REALIGNING HABEAS CORPUS: HOW BROWN V. DAVENPORT ATTEMPTS TO BALANCE HABEAS RELIEF WITH FEDERALISM.

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INTRODUCTION

The writ of Habeas Corpus is one of the most important facets of the American legal system. Simply, in the event a prisoner believes that one or more of their constitutional rights were violated during trial and the state courts disagree that their violation was an issue, then the prisoner can petition the federal courts for habeas relief and have them released from prison. This legal concept dates to the signing of the Magna Carta and even to Roman law.[2] Throughout its extensive history, the idea behind habeas corpus remained the same: to protect against illegal detention.[3] However, habeas corpus was only available before a final judgment was entered.[4]

The problem which faced the American legal system before Brown, Acting Warden v. Davenport[5] was molding the idea behind habeas corpus to conform to American federalism while respecting the sovereignty of the states and federal government. The Supreme Court attempts to realign nearly 60 years of habeas corpus precedent to ensure that the time-honored right respects the sovereignty and interests of the states while balancing the interests of prisoners to ensure they are not being illegally imprisoned.

THE CASE

One evening in 2007, Ervine Davenport and Annette White were driving home after an event.[6] What happened during the car ride is disputed at trial, but White was later found dead in a field.[7] At trial, Davenport sat shackled

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2. Neil Douglas McFeeley, *The Historical Development of Haberas Corpus*, 30 SW L.J. 585, 585 (1976).
3. *Id.* at 590.
4. *Id.* at 586-7.
5. Brown, Acting Warden v. Davenport, No. 20-826, 96 U. S. *1, *1 (2022).
6. *Id.*
7. *Davenport*, No. 20-826, 96 U. S. at *2.

behind a privacy screen.[8] Ultimately, the jury returned a verdict convicting Davenport of First-Degree Murder.[9]

On appeal, the Michigan Court of Appeals held that the shackles were not prejudicial to Davenport.[10] The Michigan Supreme Court held that the trial court may have violated the Fourteenth Amendment's Due Process clause in light of *Deck v. Missouri*.[11] In response, the Michigan Supreme Court remanded the case back to the trial court with instructions to determine whether "the jury saw the defendant's shackles" and, if so, "whether the prosecution can demonstrate beyond a reasonable doubt that the shackling error did not contribute to the verdict against the defendant."[12]

During an evidentiary hearing, only five jurors remembered seeing Davenport's shackles and all 12 testified that it did not influence their verdict.[13] On appeal, the Michigan Court of Appeals held "the trial court did not err in finding that . . . the shackling error did not affect the verdict."[14] The state Supreme Court declined to hear the appeal.

Davenport subsequently filed a habeas petition in federal court for the Western District of Michigan. In federal court, a magistrate and district court judge found that there was no violation of the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996[15] nor *Chapman v. California*.[16] However, the Sixth Circuit Court of Appeals held that the AEDPA did not apply, rather only *Brecht v. Abrahamson*[17] applied.[18] The Supreme Court granted certiorari because the ruling of the Sixth Circuit was in conflict with that of other circuits. The Supreme Court reversed the Sixth Circuit and held that in order for a prisoner to be granted habeas relief, the prisoner must satisfy the AEDPA, of which *Brecht* partially satisfies.[19]

8. *Id.*
9. *Id.*
10. People v. Davenport, No. 287767, 2010 Mich. App. LEXIS 1516, at *5 (Ct. App. Aug. 5, 2010).
11. *Davenport*, No. 20-826, 96 U. S. at *3.
12. People v. Davenport, 488 Mich. 1054, 794 N. W. 2d 616 (2011).
13. People v. Davenport, No. 306868, 2012 Mich. App. LEXIS 2542, at *4 (Ct. App. Dec. 13, 2012).
14. *Id.* at *6-7.
15. 28 U. S. C. §2254(d).
16. Davenport v. MacLaren, 2016 U.S. Dist. LEXIS 190407, 2016 WL 11262506, *4 (WD Mich., Nov. 7, 2016); *see also* Davenport v. MacLaren, 2017 U.S. Dist. LEXIS 157609, 2017 WL 4296808, *1-*2 (WD Mich., Sept. 26, 2017).
17. Brecht v. Abrahamson, 507 U.S. 619.
18. Davenport v. MacLaren, 964 F.3d 448, 455 (6th Cir. 2020).
19. *Davenport*, No. 20-826, 96 U. S. at *7.

