

THE USA PATRIOT ACT: COMING TO TERMS WITH SILENCED VOICES

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Abstract

Domestic and international issues of the 1990s form an incendiary combination of controversies that heightened American fears, anger, and sensitivity to the politics of difference and provide the background for the passing of the Patriot Act of 2001. The author argues that censorship occurs with the silencing of voices in a democracy and describes the control of voice in the post-USA Patriot Act era, where the danger of censorial power resides in secrecy combined with indeterminacy.

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The USA PATRIOT Act of 2001² was composed administratively and passed legislatively, of course, in the wake of 9/11/01, but its roots went much more deeply into U.S. domestic and foreign policies in the troublesome decade of the 1990s. Domestically, immigration issues had floated through congressional deliberations and presidential campaigns, taking on particularly jingoistic tones in Patrick Buchanan's run for the presidency in 1996, when he proposed reducing immigration into the U.S. by a quarter of a million people a year and building a fence along the Mexican border. He was riding a wave of anti-immigration sentiment that grew through the 1980s and 1990s, intensified by the first bombing of the World Trade Center in 1994 as well as Proposition 187, which California voters had passed that same year. Proposition 187 called for controls on undocumented aliens as well as reduction and even elimination of their access to state educational and medical services. Furthermore, between 1986 and 2002, at least five states – California, Alaska, Florida, Hawaii, and, yes, Iowa – passed laws making English the official language for public business, replaying some of the same issues that produced the post-World War I English-only laws that were passed in post-war fear but struck down by the U.S. Supreme Court in 1923.

The United States, therefore, had serious questions about cultural otherness or difference playing upon the minds of its citizens even in the great decade of multicultural change. Those questions were paralleled by even more difficult transcultural issues in the international arena. The Persian Gulf War was painted, despite the senior President Bush's best efforts to write it into his New World Order, as an anti-Arab event with control of oil fields as its principal justification. The 1994 World Trade Center bombing was seen as one consequence, as were Al Qaeda's 1998 devastation of U.S. embassies in Kenya and Tanzania, the rubber-raft attack on the U.S.S. Cole in 2000, and then the airplane assaults of 9/11. Together with the inability of any road map to help mitigate Arab-Israeli conflicts, with the U.S. always viewed as an Israeli confederate, Christian-Jewish America was perceived of by many as at war with the Muslim world.³ Many in the international community would have affirmed Samuel Huntington's (1996) thesis that the Muslim-Western clash was the central world conflict of our time.

Taken together, both the domestic and international issues of the 1990s formed an incendiary combination of controversies that heightened American fears, anger, and sensitivity to the politics of difference. Cultural clash, especially, and the sense of failed opportunities for self-protection and self-promotion were residues of the culture wars of the early nineties, the defeat of Bush senior's administration in 1992, and the indecision in both the Clinton and Bush junior administrations over how to handle terrorist threats. The spring-summer 2004 hearings of the congressional 9/11 Commission allowed us to peek into the dynamics of that indecision (9/11 Hearings 2004).

And then came 9/11 within the first year of an administration having trouble getting traction in the United States – a minoritarian president without federal governmental experience, with little to show for his first year of legislative leadership, and with only 43 percent of the citizenry thinking that he was leading the country in the right direction in early September 2001 (PollingReport.com 2004). Here was a terrifyingly unprecedented attack on U.S. soil, with sorrow and virulent anger manifested broadly across the population. Both the sorrow and anger

were focused in President Bush's early post-9/11 statements, from his so-called bullhorn speech in the pit of the WTC on 14 September to his initial address to a joint session of Congress on 20 September. With British Prime Minister Tony Blair at his side, he declared that "Our grief has turned to anger, and anger to resolution," and told the rest of world that "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists" (WhiteHouse.gov 2004). An unambiguously disjunctive mindset flowed from U.S. government officials, and engulfed the citizenry as well; within a month of the USA Patriot Act being passed in late October, a full 87 percent of people surveyed were favourable toward the President and his actions (PollingReport.com 2004).

