

Erosion of Due Process in National Security and Administrative Law

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Abstract

This paper examines the erosion of due process within the framework of administrative law, with a specific focus on national security concerns post-9/11. It explores the expansion of executive authority, the use of classified evidence during trials, and preventive detention, all of which have significantly undermined procedural safeguards such as habeas corpus. Through an analysis of key judicial rulings and scholarly literature, the paper discusses how national security measures designed to address emerging threats have led to a weakening of individual rights and legal protections. Particular attention is given to the judiciary's role in providing oversight, as well as the challenges it faces in balancing security and civil liberties.

Findings indicate that a spillover effect of national security policies on domestic criminal law exists, highlighting how procedural shortcuts adopted in terrorism-related cases have begun to influence broader criminal justice practices. Ultimately, the paper argues for the reinforcement of judicial oversight and procedural due process to preserve the rule of law in democratic societies. This research contributes to the broader scholarly discourse on the intersection of national security and civil liberties, emphasizing the need for a balanced approach that safeguards individual rights while addressing contemporary national security challenges.

Keywords: Due Process, Habeas Corpus, National Security, Judicial Oversight, Executive Authority, Preventive Detention

Introduction

The balance between national security and individual rights has been a key issue in administrative law. The attacks on September 11, 2001, profoundly impacted the U.S. legal system and significantly affected the civil liberties of many individuals. Under the guise of national security, the U.S. government introduced and implemented policies that expanded executive powers, which many refer to as warrantless detentions. These actions have led to significant concerns regarding the erosion of due process rights. Practices such as preventive detention, the use of classified evidence in trials, and other extraordinary measures have become standard and continue to generate significant concerns within the U.S. justice system.

Problem Statement

This research's central issue is examining the erosion of due process protections, particularly the right to habeas corpus, for individuals detained under national security policies. Such erosions are most evident in the practice of preventive detention, where individuals are held without formal charges, often based on suspicion rather than substantiated evidence (Wood, 2020). Such practices have been a persistent feature of national security measures implemented in the aftermath of the

2001 terrorist attacks. Key stakeholders in this dynamic include the U.S. executive branch, national security agencies, and the judiciary, which has faced significant challenges in exercising effective oversight.

This issue's origins trace back to the legal and political developments following September 11, 2001. In the immediate aftermath, the U.S. Congress passed the USA PATRIOT Act, granting unprecedented powers to the executive branch. These included enhanced surveillance capabilities, expanded detention authority, and the establishment of military commissions to handle terrorism-related cases (Banks & Tauber, 2014). At the same time, Guantanamo Bay became the primary facility for detaining individuals classified as "enemy combatants," many of whom were held without formal charges for years.

As these policies were implemented, the judiciary faced increasing challenges in maintaining its role as a safeguard against questionable practices of executive power. The landmark Supreme Court decision in *Boumediene v. Bush* (2008) reaffirmed the importance of habeas corpus rights for detainees, ruling that individuals detained in detention centers such as Guantanamo Bay have the right to contest their detention in federal court (Kovarsky, 2019). Despite this ruling, subsequent judicial decisions have shown a pattern of deference to executive claims of national security, particularly when classified evidence is involved, creating a legal environment in which individuals' due process rights are increasingly compromised.

Moreover, the problem has broader implications for the U.S. justice system, as preventive detention and classified evidence have begun to influence domestic criminal law. The practice of detaining individuals based on suspicion rather than evidence, combined with the government's ability to withhold evidence from defendants under the pretext of national security, represents a significant departure from traditional due process protections (Greenberg, 2015). As a result, the erosion of due process and habeas corpus rights is a critical concern for the broader application of detentions and justice in the United States.

Literature Review

Judicial Oversight and the Erosion of Habeas Corpus

The current conflicting dynamics between national security and due process in the American justice system raise significant legal and human rights concerns. In the aftermath of the September 11, 2001, attacks, the U.S. government significantly broadened executive powers, encompassing the use of classified evidence and the adoption of preventive detention policies to address perceived security threats. These actions often conflict with the principles of due process, which include the right to a fair trial, legal representation, an alleged suspect's presumption of innocence, and habeas hearings. This paper analyzes the weakening of procedural safeguards in the context of national security. It investigates the broader ramifications for the American justice system, focusing on constitutional and administrative law principles.

