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AMERICAN NATIONAL IDENTITY AND WARTIME SECURITY POLICY:
A MULTIPLE TRADITIONS ANALYSIS

by

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Abstract

Using a case study approach, this paper examines American national identity through the impacts that discriminatory wartime domestic security policies have on perceived enemy populations. The central argument holds that although Americans claim a principled commitment to the Creed, they deviate from their principles when national security threats arise, indicating that Americans hold beliefs about themselves that are conceptually prior to the Creed. Otherization of perceived enemies during wartime represents a deviation from the Creed and demonstrates that multiple traditions frame American national identity. Otherization becomes a tool that Americans use to reconcile their principles with their contradictory and inegalitarian practices, but the Creed exists to keep their deviations temporary.

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Introduction

In 2013, Basaaly Moalin, a Somali national living in San Diego, was convicted of conspiracy to provide material support to a foreign terrorist organization, because he sent \$8500 to al-Shabaab, an FBI-designated terrorist organization in Somalia. Federal prosecutors learned of the terrorist link from the National Security Agency, which collected Moalin's phone records as part of its secret dragnet surveillance program that authorized the NSA to collect phone and internet data of every American citizen and resident.¹ During the trial, Moalin and his attorney did not know that the NSA collected the original intelligence about his case, because that detail remained classified. The information surfaced months later when the federal government defended itself against former NSA contractor Edward Snowden, who exposed the secret surveillance programs to the American public. The news provoked public outcry about the dragnet surveillance. Amidst the controversy, the NSA defended its actions by pointing to the Moalin case, which, according to the NSA, justified the need for the mass surveillance for counterterrorism efforts in the ongoing War on Terror.² When Moalin learned the origins of the evidence used against him, he demanded a new trial, claiming that the intelligence was illegally obtained and that the NSA surveillance violated his Fourth Amendment right to privacy.³

¹ Ben Brumfield, "Four Somalis in U.S. Found Guilty of Supporting Terrorists Back Home," *CNN* February 22, 2013, accessed June 10, 2016 <http://www.cnn.com/2013/02/23/us/somalia-al-shabaab/>. Counterterrorism Guide, "Al-Shabaab," NCTC, accessed on June 10, 2016, https://www.nctc.gov/site/groups/al_shabaab.html.

² Mattathias Schwartz, "The Whole Haystack," *The New Yorker*, January 26, 2016, accessed on June 13, 2016, <http://www.newyorker.com/magazine/2015/01/26/whole-haystack>.

Moalin's position is consistent with the well-accepted American ideals that all people are born free and equal with rights that should be protected by an elected and accountable government. These liberal democratic principles are expressed in the American Creed, a phrase coined to envelop ideals that most Americans accept and upon which Americans derive their sense of collective identity. The Creed includes commitment to freedom, equality, and justice for everyone. Yet, the U.S. government's history of infringing on rights raises questions about the sincerity of American commitment to the Creed.

Although the infringements are evident in multiple aspects of U.S. history, this paper focuses on infringements that occur during wartime, when perceived threats are high, necessitating domestic security policies that promise to keep Americans safe from perceived enemies. Wartime security policies usually target an enemy population, including U.S. citizens and residents who resemble the enemy. This population of Americans becomes "otherized," and is no longer entitled to protections. The NSA surveillance is one such policy designed to protect Americans from the threat of terrorism during the global War on Terror. Although the NSA surveillance collects data on everyone, its intended target is Islamist extremists who pose a terrorist threat. Because of the difficulty in recognizing the difference between extremists and peaceable followers of Islam, Muslims have become the targeted and otherized population in the U.S. during the War on Terror.

³ Greg Moran, "NSA Spying May Give Somali Men a New Trial," *The San Diego Union-Tribune*, September 6, 2013, accessed on June 13, 2016, <http://www.sandiegouniontribune.com/news/2013/sep/06/nsa-spying-somali-new-trial-court-moalin-fbi/?#article-copy>.

Americans disagree about how wartime security policies align with the American Creed. Critics claim that government infringements on the freedoms of an otherized group represent unequal application of law. Because the Creed applies universally, otherizing any group violates the Creed. Furthermore, the policies threaten the rights of all Americans by normalizing government intrusions into private lives, which runs contrary to American values of individual freedom. In the process, Americans lose the essence of themselves, or their very souls. Proponents claim that the policies protect freedom and democracy. Without strong security policies, evil forces will attack and destroy liberal democratic values, stripping people of their natural rights. Dangerous wartime circumstances demand sacrifices in the form of temporary infringements on personal liberties. Surrendering a few rights is worth the security gains.

The disagreement exemplifies a long-debated question about the nature of American national identity. Do Americans derive their group identity from the Creed? Or do government violations of the Creed demonstrate that Americans are not truly committed to Creedal principles? This paper theorizes that American national identity is based on both. A complex combination of multiple, and oftentimes competing, influences has shaped the American people. Commitment to the Creed, combined with inegalitarian applications of the Creed, have mixed in ways that suggest that America has never been

completely liberal. This concept is based on the multiple traditions theory originated by political theorist Rogers Smith.⁴ Smith proposes a holistic approach to understanding Americanness that combines Creedal elements of national identity with acknowledgement of inegalitarian influence.

The multiple traditions theory holds that American national identity is the "interaction of multiple political traditions, including *liberalism*, *republicanism*, and *ascriptive forms of Americanism*, which have collectively comprised American political culture."⁵ With Smith, this paper defines liberalism as the political tradition that emphasizes government by common consent, the protection of individual rights by the rule of law, a free-market economy, and the equality of all people. Republicanism includes the intertwined concepts of popular sovereignty and formal institutions controlled by self-governing people who exercise civic virtue. Inegalitarian ascriptive Americanism refers to the formal and informal practices that elevate one population over another based on "involuntarily acquired traits that differentiate people," such as race, ethnicity, class, religion, and sex,⁶ and even ideological leanings that do not match the majority.

The central argument of this paper holds that although Americans claim a principled commitment to the Creed, they deviate from their principles when perceived

⁴ Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997).

Rogers Smith, "Beyond Tocqueville, Myrdal, and Hartz: The Multiple Traditions in America," *The American Political Science Review*, 87, no. 3 (1993).

⁵ Smith, "Beyond Tocqueville," 550.

⁶ Smith, *Civic Ideals*, 507-8, footnote 5.

national security threats arise, indicating that Americans hold beliefs about themselves that are conceptually prior to the Creed. Otherization of perceived enemies during wartime represents a deviation from the Creed and demonstrates that multiple traditions frame American national identity. Otherization becomes a tool that Americans use to reconcile their principles with their contradictory and inegalitarian practices, but the Creed exists to keep their deviations temporary.

The NSA surveillance represents one recent example in a long history of wartime security policies that deviate from the American Creed by infringing on the rights of an otherized population. Recognizing that an array of examples exists, this paper focuses on three wartime security policies. In the 1798 Quasi War with France, the Alien and Sedition Acts stripped French Americans of speech and press rights. During the Civil War, President Abraham Lincoln suspended the writ of habeas corpus for secessionists. During WWII, the U.S. forcibly interred Americans of Japanese descent.

Nevertheless, in each case, opponents challenged the inegalitarian policies, which provides evidence that multiple traditions shape American national identity. Opponents apply Creedal rhetoric to condemn the inegalitarian policies, while proponents support the policies with similar Creedal rhetoric. Both sides of the debate claim that their understanding of America is correct while accusing the other side of being un-American. However, both have important influence and deserve equal credit in current understandings of American national identity. Using a multiple traditions framework to examine Creedal rhetoric used to justify or oppose wartime security policies, this paper contends that the dynamic between opposing forces has shaped American national

identity. Ultimately, this paper supports the notion that Americans are committed to the Creed, despite their deviations, because the Creed restrains the deviations and obliges policymakers to rescind discriminatory security policies after the wars end.

Literature Review

Scholars have long debated the definition and origin of American national identity without arriving at a general consensus or broadly-accepted definition. Two overall trends exist. First, early scholars, such as Lipset and Hartz, rely predominantly on a Tocquevillian framework, explaining that American character is solely based on Creedal elements. Later scholars, such as Hixson, reject the Tocquevillian framework because of inequalitarian U.S. policies and practices. Smith combines the two perspectives and provides a comprehensive framework that explains national identity as a combination of multiple traditions. Multiple traditions theory has not been applied to foreign policy or to wartime domestic security policies, which is the focus of this paper. The literature review identifies these main historical themes and prepares the reader for the theory chapter, which applies multiple traditions to wartime circumstances.

Seymour Martin Lipset describes Americans as a people who share allegiance to a common set of liberal, democratic ideals.⁷ This prevailing belief extends back to 1835 when Alexis de Tocqueville observed that the U.S. appeared "remarkably egalitarian"⁸ because the political and economic systems were not based on an aristocratic hierarchy, but, rather, on classical liberal contract theory, which states that all people are naturally

⁷ Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York City: W. W. Norton & Co., 1996), 17-19.

⁸ Smith, "Beyond Tocqueville," 549.

free and equal. Tocqueville's analysis provided an influential framework for subsequent scholarly and general understandings of American national identity. Notably, influential scholars Gunnar Myrdal and Louis Hartz reinforced the Creedal elements of American national identity that endure today. Their prominence promulgated Tocqueville's framework. Myrdal's *American Dilemma* discussed race relations and posited that discrimination against African Americans is a violation of Creedal values. Myrdal believed that the Creed would eventually triumph over racism.⁹ Hartz's *Liberal Tradition in America* claimed that Americans derive their commitment to the Creed from economic prosperity related to "relatively egalitarian and free economic and social conditions" that exist in the U.S.¹⁰ Both Myrdal and Hartz accepted the Creed as a self-evident and irrefutable foundation for American national identity. According to Smith, they framed American deviations from the Creed "within liberal boundaries" without questioning its fundamental importance.¹¹

Other scholars note that Americans hold beliefs about themselves that are conceptually prior to the Creed. Following in the Tocquevillian tradition, Samuel Huntington wrote that America's deepest national values are "liberty, equality,

⁹ Smith, *Civic Ideals*, 19.

¹⁰ *Ibid*, 20.

¹¹ *Ibid*.

individualism, democracy, and the rule of law under a constitution."¹² However, Huntington explained that what sets America apart from other democracies is Anglo-Protestant culture, which was established by the British colonizers who first arrived in North America. Americans with Anglo-Protestant ancestry originally defined the nature of Americanness, and subsequent waves of immigrants have assimilated to Anglo-Protestant culture to be counted in that definition.¹³ Elizabeth Theiss-Morse described the "prototypical" American as white, male, Protestant, wealthy. These characteristics define who counts as part of the "ingroup" of Americans,¹⁴ and who, in turn, receives automatic protections during wartime crises.

Smith observes that "Americans [can] not tolerate permanent unequal statuses; persons must either be equal or outsiders."¹⁵ If the prototype represents what *is* American, it also presupposes what *is not* included. The existence of an ingroup assumes the existence of an outgroup. Huntington explains that "identity requires differentiation."¹⁶ In other words, the boundaries placed around Americanness include some people and leave

¹² Samuel Huntington, *American Politics: The Promise of Disharmony* (New York: Simon and Schuster, 1981), 14.

Rogers Smith, "The 'American Creed' and American Identity: The Limits of Liberal Citizenship in the United States," *The Western Political Quarterly*, 41, no. 2 (1988), 225-6.

Irving Louis Horowitz, "Louis Hartz and the Liberal Tradition: From Consensus to Crack-Up," *Modern Age: A Quarterly Review* 47, no. 3, (2005), accessed September 14, 2016 <https://home.isi.org/louis-hartz-and-liberal-tradition-consensus-crack>.

¹³ Samuel Huntington, *Who Are We? Challenges to America's National Identity* (New York: Simon & Schuster, 2004), 40.

¹⁴ Elizabeth Theiss-Morse, *Who Counts as an American: The Boundaries of National Identity* (New York: Cambridge University Press, 2009), 8.

¹⁵ Smith, "Beyond Tocqueville," 561.

¹⁶ Huntington, *Who Are We?*, 26.

others out. During wartime, these boundaries become especially pronounced, and enemies are expressly excluded from the definition of American. Enemies are considered evil forces who pose a threat to the very essence of Americanness.¹⁷ Americans distance themselves from their enemies out of fear that the enemy's ideology will infiltrate and change Creedal ideals. As a result, Americans demonize and otherize enemy populations and people who share physical characteristics or ideology with the enemy. Enemies become members of an "outgroup" whose rights are justifiably violated in order to protect those of the ingroup.¹⁸

Americans partially derive their sense of ingroup from the notion of exceptionalism. The supposition that America is a promised land reserved for a divinely-chosen people permeates wartime security policies.¹⁹ American loyalty to liberal democracy conforms to their understanding of what it means to be "special," and Americans reserve protections of universal rights to those who fit within the category of "special." Historically, Americans have reserved specialness for prototypical Americans and others who demonstrate loyalty to the group by conforming to accepted behavioral

¹⁷ George W. Bush, "Address to the Joint Session of the 107th Congress September 20, 2001," in *Selected Speeches of George W. Bush*, accessed October 11, 2015, http://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf.

¹⁸ Theiss-Morse, *Who Counts as an American*, 68-9.

¹⁹ Smith, "Beyond Tocqueville," 559.

Peter S. Onuf, "American Exceptionalism and National Identity," *American Political Thought* 1 no. 1 (2012): 77-80.

Patrick Deneen, "Cities of Man on a Hill," *American Political Thought* 1 no. 1 (2012): 29-33.
James W. Caesar, "The Origins and Character of American Exceptionalism," *American Political Thought* 1 no. 1 (2012): 4-5.

norms.²⁰ Wartime enemies are not included as special, because they threaten to destroy the promised land and chosen people.

The discriminatory security wartime policies that originate from ingroup mentality fall under Smith's articulated "inegalitarian ascriptive Americanist traditions," which "believe that 'true' Americans are 'chosen' by God, history, or nature to possess superior moral and intellectual traits" linked to their physical characteristics, religious preferences, or ideological leanings.²¹ These traditions construct and support hierarchical structures that favor prototypical Americans while otherizing enemies because of perceived moral deficiencies. The hierarchical structures assume the innocence of the prototype and the guiltiness of the Other during wartime.

Liberal democracy depends heavily on people's tolerance of difference, but when people feel threatened, they become less tolerant of difference. People react to threat with xenophobia, ethnocentrism, prejudice, and intolerance.²² During the heightened threat of wartime, Americans are willing to surrender rights and liberties if they perceive an increase in security from doing so. Americans are particularly likely to favor targeting minority populations as the subjects of policies intended to protect national security. In so doing, Americans reconcile their commitment to equality with their inegalitarian practices. As long as the Other is the target, "we," the ingroup, remain safe. Because the loyalty of the prototype is not questioned, he is not subject to additional scrutiny.

²⁰ Theiss-Morse, *Who Counts as an American?*, 4.

²¹ Smith, *Civic Ideals*, 508, footnote 5.

²² George E. Marcus, John Sullivan, Elizabeth Theiss-Morse, Sandra L. Wood, *With Malice Toward Some: How People Make Civil Liberties Judgments* (Cambridge: Cambridge University Press, 1995), 12.

Meanwhile, the Other is automatically suspect unless he demonstrates his loyalty to the ingroup. Additionally, because the rights of the prototype are protected by the discriminatory policies, Americans can claim their continued commitment to Creedal principles.²³

Such discrimination against the Other prompts critics to accuse America of applying double standards to different populations, leading some scholars to suggest that America is not truly established on the Creed, because Creedal principles are not applied universally. Rather, American liberal democracy is merely a myth.²⁴ Walter L. Hixson dismisses the influence of Creedal ideology on foreign policy decisions, reasoning, rather, that wartime relations are tales of white male oppressors who subjugate enemies according to ascriptive hierarchies. Americans endorse the subjugation because the U.S. considers itself a "beacon of liberty" that holds a "special right to exert power in the world."²⁵ Creedal ideology motivates foreign policy and justifies U.S. actions, because the Creed will benefit everyone. Thus, the U.S. is hypocritical and motivated by ethnocentrism.²⁶

Hixson's argument is overly pessimistic. Smith describes this kind of argument as "too simplistic"²⁷ because of its one-sidedness. Furthermore, it disregards the normative

²³ Theiss-Morse, *Who Counts as an American*, 68-9.

²⁴ Walter L. Hixson, *The Myth of American Diplomacy: National Identity and U.S. Foreign Policy* (New Haven and London: Yale University Press, 2008), 1-9.

Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton University Press, 2008), <http://press.princeton.edu/chapters/s8664.html>.

²⁵ Hixson, 1.

²⁶ *Ibid*, 119-21.

²⁷ Smith, "Beyond Tocqueville," 555.

expectations set by American commitment to the Creed, which professes the equality of all people and limits inegalitarian practices. Basing American nationalism purely on cynical notions of ethnocentrism ignores the successful process by which non-prototypical Americans become accepted into the mainstream. Hixson's perspective disregards the fact that "white men . . . have been prominent among those combating" the inegalitarian policies and promoting the acceptance of otherized groups into the mainstream.²⁸ It ignores the fact that formerly otherized populations have successfully transitioned from the outgroup to the ingroup.

According to Smith, Americans have accepted outsiders as equals, which demonstrates success "in building a more inclusive democracy."²⁹ Smith is careful to note that such inclusiveness has "come only through difficult struggles."³⁰ Participating in that struggle represents the essence of Americanness, according to prominent political theorist Michael Walzer. He argues that every group, prototypical or marginalized, has contributed to American national identity "precisely because of their dispersion and inter-mixing" with each other to "share a common political space, whose safety, healthfulness, beauty, and accessibility are collective values."³¹ In the process, multiple traditions have interacted to produce and evolve American national identity.

According to Walzer, outgroup members demonstrate their belongingness through a three step process of articulation, negotiation, and incorporation. Eventually, after

²⁸ Ibid, 558.

²⁹ Ibid, 563.

³⁰ Ibid, 550.

³¹ Walzer, 10.

prolonged struggle in which they appeal to American commitment to the universal application of the Creed and demonstrating loyalty to the ingroup,³² otherized groups prove their Americanness.³³ Throughout the process, many prototypical Americans advocate for the Other's rights, which demonstrates the multiple traditions embedded in American character. To define Americanness solely on inegalitarian elements ignores the contributions made by otherized groups and their allies and to disregard the Creed's normative influence for change.

Comparably, explanations of national identity that rely solely on the Tocquevillian framework are equally simplistic,³⁴ because they ignore the ascriptive, inegalitarian elements that Hixson emphasizes. Smith argues that the Tocquevillian framework "captures important truths," but is "deceptive because it is too narrow."³⁵ Although the American Creed has "had great normative and political potency," Smith recognizes that "contrary ascriptive traditions" have had equal "ideological and political appeal."³⁶ As a result, wartime security policies are neither completely equitable, nor are they completely inegalitarian. Instead, they reflect the "asymmetrical compromises" that interact between the "multiple ideologies vying to define American political culture."³⁷

³² Theiss-Morse, *Who Counts as an American: The Boundaries of National Identity*, 68-9.

³³ *Ibid*, 4-8.

³⁴ Smith, "Beyond Tocqueville," 555.

³⁵ *Ibid*, 549.

³⁶ *Ibid*, 558.

³⁷ *Ibid*, 561.

These asymmetrical compromises produce wartime security policies that satisfy the American need to feel secure with its need to protect rights.

To fully understand American national identity, conflicting Creedal and inegalitarian elements must be considered and given equal importance. For this reason, Smith's multiple traditions theory provides a comprehensive framework that allows for discussion of both elements without placing importance on one over the other. However, Smith uses U.S. citizenship laws as his evidence, thus leaving opportunities for future researchers to apply the multiple traditions theory to additional U.S. policies and practices. As of yet, the multiple traditions theory has not been applied to foreign policy decisions nor to wartime domestic security policies. However, the otherization that occurs during wartime and the discriminatory policies that result from otherization provide additional context whereby to apply the multiple traditions theory.

This paper applies the multiple traditions framework on wartime domestic security policy. Using a multiple traditions framework, one would expect the inegalitarian policies implemented during the War on Terror to be iterations of familiar themes throughout wartime history. Multiple traditions theory leaves space for the Creedal elements that rein in the inegalitarian security policies after the wars end. These Creedal elements are embraced by most Americans, while the ascriptive, inegalitarian elements have contributed equally to American national identity.

Debates surrounding wartime security policies advance the notion of multiple traditions in America. Using Creedal rhetoric, the government defends policies and practices that otherwise contradict the Creed. In so doing, the government convinces a large percentage of Americans to concede to inegalitarian policies under the guise of

protecting the American way of life from a threat. Discriminatory policies are justified as long as they target the enemy Others whom Americans consider to have surrendered their rights because they pose a threat. Simultaneously, wartime opposition voices arise who rely on Creedal rhetoric to combat the discrimination. The debate between the two sides usually produces a policy that represents an asymmetrical compromise and is neither fully representative of the Creed nor fully inegalitarian.

Smith focuses on the racial and gender hierarchies that motivate ascriptive and inegalitarian policies. Additional hierarchical structures exist, which are based on ethnicity, religion, and ideological leanings. During wartime, discrimination is applied to individuals based on that hierarchy. In historical U.S. wars, ethnic dimensions played a predominant role in the inegalitarian policies. Being an American of French or Japanese descent subjected one to scrutiny during the Quasi War and WWII respectively. During the Civil War, political and ideological factors prompted inegalitarian policies. During the current War on Terror, religion defines the Other, and followers of Islam are the subjects of discrimination. This paper applies the multiple traditions theory to wartime domestic security policies.

Methodology

Using a case study approach, this thesis applies the multiple traditions theory to wartime domestic security policies from three wars, one from each century since U.S. independence. Recognizing that numerous other wartime examples exist, the confines of this paper allow for the analysis of the following three wars: 1. The Alien and Sedition Acts during the 1798 "Quasi War" with France; 2. The suspension of the writ of habeas corpus during the Civil War; 3. The Japanese internment camps of World War II. During

each of these wars, Americans exhibit repeated patterns of otherizing a perceived enemy, enacting a discriminatory policy in order to protect national security, and rescinding that policy when the war ended.

These three wars provide historical background to analyze the twenty-first century War on Terror, in which the established patterns reemerge. During the War on Terror, Muslims have become the perceived enemy, and American Muslims are otherized. Even American-born Muslims are treated as foreigners and outsiders. Incidents of backlash against Muslims within the U.S. have risen steadily since 9/11.³⁸ As Americans have felt increasingly threatened by Muslims, they have become more likely to support anti-terrorism policies, particularly those that threaten civil liberties, such as the NSA surveillance program.³⁹ Conversely, as discrimination against Muslims has increased, Muslim allies have become vocal in their opposition to draconian measures that target Muslims.

Evidence of these patterns exists in political debates that surface between government officials in all three branches of government. This paper examines rhetoric from primary sources. During the Quasi War, the evidence exists in Congressional debates and in the state legislatures' responses, particularly the Virginia and Kentucky Resolutions, which publicly resisted the Alien and Sedition Acts. During the Civil War, primary sources include the ruling of Supreme Court Chief Justice Roger B. Taney, which opposed Lincoln's suspension of the writ of habeas corpus. Lincoln responded to

³⁸ Lori Peek. *Behind the Backlash: Muslim Americans After 9/11* (Philadelphia: Temple University Press, 2011), 5, 36-59, 64-70, 71-99.

³⁹ Leonie Huddy, Stanley Feldman, Charles Taber, and Gallya Lahav, "Threat, Anxiety, and Support of Antiterrorism Policies," *American Journal of Political Science* 49, no. 3 (2005), 603.

Taney's opposition with personal letters and in a speech to Congress. During WWII, justification for the Japanese internment camps came from Executive Order 9066 and from the speeches delivered by Dillon S. Myer, Director of the War Relocation Authority, which was tasked with implementing the internment program. Very little government opposition surfaced other than the dissent of Supreme Court Justice Robert Jackson in *Korematsu vs. the U.S.*, in which Jackson condemned the U.S. for its racist program. Primary evidence of the opposition to the NSA surveillance comes from members of Congress, particularly Congressman John Conyers, one of the few representatives who initially opposed the Patriot Act upon which the NSA surveillance program is built. President George W. Bush validated the surveillance program in his speeches to the American public.

This paper analyzes these primary sources, which are steeped in Creedal rhetoric. Proponents and opponents of wartime security policies justified their respective positions using the rhetoric of American values. Specifically, policymakers refer to terms and phrases such as "preserving the American way," "protecting democracy," "safeguarding American values," "promoting equality," and other general variations of these themes. These powerful rhetorical tools serve not only to conjure up images of Americanness, but also to reinforce those images. Therefore, rhetoric both exemplifies and defines the nature of what it means to be an American and who is included in that definition. The debates surrounding wartime security policies provide suitable conditions for which to examine the multiple traditions theory and its application to foreign policy decisions. A careful examination of the rhetoric used to support and oppose wartime security policies will

reveal much about the nature of American national identity. Rhetoric exposes the deepest thoughts and priorities of Americans.

Chapter Outline

Chapter One develops my theory. I discuss the multiple traditions theory as applied to foreign policy and wartime security and demonstrate that foreign policy is an expression of national identity and a tool that policymakers use to build and sustain an image of Americanness that extends from Creedal and cultural elements. Policymakers construct an enemy based on a perceived wartime threat, and the enemy is excluded from the definition of American. Americans who are perceived to identify with the enemy's outward characteristics become otherized in U.S. policy and practice, and otherized populations lose constitutionally-protected rights—a pattern that violates the universal American Creed. Thus, otherization becomes a tool that Americans use to reconcile their discriminatory practices with their Creed. However, opposition to the discriminatory policies restrains the tendency to make discriminatory policies permanent. When the wars end, the policies also end, because Americans recognize that the discrimination deviates from their core values. Therefore, the Creed exists to keep deviations temporary, which demonstrates that Americans are truly committed to their Creed, despite the deviations.

