

An Analysis of Congressional Arguments Limiting Free Speech

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The Alien and Sedition Acts, Espionage and Sedition Acts, and USA PATRIOT Act are all war-time acts passed by Congress which are viewed as blatant civil rights violations. This study identifies recurring arguments presented during congressional debates of these acts. Analysis of the arguments suggests that Terror Management Theory may explain why civil rights were given up in the name of security. Further, the citizen and non-citizen distinction in addition to political ramifications are discussed.

The Alien and Sedition Acts of 1798 are considered by many as gross violations of civil liberties and constitutional rights. John Miller, in his book, *Crisis in Freedom*, described the Alien and Sedition Acts as a failure from every point of view. Miller explained the Federalists' "disregard of the basic freedoms of Americans [completed] their ruin and cost them the confidence and respect of the people."¹ John Adams described the acts as "an ineffectual attempt to extinguish the fire of defamation, but it operated like oil upon the flames."² Other scholars have claimed that the acts were not simply unwise policy, but they were unconstitutional measures.³ In an article titled "Order vs. Liberty," Larry Gragg argued that they were blatantly against the First Amendment protections outlined only seven years earlier.⁴

Despite popular opinion that the acts were unconstitutional and violated basic civil liberties, arguments used to pass the acts have resurfaced throughout United States history. Those arguments seek to instill fear in American citizens that foreigners will ultimately be the demise to the United States unless quick and decisive action is taken. In a letter from James Madison to Thomas Jefferson, Madison wrote, "Perhaps it is a universal truth that the loss of liberty is to be charged to provisions against danger, real or pretended, from abroad."⁵ While scholars criticize the constitutionality of the actions taken against immigrants in the 1790's, those same questionable actions have repeatedly been accepted by lawmakers in acts such as the 1917 Espionage Act and Sedition act of 1918, and most recently in the 2001 USA PATRIOT Act. Attorney Michael Linfield writes, "Rather than being an exception, war-era violations of civil liberties in the United States are the accepted norm for our government."⁶ David Cole suggests in his book *Enemy Aliens*, that in practice, the government has most often at least initially sacrificed noncitizens' liberties while retaining basic protections for citizens. While this is often a politically safe move to make, Cole warns that according to history, those restrictions will inevitably be used against citizens as well as noncitizens.⁷

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Due to the popular conception that these acts are repressive in nature and violate basic constitutional rights, it is important to understand why and how similar legislation continues to resurface. The present study seeks to understand the rhetorical strategies and recurrent arguments used to pass these acts through Congress. By recognizing the recurrent arguments and understanding how those arguments have affected our nation in the past, one can be more skeptical in accepting those same arguments in the future.

Literature Review

Alien and Sedition Acts

The Alien and Sedition Acts were passed during a time of great tension due to possible war with France. In a paneled symposium for the *New England Journal of International and Comparative Law*, Daniel Kanstroom outlines the history of the Alien and Sedition Acts and offers the argument that the fear of foreigners propelled its passage. Furthermore, he argues that the United States has repeatedly contradicted the “nation of immigrants” ideal on which it was founded. Kanstroom described the Alien and Sedition Acts to be the first time in United States history that the government systematically targeted non-citizens because of deep fears about their loyalties.⁸ The Federalist felt that an insurgent of immigrants would hurt their party politically because many immigrants tended to vote Republican. The Federalist had strong anti-French sentiments and feared that the French immigrants would ultimately create an uprising on the American shores. In order to save the country from internal enemies, something radical was needed.⁹ In general, the goal was to keep these immigrants from being able to vote, presumably Republican, for as long as possible.

Based on these fears, the Federalist pushed four acts through Congress known collectively as the Alien and Sedition Acts. The first act, the Naturalization Act, extended residency requirements for citizenship from five to 14 years. The Alien Enemies Act was primarily targeted at French aliens and required a declaration of war to be enacted. It stated that during war, all natives, citizens, denizens, or subjects of the hostile nation shall be liable to be apprehended, restrained, secured and removed, as alien enemies.¹⁰ The Alien Enemies Act authorizes the President during wartime to detain, deport, or otherwise restrict the liberties of any person over fourteen years of age who is a citizen of a country with which we are at war, without any individualized showing of disloyalty, criminal conduct, or even suspicion.¹¹ The third act, the Alien Friends Act, gave the President the authority to deport any alien whom he felt was

dangerous to the peace and safety of the United States. It further provided for criminal prosecution for those that returned after they had been removed and allowed the President to expel any foreigner if there were reasonable grounds to suspect the person was “concerned in any treasonable or secret machinations against the government.”¹² The act did not provide any provisions for a jury trial and there was not a requirement that the order of removal specify any particular findings upon which it was based. Finally, the Sedition Act made it illegal to combine or conspire together with the intent to oppose any measure or measures of the government.

