

THE ALIEN REGISTRATION ACT OF 1940:

A STUDY IN FREE SPEECH

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PREFACE

Several themes appear to dominate the stream of United States history. One is the conflict involving how best to preserve democracy--by showing tolerance for all opinions, or by restricting certain activities of the participants. Another major theme is the existence of xenophobia near the surface of the stream. In times of crisis, this fear tends to break the surface and burst into frenzied activity.

The purpose of this study is to investigate one event involving both of the above-mentioned themes--the formation and application of the Alien Registration Act of 1940. The bill contained two major provisions which were related to those two themes. The provision which makes it illegal to advocate the overthrow of the government by violence reflects the view that democracy should be protected with restrictive legislation. The provisions for the exclusion of certain aliens and the registration of all non-citizens reflect the existence of the xenophobic tradition.

Public attitudes were measured in order to determine the extent to which Congressmen were influenced by the nation's opinions. The sources of public opinion employed were newspapers and periodicals representing both liberal and conservative views. Because of availability and their general manifestation of the liberal and conservative attitudes, respectively, the New York Times and the Oklahoma City Daily Oklahoman were surveyed. The periodicals used--journals of opinion, popular magazines, and professional journals--were also chosen to achieve a variety of attitudes.

For assistance in writing this thesis, the writer expresses gratitude to individuals who contributed much. Special thanks are tendered Professor Theodore L. Agnew, Jr. for his advice and direction which still did not infringe on the individual's creativity. Gratitude is expressed to Professor Sidney D. Brown for his careful preliminary reading of the thesis. Also, thanks are extended to Mr. James M. Poteet for constructive advice and technical assistance.

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CHAPTER I

THE UNITED STATES IN THE 1930's

Depressions usually include conditions of economic insecurity, psychological insecurity, and social dislocation, but the Great Depression of the 1930's was an amalgam of those elements to the most severe degree in the history of the United States. The economic insecurities included not only the banking and business failures, with the resulting unemployment, but they also stemmed from the New Deal remedies for the sick economy. At that time the doctrine of laissez faire as government policy was largely set aside and instead attempts were made to protect the individual as fully as possible from being overwhelmed by industrialized urbanized society. Notable examples of such New Deal agencies were the Tennessee Valley Authority, the Agricultural Adjustment Administration, the National Recovery Administration, and the Social Security Administration. As is typical in a democratic state, the New Deal economic program brought criticism--criticism from those who feared totalitarianism as a result of the strengthened role of the federal government. The critics of the latter persuasion called themselves Jeffersonian Democrats, looking to a mythical past golden age of free enterprise, rural-agrarian individualism, and states rights. Although these people feared that the New Deal solutions for the Depression would lead to totalitarianism and socialism, the capitalistic economy essentially was

preserved.¹

The general unrest and discontent prevalent during the Great Depression were linked to psychological insecurity and social dislocation. The long spells of unemployment were damaging to individual morale and to family cohesion. Human behavior, individually and collectively, was erratic because of the ubiquitous crises. Among the wealthier people, those who were able to face the reality of the situation were forced to live in a manner to which they were unaccustomed. Poorer people found themselves evicted from their dwellings and often had to live in tarpaper shacks and on subsistence-level diets. Many city dwellers moved to the country in hopes of providing themselves with the necessities of life by farming. The northern urban centers were places of settlement for many Negroes who migrated from rural southern areas; the concomitants of these moves were crowded housing conditions and more jobless people seeking employment. Convinced that the country was degenerating morally, many found one more proof in the kidnapping and murder of Charles A. Lindbergh, Jr. With the loss of traditional focal points around which to organize their thoughts and actions, many people began to search for a new set of values.

Political leaders rose to meet the demands of the sick society. One of them was President Franklin D. Roosevelt who, through his personal charm and pragmatic approach, led the country in attempting to solve the problems of the Great Depression. Another was the unscrupulous, blatant demagogue from Louisiana, Huey (Kingfish) Long. "Share Our Wealth," the name of Long's plan, had as its objectives:

¹For a general survey, see William E. Leuchtenburg, Franklin D. Roosevelt and the New Deal, 1932-1940 (New York: Harper & Row, 1963), passim.

Every family to be furnished by the government a homestead allowance, free of debt, of not less than one-third the average family wealth of the country, which means, at the lowest, that every family shall have the reasonable comforts of life up to a value of from \$5,000 to \$6,000.²

The revenue to support this plan was "to come from the reduction of swollen fortunes from the top."³

Others had political solutions as well. Although his attacks later became anti-Semitic and anti-Roosevelt, Father Charles E. Coughlin of the Shrine of the Little Flower, Detroit, in regular radio broadcasts proposed a plan of a guaranteed annual wage and nationalization of banking, currency, and natural resources.⁴ Townsend Old Age Revolving Pensions plan and the corresponding Townsend Clubs, founded by Dr. Francis E. Townsend, had a wide appeal for the aged. His program consisted of a government pension (financed by a sales tax) of \$200 a month to every citizen over sixty to be spent within thirty days of receipt.⁵ Yet, these plans, if adopted by the federal government, could not have solved the Depression problems, for not all segments of the population were included in the benefits.

In the search for security against the dissolution of old values, many Americans, especially the intelligentsia, turned to Marxism. The Norman Thomas Socialists, who agreed with original Marxism and the Leninist interpretations of social and economic inequalities, retained their commitment to democracy and gradualism. Others, seeking to establish

²For further information see Frederick Lewis Allen, Since Yesterday (New York: Harper & Brothers, 1940).

³Ibid.

⁴Ibid.

⁵Ibid.

social and economic equality by revolution, supported the Communist Party. Although they later became disenchanted with Communism when the Soviet Union and Germany signed their Non-Aggression Pact in 1939, many people had found their psychological needs met for several years. Marxian dialectical materialism provided certitudes "while liberalism and conservatism alike mumbled in the corridor."⁶ According to the Marxists, the Depression could be explained as the final collapse of capitalism, which would soon be replaced by a classless utopian society.⁷ Especially in the brief period from 1935 to 1939 did the Communists actively court liberal favor. Under the leadership of Earl Browder, the "Popular Front" movement infiltrated peace groups, youth groups, and organized labor. The honeymoon ended for many of the intelligentsia even before the foreign policy of the Soviet Union became intolerable to them; the rigidity of Marxism disenchanted them.⁸ The Nazi-Soviet Pact of 1939 shattered the illusion that the Soviet Union represented an active program for democracy in the world.⁹ The union of the Nazis and Soviets caused American writers to view the Soviet Union as a terrifying and oppressive monster.¹⁰

The Depression had, of course, affected Europeans and Asians with the same disorders as the United States, but the solutions differed. For Germany and Italy, fascism had become the panacea. When early in the

⁶Arthur M. Schlesinger, Jr., The Politics of Upheaval (Boston: Houghton Mifflin Company, 1960), p. 165.

⁷Merle Curti, The Growth of American Thought (New York: Harper & Brothers, 1951), p. 731.

⁸Leuchtenburg, 282.

⁹Norman Holmes Pearson, "The Nazi-Soviet Pact and the End of a Dream," America in Crisis, Daniel Aaron (ed.), (New York: Alfred A. Knopf, 1952), 342.

¹⁰Ibid., 344.

1920's Italy was suffering from economic and other disorders, Mussolini marched his troops triumphantly into Rome. The Nazi government came to power in Germany in 1933 as a result of the charismatic Hitler's rise. Using religious symbols and myths of racial origins, fascists in both Italy and Germany played on the national consciousness of their populations to gain support for solving domestic economic problems with the thrill of foreign conquest. Under the guise of providing relief for population pressure in Italy, Mussolini invaded and conquered Ethiopia in 1935 despite the feeble protests of the League of Nations. Germany re-armed and marched into the Rhineland in 1936; this was the beginning of a series of Nazi territorial aggressions. In Japan the militarists whose rise to power was made possible by peculiar features of the nation's constitution, were using myths of Japanese national origins and racial supremacy to gain support for aggressions in Manchuria and China.

After the autumn of 1938 the world seemed to be on the brink of war. The Japanese armies had forced Chiang Kai-shek's Nationalist government to retreat to Chungking in China's inland. After several years of attempting annexation of Austria by strong-arm tactics against the nation's leadership and by propagandizing, the German army achieved Anschluss in March, 1938. But a short interval separated the fall of Austria from the dismemberment of Czechoslovakia at the Munich conference and the German military occupation invasion of that nation. Then, in the autumn of 1939, Germany invaded Poland. Accompanying almost all of Hitler's moves were violent anti-Semitic pogroms, the worst of which were in October, 1938.

In the United States worried citizens scoured the country for portents of fascism at home. Their searches reflected insecurity and unrest brought on by the setback of the New Deal recovery programs in the

recession of 1937 as well as by the fierce struggles in Europe and Asia. Americans were disturbed by what they found, for the Nazi organization was serving as the prototype for similar groups in America. The Khaki Shirts, organized in 1933 by Art J. Smith, were uncovered again and re-evaluated. Obsessed with the dangers of the "international Jew", the Silver Shirts, organized in 1933, used mystical and military trappings reminiscent of the Nazi SS to appeal to ignorant and insecure people. The organizational arm of Father Coughlin's Movement, the Christian Front, was especially active in 1939 with its anti-Semitic propagandizing and plotting for an armed coup.¹¹ In the later 1930's, fundamentalist minister Gerald B. Winrod of Wichita, Kansas, published and broadcast the evils of the alleged "Jewish conspiracy." To Winrod, convinced that Hitler's ideas and approaches were correct, the Jew was responsible for the economic miseries of the country and the threat of communism. Involved in intimidations and other acts of violence, the Black Legion, similar in nature and appeal to the Ku Klux Klan, carried its extra-legal fight against the Republican and Democratic parties into the industrialized areas of Michigan, Indiana, and Ohio. The main appeal of the group was nativism--anti-Negro, anti-Semitic, and anti-Catholic.¹² Numerous similar organizations sprang up; among them were the Black Guard, the United Brotherhood of America, the Crusaders for Economic Liberty, and the American Vigilantes.¹³ The fears of those Americans who saw danger in the fascist movements were probably exaggerated, for,

¹¹Schlesinger, 79-81, 91.

¹²Morris Janowitz, "Black Legions on the March," America in Crisis, Daniel Aaron (ed.), (New York: Alfred A. Knopf, 1952), p. 314.

¹³
Schlesinger, 81.

though the potential existed, the leaders of the groups were unable to mobilize their forces enough to undermine democratic institutions.¹⁴

Americans searching for something to fear found their suspicions confirmed by the reports of the House Committee on Un-American Activities, which had as its chairman Martin Dies of Texas. Formed in June, 1938, the Dies Committee became front-page news starting in August of that year when the testimonies of its first hearings were publicized. At those hearings witnesses claimed that there were Communists in the Federal Theater and Federal Writers' Projects, and that subversive activities were being conducted by the German-American Bund in conjunction with the German government. From that time on, the headlines of American newspapers screamed with reports of the Dies Committee's often unsupported charges of Communists having infiltrated all aspects of American society.¹⁵ Not unlike the later McCarthy investigations of the 1950's, the Dies investigations implicated such innocuous groups as the Boy Scouts and the Camp Fire Girls.¹⁶

Further portents of danger were found in the sometimes radical-

¹⁴Janowitz, 305-307.

¹⁵Ibid., 307; Schlesinger, 82. Schlesinger described the "seediness of the movements in which two-bit demagogues, part racketeers, part prophets, preyed upon simpletons and deadbeats." Janowitz found that the leaders of the nativist movements were lower middle-class in origin, their lives were marked by constant occupational troubles, and that they had psychopathological problems such as paranoia and megalomania. His studies also revealed that the average member of the Black Legion was of Anglo-Saxon descent, male, had two children, lived in an industrial suburb, and was unable to adjust to depending on the W.P.A. for occupation at an unskilled job.

¹⁶

August Raymond Ogden, The Dies Committee (Washington: The Catholic University of America Press, 1945), pp. 47-73.

appearing activities of organized labor. Bargaining power had been protected by section 7a of the NIRA and the Wagner Act, and as a consequence organized labor became a social, economic, and political power. When the American Federation of Labor did not pursue mass organization effectively enough to meet the demands of the militant John L. Lewis, the latter helped form the Committee for Industrial Organization, which seceded from the AF of L in 1935. The separation of the CIO marked the beginning of a firmer move for recognition for unionism. Oftentimes, however, the struggle for power involved violence. Strikes now included sit-downs, wildcat outbreaks, and pitched battles with the police. During the winter of 1936-1937, the CIO struck at General Motors by means of the sit-down; violence broke out with the police being beaten off in their attempt to storm the plant.¹⁷ Another example of violence in the struggle for unionism occurred within the steel industry. In 1937, the leaders of Little Steel--Bethlehem, Republic, National, Inland, and Youngstown Sheet and Tube--refused to sign contracts with the CIO. The strike which followed was highlighted by protection for loyal workers with grenades and guns, delivery of supplies by plane to those remaining within the plants, and fatalities in South Chicago when picket lines were dispersed by police.¹⁸ To many Americans, these signs of industrial friction were frightening.

Even President Roosevelt was an object of suspicion to those who saw the growth of federal authority as one step from totalitarianism. They viewed with horror his attempt to enlarge the Supreme Court. Roosevelt was likewise execrated for his foreign policy which appeared to be

¹⁷Leuchtenburg, 280.

¹⁸Allen, 287-290.

singlehandedly bringing the United States into war. Attempting to make democratic government more effective, efficient, and unified, Roosevelt in 1938 requested of Congress a bill for the reorganization of the federal government. Through this bill many thought the President revealed his aspirations to become a dictator. Some Congressmen in the vigorous debate over the measure expressed the fear that Roosevelt was trying to usurp Congressional prerogatives.¹⁹

The insecurities and fear brought on by the great Depression caused the American people to react in unusual ways; they looked for signs of security, and yet they abused the instruments of a democratic society. In an atmosphere that had the potential to develop into fascism, Americans accused, investigated, and were intolerant. Their representatives diligently tried to legislate security for their constituents, while the pleas and protestations of those defending American civil liberties seemed like whispers. When Hitler's armies attacked western Europe early in 1940 the noise of the accusations, investigations, and demands for legislation grew to thunderous proportions.²⁰ Finally, in July of that year a specific piece of legislation was signed by the President in order to protect Americans from the dangers of infiltration and to provide them with the security citizens felt they needed. This bill was the Alien Registration Act.

