

Abraham Lincoln and the Pardon Power

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President Abraham Lincoln. Public Domain



By Jonathan W. White

12/12/2024 Updated: 12/12/2024

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Commentary

During this period of transition between presidential administrations —when pardons are typically issued in large numbers—it is useful to

see how another president used the pardon power afforded to him by the Constitution.

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When considering pardon requests during the Civil War, Abraham Lincoln typically sought to pursue justice as he understood it, regardless of a petitioner's race, class, or sex. In making his decisions, Lincoln strove to avoid getting swept up by the passions of the day.



Indeed, some cases took great courage because they involved significant political risk. Reviewing death penalty cases even gave him headaches.



One of Lincoln's earliest pardons involved a young soldier from



Vermont named William Scott who fell asleep at his post near Washington, D.C., after two consecutive nights on guard duty in 1861. For this crime, Scott was court-martialed and sentenced to be shot.

Army officers supported the death penalty in “sleeping sentinel” cases to set examples for other soldiers. But military authorities in the 1860s did not appreciate the physiological importance of sleep. Today, we understand that the human body requires a fixed amount of rest for the brain to function properly. In the nineteenth century, professional soldiers thought that falling asleep on picket reflected the inherent weakness—even immorality—of a person's character.

In Scott's case, Lincoln decided to show mercy. But Lincoln's pardon was more than mere mercy—it was also an act of justice. Military authorities were not protecting soldiers' sleep, so that job fell to the president.

By contrast, the following year, Lincoln allowed a notorious slave trader named Nathaniel Gordon to be executed. In August 1860, Gordon had loaded 897 Africans onto his ship, the Erie. Most were women and children; some were as young as six months old. Soon after setting sail, a U.S. navy vessel captured the Erie and sent Gordon to New York City for trial.

Although slave trading had been illegal since 1808, Gordon knew he had little to fear because no one had ever been fully punished for the

crime. His first prosecution ended in a mistrial, but Lincoln's U.S. attorney for the Southern District of New York had Gordon retried in November 1861, and he was convicted and sentenced to be executed. Thousands of Northerners petitioned Lincoln to spare Gordon's life, but Lincoln refused, and the hanging took place on Feb. 21, 1862. When handling another slave trading case, Lincoln declared, "I never will pardon" any person "who, for paltry gain and stimulated only by avarice, can rob Africa of her children to sell into interminable bondage." In other words, justice required that someone like Gordon pay the full penalty for his crime.

A few months later, war broke out in Minnesota between Dakota Indians and white settlers. The Dakotas were starving. Treaties with the U.S. government had hemmed them into small reservations, and the government was delinquent in paying their annuities. To make matters worse, merchants and federal agents were horribly corrupt, defrauding the Dakotas year after year, keeping them perpetually in debt.

In August 1862, Dakota warriors attacked and killed more than 600 white settlers, including many women and children. Stories of unarmed civilians being raped and killed were common. Soon the U.S. army mobilized and counterattacked. After six weeks of fighting, the Dakotas were defeated, and hundreds of warriors were captured. In September, the army set up a military tribunal to try the Dakotas for war crimes. Some of the trials took only a few minutes. Over the course of 30 days, 303 Dakotas were found guilty and sentenced to be executed, while only 69 were acquitted.

The pressure on Lincoln to approve the executions was immense. One Minnesotan wrote to Lincoln: "The voice of this people calls for vengeance ... the people of this state ... are so exasperated against the Indians that if the authorities do not hang them, they will." Jane Grey Swisshelm, a radical abolitionist and first-wave feminist, wrote, "Shoot the hyenas and ask no odds of any man Exterminate the wild beasts, and make peace with the devil and all his hosts sooner than with these red-jawed tigers whose fangs are dripping with the blood of innocents!"

Into this racial and political maelstrom, Lincoln deliberately slowed things down. He ordered military leaders in Minnesota to delay executions until they heard from him. He then had three trusted lawyers review all 303 case files. He wanted to know which Indians had committed war crimes—like rape or the murder of unarmed civilians—and which had simply been captured on the battlefield during the war. After a careful review, Lincoln commuted the sentences of 265 Dakotas, and he approved the executions of 38 whom he believed had committed atrocities against unarmed civilians.

This moment is controversial today because it was the largest single-day mass execution in American history. But it is also the largest commutation. Moreover, Lincoln’s view that only the Dakotas who had attacked noncombatants should be punished aligned with his view of whites in similar situations. When they were found guilty of atrocities like violating women or fighting like guerrillas, Lincoln tended to let their convictions stand.

The execution of the 38 took place on Dec. 26, 1862. Afterwards, a politician chastised Lincoln, saying that Republicans would have done better in the previous election if he had executed them all. Lincoln replied, “I could not afford to hang men for votes.”

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