch during the war and trampling on civil liberties, the fact that this election actually took place is a testament to Lincoln's leadership during the war. In the months leading

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<sup>128</sup> Stamm, "Milligan Case and the," 51.

<sup>129</sup> Morton to Stanton, August 23, 1864. *Morton Letter Books*, Indiana State University, Indianapolis

up to the election “the people [were] wild for peace,”<sup>130</sup> and even Lincoln believed “it [seemed] exceedingly probable that this administration will not be reelected.”<sup>131</sup> War weariness was the leading cause for this sentiment, but also Grant’s overland campaign against General Lee was causing outrage at home. At a moment when everyone assumed the Confederacy was on its last heels, the casualties continued to mount and became hard to reconcile. Since Grant’s wilderness campaign had begun on May 5<sup>th</sup> through early July, sixty-four thousand casualties had been sustained.<sup>132</sup> In response to the mounting casualties, C. Chauncey Burr, editor of the *Old Guard* denounced General Grant’s slaughter by voicing, “What is the difference between a butcher and a general? A butcher kills animals for food. A general kills men to gratify the ambition or malice of politicians and scoundrels.”<sup>133</sup> In addition to this casualties mounting, it was rumored that former Army of the Potomac General McClellan would be the presidential nominee. Though relieved of his command, the former General still had good standing with many in the army and had allies in Washington. When Morton wrote Stanton in August, many, including Lincoln himself, doubted he would be reelected come November.

The trial against Dodd and the other leaders commenced when Stanton gave Morton the go ahead. While it was easy to try Dodd, granted he confessed his plan to a double agent, convicting the other leaders who, for all intents and purposes, were not known in the hearing as co-conspirators, proved difficult. Furthermore, the lead witness in the case, the double agent, “was obliged to confess that he had no direct knowledge of the society’s alleged military branch, and that he had never seen any of its members engage in military drill.”<sup>134</sup> If the double agent,

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<sup>130</sup> “Lincoln Memo on Failure of Reelection” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:324.

<sup>131</sup> *Ibid*, 324.

<sup>132</sup> Weber, *Copperheads*, 139

<sup>133</sup> C. Chauncey Burr, “Editors Table,” *Old Guard*, July 1864, 189.

<sup>134</sup> Stamp, *Milligan Case and the*, 53.

who was a high enough ranking member to learn of the plot, could not attest to the society's military activities, then the society's military capability and overall threat to the Union war effort was negligible at best. The systematic effort to charge the whole Democratic party with participating in this conspiracy is illustrated in the judge advocate's following questions to a witness:

Q. Of what political faith were the majority of men comprising that organization [Sons of Liberty]?

A. They were all Democrats.

Q. State whether any other class of men were admitted, or was it *sine quo* [sic] *non* that a man must be a Democrat?

A. I do not think that anyone would have got in unless he professed to be a Democrat.<sup>135</sup>

Generals Hovey and Carrington, who remained in Indiana, were on the campaign trail for the Union party. Judge Advocate Burnett divided his time between his duty hearing the case and “[delivering] less subtle political speeches at local Union meetings.”<sup>136</sup> The partisan makeup surrounding the whole proceedings has all the makings of a show trial. The trial and its coverage in the press made one fact abundantly clear for the people of Indiana: “all Sons of Liberty were traitors and [...] most Democrats were Sons of Liberty.”<sup>137</sup> In consequence of the trial, one of Morton's secretaries exclaimed, “The exposure of the Sons of Liberty is tearing the ranks of the Democracy all to flinders. McClellan stock is not quoted at all. McDonald stock is fast going down.”<sup>138</sup> The trial, coupled with military victories in September, saved the Union party come

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<sup>135</sup> Pitman, ed., *Trials for Treason*, 125.

<sup>136</sup> Stampp, *Milligan Case and the*, 54.

<sup>137</sup> Stampp, *Milligan Case and the*, 54.

<sup>138</sup> W. H. H. Terrell to General Wilder, September 6, 1864, *J. T. Wilder Papers*, Indiana State Library, Indianapolis.

the fall the elections. Dodd eventually escaped to Canada, and the military court found Bowles, Milligan, Horsey, and Humphrey guilty.

