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The Effects of National Security on Supreme Court Case Decisions Involving Civil Liberties

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The Effects of National Security on Supreme Court Case Decisions Involving Civil Liberties

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Honors Research Project

Submitted to

The Williams Honors College

The University of Akron

ABSTRACT

National security has been a primary objective for the United States of America for as long as wars have been fought and enemies have been made. National security continues to be a concern for the United States government, especially with the prominence of technology that has made the U.S. more vulnerable to breaches in security, such as cybernetic attacks. Through various observations witnessed throughout history, there is a concern that national security can influence Supreme Court decisions, police arrests, and other government actions, such as instating laws, that may infringe on the civil liberties of Americans.

Laws that were passed pertaining to national security, as well as the Supreme Court and their decisions on cases involving national security and civil liberties throughout history will be the main focus of the research. There will also be an analysis on the climate of the Supreme Court throughout the years that may contribute to why cases were decided in certain ways. Arrests, in particular ones that occurred due to the threat of espionage are also relevant to the conclusion of this study. Through this research, patterns may be discovered in accordance to how threats to national security are handled that will enhance the understanding of the relationship between national security and civil liberties.

The research found that the ideology of the Supreme Court and whether or not they were a more conversative or liberal court did not directly impact the case decision in any instance. This analysis will find that the Supreme Court indeed infringes on the civil liberties of the people, particularly in times of war where mass hysteria, which afflicts the government, nation, and courts respectively, is occurring. This observation was more common in the early 20th century, during World War II and the early Cold War. There has been a shift in the early 21st century that sees the court ruling in favor of civil liberties, particular cases that involve the War

on Terror. Perhaps this is due to an societal, ideological, or cultural shift that needs to be further examined.

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I. INTRODUCTION: THE PROBLEM

For as long as wars and tensions have been combated, the security of a nation has been of great priority. This was apparent in the various wars the U.S. was involved in from the 1900s to the 2000s. There were immense efforts by the government to deter the enemy, as well as United States citizens, from working against the United States regardless of whether or not this violated civil liberties. Whether it was government persecution against Communism, or the threats of severe consequence for obstructing the draft during World War I, the government was dedicated to promoting national security regardless of the diminishing concern for civil liberties. This is apparent in the laws that were passed, along with the Supreme Court's tendency to support the government during this time. The research question for this project is as follows: "If the United States of America is in a time of heightened national security, is it more likely that an individual's civil liberties will be infringed upon due to the government and the Supreme Court placing priority on national security over civil liberties in times of war?"

The establishment of the various efforts to maintain national security would set precedent for the overall attitude towards it. During the length of the Cold War, national security was especially a concern due to the Red Scare, concerns around espionage, and the fear of an inside attack against the U.S. by Communists. The Soviet Union and the U.S. were holding each other's throats, and this tension caused not only fear amongst citizens, but the government as well. This is consistent with the laws that were passed after World War II to the end of the 20th century. These laws arguably threatened the civil liberties of citizens; there was an apparent lack of trust and empathy that greatly affected many governmental actions in the effort to sustain national security. This notion often bled into the ideology of the Supreme Court as well.

The Supreme Court is designed to rule on such cases that involve civil liberties, regardless of whether or not the case involves national security. The problem that arises from the Supreme Court upholding national security concerns above civil rights is the effect that this has on not only for individuals, but for all citizens across the whole United States. When civil liberties are ruled against, this demonstrates the willingness of the Court to support the government by curtailing the rights of the individual for the sake of security. The Supreme Court has come to the conclusion in many instances that as long as there is a genuine threat, liberties can be limited. The Supreme Court has made decisions that both have protected and infringed upon civil liberties, and understanding what variables affect these decisions will contribute to the explanation of the methodology of the Supreme Court and create an interesting dynamic for why certain rights may be diminished in order to sustain national security.

The danger that arises from limiting civil liberties is the hysteria that surrounds national security events that leads to the infringement of civil liberties. Examples of this would be the Pearl Harbor attacks that allowed for the detention of Japanese-Americans, who were no threat to the country, and the 9/11 terrorist attacks that fueled discrimination against Muslims following 9/11. People who are deemed to be the enemy during a time of tension, even if they are not a true threat, are at risk for having their civil liberties infringed simply because of their race or religion. A major issue that contributes to such discrimination and fear is the notion of mass hysteria. The danger of this is that the rights of the people are at risk due to fear and hysteria instead of an *actual threat*. Such discrimination still plagues society today, and has lead to many controversial government and judicial actions. The limitation of rights, on the basis of mass hysteria, is simply illegitimate.

Previous research on how national security will impact the Supreme Court decisions that may or may not infringe on the civil liberties of citizens looks into decisions that were made in both times of war and times of peace. This allows for a reasonable comparison that not only looks into how intrusive the impact of the state of the country is on the Court, but what other factors may contribute to decisions? These factors may be whether or not the Supreme Court is in a more liberal, conservative, or moderate phase of ideology, certain laws that have been passed regarding national security, as well as the overall political climate of the country.

The importance of determining the conservative or liberal ideology of both the court and the nation at the time is how certain political idealists may view civil liberties during not only national emergency, but as a whole. The theory that lies within this concept is that conservatives are more likely to be pro-government, while liberals are more likely to be pro-person. This is supported by the beliefs that each political ideology tends to observe. Conservatives are more likely to support the government because they believe in the balance of both state and federal government, and tend to support such government action, like national defense or law enforcement. However, conservatives may not be so keen on government action when it comes to organizations like private businesses, and are not as concerned for the individual. Liberals, by contrast, support limited government and are concerned with civil rights, human rights, and civil liberties. In simpler terms, conservatives prioritize institutions (governments, businesses, etc.) and liberals prioritize the individual and the rights they are owed.

The reason why Supreme Court ideology matters when examining Supreme Court cases that involve war and civil liberties is because Justices are *expected* to be impartial and unbiased when it comes to rulings, not be influenced by external factors, and focus on the legality of the circumstances of the case. When ideology influences a Court to rule in a certain way, in

reference to this research, either pro-government or pro-defendant, this can have harmful impacts on both parties. For example, a person's rights can be curtailed, or government law could be struck down depending on which way the court rules. War cases are especially vulnerable to bias because of the outside conflicts and war that infiltrate the Courtroom and impact the Justices. As past research suggests, even a more liberal court will rule conservatively when it comes to wartime cases. The concept of mass hysteria, as described earlier, is not just a concept that affects civilians, but governmental and judicial bodies as well. The liberal or conservative ideology of the courts can be a significant deciding factor, and one that many justices may refuse to discard for the sake of the case. The values, beliefs, and personal policy stances amongst the Justices are perhaps what the fate of a case involving civil liberties and war depends on.

II. SUPREME COURT CASE DECISIONS AND CIVIL LIBERTIES

Due to the extensiveness of this problem, there has been significant research on how Supreme Court Cases are affected by war, Supreme Court ideology, and laws. National security has been a concern of nations for generations, which incites that civil liberties have been at risk for just as long. This declaration is not one that is ill-supported; “Thus, in the United States, ‘the struggle between the needs of national security and political or civil liberties has been a continual one’” (Epstein et al, 2005, pg 14). The battle between the need for security and the upholding of civil liberties is not an unfamiliar phenomenon, and is a major theme in much of the research conducted revolving around the Supreme Court, civil liberties, laws, and national security.