¹⁹Ibid., 292-293.

²⁰Leuchtenburg, 277-279.

CHAPTER II

THE NATURE OF THE BILL AND ITS LEGISLATIVE HISTORY

On June 28, 1940, the first peace-time sedition statute since 1798 became law when the Alien Registration Act of 1940 was approved.¹ Consisting of four titles, the act in some ways resembled previous war-time sedition laws, particularly the Espionage Act of 1918. The first title of the 1940 statute prohibited certain subversive activities such as interfering with the loyalty of the military forces either by giving advice or by distributing literature; the Espionage Act of 1918 had contained a similar provision. This same title also stated that it was unlawful for a person to advocate the overthrow by force or violence of any government in the United States; this provision, also, was a near duplication of a section of the 1918 Act. Distribution of literature and the organization of societies for subversive acts were also declared illegal in the 1940 act but did not have parallels in the 1918 Act. Provisions were also included for confiscating and penalizing possession of supposedly subversive materials. The second title was an amendment to the Immigration Act of 1917 in that the number of categories of aliens eligible for deportation was increased. Registration and fingerprinting of aliens by the Department of Justice, along with the mechanics of the procedures and penalties for infringement, constituted the essence of the third title. The fourth title included the short title of the bill,

¹U.S., Statutes at Large, LIV (1939-1941), 670-676.

"Alien Registration Act, 1940" and a separability clause which stated that if any part of the Act were held invalid the remainder would not be affected.

During the first session of the 76th Congress, which lasted from January 3 to August 5, 1939, the bill which became the Alien Registration Act of 1940 was one of several which would have restricted or regulated aliens. In that one session of Congress, at least eleven bills for the restriction of aliens were introduced in the Senate, and thirty-one bills, many of which were overlapping in provisions and purposes, were introduced in the House of representatives. Apparently because of the quantity and repetitiveness of the measures, Congressman Howard W. Smith (Dem., Virginia) tried to combine the basic principles of many into one comprehensive act.² In addition to approximately ten bills which provided in some fashion for the registration of aliens, other bills proposed deportation of certain aliens, prohibited commuting of aliens from foreign countries contiguous with the United States, and even pronounced a moratorium on immigration to the United States. However, this brief summary does not give a clear indication of the actual flood of anti-alien legislation that had been before the Congress, for many such bills had been introduced in the national legislature during 1938, and action was still pending on them when the 75th Congress expired January 3, 1939.

Understanding the motivation of the Congressmen in approving the Alien Registration Act of 1940 can partially come from studying the movement of the bill through Congress. On March 30, 1939, Representative Smith introduced in the House of Representatives H. R. 5138, "Crime to

²U.S., Congress, House, Subcommittee of the Committee on the Judiciary, Hearing, Crime to Promote Overthrow of Government, 76th Cong., 1st Sess., 1939, 71.

Promote Overthrow of Government." Among his introductory remarks was the statement that he felt a majority of Americans would want legislation of that nature to "curb, prohibit, and punish some of those most flagrant, offensive, persistent, and organized subversive movements against our constitutional form of democratic government."³ He further expressed need for this bill by explaining that there were "millions of loyal American citizens" who showed concern over the existence and prolific distribution of subversive publications, the presence of agents of foreign governments attempting to undermine the United States government, and the slowness of Congress in taking action to prohibit and punish those engaged in activities so dangerous to the country.⁴ At the time of the introduction the measure was referred to the Committee on the Judiciary. The act as introduced by Congressman Smith contained five titles.

Title I

section 1 makes it unlawful to advocate overthrow of the government by force.

section 2 makes it unlawful to publish or distribute literature advocating overthrow of the government by force.

section 3 makes it unlawful to defend by words or writing the assassination of any officer of the government.

section 4 makes it unlawful to affiliate with any organization advocating overthrow of the government by force.

Title II

section 5 makes it unlawful to organize or join civilian military organizations without a license from the Secretary of War.

section 6 provides that the Secretary of War may investigate such organizations and require statement of purposes and objects under oath.

section 7 is a definition of civilian military organizations.

section 8 contains exceptions.

section 9 makes it unlawful to advise members of the Army or Navy to disobey orders.

section 10 gives power to seize literature advising members of the Army or Navy to disobey orders.

³U.S., Congressional Record, 76th Cong., 1st Sess., 1939, LXXXIV, Part 3, 2971.

⁴Ibid., 2972.

section 11 defines Army.

Title III

section 12 denies naturalization to persons who advocate any other form of government for the United States.
 section 13 prohibits aliens from commuting to United States for employment.
 section 14 provides for deportation of criminal aliens.
 section 15 provides for registration of aliens.
 section 16 details how to register.
 section 17 deals with the immigration service requiring registration.
 section 18 deals with fingerprinting aliens.
 section 19 deals with forms for registration.
 section 20 sets first registration within 60 days.
 section 21 provides commissioner of immigration to keep records.
 section 22 deals with deportation for failure to register.

Title IV

section 23 makes it unlawful to attempt or to conspire to violation of the act.
 section 24 provides for punishment and deportation of any aliens violating the act.
 section 25 provides that any country refusing re-entry to deported aliens will have its immigration quota suspended.

Title V

sections 26 to 31 provide for internment of certain aliens and enlarge jurisdiction of circuit courts of appeals in certain cases.⁵

With a few exceptions, the original bill was similar to the Alien Registration Act as it is known today. The more notable differences were found in Title II of the Smith bill, in which a person was not to be able to organize or be a member of a civilian military organization which did not have a permit to function from the Secretary of War; other notable differences were in Title V by which the Secretary of Labor would have been authorized to establish, maintain, and operate places of detention for those aliens who were eligible for deportation but whose countries would not accept their return. These provisions were not included in the law as eventually passed.

After an interval of about two weeks, a subcommittee of the House

⁵Ibid.

Committee on the Judiciary sat for hearings, with Sam Hobbs (Dem., Alabama), acting chairman, presiding. Beginning their session at 10:00 on the morning of April 12, 1939, the subcommittee heard, on that day and in the afternoon of April 13, five sets of testimony criticizing the bill and ten statements which approved of the bill.⁶ Generally speaking, the testimony given represented the dilemma of the yet-unanswered question of how best to preserve democracy--by attempting to eliminate potential threats, or by allowing them freely to exist.

Among those who criticized the bill was Osmond K. Fraenkel, representing the American Civil Liberties Union and the view that democracy can best be preserved by allowing its participants freedom of activity. Fraenkel said that the American Civil Liberties Union was opposed to Title I of the bill because that organization felt it was a seditious law dangerous to American's rights of free speech, free assembly, and free worship. To support his stand, Fraenkel stated that "if you enact legislation of this kind, you encourage informers, you encourage persecution, you encourage hysteria; and above all things, now is the time for us to keep our heads clear and cool."⁷ A letter written by Professor Henry Steele Commager to the New York Times was presented by Fraenkel to the committee as further evidence that bills of that nature were inimical to the freedoms guaranteed in the first amendment to the Constitution.⁸ In

⁶It should be noted that the number of witnesses invited to give testimonies might have been limited before the hearings began, for acting chairman Hobbs said, at the end of the first day of hearings, "we are not inviting any additional testimony, but if anybody has been overlooked that we think should be called, we will be happy to make an exception in his case at that time [on April 13, 1939]." U.S., Congress. House, Hearing, 1939, 79.

⁷Ibid., 11.

⁸When Fraenkel asked to present Commager's letter to the committee, Chairman Hobbs asked, "Who is Mr. Commager?" Fraenkel replied "he is a

addition to other criticisms of the bill, Fraenkel stated his group's objected to the third title because it restricted aliens who, if they had legal entry to the United States, should have the same rights of expression as Americans.⁹ Speaking of the provision for registration of aliens, Fraenkel said it was "a form of governmental control of freedom of movement of individuals, which we have always deplored and which we have never heretofore engaged in."¹⁰

Representing the Foreign Language Information Service at the hearings was Read Lewis, who also presented objections to Smith's bill which were mainly directed toward the section dealing with aliens. Some parts of the bill were opposed because of their repetitious nature, others because of possible harmful effects. For example, section 14 of Title III was held objectionable because it could be so misconstrued as to lead to inhumane prosecution. Thus an alien might be deported for "spitting on the sidewalk or any other public place."¹¹ Registration provisions were also objectionable to Lewis' group, since registration would not accomplish its purpose of apprehending the criminal alien; further, registration would actually harm alien women who, already scorned by their children for their foreignness, would tend to lose the remaining reins of control over their families. The resulting breakdown in discipline would lead to an increase in delinquency and crime.¹²

Ralph Emerson, representing the Maritime Unions of the Committee for

historian of considerable note, and frequently writes articles for the New York Times." Ibid., 7.

⁹U.S., Congress. House, Hearing, 1939, 12.

¹⁰Ibid., 14.

¹¹Ibid., 20.

¹²Ibid., 23.

Industrial Organization, also objected to the bill, mainly to its phraseology. Title V, he maintained, included an implication of the establishment of a concentration camp; he wondered "if the First Congress of the United States had passed such a bill as this, just how many of us would be in this room today."¹³

Another dissenter at the hearings with a slightly different view on the problem of how best to preserve democracy was J. F. Harrington from the Department of State. Using letters from Senator Richard B. Russell (Dem., Georgia) to Secretary of State Cordell Hull and from Hull to Congressman Samuel Dickstein (Dem., New York) to substantiate his department's opinion, Harrington expressed concern over the potential effect the sections limiting aliens would have on relations with foreign countries. American citizens abroad might even feel the pressure of reciprocal action by foreign governments.¹⁴

The statements of James L. Houghteling, Commissioner of Immigration and Naturalization, also denounced Smith's bill. Not only did Houghteling express the need for clarity of language in the act, but he also objected to Title III, section 14, subdivision 7, which stated that aliens engaged in "domestic political agitation" would be eligible for deportation.¹⁵ Houghteling expressed concern that the interpretation of this section might be expanded to include activities of a purely local level having nothing to do with the Federal government.¹⁶ He also objected to having a provision for the registration of aliens because he

¹³Ibid., 40.

¹⁴Ibid., 63.

¹⁵Ibid., 67.

¹⁶Ibid.

felt it would "serve to set the non-citizen, foreign-born in a class apart from the rest of the community and convey to them the impression that they are unwelcome, treated as inferiors, and discriminated against."¹⁷

On the other hand, several witnesses at the hearings presented arguments favoring the passage of the proposed act. Many of these opinions represented the view that democracy can best be preserved by placing limits on or by eliminating potential threats. Among defenders of the bill and its underlying philosophy was John Thomas Taylor, Director of the American Legion's National Legislative Committee, who not only expressed approval of the bill for its correlation with the Legion's Americanism program, but also presented the resolutions adopted by the American Legion at its 1938 national convention.¹⁸ These resolutions called for Congressional action very similar to the provisions of the legislation proposed by Smith.

Also present at the hearings to convey approval was the bill's author, Howard Smith. He justified the bill as needed because "the country is demanding some legislation that will stop these subversive activities and which will provide for the deportation of aliens who are here wrongfully, and will restrict those who are coming unlawfully."¹⁹ When asked by Congressman Hobbs if the act essentially provided for compulsory naturalization, Smith adamantly stated that naturalization was not compulsory in that an alien could return to his native country if he

¹⁷Ibid., 68. A letter from the American Committee for Protection for Foreign Born was submitted as representative of another force of opposition. Ibid., 76, 77, 78.

¹⁸Ibid., 15.

¹⁹Ibid., 73.

did not intend to become a citizen.²⁰

Representing the Commandery General of Sons of America, Incorporated, and other organizations, James H. Patten approved the bill, saying that the nature of organizations criticizing it must be taken into consideration. The American Civil Liberties Union and the Foreign Language Information Service both had been engaged in un-American activities, according to Patten.²¹ Thus, having attempted to destroy the opposition and having implied his version of the nature of democracy, Patten went on to say that Congress should handle the problem of aliens "for the benefit of America and Americans, for our native-born and naturalized here, and that whatever is done should be done to protect our workingmen in their standards and wages, our social and living conditions, and our economic and social and political structure, instead of for the benefit of any foreign land or foreigner."²²

The American Coalition, said to consist of one hundred fifteen patriotic societies, sent John B. Trevor to the hearing as its representative. Relaying the organizations' view that such legislation was necessary, Trevor cited materials purchased in a Communist bookstore in New York City as proving an interlocking relationship between the Communist International and the American Communist Party.²³ Moreover, Trevor summarized a survey he had made indicating that foreign countries had

²⁰Ibid., 75. At this time Smith was asked if he would object to the administration of the bill being transferred to the Department of Justice. He expressed no disapproval of this suggestion. Ibid., 73, 74.

²¹Ibid., 43, 44.

²²Ibid., 59.

²³Ibid., 84.

immigration laws protecting their own laborers; the United States should retaliate by temporarily suspending all immigration.²⁴ Pressing his point further, he related a personal experience. He had had contact with a group of forty aliens who "represented just every type of people that we would not want for citizens in this country under any consideration. They were perfectly appalling in their whole attitude of mind toward our government, even if they might not have been deportable under the law."²⁵

Favorable opinions of the proposed legislation were presented in letters by officials of the United States government and by members of the military services. One letter submitted was written by the National Secretary of the National Council, Junior United American Mechanics, James L. Wilmeth; this letter stated that aliens were a threat to the economic situation and to American democratic institutions.²⁶ Upholding its reputation for traditionalism, the United States Navy's Office of the Judge Advocate General sent Lieutenant Ira H. Nunn to render support to the Smith Act. Nunn's testimony revealed that the Navy had drafted a bill which had been approved by the Bureau of the Budget, the Secretary of State, the Attorney General, and the Secretary of War, and had been earlier submitted to this Congress. Sections 9, 10, and 11 of the Smith Act embodied this proposed legislation.²⁷ Commander Albert Eledsoe, from the Bureau of Navigation of the Navy Department, substantiated the need for Congressional approval of the Smith Act by presenting a newsclipping from a February 25, 1937, Los Angeles paper which reported that two women were

²⁴Ibid., 87.

²⁵Ibid., 91.

²⁶Ibid., 94, 95, 96.

