Lincoln Lore

October, 1986

Bulletin of the Louis A. Warren Lincoln Library and Museum. Mark E. Neely, Jr., Editor. Ruth E. Cook, Editorial Assistant. Published each month by the Lincoln National Life Insurance Company, Fort Wayne, Indiana 46801.

Number 1772

THE ORIGINS OF *CONSTITUTIONAL PROBLEMS UNDER LINCOLN*

Note: This article is based in part on letters in the James G. Randall Papers, University of Illinois Archives. I want to thank Maynard Britchford, University Archivist, for his assistance, and Professor David Herbert Donald, of Harvard University, for granting permission to read and quote from the collection.

M.E.N., Jr.

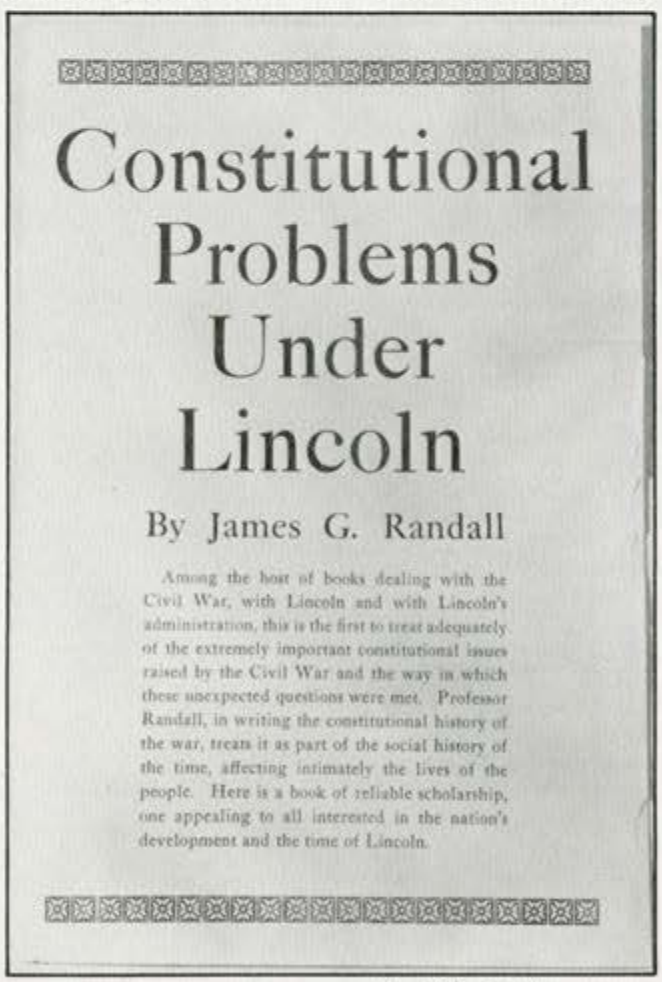
The bicentennial of the United States Constitution provides a good occasion to read, reread, or reflect on James G. Randall's landmark book, *Constitutional Problems under Lincoln.* First published in 1926, it was immediately hailed as the best treatment of the subject and it remains the best — in fact, the only — book-length scholarly treatment of the subject. More recent books touching the subject have included considerations of Reconstruction or prewar constitutional issues as well as problems of the Civil War, and Randall's book devotes more pages to its subject than any other work.

The importance of Randall's book — the most complete study of the Constitution in the period of its greatest crisis — is made even greater in this year of reflection on the two-hundred year history of that document. A look at its origins seems especially timely now.

No matter how solid the work of historical scholarship nor how long-lasting the influence of the book, every piece of research takes some of its tone, outlook, and impetus from the works on the subject written by other historians. Randall's work grew out of the intellectual milieu of the Progressive Era, and historians living in that period took a keen interest in Abraham Lincoln's handling of the Constitution.

Unlike Democrats of the decades immediately following the Civil War who bitterly denounced Lincoln as a despot and unlike a few nervous Republicans of the same period who seemed uneasy at the recitation of Lincoln's record, Progressive Era scholars applauded Lincoln's record, often with great enthusiasm. As Herman Belz showed in his 1984 R. Gerald McMurtry Lecture, the general admiration of Progressive Era scholars in political science and history for strong executive leadership in government led them not only to describe Lincoln's administration as a sort of constitutional dictatorship but also to recommend its virtues.

