The Reasonable Interrogation of Dzhokhar Tsarnaev

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There is something very commendable and seriously troubling in the calls by the so called “responsible media,” the ACLU, and select liberals to preserve the rights of the surviving Boston Marathon bombing suspect. On the one hand, we cannot but be proud about how strongly Americans are committed to the rule of law, the Constitution, and granting a fair trial to those who engage in the most despicable acts—even when the wound is so deep and still fresh. Hospitals are still full with people whose limbs have been amputated and the victims of the attack (including an 8-year-old child) have not yet been laid to rest. But the extent to which many observers of our public life ignore the balance carefully crafted by the Constitution—between individual rights and the public interest—is stunning.

One wishes that the ardent advocates for the rights of suspected terrorist would read the Fourth Amendment, which captures very well the balance the Constitution calls for. Unlike the one-sided, absolute language of the First Amendment (“Congress shall make no law...”), the Fourth protects “against unreasonable searches and seizures,” thus recognizing on the face of it that there are reasonable searches—that is, those justified by a compelling public interest.

This essential text leads us to a question that has received much attention: should the Boston Marathon bomber have been Mirandized or was there a compelling public reason to withhold this right? Authorities did not bend the rules or sidestep justice when they delayed reading Dzhokhar Tsarnaev his rights; indeed, their decision to do so is fully supported by the public-safety exception introduced precisely for the situation at hand. The Supreme Court upheld the exception in the 1984 case New York v. Quarles, in which police were informed the suspect had a gun and asked where it was before reading his rights. It also was invoked in the case of the 2009 Christmas Day bomber and in 2010 for Faisal Shahzad after he attempted to set off a bomb in Times Square. In the wake of the Boston attack, law enforcement is trying to find out if other plots are afoot. This is always a legitimate question when one deals with acts of terror, but especially in this case, as officials already established that the brothers had stockpiled more bombs and ammunition. If this is not a threat to public safety—what is?

The ACLU and its associates are not satisfied. They wonder if the public-safety exception has been properly applied. After all, they point out, the all clear has been sounded and Boston is no longer on a lock down, as if these were the only indications that no danger remains. And they fear that if subjected to pre-Miranda interrogation, the alleged offender would be asked questions that do not concern public safety, as if one could draw such a line. Thus, in asking him about his relationship to his brother—who is reported to have radicalized him and took the lead in the bombing—is both a personal and a very legitimate question.

Another indication of the extent to which civil libertarians neglect the latter half the balance between individual rights and public safety, is their reaction to the use of close-circuit television. Thanks to CCTV surveillance, images of the suspects were quickly found and matched with driver license photos, allowing the authorities to learn the names of the bombers and greatly narrow their search. Without this evidence it might well have taken much longer to find the brothers, leaving them free to strike and kill many more innocent people. One would think this would be an occasion to appreciate the presence of CCTV in public spaces. Instead, Jennifer Lynch, an attorney at the Electronic Frontier Foundation, worries that in heavily monitored metropolitan areas, people “could be surveilled in almost everything they do. That is a society that most of us do not want to live in.” Well, “people” on camera were not troubled by anyone—until there was a very strong reason to review the tapes. Let’s ask the people of Boston if they would prefer these cameras to be shut down.

Above all, we should heed the call of lawmakers who have raised concerns about the failure of intelligence before the attack and wonder if more could have been done to prevent it. In 2011, when Russia notified the FBI that Tamerlan Tsarnaev was in contact with radical Islamic groups, he was interviewed and let go. Because, as NPR proudly put it, “in
this country talking to Jihadists is not a reason to hold you.” Well put. However, keeping an eye on such people is not against our laws. We should learn more about why this was not done.

The commitment to the Constitution and the Bill of Rights, even in the wake of such vicious attacks, is one of most laudable features of American society. Yet one wishes it would evolve to a fuller understanding of what our founding document entails. It seeks to balance individual rights and the protection of the public. So far there is no indication that this balance has been violated by the authorities in dealing with the Marathon bombers. This is what should make us proud.

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