

Suspension of Habeas Corpus

The right of accused persons to have a court rule on the legality of their imprisonment is called *habeas corpus*. This right, which has roots in the *Magna Carta*, is sometimes called the Great Writ and is essential to liberty and justice. In this month's Bill of Rights in Times of Crisis eLesson, we explore a period in American history when the right to *habeas corpus* was suspended.

The right of imprisoned persons to go to court and demand the government show cause for their incarceration is called *habeas corpus*. Literally, the phrase is Latin for, "You shall have the body." *Habeas corpus* has also been called "the Great Writ," and has its roots in the *Magna Carta*. Article I of the Constitution, which deals with the powers of Congress, lists conditions under which the right to *habeas corpus* can be suspended: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

The right to *habeas corpus* was suspended in the United States during the Civil War. President Lincoln, believing that the very existence of the United States was in jeopardy, suspended writs of *habeas corpus* within certain areas. John Merryman of Maryland was arrested for being "an active secessionist sympathizer." He was also charged with communication with the Confederates and with treason. Merryman wanted to be removed from prison and charged in open civilian court.

The case, *Ex Parte Merryman* (1861), came before Supreme Court Justice Roger Taney. Taney's strongly worded opinion asserted two things: 1) Only Congress, and not the President, had the power to suspend *habeas corpus*, and 2) even if the privilege of the writ of *habeas corpus* had been suspended by act of Congress, only someone in the military could be held and tried by a military commission.

Taney asserted that the power to suspend *habeas corpus* was not given to the President, and could not be inferred from any of the President's listed duties. Rather, the conditions for its suspension were listed in Article I, which deals with the powers of Congress. Taney quoted past Supreme Court Justices who had written that the power to suspend *habeas corpus* belonged to Congress. Taney believed that Lincoln was violating the Constitution's provisions, guarantees, and checks and balances. He wrote, "[I]f the authority which the Constitution has confided to the judiciary department and judicial officers[to judge the legality of imprisonments], may thus, upon any pretext or under any circumstances, be usurped by the military power, at its discretion, the people of the United States are no longer living under a government of laws..."

President Lincoln disregarded Taney's order and continued ordering suspensions in additional areas. He believed his oath to preserve, protect, and defend the Constitution required him to take

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these actions. Speaking before Congress on July 4, 1861, Lincoln asked ironically, "Are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?" Two years later in March of 1863, Congress formally suspended *habeas corpus* with the passage of the *Habeas Corpus Act*.

Issues of *habeas corpus* have re-emerged with the wars in Afghanistan, Iraq, and the larger "War on Terror." Jose Padilla, a US citizen, was held for more than three years without being charged with a crime. (He was eventually charged and convicted.) Foreign citizens captured overseas as enemy combatants have been detained at Guantanamo Bay, Cuba. This term, the Supreme Court will hear a case asking whether detainees at Guantanamo Bay have the right to *habeas corpus* – that is, if the terror suspects in Guantanamo have the right to challenge their detentions in federal court.

Comprehension and Discussion Questions

1. What does *habeas corpus* mean?
2. Under what circumstances does the Constitution permit the suspension of *habeas corpus*?
3. What was at issue in the case of *ex parte Merryman* (1861)?
4. What was Justice Taney's ruling, and what were his reasons?
5. Read Articles I and II of the Constitution. Then answer the following questions:
 - o To which branch(es) of government do you believe the Constitution grants the power to suspend *habeas corpus*?
 - o In 1861 in Maryland, where the conditions for the suspension of *habeas corpus* ("rebellion or invasion") present?
 - o Was President Lincoln's suspension of *habeas corpus* the act of a tyrant, or was it a constitutional war measure?