This somewhat muscular Progressive outlook was encouraged by a less commonly noted aspect of the era, its extreme nationalism. This viewpoint was epitomized by Nathaniel W. Stephenson, one of the first academic historians to write a biography of Abraham Lincoln. Stephenson's pithy consideration of "Lincoln and the Progress of Nationality in the North," first published by the American Historical Association in 1919 and reissued as a pamphlet by the Government Printing Office in 1923, praised Lincoln's defense of the "right of the President to assume in emergency vast authority" and ridiculed Lincoln's enemies as "rhetorical visionaries," "fanatics," and "parasites" who were not "fully conscious of the Nation as a whole." Stephenson's eager defense of Lincoln's expansion of executive powers, especially in permitting the arbitrary arrest of numerous civilians, was premised on the assumption that the Civil War president faced enormous opposition behind his own lines. The historian pointed especially to "those extensive secret societies which all through the war seem always on the verge of a rebellion in the Middle West."



From the Louis A. Warren Lincoln Library and Museum

FIGURE 1. The dust jacket of Randall's landmark book.

James G. Randall shared many of the reformist assumptions of the Progressive Era in which he came of age. He also shared with Nathaniel Stephenson a belief, expressed later in Randall's book, that "disloyalty [in the North during the Civil War] was widespread. In view of such extensive disloyalty, the number of political arrests is comprehensible." Nevertheless, Randall's work bore a peculiar relationship to the ideas and beliefs that characterized the historical work of the Progressive Era on Lincoln and the Constitution.

Although not published until 1926, Randall's book had its inception fifteen years earlier, when he was a graduate student at the University of Chicago. His dissertation, entitled "The Confiscation of Property During the Civil War," had as its

subject "the use of extreme methods in crippling an enemy." The work was rather denunciatory in tone:

> On both sides the methods of conducting the war were of questionable reputability, and this was true not only in unauthorized orders, and in breaches of discipline, but in many measures which received the full sanction of government. The humanizing effect of modern international law has been nowhere more strikingly revealed than in the guarantees which have been introduced for the security of the lives and property of non-combatants, and the principle of the inviolability of private property on land has been established. Yet the thoughtless repetition of that abominable war song "Marching through Georgia" is but a glorification over the disreputability of Sherman's most famous campaign and the failure of this sort of inhuman warfare to produce a sentiment of condemnation is but an evidence of callousness due to the frequency of such outrages.

By 1918 a manuscript called "Constitutional Problems of the Civil War" was more or less complete, and it surely retained some of the anti-war assumptions of Randall's doctoral dissertation.

For part of the vaguely "progressive" doctrines of Randall's early years was a critique of war. Such views were relatively common during the Progressive Era, despite the more potent nationalism prevalent in those times. As a devout Presbyterian, Randall gave a number of talks for religious groups that revealed his early social and political views. Many of these were anti-saloon lectures, but in notes for a program on "Capturing Politics for God" he denounced the usual litany of other Progressive Era social evils, "RR frauds, bought elections, unspeakable graft, city police live on reg. toll for protec. of vice. Labor War in Colo. Dynamiters — Condition in Hopewell. Water cure in Philippines." The last named was a notorious torture method used by the United States Army in the Philippines at the turn of the century, and Randall's denunciation of it in an otherwise conventional clean government and anti-corruption lecture reveals his roots in the minority, anti-imperialist camp of Progressive Era social thought.

In another of his lay religious talks, Randall denounced war itself as "An Outworn World Idea." With the actual advent of war in Europe in 1914 and America's intervention in 1917, Randall's doctrines were put to the test. Speaking before the Westminster League in Salem, Virginia, on May 19, 1918, Randall dealt directly with the "Religious Bearings of the War." For thoughtful Christians the extreme patriotism of the churches in the warring countries was troubling. Randall considered "Christianity combative" a "sinister tendency," to be sure, but he denounced mainly non-Christian and anti-Christian doctrines for upholding war. Indeed, the "supreme task of this war," Randall argued, was to "discredit" the "negation of Christianity" in the Nietzschean "Superman" philosophy that "might is right."

