

Preserving privacy: a civil right



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“ This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened” – John F. Kennedy. Throughout history America has sought to provide and protect civil liberties regardless of race, gender, and now sexuality. Yet, the civil rights discussion has evolved to address a new and often overlooked facet of an individual’s life: privacy. The terrorist attacks on September 11, 2001 have permanently altered American culture. Increased surveillance technology and precautions have become a part of everyday life. However, the question arises where the balance exists between security and respecting civil rights. While the mission to combat terrorism is noble, the governments existing means of accomplishing that task must be reevaluated for they lack accountability, contain unnecessary provisions, and ultimately violate the rights guaranteed to all citizens by the U. S. Constitution. Before engaging the details surrounding surveillance technology, the issue of how the average citizen defines privacy must be addressed. In the article “ The Right to Privacy” author Judith Jarvis Thompson asserts that the common definition of privacy is “ the right to be left alone” (295). Initially this perception seems appropriate, however it does not protect one from invasion. There are ample ways to violate ones right to privacy without ever disturbing their routine. For example, a woman keeps her face covered in conjunction with her religious beliefs. Technology used, without probable cause, to look upon this woman’s face disrespects her decision to keep her features covered in public. Under the principles of democracy, as long as

these actions do not violate another citizen, no one has the authority to challenge the choices an individual makes regarding themselves. In the same way a person has the right to make decisions concerning their property they have the right not to be looked at or listened to, even if it causes them no harm (Thompson 303).

The average citizen understands the rights they have to protect, sell, etc. over their possessions. It is not a question that a person is of more value than their property. Thus, the provisions outlined in the Constitution exist to protect the individual. Despite the right to privacy not being explicitly named it can be argued that because one is given the rights in the Constitution they have the right to privacy. Thomas explains this as “ the right to privacy is itself a cluster of rights, and that it is not a distinct cluster of rights but itself intersects with a cluster of rights which the right over the person consists in and also with the cluster of right which owning property consists in” (306). Overall privacy is the right one has to make decisions concerning their person and exists in tandem with the rights explicitly outlined by the Constitution. This understanding of privacy will be the framework for analyzing the surveillance technology instituted by the government in post 9/11 America.

After the tragedy of 9/11 lawmakers were determined to institute measures that would allow them to combat and prevent terrorism. Only forty five days later the answer to that mission was enacted. “ The Patriot Act takes account of the new realities and dangers posed by modern terrorists. It will help law enforcement to identify, to dismantle, to disrupt, and to punish terrorists before they strike.” - President George W. Bush, at the Patriot Act signing

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ceremony, on Oct. 26, 2001 (Ashcroft 1). Ultimately the government argued that these changes were necessary to protect citizens from twenty first century terrorists. This is defended by the reality that the previous laws did not grant the Federal Bureau of Investigation the provisions to intervene on September 11, 2001.

In the article " Our Right to Security" author Debra Burlingame depicts how the FBI had incriminating evidence prior to planes crashing into the Twin Towers. The National Security Agency had foreknowledge of plane reservations, phone calls, etc. but did not proceed due to the regulations set forth by the Foreign Intelligence Surveillance Act and fear of the accusation of " domestic spying" (Burlingame 1). Investigators hold that if FISA had made an exception potentially all four airplanes could have been recovered (Burlingame 1). It was believed that not having the provisions of the Patriot Act was a misfortune that cost over three thousand lives and the nation as a whole tremendously. For this reason in October 2001 the Patriot Act was portrayed as providing a safer America, protecting citizens, and assuring that the nation would not stand by and allow events like that on September 11th to occur again. The Act would also assist prosecutors in other cases ranging from criminal to child pornography (Ashcroft). Yet, it should be noted that this feeling was not unanimous in Congress.

Senator Russell Feingold was the only opposing vote against the Patriot Act on the Senate floor. Feingold believed that while the majority of the Act had potential there were several sections which violated civil liberties and the Bush administration's urgency was unnecessary (Marshall). Feingold himself states that he was filled with anxiety in regards to the " loss of our traditional

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attachment to civil liberties over the last seven months. We must continue to respect our Constitution. This is a different time, but we must examine every response [to terrorism] to make sure we are not rewarding the terrorists by giving up our cherished liberties” (Marshall). If the war on terrorism must be won by forfeiting the principles of Democracy the nation is fighting a battle that is already lost. The priority to preserve civil liberties is embodied in public opinion polls conducted throughout the nation.

The majority of public opinion has always reflected that people find privacy to be an “essential right” (Best 375). After 9/11 public polls came in at eighty one percent, a three percent increase, indicating that privacy was a priority for the individual and upholding it is of importance (Best 376). When Americans were specifically asked through the Gallup Poll,

Which comes closer to your view: the government should take all steps necessary to prevent additional acts of terrorism in the U. S. even if it means your basic civil liberties would be violated, (or) the government should take steps to prevent additional acts of terrorism but not if those steps would violate your basic civil liberties?

Sixty five percent supported the latter (Best 390). This is reflective that while Americans support government initiatives to combat global terrorism they expect this to be done while simultaneously respecting the principles of the Constitution. Perhaps this is why the nation was filled with such outrage when information was released to the public on the extent of how the Patriot Act was accessing their information.

