

## Editorial Board: Habeas Corpus

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## About this Lesson

In this lesson, students will gain an understanding of the role of habeas corpus in safeguarding the personal freedom of individuals and as a fundamental element in the due process of law. They will review the history of habeas corpus, examine and discuss specific historical situations where habeas corpus has been suspended or curtailed, and respond to these situations as editorial writers.

**Grade Level(s)****9-12****Classroom Time**

1- 45 minute class period

**Materials**

- U.S. Constitution, 1 copy per student, available at <http://www.constitutioncenter.org/pocketconstitutions>
- TV with DVD Player
- Peter Jennings Project DVD

**Student Handouts**

- Editorial Board Worksheet

**Constitution Connections**

Articles 1, Section 9

**Background**

A writ of *habeas corpus* is a court order directing a government officer to produce a prisoner held in custody so that a judge can determine if the detention has been lawful. The Latin phrase means simply “you have the body.” Yet the principle is as profound as any in American constitutional law. Known as the Great Writ, the right of the people to challenge the authority of an arrest was the only British common law doctrine enshrined in the original text of the U.S. Constitution. Habeas corpus has thus emerged as one of the cornerstones of American civil liberties and has been used in different eras as a powerful bulwark against arbitrary arrests.

Article I, Section 9 of the Constitution, however, does allow habeas corpus to be suspended during times of rebellion or invasion, when “the public Safety may require it.” This vaguely worded exception has led to several controversies during wartime. One of the central questions, raised first during the Civil War, involves the issue of whether Congress or the president has the power to suspend the writ. Another important issue concerns how to resolve the status for those detained during wartime. Can civilians be tried in military courts? Can loyal American citizens be held with enemy aliens during periods of emergency? These are the kinds of issues that the Supreme Court wrestled with during both the Civil War and World War II. Most recently, there has been a vigorous debate over the habeas corpus rights of citizens captured as enemy combatants during the war on terror, or suspected foreign terrorists detained on U.S. territory.

**Editorial Boards**

Editorial boards usually consist of the publisher, editorial page editor, and editorial writers. Writers working in the newsroom are not typically members of the editorial board. Editorial boards meet on a regular basis to discuss the latest news and opinion trends and discuss what the newspaper should say on a range of issues. When discussing an issue, they may meet with key players or reporters who have covered the issue to make an informed decision. When a decision is reached and approved by the editorial page editor and the publisher, an editorial writer is selected to write the piece. Editorials are considered the opinion of that newspaper and as such, they are not usually attributed to one writer.

**Objectives**

Students will:

- Understand the definition of habeas corpus
- Examine habeas corpus in the U.S. Constitution
- Examine the historical perspective of habeas corpus
- Understand the purpose and function of an editorial board.
- Present a position paper on the role of habeas corpus in historic and present day situations.

## **Standards**

II. How Does the Government Established by the Constitution Embody the Purposed, Values and Principles of American Democracy?

D. What is the place of law in the American Constitutional System?

## Activity

1. Before students enter the room, write “Habeas Corpus” on the board for all to see. After students are seated, distribute a copy of the United States Constitution to each student. Instruct students to find the term in the text of the document.
  - To save time, you can provide the following clues:
    - It is not in the amendments
    - It is in Article 1
    - It is in Section 9
2. Once the class has located the text, ask a student to read it aloud. Using just the information provided, ask students to define habeas corpus.
  - The Constitution does not provide a definition.
3. Explain the following to the class:
  - The National Constitution Center in Philadelphia is a museum and organization dedicated to teaching and studying the United States Constitution. To help us better understand this term, we will watch a short video clip from their Peter Jennings Project, featuring former ABC newsman, Ted Koppel.
4. Play video Part #1: Introduction to Habeas Corpus. After the conclusion of the video, ask students to define habeas corpus. Capture their responses in the front of the class for everyone to see. Provide students with the definition from the National Constitution Center’s website:
  - *The writ of [habeas corpus](#) is historically one of the earliest civil liberties, sometimes known as the Great Writ. The phrase in Latin means “having the body” or “you have the body.” When a writ of habeas corpus is issued, the officer who is in charge of a prisoner is required by court order to show cause why the prisoner is being held. Habeas corpus is a protection against arbitrary arrest.*
  - [http://www.constitutioncenter.org/constitution/details\\_explanation.php?link=060&const=01\\_art\\_01](http://www.constitutioncenter.org/constitution/details_explanation.php?link=060&const=01_art_01)
5. With the definition posted in the front of the classroom, share the following with the class:
  - We will be examining key events in the history of the United States when habeas corpus was suspended or challenged.
  - To do this, we will be forming editorial boards to examine the facts and provide an opinion on the constitutionality of the action taken.

