NATIONAL SECURITY CRISES AND THE EXPANDING AMERICAN PRESIDENCY

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MELISSA MARGUERITE LALONDE

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Melissa Marguerite Lalonde, candidate for the degree of Master of Arts in History, has presented a thesis titled, *National Security Crises and the Expanding American Presidency*, in an oral examination held on August 29, 2012. The following committee members have found the thesis acceptable in form and content, and that the candidate demonstrated satisfactory knowledge of the subject material.

External Examiner: Dr. James Daschuk, Faculty of Kinesiology & Health Studies

Supervisor: Dr. Mark Anderson, Department of History

Committee Member: Dr. Ian Germani, Department of History

Committee Member: Dr. James Pitsula, Department of History

Committee Member: Dr. Philip Charrier, Department of History

Chair of Defense: Dr. Troni Grande, Department of English

*Not present at defense*
Abstract

The Constitution is meant to protect the rights of American citizens, while providing the United States with a strong and responsible government. During times of crisis, the executive branch of the government has often expanded its authority claiming that it requires extra powers to defend the nation. After the September 11 terrorist attacks, the George W. Bush administration expanded executive power and Congress did not object. For example, Congress passed the USA PATRIOT Act and President Bush signed it into law on October 26, 2001, allowing law enforcement agencies to obtain records and conduct surveillance on anyone suspected of terrorism-related acts.

The Bush administration was not the first to engage in actions that some would deem to be unconstitutional. During WWI under Woodrow Wilson’s leadership, the Espionage and Sedition Acts passed, leading to the deportation of thousands of immigrants who spoke out against the government. Franklin Delano Roosevelt’s administration also expanded presidential powers after the Pearl Harbour attacks by moving approximately 120,000 people of Japanese descent into internment camps after Roosevelt issued Executive Order 9066. The Bush administration continued and extended the practice of previous presidents to expand executive powers by implementing key (and controversial) measures in the wake of September 11 that went unchecked by Congress.

The separation of powers has been widely debated in scholarship. Especially during times of crisis, the presidency has expanded its powers. This thesis has two aims: to explore how the separation of powers is often altered during crises through an examination of the Wilson, Roosevelt, and Bush administrations’ expansion of executive power; and to ascertain how the aforementioned administrations sought to justify their expansion of presidential power. Ultimately, this thesis will argue that the expansion of the powers of the American presidency has occurred in response to “crises,” with a particular focus on the national security crises that occurred during World War I, after Pearl Harbor and following
the September 11 terrorist attacks.

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CHAPTER 1: Introduction

The world looks much different today than it did on the morning of September 11, 2001. On that day, 19 hijackers took control of commercial airliners in four co-ordinated suicide attacks upon the United States. At 8:46 a.m., five hijackers crashed American Airlines Flight 11 into the World Trade Center’s North Tower. At 9:03 a.m. another five hijackers flew United Airlines Flight 175 into the South Tower. A third plane, American Airlines Flight 77, slammed into the west wing of the Pentagon at 9:37 a.m. The fourth plane, United Airlines Flight 93, crashed in a field in Pennsylvania at 10:30 a.m. after its passengers fought back against the hijackers, preventing the plane from hitting its intended target, which may have been the Capitol building or the White House. These events shook the nation to its core. During the attacks, President George W. Bush was reading to a second-grade class in Florida. He later recalled his first reaction to this shocking report of the terrorist assault saying, “they had declared war on us, and I made up my mind at that moment that we were going to war.”¹ As strong as his reaction may have appeared at the time, it is questionable whether the decision to go to war was his to make.

During times of crisis, the role of the executive has often expanded. The term “crisis” refers to a condition of instability that negatively affects society. Crises come in different forms, and often affect a nation’s security, economic, societal, or political status. This thesis will focus on the expansion of executive power following a national security crisis by exploring how the Wilson administration responded to World War I, the Roosevelt administration responded to the attack on Pearl Harbor, and the Bush administration responded to September 11. Each administration viewed their respective event as a threat to national security that required a change in policy, which resulted in an expansion of executive power. For the purpose of this thesis, “national security crisis” will refer to a real or perceived event that threatens the safety of a nation, and requires the

immediate use of measures to detect and defeat or prevent hostile or destructive action. These measures may be considered controversial, particularly because when a threat to national security arises, many administrations call upon emergency powers that allow for an expansion of executive power.

When a national security crisis suddenly occurs, the government is forced to respond. Typically, the response has required an expansion of executive power. Various administrations offer their own justifications for this expansion of power, which often cause debates regarding acceptable limitations of presidential power.

Experts such as legal scholar Peter Irons argue that wartime presidents have “undermined the Constitution by usurping the power to ‘declare war’ that its Framers had placed in the hands of Congress.” During times of crisis, the executive branch of the government has often expanded its authority claiming that it requires extra powers to defend the nation. After the September 11 terrorist attacks, the George W. Bush administration expanded executive power, using the expansion of executive powers by past presidents as a precedent. Woodrow Wilson’s administration acted similarly during WW1 when it engaged the Espionage Act (1917) and Sedition Act (1918), leading to the deportation of hundreds of immigrants who spoke out against the government. Franklin Delano Roosevelt’s administration also expanded presidential powers after the Pearl Harbour attacks by moving approximately 120,000 people of Japanese descent into internment camps after Roosevelt issued Executive Order 9066 (1942). The Bush administration continued and extended the practice of previous presidents to expand executive powers by implementing key (and controversial) measures in the wake of September 11 that went unchecked by Congress.

**Source Material**

The *New York Times* provides the main source of primary information for this

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*Irons, War Powers, 2.*
thesis. As one of the United States’ oldest, largest, and most respected news sources, the New York Times offers coverage of the events of each presidency. The Times provides a common public record for explanation and justification of expansion, thus allowing comparing and contrasting. The Times is a strong source of information, as it not only covers stories from the perspective of its own journalists, but it also prints an abundance of stories from prominent newspapers across the country, such as the Washington Post. The Times is a trusted source utilized by presidential scholars such as Walter M. Brasch (America’s Unpatriotic Acts) and Arthur M. Schlesinger (The Imperial Presidency). Regarding this particular topic, the Times gives a firsthand account of the events that occurred during the presidencies of Wilson, Roosevelt, and Bush. The Times contributes an abundance of quotes from each administration, along with reports detailing the response from the public, the military, the administration itself, and members of Congress to the actions of each administration. Along with the Times, this thesis has garnered information from presidential speeches, as well as speeches from members of the administration, and Senate Judiciary Committee Hearings. Speeches given by members of the Bush administration were accessible through the Whitehouse archives, as well as on the Department of Justice (DOJ) website, as were copies of Senate Judiciary Committee Hearings involving Attorney General John Ashcroft.

PURPOSE OF THE THESIS

The purpose of this thesis is to examine the measures that the Wilson, Roosevelt, and Bush administrations put in place in response to real or perceived national security crises, and how they justified their actions. Ultimately, this thesis will argue that in the case of the aforementioned administrations, the expansion of the powers of the American presidency has occurred in response to “national security crises,” that threatened the stability of the United States and required an immediate response.
ORGANIZATION OF THE THESIS

In order to demonstrate a correlation between the actions of the administrations, and their ability to expand presidential power during a crisis, the thesis is divided into six chapters, including the introduction.

The second chapter will provide a discussion of important concepts and a review of the literature. It begins with a brief examination of the powers accorded by the Constitution, particularly in time of war, to each branch of the government. From here, it is observable how war powers shifted from the legislative to the executive. The review of literature and research will follow in order to provide historical background for each administration’s expansion of presidential power. Scholarship demonstrates that presidential power has increased before, and it is especially amplified during periods of military calamity. By identifying the approaches the experts have taken in this research area, this chapter will provide a context for understanding why it is important to compare how Wilson, Roosevelt, and Bush expanded presidential power.

The third chapter focuses on the actions of President Woodrow Wilson and how his administration expanded and justified presidential power during World War I. The fourth chapter will focus on President Franklin Delano Roosevelt’s actions, following the attack on Pearl Harbor. Chapter Five explores how the Bush administration expanded presidential power after September 11. The chapter looks at each president in chronological order, showing how executive power expanded throughout history. It is important to note that Roosevelt expanded executive power using an Executive Order, which does not require Congressional approval; however, its legality is the same as laws passed by Congress. In contrast, Bush and Wilson relied on legislation, and required the approval of Congress before expanding executive power. Chapters three, four and five show that the expansion of presidential power by the Bush administration was not an isolated incident, and similar

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incidents can be traced throughout American history. Each of these chapters will open with a summary of events, followed by a discussion of the expansion of presidential power, and an explanation of how the expansion was justified.

The sixth chapter will draw conclusions based on chapters three, four, and five and discuss the similarities and differences between Wilson, Roosevelt, and Bush and their expansions of presidential power. The main similarities include that each administration responded to an event that it perceived as a threat to national security. As such, each administration claimed that its actions were necessary for the protection of the nation. The concluding chapter focuses on a comparison of each administration’s actions. First, the administrations argued that in order to protect the nation from aggression, it was necessary to implement measures that expanded executive power. Second, following a major crisis, each administration acted against a particular group For the Bush administration, it was Islamists, particularly al Qaeda and the Taliban, for the Roosevelt administration, it was the Japanese, and for the Wilson administration, it was communists. Finally, each administration used similar tactics to justify the response to its respective crisis. Members of the administrations used broad and persuasive language to justify the need for the expansion of executive power, claiming that the actions of the administration were vital or necessary to maintaining liberty and security in the nation. Additionally, the Wilson and Bush administrations argued that their legislation was “one of the most important pieces” in American history, as further justification for its necessity and its enhancement. Furthermore, the Bush and Roosevelt administration countered claims that their actions violated civil rights by suggesting that they were in fact protecting such civil rights by continuing to implement their policies. It is clear in each administration’s justification for the expansion of presidential power that each believed it was necessary to make controversial decisions in order to counter the national security crisis at hand.
CHAPTER 2: A General Overview of Presidential Power

According to Justice Robert H. Jackson’s concurring opinion on the 1952 trial *Youngstown Sheet & Tube Co v. Sawyer*, “It is relevant to note the gap that exists between the President’s paper powers and his real powers. The Constitution does not disclose the measure of the actual controls wielded by the modern presidential office. That instrument must be understood as an eighteenth-century sketch of a government hoped for, not as a blueprint of the government that is.”¹ Over time, the presidency has become the most powerful branch of government.

**CONSTITUTIONAL ROLE OF THE PRESIDENT**

A group of selected delegates known as “the Framers,” who attended the Constitutional Convention in Philadelphia from May 14 to September 17, 1787, drafted the United States Constitution. The Framers intended the United States government to differ from the British system of unitary government, and as such, they separated powers into the legislative, executive, and judicial branches in order to prevent a potential abuse of power by the executive. Article I of the Constitution grants to Congress the power to declare war, along with the ability to fund, maintain and organize an army. These powers differ from the role of the president as Commander-in-Chief, though this issue has been debated frequently.

Even the Framers disagreed on the interpretation of the president’s war powers. For instance, Thomas Jefferson wrote, “The Constitution has authorized the ordinary legislature alone to declare war against any foreign nation...The Constitution has given to the President and Senate alone the power of enacting peace. Their treaty for this purpose is an absolute repeal of the declaration of war, and of all laws authorizing or modifying war measures.”²

In contrast, in *The Federalist No. 70*, Alexander Hamilton argued, “In the conduct of war,

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in which the energy of the executive is the bulwark of the national security, every thing
would be to be apprehended from its plurality." Hamilton believed that a strong executive
was necessary and that the presidency would be most efficient if the executive had the
authority to conduct war matters.

The Constitution that the Framers agreed upon and signed granted dominance over
foreign affairs to Congress, not the president. According to James Madison, “In no part
of the Constitution is more wisdom to be found than in the clause which confides the question
of war or peace to the legislature, and not to the executive department.” The Framers
believed that the executive was more inclined to be interested in war. Thus, the power to
declare war was placed in the hands of Congress as a check to such bellicosity. Through
Article II, the president was granted the authority as Commander-in-Chief of the Army and
the Navy. Hence, authority was not concentrated.

Despite the intentions of the majority of the Framers, the power of the presidency
has been expanding since the creation of the Constitution. William P. Marshall, a
University of North Carolina Professor of Law, asserts that presidential power inevitably
expands for the following reasons: 1) the Constitutional indeterminacy of presidential
power, 2) the presidential effects of executive branch action, 3) the growth of the executive
branch, and 4) presidential access to and control of information and the media.

First, the authority granted to the president is not written in specific terms, leaving
room to argue that the president possesses inherent powers that are not mentioned in the
Constitution. Moreover, “this fluidity in definition, in turn, allows presidential power to
readily expand when factors such as national crisis, military action, or other matters of

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3Alexander Hamilton, James Madison, and John Jay, “The Federalist No. 7: The Executive Department Further
Considered.” In The Federalist Papers (New York: Bantam, 1982).
4Alexander Hamilton, The Pacificus-Helvidius Debates of 1793-1794: Toward the Completion of the American
IV.
expedience call for its exercise.”