The Supreme Court case *Ex Parte Milligan* later reversed these charges. The court ruled that the military commission, in fact, did not have jurisdiction over their cases. Constitutional Law Historian J. G. Randall cites the *Ex Parte Milligan* decision as “one of the bulwarks of American civil liberty”<sup>139</sup> The ruling reads as followed:

Martial Law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction, ... the Constitution of the United States is a law for the rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.<sup>140</sup>

This ruling entails certain parameters for the general subject of martial law going forward. First, the president has the power to suspend habeas corpus only within recognized zones of military conflict, and only in during emergencies. Second, military trials, not preventative detentions, are permissible during war, but only within recognized zones of military conflict. Finally, the claim of military necessity in Indiana was factually implausible. As discussed here in this section, no forcible acts against the government took place saying this act impeded the Union’s ability to effectively prosecute the war “would require greatly stretching the recognized boundaries of military jurisdiction.”<sup>141</sup> In reality, “necessity must be actual and present.”<sup>142</sup> In the cases of both *Vallandigham* and *Milligan*, the claims of necessity do not hold.

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<sup>139</sup> Randall, *Constitutional Problems*, 398.

<sup>140</sup> *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866).

<sup>141</sup> Daniel Farber, *Lincoln’s Constitution*, (Chicago: University of Chicago Press, 2003) 170.

<sup>142</sup> *Ex Parte Milligan* 125-127.

## **V. Lincoln's Unchecked Executive Authority**

The ruling provided by *Ex Parte Milligan* is great in correcting the bad precedent set by the Lincoln Administration during the course of the war in regard to civil liberties, but it came

too late. It is important to note how Lincoln's executive authority increased throughout the war, and why the Supreme Court could not effectively check executive authority in the war.

The grounds for which Lincoln attained unbridled power as the executive can be traced to very onset of the war. The Civil War presents many constitutional problems for the simple fact that it is a civil war. The Confederate States of American (CSA) were never formally recognized as a belligerent state, and this initially posed problems for the Union in how to issue a blockade of the South, and deter foreign intervention from European powers such as Great Britain and France. Because the war required quick and decisive action, Congress often acted in a reactionary manner in regard to Lincoln's policies as both the executive and commander in chief of the armed forces. Also, because the Southern congressman left Washington, Lincoln was afforded a Congress in which his party largely held the majority the entire war. All of these factors contributed to a situation where the Judicial Branch could not adequately check the executive branch's power because of his role as commander in chief of the military.

When the war began, Lincoln acted with war powers before any formal declaration was legislated by Congress. The U.S. Constitution clearly outlines that only Congress has the right to declare war. When the war broke out, one of the first actions Lincoln approved was the blockade of all Southern Ports. Because "Congress alone has the right to declare war, the President's power of suppressing an insurrection is not tantamount to the war power; and his right to promulgate a blockade order only becomes valid after war has become a legal fact through congressional declaration."<sup>143</sup> Lincoln had been persecuting the war without the war powers granted to him Until Congress officially declared war on July 13, 1861, To amend this period of approximately two months in which Lincoln operated outside his role as the executive, Congress

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<sup>143</sup> Randall, *Constitutional Problems*, 53.



passed an act “approving, legalizing and making valid all acts of the President, as if they had been issued and done under the previous express authority and direction of Congress.”<sup>144</sup> This act is very significant because the legislative branch is essentially reacting to, and subsequently approving these acts after the fact. This arrangement “argues a curious commingling of legislative and executive functions for a President to perform an act which he adjudges to be within the competence of Congress and then, when the measure has been irrevocably taken, to present Congress with an accomplished fact for its subsequent sanction.”<sup>145</sup> In other words, Lincoln was exercising legislative power as an executive, anticipating whatever he did in time would be ratified by the very legislative branch he is acting in place of. One does not have to be a constitutional law historian to see this curious arrangement is bad practice, especially granted, “the Supreme Court is hardly an effective barrier against executive assertion.”<sup>146</sup>

The President’s powers became more expansive after the writ of *habeas corpus* was suspended. Now vested entirely with the war powers, the President can now create a legal state of insurrection, and under this state “the courts will accept his action in the matter as conclusive and binding upon them.”<sup>147</sup> Once a state of insurrection is declared, the President may now suspend the *habeas corpus* privilege. This suspension entails sweeping powers in the districts where *habeas corpus* is suspended, “for officials acting under the authority of the President may then make arrests without warrant for offenses undefined in the laws, without having to answer for such acts before the regular courts.”<sup>148</sup> *Habeas corpus* could only be suspended in states of insurrection. As the war progressed, Lincoln would expand the state of insurrection to encompass most of the Union under the doctrine of necessity. Thus, Lincoln’s officials wielded

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<sup>144</sup> Randall, *Constitutional Problems*, 56.

<sup>145</sup> Randall, *Constitutional Problems*, 58.

<sup>146</sup> Randall, *Constitutional Problems*, 59.

<sup>147</sup> Randall, *Constitutional Problems*, 60.