²⁷Ibid., 25.

apprehended aboard a battleship for distributing circulars of a subversive nature. Hledsoe found it lamentable that the women were released because of "lack of legal machinery" to prosecute them.²⁸

Speaking for the Army were Major S.G. Henry and Lieutenant Colonel R.C. Smith, both of the General Staff, War Department. Major Henry gave support to the proposed legislation by stating that he agreed with the purposes of sections 5, 6, 7, and 8.²⁹ Agreeing with the views presented by the representatives of the Navy, Lieutenant Colonel Smith said, "I simply state that we feel in the War Department that existing law is inadequate to curb subversive propaganda...."³⁰ The two Congressmen who spoke favorably of the bill were John J. Dempsey (Dem., New Mexico) and J. Will Taylor (Rep., Tennessee). Dempsey said, "I think we have reached the point where we should no longer suffer these various elements to come here and advocate a change in our government, whether it be overthrow of the government by force and violence or by propaganda. The effect is just the same."³¹ Congressman Taylor mentioned his proposed bill, the major provisions of which had been included in Smith's act; Taylor urged passage of a law requiring aliens to be fingerprinted in order effectively to enforce immigrations' status.³²

In the legislative history of the measure proposed by Congressman Smith, two other events occurred before the bill was fully debated by the House of Representatives. On June 19, 1939, Congressman Hobbs

²⁸Ibid., 28.

²⁹Ibid., 36.

³⁰Ibid.

³¹Ibid., 27.

³²Ibid., 92, 93.

reported the bill out of committee, at which time it was referred to the Committee of the Whole House on the State of the Union.³³ Then, a short-lived debate occurred on July 19, when Congressman Dickstein requested that the bill be referred to the Committee on Immigration. On this point, the Speaker of the House, William B. Bankhead (Dem., Alabama), stated that such a request should have been made while the bill was still with the Committee on the Judiciary.³⁴

Immediately after the Speaker handed down his decision on the committee placement of the bill, debate began with Congressman J. Will Taylor making the opening remarks. Mentioning as problems the number of aliens who have not become citizens, the recent demonstration of the German Bund in Madison Square Garden, and the threat of subversive influences to the United States government, Taylor suggested that legislation such as registration of aliens be enacted to meet those problems.³⁵ Opposing statements which reflected a differing philosophy of how to preserve democracy were made by Congressman Donald O'Toole (Dem., New York), Vito Marcantonio (American Labor, New York), John M. Coffee (Dem., Washington), Samuel Dickstein (Dem., New York), Emanuel Celler (Dem., New York), and Lee E. Geyer (Dem., California).

As an example of a specific statement of opposition, Coffee said "in this country of late it has been the fashion to direct our javelins of attack at the helpless alien non-citizen."³⁶ Another more vituperative attack was that of Geyer in which he said, "let us recognize this

³³U.S., Congressional Record, 76th Cong., 1st Sess., 1939, LXXXIV, Part 8, 8343, 8344.

³⁴Ibid., Part 9, 9532.

³⁵Ibid., 9533.

bill for what it is, an attempt to put an end to the trend toward real democracy. It is an attempt to break the labor movement that is just now gaining so fast in membership. It is an attack on a minority group, the alien."³⁷ The closing remarks of that day's discussion were given by Representative Frank Keefe (Rep., Wisconsin), who supported the bill because he felt Americans needed protection from "the un-American activities of aliens."³⁸ Then the question was ordered to agree on the resolution. After agreeing to the resolution the House tabled a motion to reconsider it.³⁹

The actual House debate on the bill began on July 18, when Congressman Celler moved for a Committee of the Whole House on the State of the Union. After the procedures of a roll call for a quorum and of a reading of the bill were dispensed with, Representative Hobbs described the need for the proposed legislation in terms of the threat of subversive influences to national security.⁴⁰ He emphasized the threat of forces seeking to undermine the loyalty of the military services and the danger of the presence of criminal aliens, especially those carrying firearms, in the United States.⁴¹ Questions asked of Hobbs indicated that many representatives held the view that in order to preserve democracy limits should not be imposed. Among Congressmen representing this view were Celler, who wondered if possession of certain firearms might mean

³⁶Ibid., 9535.

³⁷Ibid., 9540.

³⁸Ibid.

³⁹Ibid., 9541.

⁴⁰Ibid., Part 10, 10357.

⁴¹Ibid., 10358.

deportation without a trial, and Marcantonio, who pointed out that the Supreme Court had decided in the Gitlow case that advocating overthrow of the government was not an offense.⁴² Along these same lines, Geyer wondered if the bill might be an infringement on freedom of speech.⁴³ To this question Hobbs replied, "the abuse, not the use, of freedom is inhibited."⁴⁴

In addition to Hobbs, several Congressmen gave supporting arguments for the bill. One of these, demonstrating his belief that democracy could be preserved by having limits placed on potential threats, was Charles F. Risk (Rep., Rhode Island). He said that because of the current economic conditions the American people were susceptible to the "wiles and machinations of those forces seeking to tear down everything for which this country has fought for a century and a half."⁴⁵ In order to prevent disruption, Risk felt it was necessary to remove all of the alien agitators.⁴⁶ Also supporting the bill and its philosophy was Congressman Usher L. Burdick (Rep., North Dakota). The problem of aliens taking advantage of the profits and protection available in the United States but not accepting the responsibilities of citizenship needed to be eliminated, according to Burdick.⁴⁷ Stating that the bill was aimed to apprehend those people wanting to subvert the government, Congressman William P. Elackney (Rep., Michigan) also supported the measure and

⁴²Ibid., 10359.

⁴³Ibid.

⁴⁴Ibid.

⁴⁵Ibid., 10363.

⁴⁶Ibid.

⁴⁷Ibid., 10365.

commended the veterans' organizations asking for such legislation, for "they recognize the proposition that these aliens unlawfully here, preaching their nauseating doctrine of hate, should be deported."⁴⁸ In a histrionic plea, Representative John M. Robison (Rep., Kentucky) also verbally supported the proposed legislation.⁴⁹ Further defense was provided by Representative Stephen Bolles (Rep., Wisconsin) through a discourse on the history and nature of communism. Congressman Chauncey W. Reed (Rep., Illinois) expressed need for the measure because of the threat of subversives, and to substantiate his argument suggested that Haymarket Square in Chicago serve as a reminder of the dangerous activities of anarchists.⁵⁰ Among the other Congressmen supporting the bill was John W. McCormack (Dem., Massachusetts), who had been a member of the subcommittee of the Committee on the Judiciary.

Interspersed with the arguments of the supporters were the arguments of those who opposed the bill. Representative Joseph E. Casey (Dem., Massachusetts) was one Congressman who opposed the measure in the debate because bills limiting activities to preserve democracy were, to him, "undemocratic in principle."⁵¹ He also stated that most aliens were desirable potential citizens because they had a far greater appreciation of democracy than most Americans.⁵² Rather than trying to legislate away the threat to liberty and democracy, Congressman Jerry Voorhis (Dem., California), took a slightly different view, that the dangers would be

⁴⁸Ibid., 10365, 10366.

⁴⁹Ibid., 10366.

⁵⁰Ibid., 19372.

⁵¹Ibid., 19373.

⁵²Ibid.

dispelled by solving current economic problems. Voorhis also stated:

. . . the political philosophy of this bill is that you can treat aliens unjustly without taking the next step and treat citizens the same way; that you can stamp out subversive activities by passing loosely drawn legislation aimed to scare people; and that once a person has made a mistake he can never, never correct it or make up for it in the mind of the United States Congress.⁵³

A further statement of opposition was made by Representative Eberharter (Dem., Pennsylvania), who said that passage of the measure would be an admission of a lack of confidence in the loyalty of the armed forces.⁵⁴ Congressman Celler was also critical, stating that the aliens' problem, if there was one, could be solved better by assimilation of the aliens, rather than by passing a bill.⁵⁵ In searching for the reason for the large amount of anti-alien legislation pending before the Congress, Celler said "we always seek a scapegoat in times of stress, in times of depression; and just because we want to seek a scapegoat, we put all of the blame for the ills of the Nation on the aliens, little realizing that the citizen likewise is to blame for those ills."⁵⁶ Other Congressmen representing the opposition were Abe Murdock (Dem., Utah) and Marcantonio, who said that the act contained a "reactionary philosophy."⁵⁷

The comic relief of a reductio ad absurdum was provided in the midst of the debate by Congressman O'Toole in his proposed amendment to the bill. The amendment read:

⁵³Ibid., 10375.

⁵⁴Ibid., 10381.

⁵⁵Ibid., 10362.

⁵⁶Ibid., 10372.

⁵⁷Ibid., 10370.

It shall be unlawful for any person connected in any capacity with the Army, Navy, or the Coast Guard of the United States shall be [sic] prohibited from reading any newspaper, book, magazine, or other publication including the Bible and Congressional Record, while in said service.⁵⁸

O'Toole said he presented this amendment to show the type of legislation they were considering, and surprisingly enough, there were some Congressmen who rose to the occasion and debated the amendment. Eventually the amendment was defeated, and after a few more arguments on the proposed legislation were heard, that of Representative Smith included, the chairman of the Committee of the Whole House reported that the committee had come to no resolution on the bill.⁵⁹ Thus, the debate for that day on H.R. 5138 came to a close.

Debate was resumed the next day, July 29, after Congressman Hobbs moved that the House again resolve itself into the Committee of the Whole. Much of the time in this rather brief discussion was spent discussing and voting on amendments which would change the phraseology of the bill. Few of these amendments were approved, one of these being Smith's amendment to restore Title I as it had been in the original act before being revised by the committee.⁶⁰ Originally Title I prohibited advocating violent overthrow of the government and interfering with the loyalty of the Armed forces. Three times during the discussion, Hobbs moved to close the debate in ten minutes. The third motion by Hobbs received no objections, and thus debate was closed and the Committee rose.⁶¹ The

⁵⁸Ibid., 10376.

⁵⁹Ibid., 10385.

⁶⁰Ibid., 10452. Title I prohibited certain subservice activities such as interfering with the loyalty of the military forces and advocating the violent overthrow of the government.

⁶¹Ibid., 10454, 10455.

Speaker then ordered the bill to be engrossed and read a third time. After the bill was read for the third time, Marcantonio moved that the bill be recommitted. Although the motion was tabled, the division of opinion revealed in the roll call taken on the motion is significant. The actual count was yeas 48, nays 272, answered "present" 1, and not voting 107.⁶² Of the 48 yeas to recommit, 40 were Democrats, 5 were Republicans, 2 were Progressives, and 1 represented the American Labor Party. Because Burdick and Lemke, radicals from North Dakota, and Tinkham, conservative from Massachusetts, were among the 5 Republicans who voted to recommit, it can be assumed that they disapproved of this bill as they did much of President Roosevelt's legislation. Many of the Democrats who voted to recommit the bill represented urban areas such as New York City, Los Angeles, and Chicago, which contained large blocs of constituents having ethnic identifications. Some of the Congressmen themselves--D'Alesandro, Gehrman, McKeough, Sirovich, Tenerowicz, Marcantonio--also might have disapproved of the bill because of their own obvious ethnic identifications. Others disapproved of the bill because they generally were committed to the liberal persuasion, and this bill represented an infringement on Americans' civil liberties.

The House consideration of the Smith bill ended after Marcantonio's motion to recommit was tabled, for then the House voted approval of the entire measure. Permission to insert a new title was granted Hobbs, and thus the House consideration of the Smith Act temporarily terminated.⁶³

Next Smith's proposed legislation was considered in the Senate. Having received word that it had been passed by the House, the Senate

⁶²Ibid., 10455-10456.

⁶³Ibid., 10456.

referred it to the Committee on the Judiciary on July 31.⁶⁴ Five days later, Senator Tom Connally (Dem., Texas) reported the bill out of committee with no amendments.⁶⁵

Between August, 1939 and June, 1940, when the Senate debate of the measure began, the Senate Committee on the Judiciary made few reports of its progress on the bill. The committee had not been inactive, however, for on January 18, 1940, Senator Danaher reported that the committee at its "regular meeting on Monday" had decided that the bill be recommitted.⁶⁶ In the atmosphere of international crises, on May 29, 1940, Connally reported the bill out of committee, this time with amendments. As the international situation became more critical, the committee probably felt it necessary to reconsider again and make further changes, for on June 6, Connally asked for permission to withdraw the previous report on the Smith Act and to submit a substitute report. There were no objections to Connally's request.⁶⁷ In describing his substitute which he submitted on June 10, Connally said that it was actually an amendment which would serve as a substitute for the original bill. He also stated that he thought the measure would "have a very fine effect on the public mind, and assured the public that Congress is doing something about the so-called 'fifth column' and in correcting subversive activities."⁶⁸

Senate debate on the bill began on June 15 when Senator Connally's

⁶⁴Ibid., 10486.

⁶⁵Ibid., 11124.

⁶⁶Ibid., LXXXVI, Part 1, 473.

⁶⁷Ibid., LXXXVI, Part 7, 7649.

⁶⁸Ibid., 7818. The term "fifth column" refers to groups engaged in subversive activities within the existing structure of government.

motion to proceed to the bill received no objections. After Connally opened the discussion, the cursory debate was punctuated with questions, mainly for clarification, directed to Connally.⁶⁹ As an example of the type of discussion, Senator Richard B. Russell (Dem., Georgia) said that criminal aliens should be deported, but that he thought they would be the ones neglecting to register. Connally's reply was that registration would be handled by local post offices, and thus the local postmasters would be under local pressure to ensure registration of all aliens.⁷⁰ Also speaking in defense of the bill were Senators John A. Danaher (Rep., Connecticut), another member of the Committee on the Judiciary, and Henry F. Ashurst (Dem., Arizona) who expressed thanks to the committee for their work on the bill.⁷¹ After an amendment introduced by Senator Walter F. George (Dem., Georgia) was approved, the substitute bill was passed and a conference committee consisting of Connally, John E. Miller (Dem., Arkansas) and Danaher was appointed.⁷² Meanwhile the House, which disagreed to the Senate amendments on June 17, had appointed its conference committee composed of Hatton W. Sumners (Dem., Texas), Hobbs, and Clarence Hancock (Rep., New York).⁷³

⁶⁹Ibid., Part 8, 8344; at that time Connally stated that the Solicitor General and the Commissioner of Immigration and Naturalization had expressed a need for registering and fingerprinting aliens.

⁷⁰Ibid.

⁷¹Ibid., 8345; during the course of the debates, Senator Warren Austin (Rep., Vermont) said that, according to a poll, the minority members unanimously approved of the measure.

