

Policy Connection



FOREIGN POLICY

Do national security policies threaten the American commitment to civil liberties?

The Policy Challenge

In the years following the attacks of September 11, 2001, Americans were confronted with a major policy challenge. As important as it is for the government to protect the American people during a national security crisis, the social controls and intrusions into their private lives that often take place—actions that most Americans would find unacceptable during peacetime—require a reassessment of those basic constitutional liberties Americans hold so dear.

In this Policy Connection we consider various policy approaches that the government has applied under conditions related to our national security or other national emergencies, especially those that seem to threaten our civil liberties, as we have discussed in Chapter 4.

The Myth of Vulnerability

The decision to commit the United States to any war effort has obvious policy implications. Not only do armies and navies have to be mobilized on behalf of the war effort, but so too do the nonmilitary human and economic resources necessary to conduct the war, including the hearts and minds of the American people.⁶¹

National security policies are those actions taken by government to safeguard the physical, economic, and social institutions that are deemed critical to our survival as a country. Implied in this definition is the idea that there exists a threat to that survival that must be responded to and that the threat is aimed at not only our physical territory but also our way of life.

In making sense of national security, we often rely on a myth that has deep roots in our history: the myth of America's vulnerability. According to the myth of vulnerability, from the time of its founding, the United States has always been under threat militarily, politically, and economically. With this in mind, Americans feel they must constantly guard against challenges to their territorial, political, and economic integrity. "We are and have always been a nation preoccupied with security," argue James Chace and Caleb Carr.⁶² For at least the decades of the Cold War (generally dated from the end of World War II in 1945 to the collapse of the Soviet Union in 1991), this preoccupation led to an urge to achieve "absolute security" in the face of immediate and potential challenges, both real and perceived.

Many observers believed that after the fall of the Soviet Union, with America the one remaining superpower, Americans would feel less vulnerable and more secure. But that has not been the case. From the Persian Gulf War of 1991 to the war on terrorism initiated after the attacks on the World Trade Center and the Pentagon in 2001, Americans have retained their sense that the United States will never escape from the many threats emanating from a hostile world.

In its contemporary version, the myth of vulnerability has been accompanied by a belief that America cannot address its exposure to these threats by withdrawing behind a wall of isolation, as it did before World War II. Rather, there is a strong commitment to the idea that the country's vulnerability would increase if it ever decided to disengage from world affairs.

A vocal minority, however, has taken an opposite stand, expressing the position of putting “America first” and calling for the United States to assume a perspective that would minimize its involvement and entanglements in world affairs. During the 1990s, led by national figures such as the former third-party presidential candidates Patrick Buchanan⁶³ and Ross Perot, this group advocated a return to an earlier era when the myth of vulnerability was complemented by a strong belief in America’s “virtuous isolation” from world affairs.⁶⁴

The American public’s reaction to September 11, however, demonstrated that the once-strong pull of isolationism had been replaced with a worldview that accepted the inevitability of U.S. involvement in world affairs.

More than a decade later, however, there were indications that this view may be changing. Perhaps as a result of America’s post-9/11 commitments of tens of thousands of troops and billions of dollars to wars in Iraq and Afghanistan, public opinion polls began to reflect a growing sense of war wariness. More than 75 percent of the Americans surveyed in one major poll conducted in 2013 agreed or strongly agreed with the proposition that the United States must reduce its role as the world’s policeman, and more than 80 percent felt that, at a time of economic and social stress, we should spend less on foreign assistance to other nations and devote more resources to solving problems at home. Nevertheless, that same poll indicated clear support for maintaining a strong military—an indication that Americans still view the world as threatening and the nation as vulnerable.⁶⁵

The public’s ambivalence toward America’s role in world affairs was reflected in the 2016 presidential election. For the Republican Donald Trump, it was time to put “America first.” “Under a Trump administration,” he promised, “no American citizen will ever again feel that their needs come second to the citizens of foreign countries. . . . My foreign policy will always put the interests of the American people and American security first.”⁶⁶ In contrast, the Democrat Hillary Clinton argued that “if America doesn’t lead, we leave a vacuum—and that will either cause chaos, or other countries will rush in to fill the void. Then they’ll be the ones making the decisions

about your lives and jobs and safety—and trust me, the choices they make will not be to our benefit.”⁶⁷

Policy Responses to Vulnerability

How Americans view the country’s vulnerability to national security threats gives interesting insights into four major public policy approaches related to our civil liberties during times of conflict.⁶⁸

The Garrison-State Approach. To the extent that we Americans have perceived the external enemies as a major and immediate threat, we have responded by creating what the political scientist Harold Lasswell called the *garrison-state approach*.⁶⁹ During World War I, to deal with the threat of espionage and sabotage, Congress passed a number of acts limiting the freedom of speech and the press and giving the president, Woodrow Wilson, the power to deport aliens and prosecute citizens for disloyalty or “seditious” acts that undermined the war effort. In World War II, Franklin Roosevelt issued an executive order that led to the forcible relocation of 110,000 residents of Japanese descent—two-thirds of them being either American born or naturalized citizens—from the West Coast to inland relocation camps.⁷⁰

