

The Patriot Act

Issue introduction:

During the early half of June the House Judiciary Committee has been holding hearings regarding the reauthorization of certain clauses within the USA Patriot Act that are set to end by December 2005. On Friday, June 10th during the testimony of Amnesty International, the members of the committee began to argue passionately against each other regarding the delicate aspects of the Patriot Act issue. On the one hand, there is the issue of national security and the reality of terrorism; on the other hand, there is the issue of civil liberties and the reality of constitutional rights. Unfortunately, on that particular day, the issues went beyond control. The chairman of the committee, Rep. James Sensenbrenner, R-Wis., abruptly ended the meeting and walked out with the gavel and some of his fellow Republicans. As the microphones were being switched off an irritated Democrat from New York, Rep. Jerrold Nadler could be heard shouting, "We are not besmirching the honor of the United States, we are trying to uphold it!"

Moments like these demonstrate the heated and passionate debate centered around the controversial security legislation known as the Patriot Act. Adopted just six weeks after the September 11 attacks on October 26, 2001, the USA Patriot Act was passed by Congress and signed into law granting the Federal Government extraordinary law enforcement powers that would aid its ability to promote security during this War on Terror. While Congress did pass this legislation they also did agree to add a sunset clause on controversial aspects of the law in order to have a second congressional review on those sections. By February of 2005, through the newly appointed Attorney General Alberto Gonzales, the Bush administration declared its desire to have Congress make the entire Patriot Act permanent. With this in mind our legislative branch is locked in a heated debate on the controversial Patriot Act, a debate that is sure to continue until the provisions are either made permanent or are removed.

Any one who can appreciate the two fundamental positions of this debate can recognize and respect the complexity of this issue. National security is a fundamental responsibility of the Federal Government. We as citizens of this nation expect our elected representatives to provide a secure environment for us to be able to live in liberty. Yet the issue of civil liberty is also a fundamental responsibility of the Federal Government. It is through our civil liberties that we are able to maximize our ability to live as a free people, the dream and vision of our nation's very foundation. We expect that our Government provide for our most basic civil liberties.

Recently the 9/11 commission thoroughly considered all aspects of the post 9/11 reality and made several recommendations to our government regarding the War on Terror. On this issue regarding the Patriot Act and our civil liberties the commission made the following contribution:

...while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right...Because of concerns regarding the shifting balance of power to the government, we think that a full and informed debate on the Patriot Act would be healthy.¹

¹ The 9/11 Commission Report, pg. 394

In the spirit of this statement we, the social concerns committee of the Passionist Community, will also contribute to this debate by considering the arguments from both sides of the civil liberties/national security issue. We will then also reflect from our own theological perspective to see how the wisdom of the cross contributes to these considerations. In the spirit of our own early Christian Tradition we will articulate the two positions through a respectful and **fictitious** argument between two apostolic founders of our Christian heritage. The character of Paul will articulate his impassioned defense for the freedom of individuals from the constraints of (in this case Civil) Law, a progressive liberal view. On the other hand the character of James will defend his position on the importance of promoting the security of the traditional community as a priority over individual liberties, a neo-conservative view.² With that let us move to the debate itself.

Issue Debate

Paul: Remember the words of an original patriot, “Life, without liberty, is not worth living.”

As I consider the notion of retaining the federal government powers to search and seize my property and possessions (Section 213 of the Patriot Act) as well as powers to attain in secret all my private and personal records including my financial, medical and library records (Section 215 of the Patriot Act), I cannot help but think of two founding members of this great experiment we call America. On the one hand, I am reminded of Patrick Henry who said “*life, without liberty, is not worth living.*” His life example was a testament to his own words. In his own times he could have very easily chosen to preserve his own life and personal security but at the cost of British regulations. These regulations included terms of what he could purchase, the limits of his right to property, and various forms of censorship. The oppression of personal basic liberties was not an option to this original American Patriot.

