THE ORIGINS AND EXPANSION OF COUNTER-ESPIONAGE IN AMERICA: FROM THE REVOLUTIONARY WAR TO THE PROGRESSIVE ERA

Jules Joseph Sebastian Gaspard

The University of Warwick, Politics and International Studies

Doctor of Philosophy

August 2016
Library Declaration and Deposit Agreement

1. STUDENT DETAILS
   Please complete the following:  
   Full name: Jules Joseph Sebastian Gaspard
   University ID number: 1057333

2. THESIS DEPOSIT
   2.1 Under your registration at the University, you are required to deposit your thesis with the University in BOTH hard copy and in digital format. The digital copy should normally be saved as a single pdf file.

   2.2 The hard copy will be housed in the University Library. The digital copy will be deposited in the University’s Institutional Repository (WRAP). Unless otherwise indicated (see 2.6 below), this will be made immediately openly accessible on the Internet and will be supplied to the British Library to be made available online via its Electronic Theses Online Service (EThOS) service. [At present, theses submitted for a Master’s degree by Research (MA, MSc, LLM, MPhil or MMedSci) are not being deposited in WRAP and not being made available via EThOS. This may change in future.]

   2.3 In exceptional circumstances, the Chair of the Board of Graduate Studies may grant permission for an embargo to be placed on public access to the thesis in excess of two years. This must be applied for when submitting the thesis for examination (further information is available in the Guide to Examinations for Higher Degrees by Research.)

   2.4 If you are depositing a thesis for a Master’s degree by Research, the options below only relate to the hard copy thesis.

   2.5 If your thesis contains material protected by third party copyright, you should consult with your department, and if appropriate, deposit an abridged hard and/or digital copy thesis.

   2.6 Please tick one of the following options for the availability of your thesis (guidance is available in the Guide to Examinations for Higher Degrees by Research):

   [ ] Both the hard and digital copy thesis can be made publicly available immediately
   [ ] The hard copy thesis can be made publicly available immediately and the digital copy thesis can be made publicly available after a period of two years (should you subsequently wish to reduce the embargo period please inform the Library)
   [x] Both the hard and digital copy thesis can be made publicly available after a period of two years (should you subsequently wish to reduce the embargo period please inform the Library)
   [ ] Both the hard copy and digital copy thesis can be made publicly available after [insert time period in excess of two years]. This option requires the prior approval of the Chair of the Board of Graduate Studies (see 2.3 above)

   2.7 The University encourages users of the Library to utilise theses as much as possible, and unless indicated below users will be able to photocopy your thesis.

   [x] I do not wish for my thesis to be photocopied

3. GRANTING OF NON-EXCLUSIVE RIGHTS

   Whether I deposit my Work personally or through an assistant or other agent, I agree to the following:
• Rights granted to the University of Warwick and the British Library and the user of the thesis through this agreement are non-exclusive. I retain all rights in the thesis in its present version or future versions. I agree that the institutional repository administrators and the British Library or their agents may, without changing content, digitise and migrate the thesis to any medium or format for the purpose of future preservation and accessibility.

4. DECLARATIONS

I DECLARE THAT:

• I am the author and owner of the copyright in the thesis and/or I have the authority of the authors and owners of the copyright in the thesis to make this agreement. Reproduction of any part of this thesis for teaching or in academic or other forms of publication is subject to the normal limitations on the use of copyrighted materials and to the proper and full acknowledgement of its source.

• The digital version of the thesis I am supplying is either the same version as the final, hard-bound copy submitted in completion of my degree once any minor corrections have been completed, or is an abridged version (see 2.5 above).

• I have exercised reasonable care to ensure that the thesis is original, and does not to the best of my knowledge break any UK law or other Intellectual Property Right, or contain any confidential material.

• I understand that, through the medium of the Internet, files will be available to automated agents, and may be searched and copied by, for example, text mining and plagiarism detection software.

• At such time that my thesis will be made publicly available digitally (see 2.6 above), I grant the University of Warwick and the British Library a licence to make available on the Internet the thesis in digital format through the Institutional Repository and through the British Library via the EThOS service.

• If my thesis does include any substantial subsidiary material owned by third-party copyright holders, I have sought and obtained permission to include it in any version of my thesis available in digital format and that this permission encompasses the rights that I have granted to the University of Warwick and to the British Library.

5. LEGAL INFRINGEMENTS

I understand that neither the University of Warwick nor the British Library have any obligation to take legal action on behalf of myself or other right holders. In the event of infringement of intellectual property rights, breach of contract or any other right, in the thesis.

Please sign this agreement and ensure it is bound into the final hard bound copy of your thesis, which should be submitted to Student Reception, Senate House. 

Student’s signature: ............................................................... Date: 22 August 2016
# TABLE OF CONTENTS

INTRODUCTION .................................................................................. 1

EXPLORING COUNTER-ESPIONAGE ...................................................... 1
  THE CENTRAL ARGUMENT ................................................................. 6
  RESEARCH METHODS & PROCEDURES ............................................. 8
  DEFINITIONS: CALLING A SPADE A SPADE ....................................... 28
  CLASSIC ‘COUNTER-INTELLIGENCE’ .................................................. 32
  A RETURN TO ‘COUNTER-ESPIONAGE’ ............................................. 42
  WHY EXPLORE THE ORIGINS OF US COUNTER-ESPIONAGE? .............. 46
  CHAPTER OUTLINE ............................................................................ 48

SECTION I .......................................................................................... 53

Chapter [1] ....................................................................................... 54
  AMERICAN COUNTER-ESPIONAGE LITERATURE ............................... 54
    [i] ‘BLOOMSBURY’ ........................................................................... 58
    [ii] ‘OFFICIALS’ ............................................................................... 65
    [iii] REVISIONIST ............................................................................ 79
  COUNTER-ESPIONAGE AS A POISONED CHALICE ................................ 89

SECTION II ........................................................................................ 94

Chapter [2] ....................................................................................... 95
  THE ORIGINAL ELEMENTS OF US COUNTER-ESPIONAGE ................... 95
    COUNTER-ESPIONAGE IN A ‘STATE OF EXCEPTION’ ............................ 99
    IGNORANT FRAMERS ........................................................................ 109
    CONSTITUTIONAL VALUES & COUNTER-ESPIONAGE ..................... 118
    STEPPING AWAY FROM BRITAIN ..................................................... 131

Chapter [3] ....................................................................................... 134
  THE ORIGINAL ELEMENTS OF US COUNTER-ESPIONAGE, PART II ....... 134
    THE NEW YORK COMMITTEE & THE RULE OF LAW ............................ 136
    THOMAS HICKEY ............................................................................ 149
    THE OTHER END OF THE STICK ....................................................... 155
    THE MEANING OF TREASON .......................................................... 161
    THE NEW MEANING OF TREASON .................................................. 171
    SETTING COUNTER-ESPIONAGE FOR A HUNDRED YEAR .................. 180

SECTION III ....................................................................................... 184

Chapter [4] ....................................................................................... 185
  THE RISE AND FALL OF PRIVATE SECTOR COUNTER-ESPIONAGE ....... 185
    PRIVATE SECTOR COUNTER-ESPIONAGE: THE MISSING FOUNDATIONAL
      VALUE ........................................................................................... 190
    WHY HOMESTEAD IN RELATION TO COUNTER-ESPIONAGE? .............. 199
    AMERICAN ‘RIGHTS’ ......................................................................... 201
    SCALE & ECONOMIC CONSEQUENCES ............................................ 208
    IMMIGRANTS AGAINST ‘THE STATE’ ............................................... 211
    TREASON OR RIOT? ......................................................................... 216
ACKNOWLEDGEMENTS

The following people have my thanks and gratitude, without them I would not have been able to complete this project.

I would like to thank my first ever politics teacher, Peter Effer. Peter was the finest educator I had the privilege of sitting in a classroom and learning from. Without Peter’s backing in applying for university, I would not have gone. I am eternally grateful for his belief in me.

I would also like to thank Philip Davies, my first supervisor and academic mentor. Philip encouraged me to study Intelligence, sitting and having long conversations with me about the subject. Without him I would not have had the opportunity to conduct this research. I am forever in Philip’s debt.

I could not have completed this thesis without the continual guidance and support of two of the finest scholars I have had the opportunity to learn from whilst at Warwick: Chris Moran and Richard Aldrich.

I would like to thank Chris for his encouragement and essential guidance that helped me to develop intellectually throughout this process. For help, support and the gentle pushes to seek opportunities to advance. For his sharp insight and research advice. For his warmth and unflinching positivity when it was most needed. For reassurance without laxity, and prodding without bruising.

I would also like to thank Richard for years of cheerful, invaluable mentoring and patience. For championing my ideas and advancement and for helping to shape a collection of expansive, ambitious ideas into a body of work. For high standards and high spirits. For munificence with his intimidatingly vast font of knowledge. For help far beyond the requirements of duty. For good humour in times when I had lost my own. I know of few people with a more nurturing spirit.

I would like to thank my University for entrusting me with a Chancellor’s Scholarship and supporting my research. I would also like to thank the Doctoral Training Centre for funding my archival research in the US. It will be invaluable for years to come.

I would like to thank my friends and family throughout the years who have always been patient, helpful and supportive through my ‘decade of learning’: Alan Johnson, Montine Walters, James Byrne, JJ Hodari, my uncle Robert, my cousin Steven and the indomitable Graham Baker. I would also like to thank my mother and sister. They have always been a source of everlasting support, warmth and love.

Lastly, I could not have completed this thesis without the support of my partner Laura Kennedy. She has been a continual source of reassurance and help. I could not admire a person more.
From the initial emergence of Intelligence Studies as a recognised academic discipline in the 1980s to the present day, official voices have been pre-eminent. This is especially true of counter-espionage. Only a few histories on the evolution of American counter-espionage have developed entirely exogenously from those who have worked within the country’s intelligence community. Unsurprisingly, this has had a rather distorting effect on our understanding of the context and nature of American counter-espionage.

This thesis considers how America changed from a nation that partly defined itself at the outset by constricting the state apparatus of domestic spying to creating one of the largest domestic security systems. Meanwhile counter-espionage changed from being used only during states of exception, to a state of permanence.

In exploring the rise of American counter-espionage, this thesis makes three important claims of three key eras – the Revolutionary, the Gilded and the Progressive. First, it argues that the framers of the United States Constitution endeavoured to counteract the creation of a centralised security service. Second, it argues that this framework for limited counter-espionage, established by the framers, began to unravel following the Homestead Strike in 1892 and the passing of the ‘Anti-Pinkerton Act’. Lastly, it critically assesses the Progressive Era, where the foundation for the modern surveillance state was laid, with the creation of the Bureau of Investigation, the 1917 Espionage Act and a new state interventionist spirit. Along with progressivism, this thesis argues that the other dominant influences on the expansion of American counter-espionage were Britain and the private sector.

More broadly, this thesis argues that Intelligence Studies has taken a wrong turn. In seeking to restore the ‘missing dimension’, it has at the same time created a separate field of study that often fails to connect to wider ideas of constitutional history, labour history and civil rights. Therefore, whilst analysing the origins, expansion and influences on America’s domestic security apparatus, the thesis continually connects the use of counter-espionage to the political events that initiated its use. I do this so as to provide a critical revisionist account of American counter-espionage that challenges the existing narrative on the rise of spying in America.
INTRODUCTION

EXPLORING COUNTER-ESPIONAGE

Mere words are still ‘inadequate vessels to contain the sense of shock and horror that people felt’ following the terrorist attacks on 11 September 2001.\(^1\) Inaction, at any level of government, was not an acceptable response. So following 9/11, Congress and the George W. Bush administration took swift action to create the Transportation Security Administration (TSA), bringing under federal control – and into public employment – the once privately managed passenger and baggage screening operations. The passing of the bill was not controversial. The Aviation and Transportation Security Act was brought in on 21 September, and was passed in both houses of 107th Congress by 19 November 2001 – in a speedy twenty-eight days. The bill sailed through the Senate and the House with unanimous support from all 100 senators, and a 410-9 vote in the House.\(^2\) On the same day, at 10:53 am, speaking at the signing ceremony in the lobby of Terminal A at Ronald Reagan Washington National Airport, then-President George W. Bush told the assembled audience that, ‘For the first time, airport security will become a direct Federal responsibility overseen by a new Under Secretary of

---


Transportation for Security’. It was determined that the security of America’s airways was too important to leave to the private sector.

Following one act of Congress, private employees were replaced with federal employees – the business was nationalised. To this day, however, the federalisation of airport screening remains controversial, and the agency has become a target of regular criticism. The TSA has a Shakespearian fatal flaw. It was created in a panicked rush in the aftermath of a national calamity and was designated as the agency responsible for establishing transportation security policy and regulating providers of transportation operations and infrastructure (airlines, airports, railroads, transit systems, etc.). The TSA was also the operator of by far the largest component of airport security – passenger and baggage screening. Therein lies the problem; the TSA has a serious conflict of interest. In no other country does the oversight agency also directly manage the operations of airport security.

---


4 In 2015/16 the chairmen of both the House and Senate committees formerly responsible for providing oversight of the TSA have been highly critical of the organisation. Representative Bill Shuster, Chairman of the House Transportation and Infrastructure Committee, contended that, in hindsight, the decision to create the TSA as a federal agency responsible for passenger and baggage screening was a ‘big mistake’, and that frontline screening responsibilities should have been left in the hands of private security companies. John Thune, the Chairman of the Senate Committee on Commerce, Science, and Transportation, said much the same. See: Keith Laing, ‘GOP Chairman: TSA was a “big mistake”’, The Hill, 18 March 2015. <http://thehill.com/policy/transportation/236130-gop-rep-creating-tnsa-was-a-mistake> (16 August 2016).

5 Eighteen airports use private companies under contract with the TSA under the screening partnership program; 450 or so airports in America have TSA airport screeners.
In 2011, the House Transportation & Infrastructure committee conducted a study of how screening at Los Angeles’ main airport (LAX) compared with San Francisco International Airport (SFO), one of the few airports in the country which has private security. The study found that SFO screeners processed sixty-five per-cent more passengers per screener than did their counterparts at LAX. A defender of the TSA might claim that the screeners in LAX were being more diligent, hence taking longer, but the evidence does not support this deduction. A USA Today investigation in 2007 found that TSA screeners at LAX ‘missed three times as many hidden bomb materials as did privately contracted screeners at San Francisco’. Overall, private-screening airports are also cheaper.

The strength of America’s form of republican democracy – especially pertaining to security – is its separation of powers and checks and balances. It means that legislation is carefully scrutinised and weighed so as not trample over the natural rights that the framers of the Constitution attempted so diligently to enshrine and protect. In the wake of the most profound intelligence failure since Pearl Harbour, the creation of the TSA is representative of the important currents in understanding the persistent expansion of US domestic security, and counter-espionage infrastructure especially. The process occurs as follows: First, there is a major event that

---

6 It was one of the eighteen airports under the screening partnership program.
7 A 2005 study by the Government Accountability Office (GAO) also found that private screeners did a better job than TSA screeners. A 2012 survey compared sixteen private-screening airports with federal-screening airports on four performance measures. It found that the private screeners performed better on some measures, while federal screeners performed better on others. See: GAO, Transportation Security Administration: Clear Policies and Oversight Needed for Designation of Sensitive Security Information, GAO-05-677 (Washington, DC: Government Printing Office, 2005).
greatly agitates current internal security practices and that causes significant moral panic. This ‘panic’, starting in the Progressive era in the early twentieth century, was thrust upon the federal government with an expectation that it needed to ‘do something’. Lastly, the federal government responds by creating, or greatly expanding, a federal bureaucracy.

In the aftermath of 9/11, the sacrificial lamb was airport security. This thesis interprets the untold history of the expansion of US counter-espionage through the same three-step process. Remarkably, despite the numerous official and semi-official histories of counter-espionage within America, they have overlooked - not just the three-step process - but also the three key drivers of the expansion: British inspiration; private sector influence and Progressive Era politics.

This thesis explores the origins of US counter-espionage, emphasising in its analysis the three forces above, and seeking to explain why these explanatory factors are central to a complete narrative. Access to Congressional Records and newly declassified files in both the US and the UK attests to the validity of this statement. The declassification of millions of files in both the US and UK has afforded historians an abundance of opportunities to re-interpret,
revise and discover the ‘missing dimension’ of international history, since for the first time, very few files from that era are now withheld.\footnote{Christopher M. Andrew and David Dilks (eds.), \textit{The Missing Dimension: Government and Intelligence Communities in the Twentieth Century} (London: Macmillan, 1984).}

This study goes back to the very origins of US counter-espionage in order to reveal its previously unexplored ‘foundational’ characteristics. It will examine three key periods in relation to counter-espionage: first, the Revolutionary Era, where America’s constitutional values limited offensive methods of counter-espionage; second, America’s second industrial revolution when private sector security and secret services would be removed from the equation; and thirdly the Progressive Era, when America’s traditional counter-espionage culture would be replaced with a new one imbued with progressive values.

In pursuing my primary concern – uncovering the hidden origins of US counter-espionage, and the establishment of a permanent counter-espionage bureaucracy in the early part of the twentieth century – other themes will be brought to light and examined. These subsidiary questions are interwoven with and inseparable from a discussion on the origins of US counter-espionage, and logically arise pursuing this theme. These include: is espionage a law enforcement concern? What was the role of progressives, the private sector and Britain in moulding US counter-espionage? How did counter-espionage and government bureaucracy become so entwined? To what extent is immigration linked to counter-espionage? Did Marxist/Anarchist ideas pose an irreconcilable threat to American republicanism? And lastly, is today’s counter-espionage bureaucracy and
legislation anathema to America’s original political culture and traditional bureaucracy, and when did it begin to present such a challenge?

THE CENTRAL ARGUMENT

Intelligence Studies is a peculiar academic discipline. From its initial emergence in the academy to the present day the official voice has been dominant: few works have developed entirely exogenously from those who work, or have worked, within intelligence services – this is particularly true within the Anglosphere. Unsurprisingly, this has a skewing effect on the overall trajectory of the discipline and the majority of narratives on intelligence. Imagine how unusual it would seem if most coverage of US foreign policy was written predominantly by International Relations scholars who had worked within the State Department; or if analysis of the Federal Reserve was conducted chiefly by economists who work within the central bank.

The preponderance of official and semi-official works on counter-espionage history, in both the US and UK, is a striking example of the above sanitising process and, more importantly, the way it shapes the meta-narrative. In Rhodri Jeffreys-Jones’ most recent offering, In Spies We Trust, he offers the acute observation that ‘the legend of British intelligence superiority needs to

---


13 See chapter one for an overview of the official and semi-official literature on the origins and expansion of American counter-espionage.
be studied critically.' I would add that the origins, liaisons and operations of the majority of British and American intelligence are all in need of being studied more critically. His next sentence is equally apposite, pointing out that ‘at its inception American intelligence was no copycat operation, but an independent creation with virtues of its own.’

Accordingly, in this thesis I attempt to accomplish both these specified tasks. In assessing the origins of American counter-espionage I will reveal that American counter-espionage was ‘no copycat operation’ of British counter-espionage, though as a former crown-colony, it was greatly inspired by British legislation and methods of repression. It is important to unpick Britain’s role from the fabric of revolutionary America (not just as a foil, but also as a mother country) if we are to understand the origins of American counter-espionage.

In addition, I will analyse American counter-espionage’s ‘virtues of its own’, derived from the Revolutionary Era, which set an extremely high bar for treason, sedition and espionage. However, no story of counter-espionage could be complete without also dealing with the countervailing vices, those forces which greatly contributed to the expansion of American counter-espionage. These include the aforementioned Britain, but also private sector influences from non-government detective firms and Progressive Era politics at the beginning of the twentieth century.

The historiography of the origins of American counter-espionage has been greatly shaped by official and semi-official histories, which have dominated

---

15 ibid.
the discourse not only on the origins but also on the prevailing influences thereafter. As such, the main purpose of this thesis is to unearth the subterranean lineage of American traditional counter-espionage culture from the Revolutionary Era, and explore how and why it was subsequently hidden. This thesis is therefore both a critical revisionist account of the origins of US counter-espionage and also of its deliberate self-reverential framing.

RESEARCH METHODS & PROCEDURES

Exploring the pitfalls, or what William Harvey refers to as ‘traps’, of qualitative research methods is both a functional and necessary task, primarily for two reasons. First, it helps establish the efficacy of a method in an empirical way. In other words, it explores its character and texture as well as its strengths and weaknesses. Second, despite providing rather a subjective and impressionistic account of one’s use of the method, it provides a blueprint for others like myself who represent early career researchers – providing them with research shortcuts. This experiential and even anecdotal commentary, offered by those who write on research methods, may well prove invaluable to those who wish to conduct qualitative research in a historical way. As former First Lady Eleanor Roosevelt astutely warned, ‘learn from the mistakes of others. You can’t live long enough to make them all yourself.’

Intelligence Studies, however, presents discipline-specific methodological quandaries which can make it more difficult to ‘learn from the mistakes of

---

others’. Conducting research on the secret state presents several particular difficulties. First, few Intelligence Studies scholars have contributed to a body of literature on the methodology of the discipline, which would take the form of an inter-generational shared memory on best practices. Second, throughout the twentieth century, there has been unwillingness on the part of governments to place information pertaining to domestic threats, foreign governments and counter-espionage in the archives. One solution to the historian’s call for greater openness has often been to provide a laundered list of files carefully placed into the archives. The final difficulty is the prevalence of official and semi-official histories. I will not go into great detail on this latter issue here, as this particular shortfall is addressed in my literature review, but it is sufficient to say at this point that official and semi-official histories act to undermine the epistemological principles of historical scholarship: ‘no a priori truths, no unassailable facts, no privileged sources and, above all, no final interpretations’. The writing of history is a cumulative endeavour of many individuals over time; official histories run counter to this.

18 Philip H.J. Davies, ‘Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of Intelligence and Security Services’, Politics, Vol. 21, No. 1 (2001), pg. 73.
Careful and objective selection of sources is key to such a qualitative approach. Working with over 30,000 files (some adjacent) over a century, not all the cases I surveyed proved relevant or even interesting. Additionally, conducting a longitudinal study over a hundred years produces masses of data that could be relayed quantitatively but would not tell the full story of the origins of US counter-espionage; its influences would be stripped of depth and context. The role of J. Edgar Hoover cannot be represented numerically; the influence of William Pinkerton, cannot be quantified. Therefore, details will be provided by highlighting paradigmatic cases that exemplify broader trends I have found across the masses of primary sources used, from declassified FBI files to newspaper archives.

However, my analysis of the origins of my subject will not simply consist of anecdotes connected by a common theme. Too often, we think of events in history as discrete moments which form a larger history when placed in alignment. Instead, I hope that this thesis challenges that understanding in relation to counter-espionage. This history of counter-espionage in America is more than a mere list of operations in wartime. A large portion of this work is devoted to the politics of intelligence – the background context – which is vital to grasping the origins and evolution of US counter-espionage so that readers understand not only what happened, but why.

Methodologically speaking, the origins of American counter-espionage constitute a good example of two key historical concepts which impact all scholarship: agency and structure.21 One of my objectives is that after engaging with my research, the reader will have a more experiential

understanding of counter-espionage, and see the salient historic events as
the people who lived through them did, including the uncertainty that came
with the decisions made. At any one of a hundred points, a different decision
could have changed the ultimate outcome. Of course, agency is not
limitless—there are economic, social, and legal limits to the available choices.
For instance, you are constrained in your choice of hotels by how much
money you have in your bank account, you may have to settle for staying in
the Holiday Inn on your holiday instead of the Hilton round the corner. At
another level, even your own preferences may have been shaped by factors
outside your control. As John Hospers tells us, you can choose what you like,
but you cannot choose to like what you like.

If part of agency-based analysis means understanding that people are free to
make their own decisions, then we must also understand that structure limits
the available possibilities and makes certain outcomes more likely than
others. All events in history take place within a specific context, which greatly
contributes to the outcome by limiting the individual actors’ range of choices.
The origins of American counter-espionage are a great illustration of the
intersection between agency and structural analysis that shapes all historical
scholarship.

Overall, my research here is driven by an ‘agency’ based analysis – but not
one that is overly simplistic, treating individuals as highly atomised and

---

22 For more on this, see: Chuck Klosterman, But What If We’re Wrong?: Thinking
About the Present As If It Were the Past (New York, NY: Penguin USA, 2016).
23 John Hospers, An Introduction to Philosophical Analysis (London: Routledge,
1997), pg. 340.
24 Giovanni Capoccia and R. Daniel Kelemen, ‘The Study of Critical Junctures:
Theory, Narrative, and Counterfactuals in Historical Institutionalism’, World Politics,
reducing them purely to the pursuit of self-interest.\textsuperscript{25} For the sake of methodological simplicity, it does not suit my purpose to dissolve the collective notions of nationalism, community, society, class or tribe inherent to structural-based analyses. Instead, I will try to synthesise the two by applying Karl Popper’s idea of situation analysis.\textsuperscript{26}

In his intellectual autobiography, \textit{Unended Quest}, Popper noted that he was always more interested in the natural than in the social sciences.\textsuperscript{27} As such, for decades situational analysis has received scant scholarly attention.\textsuperscript{28} That being said, Popper actually devoted considerable thought to the philosophy of the social sciences, in \textit{The Poverty of Historicism}, \textit{The Open Society and Its Enemies}, and numerous other essays, including his lengthiest explication of situational analysis—\textit{Models, Instruments, and Truth}. In these works, Popper offers extended analysis of the social sciences and their methodologies.\textsuperscript{29} Briefly, I want to present the rationality principle, the

\begin{footnotesize}
\begin{enumerate}
  \item Similar, but not identical, to the methodological expedient economists use for individuals in their economic models. See page eighteen.
  \item Karl R. Popper, \textit{Unended Quest: An Intellectual Autobiography} (London: Open Court, 1976), pg. 121.
\end{enumerate}
\end{footnotesize}
concept of situational analysis, as well as its relationship to methodological individualism and how these ideas feed into the conduct of my research and the writing of my thesis.

Popper is among the most influential philosophers of the twentieth century.\textsuperscript{30} Though his contribution is most pronounced in the philosophy of science, Popper’s vital findings in the natural sciences can be extended to the social sciences. For example, Popper’s three-worlds.\textsuperscript{31} In his three-world theory Popper provides a forceful justification for concepts created by humans – such as social institutions, norms, values and other ‘World 3’ entities as ‘real’.\textsuperscript{32} Popper does so by arguing that the primary criterion establishing the reality of an entity is ‘that they may have a causal effect upon us, upon our world 2 experiences, and further upon our world 1 brains, and thus upon material bodies’.\textsuperscript{33} Because abstract entities are observable in the material world as such, Popper argues, they are real.\textsuperscript{34}

---

\textsuperscript{30} Timothy E. Burke, \textit{The Philosophy of Popper} (Manchester: Manchester University Press, 1983), pg. 228.

\textsuperscript{31} Popper’s three worlds is a way of looking at reality. Popper split the world into three categories: World 1: the world of physical objects and events, including biological entities; World 2: the world of mental objects and events; World 3: objective knowledge. Karl R. Popper, ‘Three Worlds’ the Tanner Lecture on Human Values, Delivered at the University of Michigan, 7 April 1978.

\textsuperscript{32} ibid. Gorton, \textit{Popper}, pg. 3 and 23.

\textsuperscript{33} Popper, \textit{Three Worlds}, pg. 150.

\textsuperscript{34} Similarly, one other important benefit of situational analysis is that it incorporates not just the social but the physical environment into our situational models. As Noretta Koertge has noted: ‘situational analysis helps to break down the dichotomy between material and ideological explanation by revealing that both approaches are subsets of situational explanation’. See: Noretta Koertge, ‘Beyond Cultural Relativism’, in Gregory Currie and Alan Musgrave (eds), \textit{Popper and the Human Sciences} (Boston, MA: Martinus Nijhoff, 1985), pg. 121–131.
Popper’s three-world theory feeds into his situational analysis which he outlines in *Models, Instruments, and Truth*. He begins his outline of situational analysis by positing that there are two kinds of problems in need of explanation or prediction: *singular events* (the French Revolution) and *kinds of events* (revolutions). Popper argues that to explain the former simply requires identifying some relevant starting conditions along with some universal laws to predict (or retrodict) and explain the event. However, explaining a kind of event—that is, an event that recurs predictably—requires a somewhat different approach that Popper says, is most easily solved by constructing a model.\(^{35}\)

Models are often crucial for describing types of events in the natural sciences, especially, for example, in theoretical physics. For Popper, however, models offer even greater importance in the social sciences as we ‘never have sufficient laws and initial conditions at our disposal to explain’ social situations.\(^{36}\) As such, channelling Friedrich Hayek, Popper argues that the social sciences generally must settle for ‘explanation in principle’ rather than ‘explanation in detail’—that is, an explanation of *typical* events rather than an explanation of *actual* events.\(^{37}\) For this reason, Popper argues that the construction of models for typical social situations is the best approach. He also argues it ought to be the central task of the social scientist: ‘The fundamental problem of the social sciences is to explain and understand events in terms of human actions and social situations. The key term here is “social situation”’.\(^{38}\) What Popper means by ‘social situations’ are entities like

---

\(^{35}\) Gorton, *Popper*, pg. 6  
\(^{37}\) ibid. Also, Gorton, *Popper*, pp. 6-7.  
\(^{38}\) Popper, *Myth of Framework*, pg. 166 (Popper’s italics).
social institutions (such as bureaucratic regulations, institutional ethics, legal codes, etc.) as well as traditions and social norms.\textsuperscript{39}

Situational analysis, however, need not be used only for the construction of models of typical social situations in prediction. Popper also sees situational analysis as the principle method for explaining social events—that is, as the method of history.\textsuperscript{40} Nevertheless, both nomothetic and idiographic phenomena consist of people and social relations, broadly understood, which makes situational analysis valuable in both instances.

In addition to individual and social relations, a situational model also includes relevant features of the natural environment, such as scientific laws and physical barriers that constrain an individual’s behaviour.\textsuperscript{41} Lastly, and critically, at the centre of the situational model is a human actor, whose aims and knowledge of the situation are all part of the model.

To illustrate the above, it is worth using the example Popper used to lay bare what he called ‘situational logic’.\textsuperscript{42} Popper asks us to imagine a man called ‘Richard’ attempting to cross a street in a rush, with our goal being to explain Richard’s erratic movements in crossing the street. It is a simple scenario but one that Popper believed contained all the relevant elements of situational analysis ‘as used in economics, in social anthropology, in the sociology of power politics, and in social or political history.’\textsuperscript{43} Popper lists the physical barriers encountered by Richard, including moving and parked cars, other

\textsuperscript{39} Gorton, \textit{Popper}, pg. 7.
\textsuperscript{41} ibid.
\textsuperscript{42} Popper, \textit{Myth of Framework}, pg. 166.
\textsuperscript{43} ibid, pg. 171.
pedestrians, central reservations and so on. Popper then lists further (non-physical) elements that are equally relevant to explain Richard’s movement, including: the rules of the road, police regulations, traffic lights and signs, zebra crossings and other ‘social institutions’.\textsuperscript{44}

Popper aptly highlights that some of these incorporeal obstacles take, or are incorporated in physical bodies (etc. zebra crossings and traffic signals). Some obstacles might be in human bodies, such as police regulations enforced by a police constable. Lastly, Popper notes some are purely abstract, but still Richard experiences them as if they were obstacles. Popper gathers and labels these abstract barriers and calls them ‘social institutions’; for all those things which set limits or create impediments to our action as if they were physical bodies or obstacles, like the rules of the road.\textsuperscript{45} Lastly, the situational model must also include Richard’s own aims—in this case crossing the street quickly—and his ‘certain elements of knowledge or information’ of the situation, which enable him to interpret and negotiate social institutions.\textsuperscript{46} Thus, a situational analysis is comprised of (1) physical things, (2) social institutions and (3) some elements of (relevant) knowledge on behalf of Richard to cross the road safely.

What we have above now is a model, the building blocks for a typical case, as well as a singular one. This model allows us to explore, predict (or retrodict) why a person might fail to cross a road. Perhaps a person’s understanding of the situation is imperfect, and these imperfections affect his actions. For example, Richard’s failure to notice a car turning, a physical

\textsuperscript{44} ibid, pg. 167 (Popper’s italics).
\textsuperscript{45} ibid, pg. 167.
\textsuperscript{46} Gorton, Popper, pg. 8.
component of the situation, might explain his failure to cross the road. Similarly, Richard’s misinterpretation of a social rule may also affect his actions.\footnote{ibid.} Perhaps where Richard is from the red light on a traffic light means ‘go’. A complete situational model includes both a description of the situation as it was and the situation as the actor perceived it.\footnote{Popper, \textit{Myth of Framework}, pg.183.}

As noted above, the task of the social scientist for Popper is using situational analysis to ascertain the distilled situational logic. To strive to produce an objective reconstruction of a situation as faced by Richard, as well as a reconstruction of Richard’s own assessment of the situation; with the disparities between the two frequently being key in explaining the agent’s behaviour. This is also my approach in the subsequent chapters. That is why in section three, for example, I have dedicated an entire chapter to the ‘Battle on July 6’ (the Homestead Strike); the day itself, describing the place, the actors, the time and the environment.

The logical question that arises after an explanation of situational analysis is one that Popper foresaw and dealt with: ‘how is the model of a social situation animated’?\footnote{For example, how a model of the solar system is animated by Newton’s universal laws of motion. Though his solution of the rationality principle has drawn the most criticism. See, for example: Peter Hedström, Richard Swedberg and Lars Udéhn, ‘Popper’s Situational Analysis and Contemporary Sociology’, \textit{Philosophy of the Social Sciences}, Vol. 28, No. 3 (1998), pp. 339-364.} To complete the situational model, Popper argues that we need to animate it by means of the rationality principle. In animating a model, the rationality principle is a stand-in for deterministic structural
explanations that, in Popper’s life and now, animate much of the social sciences.\textsuperscript{50}

His explanation of the rationality principle, parallels in many ways the rational choice theory employed by mainstream economists.\textsuperscript{51} However, Popper’s rationality principle differs from rational choice theory in that it merely assumes that a person will act ‘adequately’ (or sensibly), given his/her goals and the situation.\textsuperscript{52} ‘We assume no more than that the actors act within the terms of the model’, or that they ‘work out’ what was implicit in the situation. This, incidentally, is what the term ‘situational logic’ alludes to. The idea is that a person simply ‘work[s] out’ what is implicit in the situation, as posited by our model (i.e. the example above, crossing the road in a hurry).\textsuperscript{53}

The rationality principle means situational analysis, overall, is compatible with the insights of interpretive approaches to social (sociological) inquiry – specifically, that human action is meaningful and that any reasonable social science must take this fact into account.\textsuperscript{54} Popper himself characterised situational analysis this way in his later work.\textsuperscript{55} He presented situational

\textsuperscript{50} Popper, \textit{Open Society}, Vol. II, pg. 89. Popper focused his rejection on psychological explanations, what he calls ‘psychologism’. Psychologism, a view that Popper ascribes to John Stuart Mill and unattributed others, is the belief that social behaviour and social institutions are ultimately ‘reducible to the psychological laws of “human nature”’. As with the construction of situational models, Popper recommends that we ignore psychological factors and assume that the actions of individuals are guided instead by the rationality principle. See Popper, \textit{Open Society}, Vol. II, pg. 90.


