Habeas Corpus and the Drafting of the Universal Declaration of Human Rights

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Introduction

Until the mid-twentieth century, international lawyers generally understood a state’s relationship with its own citizens to be beyond the purview of international law. However, the events of World War II, particularly the Holocaust, profoundly altered this prevailing view. Instead, a new postwar regime emerged driven by democratic ideals and a common desire to prevent the abuses of the defeated fascist states in the future. Central to this new regime was the recognition and protection of human rights at the international level. The adoption of the Universal Declaration of Human Rights on 10 December 1948 represented the beginning of a new era of international human rights law.¹

Over the past six decades, the Declaration has served as the foundation for the development of a substantial body of human rights law. However, this period has also seen the emergence of many new challenges. In recent years, the debate over the relevance and importance of international human rights law has been brought into sharp focus. State responses to threats of terrorism and the growth of American hegemony have tested the scope of

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human rights law and the extent to which state obligations are observed. This has been especially true with regard to guarantees of personal liberty, whose application to detained terrorists has been extensively debated.

In this context, the sixtieth anniversary of the Universal Declaration of Human Rights provides the impetus to examine the Declaration’s position on perhaps the most important of these guarantees: the right to habeas corpus. From its origins in medieval England as a means of compelling the appearance of a person before a court, the writ of habeas corpus developed into a means of challenging the legality of a person’s detention. The evolution of this right in the common law was largely a product of efforts by the courts and Parliament to check the crown’s unfettered power to imprison its subjects.²

By providing for the judicial determination of the lawfulness of a person’s detention, the right to habeas corpus today provides an important safeguard against the arbitrary arrest or imprisonment of individuals by their government. It is, therefore, useful to consider how the right to habeas corpus is treated in the Declaration. At the same time, the story of this particular right is illustrative of the influences that led to the Declaration’s adoption as a nonbinding statement of general human rights principles.

This article explores the place of habeas corpus in the Universal Declaration of Human Rights. In doing so, it also tells the story of the Declaration itself. It begins by explaining the forces that shaped the movement toward international cooperation at the conclusion of World War II. Next, it details the early drafting of the Declaration, including the initial inclusion and later removal of the right to habeas corpus during the drafting process. The

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² Habeas corpus was first employed as a means of reviewing imprisonment by central courts attempting to divest lower courts of jurisdiction. Over time, courts extended the reach of habeas corpus to detentions ordered by the monarchy. In 1628 Parliament, in its “Petition of Right”, attempted to strengthen habeas corpus. During the ensuing debates, the romantic notion that habeas corpus had been guaranteed by the Magna Carta was popularized, but the Petition of Right itself generally failed to limit the crown’s power of detention. This was finally accomplished in the Habeas Corpus Act of 1679. See Brian Farrell, “From Westminster to the World: The Right to Habeas Corpus in International Constitutional Law”, Journal of International Law 17 (forthcoming, 2009). Just ten years after passage of this watershed reform, Parliament suspended the right of habeas corpus for the first time. An Act for Impowering His Majestie to Apprehend and Detaine such Persons as He shall finde Just Cause to Suspect are Conspireing against the Government, 1689, 1 W. & M., c. 7, available at <www.british-history.ac.uk/>.