

It greatly expanded governmental powers in the name of national security. Civil libertarians were appalled, believing it to be an overreaction. They feared law enforcement and intelligence agencies would overstep constitutional limitations. President George W. Bush's administration argued that the provisions were tools necessary for effective counterterrorism. President Obama later agreed to continue the policies.

There is a fine balance between freedom and security. When governmental powers are expanded, freedom can be restricted. When regulations limit the government's ability to collect information, security can be threatened. Law enforcement agencies have dealt with this issue for quite some time, and there are decades of statutory and case law outlining procedures for arresting suspects, collecting evidence, and depriving guilty people of their freedom. Expanding security brings concerns for the protection of civil liberties. Homeland security is bound to encounter the Constitution.

Security and Civil Liberties

USA PATRIOT Act: A law passed in October 2001 that expanded law enforcement's power to investigate and deter terrorism. Opponents claim that it adversely affects civil liberties; proponents claim that it introduces reasonable measures to protect the country against terrorists. The act was amended and renewed in 2006, and the ability to collect and analyze domestic intelligence remained part of the law. Provisions to allow roving wiretaps, increased power to seize evidence, and increased wiretaps were approved in 2011.

September 11 changed the way America views terrorism. The wars in Afghanistan and Iraq claimed the lives of thousands, and massive counterterrorist measures were taken at home. The USA PATRIOT Act of 2001, which made significant changes in the structure of federal law enforcement, was passed within weeks of the September attacks. The act was renewed in 2006, after both the Senate and the House introduced several provisions curbing governmental authority. In 2004, the 9/11 Commission issued a report calling for a complete overhaul of the U.S. intelligence system; in response, congress passed the Intelligence Reform and Terrorism Prevention Act in December 2004. The National Criminal Intelligence Sharing Plan (NCISP) set standards for a new system of domestic intelligence gathering and analysis. All of these activities generated tremendous controversy, and the debates took place as America waged foreign wars against an enemy that projected no central front. As America's internal debates continued, terrorist events around the world became deadlier.

The Bush administration faced a barrage of criticism for many of its policies in the wake of 9/11. People expressed concerns over eavesdropping on telephone calls, the collection of domestic intelligence, the treatment of terrorist suspects, and the rendition of suspected terrorists to countries that openly used torture. One of the most contentious issues dealt with the detention of suspected terrorists. The CIA maintained detention facilities in various foreign countries, military forces ran detention centers in Iraq and Afghanistan, and hundreds of people were detained without warrant. The detention facility at Guantánamo Bay, Cuba, became a lightning rod for domestic and international criticism of Bush policies.

While running for president, Barack Obama promised to put a stop to these practices, but his administration continued many of them. Attorney General Eric Holder tried to move a set of trials from **military tribunals** in Guantánamo Bay to New York City, only to back away from efforts to do so. The same thing happened when President Obama sought to close the Cuban detention center. Ironically, the president, who campaigned on promises to move away from Bush's security policies, allowed military tribunals to begin trying cases in 2012. In all fairness to both Presidents Bush and Obama, it is much easier to talk about complexity than it is to manage complex situations.

military tribunals: Military courts that try combatants outside the civilian court system. Trials take place in front of a board of military officers operating under military law.

Security and Civil Liberties Trade-Offs

There are always trade-offs related to security. This applies to social structures and to physical aspects of security. It is possible to use force to create a social structure in which people can have limited fear of crime and illegal violence. The underside is that people in such a society must often fear the powers of the civil government. Crime can be reduced through aggressive apprehension and punishment of criminals, but when the government goes beyond legal norms, people no longer fear only the criminals—they also fear the government that is supposed to protect their rights (Giroux, 2002).

This is both an ancient and a modern principle. When the Athenians were threatened with invasion, they were often willing to suspend the rules of democracy in favor of protection. They shifted from the structure of open democracy to grant more authoritarian power to leaders in times of crisis, and the power would last until the threat abated (Finley, 1983, pp. 24–25). The Romans would follow a similar course in their republic, creating a dictatorship in times of war (Mackay, 2004, pp. 27–28). During the American Civil War, Abraham Lincoln imprisoned opponents without informing them of charges, suspending the writ of habeas corpus (Goodwin, 2005, pp. 354–355). In times of emergencies, some societies have been willing to sacrifice personal liberty in the name of security.

