



Written by [Jack Kerwick, Ph.D.](#) on June 11, 2013

The Path That the Patriot Act Paved

Regardless of how it is constituted, whether it is “democratic” or otherwise, no government poses a larger threat to liberty than a government that is at war.

War is the mother of all crises and, as Rahm Emmanuel memorably — and rightly — said, crises are pregnant with opportunities for politicians and activists that they otherwise wouldn’t have. It is in moments of crisis, real or imagined, that government has its best opportunity to accumulate ever greater concentrations of power, for it is during crises that the people expect their government to assert itself in ways that wouldn’t ordinarily be tolerated.

Yet today’s self-avowed “conservatives” advocate on behalf of not just war, but war without end, for “Islamic terror” is an amorphous container into which any number of contents can be inserted.



Interminable war means, necessarily, the interminable growth of government.

And where the expansion of government is interminable, so too is the diminution of liberty.

Matters can’t be otherwise, which is why it is at once exasperating and laughable that the very same people who indefatigably defended the so-called “Patriot Act” now act shocked that it has been abused by the Obama administration. If they had an iota of wisdom, they would have recognized way back when that the Patriot Act itself is a standing abuse.

Instead, one of its authors, Republican Jim Sensenbrenner, maintains that he is “extremely disturbed by what appears to be an overbroad interpretation” of the law he crafted. In a letter to Eric Holder, Sensenbrenner asserts that while he is confident that the Patriot Act “appropriately balanced national security concerns and civil rights,” he nevertheless “always worried about potential abuses.”

There are four things of which to take note here.

First, whether “what *appears* to be an overbroad interpretation” coincides with reality is left to be seen. The fact of the matter is that, overbroad or not, at issue is an interpretation of the Patriot Act. The latter lends itself to precisely this kind of interpretation — as its critics noted back at the time of its birth.

Second, Sensenbrenner actually *admits*, albeit inadvertently, that in drafting the Patriot Act, he felt the need to achieve a “balance” or compromise between “civil rights” — i.e. constitutional liberties — and “national security concerns” — i.e. greater government power. To put it more bluntly, he concedes that the Patriot Act required trading off some of the liberties guaranteed by the Constitution in exchange for granting the government an even greater scope than it already possessed.



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Third, although he says now that he “always” had concerns about “potential abuses,” Sensenbrenner was quite dismissive of critics who have expressed these same concerns.

In 2006, he said that not only did the Patriot Act have a “stellar record” of being abuse-free, but “congressional negotiators added more than 30 civil liberty safeguards not included in current law to ensure that [its] authorities would not be abused in the future.” Sensenbrenner was indignant as he concluded that this is “still not enough for some.”

As even he now recognizes, it was for good reason that his assurances were “not enough for some.”

Finally, legislation is just that. It is no more potent than the ink and paper of which it consists. Real conservatives, and real statesmen, have always known that the true laws and “constitution” of a people are embodied in their habits and traditions. Legislation should distill this shared experience — and vindicate it.

Furthermore, paper laws, like paper constitutions, are all too susceptible to the predations of the power-hungry.

But Republican Sensenbrenner continues — along with several of his fellow partisans — to defend the Patriot Act and the entire NSA surveillance program. Take George W. Bush’s former speech writer and *Washington Post* columnist Marc Thiessen. “Signal intelligence,” Thiessen says, is the only feasible and effective way to “protect the country.” Upon reminding us that “the programs exposed in these leaks did not begin on Barack Obama’s watch,” Thiessen declares that the current president’s continuation of “Bush-era counterterrorism policy... is not an outrage — it is a victory.”

That Obama is building upon Bush’s already massive surveillance program may very well be a “victory.” But it is a victory for the champions of Gargantuan Government — not the lovers of liberty.



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