Patriot Act and Department of Homeland Security Policy Analysis

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Short Summary Page

The role of the Patriot Act 2001 in pertaining to the missions and purposes of the Homeland Security Act 2002 is evident from the previous research study. However, the connection between civil liberties and national security plays a critically important role in fulfilling the pertaining role of the Patriot Act. Bellavita (2005) explained that homeland security has been designed with the purpose of preventing terrorism instead of addressing it (pp. 1). Therefore, the Patriot Act has allowed the U.S. intelligence agencies to collect information and use it for devising a security plan. However, civil liberties are often compromised in the process. Moreover, such an expansion in the collection of information can result in a complete disregard of constitutional rights and other existing rights by presidential actions (Kashan, 2010, p. 87).

The Global War on Terrorism as an aftermath of the devastating event of 9/11 has raised the question of whether the freedoms of the citizens of the United States have been compromised in the process of fulfilling the missions of the Homeland Security Act 2002. Davis (2003) has concluded from his extensive research work on the history and development of the two Acts and critical analysis of the authorities these Acts provide to national organizations such as the National Security Agency that an appropriate balance between the two must be attained to combat terrorism (Davis, 2003, pp. 238). It further concludes that civil liberties cannot be saved if national security is not intact (Davis, 2003, pp. 238). Therefore, a nation must be free from both internal and external threats in order to sustain a relationship between national security and civil liberties (Davis, 2003, pp. 179). This discussion is important in the context of finding the extent and period of compromise that can be and should be expected from the Americans in their civil liberties, especially freedom of privacy.

Introduction And Problem Statement

The Patriot Act has expanded the definitions of foreign powers (Jaeger et al., 2010, pp. 299). It has expanded the information circle to any tangible thing such as documents, papers, records, books and others; earlier, it was limited to information such as storage unit rentals, car rentals, and hotel registrations only (Jaeger et al., 2010, pp. 299). It includes investigation from wire and oral communication to the contents of emails, including signalling, routing and dialling information in the emails (Jaeger et al., 2010, pp. 300). However, according to Section 215 of the Act, the obtained information cannot be disclosed.

The Homeland Security Act of the United States has three missions: halting terrorist attacks within the country, decreasing the vulnerability of the country to terrorism, and reducing damages and assisting to recover from the damage of the terrorist attacks in the past (Homeland Security Act, 2002). It also established the U.S. Department of Homeland Security, which includes many other organizations like the Transportation Security Administration, U.S. Secret Service, U.S. Coast Guard, and Federal Emergency Management Agency (Wiedemann, 2010). The Homeland Security Act and the Patriot Act are compatible and often work together, but not always. Literature has established a link between the Homeland Security Act and the Patriot Act in the context of the United States Visitor and Immigrant Status Indicator Technology System (Partida, 2014, pp. 61).

Problem Statement:

The role of the Patriot Act 2001 in pertaining to the missions and purposes of the Homeland Security Act 2002 is evident from the previous research study. However, the connection between civil liberties and national security plays a critically important role in fulfilling the pertaining role of the Patriot Act. The Global War on Terrorism as an aftermath of the devastating event of 9/11 has raised the question of whether the freedoms of the citizens of the United States have been compromised in the process of fulfilling the missions of the Homeland Security Act 2002. This discussion is important in the context of finding the extent and period of compromise that can be and should be expected from the Americans in their civil liberties, especially freedom of privacy.

Literature Review

The Homeland Security Act is a capstone strategy document. After the fateful event of 9/11 in 2001, the United States has been going through a phase of threat which is marked by domestic nuclear, chemical and biological attacks. It includes an insight and understanding of the situation and the preparedness to tackle any kind of situation, including providing a response to the use of a weapon of mass destruction. The Act also provides the foundation of the Department of Homeland Security, which is responsible for halting terrorism and mitigating terrorist attacks in the country.

The Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (Patriot) Act is aimed at deterring and punishing terrorist acts in the country and around the world. It places the acquisition of enhanced law enforcement investigatory tools at the base of achieving this objective (USA Patriot Act, 2001). This process reduces the restrictions on the government and relevant authorities in obtaining information concerning health records, email communication, and telephone records of the people (USA Patriot Act, 2001). However, the information must not be sought to concern a clandestine intelligence, to protect against terrorism, or an American (USA Patriot Act, 2001. Section 288(1)). Moreover, civil liability for certain unauthorized disclosures is provided under Section 223 of the Act; it constitutes a violation (Wiedemann, 2010).

