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**THE PATRIOT ACT: HOW IT HURTS
DEMOCRACY**

by

Madison Racquel Wadsworth

Thesis submitted in partial fulfillment of the
requirements for the degree

of

**HONORS IN UNIVERSITY STUDIES WITH
DEPARTMENTAL HONORS**

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Political Science
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Abstract:

After the devastating attacks on American soil on September 11th, 2001, the world's perceptions of security changed forever. Immediately following the attacks, the United States government passed the USA PATRIOT Act, broadening definitions of terrorism and codifying unconstitutional acts, such as unwarranted searches of private property, indefinite holding of suspected terrorists, and ultimately torturing those suspects. This act has had several long term implications leading to a reduction in the quality of American democracy, which subsequently affected other liberal democracies around the world through violations of basic democratic principles, or civil liberties, such as: due process, physical attacks, and freedom of speech. Through the study of the definitions, history, precedents, and what democracies traditionally value, this capstone attempts to explain how anti-terrorism legislation can have potentially grave consequences for democracies and how those consequences set a negative precedent for future legislation.

Acknowledgements

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I. INTRODUCTION

On September 11th, 2001, Al-Qaeda coordinated four terrorist attacks on the United States. It killed 2,996 people, not including the firefighters and first responders on the scene. Less than two months later, Congress approved a 342-page legislation known as the “*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*” (USA PATRIOT Act). The Patriot Act modified or voided 15 laws of the time to combat terrorism, loosened the definition of “domestic terrorism,” and gave additional funding and abilities to the government to counter terrorism. It also aided specific agencies, such as the FBI and CIA, to allow for extraction of information on citizens and non-citizens alike (Costly 2003).

President Bush, as he signed the USA PATRIOT Act (Patriot Act) into law, praised it as “*New tools to fight the present danger... a threat like no other Nation has ever faced...*” which “*upholds and respects the civil liberties guaranteed by our Constitution*” (Costly 2003). Yet, that was not the case. The Patriot Act went too far in its abilities to deter, detect, and stop terrorism in the name of security. Prior to 9/11, similar, and even less intrusive, legislation had been introduced to Congress but was rejected because it infringed on the rights and freedoms of American citizens. Distraught over 9/11, Americans, including lawmakers, were more willing to overlook threats to civil liberties allowed by the Patriot Act. However, no matter the threat, democracy requires those civil liberties.

As a consequence, the USA Patriot Act, and other anti-terrorism legislation stemming from it, negatively impacted the quality of democracy in the United States, and set a negative precedent for what this nation is willing to do in the name of security. This essay argues that the

Patriot Act allowed for three specific violations of civil liberties, including torturing and indefinite holding of suspects without due process, and collecting data or “spying” on citizens without warrant or consent. Because civil liberties are essential to democracy, a reduction in the quality of these liberties resulted in a reduction in the quality of democracy (Dahl 1973; Levitsky and Way 2013).

In this paper, first, I explore necessary definitions: democracy and the Patriot Act. Then I outline the process by which the Patriot Act came to be. I use this section to show how this legislation marked a major shift from previous legislation by documenting the history up to that point. Secondly, I address three undemocratic actions: spying, torture, holding of suspects, and explain what each is and what about them is undemocratic. Third, I show how the Patriot Act set a precedent for violating civil liberties to prevent terrorism. Lastly, I make my conclusions.

II. DEFINITIONS

It is important to define what I mean by democracy and what exactly the Patriot Act is. Democracy is defined by Levitsky and Way from their book exploring hybrid regimes according to how they violate democratic standards. The Patriot Act is defined by its goals and tools.

1. *Democracy*

Following Levitsky and Way (2013), I understand democracy as a regime that meets four minimum criteria: free and fair elections, the right for citizens to vote and participate politically, political rights and civil liberties, and a sovereign government. The third aspect, civil liberties, is what I will be focusing on. Civil rights include: freedom of the press, freedom of association, and freedom to criticize the government without reprisal (Levitsky and Way 2013, 5-6).

2. *The Patriot Act*

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, or the Patriot Act, was meant to uncover potential terrorist attacks before they happened and stop them. To do that, it gave the government additional surveillance and data collection powers through extra funding, expanded communication, broadened definitions, and expanded technological capabilities (See details in Table 1).

Title	Name	Main Outcome
Title I	Enhancing Domestic Security Against Terrorism	Increased funding in counterterrorism agencies and military assistance in terrorism emergencies
Title II	Enhanced Surveillance Procedures	Granted new authority of interception of wire, oral, and electronic communications in fraud, abuse, and terrorism investigations; clarified and added FISA warrants and

		data collection; all Sections 200-225 under Table 2 in section <i>Spying on citizens without warrant</i> .
Title III	Intl. Money Laundering Abatement And Antiterrorist Financing Act Of 2001	Created goals and tools to reduce foreign money laundering; allows for monitoring of international money transfers; defines currency crimes
Title IV	Protecting The Border	Added personnel and fingerprint identification on the Northern US border; defined terrorism and “relative words”; clarified immigration benefits in relation to terrorism victims
Title V	Removing Obstacles To Investigating Terrorism	Clarified Attorney General’s role in combatting terrorism; created additional communication between law enforcement; allowed for DNA extraction of suspected terrorists and violent offenders
Title VI	Providing For Victims Of Terrorism, Public Safety Officers, And Their Families	Provides means of payment for law enforcement who combat and prevent terrorism; provides funds, compensation, and assistance to victims of terrorist crimes
Title VII	Increased Information Sharing For Critical Infrastructure Protection	Expanded regional information sharing between law enforcement relating to a terrorist attack
Title VIII	Strengthening The Criminal Laws Against Terrorism	Defines federal terrorism and domestic terrorism; enhances punishments of terrorist crimes and harboring of terrorists; goal to reduce cyberterrorism
Title IX	Improved Intelligence	Clarifies the role of CIA in regards to FISA; grants FISA jurisdiction in foreign intelligence under NSA; allows for acquisition and storage of foreign intelligence information
Title X	Miscellaneous	Defines “electronic surveillance”; expanded crime identification technology to combat terrorism

Source: Bill H. R. 3162

Altogether, the provisions mentioned above allowed the government to: add surveillance capabilities for more terror-related crimes, use roving (constant) wiretaps to follow suspected

terrorists, conduct hidden investigations, as well as use hidden Foreign Intelligence Surveillance Courts (known as FISC or FISA Courts) to obtain information on possible terrorists. One of the priorities of the Patriot Act was to enhance information sharing between different law enforcement branches, such as the FBI, local law enforcers, and federal prosecutors. Combined with technology and court warrant provisions the Foreign Intelligence Surveillance Act, the Patriot Act allowed the government to use computer technology and “secret” warrants as tools to monitor and find possible terrorists. The government was effectively granted the ability to monitor and collect data secretly through hidden FISA Court warrants that could be obtained without any probable cause or evidence. Last, it increased penalties for terrorist crimes, added crimes for harboring a terrorist, and enhanced existing punishments.