⁷²Ibid., 8347. It should be noted that at no time was a roll call vote taken in the Senate. Apparently the international crises of 1940 reduced the amount of potential dissent.

⁷³Ibid., 8426.

The conference committee worked swiftly, enabling Connally to submit on June 21 a conference report which was ordered to "lie on the table."⁷⁴ Later the same day Miller's motion that the Senate consider the report was approved, and discussion of it began once more. It was noted that the bill as it appeared in the conference report was substantially the same as the one previously passed in the Senate except for three minor amendments; two were technical, and one changed an amendment earlier made by Senator Russell. It was also noted that the House had accepted those amendments; the Senate then approved the amended measure without a roll call vote.⁷⁵ The next day, June 22, acting on the request of Hobbs, the House considered the conference report. After Hobbs, Francis E. Walter (Dem., Pennsylvania), and Howard Smith defended the bill, Vito Marcantonio made a last-ditch stand in which he said, "I maintain that the philosophy advanced under this bill, a bill which enacts into law a military disaffection bill, which now provides for the registration of every non-citizen in the United States, represents that philosophy of restricting liberty and freedom in America."⁷⁶ Celler, too, expressed his disapproval of the measure but said he would vote for it out of fear of getting a worse one.⁷⁷ When the debate closed, the House voted on the Alien Registration Act with the tally being 383 yeas, 4 nays and 45 not voting.⁷⁸ On June 25, 1940, the speaker of the House

⁷⁴ Ibid., 8832.

⁷⁵ Ibid., 8952.

⁷⁶ Ibid., 9034.

⁷⁷ Ibid., 9035.

⁷⁸ Ibid., 9036.

signed it, and President Roosevelt signed the bill on June 28.⁷⁹ Thus, Representative Smith's bill, which represented the philosophy that democracy is best preserved by limiting its participants' activities, became law.

⁷⁹Franklin Delano Roosevelt, Public Papers and Addresses of Franklin D. Roosevelt, Compiled by Samuel I. Rosenman (New York: Macmillan Co., 1941), IX, 274-275. Accompanying his endorsement the following statement was issued by President Roosevelt on June 29, 1940:

The Alien Registration Act of 1940, which I have just signed, should be interpreted and administered as a program designed, not only for the protection of the country but also for the protection of the loyal aliens who are its guests. The registration and identification of approximately three and one-half million aliens who are now within our borders do not carry with them any stigma or implication of hostility towards those who, while they may not be citizens, are loyal to this country and its institutions.

Most of the aliens in this country are people who came here because they believed and had faith in the principals of American democracy, and they are entitled to and must receive full protection of the law. It is of the utmost importance to the security of the country that the program of alien control shall be carried out with a high sense of responsibility. It would be unfortunate if, in the course of this regulative program, any loyal aliens were subject to harassment.

The only effective system of control over aliens in this country must come from the Federal Government alone. This is as true from a practical point of view as it is from a legal and constitutional point of view. Since Congress, by this Act, has attempted to provide a single and uniform method of handling the difficult problem of alien registration in this country it seems to me that attempts by the States or communities to deal with the problem individually will result in undesirable confusion and duplication.

I ask that citizens and non-citizens alike cooperate with a full sense of the responsibilities involved so that we may accomplish this task of registration smoothly, quickly and in a friendly manner, our aim being to preserve and build up the loyalty and confidence of those aliens within our borders who desire to be faithful to its principles. With those aliens who are disloyal and are bent on harm to this country, the Government, though its law enforcement agencies, can and will deal vigorously.

CHAPTER III

A SURVEY OF PUBLIC OPINION

Zechariah Chafee, late University Professor at Harvard University and author of several books dealing with the problem of free speech, held that the Alien Registration Act contained "the most drastic restriction on freedom of speech ever enacted in the United States during peace."¹ If Chafee's summary of the Smith Act agreed with the views of other Americans, why did Congress almost unanimously approve of this piece of legislation? Did the Congressmen in passing the bill actually represent the prevailing opinion of people in the United States? Or, did they speak only for a minority? Conversely, did Chafee express a view supported by only a small group of people, or did he speak for a majority of Americans? These questions may be combined into the basic one of why Congress passed the Smith Act.

Newspapers, popular magazines, journals of opinions, professional journals, and public statements of organizations provide answers to these questions. Examining these indicators of public opinion leads to the conclusion that the basic problem was how to preserve democracy, either by restraining individuals' actions or by allowing liberty of action. In general, those arguments supporting the Smith Act or legislation of a similar nature were essentially expressing a desire to preserve democracy

¹Zechariah Chafee, Jr., Free Speech in the United States (Cambridge: Harvard University Press, 1941), 441.

by restricting the activities of the individual. Because these views reveal a fear of change in existing political and economic institutions, they will be described as "conservative." On the other hand, the arguments which opposed the Smith Act and represented the view that democracy should be preserved by allowing freedom of individual activities, will be classed as "liberal."²

Zechariah Chafee did not stand alone in his denunciation of the Smith Act. For similar reasons the editors of The Nation, a liberal journal of opinion, also opposed the measure; as early as February 18, 1939, The Nation had contained an editorial which criticized deportation laws because they were based on the desire to eliminate unorthodox opinions.³ On May 6, the magazine compared Congressman Smith's bill to the Alien and Sedition Acts of 1798; Smith they compared to Alexander Hamilton, for both held in common the belief that the "populace is a beast" which must be caged. Measures repressing aliens, said The Nation, would be a step in that direction.⁴ Again, on July 1, 1939, an editorial criticized bills to repress aliens and people having unorthodox opinions because such measures are destructive of the democratic institutions which all loyal citizens want to preserve.⁵ An editorial in the later

²This fear of change as a result of conflict between absolute good and absolute bad is, to Richard Hofstadter, evidence of paranoia in the American political scene. The spokesmen for the paranoid tradition see their own institutions as good and any different institutions as bad, and hence the two are not reconcilable. See Richard Hofstadter, "The Paranoid Style in American Politics," Harper's Magazine, CCXXIX (November, 1964), 86.

³"The Deportation Menace," The Nation, CXLVIII (February 18, 1939), 193.

⁴Kenneth G. Crawford, "Open Season on Reds," The Nation, CXLVII (May 6, 1939), 519, 520.

⁵Oswald Garrison Villard, "Issues and Men," The Nation, CXLIX (July 1, 1939), 17.

edition of the magazine described the first session of the 76th Congress as being the "antialien session of the House of Representatives," but also expressed trust that the Senate would not pass any bills restricting aliens because the six-year term of the Senators made them "less automatic in their response to the hysterical demands of their constituents." The same editorial, noting that certain elements in communities were using the aliens and Communists as scapegoats, predicted that organized labor would be the next target of persecution.⁶ A slightly different view was expressed on March 9, 1940, when the editors of The Nation attacked the anti-alien bills for breeding a "habit of racial discrimination" that would "menace national unity."⁷ Returning later to the basic problem of preserving democratic institutions, The Nation's editors accused Congress of abusing the Constitution in the attempt to suppress fifth column movements among aliens.⁸

Another liberal weekly, The New Republic, attacked legislative attempts to restrict aliens and to suppress fifth column movements. The New Republic's attack began on April 19, 1939, and included a list of those who wanted such restrictive bills passed: "a motley of super-patriots, crackpots and bad economists, who find the alien a convenient scapegoat."⁹ A later edition of this journal denounced anti-alien legislation as being an infringement on American civil liberties.¹⁰ Speaking

⁶"The Shape of Things," The Nation, CXLIX (August 5, 1939), 134.

⁷Ibid., The Nation, CL (March 9, 1940), 322.

⁸Ibid., The Nation, CL (June 8, 1940), 694.

⁹"Immigrants, Speak Up!," The New Republic, XCVIII (April 19, 1939), 290.

¹⁰"Totalitarianism at Home," The New Republic, CXVIII (May 17, 1939), 29.

specifically of the Smith Act, The New Republic on August 9, 1939, said the bill was a "thoroughly dangerous measure."¹¹ The editors of this same journal, on December 13, 1939, applauded the opinion of the Federal Circuit Court in Pennsylvania which declared that state's alien registration law unconstitutional, for, the editors said, a "rule of this sort is sure to be used to intimidate aliens especially radicals and those engaged in labor disputes."¹² Later in December, The New Republic declared that pending anti-alien bills were portents of the future for aliens because such bills, if passed, led to "regimentation and terrorization."¹³ Continuing this same pattern of thought, the editors of The New Republic, on June 3, 1940, proclaimed fingerprinting and registering aliens to be part of a "witch hunt" which would "terrorize and intimidate honest people." The editors also said that the Smith Act was passed mainly "to relieve the legislators' frustrated feelings of hate."¹⁴

The question of how best to preserve democracy also appeared as the crux of other arguments opposing alien registration. For example, The Christian Century, in an editorial on April 5, 1939, protested the attempt to eliminate by law any aliens' views which might suggest a modification of the American form of government.¹⁵

¹¹"A Bad Bill About Aliens," The New Republic, LXXXXX [sic] (August 9, 1939), 2.

¹²"Putting an End to a Bad Law," The New Republic, CI (December 13, 1939), 217.

¹³"The Attack on the Alien (Cont'd)," The New Republic, CI (December 27, 1939), 272.

¹⁴"The Witch Hunt Begins," The New Republic, CII (June 3, 1940), 745-746.

¹⁵"Let All Alien Critics Beware!," The Christian Century, LVI (April 5, 1939), 436.

On May 10 and on September 20, 1939, The Christian Century also expressed criticisms of anti-alien legislation. This periodical, on June 12, 1940, accused the federal government of stirring up "fifth column hysteria" in order to elicit support for the armament program recently launched.¹⁶ Harper's Magazine also posed the problem of how best to protect American institutions without infringing on the civil rights of all people in the nation. In an article in September, 1940, two Harper's authors described the alien as having become the American "economic scapegoat," and pictures the Smith Act as a danger to the civil liberties of aliens and Americans. The authors of the article also noted that during the post-World War I period, the alien symbolized the radical, a stigma perpetuated by patriotic societies in America. Because of the combined crises of war and depression, prejudice grew against aliens and set them apart as a distinct class. As a solution, the authors proposed that aliens should be naturalized through a simpler process.¹⁷

Other journals, too, criticized the anti-alien legislation for constitutional and humanitarian reasons. Among those presenting a critical view was The Commonweal, which, specifying the Smith bill, said that measures of that type "needlessly and indefinitely circumscribe the area of men's civil freedom, but they are also bad in offending human dignity."¹⁸ Also The American Mercury, in November, 1939, published an article which criticized the patriotic societies for making the alien a

¹⁶"Fifth Column Hysteria," The Christian Century, LVII (June 12, 1940), 758.

¹⁷Lucille B. Milner and David Dempsey, "The Alien Myth," Harper's Magazine, CLXXXI (September, 1940), 374-377, 379.

¹⁸"Laws and Men," The Commonweal, XXXI (March 29, 1940), 482.

scapegoat for American economic and social ills,¹⁹ and, in March, 1940, another accusing the "patrioteers and alien-baiters" of threatening national unity and the tradition of cultural integration.²⁰

The professional journals to some degree also opposed the anti-alien, anti-sedition legislation pending before Congress. A special issue of Social Work Today on immigration stated that Americans were affected by an element of the population which, in response to the challenge of international and national problems, were perpetuating the myth of the subversive influence of immigrants.²¹ An article in Survey Graphic, believing democracy could not be preserved by restrictions, said of registering and fingerprinting aliens, "in no country in the world, including our own, can government be trusted to apply restrictive laws to a minority of its residents (including aliens) without threatening the citizen with search, seizure, possible punishment, for the 'crime' of lacking proper identifying credentials."²² A fear of discrimination against and humiliation of aliens resulting from registering and fingerprinting them was expressed by a writer in the Columbia Law Review, who feared as well a suppression of Americans' civil liberties.²³ Publisher's Weekly viewed the Smith Bill's provisions with alarm in that its

¹⁹Woulric Bell, "Senator Reynolds Saves America," The American Mercury, XLVIII (November, 1939), 305.

²⁰S. K. Padover, "We Invited Our Aliens," The American Mercury, XLIV (March, 1940), 325.

²¹As reported in the New York Times, December 10, 1939, 3.

²²Victor Weybright, "The Vanishing Alien," Survey Graphic, XXVIII (July, 1939), 428.

²³"Legislation Requiring Registration and Imposing Economic and Other Disabilities," Columbia Law Review, XXXIX (November, 1939), 1217, 1223.

prosecutions might be a threat to the book trade.²⁴ In a later issue of the same journal, which urged people to write letters to their Congressmen asking them to vote against the Smith bill, the editors said, "the abandonment of our civil rights in anti-alien hysteria is the height of folly and would put in jeopardy the hard-earned privileges of free speech, press and assemblage."²⁵

Not only publications but also certain organizations opposed anti-alien, anti-sedition legislation. The American Committee for the Protection of Foreign Born stated that the alien was serving as a scapegoat for "unemployment, crime, espionage, and sabotage," and that the anti-alien proposals would infringe on the civil liberties of all Americans, native and foreign-born.²⁶ Typical of liberal Jewish opinion, the Independent Order Brith Abraham, at a convention in Saratoga Springs, New York, approved resolutions urging Congress to defeat laws requiring aliens to be fingerprinted and registered. More extensive denunciation of Smith's bill was provided by the always liberal American Civil Liberties Union in its publication of December, 1939, Defeat the Omnibus Gag Bill. According to this pamphlet, the bill to register and fingerprint aliens was contrary to the first amendment to the Constitution and was also dangerous because it could be used to oppress certain minority groups and organized labor.²⁷ The ACLU further criticized the bill, as introduced

²⁴"Oppose the Anti-Alien Bills," Publisher's Weekly, CXXXVI (August 5, 1939), 357.

²⁵Frederic G. Melcher, "Civil Rights Again an Issue," Publisher's Weekly, CXXXVII (March 9, 1940), 1069.

²⁶U.S., Congressional Record, 76th Cong., 3rd Sess., 1940, LXXXVI, Part 3, 2665.

