Habeas Corpus — Relief Other Than Release

Traditionally the writ of habeas corpus has been employed to secure release from unlawful imprisonment. Through the centuries its great object has been the liberation of unfortunates who have been illegally deprived of their personal freedom.[1] The courts of this country have generally adopted this common law concept,[2] and the great majority have refused to grant the writ when the petitioner was lawfully in custody. They hold that there must be an "illegal restraint" or the present means to enforce such a restraint.[3]

Despite the seemingly inflexible nature of these holdings and of the established precedent, attempts have been made to utilize the writ, by persons lawfully confined, for the purpose of securing *relief other than release.* Although the majority of these have been unsuccessful, they represent an inroad on the accepted concepts, and, as such, have produced a growing conflict in court decisions. This is illustrated by the statement of a Maryland court in a recent opinion to the effect that "whether *habeas corpus* is ever available to a prisoner who, though lawfully in custody, seeks such remedy upon the ground that he has been subjected to unlawful treatment is a question upon which the courts are not in entire agreement."[4]

It should be noted that cases involving the resort to habeas corpus when a prisoner has been denied credit for good conduct resulting in excessive sentence[5] are to be distinguished from the type under discussion, for in such cases the request for a writ is based on the theory that at least some period of the confinement is unlawful.

Cases Holding Habeas Corpus Proper Only to Secure Discharge

In England in 1843 the Court of Queen's Bench, in a case in which the prisoner complained that imprisonment in a certain part of the prison was not in accordance with the terms of the sentence, stated that the object of habeas corpus was "to restore liberty and not pronounce judgment as to the room or part of the prison in which the prisoner ought to be confined."[6] The case of *Sarshik v. Sanford*[7] is the latest of a line of lower federal court cases which

[1] Bailey, Habeas Corpus (1913).

[2] McNally v. Hill, 293 U.S. 131 (1934).

[3] McNally v. Hill, *supra,* note 2; United States *ex rel.* DeLucia v. O'Donovan, 82 F. Supp. 435 (N.D. Ill. 1948); Dunlap v. Swope, 103 F. 2d 19 (9th Cir. 1939).

[4] Bernard v. Warden of Maryland House of Correction, 187 Md. 273, 49 A. 2d 737 (1946).

[5] Carroll v. Squier, 136 F. 2d 571 (9th Cir. 1943).

[6] *Ex parte* Rogers, 7 The Jurist 992 (1843).

[7] 142 F. 2d 676 (5th Cir. 1944).

have denied the writ. It held that "the courts have no function to superintend the treatment of prisoners in the penitentiary, but only to deliver from prison those who are illegally detained there." Using the same reasoning the state courts of New York, Ohio, Texas, and Nebraska have recently refused relief,[8] the Nebraska court opining that, "In the absence of a special statute authorizing it, habeas corpus is not available for the purpose of inquiry into the legality of a particular form, manner or place of confinement executively or administratively imposed upon a prisoner lawfully in custody under a valid judgment." The Supreme Court of the United States has also declared that habeas corpus as a remedy should be used solely to obtain the discharge of a prisoner.[9]

Cases Holding Habeas Corpus Improper if Other Remedy Available

A second class of cases, in refusing the writ when it was sought for relief other than discharge, has relied not upon the above-mentioned rule, but rather upon one equally well established, the rule that habeas corpus will not lie if there is avaliable any other adequate remedy.[10] English and Canadian courts have so held.[11] An Oklahoma court in two cases in which the prisoner complained that he was held in solitary confinement and placed on a bread and water diet, said that "relief will not be granted by habeas corpus until the legal remedies provided by law have been denied or exhausted without relief."[12] It is pointed out that under a state statute the prisoner could complain to the Board of Prison Control or appeal to the Governor. A series of recent Maryland cases based on *State* ex rel *Renner v. Wright*[13] has also held that a prisoner alleging mistreatment by prison officials should protest to the State Board of Correction rather than seek a writ of habeas corpus.[14] A New York court has indicated that other relief first should be

[8] People v. Slattery, 38 N.Y.S. 2d 11 (1942); *Ex parte* Lee, 85 N.E. 2d 135 (1948). (Based on a statute which corresponds to the common law); *Ex parte* Thompson, 32 Tex. Crim. Rep. 274, 22 S.W. 876 (1893); Application of Dunn, 150 Neb. 669, 35 N.W. 2d 673 (1949). *But see In re* Tani, 29 Nev. 385, 91 Pac. 137 (1907).

[9] McNally v. Hill, *supra*, note 2; United States *ex rel.* Quirin v. Cox, 317 U.S. 1 (1942); Eagles v. United States *ex rel.* Samuele, 329 U.S. 304 (1946).