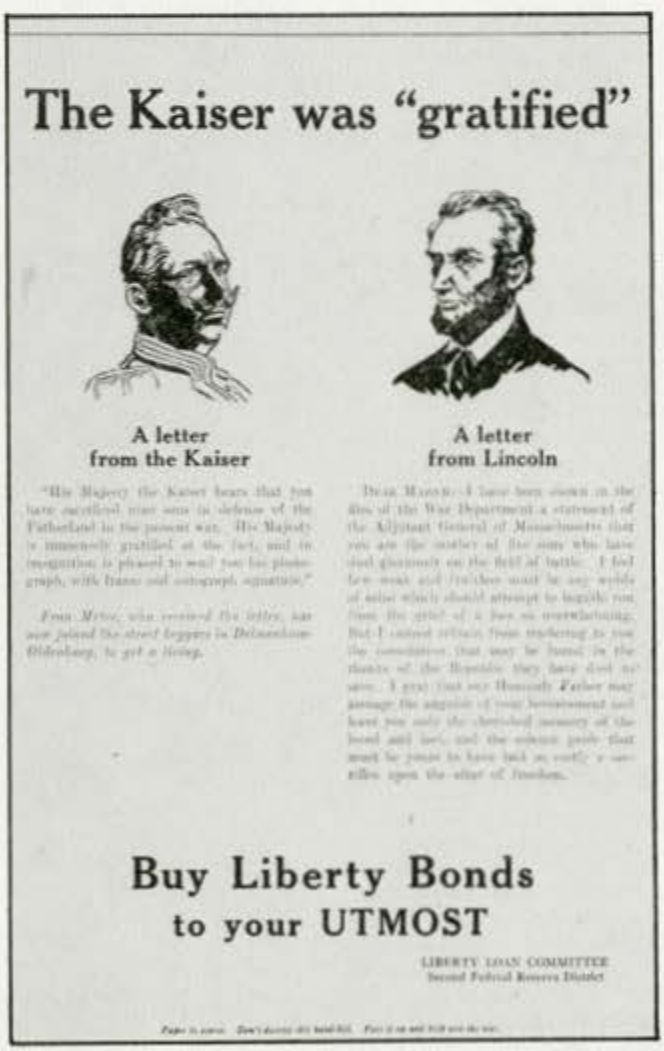
Randall also attacked the social Darwinian idea that war was "biologically necessary," arguing that the "fittest" were not necessarily the "fiercest" and that the biological struggle in nature was "not between . . . [members of the] same species." The notes for his talk reveal a message mainly of Christian brotherhood and vicarious love.

> Xns of world must lay aside differences. Xn unity must come. Only force that can bring peace. Force can't bring peace. Int'l Soc'sm cant. Collapsed completely. Genuine world wide Xty will brng peace.

But in the end, Randall's message in the little talk proved not to be one of pacifist internationalism but, instead, one of nationalistic denunciation of "the sort of religion that the Kaiser stands for." The notes for the talk continued:

> Kaiser for ever making speeches about his army, & often brings in references to God. God on German side. Lincoln: Are we on God's side. God is no partisan.

The reality of war proved as challenging to Randall's intellectual assumptions as it did to most intellectuals of the Progressive Era. Or perhaps one should say that war proved as tempting. Randall was too old for active service, but he had talents the United States government could put to use in its war effort and he volunteered them. While teaching at little Roanoke College in Salem, Virginia, Randall offered to write propaganda for the Committee on Public Information and the National Board for Historical Service. Notes for an article on "Censorship in Germany," for example, accused the enemy power of practicing the "worst c[ensor]ship possible . . . [The] Gov[ernment] controls ev'thing that pertains to ideas." *"Germany,"* he wrote, *"is under martial law."* Randall's emphasis on the extreme degree of censorship in Germany provided a necessary contrast with what he knew about censorship among all the major powers in the Great War from a study of the confidential files of the War College Division of the United States War Department. From that study he concluded that "Certain recent news leaks in the United States indicate the desirability of a more strict control of the press." He knew that "only one important paper" had been suppressed along with "a few I.W.W. organs, socialist papers, & peace papers." Likewise, few newspapers had been suppressed in France. But the Defence of the Realm Act in England imposed rather great restrictions on civil liberties there.



