Chapter 1 : Habeas corpus in the United States - Wikipedia

The Habeas Corpus Suspension Act, 12 Stat. (), entitled An Act relating to Habeas Corpus, and regulating Judicial Proceedings in Certain Cases, was an Act of Congress that authorized the president of the United States to suspend the privilege of the writ of habeas corpus in response to the American Civil War and provided for the release.

In the years since the end of the Civil War, historians have examined Abraham Lincoln and his conduct of the war in great and at times excruciating depth. This scholarly inattention is surprising, but there are a number of possible explanations. Probing the constitutional validity of the suspensions requires a textual analysis of the Constitution that is more congenial to lawyers than to scholars. The crisis Lincoln faced and the stature he has achieved make it easy for historians to justify his actions without examining them. If a president has the power to suspend the writ of habeas corpus, his power exists only in the event of rebellion or invasion, neither of which is likely to occur, so why burden history with musty law? William Duker and law professors Daniel Farber and Akhil Reed Amar have examined the issue, but, as we will see, their constitutional analyses are brief, superficial, and flawed. Under the Constitution the federal government can unquestionably suspend the privilege of the writ of habeas corpus if the public safety requires it during times of rebellion or invasion. The issue is whether Congress or the president holds this power. The relationship between Lincoln and Congress, like the power of suspension, has received limited historical attention, with the only extensive treatment a article by University of Wisconsin professor George Sellery. The background is well known. After Virginia seceded from the Union on April 17, , the only lines for overland supplies, troop movements, transportation, and communication to Washington, D. Baltimore was a rough city for the Union, and Maryland an uncertain ally. In February, Baltimore rowdies had forced President-elect Lincoln to sneak through the city in disguise, and a mob attacked the Sixth Massachusetts Regiment as it marched through Baltimore on its way to Washington. Confederate sympathizers in Maryland were numerous, organized, and sometimes violent. The Maryland legislature was of questionable loyalty, prompting Lincoln to monitor its April 26 session and, later, to order the arrest of a number of its members. Determined to keep the Maryland lines open, on April 27 Lincoln issued an order to General Winfield Scott authorizing him to suspend the writ of habeas corpus, at or near any military line between Philadelphia and Washington if the public safety required it. On May 25, federal troops arrested John Merryman in Cockeysville, Maryland, for recruiting, training, and leading a drill company for Confederate service. This writ, sometimes called the Great Writ, is a judicial writ addressed to a jailer ordering him to come to court with his prisoner and explain why the prisoner is being held. Following a hearing in the matter, Taney ordered delivery of a writ of habeas corpus to General George Cadwallader directing him to appear before Taney on May 28 with Merryman in tow. After Cadwallader refused service of the writ, Taney ruled on May 28 that the president did not have the power to suspend the writ, and Taney announced that he later would issue an opinion in support of his ruling. Several days later, Taney issued his opinion. He observed that the limitation on suspension of the writ appeared in Article I of the Constitution, dealing with legislative powers, not in Article II, which established executive power. He explored the history of the writ of habeas corpus under English law, showing that the House of Commons had limited and then abolished the royal power to suspend the writ, leaving suspension in legislative hands. The Constitution, he said, embodied this English tradition. Article II, he asserted, gave the president very limited powers that were weakened further by the Bill of Rights. Finally, he cited eminent authority, noting that Chief Justice John Marshall, Thomas Jefferson, and Joseph Story, a luminary as both judge and scholar, had all acknowledged that the power to suspend was a congressional power. Neither the Supreme Court nor the lower federal courts dealt with the issue again. The action now passed to the president and Congress. The Immodest Man On April 15, , twelve days before he first authorized suspension of the writ of habeas corpus, Lincoln called a special session of Congress to convene on July 4. Before Congress convened, Lincoln followed his April 27 order authorizing suspension with a May 10 order authorizing suspension on part of the Florida coast [3] and a July 2 order authorizing suspension between Philadelphia and New York. He then went on: But the Constitution itself, is silent as to which, or who, is to exercise the power; and as the provision was plainly made for a

dangerous emergency, it cannot be believed the framers of the instrument intended, that, in every case, the danger should run its course, until Congress could be called together; the very assembling of which might be prevented No more extended argument is now offered, as an opinion Whether there shall be any legislation upon the subject, and if any, what, is submitted entirely to the better judgment of Congress. On July 2, just two days before Congress convened, Lincoln issued an order authorizing suspension of the writ of habeas corpus between New York and Philadelphiaâ€”friendly territory for the administration. Indeed, when he says in his message that "whether there shall be any legislation on this subject As we will see, Congress did not enact legislation authorizing suspension of habeas corpus until March 3, The proclamation orders that, for the rest of the war, i "all rebels and insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid or comfort to rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts martial or military commission," and ii "the writ of habeas corpus is suspended in respect to all persons arrested or imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any court martial or military commission. In May , New York Democrats adopted resolutions criticizing Lincoln for infringements of civil liberties, including the arrest and detention of Ohio Copperhead politician Clement Vallandigham and others. Erastus Corning forwarded those resolutions to Lincoln, who responded in a well-known June 12 letter to Corning. Lincoln responded in a June 29 letter to Matthew Birchard. The Ohio resolutions asked what would happen if action was taken to "expunge from the constitution this limitation upon the power of Congress to suspend the writ of habeas corpus. This question, divested of the phraseology calculated to represent me as struggling for an arbitrary personal prerogative, is either simply a question who shall decide, or an affirmation that nobody shall decide, what the public safety does require, in cases of rebellion or invasion. The constitution contemplates the question as likely to occur for decision, but it does not expressly declare who is to decide it. By necessary implication, when rebellion or invasion comes, the decision is to be made, from time to time; and I think the man whom, for the time, the people have, under the constitution, made the commander-in-chief, of their Army and Navy, is the man who holds the power On September 15, , Lincoln, likely seeking political cover that he would not have by enforcing his September suspension order, issued a proclamation suspending the writ of habeas corpus based upon the suspension act. His September 15 order begins by referring to both the Constitution and the legislation and ends by urging all citizens "to conduct and govern themselves While Lincoln talked and acted, Congress talked without acting. Neither the Wilson nor the Trumbull bill passed in the special session. Opposition to congressional action was apparently based in part on the concern of some Republicans that legislation would be read as a rejection of presidential power. As enacted, the suspension act said that the president "is" authorized to suspend the writ, while earlier versions said that the president "shall be" empowered. That section imposes a restriction that, if enforced, would severely restrict and even disable the presidential suspension power. Section 2 effectively time-limits suspensions. By freeing all those not indicted by the first available grand jury, it handed the jailhouse keys to all prisoners who committed subversive but non-criminal acts. That, however, would have provoked a congressional confrontation in the dark days following the Battle of Fredericksburg. He did not veto it or even oppose it. Nor did he issue a signing statement questioning the constitutionality of parts of the act, as he had done when he signed the Second Confiscation Act. Instead, he dealt with Section 2 of the act as he once said an old farmer had dealt with a tree trunk too big and deeply rooted to be dislodged by a breaking plowâ€”he plowed around it. His plow was stored in the provision of Section 2 requiring the secretaries of state and war to furnish the required lists "as soon as practicable. Because of the September declaration of martial law and the and suspension orders, the prisoners were held throughout the country in military facilities which, in the words of the suspension order, included forts, camps, arsenals, military prisons, and "other places of confinement. Under the circumstances, it would have been difficult with diligence and good faith to produce the lists with the required data, and the "as soon as practicable" requirement made it easy to relax diligence, if not good faith. When the system had not produced any lists, the Senate passed a resolution directing the secretary of war to report on the lists. Nicolay and Hay describe the response: The rolls were necessarily incomplete; the offenses

