

Senate must shed light on detainees' rights bill

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Even for a body composed of professional politicians, the Senate has had quite a week. First it offhandedly punched a hole in the Constitution, and then it sought public accolades for patching up part of the damage it had just caused.

Since 2002 our government has been picking up people from around the world on the basis of information of varied reliability suggesting that they are somehow linked to "terrorism," nebulously defined, and isolating them at Guantanamo Bay, Cuba. Government officials have openly acknowledged that in many cases they simply seized the wrong person. In other instances, people were sold to American forces for cash bounties, handed to our government by foreign governments that lacked evidence to hold them, or implicated by evidence secured through torture.

In June 2004 the Supreme Court finally decided that enough was enough. The executive branch, it held, could not act as judge, jury and executioner. Instead, the courts had to ensure that minimum standards of justice were met before the administration could imprison people indefinitely on its own say-so. Prisoners had to know what they were charged with and be able to confront the evidence against them. This ruling was the single most important triumph the Bill of Rights has had since the war on terror began.

The administration's response has been to stonewall. It has launched a series of obstructionist legal maneuvers that have succeeded in keeping the detainees from obtaining court review.

Under these circumstances a normal person might have thought that if Congress wanted to intervene to improve the situation, it might, for instance, cut off funds to the Justice Department until it implemented the mandate of the Supreme Court. But normal people and politicians think differently.

What actually happened was that on Nov. 10, Sen. Lindsey Graham (R-S.C.) went to the floor and made a rhetorical speech that stampeded the Senate - which thought the path of political advantage lay in curtailing basic rights rather than standing up for them - into passing a stealth amendment to the Defense Department appropriations bill that barred the Guantanamo detainees from seeking review of the basis for their detentions.

The public reacted with justified outrage to this casual tinkering with basic fairness. Newspapers from around the country ran editorials denouncing the legislation as an "ill-considered step." Local citizens wrote opinion pieces objecting that the Senate had acted "in a cavalier manner" to return Guantanamo to the status of a legal black hole just when the Supreme Court had allowed a few rays of light to seep in. Religious, military and bar groups added their protests to the passage of momentous legislation "with no hearings and little debate."

By Monday, the pressure had gotten so intense that Graham knew he had to do something. Did he withdraw his amendment for sober consideration of the problems and sensible solutions to them? Of course not; he's a politician. He sat down at the edge of the Senate chamber with Michigan Sen. Carl Levin, the ranking Democrat on the Armed Services Committee. The two of them cobbled together an amendment that returned some small measure of the due process rights that had been taken away.

How much? No one knows. Because there had been no hearings in either House, and certainly none by the Senate Judiciary Committee (as its chair, Sen. Arlen Specter (R-Pa.), rightly protested on the floor), the meaning of the Graham-Levin compromise was left for future determination.

That, however, did not stop the Senate from passing it by an 84-14 vote as members congratulated one another for having "saved" the right to judicial review they themselves had abrogated a few days before. One wonders what they would have said about a thief who had stolen a whole pie and then sought praise for returning half of it.

The matter must not be left to rest there. If we are to remain true to our own values, we simply cannot afford to thoughtlessly weaken the basic structure of checks and balances that has served for centuries to control arbitrary executive action.

Fortunately, the defense appropriations bill still needs to clear a House-Senate conference. (The House never considered the Guantanamo issue, and its bill contains no provision on the subject.) The public should make itself heard to every member of Congress, demanding that the conferees strip the Graham-Levin "compromise" from the legislation.

If our representatives seriously propose to rewrite the Bill of Rights so that they can run campaign commercials showing how tough they are on terrorism, let them do it in the sunlight (or at least under the television lights) - after open hearings in both Houses and full debate.

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