\textsuperscript{52} In this sense, it is also like the principle of rationality in neo-realist IR theories.

\textsuperscript{53} Popper, \textit{Myth of Framework}, pg. 169.

\textsuperscript{54} Gorton, \textit{Popper}, pg. 10.

\textsuperscript{55} Popper, \textit{Objective Knowledge}, pp. 162–180; see also Farr, ‘Popper’s Hermeneutics’.
analysis, steered by the rationality principle, as the best method for history, when the aim of historical inquiry is to understand the actions, beliefs and motives of individuals in history. ‘My thesis’, Popper wrote, ‘is that the main aim of all historical understanding is the hypothetical reconstruction of a historical problem-situation’.56

Therefore, situational analysis conceptualising human action as intentional requires that the writer unpack the beliefs, values and social rules that inform an agent’s behaviour. Thus, if a situational model is well constructed, it ought to advance our understanding of the situation, as well as the individuals who inhabit it. It must be noted, however, that such models never have such strong predictive power as can be found in the models within the natural sciences. At best, situational models might produce merely adequate retroductions that nevertheless help us with practical problems involved in explaining social institutions, and help us understand how they came into being, when they changed and what changed them.

One of the main reasons this thesis follows in the Popperian mould is the conceptualisation of human action as intentional; in other words the methodological individualism inherent within situational analysis. Apart from John W. N. Watkins, whose work drew from Popper’s, Popper is often cited as an authority on methodological individualism.57 Indeed, As Gorton notes

56 ibid, pg.170. Popper himself very occasional wrote history, specifically the history of science, where he employed situational analysis to enhance our understanding of, for example, Galileo’s theory of the tides and Kepler’s metaphysics. See: ibid, pp. 170–180; and Karl R. Popper, All Life Is Problem Solving (New York, NY: Routledge, 1999), pp. 74–78.

in his book on Popper, ‘in scholarly essays on methodological individualism, it is practically de rigueur to begin with a nod to Popper’s contributions to the topic’.\textsuperscript{58}

In \textit{The Poverty of Historicism}, Popper explained methodological individualism as the: ‘quite unassailable doctrine that we must try to understand all collective phenomena as due to the actions, interactions, aims, hopes, and thoughts of individual men, and due to traditions created and preserved by individual men’.\textsuperscript{59} Clearly put, whoever wishes to trace back the origins, transformation and expansion of a social institution to root causes cannot sidestep the analysis of individual actions. He/she must deal with the choices of individuals. He/she must deal with the meaning that individuals attach to the situations in which they act, and to the alternative situations that they believed were available.\textsuperscript{60}

As such, \textit{In the Open Society and Its Enemies}, Popper maintained that methodological individualism ‘insists that the “behaviour” and the “actions” of collectives, such as states or social groups, must be reduced to the behaviour and to the actions of human individuals’.\textsuperscript{61} That methodological individualism gives credence to the important doctrine that the functioning


\textsuperscript{60} This has been famously argued by Carl Menger, \textit{Untersuchungen zur Methode der Socialwissenschaften und der politischen Ökonomie insbesondere} (Leipzig: Duncker & Humblot, 1883), Bk. III, chap. 2, pp. 153–171.

of all social institutions should be understood as resulting from the decisions, actions, attitudes, etc., of human individuals. Later in *the Open Society* Popper adds that we also ought to be dissatisfied with explanations in terms of so-called ‘collectives’ (states, nations, races, etc.).

The impetus for Popper’s methodological individualism (and mine) can be found here. It is to counter what he believed to be the widespread but deeply misguided approach to social inquiry: the approach he dubbed ‘methodological collectivism’. The approach that he accused Hegel and Marx of employing. It entails the belief that a transcendent entity, or suprahistorical force, imposes its will on individuals and thereby produces social phenomena. In other words, ‘supraindividual entities are deemed to be prior to individuals in order of explanation; individuals are merely puppets to such forces’. For Hegel, Popper says, this force was ‘national spirit’; for Rousseau, it was the ‘general will’; and for Marx it was of course ‘class’. Other holistic entities could be Reason or human nature, in the Hegelian sense, which could both also be argued to direct the dialectical march of history. All are firmly deterministic and leave no space for individual agency, for free will.

Here, like Popper, I conclude that the agency of the individual can never be made subservient to the will of some holistic entity; that ultimately it is individuals that animate the social world and never the other way around. Or as Ludwig von Mises explained: ‘The characteristics of individual men, their

---

62 ibid and Gorton, *Popper*, pg. 16.
63 And to a lesser extent for situational analysis.
ideas and judgments of value as well as the actions guided by those ideas and judgments, cannot be traced back to something of which they would be the derivatives. There is no answer to the question why Frederick II invaded Silesia except: because he was Frederick II.67 At the same time, however, social phenomena cannot be reduced to simply relaying facts about an individual— ‘whether as isolated beings, psychological entities or material properties’.68 In fact, most of the effort involved in developing a Popperian situational model is dedicated to producing a description of social institutions. For instance, from this thesis, in chapter five on the Homestead Strike. The actions of the individual, however, will be assumed to be guided by the rationality principle regardless of the various situational milieus present.

Historical analysis, if it weds itself to known facts, must explain social situations as resulting from individual action, and the causal chain of events must start and end with the ideas and judgments of individuals.69 It must describe in retrospect ‘how the acting person perceived the situation in which he had to act, what he aimed at, what he believed to be the means at his disposition’.70

My methodological individualism has also resulted in my research branching further out from the narrow confines of ‘Intelligence Studies’ – my research is

68 Gorton, Popper, pg. 20.
69 Jörg Guido Hülsmann, Mises: The Last Knight of Liberalism (Aurburn, Al: Ludwing Von Mises Institute, 2007), pg. 955
70 ibid. Popper is also useful for his arguments in favour of human free will against determinism, as in situational analysis he finds that human action must be understood as non-causal, free, and irreducible to an individual’s psychological properties.
thoroughly interdisciplinary. In the next chapter, I identify and detail my issues with narrow and frequently arbitrary or artificial disciplinary boundaries that exist, which have prevented intelligence scholars from seeing the close connections between different phenomena and between different disciplines. Though my conclusions and reader here dwell within the multidisciplinary field that is intelligence – in terms of both the ontology and epistemology of the research – the methods and literatures I have engaged with include several other social scientific disciplines.

In addition, in situating counter-espionage within its historical and political context, I have used more than archival material as major sources. With leaps in technology, it has become a much easier task to analyse multiple press reports from the nineteenth and early twentieth centuries to get a sense of what the popular impression of something was in its own time. As late as 2005, exploring America’s rich press archives would have presented a gargantuan task that meant criss-crossing the country to visit small towns with no public transport. Now thousands of defunct newspapers and periodicals are available at the price of low monthly subscriptions. Obviously, I was not alive a hundred years ago, but it is currently possible, due to the internet, to examine the coverage of up to fifty regional papers on a national event like the Homestead Strike or the passage of the Espionage Act.

On the latter point, while exploring the origins of American counter-espionage, particularly in the latter two sections of the thesis, one of the main drawbacks I observed within the literature has been the prevalence of presentism – the applying of present-day ideas and perspectives into
depictions or interpretations of the past.⁷¹ Accordingly, I do not wish to sit in judgement upon any of the historical actors who played a part in the origins of American counter-espionage. I merely wish to present their positions, courses of action, policy objectives or ideologies in relation to the context of their time.

Numerous histories I have engaged with in the course of this exploration of American counter-espionage have either been teleological, triumphalist or curiously both. Accounts provided by official and semi-official histories tend to be rare examples of the latter, providing a history of counter-espionage presented as an inevitable march towards today’s permanent intelligence bureaucracy. Other literatures I have engaged with – Social and Labour History, crime and punishment in America, progressive politics and constitutional theory to name a few areas – are dealt with in more detail in each chapter, but it would appear that most histories written in the twenty-first century in relation to the expansion of American counter-espionage seem to be afflicted with presentism to a significant degree. This perhaps reflects the extent to which domestic security has proved controversial - both within the context of the Cold War and more recently the so-called ‘Global War on Terror’.

The determination to render ‘final judgement’ (rather than providing a cohesive analysis of causation explaining how and why we got from a to b) was a particularly ubiquitous issue I encountered when conducting research on the origins of American counter-espionage. Finger wagging, admonishment and righteous indignation all serve to obfuscate our

---

understanding of past events which should instead serve as an objective resource, informing our current policy realities. To circumnavigate this problem and avoid the tendency towards moral aggrandisement, the reader will notice that up to eighty per cent of my analysis is focused on an examination of primary sources, in the form of congressional records, archival records, memoirs and committee reports. For the other twenty per cent, I have tended to draw upon secondary sources as close to the events assessed as possible.

Engaging with older secondary sources does not mean I have not engaged or read the most up to date scholarship on the events that form my narrative; indeed, this was absolutely necessary to go back through various historiographies and find those secondary sources written closest to the events in question. For example – one of many I could give – when analysing the 1917 Espionage Act, I engaged with the files from the Wilson administration, including those from Colonel House held at Yale University; President Woodrow Wilson’s files, available at his presidential library in Virginia and congressional records, which thankfully in the twenty-first century are now available online, but also at the Library of Congress in Washington, D.C.\textsuperscript{72} In terms of secondary sources I used early accounts, including those of H. C. Peterson, Gilbert C. Fite and John Lord O’Brien written in the 1950s and, most importantly, the fantastic \textit{Freedom of Speech} by Zechariah Chafee, penned in 1920.\textsuperscript{73}

\textsuperscript{72} Wilson’s Presidential Library is outside the presidential library system.
Extended declassification times imposed by over-cautious officials have distorted the historiographical landscape. Although it was much the same story when exploring the influences of private sector counter-espionage and British influence, the research process was rather more complicated. Inevitably, with a subject like counter-espionage, earlier sources were not always written with a significant quantity of documents available. This is particularly true for the UK. The declassification process of First World War British intelligence files, for instance, did not commence in earnest until the 1994 Waldegrave Open Government initiative.\(^\text{74}\)

Similar lacunae exist within our understanding of private sector counter-espionage during the twentieth century. The archives of the Pinkerton Detective Agency, for example, were not declassified and made accessible to the public until 24 May 2000, when the agency placed approximately 100 boxes of documents and photographs into the Library’s Manuscript Division of the Library of Congress.\(^\text{75}\) These newly-released archives encompass the period from 1850 to 1938 and before then had never been accessible to the public. Therefore, some earlier secondary sources on Pinkerton, written pre-May 2000, were written by historians who had been granted special access.\(^\text{76}\)


\(^{76}\) For books by authors who were granted access to archives by the agency, see: David Ricardo Williams, *Call in Pinkerton’s: American Detectives at Work for Canada*
As such, some of these books reflect the same problems as official histories in Britain; they were written by authors who were given privileged ingress with the price of admission essentially being trumpeting the company line. Due to the limited release of files on the matter of Pinkerton’s role in American counter-espionage, some of the least biased accounts were written more recently when access came with no price attached. In terms of my overall historiographical method, I never rigidly stuck to using sources as close to the event as possible if the end result impacted negatively upon the reliability and validity of my claims. As George Orwell cautioned when setting out one of his six rules on good writing: ‘Break any of these rules sooner than say anything outright barbarous’.77

---

77 The other five being: (1) never use a metaphor, simile, or other figure of speech which you are used to seeing in print; (2) Never use a long word where a short one will do; (3) If it is possible to cut a word out, always cut it out; (4) Never use the passive where you can use the active, (5) Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent. See George Orwell, ‘Politics and the English Language’, Horizon, Vol.13, No. 76 (1946), pp. 252–265.
I have opted to frame the activities of various American intelligence bureaucracies in my thesis as ‘counter-espionage’ rather than ‘counter-intelligence’. To explain that decision, it is best to start with the etymology of both words. The etymology of a word is important in teasing out its root-idea, providing clarity and vivid context for the concept it signifies.\textsuperscript{78} The etymology of ‘Intelligence’ comes from the Latin world—\textit{Intelligentia, intelligens}—meaning ‘communicator of news’ or ‘one who conveys intelligence’.\textsuperscript{79} Espionage, on the other hand, is from the French \textit{espionnage} meaning ‘spying’, which is from Middle French \textit{espionner} ‘to spy’.\textsuperscript{80} ‘Espionner’, in turn, is from mid-thirteenth century French \textit{espier}, meaning ‘to watch stealthily’.\textsuperscript{81}

Language obviously has all sorts of uses, but we ordinarily use it to communicate an idea as clearly as possible. This, however, is not its only function; it can also be used to obfuscate. The substitution of ‘counter-intelligence’ for ‘counter-espionage’ is an example of such euphemistic obfuscation.\textsuperscript{82} The George Bush administration’s efforts to retitle ‘torture’ as ‘enhanced interrogation techniques’, is a well-known example of deliberately using a more complex term to hide its less pleasant aspects.\textsuperscript{83}

\textsuperscript{78} James Donald (ed.), \textit{Chamber’s Etymological Dictionary of the English Language} (Edinburgh: W.&R. Chambers, 1872), pg. v.
\textsuperscript{79} ibid, pg. 266.
\textsuperscript{80} ibid, pg. 161. Both ‘intelligence’ and ‘espionage’ are from the seventeenth century.
\textsuperscript{81} ibid.
\textsuperscript{82} The same is true for the substitution of ‘espionage’ with ‘intelligence’.
Obfuscation can also occur in the social sciences when writers attempt to emulate the rigour of the natural-sciences and circumvent the imprecision of ordinary language with unnecessarily complex terminology.\textsuperscript{84} This is not to say that the employment of sophisticated language does not have a useful purpose. The development of discipline-specific terminology is often vital to explaining new, complex concepts by stipulating exactitude upon terms and making them measurable via experiments or observation. ‘Counter-intelligence’, however, conveys no extra rigour, extra precision in terms of meaning, no better understanding of the activities it purports to delineate than ‘counter-espionage’. In fact, counter-intelligence does the opposite – it is (and has been) used by government legislation, security organisations and academics to conceal ‘the soft underbelly’ of the less scrupulous methods of the concept lurking below the surface. It has also been used to obscure the extent to which surveillance for legitimate security purposes can quickly slide into suspicion against all those who do not conform to the social or political norm.

In 1921, an MI5 report produced by G. Branch on ‘the investigation of espionage’, in the preface on ‘the experience of M.I.5. from 1909 to 1918’, produced a rather pivotal distinction. In the latter years of the First World War, German intelligence sent fewer agents to the United Kingdom for the purpose of ‘espionage proper’, as the bulk of Britain’s armed forces were abroad.\textsuperscript{85} The experience of MI5 between 1909 and 1918 was that Germany’s concept of espionage embraced ‘the whole life of the state: naval, military, economic, political and social...’ with even ‘the conduct and fortune of private

\textsuperscript{85} The National Archives, KV 1/39, The Experience of M.I.5. from 1909 to 1918, 1921, pg. 8.
citizens of interest to them’.\footnote{ibid, pg.7.} They did not only collect information related to military preparedness, but also ‘stirred up discontent and strikes’ and conducted ‘commercial penetration.’\footnote{ibid, pg.7.} As such, in understanding what countering ‘espionage’ was, MI5 needed to cover the same expansive concept of espionage in order to counter it.

Here is the salient part of the report: ‘its [Germany’s] elements are so various and inclusive that in legislation the wider term, “German agent” is now substituted for that of spy, and similarly the expression “Defence Security Intelligence” of larger connotation than “counter-espionage” has been adopted to express more adequately the work done by M.I.5.’\footnote{ibid, pg.9.} From the early 1920s, terms like ‘defence security intelligence’ started to come into use, though the explanation offered here was because – ironically – counter-espionage failed to capture the alleged breadth of German intrigue within Britain. Counter-espionage would remain the dominant terminology to define the activities of secret and security services in English-speaking countries until the run up to the Second World War. From the mid-1930s onwards, however, counter-intelligence would begin its precipitous rise and eventually over-take counter-espionage, which simultaneously began its slow decline – leaving us where we are today, when counter-intelligence has current primacy.

This trend is not just observable from impressionistic anecdotal engagements with the files and the literature, but also through gigantic leaps in search engine technology that enable the scanning and registering of impressions...
of the use of specific terms. Google Books Ngram Viewer – an online search engine that charts frequencies of any set of comma-delimited search strings using a yearly count of n-grams found in sources printed between 1500 and 2008 – demonstrates unequivocally the substitution of ‘counter-espionage’ with ‘counter-intelligence’ since the 1920s.89

The adoption of ‘counter-intelligence’ instead of ‘counter-espionage’ over time would have been a rational shift if it reflected a desire to encompass the broadening of the German activities within the concept identified in the MI5 report in 1921. However, ‘counter-intelligence’ – much like the word ‘intelligence’ – is preferred by governments the world over for the clean, clinical veneer it paints over the activity. The word semantically projects a sense of less invasive information gathering. It is a clever trickery of language aimed at sanitising the business by illuminating activities that go along with the concept, while detaching it from the espion – the spy. Counter-intelligence theorising within the literature is similarly purged of its dubious motives, means and ends; whilst most frequently being analysed during war and against foreign states, conferring a cloak of legitimacy over the activities.90 However, despite the seemingly neutral framing, counter-intelligence is so much more than that.

89 An ‘n-gram’ is a contiguous sequence of n items from a given sequence of text or speech. The items can be phonemes, syllables, letters, words or base pairs according to the application. The n-grams typically are collected from a text or speech corpus. In the case of Google Books Ngram Viewer it is scanned books, newspapers, periodicals and journals available on Google Books. Even with the criticism of the software, the trends both ways are pronounced enough to demonstrate a switch out of ‘counter-espionage’ and switch in of ‘counter-intelligence.’ See: Google Books Ngram Viewer, words searched ‘counter-intelligence’ and ‘counter-espionage’ and variations of spellings. available from: <https://books.google.com/ngrams> (16 August 2016).
90 Unless within the studies of intelligence, the writers are talking about Soviet counter-espionage.
Sadly, Intelligence Studies scholars are actually the individuals best placed to highlight the discrepancies between jargon and terminology, and comprehensive and partial theorising; as they are the individuals with the best command of the discipline. However, when it comes to understanding counter-intelligence, the overwhelming majority of those who have contributed to the debate on the theorising of the term have been former or current practitioners. As such, they are actually the least likely to highlight discrepancies, as they have a strong interest in projecting an image of ‘counter-intelligence’ that confers legitimacy and proportionality, as they have (in some cases still do) partaken in it.91

The term ‘counter-intelligence’ adds nothing to counter-espionage – which was the term used in the nineteenth and most of the early twentieth century. Not only does the term bamboozle, but the significant body of writing claiming to theorise counter-intelligence is limited and written almost exclusively by former intelligence officers, leaving only a partial understanding of the concept at best.

CLASSIC ‘COUNTER-INTELLIGENCE’

Quite apart from the ambiguities in our understanding as a result of the aforementioned semantic obfuscation, our knowledge of counter-intelligence is less complete than our knowledge of other components of intelligence for other reasons. There are three primary factors at work here.

91 I highlight in text and footnotes when a scholar has worked in the intelligence community throughout the remainder of this exploration on definitions.
First, much of the recent theorising on intelligence generally within the literature has almost entirely ignored ‘counter-intelligence’.92 Second, as we have already seen, counter-intelligence is in a ‘semantic rut’.93 In 1963, C.N. Geschwind identified in the CIA’s journal Studies in Intelligence, that “intelligence” as the root of “counterintelligence” distorted thinking on the term, noting ‘it is no exaggeration to say that the word “counterintelligence” has become one of the most dangerously misleading in our language because it enshrines the concept that in counterintelligence we are countering the operations of a hostile intelligence organization.”94 His reflection is still as accurate in the twenty-first century. In the US (where the majority in the discipline broadly known as ‘Intelligence Studies’ define intelligence as timely, good, relevant information to help decision-makers formulate sound policy) counter-intelligence is simply the thwarting of those same endeavours by foreign intelligence services.95

---


94 ibid.

95 See the following for broad definitions of intelligence: Frederick L. Wettering, ‘Counterintelligence: The Broken Triad’, International Journal of Intelligence and Counterintelligence, Vol. 13, No. 3 (2000), pp. 265-300; Roy Godson, Dirty Tricks or Trump Cards: U.S. Covert Action and Counterintelligence (Washington, DC:
Lastly, and proportionately the weightiest explanation of the three, is connected to the core of counter-intelligence. As the countering of foreign intelligence takes place within the jurisdiction of the state, it intersects with citizens who have constitutional rights – rights that (in the US) severely curtail the repertoire of tools a permanent federal bureaucracy mandated to perform counter-intelligence would otherwise exploit. Connected to this quandary is the almost exclusive theorising on counter-intelligence by individuals currently or previously employed within the US intelligence community.96

Needless to say, with respect to theorising on the subject, the preponderance of engagement by intelligence officers has skewed our understanding of counter-intelligence. Since the early 1960s, research has been undertaken that sketches out a theory of counter-intelligence which focuses on legitimate methods, a focus on agents from foreign states during war and expresses a disregard for the purpose – the overall objective of all counter-intelligence operations.

Occasionally, counter-espionage is split into two branches: defensive measures (efforts taken to prevent a rival’s espionage) and offensive measures (deception activities an intelligence organisation may take in order

---

96 In the literature review in the first chapter, I will demonstrate how the history of counter-intelligence has mostly been written by current and former practitioners.
Unsurprisingly, theorising by officials or former officials has focused on either ‘passive’, ‘reactive’ or ‘defensive’ activities – keeping sensitive information in vaults and behind firewalls, protecting state secrets by maintaining good levels of personnel security, conducting background investigations and reinvestigations, and observance of the ‘need to know’ principle.

The less theorised component is frequently described as ‘offensive’. When discussing offensive measures, counter-intelligence takes the form of recruiting double agents (moles) to learn the identity, methods and operations of the intelligence service from ‘their’ spies. It endeavours to preoccupy or distract a rival state’s counter-intelligence apparatus with the ultimate goal of achieving ‘strategic deception’, by the double agent(s) feeding a steady stream of disinformation and by manipulation. However, offensive measures are usually broached in defensive terms, controlled and clean operations that are frequently framed against agents of foreign powers, with little to no mention of how counter-intelligence intersects with the lives of American citizens. Nor are there mentions of offensive measures – agents provocateurs, blackmail, informants, intimidation, subversion and

---

deportation – which are rarely included in the theorising of the institutional arsenal of western security services.

Not all attempts to understand counter-intelligence have focused on this bipartite framework. The majority of counter-intelligence theorists’ classifications of counter-intelligence have been either on a tripartite or quadripartite basis. Indeed, one author has approached counter-intelligence by breaking it down into a quintipartite.\(^{98}\)

Though the conceptualisation proliferates, the focus on outside forces continues. Michelle Van Cleave – who served as the first National Counterintelligence Executive under President George W. Bush – notes the ‘signature purpose of counterintelligence’ as to ‘confront and engage the adversary’.\(^{99}\) Across her three major contributions, she conceptually broke counter-intelligence down into four components: identifying (spies); assessing (analysis); neutralising and exploiting (offensive).\(^{100}\)

\(^{98}\) Paul Redmond, ‘The Challenges of Counterintelligence’, in Loch Johnson (ed.), *The Oxford Handbook of National Security Intelligence* (New York, NY: Oxford University Press, 2010), pp. 537-554. Paul Redmond is yet another counter-intelligence officer, indeed an extremely senior one. At the time of his retirement he was head of Counterintelligence at the CIA. His five parts are: (1) as Counterespionage; (2) as Asset Validation; (3) as Disinformation Operations; (4) as Operational Tradecraft; (5) as the Recruitment and Running of Counterintelligence Sources.


George Kalanis and Leonard McCoy also split counter-intelligence into four sections (penetrating hostile intelligence services, research and information collection on hostile intelligence services, disrupting and neutralising hostile intelligence services and assessing the bona-fides of defectors), a typology that is not dissimilar to that of Van Cleave.101 Moreover, like the former-Counter-intelligence Executive, the pair – both former CIA counter-intelligence officers – focus on ‘hostile intelligence services’, not citizens whose crimes would not be considered espionage, but potentially treason. In addition, no mention is made of the use of belligerent methods, attributed only to hostile intelligence.102 Christopher Felix – a pseudonym for another intelligence officer, James McCargar, who served in the CIA during the early Cold War, also defines counter-intelligence in four parts.103 In 1989, a further group of counter-intelligence experts met and also defined counter-intelligence in terms of organisational activity, functionally splitting counter-intelligence into four similar groups to those above.104

Jennifer Sims and Burton Gerber – two more individuals who have contributed to theorising on counter-intelligence from within the US

---

intelligence community, also define counter-intelligence based on four activities: ‘Decision makers matching wits with an adversary want intelligence – good, relevant information to help them win. Intelligence can gain these advantages through directed research and analysis, agile collection, and the timely use of guile and theft. Counterintelligence is the art and practice of defeating these endeavours. Its purpose is the same as that of positive intelligence – to gain advantage – but it does so by exploiting, disrupting, denying, or manipulating the intelligence activities of others.’105 Uniquely, Sims and Gerber provide a purpose, to gain advantage, but the purpose is sufficiently broad to be almost meaningless.

Equally, counter-intelligence theorists’ classifications of counter-intelligence have been developed on a tripartite basis, with a focus on mechanisms and disregard for purpose and non-foreigners. The first to expound such a typology was another former CIA officer, Charles V. Cate.106 Building upon Sherman Kent’s tripartite framework for considering intelligence matters, the author discusses counterintelligence as a confluence of knowledge, activity and organisation.107

105 My own italics. Jennifer Sims and Burton Gerber (eds.), Vaults, Mirrors, and Masks: Rediscovering U.S. Counterintelligence (Washington, DC: Georgetown University Press, 2009). Sims served as Deputy Assistant Secretary of State for Intelligence Coordination and as the Department of State’s first coordinator for intelligence resources and planning. She has also served on the staff of the Senate Select Committee on Intelligence. Gerber served for thirty-nine years as an operations officer in the CIA.


Arthur A. Zuewle – a former Soviet analyst from the Defense Intelligence Agency – also breaks down counter-espionage into three constituent parts with two of those - ‘aggressive’ and ‘defensive’ - mirroring the classical duel taxonomy. He adds ‘preventative’ to the mix, segmenting defensive measures, mirroring Soviet ideas of prophylactic measures to some degree.108 Along the same lines, Frederick L. Wettering – yet another retired CIA officer – conceptualises counter-intelligence as: ‘protecting secrets’, ‘catching Americans that spy for foreign intelligence services’, and ‘frustrating attempts by foreign intelligence services’.109 Roy Godson strikes a similar chord, defining counter-intelligence as a state’s effort ‘to protect their secrets, prevent themselves from being manipulated, and (sometimes) to exploit the intelligence activities of others for their own benefit’.110

Godson, who served on the President’s Foreign Intelligence Advisory Board under Ronald Reagan, sagaciously observed in the same book that most writing fails to include not just counter-intelligence but covert action as important ‘elements’ of intelligence’.111 Godson, though not an intelligence officer, was a consummate Washington insider during the Reagan era whose general thesis was that these clandestine arts would be important tools of statecraft in the post-Cold War World. Precisely because he was an influential advocate of the best counterintelligence constituting an ‘offensive defense’, his 1995 book highlights the classic myopia within the theorising on intelligence broadly; it demonstrates that under-theorising, combined with

---

109 Frederick L. Wettering, ‘Counterintelligence: The Broken Triad’.
110 Godson, Dirty Tricks or Trump Cards, pg. 2.
111 ibid. Though later in life, Godson became more involved with government policy.
popular misconceptions, has resulted in counter-intelligence being regarded as a ‘dirty tricks’.\textsuperscript{112} His comments represent an illustration of the remarkable gap between all the sanitised theorising I have considered in this section and a more grounded historical perception of counter-intelligence in America within its broader political context.\textsuperscript{113}

Like Godson, John Ehrman – another former-CIA officer who specialised in counterintelligence – provides a taut definition: ‘Counter-intelligence is the study of the organization and behaviour of the intelligence services of foreign states and entities, and the application of the resulting knowledge.’\textsuperscript{114} However, his definition does not fit well with the three types of counter-intelligence operations he identified in his article: (1) Classic penetration: an officer from a rival service is recruited and provided information from within; (2) Double agents: someone who appears to be working for one intelligence service but in reality is controlled by another and (3) Surveillance by area: through access to agents or physical and technical surveillance to uncover activation and contacts on an enemy service.\textsuperscript{115}

Clearly, the most appropriate observation that we can draw from the above is that all the authors have at some point in their career worked within, or in concert with, the US counter-intelligence community, many within security sections of the CIA. From all the above semi-practitioners/ semi-theorist we have several key – sometimes overlapping – methods and concepts that

\textsuperscript{112} ibid.
\textsuperscript{113} Though I obviously disagree on which component of counter-intelligence is missing from our understanding.
\textsuperscript{115} ibid.
continually recur; which to borrow a phrase from one of the articles, I would call the classic ‘anatomy of counterintelligence’.

(1) Being offensive;
(2) Is both an activity and a product;
(3) Entails covert/overt penetration;
(4) Involves double agents;
(5) Requires extensive surveillance;
(6) Aims at disrupting and neutralising rival intelligence agencies;
(7) Seeks to Protect secrets by various means.

These mutually combined components (which are not exclusively or mutually/jointly sufficient) make up the boundaries of what these authors considered counter-intelligence. As I endeavour to move beyond them, I consider them ‘classic counter-intelligence’. The list of characteristics is sanitised and narrow, and avoids regrettable episodes and unsavoury methods in the history and use of counter-intelligence. Chapters in America’s history where the intelligence community has not been used against a rival intelligence service, but rather against American citizens, tend to be overlooked.

The various theories considered above are also often disconnected from legislation and conceptions of what it means to be ‘disloyal’, an ‘enemy’, ‘spy’ or ‘traitor’. They are equally disconnected from America’s earliest history of counter-espionage, before the Second World War, or what counter-intelligence would mean in a non-state context. Most bizarrely, few provide an ‘end’ to their list of ‘means’ outside of the successful completion of the operation for the sake of the operation. In other words, the conception of this subject is remarkably tactical and often lacks political or strategic context. Counter-intelligence is taken to be a self-evident good and is rarely considered through a critical lens.

A RETURN TO ‘COUNTER-ESPIONAGE’

Accordingly, I return here, and through the remainder of my thesis, to counter-espionage. I seek to adopt a much broader and more intuitive stance on the essence of counter-espionage, as I do not wish to follow in the constrained path of the above authors who have contributed to the ‘theories of counter-intelligence’ debate. Instead, I wish to deploy a term that semantically distinguishes itself from the above activist practitioner /academics whilst reincorporating the sanctioned with the unsanctioned components of American ‘counter-intelligence’.

Although some authors, like George F. Jelen and William R. Johnson, have thought of counter-espionage in narrower terms than (even sometimes as a sub-category of) counter-intelligence, I wish to suggest that the former term better encapsulates the essence of the activities.118 On the one hand, the

---

word ‘intelligence’, is suggestive of a civilised and justifiable activity that a state undertakes to gain knowledge of the world around them in order to protect the citizen. On the other hand, the word ‘espionage’, signifies something rather more dastardly, it conveys concealment, subterfuge and/or deceit. It is more than just the gathering of information presumably for the purpose of better informing policy. The two activities – counter-intelligence and counter-espionage – are conceptually, and in terms of their etymology, extremely close. One, however, conjures up images in the mind of practices uncivilised; where the other does not. It is the difference between ‘torture’ and ‘enhanced interrogation techniques’.

Theories of counter-intelligence are sanitised, and like the literature on the history of American counter-espionage, bear little resemblance to the reality of the historical record outside of war.\textsuperscript{119} This representational problem however, is not entirely unexpected. If the history and theorising of a discipline are dominated by current and former practitioners, it will not be close to neutral in its approach. Returning once again to the analogy above, it would be akin to a history of torture in America being written by current and former interrogators and jailers from Guantanamo Bay.

Much of the theorising discussed above emphasises ‘foreign enemies’ (often a code for Soviets), protecting secrets, surveillance and stealing secrets. It is a classical Cold War understanding of counter-intelligence. It fails to talk about supporters of, for example, communism who undertake some of the same activities of Soviet spies but are in fact Americans taking no orders from Moscow. It also fails to account for those on the level of abstraction below; those individuals who do not steal secrets or sow seeds of discontent, but

\textsuperscript{119} for more on the historical record see chapter one.
provide the material safe-haven for those who do. Or the level of abstraction below that; those who do not even provide a material safe-haven but support the same communistic ends. Their crime is in thought, not in deed, but the history of US counter-espionage is littered with examples of individuals who have been persecuted for holding opinions that challenged the dominant status quo. That is the real essence of counter-espionage. It is concerned with protecting the predominant political social order from various threats, and is not selective in terms of the various offensive and defensive measures it employs.

Substantial theorising within the classic counter-intelligence literature has focused on methods (or activities) – the means – but the ends seem to be simplified, focusing largely on the prevention of intelligence collection by a foe. Not only are less genteel methods side-lined – including agent provocateurs, blackmail, informants, intimidation, subversion, deportation, group infiltration, smear campaigns and integration – but a focus on the means is wrong headed; as the methods are of secondary importance to the goals. Counter-espionage is best understood by its aims, which include systematic attempts to ‘frustrate preliminary stages of organisation before more advanced forms of “revolutionary radicalism”’ can develop to the suppression of internal dissent. It ‘counters’ these threats through the maintenance and utilisation of activities not ordinarily associated with law enforcement or the army. But so often counter-espionage simply concerns itself with the activities of awkward citizens who annoy the state.

---

120 See chapter nine for examples in the post First World War period.
Once you analyse counter-espionage by its aim – discouraging the influence of hostile ideologies – it increases the scope of moments in American history that would be considered relevant to an understanding of counter-espionage. It opens up counter-espionage to the unpleasant methods listed above, as opposed to being restricted by the arbitrary lists suggested in most of the previous theorising. It also opens up theorising to include the role of private sector detectives, which has previously been shut out of almost all generalised conceptions.\(^\text{122}\)

A definition based on aims also gives us a more complete critical account of counter-espionage, as it does not just focus on threats to the nature of the state during wartime, but threats from organised labour, anarchists and other movements that emanate domestically and challenge the dominant ideology. It incorporates counter-subversion, counter-conspiracy and – to borrow the wording from the UK Security Service Act – the ‘... protection of national security against threats from espionage, terrorism and sabotage from the activities of foreign powers and from activities intended to overthrow or undermine parliamentary democracy by political industrial or violent means.’\(^\text{123}\)

However, this focus on the aims of counter-espionage also conjures up a troubling paradox that lies at the heart of this research: How did the US – a country established with specific mechanisms to guard against the rise of a secret police – come to develop one of the most extensive counter-espionage communities in the history of mankind?

\(^{122}\) I provide substantially more detail on why private sector counter-espionage ought to be included in chapter four.  
\(^{123}\) United Kingdom, The Security Service Act 1989 (c 5), § 1(a) and (b).
WHY EXPLORE THE ORIGINS OF US COUNTER-ESPIONAGE?

