

LBAR Lesson X: Security (Part 4 – Civil Liberties)

Given the way the last discussion ended, it is undoubtedly already clear what sorts of problems develop as age-old issues meet new-age technology. Americans have always struggled with the notion of security, and that because we are wary of the very instrument – government – that we create to provide us with security. That instrument, if not properly constrained, is just as likely to threaten our freedom as any criminal or terrorist. Listen to this voice from the past, and see if its echoes do not still ring true: “But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” These words come from none other than James Madison himself, often called the father of the Constitution, as he argues on behalf of the United States Constitution in the *Federalist Papers*. Madison, as well as all the founders and framers, knew what every American holds dear: we ask the government to protect us, but in doing so we do not intend for it to take away our rights.

You can see already that the issue of governmental power – how much latitude we give the government to seek out and prevent harm before it occurs – is already at the origin of the republic. Cyberspace merely gives a new avenue for this issue: government must be proactive in using Cyberspace to seek out threats, yet that initiative on the part of the government can be dangerous to the freedom of the governed. The issue can be summed up this way: how much power should we give to the government in order for it to effectively secure our rights? When does too much power threaten rather than protect our rights? You could say that American ambivalence toward power is in our genes, and you would be correct in doing so; the word gene comes from the Greek word *genesis*, which means origin or beginning.

To make sure you feel the full impact of this point (and you are not likely to understand that impact until you can *feel* the implications), listen to another noble voice: “Is there, in all republics, this inherent and fatal weakness? Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?” This from Abraham Lincoln, on July 4, 1863, in a speech to Congress on the suspension of the writ of *Habeas Corpus*. Lincoln's reasoning follows Madison precisely, and gives us insight into our own civic tradition. The United States Republic is a mixture of institutions and ideas, both of which combine into what is called “republican theory or principles.” Republics are those that have citizens and not subjects; the people of republics are free, and they institute their governments to protect their rights which are not given to them by those governments (this is crucial!). Republics thus presuppose both freedom/rights and the need to protect those rights/security. The reason then that these issues surrounding the scope of governmental power, especially as it affects personal privacy, continue to creep up is because they cannot go away as long as we have free government. As Lincoln himself says, if we have absolute freedom, then we can have no government whatsoever. But then we have no means of protecting ourselves, and hence our rights. But if we have an overwhelming and arbitrary government, then we have no means of protecting ourselves, and hence our rights. The issue is thus embedded in the structure of republican government, and it is inescapable; any attempt to overcome the issue results in tyranny rather than freedom.

The answer, according to Madison, is to 1) structure the government such that it limits its own powers, and 2) educate citizens about being citizens, which means educate them about the dynamics of republican government. Focusing only on part 1 for now, let us ask not only what sorts of power the

government has, but also how that power is checked.

- Who makes the law; who enforces the law; who judges whether or not the law has been broken?
- Why are those tasks separated? Would it not be easier to combine them?
- What means does each branch have to resist the encroachment of the others?
- Are there any other relevant governments in our regime, and if so, what role do they play in checking the governments power? How does it check their power?