

What price will we pay for our security?

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On Christmas Day, a young Nigerian starkly reminded us of the dangers to our nation and its citizens posed by acts of terror. Absent courageous action by passengers and crew, he might have blown a hole in a jetliner, causing it to plunge to earth, killing hundreds. This brought the terrible 9/11 attacks to mind, and we feel exposed and afraid.

While pondering how we might still better protect ourselves, we need to remain conscious of times in the past when, in the quest for security, we have strayed from the principles on which America was founded. Looking back at these episodes after the fears have subsided, we see how they prompted excessive actions that probably did little or nothing to make us safer.

In 1798, a war between England and France threatened to engulf our young nation. The Federalists, who held power under President John Adams, favored the English, while the Republicans - led by Thomas Jefferson - preferred the French. Fierce partisan battles resulted, prompting leading Federalists to charge their foes with disloyalty.

The Alien and Sedition acts were enacted. The Alien Act empowered the president to deport any non-citizen he judged dangerous to the peace and safety of the United States, without evidence, hearing or judicial review. The Sedition Act, which prohibited criticism of the government, Congress or the president with the intent to bring them into contempt or disrepute, was enforced only against editors and other supporters of the Republican Party.

The passage and signing of these measures, according to historian and author David McCullough, "were to be rightly judged as the most reprehensible acts of [Adams's] presidency."

During the Civil War, faced with widespread and often bitter opposition to the war, the draft and the Emancipation Proclamation, President Lincoln suspended the writ of habeas corpus eight times. The most extreme order declared that "all persons â€" guilty of any disloyal practice â€" shall be subject to court martial." Under this authority, military officers arrested and imprisoned as many as 13,000 civilians with neither judicial proceedings nor review.

A year after the war ended, the Supreme Court ruled that the president could not constitutionally suspend habeas corpus even in time of war, if the civil courts remained open and functioning. The court expressly rejected the government's argument that, due to the war, the executive branch had the right to function as "supreme legislator, supreme judge and supreme executive."

In the months following Japan's attack on Pearl Harbor, 120,000 individuals of Japanese descent, two-thirds of them American citizens, were forced from their homes and interned pursuant to Executive Order 9066.

While the Supreme Court, in one of its worst moments, upheld the action, Attorney General Francis Biddle later wrote that the episode showed "the power of suggestion which a mystic cliché like 'military necessity' can exercise on human beings." Because of a "lack of independent courage and faith in American reality" we missed a unique opportunity to "assert the human decencies for which we were fighting."

President Ford in 1976 issued a proclamation confessing the wrong, and in 1982 a federal commission unanimously concluded that the factors that shaped the internment decision were "race prejudice, war hysteria and a failure of political leadership" rather than military necessity.

How have we dealt with our justifiable fears arising from the enormity of the 9/11 attacks? Rather well in some ways, but in others not well at all.

In the name of national security, we have adopted radical measures by executive fiat. Foreign men and boys have been hauled off to prison (sometimes after a bounty hunter turned them over for the reward), whether Guantanamo Bay, Bagram Air Base or secret "black sites," often with no realistic assurance that they committed any crime. They have been detained without charge or any possibility of a fair assessment whether they did anything seriously wrong. The government has claimed the right to hold them indefinitely - that is, for the rest of their lives.

We have depended on interrogation to distinguish the innocent from the guilty. This utter reliance on interrogation led inevitably to what may be our greatest loss. America, that most ardent champion of human rights, has endangered its moral authority by engaging in what amounts to state-sanctioned torture.

Quite apart from what it says about our nation, grave doubts exist over whether torture gives us the truth. The U.S. Army's Field Manual "Intelligence Interrogation" (FM 34-52), written before 9/11, states:

"Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts and can induce the source to say what he thinks the interrogator wants to hear."

Our military forces have long rejected torture because, among other reasons, it inevitably produces reprisals by the enemy on our own soldiers. And consider how many terrorists have been recruited by accounts of these practices.

I do not suggest that we be anything less than tenacious in our defense. Rather, I argue only that, before deciding on actions to take, we remain conscious of how we lost our way during perilous times in the past.

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