The Presidency and Emergency Powers

A PRESENTATION OF THE MISSOURI BAR’S CITIZENSHIP EDUCATION PROGRAM
The Framers of the Constitution envisioned a presidency that would be energetic, yet within the limits of the system of checks and balances.
From Washington to Trump, the trend has been for the power of the presidency to grow. Why?
One reason for the growth of the presidency is the expansive way that presidents have interpreted their power under Article II.
Presidents Assert Additional Power: Emergency Powers

The Constitution gives the president

- executive power
- the power as Commander in Chief
- and the responsibility to see that the laws are faithfully executed

Presidents interpreted these powers as giving them “emergency powers,” not specifically articulated by the Constitution, but necessary for presidents to do their jobs under extraordinary circumstances.
One of the most notable instances of the use of emergency powers came from Abraham Lincoln during the Civil War.
Among the actions taken by Lincoln

- Blockading southern ports without congressional authorization
- Suspending the writ of habeas corpus by presidential decree
- Authorizing the trial of civilians by military courts
- Freeing the slaves in the Confederate states
Lincoln justified his actions as necessary:

“I may in an emergency do things on military grounds which cannot be done constitutionally by Congress.”
Lincoln’s actions preserved the nation at its most trying time.

More uncertain is the precedent set by Lincoln’s presidency.
The Precedent of Lincoln’s Actions

Some Experts Say
Lincoln’s actions created a precedent that presidents may use emergency powers when they encounter their own emergency circumstances

Other Experts Say
The Civil War was such a unique event that Lincoln’s actions should never be repeated by any other president
What do you think?

Should Lincoln’s extraordinary actions create a precedent for future presidents in situations that do not rise to the level of a civil war?
Over eighty years later, the attack on Pearl Harbor by Japan gave rise to another president’s assertion of emergency power.
After war was declared with Japan, Franklin Roosevelt issued Executive Order 9066

This allowed for the forced relocation and imprisonment of over 100,000 individuals of Japanese ancestry.

Approximately 75,000 were American citizens of Japanese descent.
Roosevelt’s Order was justified by concerns about espionage and sabotage on the West Coast.
Do you believe the president’s use of emergency powers was justified in this case? The Supreme Court was called upon to deal with this issue in *Korematsu v. United States*. 