Chapter 1 : Habeas Corpus | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

A pamphlet, entitled "The Privilege of the Writ of Habeas Corpus under the Constitution," from the pen of the Hon. Horace Binney, has been recently advertised for sale in this city, and it is proposed, with deference for the high name of the author, to review some of its errors.

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 2 : Habeas corpus - Wikipedia

Excerpt from The Writ of Habeas Corpus and Mr. Binney The clause, as it now stands, and as it was submitted to the States, is not obscure. The eighth section of the Constitution is that which is enabling to Congress.

Argument of Horace Binney, Esq. An eulogium upon the Hon. William Tilghman, late Chief Justice of Pennsylvania. Eulogy on John Marshall. Da Capo Press, The leaders of the old bar of Philadelphia. Letter from Horace Binney To the General committee of invitation and correspondence of the Union league of Philadelphia. Opinion of Horace Binney, esq. The opinion of Mess. Binney and Chauncey, on the acts of the Legislature of New-Jersey, respecting the Delaware and Raritan canal, and Camden and Amboy rail-road companies. The privilege of the writ of habeas corpus under the Constitution. Remarks to the bar of Philadelphia, on the occasion of the deaths of Charles Chauncey and John Sergeant. By the writer of the letter. Speech delivered by Horace Binney. Speech of the Hon. Horace Binney, on the question of the removal of the deposites [sic]. Delivered in the House of Representatives, January, Printed by Gales and Seaton, A review of Mr. A Sketch of Horace Binney. The writ of habeas corpus and Mr. A response to Mr. John Sergeant and Horace Binney as to trusts under Mr. Letter to Horace Binney, Esq. An eulogium on the life and character of Horace Binney. The writ of habeas corpus, and Mr.

Chapter 3 : BINNEY, Horace () Bibliography

Mr. Binney is also entitled to thanks for having "flushed and put upon the wing the covey of reviewers from the Philadelphia bar," which very able covey, it is hoped, have enlisted for the war, and will give the country many other manifestations of such de- cided ability.

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

Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.

See other formats E Bin- ney, a Philadelphia writer, quotes the following passages there- from: Let us suppose the Constitution wholly silent on the subject, saying not one word about the Writ or its suspension, where then would have been the power to sus- pend? No intelligent, candid man will pretend that it would not be clearly, indisputably, with Congress, or that by any possible, fair construction the power could be assigned to the President. Without the restriction Con- gress would have plenary power, untrameled discretion over the Writ. It could have created the Writ, or not, at its pleasure, sus- pended or wholly repealed it out of existence whenever and as often as it thought proper. Who, then, was intended to be restrained by this clause? Surely not the President, who, under such silence of the Constitution, would have had no possible control over the Writ in any circumstances whatever. There could be no necessity to [4]: It was not overlooked in the pre- ceding Tract his first pamphlet , but left for assertion and proof. If it is sound it materially disables the argument which regards the Habeas Corpus clause as a grant of authority. The objection u affirmative one, and puts upon the writer who makes it the duty of proving it. The objection is not proved at all. This criticism is just. It was not proved because it was presumed to need no proof, and would not lie denied by any lawyerâ€” least of all by Mr. In his attempt at this he makes the following most sur- prising affirmations: Such rash deduction, from tch premises, was perhaps never before made by a man o such ace. Their elucidation [5] depend upon the meaning of " to constitute a tribunal," and of to " establish a court. The mere erection of a tribunal by name is nothing. The erection of a court, and vesting jurisdiction and judicial power in it, would be nothing without more. A judicial tribunal is not con- stituted unless it is endowed with the active powers which are necessary to the exercise of its judicial powers. It must have the means of bringing parties before it, and to enforce its judgments and decrees. It must have the power of issuing writs, of commit- ting its mandates to officers to be executed, in just such kind, number, and variety as its judicial powers demand. Yet he carps at the expression used by Governor Randolph, " the power given to Congress to regulate the courts," as " indefinite language," not warranted by the Constitution, it not having used that very word regulate, though by this, his own showing, it has used its perfect equivalent. By that showing, the power to "constitute tribunals " carries with it as ample power to regulate them as if the word had been used, and the clause had read to " constitute and regulate tri- bunals. Binney well knows it to have been al- ways held by the Supreme Court, that the inferior courts can ex- ercise no power except such as is given them by Congress. Judge Story says, 3 Comm. These were therefore left entirely to the discretion of Congress as to their number, their jurisdiction, and their powers. Experience might and probably would show good grounds for varying and modifying them from time to time. It would not only have been unwise, but exceedingly inconvenient, to have fixed the management of these courts in the Constitution itself, since Congress would have been disabled thereby from adop- ting them from time to time to the exigencies of the country. Hudson, 7 Cranch 32, the Court said as to the inferior courts that they "possessed no juris- n but what was given them by the power that created them," that is by Congress. All this being well-known to him, it is marvelous how Mr. Bin- ney could make the unqualified assertion that " the Constitution gives no such power to Congress as a power to regulate the courts. But that being no part of the present purpose, he having said words in this new pamphlet enti- tling him to lenient treatment, notwithstanding his defection from rvatism, it will be confessed that most probably the words do not convey his real meaning. What he meant was that an un- stinted power to regulate does not, as he afterwards more distinct- ly contends, carry with it the power to destroy the courts and their powers. What he ought to have meant, but which he proba- blv did not, was that ike power did not carry with it the right to destroy â€” about which he will be talked with further along. The stalwart blows he gives in defense of the spirit against the strict letter of the Constitution and in vindication of civil liberty, whilst making his chivalrous attempt to prove that without the Habeas Corpus clause Congress would have had no power to suspend the are worthy of those