Chapter Two demonstrates the relevance of multiple traditions in three historical wars: the 1798 Quasi War, the Civil War, and WWII. Wartime security policies in these three wars follow patterns of constructing an enemy, otherizing the enemy at home, and justifying and opposing that otherization with Creedal rhetoric, implementing a discriminatory policy, and, finally, rescinding the policy. This pattern repeats with the Alien and Sedition Acts of 1798, the suspension of the writ of habeas corpus during the

Civil War, and the Japanese internment camps during WWII. Of course, other wars provide further evidence of this pattern, but for the confines and length of this paper, I limit the examples to these three. In Chapter Two, I provide an overview of each war and the foreign policy decisions that result; discuss the domestic issues that led to otherization of perceived enemies; explain the wartime security policy that infringes on the rights of otherized populations; examine the Creedal rhetoric that political elites use to justify and oppose the policy; analyze the rhetoric and policies to demonstrate the interaction of multiple traditions; and demonstrate that Americans use the otherization to reconcile their practices with the Creed before they rescind the policy at the close of the war.

Chapter Three focuses explicitly on the War on Terror and the domestic surveillance policy enacted to preserve national security, specifically addressing the Bush-era NSA surveillance during the U.S. interventions in Afghanistan and Iraq. Although the program has endured through the Obama administration and into the Trump administration, which provides a great deal of additional evidence, that content is beyond the scope of the current research. Using the same approach from Chapter Two, I demonstrate that the NSA surveillance is a current iteration of the repeating historical patterns of wartime domestic security policy. Muslims have become an otherized population within the U.S. who are subject to increased scrutiny and surveillance. Bush justified the discriminatory security policies with Creedal language. However, civil liberties advocates use Creedal language to oppose such discrimination.

Conclusion

A main argument of this paper is that Americans deviate from their Creed during wartime, but the Creed reins in deviations after the perceived threat ends. This pattern has been established historically, but the reining in of discriminatory policy has not yet happened in the War on Terror. The War on Terror, however, differs from previous wars, because the U.S. has not officially declared war, the enemy is a non-state actor, the war has not ended, and determining the end will be difficult. The perceived threat of terrorism permeates American society, triggering fear and suspicion.

Apprehension about Muslims renews each time a new perceived threat arises. Under President Obama, the rise of the Islamic State (ISIS), and lone wolf attacks perpetrated by individuals who have been radicalized by the ISIS message, provide Americans with new reasons to distrust and otherize Muslims.⁴⁰ Furthermore, President Donald Trump attaches the phrase “radical Islam” to terrorism, marking a shift from previous leadership who refused to rhetorically connect the religion with the acts of terror.⁴¹ Simultaneously, the incidents of anti-Muslim hate crimes are increasing

⁴⁰ Ashley Fantz and Ben Brumfield, “More Than Half the Nation’s Governors Say Syrian Refugees Not Welcome,” *CNN.com*, November 19, 2015, accessed on November 21, 2016, <http://www.cnn.com/2015/11/16/world/paris-attacks-syrian-refugees-backlash/>.

⁴¹ Donald J. Trump, “Donald J. Trump Statement on Preventing Muslim Immigration,” *DonaldTrump.com*, December 7, 2015, accessed on November 22, 2016, <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

Gabriel Trip, “Donald Trump Says He’d ‘Absolutely’ Require Muslims to Register,” *The New York Times*, November 20, 2016, accessed on November 21, 2016, <http://www.nytimes.com/politics/first-draft/2015/11/20/donald-trump-says-hed-absolutely-require-muslims-to-register/>.

nationwide.⁴² Although the President cannot take the blame for the actions of every American, certainly, official presidential rhetoric creates an atmosphere and establishes accepted ideological and behavioral norms. Moreover, Trump issued an Executive Order that prohibits travelers from seven Muslim-majority countries from entering the U.S.,⁴³ and the corresponding media coverage has heightened already existing sensitivities.

Trump's rhetoric and policy choices are not the focus of this paper. However, they build upon established post-9/11 counterterrorism policies and practices. Because the War on Terror does not have an end in sight, Trump's counterterrorism approaches raise questions about the temporariness of otherization that Muslims currently face. If, indeed, the Creed restrains wartime deviations and promotes the scaling back of discriminatory policies, only time will tell if the War on Terror follows the historical pattern or if Muslims will remain an otherized population indefinitely.

⁴² Council on American-Islamic Relations, "Post-Election Anti-Muslim Bias," *CAIR.com* last updated November 18, 2016, accessed on November 21, 2016, <http://islamophobia.org/2-uncategorised/182-anti-muslim-bias-incidents-post-election.html>.

Davidson College, "Difference between a Hate Crime and a Bias Incident," *Davidson.edu*, accessed on November 21, 2016, <http://www.davidson.edu/student-life/multicultural-life/hate-crime-and-bias-incidents>.

⁴³ Donald J. Trump, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, March 6, 2017, *The White House Office of the Press Secretary*, accessed on March 31, 2017, <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

Franklin D. Roosevelt, *Executive Order 9066 Authorizing the Secretary of War to Prescribe Military Areas*, February 19, 1942, transcript, accessed on March 27, 2017, <https://www.ourdocuments.gov/doc.php?flash=false&doc=74&page=transcript>.

Chapter 1

Theory

The Constitution "is made for people of fundamentally differing views"

-Supreme Court Justice Oliver Wendell Holmes⁴⁴

Americans believe in Creedal principles of equality and justice, but their wartime domestic security policies deviate from their principles because the policies target a minority population. The chasm that exists between beliefs and actions necessitate reconciliation between universal principles and inegalitarian practices. The debate between conflicting perspectives validates the influence of multiple traditions on American character. Otherization becomes a tool whereby American reconcile their principles with their practices. The U.S. has an established pattern of wartime otherization, including French people in 1798, secessionists in the Civil War, the Japanese during WWII, and Muslims during the War on Terror. Americans consider the Other to be inferior, and, thus, less entitled to the protection of rights. Therefore, as long as the Other's rights are violated, Americans feel secure from threat and committed to their core principles. Violating the Other's rights is not an infringement on the Creed, because the Others do not count as real Americans.

This chapter develops the theory. It discusses theory wartime domestic security policy using a multiple traditions framework. Foreign policy simultaneously expresses and reconstructs national identity in an image of Americanness that extends from Creedal and cultural elements. Using a multiple traditions framework, this chapter discusses the

⁴⁴ *Lochner v. New York*, 198, U.S. 45, 76 (1905) (Holmes, J., dissenting).

Creedal foundations of national identity, foreign policy dimensions that originate in the Creed, wartime deviations from the Creed, otherization of the perceived enemy, and American reconciliation of Creedal principles with inegalitarian policies and practices. The final conclusion is that Americans believe in the Creed, despite their deviations, as evidenced by the fact that wartime deviations are temporary. The Creed restrains the deviations.

National Identity and the American Creed

American national identity is a socially-constructed identity. Unlike other nations, to be American is not to demonstrate loyalty to a single fatherland or to share a common ethnic, racial, religious, or cultural background. America is a pluralistic nation and its people have immigrated from all corners of the earth. America is a "nation of nationalities" and a "union of social unions."⁴⁵ The definition of Americanness constantly evolves and is never finished. In the words of former U.S. President Bill Clinton, "Each generation of Americans must define what it means to be an American."⁴⁶

Many Americans believe that their shared identity originates from shared values and principles. In 1922, British philosopher and theologian G.K. Chesterton described America as "the only nation in the world founded on a creed."⁴⁷ Harry S. Truman once stated that "being an American is more than a matter of where you or your parents came

⁴⁵ Walzer, 24-30.

⁴⁶ Bill Clinton, "We Force the Spring" (Inaugural Address, Washington, DC, January 1, 1993), *The New York Times*, accessed on January 6, 2017, <http://www.nytimes.com/1993/01/21/us/the-inauguration-we-force-the-spring-transcript-of-address-by-president-clinton.html?pagewanted=all>.

⁴⁷ G. K. Chesterton, *What I Saw in America* (1922), in *The Collected Works of G. K. Chesterton*, vol. 21 (San Francisco, Ignatius, 1990), 41-45, quoted by the American Chesterton Society, accessed on January 19, 2017, <https://www.chesterton.org/america/>.

from. It is a belief that all men are created free and equal and that everyone deserves an even break. It is a respect for the dignity of men and women without regard to race, creed, or color. That is our creed."⁴⁸ The American Creed, most clearly stated in the Declaration of Independence, affirms "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights"⁴⁹ and governmental power is derived "from the consent of the governed."⁵⁰

The Creed defines and limits American policies and practices. It also provides a framework for scholars of American national identity to approach their research. This Creedal framework extends back to 1831 when Alexis de Tocqueville observed that America had dismantled European aristocratic norms and established an environment of equality where birthright did not privilege certain people over others.⁵¹ Rather, America was founded on classical liberal contract theory, which states that all people are naturally free and equal. Compared to Europe, America appeared to Tocqueville to be a land where every person could participate fully in the political process and have equal economic opportunity, regardless of birthright. American national identity is built on American commitment to the Creed, which establishes normative expectations through which Americans approach their government, laws, and practices.

⁴⁸ Harry S. Truman, "Rear Platform and Other Informal Remarks in Indiana and Ohio" (speech, South Bend, IN, October 26, 1948), Harry S. Truman Library and Museum, accessed on January 6, 2017, <https://trumanlibrary.org/publicpapers/viewpapers.php?pid=2008>.

⁴⁹ Declaration of Independence (U.S. 1776).

⁵⁰ Ibid.

⁵¹ Alexis de Tocqueville, quoted in Rogers Smith, "Beyond Tocqueville," 550-1.

Tocqueville's analysis provided an influential framework for subsequent understandings of American national identity. Celebrated twentieth-century scholars Gunnar Myrdal and Louis Hartz promulgated the Tocquevillian framework by focusing on the Enlightenment ideals that shaped America, including the importance of individual property rights and the sacrosanctity of the social contract.⁵² The Tocquevillian paradigm embedded in the works of Myrdal and Hartz focuses on Creedal interpretations of national identity. Myrdal and Hartz are two of the many scholars who have adopted and simultaneously reinforced the Tocquevillian paradigm.⁵³

Multiple Traditions Theory

Although the Tocquevillian framework encapsulates indisputable realities about American values, it also neglects to incorporate unsavory aspects of American history that contradict those values.⁵⁴ Prominent political theorist Rogers Smith notes that "Tocqueville's thesis-that America has been mostly shaped by the unusually free and egalitarian ideas and material conditions that prevailed at its founding" is useful, but incomplete.⁵⁵ Smith argues that scholars have relied too heavily on this narrow interpretation, which ignores "an array of other fixed, ascriptive systems of unequal

⁵² Smith, 510-11.

⁵³ This topic has been discussed multiple times. For details, see Rogers Smith, "The 'American Creed' and American Identity: The Limits of Liberal Citizenship in the United States," *The Western Political Quarterly*, Vol. 41, No. 2 (Jun., 1988), pp. 225-251 (PAGE 225-6)

Samuel P. Huntington, *American Politics: The Promise of Disharmony* (Cambridge, Belknap Press, 1981), 24.

Irving Louis Horowitz, "Louis Hartz and the Liberal Tradition: From Consensus to Crack-Up," *Modern Age: A Quarterly Review*, 47 no. 3, 2005, accessed September 14, 2016 <https://home.isi.org/louis-hartz-and-liberal-tradition-consensus-crack>.

⁵⁴ Smith, 549.

⁵⁵ Smith, "Beyond Tocqueville," 549.

status" that existed at the founding and largely remained "unchallenged by the American revolutionaries."⁵⁶ In reality, a political and economic hierarchical structure based on gender and race limited the participation of most of America's population. A deeper examination of American history reveals that "the majority of the domestic adult population was . . . ineligible for full American citizenship solely because of their race, original nationality, or gender" for "at least two-thirds of American history."⁵⁷

U.S. history is replete with contradictions. For example, the Chinese Exclusion Act of 1882, "the first repudiation of America's long history of open immigration,"⁵⁸ imposed restrictions of Chinese laborers until 1956 on the basis of protecting the "free white man" from the degrading and demoralizing influence of the "Chinese race."⁵⁹ Likewise, black people, after being freed from slavery, were subjected to Jim Crow laws that segregated them from white populations and prevented them from participating as equals.⁶⁰ Furthermore, women, once granted suffrage, encountered federal policies that "deepened, rather than modified, the dependence of [their] citizenship on that of their husbands."⁶¹ Smith offers these and many additional examples as representative of the "asymmetrical" forces that interacted between the "multiple ideologies vying to define American political culture."⁶²

⁵⁶ Smith, 549.

⁵⁷ Ibid.

⁵⁸ Ibid., 560.

⁵⁹ Ibid., 559.

⁶⁰ Ibid., 561.

⁶¹ Ibid., 562.

As a result, Smith argues that "America has never been *completely* liberal"⁶³ (emphasis added), contrary to the Tocquevillian analysis. American commitment to liberal democratic ideals, or the Creed, has partially shaped national identity, but inegalitarian and ascriptive elements have had equal influence. In practice, the Creed has been subject to interpretation and has conformed to prevailing theories of racial and gender hierarchical relationships. The ideologies that have defended those hierarchical relationships "have always been heavily conditioned by the presence of liberal democratic values and institutions."⁶⁴ America is neither fully liberal nor fully inegalitarian.

Because mainstream approaches to American history have largely relied on the Tocquevillian analysis, even scholars who have attempted to "add complexities" have done so "without disputing the basic Tocquevillian framework."⁶⁵ This over reliance on Tocqueville has simplified understandings of Americanism. Smith proposes a more holistic approach, known as the multiple traditions theory, to explain Americanism as the

⁶² Ibid., 561.

⁶³ Ibid., 550.

⁶⁴ Ibid.

⁶⁵ Ibid., 555.

"interaction of multiple political traditions, including *liberalism, republicanism, and ascriptive forms of Americanism*, which have collectively comprised American political culture."⁶⁶ According to Smith,

The multiple traditions theory holds that Americans share a *common* culture but one more complexly and multiply constituted than is usually acknowledged. Members of all groups have shared and often helped to shape the ideologies and institutions that have structured American life, including ascriptive ones.⁶⁷

This paper approaches national identity from a multiple traditions framework. The multiple traditions theory reveals the complexities of American culture and ascribes the development of national identity to an intricate entanglement of liberal values with inegalitarian ideologies and ascriptive hierarchies. This reality is true for U.S. foreign policy decisions and for wartime domestic security policies. During times of war, American "liberal and democratic traditions have had great normative and political potency."⁶⁸ Simultaneously, "contrary ascriptive traditions" have had equal "ideological and political appeal."⁶⁹

The American Creed and Foreign Policy

Foreign policy is an extension of national identity. Scholars of international relations do not typically value the use of culture to explain foreign policy decisions, but doing so provides context behind the subjective nature of foreign strategy.⁷⁰ According to

⁶⁶ Ibid., 550.

⁶⁷ Ibid., 558.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Andrew M. Johnston, *Hegemony and Culture in the Origins of NATO First-Use, 1945-55* (New York: Palgrave-Macmillan, 2005), 7.

political scientist Henry R. Nau, foreign policy decisions support the national interest, and "national interest begins with what kind of society the nation is, not just what its geopolitical circumstances are."⁷¹ Nations make foreign policy decisions based on "cultural assumptions about their national identity," and their "preferences are bounded by worldviews that are, in the end, constructed socially."⁷² Foreign policymakers forge strategic culture "from the materials of national memory (or its inverse, national amnesia) to serve specific interests. [Strategic culture] then acts as a 'social fact' that determines the contours of 'appropriate' behavior."⁷³ To fully understand how the U.S. interacts globally, one must first examine the domestic cultural history, or the elements that influence national identity, including ideology, race and gender relations, religion, and politics.⁷⁴

Cultural aspects of American foreign policy are linked to the American Creed, which becomes evident with the concept of exceptionalism. Tocqueville first used the word "exceptional"⁷⁵ to describe America, and Americans have adopted that word to describe themselves. Americans believe that they are a divinely-chosen people with a providential responsibility to spread the economic, social, and democratic prosperity that accompany the free, egalitarian conditions observed by Tocqueville.⁷⁶

⁷¹ Henry R. Nau, *At Home Abroad: Identity and Power in American Foreign Policy* (Ithaca: Cornell University Press, 2002), 15-6.

⁷² Johnston, 6-7.

⁷³ Johnston, 20, footnote 1.

⁷⁴ Johnston, 29.

⁷⁵ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 430.

The belief in American exceptionalism is evident in the rhetoric of U.S.

Presidents. Ronald Reagan noted that America's "founding documents proclaim to the world that freedom is not the sole prerogative of a chosen few. It is the universal right of all God's children."⁷⁷ In a speech about national security, Barack Obama said

I believe with every fiber of my being that in the long run we also cannot keep this country safe unless we enlist the power of our most fundamental values. The documents that we hold in this very hall -- the Declaration of Independence, the Constitution, the Bill of Rights -- these are not simply words written into aging parchment. They are the foundation of liberty and justice in this country, and a light that shines for all who seek freedom, fairness, equality, and dignity around the world.⁷⁸

Reagan's and Obama's rhetoric reveal an important assumption from which Americans approach foreign policy decisions-that America is the foundation of liberty and considers itself responsible for maintaining and spreading Creedal principles worldwide. Such rhetoric reinforces American perceptions that U.S. is "the divinely-appointed vehicle for attaining lasting human progress."⁷⁹ Justified by its divinely-appointed mission, America "embodies and promulgates" universal principles.⁸⁰ Anyone who opposes the U.S. also opposes the principles of freedom, equality, and justice that America advocates.

⁷⁶ Smith, "Beyond Tocqueville," 550-1
Seymour Lipset, *American Exceptionalism* (New York: W. W. Norton & Company, Inc, 1996), 151-75.

⁷⁷ Ronald Reagan, "Remarks to the Captive Nations Week Conference" Los Angeles, CA, July 15, 1991.

⁷⁸ Barack Obama, "Remarks on National Security" (speech, Washington, DC, May 21, 2009), The White House Briefing Room, accessed on January 6, 2017, <https://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>.

⁷⁹ McCartney, 406-7.

⁸⁰ McCartney, 407.

American exceptionalism manifests in foreign policy in two dichotomous ways. On one hand, Americans consider the U.S. to be an “exemplar,” or the biblical “city upon a hill” for other nations to observe and emulate. Americans who subscribe to the exemplar identity advocate for isolationism. For example, in his farewell address in 1796, George Washington warned against the U.S. forming “permanent alliances.”⁸¹ On the other hand, Americans consider themselves a “redeemer nation” with a moralistic purpose to spread liberal democratic principles throughout the world.⁸² The missionary identity motivates internationalist foreign policy.⁸³ Americans with this missionary identity approach foreign policy with the assumption that “America’s national interest and the greater good of mankind are one and the same.”⁸⁴ Woodrow Wilson’s charge to “make the world safe for democracy” demonstrates the missionary identity of exceptionalism.⁸⁵

The idea of exceptionalism is based on “mythic”⁸⁶ portrayals of America’s origins and purposes that glorify American foreign policy and justify U.S. actions during wartime as divinely-appointed and, therefore, righteous. This assumption eliminates the

⁸¹ Hilde Eliassen Restad, “Old Paradigms in History Die Hard in Political Science: U.S. Foreign Policy and American Exceptionalism,” *American Political Thought* 1, no. 1 (2012), 56.

⁸² Ernest Lee Tuveson, *Redeemer Nation*, as paraphrased in Patrick J. Deneen, “Cities of Man on a Hill,” *American Political Thought* 1, no. 1 (2012), 30-31.

⁸³ Restad, 56.

⁸⁴ McCartney, 402, 407.

⁸⁵ Woodrow Wilson, “Joint Address to Congress Leading to a Declaration of War Against Germany (1917)” (speech, Washington, DC, April 2, 1917) *Our Documents*, accessed on January 7, 2017, <https://www.ourdocuments.gov/doc.php?doc=61>.

⁸⁶ Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT: Yale University Press, 1997), 5.

possibility that American actions contradict the Creedal principles they are divinely appointed to uphold. It also disregards the wartime policies that deviate from the Creed and the cultural origins from which those deviations emanate. The assumption eliminates the significance those cultural origins have on the framing and development of American national identity.

Deviations from the Creed during Wartime

During times of war and national crisis, Americans deviate from their Creed in order to protect citizens from rising threats. Perceived threats spark feelings of fear and insecurity, which causes the institution of measures that contradict basic American values of freedom, equality, and justice in order to preserve national security. The measures usually are not necessary during times of peace, but, during war, policymakers must lessen the chances that an attack will happen within the borders of the U.S. To this end, wartime domestic security policies restrict rights and liberties, especially on perceived enemy populations that are otherized based on ascriptive Americanist traditions. Americans believe the restrictions are a small price to pay for the relatively large perceived security gain.⁸⁷ In most wars, these restrictions are temporary and are designed to minimize the threat and protect the majority. Americans realize that when the war ends, the restrictions will also end.

The ways in which these actions violated the Creed may seem self-evident, but, for the purposes of this paper, they need to be discussed. Historically, domestic security policies infringe on rights protected by the U.S. Constitution, such as freedom of speech,

⁸⁷ Stone, *Perilous Times*, 531.

assembly, and privacy. For example, in 1798, the Alien and Sedition Acts suppressed First Amendment speech protections, especially of people who were critical of the Federalist-controlled government. The repression of speech rights infringes on people's ability to express opposition to the government. As Geoffrey Stone, scholar of civil liberties, indicates, freedom of speech is especially important during wartime, because citizens need to be able to discuss and critique the effectiveness of wartime response. "The freedom of speech in this context is not merely a right of the individual, but a fundamental national interest that is essential to the very essence of democratic decision-making in wartime."⁸⁸ Every wartime domestic security policy had similar constitutional issues, which will be discussed more fully in Chapters Two and Three.

But the wartime policies infringe on Creedal rights at a different level. According to Princeton political scientist George Kateb

Every basic right has a double meaning. The spirit of the laws-that is, the spirit of the U.S. Constitution and other comparable charters-reveres personhood, reveres the human status of every individual. Indeed, the substance of specific basic rights, such as free speech and religion, or the prohibition of self-incrimination and double jeopardy as well as, of course, the various rights clustered in the idea of the right of privacy, may be said to derive from an initial idea of personhood. Or, if the practice of a given right preceded the articulation of the idea of personhood, then it is this idea that provided the rationale for the right when, for example, the codification we know as the Bill of Rights was framed, and that still provides the deepest reason for it.⁸⁹

⁸⁸ Geoffrey R. Stone, "Civil Liberties in Wartime," *Journal of Supreme Court History* 28 no. 3 (2003), 243.

⁸⁹ George Kateb, "On Being Watched and Known," *Social Research* 68 no. 1 (2001), 270-1.

In other words, rights are fundamental to personhood, and laws exist to protect those fundamental rights. Likewise, the Constitution exists to protect those rights. Kateb continues,

Every violation of a basic constitutional right is an injury to the human status of individuals, but not every injury to the human status is, at least initially and in appearance, a violation of a basic constitutional right. . . . But fundamental moral rights remain even in the absence of constitutional rights.⁹⁰

The wartime security policies violate both constitutional and fundamental moral rights. The constitutional issues reside with the First and Fourth Amendment protected rights of speech, assembly, and privacy. Furthermore, inalienable rights belong to everyone, and because the government is charged with protecting rights that are inherent to personhood, it infringes on moral rights when it violates constitutional rights.

Because Americans readily and recurrently violate their principles in pursuit of national security, conclusions can be drawn about the nature of America's priorities. The violations demonstrate that Americans prioritize preserving national security over absolutely protecting Creedal rights. More simply stated, security trumps the Creed. Otherwise, Americans would not enact domestic security policies that violate anyone's rights. Nor would they use national security issues to justify the violations.

This is not to say that Americans, in violating the Creed with domestic security policies, completely disregard the Creed. In fact, the justifications used to support the policies often rely on Creedal language, as does the language Presidents use to justify U.S. entry into war. For example, at the same time that Roosevelt authorized the internment camps, he also charged Americans to secure four freedoms-freedom of

⁹⁰ Ibid, 271.

speech, freedom of worship, freedom from want, and freedom from fear, “everywhere in the world,”⁹¹ thus justifying U.S. entry into World War II. Roosevelt used Japan’s attack on Pearl Harbor to support the need for internment camps, saying that people of Japanese ancestry were a potential threat, because they might harbor loyalties to Japan and its imperialistic cause that contradicted the tenets of democracy.

Every war has had its iteration of this phenomenon, as people who share physical traits with enemy populations are massed into one group assumed to be dangerous. In each case, the otherization in security policies accompanies discrimination that the otherized population encounters from fellow Americans. Consider, for example, the fact that when Japanese Americans were forced into internment camps, very few other Americans objected.⁹² In fact, the internment camps were an extension of the fear that Americans felt towards people of Japanese descent as a result of the bombing of Pearl Harbor. Japanese Americans were labeled derogatory names, vilified in media, and not considered citizens by many white Americans.⁹³ The Roosevelt administration, therefore, received public support for the internment camps, which now have come to be considered “one of the blackest blots on American history; as the time that democracy came the

⁹¹ Franklin Delano Roosevelt, “Annual Message to Congress on the State of the Union” (speech, Washington, DC, January 6, 1941) *The American Presidency Project*, accessed on January 9, 2017, <http://www.presidency.ucsb.edu/ws/?pid=16092>.

⁹² Robert Shaffer, “Opposition to Internment: Defending Japanese American Rights During World War II,” *Historian* 60 no. 3 (2009), 598.

⁹³ George H. Roeder, Jr., “Censoring Disorder: American Visual Imagery of World War II,” in *The War in American Culture: Society and Consciousness During World War II* ed. Lewis A. Erenberg and Susan E. Hirsch (Chicago: University of Chicago Press, 1996), 65.

nearest of being wrecked."⁹⁴ However, Roosevelt and supporters of the camps considered them to be necessary to preserve democracy.

