

Research paper on civil liberties habeas corpus and the war on terror

[Law](#), [Criminal Justice](#)



Habeas corpus is originally a Latin word that means that any government prisoner is entitled should have the right to challenge incarceration terms before a judge in a court of law. It is a legal procedure giving the suspect an undeniable right. The person who happens to be restraining another individual's liberty is subjected to explain to the court why he/she is doing so. Without satisfactory reason for the restraint, the person is released. The term was mostly used in England simply as a subpoena. It has a rich history in England since it even precedes Magna Carta in 1215. The kings used it to make the people appear before the jury and testify. In 1679 in England, it was made into an act and protected and populace people from being arrested with no charges. It was used in the times of Magna Carta, but it was an unwritten rule (Haugen, 2009).

Habeas corpus was unknown in most of civil law England systems that devolved from Justinian and Roman law. The European law systems favor collective authority while the habeas corpus mostly goes in the favor direction of an individual. Thus habeas corpus is a common law system. Norman intruders challenged the common law from 1066 to 1640s leading to beheading of king Charles 1 (Doyle, 2006). This law exhibits a war between the state and an individual. It reduces the states power since an individual can challenge the state to tell him/her why they are been restrained. It came to evolve in such a manner that by 19th century it included even the ones held by pure private process. This is an extension since it previously dealt only with the ones held by states.

In America, the writ of habeas corpus was established by the times of the civil war in America. This was after the whole of England had adopted it. It is

found in the constitution of America at article 1 section nine (9) and states “ The privilege of the writ of habeas corpus shall not be suspended unless in a case of rebellion or invasion of public safety”. The writ of habeas corpus appears to like an afterthought since it was not initially included in the Bill Of Rights. James Madison spearheaded the motion to put it in the bill of rights solely convincing the congress to make the necessary changes (Haugen, 2009). This was in the year 1791, 15th December, which was two years after the ratification of the constitution.

Habeas corpus right violation is not a severe civil liberty imaginable but in itself is capable of disguising more than one and very severe civil rights violations. Adolf Hitler at his heights signed the night and fog decree and abolished habeas corpus in many cases that anti government sentiments were greatly suspected. The signing of the decree helped Hitler disguise the atrocities ha perpetrated against the Jews. In Russia, the habeas corpus act was disregarded and many imprisonments were conducted which the media and the whole world termed as frightening (Doyle, 2006).

United States has been the greatest disregarder of the habeas corpus in present times. Many people who believed that he did not handle the suspects captured in Iraq and Afghanistan well criticized Bush greatly. The suspects were captured and flown to Guantanamo bay, which is beyond the United States jurisdiction, and inhumane methods were administered in trying to get information about terrorism. This was done to the culprits without any judicial review and meaningful trial. The number of suspects caught was frighteningly high. The current president (Obama) and the democratic congress made promises to the Americans that they would

reestablish the act.

It is a fundamental principle to respect civil rights and liberties in America. In American constitution the writ of habeas corpus privilege is not to be suspended unless public invasion and cases of rebellion require it. Habeas corpus has a literal meaning that is produce the body. It is a court order that requires any suspect arrested by the government to be presented in a court of law and the arrester explain to the judge the reason for the arrest.

It has developed in such a manner that if the court does not order it, the suspect can request for it. Since the judge has the powers to order for an explanation from the jailer, the judge also possesses powers to order the release of the suspect. In America, the Chief Justice Rehnquist and the Supreme Court limited use of habeas corpus since many prisoners in the death row have took advantage of it in order to delay their executions. Those who support habeas corpus argue that since the judges protect the constitution they should not be denied from judging themselves.

This right to challenge for ones arrest has been added in international human rights standards and is exercised by use of extraordinary process in the countries that still embrace the common law system (Doyle, 2006).

In the case of Ex parte Dred Scott who was a physician slave who had been promised to be freed in the occurrence of his masters death. This did not however happen. He was still a detained slave. Dred Scott did not give up and petitioned the court for Writ of Habeus Corpus. Federal district court and federal court of appeals granted the habeas corpus but the supreme court overturned it arguing that was a slave and no a person. They argued that through the constitution of the United States he did not have the right to

petition for writ of Habeas Corpus.

During the leadership of President Lincoln at the times of the civil war, the chief justice by then Justice Roger Tanney expected the president to suspend the writ of habeas corpus in a case of Ex parte Merryman but it did not happen. He concluded that only the congress had the power to overturn article 1 section 9 (Haugen, 2009). After the ex parte case and assassination of President Lincoln, the Supreme Court went ahead and decided that the congress was the only government branch that had the power to suspend the writ. They also went ahead and stated that the military had no jurisdiction in the trials of civilians in during the post civil war.