BACKGROUND

The issue in *Brown v. Davenport* was when is a writ of habeas corpus appropriate. This is an issue that was inherited by American courts from English courts. The foundation for American writ of habeas corpus comes from the English judge William Blackstone who wrote the writ of habeas corpus is "when a man hath a cause of action against one who is confined by the process of some inferior court; in order to remove the prisoner and charge him with this new action in the court above."[20]

Integrating this doctrine into the American legal system was not a smooth transition. In 1807, Erick Bollman and an accomplice were convicted in the D.C. Circuit Court for treason.[21] Bollman, relying on Judge Blackstone, appealed to the Supreme Court for a writ of habeas corpus. Chief Justice Marshall wrote that the Supreme Court of the United States is not a "superior" court, as mentioned by Judge Blackstone, but is rather the ultimate appellate court.[22] Marshall also stated that Bollman was not eligible for habeas relief because he was charged in federal court.[23] Marshall then explained that habeas relief was only available to state prisoners to seek a review of their case by federal courts. Though, the opinion noted that "The state courts are not, in any sense of the word, inferior courts . . . because they emanate from a different authority and are the creatures of a distinct government."[24]

Two decades later, the Supreme Court was faced with another habeas corpus issue in *Ex Parte Watkins.* In 1829, Tobias Watkins, the U.S. Treasury Auditor, was convicted in the D.C. Circuit Court of fraudulently obtaining public money by means of treasury drafts.[25] Watkins petitioned the Supreme Court for habeas relief. The Supreme Court rejected Watkins' petition because there was already a valid and final judgement by the D.C. Circuit Court.[26] Chief Justice Marshall wrote "The law trusts [the trial court] with the whole subject . . . We cannot usurp [the power of the trial court] by the instrumentality of the writ of habeas corpus."[27]

Judge Blackstone, *Bollman*, and *Watkins* formed the foundation of the writ of habeas corpus. "The principle [of Habeus Corpus] is clear: substantive error on the part of a court of competent jurisdiction does not render

20. William Blackstone, 3, in Commentaries on the Laws of England , 129–137.
21. United States v. Bollman, 24 F. Cas. 1189, 1192.
22. *Ex parte* Bollman, 8 U.S. (4 Cranch) 75, 101 (1807).
23. *Id.* at 97.
24. *Id.*
25. United States v. Watkins, 28 F. Cas. 419, 424.
26. *Ex parte* Watkins, 28 U.S. 193, 202-03 (1830).
27. *Id.* at 207.

detention "illegal" for purposes of habeus corpus."[28] Though, the 1967 Supreme Court case *Chapman v. California* asked when does an error become harmful and entitle a defendant to habeas relief. [29]

In 1965, Thomas Teale and Ruth Chapman were convicted of first-degree murder, first-degree robbery, and simple kidnapping of a bartender in Fresno, California.[30] During the trial, Teale and Chapman did not testify. Throughout the trial, the prosecution repeatedly made comments and reminded the jury about the defendants not testifying.[31] Writing for the majority, Justice Black noted that although the case had "a reasonably strong 'circumstantial web of evidence' against petitioners, it was also a case in which, absent the constitutionally forbidden comments, honest, fair-minded jurors might very well have brought in not-guilty verdicts."[32] The Supreme Court ruled that the prosecution's comments and reminders to the jury denied the defendants their constitutional rights and made their version of evidence worthless.[33] In response, the Supreme Court developed the *Chapman* Test which says that when a constitutional error is brought up on appeal in a criminal case, the appellate court does not have to reverse the conviction, but rather require the prosecution to establish that the error was harmless beyond a reasonable doubt.[34] The question that must be asked is whether the issue contributed to the jury's verdict against the defendant; if the answer is no, then the conviction is affirmed; if the answer is yes, then the case needs to be retried without the issue.[35]