The development of national security is grueling, yet ongoing. National security was officially named and recognized by the government when President Harry Truman signed the National Security Act of 1947 (Kaplan, 1993, pg 7). This act was a result of *perceived* Soviet expansion in Greece, and the fear of Europe being lost to Communism (Kalperin, 1993). This perception by the U.S., that came to the erroneous conclusion which blamed the Soviet Union for Communist expansion, is the reason why this law was passed. National security has been constantly reshaped throughout the years, regarding both constitutional law and national security threats, hence the conceptualization that national security is an inherently broad term (Blomquist, 2011). The complex decisions that Justices make potentially stem from external political factors, which includes the evolution and interpretation of national security.

For the purpose of this research, there will be an investigation into several periods of international war. Starting at 1900 to the present, involving World War I, World War II, the Korean War, the Vietnam War, both Gulf Wars, and the war in Afghanistan. Many of these cases also take place during the Cold War between the United States, the Soviet Union, and the U.S.’s

effort against communism. In relevance towards this research, national strife has been defined as “‘emergency and peril,’ ‘commotions,’ and ‘crisis’ here to signify major international events, including *war*, that threaten the security of the nation.” (Epstein; et al, 2005 pg 3). All of these events are considered to be “external conflicts” (Epstein; et al, 2005 pg 27), as these conflicts include war or international conflicts that directly affect or involve the United States. In accordance with past research, crisis has been defined three different ways (Epstein; et al, 2005, pg 46). The wars that will be discussed in this research paper are defined under the first definition “absence or presence of war” (Epstein; et al, 2005 pg 46). Where a clear war is being fought involving the U.S. and another external power. The second definition, considered as major international conflicts (Epstein; et al, 2005) and the third, where the people “rally” around the president (Epstein; et al, 2005 pg 46-47) do play a minor role in this research. These roles include the mentioning of events such as the Cuban Missile Crisis and the support of a president’s decisions during wartime. However the main focus and definition of war for the purpose of this research is the absence or presence of war, as stated earlier.

There have been debates about how the Supreme Court should apply national security as well as the correlating concepts and laws passed in accordance to the protection of the country (Blomquist, 2011). Particular research argues the importance of obeying such laws; a country that is destroyed by the failure of its citizens to follow the laws is a morbidly ironic concept (Halperin, 1976). There still must be a consideration for human rights, and research argues that the President is not obligated to disregard such rights due to those rights becoming “troublesome” or infringing upon their war powers--this same principle applying to the Supreme Court (Stone, 2003, pg, 243). Is it truly worth it to disregard civil liberties for the sake of a country’s welfare?

Nations that are facing war seem to respond to such tensions in sundry ways that are commonly a reflection of a nation's culture or systemic ideals (Epstein; et al, 2005). Perhaps this is a reflection of the diversity of crises, or is simply dependent on the policies of that nation. "When societies confront crises, they respond in different ways. Sometimes they use military force to attack their aggressors; sometimes they do not. Sometimes they impose economic sanctions; sometimes they do not. Sometimes they undertake diplomatic efforts; sometimes they do not..." (Epstein; et al, 2005, pg 11). National security responses are perhaps privy towards societal exchanges. Social, cultural, and economic values of the United States are constantly changing, and whether or not these adaptations affect the Supreme Court could conceivably provide significant reasoning for case decisions and majority opinions (Weinrib, 2016).

Supreme Court ideology perhaps has a significant impact on how cases are decided during war time versus times of peace. However, typical interpretations of a conservative court compared to a liberal court may not be valid during times of war. "The cases decided during war are far more likely to have been resolved by a left-leaning Court" (Epstein; et al, 2005, pg 69). This means, in essence, that the issues that our country faces in times of emergency have an impact that is "underestimated" (Epstein; et al, 2005, pg 40). Therefore, regardless of whether the Supreme Court is left or right-leaning, the concern for national security will create a substantial possibility that national security concerns and government action will be upheld. It has been theorized that a conservative Supreme Court uses "concurrent jurisdiction" to overturn state decisions that are pro-defendant. (Howard; et al, 2006).

The impact that war has on societal views is another key factor; "...their perception that cleavages are "dangerous," or, of course, their belief that national security and military "necessity" must outweigh liberty interests if the government is to be protected and preserved"

(Epstein et al, 2005, pg 12). A prominent example of the right to liberty during national crisis are conscientious objectors. During World War I, citizens, especially conscientious objectors, who opposed the draft, as well as the war itself, were chastised by the government. (Weinrib, 2016). Conscientious objection was not deemed as a righteous act until the 1940s when Franklin D. Roosevelt deemed it as “our national birthright” (Weinrib, 2016, pg 1130).

However, national pride may be a factor into why this issue plaguing civil liberties has been overlooked in the past. “The belief that ‘it couldn't happen here,’ that the United States constitutional system was so firmly established that there could not arise an authoritarian government, lessened people's concerns about violations of the Bill of Rights in times of emergency” (Halperin, 1976, pg 128). Essentially, this means that even though civil liberties *have been* curtailed in certain instances, there is still a peculiar belief that civil liberties are not getting violated, and that citizens are owed and granted their rights in *all* circumstances. The Supreme Court has been assigned the difficult task of maintaining consideration for and upholding civil liberties in a time where national security is a daunting concern as well. (Halperin, 1976).

The Cold War and the anti-Communist attitude of the U.S. government suggests that the U.S. has substantial fears of national security concerns and attacks; not only on the nation's borders, but attacks on democracy, capitalism, and American values as a whole (Cox, 1990, pg 30). The Soviet threat led to the passing of many laws regarding nuclear weapons and Communist tolerance, many of which “endorsed communist movement fragmentation” (Gaddis & Nitz, 1980, pg 168), such as NSC-68. Communists were viewed as dangerous, similar to the way Socialists were viewed in the early 1900s (Kendrick, 2014) and the U.S. did not hesitate to

take pronounced action against them. The fear of the Communist threat, or the Red Scare, may have afflicted the Supreme Court as well.

There has been a suggestion that the Supreme Court will align with the views of the government because of a mutual concern for national security. This would introduce the concept that the Supreme Court is ruling in a biased way, a feat that would not only be severe to the sanctity of the court, but detrimental to the civil liberties of civilians (Epstein; et al, 2005, pg 39). There is also the concept of hindsight bias (Weinrib, 2016; and Cohen, 2010), and the possibility that wartime case decisions are “plagued by hindsight biases” (Cohen, 2010, pg 1011). The relationship between the Judicial and Executive branches, and the need to provide checks and balances has been described as a “pulling and hauling” (Blomquist, 2011, pg 460) that suggests tense relationships between the branches and the overwhelming need of duty that may influence judicial judgements. A possible theory for this stark relationship is that “The Supreme Court has historically been reticent to tie the President’s hands during wartime, all the more so when the war is going badly and the perceived threat to the nation is greatest.” (Turner, 2003, pg 335).

There is much theory about the relationship between civil liberties and national security, and how the Supreme Court rules on such cases. “As many studies reveal, one response is essentially universal: In times of emergency-whether arising from wars, internal rebellions, or terrorist attacks-governments tend to suppress the rights and liberties of persons living within their borders” (Epstein et al, 2005, pg 11.) Any form of national security creates a commonality amongst the government and the judiciary to suppress the rights of the citizens (Epstein; et al, 2005 pg, 12). This suppression of rights, and why the Supreme Court is often willing to be blinded by war and support national security must be analyzed.