with which the prisoners were charged were frequently indefinitely stated; and instead of specifying the particular officers by whom arrests were made the President and Secretary of War assumed the responsibility in all cases Those arrested for military offenses were tried with the greatest possible expedition Several commissions were actively engaged in investigating the cases of prisoners, and releasing them whenever it could be done without prejudice to the public safety. In the meantime, though, it appears that no lists were forthcoming, and that the prisoners continued to be processed in the military justice system, not the federal courts. Nicolay and Hay give no indication of congressional follow-up or response. The president had successfully evaded the law. John Hay noted that Lincoln, like other great men, was not a modest man. In his handling of habeas corpus suspension, he was at his immodest best. He was typically self-assured, decisive, adept, and politically astute. He acted forcefully at the outset, but then, in his July 4, , message to Congress he seemed to acknowledge a congressional role in habeas corpus even as he advanced a soft defense of his power to suspend the Great Writ and suggested that there was no urgent need for Congress to act. A less confident president would have welcomed congressional support, but Lincoln knew that the implications of congressional authority to suspend the writ would erode his constitutional power, and he was probably concerned that Congress might hedge his authority with burdensome restrictions as, in the event, it did. In his response to Birchert, he abandoned the diffidence in his special session message and forcefully expressed the opinion that he, and he alone, held the power of suspension, but since this was a private letter rather than an official communication, Congress could ignore it. Faced with disabling restrictions in the suspension act, he ignored the restrictions without roiling Congress. In sum, in an area generally thought at the time to be within the congressional domain, he manipulated Congress, challenged its powers, ignored its laws, and imposed his authority and will without ruffling congressional feathers or provoking congressional response. In the final part of this article, an examination of the Constitution will reveal who holds the constitutional power to suspend the writ of habeas corpus, allowing us to see whether on this issue Adams fairly compares Lincoln and his doubters among the men of the schools. Binney was an eighty-two-year-old Philadelphia lawyer, politician, statesman, and author who had trained in the law under Jared Ingersoll, one of the members of the Constitutional Convention. His article remains the most penetrating analysis of the constitutional power to suspend the privilege of the writ of habeas corpus. Contrary to what Taney says in the Merryman opinion, Binney claims that presidential suspension of the writ of habeas corpus is consistent with, rather than a departure from, English practice. Under English practice, only the House of Commons can authorize suspension of the writ, but when it does so, it leaves the actual suspension to the chief executive, since only the chief executive can determine whether the conditions of suspension are met. Reading the suspension clause as both a limit on and a grant of authority to suspend the writ, Binney argues that the Constitution itself authorizes suspension, and that, as with the English chief executive, the president is the only one who can determine when suspension is called for. His position gives him the capacity to determine whether suspension is required, and he has the power to do so under his Article II powers to preserve, protect, and defend the Constitution and to take care that the laws be faithfully executed. In Ex Parte Bollman, 8 U. Story considers the suspension clause only briefly in the capacity of a commentator, not as a judge. His contribution is limited to a statement that "it would seem, as the power is given to Congress to suspend the writ of habeas corpus in cases of rebellion or invasion, that the right to judge whether an exigency had arisen, must exclusively belong to that body. If anything, Binney says, the dropped reference to the legislature indicates that the suspension clause as adopted is not a limit on congressional power. In his article, S. Fisher summarizes these responses, with particular emphasis on the serial responses of George Wharton, another Philadelphia lawyer. By finding a grant in the suspension clause, he created a weak point that his opponents exploited to great effect. Since the suspension clause was not a grant, the opponents correctly argued, the power of suspension had to be elsewhere in the Constitution, and Wharton found it in a number of congressional powers in Article I, including the powers to declare war, raise and support armies, make rules concerning captures, call out the militia, and make all laws that may be necessary and proper to carry out these enumerated powers. Even though they were sparring years ago, Binney and his opponents give us the only hard look at the meaning and implications of the suspension clause. Without offering his own analysis or opinion, he surveys the views of

Binney, other commentators, Taney, and a number of state judges, and then concludes that "the weight of opinion would seem to incline to the view that Congress has the exclusive suspending power. For example, does presidential power die when Congress assembles, to rise again if it adjourns without taking action, or does the president have a power that dies forever once Congress convenes? What if a sitting Congress sits with no action during an "emergency"? What language in the Constitution can be read to give the president a power that exists in fits and starts? Amar goes even further than Duker and Farber, claiming that the president is a spear-carrier for Congress. The scholars who have considered the suspension clause since the Civil War have failed to examine that clause in its constitutional context.

