of Bowers has been brought in question by this case, and it should be addressed. Its continuance as precedent demeans the lives of homosexual persons.

... ... ...

The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime. Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government. "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter." Casey, supra, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual.

Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.

Questions

1. How does Kennedy understand the meaning of freedom?

2. How does his definition differ from understandings of freedom in previous eras of American history?
earlier cases relating to the detention of aliens at Guantanamo, whether they have the constitutional privilege of habeas corpus, a privilege not to be withdrawn except in conformance with the Suspension Clause of the U.S. Constitution. We hold these petitioners do have the habeas corpus privilege. Congress has enacted a statute, the Detainee Treatment Act of 2005 ... that provides certain procedures for review of the detainees’ status. We hold that those procedures are not an adequate and effective substitute for habeas corpus. Therefore ... the Military Commissions Act of 2006 ... operates as an unconstitutional suspension of the writ [of habeas corpus]....

Our opinion does not undermine the Executive’s powers as Commander in Chief. On the contrary, the exercise of those powers is vindicated, not eroded, when confirmed by the Judicial Branch. Within the Constitution’s separation-of-powers structure, few exercises of judicial power are as legitimate or as necessary as the responsibility to hear challenges to the authority of the Executive to imprison a person. Some of these petitioners have been in custody for six years with no definitive judicial determination as to the legality of their detention. Their access to the writ is a necessity to determine the lawfulness of their status, even if, in the end, they do not obtain the relief they seek.

Because our Nation’s past military conflicts have been of limited duration, it has been possible to leave the outer boundaries of war powers undefined. If, as some fear, terrorism continues to pose dangerous threats to us for years to come, the Court might not have this luxury. This result is not inevitable, however. The political branches, consistent with their independent obligations to interpret and uphold the Constitution, can engage in a genuine debate about how best to preserve constitutional values while protecting the Nation from terrorism....

Officials charged with daily operational responsibility for our security may consider a judicial discourse on the history of the Habeas Corpus Act of 1679 and like matters to be far removed from the nation’s present, urgent concerns. Established legal doctrine, however, must be consulted for its teaching. Remote in time it may be; irrelevant to the present it is not. Security depends upon a sophisticated intelligence apparatus and the ability of our Armed Forces to act and to interdict. There are further considerations, however. Security subsists, too, in fidelity to freedom’s first principles. Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.

We hold that petitioners may invoke the fundamental procedural protections of habeas corpus. The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law.

Questions:

1. How does Kennedy respond to the government’s claim that a state of war allows it to ignore parts of the Constitution?

2. Why does Kennedy believe that devotion to freedom is as important a source of national strength as military might?


Source: The White House.

In the wake of the American invasion of Iraq, respect for the United States sank to a low ebb in the Islamic world. In June 2009, President Obama