2b. Government Programs

In actuality, the Patriot Act did much more than was on paper. In 2013, Edward Snowden, a former CIA worker, exposed secret government programs under the Patriot Act by anonymously leaking information about (NSA) government surveillance to The Guardian and The Washington Post (ESDUSGO 2018). There were six big disclosures, but the biggest was the PRISM program. PRISM allowed the government to legally request *all* user information from *any* company, including: Facebook, Google, Microsoft, Yahoo, PalTalk, AOL, Dropbox, Skype, YouTube, or Apple (Rathnam 2017). Additionally, Snowden exposed wiretapping -- a FISC order which legally required Verizon, AT&T, and Sprint, to hand over explicit details of every single call made or received with a party in the United States, including “*numbers of both parties on a call, location data, call duration, time of the call, International Mobile Subscriber Identity (IMSI) number and any other unique identifiers*” (Rathnam 2017). Basically, the United States

government obtained every detail involving any communication inside the United States, every day and stored it in NSA locations. The four other major discoveries were: Tempora, a program in conjunction with the UK to gather transatlantic information; Tailored Access Operation, a hacking team designed to break encryption codes; Dishfire, which collects texts, credit card info, and contact information; and SOMALGET, which *“is intercepting, recording and storing all calls made in the Bahamas... without the knowledge or consent of the Bahamian government”* (Rathnam 2017). The Patriot Act, and later its brother bills, “legally” permitted all of these unconstitutional government programs.

Whether or not the Patriot Act has prevented any terrorist attacks is debated. Opposing groups such as the American Civil Liberties Union claim it has not; while supporting groups such as the conservative Heritage Foundation, claim the opposite (Patriot Act 2017). The Patriot Act was designed to prevent terrorism, but there is still debate on how effective it actually was in that regard and if the civil liberty violations were worth it in the long run.

III. EMERGENCE OF THE PATRIOT ACT

The Patriot Act was introduced immediately after 9/11 in accordance with Attorney General John Ashcroft's recommendations of how to fight international, but especially domestic, terrorism (Patriot Act 2017). It was approved in October with bipartisan support.

Prior Acts and legislation

The Patriot Act marked a relatively large shift in the abilities to counter terrorism at the expense of civil liberties. Before 2001, any sort of communications monitoring still required a constitutional warrant, meaning they followed probable cause standards and there was a safeguard to protect civil liberties. After 2001 with the Patriot Act, that safeguard disappeared and the government had free reign to monitor any communication without proper checks and balances, as probable cause standards for secret warrants disappeared and a necessity for warrants disappeared altogether in many circumstances. The Patriot Act enabled the government to request "records" (as opposed to "warrants") which newly defined, meant, "*any tangible thing (including books, records, papers, documents, and other items)*" and also allowed the government to request those "records" from private corporations, including libraries and bookstores, all without constitutional warrants (Surveillance n.d.). The Patriot Act, therefore, changed the interpretation of previous laws and definitions to weaken privacy and warrant standards defined by the Fourth Amendment.

At the emergence of new telecommunications technology, legislation aimed to protect private individual privacy when it came to technology. The Wiretap Act of 1968 prohibited recording private "wired" conversations, such as phone calls, via wiretap. It was amended with

the Electronic Communications Privacy Act of 1986, which extended these privacy rights to “electronic communications,” such as emails (Farkas n.d.).

However, in 1994, the Communications Assistance for Law Enforcement Act required phone companies to create a mechanism for governments to wiretap communication devices (Shah 2015).¹ Next, the Foreign Intelligence Surveillance Act of 1978 (FISA) established

“procedures for the authorization of electronic surveillance, use of pen registers and trap and trace devices, physical searches, and business records for the purpose of gathering foreign intelligence.” (FISA 2013).

FISA also created the Foreign Intelligence Surveillance Courts, which previously held (before 2015) non-public hearings to ask for warrants where the government was the only party present.

Although laws regarding privacy had become more lenient as time went on, they all abided by basic protections of privacy. The Patriot Act marked a major shift by disregarding these protections. After the Patriot Act, requirements of probable cause warrant standards, or even the need for a warrant, fully disappeared. This effort to counter terrorism via monitoring communications amongst citizens violated civil liberties, as the Acts changed from monitoring only those who were under investigation and with legitimate warrants, to any suspected terrorist, and without a warrant. It also demonstrated the shift in public attitudes toward protecting liberties, as shown by the initial lack of support by Congress when proposed prior to 9/11 but immense support immediately after. Such a shift would not have been possible without public support.

The Patriot Act followed the typical pattern of intrusive legislation passed after a crisis. The unprecedented terrorist attacks shook the United States in a way it never previously experienced. Pearl Harbor was the only other time that a direct foreign attack happened on

¹ In 2005 (after the Patriot Act) this was extended to other phone and internet services (Shah 2015).

United States' soil. After 9/11, emotions were running high and citizens were calling for the government to do something to prevent a similar attack from ever happening again.

Such a reaction is not uncommon. During times of crisis and fear, the government often passes legislation, pushes executive orders, or permits civil liberty violations that would otherwise be seen as unconstitutional oversteps (Zywicki 2015). For example, Abraham Lincoln suspended Habeas Corpus during the Civil War, Franklin D. Roosevelt created Japanese Internment Camps during World War II, and temporary martial law existed after the Boston Bombings. The Patriot Act is another example of crisis legislation.

Figure 1: Public Opinion on the Patriot Act

Should the government take all steps necessary to prevent additional acts of terrorism in the U.S. even if it means your civil liberties would be violated?

Or should the government take steps to prevent additional acts of terrorism but not if those actions violate basic civil liberties?

	<u>Jan. 2002</u>	<u>Aug. 2003</u>
Take steps even if civil liberties violated	47%	29%
Take steps but not violate civil liberties	49%	67%
No opinion	4%	4%

Do you think the Bush administration has gone too far, has been about right, or has not gone far enough in restricting people's civil liberties in order to fight terrorism?

	<u>Jan. 2002</u>	<u>Aug. 2003</u>
Too far	11%	21%
About right	60%	55%
Not far enough	25%	19%
No opinion	4%	5%

How familiar are you with the Patriot Act?

Very familiar	10%
Somewhat familiar	40%
Not too familiar	25%
Not at all familiar	25%
No opinion	0%

Source: Costly 2003, information from The Gallup Organization

Anxiety caused by 9/11 created a narrative that civil liberties had to be curtailed in order for the people to be safe (Pozen 2016). As a matter of fact, most people supported the bill at the beginning (see **Figure 1** above). Immediately after 9/11, the majority of citizens said the steps

taken by the Patriot Act were “about right” *even if* they violated civil liberties, with 89% of citizens agreeing it was not going too far and with almost 50% of people saying they were willing to lose civil liberties (Costly 2003). In principle, citizens should be averse to losing their civil liberties. Citizens supported the Patriot Act because the government presented a dichotomy of either having civil liberties violated with the Patriot Act or having another major terrorist attack (Pozen 2016). This anxiety resulted in little to no outcry after it had been passed (Costly 2003). Anxiety of citizens and policymakers alike can lead to major civil liberties violations.