²⁷American Civil Liberties Union, Defeat the Omnibus Gag Bill (New York: American Civil Liberties Union, 1939), 6.

by Smith and passed by the House of Representatives, as retroactive because it affected aliens who had at any time been members of an anarchist or Communist group.²⁸ Solutions to the dangers of the bill came from the ACLU: individuals should direct protests against the Smith bill to their Senators; organizations should adopt resolutions protesting passage; and editors of local newspapers should receive letters protesting passage of the bill and calling for editorial opposition.²⁹ The American Civil Liberties Union advocated similar views and suggested protest activities in publications entitled Alien and Sedition Bills and In the Shadow of War.³⁰ A pamphlet published by the Foreign Language Information Service, Incorporated, reacted to anti-alien legislation by saying that "unless the real effect of these measures is brought home to Congress and the country, there is serious danger that some of them will become law."³¹ The Smith bill according to this agency, was "retroactive legislation with a vengeance," and it was an "example of the effort to stigmatize the alien and to regard him as one apart from the rest of the community."³²

Editorial opposition, though meager, appeared. The Philadelphia Record on August 4, 1939, attacked the Smith bill because it was a "challenge to basic American principles and civil liberties."³³ Criticizing

²⁸Ibid., 7.

²⁹Ibid., 12.

³⁰American Civil Liberties Union, Alien and Sedition Bills and In the Shadow of War (New York: American Civil Liberties Union, 1940).

³¹Foreign Language Information Service, Incorporated, Alien Legislation and American Democracy (New York: Foreign Information Service, Incorporated, 1940), 4.

³²Ibid., 18.

³³U.S., Congressional Record, 76th Cong., 1st Sess., 1939, LXXXIV, Part 4, 3849.

anti-alien legislation, the New York World Telegram editors stated that, "kicking around the aliens in America regardless of individual merits has become a widespread demagogic device."³⁴ The New York Times also contained editorial protests to anti-alien legislation; on July 1, 1939, it described the Smith bill as "drastic."³⁵ Again, on April 14, 1940, the editors said that in general most of the anti-alien bills pending before Congress "should properly be regarded with suspicion" because "it was never more necessary for our democracy to be vigilant against anything that moves toward the kind of discriminations against or persecutions of minorities with which the dictatorships have made us so familiar."³⁶

Despite opposition, the Smith bill was passed in both houses of Congress. Thus it can be assumed that, on the whole, the Congressmen represented the general feelings of their constituents, and that the voices of opposition to the bill were simply minority opinion. Consequently, it is necessary to sample available mass communication media for evidence of support for the bill. The media examined were similar to those studies for opinions of opposition.

Many of the popular magazines made no specific reference to the Smith Act. Many of these articles however revealed a great deal of fear--fear of a change which might be brought about by fifth column movements in American political and economic institutions. On June 7, 1940, for example, United States News reported that 3,000,000 aliens lived in the United States and had not renounced allegiance to nations then at war in Europe. These facts, that article went on to say, led federal officials

³⁴Ibid., 76th Cong., 3rd Sess., 1940, LXXXVI, Part 13, 98.

³⁵New York Times, July 1, 1939, 8.

³⁶Ibid., April 14, 1940, 2.

to try to eliminate fifth column movements by registering aliens.³⁷

Among popular magazines contributing to the feeling of urgency that something be done, Newsweek in particular published several articles describing the activities of fifth column movements. On December 4, 1939, Newsweek noted that "studies of subversive influences at work in the country deepened the conviction of the average American that organizations...abused the government's generous hospitality to advocate its overthrow."³⁸ Later, on January 22, 1940, Newsweek predicted that Congress would pass laws restricting immigrants and aliens before the current session (76th Congress, third session) ended.³⁹ A later issue of Newsweek contained articles, disclosing the plans of the American Communist Party to go underground, gain control of anti-war organizations, and unite them into a single Communist-dominated peace front, working as well in the unions of the AF of L and CIO.⁴⁰ On June 3, 1940, Newsweek published three articles describing the activities of the Federal government in its drive against the fifth column. It reported that the Justice Department, under the leadership of Attorney General Robert H. Jackson, was trying to watch "small-time spies" without stirring up a red hunt.⁴¹ The Justice Department was also reported to expect fifth column movements among Italian-born Americans as a result of Italy's entry into World War II, while the Dies Committee was planning to hear charges that

³⁷"Fingerprinting America's Aliens," United States News, VIII (June 7, 1940), 20, 21.

³⁸"Alien Crackdown," Newsweek, XIV (December 4, 1939), 17.

³⁹"Tighter Alien Law," Newsweek, XV (January 8, 1940), 7.

⁴⁰"Communist Campaign," Newsweek, XV (February 19, 1940), 12.

⁴¹"Anti-Alien Wave," Newsweek, XV (June 3, 1940), 9.

the Denate Alighieri Society was a front for a Fascism Fifth Column.⁴² Another article described in more detail the federal government's efforts at eliminating fifth column movements, including President Roosevelt's plan to transfer the Immigration and Naturalization Service from the Department of Labor to the Department of Justice, and noting Attorney General Jackson's support for fingerprinting all aliens.⁴³

The challenge to existing American institutions seemed dangerous to the editors of various newspapers. The Oklahoma City Daily Oklahoman on May 12, 1940, spoke of the "Trojan Horse" threat from Nazi agents.⁴⁴ Again on May 23 the editors of the Daily Oklahoman described the threat that would be posed by a large fifth column organization.⁴⁵ The same journal on June 1 and June 23, 1940, expressed editorially the need to rid the federal government of all subversive employees.⁴⁶ An editorial in the Ashville, North Carolina, Daily Citizen stated that the Smith bill had not come any too soon, because "we already possess unregistered, and unwatched aliens in the United States to prove a serious 'fifth column' menace if and when the time should come."⁴⁷ Even the New York Times at one point seemed to have jumped on the anti-alien bandwagon, when an editorial on June 1, 1940, defined an alien's obligation to "renounce his allegiance to the foreign government of which he has been a citizen or a

⁴²Ibid.

⁴³Ibid., 34.

⁴⁴Oklahoma City Daily Oklahoman, May 12, 1940, section D, 4.

⁴⁵Ibid., May 23, 1940, 10.

⁴⁶Ibid., June 1, 1940, 8 and June 24, 1940, 8.

⁴⁷As quoted in the U. S. Congressional Record, 76th Cong., 3rd Sess., 1940, LXXXVI, Part 16, 4171.

subject and to become a citizen of his adopted land."⁴⁸

Other publications took up the conservative crusade for protecting traditional American institutions. As might be expected, The Catholic World in February, 1939, likened the Communist Party to termites undermining domestic affairs in the United States.⁴⁹ The same publication the following January appealed to Catholics to help the poor so that they would not be attracted to the Communists, who would "feed them more propaganda than food...."⁵⁰ Another publication which saw an inherently dangerous fifth column movement at work in the United States was the Journal of the American Institute of Criminal Law and Criminology. An article by Horace J. Bridges in this journal proposed that legislation be enacted which would make such agitations punishable not as sedition but as treason.⁵¹ In 1940 Martin Dies published a book entitled The Trojan Horse in America; the contents of the book are obvious from the title. Dies not only named and narrated the activities of individuals and organizations acting as potential threats, but also made a blanket accusation against the foreign-born population residing in the United States:

In other words, a very large proportion of the Communists who now plot through Trojan Horse methods to destroy the American government and institutions came to this country as refugees. Any one of scores from among these thousands of foreign-born Communists would serve to illustrate the

⁴⁸New York Times, June 1, 1940, 14.

⁴⁹William H. Kelty, "Do Communists Think?," The Catholic World, CXLIX (April, 1939), 548.

⁵⁰James M. Gillis, "Go to the Workingman! Go to the Poor!," The Catholic World, CL (January, 1940), 391.

⁵¹Horace J. Bridges, "Suggestion Toward a New Definition of Treason," Journal of the American Institute of Criminal Law and Crimonology, XXX (November, 1939), 476, 478.

manner in which Communists who came here ostensibly to find a haven of opportunity (and have, indeed, found opportunities never before experienced by them in their European countries) have used America's hospitality as a cover under which to plot revolution.⁵²

Many patriotic societies found sedition lurking in the minds of aliens. Particularly assiduous in agitating for anti-alien legislation was the American Legion. At its twenty-first national convention in September, 1939, Legionnaires heard Joseph K. Carson, Jr., Mayor of Portland, Oregon, say, "I am growing sick and tired of coddling the subversive alien and the promoter of alien doctrine in our community life." Furthermore, said Mayor Carson, "we should exert every effort to see that these subversive groups do not cause our people to choose up sides and cause rancor at home."⁵³ The same convention approved a resolution calling for a measure to fingerprint and register all aliens residing in the United States.⁵⁴ At a function of a New York City Legion post, the Memorial Day services of 1940, one theme of the speech given by retired Admiral Yates Stirling, USN, was the necessity of deporting those who supported "foreignisms."⁵⁵

⁵²Martin Dies, The Trojan Horse in America (New York: Dodd, Mead and Company, 1940), 5, 6.

⁵³American Legion, Proceedings of the 21st National Convention of the American Legion (Washington: Government Printing Office, 1940), 12, 13.

⁵⁴Ibid., 71. The anti-alien attitude of the American Legion, according to Roscoe Baker, was a legacy of World War I in which aliens were exempted from military service. This resentment was transferred to all aliens. Another cause of resentment stemmed from an economic factor. During World War I, soldiers' peace-time occupations were taken by aliens; and upon returning home after the war, the soldiers found that employment was curtailed because of strikes which were blamed on alien agitators. After Hitler's rise in Germany, the American Legion began calling for, and lobbying for, registration of aliens. Roscoe Baker, The American Legion and American Foreign Policy (New York: Bookman Associates, 1954), 52, 53, 58.

⁵⁵New York Times, May 31, 1940, 10.

In addition to the American Legion, several similar organizations called for restrictive legislation in order to protect democracy from subversive influences. The New York City Harold Joyce Post Number 1116, Veterans of Foreign Wars, adopted a resolution which urged that Congress adopt an alien registration act.⁵⁶ In a similar statement the Sentinels of New America suggested as remedies for the problem of criminal aliens illegally in the United States, items which became provisions of the Smith bill in its final form.⁵⁷ Support for the registration and fingerprinting of aliens came also through resolutions adopted at the 1939 Continental Congress of the Daughters of the American Revolution.⁵⁸ The same year the Kiwanis International convention heard their President, H. G. Halfield, say that "if we have aliens among us who are not willing to conform to our methods and forms of government, they should go back to the countries from which they came, and if they do not go back voluntarily then we should deport them." He also called for governmental suppression of subversive activities and deportation of subversive aliens.⁵⁹ A similar view appeared in the resolutions adopted by the forty-first annual encampment of the United Spanish War Veterans in September, 1939.⁶⁰

In addition to expressions of opinion from newspapers, magazines,

⁵⁶U.S., Congressional Record, 76th Cong., 3rd Sess., 1940, LXXXVI Part 15, 2464.

⁵⁷Ibid., Part 14, 2311.

⁵⁸New York Times, April 21, 1939, 12.

⁵⁹Ibid., June 20, 1939, 6.

⁶⁰Ibid., September 15, 1939, 9.

and private organizations, encouragement for alien-restricting legislation came from official sources. For example, as reported previously in the account of the House actions on the Smith bill, both the Army and the Navy sent representatives to the hearings to urge support for the act. Shortly after the House hearing, Newsweek magazine reported that "G-men are starting a new drive, seeking out spy rings that might have penetrated the Army and Navy and beginning another search for alien agents in the German-American Bund."⁶¹ On July 25, 1939, the New York Times reported that the Senate Immigration Committee approved a resolution of Senator Holman (Republican, Oregon) which called for "a sweeping investigation to determine the extent to which aliens enter this country illegally and to recommend any steps necessary to tighten immigration laws."⁶²

Official leadership in trying to protect America from subversive influences was more evident after international events became critical in 1940. On May 23, 1940, the New York Times reported President Roosevelt's Reorganization Plan Number Five, which provided for transfer of the Bureau of Immigration and Naturalization from the Department of Labor to the Department of Justice. The President explained the transfer as aiming to ensure more effective safety measures for the nation.⁶³ Later in the same month President Roosevelt noted in a fireside chat on national

⁶¹"New Spy Drive," Newsweek, XIII (April 17, 1939), 9.

⁶²New York Times, July 25, 1939, 13.

⁶³Ibid., May 23, 1940, 15; Roosevelt did give his assurance, however, that this transfer would not deprive aliens of their civil liberties or in any other way impair their legal status. Of this promise, the editors of the Washington Post said that "if that promise is faithfully kept, more good than harm can come from registration of aliens." U.S. Congressional Record, 76th Cong., 3rd Sess., 1940, LXXXVI, Part 16, 3793.

defense that war abroad and armaments buildups were not the only threats to national security. Blaming a fifth column movement as a threat to the United States, he said, "spies, saboteurs and traitors are the actors in this new strategy. With all of these we must and will deal vigorously."⁶⁴

Extending the federal government's actions to combat an active fifth column movement in the United States, two executive orders were issued through the State Department on June 5, 1940. One order curbed entry into the United States of aliens who were "unable to establish a legitimate purpose or reasonable need for the entry," and the other order prohibited landing of alien seamen on American shores without the permission of the Secretary of State.⁶⁵ According to an article in The United States News, President Roosevelt told newspapermen that the Dies Committee had given evidence of a fifth column movement and that something should be done about it. The same article quoted Attorney General Jackson as desiring registration of all aliens residing in the United States.⁶⁶ Later in June Newsweek reported that President Roosevelt had asked for an increase in the Canadian and Mexican border patrol of immigration inspectors. The same article reported that Secretary Harold L. Ickes had asked all Interior Department employees to swear that they were "not members of organizations advocating overthrow of the Constitutional form of government."⁶⁷ Furthermore, Assistant Secretary of State A. A. Berle, Jr.,

⁶⁴The Public Papers and Addresses of Franklin D. Roosevelt, compiled by Samuel I. Roseman (New York: The Macmillan Company, 1941), War and Aid to the Democracies, 238.

⁶⁵New York Times, June 6, 1940, 12.

⁶⁶"How the Fifth Column Can Function in the U.S.," United States News, VIII (June 7, 1940), 11.

