

## **Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terror**

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For many of us in the Muslim world, the US detention centre based in Guantanamo Bay, Cuba has emerged as a symbol of injustice and abuse. In the aftermath of the 9/11 attacks on the United States, the Bush Administration has pursued a relentless policy of pursuit and persecution of 'terrorism' and 'terrorists'. The word 'terrorism' itself has given the administration in the US a wide canvas on which to operate. Its policy includes not only direct military intervention and preemptive measures for rooting out 'terrorism', but also to capture, detain and persecute all those accused of being involved and associated with 'terrorist' networks.

In his pocket book, *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terror*, the situation at Guantanamo Bay is a major focus of David Cole, a professor at Georgetown University Law Centre and a volunteer staff attorney at the Centre for Constitutional Rights in Washington DC.

President Bush designated the over 650 Guantanamo prisoners, captured in Afghanistan and Iraq after November 2001, as "enemy combatants" — as opposed to prisoners of war, who would be entitled to the protections of the Geneva Conventions (pp. 22- 46). The Bush Administration has taken the position that the "enemy combatants" — captured mainly in Afghanistan and Pakistan and where they are alleged to have been fighting for the Taliban or Al-Qaeda — are not entitled to attorneys, or even to hearings to determine if they are being wrongfully held. As of December 2007, around 275 people remain at the detention centre in Cuba and the Pentagon says another 60 inmates are now eligible for transfer or release.

Consequently, concerned agencies in the US have increasingly been involved in secret detentions, tortures, renditions, and indefinite detentions without charge, flouting not only basic international human rights principles, but also bypassing the US legal system. Such practices have affected people both outside the US (in the name of 'war on terror') and inside the US (under the 'Patriot Act' of October 2001). And this is the theme that runs constantly throughout the book.

Cole's thesis finds the root of today's 'War on Terror' in the 'Cold War'. To explain the parallels, he discusses several cases in which he represented defendants alleged to be communists, or were alleged to be aiding and abetting communist organizations. The government's modus operandi was: target, snoop, charge, and deport. According to Cole, even at that time, the FBI admitted that it never found evidence of criminal or terrorist activity, yet insisted on deportation proceedings (pp. 85-182).

Cole argues that the same tactics are now being repeated against those who seem "suspicious". But while yesterday it were the communists, today it is the Muslims and Arabs who are being targeted under laws amended as part of the USA Patriot Act, commonly known as the Patriot Act signed by President Bush in October 2001. He maintains that in balancing liberty and security, the US has consistently relied on a double standard, imposing measures on foreigners that the Americans would not tolerate if applied more broadly to all of them. Cole warns that while such a double standard is politically easy, it is constitutionally suspect, counter-productive as a security measure, and ultimately illusory, because history shows that acceptance of such treatment for outsiders paves the way for similar measures against American citizens. Cole points out that those who believed this treatment would never be applied to Americans have been proven very wrong indeed (pp. 183-208). To the contrary, American citizens such as Yaser Hamdi and Jose Padilla have now been declared "enemy combatants" as well on allegations only. Neither citizen has been charged with a crime, nor have they been afforded access to a lawyer (pp. 1-5).

Besides the treatment of "enemy combatants" — both citizens and non-citizens — Cole's other major concern is post-September 11 immigration proceedings. Immediately after September 11, the government rounded up thousands of Arab and Muslim men. It held them without charges and without access to attorneys or their families for far longer than the law allowed. With the facts provided by Cole, it seems absurd that former Attorney General John Ashcroft and his Department of Justice touted such deportations as evidence of fighting and winning the "war on terror." It seems more like a war on

immigrants. Cole criticizes all of these tactics as both strategic and human rights failures. From a strategic point of view, Cole argues that if the US indeed has reason to believe that terrorists are lurking in Arab and Muslim immigrant communities, then it ought to work with the communities to identify the threats. Instead, however, it has discriminatorily targeted these ethnic groups for selective prosecution for immigration violations. The result, Cole says, is a loss of goodwill among these communities. And that loss, he contends, will have a long-term negative effect both on the “war on terrorism” and on US relationships with Arab and Muslim communities both at home and abroad (pp-211-227). One cannot help avoid an ugly conclusion: The US government is using the “war on terror” as a justification for selectively targeting and prosecuting foreign nationals from Arab and Muslim countries, virtually none of whom have ever been remotely involved with terrorism.

Cole’s *Enemy Aliens* deftly presents the legal issues that abound in the treatment of immigrants post-September 11. Granted, he concedes, the Supreme Court has long allowed the differential treatment of alien fighters captured on battlefield abroad. But that ruling does not extend to aliens who are not fighting against the US. And that may be the case with respect to a significant number of those still being held in Guantanamo Bay. Moreover, it was certainly the case with those illegally detained after September 11. Cole’s most passionate argument is that the way the US government has treated immigrants is morally and constitutionally wrong. Indeed, Cole argues that the only morally acceptable option is a simple one: to treat them as human beings entitled to the same fundamental rights as citizens. But the US government, especially since September 11, 2001 has fallen terribly short of this ideal.

*Enemy Aliens* is a recommended read for anyone interested in the profound legal and governmental changes the US has seen since September 11 — and, especially, for anyone concerned about the harms those changes have inflicted on civil liberties. While those directly impacted by the US ‘war on terror’ and its legal ramifications currently happen to be Muslims and people of Arab origin, the book serves as a warning for Americans to worry about the way their government treats immigrants, for it has and will continue to have an impact on the way it will treat its own citizens.

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Abstract. David Cole's "Enemy Aliens, Double Standards and Constitutional Freedoms in the War on Terrorism" (New York: New York Press, 2003) sets forth a comprehensive and intelligent assessment of the ways in which the war on terror has put the United States and its citizens at risk. Cole argues persuasively that actions taken by the United States since September 11, 2001 in the name of national security - rather than achieving a "peace founded upon the dignity and rights of every man and woman," - have sacrificed the liberties of non-citizens and will ultimately jeopardize the Since the war on terror began, over 5000 people in the U.S. - including British nationals - have been detained in antiterrorism initiatives, yet only five have been charged with a terrorist crime and only one convicted. Why has the U.S. government locked up so many with so little to show for it? Are these sweeping ethnicity-based detentions effective security measures? Enemy Aliens, answers these vitally important questions. In the wake of Inspector General Glenn A. Fine's report documenting extensive abuse of detained immigrants in the wake of September 11, there is mounting pressure for