6. Divide the class into three groups. Each will be acting as a separate editorial board, deliberating the same issue. Share the following with the class.
  - Editorial boards usually consist of the publisher, editorial page editor, and editorial writers. Writers working in the newsroom are not typically members of the editorial board.
  - Editorial boards meet on a regular basis to discuss the latest news and opinion trends and discuss what the newspaper should say on a range of issues.
  - When discussing an issue, they may meet with key players or reporters who have covered the issue to make an informed decision.
  - Positions are often decided by a simple majority vote in the editorial board meeting.
  - When a decision is reached and approved by the editorial page editor and the publisher, an editorial writer is selected to write the piece.
  - Editorials are considered the opinion of that newspaper and as such, they are not usually attributed to one writer.
7. Give each student the Editorial Board Worksheet. Provide them with the following instructions:
  - This worksheet will guide your group discussion and assist you in writing your own editorial.
8. Play video Part #2:
  - Instruct students to consider the question posed in the video: should terror detainees have the right to habeas corpus?
9. Instruct students to work in their groups, using the worksheet provided as a guide.
10. Students will complete a 250-400 word essay expressing the view of their editorial board, even if the student does not personally agree with the decision.

### **Evaluation**

- Student actively participated in group discussion; written work was well-written in persuasive form and consisted of a thoughtful consideration of the issue.
- Student somewhat participated in class discussion, work was satisfactorily written and superficially considered the issue.
- Student did not participate in class discussion; work was poorly written and did not appropriately address the issue.

## **For Further Information:**

### **Habeas Corpus**

“Habeas Corpus,” U.S. Legal Dictionary: <http://www.wvliia.org/US-Habeas-Corpus.htm>

“Habeas Corpus: A Timeline,” American Civil Liberties Union:  
<http://www.aclu.org/safefree/detention/habeastimeline.html>.

### **Lincoln and Habeas Corpus**

“Lincoln's Crackdown,” David Greenberg, Slate online magazine:  
<http://www.slate.com/id/2059132/>

“Abraham Lincoln and Civil Liberties in Wartime,” Hon. Frank J. Williams, Heritage Foundation,  
<http://www.heritage.org/Research/NationalSecurity/hl834.cfm>

“Proclamation Suspending the Writ of Habeas Corpus, September 24, 1862”  
<http://teachingamericanhistory.org/library/index.asp?document=425>

“Abraham Lincoln’s Letter to Erastus Corning, June 12, 1863,”  
<http://teachingamericanhistory.org/library/index.asp?document=612>

Ex Parte Milligan (1866), [http://www.oyez.org/cases/1851-1900/1865/1865\\_0/](http://www.oyez.org/cases/1851-1900/1865/1865_0/)

### **Executive Order 9066**

“Executive Order 9066: The President Authorizes Japanese Relocation,”  
<http://historymatters.gmu.edu/d/5154>

“Japanese American Relocation Digital Archives,”  
<http://www.calisphere.universityofcalifornia.edu/jarda/>

“A More Perfect Union: Japanese Americans and the U.S. Constitution,” Smithsonian Institute,  
<http://americanhistory.si.edu/perfectunion/experience/index.html>

Ex Parte Endo (1944) <http://supreme.justia.com/us/323/283/case.html>

### **The Military Commissions Act of 2006**

“Civil Liberties in Wartime,” Justice Learning (NPR and New York Times),  
<http://justicelearning.org/viewissue.asp?issueID=2>