palmy days when no suspicion of defec- tion from the great cause of conservatism had ever soiled him. If he can do so well in favor of the spirit against the Utter, we can- not but sigh aft it those ponderous blows he would deal in defense li letter and the spirit plainly combined. We cannot help a: If the writer had any disposition that way he would be estopped by his own words from gainsaying Mr. Binney as to the dutiful obedience which should In- yielded to the spirit of the Constitu- tion, even when not expressed in direct language. In his review argumenl of the Presidenl and Attorney General Bates, he! But it may be well to say, that whilst this is true, it is equally true that such repeal would be a gross abuse of power, be- ing contrary to the spirit and meaning of the Constitution, which are as much to be observed as its letter ; for incontestably the Constitution contemplates that Congress shall always furnish the Writ for protection to citizens, except when in cases of rebellion or invasion it may think public safety requires a suspension of that protection, Every sound statesman and lawyer will agree that a wilful violation of the manifest spirit of the Constitution is mor- ally as bad as an infraction of its plain letter. As said by Judge Story, it is an absolute power over the subject, unavoidably left to the discretion of Congress. Not whether the mandate should be obeyed, but as to the how and the when this discretion unavoidably accompanied the power, not the right, to disobey. The distinction between power and right is obvious to everyone, yet Mr. Binney intentionally, or uninten- tionally, so confounded them as to make it difficult to get at his precise meaning. For instance, he says Congress " cannot effec- tually omit to do what it is commanded to do by the Constitution ;" and yet immediately afterwards he says, " it may omit to do the right thing, but it violates the command of its creator by so omit- ting, and brings on the destruction of its own being. He surely does not mean that a temporary repeal of the writ of Hab- eas Corpus would necessarily involve that destruction. This thing of the legislative department refusing or omitting to [8] obey a mandate of the Constitution is by no means a novelty in our system. A notable instance of a failure of the Legislature to obey an ex- press command of the Constitution occurred under the former Con- stitution of Kentucky, which expressly commanded the Legisla- ture to provide for bringing suits against the Commonwealth, yet during the sixty years of its existence this command was never obeyed. Suppose Congress omits this duty, where is the remedy? Who is to enforce the mandate â€” who to supply the omission? Disobe- dience to a command of the Constitution is wholly unlike, in this aspect, a violation of its prohibitions. For the latter there is remedy, through the other departments ; for the former there is none. It is idle, therefore, to deny the mere abstract power, without reference to the right. Binney says it is not an untrammeled power, because it is trammeled by the duty referred to. If he means morally tram- meled, he is right; but, when we speak of an untrammeled con- gri ssional power, we mean one that has no available, effective legal trammel, and such is the power to regulate the courts. The power has been so repeatedly exercised, with the express sanction of the Judiciary, and the undoubting approval of every- body else, that it is no longer open to denial. Whoever wants to limit the power for any available purpose must point oul the ex- press limitation in the Constitution. Leaving such abuses to have lull effect, without any legal check. Sixty years ago Congress thought proper to repeal out of exist- ence the whole then batch of inferior courts, and establish others in their place. Suppose this bad been done by two different bills, and that, after passing the repealing bill, sonic casualty had, for! No judge would have been mad enough to attempt to exercise his repealed powers. At the time of the abolition of imprisonment for debt, it was a prevalent opinion in the profession that there was no other suffi- ciently efficient remedy to enforce the payment of debts. Suppose that opinion to have been indisputably correct, would such gross abuse of power in leaving the courts without the proper remedial process upon so important a subject have invalidated the act repeal- ing to ca sa? No court would have dared to use that or any equivalent process. Notwithstanding his own scathing castigation of all such lati- tudinarians, Mr. Binney at least, it would seem, though others do not, deems an anonymous writer in the National Intelligencer, last summer, justifying the presidential usurpation, as some au- thority on a constitutional question. That writer, according to recollection, claimed the power of Congress to repeal the Writ out of existence, not merely in the absence of, but in despite the clause, and made that fact a main basis of his argument. Binney attempts to bring to his aid what he deems a de- veloped opinion of the members of the convention that the clause was an enabling, not a restrictive one. There is no rational interpretation of the vote but that the first member was declarative of a general prohi- bition of the power, and a confirmation of

