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Learning from History

Real and Perceived Threats to National Security

By

David Dupont

Presented to the Graduate Faculty of
Claremont Graduate University in
partial fulfillment of the requirements
for the degree of Master of Arts in
Politics.

We certify that we have read this
document and approve it as adequate
in scope and quality for the degree of
Master of Arts.

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Claremont Graduate University
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Studies

2022

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Introduction

Significant changes in American domestic security policies were generally associated with periods of military conflicts. Real or perceived threats were addressed in ways that, as stated by Justice Murphy describing the persecution of Japanese people in his concurrence to *Ex Parte Endo*, “...utterly foreign to the ideals and traditions of the American people.”¹ Laws that would pave the way for legalizing the surveillance and internment of civilian populations have their origin in the Quasi-War, early in American history. Likewise, the practice of state property seizure under the Office of Alien Property Custodian and limited internment programs were first initiated during WWI. Mass civilian internment and the requirement for the registration of foreign nationals came into existence leading up to WWII. This trajectory continued in modern times as well, with the extensive system of domestic surveillance at the start of the War on Terror, the recently expired Patriot Act, and the subsequent Freedom Act being the most recent examples. Forms of excessive encroachment in domestic and security policies by the government have marked some of the most disastrous moments in American civil liberty history. Junctures in the progression of history that provided the state with opportunities to take advantage of a conflict were commonly exploited and resulted in the implementation of overbearing measures. The instances of government overreach I am discussing have been widely scrutinized and documented even though in an altogether different setting. Furthermore, extensive scholarship analyzing the forms and effects of the government’s disproportionate power in the American context has been intensively published as well. Likewise, freedom of speech is a topic that is

¹ Justia Law, “*Ex parte Endo*, 323 U.S. 283 (1944)”.

tackled broadly across the literature. My primary approach is divergent because it is focused on the more physical and materially repressive actions, such as internment or confiscation. I have not encountered texts that encourage a change in the aspect of discussion and a reorientation towards a grand historical lens that includes the entirety of US history. For example, the typical discourse addressing security policy under the Patriot Act is confined to a historical window reaching back to the most recent administrations. One of the most tragic approaches to decision-making that a state can follow, is to shirk away from its responsibility of learning from the full extent of its past. For this reason, I argue for gaining a historical comprehension of these issues by exploring their origins starting at the inception of the Republic. By exploring the record of civilian internment, property seizure, wide-reaching surveillance, and other repressive measures, I expect to make the case for a more restrained and consequently more appropriate future security policy. Extensive persecutory security measures are costly, difficult to implement, and often result in wide-ranging unfavorable random consequences. It is in America's self-interest to deliberately reflect on approaches to security to maximize the protection and safety of Americans.

More widespread and comprehensive awareness of the full-length illustration of US security policies would likely lead future academics and policymakers to advocate for a more restrained approach to national security policy. My paper is structured as a historical argument, progressing chronologically from the emergence of various US security and internment laws, to the materializations of civilian internment, surveillance, and repression during the first and second World Wars. Next, a section on the contemporary period and the War on Terror will serve to provide the frame of reference for my work. My analysis will continue by exploring the

historical ramifications of shying away from a thorough assessment of the purposes and goals of US domestic security policy during turbulent times. My goal is to advocate for a more appropriate and restrained line of policy without jeopardizing the national security of the United States.

Literature Review

What is the significance of determining the basis for gaining a more complete understanding of security measures in wartime? Before I address that question it is necessary to disclose the sources I used to support my argument. My chronological starting point, The Quasi-War, is one of the least studied conflicts in American history but provides suitable documentation to support the inceptive underpinning for the scope of this paper. American historian Donald Hickey writing in *The Northern Mariner*, a journal on maritime affairs, traces the course of the conflict by focusing on American maritime capabilities and diplomatic relations with France. One of the few complete explorations of the Quasi-War is author William Phalen's *The First War of United States: The Quasi-War with France 1798-1801*. The author begins by describing the political realities faced by France and the United States at the turn of the 19th century. Phalen then chronicles the presidency of John Adams, the Jay-Treaty which precipitated the war, and the economic underpinnings of the conflict. He dedicates a section to the first buildup of American naval power in history and culminates his text by detailing the diplomatic 'XYZ affair' and the eventual Treaty of Mortefontaine, which ended hostilities. I include the Quasi-War as a way to essentially provide context on the Alien and Sedition Acts which arose out of that conflict. I rely on primary sources from the National Archives, Library of Congress,

and the United States Code of Laws in discussing the acts. I am also grateful to the Middle Tennessee State University's First Amendment Encyclopedia for information on the Virginia and Kentucky Resolutions, and the First Red Scare.

The subsequent component of my argument hinges on presenting a description of civilian internment in the US starting with the First World War and shifting into the ensuing postwar Red Scare. I owe much to *1914-1918-online*, an international online encyclopedia of the First World War, a joint project by two German universities, which provides a comprehensive historical database on the topic. Their narrative of aliens and internment during the Great War focuses mainly on the internment mechanisms of the United States, Germany, and Britain, citing numerous texts and primary documents on the topic. A recent collection of essays on internment during WWI, *Internment during the First World War: A mass global phenomenon*, contains an essay on the American system by German historian Jörg Nagler. In continuing to build on the context of American internment, Nagler's exposition on the prelude to internment camps, along with the portrayal of the internment experience, was essential. He backs up his central points with extensive sourcing from first-hand accounts of life as an enemy alien. British Historian Matthew Stibbe of Sheffield Hallam University, along with French historians Stéphane Audoin-Rouzeau and Annette Becker were my preeminent sources on the internment environment within the European mainland. Stibbe's *Civilian Internment during the First World War* is a compendium on the different national forms of internment on the European continent. Becker and Audoin-Rouzeau's text *14-18: Understanding the Great War* is a more standard analysis of WWI devoting only fragmented sections to the subject of internment. The historical framework for my argument spans an extended period of American history requiring an assortment of

journal articles and texts. Two online encyclopedias, edited by German and Japanese nonprofit organizations, aim to share and preserve the history of the incarceration of their respective peoples. Densho is a US-based organization offering an archive of primary sources and articles on Japanese internment. The German American Internee Coalition(GAIC) is a similar US-based organization only oriented around the German experience. In addition to the numerous primary sources from the National Archives and other government records, I utilized a collection of books written by German, Japanese, and American historians. Authors like the sociologists Wendy Ng and Tetsuden Kashima, along with Canadian historian Greg Robinson wrote some of the landmark books on the subject of Japanese internment which served as an anchor for my research into that particular topic. The authors' counterparts supporting my research on the situation of German aliens were American historians Stephen Fox and Max Paul Friedman. Similarly, as part of my research on the Patriot Act, I cite several government agencies' websites including the United States Customs and Border Protection, the Senate Committee on Homeland Security and Governmental Affairs, the Office of the Director of National Intelligence, and the Office of Legislative Research of the Connecticut General Assembly. I also included information provided by nonprofit agencies on the abuse of civil liberties under the USAPA and electronic surveillance, respectively from the American Civil Liberties Union(ACLU) and the Electronic Frontier Foundation. In addition to data from their website, I quoted former ACLU president Susan Herman's book *Taking Liberties* as a source for the effects of the War on Terror on civil freedoms in the US. Professor Kam C. Wong's *The Impact of the USA Patriot Act on American Society* fills a gap in the research tackling the implementation and impact of the legislation. The collection of essays of contrasting viewpoints titled *The Patriot Act*, edited by Lauri Friedman,

was useful in gaining an understanding of the various topics within the USAPA in a more objective manner. Lastly, I cited a study by political scientist Costa Panagopoulos, that analyzed the public opinion trends in the post-9/11 atmosphere surrounding Arab and Muslim Americans.