The Alien Friends Act and the Sedition Act expired after two years, but the Enemy Alien Act is still on the books.¹³ While the Alien Friends Act was never enforced, 25 people were arrested, 14 indicted, and 10 were tried and convicted under the Sedition Act, all Republican supporters and critics of the Federalists. Once Adams left office, Jefferson pardoned all of those convicted.¹⁴ While the direct effect of the acts was minimal, its underlying message has had a tremendous impact on our nation. These acts suggested that power could essentially trample on liberty, which was an integral part of our national identity. Instead of maintaining national identity, the acts negated it through an inappropriate exercise of Congressional power.¹⁵

Espionage and Sedition Acts

Since the Alien and Sedition Acts over two centuries earlier, the United States has experienced similar situations that have resulted in similar acts by Congress. In 1917, Congress passed the Espionage Act in an effort to suppress dissent and anti-war activity. The act made it a felony to try to cause insubordination in the armed forces or to convey false statements with intent to interfere with military operations. In 1918 the Sedition Act was passed which banned treasonable or seditious material from the mail and imposed heavy penalties on anyone convicted of using disloyal, profane, or abusive language about the Constitution, the government, the military, or the flag.¹⁶ This act temporarily halted the mailing of many publications, including the *New York Times* and a liberal magazine called the *Nation*.¹⁷ In the end, more than 2,000 persons were prosecuted under one or the other of the laws, mostly political opponents of Wilson and journalist who were critical of the administration.¹⁸

The Espionage and Sedition Acts were in part due to President Wilson’s criticism of foreign-born American citizens. In a message to Congress on December 7, 1915, Wilson said, “The gravest threats against our national peace and safety have been uttered within our own borders. There are citizens of the United States, I blush to admit, born under other flags but welcomed by

our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life.”¹⁹ During Wilson’s state of the Union Address in 1915, Wilson attacked unspecified foreign agitators among us, insisting that such creatures of passion, disloyalty, and anarchy must be crushed.²⁰ While Wilson supported the acts, many scholars have condemned them, calling them an “overt assault upon First Amendment freedoms.”²¹ One author explained that the federal government’s assault on civil liberties during and after World War I may have been the “most egregious in its history.” They stifled dissenters who gave no evidence of being a danger to the nation. It permitted the persecution of German Americans who posed no threat to security. It produced a wide-ranging legal assault and men and women based on nothing but their presumed beliefs. And it routinely suspended such ordinary rights as freedom of speech, freedom of association, and freedom from the arbitrary arrest.²²

Several authors have compared the Espionage and Sedition Acts of 1917 and 1918 to the Alien and Sedition Acts. Generally, this comparison is due to the repeated violation of civil rights during a time of crisis. According to Larry Gragg in *American History*, even after the Alien and Sedition Acts, there have been several examples of Congress declaring free speech as secondary to military necessity, most notably the Espionage Act and Sedition Act.²³ Noting the repetition of civil rights violations, William Rehnquist concluded that it is “neither desirable nor is it remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime.”²⁴ In an article by David Hudson on Freedomforum.org, he stated, “American tradition suggests that civil liberties take a backseat during times of war.”²⁵ Hudson briefly described violations of civil liberties in times of war including the Revolutionary War, the Civil War, World War I, and World War II.

The USA PATRIOT Act

The most recent example of civil rights violations in times of war is the 2001 USA PATRIOT Act. Following the terrorist attacks of September 11, 2001, Congress rushed through the USA PATRIOT Act to facilitate the evidence-gathering procedures of the CIA and FBI and expedite the prosecution of suspected terrorists in this national security crisis. Many scholars and authors have criticized this act, including civil liberties attorney Ronald Weich who stated, “This new law is clearly the latest in a long tradition of government overreaction in times of crisis. It is part of the same strain of thinking that led to earlier overreactions in times of war and should be

a cause of concern for all Americans.”²⁶ In an article by Vijay Sekhon, the Patriot Act is analyzed passage by passage to discuss the violations to the First, Fourth, Fifth, and Sixth Amendments.²⁷ Sekhon argues that the Patriot Act blatantly and unfairly targets Arabs and South Asian Americans. John Paden and Peter Singer further discuss the racial implications of the act and contend that it basically tells potential friends and supporters of the United States that they are no longer wanted in the country.²⁸ Some argue that the Bush administration has overridden all constitutional liberties in the name of protecting our freedom except for the right to bear arms. For example, Cole explained that under the Patriot Act, privacy has given way to secret searches without probable cause; the effort to stem funding for terrorist has resurrected guilt by association and blacklists prepared in secret; assets have been frozen without notice, without a hearing, without any violation of law, and on the basis of secret evidence. Conversations with a lawyer may be monitored without a warrant or denied altogether when the military finds that they might impair the persuasiveness of its incommunicado interrogation methods. The right to a public hearing upon arrest exists only at the attorney general’s sufferance. And the right to know what our government is doing has been overridden because in order to keep al-Qaeda ignorant, the government says it must keep all of us in the dark as well.²⁹