The other person that I am reminded of during this time is Benjamin Franklin who said “*They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.*” For me, this quote truly hits the heart of the matter. Now granted, I expect that our Federal Government provide us with the security to live our lives but my expectation is to have a basic national security so that I can live my life with the liberty to grow and develop as who I am within my local civil and faith community. I fully support our Governments desire to provide greater security for its people. For myself that is not the issue. The issue is that my Federal Government intends to provide

² This debate style is an adaptation of two traditions. The short argument, counter-argument style comes from our own Catholic Thomistic style of debating known as *sic et non* (yes and no). The style of using legendary names as the fictitious characters that are debating a contemporary issue comes from early American styled debating. After the Revolution and especially during the debate regarding the Constitution Americans debating over that issue through the Federalist and anti-Federalist camps used legendary Roman names such as Cato, Brutus, Mark Anthony, and others to articulate their different positions. For future debates Paul will represent a progressive liberal or a progressive internationalist view. James in the future debates will either represent a traditional conservative or a neo-conservative view. This will depend on which perspective best fits the debate.

security through my concession of some of my own civil liberties. I cannot imagine Mr. Franklin or Mr. Henry would find this tolerable.

The way I see it with Section 215 of the Patriot Act, my Federal Government could at any point retrieve my financial and library records. Now, in practicing and promoting my own faith tradition I certainly read from prominent members of my community. If I were to study something controversial only for the academic desire to critique it, my Government having no idea why I read that particular material, could decide to label me as a threat to their own security without any notification. Of course at that point I should expect to find it difficult to travel or perhaps even purchase items. But then through Section 213 without any knowledge or notification, my Federal Government could take any aspect of my own property because of something I read. Worst yet I may find myself arrested or detained for reasons that are not disclosed to me. This to me is a tremendous loss of liberty and quality of life.

James: the war on civil liberties is a myth; the War on Terror is real.

You rightly express an expectation for our Federal Government to provide us with basic security. This desire of yours is consistent not only with your own fellow citizens but also with the early tradition of this nation. Our own Constitution instructs us that “We, the people of the United States, in order to ...insure domestic tranquility, provide for the common defense.” This makes up part of the oath that are own elected Commander in Chief swears to uphold as one of his responsibilities to the American public. And so it is because of this grave responsibility that the Patriot Act was written, because as you know, we were attacked as a nation on 9/11, and we rightfully demand that our political leadership protect us from this very real threat to our own security.

The Patriot Act is a necessary instrument for our Federal Government that allows it to fulfill its responsibility to protect us from the threat of terrorism. In truth, the provisions of the Patriot Act grant only incremental extensions of security arrangements that are already available in our legal/governmental system. As an example, let us seriously consider Section 213 that you raised as a concern. The issue of delayed notification, which allows law enforcement the ability to conduct search or seizure without notifying the person in question immediately, was an aspect of crime-fighting that existed before the Patriot Act. The Supreme Court had ruled in 1979 that there are cases, specifically involving drug cases, child pornography, or organized crime including terrorism, where law enforcement need not give immediate notification because of the nature of the crime. All that the Patriot Act provision does then is to allow further temporary delay when the required notification is given. Nevertheless this entire process continues to be supervised by the courts so that it continues to retain the rightful checks and balances necessary for the protection of civil liberties. And this is true for the other sections of the Patriot Act.

I don't dismiss your concerns regarding the state of your own civil liberties. It certainly is a fundamental aspect of our national identity. All aspects of Governmental powers should be reviewed regarding any encroachment on that principle. But don't view the Patriot Act as a law bent on taking away civil liberties. It is not. It's a law to help our

government wage this battle against the real threat of terrorism. Keep in mind that the Patriot Act is written to protect the First and Fourth amendment rights in order to provide the Government with its ability to provide national security while not compromising our precious civil liberties.

Paul: Unfortunately some of your myth is becoming reality.

I wish I could share in your optimism. The issue of promoting national security and preserving our democratic checks and balances as well as preserving our civil liberties is not as clean as you make them out to be. Certainly there is the reality of 9/11 to which we must be attentive, but there is the other reality of deportations, mass detentions, physical and mental torture, and racial profiling. A carefully written law that gives greater governmental power over the rights of the individual does not necessarily translate into a carefully executed law especially in times of high alert and lower tolerance.

