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EDITORIAL

Restoring American Justice

In 2006, acting in reckless haste before an election, 65 senators and 250 members of the House defied the Constitution, endangered the safety of American soldiers and hurt the nation's global reputation by passing the Military Commissions Act. The law created a separate, substandard and clearly unconstitutional system of trial and punishment for foreigners. This week Congress has a chance to begin fixing that grievous mistake.

The Senate is expected to consider a measure that would reverse one of the worst aspects of the 2006 law — the suspension of the right of habeas corpus, the ancient principle that no governing power may lock people up without the chance for a hearing in a court of law.

The protection from arbitrary arrest, embedded in the Magna Carta and in the Constitution of the United States, is one of the most powerful weapons against tyranny in democracy's arsenal. Before President Bush, only one American president suspended habeas corpus — Abraham Lincoln, during the Civil War — and the Supreme Court duly struck down that arrogation of power.

In 2004, the Supreme Court again affirmed habeas corpus, declaring that Mr. Bush had no right to revoke the rules of civilized justice at his whim for hundreds of foreigners he declared "illegal enemy combatants." But Mr. Bush was determined to avoid judicial scrutiny of the extralegal system of prisons he created after the Sept. 11 attacks. With the help of his allies on Capitol Hill, he railroaded the habeas corpus suspension through the Republican-controlled Congress.

The administration's disinformation machine portrayed the debate as a fight between tough-minded conservatives who wanted to defeat terrorism and addled liberals who would coddle the worst kinds of criminals. It was nothing of the kind.

There is nothing conservative about expressing contempt for the Constitution by denying judicial procedure to prisoners who happen not to be Americans. A long list of conservatives, including Bob Barr, a former Republican congressman; David Keene, chairman of the American Conservative Union; and William Sessions, a former federal judge and F.B.I. director under the first President Bush, support the reinstatement of habeas corpus for the prisoners of the so-called war on terror.

This issue has nothing to do, either, with coddling criminals. Many, perhaps a majority, of the men subjected to indefinite summary detention at Guantánamo Bay were not guilty of any crime. Beyond that, American justice rests on the principle that the only way to protect the innocent is to treat everyone equally under the law. The argument by Mr. Bush's supporters that Guantánamo prisoners would clog the courts with appeals is specious.

There are many other things deeply wrong with the Military Commissions Act, which established military tribunals to try any foreigner that Mr. Bush labels an illegal combatant. It also allowed the introduction of evidence tainted by coercion and endorsed "combatant status review tribunals," kangaroo courts in Guantánamo Bay that declare prisoners enemy combatants without a real hearing or reliable evidence.

All of those issues must be addressed, speedily, by Congress, but restoring habeas corpus would be a good first step. Harry Reid, the Senate majority leader, must ensure a vote on the habeas corpus restoration measure sponsored by Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, and Arlen Specter, its ranking Republican.

It is good to see the effort led by Mr. Specter, who as chairman of the committee before the 2006 election shepherded the military tribunal law through Congress at the behest of the White House. We hope similar principle will be on display by the other Republican and Democratic senators and representatives who betrayed the Constitution and the democracy they were sworn to defend by voting for that law.

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