Farber (2018) underscores how periods of national crises within the United States, dating back to the Civil War, stretch the limits of presidential power and pose challenges to the rule of law. Farber (2018) compares President Lincoln's suspension of habeas corpus to the Bush administration's

post-9/11 policies to highlight the tension between executive authority and judicial oversight. Farber (2018) emphasizes the importance of understanding the interaction between political forces, public opinion, and institutional constraints during times of crisis to maintain the fragile balance between national security and civil liberties. Farber (2018) concludes that without strong judicial oversight, the risk of unchecked executive power threatens to undermine liberties and rights.

Judicial oversight remains a critical aspect of due process, especially regarding the restriction of executive overreach. Fallon (2010) underscores the constitutional importance of habeas corpus as a safeguard against arbitrary detention. Habeas corpus ensures that individuals cannot be detained indefinitely without legal recourse. However, in the context of the War on Terror, the habeas corpus principle encounters significant contradictions. Resnik (2010) expands on the implications of habeas corpus rulings for individuals detained without trial, emphasizing the judiciary's duty to preserve access to courts, even for those deemed national security threats. Resnik (2010) found that cases such as *Hamdi v. Rumsfeld* (2004) reaffirm that citizens cannot be deprived of their constitutional rights without due process, which includes the right to contest detention before an impartial adjudicator.

Landau (2019) highlighted the judiciary's use of "process scrutiny" to examine government actions. Landau (2019) states that "process scrutiny" is a legal framework focusing on the procedures and processes through which government actions are enacted. Procedural deficiencies, such as excluding expert testimony or lacking public hearings, may suggest potential constitutional violations. Landau (2019) asserted that judicial oversight must address the substance of government actions and examine the processes that lead to such decisions. Landau (2019) also underscores that it is imperative for "process scrutiny" to address covert discriminatory practices while ensuring that legislative procedures remain transparent and inclusive.

Redish and McNamara (2010) explored the constitutional conflict between the Suspension Clause and due process. Redish and McNamara (2010) found that suspending habeas corpus during national crises undermines due process and gives unchecked power to the executive branch. Redish and McNamara (2010) conclude that due process should always be a priority, even in emergencies, as fundamental rights must not be jeopardized under any circumstance.

Kovarsky (2019) further expanded on the work of Redish and McNamara (2010) by assessing the complex dynamics between citizenship, national security detention, and habeas rights after 9/11. Kovarsky (2019) discusses critical cases such as *Hamdi v. Rumsfeld* (2004) and *Boumediene v. Bush* (2008) and criticizes how courts apply habeas rights differently depending on a person's citizenship and where they are detained. Kovarsky (2019) argues that habeas protections should cover all individuals detained by U.S. authorities, regardless of citizenship or where they are being detained. Kovarsky (2019) also calls for more robust judicial oversight, especially in indefinite detention cases. In a similar analysis, Kovarsky (2021) assessed the historical constitutional aspects of habeas rights through the case of *DHS v. Thuraissigiam* (2020). Kovarsky (2021) argues that the Supreme Court's focus on the Suspension Clause has caused ambiguity, making it more difficult for courts to protect due process in national security cases. Kovarsky (2021) highlights the need for a more substantial theory of habeas rights to defend fundamental freedoms and human rights, especially in the context of national security issues.

Baker (2016) provides a historical perspective on habeas corpus by comparing two instances: the failed congressional attempt to suspend the writ during the Burr Conspiracy in 1807 and the legal battles surrounding its suspension during the War on Terror, culminating in *Boumediene v. Bush* (2008). Baker (2016) contrasts the constitutional debates of the early days of American history with the more tense political climate of the 21st century, suggesting that habeas corpus, once a vital check on executive power, has become confined to elite legal circles. Baker (2016) also states that the Magna Carta's impact on American politics diminished, turning habeas corpus into a more technical safeguard against government overreach. It is critical to note that *Boumediene v. Bush* (2008) confirmed the right of Guantanamo Bay detainees to challenge their detention in federal courts (Fallon, 2010). Fallon (2010) points out that this ruling highlighted the judiciary's role in curtailing executive power, especially concerning national security issues. However, the *Boumediene v. Bush* (2008) decision also revealed the ongoing conflict between judicial review and executive authority. The courts often focus on procedural issues rather than addressing the larger claims made by the executive branch about detention policies, leaving many of those broader powers unchecked (Fallon, 2010).