Beliefs that are Conceptually Prior to the Creed

The Japanese internment camps are not the sole focus of this paper, but they do provide insight into the important assumptions Americans make about how to maintain national security during war and times of crisis. With the benefit of hindsight, it is easy to recognize that the internment camps were a violation of the American Creed. So, too, were the other domestic security policies that this paper details in later chapters. Yet, in the intensity of wartime, when Americans are particularly vulnerable, leaders have a difficult time remaining completely dedicated to Creedal principles. Some of this can be explained because policymakers have to make quick decisions under pressure with incomplete and oftentimes inaccurate information. They cannot predict the future, nor can they anticipate every possible scenario that could threaten security. They do not usually have time to deliberate about whether every wartime policy aligns with American values. Additionally, they must consider “a variety of political imperatives”⁹⁵ in developing wartime security policy.

Yet, the repeated tendency to otherize perceived enemy populations during wartime reveals that Americans hold beliefs about themselves that are conceptually prior to the Creed. They place boundaries around what it means to be American, and during wartime, those boundaries become particularly pronounced. Inside the boundaries are

⁹⁴ Emery Andrews, “An Interpretation,” typescript, July 7, 1943, box 2, Emery Andrews papers, Allen Library, University of Washington, Seattle, quoted in Shaffer, 597.

⁹⁵ Smith, *Civic Ideals*, 35.

people who are perceived not to pose a threat to the American way. People outside of those boundaries, even if they are U.S. citizens, lose the privilege of having their rights protected because they are perceived to pose a threat.⁹⁶

Samuel Huntington, author of *Who Are We? The Challenges to America's National Identity*, defines those boundaries. American culture centers on "Christian religion, Protestant values and moral ethic"⁹⁷ with important peripheral influences from the English language, British law, and European art, literature, philosophy, and music. For Huntington, "Anglo-Protestant culture" distinguishes America from other democracies. Unlike other countries, the U.S. was first a nation of British colonists who established the cultural and political traditions from which the American Creed emerged. Huntington claims that the early emergence of American culture, based on the British culture of the first settlers, influenced American national identity more than the immigrants who came later and assimilated to the already-established culture.⁹⁸

The initial British influence set the stage for the development of the American Creed and for subsequent definitions of Americanness. British Enlightenment philosophers, such as John Locke and Thomas Paine, shaped American Founders' beliefs about natural law, equality, and justice. Equally influential in the development of national identity were central elements of influential British culture, including "Christian religion, Protestant values and moral ethic."⁹⁹ According to Huntington, "the Creed was the

⁹⁶ Theiss-Morse, 10-11, 38, 68.

⁹⁷ Samuel P. Huntington, *Who Are We?*, 40.

⁹⁸ Huntington, 40, 59.

⁹⁹ *Ibid*, 40.

product of people with a distinct Anglo-Protestant culture" and subsequent waves of immigrants have assimilated to that culture.¹⁰⁰ The resulting definition of Americanness is associated with those early British settlers, and Huntington believes that cultural homogeneity is necessary to preserve Americanness.¹⁰¹ By this logic, the degree to which a person conforms to Anglo-Protestant culture is directly related to the degree to which a person is American. Interpreted, many Americans attach a certain moral superiority to white, Anglo-Protestant characteristics, including their physical traits.

Along with that moral superiority develops ascriptive definitions of the value of human beings, and, therefore, culturally-constructed racial and gender hierarchical relationships that Smith observes as heavily influential in American national identity. From these relationships, certain groups are accepted into mainstream American while others "are often portrayed as historically and socially conditioned to possess foreign moral values" that are so "irreparably different and dangerous that they do not merit equal status in the political community."¹⁰² Although Americans claim commitment to liberal values, the real application of those values is reserved for "morally superior" white Protestants, with all other groups being denied full status as Americans. During wartime, people whose physical characteristics match those of the perceived enemy become less worthy of protections.

Elizabeth Theiss-Morse places this phenomenon within social identity theory, arguing that people who display strong identifiers of national identity are likely to set

¹⁰⁰ Ibid, 339.

¹⁰¹ Ibid, 40, 59, 340.

¹⁰² Smith, "Beyond Tocqueville," 563.

exclusionary boundaries around what it means to be American.¹⁰³ The people who tend to strongly identify as American are "older, Christian, less educated, less politically knowledgeable, trusting of other people, and likely to identify with many social groups. They also tend not to be black or extremely liberal." She terms the white, Protestant male as the "prototypical American,"¹⁰⁴ which has become the standard to which all other groups are measured. Wartime intensifies those boundaries, and people who are outside of the boundaries become suspect.

Theiss-Morse describes the human tendency to create exclusive groups. To become accepted by the "ingroup," members must demonstrate "group commitment" and conform to "group boundaries."¹⁰⁵ Americans tend to associate strong identifiers of national identity with seemingly exclusionary elements, "such as being white or Christian or native-born," but also with less tangible elements that are "potentially more inclusive, such as feeling American or valuing freedom."¹⁰⁶ People who do not conform to those characteristics stretch the boundaries of national identity, and, therefore, become marginalized group members, "otherized" because prototypical Americans perceive them as disloyal to the group.

During wartime, this otherization occurs to foreign enemies, enemy aliens, and to U.S. citizens whose physical characteristics resemble those of the enemy. By virtue only

¹⁰³ Elizabeth Theiss-Morse, *Who Counts as an American: The Boundaries of National Identity* (New York: Cambridge University Press, 2009), 4, 13.

¹⁰⁴ *Ibid*, 61.

¹⁰⁵ *Ibid*, 4.

¹⁰⁶ *Ibid*, 89.

of their race, ethnicity, or religion, otherized populations are suspected of siding with the enemy and are considered guilty by association. In 1943, U.S. Army Lieutenant General John L. DeWitt stated that “A Jap’s a Jap. It makes no difference whether his is an American citizen or not.”¹⁰⁷ The same year, in *Hirabayashi v U.S.*, the Supreme Court ruled that “We cannot close our eyes to the fact, demonstrated by experience, that in time of war residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.”¹⁰⁸

The otherization of perceived enemy populations results from the fear and public hysteria that the dangers of war stimulate. Americans historically have reacted to the uncertainty of war by “allow[ing] fear and fury to get the better of them.”¹⁰⁹ Additionally, the intense and dangerous circumstances surrounding war necessitate swift reactions that are subject to current information and the biases of policymakers who hold assumptions about the nature of the imposing threats. Unknown political and military considerations also influence the panic responses.¹¹⁰ As a result, for over 200 years, “the United States has turned to repression in response to foreign wars.”¹¹¹ The repression has been most significantly dealt against the enemy other.

¹⁰⁷ Brief of Japanese American Citizenship League, Amicus Curiae, *Korematsu v US*, 1944 WL 42853, 198, quoted in Robert Wagstaff, *Terror Detentions and the Rule of Law US and UK Perspectives* (Oxford: Oxford University Press, 2014), 41.

¹⁰⁸ 320 US 81, 101 (1943), quoted in Wagstaff, 42.

¹⁰⁹ Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* (New York and London: W.W. Norton, 2004), 5.

David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Minneapolis: University of Minnesota Press, 1998), 1.

¹¹⁰ Stone, “Civil Liberties in Wartime,” 242.

¹¹¹ Wagstaff, 40.

The demonization of the enemy other stems from ideas of what makes an American and what does not. The tendency to categorize enemy populations based on physical characteristics demonstrates that Americans hold beliefs about themselves that are conceptually prior to the Creed. Those beliefs are steeped in ideas about the hierarchical relationships between racial, ethnic, or religious groups. The beliefs are also evidence that Americans prefer the cultural homogeneity that Huntington references, and that people who live outside of the boundaries of the culture are not considered part of the ingroup that deserves their rights protected. The consequential domestic security policies that discriminate against otherized populations are an express violation of the Creed that Americans claim belongs to everyone.

Wartime Otherization is a Deviation from the Creed

Public hysteria during wartime often inspires xenophobia,¹¹² which impacts domestic policies. During every major war, the U.S. has stripped an enemy population of basic civil rights and liberties in the name of national security and protecting U.S. interests. In the Quasi War with France in 1798, John Adams applied laws that limited free speech and press rights of suspected Jacobins (supporters of the French Revolution) in the U.S. Abraham Lincoln suspended the writ of habeas corpus, thereby stripping people of their right to challenge an unwarranted arrest. During World War II, Franklin D. Roosevelt forcibly relocated over one hundred thousand Japanese Americans to internment camps, stripping them of their rights to live freely. During the War on Terror,

¹¹² Smith, *Perilous Times*, 282.

George W. Bush, Barack Obama, and Donald Trump have instituted surveillance policies that target Muslims, stripping them of their privacy rights.

These domestic wartime policies represent major deviations from the American Creed. Not only do they infringe on constitutionally-protected rights of free speech, assembly, and privacy, but the fact that they target specific populations expressly contradicts one basic tenet of the Creed, that natural rights belong to everyone without qualification. Furthermore, assuming that someone is a potential threat based on his or her physical traits disregards another important Creedal principle, that people should be presumed innocent until proven guilty.

Evidence of Multiple Traditions during Wartime

Because U.S. policies target certain populations based on ascriptive elements such as race, ethnicity, or religion, some accuse Americans of hypocrisy, or of possessing only a rhetorical commitment to the Creed. Political scientist Walter L. Hixson acknowledges that U.S. foreign policy is culturally constructed and primarily driven by national identity elements. He dismisses Creedal influence and describes national identity as based solely on constructed ideas that America is "manly, racially superior, and providentially destined 'beacon of liberty'" that considers itself holding a "special right to exert power in the world."¹¹³ This "Myth of America" has propelled a "pathologically aggressive" U.S. foreign policy. Through the narrative of the myth, Americans believe that all of their wartime response is necessary and appropriate, including the domestic security policies that discriminate against the enemy Other.¹¹⁴

¹¹³ Hixson, 1.

Despite wartime infringements on civil rights and liberties, and despite the otherization of the enemy, Hixson's interpretation of national identity as patriarchal and racist is overly pessimistic and ignores the voices of opposition to the discriminatory policies that conflict with the Creed. In this way, Hixson's argument flattens understandings of the complex factors that influence national identity and becomes, in Smith's words, "too simplistic."¹¹⁵ However, equally simplistic is the Tocquevillian framework, which overlooks the influence of discrimination and otherization in the formation of national identity. Over reliance on either perspective can cause a single-dimensional and inadequate understanding of the nature of Americanness.

In actuality, both factors have played a role in framing American national identity. Although discriminatory wartime security policies contradict Creedal principles of freedom, equality, and justice, additional dynamics simultaneously demonstrate the influence of multiple traditions. During every war, a contingent of opposition has arisen to resist the otherization, combat the discriminatory policies, and support the Other against the influences of social prejudice. Generally, prototypical Americans "have been prominent among those combating" the inegalitarian policies and promoting the acceptance of otherized groups into the mainstream.¹¹⁶ In 1798, Jeffersonian Republicans contested the Alien and Sedition Acts as improper.¹¹⁷ In 1865, an ironic display of

¹¹⁴ Hixson, 307-8.

¹¹⁵ Smith article, 555.

¹¹⁶ Smith, 558.

¹¹⁷ John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown, 1951), 178-9.

multiple traditions occurred when Supreme Court Chief Justice Roger B. Taney, whom Americans now criticize for his racist rulings in other cases, resisted the suspension of habeas corpus authorized by Lincoln, whom Americans now revere for his civil rights advocacy.¹¹⁸ During WWII, Justice Robert Jackson dissented from the Supreme Court majority and accused the U.S. of racism with its Japanese internment camps.¹¹⁹ Presently, civil liberties groups have challenged the legality of counterterrorism surveillance policies that target Muslims.¹²⁰ Even during wartime, when the threat is most pronounced, the opposition maintains that all people deserve their rights protected.

These voices of opposition hold policymakers accountable to the Creed. Without the opposition, in some cases, policymakers consider even more draconian measures, but reject them after recognizing them as overly repressive and contrary to the Creed. Such was the case during 1798. Although Congress debated the Alien and Sedition Acts, which repressed speech rights for anti-Adams administration activists, they also considered an associated proposal that would have disallowed truth as a defense. If a person spoke against the government, even if what he said was true, this proposal would have labeled the speech seditious and prosecutable because it could incite public opposition to the government. Congress recognized that this as overly repressive and rejected it.¹²¹

¹¹⁸ Brian McGinty, *The Body of John Merryman: Abraham Lincoln and the Suspension of Habeas Corpus* (Cambridge: Harvard University Press, 2011), 77.

¹¹⁹ *Korematsu v. United States*, 323 U.S. 214 (1944) (Jackson dissenting).

¹²⁰ *ACLU v. Clapper*, Case 1:13-cv-03994-WHP Document 26, August 26, 2013, 16-30.

¹²¹ James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1956), 107-10.

Interestingly, both the opposition to and the proponents of wartime security policies point to the American Creed and use Creedal rhetoric to justify their respective positions. Each side of the debate claims the Americanness of its position and labels the other side as “un-American.”¹²² Both sides consider themselves patriotic Americans who are fighting to preserve freedom. For example, beginning with the first speech he delivered after 9/11, George W. Bush claimed the Americanness of the Patriot Act when he signed it into law in 2001.¹²³ Likewise, Barack Obama defended the Americanness of the surveillance when he validated the constitutionality of the phone metadata collection.¹²⁴ Contrariwise, former Vice President Al Gore argued that the surveillance is a violation of the Constitution and is not “the American way.”¹²⁵ Similar conflicting versions of Americanness are repeated in each war, which will be discussed in further detail in Chapters Two and Three.

With contrasting sides claiming that their version of Americanness is the true version, and with each side understanding Creedal principles so differently, all confidence in settling the true nature of American national identity might be lost without applying the multiple traditions theory. However, using a multiple traditions framework,

¹²² Peter Onuf, “American Exceptionalism and National Identity.” *American Political Thought* 1, no. 1 (2012), 77-8.

¹²³ George W. Bush, “Address to the Joint Session of the 107th Congress September 20, 2001,” in *Selected Speeches of George W. Bush*, accessed October 11, 2015, http://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf.

¹²⁴ White House, *Administration White Paper: Bulk Collection of Telephony Metadata Under Section 215 of the USA Patriot Act (2013)*, Washington, DC, August 9, 2013, archived at <http://perma.cc/8RJN-EDB7> and accessed on November 8, 2016.

¹²⁵ Suzanne Goldenberg, “Al Gore: NSA's secret surveillance program 'not really the American way,’” *the Guardian*, June 14, 2013, accessed on May 12, 2017, <https://www.theguardian.com/world/2013/jun/14/al-gore-nsa-surveillance-unamerican>.

national identity, displayed in policy and practice, results from complex interactions between conflicting sides. The resulting policy and practice represents a mixture of multiple perspectives. According to Smith, "American political actors have always promoted civic ideologies that blend liberal, democratic republican, and inegalitarian ascriptive elements in various combinations designed to be politically popular." Consequently, the nation's wartime security policies and their enforcement have often been the result of "none too coherent compromises among the distinct mixes of civic conceptions."¹²⁶ Therefore, America has never been completely liberal, nor has it been completely inegalitarian.

Otherization: A Tool to Reconcile with the Creed

Because Americans are committed to their Creed, and because their domestic security policies infringe on Creedal principles, a deep chasm separates their beliefs from their actions. To bridge that chasm, Americans have to resolve the inherent contradictions between their values and their policies. Otherization becomes the tool with which Americans reconcile their principles with their contradictory and inegalitarian practices. Domestic security policies target a subset of Americans, or the Other, during wartime. Each war has seen a different iteration, but the pattern remains. French supporters and Jacobins, secessionists, Japanese Americans, and Muslims have all been otherized depending on the war. As long as rights are violated on the Other, Americans consider themselves both protected and committed to their core principles.

¹²⁶ Smith, *Civic Ideals*, 6.

Violating the Other's rights does not count as violating the Creed, because the Others do not count as real Americans. In this way, Americans feel safe, and they feel that their personal rights are not being violated. As long as the "Other" is targeted, "we" remain protected. Of course, this pattern becomes problematic, because, as Stone explains, "the individuals whose rights are sacrificed are not those who make the laws, but minorities, dissidents, and noncitizens. In those circumstances, 'we' are making a decision to sacrifice 'their' rights-not a very prudent way to balance the competing interests."¹²⁷ Violating the Other's rights strips them of the fundamental moral rights that Kateb mentions and upon which the Creed is founded. And the Creed is supposed to apply universally, not just to a few who match certain characteristics.

Tocqueville predicted these tensions, which are inherent in a democratic culture. "The moral empire of the majority is also founded on the principle that the interests of the greatest number ought to be preferred to those of the few." The consequential "omnipotence of the majority" prove "dire" and "dangerous" for those whose opinions dissented from the majority.¹²⁸ During every war, Tocqueville's prediction rang true, as the majority assumes that the otherized population, by virtue of their physical characteristics or religion, poses a threat to national security. From that assumption, the enemy other is presumed guilty, and security policies are established to curb the perceived threat. These discriminatory policies are an express violation of the American Creed.

¹²⁷ Stone, "Civil Liberties in Wartime," 243.

¹²⁸ Tocqueville, 44.

The Creed Exists to Keep Deviations Temporary

Despite the discriminatory nature of the wartime security policies, Americans eventually, though sometimes after significant struggle, end the policies. They recognize that the discriminatory measures violate Creedal principles. This process indicates that Americans believe in the Creed, even though their wartime security policies do not always reflect that commitment. Additionally, through a long and often difficult process, otherized populations become mainstreamed into American society and accepted by fellow Americans as part of the ingroup. This process occurs after the war ends and demonstrates the American Creed exists to keep discriminatory policies temporary and, ultimately, unacceptable.

After the war ends and the perceived threat diminishes, public hysteria also recedes. At that point, Americans can evaluate their policies without the added pressure of war. Usually the discriminatory security policies are recognized as problematic. As explained by Stone, Americans recognize that they reacted to the war “too harshly,”¹²⁹ in restricting civil liberties. Generally speaking, lawmakers rescind the discriminatory policies, and, in some cases, Americans learn to regret their actions.¹³⁰ Once the policies are lifted, Americans restore their prewar commitment to civil liberties.¹³¹

Stone argues that most of the civil liberties restrictions of the Quasi-War, the Civil War, and WWII would receive more disapproval from Americans today than they did at the time they were enacted. For example, the speech rights that were restricted by the

¹²⁹ Stone, “Civil Liberties in Wartime,” 215.

¹³⁰ *Ibid.*, 215.

¹³¹ Stone, *Perilous Times*, 530.

Sedition Act in 1798 were immediately rescinded by Thomas Jefferson when he became President two years later, and the liberal interpretation that Jefferson promoted generally stands today.¹³² Likewise, after WWII ended, former supporters of the Japanese internment camps expressed regret after hindsight allowed them to examine their actions and hold them to the standards of the Creed. For example, Earl Warren, governor of California who would eventually become Chief Justice of the U.S. Supreme Court, noted in his memoirs about the internment camps

I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens. . . . It was wrong to react so impulsively, without positive evidence of disloyalty, even though we felt we had a good motive in the security of our state.¹³³

In Warren's defense, he was not the only person who agreed with the internment camps. Prevalent public prejudice against the Japanese was endemic in the U.S. at that time. Contrast that with today, when Japanese Americans face much less discrimination and prejudice. Accordingly, the camps would likely meet with much more public disapproval today than they did during WWII. In fact, even the mere mention of the camps to justify a policy has met with severe backlash. During the 2016 Presidential campaign, Donald Trump supported a requirement for all Muslims entering the U.S. to register in a database.¹³⁴ A prominent supporter, Carl Higbie, justified the database by

¹³² Stone, *Perilous Times*, 533.

¹³³ Earl Warren, *The Memoirs of Earl Warren* (Doubleday, Garden City, NY, 1977), 149, quoted in Wagstaff, 41.

¹³⁴ Aaron Blake, "Trump Says We've Known His Muslim Ban and Database Plans 'All Along.'" But We Still Don't-Not Really," *The Washington Post*, December 21, 2016, accessed on January 24, 2017 https://www.washingtonpost.com/news/the-fix/wp/2016/11/17/the-evolution-of-donald-trump-and-the-muslim-database/?utm_term=.b7267fb1205d.

referring to the historical precedent set by the internment camps. The mere suggestion prompted surprise from Fox News interviewer and commentator Megyn Kelly,¹³⁵ and sparked a critical article in *The New York Times*.¹³⁶

That Americans consider the wartime repressions to be a violation of their principles validates their commitment to the Creed. They recognize that the drastic assaults on liberties cannot be maintained, and that violating one group or individual's rights could possibly lead to the violation of everyone's rights.¹³⁷ They also realize that rights lost during wartime must immediately be regained afterwards, or else they may never be regained.¹³⁸

Although not always immediately, through time, and after much struggle, the Other becomes mainstreamed into American culture. As Rogers Smith observes, "Americans [can] not tolerate permanent unequal statuses; persons must either be equal or outsiders."¹³⁹ Americans eventually accept outsiders as equals, which demonstrates success "in building a more inclusive democracy."¹⁴⁰ However, such inclusiveness is the

¹³⁵ Derek Hawkins, "Japanese American Internment is 'Precedent' for National Muslim Registry, Prominent Trump Backer Says," *The Washington Post*, November 17, 2016, accessed on January 24, 2017 https://www.washingtonpost.com/news/morning-mix/wp/2016/11/17/japanese-internment-is-precedent-for-national-muslim-registry-prominent-trump-backer-says/?utm_term=.e72265de9f8e.

¹³⁶ Jonah Engel Bromwich, "Trump Camp's Talk of Registry and Japanese Internment Raises Muslims' Fears," *The New York Times*, November 17, 2016, accessed on January 13, 2017 https://www.nytimes.com/2016/11/18/us/politics/japanese-internment-muslim-registry.html?_r=0.

¹³⁷ Justice Jackson offered this warning in his dissenting opinion in *Korematsu v. US*, 323 US 214, 246 (1944) (Jackson dissenting) when he argued that forcing Japanese Americans into internment camps could lead to similar violations against all people. A detailed discussion is included in Chapter 2.

¹³⁸ Stone, *Perilous Times*, 531.

¹³⁹ Smith, 561.

¹⁴⁰ *Ibid*, 563.

result of significant struggle.¹⁴¹ The struggle is seen in law suits and protests, and in otherized Americans who refuse to allow their rights to be violated. The struggle is also evident in the quiet resistance of ordinary Americans who respect each other and do not succumb to xenophobic ideology. Participating in that struggle represents the essence of Americanness.

Every group, prototypical or marginalized, has contributed to American national identity "precisely because of their dispersion and inter-mixing" with each other to "share a common political space, whose safety, healthfulness, beauty, and accessibility are collective values."¹⁴² In the process, multiple traditions have interacted to produce and evolve American national identity. The process of articulating difference, negotiating acceptance, and incorporating the Other into mainstream America is an important component of American national identity. It is through that struggle that Americans eventually align their policies with their Creed. The ability to engage in debate surrounding whom they are, and what they represent, is essential to their national identity.¹⁴³ American violation of the Creed (otherizing people) necessitates that process. If Americans automatically protected the rights of everyone equally, as the Creed says is essential, there would be no need for otherized populations to fight for acceptance. Likewise, American commitment to the Creed allows otherized populations to become part of the mainstream.

¹⁴¹ Ibid, 550.

¹⁴² Walzer, 10.

¹⁴³ Ibid., 4, 18.

Conclusion

Despite American's rhetorical commitment to Creedal principles, wartime domestic security policies exemplify deviations from the Creed. In response to national security threats, discriminatory policies are enacted that target otherized populations and reveal fundamental assumptions about national identity that are conceptually prior to the Creed. The assumptions include ideas about prototypical Americanism, which is a representation of ascriptive traditions, including hierarchical racial, gender, religious, and ethnic hierarchies. The interaction between Creedal principles and ascriptive traditions influences American character, which demonstrates multiple traditions theory. Otherization of perceived enemy populations becomes a tool whereby Americans can reconcile their ascriptive practices with their Creedal values, which serve to keep wartime deviations temporary.

The deviations of the past do not have to be repeated. The temporariness of wartime deviations and the eventual acceptance of otherized populations into mainstream America illustrate "the achievements of Americans in building a more inclusive democracy."¹⁴⁴ American leaders who are committed to the Creed can "address the task that democratic cultural pluralist perspectives have eschewed, that of making their community's members feel like a 'people'"¹⁴⁵ by establishing wartime security policies that do not discriminate against the Other. In doing so, Americans will work to transcend the prejudices that have plagued their culture during wartime.

¹⁴⁴ Smith, "Beyond Tocqueville," 566.

¹⁴⁵ Smith, *Civic Ideals*, 496.

Chapter 2

Historical Wars

Historical U.S. response to wartime threats follows a consistent pattern. First, Americans perceive a threat from an external or internal enemy. Policymakers then enact domestic security policies intended to reduce that threat. In practice, the law targets the perceived enemy and anyone who shares physical or ideological characteristics of the enemy. The resulting otherization deviates from universal Creedal principles. In defense of the Other, opposition voices resist the discriminatory practices. Proponents and opponents of the policy justify their respective positions using Creedal rhetoric. The otherization becomes a tool whereby Americans reconcile their inegalitarian practice with the Creed. The deviations are temporary, as when the war ends, the policy is rescinded.

This pattern repeats in every major U.S. war, including the three discussed in this chapter. During the 1798 Quasi War with France, Americans otherized French people and enacted the Alien and Sedition Acts to suppress French speech and press rights. During the Civil War, secessionists became the otherized population, and President Lincoln suspended the writ of habeas corpus for secessionists accused of committing acts of violence against the Union. After Japan attacked Pearl Harbor in WWII, Americans otherized Japanese people. President Roosevelt authorized the forcible relocation of all people of Japanese descent from the West Coast to internment camps. In each of these three examples, the policy deviated from Creedal principles of equality and justice under the law. After each war ended, the government withdrew the discriminatory policy.

This chapter is divided into three major subheadings, one for each war. The chapter provides a brief war history, explains the fear that led to the otherization of the

perceived enemy, outlines the domestic security policy that deviates from Creedal principles, provides evidence of multiple traditions in the debate over the policy, and establishes that the otherization enabled policymakers to reconcile the Creed with the deviations. Finally, each section demonstrates that the deviations from the Creed were temporary. In every example, the policy ended when the war concluded.