The lawful bounds of the court have been suggested as a key factor in decisions involving civil liberties during wartime. Stare decisis is a legal doctrine that requires the courts to analyze case precedent in order to influence and make decisions in the cases that they hear (Blomquist, 2011). The influence of stare decisis has been a guiding principle for the courts, but scholars argue that there is an issue due to the fact that Supreme Courts are subjected to ideological changes and may or may not follow precedent during a current case decision (Blomquist, 2011). A court may not be inclined to follow precedent due to how certain principles and case law is approached. A past decision may simply be “outdated,” and deemed to no longer be good law. However, past cases, even those that were handled improperly, contain valuable insight. “While stare decisis’s message may be hard to hear in these cases, shouted proclamations about the “lessons of history” have been hard to tune out.” (Cohen, 2010, pg 996).

The Bill of Rights has been, expectedly, thoroughly discussed in reference to national securities and civil liberties, for the civil liberties issues brought to the Supreme Court frequently involve the First Amendment and Fifth Amendment, respectively. There is concern for free speech and due process rights being violated during times of national crisis, in particular with enemy combatants (Fallon Jr. & Meltzer, 2007). The way that the United States has treated enemy combatants in past cases will be analyzed for this research, but past research has suggested that the United States has had no grounds to detain enemy combatants because of due process rights (Anderson, 2005). However, regardless of the rights due to citizens, even those declared to be enemies of the U.S., the government may not be inclined to be considerate because of the pressing duty to protect the country. As explained, “due process considerations may be ‘tailored to alleviate their uncommon potential to burden the Executive at a time of

ongoing military conflict”” (Christensen, 2007, pg 1389). The burden of the Executive may be placed above the burden of the defendant when a conflict is ongoing.

Habeas corpus has been historically used to protect those detained by the Executive branch who had no previous judicial involvement with their detention (Fallon Jr. & Meltzer, 2007). Those who are unlawfully detained have the right to submit a report to a court and have the court decide whether or not the imprisonment was indeed lawful. The War on Terrorism, in particular, has caused many cases involving a writ of *habeas corpus*, usually reported by enemy combatants (Fallon Jr. & Meltzer, 2007, pg 2043). The theory of how *habeas corpus* affects Supreme Court case decisions is because of how crucial the writ is to anyone who claims to have been unlawfully imprisoned (Raboin, 2015). *Habeas corpus* involves the root of all possible convictions--the arrest and detainment--and therefore carries valuable weight in law and civil liberties (Schmelzer, 2015).

An important yet straight-foward theory is that the United States wanted to appear strong and unified to their enemies abroad, this unification being reflected by the Supreme Court in many cases (Epstein; et al, 2005). Any nation would want to appear strong to outside threats, and this was a prominent concern for the U.S. As an extension of the concept of projecting a unified front to outside nations, the preservation of the country is a motivation that the government and Court saw as a top priority (Epstein; et al, 2005). This idea was prominent during the Cold War, when the United States was competing with Soviet Union not only for political power, but space exploration, nuclear weapons, and much more (Cox, 1990). The United States was willing to go to war to combat Communism, and the idea that the Supreme Court was influenced by the government's devotion has been proposed as well. However, it is important to recognize how the

balance of governmental branches influences how the U.S. government and Supreme Court behave towards projecting unification.

The discussion of past research and the historical background of the effect that national security has on civil liberties suggests multiple theories and reasons for why the rights of the people have been suppressed. From Supreme Court ideology to national pride, the theories on why there is a detrimental yet underestimated relationship between civil liberties and national security is immense and ever-present. Past research suggests a “fog of war” concept (Cohen, 2010, pg 959) where the Supreme Court is positionally aligned with the government. This affects how cases are decided when those cases are involving war, enemy combatants, conscientious objectors, and other circumstances of national security threats.

III. HYPOTHESES AND MODEL

Determining the effect that national security has on Supreme Court decisions that pertain to civil liberties requires multiple independent variables and one dependent variable in order to test and possibly support the hypotheses. Since this is a longitudinal analysis, variables that can be applied to the various eras, political climates, ideologies, and times of war that have occurred from the early 20th century to the early 21st century are ideal. Including independent and dependent variables that are specific and relevant to this research, yet able to be broadly applied to a variety of Supreme Court cases and wars that the United States partook in, is essential. These variables have been discussed in more detail in the literature review above (pg 9).

Two hypotheses were formulated for this project:

1. During a time of war or national emergency, the Supreme Court will rule in favor of the government, over the defendant, in cases involving civil liberties.
2. If the Supreme Court leans towards conservatism, they are more likely to rule in favor of the government, over the defendant, while a liberal court is more likely to rule in favor of the defendant in cases involving civil liberties.

These two hypotheses both support the concepts that are inquired about in the research question. The hypotheses were formed in such a way to provide possible answers to the research question as well as a reasonable explanation for the answer. The first hypothesis is much more broad, focusing on the effect that national security may have on civil liberties as a whole. The second hypothesis is more specific, in regards to the notion that the Supreme Court's ideology at the time of the ruling, either liberal or conservative, has a direct impact on the outcome of the case. These hypotheses are relevant to the research question and will provide useful insight into the research question in both a comprehensive and specified approach. The analysis that has been

conducted in the effort to support these hypotheses involves many laws, Supreme Court cases, and ideologies.

Independent Variables

The methodology of the Supreme Court can be correlated with external factors that may reflect their personal ideology as well as the prominent notion of war and government action. In respect to this, independent variables were identified that most appropriately reflect these factors. The independent variables were instated to reflect the research question and the hypotheses that will be tested and inferred upon. All of these variables will be inclusive towards the data collection and analyzed in such a way to determine the effects, if any, these variables have upon the issue. There are three independent variables and one dependent variable that will be analyzed and measured.

The first independent variable is whether or not the United States is in a time of war, or peace when a certain Supreme Court case decision is made. This is important to the issue because national security provisions are typically the result of a past, present, or possible future conflict (Blomquist, 2011, pg 452) laws of which are a variable to consider as well. Determining the ambience of the U.S. will establish a relationship between the state of the U.S. and the Supreme Court's ruling tendencies. The relationship is expected between these aspects because the desire to protect and preserve the nation is not limited to the Executive branch (Cohen, 2010, pg 969).

In order to better understand the first independent variable and its importance to this research, "war" must have a clear definition. The definition of war, or armed conflict, as it pertains to this research, is "a contested incompatibility that concerns government or territory or both" (Themnér & Wallensteen, 2014, pg 541). In order for an event to be deemed as war, there

must be “over 25 battle-related deaths in a calendar year” (Themnér & Wallensteen, 2014, pg 541) and at least one of the parties in the conflict must be a government of a state (Themnér & Wallensteen, 2014). Fundamentally, there must be two or more parties, one that is a governmental body, who raise arms against each other that results in significant casualties. The wars that will be discussed in this research align with this definition, which is essential to the first independent variable as well as the entire process of research.

Following the climate of the U.S., national security laws are the next independent variable to consider. The laws that the government enacts during a time of war are opposed to how the Supreme Court rules in civil liberty cases during war as well. Is the Supreme Court a reflection of the political climate? Are they endowed to support the Legislative and Executive branches of government, and where do mutual interests align? These questions can clarify what these laws say about how the government responds in periods of crisis, and may offer a basis for Supreme Court case decisions as well.

The final independent variable, and one that will be analyzed through the U.S. Supreme Court Database (Spaeth; et al) is the Supreme Court’s ideology throughout the years of 1900-2008. These years were chosen in respect to the ten Supreme Court cases that will be analyzed, with the earliest case being the *Schenck* of 1919, and the case of *Boumediene v. Bush*, of 2008. Determining whether the Supreme Court tended to rule in a more liberal or conservative approach reflects whether or not they were more likely to uphold or retrench civil liberties where a national security concern was present. A liberal decision direction and a conservative decision direction will be defined in accordance to the Supreme Court Database in the Research Design section of this paper.