LaBrie (2019) compares the overreach of the U.S. executive power to that of the Soviet Union under Stalin. LaBrie (2019) argues that the judiciary has failed to limit presidential power, especially concerning detentions during national emergencies. Using cases like *Korematsu v. United States* (1944), LaBrie (2019) suggests that constitutional amendments are needed to restrict executive detention powers and prevent abuses of authority similar to those seen in totalitarian regimes.

Secrecy and Classified Evidence

Thorne and Kouzmin (2010) assessed how the USA PATRIOT Act increased the government's power for secret surveillance and detentions, further exacerbating the erosion of due process rights. Thorne and Kouzmin (2010) argue that the USA PATRIOT Act gave the executive branch broad authority without enough judicial oversight, shifting the balance of power and infringing on civil liberties. Rajah (2019) examined the language used in the USA PATRIOT Act, showing how it shapes ideas of national identity and global threats by casting civil liberties and due process as barriers to national security. Rajah (2019) stated that the Act creates a clear divide between "patriots" and "terrorists," which, according to Rajah (2019), silences dissent and expands executive power. Rajah (2019) asserts that the USA PATRIOT Act weakens key protections like habeas corpus, thus decreasing the safeguards meant to prevent tyranny from the executive branch.

Sinnar (2003) examined the constitutionality of the USA PATRIOT Act's mandatory detention provisions, especially section 412, which permits the indefinite detention of noncitizens labeled as national security threats. Sinnar (2003) argues that these provisions violate procedural and substantive due process rights guaranteed by the Fifth Amendment. By restricting noncitizens' access to meaningful review of their detention, the Act compromises the right to a fair hearing before their liberty is taken away (Sinnar, 2003). Sinnar (2003) also highlights the broader risks of increased executive power at the cost of constitutional rights, particularly when justified for national security reasons.

Jaeger and Burnett (2005) discovered how information flow changed after 9/11, noting that laws like the USA PATRIOT Act weakened democratic dialogue by restricting access to information. These limits on transparency have a more significant impact on smaller social groups, reducing their ability to engage in democratic processes. This lack of access severely affects due process by decreasing government accountability.

Using classified evidence in national security trials is one of the most significant threats to due process. Divoll (2011) highlights the impact of using classified evidence in judicial proceedings, particularly in national security cases. Divoll (2011) points out that when courts admit classified evidence without fully disclosing it to the defense, it raises serious constitutional concerns. This practice prioritizes secrecy over fairness, which weakens the integrity of the judicial process and promotes an asymmetry of information. Kwoka (2017) builds on the findings of Divoll (2011) and finds that courts frequently defer to government assertions of secrecy, undermining the impartiality and independence vital to the legal system's integrity. According to Kwoka (2017), in terrorism-related prosecutions, the government often invokes national security to justify withholding evidence, preventing defendants from effectively challenging the charges against them. This reliance on classified evidence violates the principles of transparency and raises serious concerns about the fairness of proceedings.

Daniel (2017) expands on the research conducted by Divoll (2011) and Kwoka (2017) by examining how classified evidence is also used to label foreign terrorist organizations (FTOs) under the Antiterrorism and Effective Death Penalty Act (AEDPA). Daniel (2017) argues that relying on classified information in these cases limits the ability of targeted organizations to challenge their designation, further threatening due process protections.

Sanders (2017) assessed how unclear laws have been intentionally used to justify human rights violations, such as enhanced interrogation techniques and indefinite detentions, during the War on Terror. U.S. authorities took advantage of these vague legal definitions to create what Sanders (2017) calls "plausible legality," a system that makes it harder to tell what is legal or illegal, allowing authorities to bypass due process. Sanders (2017) argues that stricter legal guidelines are needed to stop future abuses.

Preventive Detention

Preventive detention has been broadly practiced in counterterrorism efforts and raises concerns about fairness and the presumption of innocence. Hensen (2021) assessed New Zealand's Terrorism Suppression (Control Orders) Act 2019, which allows the government to place control orders on people suspected of terrorism before they are officially charged. Hensen (2021) argued that these control orders blur the line between civil and criminal cases, making it significantly more challenging to protect fundamental legal rights. These control orders can include restrictions on movement, curfews, and electronic monitoring, threatening the protections found in criminal trials (Hensen, 2021). Hensen (2021) found that control orders highlight the dangers tied to preventive detention, primarily when these measures are implemented without the procedural protections found in criminal trials. Hensen (2021) underscores the rise of a preventive state as part of a growing trend in the criminal justice system, where individual rights are stripped for security-focused policies. It is critical to note that the trend toward preemptive action brings forth

severe concerns about due process as preventive detention becomes increasingly prevalent in national security and domestic criminal justice contexts.

