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The Safety of a Nation Versus The Rights of Suspected Terrorists

Michaela Clark

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Michaela Clark is a first year undeclared student at Bridgewater State College who is interested in both Criminal Justice and Sociology as possible majors. This paper was written for the Honors section of Introduction to Criminal Justice taught by Dr. Richard Wright in the Fall of 2008.

On January twenty-second, 2009, newly elected President Barack Obama issued an executive order requiring the detention center holding alleged terrorists at Guantanamo Bay to be closed within one year. This proposal may potentially close a chapter on one of America’s most controversial efforts to combat terrorism. Throughout the Bush Administration’s “War on Terror” numerous laws were passed that gave the President and the Department of Defense power to determine who was an enemy combatant and detain indefinitely those they decided fit that profile. The issue of holding people the military deems a threat without giving them a traditional trial continues to be fraught with controversy. Like many facets of the criminal justice system, the debate over the legality of detaining suspected terrorists is divided between the concern for public safety and public freedom. By giving the executive branch of our government virtually unlimited power in this area, did we open the door for more of our rights to be taken away? Was this unequal distribution of power necessary to protect our nation from rampant terrorism and the hazard it poses for our nation?

Detaining suspects indefinitely is illegal according to the Constitution as well as international human rights laws, and the government should not have the power to do it. The standards by which suspected terrorists are judged are different based on the citizenship of the detainee. If the suspect is of American citizenship, this is illegal under the Non-Detention Act. This act states that, “No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress” (Limitation on Detention; Control of Prisons, 2007, para. 1). This view is supported by the Supreme Court’s 2004 decision in Hamdi v. Rumsfeld, when the Supreme Court ruled that Hamdi, an American citizen, should at least be allowed to contest the grounds on which he was detained. Justice Sandra Day O’Connor “wrote that although Congress authorized Hamdi’s detention, Fifth Amendment due process guarantees give a citizen held in the United States as an enemy combatant the right to contest that detention before a neutral decisionmaker” (The Oyez Project: Hamdi v. Rumsfeld, 2004, para. 4).

If the detained suspect is of international citizenship, they are still protected under international human rights laws. The United Nations International Covenant on Civil and Political Rights states in Article 12, Number 1, that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”
Captives “committed terrorists” and affirmed that label as the "POW status." Former Secretary of Defense Donald Rumsfeld called the POW status.

Some argue that because of the war on terrorism extreme measures are needed. This view violates international human rights laws laid out in the Geneva Conventions. Along with over one hundred other nations, the United States agreed with and signed onto this international treaty in 1949, and ratified their decision in 1955 (Geneva Conventions 1949 – United States of America reservation text). The Geneva Conventions were written as a uniform guide as to how to treat prisoners of war, the sick, wounded, civilians, or any other non-violent people that the signatories may encounter while at war with an opposing nation.

Specifically, the Fourth Geneva Convention addressed how prisoners of war are to be treated. Denying them the right to a fair trial is considered a “grave breach” of the law, and a war crime. According to Chapter III, Article 103, “Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the detaining power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months” (International Humanitarian Law – Third 1949 Geneva Convention).

The detainees at Guantanamo Bay have been in captivity for much longer than three months, which is the limit according to the Geneva Conventions. When a Taliban soldier is taken into captivity in Afghanistan and deemed an “enemy combatant” s/he is shipped off to Guantanamo Bay to be imprisoned and questioned. The Bush Administration did not consider that person a prisoner of war, even though, by definition, that soldier clearly is one. Holding these people in prison and interrogating them defies all the rights that a POW is entitled to, according to the Geneva Conventions. The United States solved this problem by denying these “enemy combatants” POW status.

Former Secretary of Defense Donald Rumsfeld called the captives “committed terrorists” and affirmed that label as the reason they were not treated as P.O.W.s (Toobin 2004). This unlawful and subjective decision-making was accomplished in the name of protecting the nation against terrorism. However, the facts show that the previous presidential administration violated long standing international treaties, to which it is a signatory, without suffering any consequences.

The Department of Defense does eventually re-assess each prisoner’s status and decides who is actually a threat and who is not. This process takes place once a year. The “Combatant Status Review Tribunals” (CRST’s) were held for about 570 detainees at Guantanamo Bay. The military determined that all but 38 were “no longer enemy combatants” (International Herald Tribune, 2007, para. 6). The percentage of people taken into custody who are a legitimate threat is very small, roughly seven percent, if calculated according to the figures provided. This is the primary form of due process that the detainees have received.

The grounds for which the government acted are based on authority from two sources: the Anti-Terrorism Act of 2001 and the Military Commissions Act. The Anti-Terrorism Act states that “The Attorney General is vested with the discretion...to detain individuals who are found to pose a threat to national security until they are actually removed or until the Attorney General determines the person no longer poses a threat” (Free Republic, 2001). This declaration of ultimate authority leaves no room for questioning of the charges against the detainee. The right to a fair trial is non-existent. Again, this violates the Geneva Conventions. In Chapter III, Article 99, it states that “No prisoner of war may be convicted without having had an opportunity to present his defense and the assistance of a qualified advocate or counsel” (International Humanitarian Law – Third 1949 Geneva Convention). By giving the Attorney General supreme power over the detainee’s future, all possible legal action that should be taking place on the detainee’s behalf is obliterated.

In 2006, Congress passed The Military Commissions Act. This bill eliminated the right of habeas corpus for detainees and allowed the President to decide what interrogation techniques constitute torture (and are thus illegal) and whether or not the detainee will continue to be imprisoned. All of these factors collaborate together to show how truly unconstitutional and invalid it is to detain humans against their will at Guantanamo Bay.