Second, the expansion of power by previous presidents supports similar actions in the future. Presidents and members of their administrations commonly cite historical examples proving the use of extraordinary powers in defense of the expansion of executive branch power. Third, the federal bureaucracy is far larger and more powerful than the Framers likely intended, and its continued growth contributes to the expansion of the power of the Presidency. Finally, the executive branch has a stronger ability to collect and analyze information than the other branches of government. Moreover, the media portrays the president as powerful, and unlike the other branches, the president is able to use this power to influence the nation.

Since the role of the president has expanded over time, the balance of power has shifted, creating a power struggle between the branches of government. The presidency becomes stronger following a crisis, since Congress and the courts often do not oppose action taken by the executive. Executive power particularly expands during wartime since many administrations call upon emergency powers during times of crisis. During wartime, Congress “actively supplemented the president’s Constitutional powers with new statutory authority over all sorts of policy domains; and at least as long as troops remained in the field, the courts refused to interfere.” All Constitutionally available powers are at the executive’s disposal, and each president is able to benefit from the powers claimed during earlier crises. In the pursuit of power, “Presidents are more inclined and better suited to take advantage of Constitutional ambiguity as compared to the other branches.” When the legislative and judiciary branches do not object to the executive’s use of power, the system of accountability becomes ineffective.

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8 Ibid., 514.
HISTORICAL EXAMPLES

Over the course of American history, numerous presidents have expanded executive power, particularly during times of crisis. Arthur M. Schlesinger argues, “The inclination in foreign policy is to let the president have the responsibility and the power—a renunciation that results from congressional pusillanimity as well as from presidential rapacity. The more acute the crisis, the more power flows to the president.”11 Recently, presidents have argued, “the modern world was too dangerous and complex for a president’s hands to be tied. They advanced a philosophy that the president wields vast ‘inherent’ and independent powers not spelled out in the Constitution that allow the president to defy the will of Congress.”12 Through a brief analysis of past presidents, a clear trend emerges, which shows how presidents have been able to expand executive power beyond the Constitution.

In April 1803, President Thomas Jefferson purchased the Louisiana Territory from France for $15 million. In purchasing this land, Jefferson expanded executive power, since the Constitution did not allow him to acquire new territory.13 Moreover, Jefferson purchased the territory without a formal treaty. This defied the president’s Constitutional powers “‘to make treaties’ with foreign nations but only with the ‘advice and consent’ of the Senate, and with the concurrence of ‘two thirds of the Senators present’ for the ratification vote.”14 The Senate did not object, and ratified the treaty with France in October 1803.

On April 12, 1861, Confederate troops launched a war against the federal government. Despite the fact that Congress was out of session at the time, President Abraham Lincoln expanded executive power by enlarging the “Union’s army and navy,

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13 Irons, War Powers, 52.
14 Ibid., 51-2.
blockaded Southern ports, spent money not appropriated by Congress, and arrested Northerners suspected of being Southern agents without giving them legal rights.”

Moreover, Lincoln suspended the writ of habeas corpus during the war, which should have required authorization from Congress. As a result, over 10,000 people were arrested and imprisoned over the course of the Civil War. Lincoln admitted that his actions lay outside the Constitutional rights of the president, and subsequently asked Congress to ratify his emergency actions, claiming that they were necessary to keep the nation together.

President Theodore Roosevelt believed that, “the president had a broad ‘residuum of powers’ to do anything he was not specifically forbidden to do.” Roosevelt acted in line with these beliefs, and “Without seeking prior congressional approval, Roosevelt launched the project to build a canal in Panama, sent the U.S. fleet around the world, and dispatched U.S. troops to intervene in the Dominican Republic and Cuba.” Roosevelt argued that as president, he had inherent powers that justified his actions.

During World War I, President Woodrow Wilson urged Congress to enact the Espionage Act (1917) and the Sedition Act (1918). The aim of these acts was to get the nation behind the war effort during a time of heightened fear. The Espionage Act made it illegal to:

- Make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, [and to] cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces ... or ... wilfully obstruct the recruiting or enlistment service of the United States.

These actions could be punishable by a hefty fine, imprisonment, or death. The Sedition Act included a set of amendments to the Espionage Act, which prohibited speech that included “any disloyal, profane, scurrilous, or abusive language about the form of

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15 Savage, Takeover, 16.
16 Irons, War Powers, 70.
17 Savage, Takeover, 17.
18 Ibid.
government of the United States ... or the flag of the United States, or the uniform of the Army or Navy.” Wilson believed that these extra powers were necessary in order to protect the American public during wartime.

On February 19, 1942, as a response to the Pearl Harbor attacks, President Franklin Delano Roosevelt signed Executive Order 9066 authorizing the internment of approximately 120,000 people of Japanese descent living in the United States. Those detained were considered to be of “Foreign Enemy Ancestry,” thus immigrants, naturalized citizens, and American citizens were placed in internment camps. The order stated that its intention was to protect “against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities.” Through the executive order, Roosevelt gave the military the power to force enemy aliens to move out of prohibited areas, and into designated military areas.

In 1950, President Harry S. Truman announced that, “in accordance with the resolution of the Security Council, the United States will vigorously support the effort of the Council to terminate this serious breach of peace.” For the first time in American history, the president took the country into an overseas war without the consent of Congress and without a formal declaration of war. Truman argued that his inherent powers gave him the ability to avert a strike by the nation’s steel industry, arguing that it might endanger the war effort. Using an executive order, Truman forced steel mills to continue running. According to the government’s lawyers, the strike would have “endangered the well-being and safety of the nation, [and Truman had inherent powers allowing him to seize the mills] supported by the Constitution, by historical precedent, and by court decisions.” In this instance, Truman acted without the consent of Congress.

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20Garrison, Supreme Court, 92.
22Irons, War Powers, 171.
23Savage, Takeover, 19.
President Richard Nixon claimed: “presidents have the inherent power to authorize government officials to break laws if the president decides that doing so would be in the national interest.”\textsuperscript{25} During his presidency, Nixon attempted to prevent civil servants from completing tasks assigned to them by Congress. Nixon refused to spend money appropriated by Congress for programs he opposed.\textsuperscript{26} Additionally, Nixon authorized “warrantless domestic wiretapping, burglaries, mail openings, and other illegal ‘black bag job’ intelligence collection on U.S. soil”\textsuperscript{27} in an effort to eavesdrop on his political enemies.

Each of these cases provides an example of the ways executive power has been expanded over the course of American history. For the purposes of this thesis, the Woodrow Wilson and Franklin Delano Roosevelt administrations have been selected for study and comparison to the George W. Bush administration since each administration expanded executive power in response to a real or perceived national security crisis. The thesis focuses on explaining the measures used to expand executive power and the justifications provided for said expansions. Each of the three chosen administrations was dealing with a national security crisis requiring a defense of the nation against a foreign threat. The administrations acted similarly as they were fuelled by their fears, not only of the crises but also of the enemy. These fears manifested themselves in the Espionage and Sedition Acts, Executive Order 9066, and in the PATRIOT Act, all of which were designed with the intention to protect America against further threats to its national security.

**REVIEW OF THE LITERATURE AND RESEARCH**

The literature review will begin with a discussion of the works dealing with a general presidential power expansion, followed by a review of works that focus on Wilson, Roosevelt, and Bush. A number of academic works trace and assess the expansion of

\textsuperscript{25} Savage, *Takeover*, 21.
\textsuperscript{26} Ibid
\textsuperscript{27} Ibid., 22.
executive powers throughout American history, arguing that a trend exists that allows presidents to continue expanding power today. Peter Irons asserts in War Powers: How the Imperial Presidency Hijacked the Constitution (2005) that Congress and the Supreme Court have abandoned their responsibility to check presidential power, even going so far as to allow presidents to declare war. Irons seeks to answer the question, “Why and how do we go to war?” through a chronological study from the Constitution’s framing to the aftermath of the Iraq invasion in 2003.\(^{28}\) The Constitution placed war powers into the hands of Congress, and limited the president’s powers as commander in chief. Over time, the federal bureaucracy grew, the United States became a world power, and presidents began to insist on inherent powers to allow for the expansion of executive power.

Similarly, Arthur M. Schlesinger’s The Imperial Presidency (2004 ed.) explores the expansion of presidential power from George Washington to George W. Bush showing how, in his opinion, some administrations served the Constitution and some strayed from it. The book begins with a discussion on the powers the Framers intended for the president to have, and how they agreed and disagreed on various areas of executive power. He then traces the development of presidential power chronologically through time. Presidents utilized various means to expand the power of the executive, shifting the balance of power. Irons and Schlesinger would agree that gradually over time, the executive acquired more war powers despite the Constitution.

In Takeover: the Return of the Imperial Presidency and the Subversion of American Democracy (2007), Charlie Savage focuses on the history of the political struggle between the executive and legislative branches of government. Savage claims that the Bush administration has “seized vast powers,” bringing the imperial presidency back by disregarding the system of checks and balances put in place in the Constitution. Savage argues that because of the precedents set by previous presidents, the Bush administration

\(^{28}\)Irons, War Powers, 1.
has assumed that Congress cannot “place any limits on the President’s determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These descriptions, under our Constitution, are for the President alone to make.” Savage states that the administration chose solutions to issues after 9/11 that required the greatest expansions of presidential power possible in order to grant Bush his “inherent executive authority.”

WOODROW WILSON

The progressive era saw power shift from Congress to the president in order to make the political system more efficient. Regin Schmidt’s *Red Scare* (2000) argues, “The active and vigorous role of the federal government tended to increase the power of the president and the executive branch, which possessed the resources to identify the problems, define their solution, and administer the many new laws and regulations.” The expansion of power in the executive branch allowed the Wilson administration to attack radicals during World War I. Stephen M. Kohn argues in *American Political Prisoners* (1994) that the Wilson administration created the Espionage and Sedition Acts in order to legalize the “investigation and imprisonment of thousands of Americans because they held unpopular beliefs or political affiliations.” William H. Thomas’s *Unsafe for Democracy* (2008) details that in 1917 and 1918, the FBI secretly attempted to suppress opposition to World War I out of fear that dissent would affect morale. According to Thomas, Wilson believed that the best way to deal with such disloyalty was through “stern repression.” As a result, over 850 Americans were convicted under the Espionage and Sedition Acts between June 15, 1917 and July 1, 1918.

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Thomas E. Woods and Kevin Raeder Gutzman’s *Who Killed the Constitution?* (2008) posit that the government pressured journalists to censor their speech and writing prior to passing any restrictive legislation. H.C. Pearson and Gilbert Cortland Fite’s *Opponents of War* (1986) notes that President Wilson believed that the administration must have the authority to censor the press, and that it was “absolutely necessary to the public safety.” Wilson believed that “a time of war must be regarded as wholly exceptional and that it is legitimate to reward things which would in ordinary circumstances be innocent as very dangerous to the public welfare.” Thus, the Wilson administration was able to take control over the press, the railroads, and other industries.

Peterson and Fite argue that the Wilson administration was openly against those who opposed the war. On June 14, 1917, Wilson remarked, “Woe to the man or group of men that seeks to stand in our way in this day of high resolution.” Prior to the declaration of war on April 6, 1917, the DOJ had sought legal power to punish espionage. This is consistent with Kohn’s argument that the government used the Espionage and Sedition Acts for its own political goals, expanding the language to indict thousands, and making conspiracy a crime. Kohn suggests that this “legalization of political repression allowed not only for the Red Scare but also for all future government intrusion into the political and religious dissent activities of millions of Americans.” The creation of the Espionage Act led the government to create a peacetime Sedition bill and contributed to their ability to begin the Red Scare.

**FRANKLIN DELANO ROOSEVELT**

The *New York Times* reported on December 17, 1941 that the House and Senate speedily passed legislation to “confer on President Roosevelt almost unlimited power to

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35 ibid., 101.
36 ibid., 14.
regulate the nation’s emergency effort at home.”39 Burton W. Folsom and Anita Folsom’s *FDR Goes to War* (2011) states, “In his first two terms [Roosevelt] expanded executive power on the domestic scene with a slew of federal programs and expanded executive powers beyond what the Constitution prescribed. As the US moved towards war, and into war, FDR’s powers would expand further.”40 Folsom and Folsom argue that FDR held the most power of any president in American history, and that his administration had the power to “regulate American life as never before.”41 Greg Robinson’s *By Order of the President* (2001) argues that Executive Order 9066 “concealed an unprecedented assertion of executive power. Under its provisions, the president imposed military rule on civilians without a declaration of martial law, and he sentenced a segment of the population into internal exile under armed guard, notwithstanding that the writ of habeas corpus had not been suspended by Congress.”42 Conversely, Keith Robar’s *Intelligence, Internment and Relocation* (2000) maintains that Roosevelt’s administration had not exceeded its war powers since, “President Roosevelt was not plowing new ground when he signed Executive Order 9066 authorizing the evacuation of ethnic Japanese from a war zone. Measures taken by Roosevelt were approved by Congress, and declared Constitutional by a liberal Supreme Court that makes it almost unanimous.”43 Robar suggests that Executive Order 9066 did not single out any ethnic group, though it focused on those who were perceived as a threat to the war effort.

