

Life and liberty: Plan for military tribunals an assault on legal standards

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Securing the rights of life, liberty and the pursuit of happiness has always required balancing issues of security—the protection of life—with issues of freedom. It has also provoked differing interpretations of the pursuit of happiness, from the libertarian stress on the individual's pursuit of happiness, which is now generally ascendant in the U.S., to more communitarian ideals that once found expression in codes of conduct for media communications and blue laws. Throughout U.S. history, the relationship among these basic rights has always been fluid and revisable.

Recent steps taken by Congress and the Bush administration in the war against terrorism, such as emergency detainments, the loosening of restrictions on surveillance and the president's order that suspected terrorists can be tried by military tribunals, have sparked a new and furious debate between the security conscious and the watchdogs of liberty. Significantly, each side advances a different assessment of the risk faced by the nation.

Libertarians tend to downplay severe warnings of a terrorist threat as the product of paranoia or media-driven hysteria. The real danger is a looming police state that, in the words of Senator Russ Feingold (D., Wis.), "may make it easier to catch terrorists," but "wouldn't be a country in which we would want to live." For libertarians, the chief danger is to liberty, not life.

Security advocates believe it is madness to brush aside the possibility that enemies who speak of the "extinction of America" could detonate radiation bombs or release deadly biological or chemical agents in crowded urban centers. In their view, the curtailment of some liberties is a small price to pay to prevent the use of weapons of mass destruction on U.S. soil. Life, say securitarians, is the necessary prerequisite to the enjoyment of civil liberties.

As in any serious and complex debate, both sides are voicing truths. Terrorists have already demonstrated a will to inflict mass death and economic ruin on American civilians, and the evidence is strong that they possess the means to inflict greater harm. While that threat remains tenable it is proper that the balance among rights be weighted in favor of protection of life. This concession, however, grants no branch of government carte blanche to unnecessarily constrict liberties.

The Bush administration's authorization of military tribunals for some who may be accused of terrorist acts is just such an unadvised abridgment of rights. The order suspends the right of habeas corpus without the constitutionally required consent of Congress; it is left to the president to decide who would be subject to such a trial; the trials would be held in secret; evidence could be used that would not be admissible in a civilian court; conviction could be obtained through a majority vote of two-thirds of the jurors; and there would be no right of appeal.

Since U.S. civil courts have already proven their ability to try accused terrorists, the Bush directive is unnecessary. Worse is the blow such irregular courts would deal to emerging international legal standards. The secret tribunals would have no more validity in the world court of opinion than the infamous show trials held by totalitarian regimes. The Bush plan would set a U.S. precedent only tyrants could applaud.