

Civil liberties, habeas corpus, and the war on terror research paper

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Political Science

Federman (2010, p. 215) stated that the Writ of Habeas Corpus provides a mode of redress for violating the provisions of the due process law under the Constitution. Under the U. S. federal law, the writ has permitted the state prisoners who have been convicted to appeal their cases to the federal district court and question the basis for such judgment finding them guilty. However, it is mandatory for the federal habeas corpus courts to have jurisdiction over the subject matter before setting the case for hearing and issue a ruling based on the merits. In the event that the federal court shall rule in favor of the defendant, the case is reverted back to the state court or the defendant shall be released from imprisonment. The rationale behind the state court's action is that the federal court is supreme and that the state court has to obey the federal court ruling (Federman, 2010).

Under the English common law practice that has been adopted by the American tradition in the 19th century, habeas corpus was used by those held in jail before they are convicted. However, after the Civil War, this view has been changed and exclusively became a post-conviction remedy. The writ of habeas corpus has been availed as a relief for any person who has been convicted in a state court, can later on appeal the case before the federal court by filing an application for the writ. The traditional purpose of habeas corpus is elemental but powerful which is to allow a judge to review the legality of the detention of a prisoner (Garrett, 2012, p. 58).

This argument was reversed in the later case of Rasul vs. Bush decided in 2004, where the Supreme Court held that decision in the Eisentrager case did not negate the statutory right to habeas corpus. As an effect, the present

habeas corpus statute did not deny the privilege of litigation to the Guantanamo detainees holding that the writ of habeas corpus shall apply to the person who holds the prisoner in unlawful custody. In the opinion of Justice John Paul Stevens, the “longstanding principle” cannot be applied in this case which states that the U. S. federal legislation is presumed to have no extraterritorial application. However, the express provisions of the 1903 Lease Agreement with Cuba has granted the U. S. the option to permanently exercise full jurisdiction and control over the Guantanamo Bay Naval Base. In effect, the extraterritorial application is supported by a clear statement (Staag, 2008).

On the other hand, in the case of Hamdi vs Rumsfeld, the Supreme Court held that an American citizen who had been detained in Guantanamo Naval Base who is charged for being an enemy combatant must be afforded the right of due process and given the opportunity to defend himself to negate the U. S. government’s claims against him. In the same vein, the case of Rasul v. Bush, the Supreme Court reversed the conclusions of the Bush administration, by arguing that the Guantanamo detainees should be afforded the right to a hearing before a federal court and to question the legality of their indefinite detention. In effect, the High Court ruled in favor of the accused by ordering that the federal habeas statute should be also applied to the Guantanamo detainees.

The Bush administration swiftly moved to nullify the decision in Rasul by establishing a rigged system of military status tribunals for the purpose of ratifying previous determinations that the prisoners were enemy combatants and to stop habeas hearings from taking place in federal courts (Hafetz,

2008). In order to respond to the Rasul decision, Congress passed the Detainee Treatment Act of 2005 (DTA), which repealed the habeas statute for Guantanamo detainees and denied the federal courts the jurisdiction to rule on the application for their habeas. In 2006, there was a revision made by Congress on the DTA in the Military Commissions Act of 2006 (MCA), which removed the habeas rights of non-citizens, who had been regarded by the Executive branch as “ enemy combatant” , regardless of the fact if they were included in the Guantanamo detainees. The DTA purportedly stripped the federal courts of habeas corpus jurisdiction over the Guantanamo detainees. As a result, they have been imprisoned for more the six years without the benefit of a fair trial, or to question the constitutionality provisions of the new law which denied them of the right to file an application for a writ of habeas corpus. However, in the case of Hamdan vs. Ramsfeld, the Supreme Court rejected the court-stripping measure by nullifying the military commission created by the President and ordered that no prisoner can be detained without the baseline protections embodied in the Common Article 3 of the Geneva Conventions (Hafetz, 2011).

In the case of Boumediene v. Bush, the Supreme Court that the detainees in Guantanamo Bay or in any other place by the U. S. forces must be subject to the requirements of international law and basic rights and liberties given to U. S. prisoners. The opinion of majority of the 5 justices who ruled in favor of Boumediene was written by Justice Kennedy. Justice Kennedy stated that the privilege of the writ of habeas corpus is to give prisoners the opportunity to show by convincing evidence that he is unlawfully detained on the basis of the wrong interpretation of the law. The determination of whether there is

erroneous application of a relevant law remains to be a power of the judiciary, and not the executive branch of the government (Federman, 2010, p. 233). In addition, Justice Kennedy states that the Constitution's habeas guarantee should be made applicable to the Guantanamo Bay detainees at the base. The history of the writ of habeas corpus, based on the context of the Constitution, involves matters on separation of powers. Thus, the contention of President Bush that is empowered to create a lawless zone of undetermined executive detention which cannot be subject to the scrutiny of the judiciary is unfounded.

However, there were four justices who dissented the ruling of the majority by upholding the theory of unilateral executive power of the Bush administration. Chief Justice Roberts, together with other Justices Scalia, Thomas, and Alito, raised the issue of judicial activism by stating that what the majority of the Justices had done is to shift the responsibility involving sensitive foreign policy and national security measures to the Federal Judiciary. They accuse the majority for erroneous interpretation of the statute and establishing a different method of constitutional resolution. In effect, the Americans have lost control over the conduct of the foreign policy of the country and delegated the power to unelected and politically motivated judges who may claim unaccountability for their decisions (Alliance for Justice).

Based on my evaluation, the writ of habeas corpus based on the definition under the provision Constitution and the rulings in the Supreme Court decided cases, remains to be motionless, unless it is activated by the accused, or any person who had been convicted to violating certain rights

under the law. The writ should be made applicable to the accused wherever he may be and should be given the opportunity to question the charges against him before the appropriate tribunal. Based on the decided case of *Boumediene v. Bush*, the Supreme Court held that the Guantanamo Bay cases have activated the writ of habeas corpus back to its origin and to validate the legality of executive power. As a result, these cases involving the writ served as a means to review the reasonableness of executive detention. It also emphasized on the role of the Supreme Court to safeguard and strengthen the basic rights and civil liberties of the people whose rights have been violated.

On the other hand, the role of the President, as the Commander-in-Chief of the state during wartime is to strike a balance between protecting civil liberties and national security. Thus, as a co-equal, the judiciary has the sole power to determine the legality of executive detention imposed upon the detainees. At the same time, the role of the Executive Department during war time is to determine the proper time when habeas corpus can be suspended. This was shown in the act of Congress in creating particularly, the Detainee Treatment Act of 2005 (DTA), which limited judicial review of the Combatant Status Review Tribunals or CSRT for the purpose of determining whether each Guantanamo Bay detainee was an enemy combatant and evaluate their status if the due process requirements under the Constitution had been complied with.

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