Chapter 2 : Lincoln's Suspension of the Writ of Habeas Corpus: An Historical and Constitutional Analysis

The Suspension Clause of the United States Constitution specifically included the English common law procedure in Article One, Section 9, clause 2, which demands that "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 military situation made it dangerous to call Congress into session. Morris, wrote in reply, "At the date of issuing your writ, and for two weeks previous, the city in which you live, and where your court has been held, was entirely under the control of revolutionary authorities. That bill was not brought to a vote before Congress ended its first session on August 6, due to obstruction by Democrats, [15] [16] [17] and on July 11, , the Senate Committee on the Judiciary recommended that it not be passed during the second session, either, [18] but its proposed habeas corpus suspension section formed the basis of the Habeas Corpus Suspension Act. In September the arrests continued, including a sitting member of Congress from Maryland, Henry May , along with one third of the Maryland General Assembly , and Lincoln expanded the zone within which the writ was suspended. On February 14, he ordered all political prisoners released, with some exceptions such as the aforementioned newspaper editor and offered them amnesty for past treason or disloyalty, so long as they did not aid the Confederacy. In March Congressman Henry May, who had been released in December , introduced a bill requiring the federal government to either indict by grand jury or release all other "political prisoners" still held without habeas corpus. When the Thirty-seventh Congress of the United States opened its third session in December , Representative Thaddeus Stevens introduced a bill "to indemnify the President and other persons for suspending the writ of habeas corpus, and acts done in pursuance thereof" H. This bill passed the House over relatively weak opposition on December 8, The Senate version referred all suits and prosecutions regarding arrest and imprisonment to the regional federal circuit court with the stipulation that no one acting under the authority of the president could be faulted if "there was reasonable or probable cause", or if they acted "in good faith", until after the adjournment of the next session of Congress. Pendleton to the conference committee. On February 27, the conference committee issued its report. The result was an entirely new bill authorizing the explicit suspension of habeas corpus. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during the present rebellion, the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons detained by him by authority of the President; but upon a certificate, under oath, of the officer having charge of any one so detained, that such person is detained by him as a prisoner under the authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the writ so long as said suspension by the President shall remain in force and said rebellion continue. The Sergeant-at-Arms was dispatched to compel attendance and several representatives were fined for their absence. Powell of Kentucky vehemently opposed the bill. The Senate spent the evening of March 2 into the early morning of the next day debating the conference committee amendments. Cloture had not yet been adopted as a rule in the Senate, so there was no way to prevent a minuscule minority from holding up business by refusing to surrender the floor. That motion was defeated 5â€”31, after which Lazarus W. Powell of Kentucky began to speak, yielding for a motion to adjourn from William Alexander Richardson of Illinois forty minutes later, which was also defeated, 5â€” Powell continued to speak, entertaining some hostile questions from Edgar Cowan of Pennsylvania which provoked further discussion, but retaining control of the floor. At seven minutes past two in the morning, James A. Powell yielded the floor to Bayard, who then began to speak. At some point later, Powell made a motion to adjourn, but Bayard apparently had not yielded to him for that motion. When this was pointed out, Powell told Bayard to sit down so he could make the motion, assuming that Bayard would retain control of the floor if the motion failed, as it did, 4â€” The presiding officer, Samuel C. Pomeroy of Kansas, immediately called the question of concurring in the report of the

conference committee and declared that the ayes had it, and Trumbull immediately moved that the Senate move on to other business, which motion was agreed to. In this way, the bill cleared the Senate. During the ensuring discussion, the president pro tempore asked permission "to sign a large number of enrolled bills", among which was the Habeas Corpus Suspension Act. The House had already been informed that the Senate had passed the bill, and the engrossed bills were sent to the president, who immediately signed the Habeas Corpus Suspension Act into law. As a result of the Act, the jailer could now reply that a prisoner was held under the authority of the president and this response would suspend further proceedings in the case until the president lifted the suspension of habeas corpus or the Civil War ended. Milligan, one of those arrested while habeas corpus was suspended and tried by military commission One of those arrested while habeas corpus was suspended was Lambdin P. Milligan was arrested in Indiana on October 5, , for conspiring with four others to steal weapons and invade Union prisoner-of-war camps to release Confederate prisoners. They were tried before a military tribunal , found guilty, and sentenced to hang. In ex parte Milligan , the United States Supreme Court held that the Habeas Corpus Suspension Act did not authorize military tribunals, that as a matter of constitutional law the suspension of habeas corpus did not itself authorize trial by military tribunals, and that neither the Act nor the laws of war permitted the imposition of martial law where civilian courts were open and operating unimpeded. Burnside had him arrested in May claiming his anti-Lincoln and anti-war speeches continued to give aid to the enemy after his having been warned to cease doing so. Vallandigham was tried by a military tribunal and sentenced to two years in a military prison. Lincoln quickly commuted his sentence to banishment to the Confederacy. Vallandigham appealed his sentence, arguing that the Enrollment Act did not authorize his trial by a military tribunal rather than in ordinary civilian courts, that he was not ordinarily subject to court martial, and that General Burnside could not expand the jurisdiction of military courts on his own authority. She was sentenced to death but her lawyers Clampitt and Aiken had not finished trying to save their client. On the morning of July 7, they asked a District of Columbia court for a writ of habeas corpus, arguing that the military tribunal had no jurisdiction over their client. The court issued the writ at 3 A. Hancock was ordered to produce Surratt by 10 A. General Hancock sent an aide to General John F. Hartranft, who commanded the Old Capitol Prison, ordering him not to admit any United States marshal as this would prevent the marshal from serving a similar writ on Hartranft. President Johnson was informed that the court had issued the writ, and promptly cancelled it at General Hancock and United States Attorney General James Speed personally appeared in court and informed the judge of the cancellation of the writ. Mary Surratt was hanged, becoming the first woman executed by the United States federal government. Because all of the provisions of the Act referred to the Civil War, they were rendered inoperative with the conclusion of the war and no longer remain in effect. The Habeas Corpus Act of partially restored habeas corpus, extending federal habeas corpus protection to anyone "restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States", while continuing to deny habeas relief to anyone who had already been arrested for a military offense or for aiding the Confederacy. Congress strengthened the protections for officials sued for actions arising from the suspension of habeas corpus in [54] and

