

Taking Rights Seriously: Rights Do Not Require a Government Permission Slip Nor the Approval of Family or Neighbors

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“Thus, your right to be alive, to think as you wish, to say what you think, to publish what you say, to worship or not, to associate or not, to shake your fist in the tyrant’s face by petitioning the government, your right to defend yourself and repel tyrants using and carrying the same weapons as the government does, your right to be left alone, to own property, to travel or to stay put – these natural aspects of human existence are natural rights that come from our humanity and for the exercise of which all rational persons yearn.”

[Taking Rights Seriously](#)

by [Andrew P. Napolitano](#), [Judge Napolitano](#)

July 13, 2023

*“If all mankind minus one were of one opinion,
and only one person were of the contrary opinion,
Mankind would be no more justified
In silencing that one person,
Than he, if he had the power,
Would be justified in silencing mankind.”*

– John Stuart Mill (1806-1873)

The world is filled with self-evident truths – truisms – that philosophers, lawyers and judges know need not be proven. The sun rises in the east and sets in the west. Two plus two equals four. A cup of hot coffee sitting on a table in a room, the temperature of which is 70 degrees Fahrenheit, will eventually cool down.

These examples, of which there are many, are not true because we believe they are true. They are true essentially and substantially. They are true whether we accept their truthfulness or not. Of course, recognizing a universal truth acknowledges the existence of an order of things higher than human reason, certainly higher than government.

The generation of Americans that fought the war of secession against England – according to Professor Murray Rothbard, the last moral war Americans waged – understood the existence of truisms and recognized their origin in nature.

The most famous of these recognitions was Thomas Jefferson’s iconic line in the Declaration of Independence that self-evident truths come not from persons but from “the Laws of Nature and of Nature’s God.” Thus, “All Men are created equal and are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness” is a truism.

Jefferson’s neighbor and colleague, James Madison, understood this as well when he wrote the Bill of Rights so as to reflect

that human rights do not come from the government. They come from our individual humanity.

Thus, your right to be alive, to think as you wish, to say what you think, to publish what you say, to worship or not, to associate or not, to shake your fist in the tyrant's face by petitioning the government, your right to defend yourself and repel tyrants using and carrying the same weapons as the government does, your right to be left alone, to own property, to travel or to stay put – these natural aspects of human existence are natural rights that come from our humanity and for the exercise of which all rational persons yearn.

This is the natural rights understanding of Jefferson's Declaration and Madison's Bill of Rights, to the latter of which all in government have sworn allegiance and deference.

A right is not a privilege. A right is an inalienable personal claim against the whole world. It does not require a government permission slip. It does not require preconditions except the ability to reason. It does not require the approval of family or neighbors.

A privilege is something the government doles out to suit itself or calm the masses. The government gives those who meet its qualifications the privilege to vote so it can claim a form of Jeffersonian legitimacy. Jefferson argued in the Declaration that no government is morally licit without the consent of the governed.

No one alive today has consented to the government, but most accept it. Is acceptance consent? Of course not – no more than walking on a government sidewalk is consent to government's lies, theft and killing. Surely, the Germans who voted against the Nazis and could not escape their grasp hardly consented to that horrific form of government.

We need to distinguish between privileges that the government doles out and rights that we have by virtue of our humanity,

rights so human and natural that they exist in all persons even in the absence of government.

Are our rights equal to each other? Some are equal to each other, but one is greater than all, as none of the rights catalogued briefly above can be exercised without it. That is, of course, the right to live. This is the right most challenging to governments that have enslaved masses and gloried in fighting morally illicit wars that kill and thus destroy the right to live.

But if a right is a claim against the whole world, how can a government – whether popular or totalitarian or both – extinguish it by death or slavery? The short answer is no governments, notwithstanding the public oaths their officers take upon assuming office, accept the natural origins of rights. To government, rights are privileges.

Stated differently, governments do not take rights seriously.

Governments hate and fear the exercise of natural rights. Ludwig von Mises properly called government “the negation of liberty.” Freedom is the default position. We are literally born free, naturally free.

Government is an artificial creation based on a monopoly of force in a geographical area that could not exist if it did not negate our freedoms. Government denies our rights by punishing the exercise of them and by stealing property from us.

Rights are not just claims against the government. They are claims against the whole world. This was best encapsulated by Rothbard’s non-aggression principle, which teaches that initiating all real and threatened aggression – whether by violence, coercion or deception – is morally illicit. That applies to your neighbors as well as to the police.

Of course, in Rothbard’s world, there would be no government

police unless all persons consented – and he wouldn't have. A private police entity – paid to protect life, liberty and property – would be far more efficient and faithful to its job, which it would lose if it failed, than the government's police, which thrives on assaulting life, liberty and property, and keeping their jobs.