⁶⁷"U.S. Crackdown," Newsweek, XV (June 17, 1940), 40.

followed Attorney General Jackson in quitting the National Lawyers Guild because it was "not prepared to take any stand which conflicts with the Communist party line."⁶⁸ Also reported in the same magazine edition was the order from the Federal Communications Commission prohibiting radio amateurs from communicating with stations outside the United States; this was done to "bar Fifth Columnists from the air waves."⁶⁹

Examples of public leadership were also found in statements reported from lower level officials. In 1939, the Senate of the State of Tennessee approved a resolution asking for federal legislation to deport undesirable aliens.⁷⁰ At a meeting of the Grand Jurors Association of Bronx County, Justice Salvatore A. Cotilla of the New York State Supreme Court recommended that a more stringent naturalization method be adopted in order to prevent the "vicious elements" from undermining the welfare of the United States.⁷¹

In summary, sentiment on the Smith bill divided into two basic attitudes: one group wanted to protect democracy by restrictive legislation; and another wanted to preserve democratic institutions by tolerating divergent ideas and ethnic groups. Quantitatively speaking, the liberal opinions constituted a minority view. While not always related to the Smith bill, however, conservative opinions were far more frequently found in publications, statements of public officials, and resolutions of patriotic organizations.

⁶⁸Ibid.

⁶⁹Ibid.

⁷⁰U. S., Congressional Record, 76th Cong., 1st Sess., 1939, LXXXIV, Part 12, 1518.

⁷¹New York Times, May 12, 1939, 7.

To what degree did the opposition affect the passage of the bill and its enforcement? The period before and during World War II did not produce a red hunt similar to the one of post-World War I days or to that of the McCarthy era. The paranoid elements, to use Richard Hofstadter's phrase, which could produce such a witch hunt did exist in the late 1930's, with the Dies House Un-American Activities Committee filling the role at least in part. Further evidence of these elements was seen in the previously mentioned editorial opinions, statements from patriotic societies, and activities of government officials. According to a public opinion survey, the majority of Americans did approve of the registration and fingerprinting of aliens.⁷² However, there was no evidence that wholesale persecution of aliens or Communists took place as a result of the Alien Registration Act.

Moreover, it can be safely concluded that the arguments of the liberal opposition basically went unheeded because of the crises in Europe. Germany's blitzkrieg attack on Western Europe in April and May, 1940, brought about a crisis psychology in the United States, with the result that war and foreign policy were the foci of public attention rather than

⁷²Hadley Cantril (ed.), Public Opinion, 1935-1946 (Princeton: Princeton University Press, 1951), 947. (U.S. January 26, 1939) Do you think all persons living in this country who are not citizens should be fingerprinted and registered with the federal government?

Yes: 84% No: 16%

(U.S., June 9, 1940) Should all people who are not United States citizens be required to register with the government?

National total. Yes: 95% No: 57%

By Geographic Section:

New England and Mid-Atlantic.	93%	7%
East Central.	95%	5%
West Central.	94%	6%
South	98%	2%
West.	97%	3%

issues involving civil liberties. After having remained in committee for almost a year, the Smith bill was brought out for Senate debate with the fall of France in June, 1940, and was almost immediately adopted. Instead of preventing the bill's passage in Congress, the liberals may have provided a restraining influence so that in the enforcement of the act cooperation came from all sides. Further, government leadership may have set an example of moderation. President Roosevelt, in spite of his messages urging measures to protect the country from subversive influences, probably provided a moderating influence. A member of an old established family, Roosevelt had no social or economic fears of aliens. Instead he was able to work with and recognize the problems of those having ethnic identifications. When he signed the Alien Registration Act, he took cognizance of the apprehension of some who feared infringement of civil liberties and discrimination against the non-citizens, stating that:

Most of the aliens in this country are people who come here because they believed and had faith in the principles of American democracy, and they are entitled to and must receive full protection of the law. It is of the utmost importance to the security of the country that the program of alien control shall be carried out with a high sense of responsibility. It would be unfortunate if, in the course of this regulative program, any loyal aliens were subjected to harassment.⁷³

⁷³The Public Papers and Addresses of Franklin D. Roosevelt, IX, 274.

CHAPTER IV

APPLICATIONS OF AND REPLACEMENTS FOR THE ACT

Civil liberties have remained an issue since the Alien Registration Act was passed in 1940. As with most such issues, the basic question has remained the same--how can democracy best be preserved? There were, and still are, some persuaded that loyalty of citizens to the government is the best indicator that a state is democratic. In order to ensure the loyalty of all citizens, restrictive legislation such as the Alien Registration Act has been passed implying the belief that loyalty can be created by compulsion. Conversely, others are equally persuaded that democracy is synonymous with tolerance for all views--even at the risk of efforts to overthrow the government.

Even though it has largely been replaced by subsequent legislation, the Alien Registration Act has been enforced and sustained. Having the existence of a "clear and present danger"¹ as one of its underlying concerns, the federal government first applied the Smith Act in 1941 to curb the Trotskyite faction of the American Communist Party. In Minneapolis, Vincent Raymond Dunne and seventeen other members of the Trotskyite Social Workers Party were tried in Federal district court, were convicted, and were given sentences of from one year and one day to sixteen

¹The standard proposed in Scheneck v. United States, 249 U.S. 47 (1919).

months.² The United States Court of Appeals sustained the decision. The defendants appealed for review by the Supreme Court, but their request was not honored; instead they served out their sentences.³ From the fact that the Supreme Court refused to grant certiorari, one might deduce that the Court did not feel disposed to question the constitutionality of the Smith Act.

Again in 1942 the Alien Registration Act was used as the basis for indicting supposedly subversive elements. A group of alleged Fascists (Gerald B. Winrod, George Sylvester Viereck, William Dudley Pelley, and others) were charged with violating section 1 of the law by cooperating with the enemy in the use of propaganda. Later, the indictment was made more specific; they were charged with impeding the American war effort by conspiring with the German Ministry of Propaganda and Public Enlightenment, the German Library of Information, and the League of German-Dom Abroad. After several months of the trial the presiding judge died, the government chose not to press the case, and shortly thereafter the action was dropped.⁴

Nearly a decade later, with the nation undergoing what has been termed the McCarthy era, many Americans feverishly sought out subversive elements and attempted to have them prosecuted according to the provisions of the Alien Registration Act. The intensity of the frenzied searches and accusations was so great that some scholars see a "red

²Francis Biddle, The Fear of Freedom (Garden City: Doubleday & Company, 1951), p. 107.

³John W. Caughey, In Clear and Present Danger (Chicago: University of Chicago Press, 1958), pp. 96, 97.

⁴Biddle, 107.

hunt" as the dominant theme of those years.⁵ The reasons for this Red Hunt in the late 1940's and early 1950's have been the subject of many studies by historians, political scientists, and sociologists, some of whom have reached a consensus in their findings.

The post-World War II period, these scholars hold, saw many international and domestic events which necessitated fundamental changes in Americans' patterns of thought and behavior.⁶ The end of World War II brought not peace but a new form of conflict, the Cold War. The post-war power vacuum and world-wide poverty were issues played upon by the Communists. Soviet pressure on Greece and Turkey in 1947 and the creation of Soviet satellites Hungary, Bulgaria, Rumania, Poland, Albania, and Czechoslovakia contributed to the unstable situation. Other Communist successes were in North Korea, Outer Mongolia, and the mainland of China. These successes created a tense atmosphere in which two monoliths, the United States and the Soviet Union, were left facing each other in armed readiness. The solution to these international problems, many held, was not to be the quick total solution that Americans had been accustomed to, but rather it was containment--preventing further Communist expansion.⁷

The mutual fears and animosities between the United States and the

⁵Martin D. Irish, ed., Continuing Crisis in American Politics. (Englewood Cliffs: Prentice-Hall, Inc., 1963), p. 22. Robert McCloskey, in his essay titled "The American Ideology," found several periods in American history dominated by frenzies of intolerance or reform. Among those eras are the Alien and Sedition Acts period, the Progressive era, the post-World War I Red Hunt, and the McCarthy era. Each of these periods was relatively brief, McCloskey found, and was followed by a rapid cooling of tempers.

⁶Eric Goldman, The Crucial Decade--And After: America, 1945-1960 (New York: Vintage Books, 1960), p. 61.

⁷Ibid., 80, 114.

Soviet Union were perhaps heightened by the increased number of Soviet spies in the United States and by official United States government programs. The Temporary Commission on Employee Loyalty was created in 1946 but became a permanent board in 1947 with the power to investigate and recommend the dismissal of employees. Shortly thereafter, Congress undertook investigation of government employees; later, Congress extended its authority to private citizens.

The domestic scene of the post-war period had changed also. Socially and economically America had been altered by the increased opportunities for minority groups, which thus challenged the status of the white, Protestant, Anglo-Saxon, established families.⁸ Standards of sexual behavior, according to Dr. Alfred C. Kinsey, had changed too. "The Half-Century of Revolution," to borrow Eric Goldman's phrase, had created a nation of the middle class at the risk of destroying the traditional American ways of thinking and the traditional roles of the federal government.⁹

These changes, according to the consensus view, provoked a turning-point in 1949, when a counter-revolution started to form.¹⁰ This reaction found its leadership in a group who have come to be known as New Conservatives.¹¹ Rather than trying to preserve the then existing America, as true conservatives presumably would, the new group of dissenters actually wanted to institute changes--of a reverse order. Consequently

⁸Ibid., 119.

⁹Ibid., 120, 121.

¹⁰Ibid., 121. Goldman stated that the reaction was particularly strong because of the great social and economic opportunities which had begun to exist, for a social movement is destroyed by prosperity.

¹¹Ibid., 53.

Richard Hofstadter has termed this type of malcontent "pseudo conservative." To Hofstadter, "the pseudo conservative is a man who, in the name of upholding traditional American values and institutions and defending them against more or less fictitious danger, consciously or unconsciously aims at their abolition."¹² The composition of this group of dissenters was found by Hofstadter to be dominated by two groups of status seekers, the old-family, white, Protestants, and the immigrant families.¹³ Barth found that the main concern of both groups was loyalty.¹⁴ Barth further stated that their definition of loyalty was negative in that "The whole postwar accent is on something called 'un-American'-- a hyphenated synonym for unorthodoxy. Deviations to the Left are regarded as more suspicious or criminal than deviations to the Right; but the tendency is to question all deviations."¹⁵ Even more alarming to Barth was the fact that denunciations of deviations came from official government sources using extra-legal techniques.¹⁶

Another scholar, in his analysis of the predominant themes of the post-World War II period, found that the prosperity of the late 1940's and early 1950's resulted in the rise of a phenomenon of political behavior known as the radical right. Seymour Martin Lipset found that prosperity caused the ascent of status politics.¹⁷ Particularly

¹²Daniel Bell, ed., The New American Right (New York: Criterion Books, 1955), 35.

¹³Ibid., 44.

¹⁴Alan Barth, The Loyalty of Free Men (New York: Viking Press, 1951), 7.

¹⁵Ibid., 71.

¹⁶Ibid., 13.

¹⁷Bell, 166.

receptive to this phenomenon are those people who possess status but feel their high social position may be challenged by others achieving status; also receptive are those who have risen economically but feel frustrated in their attempts to achieve status.¹⁸ Furthermore, Lipset found, status politics seeks a scapegoat; the scapegoat of the late 1940's and early 1950's was Communism. McCarthyism served as the principal expression of the radical right during that period.¹⁹

Even in times as emotionally charged and confusing as those described above, the federal judicial system traditionally endeavors to remain immune to popular clamor. However, this did not seem to be true in the post-World War II era, for in 1949 eleven principal figures in the American Communist Party were brought to trial in New York at the request of the Department of Justice. They were tried not because of any overt act but because the purported main purpose of the Communist Party was the violent overthrow of the government. They were actually indicted for violation of the conspiracy provisions of the Smith Act. The doctrine of "clear and present danger" was reviewed once again, since the point of law with which the prosecution was dealing was whether presence and advocacy could actually be called a crime. The court found that the defendants were indeed guilty of seeking to overthrow the government by force. The Circuit Court, with Judge Learned Hand writing the opinion, upheld the convictions.

In 1951, the Supreme Court granted certiorari in Dennis v. United States and, in a six to two decision, upheld the conviction for conspiracy under the Smith Act of 1940. By doing so, the Supreme Court also

¹⁸Ibid., 168.

¹⁹Ibid., 167.

upheld the constitutionality of the law; for the court limited itself to the discussion of whether or not sections two and three of the Smith Act violated the First Amendment and other provisions of the Bill of Rights. Chief Justice Vinson, in writing the majority opinion, applied the "clear and present danger" test to explain the Court's finding that the petitioners had conspired to organize the Communist Party of the United States and were teaching the necessity of overthrowing the government. Vinson wrote that Congress had the power to protect the United States not only from armed rebellion, but also from any subordinate action which would lead to such violent rebellion. Thus the Court held that sections two and three of the Smith Act were constitutional.

There were dissenting opinions, however, written by Justices Black and Douglas. Declaring that section three of the Smith Act was in his opinion unconstitutional, Justice Black wrote:

The indictment is that they conspired to organize the Communist Party and to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the Government. No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids.²⁰

Upholding a similar view, Justice Douglas wrote that the tendency of the Court's action "is to make freedom of speech turn not on what is said, but on the intent with which it is said."²¹

By 1957 the nation breathed a more relaxed atmosphere than that which had prevailed during the McCarthy red hunt and which had produced the Dennis case. The frenzied activities which characterized the

²⁰ Dennis v. United States, 341 U.S. 579 (1951).

²¹ Ibid., 583.

McCarthy era had, by 1957, cooled considerably.²² Continuity, according to Goldman, had become the dominant theme, meaning that Americans had acclimated themselves to the idea that there was no single panacea for international problems. In a time of steadily increasing prosperity, Americans had also adjusted to the social and economic reforms of the "Half-Century of Revolution"; furthermore, the Revolution itself was allowed to develop slowly during the Eisenhower administration.²³

The Smith Act was nevertheless used again in the less tense atmosphere of 1957, this time to convict fourteen California Communist leaders. The federal court for the Southern District of California convicted the fourteen of conspiring to advocate the overthrow of the government by violent action and with organizing the Communist Party of the United States. The Supreme Court granted certiorari in this Yates case, reviewing the petitioners' contentions that the term "organize" as used in the Smith Act was erroneously construed by the two lower courts to mean a process continuing throughout the life of an organization. In the opinion of the Court, as written by Justice Harlan, the term "organize" referred only to acts involving the actual creation of an organization and did not mean the continuing processes of maintaining its life. The Court further made a distinction between advocacy of an abstract doctrine of overthrow of the government and efforts actually to instigate action to that end. Also, the Court ruled that five of the defendants, Connally, Richmond (both editors of the Daily People's World, the West Coast publication of the Party), Dusnitz, Spector, and Steinberg, should be acquitted. As for the other petitioners, the Court

²²Irish., 22.