Anthony Lewis, columnist for the *New York Times*, analyzes the Patriot Act by providing a potential scenario that could occur under the act. Lewis explains that, under the Patriot Act, anyone in the United States can be picked up by federal agents and detained indefinitely in a military prison—without charges, without a trial, without access to a lawyer—until Bush declares the war on terrorism as over, which could be years or even decades away.³⁰ Lewis further compares the unconstitutional actions the government is taking under the Patriot Act to similar actions of the Alien and Sedition Acts of 1798, and the Espionage and Sedition Acts of 1917-1918. In *The War on Our Freedoms*, Richard Leon stated that after September 11th, 2001, there was little risk that the administration would err on the side of protecting civil liberties—indeed, the “Patriot Act that the administration authored, and Congress left almost entirely intact, was arguably the most far-reaching and invasive legislation passed since the Espionage Act of 1917 and the Sedition Act of 1918.”³¹ Jason Krause briefly discussed in the *American Bar Association Journal* that the Patriot Act is similar to the Alien and Sedition Act due to the lack of privacy and free expression.³²

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Direction for the Present Study

Previous research has compared Alien and Sedition Acts, the Espionage and Sedition Acts, and the USA Patriot Act because of their apparent civil rights violations enacted during times of crisis. Research has also examined the acts individually and discussed their history and their impact on society. Little research, however, has been done examining the recurring arguments that have been presented to Congress in the aforementioned cases. If all three of the acts are viewed in hindsight as violations of civil liberties and an embarrassment to American history, then why does Congress keep passing essentially the same legislation? This study seeks to determine the specific arguments that have resurfaced over the course of the last two centuries. By recognizing and understanding the arguments that are likely to occur in times of crisis, legislators and citizens can be better prepared to handle the arguments in a manner that may be more suitable to protect not only the United States but also citizens' civil rights guaranteed by the Constitution.

Method

Selections

To examine the recurring arguments that were presented to Congress, transcripts from Congress were viewed and analyzed. These transcripts came from the Annals of Congress and the *Congressional Record*. The three acts considered in this study were chosen because they were acts directly passed down by Congress in a time of war or pending war. All three acts were criticized heavily for violating civil liberties to ensure security. Some scholars have discussed other situations as similar violations of civil liberties in times of war, such as the Palmer Raids and the Japanese internment camps, however, those incidents were executive orders rather than acts by Congress, thus were excluded from this study.

Procedures

The *Congressional Records* were examined and the major arguments that were presented to Congress were recorded for each of the Congressional acts. Once the arguments were examined, they were further categorized based on emergent themes. There were five major themes that emerged in the Alien and Sedition Acts, four major themes in the Espionage and Sedition Acts, and six major themes in the Patriot Act. Within the themed categories, the dominant arguments that seemed to support and criticize the topics were noted. Finally, the arguments were compared

from case to case, analyzing the themes and specific arguments that have repeatedly emerged throughout the past two centuries.

Results

Alien and Sedition Acts

The first dominant theme in the arguments over the Alien and Sedition Acts was that the legislation was too vague. Several Congressmen argued that it left so much uncertainty it is impossible for a person who commits a crime to know what crime he had committed or what punishment he was liable.³³ Furthermore, one should not be punished based merely on suspicion. Gallatin argued that this act provides for the people at large to perform a duty that is undefined.³⁴

Sewall responded to these arguments by suggesting that a law that was not vague would be too mild in its operation. He also explained that the purpose of the bill is to punish crimes that are not defined. All countries have a power lodged somewhere for taking measures of this kind.³⁵ Otis played off the fear of the French and argued that if a French army were to land in this country, some may act suspicious and we need to be able to act on that even though we do not know why. Furthermore, men are usually arrested on suspicion of being guilty and imprisoned until he can be examined. To define the power of deportation too narrow undermines the whole system of national defense. It is important in times of crisis to not be bogged down with formalities and safeguards. If the United States failed to take these steps against its enemies, it would cripple its own defense efforts.³⁶

Building off the premise of the first theme, the second theme was that the legislation gave too much power to the President. This theme centered on the issue of leaving the law up to the President to decide how and when to define it. Many Congressmen thought that Congress should go ahead and specifically define the issues that would be punished. Gallatin argued that instead of being obedient to laws the people would have to be obedient to whims of the President.³⁷ Lyon furthered that argument by explaining that we should not give a power to the President which might enable him to distress innocent persons.³⁸ Harper argued in reply that claiming possible abuse of power is ridiculous because based on that argument, no power would ever be granted, which would stop the wheels of government.³⁹

The third major theme is whether or not it infringes on our liberty. The main argument is that it deprives a person of their liberty without any process of law or being guilty of any crime. Some argued that the Constitution is only for our citizens, while others said that alien friends

should also be protected and have the right to a trial. Being arrested and deported based on suspicion alone violates the liberty of those visiting this country. Livingston argued, "The Constitution says all persons have the right to face their accuser and have a trial. To say that these aliens aren't 'accused' is absurd because we're punishing them."⁴⁰ Otis replied that giving them a trial was only a courtesy, not a right.