The question of the suspension of liberty lies at the root of arguments concerning homeland security. Proponents at one end of the spectrum argue that the open nature of democratic societies leaves the social structure open to attack. They argue that some limitation on civil liberties is necessary to preserve the greater good. On the other end of the spectrum, people argue that limiting civil liberties is far more dangerous than the more limited threats posed by terrorism. Like Donald Black (2004), they argue that when governments suppress freedom in the name of counterterrorism, their actions are more violent than the terrorists they are trying to stop. There are many differing positions between these two extremes, and the debate complicates any approach to homeland security (Wise and Nadar, 2002).

Because the dispute is unresolvable, a metaphor might be helpful. More than a century ago, tremendous debates raged in the navies of Japan, Europe, and the United States about the construction of battleships. The problem focused on three critical aspects of battleships: speed, armor, and firepower. Any time engineers increased one of the three, they had to decrease the other two. For example, one set of nations decided to develop fast battle cruisers before World War I. This meant that they had to reduce the number and caliber of big guns on the ships as well as the armor plating. Guns and armor added weight and slowed the cruisers. The battleship debate was a zero-sum game.

The debate about homeland security involves similar factors. Decreasing civil liberties limits individual freedom and increases governmental power. It may increase protection from terrorism, but it also increases citizen vulnerability to the abuse of governmental power. Just as it was impossible to build a battleship that had the heaviest guns, the thickest armored protection, and the fastest speed in any navy, so it is impossible to construct a counterterrorist system that ensures complete protection, allows for maximum civil liberties, and protects unrestricted freedom of movement. Issues need to be balanced, and the debate centers on the areas that should be emphasized.

When homeland security is being discussed, the topic of individual rights usually becomes part of the discussion. To engage in a struggle against terrorism, Americans must examine themselves and honestly select a course of action that they will accept. It cannot be imposed by legislative action, military force, or police power. It cannot be defined by self-appointed civil rights guardians. Attorneys and courts are fond of claiming this area for their exclusive jurisdiction, but the issue extends far beyond judicial logic. If Americans want to secure the homeland, they need to engage in a thorough

civil liberties: Individual rights granted to citizens under the U.S. Constitution.

Bill of Rights: The first 10 amendments to the U.S. Constitution.

self-examination and decide what they are willing to sacrifice and how they will maintain the most cherished aspects of social freedom (Cole and Dempsey, 2002, pp. 11–12).

Human Rights and Civil Liberties

Civil liberties refers to the individual freedoms people have under a system of law. The Constitution is the law of the land in the United States. It establishes procedures for government and provides for civil liberties. The first 10 amendments, which are known as the Bill of Rights, further limit the power of government. Americans enjoy

EXPANDING THE CONCEPT

The UN Universal Declaration of Human Rights

In 1948, the United Nations adopted the Universal Declaration of Human Rights. The provisions include the following:

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.
- Everyone is entitled to all the rights and freedoms in the Declaration; and no distinction shall be made on the basis of the racial, religious, political, jurisdictional or international status of the country or territory to which a person belongs.
- Everyone has the right to life, liberty, and security of person.
- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
- No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.
- Everyone has the right to recognition everywhere as a person before the law.
- All are equal before the law and are entitled without any discrimination to equal protection of the law.
- Everyone has the right to a legal remedy if human rights are violated.
- No one shall be subjected to arbitrary arrest, detention, or exile.
- Everyone is entitled in full equality to a fair and public trial.
- Every defendant has the right to be presumed innocent until proved guilty according to law in a public trial.
- No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence. Everyone has the right to the protection of the law against such interference or attacks.
- Everyone has the right to freedom of movement, and the right to leave any country, including his own, and to return to his country.
- Everyone has the right to seek political asylum from persecution.
- No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
- Men and women of full age have the right to marry and to found a family. Marriage shall be entered into only with the free will and consent of the spouses.
- Everyone has the right to own property and no one shall be arbitrarily deprived of his property.
- Everyone has the right to freedom of thought, conscience, and religion.
- Everyone has the right to freedom of opinion and expression.
- Everyone has the right to freedom of peaceful assembly and association.
- Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government.

Source: United Nations, <http://www.un.org/Overview/rights.html>