²³Goldman, 292, 293.

remanded for retrial, but only on charges of overt action such as outright advocacy of violent overthrow of the government.²⁴

Again in 1961 the validity of prosecution under the Smith Act was tested. In each of two cases decided that year the part of the act at stake was the membership clause, which makes it illegal to be a member of any organization advocating the violent overthrow of the government. In the first case (Scales v. United States), the petitioners challenged the indictment on several grounds, statutory, constitutional, and evidentiary. The Court decided, in a five to four split, to uphold the convictions under the membership clause, which the Court interpreted as requiring proof of active rather than passive participation in the Communist Party. The petitioners' constitutional attacks on the membership clause of the Smith Act for supposedly violating the Fifth and First Amendments were also met by the Court. Membership in an organization, the Court held, meant that the individual recognized and gave his assent to the group's purposes and activities, thus making the guilt personal and subject to attack under the Due Process Clause of the Fifth Amendment. As for the claim that the Smith Act infringes the First Amendment, the Court decided that the Dennis case established the idea that advocacy is not constitutionally protected speech. The Court also found that there was sufficient evidence of advocacy of violent overthrow either immediately or in the future.

The view that democracy can be best preserved by certain restrictions was thus represented in the opinion of the Court, which was written by Justice Harlan. The decision stated that "we can discern no reason why membership, when it constitutes a purposeful form of complicity in a

²⁴Yates v. United States, 354 U.S. 298 (1957).

group engaging in this same forbidden advocacy, should receive any greater degree of protection from the guarantees of that First Amendment."²⁵ Representing an opposite view, the dissenting opinion of Justice Douglas noted:

When we allow the petitioner to be sentenced to prison for six years for being a 'member' of the Communist Party, we make a sharp break with traditional concepts of First Amendment rights and make serious Mark Twain's light-hearted comment that 'it is by the goodness of God that in our country we have those three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either of them.'²⁶

In the second case involving the validity of a prosecution under the membership clause of the Smith Act, Noto v. United States,²⁷ the Court decided not to consider the petitioner's statutory and constitutional challenges to the conviction. This decision was made because of the Court's previous holdings in the Scales case. Five of the Justices decided that the evidence at the trial was insufficient to show that the Communist Party was advocating direct action to bring about the forcible overthrow of the government. The Court also held that the judgment of conviction be reversed because "the mere abstract teaching of Communist theory, including the teachings of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action. There must be some substantial direct or circumstantial evidence of a call to violence now or in the future...."²⁸ Typically, Justices Black and Douglas

²⁵Scales v. United States, 367 U.S. 229 (1961).

²⁶Ibid., 262.

²⁷Noto v. United States, 367 U.S. 290 (1961).

²⁸Ibid., 297-298.

expressed, in separate concurring opinions, the view that the terms of the First Amendment made the convictions invalid.

In thus tracing the course of the application of the Alien Registration Act, it can be seen that external events affected human behavior in deciding how the law was to be applied and interpreted. Times of crisis, such as World War II and the era of the threat of spreading Communism, resulted in fear and served as catalysts for increased enforcement through the American legal system.

As previously mentioned, the Smith Act has been essentially replaced by subsequent legislation, all of which represented the doctrine that loyalty to the government is necessary in a democratic state. Furthermore, according to this belief, loyalty can be guaranteed in a legalistic sense by passing stringent laws and by strictly enforcing them. The major pieces of legislation which replaced the Smith Act were promulgated in a time when the psychological needs for national security were especially intense, and consequently those people, the radical right, adhered to the view that security could be maintained by enforced loyalty and dominated the political scene.

During the insecurity of the Korean conflict and the McCarthy Communist hunt, the Internal Security Act became law in September, 1950. The McCarran Act, as it is popularly known, partially replaced the Smith Act in that it added Communists and other totalitarians to the list of immigrants to be excluded.²⁹ This bill also required, through elaborate procedures, the registration of Communist action and front groups.³⁰

²⁹Robert E. Cushman, Civil Liberties in the United States (Ithaca: Cornell University Press, 1956), p. 168.

³⁰Ibid., 176.

Among its many other provisions, the McCarran Act also provided that the President, in a state of emergency such as war declared by Congress, could detain any person who might engage in espionage or sabotage. President Truman, disapproving of the act, wrote in a challenging veto message:

Section 22 is so contrary to our national interests that it would actually put the Government into the business of thought control by requiring the deportation of any alien who distributes or publishes, or who is affiliated with an organization which distributes or publishes, any written or printed matter advocating (or merely expressing belief in) the economic and governmental doctrines of any form of totalitarianism. This provision does not require an evil intent or purpose on the part of the alien, as does a similar provision in the Smith Act.

Congress, however, passed the McCarran Act over his veto.³¹ Probably the Internal Security Act added something to the Smith Act, a more drastic approach to the problem of loyalty in a democracy.

A recrudescence of the view that aliens pose a threat to our nation's internal security occurred in 1952 when the Immigration and Nationality Act became law. This bill, too, partially replaced the Smith Act. First of all, the provisions of the Immigration and Nationality Act (known as the Walter-McCarran Act) were much more stringent. For example, the Act of 1952 made more elaborate the provisions for fingerprinting and registering aliens as specified in the Smith Act. In addition a central file of all aliens in the United States was to be created. The bill also prohibited Communists, members of Communist or Communist-front organizations, and those persons advocating, teaching, or publishing the doctrine of overthrowing the government by violent action from being naturalized.

³¹U.S., President (Truman), Public Papers of the Presidents of the United States: Harry S. Truman, 1950 (Washington: U.S. Government Printing Office, 1965), p. 652.

New grounds for denaturalization were included in the act, as well as a retroactive provision which permitted the deportation of people who had been members of organizations designated as subversive.³² Finally, the Walter-McCarran Act by its own provision repealed Title III of the Alien Registration Act.³³

Once again it can be seen that the Alien Registration Act has been eclipsed, not only by Supreme Court holdings, but also by Congressional legislation. The two McCarran Acts of the 1950's thus supplanted both the anti-sedition and anti-alien provisions of the Smith Act.³⁴

³²Cushman, 168, 169.

³³Gilman G. Udell (comp.), Naturalization Laws (Washington; Government Printing Office, 1964), p. 336.

³⁴It should be noted that the Immigration Act of 1965 modified the McCarran Immigration Act in that the quota systems were abrogated. Also of note, the effect of the two McCarran Acts was further lessened by dissenting opinions in such Supreme Court decisions as Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961) and Scales. In the first case, the Court's dissenting opinions included statements that the Internal Security Act of 1950 contained infringements on First and Fifth Amendment freedoms. In the Scales case, one of the dissenting opinions stated that the Internal Security Act gave people immunity from prosecution under the membership clause of the Smith Act.

CHAPTER V

CONCLUSIONS

In summary, the struggle for civil liberties, or "the struggle between Liberty and Authority," has continued through the history of Western Civilization.¹ In the United States, in particular, the problem of how to preserve personal liberties extends as far back as the embryonic colonial period and remains today as a current question. The issue of civil liberties has two basic aspects: actions taken by the federal government to protect them; and the effect of international and domestic affairs on the protection of those liberties.

In the relatively short history of the United States, there has been virtual unanimity on the viewpoint that man does have rights that are natural, inherent, and inalienable. This unanimity has disappeared, however, when the question of how to preserve those rights has been posed, and instead two opposing poles of opinion have appeared. Some have held to the view that liberty should be preserved by restrictive legislation and Court action in order to prevent usurpation of government authority. The opposite view held, and still maintains, that individual liberties should be guaranteed by the government even at the risk of its thus being overthrown. This tolerant view was best expressed by John Stuart Mill:

¹John Stuart Mill, On Liberty and Considerations on Representative Government, R. B. McCallum (ed.) (New York: The Macmillan Company, 1947), 1.

But the peculiar evil of silencing the expression of an opinion is, that it is the robbing of the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.²

These two schools of thought have struggled for political domination for the relatively few years' existence of the United States. Whichever opinion has achieved dominance has been related to the existence of real or potential threats to national security. In the Federal period, for example, those desiring the guarantee of civil liberty dominated in that the Bill of Rights was added to the Constitution. This addition was made in spite of forceful contrary arguments of James Madison, John Jay, and Alexander Hamilton in the Federalist Papers. Particularly strong in his protestations that the Constitution be accepted without the Bill of Rights was Hamilton, who feared that that addition might lead to disorderly "popular tyranny."³ It should be noted that the Bill of Rights was adopted during a period when there was no overwhelming threat of disaster to the new republic.

Less than ten years after the adoption of the First Amendment, however, the pressures of international affairs were strongly felt. By 1798, with Britain and France at war and with foreigners spreading revolutionary doctrines here, it seemed that the United States might become directly involved.⁴ As a result, those Congressmen holding to the more

²Ibid., 14-15.

³Alan Barth, The Price of Liberty (New York: The Viking Press, 1961), 33. However, during the First Congress, Madison advocated amendments similar to the Bill of Rights to be incorporated within the text rather than to be added in the body at the end of the Constitution.

⁴Zechariah Chafee, Jr., Free Speech in the United States (Cambridge: Harvard University Press, 1954), 27.

legalistic view were able to persuade Congress to enact the Alien and Sedition Laws. Fortunately, both acts expired within a few years by their own provision, and both were furiously opposed.

Another notable example of how international events instilled in the minds of Americans fear for national security and caused them to react firmly came in 1917 and 1918. The pressures of propaganda emphasizing German atrocities and the fears generated by direct involvement in war led Congress to act. In order to control war opposition and German propaganda, the Espionage Acts of 1917 and 1918 were passed.⁵ These acts were applied in the famous "red hunt" of that era pursued by Attorney General A. Mitchell Palmer.

In the Thirties, as if the economic collapse and the social revolution of the New Deal were not critical enough problems, the specter of becoming involved in another war in Europe and one in Asia loomed large in Americans' minds. As a result the end of the decade saw many attempts to protect American security. The non-citizen was viewed by those who wanted to secure American liberty, as a serious threat in that he might be the propagator of subversive ideas.⁶ If these ideas were allowed to be planted and nurtured, they might sprout into a full overturn of the government. Especially in 1939 and 1940, when Hitler's armies marched into neighboring European countries, Americans became more frenzied in efforts to protect their own democratic state.

Thus in 1940 the groups most actively trying to protect America by legislation which would restrict certain activities met with success.

⁵Ibid., 37-38.

⁶William Preston, Jr., Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933 (Cambridge: Harvard University Press, 1963), 2-3.

Congress in June, 1940, approved the Alien Registration Act. The measure had been introduced in March, 1939, by Congressman Howard W. Smith as an attempt to combine several similar measures into one comprehensive bill. After two days of hearings in April by the House Committee on the Judiciary and two days of active debate in May, 1939, the House approved the measure. It was then sent to the Senate, where it was immediately assigned to the Committee on the Judiciary. The Senate committee reported the bill out three times: the first time, in August, 1939, without any changes; the second time, in May, 1940, with admendments; then, as international events became more intense, the Senate committee reconsidered the bill and reported out a substitute measure in June, 1940. After a cursory debate the Senate approved the substitute bill and returned it to the House. Conference committees of the House and Senate reconciled the two versions. Then, on June 22, 1940, the Alien Registration Act was formally approved by both houses of Congress and on June 28, 1940, was signed into law by President Roosevelt.

Although the United States did not experience a full-fledged "red scare" during World War II as had been feared, the Alien Registration Act was enforced. Aliens were indeed registered; in fact, the terms of their registration have since become much more stringent, as specified in the two McCarran Acts of 1950 and 1952. In several Supreme Court decisions on specific cases, persons and groups were successfully prosecuted as suversive under the Smith Act. The terms of the bill dealing with those dangerous elements, however, have been largely replaced. When Senator McCarthy was at the zenith of his influence in the early 1950's, the Smith Act was eclipsed by even more drastic measures, the aforementioned McCarran Internal Security Act of 1950 and the McCarran-Walter Immigration and Naturalization Act of 1952. Thus the Alien

Registration Act has been sustained in its position in the United States Statutes, but the wisdom of its provisions has not been accepted by all. Many continue to hold that, in a democratic state such as ours, the basis of relationships in the human community should be trust and tolerance.

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Books

- Aaron, Daniel, Ed. America in Crisis. New York: Alfred A. Knopf, 1952.
Controversial subjects in United States history are reviewed in this series of essays. Useful for this study were "The Nazi-Soviet Pact and the end of a Dream" by Norman Holmes Pearson and "Black Legions on the March" by Morris Janowitz.

Allen, Frederick Lewis. Since Yesterday. New York: Harper and Brothers, 1940.

Life in the United States from the stock market crash of 1929 to the waning years of the Great Depression is described by the author as he saw it.

Baker, Roscoe. The American Legion and American Foreign Policy. New York: Bookman Associates, 1954.

The author described a marked influence of the activities of the American Legion on the foreign policy decisions of the United States government.

Barth, Alan. The Loyalty of Free Men. New York: Viking Press, 1951.

According to Barth, personal freedoms have been encroached upon because of unnecessary fears existing in the minds of Americans.

_____. The Price of Liberty. New York: The Viking Press, 1961.

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Bell, Daniel, ed. The New American Right. New York: Criterion Books, 1955.

A series of essays attempting to explain the attraction of and spread of McCarthyism. The two most useful were Richard Hofstadter's "The Pseudo-Conservative Revolt" and Seymour Martin Lipset's "The Sources of the 'Radical Right.'"

Biddle, Francis. The Fear of Freedom. Garden City: Doubleday and Company, 1951.

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Cantril, Hadley, ed. Public Opinion, 1935-1946. Princeton, New Jersey: Princeton University Press, 1951.

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Caughey, John W. In Clear and Present Danger. Chicago: University of Chicago Press, 1958.

A history of the development and applications of the "clear and present danger" doctrine, this book provided further information on the first application of the Smith Act.

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Intellectual movements of the 1930's are described in this standard work on thought in the United States.

Cushman, Robert E. Civil Liberties in the United States. Ithaca: Cornell University Press, 1956.

The provisions and implications of the two McCarran Acts of the 1950's were described.

