

# What the New York Times doesn't say about the court ruling on habeas corpus

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The *New York Times* on Thursday published an editorial on this week's appeals court ruling upholding the Military Commissions Act, which strips Guantánamo prisoners of their habeas corpus rights. The commentary, entitled "American Liberty at the Precipice," is a model of half-truths and evasions.

Typical of this leading organ of present-day American liberalism, the editorial denounces the ruling and the law it upholds while saying nothing about the complicity of the Democrats and ignoring the social reality underlying the assault on democratic rights.

The writ of habeas corpus—the right to challenge one's detention in court—is a bedrock principle of democracy and indispensable legal restraint on executive power. Without the protection of the "great writ," the president (or in an earlier period, the king) has the power to arrest and detain an individual indefinitely without giving any reason. The Bush administration, under the pretext of the so-called "war on terror," asserts that it has the right to do precisely this.

The decision handed down Tuesday by the US Court of Appeals for the District of Columbia Circuit rejected a case brought by Guantánamo detainees alleging that the Military Commissions Act, passed last September, is unconstitutional because it bars US courts from considering writs of habeas corpus "filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant."

The *Times* notes that the "frightening" law "raises insurmountable obstacles for prisoners to challenge their detentions." The newspaper adds that "it gives the government the power to take away habeas rights from any noncitizen living in the United States who is unfortunate enough to be labeled an enemy combatant."

*Times* describes the passage of the act in a manner calculated to place the entire onus on the Bush administration and ignore the critical role played by the Democrats. The act was "stampeded through Congress last fall" by the Bush administration, the editorial states, and further on declares that the Bush administration responded to last year's Supreme Court ruling striking down its military commissions by "driving" the new law through Congress.

This is a whitewash of the role of the congressional Democrats. While they could not have stopped passage of the bill in the Republican-controlled House of Representatives, they could have blocked it in the Senate, where they had more than enough votes to garner the 41 needed to mount a filibuster. They refused to do so.

In reality, the Military Commissions Act passed both houses with a significant number of Democratic votes—12 in the Senate and 34 in the House.

In facilitating passage of the bill, the Democrats allowed not only an attack on habeas corpus, but also drumhead military commissions that can use hearsay evidence and evidence obtained through torture. The law also revises the War Crimes Act to protect US officials from prosecution for war crimes and permits the president to "interpret" the Geneva Conventions.

The *Times* editorial trumpets a new measure sponsored by Democratic Senator Patrick Leahy and Republican Senator Arlen Specter that would repeal the provision denying habeas corpus rights. "With the Democrats now in charge, [Congress] is in a good position to pass a new law that fixes the dangerous mess it has made," the newspaper writes.

This is a fraud. The measure, even if it managed to pass through Congress, would be vetoed by the Bush administration, and the bill's supporters do not have

the votes to override a veto.

More fundamentally, the editorial offers no explanation for the unprecedented assault on democratic rights epitomized by the attack on habeas corpus.

It concludes with the statement, “Much has changed since September 11, but the bedrock principles of American freedom must remain,” in order to suggest that the proliferation of police-state measures is a response to the terrorist attacks on New York and Washington. According to this line, certain restrictions on democratic rights are justified by the requirements of the “war on terror,” but the Bush administration has gone too far.

This explanation does not withstand any critical examination. During the height of the Cold War, when the US was locked in a struggle for global supremacy against a massively armed world power, the right of habeas corpus was never subjected to similar attack.

In fact, the “war on terror” was contrived to serve as an all-embracing framework and political pretext for the use of military force in the pursuit of US hegemony in the Middle East and around the world. Furthermore, the events of 9/11 have never been seriously investigated, including the many unexplained aspects that point to complicity by elements of the intelligence and national security apparatus in the hijack-bombings.

The fundamental assault on democratic rights represented by the Military Commissions Act must have deep roots, and can be explained only by examining underlying social realities. At the root of the attack on democratic rights lies the enormous growth of social inequality in the US.

Over the past three decades, the American ruling elite has carried out an ever more vicious assault on jobs, social programs and all constraints on the accumulation of profit and personal wealth. Top corporate executives and large investors routinely pull in tens of millions of dollars a year, even as the living standards of the majority of the American population stagnate or decline, and ordinary working people face a lifetime of economic insecurity and an increasingly crushing burden of debt. Such enormous levels of inequality are ultimately incompatible with the maintenance of democratic forms of rule.

On the world arena, the American ruling elite has pursued a parallel policy of plunder, seeking to seize

control of the natural resources of the Middle East and Central Asia through military force.

The *Times* is incapable of addressing these issues because it, along with the rest of the political and media establishment, speaks for the small and extremely wealthy layer of the population that has benefited from the assault on working class living standards at home and the eruption of militarism abroad—hence the hypocritical and two-faced character of its purported defense of habeas corpus.



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