The USA Patriot Act was written in three short weeks, and debated in committee and on the floors of the U.S. House and Senate in less time than that. Its goals were clear enough in its title, which actually was an acronym: "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism." The so-called appropriate tools included the power to intercept and monitor wireless telephone calls and Internet messages, to tap private telephone conversations without judicial authority, to arrest suspicious individuals and to hold them indefinitely, to monitor lawyer-client conversations, to detain immigrants on the authority of the Attorney General without court review, and even to submit them to military tribunals rather than civilian courts.⁴ Additional interpretation of the act was added through orders from U.S. Attorney General John Ashcroft, including the establishment in December 2001 of so-called "free speech zones," which allowed the Secret Service to cordon off protesters to places away from motorcades and arenas for speeches when the President travelled (Bovard 2003).⁵

The USA Patriot Act legislated near-unprecedented executive-bureaucratic powers to control the voices and bodies, the presence and absence, and access to and search of American citizens. In this article, I want to focus briefly on one portion of those controls – the control of public speech, of what I will call *voice*. The primary meaning of "voice" comes from the Latin *vox* (Kennedy 1987), referring to the apparatus of human communication, that is, the mechanisms that shape discrete sounds (phonemes) and that carry what David Crystal (Brown, Strong, & Rencher 1973) calls "emotional characterisers" – the sense we get of others engaging in paralinguistic snarling, grunting, threatening, pleading, and so on. Emotional characterisers are marks of individual expressiveness, the assertion of an individual "I."

More intriguingly, however, the word *vox* is directly related to the earlier Greek word *epos*, the word for tale, speech, fable, or other formatted segments of talk. In this second sense, then, to "give voice" is not simply to produce intelligible and expressive sound but to emit structured discourse: thoughts with beginnings, middles, and endings, with movement among and connections between ideas, even with coherent views of the speaking selves and the arenas within which they speak.

I would add another extension to the secondary meaning of voice, and that is the notion of "author." An important ancestor of that English word is the medieval Latin idea of *auctor* or authoritative voice. The medieval *auctor* was one with the duty of giving voice in a forceful way. In turn, the opening of public places to multiple or alternative *auctores* was thought to produce a delegitimizing of au-

thoritative voices (Pease 1987: 106-109); the multiplication of voices to us may feel vaguely democratic, yet it is potentially destabilising as well (Kennedy 1991: esp. 78). And hence, political and religious institutions regularly have moved to limit the number of authoritative voices – voices that must be taken seriously – on particular issues or in times of special social stress.

The focus on this paper, then, will be on four ways that the USA Patriot Act of 2001 effectively eliminates or significantly limits political voice of American *auctores*. After considering those mechanisms for control of both individual expressiveness and public authority, I will speculate a bit about the present-day dynamics of the public sphere in the U.S. and the decade-and-a-half assault on the multicultural spirit of the country.

Four Limitations on Voice Following Passage of the Patriot Act

I am interested in both the absent voice, that is, the *auctores* who cannot express themselves publicly, as well as the distorted voices, that is, the *auctores* who through fear or spatial limitation cannot or will not speak in their own voice in what I identified as the original sense of that word. First, I will talk briefly about the absent voice, and then more about three additionally limited voices: the muted voice, the bounded voice, and the substituted voice.

The Absent Voice

Despite Sec. 102 of the Patriot Act, which explicitly reaffirmed the civil rights and liberties of “Arab Americans, Muslim Americans, and Americans from South Asia” (House of Representatives 2001), in fact large numbers of both American and alien citizens with those ethnic heritages were confined without access to legal counsel or judicial review after 9/11. The matter of aliens swept up in the Afghan operations, leading to the establishment of a detainee centre in the Guantanamo Bay (Cuba) naval prison and including some 660 adult males and children from forty-two countries, could be explored here, but I will limit myself to American citizens and aliens legally admitted to the country.