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A standard work on freedom of speech originally published in 1941. Chapter 12, "More Legislations Against Sedition," was particularly useful because Chafee presented the hypothesis that the Smith Act was passed so hurriedly that the liberal opposition had not time to organize a protest against it.

Dies, Martin. The Trojan Horse in America. New York: Dodd, Mead and Company, 1940.

A contemporary of the pre-World War II era, Congressman Dies saw portents of a dangerous fifth-column movement having as its goal the overthrow of the United States government.

Goldman, Eric. The Crucial Decade--And After: America, 1945-1960. New York: Vintage Books, 1960.

This is a standard investigation of the post-World War II era and describes how interaction between domestic and international problems came to a head in 1949 and caused singular reactions in the behavior of Americans.

Irish, Martin D., ed. Continuing Crisis in American Politics. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1963.

One in a collection of essays on American government, Robert McCloskey's "The American Ideology" described phenomena of American political behavior.

Leuchtenburg, William E. Franklin D. Roosevelt and the New Deal, 1932-1940. New York: Harper and Row, 1963.

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Mill, John Stuart. On Liberty and Considerations on Representative Government. R. B. McCallum (ed.). New York: The Macmillan Company, 1947.

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Ogden, August Raymond. The Dies Committee. Washington: The Catholic University of America Press, 1945.

This detailed and well-documented study of the Dies Committee was an important source of information.

Palmer, Edward E. The Communist Problem in America. New York: Thomas Crowell Company, 1951.

Further information on the two McCarran Acts of the 1950's was found in this book.

Preston, William, Jr. Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933. Cambridge, Massachusetts: Harvard University Press, 1963.

Preston firmly believed that non-citizens have been suppressed because they have been looked on unfairly as threats to American security.

Schlesinger, Arthur M., Jr. The Politics of Upheaval. Boston: Houghton Mifflin Company, 1960.

The growth of the fascist societies and the appeal of the demagogues of the thirties were explained in this standard work on The Age of Roosevelt.

Articles in Newspapers

"Alien Inquiry Is Approved," New York Times, July 25, 1939, 13.

Reported that the Senate Immigration Committee approved a resolution to investigate aliens to determine the necessity for tighter immigration laws.

"America's Open Door," New York Times, June 1, 1940, p. 14.

An editorial which stated that an alien's obligations are to renounce his former citizenship and become an American citizen.

"Arms Call Sounded by Mrs. Caraway," New York Times, April 21, 1939, 12.

Contained resolutions passed by the DAR Continental Congress held in Washington asking for legislation to register and fringer-print aliens.

Belair, Felix, Jr. "President Offers Alien Control Plan," New York Times, May 23, 1940, 15.

Report of President Roosevelt's announcement of Reorganization Plan Number V to place more strict control over aliens because of international events.

"Bill to Shut Out Aliens is Reported," New York Times, July 1, 1939, 3.

Critical of bill proposing to suspend immigration and to register aliens.

"Curb on Aliens Urged," New York Times, May 12, 1939, 7.

Revealed that a speech given by Justice Salvatore A. Cotillo of the New York State Supreme Court at the meeting of the Grand Jurors Association of Bronx County urged more stringent measures be taken to eliminate subversive elements.

"Curbs Alien Entry as Defense Move," New York Times, June 6, 1940, 12.

Enumerated provisions of two executive orders issued by the State Department to restrict the entrance of aliens.

"The Enemy Within," Daily Oklahoman, June 24, 1940, 8.

Expressed the need to remove all subversives employed by the federal government.

"Good Veto," New York Times, April 14, 1940, IV, 8.

Reacted favorably to President Roosevelt's veto of the Starnes Bill and expressed the need to be vigilant against suppression of minorities.

"A Sixth Column," Daily Oklahoman, May 23, 1940, 10.

An editorial which saw a large number of fifth columnists in the United States but saw no need to form a new organization to combat them.

"Survey Disputes Immigrant Menace," New York Times, December 10, 1939, 42.

Contained the text of an article published in a special issue of Social Work Today which denounced the prevalent tendency to make immigrants the scapegoat for economic problems.

"The Trojan Horse is Here," Daily Oklahoman, May 12, 1940, D, 4.

An editorial expressing fear that Nazi agents were the Trojan Horse in the United States.

"U.S. Entry in War Urged by Stirling," New York Times, May 31, 1940, 10.

Description of Memorial Day services held by a local American Legion Post.

"Urges Suppression of Un-Americanism," New York Times, June 20, 1939, 6.

Contained the text of an anti-alien speech given by H. G. Halfield, President, at the annual convention of the Kiwanis International.

"Veterans Demand Wide Conscription," New York Times, September 15, 1939, 9.

Resolutions adopted at the United Spanish War Veterans convention were described.

"Words or Deeds?," Daily Oklahoman, June 1, 1940, 8.

An editorial which suggested that all subversive employed by the federal government should be removed from their jobs.

Articles in Periodicals

"Alien Crackdown," Newsweek, XIV (December 4, 1939), 17-18.

Conveyed the conviction of Americans that many organizations abused the privileges of free speech.

"Anti-Alien Wave," Newsweek, XV (June 3, 1940), 9.

Reported Attorney General Jackson's attitudes toward prosecuting fifth columnists without harming innocent aliens.

"The Attack on the Alien (Cont'd.)," The New Republic, CI (December 13, 1939), 272-273.

Denounced anti-alien bills before Congress because of their danger to civil liberties.

"A Bad Bill About Aliens," The New Republic, LXXXXX (August 9, 1939), 2.

Firmly opposed to a bill passed by the House which made aliens eligible for deportation if they belonged to an organization advocating overthrow of the government.

Bell, Woulric, "Senator Reynolds Saves America," The American Mercury, XLVIII (November, 1939), 305.

An article which criticized patriotic societies for making the alien a scapegoat.

Bridges, Horace J., "Suggestion Toward a New Definition of Treason," Journal of the American Institute of Criminal Law and Criminology, XXX (November, 1939), 470-484.

According to Bridges, the problem of alien agents and subversives should be solved by punishing subversives for treason rather than for sedition.

"Communist Campaign," Newsweek, XV (February 19, 1940), 12.

Reported information on the Communist Party in America working to solidify American sentiment against sending aid to the Allies.

Crawford, Kenneth G., "Open Season on Reds," The Nation, CXLVIII (May 6, 1939), 519-520.

Critical of both Congressman Howard W. Smith and his bill.

"The Deportation Menace," The Nation, CXLVIII (February 18, 1939), 192-193.

Very critical of deportation laws because of their danger to democracy.

"Fifth Column Hysteria," The Christian Century, LVII (June 12, 1940), 758-759.

Accused the federal government of contributing to fifth column hysteria by launching a large armament program.

"Fingerprinting America's Aliens," United States News, VIII (June 7, 1940), 20-21.

Contained information about the number of aliens residing in the United States who have not become citizens.

Gillis, James M. "Go to the Workingman! Go to the Poor!," The Catholic World, CL (January, 1940), 387-394.

Reported that the Pope said that Communists appealed to the poor on empty promises of food.

Hofstadter, Richard. "The Paranoid Style in American Politics," Harper's Magazine, CCXXIX (November, 1964), 77-82, 85-86.

Hofstadter has found in a segment of the population an undercurrent of paranoia which manifests itself by demanding elimination of the enemy.

"How the Fifth Column Can Function in the U.S.," United States News, VIII (June 17, 1940), 11.

Contained requests by President Roosevelt that action be taken to curb the presence of a fifth column movement. Also reported that the Attorney General wanted all aliens registered.

"Immigrants, Speak UP!," The New Republic, XCVIII (April 19, 1939), 290.

Denounced anti-alien legislation and those who supported such bills.

Kelty, William H., "Do Communists Think?," The Catholic World, CXLIX (February, 1939), 548-553.

The Communist Party in the United States was described as containing all the worst elements of a religion.

"Laws and Men," The Commonweal, XXXI (March 29, 1940), 482.

Found anti-alien and anti-sedition laws dangerous.

"Legislation Requiring Registration and Imposing Economic and Other Disabilities," Columbia Law Review, XXXIX (November, 1939), 1216-1223.

Intolerance was seen as the underlying current of anti-alien bills.

"Let All Alien Critics Beware!," The Christian Century, LVI (April 5, 1939), 436-437.

Reacted strongly against the Dempsey bill and other anti-alien bills.

Melcher, Frederic G. "Civil Rights Again An Issue," Publisher's Weekly, CXXXVII (March 9, 1940), 1069.

Asked readers to write to their Congressmen and oppose all anti-alien bills in order to protect civil liberties.

Milner, Lucille B. and Dempsey, David, "The Alien Myth," Harper's Magazine, CLXXI (September, 1940), 374-379.

Admitted that the events in Europe necessitated taking steps to protect the United States; however, the authors denounced the tendency to make the aliens the scapegoat for economic problems.

"New Spy Drive," Newsweek, XIII (April 17, 1939), 9.

Reported increased government action to apprehend spies and alien agents.

"Oppose the Anti-Alien Bills," Publisher's Weekly, CXXXVI (August 5, 1939), 357.

Denounced the Smith Bill and asked readers to send protests against the bill to their Senators.

Padover, S. K., "We Invited Our Aliens," The American Mercury, XLIV (March, 1940), 325.

Accused patriotic societies of alien-baiting and threatening national unity.

Patterson, James T., "Conservative Coalition Forms in Congress, 1933-1939," The Journal of American History, LII (March, 1966), 757-772.

The conservative coalition, predominantly composed of rural Congressmen who were disenchanted with the New Deal, dominated after 1937.

"Putting an End to a Bad Law," The New Republic, CI (December 13, 1939), 217.

An emphatic declaration of approval of the Pennsylvania Federal Circuit Court's decision that the alien registration law of that state was unconstitutional.

- "The Shape of Things," The Nation, CXLIX (August 5, 1939), 133-135.
Firmly denounced anti-alien bills because they spring from a hatred which the editors of The Nation felt should be combated.
- _____. The Nation, CL (March 9, 1940), 322.
See annotation above.
- _____. The Nation, CL (June 8, 1940), 694.
See annotation above; also gave guarded approval of Attorney General Jackson's attempts to combat the fifth column movements.
- "Tighter Alien Laws," Newsweek, XV (January 8, 1940), 7.
Predicted that Congress would pass more alien bills in its next session.
- "Totalitarianism at Home," The New Republic, XCVIII (May 17, 1939), 29-30.
Found anti-alien bills a threat to democracy.
- "U.S. Crackdown," Newsweek, XV (June 17, 1940), 40.
Reported steps taken by President Roosevelt and Secretary Harold L. Ickes to ensure protection from subversive influences.
- Villard, Oswald Garrison, "Issues and Men," The Nation, CXLIX (July 1, 1939), 17.
Not only criticized anti-alien bills but stated that they are unnecessary.
- Weybright, Victor, "The Vanishing Alien," Survey Graphic, XXVIII (July, 1939), 427-430.
Saw anti-alien legislation as a distraction from the real national issues.
- "The Witch Hunt Begins," The New Republic, CII (June 3, 1940), 745-746.
Offered a strong reaction against fingerprinting and registering aliens because such a bill had an undercurrent of hate.

Pamphlets

- American Civil Liberties Union. Defeat the Omnibus Gag Bill. New York: American Civil Liberties Union, 1939.
Firmly opposed to the Smith bill, the American Civil Liberties Union suggested several avenues of protest against the bill.
- _____. Alien and Sedition Bills. New York: American Civil Liberties Union, 1940.
See annotation above.
- _____. In the Shadow of War. New York: American Civil Liberties Union, 1940.
See annotation above.

Foreign Language Information Service, Inc. Alien Legislation and American Democracy. New York: Foreign Language Information and Service, Inc., 1940.

Reacted strongly against the anti-alien legislation because it tended to set the alien apart from the American community.

APPENDIX

Chronology of Alien Registration Act, 1940. Public Law No. 670, in
Congress, June 28, 1940.

On March 20, 1939, Mr. Howard Smith of Virginia presented a bill "to make unlawful attempts to overthrow the Government of the United States; to require licensing of civilian military organizations; to make unlawful attempts to interfere with the discipline of the Army and Navy; to require registration and fingerprinting of aliens; to enlarge the jurisdiction of the United States Circuit Courts of Appeals in certain cases; and for other purposes."

The following is a calendar of the bill's progress through the Congress of the United States as prepared and furnished by the Office of Representative Howard Smith.

March 21, 1939; Referred to subcommittee No. III.
April 12, 1939; Hearing
April 13, 1939; Hearing (serial No. 3)
April 14, 1939; Communication received from the Secretary of State
May 10, 1939; Considered by subcommittee
May 19, 1939; Referred to Attorney General
May 20, 1939; Acknowledged by the Attorney General
May 24, 1939; Report received from the Attorney General
May 25, 1939; Considered by committee
June 6, 1939; Considered by committee
June 13, 1939; Considered by committee
June 15, 1939; Considered by committee
June 20, 1939; Considered by committee
June 20, 1939; Referred to the United States Civil Service Commission
June 22, 1939; Considered by committee
June 27, 1939; Ordered favorably reported to the House as amended
June 29, 1939; Reported by Mr. Hobbs (H. Rept. No. 994) (Union Calendar No. 413)
July 13, 1939; Rules committee reported H. Res. 257 for the consideration of H. R. 5138
July 28, 1939; Debated by House
July 29, 1939; Passed by House, amended
July 31, 1939; Referred to Senate Judiciary Committee
August 5, 1939; Reported by Mr. Connally (S. Rept. No. 1154)
January 18, 1940; Recommitted to the Senate Judiciary Committee
May 29, 1940; Reported by Mr. Connally from the Senate Judiciary Committee (S. Rept. No. 1721)
June 10, 1940; Additional report filed by Mr. Connally (S. Rept. No. 1769)

- June 15, 1940; Passed by the Senate, amended. Senate insists on its amendments and appoints the following conferees: Mr. Connally, Mr. Miller and Mr. Danaher
- June 17, 1940; House disagrees to Senate amendments. Agrees to a conference and appoints the following conferees: Mr. Summers of Texas, Mr. Hobbs and Mr. Hancock.
- June 21, 1940; Mr. Summers of Texas filed Conference Report in House (H. Rept. No. 2683)
- June 22, 1940; Conference report agreed to by House (Yeas 382, Nays 4)
- June 22, 1940; Senate agrees to conference report
- June 28, 1940; Approved by the President (Public Law No. 670)

Vita

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