Bush and Lincoln are two presidents that signed the suspension of the writ of habeas corpus. In October 2006, the president went ahead and signed the suspension of the right of Habeas Corpus to persons the united states government determined as enemy combatants in fight of global terrorism. Also in November, the president also gave a military order to detain, treat, and try of specific non-citizens as a way forward in the fight against terror. The presidents' decision were greatly criticized and argued on the methodology to be used in determining who was an enemy combatant (Doyle, 2006). The president is the one who was to determine who the enemy to the Americans was. Jonathan Turley a professor of constitutional law stated that it was a real shame in the American History for the president to support military commissions act law and suspend the writ of habeas corpus. He had revoked 200 years of American values and principles. President Lincoln also has suspended the writ and upheld the military

commission act law. They argued that they did so in prevention of war.

Eventually a combatant status review tribunal has been formed which is used to determine whether the detainees are unlawful combatants.

Because of the president suspending the Writ of habeas corpus, a case was filed in the Supreme Court for a case known as Hamdan and Rumsfeld. Judge James Robertson heard the case and the ruling was in favor of Hamden. The three judges later reversed the decision followed by the nomination of Roberts to the US Supreme Court. Later it was declared that the order was unconstitutional which was after it had decided it had the jurisdiction.

According to the United States there seems to be a slight difference between the commander in chief of the armed forces and the commander in chief of the American people. The people who commands and sets strategies the military is to use as a way of ensuring that the peoples will is served is the armed forces commander in chief elected by people.

In an argument between Arlen Specter and the attorney general Gonzalez the argument indicates that there are amendments that should be made in the writ of habeas corpus. The attorney general argues out that the not every individual in the United States is assured of the right of habeas Corpus (Haugen, 2009). The constitution states that the habeas corpus right shall be simply not be suspended except in cases of invasion or rebellion. It is also at the disposal of the president in case there is an emergency and the president deals there is a terror threat.

The citizens become liberty's voice and hand over all the powers of defending the constitution and the people's rights to the legislators. In cases where the legislators fail in their duties to defend the people's constitution they should be simply replaced by others who are willing and active in to perform the duties (Doyle, 2006).

The idea of granting the terrorists rights are of great danger to the country. Although some may argue that the rights will help improve the relationship of the country with the enemies, it does not make the world a safer place. It makes the world a dangerous place for the civilians and the war soldiers. Thus, the congress should not at all undermine the government's powers to detain the illegal combatants (Haugen, 2009). This means that the rights reward acts of treachery with privilege. According to Geneva Conventions, the unlawful combatants are not even entitled to be prisoners of war let alone granted access to the United States courts. Thus granting the rights to these unlawful enemy combatants cripples integrity and the war laws. The rights granted to these terrorists also impede the efficiency of military operations. The military work under very strenuous conditions and adding these rights that impede their work makes their working conditions unbearable. The disadvantages are great. They also cripple the intelligence gathering process. This awards the enemy combatants enough time to comprehend and learn what to tell the intelligence thus crippling it.

This is to say that imposing of these procedures over the armed conflict conduct damages the national security making the enemy combatants more

dangerous. The drive is based on views of the constitution that are erroneous and disregard the war realities.

Reference

Habeas corpus: From England to empire. (2010). Cambridge, Mass: Belknap Press.

Doyle, C., & Inkus, S. W. (2006). Federal habeas corpus. Hauppauge, N. Y: Nova Science Publishers.

Rothwell, E. (2009). Habeas corpus. Mosman: IMinds.

Top of Form

Habeas corpus. (2009). Mosman: IMinds.

Bottom of Form

Haugen, D. M., & Musser, S. (2009). Criminal justice. Detroit: Greenhaven Press.

Top of Form

United States. (2009). Habeus [sic] corpus and detentions at Guantanamo Bay: Hearing before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the Committee on the Judiciary, House of Representatives, One Hundred Tenth Congress, first session, June 26, 2007. Washington: U. S. G. P. O.

Bottom of Form

United States. (2009). Upholding the principle of habeas corpus for detainees. Washington: U. S. G. P. O.

Reinhart, C., & Connecticut. (2009). Habeas corpus petitions by inmates sentenced to death. Hartford: Connecticut General Assembly, Office of

<https://assignbuster.com/research-paper-on-civil-liberties-habeas-corpus-and-the-war-on-terror/>

Legislative Research.

United States. (2009). Habeas corpus proceedings and issues of actual innocence: Hearing before the Committee on the Judiciary, United States Senate, One Hundred Ninth Congress, first session, July 13, 2005.

Washington: U. S. G. P. O.