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Patriot Act

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USA Patriot Act

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The USA Patriot Act is an acronym for the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001. It was passed by overwhelming majority votes in both the House of Representatives (357 in favor to 66 against) and the Senate (98 in favor to only 1 against) and signed into law by President George W. Bush on October 26, 2001, only six weeks after the September 11 attacks on the World Trade Center towers and the Pentagon. The Act was designed to strengthen the counter-terrorism capabilities of the United States and to prevent further attacks. The lengthy and somewhat clumsy title was designed to generate supportive public opinion. The Act itself is a wide-ranging piece of legislation, over 300 pages in length, and it is based upon a draft proposed by the Department of Justice. Its stated aim is “to deter and punish terrorist acts in the United States and the world” (USA PATRIOT ACT 2001, PL 107–56). To that end, the Patriot Act strengthened existing statutes against money laundering, reduced restrictions on the use of surveillance and other investigatory tools for law enforcement and intelligence-gathering, broadened the grounds under which foreign nationals can be detained or excluded, redefined terrorism, and enhanced the penalties for engaging in such activities. These statutory measures, coupled with the Act’s quick passage and its length, have attracted intense criticism. Critics charge that Congress, under extraordinary pressure from the Bush administration and given the perceived necessity for some action in response to 9/11, acted too quickly, with little debate and without considering all the details of the legislation. As a consequence, the Act’s provisions often violate civil liberties and ignore the system of checks and balances the Framers of the Constitution so carefully constructed (Cole and Dempsey 2002:

195–196). Supporters point to national security concerns and contend that Congress did not make sweeping changes in the existing law, but only modest ones, allowing, for example, the use of investigatory and surveillance tools that were already being utilized for fighting organized crime and drug trafficking (Department of Justice ca. 2001: 1).

Some of the notable provisions of the Act that have drawn the least fire from critics are the ones against money laundering (Cole and Dempsey 2002: 195). Designed to better detect, deter, and stop the financing of terrorism, these provisions also reflect pre-9/11 worries about the weakness of existing anti-money laundering statutes. Accordingly, the Patriot Act specifically requires financial institutions to establish and implement anti-money laundering programs; moreover, it specifically bans, with narrow exceptions, foreign shell banks (banks that do not have a physical presence in the United States). Such banks, which are not subject to regulation, are perceived as more likely to be conduits for mostly terrorist-related money laundering. Other significant provisions require financial institutions to verify the identity of a customer, to check him or her against a list of suspected or known terrorists, and to file suspicious activity reports (SARs), which alert the Treasury Department about unusual financial transactions (USA PATRIOT ACT 2001, PL 107–56, Title III). The Patriot Act also expands the authority of existing agencies to freeze the assets of suspected individuals or groups. In the past sanctions could be applied if the individuals or groups received a special designation. Now assets can be frozen without that designation, in “aid of an investigation” to prevent the flight of assets or other negative actions (Eckhart 2008: 217). As a consequence of the emphasis on financial transfers, filings of suspicious activity reports from financial institutions have greatly increased. While more reports have been filed, fewer than 1% of them have involved any possibility of terrorist financing (Eckhart 2008: 219). Finally, the Patriot Act broadened the crime of money laundering. Money laundering now includes amongst other financial transaction schemes the laundering of

funds linked to foreign crimes of violence and political corruption and the crime of providing material support to a terrorist organization. Under the Act it is also a crime to run an unlicensed money transmission business. This provision reflects the concern of police and intelligence agencies that small, owner-operated businesses are more likely to be conduits for terrorist activity (USA PATRIOT ACT 2001, PL 107–56, Title III). This last provision is one that has come under fire. Its critics argue that it is through such businesses that immigrant workers are able to send money back to relatives, thus helping not only their families, but the economies of less developed countries. Closing off such means for transferring money internationally creates hardships for many foreign workers, especially since conventional mechanisms for money transfers are not available for small sums, or are too costly. Critics also note that there is little evidence to support the idea that these businesses are linked to terrorist groups or activities. In fact, they charge that there is now evidence to suggest that it is the large traditional financial institutions that are the channels for such activity (D’Estree and Busby 2005).