1798 Quasi War with France

In 1798, the young United States almost went to war with France. In what has been named the Quasi War, Americans established incidents of Creedal justification for war, domestic security policies that deviate from the Creed, and otherization of perceived enemies that become a pattern in subsequent wars. This section provides a brief overview of the Quasi War, a description of the otherization of French people and their supporters, and an examination of the domestic security policies and practices intended keep Americans safe from the French threat. Namely, the Alien and Sedition Acts restricted freedom of speech, especially for supporters of French revolutionary ideals, otherwise known as Jacobins. The rise of political parties, the Federalists and Democratic Republicans, illustrates the existence of multiple traditions. Federalists, who controlled the legislative and executive branches, feared French influence would undermine Creedal principles and, therefore, passed the Alien and Sedition Acts to protect against that influence. Republicans opposed the Acts because the restrictions of free speech infringed on natural rights and represented a deviation from the Creed. When the conflict ended, Republicans took control of the Presidency and Congress, in part because Americans believed that free speech protections for everyone aligned properly with Creedal principles. Therefore, the Creed kept the wartime deviations temporary.

War Overview

The hostility between France and the United States began in 1794, in the midst of a fierce, globe-spanning war developing between France and Britain. After the 1789 French Revolution, France experienced intense conflicts that escalated into the “Reign of Terror,” when the government suppressed dissent with mass arrests, imprisonments, and executions.¹⁴⁶ Fearful that the French civil war and revolutionary ideals would spread and strip Europe of its monarchies, Great Britain declared war on France. The French prevailed, and by 1797, France, under the leadership of Napoleon, had become the most powerful military in Europe and threatened to attack Britain.¹⁴⁷

The U.S. carefully remained neutral during the conflict in an attempt to maintain friendly economic relations with France and Britain, but, instead, the neutrality angered both countries. In response, the British navy captured American ships and coerced the seamen to serve Britain. To avoid war with Britain, the U.S. negotiated Jay’s Treaty, which prevented the U.S. from interceding in the conflict between France and Britain.¹⁴⁸ Believing Jay’s Treaty violated the terms of the 1778 Franco-American Treaty, in which the U.S. pledged military support to France in case of future war with Britain, French leaders seized hundreds of U.S. merchant ships and captured the American seamen.¹⁴⁹ To

¹⁴⁶ Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* (New York: W.W. Norton & Company, 2004): 21.

¹⁴⁷ Stone, 21.

¹⁴⁸ Ibid.

Alan Taylor, “The Alien and Sedition Acts,” in Julian E Zelizer, *The American Congress* (Boston: Houghton Mifflin Harcourt Publishing Company, 2004), 65.

¹⁴⁹ Stone, 21.
Taylor, 65.

avoid war, President John Adams sent three envoys to France to negotiate a peaceful solution. The envoys were disappointed and offended when French emissaries attempted to bribe them. The Americans informed U.S. leaders, replacing the names of the French emissaries for X, Y, and Z in communications. Ultimately, the French continued the seizure of American ships.¹⁵⁰

Fearing that France would escalate the conflicts into war, Congress gave Adams every tool he deemed necessary to protect America. Congress authorized preparations for war by reestablishing the Marine Corps, expanding the U.S. naval capacity, and strengthening land forces in anticipation of a possible French attack from the West.¹⁵¹ Congress suspended the Franco-American alliance and restricted trade with France.¹⁵² Adams predicted that "we may have to contend at our very doors for our independence and liberty."¹⁵³ America lingered in "a virtual state of undeclared war with France."¹⁵⁴

Domestic Issues: The Rise of Political Parties

When the American public learned of the XYZ Affair, they reacted in outrage. The national response reflects multiple traditions, which are evident in the rise of political parties, the Federalists and the Republicans, who opposed each other in their respective

¹⁵⁰ Taylor, 65-6.

John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown, 1951), 5. Stone, 23.

¹⁵¹ James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1956), 8.

¹⁵² Taylor, 66.

¹⁵³ Henry Cabot Lodge, editor, *The Works of Alexander Hamilton* (New York: G.P. Putnam's Sons, 1904), 302-4, quoted in Miller, 5.

¹⁵⁴ Smith, 8.

interpretations of the Creed and its inherent protections of free speech. Federalists believed that restricted speech during wartime protected from internal ideological threats. Republicans believed that unrestricted speech held the government accountable to create effective wartime responses. Each party validated its position with Creedal principles, which demonstrates the influence of multiple traditions.

In the 1790s, Americans did not recognize political parties, but ideological divisions produced two camps: Federalists and Republicans. The Federalists, led by Adams, George Washington, John Marshall, and Alexander Hamilton, believed that a successful democracy depended on a secure and strong central government led by people whom voters held in high esteem. Governing elites should remain free from “licentious” criticism. Federalists distrusted public opinion and believed that people should express their will at the voting booths, but leave the governing to the elected officials.¹⁵⁵ On the other hand, Republicans (not to be confused with today’s Republican Party, which has its roots in the mid-nineteenth century), led by Vice President Thomas Jefferson, James Madison, Albert Gallatin, George Clinton, and Aaron Burr, held a deep, zealous commitment to popular government and the responsiveness of elected officials to the will of the people. Republicans advocated for a decentralized government that protected individual liberty over security.¹⁵⁶ Although this debate was new in the 1790s, from them emerged free speech and press protections that generally stand today.¹⁵⁷

¹⁵⁵ Taylor, 63-4.
Stone, 25

¹⁵⁶ Ibid, 64
Stone, 25.

¹⁵⁷ Ibid, 63.

In the war between France and Britain, Federalists and Republicans supported U.S. neutrality, but each accused the other of secretly favoring one of the parties. Republicans suspected Federalists of favoring Britain, and Republicans sided with the French. When Adams informed Congress of the XYZ Affair, disbelieving Congressional Republicans demanded to see evidence. Adams happily complied and released the dispatches between himself and his envoys. The press published the affair, which humiliated the Republicans and infuriated the American public.¹⁵⁸

Otherization of the French: Fear of Jacobinism

That infuriation turned to otherization of French people and their supporters during the U.S. conflict with France. Anger about the XYZ Affair and fear of impending war with France sparked a furious explosion of anti-French sentiment throughout the U.S.¹⁵⁹ Americans projected their disdain for Talleyrand and his three emissaries onto French émigrés in the U.S., who then exceeded 25,000 in population.¹⁶⁰ French émigrés encountered suspicion and distrust from their neighbors. The Federalists considered French immigrants as potential spies.¹⁶¹ Rumors spread that French people in America were planning to set Philadelphia, the U.S. capital, on fire.¹⁶² Federalist newspapers aggrandized the uneasiness with warnings of French conspiracies to destroy "Your houses and farms with fire, plunder and pillage! and your wives and sweethearts with

¹⁵⁸ Ibid, 66.

¹⁵⁹ David G. McCullough, *John Adams* (New York: Simon & Schuster, 2001), 498.

¹⁶⁰ McCullough, 505.

¹⁶¹ Ibid, 505

¹⁶² Stone, 22.

ravishment and assassination, by horrid outlandish sans-culotte Frenchmen!!" The newspapers warned men to "remove your wives far from the Infernal Fraternal embrace, or you may prove witnesses of their violation and expiring agonies, or if reserved for future infamy, may increase your families not only with a spurious, but with a colored breed."¹⁶³

Deviation from the Creed: Alien and Sedition Acts

Fear of war and the outrage against French people produced a panic response in the Adams administration and Congress. Adams wanted to protect Americans from a perceived French threat and vindicate "the honor of [their] nation" from the insults of the French in the XYZ Affair.¹⁶⁴ That vindication took the form of four separate legislations, collectively known as the Alien and Sedition Acts (hereafter, the "Acts"), passed by Federalists in Congress and signed into law by President Adams. The Naturalization Act increased the residency requirement for citizenship from five to fourteen years. The Alien Friends Act granted the president power to deport allegedly dangerous aliens during peacetime. The Alien Enemies Act authorized the deportation or imprisonment of aliens during war. The Sedition Act had particular First Amendment implications, as it criminalized seditious speech and writing, defined as communication with the intent to

¹⁶³ *Albany Centinel*, October 12, 1798, *Porcupine's Gazette*, July 27, 1798, *The Pennsylvania Herald and York General Advertiser*, August 1, 1798, quoted in Miller, 6.

¹⁶⁴ John Adams, in William Austin, ed., *A Selection of the Patriotic Addresses, To the President of the United States. Together with the President's Answers . . .* (Boston, 1798), 70, quoted in Douglas Bradburn, "A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts," *The William and Mary Quarterly* 65, no. 3 (2008): 565.

defame the President or Congress.¹⁶⁵ This section discusses the Alien Acts separately from the Sedition Act, because each offers a different insight into how Americans hold ideas about themselves that are conceptually prior to the Creed.

The Alien and Sedition Acts targeted French people and their Republican allies. The Adams administration labeled their opponents “Jacobins” to stigmatize them and associate them with French revolutionaries, who, by this time, had become less supported by Americans than they were before the Reign of Terror. The Acts were meant to prevent the spread of “the principles of that exotic system which convulses the civilized world.”¹⁶⁶ The Federalists feared that French revolutionary ideals would cause rebellions that would compromise the central government’s authority during a time of national crisis and spiral the country into anarchy. To support their fears, Federalists referenced the rumors about secret French agents who lived in the U.S. with the purpose to incite rebellion, as they did in European countries, such as Holland and Switzerland, which had succumbed to French attacks. Before French military forces moved in, French spies weakened the nations from within. To avoid the same end, the Federalists thought it prudent to expel pro-French sentiments from the U.S.¹⁶⁷

Evidence of Multiple Traditions

The debate about the Alien and Sedition Acts, coupled with the resulting law and inegalitarian practice, highlights the multiple traditions that influence the development of American national identity. Both parties articulated concerns about the nature of

¹⁶⁵ Stone, 29-44.

¹⁶⁶ *Annals of Congress*, IX, 2890, quoted in Miller, 177.

¹⁶⁷ Smith, 66-7.

American national identity and who was entitled to Constitutional protections. Federalists contended that the Constitution only covered “We the People of the United States of America,” which excluded noncitizens. They also believed that disloyal citizens forfeited their rights when they engaged in seditious speech. The Federalists’ exclusive interpretation of Americanness separated Americans from others. Republicans argued that the Bill of Rights never mentioned citizens, only people, which implied that Constitutional protections belonged to everyone. Republicans promoted an inclusive definition of Americanness that welcomed all people, including noncitizen immigrants. They also believed that an essential component of a republic is the people’s ability to criticize the government. This section discusses the Alien and Sedition Acts separately, because they address separate issues. The Sedition Act received significantly more focus, mainly because it was enforced rigorously, whereas the Alien Act was not.

Alien Acts

The two Alien Acts, which authorized the President to deport noncitizens, became the center of controversy about whether the Constitution protects only citizens or all people. The debate reveals a core element of American national identity. Although Americans claim that the Creed is universal, when security issues arise, Americans place boundaries around people who deserve their rights protected and those who do not. During the Quasi War, French people and their suspected sympathizers in the U.S. became otherized, especially by Federalists who feared the spread of French revolutionary ideas. This otherization reveals that Americans hold ideas about themselves that are conceptually prior to the Creed and are based in certain ideologies. However,

Republicans advocated for the protection of all people. The existence of two opposing sides—one that favors restricting Creedal protections to the deserving few, and the other that favors extending Creedal benefits to all people—illustrates the multiple traditions inherent in the development of American national identity.

Part of the debate over the Acts centered on interpretations of who counts as American. Federalists defined Americanness as ideological unity with the government, which they happened to control at that time. They considered anyone who opposed the government to be disloyal, and, therefore, un-American and framed their support of the Acts in terms of loyalty to the country. Because the country was experiencing turbulence with the French, Federalists considered any support of Frenchness to be disloyal to America.¹⁶⁸ The Acts became a tool to fight any communication that threatened the American way. In doing so, Federalists aimed to protect people from dangerous ideas that were spreading throughout Europe as a result of the French Revolution.¹⁶⁹

Further dividing the two camps were their differing opinions on the nature of Constitutional protections. Federalists believed that the Constitution protected only U.S. citizens, not noncitizens. Therefore, Creedal principles were legally protected only for people whose loyalties remained with the U.S. government. One Federalist wrote that "the Constitution was made for Citizens, not for Aliens, who of consequence have no Rights under it, but remain in the country, and enjoy the benefit of the laws, not as matter of right, but merely as matter of favour and permission."¹⁷⁰ As a result, all foreigners did

¹⁶⁸ Miller, 11.

¹⁶⁹ Miller 74.

¹⁷⁰ Bradburn, 588.

not belong, and otherizing the French became justifiable in order to preserve purity of Americanness. On the other hand, Republicans opposed the Acts on principles of the American Revolution and focused their definition of Americanness on commitment to the natural rights of all people, including noncitizens. Republicans believed that the Constitution limited the power of the government to infringe on the natural, inalienable rights of all people, citizen or not.¹⁷¹ Any person, regardless of national origin, was entitled to the protections guaranteed in the Bill of Rights.

Sedition Act

The U.S. never officially declared war with France before tensions subsided, and, therefore, the Alien Acts were never fully enforced. However, the Sedition Act was heavily enforced and became the source of controversy and the eventual defeat of the Federalists in the election of 1800. The debate about the Sedition Act revealed a stark divide between Federalist and Republican elites over the definition of “free speech.” Federalists had little confidence in free and open debate. They believed that public opinion was easy to influence and manipulate by printed communications, and that false information could spark violent outbreaks, such as those experienced in France after the 1789 Revolution, which would lead to the destruction of Creedal rights, as evidenced in the Reign of Terror.¹⁷² Conversely, Republicans believed that freedom of speech and press was essential for “establishing and perpetuating the union,”¹⁷³ even if the speech

¹⁷¹ Ibid, 588.

¹⁷² Stone, 34.

¹⁷³ Bill of Rights Institute, “Virginia and Kentucky Resolutions,” *BillOfRightsInstitute.org*, accessed on November 30, 2016, <http://billofrightsintitute.org/founding-documents/primary-source-documents/virginia-and-kentucky-resolutions/>.

criticized the government. They wanted to restrict government power over speech and press and pointed to natural rights as outlined by the Creed to defend their version of free speech.¹⁷⁴

Federalists attempted to prevent the perceived dangers of irresponsible and deceitful press.¹⁷⁵ To that end, they passed the Sedition Act limited speech and press rights by criminalizing written, spoken, or published communications that opposed, defamed, or incited rebellion against or hatred towards the U.S. government, Congress, or the President.¹⁷⁶ Sedition was punishable by up to a two thousand dollar fine and a two year prison sentence.¹⁷⁷

Federalists derived their interpretation from prerevolutionary English common law, which protected the right of individuals to freely publish anything without government restraints, but maintained that anyone who published content that eroded public confidence in the government, even if the content was true, was subject to prosecution for sedition.¹⁷⁸ Federalists believed that this interpretation of free speech and press defended Creedal principles of liberty, because it protected responsible speech by

¹⁷⁴ Taylor, 71.

¹⁷⁵ Stone, 34.

¹⁷⁶ The Sedition Act, July 14, 1798; Fifth Congress; Enrolled Acts and Resolutions; General Records of the United States Government; Record Group 11; National Archives. Accessed on November 29, 2016, <https://www.ourdocuments.gov/doc.php?doc=16&page=transcript#no-3>.

¹⁷⁷ Ibid.

¹⁷⁸ Taylor, 70-1.
Stone, 33, 42-25.

only punishing “licentious speech.”¹⁷⁹ Additionally, Federalists boasted that they had improved and liberalized controversial aspects of English common law by empowering juries, rather than judges, to decide matters of sedition, by prohibiting judges to consider the truth as seditious, and by requiring prosecutors to provide evidence that publishers intended their content to weaken public esteem for the government.¹⁸⁰

Republicans responded to the Sedition Act by crafting a more expansive interpretation of free speech and press that laid the foundation for protections that Americans enjoy today. They argued that the First Amendment prohibited federal courts from using common law of sedition to prosecute offenders and contended that the Federalists’ interpretation of sedition would have a chilling effect on the free speech and press that was necessary for a successful republic. They insisted that would-be publishers might hesitate to print the truth out of fear that they would lack the “power to establish the truth to the satisfaction of a court of justice.”¹⁸¹ Furthermore, Republicans defended free speech as necessary for free and fair elections. James Madison argued that incumbents running for office would have a significant advantage over their opponents “because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst the latter may be exposed to the contempt and hatred of the people without violation of the act.”¹⁸²

¹⁷⁹ Taylor, 71.
Stone, 42-25.

¹⁸⁰ Taylor, 71.
Stone, 43.

¹⁸¹ Congressman John T. Nicholas, in the House of Representatives, July 10, 1798, quoted in Taylor, 71.

The Adams administration unevenly enforced the Sedition Act, specifically on Adams's Republican political opponents, whom Federalists claimed supported France. Yet, Republican elected officials remained safe from prosecution. Secretary of State Timothy Pickering championed the enforcement as necessary to maintain law and order. Known for being "grim and forbidding, irascible and unyielding,"¹⁸³ Pickering demanded public conformity with the President. He methodically attacked and eliminated the sources of Jacobinism, "a scare word intended to denote the anarchy in France in 1793-1794."¹⁸⁴ Republican newspapers became the target of Pickering's pursuits. Every morning, he scoured the newspapers for seditious content. He supported a network of spies and informants who notified him of suspicions. He relentlessly demanded the prosecution of both authors and publishers, even those who reprinted from other newspapers.¹⁸⁵ Pickering prosecuted four of the five most prominent Republican newspapers and several smaller newspapers, causing two to collapse and others to suspend publications while their editors served jail sentences.¹⁸⁶

¹⁸² James Madison and Thomas Jefferson, "Resolutions of Virginia and Kentucky," Library of Princeton University, 58, published on Google Books, accessed on March 1, 2017, <http://tinyurl.com/KYVAresolutions>.

¹⁸³ John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown, 1951), 87.

¹⁸⁴ Smith, 177.
Stone, footnote on 20.

¹⁸⁵ Stone, 46-8.
Miller, 88-9.

¹⁸⁶ Smith, 188-220.

Reconciling with the Creed

As becomes the pattern in all U.S. wars, the enemy of America, in this case French people, became the Other, and, therefore, not entitled to protections of their rights. By extension, anyone who associated with or supported French revolutionary ideals, or Jacobins, also became subject to discrimination. Out of the perceived need to protect national security, Federalists maintained that the Other surrendered their rights when they sided with the enemy, thereby posing a threat. In effect, the Other is not a real American. This otherization is an express violation of the Creed, which asserts that all people have inherent rights. However, the otherization is also a tool that Americans use to reconcile their inegalitarian practices with their commitment to the Creed. As long as French people and Jacobins were the targets, real Americans remain protected, and Creedal rights remain intact.

Keeping Deviations Temporary

Despite Adams's claim that America supported the Alien and Sedition Acts, vehement opposition spread. Weeks before the Acts passed, Adams was hanged and burned in effigy in North Stamford, Connecticut.¹⁸⁷ After the passage of the Acts, protesters erected potent revolutionary symbols of opposition called liberty poles.¹⁸⁸ Republican newspapers encouraged additional protests and launched a national petition drive that sent opposition letters to the desk of President Adams.¹⁸⁹ Thousands of Kentuckians congregated in Lexington to adopt the Kentucky Resolution, which nullified

¹⁸⁷ Bradburn, 565.

¹⁸⁸ Ibid, 573-4.

¹⁸⁹ Ibid, 575.

the Acts and declared the Federalist principles "unconstitutional, impolitic, unjust, and a disgrace to the American name."¹⁹⁰ Shortly thereafter, the Virginia state legislature passed a similar Resolution that "protest[ed] against the palpable and alarming infractions of the Constitution in the two late cases of the 'Alien and Sedition Acts.'"¹⁹¹ Written by James Madison and Thomas Jefferson, the Kentucky and Virginia Resolutions symbolized resistance to the Alien and Sedition Acts.¹⁹²

The struggle ended when Jefferson won the 1800 election, due, in part, to his defense of freedom of speech. According to free speech scholar Geoffrey R. Stone, "The Sedition Act alienated a substantial majority of the American people, gave those who supported the Republican cause a powerful issue of principle around which to rally, and hastened the downfall of the Federalist Party."¹⁹³ On March 3, 1801, Adams's last day in office, the Sedition Act formally expired. The free speech rights Americans enjoy today originate from Jefferson's liberal interpretation. The Creed retracted the deviations and established a pattern for future wars in which Americans terminate their inegalitarian domestic security policies when the war ends and threats diminish.

¹⁹⁰ Ibid, 566.

¹⁹¹ Bill of Rights Institute, "Virginia and Kentucky Resolutions," *BillOfRightsInstitute.org*, accessed on November 30, 2016, <http://billofrightsintstitute.org/founding-documents/primary-source-documents/virginia-and-kentucky-resolutions/>.

¹⁹² Miller, 178-9

¹⁹³ Stone, 71.

Civil War

Although much of the debate about the legality of the Alien and Sedition Acts focused on First Amendment rights and to whom they belong, the controversy also addressed unsettled questions about the limits of federal power and state sovereignty. Accordingly, the debate set the stage for nineteenth-century conflicts over states' rights to nullify federal laws and to secede from the Union.¹⁹⁴ For the six decades that followed the Alien and Sedition Acts, bitter economic, social, and political tensions intensified between the states in the North and the South. The American Civil War marked the culmination of these tensions. President Abraham Lincoln suspended the writ of habeas corpus for secessionists whom he perceived as a threat to the fragile Union. Accordingly, secessionists became the otherized population. Lincoln faced opposition from Chief Justice Roger B. Taney, which provides an example of the multiple traditions that have influenced American national identity during wartime. Secessionists became the threat and, thus, the otherized population targeted by wartime domestic security policy.

War Overview

The background of the suspension is well known and documented. By the time Lincoln was inaugurated on March 4, 1861, he faced perilous circumstances. Seven states had already seceded from the Union and formed the Confederate States of America. Shortly thereafter, four more states seceded, and the Confederacy captured Fort Sumter in South Carolina.¹⁹⁵ Lincoln was absolutely committed to preserving the Union. Fearing

¹⁹⁴ Kurt T. Lash and Alicia Harrison, "Minority Report: John Marshall and the Defense of the Alien and Sedition Acts," *Ohio State Law Journal* 435 (2007), 438.

¹⁹⁵ Donald, 266-8.

that the U.S. would fall into anarchy, Lincoln moved troops from Philadelphia to Washington, D.C., a route that passed through Maryland, a Southern, slave owning, secessionist-leaning state whose citizens almost universally detested Lincoln.¹⁹⁶ On April 19, Northern troops, artillery, and military supplies passed through Maryland on the way to Washington, D.C., and secessionist vigilantes in Maryland, "exasperated to the highest degree," reacted violently. They rioted in the streets of Baltimore, and blocked transportation passages by planting explosive devices that destroyed railroads and bridges along the route. The first deaths of the Civil War occurred that day.¹⁹⁷

Otherizing Secessionists: Ideological Enemies

Secessionists became the ideological enemies of the Union, because their opinions and goals did not align with that of the majority. Lincoln believed that secession threatened the very essence of democracy, which would fail if the Union failed.¹⁹⁸ In Lincoln's inaugural address on March 4, 1861, he clearly communicated that any state's attempt to leave the Union was absolutely unconstitutional. Lincoln took seriously his

¹⁹⁶ Brian McGinty, *The Body of John Merryman: Abraham Lincoln and the Suspension of the Writ of Habeas Corpus* (Cambridge; Harvard University Press, 2011), 35.

¹⁹⁷ *Ibid*, 1-3.

¹⁹⁸ Neely, 235.

oath to protect and defend the Constitution, and, part of that duty included maintaining the Union. Lincoln considered the people to be his ultimate masters, and, therefore, he felt subject to the will of the majority.

Plainly the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism. Unanimity is impossible. The rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.¹⁹⁹

Because secessionists were a minority, they were not his master, and he was not subject to their will. Lincoln separated secessionists from the definition of American by asserting that secession

presents to the whole family of man, the question, whether a constitutional republic, or a democracy - a government of the people, by the same people - can, or cannot, maintain its territorial integrity, against its own domestic foes. It presents the question, whether discontented individuals, too few in numbers to control administration, according to organic law, in any case, can always ... break up their Government, and thus practically put an end to free government upon the earth.²⁰⁰

If a minority could separate itself every time it felt displeased with the results of an election, then democratic self-government would be seriously threatened. To Lincoln, secessionism represented an affront to a fundamental Creedal principle-"government of

¹⁹⁹ Abraham Lincoln, "Inaugural Address," March 4, 1861, online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, accessed on March 25, 2017, <http://www.presidency.ucsb.edu/ws/?pid=25818>.

²⁰⁰ Abraham Lincoln, "Address to a Special Session of Congress," Washington, D.C., July 4, 1861, quoted in Akhil Reed Amar, "The David C. Baum Lecture: Abraham Lincoln and the American Union," *University of Illinois Law Review Online* 1109 (2001), 1113.

the people, by the people, for the people."²⁰¹ Furthermore, secessionists' aggression against the Union disqualified them from receiving protections under the law. In fact, Lincoln stated that secessionists had "no oath registered in heaven to destroy the Government, while [he] shall have the most solemn one to 'preserve, protect, and defend it,'"²⁰² thereby justifying his position and subsequent actions as constitutional.

However unacceptable Lincoln considered secession, he believed the best course of action would be for Southern states to remain in the Union and attempt to address their grievances through the constitutionally-established process. He explained that Northerners and Southerners "are not enemies, but friends. [They] must not be enemies. Though passion may have strained it must not break [their] bonds of affection."²⁰³ These closing words of his inaugural address suggest that Lincoln did not otherize secessionists for arbitrary reasons, and that, ultimately, they, and not he, had the power to stop their otherization by ending their attempts to divide the Union. For this reason, Lincoln's suspension of habeas corpus is somewhat different than the domestic security policies that targeted (and still do, in the case of the NSA surveillance) a population based on physical characteristics, such as nationality, ethnicity, or religion. The xenophobia associated with 1798, WWII, and the War on Terror do not apply to the Civil War. Nevertheless, the patterns of targeting the Other with domestic security policy applies to

²⁰¹ Abraham Lincoln, *Address at Gettysburg, Pennsylvania*, November 19, 1863, Abraham Lincoln Online: Speeches and Writings, 2017, accessed on March 25, 2017, <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>. See also, Amar, 1114.