By November 2001, 1,200 people, mostly Arabs and Muslims, had been arrested and detained in connection with 9/11. Many remained incarcerated. On 2 June 2003, Glenn A. Fine, Inspector General of the U.S. Department of Justice, issued a report on the 762 aliens being held in Brooklyn’s Metropolitan Detention Center and Paterson, New Jersey’s Passaic County Jail (Subliminal News 2003).⁶ Complaints by any of these detainees against Bureau of Prison or F.B.I. treatment were available to public airing only through the periodic reports on their protests issued semi-annually by the Department of Justice. And, because they were held without being able to post bond, they often were subjected to 24-hour-a-day cell time. Then, on 2 March 2003, when the Department of Homeland Security was formed legislatively, the Immigration and Naturalisation Service (I.N.S.) moved out of the Department of Justice to the new bureau. The detainees now became the responsibility of a judicial officer beholden to a very different kind of judicial apparatus. The U.S. Supreme Court ruled earlier this year that the alien detainees could be held indefinitely, though it also agreed to hear cases about U.S. citizens held in similar circumstances (Gearan 2004).

Simply put, the detainees have had their voices taken away. Without even access to lawyers, they can be spoken about but not by anyone with first-hand knowledge about their circumstances or conditions. And, for now, the same is true for American citizens held under the same provisions of the Patriot Act. Only Supreme Court action in the following months will determine whether all detainees will continue to have absented voices.

The Muted Voice

The muted voice is one controlled through fear and intimidation. Title II of the Patriot Act contained what are now twenty-five famous sections authorising electronic surveillance of wired, wireless, electronic, and even oral communications by an army of translators, and even immunity for those who had responsibilities for the interdiction of especially electronic messages. Additionally, Title III of the act authorised open access to all international transfers of funds, while Title VIII amended various laws dealing with any sort of relationship Americans or aliens might have with anyone considered a security risk. Sec. 901 put all authority to oversee foreign – and, it turned out, domestic – intelligence in the hands of the Director of Central Intelligence, who could authorise extraordinary actions (a) if it were consonant with the Patriot and related acts,⁷ or (b) granted by executive order. Court action was unnecessary, for the powers granted by the Patriot Act were broad and could be extended by the Office of the President of the United States. And, by executive order Attorney General Ashcroft also put curbs on the Freedom of Information Act should a citizen's request for personal files be deemed in any way suspicious by any governmental agency (*San Francisco Chronicle* 2002).⁸

A primary objection to the legislation even before it was passed was that it defined protest actions by citizens as possibly a form of so-called "domestic terrorism." Georgetown University law professor David Cole argued that the act extended the definition of terrorism to "garden variety acts of violence and innocent political association," while the American Civil Liberties Union urged that "The legislative response to terrorism should not turn ordinary citizens into terrorists" (Heaney 2001). And, as New Berlin, Wisconsin, citizen Jonathan Porter wrote to his local newspaper, "I do not need some agent listening in on one of my conversations or searching through my house. Yes, this would make America 'safer,' but then it wouldn't be America to me anymore. I can't believe that we are letting our fears get the best of us" (*Milwaukee Journal Sentinel* 2001).

The sections of the Patriot Act expanding electronic surveillance of communication and financial transactions have what often are called chilling effects on speech. If both public and private voices are subjected to surveillance, talk is necessarily toned down by all but martyrs. Further, as Doris Graber (1997:141) notes, because both the press and public officials often "spin their own prejudices into a web of scenarios that puts blame for . . . disaster on socially outcast groups," racial profiling is a common basis for response – therefore putting special pressure not to talk on targeted groups. The American Civil Liberties Union (2004) finds the pressure to mute public talk so strong that it is proposing legislation to outlaw the kind of profiling by race, ethnicity, religion, or country of origin sanctioned by the Patriot Act.