The Homeland Security Act and the Patriot Act are compatible and often work together, but not always. For instance, requests for using personal health information of any type can be made under the Homeland Security Act; it is passed without the need for the patient or his legal guardian's express authorization. However, the use of this information has been limited to the performance of official duties only (Homeland Security Act, 2002). It is compatible with the privacy rules of HIPAA (Wiedemann, 2010). The Patriot Act, on the other hand, also allows the authorities to request personal health information, but each information production order must be made by either a magistrate or judge. It is the duty of the judge to demonstrate that the information has been sought for an authorized investigation (USA Patriot Act, 2001. Section 288(1)).

Bellavita (2005) explained that homeland security has been designed with the purpose of preventing terrorism instead of addressing it (p. 1). The Homeland Security Act focuses on preventing terrorism instead of addressing it for three types of fear: new behaviour, imagination, and emergence (Bellavista, 2005, pp. 4-7). This finding is important in realizing the reason behind the collection of information and data by the U.S. intelligence agencies and, thus, the emergence of new legislative pieces in this regard. In 2003, Jaeger et al. conducted a study on the impact of the Patriot Act on the freedom of information in the United States. This study focused on how this Act has changed the original vision and scope of the Foreign Intelligence Surveillance Act. This article explored this impact on information policy with a particular focus on the collection and use of personal information in the United States. Various sources of personal information, such as libraries, transactional and electronic records, and e-government, were used to examine the impact of these changes to the Foreign Intelligence Surveillance Act.

The study concluded that the Patriot Act has expanded the definitions of foreign powers (Jaeger et al., 2010, pp. 299). Initially, the acquisition of information about foreign intelligence was the purpose of the Act; the Patriot Act limited it to the level of being a significant purpose only (Jaeger et al., 2010, pp. 299). The Patriot Act also expanded the information circle to any tangible thing such as documents, papers, records, books and others; earlier, it was limited to information such as storage unit rentals, car rentals, and hotel registrations only (Jaeger et al., 2010, pp. 299). Thus, the Patriot Act has enlarged the circle of investigation from wire and oral communication to the contents of emails, including signalling, routing and dialling information in the emails (Jaeger et al., 2010, pp. 300).

Furthermore, the Patriot Act has a secrecy clause concerning the protection of the information obtained under the Foreign Intelligence Surveillance Act (Jaeger et al., 2010, pp. 299). Therefore, according to Section 215 of the Act, the obtained information cannot be disclosed. The study concluded that with all these expansionary changes, the Patriot Act has significantly impacted the relationship between law enforcement organizations and the agencies that collect and analyze such information (Jaeger et al., 2010, pp. 310). However, it has also been pointed out that the stories regarding the collection and analysis of electronic and transactional records are hypothetical; no government organizations are requesting these agencies to collect any personal information (Jaeger et al., 2010, pp. 310).

However, these stories may not always be hypothetical. In 2014, Partida published a research study in the journal named North America. It concerned the Homeland security policy changes and challenges after the fateful event of 9/11 (Partida, 2014). Although not on a large scale, the researcher has established a link between the Homeland Security Act and the Patriot Act in the context of the United States Visitor and Immigrant Status Indicator Technology System (Partida, 2014, pp. 61). The program was created as the post-9/11 legislation for homeland security and the provisions of the U.S. Patriot Act of 2001.

It is a biometric system that generates electronic data of the visitors passing through the checkpoints on the border between Mexico and the United States. Thus, the entry-exit records are harmonized (Partida, 2014, pp. 62). The system connects the watch lists of terrorists of the DHS, FBI, CIA, and the U.S. border patrol with the anti-terrorism centres of the country (Partida, 2014, pp. 62). This collected data is used for fulfilling the three missions of the Department of Homeland Security: halting terrorist attacks within the country, decreasing the vulnerability of the country to terrorism, and reducing damages and assisting in recovering from the damage of the terrorist attacks in the past (Homeland Security Act, 2002).