²⁰² Lincoln, "Inaugural Address."

²⁰³ Ibid.

the Civil war, but in a unique way, as this otherization was a reaction solely to ideological differences.

Deviation from the Creed: Suspension of the Writ of Habeas Corpus

Despite Lincoln's plea for unity, the escalating conflict in Maryland necessitated his suspension of the writ of habeas corpus. The writ of habeas corpus is central to the American Creed and system of government because it protects against government abuse of power. The writ has roots in the Magna Carta of 1215 and is written into the U.S. Constitution.²⁰⁴ Considered the "Great Writ of Liberty," the writ is intended to protect innocent people from arbitrary and illegal imprisonment. After an accused person files a petition, the court issues a writ requiring the custodian to "produce the body" (*habeas corpus*) of the detainee in court, where the court scrutinizes the legality of the detainment. If the court determines the reasons as invalid or inadequate, the individual is immediately freed.²⁰⁵

In the extreme circumstances of 1861, Lincoln recognized that granting habeas corpus would provide time for secessionists to organize additional attacks, which would jeopardize the Union. Not only did he need to guarantee the safe passage of troops to Washington, but he needed to thwart Southern plots to take the capital.²⁰⁶ The critical

²⁰⁴ U.S. Const. art. I, § 1.

²⁰⁵ McGinty, 73.

²⁰⁶ Ibid, 50.

circumstances in Baltimore warranted drastic action. As early as April 25, when the bridges north of Baltimore were destroyed, Lincoln expressed in a letter to Winfield Scott, U.S. Army General in Chief, that the efforts in Baltimore to impede the Union would be challenging to permanently extinguish because

If we arrest them, we can not long hold them as prisoners; and when liberated, they will immediately re-assemble, and take their action. And, precisely the same if we simply disperse them. They will immediately reassemble on some other place. . . . I therefore conclude that it is only left to the commanding General to watch, and await their action, which, if it shall be to arm their people against the United States, he is to adopt the most prompt, and efficient means to counteract, eve, if necessary, to the bombardment of their cities-and in the extremest necessity, the suspension of the writ of habeas corpus.²⁰⁷

Evidently, Lincoln struggled with his decision and felt forced into taking desperate measures to preserve the Union. On April 27, Lincoln officially suspended the writ of habeas corpus in another letter to General Scott

You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line, which is now used between the City of Philadelphia and the City of Washington . . . , you find resistance which renders it necessary to suspend the writ of Habeas Corpus for the public safety, you, personally or through the officer in command at the point where resistance occurs, are authorized to suspend that writ.²⁰⁸

John Merryman would become the first person arrested under these orders, and the first to challenge the constitutional legality of Lincoln's suspension. Merryman, a wealthy, influential pro-Southern landowner, slaveholder, and lieutenant of the Baltimore County Horse Guard, led the movement to burn the bridges,²⁰⁹ an action for which he was arrested and imprisoned at Fort McHenry in Maryland without an explanation of his

²⁰⁷ Abraham Lincoln, "Letter to Winfield Scott," April 25, 1861, quoted in McGinty 52.

²⁰⁸ Ibid, quoted in McGinty, 84.

²⁰⁹ McGinty, 62-67.

charges.²¹⁰ A few hours after Merryman's detainment, two prominent Maryland attorneys submitted a petition for a writ of habeas corpus to Roger B. Taney, Chief Justice of the U.S. Supreme Court.²¹¹ Taney prepared the writ, which ordered the transport of John Merryman to Taney's circuit courtroom in Baltimore the next day.²¹² Lincoln ordered the military officer charged with Merryman's custody to refuse the writ on Lincoln's order, explaining that Merryman was detained for treason and for inciting violence

Evidence of Multiple Traditions

The resulting lawsuit, *Ex parte Merryman*, reveals multiple traditions, as Taney and Lincoln supported their respective and opposing positions with Creedal justifications. Interestingly, Lincoln, whom Americans revere for his role in freeing the slaves and for his advocacy of civil rights, infringed on the rights of secessionists by suspending the writ of habeas corpus. In so doing, he otherized secessionists, or the ideological enemy of the Union. However, Lincoln realized that the infringements would be temporary and would impact a relatively small number of people in order to eventually protect the Union and preserve the rights of everyone. On the other hand, Americans generally criticize Taney for his racist decision in *Dred Scott vs. Sanford*, which claimed that blacks, whether free or enslaved, were inferior to whites and, therefore, not entitled to U.S. citizenship under the Constitution. Nonetheless, Taney argued the suspensions of the writ

²¹⁰ Ibid, 69-71.
Duelholm, 48.

²¹¹ McGinty, 72-3 and 77.

²¹² Ibid, 77.
Duelholm 49

of habeas corpus represented a gross violation of Creedal principles.²¹³ This section describes the debate between Lincoln and Taney, and the divided public reaction, in order to demonstrate the multiple traditions inherent in American character.

Taney ruled in favor of Merryman, but very little of his ruling centered on the legality of Merryman's incarceration. A larger contest ensued between Lincoln and Taney over which branch of government the Constitution authorized to suspend the writ. Taney argued that the president had no such power because the Constitution only mentioned habeas corpus in Article I, which describes the powers of the legislative branch. Section 9 specifies that "the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it." Because Article II, which limited the powers of the executive, did not mention habeas corpus, Taney opined that the power to suspend habeas corpus belonged solely to Congress.²¹⁴

Lincoln publicly answered Taney's ruling in a speech to Congress on July 4, 1861. Lincoln had not taken lightly the decision to suspend the writ.²¹⁵ Considering that secession, rebellion, and insurrection would assuredly lead to the collapse of the United States, Lincoln posed the question, "Are all the laws, *but one*, to go unexecuted, and the government itself go to pieces, lest that one be violated?"²¹⁶ Sound judgment demanded that the entire law be preserved. On the Constitutional question, Lincoln examined the

²¹³ Elizabeth Cobbs, Edward J. Blum, and Jon Gjerde, *Major Problems in American History, Volume 1: 1877, Documents and Essays, Third Edition* (Wadsworth Cengage Learning, 2012), 385.

²¹⁴ McGinty, 87.

²¹⁵ McGinty, 82.

²¹⁶ Lincoln, "Address to a Special Session of Congress."

actual text, rather than the location of the text. The Constitution does not explicitly state which branch can suspend habeas corpus, and Lincoln rejected the assumption that the mention in Article I undoubtedly granted the power to Congress. The Constitution says that the writ can be suspended in "cases of rebellion or invasion," which, certainly, had occurred in Baltimore, where riots, burned bridges, and severed telegraph lines threatened "public safety."²¹⁷ Furthermore, at the time of the suspension, Congress was not in session, and dangerous war conditions impeded representatives from traveling to Washington for an emergency session. The urgent situation demanded swift action from the President.²¹⁸

Public opinion about the suspension was split. Expectedly, Northern public opinion favored Lincoln, while Merryman and Taney became celebrities in the South. The *Baltimore Sun* heralded Taney for his "impressive sense of the power of truth" and his commitment to the "fundamental rights of the people."²¹⁹ Two notable judges weighed in on the debate. St. Louis Land Court judge General Edward Bates, who sympathized with the Union, supported Lincoln, arguing that because the president had pledged to "take care that the laws be faithfully executed" and that because the Constitution's habeas corpus clause was "vague and indeterminate," Lincoln was obliged to suspend habeas corpus in order to defend "public safety."²²⁰ Even long-time friend of

²¹⁷ U.S. Const. art. I, § 9.
McGinty 103.
Dueholm 52.

²¹⁸ Lincoln, "Address to a Special Session of Congress."

²¹⁹ McGinty, 92.

Taney and fellow Marylander (who also supported Stephen Douglas over Lincoln in the presidential election of 1860), Reverdy Johnson, sided with Lincoln, concluding that the suspension of the writ was "perfectly constitutional" because "the public safety demanded it."²²¹

For months, Congress remained silent on the issue, effectively agreeing with Lincoln and enabling additional arrests without a writ. Lincoln incrementally expanded the territory in which people could be arrested until the suspension applied nationwide under the enforcement of Secretary of War Edwin Stanton. He ordered that anyone "engaged, by act, speech, or writing, in discouraging volunteer enlistments, or in any way giving aid and comfort to the enemy, or in any other disloyal practice against the United States" could be arrested.²²² An accurate total of arrests has been difficult for historians to ascertain, but the generally-accepted estimate is close to fourteen thousand.²²³ Most of the detainees were "spies, smugglers, blockade runners, carriers of contraband goods, and foreign nationals; only a few were truly political prisoners, jailed for expressing their beliefs."²²⁴ In March 1863, Congress passed the Habeas Corpus Act, which settled the

²²⁰ Edward Bates, "Suspension of the Privilege of the Writ of Habeas Corpus," *Official Opinions of the Attorneys General of the United States* (Washington: W.H. and O.H. Morrison, 1868), quoted in McGinty, 106.

²²¹ McGinty, 108.

²²² Mark E. Neely, Jr. *The Fate of Liberty: Abraham Lincoln and Civil Liberties*, (New York and Oxford: Oxford University Press, 1991), 53.

²²³ Neely, 115.

²²⁴ Donald, 304.

debate about which branch has the constitutional authority to suspend the writ. Because Taney framed his argument around who holds the constitutional authority to suspend the writ, and not about whether the writ was necessary or legal, once Congress officially authorized the suspension, the opposition in the courts ended.²²⁵

The complex environment of the Civil War confirms the influence of multiple traditions in American national identity. Prominent Lincoln biographer, David Herbert Donald, described this time as encountering "greater infringements on individual liberties than in any other period in American history."²²⁶ Mark Neely observed that his fellow historians regard these years "as a dark chapter in the history of the Lincoln administration."²²⁷ Yet, Lincoln's actions resulted in the preservation of the Union, and, today, Lincoln has become the exemplar of civil rights advocacy. Hence, the argument stands that his suspension of habeas corpus, while a temporary infringement on Creedal rights, accomplished its intended purpose to preserve Creedal rights in the long run.

Reconciling with the Creed

During the Civil War, the U.S. continued the pattern set during the Quasi War of determining an Other, establishing a policy that targeted the Other in order to maintain national security, and using that otherization as a tool to reconcile the discriminatory policy with the Creed. Out of the need to protect national security, Lincoln maintained that secessionists posed a threat to the Union, and, by so doing, surrendered their rights. Like the French during the Quasi War, in effect, secessionists were not real Americans.

²²⁵ Neely, 68-9.

²²⁶ Donald, 304.

²²⁷ Neely, 113.

Because secessionists believed that the Union should be disbanded, they became the ideological enemies of the Union. Inegalitarian policies that targeted secessionists were placed in the context of protecting Creedal rights, and Lincoln claimed such when he defended the suspension as necessary to “keep the country whole so that democracy could not be said to have failed.”²²⁸ Therefore, the otherization became an essential tool that reconciled inegalitarian practices with the American Creed.

Keeping Deviations Temporary

Throughout the Civil War, Lincoln maintained that the suspension of habeas corpus was necessary to protect national security. But, he also realized that the suspension was a temporary measure for an emergency situation. He admitted that Americans would not want to continue the policy after the War ended, and, therefore, he rescinded the suspension in 1865.²²⁹ In his Gettysburg Address, Lincoln expressed confidence in the Creed and that the “nation, conceived in Liberty, and dedicated to the proposition that all men are created equal . . . can long endure.”²³⁰

World War II

Eight decades later, after Japan attacked Pearl Harbor, killing over two thousand Americans, President Franklin Delano Roosevelt issued an executive order that forcibly relocated Americans of Japanese descent from their homes in the Western U.S. to internment camps. With few exceptions, the American public generally condoned the

²²⁸ Ibid., 235.

²²⁹ Neely, 221.

²³⁰ Abraham Lincoln, *Address at Gettysburg, Pennsylvania*, November 19, 1863, Abraham Lincoln Online: Speeches and Writings, 2017, accessed on March 25, 2017, <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>.

policy because they feared additional attacks from the Japanese. Multiple traditions are evident, nonetheless, especially in the Supreme Court case *Korematsu vs. United States*. The Court ruled in a 6-3 vote that the internment camps were constitutional, but Justice Robert Jackson dissented, accusing the U.S. of racism. This section examines the otherization that occurred against people of Japanese descent and the internment camps as a deviation from the Creed. It also analyzes the multiple traditions evident in the Supreme Court decision and Jackson's dissenting opinion. In what is probably the starkest reversal of wartime security policy, decades after WWII ended, the U.S. paid restitution to the survivors, which indicates that Americans recognized the internment camps as violations of core American principles. Of all the wartime deviations, the reversal of the internment camps policy represents the starkest example of the Creed's ability to keep deviations temporary.

War Overview

By the time Japan attacked Pearl Harbor, Americans had already otherized people of Japanese descent for many decades. From 1790 to 1952, anti-Japanese sentiment caused U.S. immigration law to prevent Japanese immigrants from becoming U.S. citizens. The Immigration Act of 1924 completely banned immigration from Japan and prohibited Japanese immigrants already in the U.S. from citizenship, while their children born in the U.S. became automatic citizens. On December 8, 1941, the day after Pearl Harbor, the U.S. declared war on Japan and embarked on a campaign to eliminate the perceived Japanese threat from the U.S. homeland. The U.S. closed land borders to all enemy aliens and to all people of Japanese descent, including citizens. In January 1942, the government released a report about the attack, prepared by Supreme Court Justice

Owen J. Roberts, with the undocumented allegation that Japanese-American espionage agents helped the Japanese navy attack Pearl Harbor.²³¹

Otherization: People of Japanese Descent

Anti-Japanese sentiment reached a fever pitch as rumors spread that people of Japanese descent were planning sabotage. Additionally, the Japanese naval attacked West Coast targets, adding to the public hysteria.²³² The widespread prejudice was evident in all aspects of American life, including pop culture and media sources that painted Japanese people as un-American traitors and saboteurs.²³³ U.S. Army Lieutenant General John L. DeWitt vocalized the general distrust, “The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become ‘Americanized,’ the racial strains are undiluted.”²³⁴ The wartime fear and hysteria heightened the already-existing anti-Japanese sentiment.

Violation of the Creed: Japanese Internment Camps

On February 19, 1942, President Roosevelt issued Executive Order 9066, which authorized the Secretary of War to establish “military areas” in which he could designate the exclusion of “any and all persons” according to the rules that the Secretary “may

²³¹ Harry S. Truman Library, “Background,” The War Relocation Authority & the Incarceration of Japanese-Americans During World War II, accessed on March 27, 2017, https://www.trumanlibrary.org/whistlestop/study_collections/japanese_internment/index.php?action=bg.

²³² Ibid.

²³³ Lindsay Tanner, “A Fanatical Fifth Column: The Media’s Argument for Japanese Internment,” *Young Scholars In Writing* 11 (2015), 39-40.

²³⁴ John L. DeWitt, quoted in Robert Wagstaff, *Terror Detentions and the Rule of Law US and UK Perspectives* (Oxford: Oxford University Press, 2014), 41.

impose in his discretion.”²³⁵ The Western Coast was declared a military area, from which all persons of Japanese descent were ordered to leave. In the beginning, the government expected them to voluntarily move to the interior of the country. When the first eight thousand people relocated to areas in eastern California and the inter-mountain West, the government realized the problems inherent in the mass migration of a population who was ethnically linked to the enemy. They encountered extreme discrimination. The government soon halted the voluntary evacuation and replaced it with a systematic schedule overseen by the Army.²³⁶

On March 18, 1942, Roosevelt issued Executive Order 9102 to establish the War Relocation Authority (WRA), which he tasked with “provid[ing] for the removal from designated areas of persons whose removal is necessary in the interests of national

²³⁵ Franklin D. Roosevelt, *Executive Order 9066 Authorizing the Secretary of War to Prescribe Military Areas*, February 19, 1942, transcript, accessed on March 27, 2017, <https://www.ourdocuments.gov/doc.php?flash=false&doc=74&page=transcript>.

²³⁶ Dillon S. Myer, “The Truth About Relocation,” speech delivered to the Commonwealth Club in San Francisco, August 6, 1943. Papers of Dillon S. Myer, located at trumanlibrary.org, accessed on March 27, 2017, https://www.trumanlibrary.org/whistlestop/study_collections/japanese_internment/documents/index.php?documentid=24&pagenumber=3.

security.”²³⁷ Although neither Executive Order specifically mentioned Japanese people, Roosevelt’s advisors that wrote 9066 stated that

In time of national peril, any reasonable doubt must be resolved in favor of action to preserve the national safety, not for the purpose of punishing those whose liberty may be temporarily affected by such action, but for the purpose of protecting the freedom of the nation, which may be long impaired, if not permanently lost, by nonaction. . . . Such action as may be taken to meet the Japanese situation on the West Coast should be taken and considered not as a punitive measure against the Japanese, whether they be American citizens or aliens, but as a precautionary measure to protect the national safety.²³⁸

The WRA existed from March 18, 1942 until June 30, 1946 and was responsible for forcibly moving over one hundred twenty thousand Japanese American citizens and non-citizens from their homes on the West Coast without warrant or trial. They were forced to live in ten designated relocation centers in the American West, overseen by the WRA and guarded by military officers.²³⁹ Although this mass relocation has come to be considered an embarrassing blight in American history and a major violation of the Creed, during WWI, it was widely considered a necessary policy to protect Americans from an internal Japanese threat.

²³⁷ Franklin D. Roosevelt, *Executive Order 9102 Establishing the War Relocation Authority*, March 18, 1942, transcript, accessed on March 27, 2017, <http://www.presidency.ucsb.edu/ws/index.php?pid=16239#axzz1oyXFVV9p>.

²³⁸ Benjamin Cohen, Oscar Cox, and Joseph Rauh, “Memorandum to President Roosevelt,” quoted in Michelle Malkin, *In Defense of Internment: The Case for Racial Profiling in World War II and the War on Terror*, (Kindle Edition: Regnery Publishing, 2013), chapter 8.

²³⁹ Semiannual Report of the War Relocation Authority, for the period January 1 to June 30, 1946, not dated. *Papers of Dillon S. Myer*, scanned image at trumanlibrary.org, accessed March 27, 2017. www.trumanlibrary.org/whistlestop/study_collections/japanese_internment/documents/index.php?pagenumber=4&documentid=62&documentdate=1946-00-00&collectionid=JI&nav=o.

Evidence of Multiple Traditions

The records about the Japanese internment camps are extensive. For the purposes of this paper, two important sources will be analyzed to demonstrate the existence of multiple traditions. First, a speech delivered by Dillon S. Myer, Director of the WRA, entitled “The Truth about Relocation,” provides insight into the Roosevelt administration’s framing of the internment, which was steeped in Creedal rhetoric, but, nonetheless, defended a practice that was profoundly inequalitarian. Second, the Supreme Court decision in *Korematsu vs. U.S.*, especially Justice Robert Jackson’s dissent, demonstrates the opposition to the camps. Although his opinion has generally become accepted in the U.S. today, during WWII, it represented a small minority of public opinion. The two opposing sides demonstrates the existence of multiple traditions that frame American national identity.

The Truth about Relocation

When the WRA first formed, its leaders met with the governors of the states in the intermountain West to plan the relocation process. According to Myer, the WRA had several proposals as to how the camps should be run, but the governors objected to all of the proposals. Some governors “refused to be responsible for the maintenance of law and order unless evacuees brought into their states were kept under constant military surveillance.” Most of the governors opposed “any type of unsupervised relocation.”²⁴⁰ Myers expressed that the WRA had no other choice than to establish relocation centers that could accommodate the entire Japanese population, at least temporarily. The

²⁴⁰ Myer, “The Truth About Relocation Centers,” 2.

governors' demands had tied the hands of the federal government, which suggests that the government did not consider the camps to be the best option, but that it was charged with balancing multiple viewpoints. The resulting practice, as inegalitarian as it became, was the best Myers thought the WRA could do under the circumstances.

Myer explained that the WRA never intended the relocation centers to become concentration camps or prisons, but, rather, communities where evacuees could await processing and individualized relation plans. However, circumstances beyond the government's control necessitated a longer stay. In fact, Myer references the fact that Americans of Japanese descent, once properly vetted, were released from the camps and able to seek full-time employment. Myer acknowledged that the public generally resisted the efforts to release the detainees out of fear, which suggests the influence of multiple traditions. On one hand, Myer advocated for the release of the detainees, explaining that over thirty-five thousand people of Japanese descent lived outside the camps. According to Myer, "in all these months of war, not one case of sabotage on the part of any person of Japanese descent has been reported from any reliable source."²⁴¹ On the other hand, the public, reacting to widespread fear and suspicion, demanded that detainees remain in the camps. The resulting policy, which subjected Japanese Americans to the camps and a rigorous vetting process to prove their loyalty to the U.S., was extremely inegalitarian, but, represents a compromise between two competing interests, a demonstration of multiple traditions.

²⁴¹ Ibid, 5.

Not only did Myer and the public reaction demonstrate multiple traditions, but Myer's rhetoric expressed his attempt to reconcile the inegalitarian practice with American Creedal principles of equality. Myer did his best to portray the camps as safe, human environments where people of Japanese ancestry could live comfortably and contribute to society. He carefully chose his words, calling the camps "relocation centers," which provides listeners with a different visual than the word "camp."²⁴² He explained that some evacuees wanted to remain in the "sanctuary of the relocation centers" in order to avoid the discrimination they faced outside.²⁴³ Recognizing, however, that the placement of people in the camps represented a gross inequality of justice, Myer advocated for the release of detainees, so that the U.S. would, thereby, avoid becoming like the German Nazis who incarcerated and executed the Jews "for their own protection."²⁴⁴

Myer described the camps as a "sanctuary,"²⁴⁵ but, in reality, they were surrounded by barbed wire and armed guards. The facilities lacked sufficient resources for the huge influxes of people. The Japanese endured difficult conditions, including substandard facilities, rugged environment, inadequate medical services, and psychological conflict.²⁴⁶ The primitive environment can hardly be described as a "sanctuary." Some Japanese Americans resisted entering, but were compelled by military

²⁴² Ibid, 3-4.

²⁴³ Ibid, 5.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Alexandra Wood, "Rebuild or Reconcile: American and Canadian Approaches to Redress for World War II Confinement," *American Review of Canadian Studies* 44, no. 3 (2014), 350.

forces into the camps. One such resister, Fred Korematsu, became the focal point of an important Supreme Court ruling.

Justice Jackson's Dissent

Korematsu was convicted of remaining in an excluded area in San Leandro, California. On appeal, he challenged the Civilian Exclusion Order, and the Supreme Court ruled against him.²⁴⁷ In one of the most famous dissents in Supreme Court history, Justice Jackson resisted the Exclusion Order and described it as a racist infringement on the American Creed. The disagreement in the Court demonstrates multiple traditions embedded in the American character.

The majority opinion, written by Hugo Black, held that

all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.²⁴⁸

In other words, if racism is contrary to the American Creed, and national security supersedes racist policies, the only conclusion left is that national security trumps the Creed.

²⁴⁷ Edward T. Robinson, "The Japanese 'Internment' Revisited," *OAH Magazine of History* 17 no. 2 (2013), 52.

²⁴⁸ *Korematsu v. United States*, 323 U.S. 214 (1944), 216.

Yet, Jackson argued that ruling that the military exclusion areas were constitutional set a dangerous precedent that could prevail long after the war ended.²⁴⁹

Acknowledging the embedded racism, Jackson reasoned that

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived. [...] [H]is crime would result, not from anything he did, said, or thought, different than they, but only in that he was born of different racial stock. Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him. But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign. If Congress in peace-time legislation should enact such a criminal law, I should suppose this Court would refuse to enforce it.²⁵⁰

Jackson maintained that, under the American system, “guilt is personal and not inheritable.”²⁵¹ Therefore, his dissent referenced Creedal ideals that all people are created equal and deserve equal treatment under the law. However, despite Jackson’s resistance, the Court ruled against Korematsu in a 6-3 vote. The Supreme Court ruling epitomizes multiple traditions that interact to influence American character.

²⁴⁹ *Korematsu v. United States*, 323 U.S. 214 (1944) (Jackson Dissenting), 245-6.

²⁵⁰ *Ibid.*, 242-3.

²⁵¹ *Ibid.*, 243.

Keeping Deviations Temporary

The U.S. has come to recognize the Japanese internment camps as a major deviation from the American Creed. In perhaps the starkest reversal of a wartime domestic security policy, the U.S. not only rescinded the Executive Order and ended the detainment of Japanese Americans, but also attempted to reconcile the situation with monetary redress. According to one scholar, “post-redress activities in the US have helped to repair bonds between citizens and to engender a shared sense of civic pride.”²⁵² This reversal provides an excellent example of the process by which the Creed keeps wartime deviations temporary.

The redress timeline began on June 30, 1946 when the Japanese Americans were released from the internment camps. However, the end of the war did not end long-established and deeply-engrained anti-Japanese sentiment overnight. As they attempted to reestablish their lives, many of them had lost employment opportunities, businesses, and other opportunities. Four decades of struggle resulted in improved American attitudes towards Japanese people, who gained a measure of societal respect. Finally, in 1980, President Jimmy Carter signed legislation that created the Commission on Wartime Relocation and Internment of Civilians (CWRIC), tasked with investigating the impacts of the internment on Japanese Americans.²⁵³

In December 1982, the CWRIC published its findings in *Personal Justice Denied*, which determined that the causes of the internment camps were not military necessity,

²⁵² Wood, 348.