Comments on the Literature

Several observations regarding gaps and unanswered questions became evident in established literature. First, there is a lack of comprehensive analysis regarding the use of extreme security measures or any exploration of the subject, even reaching as far back as the period of the Quasi-War. The fact that I was only able to locate one comprehensive account related to my subject matter spanning the length of the entire era reinforced my opinion that this particular chapter in US history is lacking in research and requires further attention. Second, in the study of more recent examples, the major internment and surveillance operations of the two World Wars are mainly viewed through the lens of their respective contemporary times, lacking the overarching historical context. Third, outside the numerous studies addressing the case of Japanese internment, the overall awareness of the wartime treatment of other foreign ethnicities in the United States is lacking in complexity. I was forced to source from many general histories of the World Wars, where the reflections on internment are usually relegated to the sidelines. The internment of civilians in the US however deserves inquiry at least equivalent to the strong and lasting impact it has on US policy. The historians Matthew Stibbe, Max Paul Friedman, and Stephen Fox have contributed extensively to the study of war-time treatment of Germans during WWI/WWII. That the bulk of this study topic has been the contribution of three authors additionally backs up my claim for the need for further research. The problem is even more

apparent in the theme of Italians interned during WWII, their case being likely the least contemplated example of internment and wartime repression. My primary source on the Italian situation was *The Unknown Internment: A Oral History of the Relocation of Italian Americans During World War II*, written by the previously mentioned Stephen Fox. Finally, no consensus exists on the best approach to the study of extreme security measures. Much of the information on the topic is purely a historical account, followed by sociological research including oral and documented accounts of such events. As nearly all of my sources are descriptive, I am not stating a moral or strategic argument regarding these issues. Aside from academic literature on the topic, I also draw from various primary sources including the aforementioned encyclopedias, government archives, and websites. For the sake of my historically framed argument, using such primary sources is vital in avoiding a bias toward one ‘proper’ interpretation of the past. By mainly citing primary documents on many subjects, I can bypass some of the difficulties in understanding the continuum of history separated from any other scholar’s beliefs. I am not arguing for a certain interpretation of history, but rather for a comprehensive interpretation of history that does not cherry-pick to suit one’s argument. I argue that before any scholar embarks on crafting such normative arguments, they should seek to place both their understanding and work within the entire span of the topic’s history.

The Quasi-War and the Alien and Sedition Acts

The laws that would pave the way for legalizing the internment of civilian populations in wartime originated early in the life of the American Republic during the Quasi-War, an undeclared naval conflict between the United States and France lasting from 1798 to 1800.

Events following the American Revolution gradually led up to that diplomatic conflict. During the Revolutionary War, the US and France signed economic and defensive treaties that were crucial to securing the American victory in the War and established consulates in their respective states.² However, following the French Revolution which led to a series of French Revolutionary Wars, the US was determined to stay neutral in violation of its agreements with France. France's primary casus belli for starting the Quasi-War was the Jay Treaty, signed by Britain and the US in 1794. The treaty mainly contained solutions to a series of issues that remained unresolved between the two countries after the signing of the Treaty of Paris, which ended the American Revolutionary War.³ Against the backdrop of America breaking the Franco-American Treaty by not coming to the aid of France against Britain, John Jay's Treaty was interpreted by the French as an accumulative form of betrayal. Two years after the treaty's signing, France severed diplomatic relations and "...unleashed its warships and privateers on American commerce."⁴ America at this time had no standing navy and began constructing warships at a fast pace. A combination of armed merchantmen and the new American navy was able to provide a sufficient defense to discourage France, long used to bullying its less powerful continental neighbors, from attempting to do the same to the US.⁵ The cessation of the French Revolution, commencing with Napoleon's Coup of 18 Brumaire, also played a defining part in increasing the French desire for an end to hostilities(Ibid). This was also brought about by Napoleon's supporters among the French wealthy merchants, who sought to reassert their economic interests in the Caribbean sugar trade. Diplomacy played a part as well when a diplomatic commission was established that

² Hickey *The Quasi-War*, 68.

³ Ibid, 9.

⁴ Ibid, 69.

⁵ Ibid, 75-76.

initially aimed to prevent the outbreak of war, and eventually established the foundation for the end of the war attained in the Convention of 1800.⁶

It was against the background of the Quasi-War that the Alien and Sedition Acts would take form. The dominant political party of the time, the Federalists, favored a powerful central government and strongly supported placing restrictions on foreign-born Americans. The Federalist majority-controlled Congress passed a succession of four laws in 1798, at the precipice of war, that would become known as the Alien and Sedition Acts. This series of laws “...raised the residency requirements for citizenship from 5 to 14 years, authorized the president to deport ‘aliens,’ and permitted their arrest, imprisonment, and deportation during wartime. The Sedition Act made it a crime for American citizens to “print, utter, or publish...any false, scandalous, and malicious writing” about the government.”⁷ The Democratic-Republican party with Thomas Jefferson at the helm, opposed the Federalists, the party of President John Adams, along with the newly passed acts. The Democratic-Republican party was favored by naturalized American citizens, among the targets of the proposed acts. The only journalists targeted under the Sedition Act were those at Democratic-Republican leaning newspapers⁸. An intense negative reaction to the Alien and Sedition Acts “...helped contribute to the Democratic-Republican victory in the 1800 elections.”⁹ With the enactment of each subsequent act, the Republican opposition to them increased in vigor. Once debate on the Alien Enemies Act began, they feared that soon similar laws would be passed that applied to US citizens.¹⁰ Their fears were justified, as

⁶ Phalen *The First War Of United States*, 142.

⁷“National Archives and Records Administration, “Alien and Sedition Acts (1798)”.

⁸ Ibid.

⁹ Drexler, “Alien and Sedition Acts”.

¹⁰ Wicclair “USA PATRIOT Act and Alien and Sedition Acts”, 41.

evidenced by the enactment of the fourth and final piece of legislation, the Sedition Act. Although the Democratic-Republican's campaign to prevent the Sedition Act from passing failed, its passage resulted in an upwelling of localized opposition to the act. The most impactful of these were the Virginia and Kentucky Resolutions of 1798. The Kentucky Resolution was written by Thomas Jefferson, and the Virginia Resolution was drafted by James Madison. In the documents, they claimed that the acts moved beyond the limits of federal authority, and were thus null and void.¹¹ They urged the states to take measures to maintain their constitutional powers but failed to motivate any other states to pass similar resolutions. These resolutions came to the forefront again during the Nullification Crisis of the 1830s when they were held as founding documents of the state's rights cause.¹² Ultimately, three of the four internal security laws of the Alien and Sedition Acts were either repealed or were allowed to expire. The Alien Enemies Act, however, survived intact and remains contained within US Law to this day as Section 21-24 of Chapter 3 of Title 50 of the United States Code.¹³ This law authorizes the Executive to issue a Presidential Proclamation, as FDR did with Proclamations 2525-2527, to detain and intern all people of a 'hostile nation' within the United States. The law provided the legal foundation for civilian internment in the US and also began the legacy of a policy of detention in immigration policy.

World War One

¹¹ Dow "Virginia and Kentucky Resolutions".

¹² Ibid.

¹³ *Alien Enemies*, §§ 21 et seq.