Chapter 3 : President Lincoln suspends the writ of habeas corpus during the Civil War - HISTORY

Habeas Corpus [Latin, You have the body.] A writ (court order) that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody and decide whether to order the prisoner's release.

See Article History Habeas corpus, an ancient common-law writ , issued by a court or judge directing one who holds another in custody to produce the body of the person before the court for some specified purpose. Although there have been and are many varieties of the writ, the most important is that used to correct violations of personal liberty by directing judicial inquiry into the legality of a detention. The habeas corpus remedy is recognized in the countries of the Anglo-American legal system but is generally not found in civil-law countries, although some of the latter have adopted comparable procedures. The origins of the writ cannot be stated with certainty. Before the Magna Carta a variety of writs performed some of the functions of habeas corpus. The modern history of the writ as a device for the protection of personal liberty against official authority may be said to date from the reign of Henry VII â€" , when efforts were made to employ it on behalf of persons imprisoned by the Privy Council. By the reign of Charles I , in the 17th century, the writ was fully established as the appropriate process for checking the illegal imprisonment of people by inferior courts or public officials. Many of the procedures that made for effective assertion of these rights were provided by the Habeas Corpus Act of , which authorized judges to issue the writ when courts were on vacation and provided severe penalties for any judge who refused to comply with it. Its use was expanded during the 19th century to cover those held under private authority. In legislation was enacted limiting the instances in which habeas corpus could be denied and establishing new lines of appeal. In the British colonies in North America , by the time of the American Revolution , the rights to habeas corpus were popularly regarded as among the basic protections of individual liberty. In England such suspension had occurred during the wars with France at the time of the French Revolution. In the United States , Pres. Abraham Lincoln suspended the writ by executive proclamation at the outbreak of the Civil War in The presidential act was challenged by Chief Justice Roger Taney who, in the case of Ex parte Merryman , vigorously contended that the power of suspension resided only in Congress. Abraham Lincoln, photograph by Mathew Brady, In the midth century the U. That interpretation was gradually narrowed by the Supreme Court and by congressional act in the later years of the century. In contemporary law a writ frequently is requested on behalf of one in police custody for the purpose of requiring the police to either charge the arrested person with an offense or release that person. Habeas corpus proceedings may be employed to obtain release of the accused prior to trial on the ground that the bail set is excessive. On occasion habeas corpus relief has been granted a prisoner who is unlawfully detained after expiration of the sentence. In cases of one arrested on a warrant of extradition , a proceeding in habeas corpus may be instituted to challenge the validity of the warrant. The writ may also be employed in a wide variety of situations not involving criminal proceedings. Thus, competing claims to the custody of a minor may be adjudicated in habeas corpus. Someone confined to a mental hospital may in some jurisdictions bring about release from the hospital by demonstrating the recovery of sanity at a habeas corpus hearing. In the Supreme Court held, in Rasul v. Bush , that habeas corpus is available to an alien held by the military as an enemy combatant in territory outside the U. Learn More in these related Britannica articles:

Chapter 4 : What is a Suspension of Habeas Corpus? (with pictures)

Habeas corpus is a legal action in which a prisoner challenges the authority of the jail or prison to continue holding him. This Latin term translates as, "you have the body," and it allows incarcerated people to seek relief from unlawful confinement.

Latin for "that you have the body. The Habeas corpus first originated back in , through the 39th clause of the Magna Carta signed by King John, which provided "No man shall be arrested or imprisoned Deeply rooted in the Anglo-American jurisprudence, the law of habeas corpus was adopted in the U. The first Chief Justice of the U. Supreme Court, Chief Justice Marshall, emphasized the importance of habeas corpus, writing in his decision in , that the "great object" of the writ of habeas corpus "is the liberation of those who may be imprisoned without sufficient cause. Supreme Court has recognized that the "writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" and must be "administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected. The sources of habeas corpus can be found in the Constitution, statutory law, and case law. Only Congress has the power to suspend the writ of habeas corpus, either by its own affirmative actions or through an express delegation to the Executive. The Executive does not have the independent authority to suspend the writ. In the First Judiciary Act of , Congress explicitly authorized the federal courts to grant habeas relief to federal prisoners. Congress expanded the writ following the Civil War, allowing for habeas relief to state prisoners if they were held in custody in violation of federal law. Federal courts granted habeas relief to state prisoners by finding that the state court lacked the proper jurisdiction. Post-World War II reforms further expanded the writ: The Warren Court further paved the way for broader habeas corpus rights. Second, unless a United States Court of Appeals gave its approval, a petitioner may not file successive habeas corpus petitions. Thus, alien detainees designated as enemy combatants who were held outside the United States had the constitutional right to habeas corpus. Federal statutes 28 U. There are two prerequisites for habeas review: Any federal court may grant a writ of habeas corpus to a petitioner who is within its jurisdiction. The habeas petition must be in writing and signed and verified either by the petitioner seeking relief or by someone acting on his or her behalf. Federal courts are not required to hear the petition if a previous petition presented the same issues and no new grounds were brought up. Finally, a federal judge may dismiss the petition for the writ of habeas corpus if it is clear from the face of the petition that there are no possible grounds for relief. Today, habeas corpus is mainly used as a post-conviction remedy for state or federal prisoners who challenge the legality of the application of federal laws that were used in the judicial proceedings that resulted in their detention. Other uses of habeas corpus include immigration or deportation cases and matters concerning military detentions, court proceedings before military commissions, and convictions in military court. Finally, habeas corpus is used to determine preliminary matters in criminal cases, such as: The writ of habeas corpus primarily acts as a writ of inquiry, issued to test the reasons or grounds for restraint and detention. The writ thus stands as a safeguard against imprisonment of those held in violation of the law, by ordering the responsible enforcement authorities to provide valid reasons for the detention. Thus, the writ is designed to obtain immediate relief from unlawful impeachment, by ordering immediate release unless with sufficient legal reasons and grounds. The habeas corpus is not a narrow, static, and formalistic remedy, and must retain the flexibility to cut through various barriers of forms and procedural complexities by which a person may be imprisoned or detained. Accordingly, the writ of habeas corpus is a flexible writ that can be administered with initiative and flexibility to obtain release from illegal custody. Although the writ of habeas corpus is thus a flexible writ for obtaining a release from custody when one is illegally detained, there are some limitations to the rule of habeas corpus. For example, circuit precedent cannot refine or sharpen a general principle of Supreme Court habeas corpus jurisprudence into a specific legal rule that the Supreme Court has not yet announced. There are only two rare exceptions to this general rule of retroactivity:

Chapter 5 : Habeas Corpus Suspension Act () - Wikipedia

To President Bush's support for the law -- the Military Commissions Act of -- and its suspension of writs of habeas corpus, Jonathan Turley, professor of constitutional law at George Washington University stated, "What, really, a time of shame this is for the American system.

The cast of characters includes many Ohioans. Suspension of the Writ of Habeus Corpus and the Milligan Case Following his election in the face of Southern opposition, Abraham Lincoln had to travel through Baltimore by train secretly under threat of assassination to take office as president in a badly divided county in Given the small size and scattered location of the United State army, Lincoln called for help from Northern governors to defend Washington, D. While Hicks was pro-Union, he authorized Maryland militia to prevent the passage of more Union troop trains by disabling railroad bridges and cutting telegraph wires. Its origins in the Magna Carta, the Founding Fathers in the Constitution enshrined the right to a Writ of Habeas Corpus to ensure that Americans who were arrested by the government had the right to go before judges to be informed of the charges against them. Article I, Section 9, Clause 2 of the Constitution states in what is called the suspension clause: With a rebellion underway and Washington threatened by the formation of a Confederate army across the Potomac river and with Congress not in session, on April 27 Lincoln authorized Winfield Scott, commander of the army, to suspend Habeas Corpus if necessary to ensure the safety of the military supply lines between Philadelphia and Washington. Meanwhile, on April 29, the Maryland Legislature voted against secession. Butler then imprisoned the mayor, city council, and police commissioner in Ft. Its opening verse begins: His torch is at thy temple door, Maryland! Its ninth and concluding verse shouts: But Maryland did not secede and Lincoln would later imprison pro-secessionist state legislators. On May 25, John Merryman was arrested and imprisoned in Ft. McHenry on suspicion of treason. The elderly Taney obliged within a day. Jackson appointed him the U. Supreme Court in Taney was notorious for his opinion in the Dred Scott case, which inflamed abolitionist opinion in the North. Taney dispatched a U. McHenry to bring Merryman to court. Taney would die on October 13, , the same day that Maryland outlawed slavery. Lincoln called Congress into session and his Attorney General issued an opinion justifying his action to address the emergency. Lincoln wrote to Congress: However, in July, the U. Attorney for Baltimore re-indicted Merryman for treason. However, his trial was postponed and the charges eventually dismissed in April, In May, , the North Central Railroad sued Merryman for damages for his participation in the railroad bridge burnings but nothing came of this. In turn, Merryman sued General Cadwallader for unjust imprisonment but his suit was dismissed by a federal court in April, Merryman was a prosperous farmer and prominent citizen after the war, dying in Lincoln initially delegated implementation of this policy to Secretary of State William Seward but then transferred this responsibility to Ohioan Edwin Stanton, the Secretary of War. It was been estimated that between 14, and 38, were imprisoned and denied access to Habeas Corpus during the war. However, this law required the government to provide lists of those imprisoned to civilian judges and to have them charged by grand juries when they next met. Non-compliance required their release. This legislation reflected growing opposition to the military draft, culminating a few months later in the New York City draft riots. Again, Lincoln simply ignored the conditions that Congress attached to the suspension of the writ. Their opposition grew in tandem with Union military setbacks and the draft. The Peace Democrats enjoyed considerable electoral success that Fall in reaction to these events. A prominent voice among the Peace Democrats was Ohio Congressman Clement Vallandigham, a lawyer from Dayton, even though he lost his seat in the Fall, election. He was sympathetic to the South and an outspoken critic of Lincoln. General Ambrose Burnside, following his disastrous defeat at Fredericksburg in December, , was re-assigned to the Ohio department. On May 1, Vallandigham spoke in Mt. He was arrested by the army on May 5, imprisoned in Cincinnati, tried before a military tribunal despite his request for a jury trial, and sentenced to imprisonment for the remainder of the war. Vallandigham protested a denial of due process and demanded a writ of Habeas Corpus. His appeal to the U. Supreme Court would be rejected in Ex Parte Vallandigham in February, because the court ruled that it had no jurisdiction over military commissions. However, rather than allow his sentence to be carried out and