In reference to the sedition bill, some argued that it was restricting the freedom of speech and freedom of the press. Dana countered that by explaining freedom of speech and the press gave no license to injure others or the government. This bill would not abridge the freedom of the press; it merely restrains the liberty of lying and the privilege of vice. Dana stated, "Freedom of language means nothing more than a right of uttering what is not injurious to others."⁴¹

The fourth theme regards the constitutionality of the acts. There were some questions as to whether it is constitutional or not to remove aliens from the United States and if so, should it be the states or the federal government that do it. One argument contended that the power to remove aliens lies in the power of making war. If we are about to go to war and our country is filled with natives of the enemy country, Congress should be able to pass an act which is founded upon the ground that safety and community be provided for.⁴² The end goal is protection of the general welfare and Congress has a right to do everything that is necessary to protect its people.

The final major theme that emerged is that the French are dangerous. These arguments were often played as a trump card to other arguments to basically say it does not matter what reasons there are to vote against this bill, the French are dangerous and we need protection. Some Congressmen argued that these accusations had not been proved and were based solely on heresy. Supporters of the legislation referred to France's history and explained that the damage they did to Holland and Switzerland will soon be done to the United States if we do not take decisive action. Otis went so far as to claim that times are full of danger and it would be the height of madness not to take every precaution in our power to protect ourselves. The fear that the French aliens will organize and overthrow our own government from within seemed to dominate the debates. Gordon explained that while no law has been made like this before, there has never been a time when the United States was so accessible as at this time, therefore uncommon measures are justifiable.⁴³ Furthermore, he argued that the fact that Congressmen were willing to debate on the side of the French proves that minds are easily infected. No better

evidence need be required of the necessity of purifying the country from sources of pollution.

Espionage and Sedition Acts

The first theme that emerged in the debates of the Espionage and Sedition Acts was that the legislation was too vague. Several Congressmen argued that if you punish a person for a crime you must be specific on what the crime is. Webb argued that this legislation required a person be guilty of evil intent before he is punished so this is more a definite and clear restriction of current law.⁴⁴ Mann argued that instead of leaving the specifics up to the President of what type of press would be considered useful to the enemy that the Congress should go ahead and specify it. All the President can do is to explain the character of the crime, not the specifics of it because by publishing the specifics then it would be helpful to the enemy and thus illegal. If the President is going to be vague then the Congress might as well go ahead and explain the character of the acts that will be considered illegal, thus nothing is left vague. Morgan argued that we need to leave the bill with great strength in this great emergency and we must let the President have flexibility in defining what will be considered illegal press or not.

In response to leaving the legislation vague or not, the second dominant theme that emerged is trusting the President. Some said that vague legislation left too much power to the President who may abuse the power. There were several arguments about possible ways the President could abuse its power; i.e. keeping the press from printing useful information that the public needs to know during war time, banning criticism of him, making regulations too broad, and even prohibiting the *Congressional Record*. Graham argued that there should be some limitation on the publication of facts during this war, but this legislation gives the President too much control which extends to not just publications but private conversations as well.⁴⁵

Despite these potential abuses, most arguments seemed to center on the fact that we must trust our Commander in Chief. Webb exclaimed that in a time of war, "You must trust somebody. I am willing to trust the President."⁴⁶ Others argued that we live under a free government and it is not likely the President will do anything tyrannical. Parker explained that in a time of war it is always better to give the President too much power to take care of these great national needs than to not take action and deal with a problem after an act takes place.⁴⁷

The third dominant theme was whether or not these acts infringed upon our liberty by violating First Amendment rights. This seemed to be one of the most common arguments and one that incurred the most heated debate. Igoe argued that he did not want to see people deprived

of the right to criticize and comment upon the actions of the Government because we must have discussions of these matters and criticism of them, but ultimately he felt it was even more important that newspapers or citizens do not have the right to publish or communicate info that may be useful to the enemy.⁴⁸