Despite such successful use of the Patriot Act in pertaining to the missions and purposes of the Homeland Security Act, there is a hot debate concerning national security and civil liberties. Kelly (2015) submitted a thesis to John Hopkins University concerning the balance between national security and freedom. The researcher took nine countries: Egypt, Saudi Arabia, Russia, Georgia, Turkey, Pakistan, Spain, United Kingdom and the United States and divided them into three categories of being free, partially free and not free in the context of civil liberties. The researcher focused on the trend of change in any country's civil liberties as a result of an outside terrorist attack. The relevant data from 1990 to 2012 from the Global Terrorism Database was used in this regard (Kelly, 2015, pp. 8). The free countries, the United States, saw no change in their civil liberties. The remaining countries under the categories of partially free and not free saw slight changes in the extent and dimensions of civil liberties in the aftermath of an outside terrorist attack (Kelly, 2015, pp. 22).

After obtaining this result, Kelly has moved towards the discussion of the impact the Department of Homeland Security makes on civil rights, civil liberties and citizens' privacy (Kelly, 2015, pp. 41). It is an important discussion in the context of the connection between civil liberties and national security. There are three missions of the Department as provided by the Homeland Security Act 2002: halting terrorist attacks within the country; decreasing the vulnerability of the country to terrorism; and reducing damages and assisting to recover from the damage of the terrorist attacks in the past (Homeland Security Act, 2002). Bypassing and curtailing civil liberties in the process of achieving these goals often occurs in the United States. Therefore, Kelly (2015) has evaluated the Office based on a ten years' record of performance in this regard (pp. 15). The thesis finds that the Office has been successfully fulfilling its responsibilities as defined in the Homeland Security Act 2002.

Most importantly, the research has found no evidence of a seismic shift in the connection of the citizens' freedoms with the national defence. It finds that the freedoms of the citizens in the United

States are not compromised in the pursuit of fulfilling the missions of the Homeland Security Act 2002. The freedoms are kept intact and are not diminished in the process because the Office of Civil Liberties and Civil Rights has been successfully performing its part of the duties in keeping the national scenario of the country intact (Kelly, 2015, pp. 90). The work also concluded that the effectiveness of community engagement, as a matter of fact, plays a key role in the context of keeping the national defence in place (Kelly, 2015, pp. 91). Firstly, the government approaches terrorist attacks in a multifaceted way. Secondly, the community is engaged in the process; the community is heard at various platforms and other forums (Kelly, 2015, pp. 91). However, the lack of transparency in the process must be addressed as it hinders the process of effective community engagement in the United States (Kelly, 2015, pp. 91).

Talking about effective community engagement in the process of combating terrorism in the country after the dreadful event of 9/11, Davis and Silver presented a study on public opinion in this context in 2004. They questioned the Americans about their opinion on the terrorist attacks in the country and the government's take on it. They also discussed the civil liberties trade-off in this process (Davis & Silver, 2004, p. 29). The researchers explained several core terms, such as threat and trust in government, in the process of developing the model of theoretically important factors that impact the sense of threat and the trust in government by the Americans post 9/11 (Davis & Silver, 2004, pp. 30). They also discussed the political, psychological and social attitudes such as dogmatism, interpersonal trust, national pride and patriotism, and the relationship of liberalism and conservatism in this regard (Davis & Silver, 2004, pp. 31). They expanded the discussion to the demographic factors of race and ethnicity, education, age and type of community (Davis & Silver, 2004, pp. 32).

After carrying out a multivariate analysis of these factors, the researchers illustrated the effects of trust and threat in the context of the trade-off between national security and civil liberties by the Americans (Davis & Silver, 2004, pp. 38). They asked several questions: if personal freedom should outweigh the desire to live in an orderly and peaceful society, and what weight is being given to civil liberties by the Americans in the context of a sense of threat (Davis & Silver, 2004, pp. 43). The research concluded that Americans are not willing to trade off their personal freedoms for the ability to live in a threat-free society (Davis & Silver, 2004, p. 43). However, they are not willing to trade off freedoms; they adopt a moderate position on it (Davis & Silver, 2004, pp. 43). Attitudinal concepts such as social trust, political ideology, and national pride play a critical role in the willingness of citizens to let go of their liberties (Davis & Silver, 2004, p. 43). This finding is important because it supports the role of the Patriot Act in keeping the national defence intact. It informs the legislative and law enforcement agencies of the extent to which civil liberties can be compromised in the quest to combat terrorism in the country.