[10] Goto v. Lane, 265 U.S. 393 (1923); Berkoff v. Humphrey, 159 F. 2d 5 (8th Cir. 1947); Byrd v. Pescor, 163 F. 2d 775 (8th Cir. 1947).

[11] *Ex parte* Cobbett, 136 Eng. Rep. 940 (1848); Beaudin v. Landriault, 38 Con. Crim. Cas. 12 (1921).

[12] *Ex parte* Terrill, 47 Okla. Crim. Rep. 92, 287 Pac. 753 (1930); *Ex parte* Perry, 47 Okla. Cr. Rep. 156, 287 Pac. 755 (1930).

[13] 188 Md. 189, 51 A. 2d 668 (1947).

[14] State *ex rel.* Jacobs v. Warden of Maryland Penitentiary, 59 A. 2d 753 (1948); State *ex rel.* Baldwin v. Superintendent of Maryland State Reformatory for Males, 63 A. 2d 323 (1949).

sought.[15] The fact that these courts have entertained requests for relief other than release without immediately dismissing them on the basis of the limitation discussed in the preceding paragraph seems to indicate an attitude of increasing liberalization on the part of some jurisdictions.

Possibly, since these courts generally imply that "the problem is for the other branches of the government,"[16] the concept of separation of powers and a hesitancy to usurp particular functions of other branches of government is, in these situations, the principal cause of the courts' reluctance to grant the writ. None of these cases, however, discusses the propriety of granting the writ if the petitioner alleges that he has exhausted all remedies available in the other branches of government without obtaining relief.

CASES GRANTING HABEAS CORPUS FOR RELIEF OTHER THAN DISCHARGE

A few cases which well may be regarded as a third and liberal class have allowed a habeas corpus proceeding in the type of situation under discussion despite the limitations which controlled in the two classes already considered.

In Ex parte *Rider*,[17] the prisoner complained that she was prevented by prison authorities from privately conferring with her lawyer. The court granted the writ saying:

> A person may be said to be *unlawfully restrained* of his liberty so as to be entitled to the writ of *habeas corpus* when, *though lawfully in custody*, he is deprived of some right to which, even in confinement, he is lawfully entitled under the Constitution or laws of this state of the United States, the deprivation whereof serves to make his imprisonment more onerous than the law allows. . . . (Emphasis supplied.)

The court In re *Kemmerer*[18] declared that if the petitioner was suffering any unusual punishment he could always present a petition for a writ of habeas corpus. In In re *Pinaire*,[19] the court allowed a habeas corpus proceeding but decided that the method of treatment for nervousness, about which the petitioner complained, was proper under the circumstances. The leading case of this liberal classification is a federal court case, *Coffin* v. *Reichard*.[20] In that instance, an inmate of a United States Public Health Service Hospital presented a petition in a United States District Court requesting permission to file for a writ of habeas corpus on the ground that he was being cruelly treated by guards of that institu-

[15] People v. Slattery, 38 N.Y.S. 2d 11 (1942).
[16] People v. Slattery, *supra*, note 15.
[17] 50 Cal. App. 797, 195 Pac. 965 (1920).
[18] 309 Mich. 313, 15 N.W. 2d 652 (1944).
[19] 46 F. Supp. 113 (N.D. Tex. 1942).
[20] 143 F. 2d 443 (6th Cir. 1944).

tion. The District Court dismissed the petition whereupon the petitioner appealed. The Eighth Circuit Court, in its opinion, said:

> Any unlawful restraint of personal liberty may be inquired into on habeas corpus. In re *Bonner*, 151 U.S. 242, 14 S. Ct. 323, 38 L. Ed. 149. This rule applies although a person is in lawful custody. His conviction and incarceration deprive him only of such liberties as the law has ordained he shall suffer for his transgressions.
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> A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits. Logan v. United States, 144 U.S. 263, 12 S. Ct. 617, 36 L. Ed. 429.
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> When a man possesses a substantial right, the courts will be diligent in finding a way to protect it. The fact that a person is legally imprisoned does not prevent the use of habeas corpus to protect his other inherent rights.
>
> 28 U. S. C. A. 461 authorizes the court in habeas corpus proceeding to dispose of the party as "law and justice require." The judge is not limited to a simple remand or discharge of the prisoner, but he may remand, with directions that the prisoner's retained civil rights be respected, or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution.

A request by the government for certiorari was denied by the Supreme Court.[21]

Under Sections 451 and 452 of Title 28, United States Code (1946), the scope of the writ has been held to be the same as under the common law;[22] but Section 461 of Title 28, United States Code (1946) cited above in *Coffin* v. *Reichard*,[23] has been interpreted by some federal courts to be an extension of the common law writ.[24] The language of the latter section has been retained in the amendment of Title 28[25] with the exception of the word "party" has been replaced by the word "matter" which may signify an intention to further extend the scope of the writ.

