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Postconstitutional America

by Sheldon Richman

It's a truism today that in this time of "war," we must shift the balance between liberty and security, sacrificing some freedom in order to protect our society from assault. Leave aside that this ignores Benjamin Franklin's famous statement about freedom and security. Funny how we blithely forget those oft-quoted adages when they become inconvenient.

It is more important than ever that we get our pronouns right. Advocates of deficit spending used to parry the concerns of balanced-budget champions by saying that "we owe it to ourselves." This was obviously untrue. I certainly did not borrow from myself. Nor, I suspect, did you. On the contrary, agents of government borrowed for their own benefit and the benefit of special interests, then later taxed the American people to repay the government's creditors. There was no "we-ness" about it, but a whole lot of "they-ness." The first-person plural fooled everyone and allowed them to get away with our money.

There is something analogous in the current discussion of the balance between liberty and security, which has been moved manifestly toward the side falsely labeled "security" with the USA PATRIOT Act, the Homeland Security Department, and the Pentagon's ominously named Information Awareness Office, run by that very model of a modern admiral, John Poindexter. "We" won't be giving up liberty for security. Rather, a small subset of "we" — namely, "they" — will take our liberty without our informed consent, albeit with the promise that we'll be safer in the process. The age-old question, of course, is: who will protect us from our protectors?

Before someone objects that "they" were elected by us, let me point out that our "representatives" were under such pressure to pass the PATRIOT Act and the homeland-security legislation that they were not even given time to read the voluminous bills, which weren't even printed until the 11th hour. Rep. Ron Paul (R-Texas) has condemned this high-handed tactic. Thus it was only lately revealed that the homeland-security bill, which was said to be merely an efficient reorganization of government agencies, actually expands the power of the federal government to intrude on our privacy.

That intrusion will come largely at the hands of the said Admiral Poindexter. He has made the modest proposal that his office be given access to records of our electronic activities so that his agents can compile a huge database and look for patterns suggesting terrorist intent. The official seal of his Information Awareness Office (IAO) is nothing less than the eye in the pyramid (see the back of a one-dollar bill) peering out over the globe. The Poindexter program sports the Orwellian name “Total Information Awareness System.” Its motto is “Knowledge Is Power” — a benign slogan, until you remind yourself that Poindexter’s agency wants to acquire knowledge about, and thus power over, *us*. As the IAO website states, “The key to fighting terrorism is information. Elements of the solution include gathering a much broader array of data than we do currently....” (Its web page on Total Information Awareness is full of bureaucratese that masks the concrete acts the agency will commit against us all. It also contains an inscrutable Rube Goldberg-type diagram that has to be seen to be believed: www.darpa.mil/iao/TIASystems.htm.)

As news of the Bush administration’s ambitious data-gathering agency spilled out, official spokesmen have tried to reassure us with words like “safeguards,” “oversight,” “judiciousness,” and so on. That’s what they always say. Then years later we learn that these trusty bureaucrats weren’t so judicious after all; that in fact they were spying on and harassing law-abiding people.

This is about the time that we should remind ourselves that, as Thomas Jefferson said in 1798, after passage of the Alien and Sedition Acts, “Free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power.”

Unfortunately, the Constitution has proven to be a weak restraint. Government today defines its own powers. The message of the Homeland Security Department and Information Awareness Office cannot be disguised: We are living in postconstitutional America.

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