In the United States, similar legal issues exist in the context of Guantanamo Bay detainees, as evidenced by the D.C. Circuit's decision in *Al-Alwi v. Trump* (2018). Gideon (2019) analyzed this ruling, which upheld the indefinite detention of Moath Hamza Ahmed Al-Alwi, captured during the U.S. war in Afghanistan. According to Gideon (2019), the court justified Al-Alwi's continued detention under the Authorization for Use of Military Force (AUMF) despite nearly two decades having passed since the enactment of this authorization. Gideon (2019) argues that relying on the AUMF to justify indefinite detention nullifies due process and exacerbates the rates of unjust legal detentions.

Greenberg (2015) explored how the War on Terror has blurred the line between surveillance and torture, noting the increased reliance on secretive interrogation techniques that bypass due process protections. The use of enhanced interrogation methods overseas, Greenberg (2015) states, has set a dangerous precedent for domestic policy, where individuals may be detained and tortured based on mere suspicion. Greenberg (2015) states that such detentions and practices have led to the erosion of civil liberties and the indefinite detention of suspects without meaningful judicial oversight.

Hajjar (2023) assessed the lasting effects of the Guantanamo Bay detention center, which has become a symbol of the weakening of legal rights after 9/11. By conducting a historical analysis of Guantanamo through four U.S. presidents, Hajjar (2023) explains that detaining suspects without trial and the increased usage of military courts has weakened both U.S. and international laws. According to Hajjar (2023), Guantanamo shows how indefinite detention and torture have become standard tools for national security, representing a breakdown of legal protections.

Hellmuth (2021) provided an overview of U.S. counterterrorism policies from the Bush administration to the Trump era, emphasizing the ongoing use of strategies like mass surveillance, drone strikes, and indefinite detention at Guantanamo Bay. Hellmuth (2021) argues that even with different leaders, these troubling practices in the War on Terror have remained, weakening due process rights by using secret evidence and offshore detention centers like Guantanamo. The spillover of national security legal exceptions into domestic criminal law is a growing concern. Weisselberg (2008) and Chachko (2019) found that procedural shortcuts used in national security cases could extend into broader areas of criminal law. Weisselberg (2008) cautioned against the relaxed standards for evidence and searches in national security cases. Weisselberg (2008) asserted that the use of evidence obtained through coercive methods poses a massive threat to the integrity of the justice system writ large. Chachko (2019) builds on Weisselberg's (2008) research and points out that administrative practices, such as sanctions designations, often lack transparency and fail to provide adequate notice or access to evidence.

The erosion of fairness in national security cases risks becoming a permanent feature in criminal law, particularly in pretrial detention and plea bargaining, where due process protections are already vulnerable. The broader implications of national security exceptions for domestic criminal law are troubling. As the boundaries between national security and criminal law blur, the erosion of procedural safeguards risks becoming widespread. This trend is particularly worrisome in the

context of ongoing criminal justice reform efforts, where the lasting influence of national security legal norms could undermine attempts to enhance transparency and accountability.

Literature Review Conclusion

The literature on the erosion of due process reveals several particularly troubling themes. A key theme that emerges throughout the literature is the persistent tension between executive authority and judicial oversight, especially regarding habeas corpus rights. The literature also highlighted the judiciary's critical role from an administrative law standpoint as a check on executive power, particularly concerning the protection of individual rights from indefinite detention and other exceptional national security actions. It is also critical to note that the effectiveness of judicial oversight has been compromised, as courts tend to defer to executive branch assertions, thereby diminishing the integrity of due process (Fallon, 2010; Landau, 2019).

A second major theme is the role of secrecy and the use of classified evidence in legal proceedings, which poses significant challenges to due process in the administrative and judicial systems. Kwoka (2017) and Divoll (2011) emphasize that judicial deference to government secrecy frequently undermines transparency and jeopardizes the fairness of legal proceedings. The increasing reliance on classified evidence, particularly in terrorism-related cases, raises concerns that defendants are denied full access to the evidence brought forth in charges against them. This reliance on secrecy highlights a broader tension within administrative law, where security concerns are frequently invoked to justify practices that erode due process protections. Sanders (2017) characterizes these practices as "plausible legality," further complicating the balance between national security and individual rights.