²⁵³ Roger Daniels, Sandra C. Taylor, Harry H.L. Kitano, Leonard Arrington, *Japanese Americans: From Relocation to Redress* (Seattle: University of Washington Press, 2013), 190 (TU ebook, D769.8.A6 J364 1991eb).

but rather "race prejudice, war hysteria, and a failure of political leadership."²⁵⁴ The CWRIC recommended that Congress apologize and award twenty thousand dollars to each survivor. President Ronald Reagan signed the Civil Liberties Act of 1988, which enacted the redress according to the CWRIC recommendations. Additionally, February 19, the anniversary of the signing of Executive Order 9066, has become a National Day of Remembrance to commemorate the Japanese Americans who endured the internment camps.²⁵⁵

Conclusion

The patterns established in the Quasi War, the Civil War, and WWII reveal that Americans, while claiming a commitment to the Creed, deviate from their principles in response to wartime threats. These deviations demonstrate that Americans hold beliefs about themselves that are conceptually prior to the Creed, such as assumptions about the superiority of certain ethnicities and ideological leanings over others. Otherization of Jacobins, secessionists, and people of Japanese ancestry signifies a divergence from Creedal principles and reveals a multiple traditions framework that influences American national identity. Otherization is a necessary tool that reconciles inegalitarian practices with Creedal principles of equality and justice. However, the temporary nature of the policies suggests that the Creed exists to rein in deviations.

²⁵⁴ National Archives, *Personal Justice Denied* (Washington, 1982), 18, accessed on March 27, 2017, <https://www.archives.gov/research/japanese-americans/justice-denied>.

²⁵⁵ Daniels, Taylor, Kitano, Arrington, 219-23.

Chapter 3

War on Terror

On September 11, 2001, the jihadist group al-Qaeda orchestrated the largest and deadliest terrorist attack in United States history. Americans' collective sense of security evaporated as they watched the attacks unfold on live television. Two hijacked planes crashed into the twin towers of the World Trade Center in New York City, dramatically collapsing both skyscrapers, killing thousands. First responders plunged themselves into the massive dust cloud that engulfed the city as frenzied civilians desperately escaped the horrible scene. Employees evacuated the buildings, sometimes by diving out of high windows when they could not access the exterior doors. Americans heard the account of the passengers on Flight 93 who sacrificed their lives to divert hijackers from their intended, and unknown, destination. Americans witnessed the Pentagon engulfed in flames. In total, close to 3000 civilians lost their lives in the attacks.

That day, President George W. Bush spoke to the nation and connected the attack to American values. He declared that "America was targeted for attack because [it's] the brightest beacon for freedom and opportunity in the world,"²⁵⁶ suggesting that al-Qaeda had attacked not only American soil, but also freedom itself. With the end goal of protecting freedom, Bush immediately initiated intense counterterrorism efforts intended to eliminate global terrorism. As part of the "War on Terror," Bush launched a domestic surveillance program under provisions of the Patriot Act, which became U.S. law in the panic over 9/11. The National Security Agency (NSA), the Federal Bureau of

²⁵⁶ George W. Bush, "A Great People Has Been Moved to Defend a Great Nation" (9/11 Address to the Nation, Washington, DC, September 11, 2001), American Rhetoric, <http://www.americanrhetoric.com/speeches/gwbush911addressstothetation.htm>.

Investigation (FBI), and the Central Intelligence Agency (CIA) began, secretly at first, collecting phone and Internet data on every American citizen and resident. Although the data was collected on everyone, it was used in very specific ways to target Muslims, the enemy Other during the War on Terror.

The surveillance program initiated after 9/11 represents a deviation from the Creed and provides yet another opportunity to analyze the influence of multiple traditions on American national identity. In presidential speeches to various audiences and about various topics, Bush consistently advocated for the inclusion of Muslims by referencing Creedal ideals. However, his administration's policies and practices targeted and discriminated against Muslims as the enemy Other. The otherization of Muslims represents a deviation from the Creed and provides additional evidence that Americans hold beliefs about themselves that are conceptually prior to the Creed. The combination of the Presidents' Creedal words with their inegalitarian actions demonstrates that multiple traditions frame American national identity.

This chapter situates domestic surveillance in the larger context of wartime security policies and the otherization of perceived enemy populations. Using the War on Terror as a case study, the chapter discusses the otherization of Muslims in America and argues that this otherization is the tool Americans use to reconcile their Creedal principles with their contradictory and inegalitarian practices.

Acknowledging that in previous wars, the Creed reined in discriminatory policies after the wars ended, this chapter adds a caution. The War on Terror differs from previous wars, because it has no definite end in sight, and, therefore, no urgency exists to reverse the policies that discriminate against Muslims. In fact, at the time this paper was

written, newly-inaugurated President Donald Trump has issued several executive orders that specifically target Muslims and restrict immigration from Muslim-majority countries. In order for the American Creed to remain in effect, wartime deviations must be retracted at some point. Because the indefinite War on Terror will be difficult to declare ended, Americans must reevaluate their policies while the perceived threat exists.

Afghanistan and Iraq

The American Creed became the recurring theme to justify the War on Terror. From the beginning, Bush used words and phrases such as democracy, freedom, American values, and equality to defend the U.S. need to eliminate global terrorism. For example, Bush first used the phrase “War on Terror” in his speech nine days after 9/11 when he identified the attackers as al-Qaeda and described the attack as a threat to the American values of freedom, fairness, and democracy. According to Bush, al-Qaeda’s main goal was “remaking the world — and imposing its radical beliefs on people everywhere.”²⁵⁷ Bush described the reasons al-Qaeda attacked the U.S. as follows:

Americans are asking, why do they hate us? They hate what we see right here in this chamber — a democratically elected government. Their leaders are self-appointed. They hate our freedoms — our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.²⁵⁸

Bush promised to seek out and destroy al-Qaeda and its global affiliates.²⁵⁹ He claimed that the “war on terror begins with Al Qaeda, but it does not end there. It will not

²⁵⁷ George W. Bush, "Address to the Joint Session of the 107th Congress September 20, 2001," in *Selected Speeches of George W. Bush*, accessed October 11, 2015, http://georgewbush-whitehouse.archives.gov/infocus/bushrecord/documents/Selected_Speeches_George_W_Bush.pdf.

²⁵⁸ Ibid.

²⁵⁹ Frontline World, “Who are the Taliban?” *PBS*, accessed on October 29, 2016, <http://www.pbs.org/frontlineworld/stories/afghanistan604/who.html>.

end until every terrorist group of global reach has been found, stopped and defeated.”²⁶⁰

According to Bush, the purpose of the War on Terror is to defeat terrorism, the enemy of freedom everywhere. He guaranteed that the U.S. would remain "determined and strong" in defending and protecting that freedom.²⁶¹

In pursuit of protecting freedom, the U.S. launched a military offensive in Afghanistan and Iraq. The Afghanistan offensive began seventeen days after Bush delivered his speech. The U.S. attacked Afghanistan in order to eliminate the Taliban, which harbored 9/11 mastermind Osama bin Laden. The Taliban government in Kabul fell quickly, and its remaining fighters and bin Laden fled to the mountainous region between Afghanistan and Pakistan.²⁶² The U.S. searched for bin Laden for an entire decade before locating him in Abbottabad, Pakistan and assassinating him on May 2, 2011.²⁶³

One stated objective of the War on Terror is to eliminate state sponsorship of terror.²⁶⁴ In 2003, the U.S. included Iraq on the list of state sponsors of terror.²⁶⁵

Validated by the now highly controversial and contested claim that Iraq had weapons of

²⁶⁰ George W. Bush, "Address to the Joint Session of the 107th Congress September 20, 2001."

²⁶¹ George W. Bush, "Address to the Joint Session of the 107th Congress September 20, 2001."

²⁶² Frontline World, "Who are the Taliban?"

²⁶³ Scott Wilson, Craig Whitlock, and Willian Branigin, "Osama bin Laden Killed in U.S. Raid, Buried at Sea," *The Washington Post*, May 2, 2011, accessed on October 29, 2016, https://www.washingtonpost.com/national/osama-bin-laden-killed-in-us-raid-buried-at-sea/2011/05/02/AFx0yAZF_story.html.

²⁶⁴ Central Intelligence Agency, "National Strategy for Combating Terrorism," *Central Intelligence Agency*, February 2003, accessed on October 29, 2016, https://www.cia.gov/news-information/cia-the-war-on-terrorism/Counter_Terrorism_Strategy.pdf, 18.

²⁶⁵ CIA "National Strategy," 18.

mass destruction,²⁶⁶ the Bush administration invaded Iraq in March 2003. From that military offensive, Saddam Hussein was captured, tried, convicted, and hanged on charges of crimes against humanity for his brutal actions while president of Iraq. Bush expressed optimism that democracy would be ushered in, and a new era of peace, prosperity, and freedom would begin in Iraq.²⁶⁷

Violation of the Creed: NSA Surveillance

Meanwhile, domestically, widespread fear of additional terrorist attacks led to domestic security policies intended to protect the American way of life from the threat of terrorism. Included in the domestic security policies is the NSA surveillance program. The program infringes on the very freedoms that it intends to protect and represents a deviation from the Creed. Collecting data on everyone violates the Constitution because the "seemingly limitless"²⁶⁸ information the government collects "has a chilling effect on first amendment rights."²⁶⁹ America stands for liberal democratic principles, including freedom from government intrusion into the private lives of its citizens.

²⁶⁶ George W. Bush, "War Ultimatum Speech from the Cross Hall in the White House," Full transcript located at *The Guardian*, March 17, 2003, accessed on October 29, 2016, <https://www.theguardian.com/world/2003/mar/18/usa.iraq>.

²⁶⁷ Susan Sachs, "The Capture of Hussein: Ex-Dictator; Hussein Caught in Makeshift Hide-Out; Bush Says 'Dark Era' for Iraqis is Over," *The New York Times*, December 15, 2003, accessed on October 29, 2016, <http://www.nytimes.com/2003/12/15/world/capture-hussein-ex-dictator-hussein-caught-makeshift-hide-bush-says-dark-era-for.html>.

Neil MacFarguhar, "Saddam Hussein, Defiant Dictator Who Ruled Iraq with Violence and Fear, Dies," *The New York Times*, December 30, 2006, accessed on October 29, 2016, <http://www.nytimes.com/2006/12/30/world/middleeast/30saddam.html>.

²⁶⁸ Electronic Frontier Foundation, "Section 215 of the USA Patriot Act," *Electronic Frontier Foundation*, accessed on February 18, 2016, <https://www EFF.org/foia/section-215-usa-patriot-act>.

²⁶⁹ Karen McVeigh, "NSA Surveillance Violates the Constitution, ACLU Says," *The Guardian*, August 27, 2013, accessed February 13, 2016, <http://www.theguardian.com/world/2013/aug/27/nsa-surveillance-program-illegal-aclu-lawsuit>.

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001. Bush used the Patriot Act as the legal basis for instituting the dragnet domestic surveillance program. The program represents a deviation from the American Creed because it violates Constitutionally-guaranteed speech and privacy rights and also infringes on the moral rights inherent to each individual. This section describes that violation and provides context and background information about how the program otherizes Muslim populations in America.

The Patriot Act passed with broad bipartisan support in both houses of Congress, including yeas from 98 Senators and 357 Representatives.²⁷⁰ The Patriot Act targeted terrorism by increasing the executive branch's authority to collect domestic records and surveil U.S. citizens without prior court approval. At the time he signed the Patriot Act, President Bush explained that the "proliferation of communications technology" necessitated updated laws that would "allow surveillance of all communications used by terrorists, including e-mails, the Internet, and cell phones." He claimed that the law would accelerate investigations with less-restrictive warrants.²⁷¹

By the time the Patriot Act was enacted, the NSA began to expand its infrastructure in an attempt to collect counterterrorism intelligence. As early as

²⁷⁰ Senate Roll Call, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00313, accessed on November 17, 2016.
House Roll Call, <http://clerk.house.gov/evs/2001/roll398.xml>, accessed on November 17, 2016.

²⁷¹ Admin, "President Bush Signs Anti-Terrorism Bill," *PBS Newshour*, October 26, 2001, accessed October 11, 2015, http://www.pbs.org/newshour/updates/terrorism-july-dec01-bush_terrorismbill/.

September 14, 2001, NSA Director General Michael Hayden approved surveillance of specific phone numbers that communicated directly with people living in countries with known terrorist activities. Vice President Dick Cheney justified the collection, and Attorney General John Ashcroft concurred, using Executive Order (EO) 12333, a National Intelligence Effort ordered in 1981, to authorize the domestic collection of “information needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations.”²⁷²

The Bush administration used the Patriot Act and a 2008 Amendment to the Federal Intelligence Surveillance Act (FISA) of 1978 to authorize the secret Internet and phone data collection of every American.²⁷³ FISA originally existed to prevent the government from surveilling Americans without cause. FISA was a response to the revelations that President Nixon had been spying on his political opponents and claimed that his position as President granted him inherent authority to do so. In response, the Senate established the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Senator Frank Church. Dubbed the Church Committee, it conducted an investigation and found several concerning intelligence-gathering activities, including the now well-known FBI surveillance of Dr. Martin Luther King, Jr. FISA resulted from these investigations. It strengthened Fourth Amendment protections for Americans by establishing Federal

²⁷² Exec. Order No. 12,333, Part 2.3, 3 C.F.R. 1981 (1981), quoted in footnote 8, Devon Ombres, “NSA Domestic Surveillance From the Patriot Act to the Freedom Act: The Underlying History, Constitutional Basis, and Efforts at Reform,” *Seton Hall Legislative Journal* 39 no. 1 (2015): 29-30.

²⁷³ Electronic Frontier Foundation, “NSA Spying on Americans,” *Electronic Frontier Foundation*, accessed on June 13, 2016, <https://www EFF.org/nsa-spying>.

Intelligence Surveillance Courts (FISC) that granted classified warrants for suspected foreign spies living inside the U.S.²⁷⁴

The 2008 FISA Amendments Act updated the original FISA. From this update, combined with the Patriot Act, Bush claimed authority to launch a domestic data collection program that included several controversial components, collectively called the “president’s surveillance” and codenamed STELLARWIND.²⁷⁵ Under Section 215 of the Patriot Act, the NSA collected records of every phone call placed or received in the United States. The NSA did not listen to or record the contents of the phone calls, but recorded the metadata, or the number called, and the date, time, and duration of the call. The FISA Amendments Act authorized two programs. First, Section 702 authorized the PRISM program, which granted the federal government the power to compel the U.S. Internet service providers AOL, Apple, Facebook, Google, Microsoft, Skype, Yahoo, and YouTube to submit certain FISA Court-approved data to the NSA. Second, Section 702 authorized WINDSTOP (also called MUSCULAR), a program that intercepted

²⁷⁴ Susan N. Herman, *Taking Liberties* (Oxford: Oxford University Press, 2011), 111-2.

²⁷⁵ Office of the Inspector General, “Working Draft,” *National Security Agency, Central Security Service*, March 24, 2009. (top secret document published: <https://www.documentcloud.org/documents/718895-igreport.html>).

communications on internal cloud networks of Google and Yahoo.²⁷⁶ To improve collaborative analytics and efficiency, by 2004, the program expanded from the NSA to include the FBI and the CIA.²⁷⁷

Civil liberties advocates became concerned that the NSA surveillance program represented a gross violation of Constitutionally-protected rights. They view the U.S. government and its unchecked power as the enemy and the secret data collection on the people as undemocratic. Civil libertarians argue that the program as "beyond Orwellian"²⁷⁸ and violates First Amendment speech rights because of the chilling effect it could have when people perceive that their words are being recorded. They argue that First Amendment association rights are threatened, because people might reduce their

²⁷⁶ Ombres, 32.

The Washington Post, "One Month, Hundreds of Millions of Records Collected," *The Washington Post*, accessed on November 5, 2016, <https://www.washingtonpost.com/apps/g/page/world/one-month-hundreds-of-millions-of-records-collected/554/>.

Barton Gellman and Ashkan Soltani, "NSA Infiltrates Links to Yahoo, Google Data Centers Worldwide, Snowden Documents Say," October 30, 2013, accessed on November 5, 2016, https://www.washingtonpost.com/world/national-security/nsa-infiltrates-links-to-yahoo-google-data-centers-worldwide-snowden-documents-say/2013/10/30/e51d661e-4166-11e3-8b74-d89d714ca4dd_story.html.

Barton Gellman, Ashkan Soltani, and Andrea Peterson, "How We Know the NSA Had Access to Internal Google and Yahoo Cloud Data," *The Washington Post*, November 4, 2013, accessed on November 5, 2016, <https://www.washingtonpost.com/news/the-switch/wp/2013/11/04/how-we-know-the-nsa-had-access-to-internal-google-and-yahoo-cloud-data/>.

Dia Kayyali, "The Way the NSA Uses Section 702 is Deeply Troubling. Here's Why." *Electronic Frontier Foundation*, May 7, 2014, accessed on November 5, 2016, <https://www.eff.org/deeplinks/2014/05/way-nsa-uses-section-702-deeply-troubling-heres-why>.

Margot Kaminski, "PRISM's Legal Basis: How We Got Here, and What We Can Do to Get Back," *The Atlantic*, Jun 7, 2013, accessed on November 5, 2016, <http://www.theatlantic.com/national/archive/2013/06/prisms-legal-basis-how-we-got-here-and-what-we-can-do-to-get-back/276667/>.

²⁷⁷ Ombres, 30.

²⁷⁸ Electronic Privacy Information Center, "NSA: Verizon Phone Record Monitoring," *EPIC.org*, accessed on February 15, 2016, <https://www.epic.org/privacy/nsa/verizon/>.

“participation in the marketplace of ideas.”²⁷⁹ Recording private interactions violates Fourth Amendment privacy rights.²⁸⁰

Proponents of the surveillance argue that liberty cannot exist in a society that is not peaceful, safe, and secure. To ensure security, the government needs a mechanism to keep up with rapidly evolving technology that terrorists can exploit to bring to pass their plans. The U.S. Justice Department defends the Patriot Act as necessary because it "protect[s] innocent Americans from the deadly plans of terrorists dedicated to destroying America and our way of life."²⁸¹ Senate Majority Leader Mitch McConnell explained that "the nature of the threat we face is serious, it's aggressive, it's sophisticated, it's geographically dispersed, and it's not going away."²⁸² Terrorists will use every available resource to accomplish their purpose, and they do not abide by the typical rules of warfare. Additionally, terrorist networks are decentralized and have access to heavy weaponry, making them impossible to combat using traditional methods. Therefore, the U.S. must use every available resource to defend against a potential attack, even if it

²⁷⁹ Ashley Gorski, "How the NSA's Mass Internet Spying Poisons Society," *American Civil Liberties Union*, September 25, 2015, accessed on February 15, 2017, <https://www.aclu.org/blog/speak-freely/how-nsas-mass-internet-spying-poisons-society>.

²⁸⁰ *ACLU v. Clapper*, Case 1:13-cv-03994-WHP Document 26, August 26, 2013, 16-30.

²⁸¹ United States Department of Justice, "The USA PATRIOT Act, Preserving Life and Liberty," *Department of Justice*, accessed on August 22, 2016, <https://www.justice.gov/archive/ll/highlights.htm>.

²⁸² Manu Raju and Burgess Everett, "Senate fails to save PATRIOT Act," *Politico*, May 31, 2015, accessed on February 13, 2016, <http://www.politico.com/story/2015/05/mitch-mcconnell-nsa-patriot-act-surveillance-118453#ixzz40Q5AVwAS>.

means infringing on civil rights and liberties. The “modest encroachments”²⁸³ on privacy are a small price to pay for a large gain in national security.²⁸⁴

However, proponents overlook three problems inherent in the NSA data collection. First, in collecting everything, the government has become overwhelmed with the amount of data intelligence analysts must sort through and analyze in order to detect a terrorist threat.²⁸⁵ Even the White House Privacy and Civil Liberties Oversight Board claims that “We have not identified a single instance involving a threat to the United States in which [bulk collection under Section 215 of the Patriot Act] made a concrete difference in the outcome of a counterterrorism investigation.”²⁸⁶

Second, terrorists have a variety of resources available that enable them to remain undetected. They often use the dark web to keep Internet communications off the grid,²⁸⁷ and, in the case of bin Laden, completely avoid using cell phone and Internet communications and choose, instead, to deliver messages through couriers.²⁸⁸ Third, the

²⁸³ Barack Obama, “Statement by the President,” Fairmont Hotel, San Jose, California, *The White House, Office of the Press Secretary*, June 7, 2013, accessed on November 17, 2016, <https://www.whitehouse.gov/the-press-office/2013/06/07/statement-president>.

²⁸⁴ Glenn Salmasy, “Why We Need Government Surveillance,” *CNN* June 10, 2013, accessed on September 13, 2016 <http://www.cnn.com/2013/06/10/opinion/sulmasy-nsa-snowden/>.

²⁸⁵ William Binney, interview by RT, “‘NSA Totally Dysfunctional – Too Much Data to Detect Threats’ – Whistleblower,” *RT.com*, May 5, 2016, accessed on February 15, 2017, <https://www.rt.com/op-edge/341905-nsa-us-leaks-terrorism/>.

Peter Maass, “Inside NSA, Officials Privately Criticize ‘Collect it All’ Surveillance,” *The Intercept*, May 18, 2015, accessed on February 15, 2017, <https://theintercept.com/2015/05/28/nsa-officials-privately-criticize-collect-it-all-surveillance/>.

²⁸⁶ Electronic Privacy Information Center, “Why You Should Care About Phone Record Surveillance,” *Fight215.org*, accessed on February 10, 2016, <https://www.epic.org/privacy/nsa/verizon/>.

²⁸⁷ Gabriel Weimann, “Terrorist Migration to the Dark Web,” *Perspectives on Terrorism* 10 no. 3 (2016), accessed on February 15, 2017, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/513/html>.

data collected could be used for political purposes and personal objectives.²⁸⁹ One need look no further in U.S. history than the 1970s and Nixon to appreciate the possibility of a President abusing domestic surveillance capabilities for personal gain. Additionally, the NSA employees have power to access private information about people they know—neighbors, friends, family members, coworkers. Fourth, despite the government’s assurance that the data is only used for counterterrorism purposes, the possibility of mission creep remains, and at least one documented case exists in which the Drug Enforcement Agency originally acquired evidence about a drug dealer from the NSA data.²⁹⁰

Multiple Traditions in the Debate

Keeping with the patterns that existed in previous wars, Americans reconcile their need to feel secure with their commitment to Creedal principles by applying the domestic surveillance in a discriminatory way on Muslims, who are the otherized population during the War on Terror. This discrimination was anticipated by lawmakers who originally debated the Patriot Act. Bush anticipated and perceived the discrimination and tried, by all appearances in a sincere, earnest way, to discourage and decrease the discrimination. Using Creedal rhetoric about equality, Bush emphasized that Muslims are not the enemy during the War on Terror. Yet, despite his rhetoric, Muslims have

²⁸⁸ The Telegraph, “Osama bin Laden Killed: Phonecall by Courier led US to Their Target,” *The Telegraph*, May 3, 2011, accessed on February 15, 2017, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8489078/Osama-bin-Laden-killed-phonecall-by-courier-led-US-to-their-target.html>.

²⁸⁹ American Civil Liberties Union, “Privacy and Surveillance,” *ACLU.org*, accessed August 30, 2016 <https://www.aclu.org/issues/national-security/privacy-and-surveillance/nsa-surveillance>.

²⁹⁰ John Shiffman and Kristina Cooke, “Exclusive: U.S. Directs Agents to Cover Up Program Used to Investigate Americans,” *Reuters*, (Washington), August 5, 2013. Accessed on May 1, 2015 <http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805>.

remained the Other, even into the administrations of Bush's two presidential successors. Bush's rhetoric, combined with the American response to Muslims, exemplify the multiple traditions that frame American understanding of the need for domestic surveillance during the War on Terror.

Recognizing that Muslims are particularly at risk for encountering discrimination and hate crimes during the War on Terror, the authors of the Patriot Act included Creedal language stating that Muslims and Arabs are not the enemy and condemning violent acts and discrimination against them. The Act acknowledges the "vital role" that Americans of Muslim, Arab, and Southern Asian descent "play in our Nation" and explains that they "are entitled to nothing less than the full rights of every American." The Act states that "the civil rights and civil liberties of all Americans, including Arab Americans, Muslim Americans, and Americans from South Asia, must be protected, and that every effort must be taken to preserve their safety" and calls on the nation "to recognize the Patriotism of fellow citizens from all ethnic, racial, and religious backgrounds."²⁹¹

Throughout his administration, Bush framed the War on Terror in Creedal terms. He stated that "There is no American race; there's only an American creed."²⁹² Noting that "America has never been united by blood or birth or soil,"²⁹³ Bush admonished Americans to "uphold the values of America" and "live by them" through inclusion of all

²⁹¹ H.R. 3162, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001" Section 102, U.S. Government Publishing Office, accessed on October 31, 2016.

²⁹² George W. Bush, "The President's Radio address, July 6, 2002," *The American Presidency Project*, accessed on October 26, 2016, <http://www.presidency.ucsb.edu/ws/?pid=25060>.

²⁹³ George W. Bush, "Address from West Front, U.S. Capitol," Washington, D.C. January 20, 2001, from *Selected Speeches*, 2, accessed on October 28, 2016.

people, regardless of “ethnic background or religious faith.”²⁹⁴ In his first post 9/11 address, he used the word “freedom” 13 times and declared that the 9/11 demonstrates “that freedom itself is under attack” from “enemies to justice.”²⁹⁵ He explained that the terrorists “hate” America because of its democratically-elected government and self-appointed leaders. He said terrorists hate freedom, including “freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.”²⁹⁶ Bush believed that America holds a responsibility to expand democracy and freedom to the world.²⁹⁷

For Bush, the stakes were higher than the number of innocent lives lost. He believed that terrorism threatens the very fiber of Americanness and explained that the “terrorists kill not merely to end lives, but to disrupt and end a way of life.”²⁹⁸ Bush reiterated that terrorists are not peaceable followers of Islam, but, rather, “fringe form[s] of Islamic extremism” that “pervert the peaceful teachings of Islam” and have been “rejected by mainstream Muslims.”²⁹⁹ He labeled al-Qaeda the “mafia” of terror whose “goal is remaking the world — and imposing its radical beliefs on people everywhere” by murdering military personnel and civilians alike, “including women and children.”³⁰⁰

²⁹⁴ Bush, Address, September 20, 2001.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ George W. Bush, “Address to the Republican National Convention, Madison Square Garden,” New York, September 2, 2004, in *Selected Speeches*, pg 259, accessed on October 28, 2016.

