

The Senate agrees to Imprisonment without Charges

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How can the Senate vote to ban habeas corpus?!?

It makes no sense at all. It's like voting for an end to freedom. And, yet, this is exactly what happened on Friday, November 11, when the Senate passed the (Lindsay) Graham amendment which overturns an earlier Supreme Court ruling (*Rasul vs. Bush*) allowing Guantanamo detainees to challenge their imprisonment in federal court. By a 49 to 42 margin the Senate approved the measure which effectively deprives them of the right to know why they are being held or of any legal means to defend themselves.

None of the Guantanamo inmates have ever been charged with a crime. The Senate vote ensures that they never will.

The action goes beyond a simple dispute with the high court's decision to honor the rights of so called "enemy combatants". The vote denies the prisoners any civil liberties provided under the Bill of Rights, the Geneva Conventions or any other of the human rights treaties to which the US is a signatory. It is a blatant attempt to rescind the principle that men are entitled to equal treatment under the law or that they are innocent until proven guilty. From this point on, everyone who has been caught up in Bush's "war on terror" dragnet will be presumed guilty.

Habeas corpus is the cornerstone of American jurisprudence dating back 800 years in British Law. It allows a detained person to appear before a judge to determine the legitimacy of his imprisonment, and it forces the state to charge that person with a crime if it intends to continue holding him. It is the most fundamental of all human rights, and certainly the most important. Without the protection of habeas the state is free to disregard the rule of law and jail anyone it pleases. The denial of habeas is the beginning of tyranny.

Freedom does not exist in a vacuum; it can only thrive where there are restrictions on state power. Civil liberties are the fire-wall which protects the citizen from the threat of government abuse. Habeas corpus is the foundation upon which the entire scaffolding of civil liberties is erected. It is the primary shield against the violence of the state.

Senator Lindsay Graham knows all of this; after all he's an attorney. And, yet, he has taken this extraordinary step to revoke The Great Writ of Liberty (habeas corpus) to confer absolute authority on the president.

Why?

Where is the evidence that eviscerating basic liberties improves our chances of winning the war on terror?

In case after case, the Bush administration has taken the position that the president is above the law and can imprison “terror suspects” according to his own discretion. On September 9, 2005 the administration won a crucial battle when the 3 judge panel of the 4th Circuit Court of Appeals voted unanimously that Bush could continue to imprison an American citizen, Jose Padilla, without charging him with a crime. The court said that the “Joint Resolution” issued by Congress following 9-11 authorized the President to use “all necessary force” in fighting the war on terror. This, they concurred, allows the president to ignore the Bill of Rights and act on his own judgment.

Once again, the target of Bush’s assault in the Padilla case was habeas corpus, the ideological nerve-center of American jurisprudence.

Consider [the words of Alexander Hamilton](#) who said, the writ of habeas corpus protects against “the practice of arbitrary imprisonment . . . the favorite and most formidable instrument of tyranny.”

Or, [this from Justice Antonin Scalia](#):

“The very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.”

The Bush administration, under cover of the war on terror, is marching inexorably towards a totalitarian state. Since Sept 11 they have taken steps to reconfigure the legal landscape and promote their vision of the supreme presidency. Their colleagues in the Congress and the judiciary have supported their efforts to bolster executive power while putting the president beyond the range of accountability. All the while, they have calculatingly zeroed in on the essential human right upon which liberty depends; habeas corpus, the epicenter of American freedom.

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