

# Habeas corpus in the us constitution in the context of the war on terror essay ex...

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## **Habeas Corpus, Explained**

According to Fallon and Meltzer (2007), the writ of habeas corpus serves as a protection against unlawfully made arrests. The US Constitution states that it “ shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it” (U. S. Const. art. I, § 9). Therefore, habeas corpus serves as a remedy against unwarranted arrests stated under the US Constitution and it shares relevant connections to other constitutional civil rights protections.

The use of habeas corpus is highly relevant to other civil rights such as fair trial and due process. Under the US Constitution, citizens accused of committing crimes have the right to “ a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed” (U. S. Const. amend. VI). At the same time, the US Constitution provides that no state shall “ deprive any person of life, liberty, or property, without due process of law” (U. S. Const. amend. XIV, § 1). Those constitutional amendments refer to the requirements of a legally made arrest, which is the presence of a just cause and the subsequent requirement of a court trial for the arrested (Fallon and Meltzer, 2007). The rights to fair trial and due process are crucial in determining the justness of an arrest done to any citizen. Without both of those rights, any citizen could face arrest at the behest of the government regardless if the reasons are just or not.

The application of habeas corpus by the Supreme Court is set within

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particular limitations. Firstly, the Supreme Court has no power to grant habeas corpus in cases outside the ambit of judicial power indicated in Article III, § 2 of the Constitution. Secondly, the Supreme Court could issue habeas corpus only under its appellate jurisdiction; otherwise, the move would be unconstitutional. Thirdly, the specifications provided by Congress bind the appellate jurisdiction of the Supreme Court, hence disabling it to have constitutional or common-law authority over lower courts (Oaks, 1962).

## **History of Habeas Corpus**

As early as the 12th century, judicial records have shown the use of writs with the same effect as habeas corpus. The Magna Carta of 1215 indicated the importance of habeas corpus, the original usage of it being a political power by the government to call upon prisoners to testify in trials. Yet, habeas corpus began to reform itself as a writ that has favored citizens – that if there are no substantial justifications for their imprisonment, the state must release them (BBC News, 2005).

The writ of habeas corpus is originally a common law principle that enabled greater intervention of state authorities on issues concerning detention. A habeas corpus law established in 1679 institutionalized said writ to fend off chances of state abuse. Originally, habeas corpus had a wider scope in that it aided the state in conducting arrests. With the emergence of more specific rules in arresting citizens, habeas corpus became more prominent as a principle that enshrines the idea of lawfully arresting citizens (BBC News, 2005).

In the US, habeas corpus took cues from the English model. There is an

official recognition of the original use of said writ, which is to enable state officials to call upon suspected citizens and inquire them of involvement in any crime. In *Marbury v. Madison*, decided in 1803, the Supreme Court held that its application of the original use of habeas corpus has limited use in “Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party” (U. S. Const. art. III, § 2; Oaks, 1962).

## **Suspension of Habeas Corpus in the US**

The time of President Abraham Lincoln saw the suspension of habeas corpus in the US. The Civil War has played a key role to the suspension of the writ during Lincoln’s period. The war, which saw states that broke away from the union, deemed crucial the continuity of overland supply lines. Some of the supply lines passed through Maryland, a state whose loyalty to the federal government became doubtful. The problem over Maryland prompted Lincoln to allow General Winfield Scott to suspend habeas corpus under the suspension clause (U. S. Const. art. I, § 9), effectively enabling him to arrest disloyal members of Maryland’s legislative body (Dueholm, 2008).

The move of Lincoln to suspend habeas corpus met the ire of one of the arrested personalities John Merryman. His counsel contested Lincoln’s habeas corpus suspension before the Supreme Court, in which Chief Justice Roger Brooke Taney ruled that only a congressional act could enable the suspension of habeas corpus. Lincoln’s snub against the ruling became a precedent for the judiciary not to touch on the matter again. Currently, suspending habeas corpus would lie on both congressional and presidential actions (Dueholm, 2008).

In the year 2011, the US Senate approved an anti-terrorism bill that threatened the suspension of habeas corpus on any citizen deemed a terrorist by the government. Said scenario brings forth underpinnings of martial law – one that has bred oppressive regimes. President Barack Obama has planned to veto the bill but not on the grounds of a possible emergence of martial law, but rather due to the reduced governmental power to move suspects of terrorism from prison facilities in Guantanamo Bay, Cuba to those within the US (Powell, 2011).

