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Why Should We Care if the PATRIOT Act Expires? Our Freedom is at Stake

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We can answer that in one sentence: because our freedom is at stake, just like it was at the time of the original American Revolution.

Let us revisit that Revolution to set up our current problem with the PATRIOT Act. In the initial Enlightenment-era struggles against authoritarian power, the emphasis was clearly on the freedom of persons from unwarranted government intrusion. One of the early writers advocating against this practice of totalitarian power was John Locke, who put the issue quite succinctly: "He who would take away [my] freedom declares war on me. Freedom is the fence to [my preservation], because to take away freedom is to imply that one wants to take away everything else, freedom being the foundation of all the rest."

Further, Locke saw that freedom is such a foundational trait of humans that "This freedom from Absolute, Arbitrary Power, is so necessary to, and closely joyned with a Man's [sic.] Preservation, that he cannot part with it, but by what forfeits his Preservation and Life together."

Most importantly along this line, Locke argued that the extent of governmental power is limited by its obligation to secure the rights of its people.

The Framers of the U.S. Constitution were deeply influenced by this philosophy. Thomas Jefferson undeniably directly used significant portions of it in writing the Declaration of Independence. Those who wanted to keep in line with this philosophy insisted that a Bill of Rights be attached to the Constitution that would guarantee its being followed. Hence, this understanding that the people's freedom from government overreach was paramount to democracy went directly into our Bill of Rights, arguably most specifically in the First and Fourth Amendments, which will be dealt with below.

Opposed to this conception of liberty are those congressional opponents—both Republican and Democrat—who, when they talk of "freedom," limit it to corporate or individual "free enterprise," but when it comes to civil/individual liberties—the very grounding of free enterprise, as we see above—they stand fourfold against freedom. That this position indicates a certain schizophrenia disorder goes without saying. But more to the point, it is contradictory and thus irrational to maintain that the entire base of civil liberties—the liberty of the people to be free from their government's over-reaching, prying hand—should be reined in whenever the elites in power feel a threat to their power.

Witness, for example, Jeb Bush, speaking for the power-elite, when he stated this past weekend that "there is not a shred of evidence, that the metadata program has violated anybody's civil liberties." First of all, we would never know if anyone's liberties were violated, since the program is shrouded in secrecy. Second, and more to the point, the entire thrust of the Enlightenment political program was to prevent consolidation of the power of government over its citizens, and in particular the power.

Going further, Bush argues that "the first duty of our national government is to protect the homeland. And this has been an effective tool." The problem is, of course, that no such "victories" are named, and no evidence has ever been presented that the limiting of privacy rights to zero is an "effective tool" for anything but increased corporate-state power. More to the point, not one commission that has studied the metadata collection program has concluded that it "protects the homeland." Nor has the Senate Intelligence Committee come

to such a conclusion. If no authorized commission that has studied the issue can reach the conclusion Bush does, then we are entitled to characterize Bush's conclusion as "pure ideology," just like CIA Director John Brenan did, without evidence, this past Sunday, on the CBS program "Face the Nation."

There is also reason to be dismayed by the so-called "USA Freedom Act" on which the Congress is now set to vote. (A hint to the uninitiated: whenever the government considers a bill that claims to increase "freedom" in its title, you can bet that its intended aim is to do the opposite of its claim.) Although it does contain some revisions, such as requiring the government to obtain the metadata it seeks from the telecommunication companies that have it, in point of fact, the bill does nothing to change anything the NSA currently does. All of the mechanisms for bulk collection will remain in place, as will the goal of obtaining everything Americans do on the telecom devices. Further, if it is true that there is already a corporate-government complex that has replaced democracy in the U.S.—and this is an entirely plausible assumption—then "forcing" government to "ask" corporations to turn over their telecommunication records is like going to your neighbor's house to borrow a cup of sugar: it's easy, painless, and solidifies the relationship between you and your neighbor.