Folsom and Folsom argue that as early as January 1933, President Roosevelt favored war with Japan, though he kept these sentiments between himself and his closest advisors. Robinson claims that Roosevelt’s personal opinions of the Japanese contributed

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40 Folsom and Folsom, *FDR Goes to War*, 50.
41 Ibid., 137.
to his decision to sign the internment order, since he believed them to be innately aggressive and treacherous people. According to Brian Masaru Hayashi’s *Democratizing the Enemy* (2004), the Roosevelt administration based its decision to intern all West Coast Japanese on “strategic military, diplomatic, and political elements, a complex web reflected in the assigning of the removal task to the War Department, and internment to the Justice Department and the WRA.” According to Robar, the Roosevelt administration argued that, “the military threat from the Japanese Navy, the collapse of the ethnic Japanese economy, the rising tide of vigilante action against our Japanese population, and the substantial number of disloyal individuals within the Japanese community” were factors in the internment decision.

Eric L. Muller’s *American Inquisition* (2007), suggests that the U.S. Army’s views determined the decision to intern the Japanese. Since the army was suspicious of Japanese loyalty, it believed that the Japanese posed a threat to the West Coast of the United States. Executive Order 9066 “conferred on Lt. John L. DeWitt, the WDC’s commander, the power to remove any person from any military zone he might designate.” Robinson states that on February 14, 1942, General DeWitt recommended that the Japanese be relocated because, “they were members of an ‘enemy race,’ regardless of their citizenship, and that their ‘undiluted racial strains’ made them innately Japanese and a risk to national security.” DeWitt posited that the Japanese were “a menace which had to be dealt with,” and judged their loyalty on race alone.

**George W. Bush**

The Bush administration felt it had the right to make decisions regarding the

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44Robinson, *By Order of the President*, 120.
46Robar, *Intelligence, Internment and Relocation*, xiii.
48Robinson, *By Order of the President*, 85
detainment of suspected terrorists, stating that it was “above the law and that its actions cannot be tested by the other branches.”

According to David Cole and James X. Dempsey’s *Terrorism and the Constitution* (2006), the PATRIOT Act gave the executive unchecked authority, though “Congress acted under extraordinary pressure from [Attorney General John] Ashcroft, who essentially threatened Congress that the blood of the victims of future terrorist attacks would be on its hands if it did not swiftly adopt the administration’s proposals.”

PATRIOT Act supporter Viet Dinh states in *Patriot Debates* (2005), that “Passed soon after the terrorist attacks of 9/11, the USA PATRIOT Act is among the most important legislative measures in American history.”

PATRIOT Act supporter Andrew McCarthy argues that the executive branch knows the history of abuse of power by previous administrations, thus it is irrelevant because they will not allow such abuses to happen again.

According to C. William Michaels’ *No Greater Threat* (2005), presidential authority expanded with the PATRIOT Act, as Congress “passed the PATRIOT Act, giving the Bush Administration and the Justice Department sweeping investigatory and enforcement powers.”

Michaels notes that at times of extreme crisis it may appear necessary to allow presidential powers to amount to a Constitutional dictatorship, though it becomes dangerous when such powers remain after the crisis has abated.

Jennifer Van Bergen’s *The Twilight of Democracy* (2005) affirms that the Bush administration used the PATRIOT Act to create a “structure that allows too much power in the hands of the executive branch...An entire federal investigatory, surveillance, intelligence and law

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53 Baker and Kavanagh, 62.
enforcement apparatus [gives] a disturbing amount of unchecked power in the executive.”

Van Bergen argues that the Bush administration used the extended powers in the PATRIOT Act to increase secrecy, classifying once public documents.

In *America’s Unpatriotic Acts* (2005), Walter M. Brasch affirms that the Bush administration used the PATRIOT Act to defend its actions, claiming that the act was necessary to defend the nation, and that it protects civil liberties. In 2004 Bush claimed, “The PATRIOT Act defends our liberty. The PATRIOT Act makes it able for those of us in positions of responsibility to defend the liberty of the American people. It’s essential law.”

Similarly, Smith and Hung’s *The Patriot Act: Issues and Controversies* (2010), reported that Bush discussed the PATRIOT Act in his 2004 State of the Union Address, arguing that it was necessary to give homeland security and law enforcement personnel everything they need to defend the United States. Cary Smith and Li Hung argue that Bush claimed the PATRIOT Act had already protected Americans from terrorists, and that not reauthorizing it would be a “catastrophe” for the United States.

The academic community appears to agree that the Bush administration expanded executive power. While all authors invariably included justifications made by Bush and Ashcroft, few included the opinions of authorities who agreed with the PATRIOT Act.

CONCLUSIONS IN WORKS CITED

The argument that government tends to overreact in times of fear is evident through the review of literature, since many authors note how presidents adapted policies based on a reaction to crisis. Peterson and Fite note that Wilson believed that during times of war it is legitimate to restrict certain activities that would not usually be regarded as dangerous.

60Smith and Hun, *The Patriot Act*, 177.
Moreover, Schmidt argues that Wilson feared the spread of Bolshevism in the United States so much that he argued that it was dangerous to be lenient towards expressing opinions that could incite crime.\textsuperscript{62} He also did not argue against the deportation of any radicals who were arrested for sedition. Hayashi suggests that Roosevelt created Executive Order 9066 based on the government’s fear of the Japanese disloyalty. The assumption was that culture determined loyalty, and as such, the Japanese were “guilty until proven innocent.”\textsuperscript{63} The PATRIOT Act was passed as a response to September 11, and despite the arguments against the act, members of the Bush administration refused to consider altering it. According to Brasch, the Bush administration claimed that the PATRIOT Act was the only way to fight terrorism while protecting civil liberties, and that it was irresponsible to question it since without it national security would be compromised.

Kohn argued that, since making “false statements” was illegal, the Espionage Act allowed the Wilson administration to force loyalty upon Americans, thereby displaying oppression.\textsuperscript{64} According to Folsom and Folsom, the Roosevelt administration was able to “regulate American life as never before,”\textsuperscript{65} since the government held an immense amount of power. According to Van Bergen, the PATRIOT Act demonstrates the oppressive power of government, since the Bush administration was able to use national security as an excuse to expand executive power.\textsuperscript{66} Similarly, Cole and Dempsey argue that the Bush administration believed that it was above the law, and that the legality of its actions could not be tested, another example of the administration’s oppressive powers.\textsuperscript{67} Through a review of the literature, it becomes clear that a pattern of presidential power expansion exists in American history, particularly following a crisis. The executive is then able to use the crisis to adopt oppressive policies that it justifies based on a perceived necessity.

\textsuperscript{62} Schmidt, \textit{Red Scare}, 74.
\textsuperscript{63} Hayashi, \textit{Democratizing the Enemy}, 36.
\textsuperscript{64} Kohn, \textit{American Political Prisoners}, 8.
\textsuperscript{65} Folsom and Folsom, \textit{FDR Goes to War}, 120.
\textsuperscript{66} Van Bergen, \textit{Twilight of Democracy}, 72, 77.
\textsuperscript{67} Cole and Dempsey, \textit{Terrorism and the Constitution}, 193.
CHAPTER 3: Wilson Administration’s Expansion of Power during WWI

INTRODUCTION AND SUMMARY OF EVENTS

President Woodrow Wilson was the Democratic leader during the Progressive Era. This period saw power shift from Congress to the executive branch. Consequently, the shift in power afforded the executive branch “the resources to identify the problems, define their solution, and administer the many new laws and regulations,”\(^1\) and allowed the Wilson administration to attack domestic radicals during World War I. As president leading up to and during World War I, Wilson aimed to push for legislation to suppress disloyalty. In an address to Congress on December 7, 1915, Wilson stated, “There are citizens of the United States...born under other flags but welcomed by our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life...[such advocates of] disloyalty and anarchy must be crushed out.”\(^2\) The citizens Wilson refers to held beliefs that conflicted with his government’s agenda, and often affiliated with radical political organizations.

In order to subjugate dissent, the Wilson administration created “a series of laws and judicial interpretations of the First Amendment to the US Constitution that legalized the investigation and imprisonment of thousands of Americans.”\(^3\) Prior to the declaration of war on April 6, 1917, the Wilson administration and the DOJ sought legal power to prosecute those who spoke out against the government. Attorney General Thomas Gregory recommended legislation “concerning publication of information which might be useful to an enemy of the United States”\(^4\) on February 8, 1917. Although the US was officially neutral prior to 1917, the government was concerned with the accusations that it was pro-German, anti-British, or anti-war. In opposition to these charges, Wilson urged Congress to

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\(^1\) Schmidt, Red Scare, A2.
\(^3\) Kohn, American Political Prisoners, 7.
\(^4\) Peterson and Fite, Opponents of War, 14.
enact the Espionage Act (1917) and the Sedition Act (1918). The Senate passed the Espionage Act on May 14, 1917 by a vote of 77 to 6.5 One year later on May 4, 1918, the Senate passed the Sedition Act by a vote of 48 to 26.6 The acts were highly controversial, particularly because the Espionage Act initially included censorship provisions that would give the president the authority to censor the press. Although Wilson argued strongly for this provision, stating that it was “absolutely necessary to the public safety,”7 it was eventually defeated.

The federal courts broadly interpreted the language in the Espionage and Sedition Acts in adherence with the executive’s desires.8 As such, the acts criminalized more actions than Congress may have intended. Historian Stephen Kohn argues, “The powers of government swiftly combined to destroy the socialist movement through a Congress that passed anti-sedition laws through a ‘liberal’ Democratic president who signed them into law and then vigorously enforced them through a supreme court that unfailingly upheld the Constitutionality of these laws when they were challenged.”9 These acts expanded executive power, allowing for the criminalization of dissent during the war, as well as for use in future government intrusion into the political activities of Americans. Wilson believed that the expansion of presidential power was necessary in order to protect the American public during wartime.

EXPANSION OF PRESIDENTIAL POWER

Trained as an academic, President Wilson had particular views regarding the role of the president and the separation of powers. He received his Ph.D. in political science from Johns Hopkins University, where he completed his doctoral dissertation, *Congressional Government: A Study in American Politics* (1885). He went on to serve as the president of

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7 Peterson, *Opponents of War*, 16.
Princeton University for eight years. In 1908, Wilson published *Constitutional Government in the United States*, a study about re-thinking government in America. He was a progressive political thinker who wished to lead America into a new era of politics. The progressive movement caused a break within the “old order of largely decentralized, isolated and self-sufficient communities and moved toward the development of the modern society.”

This profoundly changed the dynamic of the role of the executive branch by giving more credence to a strong administrative leadership. Thus, power shifted from Congress, the branch directly representing the citizens, to the executive, and with this condensing of a multitude of leaders to a more powerful executive, came increased efficiency, according to Schmidt.

Wilson put it this way:

The nation as a whole has chosen him, and is conscious that it has no other political spokesman. His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him...He is the representative of no constituency, but of the whole people...If he rightly interprets the national thought and boldly insists upon it, he is irresistible; and the country never feels the zest of action so much as when it’s President is of such insight and calibre. Its instinct is for unified action, and it craves a single leader.

Wilson believed in political growth, and worked to transform the government to allow for strong responses to current situations differing from those that motivated the Founders to create the Constitution. Wilson had an expansive view of the presidency, suggesting that a strong president could unite the executive and legislative branches. He did not believe in a limited government, and he argued that the separation of powers was undemocratic since it prevented the government from acting efficiently. These views were noted in *Constitutional Government*:

It is manifestly a radical defect of our federal system that it parcels out power and confuses responsibility as it does. The main purpose of the Convention of 1787

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seems to have been to accomplish a grievous mistake. The “literary theory” of checks and balances is simply a consistent account of what our Constitution-makers tried to do; and those checks and balances have proved mischievous... It is quite safe to say that were it possible to call together again the members of that wonderful Convention to view the work of their hands in the light of the century that has tested it, they would be the first to admit that the only fruit of dividing power had been to make it irresponsible.\textsuperscript{12}

Wilson argued that the Constitution prevented the president from achieving his full potential, and that only by going beyond the separation of powers would the president be able to create a modern and responsible government. That said, Wilson was unable remove the division of power entirely, though he was able to persuade Congress to expand executive power during World War I.