## **Habeas Corpus and the War on Terror**

The writ of habeas corpus poses a significant role in the US government's war on terror. Terrorism is, by all means, a threat to the security of the people, and it is through that in which both the president and Congress agreed that it renders an application of the suspension clause under the habeas corpus provision in the US Constitution. Yet, it has elicited divided opinion among members of the Supreme Court, with many agreeing to the suspension of habeas corpus over matters pertinent to terrorism and some disagreeing due to particular statutory conflicts. Enemy combatants, as in the case of *Hamdi v. Rumsfeld*, are among those targeted by the suspension of habeas corpus (Fallon and Meltzer, 2007).

## **Supreme Court Interpretation on Enemy Combatants**

The Supreme Court recognizes congressional action favoring public security as a factor in affirming the suspension of habeas corpus. In *Hamid v. Rumsfeld* (2004), American citizen Yaser Hamdi faced an arrested without warrant after his designation by the US government as an enemy combatant.

Hamdi's father contested against the government before the Supreme Court. For its part, the government justified Hamdi's arrest, as it is in accordance to the passage of the Authorization for Use of Military Force by Congress days after the September 11, 2001 terrorist attacks. The Supreme Court ruled in favor of the government, albeit the sharp division in opinion. Justice O'Connor, Chief Justice Rehnquist and Justices Breyer and Kennedy affirmed the government's stand. Dissenters include Justices Souter, Ginsburg, Scalia and Stevens, all of which have cited the ban posed by the Non-Detention Act on Hamdi's arrest (Fallon and Meltzer, 2007).

## **Evaluation of Various Perspectives**

### **The President as Commander-in-Chief**

President Lincoln's suspension of habeas corpus during the Civil War has exemplified executive authority as a powerful force for the suspension of habeas corpus. Lincoln duly moved in favor of public security by preserving the continuity of supply lines across Maryland during the war through the arrest of disloyal members of the state's legislature. The urgency of said matter is so crucial to the extent that had such did not meet fulfillment, the government's defeat in the war could have transpired. Ensuring that the government has ample supplies to win the war has become the main purpose of suspending habeas corpus within specified areas (Dueholm, 2008).

Nevertheless, executive authority over habeas corpus suspension poses a large risk on civil rights protections in the event of abuse of power. The US Senate's approval of a military appropriations bill, for instance, could have

established a martial law-like system if President Obama has approved it (Powell, 2011).

## **The Congress**

The Congress plays a significant role in approving the suspension of habeas corpus, in that the Supreme Court recognizes it as the body that would determine the circumstances of suspension through relevant bills (Hamdi v. Rumsfeld, 2004). The Congress shall pass relevant bills with respective purposes for suspending habeas corpus, the main consideration being public safety. Thus, in Hamdi v. Rumsfeld (2004), the Supreme Court approved the arrest of Hamdi and rejected the premise that his arrest has been unlawful.

## **The Supreme Court**

The wisdom of the Supreme Court is highly crucial for the determination of unlawful arrests and justifying the suspension of habeas corpus. While there is an understanding that both the president and Congress dominate in decisions on suspending habeas corpus (Dueholm, 2008), the Supreme Court is nevertheless expansive in terms of considering the various laws in place that may conflict against decisions to suspend habeas corpus or in justifying the arrest of particular suspects. Yet, the Supreme Court could only accommodate habeas corpus petitions under its appellate jurisdiction, as specified earlier (Oaks, 1962).

## **My Personal Dimension**

In my view, I believe the wisdom of the Supreme Court and other federal courts in the US could resolve problems pertaining to habeas corpus. The

Supreme Court stands as the neutral arbiter between the government and other stakeholders on matters pertaining to habeas corpus, and is thus capable of preventing potential abuses that could prove hurtful for other civil rights such as the right to fair trial and due process, among others.

Maintaining national security, on the other hand, is an urgent purpose requiring expeditious responses from the government. As the suspension of habeas corpus could benefit the government in keeping terrorists away, such move could enable the government to move faster against suspicious characters subject to congressional merits (Hamdi v. Rumsfeld, 2004).

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U. S. Const. art. I, § 9.

U. S. Const. art. III, § 2.

U. S. Const. amend. XIV, § 1.

U. S. Const. amend. VI.