

# A Not-So-Happy Fourth of July

Andrew Napolitano | Jul. 4, 2013 7:00 am

Do you have more personal liberty today than on the Fourth of July 2012?

When Thomas Jefferson wrote the Declaration of Independence, he used language that has become iconic. He wrote that we are endowed by our Creator with certain inalienable rights, and among them are life, liberty and the pursuit of happiness. Not only did he write those words, but the first Congress adopted them unanimously, and they are still the law of the land today. By acknowledging that our rights are inalienable, Jefferson's words and the first federal statute recognize that our rights come from our humanity -- from within us -- and not from the government.

The government the Framers gave us was not one that had the power and ability to decide how much freedom each of us should have, but rather one in which we individually and then collectively decided how much power the government should have. That, of course, is also recognized in the Declaration, wherein Jefferson wrote that the government derives its powers from the consent of the governed.

To what governmental powers may the governed morally consent in a free society? We can consent to the powers necessary to protect us from force and fraud, and to the means of revenue to pay for a government to exercise those powers. But no one can consent to the diminution of anyone else's natural rights, because, as Jefferson wrote and the Congress enacted, they are inalienable.

Just as I cannot morally consent to give the government the power to take your freedom of speech or travel or privacy, you cannot consent to give the government the power to take mine. This is the principle of the natural law: We all have areas of human behavior in which each of us is sovereign and for the exercise of which we do not need the government's permission. Those areas are immune from government interference.

That is at least the theory of the Declaration of Independence, and that is the basis for our 237-year-old American experiment in limited government, and it is the system to which everyone who works for the government today pledges fidelity.

Regrettably, today we have the opposite of what the Framers gave us. Today we have a government that alone decides how much wealth we can retain, how much free expression we can exercise, how much privacy

we can enjoy. And since the Fourth of July 2012, freedom has been diminished.

In the past year, all branches of the federal government have combined to diminish personal freedoms, in obvious and in subtle ways. In the case of privacy, we now know that the federal government has the ability to read all of our texts and emails and listen to all of our telephone calls -- mobile and landline -- and can do so without complying with the Constitution's requirements for a search warrant. We now know that President Obama authorized this, federal judges signed off on this, and select members of Congress knew of this, but all were sworn to secrecy, and so none could discuss it. And we only learned of this because a young former spy risked his life, liberty and property to reveal it.

In the past year, Obama admitted that he ordered the CIA in Virginia to use a drone to kill two Americans in Yemen, one of whom was a 16-year-old boy. He did so because the boy's father, who was with him at the time of the murders, was encouraging militants to wage war against the U.S.

He wasn't waging war, according to the president; he was encouraging it.

Simultaneously with this, the president claimed he can use a drone to kill whomever he wants, so long as the person is posing an active threat to the U.S., is difficult to arrest and fits within guidelines that the president himself has secretly written to govern himself.

In the past year, the Supreme Court has ruled that if you are in police custody and fail to assert your right to remain silent, the police at the time of trial can ask the jury to infer that you are guilty. This may seem like a technical ruling about who can say what to whom in a courtroom, but it is in truth a radical break from the past.

Everyone knows that we all have the natural and constitutionally guaranteed right to silence. And anyone in the legal community knows that judges for generations have told jurors that they may construe nothing with respect to guilt or innocence from the exercise of that right. No longer. Today, you remain silent at your peril.

In the past year, the same Supreme Court has ruled that not only can you be punished for silence, but you can literally be forced to open your mouth. The court held that upon arrest -- not conviction, but arrest -- the police can force you to open your mouth so they can swab the inside of it and gather DNA material from you.

Put aside the legal truism that an arrest is evidence of nothing and can and does come about for flimsy reasons; DNA is the gateway to personal data about us all. Its involuntary extraction has been insulated by the Fourth Amendment's requirements of relevance and probable cause of crime. No longer. Today, if you cross the street outside of a crosswalk, get ready to open your mouth for the police.

The litany of the loss of freedom is sad and unconstitutional and irreversible. The government does whatever it

can to retain its power, and it continues so long as it can get away with it. It can listen to your phone calls, read your emails, seize your DNA and challenge your silence, all in violation of the Constitution. Bitterly and ironically, the government Jefferson wrought is proving the accuracy of Jefferson's prediction that in the long march of history, government grows and liberty shrinks. Somewhere Jefferson is weeping.

Happy Fourth of July 2013.