The Patriot Act is a prime example of how anxiety can turn into violations of democracy.

The conference papers from the 2009 Midwestern Political Science Association state,

“We find that congressional discussions of the Patriot Act were severely flawed and incomplete immediately after 9/11 and improved only marginally in subsequent years. In early debates, Congress members had little understanding of either what was in the Patriot Act or how it changed existing surveillance laws. Despite several years of debate, they failed to induce substantial research and auditing efforts on surveillance methods and never were able to assess the Act's effectiveness as an anti-terrorism tool or its impact on privacy protections” (Bendix & Quirk 2009).

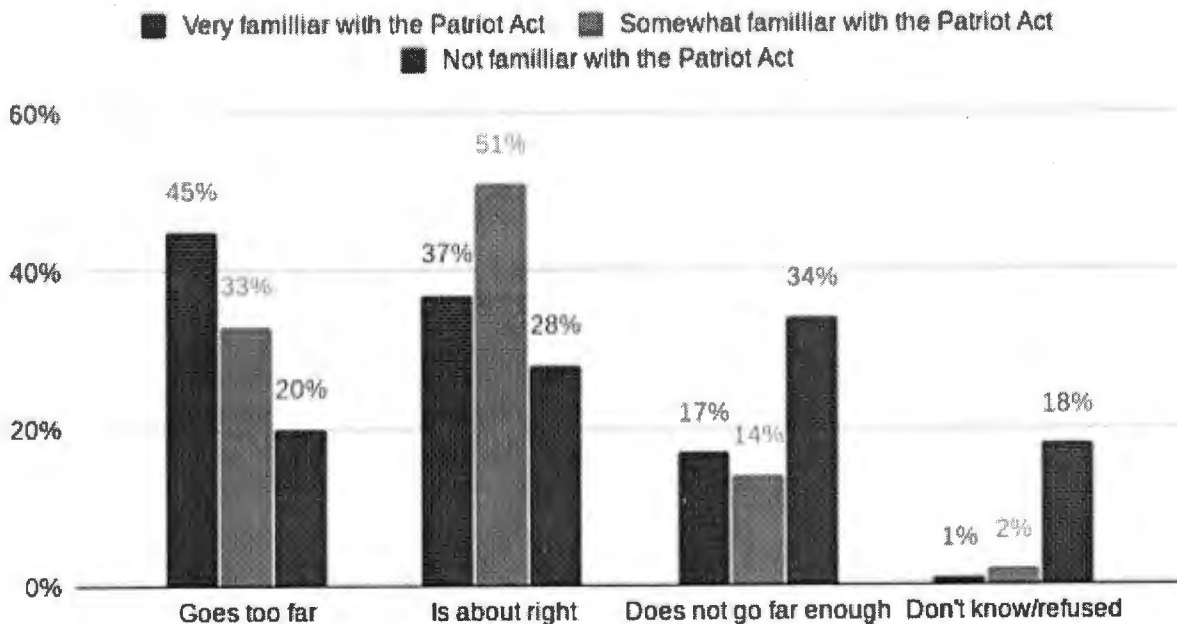
This touches on the quick and under-debated passing of the Act immediately following the terrorist attacks. Even after many members of Congress rescinded support for the Act, the history of 9/11 was still close enough to retain sufficient majority support for it, demonstrated by the fact that the Act lasted until it expired in 2015, only to be replaced by a similar piece of legislation, the Freedom Act. For years to come, the inability or unwillingness of members of Congress to debate the bill led to the ongoing ability of the Patriot Act to reduce the quality of democracy and to set a precedent of anti-democratic behaviors by the United States government.

After the Patriot Act passed, citizens gradually rescinded their support for the bill. In January of 2002, those who said it went “too far” was only 11%, which rose to 21% in August of

2003 (refer to **Figure 1**) (Costly 2003). Initially, about 89% of citizens praised the Patriot Act as a promise of safety from terrorism without realizing how it damaged democracy, saying that in restricting liberties it was either “about right” or it “did not go far enough” (Costly 2003). Later, the knowledge that the government could now spy on and store private data alarmed citizens. Once they were informed of this fact, some 70% agreed that the government was using data beyond anti-terrorism efforts (Geiger 2018). In a 2005 Gallup poll (seen in **Figure 2**), those who considered themselves to be more informed about the Patriot Act were more likely to say it went too far, showing that the citizens who knew about the more undemocratic notions of it were less supportive of it while many people still said it was “about right” (Carlson 2005).

Figure 2

“Based on what you have read or heard, do you think the Patriot Act...”



Source: Carlson 2005, information from Gallup Poll

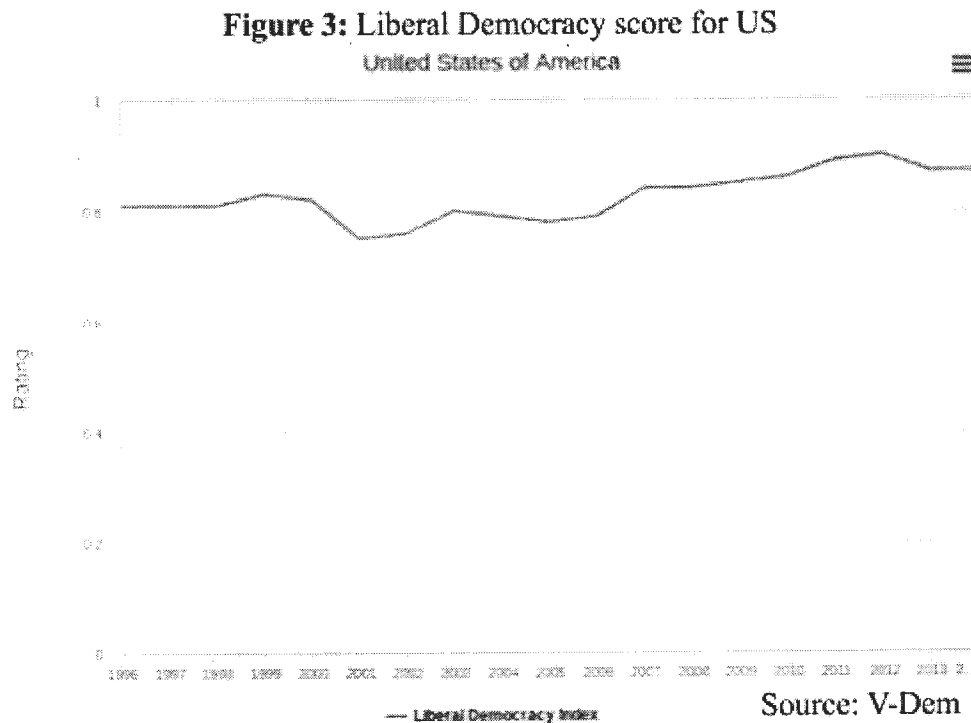
Concerned citizens were afraid of a slippery slope in which the government strips away civil liberties, one at a time, claiming to prevent terrorism to increase security (Romano 2012; Pozen 2016). A concerned American citizen and lawmaker put it,

“... And when our power, wealth and technology are not enough, then we will offer our civil liberties up in sacrifice to those who hold our democracy hostage. “You can have them; just don’t kill us,” we are pleading... Either we learn to live with our vulnerability, or without our civil liberties... There is a metaphor for the slow destruction of something we hold dear: Drop a frog into a pot of boiling water, it will scream and try to escape. But drop it into a pot of cold water on a stove set to slow heat, and it will never see the boil coming. We did not lose all of our civil liberties on Sept. 12, 2001, but most of us did not see the boil coming either” (Wilmer 2013).