Arguments claiming that it violates citizen's liberty basically stress that censorship of newspapers and people's criticism of the government blatantly violates the part of the Constitution that explicitly states that no law shall abridge free speech or press. Randall pointed out the wording of this bill directly contradicts the Constitution. The bill specifically says, "The President may prohibit the publication of information which, in his judgment..."⁴⁹ The right of free speech is guaranteed to citizens in peace time and in war time, and Johnson argued that if we are going to limit speech under the guise that war is necessary then we should do it in a legal manner. Several argued that this violation of free speech is not necessary because the press will prevent the publication of harmful information on their own accord. Several argued that since the press has not provided dangerous information to the enemy within the month that the war has been going on, they probably will not do it later, either. Graham argued, "Censorship is to authorize the blue pencil to regulate and control the publications in newspapers, which is a decided innovation and would be an infringement of the rights and freedoms of the press and a most un-American institution."⁵⁰

In response to these criticisms, some claimed that the bill included a right that says it is still alright to criticize the President, so all rights are not squelched. Morgan answered complaints by explaining, "There may be some inconvenience, but under conditions of war every man in some way must make some sacrifice. A man who does nothing more than to be placed at some inconvenience certainly cannot complain."⁵¹ If a man is true and loyal then he should not fear conviction anyway; only the guilty are afraid of suspicion. The spirit of the bill is not to restrict press, but to protect citizens in a time of war. Further, some of the writers who said not to abridge free speech sat behind closed doors while writing the Constitution. The Senate had closed debates for five years. That is the conception of our forefathers of the right to withhold information which they thought was not in the interest of the public.

The final dominant theme in the debate was references to other nations and how they handle dangerous information. Madden argued that in Europe they first kept all the information from the people that were fighting the war. Then they brought them into their confidences and when

people knew what they were doing they began to win.⁵² Cooper exclaimed that in Germany there was a newspaper criticizing the German war administration. This bill would make the United States less liberal than they are in monarchial Germany.⁵³

USA PATRIOT Act

The first theme that emerged from the debates over the USA Patriot Act was whether the act was too vague or not. There was some skepticism that it did not define crimes clearly and that its scope was too broad. The authors and other supporters of the bill argued that this legislation was clearer than any other legislation out there. Further, this legislation was more specific than what the administration originally wanted to pass. Specifically, Leahy argued that this legislation defined investigations narrower than the administration proposed and more carefully defined the new crime of harboring terrorists.⁵⁴ Senator Hollings, on the other hand, criticized the legislation for not making clear what standards will be applied to determine if a security risk is presented to an individual.⁵⁵ Other senators agreed that some specifics will need to be outlined in subsequent legislation.

The second theme was the issue of expediting the legislation through Congress. This issue came up primarily in the initial stages of debate when considering the PATRIOT Act. Several members of Congress expressed their dissatisfaction with how things were being rushed through without proper examination. Nadler understood the urgency but expressed his concern by stating, "Let the terrorism bill proceed for terrorism now, albeit in haste, albeit hastily drafted, albeit not properly vetted. If that is the will of the body, let it be done for terrorism, but only for terrorism. And let us, for other things where the emergency is not immediate, take our time and do it properly."⁵⁶ Others shared that feeling and argued for extended time to research and reword the bill so the final copy will be one which we can be proud of. They explained that the United States is not so threatened that we have to throw away our rights without careful consideration.

The primary argument for expediting the bill through Congress was that law enforcement desperately needed more power as soon as possible. Representative Green agreed that debate is important but now is the time for action. This bill needs to get through Congress quickly to get these tools in the hands of law enforcement. "They need it, and our citizens deserve no less."⁵⁷ Kyl highlighted the fact that the bill was not rushed, rather subcommittees held 19 hearings and some of the provisions had already been voted on and passed by the Senate in other legislation.⁵⁸

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The third theme was that it gave the government, specifically law enforcement, too much power. Representative Waters expressed dissatisfaction with giving power to law enforcement because they already have the laws and money that they need to do their job. They failed us and they are “using this unfortunate situation to extract extraordinary powers to be used beyond dealing with terrorism, laws that will place into the regular criminal justice system.”⁵⁹ Moreover, the broad scope of these powers granted to the government may make them susceptible to abuse which could lead to intrusion into the privacy of American citizens. Conversely, Leahy argued that we are giving powers to the administration and we must extend some trust that they are not going to be misused. Law enforcement has to have the power to deal with powers as great as al-Qaida and have the ability to be able to hold people accountable where it is legitimate to do so. Jackson-Lee presented an emotional appeal that the government needs these tools and resources so “We may preserve the freedoms and liberties of all peoples; so we ensure that justice is delivered swiftly, deliberately, and without prejudice; and so that we may work towards a world free from terror, bigotry, and lawlessness.”⁶⁰