the general principles of Magna Charta, of the petition of right, and of all that had been previously declared, and that the second member granted power to the general government in the excepted cases. That is, the three States wanted an un- qualified, whilst the others wanted a qualiiied prohibition of the exercise of a power which they all knew that Congress would have over the Writ. If they did not so know, why the unanimous vote in favor of the first member of the clause, which is purely restric- tive, and has nothing enabling about it? It could have had no purpose to restrain any supposable power in the President ; for even Mr. Binney admits that without the whole clause, the en- abling latter member, he would have had no power over the sub- ject. They must have meant to restrain congressional power, for there was no other power to restrain. If the last part had been voted down the prohibition would have been unqualified. Now, then, this exposition of the views of the members by their votes, so far from subserving his purpose, operates in the directly oppo- site way. It is the strongest possible, most satisfactory proof so derivable, that they unanimously thought Congress would have the power unless prohibited. The very language of the clause is, if possible, still stronger proof. If meant as a qualified prohibition, it is apposite and ap- propriate, whilst it is wholly inartificial and inappropriate as a grant of power. If a grant to the President had been intended, some such language as the following would have been required, and certainly used: Binney permits himself to say, "there is not a word like restriction or limitation in the first member of the clause, " though it Bays "the privilege shall not be suspended. The clause, viewed as a modified pro- hibition, is t. It equally pre- supposes a [lower somewhere, to he prohibited. There being no power anywhere to suspend any law, especially the law creating the Writ, except in Congress, the intention must have Keen to pro- [11] hibit Congress, which would be equally as full a recognition of the otherwise untrammeled power of Congress over the Writ. Either way, the argument of Mr. Binney is "materially damaged. If the suspension of the right to freedom from arbitrary arrest, and all remedy for the violation of the right, be an inseparable or necessary accompani- ment to such incidental power, he would gulp that also with a clear conscience. Binney seems at last to be awakened to the recollection of the great importance of the Writ, and speaks of it as the " princi- pal bulwark of liberty," "the great fundamental law of human liberty," " the inestimable right of personal liberty. To repel that presumption the language must be strong, unequivocal, which no one can pretend the clause to be, as a yielding of such power to the President. He reaffirms and reargues to prove the President to be the most suitable and trustworthy guardian of the sacred trust. The writer reaffirms his own position, that the President is the least suitable, the least trustworthy functionary of the whole government ; but, in- stead of rearguing the matter, he will do vastly better, by adopt- ing the language of Daniel Webster, than whom the country has produced no higher authority on constitutional questions. The following quotation is from that most perfect specimen of pure eloquence ever uttered in our language, his denunciation of the one man power: This is the nature of constitutional liberty ; this is our lib- erty. Whoever has engaged in her cause has strug- gled for the accomplishment of that object. On the long list of the champions of human freedom there is not one name dimmed by the reproach of advocating the extension of executive power. On the contrary, the uniform, steady purpose of all such champi- ons has been to limit and to restrain it.