<sup>148</sup> Randall, *Constitutional Problems*, 62.

power over the American civilian never seen before, or since, the Civil War. Similar to the aforementioned curious relationship between the Republican legislature and the President, Congress' "long inaction [in regard to sanctioning Lincoln's suspension of *habeas corpus*] served as a tacit sanction of the president's right."<sup>149</sup>

The Commission Act and the implementation of military tribunals to try civilians are most applicable to this paper's discussion regarding the two cases brought against Vallandigham and Milligan, because both were charged under military tribunals. During the war the supreme court's attitude was passive toward offering a ruling on whether civilians could be tried outside of zones of military conduct. When Judge Pugh asked for a writ of *habeas corpus* to be granted to Vallandigham, Judge Advocated General Holt advocated, "the act [*of habeas corpus*] as not applying to prisoners triable by military tribunals, or under sentence for such tribunal."<sup>150</sup> This exception, granted only to prisoners triable by military tribunals, was significant because it left the executive without restraint in all areas where martial law is present. Given General Burnside's generous assertion that military rule extends over the entire North West north of the Ohio River because the Department of Ohio was one but large army camp, in affect, the entire Union, wherever soldiers are present, was subject to martial law. Because the Supreme Court held at this time an understanding any judgment against the military was outside its bounds, the military tribunals afforded the President "a certain security and legal sanction"<sup>151</sup> to operate "with a certain assurance [...] he had previously lacked.

In all, the President's unchecked and unprecedented executive authority during the Civil War was predicated on the unique legal actions a civil war inherently precipitates, the curious commingling of both executive and legislative powers, and the establishment of military

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<sup>149</sup> Randall, *Constitutional Problems*, 128.

<sup>150</sup> Randall, *Constitutional Problems*, 167.

<sup>151</sup> Randall, *Constitutional Problems*, 167

tribunals, which the Supreme Court did not finally rule on their legality until after war. Randall finds through his study of the Constitutional problems under Lincoln that “the powers which the executive assumed and the prerogatives which he claimed were far reaching. They were fully adequate to the establishment of a dictatorship.”<sup>152</sup> His findings seem to agree with the despotic handling of the military tribunals described within this paper. In fact, “these trials were unconstitutional and could not have been validly authorized by Congress.”<sup>153</sup> Clearly, the curious commingling of both legislative and executive powers granted Lincoln considerable, if not unlimited discretion in persecuting the war, as he deemed necessary. Finally, the indecision on behalf of the Supreme Court to not provide jurisprudence on these tribunals’ legal nature essentially placed all civil liberties arbitrarily within the scope of doctrine of necessity. As is evident from this paper’s considerations of both the *Vallandigham* and *Milligan* case, there existed no necessary grounds for arresting either dissenter. Instead, as has been previously discussed, their arrests were commuted solely for political expedience. The unbound powers vested within the executive during the Civil War, thus, provided a vacuum of oversight where the rights of the minority were disregarded and replaced with a system where one despot’s definition of necessity can void the civil liberties of every American citizen.

## **VI. Conclusion**

While this study is firmly rooted in the past, its implications for safeguarding American civil liberties during times of crisis are still applicable today. Hopefully, this paper outlines just

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<sup>152</sup> Randall, *Constitutional Problems*, 183.

<sup>153</sup> Farber, *Lincoln’s Constitution*, 165.

how quickly the United States during times of crisis can morph from a democracy to a despot state, where minority rights can be quickly disregarded, and where those in power are simply left to their own devices. The American Civil War provided the President with unprecedented executive authority, and while this paper focuses on how this authority was misused, it can be argued this same authority ultimately won the war, and brought the country back together.

The Copperheads are an interesting group. All lumped together on the wrong side of history, this minority faction played a significant role during the course of the war, and, if not for some timely Union victories and military tribunals, looked primed to challenge Lincoln in the 1864 presidential election. Copperheads came from all walks of life. Some were southern born Butternuts who were rural farmers in the North West who supported states rights. Others were Irish and German Catholic immigrants who feared emancipated blacks would take their jobs in the industrial north. All of them opposed the revolutions taking place behind the backdrop of the Civil War and the central government's growing power. They decried the centralization of the federal government, which levied unprecedented drafts and income taxes against them, and joined secret societies to protect themselves against marauding Unionists. They were not all saints, though, and many of them were despicable and vile traitors during the war. However, Civil War historians like Jennifer Weber who give credence to this "fire in the rear" mythology often mischaracterize Copperheads. Allegations that these Copperheads resisted the draft were overblown, and reports of a North West Confederacy were fantastical. Many factors affected draft participation, and one of these factors, the bounty system, was a facet of the Conscription Act itself. The Copperheads get a bad rap, and deservedly so. They criticized their government at its moment of absolute peril, harbored virulent racist sentiments, and, in many cases, committed treasonous acts against the U.S government. But this paper is not concerned on whether they are

bad guys or not, this paper's purpose is to determine whether the Lincoln Administration's use of military tribunals to try civilians outside the zones of military conduct was necessary, or politically expedient.