The Bounded Voice

A third sort of limitation on the expressive voice and the public voice of citizens can be found in the “free speech zones” defined by Attorney General Ashcroft. One base for the twentieth century’s liberal politics of public opinion, according to Hardt and Splichal (2000:43), grew out of John Dewey’s assertion that “Until secrecy, prejudice, bias, misrepresentation, and propaganda as well as sheer ignorance are replaced by inquiry and publicity, we have no way of telling how apt for judgment of social policies the existing intelligence of the masses may be.” Dewey’s contemporary Carl Schmitt went further, arguing that public opinion was not merely a matter of tallying citizen votes or opinions, but, rather, of acclamation – the unorganised but publicly assembled bodies and sounds of a citizenry, gathered in stadiums, theatres, town squares, even along the streets lining a presidential motorcade (ibid., 33-34).

I think it was free speech zones’ violation of that sense of acclamative voice – individual and collective, disorganised but embodied voices demanding that they be taken seriously – that so infuriated both liberal and conservative critics of the post-9/11 free speech zones. As Congressman Barney Frank (D-MA) argued, “As we read the First Amendment to the Constitution, the United States is a ‘free speech zone’” (quoted in Paine 2003). Yet, picketers in various parts of the country have been arrested for leaving a designated zone and getting signs too close to the President. Those arrested have carried signs declaring such opinions as “No War for Oil,” “The Bush family must surely love the poor, they made so many of us,” and “War is good business. Invest your sons” (Bovard 2003; Leo 2003; Paine 2003). Children and their parents, grandmothers, labour protesters – a great variety of citizens have been charged with violating free speech zone guidelines.

Here, then, is the bounded voice, one allowed to speak but only in spaces that elide dialogic political engagement. Such voices cannot acclaim in Schmitt’s understanding of that word, as the bounded voice cannot reach the ears for which it was meant. A person with a bounded voice is not an *auctor*.

The Substituted Voice

Someone might say that I am wrong, for the voices of those who held up the signs in violation of Secret Service order still had impact. Brett Bursey, Bill Neel, the seven grandparents arrested outside a Bush rally: these voices are being heard, even in Congress and certainly in the press that reported their arrests. That brings me to a fourth limitation on public voice: being able to speak only through a substituted voice, in an act of political ventriloquism. Karlyn Kohrs Campbell entitled her two-volume study of nineteenth- and early-twentieth-century feminists *Man Cannot Speak for Her* (1989). The arguments that man cannot speak for woman, that the white Abolitionists of nineteenth-century America, no matter how well intentioned, could not speak for the African-Americans they were seeking to free, that Euro-Americans cannot stand in for Muslim- or Arab-Americans after 9/11 – all of these claims flow from a singular focus on the expressive dimension of voice transformed into authoritative public voices.

Jacqueline Reeves (2003) believes that all of the national and international attention to weblogs and online magazines leads back to the search for a personal voice in a public arena. Online magazines such as the Morning News and Flak

Magazine get 162,500 and 100,000 unique individual visitors per month respectively (ibid.). Those personal voices are not, however, simply the external manifestations of interiorised existence; they are, as Walter Ong argues, the beginning of civilisation. In his words (1981:199), "When in the series of anthropoids and prehomnids, some beings appeared who were capable of the reflective self-possession expressed in the saying of 'I,' at whatever point they did so, the leap into human existence had clearly taken place." Voice, yes, flows from self, from the expressive "I," but, if understood and taken into account by others, it flows into a symbolically constituted "we." At that point, the "I" becomes an *auctor*. In this understanding of self-society relationships, no one can assume the "I" of another.

And so, lawyers can represent the incarcerated, journalists can quote them, the Office of the Inspector General can describe their cases, and well-wishers can hold rallies to raise defence funds, to publicise their fates, and to parade their stories as exemplars of injustice, as the American Civil Liberties Union (2004) did with individuals' tales of racial profiling earlier this year. None of these expressions of opinions, even of quoted opinions, however, constitutes a voiced self, a voiced "I" that can be welded with others into a "we." Being spoken for by others, being substituted for, is probably the most widespread limitation on voice being practiced in the U.S. since 9/11.