²⁹⁸ Bush, Address, September 20, 2001.

²⁹⁹ Ibid.

³⁰⁰ George W. Bush, “Address to the Joint Session of the 107th Congress,” National Archives and Records Administration, Washington, DC, September 20, 2001, accessed on October 24, 2016.

Bush was not imagining this threat from al-Qaeda. In his “Letter to the American People,” Osama bin Laden justified the 9/11 attacks and threatened to initiate future attacks. Among bin Laden’s many indictments against the U.S., he accused Americans of being “the worst civilization witnessed by the history of mankind” who falsely believe that they are the guardians of freedom, when, in reality, Americans are “caught up in . . . deceptive lies that [they] are a great nation.” Bin Laden threatened “Jihad, resistance and revenge” against America for the alleged “tragedies and calamities” caused by U.S “oppression and aggression against” Islam. According to bin Laden, America epitomized a “despicable state” that needed to correct its behavior by committing itself to the Islamic god Allah, or else confront an Allah-sanctioned war that would return American bodies “as cargo in coffins.”³⁰¹ To say that achievement of Bin Laden’s stated goal would strip Americans of their freedoms and their way of life would be a major understatement. And 9/11 demonstrated that al-Qaeda was serious about accomplishing its goals. Bush concerned himself with protecting the U.S. against these threats.

Yet, Bush recognized that al-Qaeda did not represent all Muslims. Bush separated peaceable followers of Islam from terrorists by defining al-Qaeda as “a fringe form of Islamic extremism that has been rejected by Muslim scholars and the vast majority of Muslim clerics — a fringe movement that perverts the peaceful teachings of Islam.”³⁰² Bush vowed to destroy al-Qaeda and promised that the war on terror would last “until

³⁰¹ Osama bin Laden, “Letter to the American People,” *The Guardian*, November 24, 2002, accessed on February 9, 2017, <https://www.theguardian.com/world/2002/nov/24/theobserver>.

³⁰² Bush, Address, September 20, 2001.

every terrorist group of global reach has been found, stopped and defeated.”³⁰³ Yet, he maintained that Muslims can live peacefully in the U.S. because they are not all terrorists.

Although Bush defined al-Qaeda as the enemy, and not all Muslims, some legislators expressed concern that Muslims would become the targets of counterterrorism policy and practice. The debate reveals the multiple traditions that frame American national identity. The Congressmen who voted against the Patriot Act cited potential civil liberties violations in their opposition. Using Creedal rhetoric, Representative John Conyers, a Democrat from Michigan, summarized his objections in a floor speech as the House debated the bill. Referring to terrorism, Conyers explained that "just as this horrendous act could destroy us from without, it can also destroy us from within." Conyers reminded listeners that "at times of inflamed passion and national anger" during crises, "civil liberties have proven to be at greatest risk." Conyers objected to the intelligence-gathering authority that the Patriot Act granted to the federal government, including provisions for Internet and phone data gathering and storage. Using examples from U.S. history, including the Alien and Sedition Acts, the suspension of habeas corpus in the Civil War, and the Japanese internment camps, Conyers reminded listeners of the government's pattern of infringing on the rights of otherized populations during

³⁰³ Ibid.

wartime.³⁰⁴ Despite the opposition, Bush claimed that the bipartisan support of the Act resulted from its upholding and respecting "the civil liberties guaranteed by [the] Constitution."³⁰⁵

The complexities of this debate were further exposed in 2013 when the surveillance program received Congressional scrutiny. Congressman Jim Sensenbrenner, author of the Patriot Act, expressed disappointment in the way the Bush administration interpreted the bill to surveil all Americans, which he described as "excessive and un-American" because it targeted "millions of innocent people."³⁰⁶ Sensenbrenner's reaction exposes a major difficulty legislators have with balancing national security concerns with civil rights and Creedal notions of equality. Assuming that some kind of data collection is necessary for counterterrorism purposes, policy makers need to determine who should be surveilled without targeting a religious group or racially profiling individuals. Therefore, any policy, such as the NSA surveillance, would need to not target one population, at least in rhetoric.

Multiple traditions are not only evident in the interchange between the conflicting sides of the debate, but also necessary to realize an acceptable solution. Bush claimed that the Patriot Act was not inherently discriminatory and emphasized that Muslims were not

³⁰⁴ *Provide Appropriate Tools Required to Intercept and Obstruct Terrorism (Patriot) Act of 2001*, HR 2975, 107th Cong., 1st sess., *Congressional Record* 19691-2., accessed October 11, 2015 <https://www.gpo.gov/fdsys/pkg/CRECB-2001-pt14/pdf/CRECB-2001-pt14-issue-2001-10-12.pdf>.

³⁰⁵ Admin, "President Bush Signs Anti-Terrorism Bill," *PBS Newshour*, October 26, 2001, accessed October 11, 2015, http://www.pbs.org/newshour/updates/terrorism-july-dec01-bush_terrorismbill/.

³⁰⁶ Jim Sensenbrenner, "Press Release," jimsensenbrenner.house.gov, accessed September 13, 2016 <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=337001> along with a letter he authored to Attorney General Eric Holder questioning the legality of the phone metadata collection.

the target. Sensenbrenner opposed the surveillance because it collected data on everyone, revealing the need to narrow its scope. Conyers recognized the historical tendency for Americans to apply such laws to one population, no matter if the law was worded to be discriminatory or not. Expressing concern that the Patriot Act would potentially target Muslims, Conyers observed that "the unpopular group of the moment happens to be subject to prejudice and deprivation of liberties."³⁰⁷ Bush appears to have agreed with Conyers, as demonstrated by his repeated message that Muslims are not the enemy in his speeches. Why else would he need to repeat that message if human nature did not tend to otherize the perceived enemy? The resulting application of the surveillance program provides further evidence of multiple traditions, because the data, while collected from everyone, targeted Muslim community leaders.³⁰⁸ The Creedal principles that Bush preached became subject to interpretation and conformed to prevailing theories and attitudes about who constitutes the enemy. As a result, the NSA data collection verifies that America is neither fully liberal nor fully inegalitarian.³⁰⁹

³⁰⁷ *Patriot Act of 2001*, HR 2975.

³⁰⁸ Glenn Greenwald and Murtaza Hussain, "Meet the Muslim-American Leaders the FBI and CIA Have Been Spying On," *The Intercept*, July 9, 2014, accessed on November 21, 2016, <https://theintercept.com/2014/07/09/under-surveillance/>.

Charlie Savage and Matt Apuzzo, "U.S. Spied on 5 American Muslims, a Report Says," *The New York Times*, July 9, 2014, accessed on November 21, 2016, http://www.nytimes.com/2014/07/10/us/politics/nsa-snowden-records-glenn-greenwald-first-look.html?_r=0.

³⁰⁹ Smith, "Beyond Tocqueville," 550.

Otherizing Muslims

Multiple traditions are evident in the way that Americans otherize Muslims during the War on Terror. The NSA surveillance is intended to target terrorists, which, by official definition, share no common racial, ethnic, or religious commonalities. Yet, in the American psyche, the terrorist label applies only when an Islamic component exists. Americans consider violence that furthers a cause terrorism only if the cause is Islamist, which demonstrates that Americans hold belief about themselves that are conceptually prior to the Creed. In other words, real Americans are not terrorists, and potential terrorists are not entitled to the same Creedal protections as Americans. Americans harbor prejudices against Muslims that intensified after 9/11. This section briefly describes the backlash that has occurred against Muslims since 9/11 and illustrates the prejudices that exist towards Muslims. The section also portrays the inherently discriminatory application of the term terrorism, which serves to further stigmatize Islam and otherize Muslims. This information is precursory to the subsequent section, which discusses the ways that Americans use the otherization of Muslims to reconcile their discriminatory practices with the American Creed.

Muslims encounter discrimination, marginalization, hate crimes and bias because some fellow Americans perceive Muslims to be the enemy. This was true before the NSA surveillance program began, and it is still true today. A large percentage of Americans do not trust Muslims. Forty-three percent of Americans admit to harboring at least some prejudice against Muslims. Half of Americans believe that at least some Muslims are

anti-American. Sixty-one percent of Americans hold unfavorable views of Islam.³¹⁰

During the 2016 campaign, over half of Americans agreed with now President Donald Trump's campaign promise for "a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on," suggesting that Americans feel a threat from all Muslims until they are properly vetted.³¹¹ The visceral fear of Muslims represents their otherization in the U.S.

Given that Americans believe that terrorists "are more likely to be Arab and Muslim than Mexican or Quaker,"³¹² they consider Muslims to be potentially threatening, and, therefore, deserving of penalties for terrorist attacks.³¹³ Some Americans have sought retaliation against Muslims for the 9/11 attacks. Anti-Muslim hate crimes increased dramatically in the aftermath of 9/11. In 2001, the reported number spiked to 481, marking a 1600 percent increase from the previous year.³¹⁴ The hate crimes included "assaults, bombing plots, acts of vandalism, arson, violent threats and intimidation, and

³¹⁰ Gallup, "Islamophobia: Understanding Anti-Muslim Sentiment in the West," *Gallup.com*, accessed on November 11, 2016, <http://www.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx>.

Shibley Telhami, "What Americans Really Think about Muslims and Islam," *Brookings Institute* December 9, 2015, accessed Sept. 17, 2016 <https://www.brookings.edu/blog/markaz/2015/12/09/what-americans-really-think-about-muslims-and-islam/>.

³¹¹ Donald J. Trump, "Statement on Preventing Muslim Immigration," *Trump Pence*, accessed September 17, 2016, <https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration>.

Kristina Wong, "Poll: Half of American Voters Back Trump's Muslim Ban," *The Hill*, March 29, 2016, accessed Sept. 17, 2016, <http://thehill.com/policy/defense/274521-poll-half-of-american-voters-back-trumps-muslim-ban>.

³¹² Cole, David. *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. (New York: New Press, 2005), 4-5.

³¹³ Amaney Jamal and Nadine Naber, *Race and Arab Americans Before and After 9/11: From Invisible Citizens to Visible Subjects* (Syracuse: Syracuse University Press, 2007), 116.

³¹⁴ FBI News, "Latest Hate Crime Statistics Released," *FBI.gov*, November 14, 2016, accessed on November 15, 2016, <https://www.fbi.gov/news/stories/2015-hate-crime-statistics-released>.

shootings.” Anti-Muslim hatred caused twelve murders in 2001.³¹⁵ In 2002, the number of anti-Muslim hate crimes decreased, but never completely receded to its pre-9/11 levels. The number remained close to 150 for twelve years. The 2015 FBI annual hate crime report shows an upward trend. From 2014 to 2015, the number of anti-Muslim hate crimes rose by 67 percent, reaching its highest level since 2001.³¹⁶

Muslims have become an otherized population in the U.S.³¹⁷ Islamophobia results from Americans’ understanding of their enemy during the War on Terror. Americans associate terror with Islam, and, therefore, become suspicious and distrustful of American Muslims. According to scholars of Islam, Jamal and Naber, the term “Muslim” has become a racialized term in “mainstream American culture. This racialization process essentially sees Muslims and Arabs as different from and inferior to whites, [and] potentially violent and threatening.”³¹⁸ Muslims and Arabs do not fit the definition of a prototypical American, and, therefore, are subject to increased scrutiny and suspicion from fellow Americans who fear additional terrorist attacks.

Fear causes Americans to become suspicious of people who fit the profile of a terrorist, which, in the American psyche, contains an Islamic component, as demonstrated

³¹⁵ Peek, 28.

³¹⁶ Christopher Ingraham, “Anti-Muslim Hate Crimes Are Still Five Times More Common Today Than Before 9/11,” *Washington Post Wonkblog*, February 11, 2015, accessed on November 15, 2016, <https://www.washingtonpost.com/news/wonk/wp/2015/02/11/anti-muslim-hate-crimes-are-still-five-times-more-common-today-than-before-911/>.

FBI News, “Latest Hate Crime Statistics Released.”

Al Jazeera News and News Agencies, “FBI: Hate Crimes Against Muslims in US Surge 67 Percent,” *Aljazeera.com*, November 14, 2016, accessed on November 15, 2016, <http://www.aljazeera.com/news/2016/11/fbi-hate-crimes-muslims-surge-67-percent-161114175259237.html>.

Peek, 28.

³¹⁸ Jamal and Naber, 116.

by the application of terror charges in crimes. The FBI defines terrorism as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”³¹⁹ Although that definition does not include “Islam,” in practice, violent acts that further a political or social objective are labeled terrorism under the law only if an Islamist component exists. Non-Muslims who commit similar crimes are charged under different laws, thus stripping the stigma of terrorism from the attackers’ identity. In 1995, Timothy McVeigh committed a violent act to further a political objective when he bombed an Oklahoma City federal building, killing 168 federal employees. McVeigh received the death penalty on charges of “conspiracy, murder, and destruction by explosive,” but not terrorism.³²⁰

Additionally, when Dylann Roof opened fire in 2015 on an African Methodist Episcopal Church in Charleston to further a white-supremacist objective, his charges included 33 counts of “hate crimes,” not terrorism.³²¹ Likewise, in 2016, Ammon Bundy and his cohorts staged an armed occupation of a national wildlife refuge in Oregon in pursuit of a political objective. Calling themselves the “Citizens for Constitutional Freedom,” Bundy and his supporters occupied the refuge to protest federal land use laws,

³¹⁹ FBI definition of terrorism, as quoted by the National Institute of Justice. Accessed Sept 13, 2016 www.nij.gov/topics/crime/terrorism/pages/welcome.aspx

³²⁰ CNN, “Charges against McVeigh,” *CNN.com*, June 2, 1997, accessed on November 15, 2016, <http://www.cnn.com/US/9706/02/charges/>.

³²¹ Halimah Abdullah, “AG Lynch: Dylann Roof Indicted on 33 Counts, Hate Crime Charges,” *NBCnews.com*, July 22, 2015, accessed on November 15, 2016, <http://www.nbcnews.com/storyline/charleston-church-shooting/ag-lynch-dylann-roof-indicted-33-counts-hate-crime-charges-n396681>.

which they considered tyrannical.³²² One supporter died in a shootout with the police.³²³

The protesters were charged with “firearms possession in a federal facility” and “conspiracy to impede officers of the United States.”³²⁴

Similar acts of violence receive the “terrorism” label only when an Islamist component exists. In 2016, when Omar Mateen killed 50 people at a nightclub in Orlando, and died in a subsequent shootout with police, the FBI opened a terrorism investigation. Prior to the attack, Mateen pledged allegiance to the Islamic State on social media, and had been on an FBI terror watchlist two years earlier.³²⁵ Similarly, in 2015, the FBI opened a terrorism investigation on a couple who opened fire at a holiday party at the Inland Regional Center in San Bernardino. The woman attacker, Tasheen Malik, a Pakistani native, teamed with her husband, Chicago-born Syed Rizwan Farook, to carry out the attack, which killed 14 people and injured 22 others. Afterwards, Malik pledged allegiance to the Islamic State on social media, before the couple died in a shootout with police.³²⁶ Because the attackers were self-radicalized by ISIS propaganda, the FBI

³²² Ashley Fantz, “Oregon Standoff: What the Armed Group Wants and Why,” *CNN.com*, January 6, 2016, accessed on November 15, 2016, <http://www.cnn.com/2016/01/04/us/oregon-wildlife-refuge-what-bundy-wants/>.

³²³ Evan Perez and Holly Yan, “Ammon Bundy, Other Protesters Arrested in Oregon; Lavoy Finicum Killed,” *CNN.com*, January 27 2016, accessed on November 15, 2016, <http://www.cnn.com/2016/01/26/us/oregon-wildlife-refuge-siege-arrests/>.

³²⁴ Steven Dubois, “The Federal Government on Wednesday Leveled Additional Charges Against Ammon Bundy and Dozens of Others Who Staged an Armed Takeover of a National Wildlife Refuge in Oregon,” *USNews.com*, March 9, 2016, accessed on November 15, 2016, <http://www.usnews.com/news/us/articles/2016-03-09/fbi-agents-investigated-over-shots-fired-during-standoff>.

³²⁵ Eric Litchblau and Matt Apuzzo, “Orlando Gunman Was on Terror Watchlist, F.B.I. Director Says,” *The New York Times*, June 13, 2016, accessed on November 15, 2016, http://www.nytimes.com/2016/06/14/us/omar-mateen-fbi.html?_r=0.

investigated the attack as an act of terrorism.³²⁷ These incidents were, indeed, acts of terrorism, but the crimes committed did not differ appreciably from those of the aforementioned non-Muslim perpetrators.

The stigma associated with the definition of terrorism serves to otherize Muslims and justify discriminatory policies that target them. As long as Muslims are defined as the Other, they do not fit into mainstream America, and, thus, are not entitled to protections of their rights as expressed in the American Creed. However, Americans maintain their commitment to the Creed, and the resulting inconsistencies between Creed and practice become a conflict that are indicative of multiple traditions. The tension between the two conflicting sides become reconciled when multiple traditions interact to form practices that are neither fully Creedal nor fully inegalitarian.

Reconciling with the Creed

In order for Americans to maintain their commitment to the Creed, the Patriot Act explicitly states that Muslims are not the target. However, for practicality's sake, the scope of the data collection needed to be narrowed. Given that the NSA surveillance targets terrorism, and because the legal application of terrorism charges includes a Muslim component, the result is that Muslims become the practical target. Because Muslims are the Other, they are not considered "real Americans," but, rather, potential

³²⁶ Greg Myre, "A Mass Shooter 'Pledges Allegiance' to ISIS. What Does This Mean?" *NPR.org*, June 13, 2016, accessed on November 15, 2016, <http://www.npr.org/sections/parallels/2016/06/13/481284054/a-mass-shooter-pledges-allegiance-to-isis-what-does-this-mean>.

³²⁷ Michael S. Schmidt and Richard Perez-Pena, "F.B.I. Treating San Bernardino Attack as Terrorism Case," *The New York Times*, December 4, 2015, accessed on November 15, 2016, <http://www.nytimes.com/2015/12/05/us/tashfeen-malik-islamic-state.html>.

enemies and, thus, the real target of the data collection. In this way, Americans can claim commitment to the Creed because the infringements represent a necessary evil that accomplishes an important national security goal. Thus, the infringements are reconciled with the Creed. This section details that reconciliation.

Because Creedal rights belong to everyone, government protections of those rights should naturally belong to everyone, too. By extension, one would expect Americans to demand equality under the law and recognize that targeting one population over another violates core American values of equality and justice. Yet, in the War on Terror, despite the rhetoric from President Bush, many Americans believe that the government should surveil certain people who are considered potentially dangerous. In the words of Jamal and Naber, Americans perceive Muslims as inferior and “therefore deserving of policies that target them as a distinct group of people and criminalize them without evidence of criminal activity.”³²⁸

Americans believe that unequal application of counterterrorism policy is justified as long as the intended target displays signs that he or she is dangerous. As of 2015, poll data suggest that the majority of Americans, 57 percent, believe that the NSA data collection is unacceptable.³²⁹ At the same time, a substantial majority, 65 percent, supports surveillance on individuals who enter certain phrases considered to be dangerous or associated with terrorism, such as “explosives” and “automatic weapons,”

³²⁸ Jamal and Naber, 116.

³²⁹ Pew Research Center: Numbers, Facts, and Trends Shaping the World, “Americans’ Privacy Strategies Post-Snowden,” *Pew Research Center*, March 16, 2015, complete report pdf accessed on November 8, 2016, <http://www.pewinternet.org/2015/03/16/americans-views-on-government-surveillance-programs/>.

into Internet search engines. A slightly larger majority, 67 percent, support surveilling individuals “who visit anti-American websites.”³³⁰ For Americans who share this perspective, expressing dangerous ideas disqualifies a person from receiving the Constitutional free speech protections that are consistent with the Creed.

Furthermore, supporters of the NSA program indicate that they do not perceive the surveillance as threatening to their personal rights. Some supporters explain that “Law abiding citizens have nothing to hide and should not be concerned” if the government collects their data. Others rationalize that “I am not doing anything wrong so they can monitor me all they want.”³³¹ These comments imply that the data collection is acceptable as long as it targets the people who pose security threats, or the Others who are not part of mainstream America. From this perspective, the surveillance is a security measure intended to protect the “real Americans” from threats posed by Others, without acknowledging that the Others are Americans, too. These Americans support unequalitarian practices that infringe on universal Creedal principles.

Likewise, the Patriot Act and the NSA surveillance appear to conform to principles of equality and justice, but evidence suggests that the law is applied differently to Muslims. Although the wording of the Patriot Act clearly states that Muslims are not the target, information obtained by the press under the Freedom of Information Act indicate that the Muslim community was the real target during the Bush administration. According to *The New York Times* and *The Intercept* magazine, a spreadsheet of email

³³⁰ Pew, “Americans Privacy Strategies.”

³³¹ Lee Rainie and Mary Madden, “Americans’ Views on Government Surveillance Programs,” *Pew Research Center*, March 16, 2015, accessed on November 9, 2016, <http://www.pewinternet.org/2015/03/16/americans-views-on-government-surveillance-programs/>.

addresses that the government monitored from 2002-2008, titled “FISA Recap,” includes five prominent American Muslims with no known links to terrorist organizations. Named on the list were three Muslim civil rights activists: Agha Saeed, chairman of the American Muslim Alliance, an organization that supports Muslim political candidates; Hooshang Amirahmadi, an international relations professor at Rutgers University and president of the American Iranian Council, which works to improve diplomatic relations between the U.S. and Iran; and Nihad Awad, executive director of the Council on American-Islamic Relations (CAIR), the largest advocacy group for Muslim civil rights in the U.S.³³²

Also identified were two attorneys who have represented the interests of Muslims named in lawsuits. Faisal Gill served in the Department of Homeland Security under George W. Bush and represented Sudan in a lawsuit initiated by victims of terrorist attacks. Asim Ghafoor, an attorney who worked with Gill on the Sudan case,³³³ and who represented Al-Haramain, a now defunct Islamic organization that sued the Bush administration in 2009 for targeting Al-Haramain with the NSA surveillance.³³⁴ In June 2008, the U.S. Treasury designated Al-Haramain for providing material support to al-

³³² Glenn Greenwald and Murtaza Hussain, “Meet the Muslim-American Leaders the FBI and CIA Have Been Spying On,” *The Intercept*, July 9, 2014, accessed on November 21, 2016, <https://theintercept.com/2014/07/09/under-surveillance/>.

Charlie Savage and Matt Apuzzo, “U.S. Spied on 5 American Muslims, a Report Says,” *The New York Times*, July 9, 2014, accessed on November 21, 2016, http://www.nytimes.com/2014/07/10/us/politics/nsa-snowden-records-glenn-greenwald-first-look.html?_r=0.

³³³ Greenwald and Hussain. Savage and Apuzzo.

³³⁴ Ombres, 35.

Qaeda and “wide range of designated terrorists and terrorist organizations.”³³⁵ From this designation, the government allegedly wiretapped Al-Haramain without a FISA warrant, an accusation for which Al-Haramain filed suit.³³⁶

Additional evidence suggests that the Bush administration targeted Muslims with counterterrorism practices. FBI trainers instructed new recruits with anti-Muslim materials. A 62-page report released under the Freedom of Information Act (FOIA) revealed that the FBI recommended that agents read a list of eight books about Islam in order to conduct “successful interviews/interrogations with individuals from the Middle East.” Included the list of books was *The Truth About Mohammad: Founder of the World’s Most Intolerant Religion*, by Robert Spencer, co-founder of the Stop Islamicization of America (SIOA), which is designated as a hate group by the Southern Poverty Law Center because it disparages Muslims. When the press reported this information, the FBI released a statement saying that the training that recommended the books “was a rudimentary version used for a limited time that has since been replaced” and that the FBI no longer recommends Spencer’s books.³³⁷

³³⁵ U.S. Department of the Treasury Press Center, “Treasury Designates Al Haramain Islamic Foundation,” *Treasury.gov*, June 19, 2008, accessed on November 21, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/hp1043.aspx>.

³³⁶ Anna Lamut, “District Court Finds FISA Preempts State Secrets Doctrine; Government Wiretap Litigation To Continue,” *Jolt Digest: Harvard Journal of Law and Technology*, *jolt.law.harvard.edu*, January 5, 2009, accessed on November 21, 2016, <http://jolt.law.harvard.edu/digest/privacy/al-haramain-islamic-foundation-v-bush>.

³³⁷ Jon Swaine, “F.B.I. Teaches New Recruits to Read ‘Anti-Islam’ Books,” *The Telegraph*, July 28, 2011, accessed on November 17, 2016, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/8668284/FBI-teaches-new-recruits-to-read-anti-Islam-books.html>.

However, the training was not an isolated incident. The FBI has a persistent history of training its agents with anti-Muslim materials. In 2011, in a video released to the press, an FBI trainer states that “‘main stream’ [sic] American Muslims are likely to be terrorist sympathizers; that the Prophet Mohammed was a ‘cult leader’; and that the Islamic practice of giving charity is no more than a ‘funding mechanism for combat.’”³³⁸ He claimed that 83 percent of Islam is “non-religious” and “discusses the relationship between the Islamic and the non-Islamic world.” He likened counterterrorism efforts to the techniques used to destroy the Death Star in the Star Wars films, saying that to destroy terrorism, the focus needs to be on undermining Islam, the terrorists’ “critical vulnerability.” The trainer connected the Islamic faith with violence.³³⁹

When the bias training became public in September 2011, multiple traditions became evident in the interplay between civil rights activists and the Bush administration. A coalition of civil rights advocacy groups expressed concerns that the training taught FBI agents to “view mainstream American Muslims with suspicion and to view the faith of Islam itself as the source of terrorism and extremism.” They called for the FBI to end anti-Muslim bias from its training programs.³⁴⁰ In response to media coverage, the FBI

³³⁸ Spencer Ackermen, “FBI Teaches Agents: ‘Mainstream’ Muslims are ‘Violent Radicals,’” *The Wired*, September 14, 2011, accessed on November 17, 2016, <https://www.wired.com/2011/09/fbi-muslims-radical/>.

