

Civil liberties, habeas corpus, and the war on terror persuasive essay



Restricting the right to habeas corpus for the purpose of combating terrorism has been a subject of controversy in different spheres of the American society. A perusal of academic literature, popular media, and public opinion indicates that citizens of the United States including different branches of the government are divided on this important public issue. Habeas corpus is a fundamental legal system that safeguards the civil liberties of citizens against any form of arbitrary detention by the executive branch of the government. Here, it is important to note that the citizens of the United States have the right to petition a state or federal court for the purpose of requesting the court to evaluate the basis of an individual's detention. However, historical evidence shows that this fundamental right of the citizens protected by Article I, Section 9 of the United States Constitution has been suspended on several occasions. Furthermore, since the September 11, 2001 terrorist attacks, the United States has witnessed the detention of hundreds of people without trial in the Guantanamo Bay in Cuba and the Bagram Airfield in Afghanistan (Farrell, 2010; Aradau, 2008; Walzer, 2007).

The issues surrounding the recent suspensions of the habeas corpus and arbitrary detention of " enemy combatants" in Guantanamo and Bagram are complex, and they seem to have wide ranging implications in relation to territorial jurisdiction, separation of powers, and the rights of individuals. Furthermore, these issues have implications in the United States domestic statutory law, case law, constitutional law, and the international human rights law. This paper highlights the general meaning of habeas corpus as provided in the U. S. Constitution, its historical evolution and relevance to the current U. S. situation with regards to the war on terror, and the U. S.

Supreme Court's interpretation of the right of habeas corpus in relation to "enemy combatants". It then examines different perspectives on this controversial topic with reference to opinions raised by the Supreme Court justices, government leaders, and commentators in the academic and popular media. In conclusion, based on these assessments, this paper notes that the right to habeas corpus is fundamental in guaranteeing the basic rights individual citizens in different countries, but it can be suspended during emergency situations for the purpose of securing national security.

Habeas Corpus and Civil Liberties

According to the United States Constitution, habeas corpus refers to the right to seek judicial determination of the legal basis of a person's detention by petitioning a state or federal court. Therefore, habeas corpus is one of the fundamental guarantees of the civil liberties of American citizens. Here, it is important to note that the right to habeas corpus allows an independent judge to re-examine the legality of an individual's detention; hence, the judge can order the release of persons who are detained unlawfully. Most importantly, the right to habeas corpus safeguards the citizens against arbitrary arrests, torture, and extrajudicial killings, which can be advanced by various government machineries (Farrell, 2010).

The Historical Evolution of Habeas Corpus

The right to habeas corpus originated in medieval England, and it is influenced by the English (Anglo-Saxon) common law. It is a fundamental remedy at law in American systems of jurisprudence and other countries deriving their laws from the English common law. In the history of England, <https://assignbuster.com/civil-liberties-habeas-corpus-and-the-war-on-terror-persuasive-essay/>

habeas corpus precedes the Magna Carta (1215), but its precise origin is unknown. It is estimated that the principle of habeas corpus appeared in the middle ages whereby it was employed to ensure that all persons held in custody appeared in a court of law. At first, the Writ of Habeas Corpus was a preserve of the King and his courts, but later, restrained persons or their representatives were capable of initiating this writ to compel those holding them to provide the legal basis for their detention (Robertson, n. d.).

Subsequently, the Writ of Habeas Corpus was codified and enacted by parliament in 1679 as the Habeas Corpus Act of the English common law.

This allowed courts to issue Writs of Habeas Corpus in several occasions, and those judges who failed to do so were penalized accordingly. Therefore, habeas corpus was established as the primary means of guaranteeing individual liberty against the arbitrary exercise of power by the state.

In the same way, the Writ of Habeas Corpus in America originated in the English common law and practice, and it came into practice during the American Revolutionary War. Therefore, courts in all the British colonies in New England recognized the Writ of Habeas Corpus as part of the fundamental protections and rights of each citizen. Subsequently, the drafters of the United States Constitution incorporated the Writ of Habeas Corpus into Article I, Section 9 of the Constitution, which clearly states that the right to habeas corpus should not be suspended, unless there are enough reasons to do so, particularly during the time of a rebellion or invasion of public safety. This indicates that the right to habeas corpus is fundamental to the citizens of the United States considering that it was

included in the Constitution much earlier compared to other individual rights provided in the Bill of Rights (Robertson, n. d.).

Suspension of Habeas Corpus in the United States

On several occasions, the Writ of Habeas Corpus has been suspended in the history of the United States, particularly during the period of war. For instance, at the beginning of the American Civil War in 1861, President Lincoln gave orders for the right to habeas corpus to be suspended, but the Supreme Court challenged the constitutionality of the president's order by stating that the power to suspend laws was vested in Congress. However, in 1863, Congress granted the president express authority to suspend the right to habeas corpus. As a result, the right to habeas corpus was suspended in Hawaii following the United States entry into World War II (Farrell, 2010). In 1944, before the executive could restore the right to habeas corpus, an individual detainee petitioned the United States District Court of Hawaii to review the basis of his detention. As a result, the court held that the executive had no power to exercise martial law in the District of Hawaii, particularly in the absence of a direct threat to public safety. The same opinion was held by the United States Supreme Court, and thus, the petitioner was released from detention (Farrell, 2010). This implies that the executive can seek the Congress' intervention in suspending the right to habeas corpus if there are enough reasons to believe that public safety is at stake. However, the same executive authority cannot apply far beyond the period of an emergency.

