Overview: This seminar aims to provide historical and legal perspectives on the writ of habeas corpus. The course begins with the development of the writ in English common and statutory law in the 16th to 18th centuries, and then moves to the early 19th century in the United States with a discussion of various cases decided by the Marshall Court and the lower federal courts. Next come the antebellum, civil war, and reconstruction periods in the United States, leading up to the gradual judicial expansion of the writ in the 20th century (some, but not all, in the Warren Court), followed by judicial procedural restrictions (mostly in the Burger and Rehnquist Courts). The course proceeds with a discussion of AEDPA, which was passed in 1996 and greatly restricted the ability of federal courts to grant habeas relief to state prisoners. The end of the course focuses on executive detention through an analysis of the Guantanamo and Travel Ban cases.

Casebook: All casebook references are to ANDREA D. LYON ET AL., FEDERAL HABEAS CORPUS (Carolina Academic Press 2d ed. 2011). Please read the materials assigned for a given class in chronological order.

Grading: Grading will be based on class attendance and participation (25%) and a 20-page paper on a topic related to habeas corpus (75%). Attendance will not be taken, but absences will affect the class participation grade.

The hours for the required out-of-classroom component may be satisfied by time spent on researching and writing the paper for the seminar, participation in a post-conviction clinic, and attendance at federal court or state court post-conviction proceedings. Office hours will be on Thursday mornings at 7:30 a.m. (or another agreed-upon date and time) by prior appointment.

The Great Writ in England and the United States in the Early 1800s: Casebook pp. 1-9. Please also read (in this order) Clause 39 of Magna Carta (1215) (in statutory appendix); Bushell's Case, 89 Eng. Rep. 2 (C.P. 1670) (available on Westlaw); the English Habeas Corpus Act of 1679, 31 Car. II, ch. 2 (in statutory appendix); Somerset v. Stewart, 98 Eng. Rep. 499 (K.B. 1772) (available on Westlaw); the Suspension Clause of the Constitution, Art. I, § 9, cl. 2 (in statutory appendix); § 14 of the Judiciary Act of 1789 (in statutory appendix); Ex Parte Bollman, 8 U.S. 75 (1807); Elkinson v. Deliesseline, 8 F. Cas. 493 (1823); Ex Parte Watkins, 28 U.S. 193 (1830); and Ex Parte Dorr, 44 U.S. 103 (1845).

The Great Writ from the Antebellum Period Through Reconstruction: Please read the Habeas Corpus Bill of 1833 (in statutory appendix); the Habeas Corpus Act of 1842 (in statutory appendix); Ableman v. Booth, 62 U.S. 506 (1859); Ex Parte Merryman, 17 F. Cas. 144 (1861); Ex Parte Milligan, 71 U.S. 2 (1866); the Habeas Corpus Act of 1867 (in statutory appendix); Ex Parte McCord, 74 U.S. 506 (1869); and Tarble's Case, 80 U.S. 397 (1871). For additional reading on the Merryman case, see Brian McGinty, The Body of John Merryman (2011).

Judicial Expansion from Reconstruction through the 1960s: Casebook pp. 9-19, 279-89, 327-32, 369-80, and 20-34 (in that order). Please also read Griffin's Case, 11 F. Cas. 71 (1869); In re Ah Fong, 1 F. Cas. 213 (1874); Ex Parte Bridges, 4 F. Cas. 98 (1875); Ex Parte Royall, 117 U.S. 241 (1886); In re Schneider, 148 U.S. 162 (1893); Felts v. Murphy, 201 U.S. 123 (1906); Moore v. Dempsey, 261 U.S. 86 (1923); Johnson v. Zerbst, 304 U.S. 458 (1938); Waley v. Johnson, 316 U.S. 101 (1942); and Ex Parte Endo, 323 U.S. 283 (1944). For a perspective on finality different from that of Paul Bator, see Erwin Chemerinsky, Thinking About Habeas Corpus, 37 Case Western Reserve L. Rev. 748 (1987).


The Role of Innocence: Casebook pp. 201-76. Please also read McQuiggin v. Perkins, 133 S. Ct. 1924 (2013); and Davis v. Terry, 625 F.3d 716 (11th Cir. 2010).

AEDPA’s Statute of Limitations & the Concept of Equitable Tolling: Casebook pp. 69-90. Please also read Dodd v. United States, 545 U.S. 353 (2005); Maples v. Thomas, 132 S. Ct. 912 (2012); Cadet v. Fla. Dept. of Corrections, 853 F.3d 1216 (11th Cir. 2017); and Thomas v. Atty. General, 795 F.3d 1286 (11th Cir. 2015).


STATUTORY APPENDIX

Chapter 39 of Magna Carta, 16 John ch. 39 (1215): “No free man shall be taken or imprisoned or disseised, possessed, or outlawed, or banished, or in any way destroyed; nor shall we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.”

English Habeas Corpus Act of 1679, 31 Car. II, ch. 2: “[W]henever any person . . . shall bring any habeas corpus directed unto any sheriff . . . for any person in his or their custody . . . that the said officer . . . shall within three days after the service thereof (unless the commitment . . . were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment . . . of the charges of bringing the said prisoner . . . make return of such writ; and bring or cause to be brought the body of the party so committed or restrained, unto before the lord chancellor . . . or the judges or barons of said court . . . ; and shall then likewise certify the true charges of his detainer or imprisonment.”

The Suspension Clause of the Constitution, Art. I, § 9, cl. 2: “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.”

§ 14 of the Judiciary Act of 1789: “And be it further enacted, That all the before-mentioned courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment.—Provided, That writs of habeas corpus shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.”
Habeas Corpus Bill of 1833, 4 Stat. 632 (1833): “Either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases of a prisoner or prisoners, in jail or confinement, where he or they shall be committed or confined on, or by any authority of law, for any act done, or committed to be done, in pursuance of a law of the United States, or any order, process, or decree, of any judge or court thereof.” [Meant to allow removal to federal court of state cases involving federal revenue officers who were arrested by state authorities for enforcing the federal tariff laws, but was essentially used to remove from state to federal court cases in which federal marshals were arrested by state authorities for enforcing the fugitive slave provisions of the Compromise of 1850.]

Habeas Corpus Act of 1842, 5 Stat. 539 (1842): Allowing federal courts to issue writs of habeas corpus “in all cases of any prisoner or prisoners in jail or confinement, where he, she, or they, being subjects or citizens of a foreign State, and domiciled therein, shall be committed or confined, or in custody, under or by authority of law, or process founded thereon, of the United States or any one of them; for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, or order, or sanction, of any foreign State or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof.” [A reaction to New York’s prosecution of a Canadian, Alexander McLeod, for his role in the 1837 attack on the Caroline, an American steamboat.]

Habeas Corpus Act of 1867, 14 Stat. 385 (1867): “The several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions, in addition to the authority already conferred by law, shall have the power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States. From the final decision of any judge, justice, or court, inferior to the circuit court, an appeal may be taken to the circuit court. . . and from the judgment of said circuit court to the Supreme Court of the United States.” [The provision for appeal to the Supreme Court was repealed in 1868 over President Johnson’s veto, and led to the decision in McCordale.]