The next important case is *Brecht v. Abrahamson*.[36] In 1985, Todd Brecht was convicted of first-degree murder. After being informed of his Miranda Rights, Brecht said to police, "It was a big mistake" and then remained silent.[37] Until he testified at trial, Brecht did not tell anyone what happened during the incident. When he testified, Brecht said the shooting was an accident and gave his account of events for the first time.[38] Throughout the trial, the prosecution repeatedly reminded the jury of

28. Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harvard Law Review, 441, 466 (1963).
29. Chapman v. California, 386 U.S. 18, 18 (1967).
30. People v. Teale, 63 Cal. 2d 178, 183 (1965).
31. *Chapman*, 386 U.S. at 26-42.
32. *Id.* at 25-26.
33. *Id.* at 26
34. *Id.* at 24.
35. *Id.*
36. Brecht v. Abrahamson, 507 U. S. 619
37. State v. Brecht, 138 Wis. 2d 158, 161 (Ct. App. 1987).
38. *Id.* at 162-63.

Brecht's silence.[39] The jury ultimately returned a verdict convicting Brecht of first-degree murder.

On appeal, Brecht argued that the prosecution's comments violated his Fifth and Fourteenth Amendment rights.[40] The Wisconsin Court of Appeals found the prosecution's comments to be prejudicial and reversed Brecht's conviction.[41] The Wisconsin State Supreme Court reversed the Court of Appeals and reinstated Brecht's conviction because it held that the prosecution's comments did not prejudice Brecht and was a harmless error.[42]

Brecht subsequently petitioned for a writ of habeas corpus in federal court for the Western District of Wisconsin. The district court judge, applying the *Chapman* test, found that the prosecution's comments regarding Brecht's post-Miranda Rights silence did violate his constitutional rights and were a harmful error.[43] The 7th Circuit Court of Appeals reversed the district court and held that *Chapman's* harmful error test did not apply to federal habeas proceedings.[44] Instead of requiring the prosecution to prove that a constitutional trial error is harmless, the court required the petitioner to show that the error had substantial and injurious effect or influence on the outcome of the trial.[45] The Supreme Court affirmed the 7th Circuit. Writing for the majority, Chief Justice Rehinquist said,

> State courts are fully qualified to identify constitutional error and evaluate its prejudicial effect on the trial process under *Chapman v. California*, and state courts often occupy a superior vantage point from which to evaluate the effect of trial error. For these reasons, it scarcely seems logical to require federal habeas courts to engage in the identical approach to harmless-error review that *Chapman* requires state courts to engage in on direct review.[46]

However, in his dissent, Justice White noted that this new approach infringes on state sovereignty and is a lower standard than *Chapman*.[47]

In 1996, Congress made reforms to habeas corpus in the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996.[48] The new law said that habeas relief was only entitled to prisoners when a state court's decision was "contrary to, or involved an unreasonable application of, clearly estab-

39. *Brecht*, 138 Wis. 2d at 163.
40. *Id.* at 164.
41. *Id.* at 169.
42. State v. Brecht, 143 Wis. 2d 297, 302 (1988).
43. Brecht v. Abrahamson, 759 F. Supp. 500, 501 (W.D. Wis. 1991).
44. Brecht v. Abrahamson, 944 F.2d 1363, 1374 (7th Cir. 1991).
45. *Id.* at 1375.
46. Brecht v. Abrahamson, 507 U.S. 619, 622 (1993).
47. *Id.* at 656.
48. Antiterrorism and Effective Death Penalty Act of 1996, 1996 Enacted S. 735, 104 Enacted S. 735, 110 Stat. 1214.

lished Federal law . . .”[49] or “was based on an unreasonable determination of the facts in light of the evidence . . .”[50] The Supreme Court has interpreted this through a fair minded jurist test; habeas relief can only be granted when “it is possible fair-minded jurists could disagree that those arguments or theories [of the state court’s decision] are inconsistent with the holding in a prior decision of the U.S. Supreme Court.”[51]

ANALYSIS

Lingering in the corner of habeas corpus is the ghost of Judge Blackstone. While not always directly addressed, the above-mentioned cases have struggled to mold Judge Blackstone and the English legal system’s concept of inferior and superior courts into a form that fits American federalism.[52] The Supreme Court’s opinion in *Brown v. Davenport* is a well-executed attempt at settling the relationship between state and federal courts regarding habeas relief.