From the Louis A. Warren Lincoln Library and Museum

FIGURE 2. Lincoln's image invoked in World War I propaganda.

War College authorities as well as those of the National Board for Historical Service and the Committee on Public Information examined his articles before they were submitted for publication. In general, the ideas he espoused during the war were nicely summed up in his suggestion that the *War Encyclopedia* being prepared by the CPI include "a short statement on the Theory of Military Necessity. Germany seems to hold that any otherwise illegal thing may be done on the plea of military necessity, that inter arma silent leges, etc., whereas the American and Anglo-Saxon point of view is much more restrictive, that war does not countenance extreme illegality, and that even in the most desperate times the rule of law should prevail."

After the war Randall worked as historian for the United States Shipping Board until 1919 and entertained the idea of becoming a historian for the general staff. Soon, however, he returned to teaching, first at the University of Richmond in Virginia. The University of Illinois finally ended his uncertainty about his career by offering him a teaching job in 1920. Randall was thirty-nine years old by the time he resumed life as a scholar in 1920 and had outgrown some of his more youthful views. He was now an experienced bureaucrat whose voluntary efforts in behalf of the Woodrow Wilson administration's war effort had evolved into direct work for the government itself.

There had never been any element of coercion in these career changes, and Randall's views on war naturally altered somewhat with these dramatic developments in the historian's professional life. In manuscript notes entitled "A Constitutional View of the Civil War," obviously contemporary with World War I, Randall showed his sharp awareness of the similarity of issues in his own and Lincoln's eras:

> . . . a new tendency to refer to American experience during the Civil War has arisen since the historic action of Congress on April 6, 1917, for it is evident that in pursuing some of its vital war policies the Wilson administration will have to face precisely the same general questions as did that of Lincoln.

When it was all over, Randall's view was that the Wilson administration had faced them well, or certainly better than "militaristic" countries had. Looking at America's experience in the Civil War, Randall said, "It is true that dangerous possibilities lurked in the executive 'suspension of the writ,' that civilians were made prisoners of state by the thous[ands] and without judicial process, that some of the Union military officers out of touch with Lincoln's spirit had the erroneous notion that war breaks down the rule of law and substitutes the rule of force, that as a consequence of imperfect central control over subordinate officers many frivolous arrests were made and unwarranted orders executed. The anti-administration alarm raised by such an agitator as Vallandigham and his 'peace party' may even have had, here and there, some foundation. Yet in the main, and viewing the whole period not merely the first year of the war, it is evident that the limitations of governmental power were carefully heeded, — so carefully that at times it did seem that war was actually being conducted *in vinculis*, which may, after all, be the best way for it to be conducted." Randall added, "Lincoln's intention, it must be remembered, was often milder than the temper of the officers who carried out the Union policy."

The date of this manuscript is uncertain, though it is surely of war vintage or later, but the change in emphasis from Randall's earlier ideas is noteworthy. Before the war, Randall had focused on the "extreme methods" of fighting the Confederacy. He found them of "questionable reputability, and this was true not only in unauthorized orders, and in breaches of discipline, but in many measures which received the full sanction of government." After U.S. entry into World War I, Randall saw Civil War abuses of power mainly as "a consequence of imperfect control over subordinate officers." The change was subtle. It was a matter of emphasis. And yet, in a scholar as balanced and judicious as Randall it was surely important. The propaganda needs of the United States government in World War I led Randall to soften his criticism of the conduct of the American Civil War and to justify Lincoln's record on civil liberties so that America seemed consistently in her history to uphold law and the Constitution amidst war efforts.

The eventual result was an ambivalent book which seems, on the one hand, to condemn many Union war policies and, on the other hand, to praise Abraham Lincoln's record overall. The problem is that the manuscript retained some of the anti-war views of the prewar dissertation, whereas other parts were informed by a greater sympathy for government vigor induced by Randall's recent experience of the World War. When he promoted his book to publishers as representing fifteen years' work, Randall unconsciously explained its curiously ambivalent nature, for more than most books, this one had truly evolutionary origins.