As to whether the Copperheads like Vallandigham and Milligan posed a significant military threat, the answer is no. These secret societies they joined for mutual protection and social reasons were not paramilitary forces in any sense of the word. In gauging whether Vallandigham and Milligan posed a military threat, or even committed treason, treason's history must be considered. Prior to the Civil War, an act was only deemed treasonous if one *forcibly* levied war against the United States, or *forcibly* aided, or provided comfort to an enemy. Finally, if anyone was charged with treason, there was only one adequate sentence: death. The Civil War and all of its complexities called for a watered down treason because, in an effort to restore the Union, what good would it do if everyone in the South, traitors all, had to be put to death? Treason's change in definition and sentence was not designed with malicious intent in mind, but lowering the sentence's severity also entailed lowering the standard of what actually constituted treasonable offenses. Now, Constructive Treason constituted treason, and uttering dissenting opinions could be met with a charge of counseling resistance. This was eventually the charge brought against Vallandigham after he denounced General Burnside's General Order 38.

With both Milligan and Vallandigham cleared of posing any military threat, it appears that their arrests both served political means. Vallandigham was a vocal critic of the war in Congress and Milligan was a prominent Democrat in Indiana. In analyzing the allegations against Copperhead secret societies, it is evident allegations of rampant resistance and riots were exaggerated by both the military and Republican press to paint Democrats in negative light. Because the dissent practiced by both Milligan and Vallandigham posed no threat, the military

tribunals became an avenue for the Administration to silence critics and disregard their civil liberties. General Carrington's letter to Secretary of War Edwin Stanton show this clear as day. The fact that the Knights of the Golden Circle only existed in Republican imaginations further proves Republicans and the Administration could veil overt acts of silencing dissent by labeling their political opponents traitors, trying them in military courts, and suspending their writs of *habeas corpus*. With almost all of these military judges and provost marshals being ardent Republicans, any citizen in the Country could be arbitrarily tried for criticizing the government. The accused had zero recourse to fight the sentence in an open court, which leads to my final paper's final point: the military tribunals utilized in the prosecution of the American Civil War sets a bad precedent for the nation.

During the war, Lincoln wielded extensive power that extended beyond the powers bestowed upon the executive in the Constitution. At times he wielded both legislative and executive power because Congress passed an act that stated they would retroactively put into law and authorize any action Lincoln deemed necessary to persecuting the war. With the legislature unable to adequately check the President's power because they were essentially complicit in any decision he made, only the Supreme Court had authority to curtail the President. With the war raging, the court took back seat, and claimed it did not have any authority over military courts, only the Commander in Chief did. So, in the vacuum of oversight, Lincoln stood alone to prosecute the war as he saw fit, and one despot's definition of necessity can void the civil liberties of every American citizen.

To this day, the boundary of what is truly necessary during wartime is blurry. Considerable power is vested within the executive branch during times of crisis and war, and it is important that during these trying hours, long held American liberties are preserved and not

infringed upon. The question of what is truly necessary is still at play today—following the attack on 9/11 the U.S. government passed the PATRIOT Act, which gave the government unprecedented surveillance capabilities over its civilians. Even the current occupant of the White House, President Donald Trump, has called the border a national crisis that needs military action. During the Civil War, instead of the rule of law prevailing, men were tried and convicted outside the law and independent of the courts. Those, like Vallandigham and Milligan, whose rights had been so haphazardly stripped from them, suffered from a lack of justice while government officers were given privileges far exceeding the law and were made immune from any wrongs done.

## Bibliography

- “Clement L. Vallandigham: Speech in Congress,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States,
- Curry, Richard O. “The Union as it Was: A Critique of Recent Interpretations of the ‘Copperheads,’” *Civil War History* 13. Winter, 1967. 34.
- Entry of 5 May 1863, Daniel Read Larned, “Journal,” Daniel Larned Papers, Library of Congress.
- Ezra Bowlus to Samuel E. Williar, February 8, 1863, Ezra Bowlus Civil War Letters, folder 3, IHS.
- Farber, Daniel. *Lincoln’s Constitution*. (Chicago: University of Chicago Press, 2003)
- Fite, Emerson D. “The Agricultural Development of the West During the Civil War” *The Quarterly Journal of Economics* Vol. 20, No. 2 (Feb., 1906), pp. 260.
- “George Templeton Strong: Diary July 13-17, 1863,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:382.
- “George Richard Browder: Diary, May 17-26, 1863,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:222.
- Hallock, Judith Lee. “The Role of Community in Civil War Desertion,” *Civil War History* 29 (1983).