The exercise of rights requires abandonment of fear, acceptance of truth and rejection of compromise with government. As Ayn Rand famously observed, any compromise between good and evil, natural rights and slavery, food and poison, results in death – death of the body, death of liberty, death of both.

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Andrew Napolitano on Pegasus & Predator Spy Systems: The Feds and Their Copycats

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[The Feds and Their Copycats](#)

by [Andrew P. Napolitano](#), [Judge Napolitano](#)

May 18, 2023

The federal government recently revealed that at least 50 U.S. government personnel working in 10 foreign countries have had their mobile devices hacked by unknown persons who employed software known as "zero-click." The zero-click product, called Pegasus, is manufactured by an Israeli high-tech company, called NSO Group.

Pegasus enables the user to download the contents of the target's mobile device or desktop without having to trick the target into clicking onto a link. It also enables the user to follow the person in possession of the device, capturing all texts and emails, as well as listening to conversations on the device or that take place in near proximity to it.

Pegasus is so sophisticated that its victims are largely unaware of the digital attack on their devices. The feds learned that they have been victimized by this software when Apple informed them. Apple told the feds to expect much more of this. The feds are deeply troubled by this warning, as they don't know who the victims are. The president himself was recently in Ireland, where his personal phone may have been targeted.

But don't feel sorry for the feds. They have been using this software and similar products on unsuspecting Americans since the Trump administration.

Here is the backstory.

In reply to a routine Freedom of Information Act request made in 2020, the FBI acknowledged spending \$5 million to license Pegasus from NSO Group. When FBI director Christopher Wray was asked about this, he reluctantly told Congress that his agents bought zero-click, but he denied its use in law enforcement. What does that mean? Isn't the essence of the FBI's work law enforcement?

Wray claimed that the FBI only purchased zero-click in order to reverse engineer it – basically to see how it worked. But that's not truly why the FBI wanted Pegasus. It hoped to use the software to spy on Americans without first obtaining search warrants.

The Fourth Amendment to the U.S. Constitution, written in the aftermath of British searches of colonial homes not based on evidence of crimes, requires judicially issued search warrants based on probable cause of crime for all searches and seizures.

Thus, the owners and users of mobile devices and desktops – that's nearly every American – have a privacy right in the use of their devices and in the data they have stored in them. Even a narrow interpretation of the amendment that guarantees privacy in “persons, houses, papers, and effects” must acknowledge that a computer chip – the heart of every computer – is an “effect,” and thus its owner or user enjoys privacy protection.

Protection from whom? Let's see.

When President Joe Biden learned of the FBI's use of Pegasus – the FBI secretly bought it during the Trump years – and the FBI's shady explanation for its use of it, the White House announced an executive order that it claimed would prevent future use of zero-click. The Biden executive order stops the sales of Pegasus to Americans and to the government, but it does not stop the sales of all zero-clicks.

Rather than simply banning zero-click, rather than banning all warrantless searches, Biden banned only the use of one brand of zero-click software and only when it has also been used by foreign governments to target the U.S. government, when it is under the control of a foreign government, when it has been used to target the freedom of expression of foreign human rights activists or when it has been used by foreign

authoritarians.

What about stopping the use of zero-click by federal authoritarians? Biden banned it because of how others use it, not because, in its essence, it violates the Fourth Amendment. Quick to pick up on this, the feds quickly purchased Predator – a twin of Pegasus, made by another foreign high-tech firm, with a more benign track record of sales and use.

What good does Biden's executive order do? Whom does it protect? The Biden executive order is Joe Biden at his worst. Claiming to deny commercial benefit to a foreign company because it also sells to bad guys but permitting another foreign company to sell functionally the same product to the feds protects no one's Fourth Amendment rights.

When Thomas Jefferson predicted shortly before he died in 1826 that, in the long run, personal liberty would shrink and government power would grow, he could not have imagined any of this. It seems that, no matter who is in the White House and which political party controls either house of Congress, the tentacles of government reach deeper into our lives with every tick of the clock.

Is there any area of private or harmless behavior that the government leaves alone?

The government that Jefferson left us has been inverted. That government needed the permission of the voters to do nearly anything. Today, we need the permission of the government to do nearly everything. And folks under observation change on account of the observation.

Two of my closest friends – husband and wife – told me they were discussing diamond earrings on their cellphones with each other last week. Soon, ads for diamond earrings began popping up on their desktops.

This was obviously not the government, yet, government sets

the tone and the standard. Federal agents use zero-click to hack into our computers because that's a lot easier than developing probable cause of crime and presenting it to a judge. Big tech uses hacking because that's more effective than advertising.

Now big tech targeting consumers can mimic the feds – and, like the feds, get away with it because when the government breaks its own laws, it sets a precedent for others to follow. Is this the government the Framers left us? Is it the government we voted for? What awaits us on the other side of this Orwellian landscape?

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