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The Patriot Act: An Analysis

One of the principal powers of the United States government, enumerated by the United States Constitution, is to protect the nation and its population from threats both foreign and domestic. Historically, this has been accomplished through powers such as declaring war and raising and maintaining armed forces (Founders). However, as societies progress and technology advances, the means by which the government must fulfill this duty change accordingly. Such is the case with the Patriot Act. The attacks on September 11th, 2001, represent a marked shift in American national security practices. With haste and expedience, Congress convened to address what was perceived as a disastrous failure of the government to ensure the safety of the nation and to detect, deter, and delete terrorist threats.

Foregoing the committee debates and hearings that typically precede such significant policies (Krutz 2004), the 107th Congress passed the Uniting and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly referred to as the Patriot Act. This act addresses both the 9/11 attacks and the failures and shortcomings of the American national security system, which includes intelligence and law enforcement agencies such as the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency. The express purpose of the policy, per the law itself, is “To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes” (Patriot Act). In further detail, the act expands pre-existing law enforcement capabilities such as electronic surveillance, roving wiretaps, and delayed-notification search warrants to terrorism cases; facilitates greater interagency information sharing and cooperation; and increases penalties for individuals who commit terrorist crimes (Life and Liberty). The Patriot Act significantly expanded the federal government’s power and increased its ability to surveil and detain citizens and non-citizens alike on the grounds of suspicion of terrorist acts.

Despite a surge of patriotism in America following the attacks, the Patriot Act faced criticism over concerns regarding violations of civil liberties and constitutional rights. The American Civil Liberties Union states that the policy threatens the rights protected by the First, Fourth, Sixth, Eighth, and Fourteenth Amendments, targeting Arab and South Asian immigrants based on their religion or ethnic background (ACLU). Thousands of organizations and citizens voiced their opposition to the bill during its implementation. For instance, hundreds of New Yorkers rallied to reform the Patriot Act in 2007 when many temporary provisions were up for extension. Donna Lieberman, then Executive Director of the NYCLU, said, “Congress now has the opportunity to place common-sense limits on the Patriot Act while still providing law enforcement agencies the tools they need to protect our safety” (NYCLU). The call for a balance between national security and civil liberties has persisted throughout the policy’s duration and remains crucial when considering citizens’ interests in public policymaking.

**Background Information**

As stated, one of the government's principal responsibilities is to protect the nation from harm. As such, the federal government spends exorbitant amounts of money on national security, with one-sixth of the federal budget allocated for national defense (Budget Office). When the nation fell victim to the terrorist attacks on September 11th, 2001, it was clear that the United States’ defense system needed auditing and reform to ensure future attacks would be detected and prevented, and that the perpetrators would be punished; this was the role of the Patriot Act. While most of Congress felt a sense of urgency about the policy’s passage, some were outspoken regarding their reservations, citing the policy’s infringement on civil liberties. Specifically, Section 215 of Title II faced criticisms, as this provision allowed for the release of private records of U.S. citizens to the FBI and other federal agencies following their alleged suspicion of terrorism (Pizzo 2023). Several senators offered reforms to the policy to counteract this perceived infringement, but they failed to pass.

Many solutions to the problem already had legal precedent and only required incremental changes and retrofitting to apply to fighting terrorism. Law enforcement and surveillance practices used to respond to organized crime and major felonies have already been utilized and are approved by the courts. The intelligence, law enforcement, and national defense agencies had already shared a network and functional channels for communication. However, legal barriers prevented them from exchanging information, limiting the effectiveness of their counterterrorism efforts. Senator John Edwards described this shortcoming in a press release: "We simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing” (Life and Liberty). The Patriot Act removed these legal barriers and allowed for a coordinated effort in the fight against terrorism.

It is important to understand that many provisions in the Patriot Act were made temporary, necessitating extensions after a specified period. This strategy is known as a sunset provision (Krutz 2004). Additionally, the passage of the Patriot Act required many pre-existing laws to be amended, as they impeded the expansion of surveillance proposed by the bill. Among these laws were the Bank Secrecy Act, the Electronic Communications Privacy Act, the Family Education Rights and Privacy Act, and the Right to Financial Privacy Act.

**Implementation**

The policy, primarily focused on expanding the operational authority of the nation’s defense agencies, requires implementation at multiple levels. First, the affected administrative agencies must adjust their practices to align with the policy's provisions. This requires augmenting and retrofitting the appropriate standard operating procedures (SOPs) and guidelines (SOGs) that govern the behavior of the organization’s personnel.

One policy element is increasing the government’s right to access financial information to combat money laundering activity that could be sheltering or shielding terrorist activities. Section 312 of the Patriot Act “demands that all U.S. financial institutions have policies, procedures, and controls in place to identify instances where their correspondent and private banking accounts with foreign individuals and entities might be used for money laundering purposes” (Doyle 2002). This means that American financial institutions must adopt due diligence standards, and scrutiny is necessary when such institutions are considering operations outside of the contiguous United States. In sections 325 and 326, the act also grants the Secretary of the Treasury regulatory powers to ensure financial institutions do not fail to prevent their customers from concealing their financial history.

Beyond the United States, implementing the policy necessitates international cooperation. Sections 328, 330, and 360 aim to enable U.S. agencies to monitor the financial transactions of suspected foreign terrorist organizations and criminals abroad, while also supporting international financial organizations that assist in U.S. counterterrorism efforts, such as the International Monetary Fund, International Development Association, and International Finance Corporation.