Dependent Variable

The dependent variable for this research project involves a cause and effect approach towards civil liberties. The dependent variable that will be ascertained is the decision of the court, whether civil liberties will be upheld or diminished by a pro-government or pro-defendant position by the Supreme Court. This variable must be crucially analyzed in order to garner conclusive results that will either support or refute the hypotheses. Whether or not the U.S. is in a time of war, a time of tension, or the petitioner in a case has been involved in a direct or potential national security threat must be considered. The factors will offer a valid explanation as to why the Supreme Court made its decision in a respective case, and will determine the overall relationship between national security concerns and civil liberties.

The effect that liberalism and conservatism has on civil liberties cases is the emphasis of this dependent variable and will be considered and verified. Using the Supreme Court Database to determine whether or not the Supreme Court was left-leaning or right-leaning during the time where one of the ten cases specified for this project is made will allow for an examination into what effect, if any, this has on the decision regarding civil liberties. Supreme Court Justices are inherently unbiased, but are there any trends that would suggest otherwise? What is the significance of political ideology when it comes to a Supreme Court ruling, if any? This dependent variable is pivotal for drawing an appropriate conclusion.

In regards to the hypotheses, the relationship between the variables is a negative one. The independent variables indeed affect the dependent variable, but as the independent variable increases (tension, emergency, war, etc.) the dependent variable would decrease (pro-defendant or pro-government case decision), in respect to the hypotheses. This is also apparent for the ideology aspect of this research, that as liberalism increases in the Supreme Court, civil liberties

are more likely to be upheld and the Supreme Court would be more pro-person, while conservative-based case decisions would be more likely to uphold national security and be pro-government. This is a correlation that will be tested and either supported or not supported in regards to the data collected and analyzed, and has the potential, if the hypothesis is not supported, to be a positive correlation or hold no correlation.

IV. RESEARCH DESIGN

The data that was collected and analyzed in order to test the hypotheses of how national security affects Supreme Court decisions that involve civil liberties requires an investigation into variables that may offer an explanation to certain trends. Specific cases and laws were examined in order to pinpoint a correlation between the independent and dependent variables. The data was collected using Harold J. Spaeth's U.S. Supreme Court Database, which offers multiple ways to collect and analyze data in reference to the Supreme Court and the heard cases. The data that was collected determines whether or not the Supreme Court ruled in a liberal or conservative fashion, as well as many civil liberties cases they ruled on from 1900-2008. After this data was collected, it was determined whether or not the United States was in a time of war and the nature of the case itself.

Specific national security laws throughout the early 20th century and early 21st century were also analyzed. These laws do not necessarily reflect the ideology of the Supreme Court, but how the United States government responds during times of war. These variables provide a steady and thorough methodology into this issue. For the sake of focus regarding this research, the years that were focused on in the analysis are in close proximity to when the cases took place. This supported the research in order to draw better conclusions about the state of the country as well as the factors that contributed to the Supreme Court's decision.

The components that were included in order to formulate this database were extensive. Firstly, the majority and minority vote of the Supreme Court was set to match all possible outcomes; "equally divided," "judgement of the court," and "opinion of the court" (Spaeth; et al). The issues of the cases all involved civil liberties, and the legal provisions selected mainly had to do with any aspect of law relevant to the infringement of these liberties, such as the

United States Constitution, a Constitutional amendment, or executive orders. All possible outcomes for the winning parties--whether or not there was any “favorable disposition” (Spaeth; et al) from the Supreme Court towards the majority vote was also included.

Other contributing components that were used to compile this data included if there were any claims of unconstitutionality regarding the law provisions that were raised as an issue, as well as all possible petitioners and respondents in the case (Spaeth; et al). All possible lower court levels, such as State and Appellate courts, were also considered, as was every state in the U.S. All of these components are necessary in order to create a dataset that will subsidize this research. Under each of these components there were various “sub-issues” (Spaeth; et al) that broke down what types of cases fell under the category of civil liberty cases. An example of a sub-issue, according to the database would be affirmative action, immigration, poverty law, habeas corpus, and many more. The datasets are able to be formulated in an ornate, detailed way that complimented the research being conducted.

The limitations of this data are that there is no straightforward way to determine what *exact* factors affected Supreme Court decisions. This essentially means that there is a more critical analysis that needs to be assessed and applied in order to draw conclusions to the data that work towards proving the hypotheses and answering the research question. By gathering the total number of civil liberties cases, whether or not the court was ruling in a more liberal or conservative fashion, as well as if the cases that are going to be extracted for the purpose of this specific research were indeed ruled on during a time of war, there can be a thorough analyzation and conclusion to this research. Another limitation to this data is that one of the first and both of the last year groupings of the analyses (1940-1945, 1946-1949, and 2000-2008) are not consistent with the typical nine years per time-span. There was no way to adjust the groupings of

the years for the analysis, or choose *specific* Supreme Court cases for analysis, so this must be disclosed.

The Significance of United States National Security Laws and Supreme Court Case

Decisions

The way that the U.S. government reacts to threats of national security during times of war and the impact that this has on civil liberties must be examined. This examination must transpire because there is a possibility that the government's reactions to war by enacting certain laws may overtly affect the condition of the Supreme Court as well. The importance of pinpointing specific national security laws, the significance of when these laws were enacted, as well as the purpose of these laws reflects the mindset of the U.S. government at that time, which may also offer an explanation as to whether or not the Supreme Court responds in similar ways to the government during times of crisis, particularly with the usage of tests such as strict scrutiny and the clear and present danger test, to justify their decisions.

Alongside national security laws, Supreme Court cases will be examined both during and after war time. The ideology of the Supreme Court during the time of the case decision, whether it happened during peace or war time, as well as the facts of the case are taken into consideration. Analyzing how and why a case was decided in a certain way, as well as the opinion of the court at the time, can lead to thorough conclusions as to why civil liberty infringement was upheld or struck down. Following the data collection, Table 4 summarizes the decisions of these cases, whether or not the U.S. was in a time of war, as well as the liberal or conservative sway of the Supreme Court. The following laws and cases were chosen to allow for a longitudinal analysis that covers the various wars and tensions that the United States has faced from the early 1900s to modernity.

National security was not a term rightly named until the 1940s, and yet the fear of inside threats plagued the government as well as concerns of how such laws would impact civil liberties, particularly the First Amendment. The Espionage Act of 1917 indeed paved the way for government efforts against not only spies, but outside threats as well. Cartoons, texts, and other works that suggested going against the U.S. government were subjected to penalties (Stone, 2003, pg 342) and certain mail was censored. However, this act was more focused on protecting the military from harmful propaganda and disloyalty, but was not enacted with “civil libertarian” intentions (Stone, 2003, pg 352). The government was actively working against Socialist organizations during World War I, which would eventually evolve into a fear of Communism.

The clear and present danger test was introduced by the Supreme Court in their decisions for *Schenck v. United States* in 1919 (Kendrick, 2014, pg 1067). This test, as described: “The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that the utterance of these words will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right. (*Schenck v. United States, 1919*). This statement, delivered by Justice Oliver Wendell Holmes Jr. (Kendrick, 2014, pg 1067), provides a detailed account of the methodology and concepts that were believed and acted upon by the Supreme Court, a statement that would set precedent for several future cases, including *Korematsu v. United States*

The government was quick to extend the Espionage Act for the sake of the country. This act, the Sedition Act of 1918, upheld that “men and women voicing opposition to the war were

charged with crimes directly related to their speech” (Wu, 2018). This act would lead to controversial arrests, such as the situation surrounding the eventual Supreme Court Case *Schenck v. United States* in 1919, where the Supreme Court declared that “the character of every act depends upon the circumstances in which it is done” (*Schenck v. United States, 1919*). Charles T. Schenck, a Socialist was charged with violating the Espionage Act due to the passing out fliers encouraging men to oppose the draft.