There are three PATRIOT Act provisions that expired last night:

> 1) Section 215 of Title II is entitled "Access to Records and Other Items Under the Foreign Intelligence Surveillance Act." It permits any Assistant Special Agent in Charge to obtain a court order "requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities." There is no probable cause, nor suspicion, required for obtaining such information, under Section 215. All that is required is an assertion that information is being sought for either terrorism or clandestine intelligence concerns. Perhaps most noteworthy here is that the practice is no longer relegated to such investigations of foreign nationals; USA PATRIOT here specifically uses the language "United States person," which includes regular U.S. citizens. Thus, any book or CD you either purchase or borrow from a library is subject to government investigation and knowledge.
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> 2) The so-called "lone wolf provisions" that are included in Sections 206 and 215, each of which uses an amendment of the FISA limitation of surveillance from "any agent of a foreign power" who is allegedly "engag(ing) in international terrorism or activities in preparation thereof," to "any person."
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> 3) Section 206 authorized phone taps of specified phones of the targets of investigations, limited to "foreign powers or agents," to add "roving wiretaps" (taps that are to be made to any phone or computer that a target of an intelligence gathering investigation might use) for any person.

Contrast these provisions with three of the relevant freedoms in the Bill of Rights violated by them.

The First Amendment states that "Congress shall make no law…abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble…" In relation to this, the U.S. Supreme Court has determined that one of three conditions must be met for the determination that free speech has gone too far, and requires legal punishment: 1) Clear

and present danger of criminal action; 2) Advocacy of abstract doctrine (i.e. only action can be punished, not belief); 3) Imminent action (i.e. speech that incites an immediate lawless action [e.g. burning down the court house], not an illegal action in general [e.g. advocating government overthrow]). Not only does NSA collection of bulk data extend far beyond these boundaries, but the freedom of speech—and consequently of thought—is significantly limited when that speech and those thoughts are being monitored.

Second, the Fourth Amendment states that "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." Requiring the government to produce probable cause for such activities protects the right against illegal searches and seizures. "Probable cause" means that the government must have some reason to believe that a criminal activity is taking place or about to take place, and that they are willing to swear an oath to that effect. This provision of law was a reaction against the practice of "general warrants" in England, carried over to America by British government, whereby a government official on any level could "search wherever they wanted and…seize whatever or whomever they wished." By putting the practice of general warrants back in place, these PATRIOT Act provisions were direct violations of the Fourth Amendment.

The privacy issue was perhaps most eloquently expressed in the case Olmstead v. U.S., in 1928, when Justice Brandeis wrote the majority opinion: "The right to be left alone—the most comprehensive of our rights, and the right most valued by civilized men [sic.] To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

Finally, the Fifth Amendment states that "No person shall be…deprived of life, liberty, or property, without due process of law…" "Due process" is norm that requires governments to follow fair and non-arbitrary rules in its conduct toward its citizens, particularly in a court of law. When governments collect information about all of their citizens, on a daily and hourly basis, that constitutes the very definition of "arbitrary" rules.

It might be wondered why there is even a controversy about these PATRIOT Act provisions sun-setting. It cannot be because of a conflict between "protecting the homeland" and "catching terrorists" as opposed to freedom, because, as we have seen, there is first of all no evidence to support such a statement putting the dilemma this way. Once we add to that the fact that there have already been lone-wolf terrorist attacks under such practices, such as the Boston Marathon bomber and others (e.g. Time Square Christmas SUV bomber), then the issue of "protection from attack" becomes moot.

Given that the Jeb Bushes, John Brennans, and Mitt Romneys of the political power-elite have not and cannot produce evidence to support their claims, it is plausible to suggest another reason that this issue of sun-setting provisions is even controversial. It is that the structure of the authoritarian state requires as its sole mandate its ever-increasing power over its minions; and Bush, Brennan, and Romney are all supporters of this corporate-state. Related to that, the main method of consolidating power in democratic structure is to keep the masses in servitude of the fear inculcated by the state, which then feeds the beast of power consumption from the people. Third and finally, large institutions, particularly governing ones, are prone to ignore or reject justice demands. This is arguably the real

reason that supporters of the PATRIOT Act and its expiring provisions are so adamant in supporting it: the issue is power, not justice. The latter belongs on the side of we, the people.

While no one denies that such freedom may be limited where there is an imminent threat, the alleged dangers posed by some form of ongoing threat of terrorism are insufficient to limit the freedom of the people to "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." To allow these limits to our freedom by allowing government to collect all of our papers, etc. is to enter into a new political world, where the primary democratic dilemma is not "freedom versus alleged protection by mass spying," but freedom versus tyranny.

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