Opponents criticized that the Patriot Act was too invasive, inhumane, stripped away civil liberties, and would ultimately serve as precedent (slippery slope) for the government to pass similar legislation (Duignan 2018). The concern came too late. This fear of the Patriot Act becoming a precedent of undemocratic legislation ultimately became a reality as the Patriot Act served as a major precedent for the Freedom Act and other brother bills.

IV. UNDEMOCRATIC ACTIONS

As initially mentioned, there are three overlying undemocratic aspects of the Patriot Act: torturing suspects, indefinite holding of suspects, and spying on citizens. Many of these actions are still permitted by the Freedom Act. These actions directly contributed to decreased scores by democracy indicators in 2001 and 2002 (seen in **Figure 3** below).



These three actions violate civil liberties, which is listed as one of the four requirements for a democracy (Levitsky & Way 2013). Levitsky and Way indicate several violations of civil liberties, including the government's engagement in enforcing laws that repress free speech or tolerate physical attacks on government critics. Several civil liberty violations by the Patriot Act have led to the suppression of freedom of speech, including violations of due process and protections against physical attacks. Obtaining private data on citizens, and torturing and holding suspected terrorists, violated civil liberties, leaving an impact on the quality of democracy. The

United States is undoubtedly still a democracy, but democracy has been hindered -- without equal protection of civil liberties and rights under the law, the quality of democracy is damaged.

1) Torturing of Suspects

Technically, the Patriot Act did not make torture legal. Because the United States is part of the Geneva Convention, it claims to not partake in “torture,” but instead practices “torture lite” or “clean torture” on American soil (Campbell 2003). Torture lite does not leave any long-standing or “permanent” physical damage, while regular torture can result in death. The United States still practices regular torture in “third-party countries,” or those not part of the Geneva Convention (Campbell 2003). That said, the United States government still practices a sort of “clean” torture on United States soil. The Journal of Political & Military Sociology explains the rationale behind this distinction:

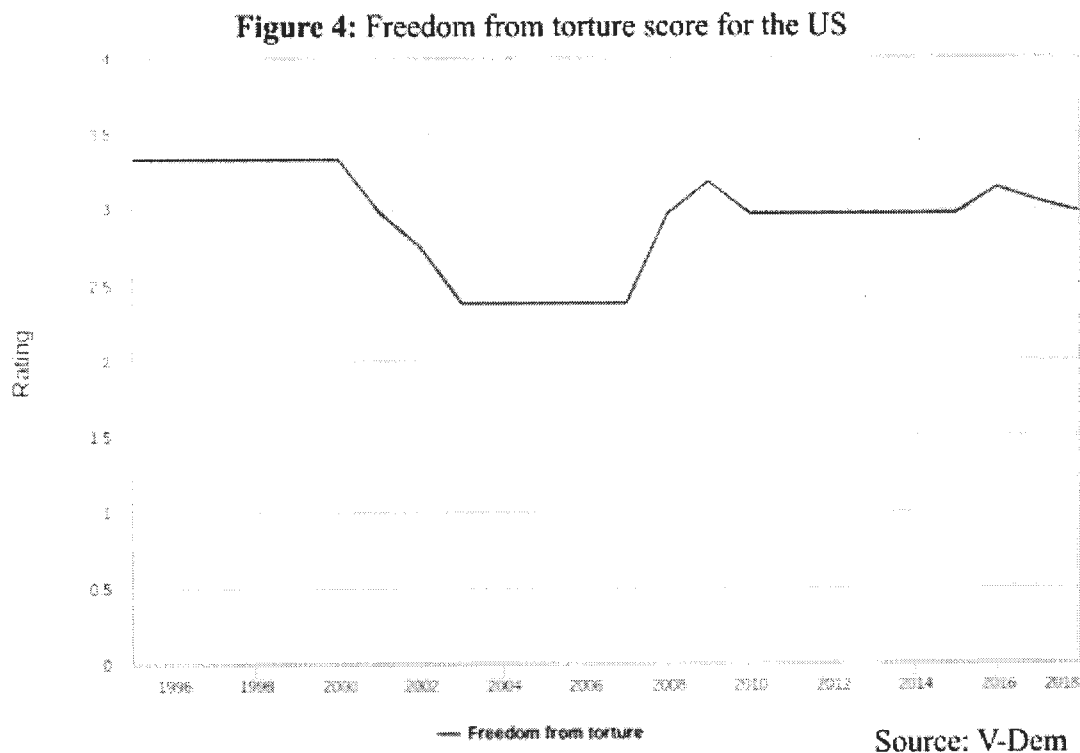
“While one might assume that democracies are the least likely regimes to torture, precisely because of these audience costs, they may in fact purposely torture in response to public demands for security. Yet, because it “leaves no marks,” clean torture also provides democratic regimes with a method to torture in spite of public opinion and despite monitoring” (Richards 2008).

The Patriot Act changed definitions and attitudes. Section 802 made domestic terrorists subject to the same punishments (torture) as international terrorists and defined domestic terrorism as:

“An act “dangerous to human life” that is a violation of the criminal laws of a state or the United States, if the act appears to be intended to: (i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.”

According to that definition, the word “terrorist” is now much more subjective and more people have likely been put on that “suspect list” because “an act dangerous to human life” is a

debatable clause. Additionally, the language in the three sub-conditions, “intimidate, coerce, influence, and affect” lack objectivity. Under this law, activism, such as protesting, could put citizens or organizations on watch lists for potential terrorist activity under the vagueness of being “dangerous to human life” (HTUSAPARDT n.d.). Efforts to catch “suspects” increased drastically as well. The War on Terror that President Bush promoted led to the capture or monitoring of all current and past inhabitants of Guantanamo Bay since 2001, violating their liberties in hopes of catching someone connected to terrorism (see **Figure 4** below) (Richards



2008).

According to the Patriot Act, if someone was “suspicious enough,” they could be detained, questioned, and sent to Guantanamo Bay to be tortured, even if there was no confession to give or insufficient evidence to be charged with a crime (HTUSAPARDT n.d.). It is hard to argue that torture is humane and democratic. The Patriot Act encouraged and allowed an

extended use of torture in a way never previously seen - on those not even convicted of a crime.

A former Congresswoman from Montana explains why democracies must abstain from these physical attacks without due process:

“Democracy requires tolerance; war intolerance. Democracy cannot exist without the rule of law; war relies on violence that is always, to some degree, indiscriminate. Democracy asks us to regard each person and judge the merits of his opinion as a unique individual; war has room only for enemies and allies. Democracy rests on a faith in our common humanity; war always dehumanizes someone. Clearly this was an act of war on the part of the attackers, but we cannot respond in kind without abandoning democracy ourselves, and that would be a victory for these faceless perpetrators” (Wilmer 2013).