Preventive detention, a key component of contemporary counterterrorism strategies, represents another significant theme that raises profound concerns about the erosion of due process protections. Hensen (2021) critiques the practice of preventive detention as a violation of the fundamental principles of habeas corpus, which traditionally ensures that individuals cannot be detained without legal recourse. The preventive nature of detention, which is increasingly justified by suspicion rather than evidence, challenges the presumption of innocence and threatens the procedural safeguards typically afforded in administrative and criminal law. This erosion of habeas corpus rights has profound implications, as it shifts the burden of proof onto individuals who have not been formally charged with any crime, reflecting a contradiction to due process.

Another emerging theme is the spillover effect of national security policies into domestic criminal law. Scholars such as Weisselberg (2008) and Chachko (2019) argue that the procedural shortcuts adopted in the name of national security, such as relaxed standards for evidence and reduced transparency, risk becoming embedded in broader criminal justice practices. The weakening of due process protections, initially justified by concerns for national security, risks making legal exceptions more common, potentially reducing fairness in situations such as pretrial detention and plea bargaining. This spillover effect poses a significant risk to the American judicial system.

Moreover, the literature reflects on the broader implications of national security measures for civil liberties and human rights. Scholars such as Greenberg (2015) and Hajjar (2023) emphasize how the post-9/11 legal landscape has blurred the lines between surveillance, detention, and

interrogation techniques that bypass due process and habeas corpus protections. These practices undermine civil liberties and establish harmful precedents for future legal policies, weakening the rule of law that administrative law is designed to protect. Baker's (2016) historical comparison between early American legal debates on habeas corpus and the post-9/11 expansion of executive authority highlights how legal justifications for circumventing due process have evolved, leaving individual rights increasingly vulnerable.

In conclusion, the literature underscores the ongoing erosion of due process within national security cases as a critical legal concern and the threat of spillover effects across the American judicial system. The increase in executive power, use of classified documents as evidence, and acceptance of preventive detention show a more significant trend of weakening habeas corpus rights and reducing the basic legal protections paramount to maintaining the rule of law. As the boundaries between national security and domestic criminal law continue to blur, the reinforcement of judicial oversight and procedural due process becomes an urgent necessity to preserve the integrity of the legal system. The lack of institutional checks, habeas corpus erosion, and due process will likely continue, posing significant risks to civil liberties and justice foundations in the legal system.

Analysis

In examining the erosion of due process within the framework of national security and administrative law, several significant themes emerge from the literature. These themes include the tension between executive authority and judicial oversight, the use of secrecy and classified evidence, and the broader impact of preventive detention on both national security and domestic criminal law. Each theme reflects the complexities of balancing individual rights with national security concerns.

Executive Authority and Judicial Oversight

One of the central themes is the ongoing tension between the executive branch's expansion of authority and the judiciary's role in providing oversight. This tension can be framed within the broader context of the separation of powers. Administrative law is fundamentally concerned with maintaining a balance between executive discretion and judicial review to prevent any single branch from accumulating unchecked power. As highlighted in the literature review, post-9/11 policies such as indefinite detention, expanded surveillance powers, and the use of military commissions have allowed the executive branch to exercise significant discretion, often with limited judicial intervention. The *Boumediene v. Bush* (2008) decision, which reaffirmed habeas corpus rights for Guantanamo detainees, underscores the judiciary's vital role in preventing executive overreach. However, subsequent rulings and political developments show that national security objectives often constrain judicial oversight.

It is clear that the judiciary's role in maintaining due process protections has diminished over time, mainly due to political pressures. Courts have increasingly deferred to executive claims of national security, allowing practices such as indefinite detention to persist. The balance between protecting national security and safeguarding individual liberties remains a contentious issue, but the

principles of administrative law demand that the judiciary play a more assertive role in reviewing executive actions.