In summary, four ways of controlling voice in the post-USA Patriot Act era are operative: absenting speakers for periods of time through detention, removing speakers from spaces through boundary-drawing, muting voices and hence inducing attitudes of self-monitoring and control, and allowing substitute speakers to replace citizens' public performances. In these four control mechanisms, access to public voice is denied or perverted through controls of temporality (not being able to speak when the times demand it), territoriality (not being able to speak in places ripe for dialogue), risk (not daring to speak for fear of reprisal, a kind of self-censorship), and self-identity (not being able to perform as the voiced "I" that can join with others to form an acclamative "we").

Consider these matters in terms of the public sphere. Certainly within a liberal political tradition, the bourgeois public sphere as envisioned by Habermas (1989) was characterised by both protection and proaction. The citizens could converse, I to I, with other citizens in the protected spaces of the salon or coffee house, yet also have the agency to act publicly upon the political institutions of their society. Institutional and non-institutional politics were separate, yet that boundary had to be permeable for the public sphere to produce a dialogic democracy: citizens, with the rights to make requests and demands, and states, with the rights to administer, govern, and judge; citizens, with the responsibilities of acting within the rule of law, and states, with the responsibilities for providing for the common good.

I would argue that the public sphere in the post-Patriot Act United States has witnessed threats to both protection and proaction. While Fraser (1992) sees "weak publics" resulting from the separation of publics from the state, I would argue that equally weak publics result from the opposite condition: one wherein the state inserts itself in controlling or manipulative ways into the public's deliberations. Especially when state actions can be as arbitrary – because of the vagueness with which the Patriot Act permits threats to be defined – as they can be presently in the United States, a condition that Squires (2001; 112) terms "oscillating" comes into

being. “Oscillating” public spheres are those where groups rise up to challenge the state, only to be threatened or repressed into silence; then, as they rise in critique again, further threats occur, and so on, in oscillating cycles of critique, surveillance, censorship and threats of censorship (p. 131). Squires was writing about the African-American press in the United States, 1917-1945 – interesting because that period is bracketed by two wars. The post-9/11 war on terrorism has produced similar state actions.

This brings us directly to the question of censorship. Certainly acts of absenting and bounding voices meet traditional definitions of censorship, though muting and substituting for voices are somewhat different cases. This range of limitations on individual and collective or acclamative voices suggests that, perhaps, we ought to explore briefly the origin of censorship in ancient Rome as a way to recoup a vision broad enough to encompass the present situation in the United States.

Censorship, Silence, and the Social Order Post-9/11

The *censores* of ancient Rome had three duties: (1) the taking of the *census*, that is, the accounting for people and their property by tribe and class; (2) the administration of public finances, the *tributi*, through tax collection and expenditure on public projects; and (3) the execution of the *regimen morum* – the moral heart of Roman social order. The *regimen morum* involved regulation of citizens’ behaviour in both private and public spaces. Regulation occurred largely through being branded by the censors as unworthy, as *nota censoria*, which in turn involved for the most part exclusions. Censored citizens could be excluded from public participation in government, stripped of the rights and markings of tribe and class, and even deprived of access to ordinary commerce and public activity (Smith 1875, s.v. “censor”).

Censorship in ancient Rome, thus, was grounded in a theory of social order, a conception of the maintenance and regulation of public relationships through the management of identity, finances, and behaviour. During the taking of the *census*, citizens would be sorted into classes and tribes that constituted identity, and, as a *nota censoria*, could be stripped of privilege or even reassigned from one tribe to another in acts of reconstituting identity. Further, to be *incensus* was not only a matter of not being counted but also entailed punishment and the loss of citizen rights. Only in these ways, thought the rulers of the Roman Empire, could orderliness and public morality be maintained.