Promoting the book, incidentally, proved to be a problem for Randall. He thought his work had commercial possibilities, apparently, but Harcourt, Brace refused even to read the manuscript. Macmillan; Little, Brown; and Houghton, Mifflin all rejected it after reading the manuscript, on the grounds that the book simply was not commercial. Probably Randall's decision not to compare Lincoln's constitutional problems with Wilson's or to invoke recent constitutional works on civil liberty like those of Zechariah Chafee doomed the manuscript to a small audience. So, too, may its ambivalence have hurt it, as well as its pedantic style, apparently a conscious departure from Randall's more vigorous writing on current constitutional issues for popular journals.

When Yale University Press dragged its feet an unconscionably long time in evaluating the manuscript, Randall decided to pay for publication himself. Appleton's finally brought the book out in 1926, but Randall had paid them the costs of production for the 1,500 copies published. This must have been something of a wrenching move for the frugal Randall, and he kept careful records of the book's sales, as he attempted to recoup his investment.

His intellectual investment — fifteen years, off and on, of work on the manuscript — paid off well, for *Constitutional Problems under Lincoln* was widely reviewed, almost always favorably, and it helped make Randall famous.

Not long before publication of the book, an old friend of Randall's, a political scientist named Edwin P. Tanner, read the manuscript and commented on it in a letter:

> I do differ a little from your general interpretation. Personally I think the whole idea of the War Power contains enormous dangers which it seems to me you together with most writers on the subject minimize. You show that you realize them of course. But somehow you give the impression that Lincoln was nearly always right. Now, I yield to nobody in my admiration for the sense and moderation of Lincoln. These are outstanding. Nevertheless, I think his theory of the War Power was dangerous in the extreme.

Randall's reply was quite revealing:

> I may have gone too far in justifying the extreme war powers. My real convictions are similar to yours, — that many dangers lurk in the war power theory. Possibly my admiration for Lincoln has carried me too far.

James G. Randall was a great historian, and the Lincoln field has never since his death quite regained the place it held in American historical literature while he was writing. Therefore, most students in the field today have at one time or another thought about Randall's vision of Abraham Lincoln. Many, knowing him to have been, as Richard Current

has pointed out, an Indiana boy born in 1881 (and named after the Republican martyr of that year, James Garfield), but married later to the daughter of a Virginia college president, have seen him as an ambivalent historian. His heart seems somehow at war with his head. Knowing the profound influence of his Southern-born wife over him, historians have thought of his heart as having been somewhat "Southernized" by her.