As we have considered in our review of counter-espionage theories – and as will be determined in the first chapter – counter-espionage in America is thoroughly dominated by current and former practitioners-turned-academics. It is remarkable that those who have, and in some cases still do, work within America’s counter-espionage community are the primary theorists and historians. To borrow a phrase from the rules for submitting entries to the much maligned Wikipedia, it fails to present us with a NPOV (a neutral point of view). Critical voices are notable by their absence and while they surface with narrative accounts, they have offered few critical theoretical contributions.

What the well-known web-based encyclopedia is trying to avoid is a practice replicated the world over for referencing materials: people writing articles about themselves. The concern is borne from the inherent conflict of interest that arises from a collapse of objectivity. Writers have a great propensity to distort facts, or rearrange them, to suit a preconceived purpose. As one of the twentieth century’s best writers, Rebecca West, astutely surmised

---

124 Of course they should contribute to the narrative, but outside observers should always be contributing.
125 This is one of Wikipedia’s three core content policies; the other two being ‘Verifiability’ and ‘No original research’. See: ‘Wikipedia: Neutral point of view’, Wikipedia, 5 August 2016 [last modified].
126 Athan G. Theoharis, Chasing Spies: How the FBI Failed in Counterintelligence but Promoted the Politics of McCarthyism in the Cold War Years (New York, NY: Ivan R Dee, 2002); David Cunningham, There’s Something Happening Here: The New Left, the Klan, and FBI Counterintelligence (Berkeley, CA: University of California Press, 2004); Gary T. Marx, Undercover: Police Surveillance in America (Berkeley, CA: University of California Press, 1988) although this focused more on the police than the FBI.
‘everyone realizes that one can believe little of what people say about each other … but it is not so widely realized that even less can one trust what people say about themselves’.\textsuperscript{127}

The key point here about self-description is not simply an abstract one about epistemology; the self-chronicling and theorising within counter-intelligence is inherently untrustworthy. Yet secrecy appears to have warped judgement in this area. While the memoirs and writings of politicians tend to be viewed with suspicion, former spies are often hailed as professionals who give us special insights into a veiled subject and somehow therefore have more credence.\textsuperscript{128}

Counter-espionage can of course protect the lives of Americans. However, it has also irrevocably injured communities and destroyed individuals’ lives. A history, which for the most part is triumphalist, is an affront to the rights and dignity of millions of people whose lives have been ruined by counter-espionage initiated by the state. For this reason alone, it is vital for a critical (re)examination of the origins and expansion of US counter-espionage.

There are two other important reasons why a rigorous exploration of counter-espionage is urgently required. First, much of the literature on counter-espionage – in relation to the origins of US counter-espionage – ignores the well-known first principle of bioethics: Primum non nocere (first, do no harm). Secret and security services are not just cloaked in mystery and intrigue, they are equally cloaked by semi-official and official histories and myths that

\textsuperscript{127} Victoria Glendinning, Rebecca West: A Life (New York, NY: Knopf, 1987), pg. xi.
legitimatiser their activities in the present. The first chapter will illustrate this point. Second, a more holistic critical approach to the origins of US counter-espionage, and its influences, will aid in our understanding of current organisations. Studying a service’s history and methods provides a window into current operations.\textsuperscript{129} There is much to glean from delving into an organisation’s history, and identifying the antecedents of an institutional culture.

The combination of these three reasons – the lack of objectivity on counter-espionage to date; the damage caused by current literature on the origins of counter-espionage to our understanding; and its role in promoting our understanding of counter-espionage organisations today – are the primary reasons that research on the origins of US counter-espionage is of significance.

\textbf{CHAPTER OUTLINE}

The first chapter (and section) provides a review of the existing literature. The literature review here is crucial; it is not a review for the sake of fulfilling the standard expectations of a tour of the literary landscape as a conventional part of a thesis. It is necessary in order to understand how the majority of accounts providing a holistic account on the origins of American counter-espionage have done so in, for the most part, an uncritical way. Moreover, we need to understand why they have overwhelmingly been written as official histories, or written by individuals who themselves have served within the

intelligence community, and as such could also be considered ‘semi-official’ histories. Therefore, the first chapter – a literature review – serves three primary purposes: (1) it shows how official and semi-official histories have dominated the historiography on the origins of American counter-espionage; (2) it highlights how the current literature fails to address counter-espionage outside of the narrow confines of ‘classic counter-intelligence’, and; (3) that the literature on the origins of the US counter-espionage fails to adequately include Britain’s role, the private sector and Progressive Era politics.

I advance the proposition that extant writings can be grouped into three broad schools of thought. The first school is what I call the Bloomsbury School, which contains authors who have focused on anecdotal details often centred around individuals. These authors place emphasis on story-telling and although they provide glimpses of useful information, they fail to maintain the standards of the academy. The second school, which is by far the largest, is the official/authorised or semi-official histories. The Official School has ‘sanitised’ the origins by providing intelligence-centric histories that mostly divorce intelligence from the politics that provided its impetus in the first place. These official and semi-official histories also focus on wars, where it is easiest to justify the use of counter-espionage. They skim over the periods of peace when counter-espionage is used against political opponents and those groups and individuals who did not conform to the dominant politic ideologies of the day. The Revisionist School represents the third group of writers. These have attempted to provide an overview, but by individuals not affiliated to, or who have worked within, a government intelligence agency.
The goal of my project is to contribute to this third Revisionist School and join with the project of establishing a critical revisionist baseline for future intelligence studies into American counter-espionage. Although many of the texts of the second and third school display a degree of methodological rigour, none so far have enjoyed the access to newly available primary materials, nor have they attempted to trace the general origins of US counter-espionage and its various influences.

Accordingly, the second section, comprised of two chapters, uncovers the previously unidentified structure of American counter-espionage. As official and semi-official histories have tended to look back through American history for justification for the current expansive American counter-espionage system, none have identified how the principles of America’s constitutional republicanism mandated an extremely limited counter-espionage framework with a new and unheralded high bar for treason. Counter-espionage was subsumed by law enforcement; swelled during war time, and then contracted in size during peace time. In short, it was limited by the constitutional principles of natural rights, federalism and the separation of powers.

The third section, comprised of three chapters, deals with the often-overlooked influences of private sector detective firms. Private sector counter-espionage was an unavoidable corollary of America’s initial counter-espionage culture, which made no provision for a permanent federal body responsible for ‘intestine enemies’. This section also deals with the downfall of private sector counter-espionage in the form of a federal statute.

---

ban on the hiring of private detectives after a national calamity at Homestead Pennsylvania in July 1892. It was the first barrier that was necessary to eliminate for the creation of the Bureau of Investigation in 1908.

The creation of the Bureau of Investigation, along with the Defense Secrets Act of 1911 and the Espionage Act of 1917, will be covered in the final section – comprised of three chapters. It deals with the two countervailing influences that germinated and contributed to the rapid expansion of American counter-espionage, these were Progressive politics, beginning with Theodore Roosevelt in 1901, and British legislation that provided a mould for a new expansive counter-espionage culture.

The final section deals not only with the influence of Britain on American counter-espionage; throughout the thesis, the rising crescendo of British influence on American counter-espionage will be explored. Moreover, the last two sections also reveal how anxiety over Anarchism and Communism drove the expansion of counter-espionage, designed to deal with ‘subversive’ forces within the country.

While the long time span addressed here is necessary in order to mount a critical challenge to orthodox accounts: a battle that must inevitably be waged at the level of a meta-narrative, nevertheless it also presents certain problems. Throughout my thesis, paradigmatic cases will be drawn out to illustrate broader trends found in the archives and to delineate the contours of American counter-espionage at its various stages. This is necessary as throughout this long period, there were far more incidents of espionage against the US than could be included here. The selection given in the chapters that follow are based on the importance of the particular case or its
relevance to a host of issues regarding the evolution of American counter-espionage.
SECTION I
Our understanding of US counter-espionage and its influences within the literature leave much to be desired, primarily for two reasons. The first and primary reason is simply the limited number of studies that have previously attempted to provide an analysis of the origins of US counter-espionage – it is a marginalised subject worthy of much further scrutiny. Second, the few texts which have attempted to do so have mostly been written by a group that I have collected together here and labelled ‘Officials’. The epithet is appropriate, as almost all the prominent texts on the origins and growth of US counter-espionage have been written by authors who currently work, or have previously worked, within the US counter-espionage community. As was argued in the introduction, the preponderance of official material presents us with a highly problematic dominant narrative that shapes the origins of US counter-espionage, its evolution and influences.

What follows is a review of those books and articles that purport to deal with the origins of US counter-espionage. Despite the limited number of texts discussed below, I have broadly separated the titles into three schools of thought based on their approach: (i) ‘Bloomsbury’ (ii) ‘Officials’; and (iii) ‘Revisionist’. The latter school of thought – Revisionist – is the grouping within which my thesis might be located. Broadly speaking, it situates itself there
because it uses the same epistemological tools to generate knowledge on the origins and expansion of US counter-espionage. It also shares a critical approach to the history of US counter-espionage.

The second school – the Officials – as discussed earlier, is composed of historians who have attempted to convey the origins of US counter-espionage, but are also a product of it. It includes current and former Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI) officers-turned-historians as well as professional internal official historians. It is also worth noting that the main professional body for former intelligence officers in the US, known as the Association of Former Intelligence Officers (AFIO), strongly embodies and indeed projects the ‘official’ perspective on counter-espionage.\(^1\) Lastly, it must be noted that the categorisation used here for ‘the Officials’ applies only to the narrow field of US counter-espionage and not to the broader discipline of Intelligence Studies. Research for this thesis has centred around American domestic intelligence, and the discipline is extremely broad and interdisciplinary with many official histories produced alongside a plethora of non-official scholarship.\(^2\)

The first school – which I have labelled Bloomsbury – is a product of the thin line between fact and fiction that has historically accompanied the academic study of intelligence.\(^3\) From America’s nineteenth-century dime-novels to

---

present day hit television spy-dramas, the secrecy, intrigue and daring that accompany espionage and attract professional historians has also attracted numerous authors who see opportunities to make money. Despite the Bloomsbury authors’ works being inescapably un-academic in their approach, they do offer flashes of insight.

After surveying the totality of the literature on the origins of American counter-espionage, I would not only suggest that there are important factors and events missing, but also that no one piece of research fully incorporates the influences of any one of the factors I have identified and highlighted, let alone all three – Britain, the private sector and progressivism. Nevertheless, despite differing conclusions, my argument aligns most closely with the Revisionist School not just because of the type of knowledge it generates, but because of my persistent critique of the narrative outlined by the Officials camp.

Lastly, before delving into the literature, it is necessary to point out that my thesis engages with various wider literatures throughout. As I am not only interested in providing details of how and when counter-espionage was used in a war, but its influences, how it evolved and how it fits into contextual US histories, my thesis therefore engages with multiple literatures. Some of the histories I engage with include those on key individuals such as the framers of the Constitution, presidents and thought-leaders of progressive politics in America. I also deal with the literatures of policing – both private and public – different political ideologies, ranging from anarchism to classical liberalism and seminal moments in US history – including the Revolutionary War, the

Civil War, the Homestead Strike, the First World War and the Palmer Raids. They will be dealt with within specific chapters when the need arises but are too extensive to be surveyed here.

If there is one component that distinguishes my research fundamentally from all others on the origins of US counter-espionage, it is an attempt to thoroughly amalgamate intelligence into the history of broader International Relations and American history writ large. It is, I hope, the correct interpretation of the clarion call which signalled the establishment of academic intelligence history made by Christopher Andrew and David Dilks in July 1984. They urged us to recover the ‘missing dimension’ of history, but with the important underlying implication that intelligence was an integral part of the fabric of wider history. Therefore, I seek to connect the creation of America’s permanent counter-espionage bureaucracies to American political and social history.

This thesis strongly accords with the ‘missing dimension’ manifesto put forward by Christopher Andrew and David Dilks in 1984. Yet, it simultaneously takes issue with the rather self-congratulatory tone of the resulting literature on intelligence over the last three decades. Andrew and Dilks called upon historians to restore the ‘missing dimension’ to a broader history, helping to make the holistic understanding of the past more complete. But instead, we have seen the rise of a separate intelligence history, devoted largely to reverential ‘regimental histories’ of particular units or agencies, or else to rather conventional biographies of great intelligence men. In short, instead of recovering the missing dimension, intelligence

\[^4\text{ibid, pp. 1-2.}\]
\[^5\text{ibid.}\]
historians have created a strange parallel dimension that is overly-descriptive and uniquely devoid of critical voices. Indeed, it is so uncritical that experts on intelligence in cognate disciplines such as sociology have felt it necessary to set up a counter sub-discipline to Intelligence Studies called ‘Surveillance Studies’, with its own journals and associations.\(^6\)

\[i\] ‘BLOOMSBURY’

In *Coming in from the Cold War*, John Ferris aptly pointed out that one of the main pitfalls some of his contemporaries had failed to avoid when writing on intelligence was what he termed ‘Bloomsbury syndrome’ – the focus on anecdotes instead of analysis.\(^7\) Bloomsbury syndrome is particularly prevalent in the literature of counter-espionage. Personality-driven anecdotal narratives have characterised many historical and popular treatments as a means to understanding the evolution of US counter-espionage; the important bureaucracies, the FBI and CIA; and indeed the roles of key individuals, Allan Pinkerton, J. Edgar Hoover and James Angleton.\(^8\)

---


The prevalence of Bloomsbury histories, especially in the twentieth century, can be explained primarily by three factors: (1) early writers of the history being actors in the event, and thus writing from an experiential perspective; (2) the prevalence of journalists attracted to counter-espionage due to tales of espionage and intrigue that offered saleable stories; and (3) the lack of academic engagement with the subject up until the mid-1980s – due to intelligence history developing a toxic reputation of attracting practitioners turned amateur historians and entrepreneurial journalists (writers from the previous two camps).  

---


Personality-driven narratives are at the heart of Bloomsbury histories, and tend to ‘tell a story’ of American counter-espionage from the perspective of a single heroic or villainous individual, be it George Washington, J. Edgar Hoover or James Angleton. Admittedly, the primary documentary record of counter-espionage tends to be organised in terms of biographical case files. But this style owes more to the fact that, in an area of such obfuscated vagary as counter-espionage, readers can relate more easily to fleshed-out individuals with relatable human motives and feelings than a movement at large, a group or an idea. As the writers were not attempting to meet, or uphold the standards of the academy, they had greater freedom to tell a good story as opposed to historically accurate ones. As a consequence, a considerable proportion of the Bloomsbury writing has as much in common with fiction as it does with fact.¹⁰

The blending of fact and fiction with counter-espionage is not just a result of writers’ prerogative, created by gaps in reality, in turn reflecting persistent state secrecy.¹¹ Counter-espionage at its core is about people, like film, and that is why the subject makes such good – and by good I mean lucrative – source material. All great stories have characters the audience can root for or against.¹² That character also needs obstacles, an arc and a nemesis. Due to the popularity of the personality-driven format – being a familiar one, intuitive and accessible for story telling – the more personality-driven narratives emerged and were popular, the more that were subsequently written in a self-replicating fashion. It is why we have so many books with individuals at

---

¹⁰ See footnote seven and Robarge, ‘Cunning Passages’, pp. 43-44.
the centre of them related to counter-espionage, from George Washington to James Angleton.\textsuperscript{13}

All these books purport not to just tell a great story, but to provide an insight into the nature of US counter-espionage. The life-story is the most well-known, accessible and simple story-telling technique humans have employed since antiquity.\textsuperscript{14} The trade-off for telling a good story usually comes at the price of academic rigour. Narratives are driven by anecdotes, the books are often largely unsourced, highly subjective and have little room for nuance, in the presentation of either information or ethics.\textsuperscript{15}

These numerous poorly evidenced competing narratives create a unique predicament for those researching the origins of counter-espionage. Rather than approaching a new, previously unexplored area – a \textit{tabula rasa} – the researcher is faced with venturing into a landscape partly shrouded by mirages. Thus, the task of the researcher becomes not just providing new data but also separating previously written anecdotal data from evidence,


\textsuperscript{14} Campbell, \textit{The Hero with A Thousand Faces}, pp. 23-30. He calls them monomyths.

fact from fiction; myths from implausible but true events. The best single example is the numerous books by, on and about Allan Pinkerton on his detective agency and life. These books are quintessentially ‘Bloomsbury’ and are emblematic of wider trends within the school of thought. They are written often by people who place Allan at the centre of their stories and follow him as the ‘heroic individual’, an archetype from literature and film. The overwhelming majority read like novels, and take a fresh look at the grandest espionage drama of the nineteenth century. However, though they also provided important revelations, they cannot be used to generate any new data, as they blend fact with fiction.

What these many books do so well is exercise the power of anecdote. They provide rich, thick descriptions of individuals and places – a technique that is quintessential to understanding the world of counter-espionage operated in the nineteenth and early twentieth centuries. This is a world that is not accessible now, a world that certainly cannot be found in a government archive. Nevertheless, despite their richness – and the richness of many texts in the ‘Bloomsbury School’ – alone, they are not sufficient to understand the networks, the financing, the shared facilities, methods and training that the documentary holdings of the archives can provide. In fact, much of the time their amalgamation of fact with fiction only serves to obfuscate that understanding.

16 See the first part of footnote seven.
The difficulty of separating fact from fiction and fable mires many early, post-war texts that broadly fit into the ‘Bloomsbury School’. As already suggested above, many of the earlier writers on US counter-espionage were either practitioners-turned-historians or journalists who had at best tenuous engagement with archival documents or elite interviewee subjects. As such, much of the original information generated on US counter-espionage, often during the Second World War, was in the form of the recollections of security officers, accounts from defectors or second – sometimes third – hand sources. The titles themselves – and even more so the subtitles – are sometimes indicative of the grandiose claims found within the books. Take, for example, the bookshelf worth of texts on Sir William Stephenson – the senior representative for British intelligence for the western hemisphere during the Second World War: A Man Called Intrepid: The Incredible WWII Narrative Of The Hero Whose Spy Network And Secret Diplomacy Changed The Course Of History; The Quiet Canadian: Life of Sir William Stephenson; True Intrepid Sir William Stephenson; British Security Coordination: The Secret History of British Intelligence in the Americas, 1940-1945; and Secret Intelligence Agent: British Espionage in America and the Creation of the OSS. Stephenson’s place in the history of Intelligence during the Second

18 This is a point first made by David Robarge, the chief historian of CIA, in his article on the Agency’s long time counter-intelligence chief James Angleton. See, Robarge, ‘Cunning Passages, Contrived Corridors’, pp. 43-45.
World War was one of the first to be well documented, and at this point cemented within Intelligence History.

Overall, in our understanding of the origins of US counter-espionage and its influences, collectively Bloomsbury histories can at best hope to provide good ancillary information on the inner workings of US counter-espionage machinery. They provide great stories, often based around an individual within a well-known chapter of history, making them agreeable to a casual reader. A modern familiar example of a manifestation of the Bloomsbury School would be the extremely popular books by Ben Macintyre. For the reader, the books are the literary equivalent of visiting a National Trust gift shop. They connect the reader to the bygone era in a romanticised and enjoyable fashion, but the visit is always inert, safe and sterile – even reassuring. Bloomsbury works, in isolation, provide excellent colour, but only fleeting glimpses of the origins of US counter-espionage and its influences. The information itself is hardly usable as an appeal to authority here.

---

21 For example, see Macintyre’s ‘true stories’: Ben Macintyre, Double Cross: The True Story of the D-Day Spies (London: Bloomsbury, 2012); Ben Macintyre, Agent Zigzag: The True Wartime Story of Eddie Chapman: The Most Notorious Double Agent of World War II (London: Bloomsbury, 2010); and Ben Macintyre, Operation Mincemeat: The True Spy Story that Changed the Course of World War II (London: Bloomsbury, 2010).

22 They can, however, be used like a treasure map that helps guide enquirers to potentially bountiful boxes in the archives.
 Officials are at the other end of that spectrum from Bloomsbury histories in terms of their epistemology and narrative. First, however, it is important to drill down into what I mean by ‘Officials’. The Officials epithet is in reference to official histories – a work of history which is sponsored, authorised or endorsed by its subject.\(^{23}\) Here, the Official School is used in connection to official histories in the broader British sense of the word, rather than the narrower American use of the term. In the US, official histories are ordinarily created for internal consumption, whereas in the UK the use of official histories has been quite different.\(^{24}\) Individual departments in the UK, of course, produce internal histories, and they are produced along the same lines as in the US: for the maintenance of a history that provides an


\(^{24}\) For example, the CIA’s staff of historians have produced a number of operational histories and document collections relating to Cold War intelligence. Many of the documents, together with declassified articles from the CIA’s in-house journal, *Studies in Intelligence*, are accessible on the CIA’s website. See: Center for the Study of Intelligence, 14 April 2007. <https://www.cia.gov/library/center-for-the-study-of-intelligence> (16 August 2016).
organisation with an ‘official’ record of events and institutional memory. However, the predominant understanding of the use of the term ‘official history’ in the UK denotes a book that has been written by an organisation about their organisation, but, for general consumption.

Official histories on intelligence in the UK have been the vehicle of choice for disclosures by consecutive British governments, providing both information control and an appeasing gesture to those researchers who, sometimes supported by noisy MPs, demand unfettered access to the archives. In the UK, the majority of official histories serve the purpose of compiling the ‘butcher’s cuts’ from the archives to monetise an organisation’s history, but they also serve to ‘set the record straight’. Official histories in the UK also have the benefit of ensuring not only information control, by denying access to undesirables, but in creating an ‘official narrative’ that repudiates previous – often more critical – narratives, with the benefit of being able to claim a more complete understanding of events.

25 For example, in the 1970s, Her Majesty’s stationary office announced four volumes on environmental planning, an official history on the nationalisation of British industry (1945-51), five on colonial development, two on external economic policy and one on defence organisation since 1945, two further volumes were commissioned on the British contribution to the Korean campaign and on the Health Service since the Second World War. See: Gaspard, A Historiography of British Intelligence, pg. 25.

26 For a combative view of this subject see Ian Cobain, The History Thieves: Secrets, Lies and the Shaping of a Modern Nation (London: Portabello, forthcoming 2016).

27 ‘Set the record straight’, phrase from Ferris, ‘Coming in from the Cold’, pg.110. In this context, it means carefully managed public relations exercises to provide intelligence and security services public support.

It is worth noting that these narratives the British government sought to challenge had fermented only due to the absence of government disclosures. The original intelligence official history – Hinsley’s history of British intelligence during the Second World War – was designed and embarked upon for this express purpose of challenging narratives, mostly bad ones that emerged about the state of British intelligence and its abilities to challenge the Soviet Union. While previously, the Cabinet Office had preferred dignified silence, officials gradually realised that they had ceded too much ground to enemy propagandists like Kim Philby, or to enterprising journalists like Anthony Cave Brown. By not writing their own history, they had hoped that it would forever remain unwritten, but instead they found that it was simply written by others who they did not like – and this distasteful discovery drove a new-found appetite for official history.

29 ibid., pg. 33.
Yet official histories, in the broader British sense, do not have to be written with the expressed consent of an intelligence bureaucracy. They can be written by current or former practitioners who, due to their career working within the machinery of a national intelligence agency, have the sources and connections to write a history. The best example of this is David Atlee Philips, a CIA veteran who not only wrote a highly sympathetic account of his agency, but also set himself up in competition with the CIA press office. While the latter would often respond to journalists with ‘no comment’, Philips discussed matters more frankly and ensured that pro-CIA quotes for journalists were only a phone call away.

Working within a security or secret service for a substantial time does mean that, like an official historian, the writer will have access. It also means these semi-official histories will be self-censored, supportive of the use of intelligence, and uncritical. For example, in the 1970s, semi-official British histories were also written to stem the tide of the deluge of books during the ‘era of exposure’ which were hypercritical of the British security and secret services. In some cases, these were written by sympathetic journalists who were given unique material in exchange for favourable prose.

---

32 To differentiate from ‘official histories’ these are sometimes called ‘semi-official’ histories.
More recently, in the twenty-first century, a new rationale has reanimated the official histories project in the UK. Along with the reasons previously mentioned, the temptation of monetising the vacuum of knowledge – created by strict adherence for a century to almost total secrecy for both the secret and security services – has proven too great for the British government to resist. Christopher Andrew’s *The Defence of the Realm: The Authorized History of MI5* appears to have striven for objectivity, and as a result was censored a second time by the Cabinet Office to remove material that was not security sensitive, but which was considered politically embarrassing. By contrast Keith Jeffery’s *MI6: The History of the Secret Intelligence Service* carefully selected chapters and sanitised the organisation’s dark periods, meanwhile it ignored the voices of senior figures, ranging from Alexander Cadogan to Lord Mountbatten, who considered MI6 to be a shambles.³⁵ Both books however were arguably compromised by being commemorations and celebrations of their respective centenaries.

Epistemologically speaking, when taking the narrow and broad concepts of official history in Britain and America respectively, the same weaknesses and strengths crop up. In terms of weaknesses, they are often carefully prepared and selected narratives that tow official lines; focus on use of counterespionage during war-time; and have an institutional emphasis. The primary strength: one historian, or a team of historians, have unprecedented access to archives that provide details unavailable anywhere else. Official histories,

---

³⁵ The two official histories, released through two trade presses rather than Routledge, the normal outlet for an official history, realised close to a million pounds for the exchequer, largely offsetting the cost of their production for the tax payer (private information).
however, should be used as appeals to authority with extreme caution.\(^{36}\) Their triumphalism, their focus on obvious enemies during war and avoidance of embarrassing chapters and politics often make them, at times, almost as limited as Bloomsbury histories.\(^{37}\)

As I am dealing with the origins of US counter-espionage, a process I argue began over a century ago, the few official histories that may have been produced for internal consumption have become outward facing.\(^{38}\) Some of the Officials I refer to here in relation to counter-espionage are in reality semi-official histories – written by men who in an earlier life worked within America’s intelligence community. Thus when I speak of Officials here, I deploy the term in the broad British sense to mean not only officials per se, but their adherents, supporters and intellectual outriders.

So what are the qualities these Official accounts share in common? For the most part histories that claim to be on the origins of US counter-espionage are triumphalist in tone, uncritical in approach, largely detached from policy and – most vitally – usually written by ‘insiders’, current and former US counter-espionage officers. The most important book in terms of influence is *A Counterintelligence Reader*, produced by the Office of the National

\(^{36}\) It is worth noting that MI6 produced an ‘official history’, while MI5 produced what is called an ‘authorised history’. Christopher Andrew became a member of MI5 while writing his study.


\(^{38}\) Though, not as well monetised as Britain’s authorised histories. See: Rafalko (ed.), *A Counterintelligence Reader* and footnote twenty-two.
Counterintelligence Executive.\textsuperscript{39} The book, in terms of strengths and weaknesses, is also atypical of the overwhelming majority of books in this school. The four-volume reader provides a persistent history of counterespionage within the context of two centuries of American history. The history, however, is largely descriptive, imparting facts that neatly fit together in a straightforward linear and chronological history of US counter-espionage till the end of the twentieth century.

Overall, the Reader’s single strength is far outweighed by five crucial weaknesses: first, the book is wholly uncritical. This comes as no shock; it was edited by Frank J. Rafalko who served in the Central Intelligence Agency’s counterintelligence staff’s Special Operations Group (SOG) that participated in the MHCHAOS programme.\textsuperscript{40} Second, it is essentially a work of inward-looking official history in terms of its material, drawing mostly from primary governmental sources, marginalising the voices of those targeted and victims of government counter-espionage. Third, like many works of US espionage in general, it is an attempt to justify the United States Cold War intelligence apparatus by pointing to the use of espionage in America’s ‘pre-history’ – particularly by the Founding Fathers, especially America’s first President George Washington.\textsuperscript{41} Fourth, the book is afflicted with a deficiency that

\textsuperscript{39}ibid.

\textsuperscript{40}Operation CHAOS, or Operation MHCHAOS, was the code name for a secret American domestic espionage conducted by the CIA and established in 1967. The programme targeted radical student activists and African-Americans, and others abroad as well as domestically to determine whether they had possible foreign (primarily Soviet) influence. See Frank J. Rafalko, \textit{MH/CHAOS: The CIA’s Campaign Against the Radical New Left and the Black Panther} (Annapolis, MD: Naval Institute Press, 2011) pg. 1 [eBook].

\textsuperscript{41}Numerous texts refer to Washington as ‘America’s first ‘intelligence chief’ or ‘spy-master’. Rafalko is not the only person to do this. See Christopher Andrew, \textit{For the President’s Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush} (London: Harper Collins, 1996); P. K. Rose [Kenneth A. Daigler],
permeates many works on intelligence: it is wholly disconnected from wider politics. This is perhaps the book’s primary failing, it assumes – a priori – that counter-espionage is justified, and thus the policies that initiated it were also justified.

Lastly, the book does not address the substantial influences that were external to government, including the private sector and Great Britain. Other than as an antagonist in the Revolutionary War, Rafalko hardly mentions Britain’s role during the First World War. Similarly, outside the Civil War he does not assess the overall impact of private detective firms providing counter-espionage services in the nineteenth century. This last weakness is a particularly pernicious oversight which this thesis endeavours to correct. However, these deficiencies are perhaps not altogether surprising. If the book was partly motivated by a desire to validate, even valorise, America’s counter-espionage tradition all the way back to the Republic’s Founding Fathers, then it is necessary to marginalise the role of foreign entities.

I would like to return in more detail to the fourth problem that I have identified with Rafalko’s A Counterintelligence Reader – the research being largely disconnected from politics and political decision making – as it is particularly emblematic of the Official School; and the reverberations of this weakness are felt widely across the subject. Moreover, the predominance of

---


2 See chapter four for more on private detective firms in the Gilded Age.

the school also has a pernicious effect on the overall narrative on the origins of US counter-espionage; as the politics of the day is stripped from the narrative, leaving only a clean sanitised history of how counter-espionage was used against America’s enemies.\textsuperscript{44} The narratives produced are stand-alone ‘intelligence-centric histories’, and provide no assessment of the wider political context driving the expansion of counter-espionage. The history of American counter-espionage is about so much more than the gadgets and methods used to catch spies during war-time; it is also about the statutes, the targets and most vitally the political controversies that often initiated its use. The artificial separation of counter-espionage from its natural context is thus the major underlying flaw of the Official School.

What this all means in practical terms for my thesis is that as much effort has been put into the politics of counter-espionage as into the use of counter-espionage itself. I went to great lengths in researching and writing my history on the origins of US counter-espionage to ensure to properly contextualise key events, and the forces that provided the impetus for them; seeking a deeper critical analysis of the forces that drove expansion in the area of counter-espionage.

Though I suggest narratives from Officials should be approached sceptically, they do have a contribution to make. By avoiding analysis of strategies and policies, they bring important empirical details of the agencies to light; the Officials build a basic institutional narrative and addresses basic questions that Revisionist histories do not always provide, and indeed that Bloomsbury works do not even go near. Questions like: what did the majority of

\textsuperscript{44} For example, none of the books within the Officials School (footnotes twenty-two, forty, forty-four and forty-seven) deal with labour violence or disputes.
employees in the organisation actually do? How large were they? What were their organisational structures and cultures? What was the organisation’s budget? In understanding the importance of, say, the Bureau of Investigation during the First World War, these sorts of questions are certainly in need of attention, no less than the personal relationships of J. Edgar Hoover in Washington and the influence he wielded.

Good examples of titles that address these sorts of questions are the various internal official histories produced in the US by different branches of what made up the nascent US counter-intelligence community. They provide helpful outlines of how the institution saw its role, what functions they prioritised and what cases they wished to bring to the forefront. As such, these quite lengthy monographs have tended to focus on linear institutional development, at the expense of the colourful characters that staffed them. Nevertheless, their sections on counter-espionage provide a great deal of detail on elements that have often been overlooked; the technical and routine aspects of counter-espionage and the specific impetus for the founding of the organisation.

As these Officials are often seeking to provide narratives of large organisations with thousands of employees, sometimes across several decades, the analysis within the text tends to be quite ‘thin’. This is compounded by the fact that Officials also tend to avoid the controversial episodes of an organisations’ history, as the histories themselves are often funded, written and managed by the same sections of the organisation that handle public relations. An ‘organisation’ focused approach inevitably leads to the downplaying, or total avoidance, of outside influences and its interaction with other organisations engaged in counter-espionage, not least because of sensitivities about liaison.46

In some sense, for an agency like the FBI, assessing – say – the role British organisations might have played in their development takes away not only from the Bureau’s own counter-espionage lineage, but that of America. Consequently, some of the texts, for example A Counterintelligence Reader, overplay the role of offensive counter-espionage in the history of the US by highlighting the role and legacy of counter-espionage in the Revolutionary Wars, but hardly mentioning the involvement of Britain, private sector detective agencies or Progressive politics in the formation of counter-espionage.47 The organisations spawn organically and their creation is always necessary. Almost all the texts have a keen focus on wars – including the Cold

47 See Rafalko (ed.), A Counterintelligence Reader; O’Toole, Honorable Treachery; Rose, ‘The Founding Fathers of American Intelligence’, pp. 9–15. The latter article is the most egregious example of an article which suggests US’ current counter-espionage community has indigenous roots that date back to the founding of the country.
War – as the crucibles of American counter-espionage; a proposition that this thesis endeavours to overturn.

Despite overly focusing on wars in understanding, the research conducted by the Officials provides extremely detailed information of requisition, personnel, budgets and operations of the major US counter-espionage organisations. Combined, they provide a detailed, if wholly uncritical, picture. Read in isolation, however, the histories are limited. As American counter-espionage has always been fragmented between numerous organisations, other than A Counterintelligence Reader, a number of the Officials just draw from one institution’s archives and personnel, and as such often provide only one perspective of a complex and multifaceted history.\footnote{See footnote forty. Also see: Raymond J. Batvinis, \textit{The Origins of FBI Counterintelligence} (Lawrence, KS: University Press of Kansas, 2007); John F. Fox ‘Early Days of the Intelligence Community: Bureaucratic Wrangling Over Counterintelligence, 1917–1918’, \textit{Studies in Intelligence}, Vol. 49, No. 1 (2005), pp. 9–17; Harry Overstreet and Bonaro Overstreet, \textit{The FBI in Our Open Society} (New York, NY: W.W. Norton, 1969); Todd Masses and William Krouse, \textit{The FBI: Past, Present, and Future} (Washington, DC: Congressional Research Service, 2003).}


These reports include the Pike, Church and Rockefeller Commissions, the Aspin-Brown Commission and the Moynihan Commission on Government
Secrecy.\textsuperscript{51} They share many of the benefits of internal histories – they are well researched, have privileged access, are comprehensive, provide previously unknown details – but they also share many of the same drawbacks. While they are often compiled by officials outside the agencies concerned, nevertheless they import other types of problems.\textsuperscript{52}

Rhodri Jeffreys-Jones, in the \textit{Role of British Intelligence in the Mythologies Underpinning the OSS and Early CIA}, argues that US government reports on intelligence have been highly partisan and as such their analysis is coloured by a clear Democrat or Republican agenda.\textsuperscript{53} In this respect, I agree with Jeffreys-Jones’ analysis in \textit{Mythologies Underpinning the OSS}. A committee headed by a Democratic congress has no desire to attack democratic party luminary presidents like Woodrow Wilson or Franklin Roosevelt, despite

\begin{footnotesize}

\textsuperscript{52} For more on the environment the above 1975 government enquiries were written in, see: Loch K. Johnson, \textit{A Season of Inquiry: The Senate Intelligence Investigation} (Lexington, KT: University Press of Kentucky, 1986).