The internment of Germans following America's entry into World War I signifies the beginning of the type of internment policy that continued to escalate during the following decades. Using the 1798 Enemy Alien Act, Woodrow Wilson enacted several policies that undermined the liberty of Germans living in the USA. They included "...bans on entering "forbidden zones", compulsory registration with the police or U.S. postmasters, prohibition on owning signaling apparatus, radios, and firearms..."¹⁴ The data from the 1910 census counted 2.5 million Americans who were born in Germany. Including the second-generation German population, the total increased to 8 million ethnic Germans, at a time in which the entire US population was only 92 million.¹⁵ The enactment of President Wilson's detention policy resulted in the internment of 6,300 men and a smaller number of women in the following camps: Fort Oglethorpe Georgia, Fort Douglas Utah, Fort McPherson near Atlanta, and Hot Springs North Carolina.¹⁶ The German experience during WW1 foreshadowed the sentiments encountered by the Japanese in the 1940s, This ranged from more tame anti-German inclinations such as banning language classes and books to the purging of German street and food names. Sauerkraut became 'liberty cabbage' foreboding the similar 'freedom fries' phenomenon of the post 9/11 era. Extreme forms of anti-German hostility also existed, such as the lynching of German coal miner Robert Prager in Illinois in 1918.¹⁷ A major financially rewarding economic component was the sweeping use of property seizure, with the Office of Alien Property Custodian amassing an amount "...worth more than half a billion dollars--close to the entire federal budget of pre-war

¹⁴ Stibbe "Enemy Aliens and Internment".

¹⁵ Manz, Stefan, et al *Internment during the First World War*, 199.

¹⁶ Ibid.

¹⁷ Siegel "Lynching of Robert Prager"..

America.”¹⁸ Germans in America were subjected to a large-scale mass seizure of their property, similar to the confiscation policy faced by the Japanese approximately 2 decades later.

Before facing internment, many enemy aliens were threatened with arrest and imprisoned for several weeks as a warning, told that if they engaged in any more disloyal actions they’d be sent to long-term internment camps.¹⁹ Around 1,500-1,800 cases of such temporary imprisonment of ‘disloyal’ enemy aliens during WWI have been documented. Avoiding such disloyal behavior was a nearly impossible task, with the Alien Enemies Act providing the broadest interpretation of such behavior. Many German seamen (and their ships) were captured and interned in the United States. Around 2,300 sailors and merchant marine crews were arrested and flagged for internment in the US.²⁰ These sailors were seized in American waters and ports, and territories such as Hawaii, Guam, Puerto Rico, and the Philippines.²¹ The sailors were sent to the McPherson and Hot Springs camps. The American internment programs during the Great War equally foreshadowed the progression of internment policies leading up to America’s entry into the Second World War.

Similarly, Panama’s imprisonment and deportation of initially thirty-two Germans, as requested by American officials, signaled similar actions in Latin America carried out during the next World War. The United States also attempted to pressure “...the governments of Cuba and Peru to introduce internment measures there.”²² Ultimately this system of the internment of

¹⁸ Gross “US Confiscated Half a Billion During WWI”.

¹⁹ Manz, Stefan, et al *Internment during the First World War*, 201.

²⁰ Ibid, 185.

²¹ Stibbe “Enemy Aliens and Internment”.

²² Ibid.

declared enemy aliens culminated in the first Red Scare following the end of the war and was accompanied by ensuing political repression.

The Red Scare of 1918-1920 was the first instance of widespread panic in the United States as a result of the newly formed Soviet state and its associated leftist ideologies. With the success of the Russian Revolution, there was a surge of labor organizations established across the world. Some of the most radical members of the left coalition, such as the anarchists, even went to such extremes of carrying out targeted bombings such as the widely publicized 1920 New York City Financial District bombing with a death toll of nearly 40. The official who in 1917 was appointed to administer the seizure of alien enemy property, Alexander Mitchell Palmer, would eventually become the United States Attorney General, setting his sights on the growing anarchist threat. Palmer, also a target of bombings, seemed like a natural choice to implement the government's planned response. Wanting to tackle the issue from the federal level, Palmer began restructuring a small agency within the Department of Justice called the BOI, Bureau of Investigation(which later evolved into the FBI). Previously the Bureau worked to solve white-collar crime and prostitution, but with Palmer's appointment of J. Edgar Hoover, a future giant of the US intelligence community, the Bureau's focus shifted.²³ Starting in 1919 the Bureau, with the help of local police and immigration services, conducted many raids on suspected anarchists and Russian workers who, without due process, faced deportation or imprisonment. These actions, widely regarded as extreme government overreach, would play an instrumental part in the founding of the ACLU.²⁴ Palmer's series of raids led to the arrest of about 3,000 suspects. These and other repressive actions were generally deemed constitutional

²³ Jensen *Introduction to Intelligence Studies*, 21.

²⁴ Kessler "A. Mitchell Palmer".

by the US Supreme Court in several cases. *Schenck v. United States*(1919), *Abrams v. United States*(1919), and *Debs v. United States*(1919) were all cases in which the Supreme Court ruled in favor of the constitutionality of the usage of the Sedition Act of 1918 and the Espionage Act of 1917. *Schenk* revolved around two socialist party members who had been indicted under the Espionage Act because they were spreading anti-draft messaging.²⁵ *Abrams* dealt with a similar issue of the constitutionality of convictions for the distribution of political leaflets.²⁶ *Debs* upheld the socialist figurehead and previous presidential candidate Eugene Debs’s conviction under the Sedition Act for a speech he had given that contained pacifist and anti-war notions.²⁷ The WWI era resulted in a grave limitation of the freedom of speech in the United States, and the attitudes from this period did not change until the 20s and 30s when a few first amendment complaints were justified in such cases as *Fiske v. Kansas*(1927) or *De Jonge v. Oregon*(1937).

The policy of internment was not unique to the United States of America, during the Great War countries across the globe began interning civilians from enemy nations. France, the first nation to implement such policies targeted enemy aliens at home and in French colonies. Ultimately, “...by November 1918, 60,000 or so enemy aliens had spent at least some time in captivity in France, many for four years or more.”²⁸ In Great Britain, 32,000 German and Austro-Hungarians were interned in relatively good conditions.²⁹ On the German side the internment policy was guided by a more reactive hand, the reasoning behind “...the internment of British enemy aliens in November 1914, French citizens in December 1914, Canadians, South Africans,

²⁵ Oyez “Schenck v. United States”.

²⁶ Oyez “Abrams v. United States”.

²⁷ Oyez “Debs v. United States”.

²⁸ Stibbe *Civilian Internment during the First World War*, 35.

²⁹ Stibbe “Enemy Aliens and Internment”.

and New Zealanders in January 1915, and Australians in February 1915...” was responding to the internment of Germans in those countries.³⁰ German attempts at internee exchanges went unsuccessful, and life for nationals of enemy countries within Germany was mainly marked by curfews, surveillance, and xenophobia. This situation was entirely different for Russian and Polish nationals in the country, as they comprised a large percentage of industrial and agricultural workers. For this reason, they were exempt from any policies of internment, yet many were forbidden from leaving the country or their employers, effectively becoming internees in a nation-sized camp. Tsarist Russia also had an atypical approach to the problem of enemy aliens. Around 250,000 Russians of ethnic German background were forcefully deported from Kiev, Riga, Podolia, Congress Poland, Volhynia, and the Volga region. Rather than ending up in camps, this population was abandoned to survive on their own in various unfriendly and uninhabited regions throughout Russia and Central Asia.