Though Congress had the power to “declare war,” Schlesinger claims that the legislative branch was not confident in the field of foreign affairs. Thus, Wilson was able to take a leading role in foreign affairs during World War I, shaping legislation that would enable him to expand executive power. As early as 1908, Wilson claimed that “one of the greatest of the President’s powers [is] his control, which is very absolute, of the foreign relations of the nation. The initiative in foreign affairs, which the President possesses without any restriction whatever, is virtually the power to control them absolutely.”\textsuperscript{13}

Wilson believed that it was his constitutional right to bring America into war; however, he wished to have Congress agree with his “necessary” decisions.\textsuperscript{14}

Wilson felt that Americans would learn to support the war. On April 2, 1917, he told close friend and journalist Frank I. Cobb, “Lead these people into war and they’ll forget there ever was such a thing as tolerance. To fight you must be brutal and ruthless and the spirit of ruthless brutality will enter into the very fibre of our national life, infecting Congress, the courts, the policeman on the beat, the man in the street.”\textsuperscript{15} Initially, the war

\textsuperscript{12}Woodrow Wilson, Congressional Government: A Study in American Politics (Boston and New York: Houghton Mifflin, 1885), 187.
\textsuperscript{13}Arthur M. Schlesinger, The Imperial Presidency (Boston, MA: Houghton Mifflin, 2004), 91.
\textsuperscript{14}Schlesinger, The Imperial Presidency, 92.
\textsuperscript{15}Peterson, Opponents of War, 11.
was not popular, and Wilson declared, “The country was in the midst of a ‘lot of hysteria.’”\(^{16}\) The “mob spirit” displayed by some Americans distressed him, particularly because he did not sympathise with it. Further, the Wilson administration became concerned that radicals would interrupt the country’s supply of war materials.\(^{17}\) On June 14, 1917, Wilson pronounced, “Woe to the man or group of men that seeks to stand in our way in this day of high resolution.”\(^{18}\) Attorney General Thomas W. Gregory also attacked the radicals in November 1917 stating, “May God have mercy on them for they need expect none from an outraged people and an avenging government.”\(^{19}\) The Wilson administration’s position on the radicals was clear: they affected morale and their dissent needed silencing.

In order to achieve its desired results, the Wilson administration introduced the Espionage Act to the Senate. Wilson strongly advocated the implementation of the controversial censorship clause, though Congress disagreed with his opinions. *The New York Times* reported that there was a “war” between the administration and Republicans over the censorship clause, since Wilson demanded press censorship.\(^{20}\) Shortly after the House voted to oppose any press censorship provision in the Espionage Act, President Wilson sent a letter to Chairman Edwin Y. Webb of the House Judiciary Committee insisting that the censorship clause remain:

> My Dear Mr. Webb: I have been very much surprised to find several of the public prints stating that the Administration has abandoned the position which it so distinctly took, and still holds, that authority to exercise censorship over the press, to the extent that that censorship is embodied in the recent actions of the House of Representatives is absolutely necessary to the public safety. It, of course, has not been abandoned because the reasons still exist why such authority is necessary for the protection of the nation...But in every country there are some persons in a position to do mischief...whose interests or desires will lead to actions on their part highly dangerous to the nation in the midst of war. I want to say again that it

\(^{16}\text{Peterson, *Opponents of War*, 150.}\)
\(^{17}\text{Schmidt, *Red Scare*, 70.}\)
\(^{18}\text{Peterson, *Opponents of War*, 14.}\)
\(^{19}\text{Ibid.}\)
\(^{20}\text{*New York Times*, “Still Apart on Spy Bill,” May 23, 1917, 1.}\)
seems to me imperative the powers of the sort should be granted. Cordially and sincerely yours,

WOODROW WILSON

This letter came as a surprise to Congress since the administration had already ruled on the clause. On May 24, 1917, the Times reported that the president urged three Senators “to see if the Senate and the House could not come to some agreement on censorship without delay.”22 As a result, Wilson presented a modified censorship provision to the House and Senate for consideration.

According to the Times, “The action of the conferees was the result of President Wilson’s personal insistence that there should be some form of censorship provision attached to the espionage measure.”23 Wilson believed that “his wishes should be respected, even if there were doubt of the legislation going through.”24 On May 27, 1917, the Times reported that the new censorship plan would give the president the power of suppression:

The broadest power of control over newspapers in the publication of war news is conferred upon President Wilson in a change made today by the House and Senate conferees in their censorship amendment to the Espionage bill.

The president is authorized to declare, by proclamation, as he sees fit, the character of information regarding naval or military affairs which, in his opinion is “not useful to the enemy.”

Opponents of censorship said tonight that the legislation would enable the President to put the most rigid restrictions upon the publication of war news, even to the point of suppressing editorial criticism of governmental activity based upon the war’s development.25

This “revolutionary war legislation” would give the Wilson administration the power to suppress anything it wanted, greatly expanding executive power. The Times reported that with these new powers, the President would “practically [be] the editor in chief of every newspaper in the country.”26 On June 1, 1917, the Times reported that the House defeated

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24Ibid.
the censorship section of the administration’s Espionage bill 184 to 144.27

Although President Wilson would not exercise censorship powers through the Espionage Act, the Sedition Act28 would provide similar powers that allowed for a greater expansion of executive power. The Times called these “broad new powers,” which would allow the president and DOJ to punish perceived disloyal mobs.29 The Espionage and Sedition Acts were used to detain Reds30 during the war, and afterwards, they continued to be used in the form of a peacetime Sedition Act. In response to the 1919 bombings,31 the acts prevented radicals from striking the United States in a “reign of terror.”32 Thus, through the Sedition Act the Wilson administration was able to deport hundreds of “Reds,” those the Times described as “Bolsheviki, anarchists, I.W.W.’s and other men and women of extreme radical tendencies.”33 The State Department noted, “There are being deported from the United States to Soviet Russia about 250 citizens of Russia who are undesirable here. These persons, while enjoying the hospitality of this country, have conducted themselves in a most obnoxious manner; and while enjoying the benefits and living under

28On May 5, 1918, the Times printed that the Sedition bill was a “blow at free speech,” since the bill would harshly punish anyone who:

Makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully say or do anything except by way of bona fide and not disloyal advice to an investor, with intent to obstruct the sale by the United States of bonds, or the making of loans, or who shall cause, or attempts to cause, or incite, or attempt to incite, insubordination, disloyalty, mutiny, refusal of duty, or shall obstruct recruiting or enlistment; or shall willfully utter, print, write, or publish any disloyal profane, scurrilous, or abusive language about the form of government of the United States, or its flag, or the uniform of the army or navy, or any language intended to incite, provoke, or encouraged resistance to United States, or to promote the cause of its enemies; or shall urge, incite, or advocate any curtailment of production in this country of anything, product or products, necessary or essential to the prosecution of the war, with intent to cripple or hinder the United States. (New York Times, “Senate Accepts Sedition Bill,” May 5, 1918, 7.)
30Red/Reds: This term refers to a member or supporter of a Communist or Socialist Party, or an individual who is a radical or leftist.
31In 1919, anarchist bombers targeted appointees and politicians on two separate occasions. The bombing targets were chosen based on their belief in sedition laws and alien deportation. The government responded to these attacks by attempting to suppress the radicals through a series of raids and arrests known as the Palmer Raids. The Palmer Raids occurred during a period known as the “Red Scare,” in which the United States reacted through fear towards political radicals. After the 1919 bombings, Palmer requested a peacetime sedition law in order to round up and deport radical immigrants.
32Schmidt, Red Scare, 150.
the protection of this Government have plotted its overthrow.” The actions on the part of the Wilson administration led to charges that the president “usurped power.” According to Senator John D. Works of California, “The greatest danger now confronting the nation was the unwarranted and unconstitutional usurpation of power by the President amounting practically to a dictatorship and the complacent surrender of its powers and functions and abandonment of its duties and obligations by the Congress of the United States.”

He claimed:

The tendency toward centralized, unchecked, and unlimited power on the part of the President has existed for some years past, and has grown rapidly worse and more offensive in the last four years. Never in the entire history of the country has the President so completely and defiantly usurped the law-making powers of the Government, and dictated and forced the course of Congress, and never has the Congress been so submissive or so subservient to a power outside itself. Never in all history have we come so near to a despotic government by a dictator, as during the last four years.

Members of Congress have, under the lash of executive and party domination, surrendered their conscientious convictions and voted against their own sentiments of right and justice.

Of course, this is the opinion of one Senator, though his concerns were well-founded as Wilson’s power increased throughout the course of the war. The Wilson administration believed that the decisions it made were justified and that it was necessary for the executive branch to combat anarchy vigorously in order to preserve the war effort.

JUSTIFICATION OF EXPANSION

Through an analysis of Woodrow Wilson’s opinions on the separation of powers and the need for a strong executive branch, it becomes clear that the administration intended to expand presidential powers in an effort to respond to the national security crisis accompanying World War I. Even though Congress did not agree to press censorship in the Espionage Act, Wilson was able to convince Congress to hear a revised version of the

36 Ibid.
censorship section, which he persuaded a sufficient number of Senators and Representatives to support. On June 1, 1917, the New York Times reported that one of the administration’s speakers, Representative Leonidas Carstarphen Dyer, supported censorship saying, “I am in favor of this because it will enable the President to protect my fellow Americans who have to traverse the seas and fight in France for their country.”37 The administration promoted the argument that presidential approval of all political newspaper articles was necessary to protect America and its armed forces.

Further, in 1917, newspapers were expected observe voluntary censorship. The administration’s Committee on Public Information argued that one percent of newspapers printed information that could contribute to the death of American soldiers and sailors. As justification for censorship, Wilson argued that without “absolute secrecy” it was impossible to ensure troop safety, since newspapers might compromise troop position and operations. In response to the actions of these newspapers, the administration stated, “The agreement must be restored. In no other way can there be lessening of the danger of future attacks upon the ships that fire on submarines, or their Captains saved from ignoble death in event or capture.”38 The administration used the worst possible scenarios in an attempt to convince journalists to conform to its wishes. After Wilson signed the Espionage Act, the Public Information Committee claimed, “Department of Justice officials regard the Espionage Act as one of the most important pieces of legislation enacted since the declaration of the state of war, and numerous prosecutions are anticipated under its provisions.”39 By claiming that the act was “absolutely necessary” or an “important piece of legislation,” the administration was able to justify its expansion of power. They argued that without this power, the country would be unsafe and criminals would go unchecked.

Wilson argued that the war was a crisis that required an expansion of executive

power in order to defend the United States. Wilson spoke on Flag Day in 1917, taking the
opportunity to justify entry into the war:

It is plain enough how we were forced into the war. The extraordinary insults and
aggressions of the Imperial German Government left us no self-respecting choice
but to take up arms in defense of our rights as a free people and of our honor as a
sovereign Government. They filled our unsuspecting communities with vicious
spies and conspirators and sought to corrupt the opinion of our people in their own
behalf. When they found that they could not do that, their agents diligently spread
sedition amongst us and sought to draw our own citizens from their allegiance.
They sought by violence to destroy our industries and arrest our commerce.  

Wilson justified the need for the Espionage Act stating that Germany dispatched spies to
the United States to corrupt its citizens. He argued that since they sought to destroy
America, the administration should have the ability to use any action necessary to stop
them. Moreover, Wilson believed in using different policies during crisis time: “I think that
a time of war must be regarded as wholly exceptional and that it is legitimate to reward
things which would in ordinary circumstances be innocent as very dangerous to the public
welfare.” Wilson justified his wartime actions by claiming that it was in the interest of the
American people to suppress criticism of the war.

Nonetheless, some Senators argued that the powers in the Sedition Act were “too
great to give any man.” However, the administration took The Espionage and Sedition
Acts very seriously and urged the American people to aid the government in penalizing
those who spoke out against the government and the war. Attorney General Gregory
justified detaining “alien enemies” for limited periods in order to discipline them. He
argued that the detention policy “has acted throughout the country as a powerful deterrent
against alien-enemy activity.” The Wilson administration justified its actions against
perceived radicals by claiming that they differed sharply from American citizens and those
facing deportation were:

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41Peterson, Opponents of War, 101.
43Peterson, Opponents of War, 86.
A menace to law and order...They hold theories which are antagonistic to the orderly processes of modern civilization. They have indulged in practices which tend to subvert the rights which the Constitution of the United States guarantees to its citizens. They are arrayed in opposition to government, to decency, to justice. They plan to apply their destructive theories by violence in derogation of law. They are anarchists. They are persons of such character as to be undesirable in the United States of America and are being sent whence they came. The deportation is in accordance with the law.  

Attorney General Alexander Mitchell Palmer argued that most of the radicals in the United States were not American citizens. He argued that they were “idealists with distorted minds...many even insane...A large number were ‘potential or actual criminals whose baseness of character leads them to espouse the unrestrained and gross theories and tactics of these organizations.”  