Chapter 5 : The Writ of Habeas Corpus | Philippine e-Legal Forum

*The Writ of Habeas Corpus and Mr. Binney (Classic Reprint) [John T. Montgomery] on blog.quintoapp.com *FREE* shipping on qualifying offers. Excerpt from The Writ of Habeas Corpus and Mr. Binney The clause, as it now stands, and as it was submitted to the States.*

Etymology[edit] From Latin habeas, 2nd person singular present subjunctive active of habere, "to have", "to hold"; and corpus, accusative singular of corpus, "body". In reference to more than one person, habeas corpora. These are the opening words of writs in 14th century Anglo-French documents requiring a person to be brought before a court or judge, especially to determine if that person is being legally detained. Et hoc nullatenus omittatis periculo incumbente. Et habeas ibi hoc breve. Hereof in no way fail, at your peril. And have you then there this writ. Viscount of said Island, Greeting. We command you that you have the body of C. We command you that the body of Charles L. Craig, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Honorable Martin T. Manton , United States Circuit Judge for the Second Judicial Circuit, within the circuit and district aforesaid, to do and receive all and singular those things which the said judge shall then and there consider of him in this behalf; and have you then and there this writ. Similarly named writs[edit] The full name of the writ is often used to distinguish it from similar ancient writs, also named habeas corpus. Habeas corpus ad deliberandum et recipiendum: Habeas corpus ad prosequendum: Habeas corpus ad respondendum: Habeas corpus ad testificandum: Origins in England[edit] Further information: English law Habeas corpus originally stems from the Assize of Clarendon , a re-issuance of rights during the reign of Henry II of England. No Freeman shall be taken or imprisoned, or be disseized of his Freehold , or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the land. Blackstone explained the basis of the writ, saying "[t]he king is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted. A previous law the Habeas Corpus Act had been passed forty years earlier to overturn a ruling that the command of the King was a sufficient answer to a petition of habeas corpus. The codification of habeas corpus took place in the context of a sharp confrontation between King Charles II and the Parliament , which was dominated by the then sharply oppositional, nascent Whig Party. The Whig leaders had good reasons to fear the King moving against them through the courts as indeed happened in and regarded habeas corpus as safeguarding their own persons. The short-lived Parliament which made this enactment came to be known as the Habeas Corpus Parliament - being dissolved by the King immediately afterwards. Then, as now, the writ of habeas corpus was issued by a superior court in the name of the Sovereign, and commanded the addressee a lower court, sheriff, or private subject to produce the prisoner before the royal courts of law. A habeas corpus petition could be made by the prisoner him or herself or by a third party on his or her behalf and, as a result of the Habeas Corpus Acts, could be made regardless of whether the court was in session, by presenting the petition to a judge. The privilege of habeas corpus has been suspended or restricted several times during English history , most recently during the 18th and 19th centuries. Although internment without trial has been authorised by statute since that time, for example during the two World Wars and the Troubles in Northern Ireland , the habeas corpus procedure has in modern times always technically remained available to such internees. Since the passage of the Human Rights Act , the courts have been able to declare an Act of Parliament to be incompatible with the European Convention on Human Rights , but such a declaration of incompatibility has no legal effect unless and until it is acted upon by the government. However, rather than issuing the writ immediately and waiting for the return of the writ by the custodian, modern practice in England is for the original application to be followed by a hearing with both parties present to decide the legality of the detention, without any writ being issued. If the detention is held to be unlawful, the prisoner can usually then be released or bailed by order of the court without having to be produced before it. With the development of modern public law, applications for habeas corpus have been to some extent discouraged, in favour of applications for judicial review. Some legal experts questioned the constitutionality of the act, due in