The French historians Stéphane Audoin-Rouzeau and Annette Becker in their book *14-18* wrote that the extension of the total war aspect of WWI was extended to the home front where enemy civilians paid the price. In the American and British contexts, the internment policies were preceded by acts of violence targeted at foreigners, involving beatings, riots, and targeted property damage.³¹ Ultimately, internment would become extremely widespread throughout the entire war. German and Austro-Hungarian nationals were interned at varying levels throughout this expansive list of countries: Italy, Portugal and its colonies, Romania, Greece, Nationalist China, Chile, Argentina, Panama, Siam, and even Haiti.³² For those detained in the American

³⁰ Ibid.

³¹ Audoin-Rouzeau and Becker *14-18*.

³² Stibbe *Civilian Internment during the First World War*, 37.

camps, the treatment was very favorable, with excellent medical care, and with food equal to that of the soldiers at a nearby army installation.³³ While their conditions were positive, there still was a section of the internees with nationalist fervor who retaliated against their wardens. At Camp Douglas where the more problematic prisoners were kept, they had issues with planted “...firebombs in the barracks, broken windows, stolen plumbing fixtures, destroyed doors and partitions...twenty-eight inmates even attempted to set the camp on fire.”³⁴

World War Two - Germans and Italians in the Americas

While the internment of Japanese Americans in the wake of Pearl Harbor is common knowledge in the American zeitgeist, the fact that many Italians and Germans faced similar situations in WWII would astonish many. The internment of Italians and Germans coincided with the Japanese internment process, after the attack on Pearl Harbor in December 1941. Initially, the measures were limited to the movement of people with German citizenship within the US. Similar to the approach in WWI, they were also not allowed to own a range of items such as radios, weapons, cameras, or certain maps.³⁵ By 1930 there were around seven million people of German heritage in the US, with the number born in Germany around 1.6 million³⁶ The only ethnic group larger in size than the Germans was the Italian community. Looking at aliens alone and not citizens “There were 314,715 alien Germans, and 695,363 alien Italians in the United States in 1940.”³⁷ On the US mainland, a total of 31,275 enemy aliens were detained by

³³ Speed *Prisoners, Diplomats, and the Great War*, 161-162.

³⁴ Ibid.

³⁵ Jong *The German Fifth Column*, 119.

³⁶ Fox *America's Invisible Gulag*, 13.

³⁷ Ibid.

the FBI. Fewer than one-third of these enemy aliens were permanently interned(cite America's invisible gulag, 38). Roosevelt's Presidential Proclamations 2526 (Alien Enemies--German) and 2527 (Alien Enemies--Italian) provided the legal foundation for the subsequent formal internment program. In the first three days after their issuance, only a few hundred alien enemies were interned, the following month rules by the Attorney General were implemented, requiring them to register and receive documents identifying them as enemy aliens resulting in the registration of around 1 million. Restrictions on movement and property ownership rights were initiated. This registration requirement under the Alien Registration Act of 1940, commonly known as the Smith Act, would become a permanent feature of US immigration policy. The emergence of the 'green card' or 'Alien Registration Receipt Card' has its origin in the Smith Act which required proof of registration from all immigrants. Officially referred to as Form I-151, this highly coveted document represents the legal right to reside and work in the US. In 1940 all foreign nationals, 14 and older, were required to be fingerprinted and registered at their local post offices, thought to appear less intimidating than other government offices.³⁸ This data was then available to organize the eventual detainment of thousands of foreign nationals once Roosevelt issued his executive orders and proclamations. During the signing of the act, FDR employed rhetoric that emphasized the purposes of the act "...not only for the protection of the country but also for the protection of the loyal aliens who are its guests."³⁹ The German and Italian populations were subjected to a system of 'selective internment'. Unlike the blanket internment of the Japanese, these Axis nationals were evaluated on a case-by-case basis. The haphazard use of suspicions based on rumors and gossip frequently resulted in a vastly imprecise

³⁸ Citizenpath "History of the Green Card".

³⁹ Roosevelt "Statement on Signing the Alien Registration Act".

decision-making process that determined which Italian and German aliens to raid and arrest. The length of their internment was driven by the progression of the wartime conflict. The Italian internees were mainly released in 1943 after Italy surrendered to the Allies. The German internees would have to wait until the end of hostilities, by November 1945 a large number of them were released or had their parole terminated. A small number of German internees did not regain their freedom until 1948.

This treatment of war-time enemy populations was not limited to enemy aliens within the borders of the United States. The populations of Axis ethnicities living in Latin American countries were extended the same extraordinary treatment. The FBI was an essential component of this Latin American policy, just as it was in the domestic efforts. Through an internal office called the Special Intelligence Service (SIS), around 700 clandestine FBI agents were stationed in embassies and American corporations as “legal attaches” throughout Latin America.⁴⁰ One of the first actions these agents took was to compile a list of “potentially dangerous enemy aliens.”⁴¹ Many times these agents were operating in countries where the leadership was unaware of the US’s intentions. Most scholarship on the topic has focused on the fears of the growth of Axis power in Latin America as driving US policymakers’ motivations for the plan. One of the foremost historians on this topic, Max Paul Friedman, believes these fears were overblown, and the more reasonable explanation for the causal sequence was the economic power that many Germans held in South America. He backs up this theory by describing the making of blacklists to target and confiscate the property of ethnic Germans in Latin American states, along with the difficulty they encountered trying to recover their homes or property after the war ended. In his

⁴⁰ Becker “FBI’s Role in Expelling Germans”, 3.

⁴¹ Kashima *Judgment without Trial*, 94.

view, the FBI served to secure US financial interests in the western hemisphere following the Monroe doctrine.⁴² The American policymakers' fear of Axis influence in their hemisphere was not entirely unfounded. During the year 1933, the Nazi Party formed a special *Auslandsorganisation* (Foreign Organization) which was to be used for the recruitment of German expatriates. This effort had disappointing results for the party leadership, and membership in Latin American countries ranged from the low single digits up to eight percent.⁴³ As an unfortunate result, most of those detained had little affiliation with Nazi politics and even included Jewish Germans fleeing Hitler's new regime. According to the historian Arnold Krammer, around 81 German Jews were detained and brought to the US from Latin America and held in the same camps as the suspected Nazi and Nazi sympathizers.⁴⁴ The majority of Germans at the time resided in Argentina, Brazil, Chile, and Mexico, yet the programs extended further. For example, the country of Ecuador held relatively little geopolitical weight and was not a target of Axis networks but the FBI nevertheless stationed 45 agents in the country. Most of these Latin American countries acquiesced to American pressure and rounded up their Axis nationals to be deported to the United States. There are various numbers of the number of people affected. One count indicated "...4058 Germans, 2264 Japanese, and 287 Italians."⁴⁵ The record-keeping surrounding this program was never entirely accurate, and as such, we rely mainly on rough estimates. The main aspect of the Latin American strategy was to 'repatriate' these peoples whom we collected from the South American continent, intending to send them back to their home countries. The central point involved the government refusing "...to provide visas to the

⁴² Becker "FBI's Role in Expelling Germans", 2.

⁴³ M. P. Friedman "Private Memory, Public Records, and Contested Terrain", 3.

⁴⁴ Krammer *Undue Process*, 98.

⁴⁵ Becker "FBI's Role in Expelling Germans", 3.

‘enemy aliens’ it brought to the US, and then issued arrest warrants to the deportees for violating immigration laws. The government had effectively transformed those it had detained into criminals in order to justify any treatment it deemed appropriate.”⁴⁶ This ploy served as the legal underpinning of the strategy thus justifying the arrest and treatment of the internees by the Immigration and Naturalization Service(INS). By the end of the war of the roughly 7000 enemy aliens rounded up, only 1447 remained in the US. A memorandum to the FBI Director in 1945, released under the Freedom of Information Act, outlines the internal opinion on the SIS program in Latin America. According to their internal numbers, the operation resulted in “...the identification of 806 espionage agents and the apprehension by Allied authorities of 327 espionage agents...”⁴⁷ Along with this, property valued above one million dollars was confiscated, mostly by the Latin American states. The other main achievements touted in the memorandum describe the success of shutting down various ‘clandestine radio sites and networks’ in Brazil and Chile. Interestingly enough, they cite the failure of British Intelligence in WWII as motivating their efforts in the program, hoping to avoid the blunders of British intelligence earlier in the war.

