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America's Civil Liberties Exceptionalism

With the passage of the NSA-reforming USA Freedom Act, the U.S. separates itself by restraining its post-9/11 surveillance state

Reid Smith

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On Tuesday, June 2, America's most controversial political exile appeared before a packed house at Amnesty International's Human Rights Action Center in London. Beamed in from Moscow, Edward Snowden fielded questions and discussed recent events, including the passage of the USA Freedom Act, an NSA reform bill. Snowden [observed](#), "For the first time in recent history we found that despite the claims of government, the public made the final decision and that is a radical change that we should seize on, we should value, and we should push further."

A day earlier, ACLU Deputy Legal Director Jameel Jaffer hailed the legislative "milestone," [explaining](#) that "this is the most important surveillance reform bill since 1978, and its passage is an indication that Americans are no longer willing to give the intelligence agencies a blank check." Google Vice President Susan Molinari also [welcomed](#) a "significant down payment on broader surveillance reform." She then observed that Senate passage marked the "first time since its enactment in 1978 that the Foreign Intelligence Surveillance Act (FISA) has been amended in a way that reflects privacy rights enshrined in our history, traditions, and Constitution."

Rhetorically, these statements broadly [echo](#) the statements issued by privacy-concerned individuals, NGOs, and concerned corporate delegates, which nearly all share several important themes. First, that the passage of the USA Freedom Act represents a landmark Congressional decision that ranks alongside 1978's Foreign Intelligence Surveillance Act. Second, that the American people played a role in the realization of reform. These inform a third and final

thematic flourish: unchecked and opaque surveillance is fundamentally contrary to our conventional norms and values.

Each thread may seem predictable enough by itself, but when strung together, they suggest something exceptional.

Consider the political context. While the USA Freedom Act does renew Patriot Act powers, it also ends the NSA's controversial Section 215 bulk data collection. Additionally, in keeping with Justice Brandeis's maxim that sunlight is the best of disinfectants, the act emphasizes accountability by opening the secretive Foreign Intelligence Surveillance Court (FISC) to additional scrutiny.

Supporters, like those quoted above, are elated that the USA Freedom Act represents the first legitimate downscaling of post-9/11 surveillance architecture. This doesn't go nearly far enough for some civil libertarians—most notably Senator Rand Paul (R-Ky.)—who demand nothing less than a full repeal of the Patriot Act. Meanwhile, concerns persist about the government's ability to access information from phone companies.

Incrementalism aside, though, perhaps USA Freedom is better understood as an important political [totem](#).

Writing at *HuffPo*, Jessica Schulberg [reminds](#) us that just five years ago—long before “*Je Suis Charlie*,” the Boston bombings, and the rise of ISIS—the Senate debated for a mere 20 seconds before reauthorizing the Patriot Act's broad powers by a voice vote. A day later, the House voted 315-97 to preserve expiring provisions. Although imperfect, the USA Freedom Act represents a seismic shift in the political topography.

Self-interested politicians don't change their tune without a nudge from an energized citizenry, however. Fortunately for reformists, most Americans are unwilling to sacrifice additional civil liberties for the promise of security.

The Pew Research Center has been studying Americans' views about national security, surveillance, and privacy for over a decade. Their most recent [survey](#) conducted in May of 2015 suggests 74 percent of those polled are unwilling to “give up privacy and freedom for the sake of safety.” Only 22 percent were eager to accept the opposite. The report suggests this civil libertarian view has “hardened” since December 2004, when only 60 percent of respondents said they should not have to give up more privacy and freedom to be safe from terrorism.

Does this attitude establish, relate to, or derive from a uniquely American stance against invasions of privacy? It's difficult to say. But it is also difficult to find another country that has

repeatedly and successfully pushed back against state surveillance through both legislative and judicial channels.

This is not to suggest that we do not face numerous and mounting threats to our liberties, privacy, and property. But for all the overreach, America boasts a comparatively decent record of rolling back unnecessary and unconstitutional scrutiny. The Church Committee is the most prominent example of this process, as it investigated intelligence abuses committed by the NSA, CIA, and FBI between 1947 and 1975. But, as the Cato Institute's Jim Harper [details](#), there are also rich precedents, historical and modern, for protecting our communication and personal data in the courts.

To put our cultural emphasis on privacy in perspective, try to imagine the British government relaxing their surveillance fetish—a confounding counterfactual in light of recent events. As *The Guardian reports*, while the U.S. government has partially curbed dragnet surveillance, “Britain’s government moves relentlessly in the opposite direction.” The article cites Westminster’s efforts to restore the “snooper’s charter” bill which would increase the surveillance powers of secret services and law enforcement, and would eliminate server encryption.

In March, Parliament’s intelligence and security committee (ISC) released the results of an 18-month inquiry into the nation’s domestic monitoring programs. The report cleared U.K. agencies of any wrongdoing by [concluding](#) that existing laws are universally respected, bulk data collections can’t be construed as mass surveillance, and sweeping surveillance does not threaten individual privacy.

The leading Labour representative on the committee explained, “What we’ve found is that the way the agencies use the capabilities they have is authorized, lawful, necessary, and proportionate.” This, despite the report’s admission that the existing legal framework could be read as a “blank cheque to carry out whatever activities [government snoops] deem necessary.” Thankfully, it did at least prompt a parliamentary act to improve transparency.

It has now been two years to the day since *The Guardian* revealed Snowden’s [first leak](#)—an order requiring Verizon to turn over millions of Americans’ metadata to the FBI. Reams of additional revelations followed. Twenty-four months removed, political petri dishes in the United States and Great Britain are responding very differently to this conspicuous dependent variable. The former eliminated the collection of telephonic metadata. The latter has worked tirelessly to preserve programmatic *status quo*. Considered in contrast, we should welcome the results.