

Habeas corpus in the context of war on terror essay example

[Experience](#), [Belief](#)



The writ of habeas corpus is one of the major developments that brought significant transformations in law. “habeas corpus” is a doctrine that is based on the argument that an individual should not be unlawfully detained. According to Anderson (2006), the doctrine states that “the prisoner or detainee should be brought before the court to decide on the lawfulness of a person’s detention or imprisonment”. The doctrine has been used on regular occasions in various countries. In the United States, habeas corpus can be used by the federal courts to determine the validity of a prisoner’s detention by the state. Besides, Zellick & Sharpe (2003) states that the doctrine can also be applied in scrutinizing any extradition process applied, the nature of bail, as well as the court’s jurisdiction. Whereas the role of this principle is well outlined in the United States’ Constitution, its application in certain cases has been a source of controversy. Particularly, the applicability of this doctrine with regard to terror detainees has been a source of a serious debate in the United States. To the end, the focus of this paper will be discussing the right of habeas corpus in the context of terror. To effectively and exhaustively address this issue, of great interest will be explaining the historical evolution of this doctrine, its suspensions in the United States, its present relevance, and various court interpretations in various cases.

The history of habeas corpus dates back to 1305, during the reign of King Edward 1 in England. As Robertson (2012) argues, in this period, habeas corpus entitled any prisoner to a court hearing in protection of the rights of freedom and liberty. The principle is normally referred to as the “Great Writ” in English Common Law, which was codified in 1641. Bator (2010) further states that the process issuing the doctrine of habeas corpus was first laid down

in the Habeas Corpus Act 1679, after a number of judicial rulings were made restricting its effectiveness.

In the United States, the application of this doctrine was borrowed from the English Common Law. The Constitution of the United States particularly contains the process of habeas corpus in the Suspension Clause. According to this clause, as Abrams and Neuborne (2011) point out; habeas corpus privilege should not be suspended, unless the safety of the public requires it in cases of invasion or rebellion. The importance of this doctrine in the history of the American Constitution is reflected by the fact that it was incorporated in the constitution during its creation, whereas other crucial individual rights were incorporated later on in the Bill of Rights. A point to note is that in the United States, habeas corpus is a civil *ex parte* process, where the courts question the legitimacy of the custody of a detainee or prisoner. In addition to being applied on checking on the jurisdiction of the court that issued the sentence, Levin-Waldman (2012) adds that it is also applied in challenging other kinds of custody, especially in case of pretrial detention.

According to Bradley, Farer and Martin (2007), in various past occasions, the doctrine of habeas corpus has been suspended in the United States. The notable occasion was in the eras of Presidents Abraham, during the period of the Civil War, and Ulysses Grant, in the Reconstruction period. President Lincoln suspended this doctrine at the time of the civil war. However, in the case of *Ex parte Merryman*, Roger Tanney, the Chief Justice, excluded the suspension of the doctrine of habeas corpus by a sitting president. He came to a conclusion that the power of suspension is upon the congress, as stated

in the constitution. Therefore, the President's decision was an oversight on the requirements of the constitution regarding the suspension of the habeas corpus. Nevertheless, the Congress later ratified the suspension in 1863.

Following this ratification, the military was allowed to temporarily detain people before they were forwarded to and judged by the civil courts.

According to Stimson (2003), the suspension was uplifted following President Lincoln's assassination, and the power for the suspension was once again bestowed before the Congress. In 1871, President Ulysses Grant also suspended the habeas corpus. This occurred during his fight against the Ku Klux Klan, to ensure that the arrested and imprisoned clansmen were not bounced from captivity by legislators. Nevertheless, the suspension only affected the South, which made it relatively domestic.

