CHAPTER 4
The USA PATRIOT Act 2001

Domestic-Foreign Enemies of Freedom

The USA PATRIOT Act of 2001—that is, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (hereinafter PA)—is an example of how 9/11 has been utilized to push for an absolutist security agenda (ASA) that legally posits U.S. national security as the controlling standard for international security. An examination of the linkage between legality, criminality, terror, and security within a domestic juridical framework illuminates the post-9/11 security context. Law is particularly relevant when one considers that U.S. power is premised upon the notion that international society should be subject to an objective rule of law. Law is a means by which U.S. domestic security can be invested with a truth value beyond (legitimate) question. When considering law and power, it must be kept in mind that power “is exercised through networks, and [actors] do not simply circulate in those networks; they are in a position to both submit and exercise this power. They are never the inert or consenting targets of power . . . power passes through [actors]. It is not [necessarily] applied to them.” Knowledge and truth are produced and reified by security measures and the order-combine from which they devolve. Legality, therefore, functions as a means of producing and reflecting U.S. security priorities at the expense of competing priorities, such as civil liberties and state sovereignty. The United States articulates a specific set of values, prerogatives, principles, and morals when it utilizes law to enhance its power. Since the post–World War II period, the United States holds itself out as the “unitary power that maintains the social peace and produces . . . ethical truths” for the international community.

In light of the war on terror, the PA exemplifies a security system’s capacity to become an overtly boundless security measure, uniting “juridical categories and universal ethical values, making them work together as an organic whole.” The PA posits a framework of security that, at a most basic level, should prompt
us to examine the essence of post-9/11 global security. As Geoffrey Blainey observes, “For any explanation the framework [utilized] is crucial. In every field of knowledge the accepted explanations depend on the marshalling of evidence than on preconceptions of what serves as a logical framework for the evidence. The framework dominates the evidence, because it dictates what evidence should be sought or ignored. Our idea of a logical framework is often unconscious, and this elusiveness enhances its grip.”

Security as articulated in the PA explicitly privileges and prioritizes U.S. security as the basis for global security; the PA blurs the demarcation between domestic and international categories of security. According to the United States, the system of states must embrace its ASA as the only logical means to combat “terror”:

In the face of this ruthless threat [of terrorism], our nation has made a clear choice: We will confront this mortal danger, we will stay on the offensive, and we’re not going to wait to be attacked again. Since September the 11th, 2001, we have taken the fight to the enemy. We’ve hunted terrorists in the mountains of Afghanistan, cities of Iraq, the islands of Southeast Asia, and everywhere else they plot, plan, and train. Our men and women in uniform have brought down two regimes that supported terrorism. We liberated 50 million people. We’ve gained new allies in the war on terror. As we wage the war on terror overseas, we’re also going after the terrorists here at home, and one of the most important tools we have used to protect the American people is the Patriot Act. The Patriot Act closed dangerous gaps in America’s law enforcement and intelligence capabilities, gaps the terrorists exploited when they attacked us on September the 11th.

The establishment of “legally definable enemies”—which one is obligated to consider “legitimate”—is a security strategy that enables the projection of U.S. security policy and interests to form the singular and ubiquitous legal basis for global security. While the United States has a long tradition of projecting its security interests and policy across the globe, the PA indicates a change in policy in that U.S. domestic security is now explicitly postulated as being synonymous with world security and is disseminated via a domestic legal instrument. Distinctions between “sovereign” states—a conceptual cornerstone of international relations—become subsumed under a totalizing rubric of security that is premised upon a universal (yet domestic/national) definition of justice. The PA reflects the hegemon’s “empire of thought” regarding control over the setting of the global security agenda. In 1943, Winston Churchill made a very insightful observation regarding the future of imperial power: “The empires of the future . . . are the empires of the mind . . . [Empire] does not covet territory or resources. It covets ideas.” By imposing its idea of global security via an “objective” medium (law), the U.S. augments its global power.