\textsuperscript{53} Jeffreys-Jones was writing about the Church Commission, but from his argument in \textit{Mythologies Underpinning} the OSS it is clear his argument can be extrapolated outwards. See: Rhodri Jeffreys-Jones ‘The Role of British Intelligence in the Mythologies Underpinning the OSS and Early CIA’, \textit{Intelligence and National Security}, Vol. 15, No. 1 (2000), pp. 5-19.
\end{footnotesize}
Progressive politics being instrumental in the expansion of American counter-espionage.\textsuperscript{54}

Though the reports are extremely good primers on American intelligence generally; they must be read over with a careful eye, and the analysis, along with the conclusions and recommendations must be taken with caution. Moreover, as with internal histories, due to the commissions’ extensive remits, often covering intelligence activities ranging from assassination to undercover surveillance, they cannot delve into the necessary depth on any one topic, like counter-espionage, to assess all the requisite influences and foundational qualities at play.\textsuperscript{55}

So far, all the Official texts discussed in this section have been written either at the behest of a government or by embedded historians within an intelligence organisation whose job it is to collate, analyse and write an official history. However, as already intimated, not all the Officials’ studies that have been written emanated from an institution or the form of a federal government commission. There are a few texts on the origins of US counter-espionage, semi-official histories, that I would still class as ‘Official’ as they are written by former intelligence officers – these include *Honourable Treachery*, by G.J.A. O’Toole; *The Counterintelligence Chronology*, by Edward Mickolus and *Spying in America*, by Michael J. Sulick.\textsuperscript{56} For all intents

\textsuperscript{54} ibid.

\textsuperscript{55} The Church Committee Final report had six books and two special reports and it still misses important details in the nineteenth century.

and purposes they function like classic official histories, with the same strengths and weaknesses. Sulick and O’Toole – both former employees of the CIA – provide solid histories of American counter-espionage that are essential to read for the new information they bring to light, even if their general outline is the same as those provided by other Officials’ books. Like other texts in this school, they are also unavoidably attempting to make a compelling case for the necessity and righteousness of the expansion of American counter-espionage. In doing so, however, they make the same mistake of all other Officials: they miss the important limiting forces emanating from the revolutionary period, which remained influential for over a century.

If the literature on the origins of American counter-espionage was diverse and written from outside as well as inside government, then there would little wrong with the Official School, so long as it was complemented by other perspectives. The general outlines they provide, their longitudinal approach and their methodological approach are all helpful to some degree. The problem is the absence of non-institutional narratives. In other words, the abiding lack of independent critical accounts of the history of American counter-espionage.

[ili] REVISIONIST

This last school – the Revisionist School – one might hope would be well populated with numerous critiques of the histories and theorising that emanate from the previous school. One might even expect this simply because the US is a pluralist society wherein the idea of political policing and
domestic surveillance has often been denounced as odious. However, in a subject which the educated reader would intuitively hope might be most free of a pro-government bias, it has been for the most part populated consistently by two main writers: Rhodri Jeffreys-Jones and Athan Theoharis. Outside the previous two schools, mostly Officials, the source of American counter-espionage and its evolution from its inception has been only haphazardly assessed. This is disappointing, given that this subject is integral to a comprehensive understanding of civil liberties, struggles for particular freedoms and associated periods of political repression in America.

It is important for Revisionist works on this subject to develop because they are freer of governmental interference, and as such the narratives provided tend to have fewer subjective – cognisant or otherwise – biases. Moreover, precisely because these historians are denied inside access to classified documents, they tend to look instead to more contextual material, which is beneficial. Absolute objectivity in the social sciences is impossible; but it is still an ideal worth aspiring to. As such, research that is conducted by groups of historians, as opposed to official historians writing on an organisation that employed them, provide less encumbered narratives which are more impervious to charges by other historians of detrimental levels of subjectivity.

Moreover, the research methodology, on the whole, is superior in the Revisionist to the previous two schools. This partly reflects the fact that more

---

58 Hughes and Scott, ‘Knowledge is Never Too Dear’, pg. 22.
writers from this school are trained historians, rather than journalists or field operatives. Accordingly, a hallmark of texts from this third school is a more methodological rigour, combining multiple qualitative methods from across the social sciences and quantitative methods too. The research in the Revisionist School also provides multiple vantage points on the same events, triangulating sources across private repositories, interviewers, memoirs, official archives and secondary sources. It is the best of both worlds, it has the flair and storytelling of the Bloomsbury School, and the precision and coverage of the Officials.\textsuperscript{61}

Yet sadly, only an extremely limited number of journal articles from the three leading journals on intelligence – \textit{Intelligence and National Security}, the \textit{Journal of Intelligence and CounterIntelligence}, and \textit{Studies in Intelligence} – fall under the rubric of this school.\textsuperscript{62} For critical Revisionist research


\textsuperscript{62} The lack of critical revisionist coverage of American counter-espionage in the leading Intelligence Studies journals is not altogether surprising, as they are similarly dominated by current and former practitioners (and one of the journals is run and managed by the CIA). The journals focus on intelligence from the perspective of the users, especially the latter two American journals, with articles on how to ‘fix’, ‘adapt’ or ‘improve’ intelligence.
connected to the history of American counter-espionage generally, it is necessary to move away from premier Intelligence Studies journals, from Routledge and from government printing offices.63

Combined, these distinct pieces of scholarship help form a collage that provides an excellent overall picture of the origins of US counter-espionage; its evolution and its drivers for growth. However, individually, they have a limited remit – focusing on a combination of time periods, organisations, individuals, International Relations theories and different branches of intelligence. Moreover, there is no one singular thread that runs through every journal article. Articles on counter-espionage at different stages, from the Revolutionary War to the Cold War, are left unconnected to the origins of American counter-espionage and how it evolved at each crucial stage. What is left is quite a fractal landscape, with divergent conclusions. Many of the journal articles also have narrower parameters than the scope set out in this project, so disunity is to be expected. Nevertheless, intellectually, they pull at common threads that this project endeavours to weave together into a more coherent whole.

The two key scholars I noted at the beginning of this section, Rhodri Jeffreys-Jones and Athan Theoharis, have been the most consistent and important scholars on the origins and expansion of American counter-espionage for nearly four decades.64 As such, their contributions serve as the exemplars of

Also see the excellent Frank J. Donner’s The Age of Surveillance, one of the few books to connect counter-espionage (surveillance), to labour unrest in the nineteenth century.

the Revisionist School and are worth assessing separately from other writers as paradigmatic cases of the strength of the approach. Across their books


and journal articles, they provide glimpses into organisations and statutes of
counter-espionage, their origins and what precipitated their maturation.

The totality of their research laid some of the conceptual groundwork for this
project, and many of the questions Theoharis and Jeffreys-Jones sought to
answer are shared by this research. For example, in one of Jeffreys-Jones’
most recent expositions, *The Role Of British Intelligence In The Mythologies
Underpinning The OSS And Early CIA*, he discusses why the narrative of
‘British-intelligence-to-the-rescue’ of a US intelligence community in a state
of ‘shameful un-readiness’ has remained unchallenged up until the mid-
eighties (what Jeffreys-Jones calls the ‘miracle thesis’).\(^\text{66}\) Although in the
article Jeffreys-Jones is not specifically covering counter-espionage, it is one
of the few studies that attempts to explain how the narrative – which is a
central pillar to some of the above Officials – came into existence.\(^\text{67}\) Jeffreys-
Jones’ explanation of the existence of the ‘miracle thesis’ is crucial, as he is
deconstructing a narrative created earlier by proponents of the Bloomsbury

---

NY: E.M. Coleman Enterprises, 1979); Athan G. Theoharis (ed.), *Beyond the Hiss
Press, 1982); Athan G. Theoharis (ed.), *From the Secret Files of J. Edgar Hoover*
(Chicago, IL: Ivan R. Dee, 1992); Athan G. Theoharis (ed.), *A Culture of Secrecy: The
Government versus the People's Right to Know* (Lawrence, KS: University of Kansas
Press, 1998); Athan G. Theoharis, *Chasing Spies: How the FBI Failed in
Counterintelligence but Promoted the Politics of McCarthyism in the Cold War Years*
(Chicago, IL: Ivan R. Dee, 2002); Athan G. Theoharis and Jeanne Theoharis, *These
Yet to Be United: Civil Rights and Civil Liberties in America Since 1945* (Toronto:
Wadsworth Publishing, 2002); Athan G. Theoharis, ‘Expanding U.S. Surveillance
515-534; Athan G. Theoharis, ‘FBI Wiretapping: A Case Study of Bureaucratic
Autonomy’, *Political Science Quarterly*, Vol. 107, No. 1 (1992), pp. 101-122; and
Athan G. Theoharis, ‘Dissent and the State: Unleashing the FBI, 1917-1985’, *The

\(^\text{66}\) Jeffreys-Jones, ‘The Role of British Intelligence’, pg. 6-19.

\(^\text{67}\) The myth being, America had no intelligence culture before the second world war
and was caught by surprise.
and Officials schools regarding the origins of US intelligence. In doing so, he has opened up the possibility of exciting new interpretations and counter-narrative on the origins of various aspects of American intelligence.

In their research, Jeffreys-Jones and Theoharis provide ‘histories’ of the two dominant agencies in the US intelligence community: the FBI and CIA. With respect to the Bureau and counter-espionage, in The FBI: A History Jeffreys-Jones deals mostly with the competing cultures within the FBI between traditional police work, focusing on making arrests, and domestic spying, following a target to acquire the depth of infiltration. Similarly, in The FBI & American Democracy, Theoharis raises similar questions on the extra-legal nature of the FBI’s police and spying activities and its problematic implications for the rule of law in America. This tension between domestic spying and police-work that both authors speak to is an intriguing one, though both do not pursue this question back in time to attempt to identify where this tension emanates from, what caused it and its relationship with political forces. Both start their analysis at the beginning of the twentieth century, but focus their research on the overindulgence of espionage in the post-Second World War national security state. As such, neither fully explains the tension between counter-espionage prevention and police-style investigation. In addition, neither fully explores the relationship between Britain, the private sector and progressives in understanding the expansion

---

69 On this particular point, Theoharis focuses on the post-Second World War period, Jeffreys-Jones start date depends on the date of the book and the organisation in question.
of American counter-espionage that ultimately resulted in the creation of America’s intelligence community today. Similarly, they do not assess the depth or consequence of these relationships.

Overall, both scholars and their numerous publications are of major intellectual importance. They signpost significant themes in the development of US counter-espionage and its various influences and ask penetrating questions. For example, was the British connection always helpful, or was it in fact harmful? Are the origins of American counter-espionage demonstrably un-American? If so, are these origins indications of outside intervention? And lastly, did this connection ultimately undermine both America’s pre-existing method of internal security and its established democratic traditions? These are questions that lie at the heart of my research – as is Jeffreys-Jones and Theoharis’ approach, adeptly weaving archival research into their books – to help reach an understanding of an organisation’s culture, in relation to the power of certain individuals in official circles. Theoharis’ The FBI: A Comprehensive Reference Guide is of particular use in exploring the Bureau’s files.

Nevertheless, despite the high quality contributions from both writers on American counter-espionage, the aim of their research differs from mine. It is important to note that the guiding principle of the totality of both their research projects – like that of all other authors in the Revisionist School – has not been uncovering the major influences on American counter-espionage. Moreover, neither has taken his analysis all the way back to America’s

---

70 The questions Jeffreys-Jones raises of class and culture are also prevalent in Robin W. Winks, Cloak and Gown Scholars in the Secret War, 1939-1961 (New Haven, CT: Yale University Press, 1987).
Founding, where its political culture and concepts of espionage and treason were codified and established.

In Jefferys-Jones’ latest offering In Spies We Trust, a book that thoroughly explores one of the most important influences on American counterespionage: Britain, Jefferys-Jones does not go back into the eighteenth and nineteenth centuries to examine British influence upon American legislation. Lastly, the scope of the book is considerably wider than mine, in terms of the different aspects and types of intelligence, it also has a strong focus on western intelligence liaison. As such the totality of insights is simultaneously wider and narrower. Nevertheless, In Spies We Trust combined with his numerous other books and articles to date, provides the best broadside against the narrative from official histories of various stripes.

Therefore, this thesis is the antithesis to the narrative provided by the Officials School. It aligns, partly, with revisionist histories, in opposition to the predominant trend of Officials that attempt to retrospectively justify America’s national security apparatus by showing America’s use of counterespionage in its ‘pre-history’. I do not deny that intelligence – broadly speaking – has consistently been part of America’s history. Like many Revisionist works, I maintain that the expansion of counter-espionage was antithetical to America’s foundational constitutional principles. My thesis

---

72 Recently, Theoharis has been focusing on contemporary issues related to domestic spying.
73 See, for example: O’Toole, Honorable Treachery; Sulick, Spying in America; Daigler, Spies, Patriots, and Traitors; and Rafalko (ed.), A Counterintelligence Reader.
74 Obviously where this text differs from many of the general intelligence histories is by wholly focusing on domestic counter-espionage, which has been less prevalent in US history than foreign secret intelligence. Also, crucially, it differs from other Revisionist books by arguing that the unravelling on the republic initiated in the
also aligns with the Revisionist School in blending the methodological approaches of the previous two schools; the experiential narrative from Bloomsbury works and the thorough assessment of institutions from the Officials camp.

COUNTER-ESPIONAGE AS A POISONED CHALICE

So what inferences can be drawn from the literature we have reviewed on counter-espionage? First and foremost, there is actually a surprisingly limited number of texts that attempt to uncover the origins and influences on

American counter-espionage. The books and articles belong to the Official School and are ‘intelligence-centric’, as few other variables are included in their analysis. In these texts there is a disconnect between counter-espionage and domestic politics, foreign policy and International Relations theory. This divorces counter-espionage from the political motivations and determinations that decided domestic ‘spying’ was necessary. The two are intrinsically linked and cannot logically be separated.

It is appropriate and necessary, for example, that significant time and energy be devoted to exploring the evolution of the PATRIOT Act from what has come to be known as the ‘COINTELPRO Era’; a period notable for a programme of political repression conducted by the FBI from 1956 to 1971. Similarly, in understanding the 1917/18 Espionage and Sedition Acts, it is necessary to explore the 1893 Anti-Pinkerton Act and America’s earlier relationship with counter-espionage. Politics and espionage are not just correlated; they are casually linked to one another. The problem is that most writers who have written on the origins of counter-espionage in America break the daisy chain at an arbitrary point, usually the Second World War, and go back no further.

Second, efforts to date the origins of US counter-espionage have for the most part been dominated by Officials – with little evidence to suggest that the gap between Revisionist and Official histories is narrowing. Third, across all three schools presented above, no one piece of research that purports to examine the origins period of US counter-espionage has had its primary focus

---

75 See for example: Rafalko (ed.), A Counterintelligence Reader; Fox, Jr. and Warner, ‘Counterintelligence: The American Experience’; Tidd, ‘From Revolution to Reform’; Sulick, Spying in America; O’Toole, Honorable Treachery.

76 See: Theoharis, Abuse of Power, pp. 141-166.
on any one of the influences I have identified – Britain, the private sector or progressivism – let alone all three. As such, an opportunity exists to bring a new perspective to bear.

Fourth, sources from official historians or pro-government histories need to be approached sceptically. Officials writing on an organisation they know intimately do provide certain advantages; for example, access to certain classified files, an experiential knowledge of the inner workings of the subject and the ability to interview individuals who would be otherwise less willing to provide oral testimonies. However, the closeness to the subject material has serious consequences for objectivity, particularly when it is not offset by more independent academic material.

Though complete objectivity for any historian is an impossibility, independence and critical thinking are important; and in a field where subjective narratives have historically been the norm, an attempt to provide a transparent narrative is essential. Writing any history is as much about the authors who wrote it as it is about the subject matter; and that is precisely why it is so important that the history of US counter-espionage not be dominated by current and former practitioners.\textsuperscript{77} The writing of history is a labour of many hands over many years – the domination of the Official School clearly runs counter to this.

Lastly, to fully understand the origins of counter-espionage – as well as the constitutional dilemmas that arise from domestic spying in the twenty-first century – the Revolutionary Era cannot be ignored. Evaluating the origins of

\textsuperscript{77} The same is true for the theorising of a subject, a point I make in the introduction, see section ‘Definitions: Calling a Spade a Spade’.
US counter-espionage without including a careful study of the influence of the framers of it would be tantamount to studying the origins of isolation and neutrality in US foreign policy without going back to 1776; you cannot do it, the constitution informs almost every aspect of American life, including counter-espionage.

The above is also evident with the primacy of the impact of certain key individuals – John Jay; Thomas Jefferson; William, Robert and Allan Pinkerton; Theodore Roosevelt and Woodrow Wilson. Certain individuals in the origins of US counter-espionage, wielded so much influence over the direction of counter-espionage in America that they cannot simply be grouped together and studied with the organisation as the unit of measurement.

In some respects, counter-espionage is uniquely important. Unlike many other forms of intelligence - counter-espionage is always about people and their rights. Thus counter-espionage has always been linked to emotive and sensitive psychological questions such as what motivates individuals to betray their country? 78 If being American is about adherence to certain ideals, embodied in the Constitution, is holding ideals contrary to the Constitution treasonable behaviour? What are the best methods for rooting out people who foment these contravening ideals? And, can these mere thoughts be considered a crime?

There is a reason why the counter-espionage branches of intelligence organisations are the most feared, the least liked and the most insulated – it is because they are always looking for traitors amidst groups of colleagues, close friends, compatriots and local communities. The Framers of the Constitution were aware of both the challenges of having a permanent counter-espionage bureau and not having one. However, during America’s Revolutionary War – when its original counter-espionage culture was established – they treated it as a poisoned chalice – a libation that ought only to be imbibed in times of crisis.
SECTION II
Stimson adopted as his guide in foreign policy a principle he always tried to follow in personal relations—the principle that the way to make men trustworthy is to trust them. In this spirit, he made one decision for which he was later severely criticized: he closed down the so-called Black Chamber—the State Department’s code-cracking office. This act he never regretted. In later years he was to permit and indeed encourage similar labors in another Department, but in later years the situation was different. In 1929 the world was striving with good will for lasting peace, and in this effort all the nations were parties. Stimson, as Secretary of State, was dealing as a gentleman with the gentlemen sent as ambassadors and ministers from friendly nations, and, as he later said, ‘Gentlemen do not read each other’s mail.’

‘Gentlemen do not read each other’s mail’ – the most overused, misunderstood and incorrectly attributed quote in relation to US intelligence. The quote has appeared ad nauseam across books and journal

1 Henry L. Stimson and McGeorge Bundy, On Active Service in Peace and War (New York, NY: Harper and Brothers, 1947), pg. 188.
2 ‘Correspondence’, Intelligence and National Security, Vol. 2, No. 4 (1987), pp. 192-192. The correspondence points out that the following all incorrectly attribute the quote to: Herbert Yardley. See: Herbert O. Yardley, The American Black Chamber
articles on studies of US intelligence, but the overwhelming majority of texts fail to provide a citation to the source of the quote; instead presenting it as a truism that underlines the naivety of Americans in the aftermath of the country’s distinguishing ‘intelligence failure’ – Pearl Harbor.\(^3\) The quote, however, has been used since the mid-1980s for a wider range of purposes – not just to highlight American folly for not having a ‘a full service’.\(^4\)

\(^{3}\) I have found at least twenty books that use the quote, in inverted commas, without an accompanying citation.

Perhaps the abundance of (mis)uses of the quote can be attributed to the majority of writers failing in their due diligence to examine the quote from the primary source - along with its vital preamble. The quote, once properly situated in Stimson’s memoirs, *On Active Service in Peace and War*, clarifies the author’s intended meaning; and in the process elucidates one of the most fundamental characteristics of US espionage and counter-espionage that goes all the way back to the founding of the American Republic: That in peacetime civilised peoples ought not to spy on one another. In other words, the central proposition was that espionage – the use of spies and stealing other people’s secrets – was a repugnant business only justifiable in the lead-up to or in times of war (war being the ultimate embodiment of a state of exception). Stimson’s ethical reservations over cryptography were partly focused on the targeting of diplomats in peacetime, not on spying in general. Stimson’s notorious declarative phrase was an ought-statement, as opposed to an is-statement, that was wholly in keeping with America’s approach to spying since its inception.

In this chapter I will contend that one of the fundamental elements of US intelligence – indeed in terms of significance the most fundamental – set forth by the framers of the Constitution is the curtailling of offensive counter-espionage outside of war. It will also identify other characteristics that flow from this initial foundational character of intelligence as a wartime capability. The framers, and subsequent legislators and presidents, were not ignorant of the threat posed by subversion, nor did they take public order for granted – so this was not a perverse self-denying ordnance. Once it has been demonstrated that the framers were not ignorant of threats against the
survival of the state, I will turn to and analyse the constraining effect on counter-espionage contained within the Bill of Rights and the Declaration of Independence. The following chapter will do much the same for the treason clause within the Constitution.

The republican system of governance, borne of the Revolutionary Wars, established a political culture rooted in constitutional rights which maximised individual freedom. Creating this ‘natural rights republic’ was done in the full understanding of the consequences of minimising the powers of the general government – even in the context of countering something as alarming as espionage. This political philosophy did not only impact offensive counter-espionage, but also upon defensive counter-espionage outside of wartime.

Defensive counter-espionage was permissible but heavily influenced by three other characteristics from the Revolutionary Era: the subsuming of counter-espionage into law enforcement; the protecting of individual liberties by separating powers in the general government, federalism and a Lockean (natural) conception of rights which made them inalienable. These elements, along with the initial wartime/peacetime distinctions, articulated by Stimson are largely misunderstood, yet they make up the foundational qualities of US counter-espionage before the rapid expansion that began in the Progressive Era.

The following chapters will examine all the above characteristics during the time in which America’s traditional counter-espionage culture was constructed, and then solidified. Chapters one and two deal with the Revolutionary Wars. The chapters also illustrate how Britain – not just as a foe but as a mother country – greatly shaped American counter-espionage in terms of bestowing the history and language that provided the initial intellectual contours for the ideas of treason and sedition. These two chapters will unpick Britain’s role (both constructive and unconstructive) from the fabric of Revolutionary America in setting the country’s first counter-espionage culture. Combined, the two chapters also reveal the incompleteness of official and semi-official histories on the origins of American counter-espionage, which have focused on the limited episodes that point to the use and abuse of counter-espionage. This first section shows quite clearly that the framers were not attempting to unleash expansive counter-espionage on the continent, but rather to curtail it quite severely.

COUNTER-ESPIONAGE IN A ‘STATE OF EXCEPTION’

When US official and semi-official histories of counter-espionage recount the importance of intelligence in the Revolutionary War, the American Civil War, the Spanish-American War and both World Wars they forget to add one important sentence to their analysis: that counter-espionage was a war time function only. This may seem trivial to many. Yet all the above phenomena

---

share a common word: war. However, no writers have identified or discussed the
remarkable fact that the expansion and contraction of counter-espionage
was a fundamental characteristic of the United States’ counter-espionage
culture until the Progressive Era. Its absence in the literature is not totally
inconspicuous. As noted in chapter one in my criticisms of Rafalko’s A
Counterintelligence Reader, I would contend that this is primarily due to an
author’s desire to justify ‘intelligence’ in all forms as a historic component of
American statecraft. The creation and maintenance of a permanent counter-
espionage bureaucracy, however, was not a founding principle (un-codified
or otherwise) that the framers attempted to set out. Indeed, rather the
opposite, it was the principle behind Stimson’s much-maligned maxim of not
reading other gentlemen’s mail.

Before the Cold War, the rapid demobilisation of counter-espionage
apparatus upon the conclusion of a conflict was the most prominent feature
of America’s counter-espionage culture. Every major conflict the US entered
into – from the Revolutionary War to the Great War – saw a rapid
mobilisation, followed by an equally rapid demobilisation of counter-
espionage infrastructure upon the conclusion of hostilities. Thus, the
pertinent question at this point is why? Why would a state that is
intermittently locked in violent conflicts not organise a permanent counter-
espionage bureau, especially when one’s international rivals have made such
provisions? Reductive realist assumptions would suggest that not imitating
the key capabilities of one’s rivals will ultimately be a losing strategy. The
answer as to why America did not conduct offensive counter-espionage, is

---

7 As will be detailed in section three, chapters seven, eight and nine.
rooted in seventeenth century enlightenment thinking, and how new conceptions of the state were incompatible with the type of counter-espionage abilities emblematic of the corrupt Old World.

The US was founded on the lofty aspirational prose of Thomas Jefferson in the Declaration of Independence, codified by James Madison in the Bill of Rights, and justified by Alexander Hamilton, John Jay and Madison again in the Federalist Papers. It was based on the aspiration to conduct politics differently from the court of the country they recently swore allegiance to, and would eventually lead them to be considered traitors. Their rejection was not just of a British monarch, but a wider revulsion at European-style court intrigue, political repression, counter-sedition, diplomacy and war.

The prose of these ‘Founding Fathers’ was given palpable form by George Washington, who understood that as America’s first President he had been given the power to shape future American presidencies. ‘I walk on untrodden ground’, was a frequent comment Washington made in the days leading up to his first inauguration. He was well aware that his footprints on ‘untrodden ground’ had the propensity to last in saecula (saeculorum). Washington wrote to James Madison in 1789 ‘as the first of everything, in our situation will serve to establish a Precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles.’

Article II of The Constitution,

---

9 My analysis is not just of these three texts, but they are central to understanding America’s counter-espionage culture, as they are understanding America’s political culture more generally.
like much of The Constitution, left a certain amount of ambiguity to how a
president would exercise and fulfil his duties.

Included under the umbrella of ambiguities that Washington would have
navigate at this time were trivialities like organising the social life of the
president, adding ‘So Help me God’ to the end of the Oath of office of the
President of the United States and for selecting the substantially less gaudy
title ‘Mr. President’ over the suggested ‘His Excellency and High Mightiness,
the President of the United States, the Protector of our Liberties and the
Defender of the Same’.\(^\text{12}\) Not all the ambiguities were trivial, Washington also
put substantially more significant precedents in motion, including the
concepts of executive privilege and executive orders; steering the US
towards a foreign policy of neutrality; establishing the tradition of a cabinet
of advisors; and, the most well-known, setting the precedent for a two-term
limit of Presidents.\(^\text{13}\) Washington understood that he was breathing life into
the newly formed republic’s executive branch with no obvious historic
models to follow.\(^\text{14}\)

---


\(^{13}\) The two-term limit was started by Washington but really solidified by Jefferson.
See chapter five and ‘From Thomas Jefferson to Weaver, 7 June 1807’, in Andrew A.
Lipscomb, Richard H. Johnston and Albert E. Bergh (eds.), *The Writings of
Memorial Society, 1903-04), Vol. 11, pg. 220; ‘Thomas Jefferson to John Taylor, 6
January 1805’, in Paul Leicester Ford (ed.), *The Works of Thomas Jefferson*, vol. 11,
*Correspondence and Papers 1808-1816* (New York, NY: G.P. Putnam’s Sons, 1904-5),
vol. 11, pp. 56–57. Again, it is not a coincidence that the two-term limit precedent
was tested in the Progressive Era by Theodore Roosevelt.

\(^{14}\) Of course Washington, like all the Framers, drew inspiration and guidance from
Great Britain, France, Rome and Greece; but America’s republican government, at
this stage, was really a political experiment in self-governance.
Washington had no footsteps to follow in for a simple reason. His guiding principle was making the presidency powerful enough to function effectively for a national government, but at the same time incapable of showing tendencies toward monarchical dictatorship and tyranny. He desired, at all costs, not to set a precedent that could lead the new republic on the path to a new King George III. To that end, Washington significantly influenced the path for all presidencies moving forward; setting standards in all aspects – including political power, military practice, and economic policy. What is sometimes missed from the areas of statecraft Washington influenced is espionage and counter-espionage. Those who have analysed Washington’s influence on ‘intelligence’, focus on his successful use and understanding of it, not his desire to prevent it becoming a permanent tool of statecraft.

The literature within Intelligence Studies has gone to great lengths to emphasise that Washington was an excellent director, consumer and user of

intelligence, but does not acknowledge the precedents he set for future presidents.\(^\text{17}\) The Constitution speaks on treason (more below) but the informal contribution Washington made (in terms of counter-espionage) is linking its expansion to wartime and – more importantly – its contraction in the hard-fought peace afterwards. An informal, un-codified precedent that Washington set – like many of the above that were followed up until the Progressive Era – was linking offensive counter-espionage to states of exception.

Up until the Second World War every conflict classified as a ‘war’ that the US entered into saw an expansion of counter-espionage, followed by a contraction of counter-espionage powers.\(^\text{18}\) This widening and narrowing took place during America’s first war, whereafter the signing of the Treaty of Paris on 3 September 1783 George Washington declined/ignored the opportunity to create a permanent federal intelligence bureaucracy headed up by Nathaniel Sackett.\(^\text{19}\) It also partly transpired at the end of the First World War – where the Negative Branch of the Military Intelligence Division, which had supervised the War Department’s counter-espionage work – closed its doors formally by 1921.\(^\text{20}\) Just like the American military in general (pre-Second World War), counter-espionage worked like an accordion, which could expand for conflicts and collapse soon after. Without talking of the

\[\text{\ldots}\]

\(^{17}\) ibid.

\(^{18}\) War in the constitutional sense – meaning a war authorised by Congress.


\(^{20}\) Roy Talbert Jr., *Negative Intelligence: The Army and the American Left, 1917-1941* (Jackson & London: University Press of Mississippi, 1992), pg. 210. Though the Bureau of Investigation, which had duties outside of counter-espionage, survived. For more on the Bureau of Investigation see chapter eight.
efficiency of this system (yet), before the Second World War American counter-espionage culture was one that Stimson digested and boiled down to a simple, but misunderstood phrase, ‘Gentlemen do not read each other’s mail’, unless one has entered into a state of exception.21

While the Constitution makes no mention of ‘emergency wartime powers’, which could feasibly include an expansion of counter-espionage, nevertheless, as Justice Robert H. Jackson noted in his dissenting opinion in Terminiello v. Chicago – a 1949 free speech case decided by the US Supreme Court – the constitutional Bill of Rights is not ‘a suicide pact’.22 In the twenty-first century, the phrase is mostly associated with pre-eminent jurist and legal theorist Richard Posner’s 2006 book Not a Suicide Pact: The Constitution in a Time of National Emergency.23 Prima facie, Posner sits comfortably alongside many of the arguments advanced in this thesis - in ‘times of danger, the weight of concern for public safety increases relative to that of liberty concerns, and civil liberties are narrowed. In safer times, the balance shifts the other way and civil liberties are broadened’.24 However, Posner’s essential argument is that ‘pragmatic balances’ – essentially consequentialist concerns – ought to give greater weight to the interests of national security than they have in the past.25 To illustrate his point, Posner weighs the costs

24 ibid., pg. 9.
25 ibid., pg. x. Original italics.
and benefits in cases involving detention, interrogation, radical speech and privacy. Thus, the title of the book is really a misnomer.\textsuperscript{26}

We might reflect here upon what a suicide pact is and what the phrase encapsulates. It signals that the Bill of Rights ought only to be jettisoned if the resulting outcome of adherence to it is national suicide; or at least an improbably phlegmatic attitude to an existential threat. What Posner – and those within the Intelligence Studies literature who make a similar argument, but with less philosophical rigour – are suggesting, is that in times of emergency, the glass ought to be broken and the state reach in and pull out legislation and powers ‘palpably in the teeth of The Constitution’.\textsuperscript{27} It is actually multiple steps below suicide; this breakage is tantamount only to national injury. It is in reality the suggestion of dismissing the Constitution when it is troublesome. It is a legal and political ‘get out of jail free card’ based on utilitarian assumptions; whilst the quote expresses deontology at the threshold, doing what is necessary if – and only if – national survival is at stake.\textsuperscript{28} The argument often made by security professionals is further weakened when we realise that the ‘necessary war’ argument has been made continuously since 9/11, a period of a decade and half.\textsuperscript{29}

Justice Jackson’s dissenting opinion in \textit{Terminiello v. Chicago} represents a repudiation not a ratification; and he was, constitutionally speaking, on solid

\begin{footnotesize}
\begin{enumerate}
\item ibid., pp. 53-127.
\item Phrase ‘in the teeth’ is from a letter to Madison from Jefferson shortly before the passing of the Sedition Act, see chapter four for more. See also: ‘From Thomas Jefferson to James Madison, 7 June 1798’, in Oberg (ed.), \textit{TPTJ}, vol. 30, pp. 393–395.
\end{enumerate}
\end{footnotesize}
ground, drawing from both Federalist and Republican traditions. In 1810, Jefferson deftly articulated the sentiment of the Constitution not being ‘a suicide pact’ to a close confidant, John B. Colvin, in justifying the Louisiana Purchase during his Presidency, an act Jefferson had great reservations about:

A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means … A ship at sea in distress for provisions, meets another having abundance, yet refusing a supply; the law of self-preservation authorizes the distressed to take a supply by force. In all these cases, the unwritten laws of necessity, of self-preservation, and of the public safety, control the written laws of meum and tuum.³⁰

In Federalist Paper No.23 Alexander Hamilton struck a similar tone, though in less grandiose prose, noting that emergency powers:

ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies,

or the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense.31

If a consensus exists between Jefferson and Hamilton, it is fairly easy to posit not only that this principle is representative of all the framers, but that it could be considered universally true.32 What both Jefferson and Hamilton are pointing to is the right – indeed, the duty – of the President to protect the security of the state. In certain circumstances when ordinary measures are inadequate to accomplish this, the right to employ exceptional measures arises. Threats to ‘the Life of the Nation’, though not codified, are a legitimate recourse for a state of exception, like wars, as the state itself – by the definition of war – is locked into a struggle where the price of defeat is possible extinction.33 Though not written into the Constitution, doing what is


33 Language taken from the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.
necessary in states of exception was understood in both streams of political thought – from Jeffersonian Republicanism to Hamiltonian Federalism – that flowed into the Constitution, and informed the actions of subsequent presidents. From the end of the Adams presidency until the first half of the twentieth century, all American presidents have recognised the nature of this arrangement: the expansion – the entering into a state of exception – and the contraction, the return to normality.

Progressive Era reimagining would fundamentally alter this understanding of counter-espionage as a wartime activity that functioned under the ‘laws of self-preservation’. This was despite the fact that the core values the US was founded upon were not easily reconcilable with offensive counter-espionage.