The money laundering provision is not the only portion of the Patriot Act that is related to immigrants. An entire section of the Act is devoted to border security, which concerns foreign nationals. Amongst the provisions are ones that expand the number of government personnel stationed along the US–Canadian border and provide for the tracking of foreign students in the United States: both these areas are deemed to be of special concern for terrorist activity. The most controversial provisions center on the exclusion, deportation, or detention of foreign nationals with terrorist ties. Specifically, these provisions exclude or permit the deportation of aliens who engage in or support terrorist activity. The provisions go further, to permit the exclusion or deportation of individuals who are members of, or support, a group whose endorsement of terrorism undermines US efforts to stop the violence generated by it. They also authorize the exclusion of foreign nationals who use their prominence to endorse terrorism or to persuade others to support terrorism, and thus undermine US anti-terrorism efforts (USA PATRIOT ACT 2001, PL 107–56,

Title IV). Critics charge that, in effect, these provisions are a return to the Cold War approach to ideological exclusion, an approach repealed by Congress in 1990 and at odds with basic constitutional principles. The one provision, opponents contend, imposes guilt by association (ACLU 2009: 26–7), while the other denies entry on the basis of speech rather than conduct. The detentions or other actions taken against suspected individuals are based on ethnicity, religion, or national identity rather than on individual activities (Joyner 2004: 244). The detention provision permits the detention of a foreign national certified by the Attorney General as a suspected terrorist. The basis for such certification is that the Attorney General has “reasonable grounds to believe” that the immigrant in question has or may have engaged in terrorist activity or is a threat to national security. The Attorney General must then charge the foreign national with a criminal or immigration violation, including ones unrelated to terrorism, or release the immigrant. Critics contend that the detention powers granted to the Attorney General are far too expansive, and they point out what they perceive as defects. First, they argue that “reasonable suspicion” (rather than “probable cause”) as a basis for detention is too low a requirement – too easy to meet. Second, the immigrant has no right to review the government’s evidence or to rebut it in a hearing, contesting the certification. Rather, the only avenue available for the immigrant is to file a habeas corpus petition after being detained. Finally, the Act allows for the possibility of indefinite detention of individuals suspected of terrorism if their country of origin will not accept their return (Cole and Dempsey 2002: 201–205).

The Patriot Act provisions perhaps most intensely subjected to debate are those that expand the surveillance and search authority, including the sharing of information amongst intelligence and law enforcement agencies. Responding to arguments that the technological sophistication of terrorist groups requires flexibility in wiretap authority (Department of Justice ca. 2001: 1), the Act provides for roving wiretaps that cover multiple devices. These roving wiretaps allow for continuous interception of communications, even though, for example, terrorist suspects frequently change cell phones, use different public access computers, or call from

phone lines in various homes (USA PATRIOT ACT 2001, PL 107–56, Title II, Section 206). Critics charge that these wiretaps are different from previous roving wiretaps used in criminal investigations: they are more likely to intercept the communications of innocent persons, thus violating their privacy rights (Abramson and Godoy 2006). The Patriot Act does not require that the surveillance target be specifically identified, nor is it necessary to indicate what device is going to be tapped (ACLU 2009: 14).

Concerns over privacy underlie the debate over the “record” and “national security letters” provision of the Patriot Act. The records provisions allows intelligence investigators to secretly demand “any tangible thing,” including not only business records but also books, documents, and other papers, so long as the items are connected with a terror investigation (USA PATRIOT ACT 2001, PL 107–56, Title II, Section 215). Critics note that this provision greatly expands the range of materials that can be obtained. Prior law only allowed authorities access to business records from motels, hotels, storage facilities, and car and truck rental agencies (Ramasastry 2005). This provision is commonly called the “libraries provision,” because library associations have argued that this provision could be used to obtain the reading records of patrons, in violation of their First Amendment rights (American Library Association 2005). The Act also permits intelligence agencies to access education records at college and universities. Critics fear that this possibility might lead students to avoid joining in dissent or protest activities, for fear that other information might become available to others (Joyner 2004: 247). Such a fear could lead to a diminution of freedom of speech for some individuals. In conjunction with the records provision, the national securities letters (NSLs) provision authorizes the expanded use of these instruments or special demands for financial records, credit reports, and telephone, email, and internet usage (these are transactional records, not content records), which do not require court approval. Both the records provision and national security letters provision allow access even if the records pertain to a person who is not under suspicion of involvement in terrorist activity (Cole and Dempsey 2002: 214–215).

The last two hotly debated investigatory provisions, which pit privacy rights against national security concerns, are the “sneak and peek” searches and information-sharing provisions. The sneak and peek provision allows searches of homes without providing the owners with an immediate notice of the search. Moreover, investigators may enter the home even without the occupants being present (USA PATRIOT ACT 2001, PL 107–56, Title II, Section 213). Critics note that sneak and peek searches have only been previously allowed when someone’s life was in danger, or evidence would be destroyed. The information-sharing provision encourages the sharing of criminal investigative findings, such as grand jury information, with intelligence agencies when the information involves foreign intelligence; however, critics charge that there is no judicial oversight and that the information sharing should be limited to specific cases involving terrorist activity (Cole and Dempsey 2002: 209–114).

