U.S. Supreme Court; Fay v. Noia, 372 U.S. 391 (1963)

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(Snips)

(a) The basic principle of the Great Writ of habeas corpus is that, in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: If the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Pp. 399-402.

(b) A review of the history of habeas corpus shows that, when the Suspension Clause, Art. I, 9, Cl. 2, was written into the Federal Constitution ..., there was respectable common-law authority for the proposition that habeas corpus was available to remedy any kind of governmental restraint contrary to the fundamental law; and it would appear that the Constitution invites, if it does not compel, a generous construction of the power of the federal courts to dispense the writ conformably with common-law practice. Pp. 402-406. ...

Thus there is nothing novel in the fact that today habeas corpus in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office.

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... Only two Terms ago this Court had occasion to reaffirm the high place of the writ in our jurisprudence: "We repeat what has been so truly said of the federal writ: `there is no higher duty than to maintain it unimpaired,' Bowen v. Johnston, 306 U.S. 19, 26 (1939), and unsuspended, save only in the cases specified in our Constitution." Smith v. Bennett, 365 U.S. 708, 713.

These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression. It is no accident that habeas corpus has time and again played a central role in national crises, wherein the claims of order and of liberty clash most acutely, not only in England in the seventeenth century, but also in America from our very beginnings, and today.

Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.

Thus there is nothing novel in the fact that today habeas corpus in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office. In 1593, for example, a bill was introduced in the House of Commons, which, after deploring the frequency of violations of "the great Charter and auncient good Lawes and statutes of this realme," provided:

"Fore remedy whereof be it enacted: That the provisions and prohibicions of the said great Charter and other Lawes in that behalfe made be dulie and inviolatelie observed. And that no person or persons be hereafter committed to prison but yt be by sufficient warrant and Authorities and by due course and proceedings in Lawe . . . .

"And that the Justice of anie the Queenes Majesties Courts of Recorde at the common Lawe maie awarde a writt of habeas Corpus for the deliverye of anye person so imprisoned . . . ."10

Although it was not enacted, this bill accurately pre-figured the union of the right to due

process drawn from Magna Charta and the remedy of habeas corpus accomplished in the next century.

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"[w]hatever disagreement there may be as to the scope of the phrase `due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial . . . . We are not speaking of mere disorder, or mere irregularities in procedure, but of a case where the processes of justice are actually subverted. In such a case, the Federal court has jurisdiction to issue the writ. The fact that the state court still has its general jurisdiction and is otherwise a competent court does not make it impossible to find that a jury has been subjected to intimidation in a particular case. The loss of jurisdiction is not general but particular, and proceeds from the control of a hostile influence." (Page 9 Line 7)

"it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to the state courts to correct a constitutional violation . . . . Solution was found in the doctrine of comity between courts, a doctrine which teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." Darr v. Burford, 339 U.S. 200, 204.

The rule of exhaustion "is not one defining power but one which relates to the appropriate exercise of power." Bowen v. Johnston, 306 U.S. 19, 27. Cf. Stack v. Boyle, 342 U.S. 1; Frisbie v. Collins, 342 U.S. 519; Douglas v. Green, 363 U.S. 192. (Pg 13 Ln 2)

Holmes, writing for the Court in Moore ... said: "if in fact a trial is dominated by a mob so that there is an actual interference with the course of justice, there is a departure from due process of law; . . . [if] the State Courts failed to correct the wrong, . . . perfection in the machinery for correction . . . can[not] prevent this Court from securing to the petitioners their constitutional rights." 261 U.S., at 90-91. (Pg 14 ln 1)

Mr. Justice Holmes in his dissenting opinion in Frank v. Mangum, supra, at 348: "If the petition discloses facts that amount to a loss of jurisdiction in the trial court, jurisdiction could not be restored by any decision above." It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void.