



The Boston Bombing and the Real Threats to Our Liberty

Immediately upon Boston bomber Dzhokhar Tsarnaev's capture, Senator Lindsay Graham (R-S.C.) was demanding that the suspect's Miranda Rights be waived. The bomber, Graham contended, must be treated as an "enemy combatant." He tweeted that the "The Law of War" permits the United States government to withhold "Miranda warnings" and legal "counsel" from those suspected of being "potential enemy combatant[s]."

Unfortunately, Graham's position is no anomaly. Within short order, many a Republican, both his Congressional colleagues as well as "conservative" media personalities, came to side with him. To be fair, their reasoning is understandable: If Tsarnaev is given Miranda Rights, he will then have the right to remain silent, and if he exercises this right, he will then refrain from revealing whatever he may know about future terrorist attacks, thus exposing innocent Americans to injury and death.



Yet while "the Graham" reasoning is understandable, it can't but send shivers down the spine of any liberty-loving American. The sort of utilitarian logic on which it's based is precisely what the Constitution was designed to guard *against*. Unlike their posterity, those who ratified the Constitution knew that liberty is no mean feat. In fact, it is beyond manly, approximating the divine, because means-end reasoning like that which Graham exemplifies is vastly more common, and vastly easier, than the resolutely non-utilitarian, and even anti-utilitarian, considerations that the love for liberty demands.

Let's be clear: Though an immigrant, the Boston bomber is a naturalized American *citizen*. Most Americans, yours truly included, believe that he is indeed guilty of the crime of which he's accused. But our beliefs on this score are utterly irrelevant: No one is guilty of any crime in America, regardless of how heinous it may be, until *after* the government, upon meticulously subscribing to every detail of established procedure, proves guilt beyond a reasonable doubt.

That every criminal defendant in America is presumed innocent before the government proves otherwise is elementary stuff. But, sadly, the Lindsey Gramhams of the world remind us that this elementary stuff bears repeating.

The liberty that Americans have always known is inseparable from the decentralization of authority and power that their institutional arrangements have traditionally secured. Multiple "checks and balances" — among which are the Constitution's Bill of Rights — insure an essentially self-conflicted government, a government incapable of acting hastily and arbitrarily against both its own citizens *as well as* those of



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other nations.

In other words, there is no *liberty*; there are only *liberties*. Or, if you will, liberty refers to *a system of mutually reinforcing liberties*, a system that distributes authority and power far and wide.

Much has been done over America's history to erode this system of liberty. But there is no more ominous sign that it is all but a thing of the past than the government's targeting of American citizens, right here at home, as "enemy combatants."

In the case of Tsarnaev, the government, thankfully, decided to ignore the pleadings of Graham and many others and issue the suspect his Miranda Rights. Yet this does nothing to change the fact that legions of Americans cheered wildly last Friday night when he was arrested. Neither does it change the fact that the authorities, from the president on down, did much to encourage the notion that the guilty had been caught.

As for this notion of an "enemy combatant," it makes sense when a country is at war against an identifiable enemy. But if Tsarnaev is to be declared an enemy combatant, then with whom can he be said to be fighting against America? If we are at war, then the question is: with whom?

Graham will no doubt answer "radical Islam," or "Islamism," or something along these lines. For a variety of reasons, this is woefully inadequate.

As long as our government insists that it is engaged in some amorphous "War on Terror" or "War on Islamo-Fascism," then, in principle, *anyone*, and at any time and for any reason, can be declared an enemy combatant. Muslims will be particularly vulnerable. On Monday's edition of Sean Hannity's radio show, guest Jay Sekulow, from the American Center for Law and Justice, summarily dismissed this idea, reassuring listeners that anyone endowed with enemy combatant status has the right to attain a habeas corpus so that he can argue his case before a judge so as to prove that he is not guilty as charged.

Pay careful attention here. Sekulow thinks that American citizens needn't worry about their liberties because if they are accused of being enemy combatants, then the burden will be on *them* to convince their government otherwise.

All hyperbole aside, the Grahams and the Sekulows of the world pose a much larger threat to American liberty than any posed by the Tsarnaev brothers.



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