part to limitations it placed on habeas corpus. The rights exist in the common law but have been enshrined in the Constitution Act , under Section Ten of the Charter of Rights and Freedoms. Suspension of the writ in Canadian history occurred famously during the October Crisis , during which the War Measures Act was invoked by the Governor General of Canada on the constitutional advice of Prime Minister Pierre Trudeau , who had received a request from the Quebec Cabinet. However, a superior court always has the discretion to grant the writ even in the face of an alternative remedy see May v Ferndale Institution. France[edit] A fundamental human right in the " Declaration of the Rights of Man " drafted by Lafayette in cooperation with Thomas Jefferson , [26] the guarantees against arbitrary detention are enshrined in the French Constitution and regulated by the Penal Code. The safeguards are equivalent to those found under the Habeas-Corpus provisions found in Germany, the United States and several Commonwealth countries. The French system of accountability prescribes severe penalties for ministers, police officers and civil and judiciary authorities who either violate or fail to enforce the law. The judicial authority, guardian of individual liberty, ensures the observance of this principle under the condition specified by law. Article , paragraph 1 of the Basic Law for the Federal Republic of Germany provides that deprivations of liberty may be imposed only on the basis of a specific enabling statute that also must include procedural rules. Article , paragraph 2 requires that any arrested individual be brought before a judge by the end of the day following the day of the arrest. For those detained as criminal suspects, article , paragraph 3 specifically requires that the judge must grant a hearing to the suspect in order to rule on the detention. Restrictions on the power of the authorities to arrest and detain individuals also emanate from article 2 paragraph 2 of the Basic Law which guarantees liberty and requires a statutory authorization for any deprivation of liberty. In addition, several other articles of the Basic Law have a bearing on the issue. The most important of these are article 19, which generally requires a statutory basis for any infringements of the fundamental rights guaranteed by the Basic Law while also guaranteeing judicial review; article 20, paragraph 3, which guarantees the rule of law; and article 3 which guarantees equality. In particular, a constitutional obligation to grant remedies for improper detention is required by article 19, paragraph 4 of the Basic Law, which provides as follows: If no other jurisdiction has been established, recourse shall be to the ordinary courts. The extension to non-state authorities has its grounds in two cases: The Indian judiciary has dispensed with the traditional doctrine of locus standi , so that if a detained person is not in a position to file a petition, it can be moved on his behalf by any other person. The scope of habeas relief has expanded in recent times by actions of the Indian judiciary. It was also filed by the Panthers Party to protest the imprisonment of Anna Hazare , a social activist. Ireland[edit] In the Republic of Ireland , the writ of habeas corpus is available at common law and under the Habeas Corpus Acts of and A remedy equivalent to habeas corpus is also guaranteed by Article 40 of the constitution. It does not mention the Latin term, habeas corpus, but includes the English phrase "produce the body". The court must then investigate the matter "forthwith" and may order that the defendant bring the prisoner before the court and give reasons for his detention. The court must immediately release the detainee unless it is satisfied that he is being held lawfully. The remedy is available not only to prisoners of the state, but also to persons unlawfully detained by any private party. However the constitution provides that the procedure is not binding on the Defence Forces during a state of war or armed rebellion. The full text of Article Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law. A remedy equivalent to habeas corpus was also guaranteed by Article 6 of the Constitution of the Irish Free State , enacted in That article used similar wording to Article The relationship between the Article 40 and the Habeas Corpus Acts of and is ambiguous, and Forde and Leonard write that "The extent if any to which Art Prior to the amendment, a prisoner had the constitutional right to apply to any High Court judge for an enquiry

into her detention, and to as many High Court judges as she wished. If the prisoner successfully challenged her detention before the High Court she was entitled to immediate, unconditional release. The Second Amendment provided that a prisoner has only the right to apply to a single judge, and, once a writ has been issued, the President of the High Court has authority to choose the judge or panel of three judges who will decide the case. The power of the state to detain persons prior to trial was extended by the Sixteenth Amendment , in Since the Sixteenth Amendment, it has been possible for a court to take into account whether a person has committed serious crimes while on bail in the past. Italy[edit] The right to freedom from arbitrary detention is guaranteed by Article 13 of the Constitution of Italy , which states: No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law. In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void. Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished. The law shall establish the maximum duration of preventive detention. Malaysia[edit] In Malaysia , the remedy of habeas corpus is guaranteed by the federal constitution, although not by name. Article 5 2 of the Constitution of Malaysia provides that "Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him". As there are several statutes, for example, the Internal Security Act , that still permit detention without trial, the procedure is usually effective in such cases only if it can be shown that there was a procedural error in the way that the detention was ordered. New Zealand[edit] In New Zealand , habeas corpus may be invoked against the government or private individuals. In , a child was allegedly kidnapped by his maternal grandfather after a custody dispute. The father began habeas corpus proceedings against the mother, the grandfather, the grandmother, the great grandmother, and another person alleged to have assisted in the kidnap of the child. The mother did not present the child to the court and so was imprisoned for contempt of court. Pakistan[edit] Issuance of a writ is an exercise of an extraordinary jurisdiction of the superior courts in Pakistan. A writ of habeas corpus may be issued by any High Court of a province in Pakistan. Article of the Constitution of the Islamic Republic of Pakistan , specifically provides for the issuance of a writ of habeas corpus, empowering the courts to exercise this prerogative. Subject to the Article of the Constitution, "A High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any person, make an order that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without a lawful authority or in an unlawful manner". The hallmark of extraordinary constitutional jurisdiction is to keep various functionaries of State within the ambit of their authority. Once a High Court has assumed jurisdiction to adjudicate the matter before it, justiciability of the issue raised before it is beyond question. The Supreme Court of Pakistan has stated clearly that the use of words "in an unlawful manner" implies that the court may examine, if a statute has allowed such detention, whether it was a colorable exercise of the power of authority. Thus, the court can examine the malafides of the action taken. In , after the Plaza Miranda bombing , the Marcos administration, under Ferdinand Marcos , suspended habeas corpus in an effort to stifle the oncoming insurgency, having blamed the Filipino Communist Party for the events of August Many considered this to be a prelude to martial law. After widespread protests, however, the Arroyo administration decided to reintroduce the writ. In December , habeas corpus was suspended in Maguindanao as the province was placed under martial law. This occurred in response to the Maguindanao massacre. The declaration suspends the writ. This is now known as the Criminal Procedure Act c. It is still in force although certain parts have been repealed. Spain[edit] The present Constitution of Spain states that "A habeas corpus procedure shall be provided for by law to ensure the immediate handing over to the judicial authorities of any person illegally arrested".

