

Recent legislation in the United States Senate, about to be considered by the House of Representatives, would limit federal habeas corpus, the legal procedure by which prisoners can go to federal courts to argue that they were unconstitutionally punished or sentenced. Under current procedures, a habeas corpus petition, based upon newly discovered evidence, must "make it more likely than not that no reasonable juror would have convicted the petitioner." Under the new legislation, a habeas corpus petitioner would have to bring forward evidence "clearly and convincingly" establishing that no reasonable juror would have convicted him. The shift from a "more likely than not" to a more stringent "clear and convincing evidence" standard makes it more difficult for a prisoner to succeed in habeas corpus review. The change is designed, in large part, to reduce the, often lengthy, period between the imposing of a death sentence upon a convict and his execution. Critics of the new legislation point out that in the last twenty years fifty-four Americans under sentence of death have been released from prison because of evidence of their innocence.

Is the new legislation limiting federal habeas corpus review morally justifiable? If so, why? If not, why not?

MODERATOR'S ANSWER: The recent legislation about to be considered by the Senate limiting habeas corpus procedures is morally unjustifiable. Reducing the period between a sentence of death and the imposition of the death penalty might enhance the symbolic impact of particular punishments and enable the families of victims to arrive more rapidly at a sense of closure in regard to the process of meting out justice to the offender, which tends to be fraught with psychological pain for victims' families. Neither of these consequences, however, outweigh concern that the limitations upon habeas corpus review in the newly proposed legislation make it more likely that innocent individuals will be put to death. If there were reason to believe that the newly proposed legislation will prevent the deaths of innocent persons then the moral issues in connection with it would be more difficult to decide. It seems, however, that there is no reason to believe this.

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