The *Davenport* Court outlines which of the three tests (*Chapman*, *Brecht*, AEDPA) lower and state courts should utilize and when. The Supreme Court notes that, regarding the present case, the Michigan Court of Appeals and Michigan Supreme Court were correct in applying *Chapman*;[53] the federal district court was correct for applying AEDPA;[54] and, the Sixth Circuit Court of Appeals was incorrect in only applying *Brecht* and not the AEDPA.[55]

Chapman, the Supreme Court writes, is the appropriate test at the state court level because it addresses the constitutional errors at trial on direct appeal and requires the prosecution to prove the issue did not have an impact on the verdict.[56] “[S]tate courts often occupy a superior vantage point from which to evaluate the effect of trial error.”[57] *Chapman* also promotes “appellants and petitioners pressing claims of constitutional error [to] serve as private attorneys general and therefore function as essential instruments for ensuring proper regard for fundamental constitutional values.”[58]

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49. 28 U.S.C.S. § 2254(d)(1).
50. 28 U.S.C.S. § 2254(d)(2).
51. Harrington v. Richter, 562 U.S. 86, 86 (2011).
52. Clarke D. Forsythe, *The Historical Origins of Broad Federal Habeas Review Reconsidered*, 70 Notre Dame L. Rev. 1079, 1103-1104 (1995).
53. *Davenport*, No. 20-826, 96 U. S. at *3.
54. *Id.* at 4-5.
55. *Id.* at 5.
56. *Id. at* 3.
57. *Brecht*, 507 U.S. at 622.
58. John M. Greabe, *The Riddle of Harmless Error Revisited*, 54 Hous. L. Rev. 59, 65.

Whereas *Chapman* is appropriate for state courts when convictions are on direct appeal, *Brecht* and the AEDPA are appropriate for federal courts when convictions are on collateral appeal. "Because the true purpose of habeas is to remedy only the most extreme constitutional violations, and because federal habeas relief entails such grave institutional costs, it is appropriate to limit federal habeas to remedy errors that had substantial and injurious effect on the jury's verdict."[59] However, "the Court puts considerations of finality and federalism at the forefront of any discussion of the scope of collateral review. One who seeks that review must justify the federal role; it is not enough to cry 'Constitution!'."[60]

The relationship between *Brecht* and the AEDPA was a large portion of the Court's opinion in *Davenport.* Pre-*Davenport*, habeas courts' analyses were varied; some were applying Brecht only; others, AEDPA only; others, a mix of Brecht and AEDPA.[61] The issue is that "Brecht and the AEDPA are different habeas analysis."[62]

Brecht requires a prisoner to merely show that the state court error had a "substantial and injurious effect or influence" on the jury's verdict.[63] This was an attempt to adapt the *Chapman* test, which was intended for review of direct appeals in state court, not for collateral review in federal habeas court.[64] Here, the ghost of Judge Blackstone can be seen; *Brecht* gave "short shrift to the State's 'sovereign interes[t]' in its final judgment."[65] *Brecht*'s standard for habeas relief allowed "federal habeas court[s] to set aside a conviction based on nothing more than 'speculation that the defendant was prejudiced by trial error' . . ."[66]

When Congress passed the AEDPA a few years after *Brecht*, it changed the habeas proceedings; rather, it intended to. The problem was that "Congress might have tried to overrule *Brecht* by passing AEDPA . . ." but, prior to *Davenport*, the Supreme Court did not directly address the relationship between *Brecht* and the AEDPA.[67] Whereas in *Brecht* a prisoner merely had to demonstrate that the state court error had a "substantial and injurious effect or influence" on the jury's verdict,[68] the AEDPA says "a federal court