IGNORANT FRAMERS

Before exploring other US constitutional values (linking counter-espionage to law enforcement, natural rights federalism and the separation of power) and what these values may mean for counter-espionage, it is necessary to demonstrate that (a) the Constitution still ought to matter in respect to current counter-espionage and (b) that the men who established America’s original political culture were not oblivious to what the values enshrined in the Constitution could mean for espionage/counter-espionage. At first glance it may seem curious to argue the importance of the connections between ideas from the eighteenth century on the essence of US counter-espionage in the twenty-first century. However, George Washington understood that the precedents he set in office would have a bearing for future presidents. America’s political culture is shaped greatly by its framers.
and their thinking. The nature and original meaning of passages from the Revolutionary Era, such as the first and fourth amendments, are central to present-day debates on laws concerning counter-espionage and surveillance in America.

Claims of the framers’ ignorance on the subject of espionage/counter-espionage are not just the sanctuary of the layman to America’s intelligence history but also, in recent times, claims made by ‘experts’. A persistent argument in favour of a ‘full service’ counter-espionage agency has been accompanied by the claim – articulated first by Ray S. Cline, a former deputy chief of the CIA – that before the 1940s, American history of intelligence was notable for its innocence. Thus, to the initiated and uninitiated alike, the claim of pre-1930s intelligence innocence has been an alluring one. However, this line of reasoning does not sit comfortably with the historical record all the way back to America’s framers. We can start with Jefferson, who was not only on the Committee on Spies (more below) but experienced...

34 Rhodri Jeffreys-Jones has done the best research exposing the creation and prolongation of the myth of American ‘intelligence innocence’ see: Rhodri Jeffreys-Jones, ‘The Role of British Intelligence in the Mythologies Underpinning the OSS and Early CIA’, Intelligence and National Security, Vol. 15, No. 2 (2000), pp. 5-19; Jeffreys-Jones points to Ray Cline and the Church Report, see: Ray S. Cline, The CIA Under Reagan, Bush and Casey: The Evolution of the Agency from Roosevelt to Reagan (Washington, DC: Acropolis 1981); and ‘Book IV: Supplementary Detailed Staff Reports on Foreign and Military Intelligence’ in United States Congress, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Reports, I-VI (Washington, DC: Government Printing Office, 1975), pg. 4 [Also known as the Church Committee Report]. Moreover, research on the historical record disproves this claim, with the creation of the Military Intelligence Division, the Office of Naval Intelligence, the (Federal) Bureau of Investigation, the Secret Service and a slew of private sector detective firms greatly involved in counter-espionage before Pearl Harbor. For an example of ‘layman’ claim of the framers not being relevant on security, see the July 4 controversial cover story of Time Magazine entitled ‘Does it Still Matter’. See: Richard Stengel ‘One Document Under Siege’ Time Magazine, 4 July 2011.

35 ibid.
seditious and treason first-hand. Serving as Governor of Virginia, Jefferson
narrowly escaped capture twice: first, when British forces under the turncoat
Benedict Arnold stormed Richmond in January 1781; second, when forces
under the command of General Charles Cornwallis overran Charlottesville six
months later.36

As a man of letters who valued privacy – and America’s second Renaissance
man – Jefferson was also a budding cryptographer.37 While serving as
George Washington’s Secretary of State (1790-1793), he devised an
ingenious wheel cipher device.38 During the Revolutionary Wars, Jefferson
had relied on secure couriers to hand-carry sensitive letters. The adoption of
codes was necessary, however, when Jefferson became America’s Minister
to France (1784-1789).39 Codes were an essential part of his correspondence

36 See Merrill D. Peterson, Thomas Jefferson and the New Nation: A Biography (New
Kerr, The Founding Fathers: Thomas Jefferson, A Biography in His Own Words (New
York, NY: Newsweek Books, 1974), pg. 104-105. Jefferson appears to have been
one of the targets of the British raid, for Lieutenant Colonel Banastre Tarleton later
reported to Cornwallis that ‘the attempt to secure Mr. Jefferson was ineffectual’.
Dumas Malone, Jefferson and His Time, Volume 1, Jefferson the Virginian (Boston,
MA: Little, Brown and Company, 1948), pg. 357. Also see the excellent book:
Michael Kranish, Flight from Monticello: Thomas Jefferson at War (New York, NY:
Oxford University Press, 2010).
37 The first being Benjamin Franklin, of course.
38 See Thomas Jefferson, ‘Thomas Jefferson, Cipher Wheel, Notes and Copy’, (no
date) The Thomas Jefferson Papers at the Library of Congress, Series 1: General
Correspondence, 1651-1827, Microfilm Reel: 056; and ‘Thomas Jefferson to Robert
Patterson, 22 March 1802’, in Oberg (ed.), TPTJ, vol. 37, pp. 107–109 [includes
illustration].
39 ibid. Also see: Ralph E. Weber, Masked Dispatches: Cryptograms and Cryptology
in American History, 1775–1900 (Fort Meade, MD: National Security Agency, Center
back to the US as European postmasters routinely opened and read all
diplomatic and any suspect letters passing through their command.  

As a Virginia delegate to the Continental Congress while Secretary of State, 
and in his personal correspondence with Thomas Jefferson, James Madison 
would also use early polyalphabetic code systems involving complex 
interaction of a keyword with alphabets and numbers in pre-established 
patterns. Even after the 1783 Treaty of Paris, ending the Revolutionary War, 
and the looming threat of British dispatch capture, Madison and other 
Virginia Congressional delegates (including Jefferson) remained obsessed 
with maintaining secrecy and good practices of defensive counter-
espionage. Throughout the 1780s, they continued to exchange codes with 
one another. In his correspondence with James Monroe, a fellow Virginia 
delegate and another future president, Madison used a major 600-element 
nomenclator. Gradually Madison, Monroe, Jefferson, and the other 
delegates lengthened the code nomenclators into the 1,500-element range, 

40 His device really was inspiring. The design of Jefferson’s cylinder cipher would be 
rediscovered among his papers in the Library of Congress in 1922, that same year, 
Commandant Etienne Bazeries, invented a similar system. Jefferson’s system would 
be adopted by the by the United States Army from 1923 until 1942 as the M-94. 
See David Kahn, The Codebreakers: The Story of Secret Writing (New York, NY: 
41 See: ‘To Thomas Jefferson from James Madison, 16 April 1782’, in Oberg (ed.), 
TPTJ, vol. 6, pp. 176–177; and ‘To James Madison from Thomas Jefferson, 31 
January 1783’, in William T. Hutchinson, William M.E. Rachal and Robert Allen 
Rutland (eds.), The Papers of James Madison, Vol. 6, 1 January 1783–30 April 1783 
(Chicago, IL: The University of Chicago Press, 1969), vol. 6, pp. 177–182 [henceforth, 
‘TPJM’].  
42 A nomenclator is a list with numbers keyed to the same number of words or parts 
of words (elements) in a random pattern and then used as their substitutes in an 
encoded message. Madison thought that such a code ‘will answer every purpose’. 
The codes were designed by James Lovell, a Massachusetts delegate to the 
Continental Congress and an expert on ciphers. See ‘From James Madison to James 
260–262.
which offered greater protection for dispatches. The focus the framers placed on defensive counter-espionage, encrypting their communications, is one illustration of their awareness of offensive counter-espionage. Nevertheless, despite experiential knowledge of spying, the framers still limited the federal government’s role in counter-espionage.

Washington was, of course, key in actualising America’s limited counter-espionage culture, and his role in relation to the value of counter-espionage in a state of exception has already been discussed. However, the quote below – perhaps the most well-known Washington quote in relation to espionage – starkly reveals the America’s President’s real concern of those who failed to spot traitors in their mist. On 24 March 1776, in a letter to Col. Josiah Quincy he wrote:

There is one evil I dread, and that is, their spies. I could wish, therefore, the most attentive watch be kept... I wish a dozen or more of honest, sensible and diligent men, were employed... in order to question, cross-question etc., all such persons as are unknown, and cannot give an account of themselves in a straight and satisfactory line.... I think it a matter of importance to prevent them from obtaining intelligence of our situation.


Despite being conscious of spies and spying, Benjamin Franklin (in stark contrast to Washington) was unconcerned about the threat they posed. Franklin was warned, numerous times, that whilst he was in Paris in the spring of 1777 he would be in the company of spies. Writing to him, a Philadelphia confidant – Juliana Ritchie, wife of William Ritchie a Merchant of Philadelphia – warned him that ‘you are surrounded with spies who watch your every movement’. The unflappably sanguine Franklin, in a response every bit the antithesis of Washington’s letter, replied famously:

I have long observed one Rule which prevents any Inconvenience from such Practices. It is simply this, to be concerned in no Affairs that I should blush to have made publik, and to do nothing but what Spies may see & welcome. When a Man’s Actions are just & honourable, the more they are known, the more his Reputation is increased & established. If I was sure therefore that my Valet de Place was a Spy, as probably he is, I think I should not discharge him for that, if in other Respects I lik’d him.

Franklin’s extolling and maintenance of his values meant that men close to him were in fact spies. One of the Americans, and long-time friend, around Franklin in Paris whilst serving as US Minister to France, Dr. Edward Bancroft,

was a British spy. Though (perhaps fortunately for Franklin) no direct evidence exists that Bancroft’s treachery resulted in any ships sailing back from the old to the new world being successfully intercepted by the British.

Undoubtedly then, the framers were fully aware of the dangers of espionage and took varying precautions to guard against British and French intrigue. All the while they lived up to their well-known maxims on liberty: Jefferson’s ‘I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it’; Madison’s ‘Perhaps it is a universal truth ... that loss of liberty at home is to be charged against provisions against danger, real or pretended, from abroad;’ and Franklin’s celebrated: ‘Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.’ Even federalist centraliser Alexander Hamilton hit the same notes as those quoted above on the danger of sacrificing liberty for security:

Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and

---

property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.\textsuperscript{52}

These explicit views from the framers – in their letters, speeches and documents – set a high bar for liberty that makes an offensive counter-espionage system difficult to justify. Moreover, the claim that America was ‘innocent’ before the 1930s is not the same as claiming that previous generations of Americans, including the framers, were oblivious to espionage. As we have seen, they were painfully aware of the issue. Indeed, the Revolutionary War within which US constitutional values were forged was one which was positively a breeding ground for treason and espionage, pitting neighbour against neighbour, father against son. Franklin’s own son, William Franklin, was a steadfast Loyalist throughout the Revolutionary War.\textsuperscript{53}

What the framers were not committed to was instituting a system (on the basis of the threat of espionage) that could potentially put the new nation on the path towards fostering a secret police.

When men like Cline made claims of America lacking an ‘intelligence tradition’, what they were committing themselves to is a demarcation around


decidedly offensive components of counter-espionage. America had an ‘intelligence tradition’, but it was constricting and focused on defensive rather than offensive methods of counter-espionage. The offensive components were created later, in the Progressive Era, and spawned new bureaucracies, legislation and methods that the framers were aware of and rejected.\textsuperscript{54}

It is crucial to repudiate the claim that the framers lacked experience and knowledge on the subject of counter-espionage. If the claim of ignorance stands, the logical conclusion to draw would be that the views they extolled offer no enlightenment on issues related to domestic surveillance, spying or terrorism today. Moreover, dismissing the period and approach of the era as amateurish diminishes the use of counter-espionage that took place and the lessons that might have been drawn from it.\textsuperscript{55} The lesson in this respect being that despite knowledge of the threat that such ‘intestine enemies’ posed, the framers elevated defensive (security-based) counter-espionage measures over offensive ones.\textsuperscript{56}

\textsuperscript{54} For a detailed analysis of the expansion of American counter-espionage during the Progressive Era see section three, chapters seven, eight and nine.
\textsuperscript{55} ‘Amateur’ is a word that appears frequently in reference to counter-espionage in America before the Progressive Era. See Nathan Miller, \textit{Spying for America: The Hidden History of U.S. Intelligence} (New York, NY: Paragon House, 1989); and O’Toole, \textit{Honorable Treachery}. Both have section/chapters which refer to ‘amateurs’. ‘Innocence’ also appears, see: Christopher Andrew, ‘American Presidents and Their Intelligence Communities’, \textit{Intelligence and National Security}, Vol. 10, No. 4 (1995), pg. 95; and Christopher Andrew, \textit{For the President’s Eyes Only: Secret Intelligence and the American Presidency} (London: HarperCollins, 1995).
Restrictions on the offensive methods of counter-espionage can be found in America’s ten commandments, Torah and Talmud – the Bill of Rights, the Declaration of Independence and the Federalist Papers. In these founding documents the framers both proclaimed and gave form to ideals of liberty, equality and justice. Equally, their various correspondence – now available in collected works, papers and archives – provides glimpses of their ideal state. The values and ideas formulated and expressed in these writings have been succinctly and powerfully invoked by Swedish Nobel-laureate economist Gunnar Myrdal as the ‘American Creed’. Common belief in this creed, Myrdal insightfully argued, shapes political and social interaction between Americans. Regardless of whether the creed exists or not, a belief in the virtues of it and the values it encapsulates is still to this day considered the touchstone of American identity. As such, if one desires to understand how the country’s political tradition constrained counter-espionage, one must understand this creed.


To understand how republican constitutional principles curtailed counter-espionage, the best place to start is the first revolutionary document, the Declaration of Independence. It was classically revolutionary, creating new sovereign states, but the doctrine underlining the separation from Britain was even more revolutionary. The Declaration of Independence was ‘the most perspicuous statement of the philosophy that had come to be the American political creed’. It was a tangible embodiment of natural rights theory. The Declaration, by Jefferson's own admission, however, contained no original ideas, nevertheless it was a brilliant distillation of the views held within the thirteen colonies:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

61 ibid., pg. 2.
63 US Declaration of Independence (1776).
<http://www.archives.gov/exhibits/charters/declaration_transcript.html> (17 August 2016). More common triad was ‘Life, Liberty and Property’ from John Locke. See Thomas Hollis (ed.), *John Locke, The Two Treatises of Civil Government* (London: A. Millar et al., 1764) chapter VII. ‘Of Political or Civil Society’ §. 87. Also
The framers defined these ‘certain unalienable Rights’ by turning to John Locke, as he enunciated them in his Second Treatise of Government (written in the early 1680s, and published in the 1690s). Locke was profoundly influential in providing the intellectual contours of the concept of natural and legal rights. The idea of natural rights is especially prevalent in the Declaration of Independence and the Bill of Rights, drafted by Virginians Thomas Jefferson and James Madison respectively. These ‘unalienable rights see James Mason’s Virginia Declaration of Independence: ‘That all men are by nature equally free and independent, and have certain inherent rights ... namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.’

64 ibid. Though I focus on Locke here, other important influences and traditions were also of supreme importance. Influences like the French and Scottish enlightenments and the framers’ Protestantism. Also the thoughts and writings of Burlamqui, Montesquieu, Lord Kames, Vattel, Grotius, Robert Bellarmine and Thomas Aquinas to name but a few. I focus on Locke as from across the papers and letters of the framers all were familiar with him, and his Second Treatise has remained hugely influential in the natural rights tradition. See: Jeremy Rabkin, ‘Grotius, Vattel, and Locke: An Older View of Liberalism and Nationality’, The Review of Politics, Vol. 59, No. 2 (1997), pp. 293-322; and Chester James Antieau, ‘Natural Rights and the Founding Fathers – the Virginians’, Washington and Lee Law Review, Vol. 17, No. 1, (1960), pp. 78-79.


66 Zuckert, Natural Rights Republic, pp. 80-81, 242-243. The language of Lockean liberalism can also be found in: James Otis, Rights of the British Colonies Asserted
rights’, by virtue of the creator, were stitched into the fabric of America by Jefferson and Madison. Both men had read and had a strong grasp of Locke and natural rights theory. The formation of rights being ‘inalienable’ meant they were inherent to the individual; and that some rights were so fundamental they could not be transferred to someone else, even with the holder’s consent. By their very definition, they could also not be repealed or restrained by human laws. Despite the centrality of the inalienability of rights, they were not necessarily manifest. Though both the Declaration of Independence and the Bill of Rights point towards what these ‘rights’ are, neither attempts to contain the totality of what constituted a ‘natural right’ and what was a ‘social right’. However, the particular natural rights on which there was the largest measure of agreement within the Commonwealth of Virginia were (in no particular order): (1) freedom of conscience; (2) freedom of communication; (3) the right to be free from arbitrary laws; (4) the rights of assembly and petition, (5) a right to own property; (6) the right of self-government, to which were frequently added (i) the right of expatriation and (ii) a right to change the form of government.


\[\text{69}\] ‘From James Madison to W.T. Barry, 4 August 1822’, in Gaillard Hunt (ed.), The Writings of James Madison, 9 Vols. (New York, NY: G. Putnam’s Sons, 1900-10), vol. 9, pg. 108 [henceforth ‘Madison’s Writings’].

\[\text{70}\] List is from: Chester James Antieau, ‘the Virginians’, pg. 45.
Agreement, however, was not consensus, and even within the colonies there was dispute over what rights were inalienable, how we ought to go about discovering them and what the base of natural rights was (whether they came from a deity or nature). Nevertheless, despite differences, natural rights theory was the most common conception of rights among the framers. For most, in order for a right to be a legitimate right in the Lockean sense, it had to be universalisable to all humans all the time; and if the universalising of that right gave rise to a logical contradiction, it could not be considered a right. Government’s role was limited, with the same logic underlining why it had no responsibility in counter-espionage, through pervasive distrust and concern of abuses by centralised power – vested in either a legislative or executive. Thus government’s role was to ‘secure’ rights, as no one was born with a natural right to rule over others without their consent; and government ought to apply the law equally to everyone. For most of the nineteenth century, the measuring stick of how to judge a President and Congress remained how they adhered to the social compact created in the Revolutionary Era to protect these natural rights.

Though here I focus on the more traditional reading of the Constitution and the focus on the inalienability of rights; the concept from the second

---

71 ibid., pp. 46-51.
sentence of the Declaration of Independence – government deriving its powers from ‘the consent of the governed’ – has been equally influential.\textsuperscript{74} Progressive presidents would eventually build off this part, as the executive was the only branch of government that could claim a truly national mandate.\textsuperscript{75} Its influence, however, would empower progressive presidents to expand the role of the federal government in counter-espionage.\textsuperscript{76}

Both presidents Theodore Roosevelt and Woodrow Wilson focused on the second sentence (de-emphasising the first) and saw themselves as representing the will of the majority. In doing so, they overrode the outcomes of an adherence to governance based on natural rights in the name of national ‘preparedness’, ‘efficiency’ or ‘social justice’.\textsuperscript{77} Natural rights would give way to the right of those being governed to ‘adjust government to their needs and interests’ – in essence, making the concept of liberty in a given era a majoritarian decision.\textsuperscript{78} This decision would have profound

\begin{footnotes}
\textsuperscript{76} See chapter seven for more details on this point.
\end{footnotes}
consequences for counter-espionage, triggering an expansion. Though this chapter and the next focus on an interpretation of the Constitution and Declaration of Independence that suggest rights come before majoritarian decision-making, both readings are within the Constitution.\textsuperscript{79}

The latter reading, focused on rights that limit government’s ability to employ counter-espionage, are most clearly codified within the 1789 Bill of Rights.\textsuperscript{80} The impetus for the amendments to the Constitution were in response to demands by Anti-Federalists for written protections of individual liberty against the government.\textsuperscript{81} The resulting amendments, which Madison would draft and introduce, intersect with state-based counter-espionage in quite a prohibitive manner. The Bill of Rights imposes a focus on counter-espionage investigations resulting in arrests (instead of a focus on disinformation and penetration), protections against being held unlawfully, \textit{Habeas Corpus}, admissible evidence, standards of proof and trial procedures.\textsuperscript{82} As opposed to having blasphemy laws, and laws against espionage and sedition, the first amendment also protected freedom of press, religion, speech, assembly and association. Contained within the Bill of Rights were a plethora of protections.

\textsuperscript{79} Thomas Paine provided an excellent explanation of the consequences of rights being not inherent but distributed by government, resulting in their reduction to the status of privileges: ‘It is a perversion of terms to say that a charter gives rights. It operates by a contrary effect – that of taking rights away. Rights are inherently in all the inhabitants; but charters, by annulling those rights, in the majority, leave the right, by exclusion, in the hands of a few ...consequently are instruments of injustice.’ See: Thomas Paine, \textit{Rights of Man} (1791).

\textsuperscript{80} US. Const. Amend. I-X.


\textsuperscript{82} ibid.
that upheld individual (natural) rights, which greatly impeded government’s ability to create a system of perpetual offensive counter-espionage.

Madison’s explanation of the first amendment in 1799 further highlights the difference in thinking on espionage, treason and sedition that had developed in the colonies from their mother country. For Madison, the essential difference ‘between the nature of the British government and the nature of the American government’ was that in England Parliament was omnipotent; where in the US, ‘people, not the government, possessed absolute sovereignty.’\[83\] On the surface, this well-known aphorism appears unconnected to the nature of counter-espionage. However, once you deconstruct the meaning behind Madison’s well known dictum, it has onerous consequences for counter-espionage.

Sir James Fitzjames Stephens, in his brilliant three-volume *History of Criminal Law in England*, puts it well: of those who believe that the people are the masters of the government, if ‘... you carry out to all its consequences, there can be no such offence as sedition.’\[84\] There may indeed be breeches of the peace which may destroy or threaten life, limb, or property, and then may be incitements to such offences, but,’ he maintained, ‘no imaginable censure on the government, short of censure which has an immediate tendency to produce such a breach of the peace, ought to be regarded as criminal.’\[85\] Succinctly, English conceptions of sedition could not coexist with the American principle of popular government. The logic of Sir James’ point


\[85\] ibid.
shows the Progressive Era’s 1918 Espionage and Sedition Acts to be incompatible with the notion of popular sovereignty. As the next chapter will further detail, English conceptions of counter-espionage could also not coexist with the rebellious colonies’ definition of treason, or with their principles on the absolute supremacy of the rule of law.

The fourth amendment within the Bill of Rights is also salient in discussing the desire of the framers to limit the state’s ability to spy on its citizenry. Recent opinions written by federal judges – William H. Pauley III and Richard J. Leon – upheld that the NSA’s domestic spying programme was, in part, justified by the idea that the framers approved of secrecy. In fact, the framers were substantially more concerned with individual rights to privacy than government secrecy.

The fourth amendment provides a framework for privacy protections and communications, it reads that the people have a right to be ‘secure in their persons, houses, papers and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized’. After the treason clause, it was the most powerful deterrent within the constitutional framework protecting citizens against certain kinds of government intrusions traditionally linked to political repression. Madison’s crafting of the fourth amendment

86 see chapters seven and nine for more details on this point.
88 US. Const. Amend. IV.
amendment was spurred by precisely the kinds of arbitrary powers that government would wield through the NSA’s prism programme.  

Using ‘writs of assistance’ – another name for ‘general warrants’ – King George III, attempting to eliminate smuggling in Colonial Boston, authorised his custom inspectors to carry out wide-ranging searches, ‘to break open Doors, Chests, Trunks, and other Packages’, without specifying either the goods to be seized or the houses to be searched. They also permitted searches anywhere and at any time regardless of whether a crime was suspected. In addition, they compelled private citizens to assist in the searches (hence the writ’s name). In a famous attack on the writs in 1761, James Otis, a prominent lawyer of his day, said, ‘It is a power that places the liberty of every man in the hands of every petty officer’. Despite his powerful oration and his well-articulated defence of the right to individual privacy, the British Superior Court in Boston refused to make the writs invalid. John Adams would later say of Otis’s argument that ‘then and there the child [of]

---

90 Text from the ‘writ of assistance’, taken from the Magna Carta.
91 ‘Writs of assistance’ is another name for ‘general warrants’. In popular American political and cultural history, the Tea Act and the Stamp Tax play are well known, where writs of assistance, though an important impetus towards revolution, is often forgotten. See: John Phillip Reid, In a Rebellious Spirit: The Argument of Facts, the Liberty Riot, and the Coming of the American Revolution (University Park, PA: Pennsylvania State University Press, 1979); and Maurice H. Smith, The Writs of Assistance Case (Berkeley, CA: University of California Press, 1978).
Independence was born’.\footnote{‘From John Adams to William Tudor, Sr., 29 March 1817’, in Charles Francis Adams (eds.), \textit{The Works of John Adams, 10 Vols.} (Boston, MA: Little, Brown and Co., 1856), vol. 10, pg. 246.} If not the child of Independence itself, the fourth amendment was born, as Madison was directly motivated by colonial opposition to these ‘hated writs’.\footnote{\textit{Stanford v. Texas} (1965) 379 US 476, pg. 484 n.13.}

Madison, however, was not singularly driven by a concern over arbitrary government power, but a belief he shared with his fellow Virginians in the philosophy of natural laws and rights.\footnote{Other than Madison ‘the Virginians’ include: Richard Bland, Patrick Henry, Thomas Jefferson, Richard Henry Lee, George Mason, Robert Carter Nicholas, Peyton Randolph, George Washington and George Wythe. See: Antieau, ‘the Virginians’, pp. 43-79.} Historically there has been ongoing legal debate on the parameters of the fourth amendment protections, as well as the nature of the ‘right to privacy’ and the legal definition of a ‘search’.\footnote{Thomas McInnis, \textit{The Evolution of the Fourth Amendment} (Lanham, MD: Lexington Books, 2010), pp. 33, 122, 183.} The debate on the fourth amendment has only intensified in the twenty-first century. The two-part test of ‘reasonable expectation of privacy’, from \textit{Katz v. United States}, following the 2013 disclosure of the clandestine PRISM domestic surveillance programme is the most notable recent example.\footnote{See: \textit{Katz v. United States} (1967), 389 US 347; Ewen MacAskill, Julian Borger, Nick Hopkins, Nick Davies and James Ball, ‘GCHQ taps fibre-optic cables for secret access to world’s communications’, the \textit{Guardian}, 21 June 2013. \url{http://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa} (17 August 2016); and Barton Gellman and Laura Poitras, ‘U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program’, \textit{The Washington Post}, 7 June 2013. \url{http://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3a0c0da8-cebf-11e2-8845-d970ccb04497_story.html} (17 August 2016).} The debate is ordinarily framed as a ‘trade off’ between personal privacy and
public interests/national security. However, for Virginians like Madison, the fourth amendment would have been grounded in a natural right to privacy, conscience and communication. It was a right that could not be ‘gradual and silent[ly] encroached upon’ by the sovereign. The rights could not be limited by the sovereign because these rights were not endowed by a king; they were innate – as first dictated in the Declaration of Independence.

As Richard Epstein, one of the most cited legal scholars of the twentieth century, has noted ‘no rights are justified in a normative way simply because the state chooses to protect them, as a matter of grace.’ To substantiate this point he uses ‘a common example of personal liberty which seldom musters disagreement: ‘the state should prohibit murder because it is wrong; murder is not wrong because the state prohibits it’. At least in the eighteenth century, even if it is not necessarily the case today, privacy was one of ‘the most fundamental of all liberties’, the ‘right to be let alone’. Madison, in his own words, wrote that liberty of conscience was one of the

100 Antieau, ‘the Virginians’, pp. 43-45.
102 Zuckert, Natural Rights Republic, pg. 42.
104 ibid.
‘choicest liberties of the people’.

It was a right ‘not included in the surrender implied by the social state.’

The rights behind the fourth amendment – privacy, freedom from governmental interference, conscience and communication – intrinsically link it to counter-espionage. Enshrining those rights within a social compact and constructing them as natural severely limits the state’s ability to exploit counter-espionage as a tool of statecraft. First, because the amendment (justified normatively) says you have a right to your thoughts, papers and to conduct private affairs. Second, it says you have a right to be free of unwarranted and unwanted government intrusion into those thoughts, papers, and private affairs. Singularly, it severely limits the state’s ability to conduct unjustified domestic surveillance. Once the amendment is connected to the other parts of the Bill of Rights – and to the treason clause within the Constitution – it adds credence to the claim that the framers were attempting to severely curtail the state’s ability to conduct offensive counter-espionage. The above federal judges, and the majority within the Official School, fail to acknowledge the major political tradition that limited counter-espionage by focusing on the relatively minor instances of espionage and secrecy from the Revolutionary Era.

108 US. Const. Amend. IV.
The fourth amendment embodies one of the many differences from Britain that developed in revolutionary America in the nature of the relationship between subject/citizen and state. Other than the Writs of Assistance case noted above, before independence Britain also started accelerating the use of seditious libel laws. Under the 1765 Stamp Act a prohibitive tax was placed on the paper used by the presses.\textsuperscript{109} Had this law been executed, it would have forced the inexpensive press out of circulation, thus suppressing colonial discussions of politics in the popular papers.\textsuperscript{110} Once committed to the path of quelling revolution colonial resistance to Britain’s mercantile policies (such as the Stamp Act) was described as ‘scandalous and treasonable,’ by those loyal to the crown who wanted to prosecute them for treason.\textsuperscript{111} When King George III issued his proclamation of rebellion against the American colonialists, he gave it the official title ‘the proclamation, by looking, suppressing rebellion sedition.’\textsuperscript{112} The Declaration of Independence itself constituted high treason, and everyone who signed it – if found by the British – could be hanged.

America’s revolutionary theory of government was founded on the principle that ‘government is a voluntary creation of self-interested individuals who

\textsuperscript{110} ibid.
\textsuperscript{112} Smith, \textit{Freedom’s Fetters}, pg. 427.
consent to government to secure their lives, liberties and property'.\textsuperscript{113} As such, the constitution established a limited government that was barred from raiding these ‘inalienable rights’.\textsuperscript{114} Conversely, over time European states’ under monarchical rule, obligations of members of society to the community (or the state) meant emphasising the individual’s duties at the expense of his rights.\textsuperscript{115}

The ideas of both popular sovereignty and inalienable rights disembarked into the New World with the earliest settlers, and never disappeared.\textsuperscript{116} It takes quite an aberration to break the chain that binds America’s republic to its constitutional moorings, which have not only greatly shaped America’s form of counter-espionage but its broader history – from civil rights to its economic policy. Despite challenges, the Constitution is still fundamentally what makes America America in its 240-year history. Thus, even arguments formed in the US that do not appeal directly to the Constitution are greatly shaped by those values which permeate deep into American society. Understanding The Constitution and the Revolutionary Era of the US elucidates not only the limiting nature of America’s traditional counter-espionage culture, but how it was formed and what influenced it.

\textsuperscript{113} Brian F. Carso, Jr., ‘Whom Can We Trust Now?': The Meaning of Treason in the United States, from the Revolution Through the Civil War (Lanham, MD: Lexington Books, 2006), pg. 43.
\textsuperscript{116} Brian Francis, Carso Jr., Whom Can We Trust Now? The Meaning of Treason in the United States, From Revolution through the Civil War (Ph.D. Dissertation: Boston University, 2004), pp. 54-58.
Combined, the founding documents that imbued America’s creed require either a total abdication of constitutional values or extended mental gymnastics for the adoption of Progressive Era counter-espionage. The revolutionary government’s response to betrayal and spying in its war against the crown, as well as its crafting of treason, further reinforce this claim.
THE ORIGINAL ELEMENTS OF US COUNTER-ESPIONAGE, PART II

The previous chapter dealt with how America’s original counter-espionage culture, formed during the Revolutionary War, functioned only during states of exception. The framers of the Constitution did not make this determination without reflecting on the potential for negative consequences. Instead, the decision was made in the full knowledge of the risks that could befall a young republic from spies and subversion. On balance the determination was made that the sort of permanent secret services needed to prevent those activities might well pose an even greater threat to nature of the republic.

This chapter further delineates the original elements of US counter-espionage. However, where the previous chapter focused on counter-espionage in states of exception and how constitutional values limited the scope for offensive counter-espionage; this chapter demonstrates how counter-espionage was subsumed under law enforcement, and how the same constitutional values curtailed the limits of treason. To fully illustrate this important point about counter-espionage being a matter of law enforcement, not something separate from it, I will analyse The New York Committee for Detecting and Defeating Conspiracies (CDDC) during the Revolutionary War. This was the first patriot organisation created for counter-espionage purposes – and certainly the most well organised effort. An assessment of the CDDC will not only show the primacy of law enforcement in the business of counter-espionage, but also the important role that states
(not just the ‘general government’) had in truncating sedition, catching spies and supressing dissent.

This chapter will explore the concept of treason, assessing the difference between ‘republican treason’ and ‘dynastic treason’. This difference is fundamental to understanding the relationship between the state and counter-espionage that the framers endeavoured to create. It is also an essential element of the pre-existing relationship between treason and the sovereign which could have been fully adopted from Britain. An analysis of treason not only shows how the framers’ desire for federalism, separation of powers and individual rights worked within the context of counter-espionage, but also how the offensive methods of counter-espionage, drawn from Europe and eventually developed in the Progressive Era, were antithetical to core constitutional values. The Revolutionary War was the key period during which the fundamentals of America’s political tradition were established and basic ideas were redefined: these included notions of treason, espionage, counter-espionage, treachery and patriotism. Lastly, continuing some of the arguments advanced in the last chapter, the framers were not unreflective on the above matters, especially treason. It was not inevitable that the framers would decide against adopting a form of dynastic treason. That instead they would opt to amalgamate developing conceptions of natural rights with treason to curtail offensive counter-espionage by the state, unprecedented in history.
THE NEW YORK COMMITTEE & THE RULE OF LAW

During the revolutionary period, counter-espionage was subsumed under law enforcement. This is best demonstrated by an analysis of a New York committee charged with ferreting out Tory spies and sympathisers.¹ The Committee (later called Commission) for Detecting and Defeating Conspiracies (hereafter, the CDDC) is one of the most important, but least well understood, organised bodies that typifies how American counter-espionage worked within a law enforcement framework during the revolutionary period. The Committee not only exemplifies the primacy of law enforcement in relation to counter-espionage, but also Washington’s deliberate effort to push the responsibilities for counter-espionage downwards from federal bodies towards individual states.

The relevant literature within Intelligence Studies, however, seems to have largely missed the point. The essence of the CDDC – created to address the threat posed to the revolution by those in New York who did not support independence – was local.² Frank J. Rafalko, the primary author of the semi-official A Counterintelligence Reader, discusses the CDDC, but only within the strict confines of showing how ‘…intelligence and counterintelligence played important roles in America’s fight for freedom…’.³ Similarly, he also uses this episode to show how ‘George Washington was a first class intelligence officer who placed great reliance on intelligence and kept a very

¹ Tories in this context were Loyalists of British America who opposed American secession during the American War of Independence.
² New York state, not only the city.
personal hand on his intelligence operations.\(^4\) In essence, Rafalko’s analysis of this period is barely an analysis at all and instead engages in a kind of “legitimacy by association”, suggesting in turn that at least part of the purpose of A Counterintelligence Reader is to legitimate the existence of America’s intelligence machinery today as a time-honoured institution.

Stephen F. Knott writes in much the same vein. He briefly assesses the ‘struggle against “intestine enemies”’ and as such touches upon the creation of the CDDC.\(^5\) His overall argument in Secret and Sanctioned means that his narrative of this New York Committee aligns with that of Rafalko’s. In short, Knott argues that American history is replete with examples of covert operations – both domestic and foreign – which demonstrate the State’s need for covert capability as part of effective foreign-policy making. There is a double sleight of hand here with Knot’s argument, in that he downplays the domestic security aspect and plays up foreign intelligence.\(^6\) Kenneth A. Daigler (aka P. K. Rose), though indisputably an insider, provides a quintessential Bloomsbury narrative in his book Spies Patriots and Traitors and article The Founding Fathers of American Intelligence, focusing on counter-espionage agents and handlers.\(^7\) Like Rafalko, he also assesses the CDDC as a means to an end for demonstrating that America before 1947

\(^4\) ibid.