Many of these positions were supported by the argument that it is the President’s job as Commander-in-Chief of the military to protect the United States from the dangers of terrorism. One person’s rights are of little concern when faced with the
responsibility to safeguard the nation. Former President Bush could argue that international law supported his view of the detainees. The United Nations International Covenant on Civil and Political Rights, to which the U.S. is a signatory, states that “the above-mentioned rights (to freely enter and leave a country) shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others” (United Nations International Covenant on Civil and Political Rights, Article 12, Number 3). Since it is the president’s job to ensure “national security”, perhaps it is required that these suspected harmful terrorists remain jailed.

The Geneva Conventions and the protections that they provide for prisoners of war may be void because of the status of the countries or organizations the detainees come from. Most of the suspected terrorists at Guantanamo Bay are Muslims and are alleged to have been involved with al Qaeda. This religiously-driven association was not established as a traditional army and they do not abide by the traditional rules of war. For instance, the al Qaeda cannot be expected to abide by the Geneva Conventions, or enter into any sort of agreement that defines how prisoners of war should be treated. Only legal countries that enter into the United Nations International Covenant can be held responsible to international human rights laws. Why should the United States honor the Geneva Conventions when the al Qaeda does not? The Department of Defense might as well use as many working tactics as possible to find information that might save the lives of millions, even if that means breaking a few rules.

I am of the opinion that the United States should not hold detainees indefinitely with no promise of a fair trial or release. The security of the nation is most assuredly an important factor, but by imprisoning these suspects, the United States has become a hypocrite. By taking away the right of habeas corpus from the detainees through the Military Commissions Act, the safety of American citizen’s own rights are endangered. If the President and Congress can strip those rights from people they deem suspicious, what other rights can they remove from us? The Bush Administration repeatedly argued that this issue was of no concern to the court system and that it should be left to the military to deal with the Guantanamo Bay detainees. I disagree with that point, simply because our whole nation is founded on the principle of checks and balances. If the military is left to make its own decisions, what is the point of having Congress or the Supreme Court?

In addition to the Hamdi case, the Supreme Court has repeatedly ruled that detainees (a.k.a. enemy combatants) have constitutional due process protections to allow for the challenging of their detention. First, in the 2006 ruling in \textit{Hamdan v. Rumsfeld}, the Supreme Court ruled that the United States needed to abide by the “laws of war” (which includes the Geneva Conventions) in trying and sentencing Salim Ahmed Hamdan, former chauffeur to Osama bin Laden. Even though Hamdan had filed a petition for habeas corpus to contest his detainment, a military commission began legal processes against him, thereby signifying him an “enemy combatant”. Because no “act of Congress” or the Executive powers of the President had officially declared Hamdan a prisoner of war, the Supreme Court ruled that the military commission must comply with the Geneva Conventions and give Hamdan a fair trial. The process in which the military commission tried Hamdan required that some parts of the trial be classified and therefore Hamdan had not received the full rights of a fair trial that was due to him according to the Geneva Conventions (The Oyez Project: Hamdan v. Rumsfeld, 2006).

Secondly, in the case of \textit{Boumediene v. Bush}, the constitutionality of the Military Commissions Act was debated, as well as the question of whether detainees at Guantanamo Bay deserve Fifth Amendment rights. Lakhdar Boumediene was detained at Guantanamo Bay as an “enemy combatant” in 2002 because U.S. intelligence officers believed him to be involved in a plot to attack the U.S. embassy in Bosnia. He filed a petition of habeas corpus. He was denied a traditional trial based on the Military Commissions Act, which denies all “enemy combatants” habeas corpus. The case was appealed on the grounds that the Military Commissions Act violated the Constitution’s Suspension Clause: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it” (The Oyez Project: Boumediene v. Bush, 2008).

In their 2008 ruling, the Supreme Court stated that the Military Commissions Act was indeed a violation of the Suspension Clause. The detainees at Guantanamo Bay were granted Fifth Amendment rights through this ruling, which states that “(No person shall)…be deprived of life, liberty, or property without due process of law….” Even though this ruling specifically deemed the Military Commissions Act unconstitutional, the Bush administration continued to operate under its policy (The Oyez Project: Boumediene v. Bush, 2008).

In conclusion, I believe that people suspected of being harmful to our nation should be lawfully investigated, but they should not be imprisoned until the Department of Defense can construct an accurate and valid case against them in a speedy, fair, and public trial. By abiding by our own basic, constitutional laws, our nation should be able to protect its
citizens. I am outraged by the seemingly offhandedness with which Congress and Former President Bush ignored basic freedoms that should belong to all people. In one year, if the executive order to close down Guantanamo Bay is obeyed, the unjust detaining of suspected terrorists will have ended. Though new concerns have arisen along with this decision by President Obama, such as what to do with the detainees, ultimately the day is coming when the United States will no longer be holding people against their will, against the Constitution, and against multiple international human rights laws and treaties. The new director of national intelligence, Admiral Dennis C. Blair, says, “The guiding principles for closing the center should be protecting our national security, respecting the Geneva Conventions and the rule of law, and respecting the existing institutions of justice in this country” (The New York Times 2009). Benjamin Franklin once said, “Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety”. I would rather die in a country that stood by the belief that all people deserve fundamental rights than live in a tyrannical society that ignores the pleas of the innocent in the name of justice.

References


