

Chapter XI

Balancing Individual Privacy Rights and Intelligence Needs: Procedural-Based vs. Distributive-Based Justice Perspectives on the PATRIOT Act

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Abstract

This chapter explores how individuals using different justice perspectives to evaluate the appropriateness of the USA PATRIOT Act will logically arrive at different views on the fairness of the legislation. Some pundits believe the USA PATRIOT Act creates an increased risk for the privacy rights of US citizens. Excerpts from both Department of Justice and ACLU documents concerning the USA PATRIOT Act are presented. An analysis of these excerpts suggests that the Department of Justice applies

a procedural justice perspective to demonstrate the fairness of the Act in terms of the way the law will be applied. The ACLU applies an outcome-based justice perspective that focuses on the potential for the Act to disproportionately penalize specific demographic groups. Different justice perspectives lead to different fairness judgments.

Introduction

This chapter presents a social justice perspective on people's attitudes about revealing personal data in exchange for increased government sanctioned-intelligence activity. The degree of personal and corporate data that law enforcement officials and intelligence agencies need in order to provide more comprehensive protection from terrorist attacks threatens to erode individual privacy rights granted by the Constitution and defined by the legal system. Are people willing to trade their personal privacy and autonomy to protect themselves and others or to trade privacy for convenience and profit? How does a society determine whether it is just to compromise privacy rights for increased security? Finally, if an individual's privacy has been compromised, how does that person judge the fairness of this sacrifice in relation to more effective government intelligence and increased physical safety of persons and property?

Comparing the merits of decreasing the threat of terrorist action to the personal costs of a decrease in individual privacy rights is important because of the technological capabilities available today. Technology can, and should, be used to help identify behavior leading to criminal acts. However, the processing capability of information technologies, the vast number of transaction databases with personal identifiers, and the ability to retrieve, integrate, and create virtual alter egos is cause for alarm. Public data of a personal nature, such as deaths, births, sales, and property transfers, have been a constant in our society. However, the difficulty, time, and expense involved in retrieving the data made it difficult to integrate the data and view it as a whole. Information technologies can remove physical barriers to accessing data and can facilitate the integration of data from multiple sources. This is especially true when this data is placed on the Web and in other publicly accessible databases. The aggregation of this public personal data can be too intrusive to be deemed appropriate for a public record (Perkins, 2002).

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