- “Harper’s Weekly: The Arrest of Vallandigham,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:226.
- Henry B. Carrington to Edwin M. Stanton, Dec. 22, 1862, Official Records, Ser. 2, Vol. V, p. 108.
- Henry B. Carrington to Abraham Lincoln, Jan. 14, 1863, Robert Todd Lincoln Papers, Manuscript Division, Library of Congress, Washington.
- Hicken, Victor “Illinois in the Civil War,” (Urbana: University of Illinois Press, 1966, 1991), 128-29.
- Hutter, W. H., and Ray H. Abrams. "Copperhead Newspapers and the Negro." *The Journal of Negro History* 20, no. 2 (1935): 131-52. doi:10.2307/2714641.
- Jordan, Wayne. “The Hoskinsville Rebellion,” *Ohio State Archeological and Historical Quarterly* 47 (October 1943): 319
- Kleen, Michael “The Copperhead Threat in Illinois: Peace Democrats, Loyalty Leagues, and the Charleston Riot of 1864.” *Journal of Illinois State Historical Society* (1998-), Vol. 105, No. 1 (Spring, 2012), pp.69-92.
- Klement, Frank L. “Carrington and the Golden Circle Legend in Indiana During the Civil War,” *Indiana Magazine of History* 61 (March 1965).
- Klement, Frank L. *The Limits of Dissent: Clement L. Vallandigham and the Civil War*. (Lexington: The University Press of Kentucky, 1970.)
- Levine, Peter. “Draft Evasion in the North During the Civil War, 1863-1865,” *Journal of American History* 67 (1981): 817-21.

“Lincoln’s letter the Erastus Corning,” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:254.

“Lincoln Memo on Failure of Reelection” in *The Civil War: the Final Year Told by Those Who Lived it*, ed. Brooks D. Simpson (New York: Literary Classics of the United States, 2013) 3:324.

Man, Albon P. "Labor Competition and the New York Draft Riots of 1863." *The Journal of Negro History* 36, no. 4 (1951): 381.

Manning, Chandra. *What this Cruel War Was Over: Soldiers, Slavery, and the Civil War* (New York: Alfred A. Knopf, 2007) 18.

Morton to Stanton, August 23, 1864. *Morton Letter Books*, Indiana State University, Indianapolis

Nimmo, Joseph. *Report on the Internal Commerce of the United States, 1880-81, House Exec. Docs.*, 46 Cong., 3 Sess., XVI, no. 7, pt. 2, pp. 76-77.

“Proceedings of a Military Commission, Convened in Cincinnati, May 6, 1863,” Citizens’ File, 1861-1865, War Department Collection of Confederate Records, National Archives.

Randall, James G. *Constitutional Problems Under Lincoln*. New York: D. Appleton and Company, 1926.

Report of the United States Grand Jury in District Court of the United States, for the District of Indiana, May term, 1862,” in “United States District Court Order Book, May 21, 1860 to November 24, 1863,” Federal Building, Indianapolis, 224-48.

Stampf, Kenneth M. “The Milligan Case and the Election of 1864 in Indiana.” *Mississippi Valley Historical Review* 31 (1944):41-58.

*The Final Year*, ed. Aaron Sheehan-Dean. Vol. 4 of *The Civil War: The Final Year Told by*

*Those Who Lived it*. New York: Literary Classics of the United States, 2014.

“The Albany Resolves” *The Political History of United States ... during the Great Rebellion*

(Washington D.C., 1864), p. 163.

Weber, Jennifer L. *Copperheads: The Rise and Fall of Lincoln's Opponents in the North*. New

York: Oxford University Press, 2006.

Wilson, Charles R. "Cincinnati a Southern Outpost in 1860-1861?" *The Mississippi Valley*

*Historical Review* 24, no. 4 (1938): 473-82. [www.jstor.org/stable/1947042](http://www.jstor.org/stable/1947042).

W. H. H. Terrell to General Wilder, September 6, 1864, *J. T. Wilder Papers*, Indiana State

Library, Indianapolis.

## Biography

Tucker Monsour was born in Beaumont, Texas on November 2, 1996 and moved to Longview, Texas when he was two. He enrolled in the Plan II Honors program at the University of Texas at Austin in 2015. In college he was a member of the Phi Gamma Delta fraternity on campus and graduated with a Plan II and History degree. He plans to attend law school in the fall of 2020.