\(^6\) ibid, pp. 3-10. Knott also seems to overlook the fact that counter-espionage was being organised by the state, as opposed to by George Washington.

had a counter-intelligence ‘outside the established legal system’.\textsuperscript{8} The Bloomsbury and Official schools come together to provide a powerful endorsement.

In \textit{Spying in America}, Michael J. Sulick, argues along the same line as Knott and Daigler. Predictably he focuses on the role of George Washington in establishing the CDDC.\textsuperscript{9} He also bemoans America’s retreat into a ‘self-imposed isolation’ and the dissolution of institutions created during wartime to ‘collect intelligence and catch spies.’\textsuperscript{10} All four authors largely ignore the fact that the CDDC was not a general government body or indeed the important connection of the Committee to law enforcement. The latter author – Sulick – at least acknowledges another of America’s key counter-espionage themes, demobilisation of counter-espionage after war, but in the same sentence decries it.\textsuperscript{11}

The CDDC has even been given the small screen treatment in a sensationalised period drama. AMC Studio’s popular series \textit{Turn: Washington’s Spies} has crystalised and expanded the above authors’ narratives of American counter-espionage during the Revolutionary War,

\begin{flushright}
\textsuperscript{8} P.K. Rose, ‘The Founding Fathers’, pg. 12.
\textsuperscript{9} Michael Sulick, \textit{Spying in America: Espionage from the Revolutionary War to the Dawn of the Cold War} (Washington, DC: Georgetown University Press, 2012), pg.18 [eBook]. Sulick is also wrong with facts and dates. He says that George Washington ‘convinced’ the New York provincial council to create the commission in June 1776, when one had already existed from May 1776. Moreover, he claims that Washington selected John Jay; he did not. He makes these claims based on working of two primary sources, see Rafalko (ed.), \textit{A Counterintelligence Reader}, Vol.1; and John Bakeless, \textit{Turncoats, Traitors and Heroes: Espionage in the American Revolution} (Philadelphia, PA: J.B. Lippincott Co., 1959), pg. 146.
\textsuperscript{10} Sulick, \textit{Spying in America}, pg. 63 [eBook].
\textsuperscript{11} ibid.
\end{flushright}
presenting the CDDC as ‘a-proto-CIA.’\textsuperscript{12} In addition, television has linked it to George Washington – playing up his credentials as America’s first ‘spymaster’.\textsuperscript{13} *Turn*, obviously has very little historical value; I do not mention it here as a reputable source. The programme, however, further highlights the point that the sensationalised, largely false, account of CDDC has permeated outside the ivory towers of academia to shape popular idea of espionage with America’s mainstream culture. A more scholarly and objective review of the CDDC, however, quickly unveils its true character and the virtues of restraint it inculcated: lawfulness and state rights.

The CDDC, was created on 21 September 1776.\textsuperscript{14} However, as missed by most intelligence historians, The New York Provincial Council had established an early version of the Committee in late May 1776, when it appointed councillors to ‘report a Law or set of Resolutions of this Congress to prevent the dangers to which this Colony is exposed by its internal enemies’.\textsuperscript{15} Before

\begin{itemize}
\item \textsuperscript{14} Although it began its work on 28 September, the extant minutes of the Committee do not begin until 17 December 1776. See: Dorothy C. Barck (ed.), *Minutes of the Committee and of the First Commission for Detecting and Defeating Conspiracies in the State of New York, December 11, 1776-September 23, 1778*, with collateral documents: to which is added *Minutes of the Council of Appointment, State of New York, April 2, 1778 - May 3, 1779* (New York, NY: New York Historical Society, 1924-25), hereafter referred to as ‘CDDC Minutes’.
\item \textsuperscript{15} George J.A. O’Toole in *Honorable Treachery* does not even mention the CDDC, he mentions John Jay only once, See: George J.A. O’Toole, *Honorable Treachery*:
the CDDC, even smaller organisations existed for detecting and removing loyalist (tory) hostilities in New York with the Provincial Congress in the lead, supported by wide array of county and district committees.\(^{16}\)

Within a month, the subcommittee of councillors had proscribed 118 individuals, with names provided to every county and district ‘committees of safety.’\(^{17}\) In late June, reporting to the full New York convention, the councilmen declared that suspected residents could be released if they agreed to swear an oath to the Patriots’ cause, and if they agreed to act


\(^{17}\) The term Loyalist or ‘tory’ was used to describe those who remained loyal to the British Crown. From the early eighteenth century, Tory had described those upholding the right of the King over Parliament. During the Revolutionary War, particularly after the Declaration of Independence, ‘tory’ was used to cover anyone who remained loyal to the British Crown. From my research, seven counties – Albany, Charlotte, Dutchess, Orange, Tryon, Ulster and Westchester had ‘boards’, only some of the records of a few counties appear to have survived. Excerpt from: CDDC Minutes, pg. xi.

\(^{17}\) This list included four from Kings County, six from Richmond County, fifty-seven residents from New York County, thirty-eight from Queens County and thirteen from Westchester County. Being ‘proscribed’ meant that you were warned and summoned to the Conspiracies Committee (since the above counties had no operating Committees of Safety) apprehended or arrested. Committee to Detect Conspiracies, Calendar of Historical Manuscripts, pp. 340-341. One-hundred copies was not a large amount. When the Provincial Council wanted to disseminate information more widely, it printed approximately a thousand fliers and published in available newspapers. For example, see: ‘Resolutions for Removing doubts which have risen respecting the true construction of the Association, 20 June 1776’, in Force, Ser. 4, Vol. 6, pp. 1419-1420.
suitably in the future (i.e. not work against or to undermine the Patriots’ cause). In the first month of this subcommittee’s existence, by not restraining the councillors, the Provincial council signalled their tacit approval of their methods, emboldening the nominally subordinate body. In addition, by not reining in the subcommittee and allowing them to prosecute, the councillors’ mandate was effectively enlarged to embrace both a judicial as well as an executive role.

However, the shortcomings of this initial system quickly started to become apparent. In the summer of 1776, district committees in three counties (Albany, Dutchess and Westchester) had started to punish Tories harshly – sentencing them to hard labour. Although their role in securing the state was necessary, the punishments struck the soi-disant Earl of Stirling, William Alexander, as being excessive and extrajudicial. In a letter to Washington he questioned if the judgements of the committee were in accordance ‘with the resolutions or intentions of the Continental or Provincial Congress’.

---

20 ‘Resolutions relative to persons dangerous and disaffected to the America cause, and to person of equivocal character, 5 June 1776’, in Force, Ser. 4, Vol. 6, pp. 1365-1366.
21 ‘Letter from Lord Stirling to Washington, 1 June 1776’, Force, Ser. 4, Vol. 6, pp. 672-674, They were forced, for example, into constructing Fort Montgomery.
22 In the Summer 1776, William Alexander was a Brigadier General in the Continental Army taking part in the fortifying of New York to repel the imminent British assault.
Indeed, some of their practices began to resemble the Star Chambers of Britain they had so recently rebelled against. The sub-committees had started to resolve cases not based on the facts and evidence but on reputation, hearsay and affidavits from familiar or favoured local sources.24 The level of abstraction was too low, with most of the heavy lifting being done at the district level. However, anything created at the intra-province (state) would have been too high to understand the local context. The blurred lines between Tory and Patriot, even within families, meant anybody too distant would logically result in spies going undetected. Washington, in his wisdom, left counter-espionage to individual colonies and local commanders who would be better equipped to identify spies among their townsfolk. States were not just pragmatically the best level of abstraction for the detection of espionage but also, as will be shown below, the fairest. As such, most counter-espionage was eventually conducted on the provincial (state) level. The main advantage of having investigations conducted on alleged espionage and other acts of disloyalty on the provincial level was the distance – both physical and political – its members had from those accused of having Tory sympathies. In short, the provincial (state) was instinctively the most suitable level of government. It was not too far away or too close.

Understanding the important connection between accuracy and legitimacy for the rule of law, the Provincial Congress strove to develop a fair process – a point entirely missed in the Intelligence Studies literature. If the patriots did not live up to the lofty aspirations that were eventually articulated in Jefferson’s Declaration of Independence, in stark contrast to their grievance against the King, they would lose the support of the people in the war they were meant to be fighting for the people.

24 Williams, New York Transformed, pg. 152
By June 1776, to rectify this apparent ‘democratic deficit’, the New York Provincial Congress added two displaced lawyers – John Jay of New York County and John Sloss Hobart of Suffolk County – to the subcommittee, assuring that the body had the legal competency to handle alleged Tory espionage in a professional manner.\footnote{Journals of the Provincial Congress, Provincial Convention, Committee of Safety and Council of Safety of the State of New-York, 1775-1776-1777, Vol. 1 (Albany, NY: Thurlow Weed, Printer to the State, 1842), pg. 495, 478 [4,5 June 1776]; ‘Petition from Mangle Mintborne, who was advertised, praying to be discharged, 13 June 1776’, Force, Ser. 4, Vol. 6, pp. 1399-1400.} With the addition of Jay and Hobart, the committee now consisted of nine men, six of whom practiced law – Leonard Gansevoort, Jr., John Haring, Thomas Tredwell, Gouverneur Morris, Jay, and Hobart. Of the remaining three who had previously not practiced law, Lewis Graham had been the High Sheriff of Westchester County.\footnote{Williams, New York Transformed, pg. 153.} Philip Livingston served as an ex-officio member – spending most of his days in Philadelphia representing his state in the Continental Congress.\footnote{Livingston still, however, was qualified to sit on committee warranted by his previous experience and education. In southern New York city before the war he had led the effort to resist crown rule.}

Therefore, the only active member without a background in law enforcement was Joseph Hallet of New York County.\footnote{Sometimes incorrectly spelt as the more traditional spelling today ‘Joseph Hallett’.} Hallet, a former member of the Sons of Liberty secret society, was most likely added to the group to appease the Council’s more radically inclined contingent.\footnote{Isaac Q. Leake, Memoir of the life and times of General John Lamb, an officer of the revolution, who commanded the post at West Point at the time of Arnold’s defection, and his correspondence with Washington, Clinton, Patrick Henry, and other distinguished men of his time, (Albany, NY: John Munsell, 1850), pp. 91-92.} Thus, from before September 1776, the historical and reported date given for the commencement of the CDDC, New York’s Provincial Council had begun to
collect ‘intelligence’, apprehend Tory spies and couriers, and examine suspected Tory sympathisers. The sub-committee was both a judicial and executive body, also – along with the above responsibilities – vested with the power to arrest, to convict, to grant bail or parole and to jail or to deport. Lastly, a week after solidifying the subcommittee’s membership in June, the Council empowered its direct militia men ‘with diligence and punctuality’ to arrest persons deemed dangerous to the Patriots’ cause. From the the makeup of the Province’s subcommittee, first and foremost, to be a member charged with finding, rooting out, evaluating and then sentencing Tory ‘traitors’ (spies) – in essence to practice counter-espionage – you needed to practice law.

In September 1776, the British landing in New York city, pushed Washington and his army out of Manhattan. Fleeing across northern New Jersey, they exposed the Dutchess and Ulster Counties to a British army that might move north. British control of New York city rendered the area between Tory and rebel-controlled sections contested territory, and stretched to the limit the pre-existing committee system (and eventually the state government). As battle lines were carved through New York, new menaces began to emerge with increasing rapidity, including subversion. It became necessary to undertake rear-guard action on a regular basis as well as to respond to criminal raiders exploiting the chaos, oppose loyalist bands and care for displaced men, women and children. In response to both the British landing and the increased lawlessness which inescapably accompanies war, New


31 ‘Resolutions for removing doubts which have arisen respecting the true construction of the Association, 20 June 1776’, *Force*, Ser. 4, Vol. 6, pp. 1419-1420.
York’s Convention appointed a new subcommittee ‘for the express purpose of enquiring into, detecting and defeating all conspiracies, which may be formed in this State, against the liberties of America’.  

Yet the specialisation of tasks through committee and sub-committee structures only further accelerated the local subsuming of counter-espionage into law enforcement. The delegating of investigatory work to a new committee put difficult questions of treason and espionage to knowledgeable and purposely selected judges. This allowed the state to focus on giving its full support to the pressing military effort. Whilst keeping two key veterans, Jay and Gansevoort Jr., the council replaced the other members of the earlier body with Nathaniel Sackett (Dutchess County), Zephaniah Platt (Dutchess County), Charles De Witt (Ulster County) and William Duer (Charlotte County).  

The judicial bent on the committee remained, with half the sub-committee coming from a legal background. Within two months – under the supervision of Nathaniel Sackett – the committee began directing the arrest of persons suspected of aiding or planning to aid the British, held daily sessions to examine their prisoners and in arranging for the confinement at Fishkill, release on parole, or deportation.

---


33 ibid; and *CDDC Minutes*, pp. xi-xix. The turnover in the committee’s membership was for the most part down to the original members of the committee trying to move their families away from advancing British forces. Three of the four new members – De Witt, Platt and Sackett – were from counties not yet invaded. Overall, the change in membership of the CDDC increased the influence of Jay and Gansevoort through their tenure. Thus, reinforcing the law enforcement focus of the committee.
to neighbouring states. Sackett’s units have been called America’s first organised ‘secret service’. However, placed in the proper context of New York’s committee structure, his role highlights how they were more in the style of a law enforcement outfit attempting to operate in a Province partially occupied by the enemy.

As summer 1776 turned into autumn then rolled into winter, the ever-looming presence of the British in southern New York elevated the threat and necessitated watching disaffected members of society closely. In a febrile climate of treason and war, the committee more than likely did wrongly penalise some neutral residents. Nevertheless, the CDDC’s fundamental anchoring was to the rule of law and the Committee endeavoured to be careful of accusing residents of aiding and abetting the enemy. It is impossible to know (it was also likely impossible to know closer to the time) how many wrongful convictions the committee presided over. It is statistically highly improbable when going over the minutes of the Committee that they had a perfect record. However, what is salient is that the committee did not operate with impunity or as if it was omniscient. Mistakes, if publicised, would have made the members of the CDDC appear to be acting like the imperial

---


36 ibid.
lawyers they were meant to be offering an alternative to.

Revolutionary fervour meant that the Committee would err on the side of caution by setting a higher bar for a guilty verdict by putting an individual’s rights over collective security concerns. In at least one instance, the committee refrained from convicting someone they had charged because they feared making an error. The CDDC also pursued the indefinite postponement of trials as a stratagem. In the view of the Committee, deferment signified circumspection— at least to those residents who longed for, or would tolerate, a resolution to the conflict which resulted in permanent severing from the British Empire. Fortunately for them, this policy looked increasingly likely to succeed, as the prospects of Washington’s defence of New York began to recover. Victories at Trenton in December 1776, and then in Princeton in January 1777, meant armed opposition against Britain would continue into the new year. With the alleviation of pressure on the military front, the temptation to act in reckless haste, which comes with military peril, continued to ease off. The CDDC thus had the time that it needed to investigate and convict people of disloyalty and espionage in accordance with the standard of jurisprudence expressed by the Continental Congress.

The establishing of legal oversight over the CDDC is a clear indication the committee was not outside New York’s legal system but attempting to operate within it, whilst nevertheless operating within the realities of a war-torn state. Establishing legal oversight was necessary if people were to support a new and emancipatory political order. As such, the CDDC for the

37 For example, an affidavit of Abraham W. de Peyster, a member of one of the oldest and prestigious Dutch families in New York, reported hearsay that one Joseph Reid, ‘was a great Tory.’ However, even with the emergency law enforcement powers being utilised at that time, this information was enough to indict but not to convict Reid. See: ‘Deposition of Abraham W. de Peyster, 10 September 1776’, in Force, Ser. 5, Vol. 2, pg. 680.
most part only punished residents after a sufficient investigation had taken place that met due process standards (fair treatment, notice of charge, hearings and impartial judges). The sub-plot to the infamous execution for treason/sedition – the first in the history of the eventual US – of Thomas Hickey, a Continental Army soldier in Washington’s Life Guard, exhibits the Committee’s genuine desire for due process in matters of counter-espionage. Histories of the origins of American counter-espionage have focused on Hickey’s treason and the corresponding mythology of George Washington’s prowess as a spy-master. Yet no history of counter-espionage in America has analysed Hickey’s treason (and the counter-espionage operation to catch him) in the context of the emphasis put on the rule of law throughout the case.

---


39 Hickey’s betrayal is a well-known story that does not need to be retold here, but for more information see: Bradley Chapin, American Law of Treason: Revolutionary and Early National Origins (Seattle: University of Washington Press, 1964); and also see North Callahan, Royal Raiders: The Tories of the American Revolution (Indianapolis, IN: Bobbs-Merrill, 1963).
In June 1776, a Tory conspiracy to stage an armed revolt of Loyalists and secret turncoats in Washington's army was discovered, timed to coincide with the landing of the British army in New York. In a local businessman by the name of William Leary came to the Committee to inform them that whilst searching for a runaway servant from Erskine’s Bigwood Ironworks, he had a chance encounter with a former employee, James Mason, who had since been discharged. After some cautious fencing Mason indiscreetly confided to Leary that he and others were in the pay of the British to recruit conspirators ready to fight when the British Army eventually arrived. A warrant was issued for Mason, he was apprehended and brought before the Committee for examination.

Mason seems to have broken under the weight of the affair, though this is hard to know for certain. During his examination before the CDDC he seemingly divulged everything, and everyone, he knew was involved in the

40 Enlistees were paid by counterfeiting currency that was supplied by the Royal Governor.
42 Thomas Hickey was already arrested, shortly before Leary’s testimony, but only on suspicion of counterfeiting. On his arrest the extent of the plot was unknown – to use counterfeit currency to induce Patriots to the British cause when the army landed in New York city. Hickey, however, had already implicated himself by revealing too much information to a fellow inmate, Isaac Ketcham, whilst drunk and boasting. Ketcham himself was in prison for counterfeiting, but had taken a plea deal to act as a spy in prison for the Provincial Congress – whom he passed Hickey’s information on to. See: Bakeless, *Turncoats, Traitors and Heroes*, pp. 97–102; and ‘Examination of William Leary, 20 June 1776’, in *Force*, Ser. 4, Vol. 6, pp. 1154-1155. For more details on Hickey see Gary Shattuck, ‘Plotting the “Sacrifice” of George Washington’, *Journal of the American Revolution* (25 July 2014), available online at: <https://allthingsliberty.com/2014/07/plotting-the-sacrifice-of-george-washington/> (13 August 2016).
plot. He implicated several soldiers, including members of Washington's guard (one of whom was Hickey), and thirteen civilian conspirators. One of those implicated in the plot was William Forbes. Mason informed the Committee that Forbes was enlisting soldiers for the King, whilst also enticing Continental soldiers to leave service once Britain invaded.

The Committee declared Mason and Forbes, along with four of his associates, ‘enemies of America’. The investigation conducted by the Committee did not convict on the account of just one witness. They cross examined Forbes and other individuals Mason implicated in his examination who had not fled, including the Mayor of New York, David Matthews, who was named in the conspiracy. Finding enough similarities to suspect – but not prove – Forbes opposition to the Patriot cause, he was sent to a prison in Litchfield, Connecticut, and also had his name added to the list of

---

44 Mason implicated Hickey, Gilbert Forbes (a gunsmith, William Forbes, and three other members of Washington’s Life Guard: Drummer, William Greene; Fifer, James Johnson, and a soldier, John Barnes. See ibid and Freeman, George Washington, vol. 4, pp. 116-17 [eBook].
45 ibid.
'dangerous and disaffected persons'.

After spending around four months in prison, Forbes wrote a letter to the Provincial Council, professing his innocence and loyalty to the rebel colonies. The convention reconsidered his petition, although no records exist on whether his effort to re-enter society was successful. Once the dust had settled, between twenty and forty individuals related to the plot were taken into custody. Hickey’s three co-conspirators in Washington’s guard testified against him and were removed from the trial, leaving only Hickey to face the assembled tribunal. Hickey was court-martialed, according to the articles of war updated by the Committee of Spies, and found guilty of mutiny and sedition, ‘and of treacherously corresponding with, enlisting among, and receiving pay from the enemies of the united American Colonies.’

Although ensuring public safety gave the CDDC a valid reason to detain Forbes without definitive proof of his treachery, at least the price he paid for uncertainty was not his life. Hickey, however, would pay that price as he was

not a civilian but a soldier. Livingston, Jay, and Morris processed his case with even-handedness, hearing evidence from multiple sources (including the accused) whilst keeping the Provincial Council informed of their actions. Declaring Forbes a ‘dangerous and disaffected’ – as well as deciding to imprison him in Litchfield, Connecticut – reflected more the judges belief of the desperate military situation in New York. It did not necessarily reflect his participation in a British invasion plot. The concept of due process and individual rights in relation to counter-espionage was so significant that even when the success of the Patriot cause was in doubt a man of erratic political views was not severely punished. Even while Washington’s army was hastily constructing earth-based fortification for an impending British invasion, the CDDC was turning the fluidity of allegiance in the colonies into an advantage. It did this by not using government power to punish people arbitrarily and demanding absolute obedience. The Hickey plot is represented in the literature as evidence of offensive counter-espionage in the Revolutionary Era. In fact, it shows us that the rule of law imposed remarkable constraints on counter-espionage operations, even during war.

The last meeting of the CDDC was held on 23 September 1778 when their accounts were closed, their books audited and the balance of their money returned to the State Treasurer. However, the linking of counter-espionage to law enforcement does not end with an evaluation of the CDDC during the Revolutionary Wars. Nathaniel Sackett – the man most involved within the

53 Though the proof was substantial and Forbes admitted to attempting to taking part in the plot to get on board the British man-o-war, but under the false pretence of meeting his brother-in-law to pay back a debt.
55 CDDC Minutes, pg. xvii.
CDDC in what would often be seen as offensive counter-espionage – would write to President George Washington in March 1789 asking for a job in the federal government, with an attached ‘CV’.\textsuperscript{56} It is not entirely clear if he was pushing for a new role as a spy-chief, but that is where his experience lay and what was emphasised on his ‘CV’. Washington, however, did not acquiesce and did not grant Sackett a job in the federal government. If Washington was interested in replicating the function and tasks of the CDDC in peacetime, Sackett would have been the man, and he readily provided America’s first President with the opportunity to perpetuate these activities. Washington’s rejection is another clear reminder of his aversion to the institution of a permanent federal bureau responsible for counter-espionage of the kind that was embarked upon at the turn of the twentieth century.

Perhaps the coup de grâce for those official and semi-official histories that highlight and elevate offensive counter-espionage in American history – specifically during the revolution – is the role John Jay went on to take after the Revolutionary Wars, as the First Chief Justice of the United States. This promotion assuredly underlines – from the country’s inceptions – the subsuming of counter-espionage within law enforcement. The man pointed to in multiple titles as inseparable from American counter-intelligence was first and foremost a man of law.\textsuperscript{57}

\textsuperscript{57} Indeed, P.K. Rose calls him a ‘Founding Father of American intelligence’, and highlights in the article that a meeting room in the CIA for hosting foreign liaison is named after Jay because of his link to ‘counter-intelligence’, see Rose (Daigler), ‘The Founding Fathers’, pp. 9,12; Daigler, Spies, Patriots, and Traitors, pp. 111-125; Knott, Secret and Sanctioned, pg. 28-33; Rafalko (ed.), A Counterintelligence Reader, vol.1, pg. 2.
Jay was a permanent fixture on the CDDC, the most frequently present in its tripartite quorum judging system and its most influential member. He was the man brought onto the committee when, dealing with an increasing number of espionage cases, it needed to have more of a legal speciality. He was indeed one of America’s first counter-espionage experts, but the crucial component of his expertise in this area was his ability to balance public safety with the philosophical precepts rooted in the rule of law which underlined the revolution.

It is important to remember that Jay went onto to become the first Chief Justice, so this was not merely coincidence. Jay was a leading lawyer of his day, and counter-espionage in the US was a matter of law. Official histories have played down this connection, and have in fact suggested that while on the committee, Jay ‘investigated, tried, and sentenced suspects outside the established legal system’. It is clear from the above, however, that the CDDC was far from operating ‘outside the established legal system’. New York’s provincial council and the Continental Congress strove to do what they could to ensure counter-espionage was a normal legal process rather than some special or shadowy activity.

THE OTHER END OF THE STICK

It is important to emphasise that the subsuming of counter-espionage within law enforcement during or following the revolution was not preordained. The rebellious colonies could have mirrored the practices across the ‘North’ (Hudson) River in suspending courts under martial law. America endeavoured to be a republic, but the outcome could not be guaranteed, and the past offered little in the way of guidance. History is littered with examples of great military commanders and revolutionary leaders who espouse the values of rights and popular governance, but in practice never loosen their grip of the reins of power. The colonies, from the perspective of military necessity, would have done well to mimic the army of King George III; it was as effective as it was ruthless.

By mid-September, once Britain captured New York city – and later in Charles-town, South Carolina – British commandants dispensed justice on the basis of fidelity to the King, recognising only those who had taken an ‘oath of allegiance’. Commandants even possessed the power to arrest and confine persons without having to show cause. Treatment of confined persons was also particularly ruthless. During the British occupation of Charles-town between 1780 and 1782, for example, the basement of the Exchange was used as a prison, and described in one memoir as ‘damp ... [and] ... unwholesome,’ the cause of ‘much sickness and some deaths,’ all

prisoners, both political and criminal, men and women, were ‘huddled up together in one common room.’ Many Carolinians who refused to take the British oath were incarcerated in what came to be known as ‘the dungeon’ on ‘the slightest pretense.’

Once in captivity, British officials would use persuasion, bribes and threats to seduce fighting-age men, from officers to ‘naked and starving privates,’ into joining royal regiments outside the Thirteen Colonies, often in the Caribbean, so as to entice men who would soldier but not take up arms against their countrymen. Whilst most officers contemptuously rejected the offer, a hundred or so less fortunate prisoners running short of alternatives, confined without food or clothing in disease-ridden prisons while being subjected to intimidation and beatings, did succumb to the offer – though surprisingly few considering the conditions and numbers.

The most renowned patriot to have been held prisoner in the bowels of the Provost’s Dungeon, Militia Colonel Isaac Hayne. The treatment of Hayne at the hands of British forces is emblematic of how royal regiments dealt with alleged espionage, treason and sedition in the colonies. As such, it represents a clear demonstration of the non-inevitability of linking law

---

60 Carl P. Borick, *Relieve Us of This Burthen*; William Moultrie, *Memoirs of the American Revolution: so far as it Related to the States of North and South Carolina, and Georgia*, Vol. 2 (New York, 1802), vol. 2, pp. 99-104, 252, 299, 299 and 300. Was also known as the Provost’s and Custom House. The building, a two-story eighteenth century built, is now known as the Old Exchange & Provost’s Dungeon, and is a prisoner-of-war museum operated by the Daughters of the American Revolution, due to the brutal treatment of Patriot prisoners (civilian and soldier) during the war. In the Carolinas the Old Exchange is often called ‘the Independence Hall of South Carolina’ due to its important role during the revolution.

61 Carl P. Borick, *Relieve Us of This Burthen*, pp. xiv, 170.

62 ibid.
enforcement to counter-espionage in revolutionary America. It is also an illustrative depiction of the counter-espionage values that the Founding Fathers endeavoured to resist. A clear picture is offered to us through a biography of one South Carolinian’s tragedy.

Hayne was among the 5,000 other Patriots when the Continental Army surrendered after the failed defence of Charles-Town in May 1780, after a two-month British siege. The choice Hayne and other patriots were now faced with was to take an oath of allegiance and become a British subject in exchange for their parole, or submit to confinement and possible confiscation of property. He was one of those rare Patriot officers to take the oath and go on parole. However, all reliable accounts of Hayne’s life agree it was not an act of self-preservation, borne of cowardice, but an attempt to seek clemency for his young family: Hayne’s wife and three of his children were gravely ill with smallpox. In his own words, Hayne noted that the ‘deplorable Situation of his Family, his Wife & Children then being dangerously ill, & the Country wasted’, had compelled him, ‘for saving their...

---

63 Hayne was an affluent owner of three plantations (Hayne Hall, Pear Hill and Sycamore) totalling 2,200 acres, plus an additional 6,377 acres, most of which was up-Country, owned more than ‘one hundred negroes’, was a developer of iron mines, a horse breeder, and was elected, at the age of 25, to the Royal Assembly in South Carolina. He was later elected to the Third General Assembly and served in the Senate during 1779 and 1780 for the parish of St. Bartholomew. See: David K. Bowden, The Execution of Isaac Hayne (Lexington, SC: The Sandlapper Store, 1977); Daniel W. Barefoot, Touring South Carolina’s Revolutionary War Sites (Winston-Salem, NC: John F. Blair Publisher, 1999), pp. 102 -103; and James Thatcher, A Military Journal During the American Revolutionary War, from 1775 to 1783 (Boston, MA: Richardson & Lord, 1823), pg. 353. A complete copy of Colonel Isaac Hayne’s records can be found at the South Carolina Historical Society, File 34-0560. Several portions of the records have been published in the South Carolina Historical Magazine, Volumes 10, 11, and 12.

64 Bowden, The Execution of Isaac Hayne, pg. 20.

65 Despite his efforts shortly after signing the oath his wife, Elizabeth and his three children that contracted smallpox all succumbed to the disease.
Lives, to come to Charles-Town, to get a Physician, & procure Necessaries for the sick’. Thus, Hayne signed the oath, but only after seeking, and obtaining, assurances from the deputy British commandant of the garrison, Brigadier General Patterson, and the Intendant of the British police in Charles-Town, James Simpson, that he would not be required to bear arms against his former compatriots.  

Notwithstanding his particular oath, Hayne was repeatedly called upon to take up arms. By early 1781, his parole was cancelled and the requests transformed into an ultimatum: join the fight against the Continental Army or face closed confinement. Outraged at the breaking of his parole agreement, and buoyed by the success of the Continental Army everywhere in state (bar Charles-Town), Hayne resumed his activities as a Patriot officer. His second commission in the Militia, however, would be shorter than his first. By July 1781, Hayne suffered the misfortune of being captured a second time in a raid by British forces. Hayne was then held in the Provost dungeon and charged with treason and espionage that same month and brought before a British court of inquiry, not Court Martial, in Charles-Town, where – without trial – he was sentenced to death. On 4 August 1781 he was marched through the streets of Charles-Town to the gallows at White Point and hanged. His execution was particularly ‘odious to the whole civilized world,’ because as

---

66 Bowden, The Execution of Isaac Hayne, pg. 20.
68 ibid; and Bowden, The Execution of Isaac Hayne, pg. 50
69 Hayne was not the intended target in the raid. He had taken part in regimental manoeuvres to capture British General Andrew Williamson, an American who became a loyalist. Hayne was captured in the rescue operation for Williamson.
70 William Cobbett, John Wright, Thomas Curson Hansard (eds.), The Parliamentary History of England, from the Earliest Period to the Year 1803: From which Last-
a uniformed officer he was protected by the laws of war, which British forces flouted – according to Lieutenant Colonel Nesbit Balfour, the British Commandant of Charles-Town – for ‘the imperious necessity of repressing the disposition to similar acts of treachery.’

Hayne was made an example of in order to discourage other Patriots from breaking their oaths. It had the opposite effect; Hayne was a popular figure in his state before his ignoble execution, and after it he quickly rose to the status of martyr. Through his arbitrary death, Hayne lifted Patriot support and doused Tory sentiment in Southern states. Disconcerted by the lack of clemency and deference to the rule of law, the ‘Hayne Affair’, as it came to be known, along with other, American POW executions, undermined support for Loyalist forces in the conflict. Two and half months later, on 19 October 1781, British forces would surrender at Yorktown.

Britain’s conduct in Charles-Town is not an example of an unfortunate city lumped with the ‘bad apples’ of Britain’s officer corps. The reverberations of the shockwave generated in Charles-Town by which Lieutenant Colonel Balfour dispensed justice reached the shores of the British Isles. Subsequently, on 31 January 1782, a censure vote in the House of Lords against Lord Rawdon – the commanding officer in South Carolina – was held for his part in the Hayne Affair. Lord Rawdon’s defence, was simply ‘that if

mentioned Epoch it is Continued Downwards in the Work Entitled ‘Hansard’s Parliamentary Debates’ (London: T.C. Hansard, 1814), pg. 981 [Henceforth, ‘HANSARD’].


72 latter the Earl of Moira.
a prisoner of war, having broken his parole, has thereby forfeited his life; and is to be executed like a spy.\textsuperscript{73}

Despite the rather pithy defence and while not disputing the facts of the Hayne Affair, as noted during debate by the Earl of Effingham, the Lords nevertheless rejected any censure or official inquiry by a vote of three to one.\textsuperscript{74} In fact, not only was there to be no inquiry or consequences for Lord Rawdon through Parliamentary channels, he was able to obtain an apology from the peer who had the temerity to motion the investigation — for its ‘intolerable impeachment’ of his honour.\textsuperscript{75}

The Hayne Affair is not simply one episode that is not consistent with wider trends of the treatment of patriot prisoners and the disdain of British forces for the rule of law during the War. In all, 120 South Carolinians have been documented as staying in the prison, the majority of whom spent time as prisoners on site under the charges of treason or sedition, like Hayne.\textsuperscript{76} After that harrowing account, it may be hard to believe, but there were many men more unlucky than a patriot colonel who was captured twice and eventually hanged, as he still avoided being moved to the now infamous British prison ships.

Back in New York, prisoners of War, spies and some who refused to take oaths were held in Hulked prison ships, due to the overcrowding on prisons on land. The most infamous of these Prison ships now is the Jersey, where eight corpses a day were tossed overboard from that ship alone before the

\textsuperscript{73} HANSARD, pp. 965-984.
\textsuperscript{74} ibid, pg.984.
\textsuperscript{75} ibid, pp.967-970. It also appears to have had no consequences for his career.
\textsuperscript{76} Borick, Relieve Us of this Burthen.
British surrendered at Yorktown. The fiendish brutality of Britain’s prison ships cannot be done justice in this chapter, even by the standards of prisoners of warfare of the time. The most harrowing detail I could provide of the heinousness of Britain’s prison ships is the death toll: more American patriots died on these ships from deliberate neglect than in every battle of the Revolution, combined.77

THE MEANING OF TREASON

As we have seen, America’s nascent counter-espionage bureaucracies were subsumed by to the demand for the rule of law and a desire to decentralise as much power to the states as possible. In much the same vein, the laws connected to counter-espionage, and the concept of treason in particular, was also not going to trespass on freedoms. Although one might have expected, given the circumstances of the immediate severance from Britain, an ever more expansive statute on treason than had been bequeathed to the Colonies from Britain, this was far from being the case.