The Wilson administration argued that the Bolshevik threat was so large that it required immediate action.

The Espionage and Sedition Acts continued to exist long after Wilson’s presidency. On March 3, 1942, during Franklin Delano Roosevelt’s presidency, the *Times* reported that there were arrests made under the Espionage Act. According to the *Times*, in 1942, “The Espionage Act, it was pointed out, provides as maximum penalties death or imprisonment.”  

Arrests were made if people were caught discussing Army or Navy matters, such as detailing the movement of American ships. Admiral John W. Greenslide told the *Times* that “it was ‘the duty of every citizen who hears talk dangerous to national security’ to report it to the authorities.”  

Importantly, this article makes it abundantly clear how the expansion of presidential power continues after the crisis subsides. Similar justifications were provided in 1942 as during World War I, as it was claimed that the Espionage and Sedition Acts protected national security, and in turn, America as a whole.

**CHAPTER CONCLUSIONS**

The Wilson administration desired legislation to suppress perceived disloyalty
during WWI, particularly because of the effects seditious talk had for the war effort at home and abroad. As a scholar, Wilson had published works detailing his opposition to the separation of powers. As early as 1908, Wilson claimed that one of the president’s greatest powers was his absolute control over the nation’s foreign relations. He argued that press censorship was necessary for the nation’s protection. That said, politics forced Wilson to accept a modified Espionage Act in 1917 and accept Congress’s decision to remove the censorship provision. In 1918 a set of amendments known as the Sedition Act extended and expanded the act.

As justification for censorship, Wilson argued that without “absolute secrecy” it was impossible to ensure troop safety, since newspapers were giving details regarding the destinations troops would sail to, as well as their exact arrival dates, names, equipment and plans. The DOJ claimed that the Espionage Act was one of the “most important pieces of legislation” since the declaration of war. Moreover, they were prideful of the act since it enabled law enforcement to prosecute many radicals. Wilson substantiated the need for the Espionage Act stating that the Germans sent spies into America to corrupt its citizens. He argued that since they sought to destroy America, the administration should have the ability to use any action necessary to stop them from committing seditious acts.

The Wilson administration contended that not only were their actions legal, but that they were protecting the American public from the lawless classes that sought to destroy the government. The Roosevelt administration’s actions against Japanese residing in the United States after Pearl Harbor mirrored those of the Wilson administration. Similar to Wilson administration, the Roosevelt administration faced a crisis that required the government to determine the loyalty of its citizens. Each administration feared the existence of disloyalty within the United States. They feared the possibility that these groups might create havoc, which in turn led to the expansion of executive power.
CHAPTER 4: FDR Administration’s Expansion of Power after Pearl Harbor

INTRODUCTION AND SUMMARY OF EVENTS

On December 7, 1941, the Imperial Japanese Navy suddenly attacked the United States naval base at Pearl Harbor, Hawaii. The death toll reached 2,402 with another 1,282 wounded... President Franklin Delano Roosevelt famously proclaimed the day of the attacks, “a date which will live in infamy.” Roosevelt, and his military advisors who possessed decrypted ciphers used for communication between Japanese embassies anticipated this crisis. U.S. intelligence officers were able to decode the information they obtained, however they experienced problems when they attempted to organize and, thus, fully understand it. On December 8, 1941 the New York Times reported that the attack had been expected, observing, “It is now possible to reveal that the United States forces here had known for a week that the attack was coming and they were not caught unprepared. It broke with such suddenness, however, that at first the identity of the planes was not definitely known.” The shocking event directly led to America’s involvement in World War II.

Immediately after the Pearl Harbor attacks and the declaration of war, Roosevelt issued proclamations that declared, “All nationals and subjects of the nations with which we were at war to be enemy aliens. This followed the precedent of the last war, and was based upon the same statutory enactment which supported the Proclamations of President Wilson in this regard.” According to the Western Defense Command and Fourth Army’s “Final Report,” “On the night of December 7th and the days that followed, certain enemy aliens were apprehended and held in detention pending the determination whether to intern...During the initial stage of this action, some 2,000 persons were apprehended.

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Japanese aliens were included in their number.” Soon after, the DOJ declared prohibited zones for those deemed enemy aliens, requiring them to register. The government’s need for military control enabled these developments, which ultimately led to Executive Order 9066.

**Expansion of Presidential Power**

Roosevelt issued Executive Order 9066 and the *Times* reported that Congress “approved the resolution in the record time of 33 minutes after President Roosevelt denounced Japanese aggression in ringing tones.” Roosevelt signed and issued Executive Order 9066 on February 19, 1942. It authorized the internment of approximately 120,000 people of Japanese descent living in the United States. Those detained were considered to be of “Foreign Enemy Ancestry,” thus certain immigrants, naturalized citizens, and American citizens of Japanese descent were placed in internment camps. A small number of people of Italian and German ancestry were sent to internment camps because like the Japanese, they were considered threatening. The *Times* published the text of Roosevelt’s “Alien Order” on February 21, 1942:

> By virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the military commanders whom he may from time to time designate, whenever he or any designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate military commander may determine, from which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate military commander may impose in his direction.

Through this portion of the executive order, the president simply assumed the authority to designate areas prohibiting enemy aliens. The Order also granted the following powers:

> I hereby further authorize and direct the Secretary of War and the said military commanders to take such other steps as he or the appropriate military

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commanders may deem advisable to enforce compliance with the restrictions applicable to each military area hereinabove authorized to be designated, including the use of Federal troops and other Federal agencies, with authority to accept assistance of State and local agencies. Executive Order 9066 gave the Secretary of War control over the creation and maintenance of facilities for those who must leave designated military areas. The military had the authority to take any necessary steps to ensure compliance on the part of those deemed “enemy aliens.” The president commanded that all government departments must assist in carrying out this order. Lieutenant General John Lesesne DeWitt, a World War II Western Defense Command Lieutenant, supported Executive Order 9066. On March 2, 1942, DeWitt issued “Military Proclamation No.1,” which set up military zones that required all persons of Japanese ancestry to be evacuated from Military Area No. 1, which according to the Times “covers about two-thirds of Washington, two-fifths of Oregon, three-fifths of California and the lower third of Arizona.” Removal began on March 23, 1942 in Los Angeles, and those not evacuated had curfew.

Appealing to “military necessity” as a rationale, Roosevelt expanded executive power through Executive Order 9066. The use of an executive order was quick, efficient, and avoided public debate and a potentially time-consuming battle with Congress for approval... George A. Krause and David B. Cohen stated, “The executive order allows presidents to act strategically, enabling them to pursue policy goals in an efficient and alternative manner...presidents are strategic actors who will bypass Congress by issuing executive orders.” Roosevelt issued 3,728 executive orders during his presidency. He did not appear to be concerned with his expansion of presidential power, as his Attorney General, Francis Biddle, wrote specifically regarding Executive Order 9066, “The Constitution had not greatly bothered any wartime president. Nor do I think that the Constitutional difficulty plagued him…That was a question of law, which ultimately the

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Supreme Court must decide. And meanwhile—probably a long meanwhile—we must get on with the war.”

In short, Roosevelt believed the expansion of presidential power was necessary to protect the American people, and the speed with which the executive order was set into place, helped him in this capacity. On December 9, 1941, only two days after the Pearl Harbor attack, the Times printed an article titled, “President’s Power Greatly Enlarged: ‘Direction of Common Strength’ Rests With the Executive.”

The news story provides a summary of the president’s new powers, asserting, “A state of war all but lifts the limit from Presidential powers.” Historian Greg Robinson argues that Executive Order 9066’s “bland language concealed an unprecedented assertion of executive power. Under its provisions, the president imposed military rule on civilians without a declaration of martial law and he sentenced a segment of the population to internal exile under armed guard, notwithstanding that the writ of habeas corpus had not been suspended by Congress.”

The president expanded executive power in response to the Pearl Harbor attacks. In terms of rationale, Roosevelt acted similarly to Wilson since both presidents used their expansion of executive power in an effort to prevent the United States from facing another possible national security crisis. A group of people disloyal to the United States were threatening to Roosevelt and Wilson, causing them to take “necessary” action against these groups.

JUSTIFICATION OF EXPANSION

From a military standpoint, the Roosevelt administration argued that an evacuation was necessary. While Roosevelt did not speak publically regarding Japanese internment, members of his administration and the military that he appointed to oversee the evacuation claimed that “military necessity” was the justification for the exclusion of ethnic Japanese

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12 Ibid.
from the West Coast. The “military necessity” argument was based on four factors: “the military threat from the Japanese Navy, the collapse of the ethnic Japanese economy, the rising tide of vigilante action against [the United States] Japanese population, and the substantial number of disloyal individuals within the Japanese community.”\textsuperscript{14} These factors led the president to believe that the nation’s safety was at stake, thus it was necessary to take action. Dillon Myer, Director of the War Relocation Authority, stated, “The Department of Justice, the Executive and Legislative branches, agreed that detention of American citizens can be done in wartime on the basis of strong evidence of disloyalty or proof that such a detainee was a ‘potential threat to the national security.’”\textsuperscript{15} In this instance, the administration claimed that its authority stemmed from its need to protect the country during wartime. Through presidential decree, General DeWitt had discretionary powers to move Japanese aliens and citizens to internment camps. DeWitt frequently claimed that the Japanese internment was warranted based on military necessity. The \textit{Times} reported in a headline on March 2, 1942, “Aliens Will Be Moved as Needed, Gen. DeWitt Replies to Opposition: ‘Military Necessity’ Will Be the Army’s Only Guide in Evacuating the West Coast, He Declares.”\textsuperscript{16} The article gives a clear rationalization from General DeWitt regarding the necessary evacuation from the West Coast: “Considerations of national security must come first...Military necessity is the sole yardstick by which the Army has selected the military areas from which the exclusion of certain groups will be required.”\textsuperscript{17} Similarly, on June 3, 1942, the \textit{Times} reported the site of the most eastern relocation center chosen by General DeWitt, who reiterated “military necessity, ‘in satisfaction of which relocation of evacuees in federally supervised projects inland is imperative’.”\textsuperscript{18} DeWitt’s most common justification of the administration’s actions was

\begin{footnotesize}
\textsuperscript{14} Robar, \textit{Intelligence, Internment and Relocation}, xiii.
\textsuperscript{15} Robar, \textit{Intelligence, Internment and Relocation}, 85.
\textsuperscript{18} \textit{Ibid.}
\end{footnotesize}
“military necessity.” On April 12, 1942, the *Times* printed the Army’s official release that validates DeWitt’s “alien-control program” as one “tempering stern military necessity with every practicable safeguard for individual and property rights.”¹⁹ The piece provides a lengthy, positive biography of DeWitt, offering sympathy for him as he had the critical job of dealing with the “Japanese problem.” The *Times* reported that “More than once [DeWitt] emphasized that, although ‘military necessity’ dictated the evacuation of American-born Japanese from coastal areas, these American citizens were not restricted in their quest of new residences in the interior.”²⁰ The administration often sanctioned the camps in this way, arguing that the Japanese could choose to reside anywhere outside of the military zones.²¹

The Roosevelt administration was concerned about the loyalties of the Japanese, particularly those who had returned to Japan for their education. Assistant Secretary of War, John J. McCloy reported that Roosevelt said, “There will probably be some repercussions but it has got to be dictated by military necessity.”²² The Roosevelt administration agreed with DeWitt that, “the continued presence of a large, unassimilated, tightly knit and racial group, bound to an enemy nation by string ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with.”²³ On February 20, 1942, the *Times* detailed the Roosevelt administration’s “basis for forcible removal” of the Japanese: “Under the second plan, which seems to have received preferred status, any citizen whose presence appeared dangerous to national safety could be taken out of a designated area, or refused permission to enter, if living outside. This program could be made applicable to Japanese who have American citizenship but whose loyalty to American institutions is considered doubtful.”²⁴

²² Robinson, *By Order of the President*, 106.
military advisors found it difficult to conclude which of the West Coast Japanese were loyal to the United States. DeWitt argued in his Final Report that it was impossible to determine Japanese loyalty:

Because of the ties of race, the intense feeling of filial piety and the strong bonds of common tradition, culture and customs, [the Japanese] population [on the West Coast] presented a tightly-knit racial group...While it is believed that some were loyal, it was known that many were not. It was impossible to establish the identity of the loyal and the disloyal with any degree of safety. It was not that there was insufficient time in which to make such a determination; it was simply a matter of facing the realities that a positive determination could not be made, that an exact separation of the “sheep from the goats” was unfeasible.25

As late as 1943 the army’s Provost Marshal General’s Office was under the impression that the Japanese race was deceitful and actively disloyal.26 Historian Keith Robar claimed, “Our government’s position was that the mass movement of people of Japanese descent would never have taken place had it not been for the presence of a very large number of actively and potentially dangerous people.”27 The Roosevelt administration was under the impression that it was necessary to act quickly to prevent further Japanese aggression, and that disloyal mainland Japanese would assist in the attack. In a discussion regarding the removal of Japanese from the military zones, California Attorney General Earl Warren stated:

It should be done...the Army has the right to do it. A political approach to the problem is just too cumbersome...There is only one group in the last analysis that can protect this state from the Japanese situation and that is the armed forces of this government. What we need now it seems to me, is action, and I think we ought to urge the military command in this area to do things that are obviously essential to the security of this State.28

The Roosevelt administration was concerned that if the Japanese were to remain on the West Coast, another calamity on the scale of Pearl Harbor was imminent. Thus, they argued that it was essential to prevent such an attack by any means necessary.