The Temporary-State-of-War Approach. In contrast to the garrison-state approach, there have been times in our history when we adhered to what can be termed the *temporary-state-of-war approach*. This perspective reflected the belief that some measures taken during wartime or under emergency conditions are necessary but short term. Usually they are based on short-term declarations of emergency or martial law (military rule) that can involve the temporary suspension of everyday liberties. The public often accepts these edicts because they deem them necessary to bring an end to chaotic conditions. Underlying this approach is the belief that the sooner the immediate danger or threat passes, the sooner life—and liberties—can return to normal. During the Civil War, for example, Abraham Lincoln suspended the constitutional guarantee for a writ of habeas corpus (see Chapter 2) in certain parts of the country, and he also curbed freedom of speech and assembly in those areas placed under martial law.⁷¹

Today, presidents and governors can and do declare state-of-emergency conditions after a major natural catastrophe. At times, those declarations suspend the normal operations of government and make demands on citizens to evacuate an area subject to flooding or to limit travel during a major snowstorm—demands that many citizens regard as temporary intrusions on their civil liberties. After September 11, 2001, however, the domestic capacities to deal with natural disasters through a short-term declaration of emergency became closely tied to the national security network designed to prevent more attacks on American soil, thus creating programs that come under the umbrella of **homeland security**. The result has been a change in state-of-emergency procedures in which the system, once triggered by an event such as the Boston Marathon bombings of 2013, defaults to procedures that immediately impose constraints on civil liberties.⁷²

The Glass-Firewall Approach. Still another approach creates a *glass firewall* between those areas that are deemed important to national security and those that are not. This approach includes policies that limit civil liberties in matters classified as top secret or sensitive enough to warrant special treatment. Under this approach, freedoms associated with access to information or the distribution of information can be severely restricted in certain sensitive areas. The logic behind these policies is that keeping an “open society” requires that some information be kept confidential—what was described in government circles as “secrecy in the public interest.”⁷³

The amount of information behind the firewall expanded greatly during the Cold War, and what emerged was, according to one government study, a “culture of secrecy” that threatened basic civil liberties. In 1997, the senator Daniel Patrick Moynihan headed a commission that concluded that the government must completely revamp its policies, giving as much consideration to the rights of individuals as to the need for confidentiality.⁷⁴

A number of changes took place in response to the Moynihan Commission report, including a program of declassification throughout government and enhancement of the federal government’s Freedom of Information Act policies. The 9/11 attacks and the

War on Terror triggered a return to secrecy. Nothing illustrates this more than passage of the **USA Patriot Act of 2001**. This act contained many provisions restricting or affecting civil liberties and permitting the application of new technologies that enhanced the glass firewall.

The act included the following provisions:

- It established a policy allowing preventative detention.
- It loosened the requirements for surveillance.
- It expanded government access to public and private records previously regarded as protected from such scrutiny.
- It imposed requirements on commercial transactions among individuals.
- It gave considerable power to immigration and customs personnel in their treatment of individuals at U.S. borders.
- It gave more discretion to law enforcement officials in their investigations of terrorist threats and acts.⁷⁵

The implementation of the Patriot Act and related policies has drawn considerable criticism and reaction in recent years, and the unauthorized release of classified information regarding the activities of the U.S. government under post-9/11 national security policies has embarrassed American officials here and abroad.⁷⁶ Although the U.S. government has pursued prosecution of those who leaked documents related to U.S. intelligence, there has been a growing call for change from both the public and some members of Congress.

The Enemy-Within Approach. Perhaps the most controversial national security policies related to civil liberties have been those based on an *enemy-within approach*. This view emphasizes that the threat to our security emanates from within our borders and that, as good Americans, we should ferret out disloyal and subversive individuals.

We can find this perspective throughout U.S. history, starting with passage of the Alien and Sedition Acts of 1797, which dealt with the perceived threat to government posed by those supposedly inspired

by the French Revolution. After the end of World War I, many of the programs developed to stop spying and sabotage were used as part of the Red Scare, which focused on dealing with those Americans suspected of communist or socialist sympathies. Similarly, during the initial phases of the Cold War, fear of the enemy within fueled anti-espionage investigations by federal agencies and congressional committees. And, despite official denials and explicit declarations against targeting Muslims, dating back to the 2001 Patriot Act, it is widely believed that several law enforcement agencies have been carrying out surveillance and investigations of U.S. mosques and their attendees.⁷⁷

Conclusion

How can the government maintain its commitment to civil liberties while minimizing the nation's vulnerability to attack?

As we discussed in Chapter 4, most Americans think about civil liberties in absolutist terms, but in reality the courts have had to limit and define our most

fundamental freedoms for a wide range of reasons. As this Policy Connection makes clear, civil liberties have also been the focus of policies developed in response to national and homeland security concerns. Thus, although we Americans aspire to greater freedom under the protections guaranteed by our constitutional liberties, we find ourselves having to make compromises in the face of threats and fears about our vulnerability.

QUESTIONS FOR DISCUSSION

1. **The War on Terror is unlike past conflicts in that the enemy is not another nation-state, but loosely knit groups that operate in cells located throughout the world. Is the United States capable of fighting this type of enemy, given its emphasis on civil liberties and reliance on traditional military approaches? If not, what must change to win this new type of warfare?**
2. **In what ways, if any, have you personally been affected by recent national security policies, such that your civil liberties have been limited or even taken away?**