The USA PATRIOT Act of 2001, together with the structural rearrangements of governmental offices and reporting mechanisms legislated five months later in the Homeland Security Act of 2002, has produced censorship offices quite like those of Rome. While the United States has not yet opted for identity cards, it is using numerical coding and new body scanning procedures that provide a citizen management system at least as controlling as that of the Roman *census*. Electronic connections between governmental and banking data systems provide relatively easy oversight of the country’s financial transactions, permitting comparisons between and among tax records, financial holdings, and financial transactions. And, profiling by race, ethnicity, or country of origin parallels the Roman censors’ ability to oversee and even reassign class and tribe.

What makes the censorial powers of post-9/11 U.S. governmental agencies so dangerous is their secrecy combined with indeterminacy. In the age of electronic

surveillance managed across data systems and ungoverned by formal judicial review, mountains of data can be gathered and subjected to uncontrollable analysis. Detainees have no right to know the grounds for their detainment, and protesters violating free speech zone protocols can be arrested simply because an authority does not like a sign being carried (Bovard 2003; Leo 2003). Normative determinacy is defined by Gregg (2003:1) as “definite knowledge about norms as themselves direct guides to behaviour, or as cues to the interpretation of texts that regulate behaviour, or as directives to the interpretation of cultural practices that also regulate behaviour.”

The Patriot Act and the Homeland Security Act generate normative indeterminacy on all three of Gregg’s standards, making censorship intolerably arbitrary. When Sec. 411 (a.1.A.i.IV.aa) of the Patriot Act defines a terrorist organisation as “a political, social or other similar group whose public endorsement of acts of terrorist activity the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities,” and when signs such as “No War for Oil” are regarded as grounds for arrest, then we, indeed, are living in a time of normative indeterminacy. There are no precise guides for behaviour; we cannot know for sure how our behaviour will be subjected to statutory interpretations; and the political culture of the U.S. itself has shifted toward a centralised, secret, information-gathering and -storing set of bureaus now all centralised in the Department of Homeland Security. Behavioural norms are frighteningly indeterminant.

Normative indeterminacy, furthermore, has been combined with the oscillating threats and acts of criminalisation that we have referenced: with sweeps of communities whose citizens and legal visitors fill detention centres, acts of electronic surveillance justified by the thinnest of evidence (and sometimes looking suspiciously like pure acts of ethnic profiling), hit-and-miss arrests of protesters leaving free speech zones. Various agencies now organised under the Department of Homeland Security, in cooperation with the Department of Justice, move covertly from operation to operation with no clear public declarations of what acts will produce detention, surveillance, or arrest.

And herein lie the greatest forces for silencing voices. Overt censorship involves both absencing and forcing dissident voices into bounded spaces, yet comparatively few American voices have been absented and bounded. But, even more powerful are the normative indeterminacies in tandem with seemingly random police action that produce muted and substituted voices. These forces are equivalent to the Roman *regimen morum*, the regulation of private and public behaviour through fear-of-reprisal. As Richard Rorty (2004) said recently, “Ever since the White House rammed the USA Patriot Act through Congress, I have spent more time worrying about what my government will do than about what the terrorists will do.” His worries come from the secrecy and statutory vagaries that have centralised the powers to monitor, regulate, and criminalise citizen behaviour through the ad-dling mixture of the laws of war with the domestic criminal code. And so voices are shut off, muted, bounded, and substituted for because the USA PATRIOT Act radically remade political culture in the name of increasing safety and exacting revenge following 9/11.

Let us also not forget that the Bush administration was able to push through this legislation not simply with overwhelmingly strong congressional support but

with the collective citizenry endorsing his governmental leadership. I am convinced that his popular support was grounded not only specifically in his reactions to 9/11 but more generally as extensions of the politics of cultural difference and multicultural fear that had been in play for more than a decade before 9/11. Matters of race, ethnicity, and country of origin simply must be a significant aspect of American responses to 9/11, culturally or socially and, yes, politically or administratively.⁹ The U.S. citizenry is implicated in the losses of individual and acclamative voice; only the U.S. citizenry can reopen public forums.