In accordance with Levitsky and Way’s civil rights indicators, the government’s engaging in or toleration of physical attacks on government critics, including threats on individuals, violates democracy. With torture, this is exactly what happened,

“Torture’s uselessness and ineffectiveness aside, any act of torture is inherently undemocratic, illiberal and evil. Vengeful retribution and unchecked violence against prisoners is in opposition to democracy and liberty. A free and democratic society has to allow for avenues through which truth emerges: speech, press, transparent government and a fair jury trial system. Torture is not in concert with these ideals. Rather than producing truth, torture clouds it, as somebody subjected to torture will say anything to stop the pain or to ensure the safety of his or her children. Torture is a tool of the bad guys. Who are we?” (Struhar 2008).

Not only is it a physical attack against political opponents, but it also happens in the absence of due process. Democratic principles are incompatible with this sort of behavior. By physically attacking political opponents, there is a fear among citizens and non-citizens alike that if they speak out, they will face retribution by the government. Ultimately, these physical attacks, along with limited due process, lead to a loss in freedom of speech, which seriously hinders democracy.

2) Indefinite holding of suspected terrorists at Guantanamo Bay

For the same reasons the Patriot Act encouraged undemocratic torture against suspected terrorists, it also encouraged holding them, without trial, for indefinite periods of time.

Specifically, the Patriot Act gave the Attorney General the power to hold any non-citizen who comes to the United States indefinitely, saying,

“The Attorney General can order detention based on a certification that he or she has “reasonable grounds to believe” a non-citizen endangers national security. Worse, if the foreigner does not have a country that will accept them, they can be detained indefinitely without trial” (Surveillance n.d.).

Citizens’ rights were vulnerated in a similar way. The Patriot Act allowed for the detainment and torture of people, which mainly took place at Guantanamo Bay since it is not on U.S. soil. As it is a “lease” from Cuba, they claimed that the Constitution does not apply there.² One U.S. citizen, Yaser Hamdi, was captured in Afghanistan and sent to Guantanamo Bay, where he was going to be held indefinitely under “enemy combatant” status, but was later transferred to another military prison (Boyd 2019). The Supreme Court ruled that as a citizen, he definitely had a right to due process, which brought up the question of rights on non-citizens. As explained by a George Mason University law professor, the Bill of Rights still applies to non-citizens, except amendments that explicitly state “the people” which the Courts found to mean “citizens” (Somin 2017). The United States government tried to argue that “technically” they do not have to guarantee civil liberties to non-citizens. However, as the Supreme Court later stated, the U.S. has sovereign control over Guantanamo Bay, meaning the government does have to give democratic rights to the people held there, which arguably means torture should not be practiced there (Boyd 2019). However, the administration continued to use it for this purpose. In late 2006, the CIA

² In 2004, the Supreme Court ruled in *Rasul v. Bush*, that Guantanamo Bay is considered to be under United States sovereign control, meaning that those held there did have a right to a writ of habeas corpus, which is also not dependent on citizenship status (Boyd 2019).

and the Bush Administration acknowledged that Guantanamo Bay and other secret overseas prisons were used to get around this technicality (Guantanamo Bay 2018). The public allowed this because many believed it was necessary to do so,

“In terms of culture and values, the biggest discernible change after 9/11 was the nation's dismissive attitude towards human, civil and constitutional rights in the face of terrorist threats. After 9/11, it came to be considered acceptable, if not even necessary, to torture suspected terrorists for information [and to] imprison terrorists (Taliban and al-Qaeda members) without due process” (Wong 2006).

Many Americans have jumped on board with the idea that it is okay to indefinitely hold and torture people who may threaten security. It has created a precedent that America no longer has to follow “innocent until proven guilty.”

In the Emory Law School Law Review of 2019, due process is shown to be essential to democracy,

“The essence of democracy is granting—and protecting—the civil and political rights of attacker and attacked alike. Failure to provide due process to individuals suspected of involvement in terrorism leads a society down a slippery slope from which there is no return. While controversial and perhaps unappetizing, the true test of democracy is protection of those seeking to attack it” (Guiora 2012).

Unfortunately, the exact opposite happened when the United States faced and still faces that choice. If democracy values human life, it would value due process for all. Holding and torturing *suspects* without trial assumes guilt over innocence.

3) *Spying on citizens without warrant*

The Patriot Act allowed for spying by the United States government on everyday people without warrant, by means of FISA Courts and direct legislation. In the United States Constitution, the Fourth Amendment protects against such searches, stating that people should not be warrantlessly searched or information ‘seized’ without warrant. The United States

Constitution should supposedly safeguard the country from these violations of civil liberties, but sometimes it is not enough (Levitsky & Ziblatt 2019). Unwarranted physical attacks on property are violations of civil liberties essential to a liberal democracy (Held 1996, 4; Levitsky & Way 2013). The Patriot Act allowed for this undemocratic practice with the following sections:

Table 2	
Section(s)	Effect
201 & 202	Government officials can seek a FISA court order (<i>meaning they do not need probable cause</i>) to conduct data collection for “computer and terrorist crimes” which were added to the serious offenses list (Duignan 2018).
209	Voicemails are subject to the weaker safeguards found with phone records and emails instead of telephone conversations, meaning they can be <i>stored without warrant</i> (Duignan 2018).
210	Individuals’ credit card and bank account numbers can be obtained <i>by subpoena</i> (not warrant) through communication services (Duignan 2018).
213	The FBI can conduct secret searches when given a “sneak-and-peek” type warrant, where officers claim an immediate need to do so. With the warrant, the FBI is not required to notify the citizen immediately, meaning, “The FBI may search a citizen's home or business in secret. The FBI says these searches may be necessary to prevent the destruction of evidence or to keep from jeopardizing an ongoing secret investigation” (Costly 2003). Many consider these searches to be considered “unreasonable” as defined in the Fourth Amendment (Duignan 2018).
215	Adds basically any type of “property” to the list of “any tangible things” that the FBI may monitor or seize. This includes any physical thing but also records by “public libraries, bookstores, medical offices, Internet providers, churches, political groups, universities, and other businesses and institutions.” (Costly 2003)
216	Pen-trap orders now include email and internet browsing. All internet searches and visits, along with all email addresses associated with an account or computer, can be searched and given to the government by an internet provider (Costly 2003).

218	The FBI can conduct secret physical or wiretap searches by extension of the FISA courts to the FBI, meaning <i>they do not need probable cause</i> of any criminal activity (AUSPAS218 n.d.).
505 & 206	“Authorized the FBI to issue subpoenas based on a certification that the information sought is relevant to a foreign intelligence or international terrorism investigation. Orders for such information, known as National Security Letters (NSLs), also imposed gag orders on their recipients. Other sections of the act permitted the FISC to authorize “roving” electronic surveillance, which could be carried out in any location and with any equipment (Section 206)” (Duignan 2018).