Longley (2012) is of the opinion that the applicability of the suspension of habeas corpus was put into place in the recent past in the fight against terror. In 2006, based on Military Commissions Act of 2006, President Bush approved the suspension of this doctrine, citing similar reasons put forth by President Lincoln during the Civil War. In the case, Bush held that the doctrine should not be applicable for people believed to be "fighters of the enemy" in the Global War on Terror. His decision raised various controversies, especially with regard to how the United States would determine who is an "enemy fighter." Following this suspension, hundreds of arrested terror suspects were held in a military base in Guantanamo Island. The prisoners had no right to a court case, and many were tortured to reveal their terror network and their involvement in terrorism.

According to Margulies (2006), the relevance of habeas corpus in the United

States on the war on terror has normally taken a different approach, especially as terror suspects are branded enemy fighters by the government security agencies. The Constitution has given the Federal government the right to suspend the writ of habeas corpus and hence the autonomous power to detain any individual suspected to be an enemy of the state especially. After the 9/11 attack, President Bush applied this right as the war on terror took a different direction, and declared that terror suspects were illegal fighters or enemy fighters. The President was supported by the Congress, which led to the detention of many terror suspects in Guantanamo Bay prison. The pentagon also supported his move, because they perceived the prisoners as enemies of the state; hence threat to national security. The war on terror has had its fair share of abuse of civil liberty among terror suspects as they were held in military base without the right to a fair trial. Schmidt, Shelley & Bardes (2011) state that the Supreme Court interpretation of the right of habeas corpus put to test during the case of Boumediene v. Bush in 2008. The case was writ of habeas corpus submission made on behalf of Lakhdar Boumediene in a United State civilian court. Mr. Boumediene, a naturalized citizen of Bosnia and Herzegovina, was being held without trial at the Guantanamo Bay detention camp in Cuba. The detention camp is a naval base in Cuba, which was leased from the Cuban government, but the American exercises the complete control and jurisdiction over it. The court case was decided with a 5-4 majority rule, which sought to exercise the right of habeas corpus on the detained individual as the Military Commission Act of 2006 was put to task by the judges.

Schmidt, Shelley & Bardes (2011) further argue that the act was viewed as un-constitutional; and thus, it guaranteed the right of habeas corpus on Mr. Boumediene. The dissent of four supreme justices in the case sought to explain the procedures as prescribed by the Congress that the right of habeas corpus was guaranteed in the case, and thus there was no need to suspend the writ. The views of the four dissenting judges was sought to find the sovereignty of Cuba and the location of the Guantanamo Bay, which is located in Cuba. The four judges viewed the case as a contravention of the Congress mandate in safeguarding the civil liberty on prisoners.

It is imperative to note that the doctrine of habeas corpus has been looked at from various perspectives. For instance, according to the Constitution, the role of the President, as the Commander-in-Chief, has been granted the power to alter the writ of habeas corpus in a case of an invasion or national security threat. In addition, Schmidt, Shelley & Bardes (2011) are of the opinion that the president can alter the doctrine of the right of habeas corpus if he perceives that the situation has been guaranteed in the Constitution. On the other hand, the role of Congress regarding the issue has been clearly stipulated in constitution. The congress has a right to suspend this doctrine in case of national threat or invasion as mandated by the constitution. This right was put into practice during the Bush administration, when the congress suspended the right of habeas corpus and led to the set-up of a military detention camp in the Guantanamo naval base in Cuba. According to Bradley (2010), " the Supreme Court forms part of the judicial system in the United States constitution, which is mandated with protecting civil liberty while at eh same times making sure that the law of the land are

being followed” The judicial philosophy guides the Supreme Court to exercise civil liberty in ensuring that arrested individuals are not detained without the right to a trial as it seeks to ensure the right and freedom of such individual. In conclusion, in the fight against terror in very country uses all its power to ensure that its citizens are protected and the government system operate well. The balance between civil liberty and national security usually raises a lot of issues in terms of what is the best way to ensure the progress of both issues in a country. A country’s administration has a right to ensure the liberty of its citizens and at the same time protect them against any danger or terror both internal and external. A country may choose to suspend the civil liberty of terror suspects in its fight against terror attacks in its quest to ensure national security.

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