The Japanese in Latin America

As discussed, the Europeans who were detained from Latin America were mostly Germans. The fears surrounding the Germans and their economic activity in the hemisphere were far greater than that of the Italians in the region. The Italians who were detained and brought to the US nevertheless paid a high price for their country’s alliance with Germany. The second-

⁴⁶ Ibid, 4.

⁴⁷ Tamm “MEMO RE: PROPOSED LETTER TO GENERAL VAUGHAN”.

largest group of detainees in the Latin American program was Japanese nationals. The same system of collaboration with the security apparatus of Latin American states that focused most of its energy on Germans on the continent now expanded its scope to include the Japanese as well. The first step towards the policy addressing the Japanese, occurred in October of 1941 when Panama and the US agreed to proactively arrest and intern the Japanese on the Panamanian island of Taboga in the event of a war.⁴⁸ Peru was one of the countries with the largest population of Japanese people, with immigration going back to 1873 as it was the first Latin American country to establish diplomatic relations with Meiji-era Japan. The expansion of agriculture in Latin America in the late 19th and early 20th centuries attracted much excess farm labor from Japan. Combined with the economic depression of the 1930s and restricted immigration to the US, the Japanese population proliferated in Latin America. Most ended up in Brazil or Peru, and generally, most of the immigration of Japanese to the region occurred between 1885 and 1924.⁴⁹ During a single year, 23,000 Japanese entered Brazil.⁵⁰ According to Latin America specialist Marc Becker, Peru was home to more than seventy thousand residents of Japanese descent in the early 1940s.⁵¹ According to the 1940 census, Brazil had as many as 250,000 Japanese living within its borders. However, unlike Peru, Brazil was not easily convinced to join the internment plan. Economically much of the support for internment in Peru was guided by local animosity towards the Japanese and their businesses. Much to the economic benefit of Peru, the country ‘reclaimed’ the Japanese assets. Brazil took a different approach and only monitored, internally relocated, and culturally restricted their Japanese population. Since the

⁴⁸ Masterson *Japanese in Latin America*, 118.

⁴⁹ Ng *Japanese American Internment*, 4.

⁵⁰ Commission on Wartime Relocation and Internment of Civilians *Personal Justice Denied*, 306.

⁵¹ Becker *FBI in Latin America*, 3.

vast majority of the Brazilian Japanese worked in the expansive agricultural industry, it was economically unfeasible to follow the US's deportation suggestions.⁵² As a result of these demographics and Brazil's actions, about 80% of those ethnic Japanese detained and brought to the US originated in Peru.⁵³ According to the *Densho Encyclopedia*, a project aimed at spreading awareness of the Japanese internment experiences in WWII estimates that "the United States interned nearly 1,800 Japanese from Peru, 250 Japanese from Panama, and substantial numbers from Bolivia, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Mexico, Nicaragua, and Venezuela."⁵⁴ Panama, Peru, and many other countries were eagerly allied with the US to address the potential Axis problem, while others such as Brazil took their own approaches. Ultimately countries such as Argentina or Chile chose not to intern their Japanese populations at all.

The Emergence of Mainland Internment

The United States Government had various streams of motivation guiding it to implement its Latin America policy. By its admission, national security and retaining American regional supremacy under the Monroe Doctrine was the major factor in the decision. As discussed, the US government's fears of Axis involvement in Latin America were justified, only they vastly overestimated the extent of the Axis commitment to accomplish political and economic goals in the region. A comprehensive evaluation of the Axis threat was obstructed by the frequently misleading or outright false intelligence provided by SIS agents. Agents were often assigned to

⁵² *Densho Encyclopedia* "Japanese Latin Americans".

⁵³ Robinson *By Order of the President*, 264.

⁵⁴ *Densho Encyclopedia* "Japanese Latin Americans".

positions with little knowledge of their region and frequently without the necessary language proficiency. In hindsight, the “United States officials made the erroneous assumption that ethnicity alone decided loyalty.”⁵⁵ Aside from the US national/regional security interests, various economic considerations also played an important role. Both the Latin American countries which confiscated the property of those German, Japanese, and Italians who were deported and interned and the United States benefited economically from the arrangement. The countries reaped pure economic gains, and the American companies in those states now no longer faced serious competition. The blacklist of individuals and businesses assembled by the FBI under the direction of the FDR administration foreshadowed the more contemporary sanctions approach taken by the US against its modern adversary countries. The final primary aspect of US rationality for the Latin American plan concerned the topic of POW bargaining. A series of internal state department memorandums obtained by the German American Internee Coalition discovered the strategy of using the enemy aliens as trading material for Allied citizens who were being held in Axis countries. According to the coalition, this motivation serves to dispel the notion that the US mainly took these actions for security concerns above all. It also explains why many internees from Latin America ended up repatriating to their native country, now ravaged by war, which they had only recently fled. Repatriation was commonly not voluntary and predominantly served the interests of US policymakers.⁵⁶ Once the war had ended, the process for ending the internment of many enemy aliens brought to the US from Latin America was not very expeditious. In July of 1945, almost two months after Germany surrendered, President Truman issued Presidential Proclamation 2655 which authorized the US to deport any enemy

⁵⁵ *German American Internee Coalition* “Timeline of Related Events”.

⁵⁶ *Ibid.*

aliens who may be dangerous to the public peace and safety.⁵⁷ At this point, the thousands of remaining internees were in limbo and technically remained imprisoned indefinitely. In September of that year, Truman also issued Presidential Proclamation 2622 which authorized the deportation of enemy aliens brought to the US from Latin America. Proclamation 2685 was issued the following year, which overrode Proclamation 2622 and reauthorized the deportation repatriation of enemy aliens brought to the US. However, this proclamation allowed for an unreasonable timespan of 30 days for enemy aliens to try to arrange their affairs in preparation for their departure. Not all enemy aliens were deported, with the proclamations being intended for ‘dangerous’ aliens. Those who were released and allowed to remain in the US either returned to relatives or began reentering society on their own. The bureaucratic process of releasing the remainder of the internees dragged on into 1947 and concluded in 1948 when the final internee was released. Efforts were made within the government to expedite the process, such as Senator William Langer of North Dakota’s Senate Bill 1749, but were not successful. The Supreme Court would come to uphold the government’s actions in *Ludecke v. Watkins*(1948) in which they denied a German internee’s writ of habeas corpus who had been interned since 1941(cite justia Ludecke v Watkins). Throughout the war and after its end “No internee was ever convicted of a war-related crime against the United States.” Once released most internees who were to remain in the US had to sign oaths of secrecy under threat of deportation if they spoke of their experiences.⁵⁸ The elimination of the WWII internment process commenced slowly without any regard for the internee's human rights.

⁵⁷ Ibid.

⁵⁸ Ibid.