77 Recollections of the Jersey Prison Ship, by Thomas Dring, Albert Greene is a harrowing read that provides more of the everyday life of a prisoner on the worst of Britain’s hulked prison ships in the bay of New York City. See: Thomas Dring and Albert Greene, Recollections of the Jersey Prison Ship (Bedford, MA: Applewood Books, 1986). I do not want to give the impression that British prisoners were interned in good conditions. They were, however, orders of magnitude more hospitable with significantly less deaths – even with significantly less internment used. Many tory loyalists were not even imprisoned, instead being paroled with Patriot families, see: Frank Doherty, ‘The Revolutionary War Fleet Prison at Esopus’, in James M. Johnson, Christopher Pryslopski, Andrew Villani (eds.), Key to the Northern Country: The Hudson River Valley in the American Revolution (Albany, NY: SUNY Press, 2013), pp. 184-199.
Prior to the revolution, treason had been defined in sufficiently general terms to give room for a creative role of a sovereign in deciding who and what to prosecute. Most of the colonies looked to English law for their definition of treason, often stemming from an expansive reading of statute of 25 Edward III.\(^78\) Thus, the authority given in charters, grants and in instructions on treason to royal governors was put in familiar words, resorting to martial law for the suppression of ‘rebellion,’ ‘sedition,’ or perhaps even ‘mutinies’.\(^79\)

Before the revolution, within the concept of treason in the colonies, we find included: the act of imagining ‘the Death of our Sovereign Lord the KING, or of our Lady the QUEEN, or of the Heir apparent to the Crown’, to ‘join, adhere or confederate with any Indians’, being an ‘adherent to the kings enemies by giving them aid, and comfort in the realm’, ‘all traitorous correspondence with his Majesty's enemies’, ‘counterfeit[ing] the King’s Great or Privy Seal’, or by force of arms or otherwise to disturb the peace good and quiet.’\(^80\) Punishments included ‘Hanging and Quartering of a Man,

\(^78\) ‘Treason was declared to exist in case where ‘a man doth compass or imagine the death of our Lord the King, the Lady his Consort, or of their eldest son and heir; or if a man violates the King's Consort or the King's eldest daughter being unmarried, or the consort of the King’s eldest son and heir. And if a man levy war against our said Lord the King in his realm, or be adherent to the enemies of our Lord the King in the realm, giving to them aid and support in his realm or elsewhere; and thereof be attainted upon due proof of open deed by people of their condition.’ 25 Edw. 3 St. 5 c. 2 (1351). <http://www.legislation.gov.uk/aep/Edw3Stat5/25/2#commentary-c919027> (13 August 2016). Translated from the original Norman French, by Luder, in Howell's State Trials, Vol. 5 (1810), pp.971-977.


\(^80\) Ibid, and the following: ‘An Act Against High Treason’ in The Connecticut Acts and Laws (1702), pg.13; Thomas Bacon (ed.), Laws of Maryland at Large, 1637 -1763 (Annapolis, 1765), Assembly of 25 February to 19 March1638, No. 22; The Massachusetts Bay Act of 31 August 1706. One of the only pre-revolutionary treason trials of which there is an extensive record is King v. Bayard (1702), a New York prosecution under an Act of 6 May 1691, which made it treason 'by force of arms or
and Burning of a Woman’; ‘the Offender’s Blood to be corrupted’ and regardless of the traitor ‘Punishment of Death to be inflicted on a Lord of a Manor by Beheading.’

It was not the case that the colonies were out of line in legislating on treason; drawing from English law, the authorities in Britain were active in reviewing definitions being formed for the offense of treason in America, and enforced awareness of the English law of treason. Thus, although in 1692 Massachusetts had substantially copied the language of the Statute of 25 Edward III, it was disallowed by the Privy Council on 22 August 1695, because: ‘in ye Article of Treason no punishment is inflicted for counterfeiting the Great Seal of England or the seal of ye Province nor is that article agreeable to the statute of the 25th of Edward the third in relation to Treason.’ In other words, the phraseology of treason Massachusetts had otherwise to disturb the peace good and quiet of this their Majesty’s Government as it is now established’. It is important to point out that the act was thought by the home authorities to be too vague and amended. However, even this unusual pronouncement in favour of restrictive treason was immediately balanced, in the repealing statute’s declaration it noted that the laws of England were ‘sufficiently provided for the suppression of domestic treason’ in the colonies. See ‘The Trial of Colonel Nicholas Bayard in the Province of New York for High-Treason, 1702’ in Howell’s State Trials Vol. 14 (1812), pp. 471, 478, 495, 499, 506; John D. Lawson (ed.), American State Trials: A Collection of the Important and Interesting Criminal Trials Which Have taken Place in the United States (St. Louis, MO: F.H. Thomas Law Book Co., 1918), vol. 10, pp. 518, 533, 535; Julius Goebel Jr. and T. Raymond Naughton, Law Enforcement in Colonial New York: A Study in Criminal Procedure (New York, NY: Columbia University Press, 1944), pp. xxiii, xcv; Elmer Beecher Russell, The Review of American Colonial Legislation by the King in Council (New York, NY: Columbia University Press, 1915), pp. 29, 104; George Adrian Washburne, Imperial Control of the Administration of Justice in the Thirteen American Colonies, 1684–1776 (New York, NY: Columbia University Press, 1923), pg. 48.

81 ibid.

adopted was not sufficiently broad, or sufficiently punitive, to capture what was considered treasonable and a just punishment from the mother country.

Broadly, the colonies drew on general concepts found in English law for their definitions of treason and its prosecution. Moreover, none of their statutes contains anything denying the applicability of English concepts of the scope of the offense. The broad terms within the statute also raise an interesting question, whether to convict under it, a specific intent to betray a colony had to be shown.\footnote{Unfortunately, the archives on treason cases in the colonial period are too scant to be of much help in answering this question.} That aside, the striking characteristic of all of the pre-revolutionary legislation in the colonies is the evident emphasis on the safety of the sovereign or state government, and the substantially subordinate role of any concern for the liberties of the individual.

Clearly then, treason in the colonies was not a \textit{tabula rasa}; it had been guided toward an expansive concept of dynastic treason by Britain from the arrival of the earliest settlers. This background makes the later developments and restrictions placed on the scope of treason in the Constitution all the more poignant and striking. Despite internal forces that eventually drove America towards expansive counter-espionage abilities and legislation, at the outset the framers \textit{intentionally} curtailed both. Not only did the volatile internal environment suggest colonial-style legislation that was expansive and punitive, the external environment also ought to have reinforced this predilection toward an expansive idea of treason.

James Willard Hurst, widely credited as the founder of the modern field of American legal history, argued, along with others, that an all-encompassing
definition and severe punishments for treason (the latter to work as a deterrent) were necessary for their time. The nearness of hostile empires and Indian tribes precipitated a need for a ‘positive defense against external enemies’.\(^84\) Adding to Hurst’s argument, there was also a clear incentive for the public officials that dominated politics in the colonies – all of whom were wealthy white males who owned land or belonged to the mercantile classes – to use treason as a tool of political repression in order to maintain the status-quo.

The external pressures that Hurst enumerates in his analysis were also present at the Constitutional Convention, their significance, however, is inflated. When the framers turned to constructing a new meaning of treason, native tribes and class were not the weightiest variables. The impetus Hurst provides is over-determined. The significant variable on the treason clause, which fifth columnists would have been tried under, was British influence. Taking abstract concepts used in ordinary language – like ‘sedition’, ‘treason’, ‘mutiny’ and ‘rebellion’ – and writing them down in law, in essence reifying them, was greatly informed, guided and shaped by England.

Yet, even with an unavoidable British legal anchoring and the external and internal pressures noted above, the Continental Congress would shape future treason laws with a distinct emphasis on protecting individual liberty.\(^85\) This is both remarkable and improbable. Not only were the framers contending with the threats Hurst listed – unfriendly empires, class divides and bordering Indian tribes – but they were in the process of a revolution

\(^84\) Hurst, ‘Treason in the United States?’, pg. 236.

\(^85\) Individual liberty was the forefront concern in almost all matters at the constitutional convention.
against a stronger European nation, where victory was far from assured. As it was, in essence, a civil war – previously, all men in the colonies were subjects to His Majesty King George III – the conflict divided neighbour from neighbour, which is the most fertile of breeding grounds for suspicion, treason and espionage; allegiances and loyalties were in a state of flux.

It is in this sort of atmosphere that one might instinctively suspect the dominant approach of the Continental Congress would be to develop the most draconian and sweeping definition of treason. However, the opposite would be the case, as John Adams remarked: ‘such was the Opposition, and so indigested were the notions of Liberty prevalent among the Majority of the Members most zealously attached to the public Cause, that to this day I scarcely know how it was possible, that these Articles could be carried.’

On 5 June 1776, Adams, along with Thomas Jefferson, Edward Rutledge, James Wilson, and Robert Livingston, were appointed by the Second Continental Congress to the ‘Committee on Spies’ to ‘consider what is proper to be done with persons giving intelligence to the enemy or supplying them with provisions’. There are few records available of their meetings, but Jefferson’s thoughts and reading of 25 Edward III from two years earlier illustrate that he – and indeed John Adams – viewed the statute as being intended to restrict, rather than expand, cases of treason. Jefferson, writing

---

88 ‘Instructions for Deputies appointed to meet in General Congress on the part of this Colony’, in Andrew A. Lipscomb and Albert Ellery Bergh (eds.), *The Writings of Thomas Jefferson*, 20 Volumes (Washington, DC: Issued under the auspices of the Thomas Jefferson memorial Association of the United States, 1903-04.), vol.1, pg. 211.
later to his former law teacher and judge on the newly-created Virginia High Court of Chancery, George Wythe, also demonstrates his sophisticated understanding of England’s laws of treason, as well as his desire to limit treason to specific categories of disloyal acts.\textsuperscript{89} In his note to Wythe, which included an attempt to define treason, he added the words ‘and no others’ to language broadly built off 25 Edward III which narrowed treason to only ‘levying war and adherence’.\textsuperscript{90}

Jefferson was not a lone ‘dissenting voice’ in attempting to forestall the development in the Colonies of constructive treason. I will return to Wilson and Rutledge below, who were in lock-step with Jefferson, but above I claimed that we know Adams was in the same mind as Jefferson on this matter. This claim is based on a diary entry made rather later by Adams, recalling his time on the Committee of spies; he wrote, ‘Jefferson in those days never failed to agree with me in everything of a political nature, and he very cordially concurred in this [the articles of war, with modifications by the committee]’, indicating a melding of minds.\textsuperscript{91}

As a matter of law, the revolution itself created an immediate need for new legislation. The committee – a grouping of the finest group of lawyers and legal scholars in the new world – were motivated to rapidly revise the Articles of War in regard to treason directed against the American forces, because of a high level British spy. Dr. Benjamin Church, chief physician of the Continental Army, had been seized and imprisoned as a British spy, but there

\textsuperscript{89} ibid, vol.1, pp. 216, 218, 220-221.
\textsuperscript{90} ibid.
was no civilian espionage act, and George Washington thought the existing military law did not provide punishment severe enough to afford a deterrent. On 7 November 1775, the death penalty was added for treason to the Articles of War, but the clause was not applied retroactively, and Dr. Church escaped execution.

On 7 August 1776 the committee brought in a report which was debated on 19 August and again on 19 and 20 September. On the last of these dates the revised Articles were adopted and recorded in the Journal, which enacted America’s first treason act:

Resolved, that all persons abiding within any of the United Colonies, and deriving protection from the laws of the same colony, owe allegiance to the said laws, and are members of such colony; and that all persons passing through, visiting, or making a temporary stay in any of the said colonies, being entitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owe, during the same time, allegiance thereto:

That all persons, members of, or owing allegiance to any of the United Colonies, as before described, who shall levy war against any of the said colonies within the same, or be adherent to the King of Great Britain, or others the enemies of the said colonies, or any of them, within the same, giving to him or them aid and comfort, are guilty of treason against such colony:

That it be recommended to the legislatures of the several
United Colonies, to pass laws for punishing, in such manner as to them shall seem fit, such persons before described, as shall be provably attained of open deed, by people of their condition, of any of the treasons before described.  

From the wording of the report it is clear that the Revolution did not entirely break the chains of continuity from traditional English materials that defined the scope of treason. The familiar words of the resolutions apart, it would be improbable for this distinguished group of lawyers and students of the law to draft their suggestions without a background of English law in mind. The Law libraries in the colonies were furnished with English treatises, statute books and law reports, and it is reasonable to assume that leading lawyers of the period had opportunity — both in the legal education which some enjoyed in England, and in the books available in the colonies — to familiarise themselves with much that was written on the subject.

In short, the framers were attempting to escape the strong gravitational pull of a large and established body of English law. But the precise form in which this influence materialised itself in the colonies was also important. No better example could be found than the Commentaries on the Laws of England, by Sir William Blackstone, who began publishing his works in 1765.

---

92 Journals of the Continental Congress, 1774–1789 (Washington, D.C.: Government Press Office, 1906), vol. 5, pg. 475; ‘The Congress took into consideration the Report of the Committee on Spies, Tuesday, 25 June 1776’, in Force, Ser. 4, Vol. 6, pg.1720. Emphasis added. It was resolved further that the act ‘be printed at the end of the rules and articles of war.’ On 27 February 1778, the law was broadened to include any ‘inhabitants of these states’ whose intelligence activities aided the enemy in capturing or killing revolutionary forces.

93 We know it to be the case with Jefferson due to his letters, similarly James Wilson studied at the Universities of St. Andrews, Glasgow and Edinburgh.

scholars – most well-known Jeremey Bentham, but also Thomas Jefferson – were sceptical of Blackstone’s task of reducing complex legal institutions into short rational essays, Commentaries was instrumental in the American colonies. Most Americans were not as ‘bookish’ as Jefferson – they also did not have the advantage of inheriting forty books from their father. The Commentaries made English common law succinct, readable and – most importantly – portable to fulfilling an urgent need for such a text in America as a tool of legal learning and training.\textsuperscript{95} The four volumes were basically required reading for most lawyers in the Colonies; for many they were the only reading. Blackstone’s mostly Whiggish reading of English law as a force to protect people, liberty, and property had a lasting ideological impact. It also influenced the framers, most notably Jefferson, Madison and Wilson, who grappled with the boundaries of treason, allegiance and sovereignty.\textsuperscript{96}

Within six months of declaring independence, six states – New York, Pennsylvania, Massachusetts, Maryland, New Hampshire and Virginia – had enacted appropriate legislation using the Committee’s and the Congress’ recommended language, itself based on language of 25 Edward III.\textsuperscript{97} Within the year, the remainder followed suit. The US Had taken its first step on a new journey of restrictive treason, but it was only the first step of many more to come.

\textsuperscript{95} Brian F. Carso, Jr., ‘Whom Can We Trust Now?’: The Meaning of Treason in the United States, from the Revolution through the Civil War (Lanham, MD: Lexington Books, 2006), pg. 47.
\textsuperscript{97} Definitions of treason in the states were more varied, some put more of a burden of the security of the state than the individual. Hurst, ‘Treason in the United States?’ (1944), pp. 226-228.
THE NEW MEANING OF TREASON

The new republic did enjoy one major advantage in its efforts to rethink the idea of treason. Since treason is a betrayal of allegiance to a sovereign, and as a republic America endeavoured to not have one, the revolutionary wars necessitated changes in the concept and laws of treason. Instead, sovereignty in the US was located in the citizenry, and the ties that bind man to government were derived from the consent of the citizen. The consequence of this was that treason would take on a new meaning distinct from, but influenced by, European style dynastic treason.

If treason was about acts of betrayal against the sovereign, be it Machiavelli’s Prince or Frederick’s Anti-Machiavel Prince, it was about a single person, at best a Parliament; and treason laws exist to protect the sovereign authority of the state. In America, the combination of popular sovereignty on the one hand and the inalienability of rights on the other, meant treason would take on a new form. Christopher Thorne has argued that America was created as an ‘idea nation’. Unsurprisingly then, treason in America would be against an idea, often the dominant political ideology of the time. In the Revolutionary Era, this meant the tenets of the revolution, popular sovereignty and the inalienable rights of man.

We turn now to the proceedings of the Constitutional Convention in Philadelphia in the summer, 1787, which pre-empted The Continental Congress. This particular summer is known for being a stiflingly hot one, the heat in the East Room of the Philadelphia statehouse was made all the more

98 Carso, ‘Whom Can We Trust Now?’, pg. 45.
unbearable as the windows and doors were kept locked for the purpose of maintaining secrecy. The framers of the Constitution laboured through the heat and here the issue of loyalty - combined with political obligation - arose as the delegates began their work. Nevertheless, formal discussion on treason would not begin until almost three months later, on 20 August. For now, the potentially thorny topic elicited only mild debate and preliminary intellectual skirmishes among delegates.

This does not mean the treason clause only played a small role; it was important. The primary reason for a lacklustre debate was due to a virtual agreement among delegates who agreed that a definition of treason needed to be included among the foundation laws of the new republic, but that it needed to be restricted. A superficial analysis of the treason clause can often elicit the response that the delegates’ purpose was to place loyalty to state and political obligation the core of American law and identity, indicated by the remarkable fact that it exists as the only criminal law in the Constitution. The clause, however, is not an example of how important the delegates felt it was to punish traitors and spies, but how important it was to ensure that an ambiguous definition of treason which could be used against citizens would not be constructed.

The delegates recorded only scarce details and these do not clearly indicate individual motivations for the treason clause. One of the earliest rules that the Constitutional Convention developed for its proceedings was, ‘that nothing spoken in the House be printed, or other- wise published, or

communicated without leave.’¹⁰¹ That being said, the weight of available evidence – including the impetus towards revolution; the intellectual climate; and recent precedents set by the Committee of Spies – all suggest the clause was to protect individuals, not to embolden the general government.

The key debates, once a working clause was drafted, also indicate where their main concern lay. The three main areas of concern were the prevention of a pernicious expansion of what constituted treason; finding the right balance between general and state governments to avoid divided sovereignty; and placing the burden of proof at the right level to prevent injustice. All this indicates that the discussion at the Convention for the majority of delegates, in common with most other areas discussed, was protecting individual rights against arbitrary governmental power. In respect to treason, this meant the pursuit of a precise and permanent definition of the concept, the permissible means of proving it and the limitations on the punishment for it.

Unlike the Committee of Spies, which was driven by pragmatism, the definition of treason was created by the confluence of a legal and theoretical necessity. Treason laws in the colonies from England, as suggested above, hinged upon the sovereign’s relationship with his subjects. Treason was one mechanism through which the sovereign authority (a King) protected his rule. As the locus of sovereignty changed in the republic, legally and theoretically speaking, so did the meaning of treason. The definition of the concept, almost axiomatically, becomes linked to the principles of republican government, as the people – to borrow a phrase from Madison – were the ‘fountain of power’. There was a certain amount of inevitability to this

process. Ideas of popular sovereignty, as Pulitzer Prize-winning professor of American cultural history Michael Kammen eruditely puts it, ‘compelled widespread assent simply because they seemed profoundly true. Under republican regimes, where else could power originate than from the consent of the people?’

The Constitutional Convention was positively awash with Lockean liberalism and his enunciated notions in his Second treatise of Government (Written in the early 1680s, published in 1690). It put forward a theory of government that was a voluntary creation of self-interested individuals who consent to be governed in order to protect their personal rights to life, liberty and property. Sovereignty in the US would be located in the enfranchised citizenry, not a personal figure, not even a legislative body (like the English parliament). Treason, therefore, took on a new meaning that transitioned away from the centuries-long dynastic form that had developed in Europe and morphed into fiendish ‘constructive treason’.

---


103 John Locke, Second Treatise of Government (1689), pg. 45. The language of Lockean liberalism is featured prominently in James Otis, Rights of the British Colonies Asserted and Proved (1764); Richard Bland, An Inquiry into the Right of the British Colonies (1766); Samuel Adam, A State of the Rights of the Colonies (1772) and – of course – Thomas Jefferson, Declaration of Independence (1776).

104 ‘Constructive treason’ is the judicial extension of the statutory definition of the crime of treason. Historian Alfred H. Knight puts it best: ‘The word “constructive” is one of the law’s most useful frauds. It implies substance where none exists. There can be constructive contracts, constructive trusts, constructive fraud, constructive intent, constructive possession, and constructive anything else the law chooses to baptize as such. “Constructive” in this sense means “treated as.” A court can reach a desired result by calling a transaction that doesn’t cut the decisional mustard “constructively” a transaction that does. Constructive treason wasn’t “real” treason but a vaguely defined, less potent category of conduct that the court deciding the particular case felt should be “treated as” treason. It was the perfect instrument of oppression, being virtually whatever the authorities wanted it to be.’ See Alfred H.
From the first report on 6 August, put forward by the Committee of Detail, the treason clause would be transformed from royalist blunderbuss to precise republican target rifle:\textsuperscript{105}

\begin{quote}
Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them.
\end{quote}

\begin{quote}
No person shall be convicted of treason, unless on the testimony of two witnesses.\textsuperscript{106}
\end{quote}

The Committee of Detail, like the Committee of Spies before it, reached back through time for the language from the Statute of 25 Edward III (1350 A.D.), removed any vagueness from the common law and limited treason from seven acts – which including ‘compassing or imagining’ the death of the king – to just the ‘levying war’ against the king, ‘adhering to’ the king’s enemies, and giving them ‘aid and comfort’. The clause also drew from the evidentiary

---

\textsuperscript{105} The language from the Committee of Detail was prepared by Oliver Ellsworth (Connecticut), Nathaniel Gorham (Massachusetts) and Edmund Randolph (Virginia); It also included former Committee on Spies members John Rutledge (South Carolina) and James Wilson (Pennsylvania). Wilson was one of the most active participants in both the Constitutional Convention and Continental convention on treason, and the clause was the better for his engagement. Widely considered one of the nation’s most able lawyers; Like Jefferson, he had studied the history of treason extensively and interpreted British statues as restrictive not expansive. See: Robert Green McCloskey (ed.), The Works of James Wilson (Cambridge, MA: The Belknap Press of Harvard University Press, 1967), vol. 2, pp. 662-665; Carso, ‘Whom Can We Trust Now?’, pp. 93-96.

\textsuperscript{106} Farrand, The Records of the Federal Convention, vol. II, pg. 345
requirements of 7 William III (the 1696 Trial of Treasons Act), which required two witnesses to the same overt act of the same overall treasonous plot.107

The committee, like state legislatures under the British, drew upon pre-existing English statutes, but they interpreted them as a means of limiting a sovereign’s ability to exploit arbitrary powers. The Committee, from the first draft, went farther than any English definition of treason, in the hope of avoiding the path that leads to ‘constructive treason’. It achieved this through its first foray into a restrictive clause, rather than an expansive one, by removing from it ‘compassing or imagining’ words that punish thoughts and can be interpreted for the purpose of dealing with one’s political opponents.108

From 20 August, in the debates that followed this initial provision, Virginia delegates George Mason and Edmund Randolph pushed for the adding of the phrase ‘giving them Aid and Comfort’ along with ‘adhering to’ by the Committee of Detail to restrict the definition of the crime even further.109 John Dickinson, a delegate from Delaware and eventual leading Democratic-Republican, felt the language was unnecessary but pushed even further for the narrowing clause. He added that the testimony of two witnesses should be limited ‘to a specific overt act’.110

After an unnamed delegate introduced a new provision further limiting treason by suggesting that a conviction should require two witnesses who

108 See chapter nine for how this happened in the Progressive Era
testified to ‘the same overt act’, a provision that dated back to a statute from the reign of Edward VI in 1552, Dickinson’s suggestion got major support.\(^{111}\) Benjamin Franklin, Pennsylvania’s delegate, indicated that he favoured this amendment as a means to prevent injustice: ‘prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.’\(^{112}\)

Ironically, pushback for the narrowing of the definition during the debate came from none other than Virginia’s James Madison. One of the most well-known Democratic-Republicans, he peculiarly suggested that the above proposed definition recommended by the Committee of Detail was too narrow. At the time, he argued that the power would be checked by state legislatures with their concurrent state laws for treason and ‘it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused’.\(^{113}\) Madison clearly left this view behind in Philadelphia when it came time to sell the new Constitution to the American people. In Federalist Paper No. 43, he sang the praises of the Convention’s wisdom of raising the constitutional bar to avoid ‘new-fangled and artificial treasons’ (constructive treason), and limiting the consequences of guilt.\(^{114}\)

In addition, Madison’s later role in the Virginia resolution, which challenged the 1798 Alien and Sedition acts, illustrates that – in time – he came to see the wisdom in the position of men like Franklin and Dickinson. Madison was probably in the same frame of mind as the majority of other delegates in the room who could appreciate the merits of both sides of the argument. Pennsylvania’s James Wilson observed during the debate that ‘treason may sometimes be practiced in such a manner, as to render proof extremely difficult’; a noteworthy point. But Wilson, like Madison and the other delegates – despite this reservation, accepted this final provision and punishment:

*Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.*

*The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work*

---


117 US. Const., Art. III, Sec. 3, c. 1.
Corruption of Blood, or Forfeiture except during the Life of the Person attainted.¹¹⁸

The treason clause (as it has now come to be known) in the Constitution is the only law in America’s founding document. This unique status illustrates the importance the framers put on protecting citizens from the development of constructive treason, that shifted emphasis to allegiance, spying, sedition or loyalty to a leader or a cause.¹¹⁹ What the clause – and its passage – say about treason, sovereignty, loyalty and alliance is probably the most important contribution the framers provided on the origins of US counter-espionage, despite its neglect in the literature. The debate during the Constitutional Convention also shows awareness of both English common law and legislative history. More importantly, it underlined a desire on the part of the framers not create the same tools of repression that existed in England that are a precursor to generally offensive methods of counter-espionage.

The only subsequent changes to the treason clause – which only further indicates the connection between law-enforcement and counter-espionage, and the primacy of the latter over the former – is the location of the clauses in the final document. During debates on 20 August, the treason clause was meant to be within provisions concerning the powers of Congress. In September, however, the Committee of Style moved the treason clause to Article III, to the power of the courts; so the courts, not Congress, would administer The Constitution’s only criminal law.¹²⁰ Why does it matter that the

¹¹⁸ US. Const., Art. III, Sec. 3, c. 2.
¹¹⁹ Madison, ‘Federalist Paper No. 43’.
treaon clause was moved from article II to article III? Because it further
determined that treason was a matter of law and not a matter to be dealt
with by a sovereign – the sovereign in the US being ‘we the people’,
embodied by Representative legislative house. Individuals could not be tried
or convicted by the people, but only by meeting the high bar set for treason
in article III.

SETTING COUNTER-ESPIONAGE FOR A HUNDRED YEAR

Some years later, when he was a Justice on the Supreme Court, James Wilson
described 25 Edward III as ‘an object of national security, as well as of
national pride, it may well be styled the legal Gibraltar of England’.121 He
made this statement because he, like all the framers on the Committee on
Spies and The Committee of Detail felt that an indeterminate law of treason
alone would be sufficient to make a government ‘degenerate into arbitrary
power’.122 He understood that any definition of treason ‘should possess the
two following qualities 1. It should be determinate. 2. It should be stable.’123
Drawing upon Montesquieu, Wilson noted that ‘if the crime of treason be
indeterminate, this alone is sufficient to make any government degenerate
into arbitrary power. In monarchies, and in republics, it furnishes an
opportunity to unprincipled courtiers, and to demagogues equally
unprincipled, to harass the independent citizen, and the faithful subject, by
treasons, and by prosecutions for treasons, constructive, capricious, and
oppressive.’124

122 Carso, ‘Whom Can We Trust Now?’, pg. 94.
124 ibid.
Up until the twentieth century, America’s definition of treason was both ‘stable’ and ‘determinate’. It was purposefully placed in the Constitution to prevent the lowering the bar of what could be classified as treasonable activity. The unrelentingly high bar, however, meant creative politicians would walk under it by creating new legislation, before they attempted to lower it and leap over – making the clause of treason in the Constitution irrelevant. John Adams, the Second President and member of the Committee on Spies, attempted almost straight away to walk under it with the 1798 Alien and Sedition Acts; Woodrow Wilson in 1917/18 with the passing of the Espionage and Sedition Act would follow suit.\textsuperscript{125}

One of the more active men (at least more active than James Wilson) in the debate on treason was another James – James Madison. A year after the Constitutional Convention, writing in Federalists No.43, Madison explained the logic behind the treason clause:

\begin{quote}
As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on
\end{quote}

each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.\textsuperscript{126}

The treason clause in the Constitution encapsulates contradictions between two principles: on the one hand the protection of individual rights from government; on the other hand, the self-preservation of government which derives its ‘just powers from the consent of the governed’.\textsuperscript{127} Although it was heavily influenced by Britain, it was a creation all of its own; one which should be considered as ground-breaking as the first amendment since it endeavoured to eliminate the tool most used by government for political persecution and repression.

The framers opted to fight with the proverbial one arm tied behind their back on principle. They did not do so at a time when most states act on principle – when they can afford to and it is in their interest – but when circumstances were against them. The country was rebelling, militarily smaller and weaker than Britain, but the Founding Fathers still set out a course which put the state at odds with the type of courts of intrigue where gentlemen routinely read each other’s mail. Instead, they developed methods to encrypt and aspired to do statecraft differently, with the individual at the centre of it, not an elite ruling class. The election of 1800 between John Adams and Thomas

\textsuperscript{126} Madison, ‘Federalist Paper No. 43’.
\textsuperscript{127} US Declaration of Independence (1776); and Carso, ‘Whom Can We Trust Now?’, pp. 105-106.
Jefferson – which had counter-espionage at the centre of it embodied by Alien and Sedition Acts – solidified the way America’s political tradition intersected with counter-espionage, mollifying it for a century. However, before moving a hundred years forward into the Progressive Era, when America’s counter-espionage tradition was irreversibly altered, it is necessary to pause in 1892 to explore the rise and fall of the last element of America’s traditional counter-espionage culture: private sector detective and investigative firms.

SECTION III
THE RISE AND FALL OF PRIVATE SECTOR COUNTER-ESPIONAGE

The previous two chapters illustrated the foundational qualities of US counter-espionage – the linking of the expansion of counter-espionage to war; the subsuming of counter-espionage under law enforcement; and the US constitutional values of federalism, the separation of powers and natural (inalienable) rights. The delineation of these characteristics during the revolutionary period, the early challenge and eventual reassertion following the fight against the Adams administration’s Alien and Sedition Acts, meant that the majority of nineteenth century presidencies were firmly tethered to them.

Though not directly integral to this thesis, this study moves in sympathy with the arguments of constitutional scholar Bruce Ackerman, who put forward the theory of constitutional law developing at extraordinary times called ‘constitutional moments’ – where the three branches of government coalesce with one another together with the American people – to alter the constitutional framework in enduring ways.¹ Ackerman identified three such moments — the founding (Revolutionary Era), Reconstruction, and the New Deal.² However, his thesis does not satisfactorily explain the origins of American counter-espionage. The more recent argument advanced by

---

² ibid.
Michael J. Gerhardt – author of the influential text *The Forgotten Presidents* – is more useful in understanding the development of American counter-espionage. Gerhardt articulates the idea that ‘Constitutional construction develops incrementally through collective, coordinated action, including national leaders interacting with each other and the public, to reinforce, revise, or extend constitutional judgments. Constitutional law develops through a series of commitments over time—not in a day’.³

In later chapters, I show how the unravelling of America’s foundational counter-espionage culture took place during the intense Progressive Era, influenced (both directly and indirectly) by Great Britain.⁴ This chapter also deals with an important change – perhaps the most significant – to America’s system of counter-espionage which also occurred outside one of Ackerman’s ‘constitutional moments’. In 1892, Congress made it illegal for the federal government to hire private detectives, following the ‘deplorable events at Homestead’ that same year – an industrial lockout and strike which began on 30 June 1892, culminating in a battle between strikers and private security agents on 6 July 1892, that left twelve dead and many seriously wounded.⁵ The prohibition was as blunt as it was explicit. ‘That hereafter no employee

---

⁴ And eventually reinforced in the New Deal Era.
⁵ There is a substantial literature on Homestead, by far the most thorough accounts are to be found in the reports of the committees of the United States House and Senate, ordered to investigate and report the facts in relation to the employment for private purposes of Pinkerton Guards in connection with differences between union workmen and the factory owner. Both reports are excellent as they have numerous eye witness testimonies (from both sides), which is why I use them extensively through this entire section. ‘The testimony of Robert Pinkerton’, in House Committee on the Judiciary, *Investigation of Homestead Troubles*, H. R. Report No. 2447, 52nd Congress, Second Session (Washington, DC: Government Printing Office, 1893), pg. 190 [Henceforth ‘H. R. Report No. 2447’].
of the Pinkerton Detective Agency, or similar agency shall be employed in any Government service or by any officer of the District of Columbia.’

In the historiographies of both policing and labour in the US, the ‘Homestead Massacre’, and the subsequent self-denying ordinance against hiring private detectives the government placed on itself, is a pivotal moment that looms large. Conversely, in histories of US counter-espionage, the episode is marginalised and considered almost irrelevant. In almost all counter-espionage histories, the important event – indeed the only noteworthy event – of the nineteenth century is the Civil War. Although the Civil War did see an expansion of counter-espionage, like the Revolutionary War before it, the conclusion of the conflict saw an equally rapid demobilisation of counter-espionage. Thus, it does not represent a rupture from America’s foundational counter-espionage culture. The prohibition of the use of private detectives, on the other hand, did; it paved the way for an eventual federal government expansion and monopoly of counter-espionage and the creation of a Bureau

---


8 All the official and semi-official histories in footnote seven mention and go into detail on Union counter-intelligence operations against the confederacy.
of Investigation. As such, it is crucial to any understanding of the shape of American counter-espionage and its pivot away from the constitutional framework explored in previous chapters.

This section, therefore, explores a critical moment in America’s counter-espionage trajectory. It explores the downfall of the use of private detectives by the federal government, an essential preliminary to the creation of a permanent federal bureaucracy to handle counter-espionage. The chapter advances the argument that not all offensive methods of counter-espionage in American can be placed squarely at the feet of Britain’s security apparatus tutelage. Instead this relationship was episodic and organic. In fact, the US boasted a large burgeoning private sector that handled counter-espionage – with an equally large and ubiquitous history of political repression – which pre-dates extensive exposure to British methods of counter-espionage during the First World War.

First, I will explore how America’s foundational principles (the linking of counter-espionage’s expansion to war; the subsuming of counter-espionage under law enforcement; and US constitutional values) necessarily resulted in a market for private sector counter-espionage bureaus. Then I will show why the use of private detectives within a state’s interior labour disputes – like the 1894 Homestead Strike – can be considered an issue relevant to counter-espionage.

---

9 The forerunner to the Federal Bureau of Investigation is dealt with in chapter eight.  
Once the subject has been firmly shown to be situated within the realm of counter-espionage, in the following chapter I will detail the Pinkerton National Detective Agency’s role in the ‘Homestead Massacre’, as this event was the impetus for placing a ban on the federal government hiring private detectives.11 The Homestead Strike has been almost exclusively narrated from the perspective of organised labour.12 Quickly after the strike, Pinkerton was cast as a villain that arrived at the mill as a private militia of capitalists, and the state and federal prohibitions were viewed as a triumph early on.13 It has since become the central case study – a cautionary tale – of the excesses of private security systems that ‘exposed the weaknesses of police work in a country enamoured of federalism’.14

12 See chapter five.
By providing new information and a new perspective on Homestead, in this section’s final chapter I endeavour to show how the national legislatures overreacted and that better legislation reinforcing the law – prohibiting offensive methods of counter-espionage, components not present at Homestead – ought to have been introduced instead.