25 Muller, American Inquisition, 18.
26 Ibid., 19.
27Robar, Intelligence, Internment and Relocation, 133.
28Ibid., 64.
According to DeWitt’s *Final Report*, in 1940 more than 10,000 Japanese in the United States were members of Heimusha Kai, a group organized to further the Japanese war effort. The members of this group contributed relief funds for soldiers in Japan, and vowed to “take strong action...for our National cause.”

DeWitt also claimed that thousands of Japanese lived close to “strategic points,” which could not be a coincidence. The *Times* reported that “among the 881 Japanese ‘treaty merchants,’ who enjoyed special privileges in the United States, were ‘many’ who were using their merchant status as a cloak for espionage.” The same story reported that the Japanese obtained detailed information regarding American military bases:

Agents who apparently for years travelled thereabout, gathering bits of data for consolidation into an over-all picture at Tokyo. One map of the entire Pacific area, submitted with the report for study by the House, provided convincing proof...of Japan’s belligerent intentions and furnished also a clue to the Japanese strategy as it affected the places marked far in advance for assaults that developed.

Such reports provided the West Coast States with grounds to pressure the Roosevelt administration to remove the Japanese population before the Japanese could take action. On February 28, 1942, the *Times* reported that in Bakersfield, California, “authorities called for an immediate end to the influx of Japanese from coastal ‘prohibited’ areas. ‘We don’t want them here,’ said Sheriff John Loustalot. ‘We don’t want any Japs in this country and we wish the government would move them away inland, far from any place where they could do any damage to the national defense effort.’” Similarly, on March 2, 1942 the *Times* reported that “Representative John H. Tolan, chairman of the House Committee investigating the enemy alien situation, revealed that governors of most States west of the Mississippi River did not want Japanese aliens unless they were concentrated under Federal

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supervision.”\textsuperscript{33} There was also concern for the safety of the Japanese who remained in these States, as some suspected that they would be involved in “unfortunate incidents.”\textsuperscript{34} The Roosevelt administration countered that mass evacuation of the Japanese from the military zones was the most reasonable solution. Thus, the expansion of presidential power was justified by the Roosevelt administration, which believed that “military necessity” made the internment of the Japanese excusable. The Roosevelt administration was under the impression that it was impossible to determine the loyalty of the Japanese, and that if it did not act, another attack may occur. Due to the threat of violence, the West Coast states argued for Japanese removal, and the Roosevelt administration agreed. In response to a crisis, Executive Order 9066 resulted which allowed the president to expand executive power in the name of “military necessity.”

\textbf{CHAPTER CONCLUSIONS}

Following the attack on Pearl Harbor, President Franklin Delano Roosevelt used Executive Order 9066 to combat the perceived Japanese threat in an effort to prevent another strike against the West Coast of the United States. Executive Order 9066 expanded presidential power, allowing Roosevelt to delegate power to the Secretary of War to remove people of “foreign enemy ancestry” from designated areas of the country into specifically created internment camps. Roosevelt did not speak publicly regarding Japanese internment; however, members of his administration in charge of overseeing the evacuation claimed “military necessity” as motive. The president clearly agreed with this argument, which held its basis in the belief that the Japanese economy was collapsing, the Japanese navy was a threat, and many Japanese individuals were disloyal or involved in vigilante activities. These factors threatened the safety of the nation, providing justification for immediate action. Roosevelt’s military advisors, including General DeWitt, argued that it was impossible to determine the loyalty of the Japanese living in the United States, and


\textsuperscript{34} Davies, "Shifting of Aliens Nearing on Coast," 8.
so they concluded that the best course of action was to remove all people of Japanese origin from the West Coast as quickly as possible in order to prevent another attack.

The Roosevelt administration claimed that internment was the most reasonable solution, since the Japanese would not pose a threat if they were interned in other parts of the country. There was also concern for the safety of the Japanese if they remained on the West Coast, as evidenced by the expressed interest from western states to have them removed. For these reasons, the internment of the Japanese was justified, particularly because DeWitt claimed that the military was doing all it could to protect the civil rights of the Japanese, while simultaneously protecting the nation from another attack. Similarly, the Bush administration argued that in order to prevent another attack on United States soil after 911, it was necessary to continue using the PATRIOT Act. Both the PATRIOT Act and Executive Order 9066 were put in place to deal with shocking attacks upon the United States that required the respective administrations to act quickly, defensively, and decisively. Like the Roosevelt administration, the Bush administration claimed that it was necessary to use such measures to protect the nation.
CHAPTER 5: Bush Administration’s Expansion of Power After 9/11

INTRODUCTION AND SUMMARY OF EVENTS

Under President George W. Bush, the executive expanded power again. On September 11, 2001, only eight months into Bush’s presidency, al-Qaeda attacked the United States. This act of violence prompted Bush to emphasize the need for the nation to come together. During the State of the Union Address on January 29, 2002, Bush spoke about the “evil” of terrorism:

States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic.¹

Bush saw the September 11 crisis as a matter of national security that launched the United States into another war. The PATRIOT Act was a response to the armed aggression faced by the nation during the terrorist attacks. In the months following September 11, the United States could be defined as a national security state. Legal professor C. William Michaels cites, “A national security state generally believes it is under constant siege by malevolent forces both within and without. It usually has suffered a catastrophic event perceived as a blow to national pride and honor...A national security state usually believes it is on a special mission to avenge its national pride abroad or to maintain social order within.”² For example, as in response to the catastrophic events of September 11, Bush ordered the invasion of Afghanistan and Iraq as part of the “War on Terror.”

Bush believed that the United States had to fight terrorism in order to “save civilization,” and that the greatest challenge facing the nation was “to hunt down the

terrorists and strengthen our protection against future attacks.” The Bush administration additionally intended to engage in a pre-emptive war in an attempt to protect the United States from further attacks. Only days after the terrorist attacks, Congress passed the following resolution expanding presidential powers:

The President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

This resolution gave the president the power to determine who was responsible for the terrorist attacks and what level of force to use against them. Bush claimed that he was a “war president,” and as such, his actions were necessary to ensure the safety of the United States. Bush’s Deputy Assistant Attorney General John Yoo wrote, “In wartime, it is for the President alone to decide what methods to use to best prevail against the enemy.” Bush’s actions clarified his belief that the president was not bound by rule of law during times of crisis. Bush rationalized the expansion of presidential power through the argument that it was necessary for national security, asserting that the PATRIOT Act was a vital tool to provide security and ensure liberty.

EXPANSION OF PRESIDENTIAL POWER

The PATRIOT Act constituted a key part of the Bush administration’s response to September 11. On October 26, 2001, Bush signed this act of Congress into law. The USA PATRIOT Act (commonly referred to as the PATRIOT Act), is an acronym that stands for Uniting and Strengthening America by Providing Appropriate Tools Required to

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6Ryan J. Barilleaux, and Christopher S. Kelley. The Unitary Executive and the Modern Presidency (College Station: Texas A&M University Press, 2010), 129.
Intercept and Obstruct Terrorism, and was intended to improve intelligence, enhance domestic security against terrorism, strengthen surveillance protocols, and remove obstacles to investigating terrorism, among other things. The Times reported on August 19, 2003 that the PATRIOT Act “expanded the power of law enforcement agents to wiretap and follow terror suspects and investigate their financial and personal records, and made it easier for officials to share the information they obtained through those methods.”

The act generated a great deal of controversy, as some scholars maintained that it threatened due process, the right to be free of unreasonable searches and seizures, and freedom of association. Potentially, immigrants could be detained indefinitely for minor perceived violations; citizens and immigrants alike could be searched, be wiretapped or have computers tapped, and have financial records obtained without a warrant if they had “relevance to an ongoing investigation.” Immigrants could be excluded or deported from the United States based on associations with groups suspected of terrorist activities. These instances demonstrate how the Bush administration was able to expand executive power.

The PATRIOT Act placed an abundance of power into the hands of the executive branch, which according to the New York Times “alter some basic principles of the American judicial system— like the right to a jury trial, the privacy of the attorney-client relationship and strong protections against the use of preventative detention.” As early as October 13, 2001, the then “antiterrorism bill” was being debated by civil liberties advocates. The Times reported that many lawmakers feared that the government would potentially be able to use the new laws under the PATRIOT Act to overextend and abuse

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8Van Bergen, Twilight of Democracy, 111.
9Ibid., 113.
10Ibid., 117-18.
powers. Moreover, many lawmakers said, “it had been impossible to truly debate, or even read, the legislation [they] passed.”\textsuperscript{12} The \textit{Times} claimed that the PATRIOT Act was created in response to Attorney General John Ashcroft’s demand for “immediate action.”\textsuperscript{13} \textit{Terrorism and the Constitution}, by David Cole and James X. Dempsey, also noted that Congress was under pressure by Ashcroft who “essentially threatened Congress that the blood of the victims of future terrorist attacks would be on its hands if it did not swiftly adopt the administration’s proposals.”\textsuperscript{14} Though Congress passed the act that gave the Bush administration new forms of unchecked authority, it placed five-year expirations on many of the powers.

The Bush administration used the PATRIOT Act to tighten security under the Freedom of Information Act.\textsuperscript{15} Former Vice President Al Gore contended that the Bush administration used “unprecedented secrecy and deception in order to avoid accountability to the Congress, the courts, the press and the people.”\textsuperscript{16} The administration classified presidential records and documentation related to the government’s terrorism investigation soon after September 11, 2001. The PATRIOT Act expanded executive power allowing federal, state, and local law enforcement personnel to take on the role of “investigators of terrorist threats and protectors of the civilian populations from the specter of terrorism.”\textsuperscript{17} On November 25, 2001, the \textit{Times} published an article titled, “Bush’s New Rules to Fight Terror Transform the Legal Landscape.” This article explains many of the ways the PATRIOT Act allows for the expansion of executive

\textsuperscript{13}Toner and Lewis, “A Nation Challenged.”
\textsuperscript{14}Cole and Dempsey, \textit{Terrorism and the Constitution}, 195.
\textsuperscript{15}According to the US Department of Justice, the Freedom of Information Act (FOIA) “was enacted by Congress and signed into law by President Lyndon B. Johnson in 1966. Since that time, Congress has regularly updated the original statute through legislative amendments. Most recently, Congress passed the OPEN Government Act of 2007, which addressed several procedural issues that concern FOIA administration.” FOIA allows the US government to make previously unreleased documents available to the public. Please see \url{http://www.justice.gov/oip/amended-foia-redlined-2010.pdf} for more information.
\textsuperscript{16}Walter M. Brasch, \textit{America's Unpatriotic Acts: The Federal Government's Violation of Constitutional and Civil Rights} (New York: Peter Lang, 2005), 137.
\textsuperscript{17}Michaels, \textit{No Greater Threat}, 35.
power. According to the *Times*, “The Act expands the notion of who should be considered a terrorist and provides the attorney general with remarkable personal powers to detain such people.”\(^{18}\) The attorney general gained the power to detain any foreigners whom he believed to be “endangering national security” and to determine whether there is “reasonable suspicion” to listen to the communications of federal prisoners without a warrant.\(^ {19}\)

Title I of the PATRIOT Act allowed the executive branch to investigate terrorist attacks and to “seize the property of any foreign person, organization or nation which planned, authorized, aided or engaged in an attack upon the United States.”\(^ {20}\) The president, during pending investigations, earned the power to freeze a suspect’s property and such property, at the president’s discretion, could be sold or discarded. Title II granted the president power to “intercept wire, oral, or electronic communications... [Authorizing] this interception to investigate criminal use of chemical weapons, terrorism, or computer fraud abuses.”\(^ {21}\) Title III gave the president stronger authority to impose asset or property forfeiture through an amendment to the International Emergency Economic Powers Act. The PATRIOT Act asserts that “If the United States is engaged in ‘armed hostilities’ or has ‘been attacked by a foreign country or foreign nationals’ the President can exercise these new powers to ‘confiscate any property’ within United States jurisdiction ‘or any foreign person, foreign organization, or foreign country’ that has planned, authorized, aided, or engaged in such hostilities.”\(^ {22}\) The president thus became able to impose his authority on the personal property of those he deemed suspect. Under the PATRIOT Act’s “sneak and peek” searches, the administration won the authority to search the homes of Americans without informing them.\(^ {23}\) This portion of the act is

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\(^{19}\)Cole and Dempsey, *Terrorism and the Constitution*, 182.