make him a Copperhead martyr, Lincoln instead exiled him to the Confederacy. After the war, Vallandigham ran unsuccessfully for seats in the U. Senate and House of Representatives on an anti-Reconstruction platform. His practice as a lawyer ended with his death in in Lebanon when he accidentally shot himself while defending an accused murderer. Union authorities feared that a secret underground group of pro-Confederate sympathizers - the Knights of the Golden Circle or the Sons of Liberty - might actually stage an uprising aimed at freeing Confederate prisoners and leading disaffected Midwestern states to secede. This was despite the lack of support for General John Hunt Morgan when his Confederate cavalry passed through southern Indiana and Ohio from July 8, until the capture of his remaining raiders on July Suspected of conspiring against the Union, he and some other Indiana Copperhead leaders were arrested by the military under the direction of General Alvin Hovey on October 5, and tried by a military tribunal beginning on October Milligan was convicted of treason along with four others. He was sentenced on December 10 to be executed by hanging, His execution date was set for May 19, On March 6, , the U. Milligan was represented by a legal team that included Ohioan Civil War hero, Congressman, and future president James Garfield and David Dudley Field, a prominent attorney and the older brother of sitting U. Supreme Court Justice Stephen Field. It ruled unanimously that under the Habeas Corpus Act Milligan should have been tried in the open civilian courts in Indiana, rather than by military commission. The author of the lead opinion was Justice David Davis. He became a state judge. Befriending attorney Abraham Lincoln, Davis became his campaign manager at the Chicago Republican convention that nominated him. In , Lincoln by recess appointment named Davis to the U. With Lincoln now dead and the Civil War over, Davis famously wrote: No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Davis not only recognized the operation of the civilian courts in Indiana in but also the denial of the Sixth Amendment right of Milligan to a trial by jury. On behalf of four justices, Chief Justice Chase wrote that Congress did have the power to create military commissions, something not recognized by Davis in his opinion. In March 2, , in the first Reconstruction Act, Congress empowered military commanders in the occupied South to use military commissions, which were used until its end when Ohioan and President Rutherford Hayes withdrew Federal troops from the South and ended its occupation after his controversial election in Released in April, , Milligan inveighed publicly the next month against the martyred president and the wartime pro-Union governors of Indiana and Ohio. Milligan was represented by Thomas Hendrickson, a future Vice-President. The general who ordered his arrest was represented by Ohio-born future president Benjamin Harrison. Milligan died in Conclusions My conclusions are these: Lincoln was entirely justified in his initial suspension of Habeas Corpus with Congress not in session under unprecedented wartime conditions caused by the secession of the Southern states.

Chapter 6 : habeas corpus | Definition, History, & Scope | blog.quintoapp.com

At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." R. Walker, The American Reception Of The Writ Of Liberty ().

Judicial Activism Habeas Corpus Habeas corpus is a legal action in which a prisoner challenges the authority of the jail or prison to continue holding him. Habeas corpus is a protection against illegal imprisonment , afforded to United States citizens as outlined in the Suspension Clause of the U. To explore this concept, consider the following habeas corpus definition. Definition of Habeas Corpus Noun A court order that requires a person, usually a prisoner, to be brought before a judge to decide whether he is being held legally, or should be released. Origin Around B. Medieval Latin What is Habeas Corpus Habeas corpus is the belief or concept that citizens of the United States should be free from the fear of being illegally detained or imprisoned. If the court finds the warden or other custodian has no legal justification to hold the prisoner, it may order his release. History of Habeas Corpus The concept of habeas corpus dates back to 14th century England. This principal traveled with the colonists to early America, where it evolved to the modern principal held dear by American citizens, that no person shall be deprived of freedom without due process of law. The writ was issued by American colonial courts and state governments continued to recognize habeas corpus as a natural right. In , the Judiciary Act granted federal courts the authority to issue the writs to detainees in federal custody. However, the same courts could not issue the writ for state or local prisoners. Additionally, the Supreme Court held, in , that federal courts had no authority of habeas corpus over prisoners held by state or local governments, as Congress had not given it that authority. This oversight was corrected by Congress in , with the enactment of the Force Bill. The principle and application of habeas corpus continued to evolve and, in , the writ was made available to anyone deprived of his liberty in violation of the U. For the first time in history, writs of habeas corpus became a remedy for individuals already convicted. During the reign of King Charles in England, Parliament eventually succeeded in addressing the issue with the enactment of the Habeas Corpus Act of The intention of the Habeas Corpus Act was to protect the liberties of citizens, preventing them from being imprisoned indefinitely without just cause. The Act became one of the most important statues in English history, as it protected the rights of individual citizens. There have been several acts passed since the Habeas corpus Act of , but none has had the far-reaching impact of that first legislation. What is a Writ of Habeas Corpus A writ of habeas corpus is a petition filed with the court when a prisoner wishes to contest the legality of his imprisonment. Most frequently, a writ of habeas corpus is used as a post-conviction remedy when a person believes laws were illegally applied during the judicial proceedings that resulted in his detention. The writ is also used for military detention purposes, as well as in immigration and deportation matters. A writ of habeas corpus may also be used to determine certain preliminary issues in a criminal court case, such as: Determining whether there is an adequate basis for detention Determining whether the case should be moved to another federal court district Determining whether bail or parole should be denied To hear a claim of double jeopardy To contest extradition to a foreign country To determine whether the prisoner has been denied his right to a speedy trial Habeas Corpus Petition If a prisoner believes he is being held illegally, he may submit a habeas corpus petition to a state or federal court, asking the court to order the prison officials or other warden or custodian to produce the prison before a judge. The judge issuing the writ in response to the habeas corpus petition then has the authority to make a determination as to whether the prisoner is being detained legally. The steps required to be followed in submitting a habeas corpus petition to the court include: The petition is generally filed pro se, meaning the prisoner files the petition without the help of a lawyer. The petition must include certain information, such as the facts of the case, and why the prisoner feels he is being detained illegally. The petition must be in writing and signed by the prisoner or his attorney. After the petition is written up, it must be filed with the court. This can be done by mail, online, or in person. There is a filing fee associated with a habeas corpus petition, but that fee may be waived if the prisoner provides an affidavit that he cannot afford to pay it. After the petition has been filed with the court, it must be served on the person