Sources listed individually

4. *Democratic Principles*

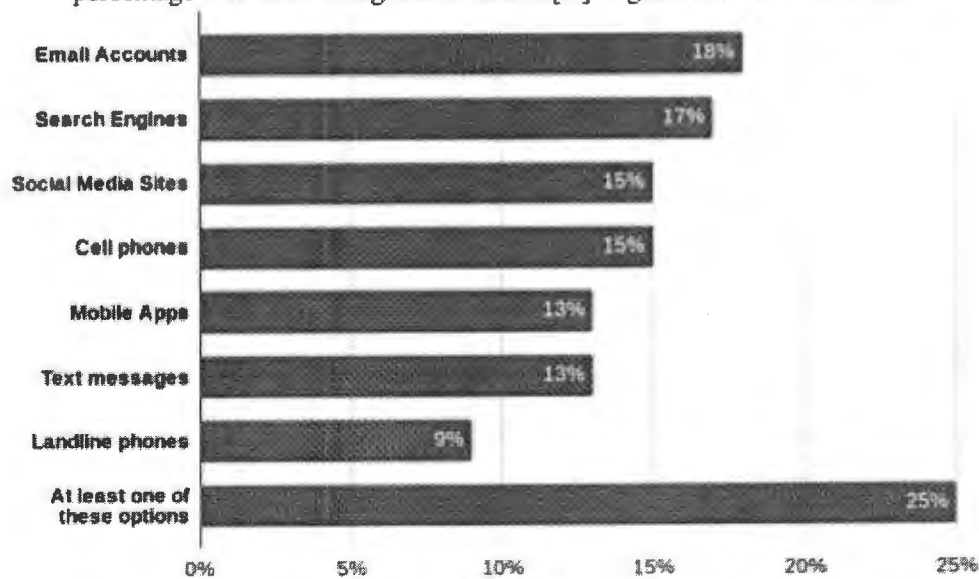
Civil liberties, including due process, protection against physical attacks, and freedom of speech are required for democracy. Torturing and holding of suspects and spying on citizens violate these democratic standards. Since the enactment of the broad and all-encompassing umbrella act, which, “*accounts for the ‘diminishing’ of civil liberties in the US ... with the principal aim to condemn any type of action associated with national or international ‘terrorism,’*” the government has committed these undemocratic and unjust offenses repeatedly (Romano 2012). These specific three offenses (torture, indefinite holding, and spying) collectively hinder civil rights. Too often, citizens and non-citizens alike have suffered from this legislation.

If due process is denied, civil rights, including access to an honest judicial system and safety from arbitrary judgment or punishment, are degraded, resulting in undemocratic practices (Guiora 2012). Due process forces the United States to keep its promise of “innocent until proven guilty,” because without due process, that statement holds no weight. Instead, now anybody can be assumed guilty of something, “*We have already gone from ‘anyone can be the*

enemy to *'everyone is the enemy.'* Our government collects information on everyone, without probable cause, without judicial review" as expressed by the former Congresswoman (Wilmer 2013). Between secret FISA Courts, lack of probable cause standards, lack of representation, inability of judges to truly block action, and the maltreatment of prisoners, due process, as a civil right, was basically broken under the Patriot Act, meaning part of the democracy was too. Additionally, there is an assumption that democratic governments will not torture its citizens (or permit physical attacks) without trial.

Figure 5: Change in Technology Usage

"Among the 87% of U.S. adults who have heard of the government surveillance programs, the percentage who have changed their use of [...] 'a great deal' or 'somewhat.'"



Source: Geiger 2018, information from Pew Research Center

The violation of the due process and protection from physical attacks, have suppressed freedom of speech. While the government has not explicitly blocked people from saying things, its actions have led to self-censorship, as people do not want to become targets for data collection and monitoring. After the 2013 revelations, adults were wary of what was going on with their data -- and they did not want to be watched. According to the Pew Research Center in

2015, adults were twice as likely to say their data was less secure than it was in the previous five years, 50% said they were not confident in the government's handling and protection of their data, and of those who had heard about the programs exposed by Snowden, 25% had taken personal action to protect their data from the government (see **Figure 5**) (Geiger 2018). The results of citizens becoming aware of government data monitoring and collection were self-censorship and growing attitudes of government distrust.

Because of the Patriot Act, more people *were* likely monitored under government surveillance watch-lists for practicing free speech (Costly 2003; Surveillance n.d.). The fears were not in vain, as the government specifically targeted first amendment activities without requirement of judicial review, another important facet of democracy (Duignan 2018). The ACLU points out how judicial review or oversight lacked under the Patriot Act:

“Judicial oversight of these new powers is essentially non-existent. The government must only certify to a judge - with no need for evidence or proof - that such a search meets the statute's broad criteria, and the judge does not even have the authority to reject the application” (Surveillance n.d.).

Additionally, when the government did find something they deemed suspicious, the person they were investigating *may have been* told about a search order on them, but they were not allowed to tell anyone (Surveillance n.d.). Critics of this provision questioned why there was a need for secrecy and clearly exposed it as an attempt to stifle free speech.

Freedom of speech under the Patriot Act was even worse for non-citizens because it “[gave] the Attorney General and the Secretary of State the power to detain or deport any non-citizen who belongs to or donates money to one of these broadly defined “domestic terrorist” groups” (Surveillance n.d.). These groups can be whatever the government defines them to be, including political opponents. It is not far-fetched to say that someone who donates

to or protests for an extremist political group could be detained for supporting a possible “domestic terrorist” group (see **Figure 6** below). Most importantly, because of these violations of due process and protection from physical attacks, and ultimately a loss of freedom of speech, people are less free to participate in their democracy without fear of retaliation. There is an incentive to not speak up or protest about the government for the fear of possibly ending up being investigated or even detained. It gives citizens the idea that the government is “above the law” and not necessarily willing to follow the established rules and norms. With that in mind, the government cannot be a full liberal democracy, representative of the people, if the people are silenced about their true preferences in fear of losing their liberties. When civil liberties are not protected by their government who is enshrined to do so, citizens have no reason to believe that that same government will protect the right of freedom of speech or that they will protect them from the prosecution of speaking up in a democratic society.



V. PRECEDENT OF UNDEMOCRATIC SURVEILLANCE LEGISLATION

Both domestically and internationally, the Patriot Act set a precedent of undemocratic legislation to prevent terrorism through violations of civil liberties. Through direct amendments and in conjunction with “brother bills,” the Patriot Act allowed for, pushed, and resulted in more undemocratic legislation, ultimately resulting in the Freedom Act of 2015. Internationally, other countries looked upon the United States and followed suit, some even barely modifying the language of the bill for their own country.