\(^{20}\)Michaels, *No Greater Threat*, 44.

\(^{21}\)Ibid., 46.

\(^{22}\)Ibid., 90.

Section 213, which “allows federal agents, with a court order, to enter a suspect’s home or residence secretly and search for evidence without immediately telling the person they have been there.”  The PATRIOT Act also allowed the DOJ to detain suspects for up to seven days without laying charges. The suspect might be detained for up to six months if the attorney general deemed that s/he posed a threat to national security, and as such was too dangerous to be released. The DOJ also has the power under the PATRIOT Act to deport aliens who supported a terrorist organization in any way.

The Bush administration had the power to detain those they deemed as “enemy combatants” in Guantanamo Bay indefinitely. President Bush had “categorically determined that anyone fighting for Al Qaeda or the Taliban was an ‘unlawful combatant,’” therefore, the prisoners had no hearings. Further, the Bush administration insisted that the other branches of government could not question its actions, specifically the legality of its “enemy combatant” arrests. The Bush administration’s new powers allowed for a resistance against the system of checks and balances, yet the administration “contended that neither Congress nor international law could bar the president from authorizing torture when he is acting as commander in chief.” The administration’s ability to imprison aliens without probable cause diminished the oversight function of the courts. According to Supreme Court Justice Stephen Breyer, “It seems rather contrary to an idea of a Constitution with three branches that the executive would be free to do whatever they want without a check.” In short, the Bush administration discouraged congressional involvement in the War on Terror.

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25 Cole and Dempsey, Terrorism and the Constitution, 198.
26 Ibid., 185.
27 Ibid., 193.
28 Brasch, America’s Unpatriotic Acts, 14.
JUSTIFICATION OF EXPANSION

In the years following the September 11, 2001 attacks, the Bush administration fully utilized the powers provided by the PATRIOT Act. The administration claimed that the PATRIOT Act was necessary for “national security,” and it used this justification to further increase executive power by expanding the act. The supplemented act, known as the PATRIOT Act II, “would give the government broad powers to seize documents and force testimony without court order, expand use of the death penalty and make it harder to be released on bail.”\(^{30}\) That said, the controversy generated by the PATRIOT Act required the Bush administration to be especially diligent in the use of its policies. Attorney General Ashcroft assured the Senate Judiciary Committee:

We have carefully crafted our post-September 11 policies to foster prevention while protecting the privacy and civil liberties of Americans. As I have often said, we at the Department [of Justice] must think outside the box, but inside the constitution. I take seriously the concerns of civil libertarians, for I, too, believe that protecting America does not require the sacrifice of those very freedoms that make us Americans.\(^{31}\)

Along with Ashcroft, Deputy Attorney General James B. Comey argued in *The Patriot Debates*:

The Patriot Act bolsters our law enforcement and intelligence capabilities and better protects America against senseless terrorist violence...To my dismay, it has steeped into the nation’s drinking water that the Patriot Act requires a trade off between civil liberties and privacy on the one hand, and the protection of national security, on the other hand. I reject that...The Patriot Act, which we use and enforce, requires no such trade off. It allows us to serve and protect, to borrow a phrase, and it is fully consistent with our reverence for civil liberties and individual freedoms.\(^{32}\)

The DOJ publicly defended the PATRIOT Act on a website titled www.lifeandliberty.gov. The purpose of the website is to “dispel the myths” surrounding the PATRIOT Act, and to prove the Act’s importance. The DOJ claims that the PATRIOT Act preserves life and...


\(^{31}\) Brasch, America’s Unpatriotic Acts, xi.

\(^{32}\) Baker and Kavanagh, Patriot Debates, vii-viii.
liberty, arguing:

The Department of Justice's first priority is to prevent future terrorist attacks... The Patriot Act has played a key part - and often the leading role - in a number of successful operations to protect innocent Americans from the deadly plans of terrorists dedicated to destroying America and our way of life... In passing the Patriot Act, Congress provided for only modest, incremental changes in the law. Congress simply took existing legal principles and retrofitted them to preserve the lives and liberty of the American people from the challenges posed by a global terrorist network.33

This website makes four assertions: “The PATRIOT Act (1) allows investigators to use tools to investigate organized crime and drug trafficking, (2) facilitates information sharing and cooperation among government agencies so they can better “connect the dots,” (3) updates the law to reflect new technologies and new threats, and (4) increases the penalties for those who commit terrorist crimes.”34 Ashcroft claimed that the PATRIOT Act allowed for the prevention of terrorism, and that America became safer because of it.

In a speech delivered on March 4, 2003, titled, “The Terrorist Threat: Working Together to Protect America,” Ashcroft argued that the DOJ’s prevention strategy was working for a multitude of reasons. Ashcroft posited, “Hundreds and hundreds of suspected terrorists have been identified and tracked throughout the United States...4 alleged terrorist cells in Buffalo, Detroit, Seattle and Portland broken up; 211 criminal charges brought to date; 108 convictions or guilty pleas to date... 478 deportations linked to the September 11 investigation.”35

Ashcroft continued to defend the administration’s expansion of powers stating, “The President's powers to protect the American people are rooted in the Constitution and sustained in Court. The actions we take against the terrorist threat will always be rooted in the Constitution while accounting for the adapting and changing methods of our terrorist

34“What is the USA Patriot Web.”
enemies.”

Ashcroft quoted Bush in justifying the PATRIOT Act, “As the President stated in a recent visit to the FBI, ‘There is no such thing as perfect security against a hidden network of cold-blooded killers. Yet, abroad and at home, we're not going to wait until the worst dangers are upon us’.”

Ashcroft claimed that the Bush administration’s strategies were working, emphasizing their importance. Ashcroft argued that those who opposed the PATRIOT Act were unpatriotic. On December 6, 2001, he legitimized the PATRIOT Act by discrediting its dissenters, “To those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists--for they erode our national unity and diminish our resolve. They give ammunition to America's enemies, and pause to America's friends.”

Ashcroft insisted that the PATRIOT Act provided the government with “tools to prevent terrorists from unleashing more death and destruction on our soil. We have used these tools to save innocent American lives. We have used these tools to provide the security that ensures liberty.” The Bush administration argued that the PATRIOT Act was one of the most significant legislative measures in American history, and without it, the fight against terrorism would have been much more difficult, if not impossible.

Prior to the expiration of a number of the PATRIOT Act’s provisions, President Bush and Attorney General Ashcroft argued publicly for its full renewal. The Bush administration began its defense of the PATRIOT Act on August 19, 2003, according to the New York Times. Ashcroft insisted, “The cause we have chosen is just...The course we have chosen is Constitutional...If we knew then what we know now...We would have passed the

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36Ashcroft, “Prepared Remarks.”
37Ashcroft, “Prepared Remarks.”
38Brasch, America's Unpatriotic Acts, 90.
Patriot Act six months before Sept. 11 rather than six weeks after the attacks.”

According to Ashcroft, the aim of the PATRIOT Act was to prevent terrorist attacks, and the best way to pay tribute to those who died on September 11, 2001 was to “defend our responsibility to defend the living.” The Times reported on August 20, 2003, that Ashcroft forcefully defended the Act and the need for the continuation of the expanded legal powers given to law enforcement agents. “To abandon these tools...would senselessly imperil American lives and American liberty, and it would ignore the lessons of Sept. 11,” he averred. Ashcroft claimed that the PATRIOT Act was essential in preventing further terrorist attacks since the Act “gives us the technological tools to anticipate, adapt and out-think our terrorist enemy.” In Ashcroft’s speaking tour, he intended to dispel misconceptions regarding the use of the PATRIOT Act.

President Bush also travelled across America in order to justify an extension of the PATRIOT Act’s provisions set to expire in 2005. On April 20, 2004, Bush spoke about the PATRIOT Act in Buffalo, New York. He stated, “The first thing I want you to think about is, when you hear the Patriot Act, is that we changed the law and the bureaucratic mind-set to allow for the sharing of information. It’s vital...When you think Patriot Act; Constitutional guarantees are in place when it comes to doing what is necessary to protect our homeland, because we value the Constitution.” Bush insisted that America was more secure because of the PATRIOT Act. Joining President Bush in the defense of the Act was special agent Pete Ahearn who argued that before the PATRIOT Act, law enforcement personnel “were fighting with one arm tied behind our back.” Another “vital tool in our

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42Knowlton, “Ashcroft Pushes Defense of Terror Law.”
44Lichtblau, “Ashcroft Says Efforts to Weaken Terrorism Law Will Place Americans at Greater Risk.”
46Neilan, “President Continues Push.”
war against the terrorists,” according to President Bush, was the secret eavesdropping program he ordered the National Security Agency to conduct.\(^{47}\) Bush claimed that it was necessary for the NSA to intercept the communications of Americans in order to monitor terror suspects within the United States. On February 15, 2005, the *Times* reported, “President Bush on Monday urged the nation to stay the course in its ‘urgent mission’ to fight terrorism, and he called on Congress to move quickly to extend sweeping law enforcement powers under the USA Patriot Act.”\(^{48}\) The *Times* quoted the president who said, “We must not allow the passage of time or the illusion of safety to weaken our resolve in this new war...To protect the American people, Congress must promptly renew all provisions of the Patriot Act this year.”\(^{49}\) On July 20, 2005, President Bush spoke in Baltimore in order to encourage the renewal of the PATRIOT Act provisions. He claimed:

To protect the homeland, we’ve got to give our law enforcement better tools to track and stop terrorists before they strike. And one of the most important tools is the U.S.A. Patriot Act. The Patriot Act closed dangerous gaps in America’s law enforcement and intelligence capabilities, gaps that terrorists exploited when they attacked us on September the 11\(^{\text{th}}\). Both houses of Congress passed the Patriot Act by overwhelming bipartisan majorities, and I was proud to sign this law. And it’s working. The Patriot Act authorized better sharing of information between law enforcement and intelligence. Before the Patriot Act, criminal investigators were separated from intelligence officers by a legal and bureaucratic law... How the heck can people expect us to protect our country when you can’t share intelligence with people who are investigating? The Patriot Act helped tear down that wall so that people can share information better.\(^{50}\)

The concept of the “wall” between law enforcement and intelligence regarding information sharing was commonly utilized by the Bush administration to defend and justify the PATRIOT Act. In the same speech, Bush argued:

The Patriot Act allowed investigators to pursue terrorists with the same tools they


\(^{49}\)Lichtblau, “Bush Renews Call to Extend Patriot Act.”

use against other criminals. Think about that statement. We have had people that
could use certain tools against drug dealers, but couldn’t against terrorists. Before
the Patriot Act, it was easier to track the phone contracts of a drug dealer than the
phone contracts of a terrorist...That didn’t make any sense. The Patriot Act ended
all these double standards.51

According to Bush, the PATRIOT Act achieved all that it was designed to do, and as such,
it was essential to renew the expiring provisions in order to effectively protect the United
States...

On July 21, 2005, the House voted and approved a permanent PATRIOT Act that
would include 14 of the 16 major anti-terrorism provisions of the 2001 PATRIOT Act. The
Times reported, “The remaining two provisions—giving the government the power to
demand business and library records and to conduct roving wiretaps—would have to be
reconsidered by Congress in 10 years.”52 The Times also reported that reauthorizing the act
was a top priority for the Bush administration, and in defense of the act, they claimed, “the
government’s expanded surveillance and law enforcement powers had given it the tools it
needed to track terrorists and that it had broken down the bureaucratic walls that bottled up
investigations before the Sept. 11 attacks.”53 On March 9, 2006, President Bush signed the
USA Patriot Act Improvement and Reauthorization Act. Bush rationalized the expansion of
presidential power following September 11 through claims that in order to effectively
protect the United States against further terrorist attacks, it was vital to use and renew the
PATRIOT Act because of the results it has attained.

CHAPTER CONCLUSIONS

Following the terrorist attacks on September 11, 2001, President Bush urged the
nation to come together in order to save the country from terrorists, and to protect against
future attacks. At this time, the United States could be described as a “national security
state,” since it had suffered a catastrophic attack that placed it under siege and forced the

53Lichtblau, “House Votes for a Permanent Patriot Act”
government to react in a way that maintained stability within. Bush claimed that as president he had the right to use “all necessary and appropriate force” against the enemy, which provided justification for the consequent expansion of executive power. The PATRIOT Act was created as part of the Bush administration’s response to the terrorist attacks. The intention of the act was to improve intelligence, strengthen surveillance protocols, and to prevent future terrorist attacks. It expanded the power of the executive to allow for wiretapping, searching, and seizing property and financial records without warrants, and detaining immigrants indefinitely for minor violations, among other things.

