

27. National ID Cards

Congress should resist the establishment of a national identification card and encourage the development and acceptance of private identification systems.

In the wake of a calamitous terrorist attack, such as the one that America experienced on September 11, 2001, it is appropriate for policymakers to review our laws, policies, and customs with an eye to changes that would enhance our safety and security. Identification systems, and the question of whether there should be a uniform national ID, have been significant features of public debate since it came to light that several of the terrorists acquired false identification papers.

Every policy proposal should be carefully examined for effectiveness and consistency with our values and freedoms. A national or uniform ID system offers less protection at greater cost to freedom than it appears to. Verifying identity is just one, fallible, way of attempting to secure transportation systems and infrastructure. A national or uniform ID system would be a small but significant step toward future impingements on freedom, including mandates that all Americans carry identity cards at all times, the creation of an internal passport system, and government tracking of individuals' travels and financial transactions.

Congress should not hastily enact any proposal simply because it is packaged as an "anti-terrorism" measure. Rather, it should encourage market solutions that allow people and institutions to choose how identity is to be established and how people's suitability for access to transportation systems, buildings, military bases, and other infrastructure is to be determined. The happenstance that nearly everyone carries a driver's license is not a sound basis for federally mandated or unified identity cards.

Security Benefits Are Illusory

It was only a matter of days after the attack of September 11 before some members of Congress proposed a national ID card system as a way

of thwarting additional terrorist attacks. In the past, a national ID card has been pushed as a way of finding illegal immigrants. Since September 11, the proposal has been repackaged as a “security” measure.

A national or uniform ID card would be a very bad deal for America because it would require some 250 million people to surrender some of their freedom and some of their privacy but not offer substantial protection from terrorist attack. An ID card with biometric identifiers may seem impenetrable, but there are several ways that terrorists will be able to get around such a system. They can bribe the employees who issue the cards or the employees who check the cards, for example. Terrorists could recruit people who possess valid cards—U.S. citizens or lawful permanent residents—to support and carry out attacks.

Indeed, past incidents of terrorism have been carried out by people born and raised in the United States, people who had been issued proper, fully valid identification. Knowing who a person is reveals little about his or her plans or motivations, and a national ID system would do nothing to distinguish first-time terrorists before they attack. Terrorist recruits or people who newly adopt terrorist methods will not be revealed by a national ID system until after our security has failed and disaster has struck. Identity-based security is valid in some contexts, but it is not a substitute for security programs that harden critical infrastructure against likely tools and methods of attack and that develop intelligence on the people and groups who wish to do our country harm.

Proponents of national ID systems point to countries in Europe, such as France, that already have national ID card systems. But the experience of those countries is nothing to brag about. The people in those countries have surrendered their privacy and their liberty, yet they continue to experience terrorist attacks. National ID cards simply do not deliver the security that is promised.

The Loss of Liberty Will Be Real

The establishment of a national ID card system would dilute civil liberties and pave the way for further intrusions on anonymity and freedom. The Fourth Amendment to the Constitution protects Americans against unreasonable arrests and the Fifth Amendment prohibits the government from forcing people to incriminate themselves. The Supreme Court recently upheld the arrest of a man who invoked his right to remain silent when a police officer asked him for identification. As strange as it may sound, standing quietly and peacefully on a public sidewalk can now be a crime

in America. Although the Supreme Court declined to say that the police can demand identification whenever they want, the police have essentially acquired that power as a practical matter. That is because it is almost impossible for a layperson to know precisely when he can lawfully refuse such a request. The law on the matter is just too nuanced for nonlawyers to comprehend.

If a national ID system were enacted, pressure would inevitably build to enhance the government's power even further by making it crystal clear that citizens must produce identification in any and all circumstances. The proof of this is at hand: In the countries that already have national ID card systems, the police have acquired the power to demand identification at will. Implemented widely, such power would become an "internal passport" system. "Your papers, please" could again become a familiar request, harking back to the worst totalitarian states of the last century. Americans are rightly suspicious of national IDs for this reason. A uniform requirement to carry and produce identification could quickly devolve into a comprehensive tracking mechanism, used by government at first to investigate ordinary crime but over time to systematically track and control ordinary, law-abiding citizens.

It is important to note that many of the proponents of the national ID card—such as Alan Dershowitz of Harvard Law School and Larry Ellison from Oracle—present the idea in its most innocuous form. The proponents say the card will be "voluntary" and that people will have to present it only at airports. And the card will reveal only a few basic pieces of information, such as name and address. But, over time, the amount of information on the card will surely expand. (The Pentagon has already moved to create a Total Information Awareness database that would contain medical and financial information on citizens.) The number of places where one will have to present an ID card will also expand, and it will eventually become compulsory. And, sooner or later, a legal duty to produce identification whenever a government official demands it could be created.

Government officials warn us to expect more terrorist attacks. It is a safe bet that there will be more anti-terrorism proposals in the wake of such attacks. Perhaps there will be an attack a year from now, and a limited national ID card will be proposed and enacted. Maybe three years later, America will be attacked again; people will die, and law enforcement will go to Congress and say, "We have a national ID card, but the problem is that it is voluntary, not compulsory." Thus, by increments, America

will get the full-blown national ID card system that is now in place in other countries. Congress should avoid this slippery slope by focusing its attention on more effective security measures. A national ID card expands the power of government over law-abiding citizens, but it will not really enhance security.

Rather than focus on government-issued ID cards, federal policy should encourage and foster the variety of identification systems that exist in the private marketplace today. People carry many types of privately issued identification, and these systems could be expanded and modified for security purposes. Many people, for example, carry credit cards that allow them to pay for goods or services. A variety of privately issued access cards allow people entry into buildings or access to automobiles. Many of these systems already provide better assurance of identity and trustworthiness than many government-issued ID cards. The government should accept privately issued identification that sufficiently authenticates the holders and the suitability of the holder for access to transportation systems and critical infrastructure. In a marketplace for identification services, consumers would be able to choose what methods they use to identify themselves, how much information they share for this purpose, and whether records are kept of their activities. A national ID system would deprive Americans of choices like these, which they should have.

Conclusion

It is very important that policymakers not lose sight of what we are fighting for in the war on terrorism. The goal should be to fight the terrorists within the framework of a free society. The federal government should be taking the battle to the terrorists, to their base camps, and killing the terrorist leadership; it should not be transforming our free society into a surveillance state. Proposals for uniform national identification would take America in the direction of a “Show us your papers” surveillance state.

Suggested Readings

Crews, Clyde Wayne Jr. “Human Bar Code: Monitoring Biometric Technologies in a Free Society.” Cato Institute Policy Analysis no. 452, September 17, 2002.

Kopel, David. “You’ve Got Identity: Why a National ID Is a Bad Idea.” *National Review Online*, February 5, 2002.

Lynch, Timothy. “Breaking the Vicious Cycle: Preserving Our Liberties While Fighting Terrorism.” Cato Institute Policy Analysis no. 443, June 26, 2002.

_____. “Cooperate, Or Else!” *Reason Online*, June 25, 2004. www.reason.com/hod/tl062504.shtml.

Twight, Charlotte. "Watching You: Systematic Federal Surveillance of Ordinary Americans." Cato Institute Briefing Paper no. 69, October 17, 2001.
Watner, Carl, and Wendy McElroy, eds. *National Identification Systems*. Jefferson, NC: McFarland, 2004.

—*Prepared by Timothy Lynch and Jim Harper*