or facility that has custody of the prisoner. If the prisoner is in a state prison, the petition is served on the state attorney general. Consideration of the Petition. After the petition has been properly served, a judge is assigned to the case to examine it, and to determine whether or not it meets the requirements for a writ to be issued. Dismissal or Award of Writ. After the judge has reviewed the habeas corpus petition, reviewing pertinent evidence and supporting documents, he will make a judicial decision whether to issue a writ of habeas corpus. If a writ is issued, a date for a hearing is set. At the hearing, both the prisoner and the custodian or prosecutor will have the opportunity to present their arguments, evidence, and witness testimony. At the conclusion of such a hearing, the judge will issue a judicial decision as to whether or not the individual is being held lawfully, or if he should be released from custody. If the writ is denied, the prisoner can file an appeal. The state can do the same if the writ is approved by the court. Example of Habeas Corpus John was charged with domestic abuse. During the hearing, the evidence presented was mainly hearsay testimony from a police officer that had spoken to Mary after the assault took place. A year after John was convicted and sentenced to prison, the Supreme Court ruled, in the case of Crawford v Washington that hearsay statements of witnesses that refuse to testify in court are not admissible in a criminal case. Related Legal Terms and Issues Affidavit â€" A written statement made under oath, for use as evidence in court. Authority â€" The right or power to make decisions, to give orders, or to control something or someone. Due Process â€" The fundamental, constitutional right to fair legal proceedings in which all parties will be given notice of the proceedings, and have an opportunity to be heard. Hearing â€" A proceeding before the court at which an issue of fact or law is heard, evidence presented, and a decision made. Judicial Decision â€" A decision made by a judge regarding the matter or case at hand. Judgment â€" A formal decision made by a court in a lawsuit. Jurisdiction â€" The legal authority to hear legal cases and make judgments; the geographical region of authority to enforce justice. Overturn â€" To change a decision or judgment so that it becomes the opposite of what it was originally. Pro se â€" A party to a legal action acting without legal counsel. Remedy â€" The enforcement of a right, or imposition of a penalty by a court of law. Warden â€" An individual responsible for the care or custody of people, as in the chief administrator in charge of a prison. Writ â€" A written order from a court or other legal authority.

Chapter 7 : Lincolnâ€™s Suspension of Habeas Corpus

The writ of habeas corpus, or the "Great Writ," is an order by a common-law court to require a person holding a prisoner to demonstrate the legal and jurisdictional basis for continuing to hold.

In response, Congress passed the Enforcement Acts in â€" One of these, the Civil Rights Act of , permitted the president to suspend habeas corpus if conspiracies against federal authority were so violent that they could not be checked by ordinary means. That same year, President Ulysses S. Suspension in the Philippines[edit] This section needs expansion. You can help by adding to it. He did so the same day, and habeas corpus was suspended until he revoked his proclamation on October 15, Kahanamoku , U. In , eight German saboteurs , including two U. In Ex parte Quirin , [41] the U. Supreme Court decided that the writ of habeas corpus did not apply, and that the military tribunal had jurisdiction to try the saboteurs, due to their status as unlawful combatants. The period of martial law in Hawaii ended in October It was held in Duncan v. Kahanamoku [42] that although the initial imposition of martial law in December may have been lawful, due to the Pearl Harbor attack and threat of imminent invasion, by the imminent threat had receded and civilian courts could again function in Hawaii. The Organic Act therefore did not authorize the military to continue to keep civilian courts closed. After the end of the war, several German prisoners held in American-occupied Germany petitioned the District Court for the District of Columbia for a writ of habeas corpus. Eisentrager [43] the U. Supreme Court decided that the American court system had no jurisdiction over German war criminals who had been captured in Germany, and had never entered U. The AEDPA was intended to "deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. For the first time, its Section set a statute of limitations of one year following conviction for prisoners to seek the writ. It barred second or successive petitions generally but with several exceptions. Petitioners who had already filed a federal habeas petition were required first to secure authorization from the appropriate United States Court of Appeals, to ensure that such an exception was at least facially made out. Habeas corpus in the 21st Century[edit] The November 13, , Presidential Military Order purported to give the President of the United States the power to detain non-citizens suspected of connection to terrorists or terrorism as enemy combatants. As such, that person could be held indefinitely, without charges being filed against him or her, without a court hearing, and without legal counsel. Many legal and constitutional scholars contended that these provisions were in direct opposition to habeas corpus, and the United States Bill of Rights and, indeed, in Hamdi v. Rumsfeld [44] the U. Supreme Court re-confirmed the right of every American citizen to access habeas corpus even when declared to be an enemy combatant. The Court affirmed the basic principle that habeas corpus could not be revoked in the case of a citizen. Rumsfeld [45] Salim Ahmed Hamdan petitioned for a writ of habeas corpus, challenging that the military commissions set up by the Bush administration to try detainees at Guantanamo Bay "violate both the UCMJ and the four Geneva Conventions. On September 29, the U. House and Senate approved the Military Commissions Act of , a bill which suspended habeas corpus for any alien determined to be an "unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States" [46] [47] by a vote of This was the result on the bill to approve the military trials for detainees; an amendment to remove the suspension of habeas corpus failed Except as provided in section of the Detainee Treatment Act of , no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination. The Supreme Court ruled in Boumediene v. Bush that the MCA amounts to an unconstitutional encroachment on habeas corpus rights, and established jurisdiction for federal courts to hear petitions for habeas corpus from Guantanamo detainees tried under the Act. Left unchanged was the provision that, after such determination is made, it is subject to appeal in federal courts, including a review of whether the evidence warrants the determination. Wikinews has related news: President Bush signed into law the Military Commissions Act of There is, however, no legal time limit which would force the government to provide a Combatant Status Review Tribunal hearing. Prisoners were, but are no longer, legally prohibited from petitioning any court for