The Japanese on the Mainland

The Japanese within the United States faced a similar fate to their Latin American kin. The major difference was that a majority of Japanese interned on the mainland were American citizens, along with the comparatively easier logistical task of transportation to the assembly centers and detention facilities. The proportion of US citizens among the Japanese internees was nearly two-thirds of the total, making this arguably the most egregious transgression against traditional American ideals. Japanese immigrants to America faced assorted forms of repression since their first arrival in 1869. There were even unsuccessful attempts to segregate Japanese children at public schools in San Francisco.⁵⁹ Numerous states passed laws preventing ‘aliens ineligible for citizenship the right to own or lease any land. Eventually, a Supreme Court case, *Takeo Ozawa v. U.S.*, would limit the ability to become a naturalized citizen to “...free white persons and aliens of African ancestry.”⁶⁰ Japanese immigration effectively stopped in 1924 when the National Origins Act banned all immigration from Asia. After the attack on Pearl Harbor in late 1941, a series of anti-Japanese and anti-axis national laws and actions were implemented. In 1942 the so-called ‘strategic military areas’ along the Pacific coast were established and President Franklin D. Roosevelt issued Executive Order 9066, which authorized the creation of military exclusion zones for civilian internment.⁶¹ This executive order was employed for the detainment of people of Japanese ancestry, while the smaller German and Italian populations undergoing the same treatment were held under Presidential Proclamations

⁵⁹ Ng *Japanese American Internment*, xvii.

⁶⁰ *Justia Law* “*Ozawa v. United States*, 260 U.S. 178 (1922)”.

⁶¹ *National Archives and Records Administration* “Executive Order 9066: Resulting in Japanese-American Incarceration (1942)”.

2526, and 2527. Initially, when these two proclamations were issued in December of 1941 they included a subsection for the Japanese population, 2525.⁶² This proclamation however was superseded by Executive Order 9066 in early February of the next year. A new agency, the War Relocation Authority(WRA) was created to manage the internment of 110,000 Japanese Americans. Interestingly enough, General John L. DeWitt, the officer in charge of the internment of the Japanese initially wanted to pursue a similar strategy of civilian internment for the entire German and Italian population as well. When he sought permission to do so the government “...declined to approve indiscriminate mass removal of any other group...”⁶³ It was decided then that only the entirety of Japanese Americans had to be immediately separated and isolated from the national American population. The German and Italian populations were interned to a much smaller degree. However, the final internment camps for the Japanese Americans were only in the planning stages at this point. The Western Defense Command, the Army regional command responsible for the defense of the Western United States, created a functional command, the Wartime Civil Control Administration(WCCA), tasked with the logistics and construction of building or repurposing temporary detention camps for the 110,000 Japanese Americans.⁶⁴ Some of the ‘camps’ the WCCA utilized were previous migrant worker camps, Civilian Conservation Corps Camps, Army Bases, racetracks, fairgrounds, and Indian Reservations. Throughout the spring and summer of 1942, the interned Japanese were kept in camps run by the WCCA and were then transferred to permanent camps administered by the WRA during the fall of 1942. Ten proposed locations for the permanent internment camps were identified and construction was

⁶² *National Archives and Records Administration* “World War II Enemy Alien Control Program Overview”.

⁶³ *Robinson By Order of the President*, 128.

⁶⁴ *Densho Encyclopedia* “Wartime Civil Control Administration”.

completed: Tule Lake and Manzanar in California, Gila River, and Poston in Arizona, Topaz in Utah, Rohwer and Jerome in Arkansas, Minidoka in Idaho, Heart Mountain in Wyoming, and Granada in Colorado.⁶⁵ Officially the camps were referred to as ‘Relocation Centers’, and most were located in rural and often inhospitable areas. The process of relocation to the camps was an arduous journey for the Japanese Americans, exclusion was not undertaken universally at a single time. The west coast was divided into two military areas, No. 1 and No. 2, that each had different policies on where enemy aliens may or may not be situated. Around 9,000 Japanese Americans voluntarily relocated out of Military Area #1 to Military Area #2, the area where the recent public proclamation implied would be free from restrictions. Ultimately, a total of 108 ‘Civilian Exclusion Orders’ were announced, each affecting around 1,000 people, and the Japanese population was eventually forcefully relocated and interned whether they were in area #1 or #2.⁶⁶ The state with the largest Japanese population of nearly 150,000 was Hawaii. Rather than being interned en masse, the Japanese of Hawaii were only subjected to increasingly strict controls and surveillance. However, under pressure from President Roosevelt and Secretary of the Navy, Frank Knox, the military governor of Hawaii, General Emmons, accepted the plan to intern only the most dangerous of the Japanese in Hawaii.⁶⁷ Of the around 10,000 people who were investigated only 1,569 were apprehended to be interned. Also, around 1000 Japanese voluntarily left Hawaii to join their family members who were already interned. The Japanese treatment in Hawaii serves as a strong contrast to that of the Japanese on the American mainland.

⁶⁵ U.S. National Historic Landmarks Program *JAPANESE AMERICANS IN WORLD WAR II*, 8.

⁶⁶ *Ibid*, 27.

⁶⁷ *Ibid*.

The report *Personal Justice Denied* by the Commission on Wartime Relocation and Internment of Civilians was made to ‘review the facts and circumstances surrounding Executive Order 9066’ along with the ‘directives of the United States military forces requiring relocation’. The commission in this report identifies four major explanatory factors explaining the context of the relocation project. They identify the exclusion as a component of a line of animosity and distrust toward Japanese people in America. The startling speed at which Japanese armies were winning encounters in the Pacific theater against the Allies served to ignite fears of potential attacks on the West Coast. Also, the notion of a ‘fifth column’ formed by Japanese saboteurs was widely believed to have aided in the Pearl Harbor attack. Politicians, too, contributed to this context, as they began taking more anti-Japanese positions and eventually urged the War and Justice departments for measures such as those which were eventually implemented. However, a different case was made in a report requested by the Chief of Naval Operations in 1941 named the Ringle Report after Kenneth Ringle, the Naval Intelligence Officer who penned it. As a Japanese expert, Ringle deemed that the wide majority of both second and first-generation Japanese in the US were sufficiently loyal to the United States. He urged against detention measures and emphasized that the number of Japanese “...actuated by a fanatical loyalty to that country who would act as saboteurs or agents...is estimated to be less than three percent of the total, or about 300 in the entire United States.”⁶⁸ The Commission's report also identifies military necessity as the major justification given for the measures and rightfully concludes that “...the record does not permit the conclusion that military necessity warranted the exclusion of ethnic

⁶⁸ *Naval History and Heritage Command* “Ringle Report on Japanese Internment”, 2.

Japanese from the West Coast.”⁶⁹ The report discusses the vast number of conditions that permitted the decision to carry out the internment. These conditions range from ignoring the opinions of intelligence services who denied the possibility of a ‘fifth column’ to General Dewitt’s tendency to exaggerate requirements needed to maintain security. President Roosevelt himself went forth with the decision without raising it to his Cabinet to discuss or review the situation.

The impact of the mass relocation and internment of Japanese Americans was devastating for the families affected. They were limited to bringing only that which they could carry, and wages for labor at the camps were low even for professional employees.⁷⁰ Once they were eventually released from the camps, they were given compensation for their lost personal property that did not approach any fair amount of repayment. Along with their loss of property, many were left with psychological problems from the ordeal. The CWRIC report also identifies that the government did not try to compensate them for their other types of injury, such as “...the stigma placed on people who fell under the exclusion and relocation orders; the deprivation of liberty suffered during detention; the psychological impact of exclusion and relocation; the breakdown of family structure; the loss of earnings or profits; physical injury or illness during detention.”⁷¹ The end of the Japanese internment in the US was the result of two Supreme Court decisions handed down on the same day in December of 1944. The announcement of the War Department lifting the West Coast exclusion orders a day before these two cases were published was most likely the result of prior notice of the ruling. On December 17 “...Public Proclamation

⁶⁹ Commission on Wartime Relocation and Internment of Civilians *Personal Justice Denied*, 8.