To Rorty, only people who still have expressive and collectively energised, authoritative voice can prevent the end of their civilisation, and I close with his words: "In a worst-case scenario, historians will someday have to explain why the golden age of Western democracy, like the age of the Antonines, lasted only about two hundred years. The saddest pages in their books are likely to be those in which they describe how the citizens of the democracies, by their craven acquiescence in governmental secrecy, helped bring the disaster on themselves."

Notes:

1. The author wishes to thank Obermann Center Director Jay Semel and the Center's staff for all the support given to this and many other projects. Thanks as well to research assistant Aya Matsushima for her Lexis-Nexis search. In this paper, I have tried to use as many online sources as possible to facilitate follow-up by scholars in various parts of the world.

2. The capitalised letters form the acronym for the full name of the act. (See below.) Throughout the rest of the article, I usually will change the primary word to caps-and-lower-case letters for aesthetic purposes.

3. The same range of ethnic issues played, if in somewhat more muted form, during the Persian Gulf War of 1991. See the special issue of *Media Development*, a publication of the World Association for Christian Communication, offered in October 1991, drawing from its parent organisation's joint international conference with the International Association for Mass Communication Research (19-20 June 1991).

4. The text of the act is included in the House of Representatives' debate over it, accessible at <http://www.fas.org/sgp/congress/2001/h102301.html>. A sharp, scholarly critique of it is available in Kellner (2003) and innumerable journalistic-political critiques can be found through a Lexis-Nexis search.

5. This certainly was not the first time that the United States had passed legislation and issued executive orders severely curtailing individual liberties. Abraham Lincoln suspended *habeus corpus* during the Civil War, and World War I saw Congress pass the Sedition Act in 1918, allowing for the fining and imprisonment (up to twenty years) for any who would "incite insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct . . . the recruiting or enlistment service of the United States, or . . . shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States . . . or shall willfully display the flag of any foreign enemy, or shall willfully . . . urge, incite, or advocate any curtailment of production . . . or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein" (U.S. Sedition Act 2004).

6. Sec. 1001 of the USA PATRIOT Act provided for review of complaints "alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice" (House of Representatives 2001). Once the Immigration and Naturalisation Service was moved out of the DOJ, however, the enforcement teeth of this section lost their bite.

7. The aggravation felt by many when the Patriot Act passed was that it was not self-contained. Rather, most of it was comprised of edits made to fifteen existing statutes such as the Foreign Intelligence Surveillance Act (opening business records and even library records to federal inspection), the Family Educational Rights and Privacy Act (opening student records), the Electronic Communications Privacy Act and the Communications Act (permitting monitoring of all forms of electronic communications, including Internet Service Providers), the International Emergency Powers Act (permitting swift action on presidential authority alone), and a series of statutes dealing specifically with aliens (such as the Antiterrorism and Effective Death Penalty Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and other sections of the U.S. Code). One could not read the Patriot Act by itself to understand its provisions; rather, it wove a spidery web of communication limitations, access points, and controls over users of public and private channels across varied laws (Hitchcock 2002; Loewen 2003).

⁸The *San Francisco Chronicle's* article on Ashcroft's memo justifying the quashing of Freedom of Information Act (FOIA) requests for personal information quoted the memo: "When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records." The DOJ was putting itself in the service of suppression of information.

9. Race and the politics of difference regularly are at work, even if coded in such guises as concern about crime or housing or welfare, in American political deliberation. The politics of difference only intensified following 9/11. See Miller (1994) on racial coding and Nacos & Torres-Reyna (2003) on dominant American opinions about Muslim- and Arab-Americans following 9/11.

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