Another consideration in implementing the policy is the legal defense needed to protect the act from claims of civil liberty violations. One of the most legally challenging aspects of the policy is its allowance for the FBI to retrieve records from private communication companies and internet service providers secretly and without judicial supervision (NYCLU). The NYCLU and ACLU filed a joint lawsuit challenging Section 2709’s constitutionality, citing infringements of First, Fourth, and Fifth Amendment rights. The judge, Victor Marrero of the Southern District of New York, ruled in favor of the plaintiffs, requiring the government to file an appeal and continue the legal battle. The legal defense of the Patriot Act will continue to prove necessary.

The results of the Patriot Act are hard to quantify, as the primary indicator of its success is the absence of further terrorist attacks. The lack of terrorist attacks on the United States following the passage of the Patriot Act could be explained by other factors; however, some claim the policy is the key reason. The Department of Justice says, “The USA PATRIOT Act, enacted on October 26, 2001, has been critical in preventing another terrorist attack on the United States. It brought the federal government’s ability to investigate threats to national security into the modern era—by modifying our investigative tools to reflect modern technologies, eliminating barriers to effective national security investigations, and giving national security investigators the same sorts of tools as have long been available to investigators who handle non-national security matters” (DOJ 2005). The primary criticism of the policy’s effectiveness is its potential to violate civil liberties. Jim Sensenbrenner is quoted as saying, “Zero. That is the number of substantiated USA PATRIOT Act civil liberties violations. Extensive congressional oversight found no violations” (DOJ 2005). Others will argue otherwise, saying the policy fails because it cannot reconcile national security with civil liberties. The ACLU, in a flyer addressed to the public informing them of the policy and its implications, has made multiple claims that the policy has led to unfair and illegal treatment of immigrants and non-citizens. The flyer states that thousands of men of Arab and South Asian descent have been profiled and held in secretive custody without any charges filed against them. Additionally, it claims that “American citizens suspected of terrorism are being held indefinitely in military custody without being charged and without access to lawyers” (ACLU). These injustices, if true, would undermine the bill's intention and ultimately lead to its failure.

**Policy Recommendations**

Many revisions to the policy have already been made to address my preliminary concerns. When the sunset provisions were due for extension, they were executed with added safeguards to prevent the tools from needlessly encroaching on the private lives of American citizens. After much debate and consideration from Congress, the policy was extended with 30 new significant safeguards. Examples include requirements for ‘high-level’ approval for select personal records, expansion of judicial control over requests for warrants and information-gathering clearances, and limits on the retention and dissemination of private information concerning Americans (DOJ 2005).

The policy scope should likely be scaled back, as it is unclear whether the increase in privacy violations has led to any tangible reduction in foreign terrorism. Other factors include the U.S. military presence in Iraq, Afghanistan, and Syria. Additionally, it is a clear overstep to surveil, track, and detain residents of the United States without legitimate suspicion of wrongdoing. Furthermore, the use of unrestricted, secretive mass electronic surveillance techniques on American citizens is egregious. This surveillance campaign by the National Security Agency was permitted through Section 215 of the policy. It remained unknown until NSA Agent and whistleblower Edward Snowden publicly leaked information about the agency’s domestic surveillance practices in 2013 (Pizzo 2023). While the policy’s provision allowing the NSA to gather bulk surveillance data was reinstated, it was done with some alterations. The NSA was given six months to transition to a reformed system in which private telecommunications companies were sent and held the data, which was only available upon official request from the government via a warrant. As of 2020, this provision was not renewed and has now expired.

This position is rooted in the values set forth by the Constitution. There is an ever-present struggle between the government's authority and individual liberties. While the government needs to wield its power in favor of the greater good, it must not do so at the sacrifice of the rights bestowed upon the American people by God and the United States Constitution. These recommendations will not strengthen the policy’s ability to meet the stated goals in the introduction. They will decrease the efficiency of law enforcement and intelligence agencies and reduce access to critical information necessary to screen individuals for terrorist activities; however, innocent Americans will not have their privacy breached in the process.

**Conclusion**

The United States is responsible for protecting the nation from threats. This responsibility is as old as the country itself and consumes much of the nation’s resources. As societies progress, so do the means necessary for fulfilling such responsibility. The 9/11 attacks catalyzed an overhaul of the American defense strategy, causing a shift from a defensive to an offensive posture. This required enabling legislation, which the Patriot Act fulfilled. U.S. intelligence and federal law enforcement agencies were empowered to increase the scope of their surveillance practices and freely share information between agencies. Additionally, the United States took a hard stance against terrorism, mobilizing the law to enhance punishments for crimes of terror. These expansions were not without criticism, with prominent civil rights organizations like the American Civil Liberties Union and New York Civil Liberties Union organizing protests and speaking out about the policy’s infringements.

The policy’s implementation required changes at many levels. Numerous existing bills had to be modified to ease the privacy restrictions imposed on various private records, such as financial transactions and communication logs. Given the nature of the foreign terrorist threats, the United States needed to seek foreign and international support. Incentives were offered to international organizations and foreign countries in exchange for their cooperation.

The efficacy of the policy is open to debate, as potential explanatory and confounding variables may have contributed to the lack of terrorist attack incidents in the U.S. since the act. The Department of Justice contends that the act has been integral in the fight against terror and that the modernization of the national security system has significantly improved outcomes for the American people. The policy’s success ultimately depends on one’s definition of the term, as many would argue it is a failure due to its inability to avoid compromising individual liberty and its unfair targeting of marginalized groups.

As the policy has aged, many of the most contested provisions have expired, as they were not renewed by Congress following their expiration. Those that remain active do so with added safeguards designed to ensure the provisions are not abused, and are used to advance the interests of the American people. The Patriot Act is one of the most famous and debated acts in U.S. history, and it has drastically changed how privacy rights are viewed in the country today.

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