Finally and importantly, the Patriot Act alters the legal definition of terrorism. Under previous law terrorism was confined to acts “backed by a foreign power.” As a consequence of the September 11 attacks initiated by al-Qaeda, the new definition of terrorism is expanded to include non-state actors and “lone wolf” attacks. Terrorist attacks against mass transit systems, as well as the use of biological weapons and the hacking of computers, are outlawed. The definition is also expanded to include domestic terrorism (USA PATRIOT ACT 2001, PL 107–56, Title VIII). This definition is more in keeping with definitions of terrorism used elsewhere in the government, which would identify terrorism as violence pursuing political objectives and intended to influence an audience. Such definitions also include the idea that the terrorist individual or group is not a state. While the definition recognizes different kinds of terrorism, the inclusion of the definition within the Patriot Act has implications for governmental efforts to deal with possible attacks. The inclusion of domestic terrorism within the purview of the Act makes some sense from the perspective of efforts to combat all kinds of terrorism, but it also means that many of the provisions of the Patriot Act designed to deal with foreign citizens plotting against the United States can also be used against US citizens suspected of terrorism.

Critics have charged that the domestic terrorism description can be so broadly interpreted that it might include some political protests and forms of civil disobedience (Joyner 2004: 245). Lastly, one of the most controversial provisions of the Act alters the existing prohibition against providing “material support” for terrorism to make it include the giving of “expert advice or assistance,” an alteration that, critics contend, chills the rights of free speech protected by the First Amendment (ACLU 2009: 24).

Since the Act was passed in 2001, many of its most controversial provisions have been challenged in court and targeted for revision, repeal, or non-reauthorization. The first and only challenge to reach the Supreme Court involved prohibitions against providing “expert advice or assistance” to terrorist organizations. Those bringing the challenge wanted to advise groups that have been designated as terrorist organizations under US law and to train them in how to use international law in peace negotiations and how to petition the United Nations for assistance. While the Supreme Court recognized that the provision infringed freedom of speech, it held that the government’s interest in combating terrorism outweighed any First Amendment rights, even when the assistance provided to the terrorist organizations is advocating nonviolent means of redress for grievances rather than violent ones (*Holder v. Humanitarian Law Project* 2010). In addition, in response to criticism, Congress made some modifications to the “records” and national security letters provisions that established more congressional and judicial oversight (Yeh and Doyle 2006). Despite the continued criticism of the Act, Congress enacted and President Obama signed legislation renewing the few Patriot Act provisions that were not permanent – the records and rolling wiretap provisions – for another four years (Abrams 2011).

The USA Patriot Act has been controversial in many of its provisions. Some of those provisions are under challenge in courts, but to date there have been no definitive rulings overturning portions of the Act, since only one challenge has reached the Supreme Court. The passage of the Act reflects a long-established cyclical pattern in US law and politics. In times of stress and national security uncertainty, Congress supports measures, often initiated by the executive

branch, which have the effect of resetting the balance between liberty and security to favor security interests. This tension between liberty and security also surges in wartime, and the fact that the struggle with al-Qaeda in the aftermath of the attacks of September 11 was viewed in the context of a global war on terrorism has strengthened the emphasis on security at the expense of liberty and has led to greater latitude on the part of the executive branch in dealing with suspected terrorists (Sederberg 2003). This combination of war analogy and congressional support for defensive measures has enhanced the authority of the executive branch at the expense of the authority of the judicial branch. This happened in the past when there were threats to national security. In the past, when the crisis or security threat was perceived to have abated, the judiciary normally reasserted its role as protector of civil liberties, reestablishing the prior equilibrium (or something close to it). The global war on terrorism, which continues because (and as long as) the threat from terrorism continues, tests not only the resilience of this pattern and the place of Congress in a wartime scheme of checks and balances, but also the role and institutional capacity of the judiciary as a political actor in an increasingly globalized environment.

SEE ALSO: Civil Liberties; Money Laundering; Politics and Crime Policy; Terrorism, Domestic; Terrorism, International; Transnational Organized Crime.

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Further Readings

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The history of the USA PATRIOT Act involved many parties who opposed and supported the legislation, which was proposed, enacted and signed into law 45 days after the September 11 terrorist attacks in 2001. The USA PATRIOT Act, though approved by large majorities in the U.S. Senate and House of Representative, was controversial, and parts of the law were invalidated or modified by successful legal challenges over constitutional infringements to civil liberties. The Act had several sunset provisions. The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001." To view this law in its entirety, click on the USA PATRIOT Act link below. USA PATRIOT Act. The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes, some of which include:

- The Patriot Act has become a symbol of the massive expansion of government surveillance after 9/11. So if you're concerned about excessive government surveillance, or if you've ever talked with someone who is, you've probably heard or used "the Patriot Act" as a shorthand for the problem. That's not exactly right. The Patriot Act was a big, broad law, and a lot of it has nothing to do with surveillance. And the government's current surveillance powers are drawn from some parts of the Patriot Act, but also from other laws.