The various attitudes which have motivated the courts in reaching their conclusions in this third class of cases are apparently as follows:

1. Requests for the writ of habeas corpus are not to be technically considered, but liberally regarded.[26]

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[21] 325 U.S. 887 (1944).

[22] *Ex parte* Parks, 93 U.S. 18 (1876).

[23] *See* note 21, *supra*.

[24] Medley, Petitioner, 134 U.S. 160 (1890); Bryant v. United States, 214 Fed. 51 (8th Cir. 1914); Whitaker v. Mathues, 9 F. 2d 913 (3rd Cir. 1925).

[25] 62 STAT. 965 (1948), 28 U.S.C. §2243 (Supp. 1946).

[26] Holiday v. Johnston, 313 U.S. 342 (1941).

2. The term "illegal restraint" does not connote a confinement or imprisonment totally illegal, but *any restraint of liberty,* any denial of a right occuring during a lawful detention.
3. The judicial branch of the government should consider complaints of petitioners for the writ of habeas corpus and if necessary order that corrective measures be taken although the petitioner may not have exhausted all remedies available including those through other branches of the government.
4. The writ of habeas corpus may be used as a vehicle to accomplish step 3 and is no longer regarded as a device, the use of which must result, in the event of a finding in favor of the person invoking it, in complete discharge from custody.

HABEAS CORPUS AS REMEDY

The recency of most of the cases having as their objective the securing of a remedy other than complete release, and the fact that many such requests for the writ of habeas corpus are now being made which are not found in reported cases[27] seem to indicate that the courts will be increasingly confronted with the problem of whether or not the writ is proper under these circumstances. It is suggested that if the concept of habeas corpus is held to be that set out in step 4 above, the courts in the interests of justice, particularly in those instances where the person detained has been unsuccessful in obtaining deserved relief through entreaty directed to the executive branch of the government, should liberally regard petitions for the writ. If, however, the interpretation of the writ is such that unless the unlawful condition is corrected release is *mandatory,* granting the writ would certainly be unreasonable. To loose upon society an individual who admittedly should be detained simply because of a wrong perpetrated against him by another would be absurd. It is doubtful that all courts will early agree on either of these theories.

The legislatures of the various jurisdictions, both federal and state, could do much to clarify the issue if they would plaintly define what is meant by the term "any unlawful restraint or detention" and would also declare whether a habeas corpus proceeding must necessarily result in complete release or something less than that.

[27] Goodman, *Use and Abuse of the Writ of Habeas Corpus,* 7 FED. RULES DEC. 313 (1948).

OTHER POSSIBLE REMEDIES

To avoid the existing confusion in the courts in attempting to cope with this problem, it would perhaps be more desirable to have available other means of obtaining relief. The alleviation of a prisoner's plight might be accomplished by reliance on the criminal sanction or civil liability imposed by the Civil Rights Act.[28] It might also be accomplished by the issuance of a writ of mandamus; but this writ is generally classified as an extraordinary legal remedy and certain definite requisites must exist before the courts will recognize a petition for it. The right of the petitioner must be clear and the duty of the officer, performance of which is to be commanded, must be plainly defined and ministerial rather than discretionary.[29] Because of this inflexible nature of mandamus, it seems clear that to rely on it to solve the problem presented in the type of case under discussion would be unsatisfactory.

A better solution apparently lies in bringing injunction proceedings against the party responsible for the unlawful treatment. It is the general rule that equity will not protect *personal* rights and interests;[30] however, in recent years this doctrine has been severely attacked, and many courts have enjoined acts which were an infringement on these rights, although recognizing a vague property right as the basis for such action.[31]

CONCLUSION

Considering the above remedies, together with that of habeas corpus, in the light of their applicability to the type of case discussed in this article, it appears that the equitable remedy, the injunction proceeding, is perhaps the most reasonable and practical; therefore, a suggested solution to the problem presented by a request for relief other than release is the acceptance by the courts of the injunction as a method of protecting personal rights and liberties and the employment of it to grant relief without altering the lawful detention of the complainant.

J. Robert Donnelly

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[28] Gordon v. Garrson, 77 F. Supp. 477 (E.D. Ill. 1948).

[29] United States *ex rel.* Roughton v. Ickes, 101 F. 2d 248 (D.C. Cir. 1938).

[30] McCLINTOCK, EQUITY 426 (2d Ed. 1948).

[31] McCLINTOCK, EQUITY 426 (2d Ed. 1948); Moscovitz, *Civil Liberties and Injunctive Protection*, 39 ILL. L. REV. 144 (1944).