The Legality of Abraham Lincoln’s Use of the War Power

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During the Civil War, President Abraham Lincoln, in order to respond effectively to the Confederate States of America, employed a broader range of powers as commander-in-chief of the United States armed forces than America’s previous presidents, and in doing so created a new concept, the war power. This paper scrutinizes the legality of Lincoln’s actions by examining his justifications, and whether or not his actions support his assertions that he invoked the war power in the name of military necessity. This paper also studies changes in political thought through the course of American history, examining the possibility that, although Lincoln’s use of executive authority might not have been accepted in 1787, by the outbreak of the Civil War, American public opinion might allow a majority to accept Lincoln’s actions as legitimate. Finally, this paper examines the Constitution itself, along with both Lincoln’s interpretation of it and secessionists’ interpretation of it, and questions whether or not the Constitution is a flexible document, allowing for the preservation of the government which it created, in order to determine if Lincoln’s attempts to force the Confederate states back into the union were legal or illegal.

This study, besides using a variety of secondary sources, employs primary sources, such as the political speeches and writings of Abraham Lincoln, and the diaries and letters of John Hay.

This study concludes that Abraham Lincoln’s use of the war power was legal because his actions were in line with his justifications, because he had the support of the political majority in the union, and because the Constitution is a flexible document.