Similar to fears expressed in the third theme, the fourth theme was that the administration may abuse the powers that are granted to them. The main concern that was repeatedly addressed was that the legislation substantially weakens safeguards against the misuse of powers. Some argued that while this extreme legislation may be appropriate during times of war, it may be abusive during peace time, thus should be reexamined when the war is over. Leahy acknowledged that the government has used the rubric of “national security” to justify some unsavory activities and it is important to have safeguards against these abuses.⁶¹

The fifth dominant theme is the issue of liberties and constitutional freedoms. Members of Congress expressed concerns that the legislation took away from the protection of unreasonable searches and seizures guaranteed in the Fourth Amendment. In addition, it violates citizens’ privacy by installing unreasonable searching capabilities that go beyond terrorism, but crime in general. Another complaint was that aliens can be held for an unlimited amount of time. Representative Christensen expressed that although the Constitution may not be the first casualty of the war, if this bill is passed, “It will perhaps be the most devastating one, certainly the most far-reaching one, one that will not honor those whose lives were lost in the terrorist attack, and one that all of us in this body—those who voted for it and those who did not—will rue to our

dying day. This will be the crowning glory and the golden key of all of the most extreme radical conservatives in this country.”⁶²

Several Representatives, including Representative Kind reminded the Congress that the legislation is constitutional because the Constitution clearly states, “Congress shall have the power to provide for the common defense and general welfare of the United States. . .”⁶³ Wellstone argued that it is always a challenge to balance security with liberties and this bill has done a good job in doing that.⁶⁴ Schumer shared Wellstone’s sentiments and explained that some say to pass anything, others say focus only on liberties and not security. “Fortunately, neither prevailed in this fine piece of work that we have before us. Balance and reason have prevailed.”⁶⁵ Other members of Congress insisted that this bill has gone through a thoughtful, deliberative process where civil liberties were protected. Leahy summed up the sentiments in favor of this bill by stating, “We will enhance our security in this bill, but we will preserve our liberties. How could any one of us who have taken an oath of office to protect the Constitution do otherwise?”⁶⁶

The sixth theme was that of fear and protection. Members of Congress repeatedly brought up images of 9/11 and reminded the legislature of all the destruction terrorist are able to do and probably will do again in the near future if we stick with the status quo. Some argued that we are not in as much danger as it seems, but nevertheless the dominant argument was that the world is a scary place and protection is necessary to survive in these dangerous times. Enemies are within our borders and in order to help the victims of state-sponsored terrorism, drastic legislation is necessary.⁶⁷ No matter what sacrifices are required, the world is so dangerous right now that it is imperative that legislation be passed quickly to provide our government with tools necessary to protect the citizens.

Discussion

Summary of Findings

The three acts, spanning over two centuries, had several arguments that were dominant in each of the debates. The first recurring argument was that the legislation was too vague. Second, all three of the acts gave the government a lot of power but the main recurring argument in this theme was that we must trust the President and give him all the powers necessary to fight the enemies. Third, the issue of civil liberties and constitutionality was discussed in each set of debates, but each time legislators were able to convince their colleagues that the acts are not as

bad as other acts, or that it is more important to protect citizens than it is to focus on having liberties such as free speech and being able to criticize the government.

Interpretation of Results

It is important to recognize that all three acts came about in times of a national perception of impending danger. In all three cases the government was involved in an in-depth campaign to promote a sense of panic by exaggeration and distortion. The hysteria by the media and government officials led to a heightened sense of urgency to pass some sort of legislation to remedy the situation. By playing on the people's fears, issues such as liberty and vagueness are not as important as expansive government powers to eradicate every threat.

In *The Denial of Death*, Becker argued that the fear of death haunts the human mind so much so that we ultimately try to overcome the thought of death by denying that it is the final destiny of man. The fear of death is so prevalent that in order to function, one must repress and deny the reality of death in order to create a manageable image of oneself.⁶⁸ Terror Management Theory explains that when people are confronted with their death, the realization will cause immense anxiety and terror. Conscious or unconscious mechanisms have been discovered that buffer against this terror. One unconscious mechanism is the cultural worldview which gives one's life meaning and purpose, and people may turn to their cultural worldview when faced with their own death.⁶⁹ Based on Terror Management Theory, if a person is confronted with a threat, either real or imaginary, civil liberties do not matter as much as protecting their own lives. Arguments that appeal to senses such as protecting civil liberties and not granting the government too much power will not prevail as long as people are panicked.

According to Maslow's Hierarchy of Needs, when one is concerned with safety and security, arguments that appeal to more sophisticated needs are not persuasive. The government was able to present a scenario that represented danger and potential destruction of the United States from within. Once fear sets in, the most persuasive arguments become protection and security whereas issues such as liberty and constitutional rights fade into the background. For supporters of the acts, the three recurring themes of the legislation being vague, the government getting power, and limitations on liberty were characterized by arguments that specifically dealt with fear and insecurity and offered compelling solutions to the urgent need. Research consistently demonstrates that it is not a blank playing field where the best argument wins. No matter what the argument, protecting civil rights will not win over fear of death.

