

Our history has seen a broad range of limitations of individual rights in order to ensure national security. In February 1942, President Roosevelt, using his authority under Article II, Section 2 as Commander-In-Chief, issued Executive Order 9066, authorized the Armed Forces to hold anyone with 'Foreign Enemy Ancestry' in interment – swiping away constitutional rights from Japanese-Americans and nationals of Japanese descent. Almost 120,000 Japanese were relocated from the west coast to camps in the interior, with 62 percent of them being legal US citizens ("Executive Order 9066"). Japanese living in America were denied due process guaranteed by the Constitution. With this policy in place, the United States government essentially said that Japanese living in America were a threat to security and therefore needed to be contained in camps. Immediately after the 9/11 attacks, the president created the Office of Homeland Security with the vague mission to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorists' threats or attacks (Dycus, 635). Congress also acted quickly to pass the USA Patriot Act of 2001 that granted vast powers to the executive branch over citizens and resident aliens that also included the suspension of certain constitutional rights (enumerated in the 1st, 4th, and 6th Amendments). For example, the Patriot Act eradicates the personal privacy an individual has over his library, financial, medical, phone, internet, or educational records. In my opinion, these steps are well intentioned to maintain security, but grant too much unchecked authority to the federal government by curtailing civil rights and liberties.

In both instances, I appreciate the thinking that led to these initiatives as regarding national security and the prevention of harmful attacks on the country but am opposed to the actual measures taken. For example, history has proven that the internment camps were a very flawed response by the government and the Supreme Court has ruled parts of the USA Patriot

Act unconstitutional. These actions were carried out by legislation of the Congress, by suggestion of the executive, who in so doing did not exceed their presidential powers except in that the actions were inconsistent with the Constitution. In this way, their actions were not usurpations of congressional authority but the actions in themselves, committed by the entire government, were unconstitutional. They severely curtailed rights protected by the Constitution significantly reducing the limits on governmental power and infringing on the ideals of democracy which include freedom from governmental abuse of power. In ensuring national security, I do not think that the civil liberties enumerated in the Bill of Rights need to be forfeited. Some sacrifices may be made in the name of protection, but a balance between the maintenance of national safety and the protection of rights would be best. Finding this balance is a difficult thing to accomplish as the stakes are very high on both sides and both safety and liberty are promised to the American people.

Concerning the status of citizens and resident aliens regarding their protected rights, the Constitution makes no distinction between the two. The rights of resident aliens should be protected equally to those of citizens as the Constitution cites the "people" and not the citizens alone when discussing those it was constructed to protect. I take this to mean all people living in the United States and would not discriminate on the basis of citizenship. For example, the case of *Korematsu v. United States*, 323 U.S. 214 (1944) provides an interesting consideration. This case was brought in an effort to protect an American citizen of Japanese descent from the exclusion from his home in the internment camps of World War II which were created in an effort to avoid invasion by the Japanese. Among those removed from their homes were citizens and resident aliens alike, but all were selected on the basis of their ancestry. This action by the U.S. government was a violation of the Fourth Amendment guaranteeing the freedom from search and

seizure and the Fourteenth Amendment granting equal protection under the Constitution but the court upheld the constitutionality of this action in an effort to protect national security. I disagree with this decision as it defies the underlying principle of equal protection as set forth in our Constitution.

If there is a need to curtail civil liberties belonging to those protected by the Constitution, it should only be done by Congress as specified in Article V with Amendments passed by 2/3 of Congress and 3/4 of state legislatures. This is important in order to maintain checks and balances between the three branches of government, particularly against an abuse of executive power. An example of such is in the suspension of writs of habeas corpus as seen in *Ex parte Merryman* which was ruled unconstitutional because the ability to suspend a writ of habeas corpus does not belong to the president; only congress is allowed to perform this action as specified in Article 1 section 9 of the Constitution.

The USA Patriot Act of 2001 was not passed during a time of war. Restricting so many constitutionally protected rights not during war time opens the doors to the restriction of rights at any time the government feels it is necessary. This greatly threatens those civil liberties guaranteed under the Constitution and allows them to be undermined by the federal government. This is not something that I think should be allowed as it has the potential to be abused in a way that puts at risk the very people that are to be protected.

Moreover, if any individual rights are to be restricted by the government, it should not be done because they are "dangerous to the public safety" as it is more dangerous to invade these rights. At times, it may be helpful to suspend some personal liberties temporarily in order to more effectively protect national security but there are those civil liberties which should not be altered, namely those included in the Bill of Rights. These rights should be protected above all

others because they are a part of the foundation of our country and have been valued and protected throughout our nation's history. If the civil liberties and rights enumerated in the Constitution are ever seen as dangerous, especially to the government whenever it feels threatened and not exclusively during times of war, then the nation is at risk of losing the core values on which it stands. For these reasons, I do not think that any rights protected under the Constitution are dangerous to national security.

Some examples of the measures that I think are appropriate to take in ensuring national safety include the escalation of security in airports and public places. In addition, I would advise against the usurpation of constitutionally protected rights including the freedom from search and seizure and the right to a fair, public, and speedy trial by jury with the assistance of Counsel (Amendments 4, 6, 7). With these considerations, the country may have been better protected not only against future attacks, but abuses of power by the federal government as well. I do not think that the government should be able to overlook other rights such as the protection from search and seizure, the freedom of speech (from having phone lines tapped), the freedom of assembly, the suspension of due process of law and a jury trial, or the right to a speedy and public trial. These are basic rights protected by the Bill of Rights and should not be altered except in very limited circumstances and done so only by the proper means and as previously discussed. The USA Patriot Act of 2001 was not the proper means for doing this although these are some of the rights on which it infringed in the name of national security.

In light of all the aforementioned considerations, there can be a distinction between the rights of the Native American terrorists who bombed the Murrah Federal Building in Oklahoma City and those prisoners that are denied rights at Guantanamo. It is important to consider the nationality of those being held at Guantanamo, as "aliens outside the United State have fewer, if

any, constitutional rights” than citizens of the United States, such as the aforementioned Native Americans. The majority of those being held at Guantanamo are not citizens of the United States and thus, as is currently argued and enacted by our government, do not have the privilege to the rights as enumerated by the Constitution. Additionally, because the prisoners are not being held on U.S. soil it can be argued that they are thus not subject to U.S. laws. These issues have been highly controversial in their interpretations, garnering enough attention for current review by the Supreme Court.