Although Congress passed the PATRIOT Act, many members admitted that they never read the act. Moreover, Attorney General Ashcroft threatened Congress that it would be responsible for future terrorist attacks if it did not adopt the proposal. Congress inevitably passed the PATRIOT Act, however many of its provisions were made to sunset in five years. This prompted the Bush administration to diligently justify the need for renewal of the Act, using Ashcroft’s speaking tour as a way to prove the Act’s importance. Ashcroft argued that those who did not support the PATRIOT Act were unpatriotic, and that they had forgotten the lessons of September 11. Ashcroft and Bush publicly claimed that the Act allowed for better information sharing between government agencies, and increased penalties for terrorists, while protecting the civil rights of Americans. Like Wilson and Roosevelt before him, President Bush argued that the measures he took to protect national security were necessary, as he was on an urgent mission that required him to utilize his Constitutional powers.
CHAPTER 6: Conclusions and Comparisons

FOREGROUND

Presidential power has expanded over the course of American history. This is especially true when national security is threatened. In times of crisis, the executive assessed how past administrations dealt with threats to security and used this as a learning tool in dealing with their particular situation. The executive branch expanded its powers and justified said expansion in calculated ways when reacting to threats on national soil. By the time the September 11, 2001 terrorist attacks occurred, presidential power expansion had become a common solution to dealing with threats to the nation. The Woodrow Wilson administration and the Franklin Delano Roosevelt Administrations were among the most apparent cases for presidential power expansion during a crisis. The actions of each administration leading to and during their expansions of power were very similar, as were their motivations to expand power.

COMPARISONS

The Wilson, Roosevelt, and Bush administrations dealt with differing crises and different times in American history. However, similarities were evident. Each administration dealt with threats against the nation and each reacted decidedly to protect American soil. Wilson, in the wake of the First World War struggled to contain perceived threats to national security posed by those who spoke out or agitated against the war effort. Likewise, after Pearl Harbor, Roosevelt sought to check the perceived threat presented by persons of Japanese extraction. Similarly, Bush confronted fallout from the 911 terrorist attacks and sought to solve it by launching the so-called War on Terror. Each of these crises created fears that compelled the respective executives to take actions that in turn expanded the powers of the presidency. As such, each administration justified its actions in national security terms, often using similar tactics.

The Wilson administration argued that it was necessary to expand executive power
during World War I in order to ensure troop safety. The administration argued that the United States would be unsafe without the acts. Wilson believed that in times of war the president was entitled to expanded powers so that citizens would be protected at home and abroad. He stated it was “absolutely necessary that unquestionable powers should be placed in his hands”\(^1\) for the duration of the war. To justify his actions, Wilson claimed, “The powers were very great indeed, but no greater than those it had been found necessary to lodge in other Governments involved in the war.”\(^2\) Wilson argued that Germans denied the United States the right to remain neutral. Since the nation was at war, new rules applied, and it was crucial to ensure that Germany was unable to continue spreading sedition and spying on Americans.\(^3\) Wilson justified the need for the Espionage Act by arguing that war placed the nation in an exceptional position that required the government to protect the public. He argued that in order to protect the American public from sedition, the Espionage Act must be used and maintained. The government justified using the Espionage and Sedition Acts to deport alien-enemies, arguing that many of them were insane, potential or actual criminals, who held radical views.\(^4\) The government argued that it was dangerous to American society to allow aliens to believe in anarchism, and that deportation was necessary to maintain law and order.\(^5\)

The Roosevelt administration used many of the same arguments as the Wilson administration to justify their Executive Order 9066. It argued that the Japanese, like the Germans before them, forced the United States into war.\(^6\) The administration held that the decision to intern all West Coast Japanese was in the best interest of the country because it could help thwart further attacks. Hence, the Roosevelt administration claimed that “military necessity” was the justification for the forced relocation of approximately

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\(^1\) *New York Times*, "Espionage Bill is Signed," June 16, 1917, 10.


120,000 Japanese citizens and aliens. The government maintained that the Japanese were a threat to national security, and that the perceived evidence of disloyalty on the part of the Japanese was enough to justify the Executive Order.\textsuperscript{7} The government believed that within the Japanese population were a number of “actively and potentially dangerous people.”\textsuperscript{8} The government was unable to determine if the Japanese would in fact act against the United States and so it concluded that relocation was the best source of protection against the potential threat.

The Bush administration employed guilt tactics not only to pass the initial PATRIOT Act, but also to ensure that its provisions would not sunset. Ashcroft claimed that those who opposed the PATRIOT Act were aiding terrorists, and that they gave “ammunition to America’s enemies.”\textsuperscript{9} According to Ashcroft, the PATRIOT Act saved innocent lives, giving the government the necessary tools to ensure the safety of America.\textsuperscript{10} Ashcroft also charged that if the PATRIOT Act had been passed before September 11, 2001, the attack never would have occurred, sparing many lives. According to Ashcroft, those who argued against the act were unpatriotic, particularly because they aimed to “scare peace-loving people,”\textsuperscript{11} namely those who agreed with the act. Ashcroft used these persuasive comments to prove how powerful the PATRIOT Act was for America, and how dangerous it would be if it were not upheld.

The Bush administration justified the PATRIOT Act and marshalled statistics in an attempt to demonstrate how useful the act had been in the fight against terror. According to Ashcroft, the PATRIOT Act allowed the government to identify “hundreds and hundreds” of suspected terrorists. Many of these terrorists were charged, convicted, or deported.\textsuperscript{12}

\textsuperscript{7}Robar, Intelligence, Internment and Relocation, 85.
\textsuperscript{8}Ignatieff, “Lesser Evils.”
\textsuperscript{9}Ashcroft, “Testimony of Attorney General John Ashcroft Senate Committee on the Judiciary.”
\textsuperscript{11}Ashcroft, “Testimony of Attorney General John Ashcroft Senate Committee on the Judiciary.”
\textsuperscript{12}Ashcroft, “Prepared Remarks.”
Bush argued that because of the act’s clear successes, it needed to be renewed and enhanced, as extra powers would allow the government to make America more secure.\textsuperscript{13} The administration also used fear tactics in order to persuade Congress and the American people to support the Act, arguing that the United States would not be safe without the PATRIOT Act “for a single moment.”\textsuperscript{14} The administration suggested that the country was still threatened by terrorism despite the years that had passed between the September 11, 2001 attacks and the renewal of the PATRIOT Act provisions. The Bush administration argued that it was a myth that the PATRIOT Act infringed on civil liberties, and that there is no trade off between the protection of national security and the rights of the American people.\textsuperscript{15}

**SIMILARITIES IN JUSTIFICATIONS**

By examining the actions taken by Wilson, Roosevelt, and Bush in response to their respective national security threats, various patterns emerge. The administrations were targeting a group they perceived as the “other.” The administrations claimed they could protect civil rights while expanding power and argued that their actions were so essential in the protection of the nation that they required an expansion of presidential authority. Ultimately, the administrations simply claimed that their actions were “necessary,” and thus justified.

During each administration’s respective crisis, there was always an adversary upon whom to place the blame. In each case, a particular group stood out as exceptionally threatening, and in order to protect the nation from further damage it became necessary to respond to each respective group with force. Through legislation and executive orders, the presidents were able to target the “other,” in an attempt to eliminate the perceived threat.

The “other” refers to an individual or group that differs from the societal norm, which provides further justification for any actions taken against them. If these groups are directly responsible for a crisis, they may be seen as deplorable or even inhuman. Moreover, the majority of the citizenry may share the administration’s view on these groups after a particularly threatening attack, which makes taking action against these groups, or targeting them, acceptable.

During World War I, the Wilson administration used the Espionage and Sedition Acts to imprison and expel dissenters who spoke out against the government or the war effort. When the war was over, the government still feared communism and the possibility of a Bolshevik takeover in Russia. Under the Espionage and Sedition Acts, approximately 10,000 people were arrested, out of which 3,500 were held in detention, and 556 were deported. These arrested under Espionage and Sedition Acts “ranged from pacifists, to anarchists, to religious zealots, to socialists and trade union leaders.” These groups were targeted because they posed a threat to the war movement. Attorney General Gregory claimed, “Most of the disorder throughout the country is caused by lack of laws relating to disloyal utterances.” Wilson also argued that those who opposed the war were enemies of the United States. President Wilson did not object when the DOJ planned to round up and deport radical aliens.

Similar to the Wilson administration’s fixation with perceived domestic German threats, the Roosevelt administration was concerned about the loyalty of the Japanese citizens and aliens residing in the West Coast of the United States following the Pearl Harbor attack. Intelligence suggested that another Japanese attack on the United States may occur, and as such, it was necessary to act in order to prevent that. On February 14,

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18 Peterson and Fite, *Opponents of War*, 212.
1942, General DeWitt recommended that the Japanese be relocated because, “they were members of an ‘enemy race,’ regardless of their citizenship, and that their ‘undiluted racial strains’ made them innately Japanese and a risk to national security.” He argued that the Japanese were “a menace which had to be dealt with,” judging their loyalty on race alone. Similarly, after the September 11 attacks Ashcroft called the terrorists cold-blooded killers.

The Bush and Roosevelt administrations justified the expansion of presidential power in the form of the PATRIOT Act and Executive Order 9066 respectively. They argued that their measures protected civil rights, rather than detracting from them. Members of the Bush administration such as Ashcroft often argued that they were concerned with maintaining civil rights. Ashcroft stated that the PATRIOT Act maintained and protected civil liberties while preventing terrorist attacks. He claimed that it was important to the Bush administration to ensure these rights were protected, using this argument as justification for the PATRIOT Act, since it defended America while ensuring that there was no loss of civil liberties. Similarly, the Roosevelt administration openly claimed that its actions protected civil rights. Despite the fact that all citizens and aliens of Japanese descent were removed from the military areas determined by General DeWitt, he still claimed that the Roosevelt administration was concerned about protecting their civil rights. DeWitt argued that because Executive Order 9066 only prevented the Japanese from entering military zones, they were free to move to other states. DeWitt also claimed that they were given time to sell any property they desired, or to make further arrangements.

The Bush and Wilson administrations believed so strongly in the measures they undertook to combat their respective crises, that they demanded the expansion of the legislation. The Bush administration’s PATRIOT Act contained a number of provisions that would sunset after five years, which prompted the administration to begin a public relations tour to justify renewal of the act. Bush and Ashcroft claimed that the act was so

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20 Robinson, *By Order of the President*, 85.
successful in preventing terrorist attacks and identifying potential terrorists that it needed an expansion. Congress eventually made the sunset provisions permanent. The Wilson administration acted similarly in regards to the Espionage Act. When the act was initially drafted, it included a censorship clause that was in turn denied by Congress. Wilson argued strongly for censorship, as he believed it was the only way to ensure troop safety abroad. One year later, the Espionage Act was amended by the Sedition Act, which prohibited many forms of speech.

Members of each administration argued that their actions were necessary for the protection of the nation. Wilson argued that without the Sedition Act, newspapers would be able to publish information that could expose secret military missions abroad. Wilson averred that absolute secrecy was necessary to protect America and its army. Again, Roosevelt used the argument that his actions were necessary as a justification for the expansion of executive power during WWII. The Roosevelt administration claimed that “military necessity” was the only reason for the interment of the Japanese. Roosevelt believed that the Japanese posed a threat to the United States, and that it was necessary to deal with them in an efficient manner since it was impossible to determine their loyalty. Bush and Ashcroft claimed that without the PATRIOT Act, more events like September 11 would be able to occur. They also claimed that the act was vital in preventing these attacks, since it allowed intelligence organizations to share information. Moreover, Bush and Ashcroft claimed on a number of occasions that the PATRIOT Act was one of the most important pieces of legislation in American history. The Wilson administration made similar claims about the Espionage and Sedition Acts.

Each administration believed that their actions were necessary in order to protect the United States from further crises. The Wilson administration believed so strongly in the Espionage Act that they argued for amendments that would strengthen it, which came in the form of the Sedition Act. The Roosevelt administration believed that in order to prevent
the Japanese from attacking the West Coast of the United States, it was necessary to remove them completely from any areas where they could be a potential threat and they used Executive Order 9066 to do this. The Bush administration believed that the PATRIOT Act was so essential that it required a speaking tour by the Attorney General in order to ensure its permanence. The Wilson, Roosevelt, and Bush administrations expanded executive power during times of crisis, and justified their actions based on their respective crisis and the unique situation in which they were placed. After September 11, 2001, the Bush administration faced a crisis of extreme proportions unlike any the United States had experienced since Pearl Harbor. Such a crisis required a strong response on the part of the president. Bush was not the first to expand presidential power. A number of presidents before him acted outside of their Constitutional rights during times of crisis, using said crisis to justify their use of auxiliary powers. Bush, Wilson and Roosevelt rationalized the expansion of presidential authority crises through claims that the United States could only be protected effectively if presidential power was expanded, which came in the form of the Acts, and the powers these acts provided each president.
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