

## *Ex parte Milligan*

This case is about Mr Milligan a citizen of the United States and a resident and citizen of the state Indiana. He was arrested on the fifth of October, 1864. This was an order from the military commandant of Indiana. The following charges were brought against him.

1. *'Conspiracy against the Government of the United States;'*
2. *'Affording aid and comfort to rebels against the authority of the United States;'*
3. *'Inciting insurrection;'*
4. *'Disloyal practices;'* and
5. *'Violation of the laws of war.'*

Milligan was found guilty by the military commission and was sentenced to death. Just before his execution he filed a petition. He argued that he should have been judged by a Grand Jury and that the military court had no jurisdiction and he therefore should be released from false imprisonment. He was not a citizen of a rebellious state, he was not a prisoner of war and he had never joined the army.

The main question in this case was if the military commission had jurisdiction to judge Milligan and if this was the case, should Milligan be given a writ of habeas corpus.<sup>1</sup>

In its judgement the Circuit Court quotes the fifth amendment of the original constitution:

*"That the trial of all crimes, except in case of impeachment, shall be by jury".*

So only in case of impeachment there could be a trial by another tribunal than a Grand Jury. The Circuit Court took the amendment very seriously and stated that the competence by the Grand Jury was furnished by the founders of the country with purpose. It was meant to protect one of the basic principles of the country, namely liberty of the people. The Court reviewed that the military commission only had jurisdiction in times of foreign invasion or civil war when the civil courts are closed and it is impossible to administer criminal justice according to law.

In its judgement the Circuit Court granted Milligan the Writ of habeas corpus, irrespective of the crimes he had committed. He had been imprisoned, tried, convicted, and sentenced to be hanged unlawfully and for that reason he was released.

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<sup>1</sup> **Habeas corpus:** ... In addition to being used to test the legality of an arrest or commitment, the writ may be used to obtain review of (1) the regularity of the extradition process, (2) the right to or amount of bail, or (3) the jurisdiction of a court that has imposed a criminal sentence.