



Writ of Habeas Corpus

- **Found in Article 1, Section 9 of the 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".
- A "writ of habeas corpus" is a formal written court order requiring gov't officials to present a prisoner in court and explain to a judge why a prisoner is being held.
- The basic premise is that you cannot be held against your will without just cause. The privilege of habeas corpus is not a right against unlawful arrest, but rather a right to be released from imprisonment after such arrest.
- Prevents unlawful detention of a person and protects them from being harmed by the judicial system. It is also an important protection of an individual's civil liberties. Suspension of the writ of habeas corpus is always controversial.

Suspension of the Writ of *Habeas Corpus*

- **1865- President Abraham Lincoln & The Civil War:**
On April 27, 1861, the writ of *habeas corpus* was suspended by President Abraham Lincoln in Maryland and parts of Midwestern states, including southern Indiana, during the American Civil War. Lincoln did so in response to riots, local militia actions, and the threat that the border slave state of Maryland would secede from the Union, leaving the nation's capital, Washington, D.C., surrounded by hostile territory.
- **1942- President Franklin D. Roosevelt & World War II:**
In the aftermath of the Japanese attack on Pearl Harbor martial law was declared in Hawaii and *habeas corpus* was suspended for prisoners held in American-occupied Germany.
- **1996- Oklahoma City Bombing:**
Following the Oklahoma City bombing, President Clinton signed the Antiterrorism and Effective Death Penalty Act (AEDPA). The AEDPA was intended to "deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes." The AEDPA introduced one of the few limitations on *habeas corpus*.
- **2006- President George W. Bush & War on Terror:**
The November 13, 2001 Presidential Military Order gave the President power to detain non-citizens suspected of connection to terrorists or terrorism as enemy combatants. As such, that person could be held indefinitely, without charges being filed against him or her, without a court hearing, and without legal counsel. Many legal and constitutional scholars contended that these provisions were in direct opposition to *habeas corpus*, and the Bill of Rights.

Bill of Attainder & Ex Post Facto Law

- **Found in Article 1, Section 9 of the Constitution:**
"No Bill of Attainder or ex post facto Law shall be passed."
- **Bill of Attainder:** A legislative act that declares specific person or group guilty of a crime without a trial.
- **Purpose:** reinforced separation of powers and to prevent Congress from performing judicial functions. Also embodies the concept of due process which was later reinforced by the Fifth Amendment. Constitution forbids "bills of attainder" because Founders believed that it was the job of the Court, not the Congress, to decide guilt and innocence and impose punishment.
- **Ex Post Facto Law:** Literally means "after the fact" making a behavior/act illegal that was not illegal when it was committed.
- A "retroactive law"- retroactively changes the legal consequences of acts committed or legal status of facts/relationships that existed prior to the enactment of the law.

Free Exercise Clause

- **Found in the 1st amendment of the Constitution:**
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."
- Guarantees individuals the right to practice their religion without government intervention and coercion. Also known as the "religious freedom" clause.
- **The "first freedoms" interpretation:**
holds that Congress may restrict religious activity only if it has a "compelling interest" in doing so. This means that Congress may not, for example, ban the hallucinatory drug peyote (used by some American Indian traditions) because it has no compelling interest.
- **The "nondiscrimination" interpretation:**
holds that Congress may restrict religious activity as long as the *intent* of the law is not to restrict religious activity. Under this interpretation, Congress can ban peyote as long as the law is not specifically written to target a religious practice.

Establishment Clause

- **Found in the 1st amendment of the Constitution:**
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."
- Prohibits the establishment of a church officially supported by the government and prevents the government from establishing an "official" church.
- The phrases "separation of church and state" and "wall of separation" are generally traced to an 1802 letter written by Thomas Jefferson to Baptist theologians.
- Jefferson frequently spoke of the combined effect of the Establishment Clause and the Free Exercise Clause of the First Amendment.

Interpretations of the Establishment Clause

- **Separationism:** the establishment clause prevents any government endorsement or support of religious establishments. Former House Speaker Nancy Pelosi, Justice Stephen Breyer Justice Ruth Bader Ginsburg, and Justice David Souter.
- **Accommodationism:** the government may support or endorse religious establishments as long as it treats all religions equally and does not show preferential treatment. President George W. Bush and former President Bill Clinton, as well as Justice Anthony Kennedy and Justice Antonin Scalia of the U.S. Supreme Court.
- **Preferentialism or Christian dominionism:** the establishment clause only prevents a literal Church of America from being created and does not prevent the government from explicitly endorsing Christianity. Rev. Pat Robertson and evidence suggests Justice Clarence Thomas may believe the preferentialist interpretation of the establishment clause applies to state law.

Due Process Clause

- **Found in the 5th and 14th amendments of the Constitution:**
- **5th Amendment:** "No person shall be...deprived of life, liberty, or property, without **due process of law**; nor shall private property be taken for public use, without just compensation."
- **14th Amendment:** "...nor shall any State deprive any person of life, liberty, or property, without **due process of law**".
- When a person receives "due process" it means: the government must respect all of the legal rights that are owed to a person according to law.
- Prevents violation of personal and legal rights of individuals by the federal government.

Equal Protection Clause

- **Found in 14th amendment, Section 1 of the Constitution:**
- "...nor shall **any State** deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction **the equal protection of the laws**".
- The Equal Protection Clause has been interpreted as the fulfillment of the promise that "all men are created equal" and **empowered the judiciary** to enforce that principle against the states.
- Before the 14th Amendment, the Bill of Rights protected individual rights only from invasion by the federal government. After the 14th Amendment was enacted, the Constitution also protected rights from abridgment by state leaders and governments.
- The amendment is the subject of much debate and controversy! Beginning in the 1890s, a series Supreme Court decisions interpreted the 14th amendment to "incorporate" the Bill of Rights, making portions enforceable against state governments. More later...