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The differentiation between citizens and non-citizens is critical in the explanation of these acts. In all three cases, the majority of civil liberties that needed to be sacrificed were to be by minorities and non-citizens. On one hand, legislators argued that because our soldiers are sacrificing themselves to protect our country, it is only fair that others be willing to make some sacrifices and be put at a minor inconvenience during the war. While this argument was compelling for some, many recognized that there is a distinct difference between citizens and non-citizens, and the sacrifices those legislators referred to were often sacrifices by non-citizens. Understanding the distinction, it becomes easy to vote for legislation that violates liberty as long as it is not directly affecting citizens. Members of Congress repeatedly argued that the legislation was only intended to protect us from enemies and was not intended to violate any civil liberties. Furthermore, non-citizens are often referred to as “guests” who have come because of the National’s invitation. Because of their guest status, the host has a right to limit them, exclude them, or send them back on a whim.

Interestingly, while the Constitution says that non-citizens are afforded the rights of the Constitution except to vote and run for office; the courts have disagreed and have excluded non-citizens from some rights. In *Yamataya v. Fisher* (1903) and *Chae Chan Ping v. United States* (1889), the Supreme Court has permitted foreign nationals to be excluded and expelled because of their race. *Galvan v. Press* (1954) argued that they can be deported for political associations that were entirely lawful at the time they were engaged in. *Porterfield v. Webb* (1923), *Terrace v. Thompson* (1923), *Oyama v. California* (1948), and *Takahashi v. Fish & Game Comm’n* (1948) barred foreign nationals from owning land and *Shaughnessy v. United States ex rel. Mezei* (1953) permitted the indefinite detention of arriving aliens stopped at the border on the basis of secret evidence that they could not confront. *Foley v. Connelie* (1978) and *Ambach v. Norwick* (1979) allowed states to bar otherwise qualified foreign national from employment as public school teachers and police officers because of their status as foreigners.⁷⁰ While foreign nationals are still entitled to due process where their lives, liberty, or property are at stake, it is not surprising that the general public still feel that there is a big distinction between citizens and foreign nationals.

Another important point to recognize is that politically, Presidents and legislators will take a much greater hit to their career if there is a massive attack on United States soil that could have been prevented than if some liberties were constrained. Perhaps the recurring argument of

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vagueness and government power has generally been accepted because legislators would like to say that they did everything they could do and then passed the torch to the President to make him responsible. Further, the argument of restricting liberties has been accepted because while voters are concerned with liberties during peace time, political careers have more to lose in war time if another attack occurs than if some people are inconvenienced.

Limitations and Directions for Future Research

The primary limitation to this study was that I focused only on the arguments presented to Congress while debating the three acts. This study could be expanded by analyzing more background information of the legislators presenting the arguments in order to determine the reasoning behind the arguments. Political and monetary motives may explain why some legislation passes despite reasonable and abundant argumentation against it. Future research could also examine the correspondence between major players in each of the acts to determine where certain ideas and arguments originated and who they were primarily intended to impact.

A second limitation is that this study only examined acts that were passed by Congress in times of war. Future research could expand this analysis to look at executive orders passed during war time in addition to repressive legislation and executive orders passed in peace time. There have been several studies that relate these three acts to things such as the Japanese internment camps, the Palmer Raids, and other oppressive actions taken during Vietnam and the Cold War. Future research could analyze the argumentation and debates both in Congress and in the media surrounding these actions.

Conclusion

Despite these limitations, this study contributes to our knowledge of political communication in three ways. First, it demonstrates that there are three main themes of arguments that have recurred in the Alien and Sedition Acts, the Espionage and Sedition Acts, and the USA PATRIOT Act. By understanding the arguments that are likely to occur in future war time legislation, one can be better prepared to handle the legislation in a way that will not result in civil rights violations. Second, my analysis offers several possible explanations of why these arguments may have occurred and why the arguments in favor of the legislation may have won out over arguments against it. Third, the study offers multiple but specific directions for future research.

Notes

¹ Miller, John. *Crisis in Freedom: The Alien and Sedition Acts*. (Boston: Little, Brown and Company, 1951), 230

² Quote of John Adams from the *Collections of the Massachusetts Historical Society*, Seventh Series, I, 82.

³ Zarefsky, David, and Gallagher, Victoria. From “Conflict” to “Constitutional Question”: Transformations in Early American Public Discourse. *Quarterly Journal of Speech*, 76 (1990): 247-261.

⁴ Gragg, Larry. “Order vs. Liberty.” *American History* 33 (1998): 24-32.