³³⁹ David Goodman, “Islam is More Ideology than Religion, F.B.I. Analyst Says in Video,” *The New York Times*, September 20, 2011, accessed on November 17, 2016, http://thelede.blogs.nytimes.com/2011/09/20/islam-is-more-ideology-than-religion-f-b-i-analyst-says-in-video/?_r=0.

³⁴⁰ Council on American Islamic Relations, “CAIR Calls for Reform of FBI’s Training on Islam, Muslims,” *CAIR.com*, last updated March 11, 2015, accessed on November 21, 2016, <https://www.cair.com/press-center/press-releases/3636-cair-calls-for-reform-of-fbi-s-training-on-islam-muslims.html>.

responded that the training “does not reflect the views of the F.B.I. and is not consistent with the overall instruction provided to F.B.I. personnel” and that the materials were presented once to an audience of 37 agents in a “career path training.” The FBI noted that the trainer who delivered the anti-Muslim presentation was removed from his position as trainer.³⁴¹ Five days later, the FBI announced that it was “conducting a comprehensive review of all training and reference materials that relate in any way to religion or culture” to ensure that all content remains consistent with core values.³⁴²

These examples of the government targeting Muslims do not exist in a vacuum. They are part of a larger pattern in which Muslims encounter otherization because they are perceived as more likely to pose a terrorist threat than other Americans. In response to that assumption, Muslims, along with South Asians, Arabs, and Sikhs, are subjected to additional surveillance and scrutiny. In 2011 and 2012, the Associated Press, in a series of articles that earned the authors a Pulitzer Prize, revealed a New York Police Department initiative that surveilled Muslims and created police records that contained information about Muslims, mosques, student groups, and business owners with no known terrorist affiliations or suspected criminal activity.³⁴³ The National Security Entry-

³⁴¹ FBI National Press Office, “Response to Media Reporting Regarding Counterterrorism Training,” *FBI.gov*, September 15, 2011, accessed on November 21, 2016, <https://archives.fbi.gov/archives/news/pressrel/press-releases/response-to-media-reporting-regarding-counterterrorism-training>.

³⁴² FBI National Press Office, “FBI Launches Comprehensive Review of Training Program,” *FBI.gov*, September 20, 2011, accessed on November 21, 2016, <https://archives.fbi.gov/archives/news/pressrel/press-releases/fbi-launches-comprehensive-review-of-training-program>.

Erica Goode, “F.B.I. Chided for Training That Was Critical of Islam,” *The New York Times*, September 16, 2011, accessed on November 17, 2016, <http://www.nytimes.com/2011/09/17/us/fbi-chided-for-training-that-was-critical-of-islam.html>.

Exit Registration System (NSEERS), instituted in 2002, targeted travelers from 25 Muslim-majority countries to register with the federal government and subjected them to a 30-minute “secondary inspection” upon their arrival in the U.S.³⁴⁴ In May 2004 to February 2005, the federal office of Immigration and Customs Enforcement (ICE) administered Operation Front Line, a secret program that authorized ICE to arrest immigrants from Muslim-majority countries in an effort to “detect, deter, and disrupt terrorist operations.”³⁴⁵ Of the hundreds of arrests made, no one was charged with terrorism.³⁴⁶

The examples continue. A border search policy issued in July 2008 by the U.S. Customs and Border Patrol instructed “in the course of a border search, and absent individualized suspicion, officers can review and analyze the information transported by any individual attempting to enter ... the United States” and allowed officers to copy documents belonging to a traveler entering the U.S. as long as a “reasonable suspicion” existed.³⁴⁷ According to the ACLU, because of the sweeping and subjective recommendations, “border agents frequently stop Muslims, Arabs, and South Asians for extensive questioning about their families, faith, political opinions, and other private

³⁴³ David Crary, “AP Series about NYPD Surveillance Wins Pulitzer,” *The Associated Press*, April 16, 2012, accessed on February 24, 2017, <https://www.ap.org/ap-in-the-news/2012/ap-series-about-nypd-surveillance-wins-pulitzer>.

³⁴⁴ Department of Homeland Security, “DHS Removes Designated Countries from NSEERS Registration (May 2011),” *Department of Homeland Security*, accessed on February 24, 2017, <https://www.dhs.gov/dhs-removes-designated-countries-nseers-registration-may-2011>.

³⁴⁵ Anan Ameri and Holly Arida, eds., *Daily Life of Arab Americans in the 21st Century* (Santa Barbara: ABC-CLIO, 2012), 24-5.

³⁴⁶ *Ibid.*

³⁴⁷ U.S. Customs and Border Protection, “Policy Regarding Border Search of Information,” U.S. Customs and Border Protection, July 16, 2008, accessed on February 24, 2017, https://www.cbp.gov/sites/default/files/documents/search_authority_2.pdf.

matters, and subject them to intrusive searches.”³⁴⁸ In 2004, the Bush administration established the Terrorist Screening Center, which maintained a list of people, reported by private entities, who were suspected of having “any nexus” to terrorism.³⁴⁹ Due to misidentification and over-classification, Muslims, Arabs, and South Asians, including U.S. citizens, seeking to enter the country encountered problems.³⁵⁰

Realizing that these examples are anecdotal, which makes global conclusions difficult to draw, the evidence suggests that Muslims are the otherized population during the War on Terror. The otherization is a tool that Americans use to reconcile their inegalitarian practices with their Creed. The multiple traditions theory is evident in the exchange between Creedal elements and inegalitarian practices of the War on Terror. By targeting Muslims, rather than everyone, the U.S. preserves its commitment to the Creed while also implementing security measures designed to keep America safe. These inegalitarian policies can be justified with Creedal principles, because as long as the Other is targeted, then “real Americans” remain protected. The mixture of Creedal elements with inegalitarian practices constitutes evidence of multiple traditions in America. The targeting of Muslims with NSA surveillance fits the pattern established in previous wars of otherizing the perceived enemy in order to reconcile inegalitarian practices with Creedal principles. As Rogers Smith observes, “Americans [can] not

³⁴⁸ The Leadership Conference, “Racial Profiling and Counterterrorism,” *ACLU*, April 2012, accessed on February 24, 2017, <http://www.civilrightsdocs.info/pdf/discrimination/racial-profiling-and-counterterrorism-w-banner-final-4-15-12.pdf>.

³⁴⁹ Donna A. Bucella, “Testimony before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security, and The House Select,” Washington, DC, March 25, 2004, accessed on February 24, 2017, <https://archives.fbi.gov/archives/news/testimony/terrorist-screening-center-capabilities-and-operations>.

³⁵⁰ The Leadership Conference.

tolerate permanent unequal statuses; persons must either be equal or outsiders.”³⁵¹ By casting Muslims as outsiders and potential threats, Americans can claim their continued commitment to the Creed, because by violating the rights of the Other, everyone else’s rights remain protected.

The Creed: Keeping Deviations Temporary

In previous wars, domestic security policies were recognized as deviations from the Creed and, therefore, rescinded when the war ended. The NSA surveillance program is a unique case that has the potential to break that established pattern. The War on Terror is technically not a war, because it did not begin with an official declaration, nor was it declared against a state actor. As such, the War on Terror will not end with an official treaty, negotiation, or surrender of an army. In fact, it may never end. The NSA surveillance could hypothetically continue for the foreseeable future. In fact, the data collection extended beyond Bush’s term expired, and most of the public opposition happened during the Obama administration. Although small changes have been made, the surveillance in its entirety has not yet been rescinded. Whether or not the Creed will be able keep this deviation temporary to remains yet to be determined. This section discusses some of the events that have propelled the debate.

After Bush’s presidential term expired, the Obama administration continued the data collection,³⁵² but the general public remained relatively unaware of its scope, despite

³⁵¹ Smith, 561.

³⁵² Glenn Greenwald and Spencer Ackerman, “NSA Collected U.S. Email Records in Bulk for More than Two Years Under Obama,” *The Guardian*, June 27, 2013, accessed on November 5, 2016, <https://www.theguardian.com/world/2013/jun/27/nsa-data-mining-authorized-obama>.

a couple of early lawsuits³⁵³ and an article published in *The New York Times* in 2005 that exposed certain aspects of the program.³⁵⁴ When Barack Obama became president in January 2011, he continued the president's surveillance program. The information became public knowledge when former NSA subcontractor Edward Snowden disclosed classified documents to reporter Glen Greenwald, who published the first of many stories in *The Guardian* on June 5, 2013,³⁵⁵ sparking public controversy.

The majority of Americans supported the program immediately after the Snowden disclosures, but that number has decreased over time. In June 2013, the majority, 56 percent, supported the NSA phone data collection “as an acceptable way for the government to investigate terrorism.” A significant minority, 41 percent, believed the surveillance was not acceptable.³⁵⁶ One year later, those numbers had reversed. Forty-two

³⁵³ *Hepting v. AT&T*, January 1, 2006

Al-Haramain Islamic Foundation v. Bush, June 9, 2007

For a complete list of lawsuits, see Electronic Frontier Foundation, “NSA Multi-District Litigation,” accessed on November 7, 2016, <https://www.eff.org/cases/nsa-multi-district-litigation#legal>.

³⁵⁴ James Risen and Eric Lichtblau, “Bush Lets U.S. Spy on Callers Without Courts,” *The New York Times*, December 16, 2005, accessed on November 7, 2016, <http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html>.

³⁵⁵ Glenn Greenwald, “Exclusive: US Orders Phone Firm to Hand Over Data on Millions of Calls: Top Secret Court Ruling Demands ‘Ongoing, Daily’ Data from Verizon,” *The Guardian* (London), June 6, 2013. Online version: Glen Greenwald, “NSA Collecting Phone Records of Millions of Verizon Customers Daily,” *The Guardian*, June 6, 2016, accessed on November 5, 2016, <https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>. For a timeline of disclosure news, see the Snowden timeline published on *The Guardian*, <https://www.theguardian.com/world/2013/jun/23/edward-snowden-nsa-files-timeline>.

³⁵⁶ Pew Research Center: U.S. Politics and Policy, “Majority Views NSA Phone Tracking as Acceptable Anti-terror Tactic,” *Pew Research Center*, June 10, 2013, accessed on November 8, 2016, <http://www.people-press.org/2013/06/10/majority-views-nsa-phone-tracking-as-acceptable-anti-terror-tactic/>.

percent supported, and 54 percent opposed.³⁵⁷ By January 2015, 40 percent of Americans believed it is acceptable “for the government to monitor communications of U.S. citizens,” and 57 percent believed the surveillance is unacceptable.³⁵⁸

The Obama administration initially defended the data collection, but changed its position amidst the controversy. In June 2013, directly following the Snowden disclosures, Obama justified the program saying it was based on laws that “have been in place for a number of years now.”³⁵⁹ A few months later, he issued a White Paper defending the program as necessary for counterterrorism purposes.³⁶⁰ He organized “The President’s Review Group on Intelligence and Communications Technologies,” five scholars who reviewed the data collection program. In December 2013, the Review Group published *The NSA Report: Liberty and Security in a Changing World*, which recommends strategies to balance the need to protect civil liberties while pursuing effective NSA counterterrorism policies.³⁶¹

³⁵⁷ Pew Research Center: U.S. Politics and Policy, “Section 6: Foreign Affairs, Terrorism and Privacy,” in “Beyond Red vs. Blue: The Political Typology,” *Pew Research Center*, June 26, 2014, accessed on November 8, 2016, <http://www.people-press.org/2014/06/26/section-6-foreign-affairs-terrorism-and-privacy/#views-of-privacy-nsa-surveillance>.

³⁵⁸ Pew Research Center: Numbers, Facts, and Trends Shaping the World, “Americans’ Privacy Strategies Post-Snowden,” *Pew Research Center*, March 16, 2015, complete report pdf accessed on November 8, 2016, <http://www.pewinternet.org/2015/03/16/americans-views-on-government-surveillance-programs/>.

³⁵⁹ Dan Roberts and Spencer Ackerman, “Anger Swells after NSA Phone Records Court Order Revelations,” *The Guardian*, June 6, 2013, accessed on November 8, 2016, <https://www.theguardian.com/world/2013/jun/06/obama-administration-nsa-verizon-records>.

³⁶⁰ White House, *Administration White Paper: Bulk Collection of Telephony Metadata Under Section 215 of the USA Patriot Act (2013)*, Washington, DC, August 9, 2013, archived at <http://perma.cc/8RJN-EDB7> and accessed on November 8, 2016.

See also Glenn Greenwald, “Recent Administration White Paper,” *Harvard Law Review* 127, no. 1871 (2013-14), accessed on November 8, 2016, http://cdn.harvardlawreview.org/wp-content/uploads/2014/04/vol127_telephony_metadata_collection.pdf.

By January 2014, Obama announced “a series of concrete and substantial reforms” to the surveillance program, including increased transparency, restricted activities conducted under Section 702, and the end of Section 215 bulk metadata collection.³⁶² His administration reportedly stopped storing the bulk metadata and sought FISA Court approval to obtain necessary data from the telephone companies.³⁶³ Obama invited Congress to codify his executive action with legislation that accomplished the same changes.³⁶⁴ In 2015, Section 215, a “sunset provision” of the Patriot Act that required periodic Congressional review and renewal, was set to expire.³⁶⁵ Instead of renewing Section 215, Congress passed the Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-Collection and Online Monitoring (USA Freedom) Act, which codified Obama’s earlier changes. The bill received broad support in the House, passing with a vote of 338 to 88.³⁶⁶ Leading Senate Republicans, especially Senate Majority Leader Mitch McConnell, vehemently opposed the changes

³⁶¹ Richard A. Clarke, Michael J. Morell, Geoffrey R. Stone, Cass R. Sunstein, Peter Swire, *The NSA Report: Liberty and Security in a Changing World* (Princeton: Princeton University Press, 2013), also available online https://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf.

³⁶² Barack Obama, “Remarks by the President on Review of Signals Intelligence,” (speech, U.S. Department of Justice, Washington, DC, January 17, 2014) accessed on November 16, 2016, <https://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence>.

³⁶³ Director of National Intelligence, *Joint Statement from the ODNI and the U.S. DOJ on the Declassification of Renewal of Collection Under Section 501 of the FISA*, Office of the Director of National Intelligence, Washington, DC, December 8, 2014, accessed on November 16, 2016, <https://www.dni.gov/index.php/newsroom/press-releases/198-press-releases-2014/1147-joint-statement-from-the-odni-and-the-u-s-doj-on-the-declassification-of-renewal-of-collection-under-section-501-of-the-fisa-12-14>.

³⁶⁴ Obama, speech, January 17, 2014.

³⁶⁵ John E. Finn, "Sunset Clauses and Democratic Deliberation: Assessing the Significance of Sunset Provisions in Antiterrorism Legislation," *Columbia Journal of Transnational Law* 48 (2010): 443.

³⁶⁶ Jennifer Steinhauer, "House Votes to End NSA's Bulk Data Collection," *The New York Times*, May 13, 2015, accessed at http://www.nytimes.com/2015/05/14/us/house-votes-to-end-nas-bulk-phone-data-collection.html?emc=edit_na_20150513&nid=69721968.

because they considered Section 215 to be essential for counterterrorism efforts.³⁶⁷

Conversely, Sensenbrenner labeled the surveillance “criminal”³⁶⁸ and supported the USA Freedom Act as a preferable alternative.³⁶⁹ The Senate passed the bill with a vote of 67 to 32. President Obama signed the USA Freedom Act into law on June 2, 2015.³⁷⁰

Because of the classified nature of the surveillance, it is difficult to determine the application of USA Freedom Act restrictions on the intelligence community. However, evidence exists that the government continues to conduct broad searches of personal information without FISA Court approval. In October 2016, three unidentified former Yahoo employees reported to Reuters that Yahoo, at the request of the NSA or the FBI, secretly created special software that searched its customers’ incoming emails, in real

³⁶⁷ Jonathan Weisman and Jennifer Steinhauer, "Patriot Act Faces Revisions Backed by Both Parties," *The New York Times*, April 30, 2015, accessed on May 1, 2015 at http://www.nytimes.com/2015/05/01/us/politics/Patriot-act-faces-revisions-backed-by-both-parties.html?emc=edit_th_20150501&nl=todaysheadlines&nid=69721968&_r=0.

³⁶⁸ Jennifer Stisa Granick and Christopher Jon Sprigman, “The Criminal NSA,” *Jim in the News, Congressman Jim Sensenbrenner*, June 27, 2013, accessed on November 17, 2016, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=341673>.

³⁶⁹ Jim Sensenbrenner, “Congressman Jim Sensenbrenner Floor Statement on the USA Freedom Act,” *Speeches and Floor Statements, Congressman Jim Sensenbrenner*, May 13, 2015, accessed on November 17, 2016, <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=397742>.

³⁷⁰ House of Representatives Judiciary Committee, “USA Freedom Act,” *Judiciary.House.Gov*, accessed on November 16, 2016, <https://judiciary.house.gov/issue/usa-freedom-act/>.

time, for specific data that the NSA provided. The action disappointed civil liberties advocates, such as the ACLU, and allegedly led to the resignation of Yahoo's Chief Security Officer Alex Stamos.³⁷¹ Without verifying the source of this information, making a judgment on the success of the USA Freedom Act to curtail dragnet surveillance becomes difficult.

³⁷¹ Joseph Menn, "Exclusive: Yahoo Secretly Scanned Customer Emails for U.S. Intelligence-Sources," *Reuters*, October 4, 2016, accessed on November 16, 2016, <http://www.reuters.com/article/us-yahoo-nsa-exclusive-idUSKCN1241YT>.

Conclusion

At the time this paper was written, its content already needed to be updated. The War on Terror did not end during the Bush administration, and neither did the otherization of Muslims. A host of new terrorist-related issues have emerged that provided Americans with new fodder to justify the otherization of Muslims and the discriminatory security policies that target them. The ascension of the Islamic State of Iraq and Syria (ISIS) and the associated ISIS-inspired “lone wolf” attackers have spread fear that a terrorist attack could happen anywhere at any time.³⁷² In response, President Donald Trump has shifted official presidential rhetoric from that of his predecessors who disconnected terrorism from religion. Trump connects “radical Islam” with terrorism.³⁷³ Trump’s initial policy priorities reflect fear of Muslims, as he issued an Executive Order that bans citizens of seven Muslim-majority countries from entering the U.S.³⁷⁴

³⁷² Graeme Wood, “What ISIS Really Wants,” *The Atlantic*, March 2015, accessed on October 31, 2016, <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>.

William McCants, “Who Exactly is Abu Bakr al-Baghdadi, the Leader of ISIS?” *Newsweek*, September 6, 2015, accessed on November 4, 2016, <http://www.newsweek.com/who-exactly-abu-bakr-al-baghdadi-leader-isis-368907>.

Scott Shane, “The Lessons of Anwar al-Awlaki,” *The New York Times*, August 27, 2015, accessed on October 29, 2016, <http://www.nytimes.com/2015/08/30/magazine/the-lessons-of-anwar-al-awlaki.html>.

Matt Zapposky and Mark Berman, “Orlando Gunman Who Pledged Loyalty to ISIS was ‘Homegrown’ extremist radicalized online, Obama says,” *The Washington Post*, June 13, 2016, accessed on October 29, 2016, https://www.washingtonpost.com/news/post-nation/wp/2016/06/13/police-orlando-gunman-was-cool-and-calm-during-hostage-standoff/?utm_term=.0ca40b661e77.

³⁷³ Peter Holley, “‘Radical Islamic Terrorism’: Three Words that Separate Trump from Most of Washington,” *The Washington Post*, March 1, 2017, accessed on April 1, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/02/28/radical-islamic-terrorism-three-words-that-separate-trump-from-most-of-washington/?utm_term=.16cb64c42007.

³⁷⁴ Donald J. Trump, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States*, March 6, 2017, *The White House Office of the Press Secretary*, accessed on March 31, 2017, <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

Franklin D. Roosevelt, *Executive Order 9066 Authorizing the Secretary of War to Prescribe Military Areas*, February 19, 1942, transcript, accessed on March 27, 2017, <https://www.ourdocuments.gov/doc.php?flash=false&doc=74&page=transcript>.

Simultaneously, the incidents of anti-Muslim hate crimes are increasing nationwide.³⁷⁵

Although Trump is not responsible for these acts, the president's rhetoric has established an atmosphere in which accepted ideological and behavioral norms include the otherization of Muslims.

From the patterns established in previous wars extend lessons that apply to current counterterrorism strategy. According to Smith, these lessons fit into two categories. The first is "descriptive and explanatory," and the second is "normative or moral."³⁷⁶ The basic descriptive and explanatory lessons have been detailed in the previous chapters. The core argument of these chapters detailed the reality that while Americans profess loyalty to the Creed, national security threats cause deviations from Creedal principles, which indicates that Americans hold beliefs about themselves that are conceptually prior to the Creed. Wartime otherization of perceived enemies represents a divergence from the Creed and demonstrates that multiple traditions frame American national identity. Americans use otherization as a tool to reconcile their principles with their contradictory and inegalitarian practices, but the Creed exists to keep their deviations temporary.

The normative and moral lessons can apply to the ongoing War on Terror. Two potential outcomes can be expected from current counterterrorism strategy. The first is more hopeful than the second. Because Trump's response to terrorism follows established

³⁷⁵ Council on American-Islamic Relations, "Post-Election Anti-Muslim Bias," *CAIR.com* last updated November 18, 2016, accessed on November 21, 2016, <http://islamophobia.org/2-uncategorised/182-anti-muslim-bias-incidents-post-election.html>.

Davidson College, "Difference between a Hate Crime and a Bias Incident," *Davidson.edu*, accessed on November 21, 2016, <http://www.davidson.edu/student-life/multicultural-life/hate-crime-and-bias-incidents>.

³⁷⁶ Smith, *Civic Ideals*, 470.

historical patterns, the eventual rescinding of the policies might be expected. Late Supreme Court Justice William Rehnquist said that “There is no reason to think that future wartime presidents will act differently from Lincoln . . . or Roosevelt, or that future Justices of the Supreme Court will decide questions differently than their predecessors.”³⁷⁷ Likewise, there is no reason to think that the President will not rescind the policies when the War on Terror ends, consistent with historical patterns. As alarming as some people consider Trump’s anti-Muslim rhetoric, the hopeful outcome will involve a recommitment to and realignment with Creedal principles of equality and justice. In other words, hopefully the Creed will rein in current otherization of Muslims.

However, because the War on Terror differs from previous wars, the second conclusion is equally possible, yet not so hopeful. The War on Terror is not an official war, and the U.S. has no state enemy. In fact, determining the enemy is difficult, given that any individual can become self-radicalized and commit terrorist acts without direct contact or affiliation with a terrorist organization. The perceived threat of terrorism permeates American society, triggering fear and suspicion. Furthermore, the lack of a state actor prevents the U.S. from knowing when, if, or how the war will end. It may never end. As such, the temporariness of discriminatory policies is uncertain.

Nevertheless, signs of the Creed’s ability to rein in current policy have already appeared. For example, in January 2017, immediately after Trump issued the travel ban, thousands of immigration attorneys flocked to U.S. airports to aid travelers who were mid-air when the ban was issued and faced detainment upon entry into the U.S.³⁷⁸

³⁷⁷ William H. Rehnquist, *All the Laws but One: Civil Liberties in Wartime* (New York: Vintage Books, 2000), 124.

Additionally, in February 2017, a federal judge temporarily blocked the travel ban.³⁷⁹ One month later, another judge extended the block.³⁸⁰ These actions illustrate the multiple traditions that interact to form national character. They also indicate the possibility of an eventual end to the discriminatory policies, but only time will tell the actuality of such an end.

The temporariness of wartime deviations is a central element of American national identity. Without Americans yielding to the Creed's power to rein in discriminatory policy, the Others of the past would never be mainstreamed, and American commitment to their professed values would remain questionable at best. Confronting the realities of the past can help Americans reconcile their counterterrorism policies with the Creed sooner rather than later. By so doing, hopefully Americans will evaluate the otherization of Muslims and determine to create policy that reflects the universality of the Creed.

³⁷⁸ Jonah Engel Bromwich, "Lawyers Mobilize at Nation's Airports After Trump's Order," *The New York Times*, January 29, 2017, accessed on April 1, 2017, https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html?_r=0.

³⁷⁹ Matt Zapotosky, Lori Aratani and Justin Jouvenal, "Federal judge Temporarily Blocks Trump's Entry Order Nationwide," *The Washington Post*, February 4, 2017.

³⁸⁰ Phil Helsel, "Hawaii Judge Extends Order Blocking Trump 'Travel Ban,'" *NBC News*, March 29, 2017, accessed on April 1, 2017, <http://www.nbcnews.com/news/us-news/hawaii-judge-extends-order-blocking-trump-travel-ban-n740396>.

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Graduate Assistant, Sep. 2014-May 2017
Political Science Department, Towson University

Regional Director of Public Affairs, Feb. 2012-Present
The Church of Jesus Christ of Latter-day Saints, MD, VA, PA, WV

Group Exercise Instructor, Apr. 1996-Present
Independent Contractor, Ridgecrest, CA and Baltimore, MD

Campaign Representative, Sep. 1999-Jan. 2003
Western Pacific Research, Inc., Bakersfield, CA

Teacher Supervisor, Southeast Asia Area, Jul. 1999-Apr. 2001
LDS Missionary Training Center, Provo, UT

Vice President of Programs
Cromwell Valley Elementary School PTA, Towson, MD

Member of the Board of Directors
Ridgeleigh Community Association, Parkville, MD

Eighteen-Month Service Mission
The Church of Jesus Christ of Latter-day Saints, Philippines