any reason before a CSRT hearing takes place. Arlen Specter who asked him to explain how it is possible to prohibit something from being taken away, without first being granted. Many of the legal features attributed to habeas corpus are delineated in a positive way in the Sixth Amendment Court of Appeals for the D. Circuit agreed in a decision, [52] on February 20, , [53] which the U. Supreme Court initially declined to review. Supreme Court then reversed its decision to deny review and took up the case in June In June , the court ruled that the act did suspend habeas and found it unconstitutional. In a two-to-one ruling by the U. Court of Appeals for the Fourth Circuit , the Court held the President of the United States lacks legal authority to detain al-Marri without charge; all three judges ruled that al-Marri is entitled to traditional habeas corpus protections which give him the right to challenge his detainment in a U. In July , the U. Court of Appeals for the Fourth Circuit ruled that "if properly designated an enemy combatant pursuant to the legal authority of the President, such persons may be detained without charge or criminal proceedings for the duration of the relevant hostilities. District Judge Ricardo M. This order stated that the detainees "have the constitutional privilege of the writ of habeas corpus. You are an enemy combatant, and we are going to talk to you about why you joined Al Qaeda. The justice, Barbara Jaffe, amended her order later in the day by striking the reference to habeas corpus. There are a number of such post-trial actions and proceedings, their differences being potentially confusing, thus bearing some explanation. Some of the most common are an appeal to which the defendant has as a right, a writ of certiorari, a writ coram nobis and a writ of habeas corpus. An appeal to which the defendant has a right cannot be abridged by the court which is, by designation of its jurisdiction, obligated to hear the appeal. In such an appeal, the appellant feels that some error has been made in his trial, necessitating an appeal. A matter of importance is the basis on which such an appeal might be filed: Any issue not raised in the original trial may not be considered on appeal and will be considered waived via estoppel. A writ of certiorari, otherwise known simply as cert, is an order by a higher court directing a lower court to send record of a case for review, and is the next logical step in post-trial procedure. While states may have similar processes, a writ of cert is usually only issued, in the United States, by the Supreme Court, although some states retain this procedure. Unlike the aforementioned appeal, a writ of cert is not a matter of right. A writ of cert will have to be petitioned for, the higher court issuing such writs on limited bases according to constraints such as time. In another sense, a writ of cert is like an appeal in its constraints; it too may only seek relief on grounds raised in the original trial. A petition for a writ of error coram nobis or error coram vobis challenges a final judgment in a criminal proceeding. Use of this type of petition varies from jurisdiction to jurisdiction, but is usually limited to situations where it was not possible to raise this issue earlier on direct appeal. These petitions focus on issues outside the original premises of the trial, i. Federal habeas corpus statistics[edit] Number of cases[edit] In , there were about 19, non-capital federal habeas corpus petitions filed and there were about capital federal habeas corpus petitions filed in U. The vast majority of these were from state prisoners, not from those held in federal prisons. There are about 60 habeas corpus cases filed in the U. Courts of Appeal do not have original jurisdiction over habeas corpus petitions. These are almost exclusively state offenses and thus petitions filed by state prisoners. Exhaustion of state-court remedies often takes five to ten years after a conviction, so only state prisoners facing longer prison sentences are able to avail themselves of federal habeas corpus rights without facing a summary dismissal for failure to exhaust state remedies. The lack of state remedies to exhaust also means that the timeline for federal death penalty habeas review is much shorter than the timeline for state death penalty habeas review which can drag on literally for decades. Success rates are not uniform, however. James Liebman, Professor of Law at Columbia Law School, stated in that his study found that when habeas corpus petitions in death penalty cases were traced from conviction to completion of the case that there was "a 40 percent success rate in all capital cases from to This is because federal funds are not available to non-capital state habeas petitioners to pay for attorneys unless there is good cause, there being no federal right to counsel in such matters. However, in state capital cases, the federal government provides funding for the representation of all capital habeas petitioners. These success rates predate major revisions in habeas corpus law that restricted the availability of federal habeas corpus relief when AEDPA was adopted in , over a decade ago. Disposition time[edit] The time required to adjudicate habeas corpus petitions varies greatly based upon factors including the number of issues raised, whether the

adjudication is on procedural grounds or on the merits, and the nature of the claims raised. District Courts took an average of two and a half years to adjudicate habeas corpus petitions in death penalty cases raising multiple issues that were resolved on the merits, about half of that time-length for other multiple issue homicide cases, and about nine months in cases resolved on procedural grounds. AEDPA was designed to reduce the disposition times of federal habeas corpus petitions. But AEDPA has a little impact in non-capital cases, where a majority of cases are dismissed on procedural grounds, very few prisoners prevail and most prisoners are not represented by attorneys. Filing rates[edit] In , the average number of federal habeas corpus petitions filed in the United States was 14 per 1, people in state prison, but this ranged greatly from state to state from a low of 4 per 1, in Rhode Island to a high of 37 per 1, in Missouri. The Anti-Terrorism and Effective Death Penalty Act of AEDPA produced a brief surge in the number of habeas corpus filings by state prisoners, as deadlines imposed by the act encouraged prisoners to file sooner than they might have otherwise done so, but this had run its course by , and by , habeas corpus petition filing rates per 1, prisoners was similar to pre-AEDPA filing rates. There was a temporary surge in habeas corpus petitions filed by federal prisoners in as a result of the Booker decision by the U.

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Bush () expanded the territorial reach of habeas corpus, ruling that the Suspension Clause affirmatively guaranteed the right to habeas review. Thus, alien detainees designated as enemy combatants who were held outside the United States had the constitutional right to habeas corpus.

Chapter 9 : What is the writ of habeas corpus? - CNN Philippines

The Suspension Clause in the Academy. In early , Horace Binney published an article that provided strong scholarly support for Lincoln's claim to a constitutional power to suspend the writ of habeas corpus.