⁵ Letter from James Madison to Thomas Jefferson, May 13, 1798, quoted in Harold Lasswell, *National Security and Individual Freedom* (New York: McGraw-Hill, 1950), 23.

⁶ Linfield, Michael. *Freedom Under Fire: U.S. Civil Liberties in Times of War*. (Boston: South End Press, 1990), p. 2

⁷ Cole, David. *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. (The New Press, 2003), 4.

⁸ Kanstroom, Daniel. “From the Reign of Terror to Reigning in the Terrorists: The Still-Undefined Rights of Non-Citizens in the “Nation of Immigrants.” *New England Journal of International and Comparative Law* 9 (2003): 47-107.

⁹ Miller, *Crisis in Freedom*, 4.

¹⁰ Smith, James Morton. *Freedom’s Fetters: The Alien and Sedition Laws and American Civil Liberties*. (New York: Cornell University Press, 1956), 35-112

¹¹ Cole, David, *Enemy Aliens*, 7.

¹² Smith, *Freedom’s Fetters*, 35-112.

¹³ Cole, David, *Enemy Aliens*, 91.

¹⁴ Smith, *Freedom’s Fetters*, 176-180.

¹⁵ Zarefsky & Gallagher, “From Conflict,” 251.

¹⁶ Rehnquist, William. *All The Laws But One: Civil Liberties in Wartime*. (New York: Alfred Knopf, 1998), 170-184.

¹⁷ *Ibid*, 178

¹⁸ “Wartime Fears.” CQ Researcher, October 24, 2003, 902.

¹⁹ 54 Cong. Rec. (64th Cong., 1st Sess.), pp. 95-100.

²⁰ Quoted in Leone, Richard, & Anrig, Greg Jr. *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. (Public Affairs, 2003). 12.

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²² Brinkley, Allan. "A Familia Story." In *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. Ed. in Leone, Richard, & Anrig, Greg Jr. (Public Affairs, 2003). 32.

²³ Gragg, "Order", 32.

²⁴ Rehnquist, All The Laws, 224

²⁵ Hudson, David. 2002. "The First Amendment: A Wartime Casualty." *Freedomforum.org*.
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<http://freedomforum.org/templates/document/asp?documentID=15746>.

²⁶ Quoted in Hudson, *The First Amendment*, 1.

²⁷ Sekhon, Vijay. "The Civil Rights of "Others"; Antiterrorism, The Patriot Act, and Arab and South Asian American Rights in Post-9/11 American Society." *Texas Journal on Civil Liberties & Civil Rights* 8 (2003): 117-150.

²⁸ Paden, John, and Singer, Peter. "America Slams the Door (On Its Foot)." *Foreign Affairs* 82 (2003): 8-15.

²⁹ Cole, David. *Enemy Alien*, 18.

³⁰ Lewis, Anthony. "Civil Liberties in a Time of Terror." *Wisconsin Law Review* 257. (2003).
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³¹ Leone, Richard, & Anrig, Greg Jr. *The War on Our Freedoms: Civil Liberties in an Age of Terrorism*. (Public Affairs, 2003). 7.

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³³ Annals of Congress, 5C, 2S (April 19, 1798), 1787

³⁴ Ibid, 1795

³⁵ Ibid, 1790

³⁶ Ibid, 1566

³⁷ Ibid, 1789

³⁸ Ibid, 1786

³⁹ Ibid, 1991

⁴⁰ Ibid, 2012

⁴¹ Ibid, 2104

⁴² Ibid, 1983

⁴³ Ibid, 1986

⁴⁴ Ibid, 1591

⁴⁵ Ibid, 1705

⁴⁶ Ibid, 1592

⁴⁷ Ibid, 1704

⁴⁸ Ibid, 1593

⁴⁹ Ibid, 1697

⁵⁰ Ibid, 1719

⁵¹ Ibid, 1696

⁵² Ibid, 1592

⁵³ Ibid, 1704

⁵⁴ Senator Leahy. "USA PATRIOT Act of 2001." (147 Cong. Rec. S10990; Date: 10/25/2001).

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⁵⁸ Senator Kyl, "USA PATRIOT Act of 2001."

⁵⁹ Representative Waters, "PATRIOT Act of 2001."

⁶⁰ Representative Jackson-Lee, "PATRIOT Act of 2001"

⁶¹ Senator Leahy, "USA PATRIOT Act of 2001."

⁶² Representative Christensen, "PATRIOT Act of 2001."

⁶³ Representative Kind, “PATRIOT Act of 2001.”

⁶⁴ Senator Wellstone, “USA PATRIOT Act of 2001.”

⁶⁵ Senator Schumer, “USA PATRIOT Act of 2001.”

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⁷⁰ Cases cited in Cole, David, *Enemy Aliens*, 212 & 285.