⁷⁰ *Ibid*, 11-12.

⁷¹ *Ibid*.

21 was issued. General DeWitt's mass exclusion orders were rescinded."⁷² On December 18 the decisions in *Korematsu v. United States*(1944) and *Ex parte Mitsuye Endo*(1944) were announced. *Korematsu* upheld the constitutionality of the exclusion zones, stating that "Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire because the properly constituted military authorities feared an invasion of our West Coast."⁷³ In the *Endo* case, the Court unanimously ruled that Mitsuye Endo should be given her freedom and that the WRA had "...we conclude that, whatever power the War Relocation Authority may have to detain other classes of citizens, it has no authority to subject citizens who are concededly loyal..."⁷⁴ Unlike *Korematsu*, which upheld the constitutionality of the internment, *Endo* avoided a discussion of constitutional issues entirely and focused exclusively on the WRA. Still, the *Endo* case ultimately provided the legal reasoning for ending detention. The dissent written by Justice Owen Roberts in the *Korematsu* case highlights a contradiction with the case. Roberts saw *Korematsu* as facing a series of contradictory proclamations, "The earlier of those orders made him a criminal if he left the zone in which he resided; the latter made him a criminal if he did not leave...The two conflicting orders, one which commanded him to stay and the other which commanded him to go, were nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp."⁷⁵ Both *Endo* and *Korematsu* had contradictory factors, *Endo* determined loyal citizens could not be detained, but *Korematsu* provided a loophole to punish individuals refusing an ostensibly illegal detainment. There was

⁷² Ng *Japanese American Internment*, 97.

⁷³ *Justia Law* "Korematsu v. United States, 323 U.S. 214 (1944)".

⁷⁴ *Justia Law* "Ex parte Endo, 323 U.S. 283 (1944)".

⁷⁵ *Justia Law* "Korematsu v. United States, 323 U.S. 214 (1944)".

not a single case of a Japanese saboteur or fifth column type group throughout the entire war. As the Japanese population was the most culturally and ethnically dissimilar to most Americans at the time, they suffered an anti-Asian racist enhanced version of the already existing popular hysteria surrounding enemy aliens in the US. Germans and Italians were spared this more extreme fate due to their proximity to traditional American culture and history. In the *Korematsu* dissent, Justice Frank Murphy argued that “No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry.”⁷⁶ The Japanese were extended the worst treatment out of all the Axis nationals, in an episode of history that tarnishes the American brand of democracy.

The War on Terror and the Patriot Act

The Global War on Terrorism, launched within days of the 9/11 attacks on the United States, initially was an international coalition to fight worldwide terrorism. This war, commonly known as The War on Terror, led to the subsequent passage of the USA Patriot Act(USAPA). The act became effective within 45 days of 9/11 and is surely one of the most discussed issues of domestic and security policy today.

Public opinion as a result of the real and perceived threats led to the Joint Resolution “To authorize the use of the United States Armed Forces against those responsible for the recent attacks launched against the United States”.⁷⁷ Congressional opposition to the resolution was

⁷⁶ Ibid.

⁷⁷ "S.J.Res. 23 — 107th Congress: Authorization for Use of Military Force".

virtually non-existent, similar to the small number of dissenters to the USAPA. Barbara Lee, the representative for California's 13th congressional district, was the only member of Congress to vote against the use of force after 9/11. She gained both national attention and criticism for her war resolution stance, in addition to her opposition to the USAPA, but the fact that she is now a widely influential 12th-term congresswoman is evidence that a solitary stance against widespread political opposition can bear long-term rewards along with political longevity. Her act of legislative courage deserves to be evaluated in light of a conflict that only recently terminated with the dubious distinction of having been the nation's longest-lasting war.

Continuing in the long tradition of creative usage of acronyms, the full title of the USA Patriot Act is **U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001. According to the Office of the Director of National Intelligence, the US Intelligence Community had 13 member agencies before September 2001, a number that has been expanded to 18 in recent years.⁷⁸

Similarly, the 9/11 attacks were also responsible for the creation of the Department of Homeland Security. Congress led this charge with the Homeland Security Act of 2002 which consolidated "...the 22 disparate agencies and bureaus responsible for disaster preparedness, prevention, and response into one Department of Homeland Security(DHS) with the unified purpose of protecting the homeland."⁷⁹ This also included the responsibility for facilitating trade and travel along with securing the border, with the largest law enforcement agency of the DHS

⁷⁸ *Office of the Director of National Intelligence* "Members of the IC"

⁷⁹ *Homeland Security & Governmental Affairs Committee* "9-11 Commission, Homeland Security, and Intelligence Reform".

being the U.S. Customs and Border Protection⁸⁰. A somewhat similar consolidation effort was attempted for the intelligence community with the Intelligence Reform and Terrorism Prevention Act of 2004, but this only connected the agencies through a ‘National Counter-Terrorism Center’ to encourage cooperation. The Patriot Act in the most general terms expanded the surveillance powers of law enforcement agencies and increased the penalties for terrorism and other related charges. The ACLU in their analysis of surveillance under the original Patriot Act describes four areas of surveillance that were empowered. It expanded the government’s ability to look at records held by third parties, along with the ability to search private property without notifying the owner. Collection of phone records under ‘trap and trace’ searches also was expanded, as well as a growth in the exceptions to wiretap laws by agencies.⁸¹ From the initial planning stages onward, the USAPA has been a controversial package of legislation. Comparing the act to the previously discussed sections, the origin and implementation of the USAPA bear a distinct resemblance to earlier wartime historical measures. While the measures undertaken in the modern scope are objectively less extreme and reckless than those taken during the two World Wars, they still create issues for American democracy and strategy. The former president of the ACLU, Susan Herman, in her book *Taking Liberties: The War on Terror and the Erosion of American Democracy* intends to convince readers that the many constitutional protections and rights they enjoy have been badly damaged following 9/11 and the War on Terror. Published in 2011 she lays out a series of cases where individuals were mistakenly caught in the crossfire of the War on Terror. The second half of her book is more concerned with the rampant and varied

⁸⁰ *U.S. Customs and Border Protection* “About CBP”.

⁸¹ *American Civil Liberties Union* “Surveillance under the Patriot Act”.

forms of surveillance practiced by the US.⁸² The contemporary methods of surveillance are technically far more advanced and offer a heightened ability to conduct, under the USAPA, constitutionally questionable actions. The USAPA has been discussed as an emergent threat to the ideals and protections outlined in our constitutional foundation. However, when viewed as another chapter in the lineage of US overreach in periods of conflict, it appears rather as another embodiment of this recurring issue of reconciling security and constitutionality. The USAPA also can be interpreted as a sign of improvement in this realm of security issues, as many of the most controversial sections of the Patriot Act were allowed to expire over the years. However, in 2015 when provisions of the associated USA Freedom Act were allowed to temporarily expire, congress moved to reauthorize them for another four years effectively reviving the subsided components of the legislation.⁸³ Although the offending portions of the USAPA were allowed to expire in 2020, there is no guarantee that the sections will not be revived in the future. While some provisions were allowed to lapse, selected sections of the act were permanently incorporated into US law through the USA Patriot Improvement and Reauthorization Act of 2005. Some of the features that were made permanent included the authority to surveil telecommunications on a grand scale under section 214. Or section 202, which allowed wiretapping in non-terror-related computer fraud cases⁸⁴ The public discussion around the USAPA and associated legislation suffered from a drought of historical context. As stated above, the USAPA was a continuation of a long line of government overreach in US security policy.

