

Civil liberties, habeas corpus, and the war on terror essay sample

[Society](#), [Terrorism](#)



The war on terror presents an unpredictable challenge for the United States. Throughout history, the motivation of man's self-interest has concluded in the domination of those with little or no power. Habeas Corpus is written in the constitution as a right of the people and should be a safeguard to protect all accused persons, but many presidents have found ways not to enforce the right. In history the writ of habeas corpus has been challenged by many president from Lincoln to most recently Bush with abuse of power by the president. I will exam whether the president goes against the constitution to protect the safety of its citizens in a time of war or is it an abuse of power because the president is the commander and chief. Is the president acting on behalf of the people or is it a personal agenda.

Habeas Corpus in Latin, means, " You have the body." According to our text habeas corpus means, " a demand by a court to a jailer to produce the prisoner and announce the charges" (Waldman-Levin, 2012, 5. 7). In my opinion for most Americans, habeas corpus protects a prisoner and it also allows a prisoner to indicate that his/her constitution guarantees rights to a fair trial. " From a political point of view, the great value of habeas corpus is that it protects citizens from a dangerous tendency which is generally found in those who exercise the powers of government" (S. G. F., 1888, pg. 454). Habeas corpus is important when it comes to a prisoner questioning why he/she is being held or imprisoned. The Habeas Corpus Act was formed in 1679 and is used to keep an individual from being unlawfully imprisoned.

The historical evolution of habeas corpus date back to the Magna Carta in 1215. English tradition of habeas corpus is as follows: " While habeas corpus

originally was the prerogative writ of the King and his courts, the passage of hundreds of years' time has permitted it to evolve into prerogative writ initiated by the person restrained, or someone acting in his interest rather than by the King or his court. Magna Carta obliquely makes reference to habeas corpus through express reference to "the law of the land". From Magna Carta the exact quote is "...no free man shall be taken or imprisoned or disseised or exiled or in any way destroyed except by the lawful judgment of their peers or by the law of the land" (Habeas Corpus The Most Extraordinary Writ, pg. 1, para. 2).

Article I, Section 9 of the American Constitution state: "The Privilege of the writ of Habeas Corpus shall not be suspended, unless when in Case of Rebellion or Invasion the public Safety may require it." Habeas Corpus is used in different ways in Modern times. Some examples of Habeas Corpus in modern times are: Persons who are in police custody but who are not charged with a crime. Persons who are awaiting trial but have been unable to make bail and person on death row that have appealed or challenged their death sentence. "For most Americans, habeas corpus is the cornerstone of our legal system: the principal constitutional check on arbitrary government power, allowing an arrested person to challenge the legality of his detention" (Wert, 2011)

There have been many president throughout history that have tried to abuse their power and suspend the writ to habeas corpus. "The first proclamation to remove the Writ of Habeas Corpus was made in September 1862. Not only did this proclamation, which had no scheduled end, remove the writ, it also

established Marshall Law. It gave full power to close down “ hostile, anti-war newspapers,” and to arrest individuals for protesting the war. Lincoln removed a great deal of power from the legislative branch with this proclamation. He was not empowered under the Constitution to make such a declaration. In fact, that right belonged to Congress alone” (Pulito, 2011, para. 3-4). Lincoln found it necessary to suspend habeas corpus to protect the people. At the time it was important for Lincoln to put the country first even if it meant going against the constitution.

The most recent account of a president abusing the power of presidency took place after the terrorist attacks on the United State on September 11, 2001. Under the Bush Administration the United States invaded Afghanistan after the attacks on September 11, 2001. All persons detained for questioning and interrogation were held in Guantanamo Bay, Cuba. “ In this compelling account of the Bush administration’s unprecedented mistreatment of accused Iraqi War Prisoner, the author (Mac Arthur Justice Ctr., clinical faculty, Univ. of Chicago Law Sch.)-who was lead counsel in *Rasul v. Bush*, the 2004 Supreme Court case, in which the court ruled against lawless detentions-recounts that trial in fascinating detail. In addition, he included gruesome examples of beatings and techniques of emotional abuse approved by Defense Secretary Donald Rumsfeld in 2003 that disdain congressional oversight of the executive branch, the military code of conduct, and the Geneva Conventions that require humane treatment of prisoners. These prisoners are mostly victims of large-scale sweeps made in

Iraq and have been proven guilty of nothing more than being in the wrong place at the wrong time” (Helicher, 2006, para. 1).

The differences between Lincoln suspending the writ of habeas corpus and Bush suspending the writ are that Lincoln was trying to save the whole country. If Lincoln would not have suspended the writ of habeas corpus then the United State may not be the free Nation that it is today it may be 50 separate colonies and not 50 United States. Whereas Bush in suspending the writ of habeas corpus generally did not justify the savior of the whole country. Yes the attacks of September 11, 2001 were a horrid act, but was the terrorist attacks an actual takeover of the United Sates and it Government.

“ Unlike President Bush, Lincoln directly addressed this question. He went to Congress. He said, “ I may have stepped over the line here. Here is my problem. Here is my situation. I was faced with this thing. Do I abide by the law and let the whole country fall apart or do I violate this one law and therefore save the whole country? Well, that’s a difficult question to answer, you know, and there was no simple answer, but at least Lincoln put it on the agenda. He said, “ This is a serious problem.” President Bush has never even admitted there’s any kind of problem. He just [blithely] goes his own way acting as if there is not Constitution. Now, the other thing is in the Civil War, the United States face the greatest crisis in its history and the greatest threat to its existence as a nation.

The attack of 9/11 was a tragic thing but it didn't threaten the existence of the United States and there was no though that Al Qaeda today is actually going to overthrow the government of the United States. In conclusion throughout history many president have used the presidential power to suspend the writ to habeas corpus. During the Civil War Lincoln suspended the writ. In World War I freedom of speech was suppressed. In World War II President Franklin D. Roosevelt suspended the writ by imprisonment of Japanese American after the bombing of Pearl Harbor. The most recent account was by President Bush after the attacks on September 11, 2001. In my opinion habeas corpus is written in the constitution to protect the people and the president should not have the power to suspend the writ without the approval of the Supreme Court.

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