This establishes the possibility that if the defendant, Schenck, may have had his charges dropped if he had not been a Socialist, or if this had not occurred during a war. Schenck’s actions and the words within them contained material the government found threatening and a potential cause for violence, and the court agreed. Nearly 60 years later, in *Cohen v. California, 1971*, Paul Robert Cohen’s charges were dropped by the Supreme Court (Krattenmaker, 2012). This decision was made because his jacket that had a rather strong opinion against the draft was determined to not be a form of speech that encouraged violence. (*Cohen v. California, 1971*). This contrast in ruling close to a century later is an interesting observation that feasibly demonstrates an evolving court (Weinrib, 2016) as well as the reliance on tests like the clear and present danger test to determine whether or not the speech conducted fell under the protections of free speech.

People were being prosecuted for their actions against the government, whether they were U.S. citizens or not, especially during early wars like World War I where there was a draft requirement. The Supreme Court was upholding such charges and lower-court trial decisions. *Schenck* was an early display of the Supreme Court declaring that the First Amendment was not violated by acts such as the Espionage Act, even though the distribution of pamphlets is

something that many would see as an act of free speech or free press (Stone, 2003). This case would not be the last involving such circumstances.

In *ex Parte Quirin*, the eight German saboteurs exuded an argument that claimed that military tribunals were unlawful when the regular courts were open and operating (Anderson, 2005, pg 691), which the Supreme Court unanimously ruled against. In *ex Parte Quirin* in 1942 is that the defendants who were sentenced to death in 1942 were Nazis, and declared enemy combatants, not U.S. citizens, and therefore a military tribunal was deemed appropriate for the Nazis that were tried and sentenced. Although *Quirin* involves a now-contentious case decision, it “quickly became the foundation stone of the Bush Administration’s detention policy” (Cohen, 2010, pg 971) which resulted in various cases involving enemy combatants and detainment measures during the War on Terror and War in Afghanistan in the early 2000s. The issue of military tribunals was present again in *Hamdan v. Rumsfeld*, in 2006, but the courts did not follow the precedent of *Quirin* and instead held that the military tribunals established by The Bush administration violated “combatant’s privilege” under the Geneva Convention (Christensen, 2007, pg 1365).

The attack on Pearl Harbor during World War II led to the eventual internment of Japanese-Americans that is still contemporarily criticized, but led to the establishment of the strict scrutiny test (G. Robinson & T. Robinson, 2005) that would set valid precedent for civil liberty cases to come. Strict scrutiny in *Korematsu v. United States* in 1944, where the internment of Japanese-Americans was deemed constitutional (G. Robinson & T. Robinson, 2005), was established in order to determine whether or not there was a “compelling interest” of the state (G. Robinson & T. Robinson, 2005, pg 37). This “compelling justification” (G. Robinson & T. Robinson) curtailed the rights of Fred Korematsu and Japanese-Americans with the reasoning

that national security deemed it necessary and proper. Although *Korematsu* has yet to be overturned by the Supreme Court, the decision is condemned by the courts if mentioned at all during a modern case. The effort to suppress the rights of the people started before *Korematsu* occurred, but as the Cold War blossomed, so did the efforts of the government to work against Communists and the Soviet Union.

The Smith Act of 1940, Truman Doctrine of 1947, and the Communist Control Act of 1954 were blatant governmental efforts to combat both right-wing and Communist oppositions against the U.S. Set during the first Cold War, these acts were an expansion of the fear of American capitalism and democracy being suppressed. The anti-Communist effort is what compelled the United States to interfere and attempt to stop the Communist expansion into Greece, Vietnam, Korea, and other nations (Kaplan, 1993). This idea grew from the fear of Socialism in the early 20th century, and the eventual and separate fear of Nazism emerged during World War II (Cox, 1990).

The consternation of Socialism that led to the government passing laws which restricted liberties is quite similar to the way the government reacted to Nazism and Communism later on. Although these ideologies are not a product of one another, the fear that the U.S. government had for each was consistent. The Smith Act would lead to civil liberties issues due to the vastness of “un-American activities” (Bruce, 2014) that were prohibited under this act, and the prosecutions that followed. *Dennis v. The United States*, 1951 was just one example of such legal action, and an instance where the Supreme Court upheld the act and suppressed the civil liberties of Communist party leaders. The Court defended the Smith Act, declared the act did not violate the First Amendment, and upheld the conviction of the leaders in the case (Wiecek, 2001).

The threat of the Soviet Union sparked the passing of certain laws pertaining to the race for nuclear arms and the effort to have the most efficient stockpile of weapons. In 1950, a top secret document created by the National Security Council (NSC) referred to as NSC-68 was a “rearmament program” (Fordham, 1998, pg 365) that would not only help the U.S. invest in Europe and Japan, but to militarize the Cold War effort (Gaddis & Nitze, 1980). The policy paper would essentially support the United States’ efforts to gather weaponry to compete against the Soviet Union. While this act did not necessarily denote civil liberties, it certainly expresses the lengths that the government will go during national security--even when a war has not been *officially* declared. While Truman and many of his officials supported this effort, the growing concern of another war so recently after WWII with one of the biggest superpowers in the world scared civilians, and anti-nuclear movements began to emerge in the 1950s and early 1960s (Eastwood, 2020, pg 137). There was an emergence of a concern for national security as well as the civil liberties of the people as tensions with the Soviet Union and China rose, as did the threat of nuclear war.

In the early 1960s, nuclear war was an unfeigned fear of the American people, especially after the Cuban Missile Crisis in 1962 (Eastwood, 2020). An anti-nuclear movement was beginning to develop, not only among citizens, but political leaders as well. President John. F Kennedy was particularly adamant against nuclear testing, but it was a “sensitive issue” (Eastwood, 2020, pg 141) and people were still very divided on it. President Kennedy wanted to establish a treaty respective to nuclear testing that would ease his concern of nuclear testing and calm Americans down without upsetting those who supported nuclear advancement. The “*Partial*” aspect reflects how the act did not ban nuclear testing entirely, but limited to tests to being underground only (Eastwood, 2020, pg 149) This treaty satisfied most of the world powers

while maintaining support from both pro and anti-nuclear war movements within the United States, and allowed for nuclear weapon testing to continue (Eastwood, 2020). The importance of the passing of the Partial Nuclear Test Ban Treaty of 1963 for civil liberties and national security is the demonstration of how the two can be balanced for the goal of U.S. peace both internally and externally.

Civil liberties continued to be threatened by national security, even during such efforts to preserve the nation from war. *Youngstown Sheet and Tube Company v. Sawyer*, decided in 1952, was an example of how the President's powers during war are subjected to checks by the Judicial branch (Adler, 2002). This case involved private property and is a display of how civil liberties not only apply to individuals, but private businesses as well (Adler, 2002). During the Korean War, President Truman seized the steel mills in order to prevent a strike from occurring and to keep the mills operating. The Supreme Court decided that the President went beyond his power, even during a war, because he did so without approval from Congress (*Youngstown*, 1952). This display of Judicial check ensures that the President does not act against the legislature or dismiss the legislature in regards to constitutional law (Adler, 2002).