After 9/11 the Justice Department rounded up on record 1200 immigrants without releasing any information regarding the detained, thanks to section 412 of the Patriot Act that allows indefinite detention on non-citizens based on “reasonable ground.” The vast majority of those rounded up were of Arab or Muslim origin. In 2002, pursuant to section 1001 of the Patriot Act, we learned from the Inspector General of the Justice Department that 762 of those who were rounded up were classified as “September 11 detainees” and that none of them were charged with terrorist related offenses. The Inspector General even qualified the conditions of the confined detainees as harsh and including “a pattern of physical and verbal abuse.” Also we have the present reality of U.S. Citizens such as Yaser Hamdi and Jose Padilla who continue to be held in U.S. custody since 2002 without a court hearing amidst the fact that the Supreme Court has ruled that they must be properly charged in a court of law. These forms of unconstitutional discrimination have already occurred and through the controversial sections of the Patriot Act have been allowed to continue by creating a legal state of limbo. Now the present reality is that this form of wide discrimination currently affects the Arab and Muslim population most of all but let us recall Martin Niemoller’s famous Holocaust quote and place it within this particular context, They came for the Arabs and I didn’t speak up, because I wasn’t Arab. Then they came for the Muslims and I didn’t speak up, because I wasn’t Muslim. *“Then they came for me, and by that time there was no one left to speak up for me.”*

I certainly hope that my concerns are exaggerated but at this point with Section 802 of the Patriot Act, which broadens the definition of “domestic terrorism” I believe I have every reason to be afraid. Through this section the U.S. Government may determine that certain actions “appear to be intended” to “influence the policy of a government by intimidation or coercion,” or “to intimidate or coerce a civilian population.” This definition is highly ambiguous. Any of us who participate at events to protect our First through Tenth amendment rights are subject to suspicion and may be indefinitely detained. No wonder the movement to end the Patriot Act has brought together some strange bedfellows from the American Civil Liberties Union (ACLU) and Amnesty International (AI) on one end to the National Rifle Association (NRA) and the

American Conservative Union (ACU) on the other. I have to stand with these groups at this moment in calling for Congress to sunset these controversial provisions of the Patriot Act because I realize that for true democracy to survive it must constantly be nurtured. As President John Adams once said, *“Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide.”*

James: have some faith in our democracy.

Paul, what you fail to see from your own argument is that the very contention between our judicial and executive branches of our Government in the controversial cases of Padilla and Hamdi demonstrate the ongoing viability of our democratic structure and how our Federal Government does provide the checks and balances you claim to be missing. What you want is to weaken our executive branch from accomplishing its constitutional responsibility through an over empowered judiciary. Different times bring different responsibilities and that calls us to find out how to redirect those responsibilities within our democratic system.

Since you seem to enjoy history why don't you recall another time in the history of our nation when it had to deal with a major insurrection (albeit internal) that we now call the Civil War. In 1862, because of the nature of the conflict, President Lincoln issues a proclamation that suspended the Writ of Habeas Corpus; something he probably had to do to secure our nation's ability to fight the confederate insurrection. We are not talking about a general tweaking of civil liberties but an overall suspension of the basic rights of the individual involved with the insurrection for a period of time. Certainly some folks were concerned at the state of their civil liberties at that time as you are today. But if your fear of an American autocratic regime branching forth through the weakening of one's civil liberties was to take place then it should have happened at this time. The reality however, was that as the war was coming to an end the suspension was lifted and the war powers of the Executive branch were dissolved. The fact is that the Government is not interested in taking your civil liberties for the sake of a power trip either in Lincoln's time or in ours. Both the 1862 proclamation and the current Patriot Act are merely trying to address the security threats of our time.

While I certainly recognize the difficulty that innocent people face in the midst of present or past security concerns, I will also recognize the security achievements that have been made possible through the Patriot Act:

- 5 terrorist cells have been broken up here in the United States;
- 375 individuals have been criminally charged in terrorism investigations;
- 515 individuals that are linked to the 9/11 investigation have been deported;
- 113 individuals are charged with terrorist financing-related crimes, with 57 convictions.