Only three years after the Patriot Act, new bills and amendments were proposed to add power to the already powerful Patriot Act. Primarily, the Intelligence Reform and Terrorism Prevention Act of 2004 created new positions, centers, and boards for counter-terrorism and protecting civil liberties, in their own words (IRTPA 2013). Then, in 2007, the Protect America Act, an amendment of the FISA Act, reduced protections from prior to the Patriot Act (these two acts directly created the PRISM program previously discussed under *Definitions*). It enabled the government to find, obtain, and store any interaction “directed to” or “from” any person outside the United States. Without reasonable suspicion or probable cause, it also allowed government agencies to tap directly into telecommunications, undoing many protections provided by the original FISA legislation (APAA n.d.). This Act expired in 2008 but was re-enacted with a different name in 2012 and is currently still law.

Over the years, parts of the Patriot Act expired while others were extended until 2015. Ultimately the Patriot Act expired and was replaced with the *Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015* (USA FREEDOM Act) to be discussed later. Although not a direct modification to the Patriot Act, the

Domestic Security Enhancement Act of 2003, commonly known as “Patriot Act II,” allowed for additional abilities for wiretapping and access to emails and phone lists. It also allowed the FBI and government officials to obtain information on “suspected terrorists” without a court order, to identify or test foreign DNA, and to apply these two conditions to both foreign and domestic “terrorism cases” (Romano 2012). The first major direct modification was the USA PATRIOT Act Improvement and Reauthorization Act of 2005, which made 14 provisions permanent and extended several controversial sections until 2009, namely sections: 206, which allowed the NSA to access FISA Courts and to wiretap any communication of a suspect; 215, which allowed the NSA to collect every phone call made to and from the United States; and the “lone wolf” provisions from the Intelligence Reform and Terrorism Prevention Act of 2004, which

“permitted the FISC (FISA Court) to authorize surveillance and physical searches aimed at foreign nationals who are ‘engaged in international terrorism or activities in preparation for international terrorism’” (Duignan 2018).

Up until 2009, various Congress members had attempted to stop these three specific sections/provisions from obtaining any more extensions, but they were ultimately unsuccessful and the latter were extended until 2011 by the PATRIOT Sunsets Extension Act of 2011, and then again until expiration in 2015, when the Patriot Act was replaced by the Freedom Act (Duignan 2018).

Precedent for the Freedom Act

The biggest specific precedent created by the Patriot Act was the direct transition to the USA Freedom Act of 2015, which corrected some of the abuses allowed by the Patriot Act, but left others unchecked. Many of the major provisions of the Patriot Act were set to expire that year and instead of renewing them, the government introduced a new bill with less controversy.

Drafters of the bill claimed that the government could only access certain data after submitting public requests to the FISA Court, marking a big difference from the Patriot Act (Duignan 2018). In 2015, a few major sections of the Patriot Act were set to expire, including Sections 206 and 215 mentioned above. Even without the Freedom Act, the legality of Section 215 was headed to the Courts regardless, as the United States Court of Appeals for the Second Circuit ruled that the Patriot Act was not enough justification to allow bulk metadata collection (Patriot Act 2017). Luckily, it never had to go farther because Congress scrapped the Patriot Act and got partially rid of that section, but the Freedom Act is by no means innocent of civil liberties violations.

There were a few key changes, however. Primarily, those two sections mentioned were both “modified” to be less invasive and unconstitutional. In regards to Section 206, the Freedom Act makes it so FISA Court hearings, which used to be closed off to the public, must now have a “public advocate” in attendance to try and protect private data from being given to the government (Ravenscraft 2015). Now, anytime the NSA goes to FISA Courts to ask for data, there is oversight and a possibility of appeals or opposing arguments given by a public advocate. It is a step in the right direction. Additionally, the bulk metadata collection is done by the private companies themselves instead of storage by the NSA. Before, phone companies like Verizon, AT&T, and Sprint had to hand over that information every single day and the NSA would store it. Now, FISA Courts are the barrier -- anytime the NSA wants data on someone, they must have at least a “selector,” or something to identify whose information they want, and then must obtain it through the revised FISA Courts. Those companies are legally required to keep all of that information in a giant database in case the government might want to obtain it (Ravenscraft 2015). Additionally, the Freedom Act requires the United States government to publish statistics

and information about surveillance and FISA Courts in an effort to increase transparency (Patriot Act 2017).

Unfortunately, some of the worst parts of the Patriot Act are still key provisions of the Freedom Act. As previously mentioned, the government can essentially spy on any international communication that has one party in the United States. This major part of the PRISM program created by the combination of the Patriot Act and the Protect America Act remained law under the Freedom Act, included as section 702. Again, this allows the NSA to legally collect and store data from any “message” sent into or out of the United States with one party in the U.S. and the other out (Ravenscraft 2015). The application of this section is that if a citizen (or anyone inside the country, for that matter) texts a family member on vacation, that message can be collected by the NSA even if it has nothing to do with terrorism. Additionally, shall that person someday commit a completely unrelated crime, that data can be used against them if it is somehow relevant. The USA FREEDOM Act was designed to lessen the abilities granted by the Patriot Act, which it did in some ways, but kept other provisions that are still problematic. Regardless, the Patriot Act was a major precedent for the creation of the Freedom Act, another undemocratic anti-terrorism legislation.

International Precedent

The United States is not the only liberal democracy to pass undemocratic laws due to terrorism, as several other liberal democracies around the globe closely followed America’s example. Almost immediately after the United States passed the Patriot Act, Canada, Australia, and the United Kingdom all passed strikingly similar legislation (Cassel 2015). Other democracies, such as South Africa, tried to pass identical legislation which ended up failing

because many citizens and officials alike said it violated civil liberties in a way they saw similar to apartheid (Cassel 2015). The Patriot Act set a direct precedent of what a nation will do for security, not only within the United States, but for other liberal democracies around the world.

VI. CONCLUSIONS

When the Patriot Act passed back in 2001, many Congress members and citizens alike did not see all of the possible consequences of the bill. Optimistic attitudes about how the bill would prevent future terrorism led to overwhelming support in Congress and amongst the public, which led to insufficient debate about how the Patriot Act potentially hurt democracy (Bendix & Quirk 2009). In the midst of public anxiety, the legislation passed with little debate sed allowing for torturing and indefinite holding of suspected terrorists, as well as spying on citizens and collection of their private data. These provisions negatively impacted Democracy in the United States. Torture, indefinitive holding, and violations of privacy and due process affected freedom of speech, a basic requirement of any healthy democracy.

The Patriot Act may not have been the first Act to diminish civil liberties, but it had substantial impact, which led to unhinged government passing whatever they deemed “necessary” in order to collect more and more data on everyday citizens guilty of nothing besides using technology. Various Congress members, mainly Republicans, have since tried to pass legislation to stop the Patriot Act and similar bills. Ron Wyden, a Democratic Senator from Oregon, for example, reasoned,

“If we do not seize this unique moment in our constitutional history to reform our surveillance laws and practices, we will all live to regret it... The combination of increasingly advanced technology with a breakdown in the checks and balances that limit government action could lead us to a surveillance state that cannot be reversed (Savage 2013).

When it comes to surveillance, there is some bipartisan support for lessening the abilities of the NSA, but power given is hard to take back, and several legislative efforts have been defeated.