The way that the United States has confronted and handled enemy combatants and the persecution of those who acted against the United States government has not altered much throughout the past century. From the Nazi Saboteurs involved in the controversial *ex Parte Quirin* decision, to 2008 with *Boumediene v. Bush*, the United States has prosecuted enemy combatants in ways that do not align with civil liberty expectations. The government's actions during the War on Terror, after the 9/11 terrorist attacks, encouraged American citizens to be "patriots" and take part in what the government was asking them to do for the purpose of protecting the country and troops in the Middle East from terrorists (Rubel, 2007). This in turn

provoked cases where writs of *habeas corpus* were petitioned, due to the inclination of the United States to imprison enemy combatants in an unlawful manner during this war (Fallon Jr & Turner, 2007). There are four cases that are considered to be landmark Supreme Court decisions in regards to enemy combatants and their detainment (Fallon Jr. & Turner, 2007), with *Hamdan* and its significance previously discussed.

The USA Patriot Act of 2001 was passed in the aftermath of the 9/11 attacks, and was a major action taken by the government to promote national security (Rubel, 2007). Although highly criticized for being a violation of privacy and the start of government surveillance issues and other practices “undermining of privacy” (Ruble, 2007, pg 145), the law was enacted for the purpose of preventing and combatting terrorism. With terrorism being one of the most recent national security concerns, and one that has not yet ceased (Fallon Jr. & Meltzer, 2007), the Patriot Act is crucial to address. Enemy combatants and terrorists in general, along with the citizens of the U.S. who were expected to work with the government and submit to the overarching need of national security were directly affected by this act. This act of counterterrorism measures was an example of the Bush Administration’s approach to enemy combatants, many of whom had cases heard by the Supreme Court.

Habeas corpus petitioners are a main component of the Supreme Court cases regarding enemy combatants. The accused or their families who filed the writ of *habeas corpus* suggest that they were illegally detained. *Hamdi v. Rumsfeld*, 2004 and *Boumediene v. Bush*, 2008 both include a writ of *habeas corpus* being presented to the court. In *Boumediene*, a lower court had dismissed a plea of *habeas corpus* for Lakdhar Boumediene (Schmelzer, 2015). The circumstances of these cases are slightly different, nonetheless. Yaser Asam Hamdi was born and raised in the U.S. and the government was quick to accuse him of plotting against the U.S.

government, and although such detainments were authorized, it was found that Hamdi was not given the rights of due process and his case was reversed (Fallon Jr. & Turner, 2007). The Supreme Court had to consider the “procedural rights” (Fallon Jr. & Turner, 2007, pg 2090).

Rasul is considered another landmark decision by the Supreme Court, for those who were held in Guantanamo Bay were permitted by the Supreme Court to file writs of *habeas corpus* to the courts (Raboin, 2015). This case is considered a landmark because the U.S. did not have jurisdiction over Cuba, only Guantanamo Bay, which was not considered a part of the U.S. Those who oppose the *Rasul* decision form research that in an attempt to support that *habeas corpus* does not extend into territories that the United States does not have “substantial sovereignty (Raboin, 2015, pg, 204). The Supreme Court ruled in a significant majority over this case and it is still deemed good law regarding detainees.

All of these laws, cases and the impacts that resulted from their establishment or occurrence is crucial to understanding the evolution and impact of national security, and its potential precedence over civil liberties through the years. Such acts display the concerns over espionage, the need for presidents to have significant power to uphold the nation in times of war, the “safety net” that nuclear arms provided, as well as the blatant fear and prosecution of Communism, especially from the threat of the Soviet Union, and the expansion of Communist influence to Europe and Asia (Kaplan, 1993).

Data Collection and Analyzation

The data that was collected and analyzed was completed in order to better understand the rulings of the Supreme Court and their respective ideology during that ruling, which may or may not have been during a time of war, as well as the impact that these factors may have had on the Court’s decisions. Using the U. S. Supreme Court Database established by Harold J. Spaeth, data

collection and analysis regarding this topic is quite enlightening. In accordance to a former research article, “Spaeth classifies civil rights and liberties cases into six broad categories: criminal procedure, civil rights, First Amendment, due process, privacy, and attorney rights” (Epstein; et al, 2005) This provides the valuable ability to gather and analyze data about the Supreme Court eras, their ideology, how many civil liberty cases were on their docket, and the decisions of those cases. Along with these crucial points, the data was gathered to determine if there was an increase in the amount of civil liberty cases that the Supreme Court has reviewed or heard since the early half of the 20th century, in accordance with the six categories of civil liberty cases recognized by Harold J. Spaeth.

Credit is due to Lee Epstein, her colleagues, and their research for the article *The Supreme Court During Crisis: How War Affects Only Non-War Cases* for the *New York University Law Review* in 2005. This article allowed for the discovery of the U. S. Supreme Court Database for the purpose of this project and therefore the ability to conduct quantitative research regarding this issue.

V. ANALYSIS/RESULTS

The first data analysis was focused on the “Legacy” database that specializes on the Supreme Court eras dating back from 1791 to 1945. For the purpose of this research project, the data that was gathered starts close to the earliest case that was discussed, *Schenck*, which was decided by the White Court. The dates that were set to be analyzed, in order to address all of the Supreme Court eras pertinent to this research project, were 1900-1945. This included the White and Stone Courts, the courts that ruled on each of these cases respectively. The dataset also covered cases that occurred during World War I, World War II, and part of the early Cold War. The dataset for the civil liberties cases heard by the Supreme Court from 1900-1945 is displayed in Table 1, where the years have been grouped together for a simpler interpretation.

Table 1

Civil Liberty Cases Heard by the Supreme Court from 1900-1945

Years	Criminal Procedure	Civil Rights	First Amendment	Due Process	Privacy	Attorneys	Total Cases
1900-1909	86	85	5	82	1	15	274
1910-1919	105	126	23	98	3	24	379
1920-1929	83	127	13	104	4	21	352
1930-1939	66	82	16	36	2	12	214
1940-1945	51	52	21	18	0	7	149

Spaeth; et al; SCDB Legacy 06

Following the collection and analysis of the Legacy data from the U.S. Supreme Court Database, the dates of 1900-1945 were altered to reflect the Modern database. The dates were then set to 1946-2008, ending with the year of the most recent case discussed in this research

project, *Boumediene v. Bush*. This dataset reflects the same aspects of what was analyzed and concluded from the Legacy data. The analysis resulted in the amount of liberal and conservative rulings, as well as the amount of civil liberties cases that were ruled upon by the Supreme Court. The Vinson, Burger, Regnquist, and Roberts Courts are all included in this data set and are involved in the decisions for the cases mentioned previously.

Table 2
Civil Liberty Cases Heard by the Supreme Court from 1946-2008

Years	Criminal Procedure	Civil Rights	First Amendment	Due Process	Privacy	Attorneys	Total Cases
1946-1949	48	29	22	26	1	0	126
1950-1959	113	82	61	31	2	3	292
1960-1969	225	158	103	16	2	5	509
1970-1979	303	266	130	83	28	12	822
1980-1989	315	219	109	71	23	33	770
1990-1999	140	113	49	26	16	7	351
2000-2008	147	93	39	26	6	7	318

Spaeth; et al; Modern Version 2020 01

An important note regarding the Table below that displays the decision direction of the courts is that liberalism and conservatism went through an ideological switch in the 20th century (Gelman, 2014). The ideology continued to develop into the liberal and conservative viewpoints that are present today. It is apparent that the viewpoints of a “liberal democrat” in the later half of

the 19th century would more likely align with the stances of a “conservative republican” today (Gelman, 2014). However, the way that the U.S. Supreme Court Database works for the six categories of civil liberty cases is such that decision directions have strict characteristics that determine whether the case was ruled in a conservative or liberal ideology. The database does not acknowledge this switch, and adapts to the modern definitions of conservatism and liberalism. For example, a liberal decision direction may be considered “pro-person” or “anti-slavery,” while a conservative decision is “pro-government” and “pro-slavery” (Spaeth; et al). This is explained in great detail on the website for the database under the “Online Code Book” section under the “Documentation” tab (Spaeth; et al).