Secrecy and the Use of Classified Evidence

Another emerging theme is the use of secrecy and classified evidence in national security cases, which poses significant challenges to due process. The literature review highlights how courts often defer to the executive branch when classified information is involved, undermining the justice system's duty. Defendants in national security cases are frequently denied access to the evidence against them, preventing them from effectively challenging their detention or prosecution. This reliance on secrecy erodes transparency and raises serious concerns about the fairness of legal proceedings.

It is critical to note that transparency is the cornerstone of democratic governance and due process. Administrative law frameworks stress the need for open procedures, public accountability, and the right to due process. Secrecy, particularly in national security contexts, contradicts these principles, making it difficult for courts to uphold individuals' rights.

Preventive Detention and its Spillover Effect

A third major theme identified throughout the literature review is the use of preventive detention and its broader implications for national security and domestic criminal law. Preventive detention allows governments to detain individuals based on suspicion rather than conviction. As the literature review points out, this practice has significant implications for due process, particularly the presumption of innocence. Preventive detention has become a defining feature of modern counterterrorism strategies, but its use raises profound concerns about individual rights and legal safeguards.

The spillover effect of national security policies into domestic law, particularly the use of preventive detention, challenges these principles. In analyzing this theme, it becomes clear that preventive detention blurs the line between national security and criminal law. This legal hybrid creates significant risks for due process, as individuals may be detained without the protections typically afforded in criminal trials. The literature suggests that this trend will continue as national security concerns increasingly influence domestic legal practices.

The major themes from the literature reflect the ongoing struggle to balance national security and individual rights within the administrative law framework. The expansion of executive authority, the use of secrecy and classified evidence, and the normalization of preventive detention pose significant challenges to due process. Administrative law is designed to provide checks on governmental power, but in the context of national security, these checks are often diminished. The judiciary's role in safeguarding due process is crucial, and courts must assert their authority more freely to prevent further erosions of constitutional protections. Ultimately, these themes underscore the need for a more robust oversight system to ensure that national security measures do not come at the expense of individual liberties.

The examination of the erosion of due process within the framework of national security and administrative law shows that these challenges are not isolated to a single jurisdiction or time frame. These challenges are a concern globally, as many governments worldwide grapple with similar tensions. It is critical for global cooperation to be conducted cohesively and diligently to abate these concerns.

Recommendations

To address the erosion of due process in national security cases, several policy and programming recommendations should be considered to strike a balance between protecting public safety and preserving constitutional and human rights. The growing concentration of executive power, the usage of classified evidence during trials, and the reliance on preventive detention require comprehensive reforms to restore the principles of fairness, transparency, and accountability.

It is paramount to strengthen the role of the judiciary in providing robust oversight of executive agency actions related to national security. Courts must be empowered to scrutinize executive claims of national security more rigorously, especially when these claims seek to justify preventive detention or the use of classified evidence in trials. Legislation should mandate judicial review at the onset of detaining a suspect and ensure that courts can challenge the executive branch's assertions when individual rights are at stake.

In addition, it is vital to implement specific legal reforms that broaden the judiciary's access to classified information without compromising security. For example, special judicial panels or national security courts could be established where judges receive additional training on classified material and the implications of national security concerns. These courts could operate under stricter review processes, providing more transparency and accountability while maintaining necessary security protocols.

Using classified evidence in national security cases has significantly undermined due process by preventing defendants from having the opportunity to challenge the evidence being used against them. This paper's findings recommend that amending the Classified Information Procedures Act (CIPA) could introduce greater transparency in cases involving classified material.

Another recommendation is implementing a structure to permit independent legal representatives, known as "special advocates," to attain security clearances to review classified evidence on behalf of defendants. These advocates could challenge the evidence in court while ensuring national security information remains protected. This model has been successfully implemented in the United Kingdom and Canada and could greatly benefit the U.S. legal framework.

The practice of preventive detention, particularly in the context of national security, represents a serious threat to the presumption of innocence and the principles of due process. Preventive detention should only be used in the most extreme cases where there is clear and compelling evidence of an imminent threat to public safety. To safeguard against the misuse of this practice, clear legal standards must be established for its application.

The findings of this research recommend that the U.S. Congress enact legislation that defines strict limits on the use of preventive detention, including a maximum detention period before formal charges are required. In addition, periodic judicial reviews should be mandated to assess the continued necessity of a suspect's detention. If new evidence does not emerge within a reasonable timeframe, detainees should be released from captivity.