“The Military Commissions Act of 2006: A Short Primer,” (Part Two) by Joanne Mariner,  
Findlaw: <http://writ.news.findlaw.com/mariner/20061025.html>

“Guantanamo Legal Battle Is Resuming,” The New York Times, Sept. 2, 2007, p.14, col. 4:  
<http://www.nytimes.com/2007/09/02/washington/02scotus.htm>

<http://jurist.law.pitt.edu/paperchase/2006/10/bush-signs-military-commissions-act.php>

## Editorial Board Fact Sheet

**Question:** Should terror detainees have the right to habeas corpus?

**Habeas corpus**-a court order directing that an officer who has custody of a prisoner present the reason why the prisoner is being held

### Article I, Section 9 of the U.S. Constitution

[The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.](#)

### Events in History When Habeas Corpus was Suspended

1) During the Civil War, President Abraham Lincoln suspended the writ of habeas corpus on eight separate occasions, including a handful of limited suspensions at the outset of the conflict that he announced without authorization from Congress and in defiance of the Chief Justice of the United States. Lincoln believed that military arrests were essential to the Union war effort and supported by the Constitution. His critics charged that the arrests were arbitrary, unnecessary and mostly political in nature. By the end of the war, nearly 14,000 Americans had been detained under various suspensions. The Congress ultimately endorsed most of Lincoln's wartime actions, though the Supreme Court later ruled in *Ex Parte Milligan* (1866) that his administration had exceeded its authority in at least one area by prosecuting some of its civilian prisoners in military courts.

2) President Franklin D. Roosevelt signed Executive Order No. 9066 in February 1942, following the bombing of Pearl Harbor and the U.S. entry into World War II. The executive order allowed military officials to remove over 120,000 Japanese-Americans and Japanese nationals from California and most of Oregon and Washington, relocating them to internment camps in the interior of the country. Though some Japanese internees were able to leave these camps by agreeing to serve in the military or by finding essential wartime jobs elsewhere, most remained under detention for the duration of the war. A divided Supreme Court upheld internment and other related wartime measures, though in *Ex Parte Endo* (1944) a unanimous Court agreed that American citizens could not be detained once their loyalty had been established.

3) Congress passed the Military Commissions Act (MCA) of 2006 to address earlier Supreme Court rulings that gave detainees at Guantanamo Bay, Cuba, the right to challenge their detention in federal courts and to receive certain minimum standards of due process. Some of these detainees were captured while fighting against American military forces in Afghanistan, but many others are suspects rounded up by the U.S. and other nations during various global operations since September 11, 2001. The U.S.

government classifies all of these figures as unlawful “enemy combatants” rather than “prisoners of war” covered by the Geneva Conventions, Many of the detainees are now undergoing what the Pentagon calls Combatant Status Review Tribunals that provide the accused with “personal representatives” but not true legal counsel, and with only limited access to review evidence in their case . The law also denies habeas corpus petitions to these detainees and limits their abilities to appeal any of the rulings against them.

*\* Please note: It is important to consider that habeas corpus falls under the broader heading of civil liberties. Japanese detention is a prime example of an episode that involves civil liberties concerns beyond just habeas corpus. Also, there is a distinction worth making between preventative arrests (suspending/ denying habeas corpus) and military tribunals (prosecuting civilians or combatants in military courts). Both can involve habeas corpus petitions, but nonetheless each represents different stages of the story.*

## Editorial Board Worksheet

**Directions:** As in an actual editorial board meeting, have your group discuss and then vote on which position they will take to answer the question “should terror detainees have the right to habeas corpus?” Use the space below to note your group’s responses. For homework, write a 250-400 word essay as if you were the writer chosen to express the editorial board’s official position.

- Good editorials briefly place their issue in historical context. What, if any, influence does the past have on this issue?
- What is the purpose of suspending habeas corpus for terror detainees?
- What is the purpose of granting terror detainees the right of habeas corpus?
- "Can the nation's security be protected without denying or suspending habeas corpus?"
- Are the reasons for denying or suspending habeas corpus legitimate, according to the Constitution?

After taking a vote to decide which position your editorial board will take, state your editorial board’s decision here:

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