Table 3

Liberal or Conservative Rulings (Decision Direction) of the Supreme Court from 1900-2008

Years	Liberal Decisions	Conservative Decisions	Years	Liberal Decisions	Conservative Decisions
1900-1909	109	165	1950-1959	153	139
1910-1919	154	225	1960-1969	376	133
1920-1929	161	191	1970-1979	369	453
1930-1939	117	97	1980-1989	314	456
1940-1945	93	56	1990-1999	158	193
1946-1949	64	62	2000-2008	138	180

Utilizing the data collected above, conclusions are able to be made in regards to the ideology the Supreme Court was more likely to lean to during the time that case was decided. Whether or not the civil liberties of the petitioner were upheld or curtailed, as well as whether or not the Supreme Court ruled in a more liberal or conservative methodology at the time of the case. There is a determination of what event transpired, either during or after a time of war, in order to provide reasoning for the Supreme Court's decision in that particular case. The findings are summarized below:

Table 4

Supreme Court Case Rulings and Details on Ten Cases Previously Discussed

Case Name	During A Time of War?	Involves an Event or Law Passed During War?	Civil Liberties Supported?	National Security, Government, or Executive Action Supported?	Supreme Court Decision Direction Tendency
<i>Schenck</i>	No; After World War I	Yes; Espionage Act of 1917	No	Yes	Conservative
<i>Ex Parte Quirin</i>	Yes; World War II	Yes; Operation Pastorious	No	Yes	Liberal
<i>Korematsu</i>	Yes; World War II	Yes; Japanese Internment	No	Yes	Liberal
<i>Dennis</i>	Yes; Cold War after World War II	Yes; Smith Act of 1940	No	Yes;	Liberal
<i>Youngstown</i>	Yes; Korean War	Yes; Executive Seizure of the Steel Mills	Yes	No	Liberal
<i>Cohen</i>	Yes; Vietnam War	Yes; Protesting the Draft	Yes	No	Conservative
<i>Hamdi</i>	Yes; War in Afghanistan/	Yes; Enemy Combatant	Yes	No	Conservative

	War on Terror				
<i>Rasul</i>	Yes; War in Afghanistan/ War on Terror	Yes; Enemy Combatants	Yes	No	Conservative
<i>Hamdan</i>	Yes; War in Afghanistan/ War on Terror	Yes; Enemy Combatant	Yes	No	Conservative
<i>Boumediene</i>	Yes; War on Terror	Yes; Enemy Combatants	Yes	No	Conservative

VI. CONCLUSION

The research conducted presents the conclusion that there is a notable impact on civil liberties regarding national security, but it is highly dependent on the circumstances of the case, the war, event, or national emergency at hand and not the political party ideology of the Supreme Court. Cases that were heard during World War I and during and immediately after World War II, such as *ex Parte Quirin*, *Korematsu*, and *Dennis*, were ruled in favor of the government regardless of the left or right-leaning tendency of the Court at that time. In stark comparison, cases heard during the Korean War, Vietnam War, and the time of national fear of Communism were much more likely to be ruled in favor of the petitioner, where civil liberties were upheld. The Supreme Court depends heavily on strict scrutiny, writs of *habeas corpus*, and the clear and present danger test while deciding these cases.

Supreme Court ideology during the ten cases that were examined was fairly even, with the courts being more liberal in the early 1900s-1950s before there was a switch to a right-leaning court in the 1960s that is still present today. Trends would suggest that a conservative court would be pro-government and uphold national security while a liberal court would uphold civil liberties. The research conducted does not support this notion. What this suggests is that the Supreme Court ruled in an unbiased fashion during these cases in regards to their own *political stances*. The Court is much more likely to be biased towards the facts of the case, if the petitioner is in a certain political organization (Communist, Socialist, etc.).

Supreme Court decisions between the early half of the 20th century typically ruled in favor of the government, with the latter half of the 20th century and early 21st ruling to uphold civil liberties. This observation is possibly owed to social, cultural and economic shifts in the United States, resulting in a new era where civil liberties are seen as equal or more important

than national security (Weinrib, 2016, pg 1131). An examination of this evolution would further research on this topic and perhaps offer insight into how these shifts impacted not only the Supreme Court, but Congress and the President as well. This also suggests that the Supreme Court will not follow precedent just to please the Executive or Legislative branches, as apparent in the case decision of *Hamdan v. Rumsfeld* in 2006.

The analysis of this data concludes that there was indeed an increase in the amount of civil liberties cases that the Supreme Court heard, with substantial spikes during and after war time. An interesting discovery is that civil liberties cases heard by the Supreme Court reached a substantial peak in the years of 1970-1989 (Table 3) This correlates with a government concern of espionage, which coincided in the amount of people that were arrested on suspicion for committing such acts. According to a Congressional Research Service Report, sixty-seven people were arrested on charges of espionage against the U.S. government (Cavanaugh, 1993). The most arrests occurred during 1984-1985, and the majority of these spies were working with the Soviet Union. The correlation between these espionage arrests and an increase in civil liberties cases suggests a relationship between civil liberties and national security. These events were during a time where the United States was in an active effort against Communism and Soviet Expansion

The national security laws discussed in the Research Design section indeed were enacted to establish a metaphorical safety net for the country that, in many instances, violated the civil liberties of citizens. The court particularly upheld these acts and national security in general during World War II and the Cold War that followed soon after. The Korean War, Vietnam War, and anti-Communist actions of the United States stirred up many vexed measures taken by the U.S. in order to combat the effort against Communism, both internally in the U.S. and external

threats in Europe, Asia, and abroad (Cox, 1990). The measures, including these laws, were broad and in many instances did not require substantial evidence or act of violence in order for the person to be prosecuted--this is where the clear and present danger test continuously come into play in order to assess free speech violations where there is no dangerous action taken.

The ten Supreme Court cases involving civil liberties and a national security issue offer a conclusion that suggests that whether or not civil liberties will be upheld is highly dependent on the national security threat at hand. Whether the court is right-leaning or left-leaning does not constitute a decision, and therefore the notion that national security threats carry an impact that is underestimated (Epstein; et al) is highly supported. The way that enemy combatants are treated during war has seen a switch apparent in the War on Terror. The Supreme Court has become more likely to uphold the civil liberties of the petitioner and deny the government's stretches for power and control over the combatants. The way that the Supreme Court treats civilians compared to enemy combatants appears to have balanced out into equality, suggesting the importance the constitution has with the modern Supreme Court as well as the concern for civil liberties.

The first hypothesis was supported, but the second hypothesis, that the Supreme Court's tendency to lean right or left affects case decisions, was not consistently supported. Ideological leaning, in accordance to this research, does not have a significant impact on the case decision or the majority vote. However, the Supreme Court's decisions in the early 20th century suggest that the Supreme Court supported the war effort as well as the national security efforts the government promoted. National security indeed has an impact on civil liberties, but this is highly dependent on what constitutional right was violated and perhaps societal development. As mentioned above, whether or not the person is a civilian or a lawful combatant seems to have an

impact on the Supreme Court's decision--suggesting that rights are considered owed to *everyone* with a strong argument that their rights have been violated, either through due process, habeas corpus, the First Amendment, etc. This is a certain methodological change from the early 20th century. The second hypothesis was not fully supported.