Chapter 6 : The writ of habeas corpus and Mr. Binney | York University Libraries

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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 7 : Habeas corpus, Constitution of India, Detention of b

Habeas Corpus: A Response to Mr. Binney by Horace Binney, S S Nicholas starting at $ The Privilege of the Writ of Habeas Corpus Under the.

Habeas corpus means show the detained body. If a person wrongfully detained, then his relatives can file this writ with the High court. The court then orders, the police officer or the person who has the custody of that person, to present the detained person. Thereafter court examines the validity of the detention. If court thinks fit, may set the person free. Therefore, this writ treated as protection against wrongful detention or to life and liberty of person. Such a writ can issued in following example cases When: Thus, Habeas corpus writ protects the liberty of individual against arbitrary detention. The writ petition filled by a person whose right infringed. Habeas corpus writ is applicable to preventive detention also. This writ issued against both public authorities as well as individuals. Grounds of Issuance of Habeas corpus The following stated below are grounds for the grant of the writ of Habeas corpus: The applicant must detained and in custody; 2. The writ of Habeas corpus can filled by the husband or wife or father or son of the detainee. Before, the writ of habeas corpus could not filled by strangers. But now the position of writ completely changed with the pronouncements of the Supreme Court in a number of cases. Even a postcard written by a detainee from jail or by some other person on his behalf inspired by social objectives could taken as a writ-petition. A person has to present the writ petition of Habeas corpus only to one judge of the court. Person has no right to present successive applications for habeas corpus to different Judges of the same court. All the formalities to arrest and detention have not followed by the authority. The order to arrest has made malafiedly or for collateral purpose. When a Magistrate did not report the arrest to the Government of the Province as required under Section 3 2 of the Punjab Safety Act, , the detention held illegal. Hence complete description of the detainee must contain in the order of detention. It may be noted in this connection that the sufficiency of the material on which the satisfaction is based cannot be subject of scrutiny by the Court. It also refused to dismiss a petition merely on the ground that it does not disclose a prima facie case invalidating the order of detention. It has adopted the liberal attitude in view of the peculiar socio-economic conditions prevailing in the country. People in general are poor, illiterate and lack financial resources. It would therefore be not desirable to insist that the petitioner should set out clearly and specifically the ground on which he challenges the order of detention.

Chapter 8 : Browse subject: Habeas corpus | The Online Books Page

Bullitt, John C. (John Christian) () A review of Mr. Binney's pamphlet on "the privilege of the writ of habeas corpus under the Constitution." High-resolution images are available to schools and libraries via subscription to American History,

Chapter 9 : Full text of "The writ of habeas corpus and Mr. Binney"

The Federal Writ of Habeas Corpus: 18 U.S.C. Â§ and 18 U.S.C. Â§ The Latin phrase habeas corpus translates to "you have the body." In the legal sense, Habeas Corpus, in the Federal Court, is a petition that claims that you are being detained against your U.S. constitutional rights.