Another recommendation is to improve transparency and accountability mechanisms within national security policies, particularly those that affect due process rights. National security agencies should be required to report regularly to Congress and the public on their use of preventive detention, classified evidence, and other extraordinary measures. These reports should include detailed information on the number of detainees, the current length of detention, and the legal justifications provided for each case.

Given the global nature of national security threats, the U.S. should work with international partners to promote legal standards that uphold due process while addressing security concerns. International organizations, including the United Nations and the International Criminal Court (ICC), have established frameworks aimed at balancing security practices while being cognizant of the necessity to protect human rights, particularly in the contexts of preventive detention and the utilization of classified evidence in trials. The U.S. should engage in these international dialogues and adopt best practices to ensure its national security policies align with global human rights standards. By aligning with global norms, the U.S. would reinforce its commitment to the rule of law and set an example for other nations grappling with similar challenges.

Summary

This paper explores the critical issue of due process erosion within national security and administrative law, particularly focusing on the period following the September 11, 2001, attacks. The expansion of executive authority, combined with the use of classified evidence and preventive detention, has significantly challenged the balance between protecting national security and upholding individual rights. Through a review of scholarly literature and analysis of key legal cases, this paper highlights ways in which national security measures have increasingly encroached upon the constitutional protections that form the foundation of administrative and criminal law.

One of the central themes addressed in this paper is the tension between executive authority and judicial oversight. The post-9/11 expansion of executive powers, the passage and perpetual renewal of the USA Patriot Act, and the usage of indefinite preventive detention have often bypassed traditional judicial review. These trends have weakened procedural safeguards such as habeas corpus. Judicial rulings such as *Boumediene v. Bush* (2008) have sought to reaffirm the judiciary's role in maintaining these rights. However, the literature consistently shows that political pressures and national security concerns have limited the effectiveness of judicial oversight.

Another key theme is the usage of secrecy and classified evidence in national security cases. The literature reveals that courts frequently defer to government claims of secrecy, undermining transparency and the nature of the legal process. Defendants in terrorism-related prosecutions often cannot access the evidence against them, compromising their ability to mount an effective defense.

This lack of transparency contradicts fundamental principles of administrative law and due process, raising serious concerns about the fairness of legal proceedings.

Furthermore, the paper discusses the spillover effect of national security policies into broader areas of domestic criminal law. Practices initially justified by the need to combat terrorism have begun to influence regular criminal law. This is particularly concerning in pretrial detention and plea bargaining, where due process protections are already vulnerable. The literature warns that these procedural shortcuts, adopted in the name of national security, risk becoming normalized across the justice system, further weakening constitutional safeguards.

This paper proposes several recommendations to address the erosion of due process within national security frameworks. These include strengthening judicial oversight to ensure rigorous scrutiny of executive actions, particularly in cases involving preventive detention and classified evidence. In addition, legal frameworks governing classified evidence should be reformed to enhance transparency, such as amending the Classified Information Procedures Act (CIPA) and implementing mechanisms such as special advocates to safeguard defendants' rights. Moreover, restrictions on preventive detention practices are also essential, with legislative measures needed to define clear limits, establish maximum detention periods, and mandate periodic judicial reviews.

Additionally, enhancing transparency and accountability through regular reporting by national security agencies to Congress and the public is vital for maintaining public trust and legal integrity. Finally, engaging in international collaboration to align U.S. practices with global human rights standards would reinforce the nation's commitment to the rule of law while addressing shared security challenges. These reforms collectively aim to strike a balance between national security concerns and preserving constitutional rights. Failure to address these challenges will exacerbate the erosion of due process and undermine democratic governance and public confidence in the legal system.

About the Author

Shahub Tossi is an Instructor of Management at Penn State University, where he teaches courses such as Principles of Management, Project Management, and Strategic Management. In recognition of his innovative and engaging teaching methods, he received the prestigious Penn State Altoona 2023-2024 Excellence in Classroom Teaching Award. Before joining Penn State, Shahub taught at the University of Cincinnati and Mid-Plains Community College.

Shahub holds a Master of Business Administration from Texas A&M University and a Bachelor of Science in Business from Penn State University. Alongside his teaching responsibilities, he is pursuing a PhD in Strategic Leadership and Administrative Studies at Marywood University. His research focuses on strategic business, economics, and legal affairs in the Middle East and North Africa, reflecting his commitment to addressing complex organizational and policy challenges in this dynamic region.

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