

# Obama, Bush, and the Patriot Act

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Minutes before midnight on May 26, President Obama, in Paris, by a species of teleportable pen [signed into law](#) a four-year extension of the Patriot Act: the central domestic support of the security apparatus devised by the Bush administration, after the bombings of 11 September 2001 and the 'anthrax letters' a week later. The first Patriot Act passed the senate on 25 October 2001, by a vote of 98-1 -- the opposing vote coming from Senator Russ Feingold of Wisconsin. In the years that followed, a minority view developed, which said that the Patriot Act 'went too far'; but its steadiest opponents have come from outside the mainstream media: the American Civil Liberties Union, the Cato Institute, and libertarian columnists such as Glenn Greenwald and Nat Hentoff.

In the last few days, two senators, Ron Wyden of Oregon and Mark Udall of Colorado, took up the mantle of Senator Feingold (who lost his bid for re-election in the anti-Obama [midterm disaster](#) of 2010). Both spoke against a [government interpretation](#) of the new Patriot Act, which has not yet been shared with the American people.

The senate as a whole voted (this time 72-23) to renew a law that citizens have had no opportunity to understand, as Wyden and Udall present it, and that few members of Congress have looked into, even to the limited extent allowed. The Patriot Act controls secret investigations. The government, however, according to Wyden, has a private understanding of the law. This interpretation has been classified. So the meaning of a law about secrets is hidden because the government's view of the law is itself a secret.

It would be wrong to see the latest curtain against transparency as marking a change of policy. True, Obama promised, in the Democratic primaries of 2008, to filibuster against a proposed amnesty for telecoms firms that illegally co-operated with a request by the Office of the Vice President to divulge information about their customers. The conduct of the telecoms firms was a violation of the Foreign Intelligence Surveillance Act (FISA), which forbade eavesdropping on Americans without judicial oversight. But in July 2008, once Obama had secured the Democratic nomination, this became the first promise on which he [renege](#)d. It set a pattern for an administration that in its earliest days adopted a slogan which would cover many further amnesties: 'We look to the future, not the past.'

Civil liberties had never been a leading concern for Obama in earlier years. His short previous record in politics associated him with the use of government as a benign agency for the protection of citizens and the subsidized extension of social opportunity. When, from the office of state senator in Illinois and U.S. senator, he ascended to the presidency in 2009, he could no longer think of himself as an advocate of the less fortunate; rather, he was the protector of all Americans; and the responsibility for 'protection' of Americans

(a paraconstitutional notion innovated by George W. Bush and picked up by Obama) involves an all-absorbing concern with safety against 'the terror threat'.

After three or four months of experiment, Obama's ratification of the post-2001 protection regime has been consistent. He has sacked advisers like Greg Craig, the White House counsel who argued that he should break with the Bush-Cheney commitment to the maintenance of Guantánamo and permanent detention. He did not fight to secure the senate confirmation of (among others) Dawn Johnsen, a constitutional libertarian and his initial nominee to head the Office of Legal Council. The present judgment of Obama about what constitutes a normal security policy goes by an instrument that was set in 2002. It is unlikely to be reset until the risk of doing so approaches zero.

Three elements of the Patriot Act have [drawn persistent challenge](#). First, the 'lone wolf' provision, which allows the intelligence bureaucracy to launch and sustain surveillance of a person who has not been linked to any foreign power. Thanks to a second provision, the 'roving wiretap', a target of surveillance may remain a target even when he shifts his means of communication by a change of phone, postal address, email or other medium: no reapplication for a warrant is required, and no demonstration of probable cause. Finally, the 'business records provision' enables the searchers empowered by the Patriot Act to get a court order under FISA to seize 'tangible things' such as personal papers and records (the definition of relevant objects is elastic); and it denies a judge discretion to limit such a warrant to specific and designated items.

Obama apparently has come to share with Bush the belief about Americans that (in Bush's words) 'we are good'. But the danger of the surveillance state has nothing to do with the goodness or badness of the American people or our unseen protectors. It has to do with the psychology of power, and what power does to life. That power tends to corrupt is a law of human nature that does not alter whether one favours the power to punish the guilty or to protect the innocent. Corruption goes nicely with the idea of enhancing the secret powers of the state, for benevolent and protective purposes, on behalf of a people who are supposed incapable of judging how to protect themselves. The presumption of the knowing protector could be read in the upright posture of George W. Bush as he announced the retaliatory launching of American troops into war after war. It can now be read in the imposing sobriety of Barack Obama as he speaks of 'targeted assaults' by special forces, or of American 'kinetic activity' in support of air strikes by America's allies. The embrace of protection goes with an unconscious love of euphemism.

The tone of the present administration is more soothing than that of its predecessor. But ever since Obama gave his National Archives Speech, in May 2009, the continuities with Cheney-Bush have been unmistakable. Meanwhile, the attacks on President Obama by Dick Cheney, which played so large a part in precipitating that speech, in the past year or so have almost ceased. Cheney has in fact [praised Obama](#) for the maturity with which he has lately understood the proper responsibilities of his office. The tendency of Barack Obama in all his ventures of policy-making is to neutralise opposition much more than to enforce respect for principle. His admirers know the largeness of this appetite for concession. 'Isn't it,' they ask, 'a necessary precaution and a lesser evil?' But the hazard to

American liberty from all enlargements of the post-2001 aberration comes simply from refusing to present the last decade as an aberration. This process of acquiescence was captured by George Kateb in '[A Life of Fear](#)' (2004):

In the eyes of police and intelligence bureaucracies, constitutional protections for persons are obstacles to be removed or circumvented to the fullest allowable extent. The need for security is insatiable, and so is the inveterate bureaucratic passion for control. The two converge and for a while satisfy each other. The irony is that the fear felt by citizens can inhibit or paralyse them; but citizens' fear energizes leaders and officials and produces restless and indefatigable activity.

Our sleep grows tighter and more tranquillised in direct proportion to our dependence on these invisible guardians.

The automatic signing of the Patriot Act by the president in Paris marked an appropriate close to an episode of a larger campaign. In a recent *New Yorker* article, [Jane Mayer](#) reported on the prosecution by the Obama justice department of Thomas Drake, a former senior executive at the National Security Administration who faces 35 years in prison for sharing with a journalist certain illegal operations of the NSA. Drake is precisely the sort of conscientious whistleblower whom post-Watergate laws were put in place to defend. The particular offences he opened to view were among those Obama as a candidate had vowed never to pardon. Yet as Mayer reports, more persons are being prosecuted under the Espionage Act by the Obama administration than by all previous administrations combined. Mayer also quotes Bill Binney, the inventor of a tracking tool which, against his intentions, was deployed to collect information on Americans; Binney 'believes that the agency now stores copies of all emails transmitted in America, in case the government wants to retrieve the details later'. These details constitute a database which may be as easily searchable as an old newspaper article on Google.

Binney has said with remorse, 'I should apologise to the American people,' since the tool he meant for other purposes 'has violated everyone's rights' and 'can be used to eavesdrop on the whole world'. The apology stands in contrast to the amnesty delivered to the offenders by the president and his attorney general. Of course, none of these proceedings is compatible with the usual understanding of Obama as a reformer and a respecter of American traditions of freedom. Yet, under the endlessly forgiving label of 'pragmatist', this president has devised a system of mental bookkeeping that is at once complex and simple. It is the belief of Barack Obama that his being the president of the United States is good for the world regardless of what he does.