

Ex parte Merryman

Federal Trials and Great Debates
in United States History

Case Summary:

- *Ex parte Merryman* was a habeas corpus case challenging the military detention of John Merryman, a civilian accused of treason during the U.S. Civil War.
- Chief Justice Roger Taney determined that the Lincoln administration's policy empowering the military to arrest and detain disloyal individuals violated the U.S. Constitution.
- The case is regarded as an important milestone in the evolution of habeas corpus law.

History of the Case:

From the outset of the U.S. Civil War (1861-1865), President Abraham Lincoln was concerned that the Union cause could be undermined by Confederate sympathizers in the north. This threat was particularly strong in Maryland, a slave state that bordered Confederate Virginia and surrounded Washington, D.C. on three sides. Lincoln believed the unique nature of the Civil War called for drastic measures to ensure victory and worried that ordinary criminal processes would not be sufficiently quick or reliable to deal with the peril. In 1861, he authorized Winfield Scott, the commanding officer of the Union Army, to suspend the writ of habeas corpus anywhere between Philadelphia and Washington, D.C. and empowered military officers to arrest and detain suspected Confederate sympathizers.

On May 25, 1861, Union soldiers arrested John Merryman, a wealthy farmer believed to hold secessionist views, and held him at Fort McHenry near Baltimore on the grounds that he had interfered with Union troop movements. Merryman's attorney petitioned Chief Justice Roger Taney, who served as the circuit justice for the U.S. Circuit Court for the District of Maryland, for a writ of habeas corpus. Habeas corpus is a longstanding and flexible legal instrument for challenging an individual's detention. It requires the authority holding a prisoner to bring him or her before the court and provide the legal basis for the detention. If that basis is insufficient, the court can order the prisoner's release.

A native Marylander, Taney had been Chief Justice of the United States for twenty-five years and stayed on the Union side during the Civil War. Nonetheless, many of his critics believed he too sympathized with the rebellion in part because he had written an infamous opinion in *Scott v. Sanford* (1857), which limited Congress's ability to restrict the spread of slavery and held that African Americans had "no rights which the white man was bound to respect." The day after Merryman's arrest, Taney ordered General George Cadwalader, the officer holding Merryman in custody, to appear before him. Cadwalader refused on the grounds that President Lincoln had authorized the suspension of the writ of habeas corpus and requested a delay so he could receive further instructions from the President. Taney then issued a writ commanding Cadwalader to appear and explain why he should not be held in contempt of court, but soldiers at the Fort refused to receive the writ.

On May 28th, Taney ruled that the President did not have the power to suspend the writ and could not usurp the role of the judiciary to determine the guilt or innocence of criminal suspects. Taney subsequently released a written opinion detailing the reasoning behind his denial of the President's authority. Taney did not order Merryman's release, but instead sent a copy of the opinion to Lincoln so the President could determine how best to follow his ruling.

Taney's opinion, which was reprinted in newspapers around the country, issued a sharp rebuke to the President and a defense of the judiciary's independence from the other branches of government. In his zeal to suppress a northern rebellion, Taney argued, Lincoln had effectively assumed the powers of all three branches of government. Reasoning that the clause permitting the suspension of the writ of habeas corpus "in cases of rebellion or invasion" appeared in Article I, the part of the Constitution setting out

Congress' powers, Taney held that only Congress could suspend the writ. Moreover, because Lincoln had authorized the military to determine who had committed treason and similar offenses and to imprison them without a trial, Taney contended Lincoln had also improperly taken powers that rightfully belonged to the federal judiciary. Although some of Taney's critics in the north argued that he had overreached his own power, many lawyers (including Cadwalader's own brother, who was a federal judge in Philadelphia) concurred with Taney's legal reasoning and his defense of the importance of both the writ of habeas corpus and judicial independence.

Lincoln continued to insist that he had the power, as President and commander in chief during a time of national emergency, to suspend the writ. Congress ratified this position in 1863 by passing a law explicitly granting him that authority. In the interim, however, Merryman was indicted in the circuit court for attempting to levy war against the United States and sabotaging railroads in Maryland. He was released on bail, but never stood trial. Taney, who as circuit justice would have presided over the trial, issued a continuance delaying the start of proceedings and then fell ill, eventually dying in 1864 without having heard the case. In 1867, after the war's conclusion, a federal prosecutor signed an order announcing that the government would not prosecute the case further.

Merryman had a broader legacy than the prosecution of one man, however. Although the full Supreme Court never ruled on the case, it served as an important precedent in landmark decisions following the Civil War and during the recent War on Terror that established the right of civilians to challenge their detention by military authorities. It also stands as unusual but significant defense of judicial independence and the separation of powers during times of national crisis.

Legal Issues:

- Did the President have the power to suspend the writ of habeas corpus during the Civil War?
- Did the military's arrest and detention of Merryman violate his rights to a criminal trial?
- Did the President violate the principle of separation of powers by authorizing the military to suspend the writ and detain disloyal individuals?

Questions for Discussion:

- Lincoln argued that he needed to be able to suspend the writ of habeas corpus because of the emergency created by the Civil War. What unusual aspects of the Civil War might support this claim? Should the Constitution be interpreted differently during times of war or other crises?
- Did the Lincoln administration's response to Chief Justice Taney's ruling respect the rule of law? Could Lincoln have insisted that Merryman never be tried on the grounds that Taney's decision was incorrect and the President has a duty to enforce the law as he interprets it?
- This case seems somewhat unusual today because Taney was sitting on a "lower" court, a practice known as "circuit riding," which was abolished in 1911. Would it have made a difference if a non-Supreme-Court judge had issued the ruling in Merryman's favor? Would Lincoln have been obligated to follow conflicting rulings in different lower courts?
- Taney's opinion did not address whether Merryman had actually committed the crimes of which was accused. Would your view of this case change if you knew whether Merryman was guilty or innocent?