Habeas Corpus and the War on Terror

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The right to habeas corpus is very relevant to the current situation regarding the war on terror in the United States. While the United States Constitution grants its citizens the right to habeas corpus in the absence of a rebellion or invasion on the country's public safety, questions have been raised on the applicability of the same law on " enemy combatants". The debate surrounding the arbitrary detentions of hundreds of people in Guantanamo Bay and Bagram Airfield tend to focus a number of issues including the status of the detainees as U. S. citizens or non-U. S. citizens, the degree to which these detainees deserve protection through the habeas corpus, and the U. S. government's interests in incarcerating and interrogating the detainees for the benefit of national security (Farrell, 2010; Fallon & Meltzer, 2007). Therefore, with the reasoning that the " enemy combatants" are non-U. S. citizens who pose sufficient threat to the United States public safety, particularly after the September 11, 2001 terrorist attacks and the war in Afghanistan, the executive is duty-bound to seek the Congress' intervention in suspending the right to habeas corpus for the detainees.

The Supreme Courts' Interpretations of the Right to Habeas Corpus

In the history of the United States, the Supreme Court has played a central role in challenging the executive's authority in suspending the right to habeas corpus. However, it is important to note that some instances regarding the suspension of the Writ of Habeas Corpus have occurred in the presence of genuine threats to public safety and invasion, particularly during the American Civil War and World War II. But, with respect to the case of *Boumediene v. Bush*, the Supreme Court stamped its authority in

interpreting the Constitution by stating that it is unconstitutional to block the <https://assignbuster.com/civil-liberties-habeas-corpus-and-the-war-on-terror-persuasive-essay/>

federal courts from reviewing petitions filed by detainees held in Guantanamo Bay in regards to their right of habeas corpus. In delivering the majority decision, Justice Kennedy noted that the United States government's practices in Guantanamo Bay were unique, but he emphasized the role of the court in acting as a check against arbitrary exercise of power by the state. Moreover, Justice Kennedy highlighted the principles of separation-of-power in guiding the Supreme Court's decision in this case (Fallon & Meltzer, 2007; Garcia, 2008).

Hence, the Court indicated that the President and Congress were wrong in stating that the U. S. Constitution could not be applied outside the United States territory. Thus, the Court ruled that the detainees had the right to petition federal courts in the United States with the intention of challenging their detention without trial. Further, the Court held that the DTA review established by the Congress could not substitute the right to habeas corpus for the detainees of Guantanamo Bay. On the other hand, while delivering the dissenting opinions, Chief Justice Roberts and Justice Scalia indicated that the detainees held in Guantanamo Bay did not possess any rights to habeas corpus as provided in the U. S. Constitution, and thus, the DTA review established by the Congress was sufficient to look into the petitions of the detainees. Moreover, Chief Justice Roberts added that the DTA review established mechanisms that could protect the detainees' rights; hence, the courts should not be involved in reviewing the detainees' petitions. Furthermore, Justice Scalia indicated that aliens detained overseas cannot be entitled to the protections of the Writ of Habeas Corpus (Fallon & Meltzer, 2007; Garcia, 2008).

Evaluation

A perusal of academic literature and public opinion indicates that leaders in the United States government, Supreme Court Justices, and the American Society in general hold divergent views as far as the issue of granting detainees held in Guantanamo Bay the right to habeas corpus is concerned. First and foremost, in 2007, the then Attorney General of the United States, Alberto Gonzalez, informed the United States Senate Judiciary Committee that the United States Constitution does not expressly grant every individual citizen in the country the right to habeas corpus. This statement sparked controversial debates across the board with some sections of the public speaking in favor the Attorney General (International Debate Education Association, n. d.). In fact, considering the language used in framing the habeas corpus clause in the Constitution, it is obvious that the clause can be interpreted to mean that the right to habeas corpus is available to a particular group of people, at a particular location, or during a specific period in the history of the country (Farrell, 2010).

Hence, it is safe to insist that the right to habeas corpus is available to citizens in the absence of direct threats to public safety or war. However, this argument should not overshadow the primary significance of the right to habeas corpus in the United States Constitution. As noted by Justice Kennedy while delivering the majority decision in the case of *Boumediene v. Bush*, the significance of the right to habeas corpus is to check whether the government's authority in restraining individual liberty is legitimate or not.

Moreover, the right to habeas corpus serves to check whether the rule of law exists in a given country or otherwise (Garcia, 2008). Again, the power to <https://assignbuster.com/civil-liberties-habeas-corpus-and-the-war-on-terror-persuasive-essay/>

conduct such checks and balances on the government is vested on state and federal courts. Thus, the President and Congress' move to block courts from reviewing petitions filed by detainees in Guantanamo Bay is unconstitutional by all means possible. However, looking at the bigger picture, the detainees in Guantanamo Bay are held at a time when the United States is facing real terrorist threats, which are bound to compromise the country's national security. As a result, the executive is in order by requesting the Congress to grant it authority to suspend the right to habeas corpus at least in the case of " enemy combatants" held in Guantanamo Bay.

Conclusion

The Writ of Habeas Corpus is a fundamental provision in the United States Constitution that protects citizens against arbitrary exercise of power by the state including arbitrary detention and torture, especially in the absence of real threats to public safety or war. Hence, persons who are detained without trial can seek judicial review from state and federal courts in compelling the government machineries to provide the basis of their detention. If the courts determine that such individuals are held unlawfully, then the courts are duty-bound to order the government to release the detainees. However, in the presence of real threats to public safety or war, the President through the intervention of the Congress can suspend the right to habeas corpus, meaning that individuals can be detained without trial. This is the basis for the detention of hundreds of people in Guantanamo Bay because they are perceived to be threats to the security of the United States owing to their terrorist activities. Therefore, while the U. S. Constitution grants express rights to habeas corpus to all U. S citizens, the United States government is <https://assignbuster.com/civil-liberties-habeas-corpus-and-the-war-on-terror-persuasive-essay/>

duty-bound to suspend the right to habeas corpus in the face of current threats to the country's national security.