In 2003, a research paper was published in the Brooklyn Journal of International Law. The researcher, Robert Davis, discussed the possibilities of striking a balance between the citizens' freedoms and the national security of the United States (Davis, 2003, pp. 175). The article discusses the history of America with respect to the U.S. intelligence gathering. It provides detailed information and analysis of the four key documents, i.e., the National Security Act of 1947, the Truman Memorandum,

Executive Order 12333, and the Foreign Intelligence Surveillance Act behind the creation of the National Security Agency. The article also discusses the intelligence-gathering authority of this organization (Davis, 2003, pp. 220).

The article surveys litigation under the Foreign Intelligence Surveillance Act and discusses the national security legislation's impact on the Fourth Amendment rights as well as the U.S. Patriot Act's anticipated effects (Davis, 2003, pp. 183). It compares and contrasts the circumstances leading to the creation of the Foreign Intelligence Surveillance Act and the U.S. Patriot Act and analyzes the impact of these two Acts on law enforcement agencies in the areas of information sharing and intelligence collection. By doing so, this article explores the relationship between national security and civil liberties (Davis, 2003, pp. 175). National security is the safety of the country against a major threat such as espionage, war and terrorism. It concerns both foreign affairs and the national defence of the United States. It encompasses security of energy and national resources, political security, military security, and economic and environmental security. Civil liberties, on the other hand, concern guaranteed basic rights and freedoms such as the right to free speech, the right to privacy, etc.

The debate on the relationship between national security and the freedoms of American citizens is the tip of a big iceberg. Freedoms entail risks. Therefore, nations struggle with how to protect civil liberties while maintaining national defense. Davis (2003) has concluded from his extensive research work on the history and development of the two Acts and critical analysis of the authorities these Acts provide to national organizations such as the National Security Agency that an appropriate balance between the two must be attained to combat terrorism (Davis, 2003, pp. 238). It further concludes that civil liberties cannot be saved if national security is not intact (Davis, 2003, p. 238). Therefore, a nation must be free from both internal and external threats in order to sustain a relationship between national security and civil liberties (Davis, 2003, pp. 179).

The connection between homeland security and civil liberties was addressed at a conference in 2004. The conference was held in Philadelphia, Pennsylvania, and was conducted by the University of Pennsylvania Law School. According to the discussants at the conference, the global war on terrorism has been an unprecedented challenge in American history. Therefore, the country has to look at the connection between civil liberties and national security in a way that has never been required before (Wang and Lovelace, 2004, pp. 1). The country now faces dual goals of staying committed to the U.S. Constitution by providing and maintaining civil liberties and preventing future attacks of terrorism in the country by keeping national security intact (Wang and Lovelace, 2004, pp 1).

Furthermore, the conference paper talks about the need to consider the continued viability and long-term implications of the domestic and international policies and laws of the country, especially after almost three years into the global war on terrorism (Wang and Lovelace, 2004, pp. 1). The major problem in combating terrorism arises due to the tension between homeland security and civil liberties. It is extraordinarily complex with segregation of power dimensions, First Amendment, privacy, criminal law, and immigration policy, among others (Wang and Lovelace, 2004, pp. 3). The discussants concluded that it is very difficult for the Americans to compromise their civil liberties

because they cherish them. Moreover, these civil liberties are taken as guiding principles for all types of communications in the country. Therefore, any prospective compromise from the Americans with regard to their civil liberties must be expected only for a finite period and to the extent absolutely necessary (Wang and Lovelace, 2004, pp. 3).

The connection between the Patriot Act and civil liberties was discussed by Kashan in 2010 in an article on the impact of the Act on freedoms. As pointed out earlier, the Patriot Act provided provisions related to the information collection methods of government agencies; it also contains provisions regarding the recording and collection of immigration data in the post-9/11 world scenario. However, Kashan (2010) pointed out that the information-collecting methods greatly trade off the personal information of Americans, especially minorities and immigrants, for an orderly and peaceful society (pp. 87). The study further pointed out that these provisions greatly expand the circle of presidential powers in the country (Kashan, 2010, pp. 87). Such an expansion can result in a complete disregard of constitutional rights and other existing rights by presidential actions (Kashan, 2010, p. 87). This situation would not be easy to handle for the legislative and law enforcement agencies later on.