59. Evan Lee, *THE THEORIES OF FEDERAL HABEAS CORPUS*, 72 Wash. U. L. Q. 151, 166.
60. *Brecht*, 944 F.2d at 1372.
61. Jeffrey S. Jacobi, *Mostly Harmless: An Analysis of Post-AEDPA Federal Habeas Corpus Review of State Harmless Error Determinations*, 105 Mich. L. Rev. 805, 827-828.
62. *Id.* at 831.
63. *Brecht*, 507 U. S. at 637.
64. *Davenport*, No. 20-826, 96 U. S. at *5.
65. *Id.* at *13.
66. *Id*; quoting Calderon v. Coleman, 525 U. S. 141, 146.
67. Jacobi, 105 Mich. L. Rev. at 827.
68. *Brecht*, 507 U. S. at 637.

may disturb a final state-court conviction in only narrow circumstances."[69] Those circumstances are when the state court's decision "was either (1) contrary to or an unreasonable application of clearly established federal law, as determined by the decisions of the United States Supreme Court, or (2) based on an unreasonable determination of the facts presented in the state-court proceeding."[70] The requirements of the AEDPA have been simplified into a fair minded jurist test; habeas relief can only be granted when "it is possible fair-minded jurists could disagree that those arguments or theories [of the state court's decision] are inconsistent with the holding in a prior decision of the U.S. Supreme Court."[71] The AEDPA allows states to have more leeway in interpreting federal laws.[72]

The incongruencies between *Brecht* and the AEDPA become apparent when the court goes to consult the body of law allowed by each rule. Under the AEDPA, "state-court decisions are measured against the Supreme Court's precedents as of the time the state court renders its decision and cannot be held unreasonable only in light of later decided cases."[73] In contrast, federal habeas courts applying *Brecht* may consult and draw upon the whole body of law; not just Supreme Court precedent at the time of the state court verdict, but also subsequent Supreme Court precedent and circuit court precedent.[74]

However, the *Davenport* Court attempts to reconcile these seemingly incongruent rules into a simpler homogenous rule. For a prisoner to receive habeas relief, the prisoner must first satisfy *Brecht* and then the AEDPA.[75] Satisfying *Brecht* alone is not sufficient.[76]

Interpreting what the Supreme Court is outlining, the rule in *Davenport* means that for a prisoner to have their case heard by a federal habeas court, the prisoner must satisfy *Brecht*.[77] For the federal habeas court to grant relief, the prisoner must satisfy the AEDPA.[78]

CONCLUSION

In the majority opinion, the Supreme Court attempts to simplify the rules of habeas relief. The Court upholds *Watkins* and *Bollman* in that a state

69. *Davenport*, No. 20-826, 96 U. S. at *14.
70. *Id.* at *4.
71. *Richter*, 562 U.S. at 86.
72. *Davenport*, No. 20-826, 96 U. S. at *24.
73. *Id.* at *16.
74. *Id.* at *16.
75. *Davenport*, No. 20-826, 96 U. S. at *7.
76. *Id.*
77. *Id.*
78. *Id.*

court's final and valid judgement on the merits is conclusive[79] unless there is deficiency in their interpretation of federal law.[80] The *Chapman* test, according to the majority, is best suited for state courts to use to determine, on direct appeal, if a constitutional violation was harmful to a defendant.[81] If a prisoner disagrees with a state court's determination that the constitutional violation was not harmful, the prisoner must meet the requirements of *Brecht* to have their petition for habeas relief considered by federal court.[82] Habeas relief will only be granted if the requirements of the AEDPA are satisfied.[83] However, just because the rules for habeas relief are now simplified, the Supreme Court reminds federal judges that granting habeas relief infringes on state sovereignty and that they are not required to grant habeas relief.[84]

79. *Ex parte* Watkins, 28 U.S. at 202-203.
80. *Ex parte* Bollman, 8 U.S. (4 Cranch) at 97.
81. *Davenport*, No. 20-826, 96 U. S. at *3 - *4.
82. *Id*, at *7.
83. *Id.*
84. *Davenport*, No. 20-826, 96 U. S. at *7.