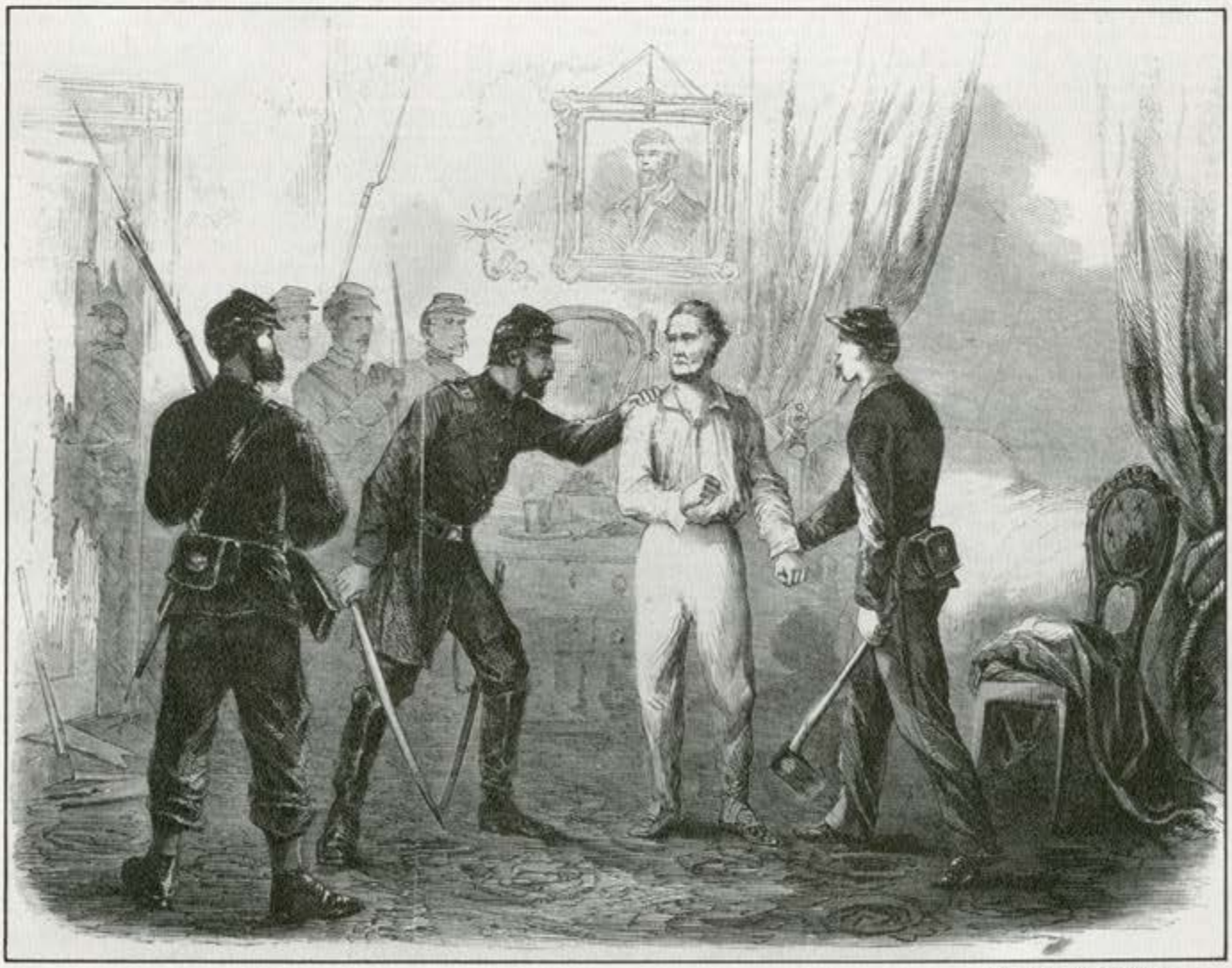
But, as Richard Current has also pointed out, Randall was influenced by William E. Dodd, his North Carolina-born professor at the University of Chicago, where Randall was a graduate student. This may have been the more profound influence, one which could only have influenced his head, so to speak. And Mrs. Randall's Southern influence came also in readings of his work. Randall's heart, on the other hand, sided with Abraham Lincoln, an emotional attachment which he admitted may well have overcome his "real" convictions about constitutional principle, the conservative doctrines he learned from Dodd and put in his dissertation.

If it could be said of as careful a scholar as Randall that his heart somehow triumphed over his head, then that may well have been evidenced in the ascendancy of Lincoln over his Southern-influenced constitutional scruples. It was a triumph, too, of his emotional patriotic identification with the nation Lincoln saved, as evidenced in his rush to Woodrow Wilson's colors in the Great War, over his intellectual doubts about the increase of war powers in the presidency.

Whatever the case, and historians may never know precisely, the influences on Randall were complex. When Ray Stannard Baker, a close associate and biographer of Woodrow Wilson, wrote Randall about *Constitutional Problems under Lincoln*, Randall offered a complex comparison of the two presidents. He noted that Lincoln handled opposition better than Wilson did (Randall was thinking, no doubt, of Wilson's inadequate response to opposition to the League of Nations after World War I). And he said that Lincoln was better at explaining controversial policies to the American people in famous letters like the one to Erastus Corning explaining arbitrary arrests. Randall noted as well:

> The striking difference between Lincoln and Wilson on this point is that, while Lincoln assumed power independently, Wilson always seems to have preferred to have statutory authority back of him. . . . Wilson kept the lead without essaying any dictatorship. . . . Is it not true that the people in Wilson's time were more ready to accept drastic measures than in Lincoln's time? I do not believe that the Espionage Act or the Sedition Act of 1918 could have been passed in Civil War times.

Perhaps "ambivalence," in the light of so thoughtful a comparison as this, is too negative a word to use to characterize *Constitutional Problems under Lincoln*. "Complex" may be the fairer term.



From the Louis A. Warren Lincoln Library and Museum

FIGURE 3. The arrest of Clement Vallandigham.