The United States is considered the champion of human rights in the world. The study emphasized that this image will be lost as a result of the Patriot Act in pertaining to achieving the missions and purposes of the Homeland Security Act (Kashan, 2010, p. 88). The researcher explains that the Patriot Act allows the agencies to monitor and examine electronic communication to a large extent. Therefore, the agencies are allowed to seize customer records and telecom companies' records (Kashan, 2010, pp. 88). Therefore, the Patriot Act has been criticized for its ability to diminish civil liberties (Kashan, 2010, pp. 88).

Waxman (2009) provided an overview of the role of the Patriot Act pertaining to the mission of the Home Security Act, which has three missions: halting terrorist attacks within the country, decreasing the vulnerability of the country to terrorism, and reducing damages and assisting to recover from the damage of the terrorist attacks in the past (Homeland Security Act, 2002). Waxman (2009) provided this overview in the context of American local enforcement. He explored the connection between the police and national security in this regard (Waxman, 2009, pp. 377). He examined the greater involvement of law enforcement agencies at state and local levels and departments, especially police, in combating national terrorism. The national security law presents three challenges in this regard: institutional tensions in the functions of the traditional local police, accountability challenges, and organizational challenges (Waxman, 2009, pp. 378).

The functional challenges make it difficult to carry out traditional functions. This situation makes it difficult for the local police department to become an effective counterterrorism tool (Waxman, 2009, pp. 402). A similar tension exists between intelligence activities and law enforcement. The accountability challenges include the impact of the counterterrorism agenda on the accountability process of local police agencies (Waxman, 2009, pp. 378). The organizational challenges include the enormous problems in the process of coordinating counterterrorism activities and national security

due to the localized and decentralized nature of American policing. Local police offer the familiarity and workforce required for preventing, investigating and responding to terrorism. However, in pursuit of a national agenda under the Homeland Security Act 2002, new coordination mechanisms are required for harnessing these resources due to the atomization of U.S. policing (Waxman, 2009, pp. 378).

Waxman (2009) examined three primary issues in the context of a heterogeneous and decentralized system of American policing: if the local policing's traditional core functions are undermined by the national security responsibilities; if the system of accountability and oversight is disrupted by devolution of national security responsibilities to local police agencies; and if great networking of the national policing agencies can result in effective combat of terrorism. The research concluded that a homogeneous system of American policing must be introduced because the heterogeneous system poses obstacles to the effective use of national police agencies (Waxman, 2009, pp. 407). This finding has future implications for the role of the Patriot Act in pertaining to the missions and purposes of the Homeland Security Act because the police agencies provide the best resources in the form of facilities and personnel at the local level. Both of these resources can best be used for combating terrorism within the country.

Conclusion Statement

This paper discussed whether the freedoms of the citizens of the United States have been compromised in the process of fulfilling the missions of the Homeland Security Act 2002 and the pertaining role of the Patriot Act 2001. National security is the safety of the country against a major threat such as espionage, war and terrorism. It concerns both foreign affairs and national defence of the United States. It encompasses security of energy and national resources, political security, military security, and economic and environmental security. Civil liberties, on the other hand, concern guaranteed basic rights and freedoms such as the right to free speech, the right to privacy, etc.

In the process of combating terrorism, the restrictions on the government and relevant authorities in obtaining information concerning health records, email communication, and telephone records of the people have been reduced (USA Patriot Act, 2001). The Patriot Act has expanded the definitions of foreign powers (Jaeger et al., 2010, pp. 299). Such an expansion can result in a complete disregard of constitutional rights and other existing rights by the presidential actions (Kashan, 2010, pp. 87). This situation would not be easy to handle for the legislative and law enforcement agencies later on. Moreover, the Americans are not willing to trade off their civil liberties in the quest to live in an orderly and peaceful society. Therefore, the need to consider the continued viability and long-term implications of the domestic and international policies and laws of the country, especially after almost three years into the global war on terrorism, must be considered (Wang and Lovelace, 2004, pp. 1).

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