The condemnation and criticism of past Supreme Court decisions suggest that the modern Supreme Courts are subjected to social, political, economic, and cultural changes and are a reflection of such environmental developments. This would be an interesting topic to research further and determine whether or not this suggestion is indeed factual or supported. What the courts ruled to be good law in the past, such as *ex Parte Quirin* and *Korematsu*, would likely not stand or be decided in the same way, and are still subjected to scrutiny and disapproval, although these cases took place almost a century ago.

In regard to the research question, which is: "If the United States of America is in a time of heightened national security, is it more likely that an individual's civil liberties will be infringed upon due to the government and the Supreme Court placing priority on national security over civil liberties in times of war?" the answer is that yes, if the United States is in a time of heightened national security, it is more likely that the civil liberties of the individual will be infringed, but it depends highly on the circumstances of the case as well as the Executive and Legislative actions. The proving of whether or not an act or law is constitutional is a major role of the Supreme Court, and the principles that contribute to the decision of upholding or striking down a law should be independent of external factors, and decided with a focus of the case at hand and the rights of the defendant. As the years have progressed and society has evolved, so has the Supreme Court, as well as the importance of civil liberties. As this research suggests, civil liberties cases will continue to pile on the Supreme Court's docket, and the Supreme Court

must make haste to rule in an unbiased fashion that protects civil liberties. No nation or its citizens will be truly secure until the rights and civil liberties of the people are guaranteed.

VII. WORKS CITED

Scholarly Works Bibliography

Adler, D.G. (2002). The Steel Seizure Case and Inherent Presidential Power. *University of Minnesota Law School, Constitutional Commentary*, 19, 155-213.

Anderson, J. B. (2005). *Hamdi v. Rumsfeld*: Judicial Balancing at the Intersection of the Executive's Power to Detain and the Citizen-Detainee's Right to Due Process. *Northwestern University School of Law Journal of Criminal Laws & Criminology*, 95(3) 689-723.

Blomquist, R. F. (2011). The Theoretical Constitutional Shape (and Shaping) of American National Security Law. *St. Louis University Public Law Review*, 31(1), 439-473.

Bruce, E. (2014). Dangerous World, Dangerous Liberties: Aspects of the Smith Act Prosecutions. *American Communist History*, 13(1), 25-38.

Cavanaugh, S. (1987, Revised 1993). *Individuals Arrested on Charges of Espionage Against the United States Government: 1966-1993*. CRS Report for Congress, The Library of Congress. GOV 93-531.

Cohen, H. G. (2010). "Undead" Wartime Cases: Stare Decisis and the Lessons of History. *Tulane Law Review*, 84, 957-1023.

Cox, M. (1990). From the Truman Doctrine to the Second Superpower Detente: The Rise and Fall of the Cold War. *Journal of Peace Research*, 27(1), 25-41.

Christensen, B. M. (2007). Extending *Hamdan v. Rumsfeld* to Combatant Status to Review Tribunals. *Brigham Young University Law Review* 2007(5) 1365-1412.

Eastwood, M. (2020). Anti-Nuclear Activism and Electoral Politics in the 1963 Test Ban Treaty. *Diplomatic History*, 44(1), 133-156.

Epstein, L., Ho, D.E., King, G. & Segal, J. A. (2005). The Supreme Court During Crisis: How War Affects Only Non-War Cases. *New York University Law Review*, 80(1), 1-116.

Fallon Jr., R. T. & Meltzer, D. J. (2007). Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror. *Harvard Law Review*, 120(8), 2029-2112.

Fordham, B. O. (1998). Economic Interests, Party, and Ideology in Early Cold War Era U.S. Foreign Policy. *International Organization*, 52(2), 359-396.

Gaddis, J. L. & Nitze, P. (1980). NSC 68 and the Soviet Threat Reconsidered. *International Security*, 4(4). 164-176.

Gelman, A. (2014). The Twentieth-Century Reversal: How Did the Republican States Switch to

Democrats and Vice Versa? *Statistics and Public Policy*, 1(1), 1-5.

Halperin, M. H. (1976). National Security and Civil Liberties. *Foreign Policy*, 21, 125-160.

Howard, R.M., Graves, S. E. & Flowers, J. (2006). State Courts, the US Supreme Court, and the Protection of Civil Liberties. *Law & Society Review*, 40(4), 845-870.

Kaplan, L. S. (1993). The Monroe Doctrine and the Truman Doctrine: The Case of Greece. *Journal of the Early Republic*, 13(1), 1-21.

Kendrick, L. (2014). Free Speech and Guilty Minds. *Columbia Law Review*, 114(5), 1255-1295.

Krattenmaker, T. G. (2012). Looking Back at *Cohen v. California*, a 40-Year Retrospective From Inside the Court. *William & Mary Bill of Rights Journal*, 20, 651-689.

Raboin, B. (2015). United States Constitutional Habeas Corpus and *Rasul*: A Case of Misapplied History. *Saint Louis University Public Law Review*, 35(1), 179-204.

Robinson, G. & Robinson, T. (2005). “*Korematsu*” and Beyond: Japanese Americans and the Origins of Strict Scrutiny. *Law and Contemporary Problems*, 68(2) 29-55.

Rubel, A. (2007). Privacy and the USA Patriot Act: Rights, the Value of Right and Autonomy. *Law and Philosophy*, 26(2), 119-159.

- Schmelzer, D. (2015) Historically Unappealing: *Boumediene vs. Bush*, Appellate, Avoidance Mechanisms, and Black Holes Extended Beyond Guantanamo Bay. *William & Mary Bill of Rights Journal*, 23, 965-1044.
- Spaeth, H. J., Epstein, L., Ruger, T., Segal, J., Martin, A. D., & Benesh, S. (2020). The Supreme Court Database. SCDB Legacy 06; Modern Version 2020 01. Retrieved March, 2021, from: <http://scdb.wustl.edu/analysis.php?sid=2001-BIRDDOG-2610>
- Stone, G. R. (2003). Civil Liberties in Wartime. *Journal of Supreme Court History*, 28, 215-251.
- Stone, G. R. (2003). Judge Learned Hand and the Espionage Act of 1917: A Mystery Unraveled. *The University of Chicago Law Review*, 70(1), 335-358.
- Turner, R. F. (2003) The Supreme Court, Separation of Powers, and the Protection of Individual Rights during Periods of War or National Security Emergency. *Journal of Supreme Court History*, 28(3), 323-338.
- Themnér, L. & Wallensteen, P. (2014) Armed Conflicts 1946-2013. *Journal of Peace Research*, 51(4), 541-554.
- Weinrib, L. (2016). Freedom of Conscience in War Time: World War I and the Civil Liberties Path Not Taken. *Emory Law Journal*, 65, 1051-1137.
- Wiecek, W. M. (2001). The Legal Foundations of Domestic Anticommunism: The

Background of *Dennis v. United States*. *The Supreme Court Review*, 2001, 375-434.

Wu, T. (2018). Is the First Amendment Obsolete? *Michigan Law Review*, 117(3), 547-581.

Supreme Court Case Bibliography

Boumediene v. Bush, 553 U.S. 723 (2008)

Cohen v. California, 403 U.S. 15 (1971)

Dennis v. United States, 341 U.S. 494 (1951)

Ex parte Quirin, 317 U.S. 1 (1942)

Hamdan v. Rumsfeld, 548 U.S. 557 (2006)

Hamdi v. Rumsfeld, 542 U.S. 507 (2004)

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

Rasul v. Bush, 542 U.S. 466 (2004)

Schenck v. United States, 249 U.S. 47 (1919)

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)