

Handout B: Chief Justice Taney and the Merryman Ruling

Directions: Read the excerpt below of Taney’s opinion in the case and then answer the questions that follow.

Background: John Merryman was a prominent Baltimore-area planter and First Lieutenant in the Baltimore County Horse Guards. Maryland Governor Thomas Hicks had ordered Merryman to aid in the destruction of several bridges north of Baltimore to prevent troops from Pennsylvania from marching through Baltimore and inciting riots. Merryman was arrested in May, 1861, for being “an active secessionist sympathizer.” He was also charged with communication with the Confederates and with treason, and he was held, without a warrant, at Fort McHenry near Baltimore. Merryman wanted to be removed from prison and charged in open civilian court, and he quickly filed a petition for a writ of *habeas corpus* with Supreme Court Chief Justice Roger Taney, sitting as a circuit court judge. (The Supreme Court was not in session.)

Deciding the case, *ex parte Merryman* (1861) Taney issued the writ of *habeas corpus* and ordered General Cadwalader of Fort McHenry to appear in the circuit courtroom with Merryman in order to explain why he should remain in custody.

Cadwalader refused to appear, saying that Merryman was charged with treason, had admitted being ready to cooperate with those in rebellion against the United States, and that President Lincoln had suspended *habeas corpus* because it was necessary to do so for the public safety.

Chief Justice Taney’s opinion

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of *Habeas Corpus* himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey Judicial process that may be served upon him.

No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise. For I had supposed it to be one of those points of constitutional law upon which there was

no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended, except by act of Congress. . .

The Constitution provides, as I have before said, that “no person shall be deprived of life, liberty, or property, without due process of law.” It declares that “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

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It provides that the party accused shall be entitled to a speedy trial in a court of justice.

And these great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me, and I can only say, that if the authority which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the Army officer, in whose Military District he may happen to be found.

In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome. It is possible, that the officer, who has incurred this grave responsibility, may have misunderstood his instructions, and exceeded the authority intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed, and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfillment of his constitutional obligation to “take care that the laws be faithfully executed,” to determine what measures he will take to cause the civil process of the United States to be respected, and enforced.

Critical Thinking Questions

1. In what ways did Chief Justice Taney charge that President Lincoln had disregarded rights guaranteed to Merryman?
2. According to Taney, who has the power to suspend *habeas corpus*?
3. Put this passage from Taney's opinion in your own words: "[I]f the authority which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the Army officer, in whose Military District he may happen to be found."
4. What did Taney order the clerk of the Circuit Court to do, and why?
5. In your own words, sum up the best argument you can to support President Lincoln's suspension of *habeas corpus*. Then, sum up the best argument you can to support Taney's position in *ex parte Merryman*. With which position, if any, do you agree? Explain your position.