Again the Patriot Act itself must be understood as a law that helps us fight our war against terrorism. In summary, the basic essence of what the Patriot Act does I would say is that it:

- Enhances the tools that were already predisposed to our investigators;
- Facilitates information sharing and cooperation between agencies;
- Updates the law to reflect new technologies and new threats;
- Increases penalties for terrorist crimes.

To sunset any of these provisions is to again weaken our ability to protect ourselves from the very real threat of terrorism.

Passionist Theology Reflection “The Wisdom of the Cross”

This Position Guide is about the perennial issue of liberty and law. It has a history in both philosophy and theology. The Christian Scriptures' outlook on the topic appears in this particular Guide, in the persons of Paul and James.

Behind the theoretical moorings of this subject matter lie personality types. It seems God has made us all so that we tend to fall into one camp or the other: liberty, with the tendency to abuse it; and law, with the orientation toward overdoing it. The social forms of these personality types have acquired the vocabulary of "left" and "right". As the guide makes clear, there are assets and liabilities associated with each. From a religious point of view, especially a Christian one, and, indeed, a Passionist perspective, we can hardly do better than recall the ramifications of what we have come to call *the Paschal Mystery*. In recent times we have seen fit to apply this as an overarching reference to the center-piece of our faith: the death and resurrection of Jesus Christ.

Upon reflection, we can see the pertinence of the Paschal Mystery to the problems that the Patriot Act is trying to address. The death of Jesus on the Cross illustrates the law (of sin) at work on this supreme representative of the human race. This law must have its way: one man must die for the people, as the high priest said to continue the social order that is based on this corrupted law. Brutal, savage and cruel as it was, the Passion of Christ was something that had to play out (The Son of Man "must" suffer at the hands of men...) in the ongoing saga of the human race trying to dig itself out of the hole into which it had dug itself over long centuries. Such an imbalance had developed between God and ourselves, that nothing short of this heroic effort of Jesus on the cross was sufficient for righting the incorrigibility that had set in. A law was at work here, aiming at righting (a move toward social righteousness) what had gone horribly wrong.

However, even as we acknowledge this hard fact, we immediately come to see that over-working this approach to law can box us into some unsavory conceptions of God. And so we ponder the cross afresh, and catch a glimmer of another law at work -- the law of love. In the last analysis, no amount of harshness and violence is going to exhaust the meaning of the law operating on Calvary. There is, thankfully, another dimension to the law: the love of God the Father for the human race, and for His Son; and the love of Jesus Christ for His heavenly Father. Here is law at its best, and it is this understanding of law that wins the day. The cross finds its meaning in such love, not in

savagery.

The Paschal Mystery also opens up to us another phase of Jesus' ministry on our behalf: His resurrection from the dead. After death had made its claim on Him, in the name of the law of sin and love, a breakthrough was to follow, in the name of liberty and freedom. The resurrection represents the breaking of the bonds of death, and the law associated with it. Born to die, we, thanks to the risen Christ, are also born to live again. The resurrection has the last word in this scenario: the luminous and diaphanous Christ, breaking the shackles of death and rolling back the stone at the entrance of the tomb, rises like a shooting star out of the bonds of death, to live again. By His resurrection, Christ breaks, not only the self-enclosure of the tomb, but also of this world of ours, so that now a passage into a whole new mode of existence, in another world, becomes available. It is the quintessential triumph of liberty, where those imprisoned break out and escape into freedom. God has made us to be free. He is the God of the living, not of the dead.

The Paschal Mystery captures both these phases of our human existence: law and liberty. Just as the death of Christ is meaningless apart from His resurrection, so is the resurrection irrelevant apart from the Passion. So it is with law and liberty. Dissimilar though they be (but no more so than death and life), they need one another to be understood. There is no law, in God's design, except the one issuing in freedom; and there is no freedom, by God's disposition of things, other than what works its way out of the law binding the human person: the law of finitude and perversity.

Is it too pretentious to encase the discussion on The Patriot Act within the framework that the Paschal Mystery provides? Hopefully not.