

SECURITY AND CIVIL LIBERTIES

The most consistent attacks against civil liberties are those made in the name of security. Some have called civil liberties guarantees “too permissive” in the face of hostile threats. Others have stated that certain legal protections provide aid and comfort to society’s enemies.

Is there any truth to these claims? Do robust civil liberties make society vulnerable? Is the Constitution, in the end, a suicide pact?



“The best friend law enforcement has is the U.S. Constitution. Because its language is so eloquent about how to empower government enough to serve the people, but restrain government enough so that it doesn’t slide down the slope of police state tactics.”

– Michael Andregg, University of Saint Thomas

In a free society, violent actors are the principle threat to individual citizens. In such an environment, the government exists to curb private violence. In an authoritarian society, the state becomes the predominant threat to individuals, through its use of unrestrained coercion.

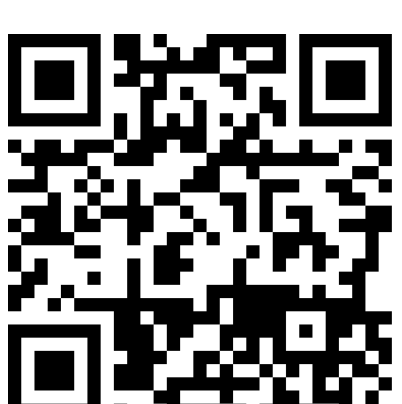
In America, the Constitution is meant to provide checks on governmental power, while leaving the state sufficient tools to combat private violence. The Constitution is well designed to empower the state to investigate and punish criminal acts committed after the fact. Preventing those acts from occurring in the first place poses more complex questions.

Since 9/11, law enforcement has become increasingly involved in “preventative” security. How can police agencies identify and thwart small groups of individuals who are quietly planning to cause mass carnage? Law enforcement’s answer has largely been to expand the use of surveillance and data collection techniques.

The use of these tactics raises legitimate and pressing questions about where and when to apply police authority. When applied too broadly, they can infringe upon the rights of entire communities. Avoiding this problem requires a cultural investment on the part of the police. They must rely heavily upon the spirit of the Bill of Rights, and the guidance that it provides to criminal investigations through standards such as probable cause, specificity in warrants, and reasonableness in searches.

This approach entails insight and discipline, so that law enforcement can focus narrowly on criminal suspects within communities, rather than broadly on communities themselves.

“What I found in my cases was that it’s a very small number of people who are willing to be that extreme in what they’re doing. There’s very few people in the room who will actually commit criminal acts. And if you paint the entire group as bad, you’ve just made a whole lot more enemies than you had the day before. And that’s really what the terrorist is counting on.” – Mike German, former FBI agent



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