⁸² Herman *Taking Liberties*.

⁸³ McKinney "Section 215 Expired".

⁸⁴ L. Friedman *The Patriot Act*, 121.

Similar to the utilization of the sudden panic and reaction to the attacks on Pearl Harbor, the chaos surrounding 9/11 was used to pass laws like the USAPA.

Arab and Muslim Americans

Arab and Muslim-Americans, following the 9/11 events, encountered a similar situation to the Japanese, German, and Italians of the past periods. The circumstances were different, however, as the 9/11 aggressor was not another sovereign nation, but an extremist Islamic terror group. Before 2001 there already was concern about anti-Muslim sentiment in most western countries. The US government in response to the 9/11 events actively tried to stem islamophobia and promoted support to the Arabic and Muslim populations in the US, an effort that was often not very successful. Instead of facing outright government repression, they mainly faced Islamophobic persecution from the public. President Bush at the time “...urged Americans to resist anti-Muslim impulses in his address to a grieving nation delivered to a joint session of Congress on September 20, 2001”, but this seemed to have little impact on the issue.⁸⁵ After the attacks, violent incidents affecting Arabs and Muslims, as well as those who could be perceived to be Arabs and Muslims increased nationwide. Political Scientist Costas Panagopoulos in his analysis of the changes in public opinion after 9/11 stated that the FBI “...reported a 17-fold increase in anti-Muslim crimes nationwide during 2001.”⁸⁶ Despite the increase in hate crimes, Americans seemed generally tolerant, and according to opinion polling “Half of all Americans believed in June 2002 that treating Muslims differently violates their rights.”⁸⁷ While

⁸⁵ Panagopoulos “Arabs and Muslims in Aftermath of 9/11”, 608.

⁸⁶ Ibid, 609.

⁸⁷ Ibid, 612.

islamophobic sentiments were not as extreme as their counterparts in past periods, they still had a major impact on Arab and Muslim populations in the US. While islamophobic attitudes only extended to about half the population, the public support for the USAPA itself was a repeat of the mass support for similar measures in public opinion during World War 2. Professor of criminal justice Kam C. Wong in his *The Impact of USA Patriot Act on American Society* cites numerous polls and media pieces from the time that show that a majority of the public supported most of the components of the USAPA.⁸⁸ This support continued for many years after the passage of the act, and Wong theorizes that this can be explained through an extensive lack of understanding of the legislation, an opinion that is backed up by other surveys. The more the public was informed about the act, the less likely they were to unconditionally support it. From the beginning, there was small grassroots opposition to the passage of the law, eventually growing with the support of various human and digital rights organizations such as the Electronic Frontier Foundation or the Bill of Rights Defense Committee. Numerous states and localities also passed resolutions repudiating parts of the USAPA. Alaska, Colorado, Hawaii, Montana, and Vermont all passed resolutions between 2003 and 2005 declaring the enhanced search and surveillance sections an encroachment on civil liberties.⁸⁹ If the various forms of opposition to the USAPA had attempted a more historical argument that lays out the long lineage of security measures infringing on civil liberties and human rights, then they very likely may have encountered more support for their cause. Certainly, it is wrong to state that this strategy surely would have succeeded, but a strong case can be made that the opposition would have been much stronger if historical examples, as described in this paper, would have been incorporated into the

⁸⁸ Wong *The Impact of the USA PATRIOT Act*, 350.

⁸⁹ Norman-Eady "State Resolutions Opposing USA Patriot Act".

discourse leading up to the passage of the act. Once again, both real and perceived threats to national security were exploited to expand a range of security policies.

Conclusion

All the events delineated in this paper have a familiar pattern of denying civil liberties in the name of enhancing national security. Historically, American foreign policy and accompanying national security considerations overpowered the sphere of domestic policies protecting civil liberties. Denying civil liberties is not intertwined with America's stated and historical values, in fact, the trajectory of American domestic politics has been one of expanding civil rights and liberties to minority groups. What each of the case examples covered above have in common, is that they were the result of the overpowering of traditional American liberal domestic policies by a competing American tradition of a 'realist' foreign policy. Each of these lapses occurred during a 'wartime' period where security concerns tend to overpower all competing areas of policy. Realism is a spectrum of ideas and theories that are based upon the Hobbesian philosophy of human nature, and it shares two common assumptions. First, the international system all states are constrained by is anarchic in nature because it lacks a central authority to enforce any form of rules. Second, states are driven to act in their rational self-interest with the goal of self-preservation through power, generally with military capabilities. This is a consequence of the fact that one state can never fully know if a competing state is

benevolent or antagonistic because they are within an anarchic structure where the survival of the state is the highest priority.⁹⁰

It is often repeated that America has a tradition of ‘isolationism’ in dealing with other countries, and only became more internationalist when drawn out by the World Wars. In reality, isolationism existed only briefly following the formation of the American state. American foreign policy quickly became active in the international arena as demonstrated by the immediate start of diplomatic relations with European countries, the Quasi-War, the War of 1812, and the Monroe Doctrine. The conflict between the values America observes in domestic policies, and how it handles real and perceived international security threats create the gap between the language of American liberal values and the actions of politicians and institutions. A realist approach, if used effectively, can result in a national security policy that is both restrained and successful. That restraint was sorely absent in the decisions made in this historical context.

Military conflicts, directly and indirectly, have swayed our nation’s security policy disposition. The unmistakable pattern has been constant from the 18th-century Quasi-War to the wars of the 21st century. The motif has brought to the forefront drastic measures including internment, property seizure, restrictions on freedom of speech, and overarching surveillance.

The sensible way ahead is a comprehensive reevaluation of the past in order to arrive at a more measured, while still highly effective, security policy. While the debate around inordinate repressive actions has been marked by controversy since the initial discourse on the Alien and Sedition Acts, we now have the benefit of a documented extensive history over two centuries to

⁹⁰ Mearsheimer *The Great Delusion*, 139-140.

draw upon. Instead of encountering the issue as a new immature nation, we can assess these matters with the confidence of the longest-standing democracy in the world and we can tackle this issue with the confidence of a knowledgeable political system reliant on its historical record. With this assurance of a new approach those involved in the debate can feasibly break this chain of disastrous policies in American history.

Scholars involved in attempting to tackle this issue may encounter some complications in my recommended novel approach. For example, there is uncertainty regarding the efficacy of making such a historically enlightened case. The US government is anything but a monolith, for such an argument to be persuasive would rely on policymakers in various positions to be equally informed and act proportionately. Humans however are emotional beings, more so evident in moments of conflict when there is a heightened sense of insecurity and apprehension affecting a rational decision-making process. Military or intelligence service bureaucracies equally are not very homogeneous, resulting in conflicting and opposing interests within the various agencies or branches, which causes them to pursue self-serving goals instead of putting national interests in the foreground. This became evident after 9/11 when efforts to connect the various intelligence services encountered massive opposition. This also holds on the political side, politicians frequently have asymmetrical definitions of self and national interest. Wealthy interest groups began injecting unprecedented amounts of funding into political campaigns after the *Citizens United v. Federal Election Commission* decision in 2010. Nowadays, an argument could be made that certain politicians tend to represent private and wealthy interest groups to a greater degree than the public or national interests as a whole. For these reasons, advocacy for this line of argument may, unfortunately, be ignored. Nevertheless, the author feels very optimistic as far as

the future is concerned. A number of government organizations are employing a management concept known as Lessons Learned which is often summed up as: “A lesson learned is knowledge or understanding gained by experience.” We have the most researched and analyzed account of security issues to draw upon, it is not unreasonable to expect a superior security product as a result of learning from history

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