Another Democrat, Jerrold Nadler, from New York explained, “*Congress never authorized this*

type of unchecked, sweeping surveillance of our citizens,” supported by James Sensenbrenner, a Republican who partially wrote the original Patriot Act (Savage 2013). While not enough to constitute a majority, it is at least hopeful that some attitudes in Congress may be changing.

However, when a bill to reduce the power of surveillance by the government gains popularity, key actors are quick to go to the podium and remind their fellow members of 9/11. They pull from the original fear and claim that supporters of such a bill are naive to forget what happened only recently. A bill was introduced in 2013 after the Snowden revelations to get rid of some provisions of the Patriot Act, including some of the most invasive ones, and chaos ensued,

“Speaker John Boehner asked Republicans to vote against it, and Democratic leader Nancy Pelosi made the same demand of her party's members. The White House spoke out against it, and the head of the NSA, General Keith Alexander, was dispatched to Capitol Hill for hours of closed-door briefings aimed at persuading lawmakers that the program was essential” (Savage 2013).

Even President Obama made a personal appeal to citizens on behalf of the Patriot Act, but for many, his pleads did not change their minds (Savage 2013). Congressional support for the bill may have been in part due to the constituency's disapproval of the Patriot Act programs. In general, since Snowden whistleblaw in 2013, attitudes have become more negative on government surveillance in anti-terrorism efforts (Geiger 2018). Many are specific in who they think the government should be able to spy and collect data on - such as non-citizens. With the knowledge that their moves are being watched and tracked, 34% of Americans said they have taken and take actions to hide their information from the government (Geiger 2018). Americans may feel the need to hide their actions, even when they have done nothing wrong, to avoid having their actions monitored and data collected by the government.

Anti-terrorism legislation, when passed almost immediately after a terrorist attack, lacks fundamentally important debate not only between those who are advocating for it in government, but the citizens themselves. In order for the government to adequately do its duty to protect those liberties, it must debate these types of legislation with vigilance and exceptional analytical foresight.

Many citizens were happy to see the Patriot Act go and the Freedom Act be signed into law. The Patriot Act and other anti-terrorism legislation, including the Freedom Act which was renewed in 2019, did not protect essential civil liberties. The Patriot Act, as an almost extreme precedent, made it so future anti-terrorism legislation, even when it is still undemocratic, is seen as a better alternative to the former. That is not to say that it is too late - democracy can be stronger again. Protection of democracy and civil liberties starts with citizen's education: the more the citizens are aware, the more they are against these types of legislation (refer to **Figure 2**) (Carlson 2005). Citizens must become informed and demand that their rights be protected, as Congress' job in a liberal democracy is to listen to those who it represents. If the people say no to undemocratic legislation, Congress will comply, and only then can the citizens expect their rights to be secured. Congress is a representation of the nation, and if the nation does not fight to prevent undemocratic anti-terrorism legislation, Congress will not either.

Congress must pursue safety for the citizens, but also must guarantee protection of civil liberties. The question then remains, where is the balance? Benjamin Franklin had a profound insight in his often-cited quote, "*They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.*" When it comes to security versus civil liberties, there is a push to say that the nation can have either or, not both. One thing seems to be

clear: those *essential liberties* that Franklin deeply respected, were not respected or upheld with the Patriot Act. The important step is the one taken next, “*With respect to the paradigm before us—due process and counterterrorism—Franklin’s words spoken more than 200 years ago capture the essence of the existential, philosophical, legal, and practical dilemmas of counterterrorism conducted in societies subject to the rule of law*” (Guiora 2012). That is to say, with future anti-terrorism legislation, those fundamental rights should never be violated again in the way they have been with the Patriot Act, Freedom Act, and other brother bills.

Reflective Writing

Completing an Honors Capstone was arguably the hardest thing I have done in college. Getting to the final result takes substantial work, dedication, and motivation, but it resulted in something amazing. I truly feel that my Capstone was the culmination of all of my undergraduate education, as it put all of my skills, knowledge, and patience to the test. It was definitely worth it.

This especially deepened my political science experience, as I was able to complete a research project using those skills I have learned throughout my studying. I also implemented many political science topics, such as democracy, the rule of law, due process, constitutionalism, and representation. I was able to do in-depth research about a subject I am truly passionate about, gain knowledge on every aspect of it, and hopefully it will educate others in the future. Additionally, I will use the skills I learned in the future as a lawyer, as research, analytical thinking, and writing skills are absolutely required.

This project also helped me engage in the global community. Ideally, others will read this thesis and see the nuances of the Patriot Act and other anti-terrorism legislation and can come up with solutions to our modern day security and liberty issues. The goal was to show how the Patriot Act was not ideal for democracy and how priorities have been on security over those liberties. Maybe reading this research thesis could be the catalyst for future legislation to protect both. It also might persuade those who do not see the problem with surveillance by the government. For example, a friend told me they did not care that the government spied on people because it kept us safe, but as I explained how it is a bad precedent for democracy and why, she seemed to agree with the idea that civil liberties should not be violated in the process.

In regards to other disciplines, I think this research could be useful in studying the psychology of why people supported and continue to support undemocratic legislation. I touch on aspects and results of this support throughout my paper, but actual research between anxiety after a crisis and legislation passing could be quite beneficial. Additionally, the psychology of “the other” and why torture was/is not seen as a huge issue. One would assume that citizens would disagree with their government undemocratically torturing people, but the psychology required more research on this.

The best part of this experience was gaining a valuable relationship with my mentor, Professor Gamboa. I chose Professor Gamboa because I had taken a couple of her classes and really liked her teaching style and personality. Additionally, I knew she would provide useful insights and suggestions. I think it is really important to work with someone who you like on a personal level who you will get along with. She helped me find new sources, come up with new theories and ideas, and pushed me hard to make sure the final product was outstanding. Because of this relationship, Professor Gamboa also helped me with a letter of recommendation for law school and gave me pointers about my personal statement. Mentor relationships go farther than the project itself, which is why I recommend choosing a mentor who you like, can talk to, and who will take the time and energy to help you through this amazing process, just like I did.

The actual process went a lot differently than I had previously anticipated. From the literature review to the final edits, it takes a lot more time and effort than one would assume, which is why I recommend starting earlier than you think you need to. While it is doable to get it done over a couple semesters, your life will be a lot easier if you take the time to do it over a longer period. Throughout the first stages of finding sources and previous research, I came across

hundreds of journals and articles, only adding to my knowledge, but pushing me to come up with something completely unique and worth-while. This process itself takes a long time because as you go through the project, you realize how many references you actually will need, as you collect more and more along the way. Additionally, the editing takes a long time. For me, it took about three months to really get to a place where my mentor and I were comfortable to say it was finished, and this included bi-weekly meetings at a minimum. This all goes to say, do not try to rush the project -- you learn more through the process than the end product.

In conclusion, an Honors Capstone is a completely rewarding experience. While it does take a substantial amount of time and work, the culmination of those efforts produces a product that you can be proud of for years to come. It shows hard work and perseverance, as it shows you are one of the few who are willing to add work to your plate just to prove you can conquer something harder.

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