On May 20, 2013 the global perception of government surveillance technology was dismantled when Edward Snowden, CIA system administrator, revealed classified information regarding the NSA (Munger 606). Snowden's motivation was to reveal American's ignorance and show just how their tax dollars are combatting terrorism (Munger 608). Ultimately it was revealed that through FISA the NSA has access to personal information from all major cellular providers, personal and business records, in addition to the majority of all internet communications through the program PRISM (Editorial 1). The article " Edwin Snowden, Whistle-Blower" claims that the director of national intelligence, James Clapper Jr., denied these NSA occurrences to Congress in March (1). Perhaps that is because the truth is that each of these measures violates the fourth amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (US Const. amend. IV).

It is illogical to argue that the personal information of all American citizens is pivotal to the war of terror when an incident has not occurred in over a decade. Supporters claim that this lack of terrorism actually validates the success of these provisions. Yet Snowden claims that this logic mirrors a children's joke: " Elephants hide in trees." " No way! I've never seen one." " See how well they hide? (Munger 606). If government surveillance technology is so advanced why are there incidents such as the Boston Marathon Bombing? In reality police officers kill more people than terrorism, <https://assignbuster.com/preserving-privacy-a-civil-right/>

but Americans are trading their civil liberties in fear, based on a portrayed threat of terrorism (Munger 608). There is no probable cause for using the information of millions of Americans, yet these unconstitutional provisions are written into the Patriot Act.

Within the Patriot Act there is one section which should make every American citizen suspicious: 215. The verbiage of the section is as follows:

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of *any tangible things* (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution (Beeson 4).

In other words, any first amendment action that citizen does makes them eligible for inspection from the FBI. The section also encompasses those who are not American citizens if they have done any "first amendment activities" (Beeson 4). The government has access to personal records from businesses, libraries, hospitals, internet service and cellular providers for the sake of terrorism investigations (Beeson 2). This government monitoring can be carried out without probable cause. One does not have to be involved with terrorism in any sense to be monitored. These searches conducted without

cause are a direct contradiction of the rights given to all citizens under the fourth amendment of the U. S. Constitution. There must a warrant before any search can be conducted under the fourth amendment, yet section 215 of the Patriot Act gives the FBI permission to monitor the private actions of anyone for something as simple as a visiting a website, making a call overseas, practicing their religion, or checking a book from the library (Beeson 3). Even more alarming however is the reality that these violations of individual privacy can be carried out without ever notifying the person.

Within section 215 of the Patriot Act is the following “ gag clause” which prohibits anyone from disclosing any information requested by the FBI: No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section (Beeson 5). The term “ tangible things” encompasses anything within grasp by the FBI. This clause allows everything they access, both specifically and in general, to remain classified. The clause is automatic and does not require any explanation for secrecy. Edward Snowden showcases the danger of this lack of accountability: “ There can be no faith in government if our highest offices are excused from scrutiny—they should be setting the example of transparency” (Munger 606). However, it is clear that the FBI’s surveillance technology is anything but transparent. In the article “ The USA Patriot Act: Problems of Post-Communism” author Cathy Zeljak, reveals that over 6, 000 documents were removed from public record in the three years following the enactment of the Patriot Act. In addition, various departments have been given liberty to judge if a document should be classified. As a

result the amount of classified documents increased by eighteen percent by 2004 (Zeljak 63). This much authority invested in a singular government organization cheapens the system of checks and balances and leaves far too much room for misdemeanors. However, the theme of secrecy is scattered throughout even further provisions of the Patriot Act.

Section 213 has been nicknamed the “sneak and peek” for it allows law officials to delay issuing a warrant to investigate an individual. This power was already granted to the government if it could be proven to a judge that an individual will attempt to flee, someone is in physical danger, the authenticity of witnesses will be effected, evidence could be jeopardized, or the trial would be delayed (How). These existing circumstances are controlled and reasonable to delay a warrant. Now under section 213 the FBI has the ability to conduct any search, physical or electronic, without notifying the party if they consider it to be necessary for preventing terrorism or even criminal cases (How). This is yet another provision which blatantly disregards the protection from unreasonable search and seizures assured by the fourth amendment. The FBI can conduct a full investigation, enter an individual’s home, take photographs, and remove evidence, without any knowledge to the person (How). Warrants exist to protect citizens from these intrusions and limit what is appropriate for inspection. This serves to protect the privacy of the individual, but if the inspection is classified there is no limitations on what can be seized (How). The Patriot Act gives direct permission for these government agencies to disregard the individual in conducting their investigations. This unsolicited power should leave all citizens questioning who is upholding their Constitutional rights.

“ Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety” -Benjamin Franklin. While the Patriot Act may be legal it is nothing short of Unconstitutional. The focus of preventing terrorism is essential in post 9/11 America. Yet, the existing surveillance technology far exceeds what is necessary to monitor potential threats to national security. It is illogical to presume that access to the personal information of each and every American is a requirement for controlling terrorism. This perspective disrespects the right a person has over themselves, their property, and privacy. There is no limit to the list of “ tangible things” that can be accessed by the FBI. These government agencies should not be given this type of power let alone be left to regulate and classify their actions. The provisions which allow the FBI to conduct their searches fundamentally violate the Constitution in several regards. Ultimately, American’s must realize that any legislation which claims to protect citizens at the expense of civil liberties mirrors a totalitarian state by directly contradicting the founding principles of democracy.

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