Ultimately, Congress’ attempt to censure and limit private detective firms would inadvertently lead to the creation of a Bureau of Investigation and the institutionalisation of the instruments of political repression within the federal government. Cast in this light, the entire section not only continues to show the developing pathway of American counter-espionage but also how private detectives, set alongside America’s foundational principles, might in fact have constituted the lesser of two evils.

PRIVATE SECTOR COUNTER-ESPIONAGE: THE MISSING FOUNDATIONAL VALUE

Before the 1950s, when the federal government became responsible for countering all sorts of crimes (other than those specified to the federal government in the Constitution) individual states, corporations and sometimes the federal government, relied on the private sector.\textsuperscript{15} When one

\textsuperscript{15} Treason, counterfeiting and piracy are the only federal crimes listed in the Constitution. In terms of counterfeiting, the seeds were sown in the aftermath of the Civil War with the creation of the Secret Service in 1865. Other than the Secret Service, the few federal law enforcement agencies that existed before the creation of the Bureau of Investigation in 1908 were limited in scope and ability. There was the US Customs Service, formed in 1789 to uphold tariff laws and the Post Office Inspectors. Federal criminal laws – as opposed to state or local laws – along with the federal justice system, have dramatically expanded its authority and reach. By the turn of the twentieth century, the number of criminal statutes numbered in the dozens. At the start of the twentieth century, best estimates suggest there were
ponders the foundational qualities of American counter-espionage explored in the previous two chapters, private sector participation in counter-espionage is an all but unavoidable corollary. Activities including surveillance, spying, agent running, agents provocateurs, informants and the guarding against all these activities from competitors were still likely to be required on an ad-hoc basis. Outside of war, if the general government (or indeed states) did not have its own standing body to perform these functions or have legislation preventing entrepreneurs entering into the market, eventually someone was likely to fill the vacuum. Although the number of private agencies also rose in the latter part of the nineteenth century in Britain and France, they are a real oddity of America’s traditional counter-espionage culture.\textsuperscript{16} An 1892 article in Reynolds’s News surmised this well: ‘It is doubtful if the public here [in Britain] would permit such a bureau of espionage to be controlled by private individuals.’\textsuperscript{17}

In its broadest sense, counter-espionage fulfils the same meta function as high policing: the maintenance of social order.\textsuperscript{18} However, the perseverance

\begin{footnotesize}
\footnotesize
\begin{itemize}
\item \textsuperscript{17} ibid.
\end{itemize}
\end{footnotesize}
of that order alone is not enough to understand the functions of counter-espionage. Otherwise, many activities in everyday life could be considered components of counter-espionage. Instead, counter-espionage maintains order by narrowing and focusing on threats to the state, not of the state. Threats that represent existential challenges to the domestic status-quo, as opposed to specific threats (a pickpocket, burglar or rapist) to the individual in their neighbourhood. The threats relevant in counter-espionage would affect every individual in every neighbourhood in the state, in other words, it deals with how a state orders itself; the dominant political scaffolding that society is structured around, which governs interactions between individuals. Counter-espionage organisations quell these ‘threats’ through the retention and exploitation of certain activities and methods, many of them related to intelligence work and not ordinarily associated with local law enforcement or the army.19

In this particular respect, following the precedent-setting failure of the Adams administration’s Alien and Sedition Acts, the US found itself in a unique quandary for the remainder of the nineteenth century. The dominant political ideology set a notably high bar for treason and therefore the demand for national (federal) solutions to such problems was correspondingly constrained. As such, no federal or state-based counter-espionage organisations seemed necessary or indeed existed. Yet the rapid economic and structural changes arising in the early nineteenth century now presented the state with new challenges.

---


19 For more on the contours of counter-espionage see introduction section ‘Calling a Spade a Spade’.
The rise of big cities in America was intrinsically linked to big corruption, even within the police, which meant vice reformers had nowhere to turn.\(^\text{20}\) Moreover, more ambitious criminals could exploit America’s federalist nature by crossing jurisdictional lines to avoid detection and arrest by local and state-based law enforcement agencies.\(^\text{21}\) Limited cooperation among law enforcement bodies in different jurisdictions meant there was no efficient way of keeping tabs on national enemies.\(^\text{22}\) In the early years of the agency, local law enforcement was haphazard, weak, and often corrupt.\(^\text{23}\) Municipal police forces lacked authority to go beyond their boundaries to make arrests, and state police forces, where they existed, were similarly restricted and also inefficiently organised. Meanwhile, the 1886 Supreme Court case of Ker v. Illinois was critical in giving private detectives a wide berth to operate with impunity across borders. Additionally, officials now struggled with the peculiar precedent set by that case — that international kidnappings do not


\(^{21}\) Similar to the way Al-Qaeda exploited the distinction the American government made between domestic and foreign intelligence collection. For more on this interesting subject see: Katherine Unterman, Uncle Sam’s Policemen: The Pursuit of Fugitives Across Borders (Cambridge, MA: Harvard University Press, 2015).

\(^{22}\) ibid.

violate US law.\textsuperscript{24} Private detectives could cross borders with much greater latitude because they were private rather than government investigators.\textsuperscript{25} It was precisely because private detective agencies could operate across municipal and state borders (though they had no special powers of arrest unless deputised) that they were able to flourish.\textsuperscript{26}

Lastly, the nineteenth century saw the rise of party-bosses who controlled politics and responded to the interests of big business; in the aftermath of reconstruction the two become closely entangled.\textsuperscript{27} Consequently, it was not


\textsuperscript{27} Cathie Jo Martin and Duane Swank, \textit{The Political Construction of Business Interests: Coordination, Growth, and Equality} (Cambridge: Cambridge University Press, 2012), pp. 93-95; James W. Clarke, \textit{American Assassins: The Darker Side of
just the state – embodied in the US by its legislative branch – that had a strong motivation to uphold the dominant political ideology. Other stakeholders in a society, especially those in a position of privilege and wealth, also had pronounced interest in maintaining the status-quo against those who desired to undermine it.28 The nineteenth century – with its robber barons, drastic inequality, corrupt politics and unprecedented immigration – fostered environments that elevated the question of who (or what) was responsible for protecting the nature of the state to the level of counter-espionage.

Thus, when one reflects on the theoretical essence of counter-espionage – not in relation to activities in wartime, or delineated by describing what a counter-espionage organisation did at a particular moment in time – the wider question in relation to America’s original counter-espionage culture is clear: how does a state with liberal concepts of treason, sedition and espionage which still confronts ‘foreign’ threats defend itself from them outside of war? How does a state protect itself against external ideologies internally that seek to redefine the relationship between state and citizen? War is feared by states and statesmen precisely because it often poses a

---

threat to the existing status-quo – not simply the horror it spawns through violence. That is partially why counter-espionage is tolerable in war, for if the state of nature has fallen to the point where the most sanctified value in society has been torn asunder– the preservation of life – then the lower order values are less likely to remain intact.

When the framers determined to sue for independence during revolt, it was precisely because they envisioned, and then violently asserted, a new political reality for the Thirteen Colonies. They had a new creed, a new contract, between citizen and state, not subject and sovereign. As noted previously, it is illuminating that the King of England responded to this severance by denouncing the acts of the colonies as treasonable. It certainly had reverberation for citizens in the lives of all those in the new world immediately. However, it also had far-reaching consequences in the long run for their civil rights. In the area of counter-espionage, this meant the elimination of dynastic treason in exchange for a narrower less complex concept in line with other constitutional values. It also meant there would be no permanent bureaucracy within the general government to deal with threats to the nature of the state. In the nineteenth century, private firms – the most well-known of which was the Pinkerton Detective Agency – would respond to the ad-hoc need for the apparatus of domestic order; and like all counter-espionage outfits since time immemorial, it often upheld the law by breaking it.

The Pinkerton National Detective Agency was a company founded in 1850 by Allan Pinkerton. It eventually provided private security and detectives –

---

29 It is important to note, Pinkerton indicated 1850 and 1852 at different times. Some historians of the agency question the accuracy of the 1850 date but the Agency itself
in other words counter-espionage services – to an eclectic mix of clients. As a private security force in post-Civil War America, Pinkerton filled a vacuum generated by America’s original counter-espionage culture. Four nineteenth century presidents would turn to Pinkerton as an instrument of law enforcement, and occasionally as a tool of political repression.\textsuperscript{30} Businesses too would turn to Pinkerton and other private detective firms.\textsuperscript{31} Allan’s son Robert, in a testimony to the Senate following the calamity at Homestead in 1894, noted that up to that point his detective force had furnished men in approximately seventy strikes, and had been employed against over 125,000 strikers in all parts of the country.\textsuperscript{32}

Beginning with the September 1866 coal strike in Braidwood, Illinois, Pinkerton began offering strike-breaking services, while in hundreds of other instances they offered their men as guards to secure company property against ‘vandalism’ by striking workers.\textsuperscript{33} Pinkerton also has a notorious

\begin{flushleft}
\end{flushleft}
record of using other methods to end strikes, including labour spies and agent provocateurs.⁴⁴

Though Pinkerton, and private security in general, has fallen into disrepute in recent years, it is important to remember the repellent nature of the alternative.⁵⁵ Private sector security services in nineteenth century American were a consequence of America’s traditional counter-espionage culture. A culture that set a high bar for crimes ‘against the state’ and spurned centralised security bureaucracies due to their proclivity for being turned against the people for the purposes of domestic surveillance and political repression. The alternative, and model for security bureaus in Europe (including Britain’s Scotland Yard), was France’s Sûreté Nationale, founded by criminologist Eugène François Vidocq in 1812.⁶⁶ Vidocq, in turn, was inspired by Napoleon’s centralisation of the French gendarmerie into a single Ministry of Police, under the infamous Joseph Fouché, devoted singularly to ‘securing the state’ – where ‘the state’ meant the ‘regime’.⁷⁷ The record of France’s various secretive security services, set against that of Pinkerton’s serves only to accentuate the framer’s concerns about setting a centralised

---

⁴⁴ See generally: Charles A. Siringo, Two Evil Isms: Pinkertonism and Anarchism, by a Cowboy Detective Who Knows, as He Spent Twenty-Two Years in the Inner Circle of Pinkerton’s National Detective Agency (Chicago, IL: C.A. Siringo, 1915); Leo Huberman, The Labor Spy Racket (New York, NY: Modern Age Books, 1937); and Morris Friedman, The Pinkerton Labor Spy (New York, NY: Wilshire Book Co.,1907). Important to note that Siringo and Morris Friedman were both former Pinkerton employees who did not leave the company on good terms.


counter-espionage bureau in motion. Even a limited one with a meagre remit, as it would still have the potentiality to swell.  

WHY HOMESTEAD IN RELATION TO COUNTER-ESPIONAGE?

In the nineteenth century all types of threats to the state outside of war, at various levels of abstraction, could be bent and fashioned into crimes ranging from espionage to treason. By contrast, histories of American counter-espionage have tended to conceive of this activity in a narrowly classic way in relation to states, wars and foreign spies. However, there are other – more pernicious – threats to the state that fester domestically. Indeed, claims of treason and espionage in the latter half of the nineteenth century actually thrived, as the century saw the creation of the aforementioned French Sûreté, Britain’s Scotland Yard, Russia’s Okhrana and America’s Pinkerton Detective Agency. Modernity created wealth, but it also created a multiplicity of threats.

---


39 For example, Rafalko’s *A Counterintelligence Reader*. All four volumes are titled and on wars (Revolutionary War, Civil War, First World War, Second World War and the Cold War). See: Rafalko (ed.), *A Counterintelligence Reader*. 
to ‘the state’ and many of these were connected with ideologies that were neither strictly national nor international.

America’s nineteenth century in general is noteworthy for its colossal population growth.\textsuperscript{40} This growth was spurred by European immigration, and resulted in a swell of foreign peoples from all over the globe bringing foreign ideas – notably anarchism and communism.\textsuperscript{41} Unrestricted European immigration, combined with social and technological dynamics present in mid- to late nineteenth century America, made it a perfect breeding ground for persistent challenges to the status-quo from within, without it being guided or planned from abroad. Homestead, Pennsylvania – a town of some 10,000 inhabitants on the banks of the Alleghany River, dominated by the Carnegie Steel Works – was a melting pot of many of these phenomena. As such, the historic strike at Homestead is the perfect illustration of the pre-eminence and influence of America’s traditional counter-espionage culture.

Homestead was a fault line conflict, brought about by a clash of contrasting values; but before moving on to the details of that fateful day, 6 July 1892, it is first necessary to explain why the events of Homestead are relevant to counter-espionage conceptually. In terms of consequence, this will be addressed later, after detailing ‘the battle of Homestead’, as they are self-evident. But for now it is sufficient to note that Labour disputes within a state are not naturally considered part of examining how counter-espionage works


\textsuperscript{41} ibid.
within the Anglosphere. This is a curious conceptualisation given that Bolsheviks would soon consider fomenting worker revolts and strikes as the central activity necessary to overturn a ruling elite, and indeed undermining ideological competitors overseas.

AMERICAN ‘RIGHTS’

Today, a ten-foot-high grey slab monument commemorates the battle. Its inscription reads: ‘Erected by the members of the Steel Workers Organization Committee Local Unions in memory of the iron and steel workers who were killed in Homestead, Pennsylvania, on July 6, 1892, while striking against the Carnegie Steel Company in defense of their American rights.’ The first issue worth pointing out is the obvious narrative contestation and romanticism of the ‘Homestead Strike’. The second issue, more relevant to this section, is the more fundamental question it begs: under America’s prevailing political culture at the time, what ‘rights’ had labour that the public would recognise?

As we have explored in the first section of this thesis, one of the most important precepts of the American revolution was the idea of rights. The concept of ‘rights’ held by America’s founding fathers – especially Virginia’s James Madison, Thomas Jefferson, John Taylor and to a lesser extent James Monroe and George Washington – was greatly influenced by John Locke’s

42 See the introduction, section: ‘Definitions: Calling a Spade a Spade’.
45 See the following chapter, the second section entitled: ‘The Storification of Homestead’.
46 For more information, see chapters two and three.
theory of natural rights.\textsuperscript{47} Succinctly, in a Lockean sense, in order for X to be a right, X must be universalisable to all humans all the time.\textsuperscript{48} Thus, if person A asserts right X for himself, X must also apply to all other people in exactly the same way that it applies to A.\textsuperscript{49} If the universal application of right X gives rise to a logical contradiction, then X cannot be a legitimate right for A or anyone else.\textsuperscript{50} This concept of rights had ramifications for counter-espionage, but it also logically had ramifications for all interactions between individuals. Take the above concept of rights and apply it to Homestead Strike, for example. The only legitimate job-related right that Person A has is the right to make offers to provide or to employ labour on mutually agreed terms, as no logical contradictions arise. So long as employees and management share this conception of rights, no existential crisis arises. As such, government intervention, in terms of enforcement or arbitration, is also redundant as there is mutually agreed accord.\textsuperscript{51} The essence of liberty, in this sense, is a respect for the rights of others.\textsuperscript{52}

Homestead is important in both the histories of labour and counter-espionage because it was a challenge to the prevailing political and philosophical order, and it because it had drastic ramifications in both areas. Looking at Homestead, the strike as a national event can be viewed as a tangible challenge to the dominant political culture. If a new political framework develops, or is imported, which conflicts with the existing political

\textsuperscript{49} ibid.
\textsuperscript{50} ibid.
\textsuperscript{51} ibid.
framework, those who benefit or uphold the existing order will rally to re-affirm it. For example, suppose a factory’s bosses hold the above conception of rights, while the workers of the factory hold another one, some combination of, or all of the following concepts of rights: the right to a job, the right to full remuneration of expended labour (a labour theory of value), or that private property is theft. These values stand in contrast. Take the right to work. If person A has a right to a job, there must be some other Person B who has a duty to provide the job to A. If so, A and B have different job-related rights. A right to receive is different from a duty to provide. Since the right to a job in this sense is not universalisable without contradiction, it is not a legitimate right in the Lockean sense as held by America’s framers and embodied in the Constitution. The same is true for the right to strike, when it is withholding labour services with attempts to deny the employer access to replacement workers, other suppliers, and willing customers. Coercive attempts by individuals who wish to withhold their own labour services (through violence or the threat of violence) or interfere with the voluntary exchange rights of other people are, in the Lockean sense, incompatible.  

Importantly, the Amalgamated Association of Iron and Steel Workers (AA) presented itself as a conservative union. However, the organisation’s President in congressional testimony argued that the existing concept of rights is constructed to benefit the company and not the worker. In addition, he argued that organised labour had the right to strike, in both withholding and preventing labour. At the testimonies, representatives of the workers claimed that men were placed around the works not to use violence, or the

53 No testimony makes this point as clearly as Powderly’s, see: ‘Testimony of T. V. Powderly’, in H. R. Report No. 2447, pg. 219-225.
threat of violence or to prevent people going in, but to use ‘Moral suasion’ to keep them from going in the works.\footnote{ibid., pg. 89.} From the events of 6 July 1892, based on the later testimonies of the sheriff and his deputy, it is clear the strikers refused to let non-union men go in.\footnote{The Sheriff of Allegheny county was William McCleary. Samuel B. Cluley, was a deputy sheriff. See: ‘Testimony of WM. H. M’Cleary’, in \textit{H. R. Report No. 2447}, pp. 55-68; and the ‘Testimony of Samuel B. Cluley’, in \textit{H. R. Report No. 2447}, pp. 66-68.}

Moreover, the claim that the AA was a ‘conservative union’ appears unfounded upon deeper examination. Not only because of the violence at Homestead, but also because of the language within the organisation’s founding constitution. Adopted at the national convention at Pittsburgh, Pennsylvania, in June 1890, the preamble was written by William H. Sylvis, America’s ‘first great figure in the American Labour movement’.\footnote{John R. Commons, et al. (eds.), \textit{History of Labour in the United States}, Vol. 2 (New York, NY: A.M. Kelley, 1966; [1918]), pg. 6. Sylvis was founder of the first American trade union federation and was active during the Civil War, arguing for the inclusion of black Americans in the labour movement, among other things. The book was published in 1942 by International Publishers, which was in essence the publishing arm of the CPUSA.} It was positively socialistic in its articles, laws and goals. The first sentence of the preamble gives the clearest indication of the association’s ideological anchoring: ‘Labour has no protection – the weak are devoured by the strong. All wealth and all power center in the hands of a few, and the many are their victims and their bondsmen.’\footnote{ibid, pp. 141-161. The quote from William H. Sylvis can be found in: William H. Sylvis, \textit{The Life, Speeches, Labors and Essays of William H. Sylvis, Late President of the Iron Molders’ International Union: and also of the National Labor Union} (Philadelphia, PA: Claxton, Remsen & Haffelfinger, 1872), pg. 30.}
Sylvis, who almost certainly would have considered himself as an implacable general in the ‘struggle between corporate capital and labor’, also gives an indication of the schism between the political theory of the AA and dominant conceptions of rights in America at the time.\textsuperscript{59} Sylvis was considered a hero by the Communist Party of America, who would publish a book about him in 1942.\textsuperscript{60} The opening of the book contains a quote from an address by Sylvis to the convention of the Iron Molders International Union in 1865, which perfectly expresses the clash (described above) permeating the Homestead Strike, as well as foreshadowing future skirmishes between the state and the left:

> What would it profit us as a nation were we to preserve our institutions and destroy the morale of the people; save our Constitution and sink the masses into hopeless ignorance, poverty, and crime; all the forms of our Republican institutions to remain on the statute book and the great body of people sunk so low as to be incapable of comprehending their most simple and essential principles, with the wealth of the nation concentrated in the hands of the few, and the toiling many reduced to squalid poverty and utter dependence on the lords of the land?\textsuperscript{61}

\textsuperscript{60} Though in his lifetime he would not have considered himself a communist. The General Council of the International Workingmen’s Association certainly did, and wrote a letter to the National Labor Union on 18 August 1869 – signed by Karl Marx – praising Sylvis as a ‘loyal, persevering and indefatigable worker in the cause...’ See: Workingmen’s Advocate, 18 September 1869.
\textsuperscript{61} Todes, \textit{William H Sylvis}, pg. 6.
An important consequence following Homestead was the rise, and greater prominence, of those demanding recognition of new property rights for wage workers. Rights that included a ‘fair’ wage and the employee to employment. These rights, were given a powerful voice in Congress during the Strike by Senator John M. Palmer (D-IL).  

Nevertheless, the Lockean conception of rights, articulated earlier, was still the dominant one that pervaded American political culture at the time of Homestead. Although almost all sections of American society were appalled by the alleged behaviour of the Pinkerton men, this revulsion did not translate into support for the striking workers’ cause. As Allan Pinkerton, the founder of the agency whose men were put in the middle of Homestead, understood: ‘nothing tends more to injure the working classes standing properly before the public, and especially before that class of the public who stand between the working class and the public, viz., the middle class, than the evil effects which "strikes" produce by resort to force’. Instead, from government reports on Homestead, Pennsylvania’s court proceedings and newspapers editorials on the ‘battle of July 6th’, mainstream America rallied to the defence of a Lockean concept of rights. Moreover, the elected representatives of the people who investigated the Homestead affair were

---

62 Palmer’s words: ‘we have recognized the right of the capitalists to the control of his property, subject to his right to a reasonable reward for his investment, and we claim for the laborer the right to permanent employment during good behavior, though he is certainly compelled to submit to the changes of business. Where the profits are small the parties must divide the losses; when the profits are large the profits may be divided’. See: Edward W. Bemis, ‘The Homestead Strike’, The Journal of Political Economy, Vol. 2, No. 3 (1894), pg. 393.


unanimous in their upholding the original constitutional conception of rights, the representatives concluded:

… no organization of laborers, or others, has the right to enforce its wishes or the decrees of its council by strong hand, setting at defiance the rights of others, or by violations of law...To do so would destroy that personal freedom which has ever been the just pride and boast of American citizens... All must recognize that in this country every man is the architect of his own fortune... Our entire system of government is based upon the idea of individual right to life, liberty, and the pursuit of happiness.\(^{65}\)

The Senate expressed much the same sentiment: ‘Having discontinued work, they have no right, legal or moral, to undertake by force or intimidation to keep others from taking their places, or to attempt to occupy, injure or destroy the property of their employers.’\(^{66}\) The views of the press were not any different, even in Pittsburgh: ‘It cannot be tolerated for a moment that one laborer shall say to another laborer, "You shall not work for this man for that wage without my consent," and then enforce such demands with brutal violence upon his person.... The law should be so enforced ... that the humblest laborer can work for whom he pleases and at what wage he sees fit, undeterred by the bludgeon of the rioter or the pistol of the assassin’.\(^{67}\)


\(^{66}\) Senate Report no.1280, pp. xiv-xv.

\(^{67}\) Pittsburgh Commercial Gazette, 11 October 1892; Senate Report no.1280, pp. xv-xix.
The clash of the two conceptions of rights go a great distance to explaining the cause of the Homestead strike. It was a political tear, one of many, in the fabric of American society – precisely the types of upheaval European states had created centralised security bureaus to ward against.

**SCALE & ECONOMIC CONSEQUENCES**

The Homestead strike is significant to counter-espionage for several other reasons. If the Mill was a small family-owned business that ground small quantities of wheat into flour instead of iron into steel, the crisis would not represent a threat to the fabric of society. Part of why Homestead matters to counter-espionage was the scale of strikes in the latter part of nineteenth century and its economic consequences, which were now on a national scale.

Homestead was emblematic of major eruptions of labour strife in the US – usually manifesting as strikes – during the last third of the nineteenth century. The federal Department of Labor estimated that between 1875 and 1900, some 22,793 strikes occurred throughout the country. In forty-seven of these instances, beginning with the Chicago ‘labor riots’ (actually, the Chicago component of the national railroad strike) of August 1877, the National Guard was dispatched against unionised (or unionising) workers. The same trajectory was evident in Homestead. In the end, to resolve the

---


dispute the state militia needed to be called in, costing Pennsylvanians a great deal.\textsuperscript{70} At this stage in America’s history, law enforcement was largely a state issue, and predominantly local – yet the local law enforcement were ill-equipped to deal with large strikes or to protect individuals and property.\textsuperscript{71} In both strikes at Homestead, the first in July 1889 and the second in July 1892 – local law enforcement was unable to properly enforce the law (as already discussed above). Yet if military forces are necessary to restore order in a locale, then a visible and unwelcome breakdown of state control has occurred.\textsuperscript{72} Moreover, such action advertises a wide dissatisfaction with the current social order, which is the very impulse that drives states to create domestic security bureaus responsible for quashing dissent less dramatically.

The strike was a counter-espionage issue because of its scale, but not scalability alone. The economic order in America and the industrial revolution meant steel production in Homestead was not just linked to the economy of Pennsylvania, but to the national economy and its ability to make war. A labour battle in a general industrial depression, as in 1892, could have ramifications and reverberations beyond the boundaries of a town. The Homestead works ranked in the top five most productive mills in the US at that time.\textsuperscript{73} By the spring of 1892, the total workforce of the Steel Mill was

\textsuperscript{70} The cost of the strike was estimated by the \textit{Engineering and Mining Journal}: \textit{See Engineering and Mining Journal}, Vol. 54, pp. 242-243.


\textsuperscript{72} For more on the role of military in quelling domestic dissent see: Robert W. Coakley, \textit{The Role of Federal Military Forces in Domestic Disorders, 1877-1945} (Washington, DC: Center of Military History, 1997).

4,000 sprawling across ninety acres and included houses, schools and shops. Homestead itself had a population of approximately 10,000, all largely dependent and sympathetic to workers of the steel works.\textsuperscript{74} The company even acted as a bank, taking deposits from its employees and providing them with mortgages.\textsuperscript{75} The town burgess (equivalent to mayor) was a steelworker (and AA member) named ‘Honest’ John McLuckie, who was well respected in Homestead, having won his office in 1890 in a four-way race 811 votes to five.\textsuperscript{76} The steel works was enormous, dominating the local town and extending its influence far beyond the city limits. It is also important to note that The Homestead Mill was making a large quantity of ‘armor plates’ for war vessels – as the Carnegie Company (who owned the mill) had a contract with the US government to make components for warships. The fact the factory has a role in ensuring the state was protected from external threats meant it seemed intolerable to shut it down due to internal dissent. Or, in today’s parlance, Homestead was part of the state’s ‘critical national infrastructure’ and needed to be secured.\textsuperscript{77}

\textsuperscript{74} Ibid; Bemis, ‘The Homestead Strike’, pg. 369.
\textsuperscript{76} David Nasaw, \textit{Andrew Carnegie} (New York, NY: Penguin, 2007), pg. 404.
Immigrants against ‘the state’

Immigration is not inherently destabilising. Plenty of factors contribute to the ability of new immigrants integrating comfortably within pre-existing communities. However, when the numbers are as large as they were in the US in the latter half of the nineteenth century, it poses certain challenges to social order and cohesion. ‘Foreignness’ is intrinsically linked to in the popular imagination with treason, espionage, anti-state activities and subversion; be it foreign spies or foreign ideologies. Counter-espionage is about preventing either or both of these forces fomenting where they are found to exist and challenge the life of the nation. These factors discussed above alone connect Homestead to counter-espionage, since the climate of accelerating immigration created a transnational dimension to the dispute.

In the latter half of the nineteenth century, the number of immigrants to the United States skyrocketed. The great famine in Ireland, between 1845–1852, pushed large numbers of Catholic Irish towards the US, as did the Revolutions of 1848 throughout Europe. The same was true for Mexicans victimised in the Revolution; Jews fleeing the pogroms in Eastern Europe and Russia; and Armenians escaping from massacres in Turkey. To all these groups, America provided a sanctuary. After 1880, larger steam-powered oceangoing ships replaced sailing ships, which resulted in lower fares, faster journeys, and greater immigrant mobility, while farming improvements in Southern Europe and Russia created labour surpluses, pushing the poorest out of Europe. Immigrants were also pulled towards America with the promise of economic

---

opportunity. The door was wide open for Europeans, and millions traversed the Atlantic due to a combination of an industrial revolution, the ending of the slave trade and America’s march westward.\textsuperscript{79}

Combining both the push and pull factors, immigration to the US in the latter half the nineteenth century is best understood as a flood. In 1830, less than one per cent of Americans were immigrants; fifty years later, immigrants accounted for nearly fifteen per cent of the country’s population.\textsuperscript{80} In the last half of the nineteenth century approximately 16,660,000 persons immigrated to the US – a yearly average of 333,200.\textsuperscript{81} By the turn of the twentieth century, demographically speaking, America had been largely transformed. One out of every three Americans was either an immigrant or a child of an immigrant.\textsuperscript{82}

As a blue collar town, Homestead was particularly affected by persistent waves of immigration. In 1890 the foreign-born accounted for thirty-one per-


\textsuperscript{80} The historical census data can be found online in the Virginia Library Geostat Center. See: ‘Historical Census Browser’, The University of Virginia, Geospatial and Statistical Data Center, 2004. <http://mapserver.lib.virginia.edu/collections/> (18 August 2016).


\textsuperscript{82} ibid.
cent, and those of foreign parentage made up sixty-two per-cent of the 7,911 population.83

Naturally, new immigrants did not merely bring their labour and hopes; they traversed oceans bringing social customs, food, humour, symbols, rituals and language along with new ideas and challenging political ideologies. Just as in Britain, counter-espionage targeted foreign nationals – notably the Germans and Irish – for the ideas and threats they represented to the domestic status-quo. In the US especially, political philosophies that clashed with the existing constitutional norms flourished among immigrant communities – namely anarcho-communism and radical socialism.

For example, the Socialist Labor Party (SLP) established in 1876, as the Workingmen’s party, was dominated in manpower and intellectual utterances by mostly new immigrants – German émigrés particularly flocked to the Party. The socialist press was also dominated by immigrants.84 Between 1876 and 1877, no fewer than twenty-four newspapers were established which either directly or indirectly supported the SLP.85 Eight of these were English-language publications, including one daily. The majority, however, were in German, fourteen including seven dailies. Two more papers were published in Czech and Swedish, respectively.86

Much the same was true in the smaller anarcho-communist/anarchist communities. As Kenyon Zimmer pointed out in his influential 2015 study,

83 ibid.
86 ibid.
Immigrants Against the State, ‘American anarchists numbered in the tens of thousands’ and the ‘vast majority of these radicals were immigrants, inextricably linking anarchism and immigration in the American experience and popular imagination.’ As with Communist and Socialist movements in the US, adherents were mostly drawn from foreign-born industrial workers, often Italian and Jewish. In terms of anarchist publications in the US there were more Yiddish, German, Italian or Russian publications than there were English publications in the nineteenth century. The lack of English-language publications highlights the fact that the dissemination of anarcho-communist/anarchist ideas was less prevalent among the English-speaking populations in the US that it was among foreign born citizens. Zimmer’s rationale as to why America proved a fertile ground for radical leftist ideals is also enlightening. He suggests the convergence of two groups—‘itinerant revolutionaries and immigrant workers’—fomented the spread of radical ideas.

87 Kenyon Zimmer, Immigrants against the State: Yiddish and Italian Anarchism in America (Urbana, IL: University of Illinois Press, 2015), pg. 1.
New ideas that challenged America’s dominant political culture swirled in the factories of Chicago and in the steel mills of Pennsylvania. They also flourished as they spoke directly to the soul of the working man, promising him a better life, more money and better working conditions. In reality, labour disputes, unions and worker’s associations in the nineteenth century were where the vanguard of radical revolutionary movements could be found. Some labour organisations had conservative goals and simply wished to secure what they considered a fairer share in the wealth. Some individuals, sometimes within these organisations, were violent anarchists – in effect infiltrators – who had a revolutionary strategy centred around the belief that successful operations against the ‘state’ and the seizure of major industrial centres would result in massive public support by workers, revolution, the destruction of capitalism and the establishment of a socialist economy. They moved among those sympathetic to their ends, even though they did not share views in relation to the means of their obtainment. It is simply the case that not all socialists were radicals, but all radicals were socialists, which made those who carried these ideas (immigrants) targets of domestic political repression.


90 The most well-known, mentioned earlier, is probably Josef Stalin who in Baku between 1907 and 1908 – where he ended up after being tracked down by the Okhranka, arrested and exiled – organised more strikes and agitation, conducted protection rackets and ransom kidnappings against the oil tycoons of Baku. He also conducted counterfeiting operations and robberies. See: Montefiore, Young Stalin; Nigel Cawthorne, Stalin: The Murderous Career of the Red Tsar (London: Arcturus Publishing, 2012), chap. one [eBook]; and Essad Bey (Lev Nussimbaum), Stalin; the Career of a Fanatic (New York, NY: Viking Press, 1932), pg. 127 (though this last book needs to be engaged with carefully). Also see the excellent MA thesis: Fuad Akhundov, Stalin’s Baku Curve: A Detonating Mixture of Crime and Revolution (Unpublished MA thesis: University of Toronto, 2016).
At the time, all the participants were unclear as to whether Homestead was ‘treason’ or simply a ‘riot’, but the debate over which category the events belong to illuminates why Homestead is relevant to counter-espionage. Moreover, this specific question highlights how the charge of treason was often applied outside the context of war. One of the most significant deliverances on the subject of the treason charge was that embodied in a letter written to the *Pittsburgh Commercial-Gazette* by veteran jurist, Hon. Daniel Agnew, ex-chief justice of the Pennsylvania Supreme Court. Judge Agnew’s argument, though he concluded Homestead was not a case of treason, points to how the episode is nevertheless relevant to counter-espionage conceptually. He declared that the Homestead affair was riot and not treason, and that it was ‘easy to distinguish treason from riot. It lies in the purpose or intent of the traitor to overthrow the government or subvert the law or destroy an institution of the state. Riot is a breach or violation of law, but without a purpose against the state.’

Not everyone agreed with the former chief justice; they saw ‘institutions’ as being embodied not just by bricks and mortar but also in abstract concepts. For instance, *Harper’s Weekly* saw ‘society and civilization’ at stake, due to a mob ‘interfering with property rights and hindering the peaceful employment

---


92 Those concepts relevant here were connected to American economic life: property rights and the liberty of the individual. See chapter two and three.
of labor’. In any other civilised country, it maintained, such acts would constitute treason and rebellion. ‘But’, it added, ‘personal sympathy with individuals must not affect our judgment upon a crisis in which civil government and the order of society are at stake.’\(^93\) At the time of the strike, Pennsylvania’s Supreme Court Justice, Edward Paxson, was in the same state of mind as *Harper’s Weekly*. Following the strike in October 1892 when the Grand Jury was considering the charges against some of the strikers, he instructed the jury that the forcible assumption of the functions of government by the strikers early in July was treason, because it was a ‘levying of war against the State.’\(^94\) In view of the unusual nature of the treason cases, Chief Justice Paxson instructed the jury – flanked by Judges Stowe, Kennedy, McClung and Porter, of the county courts – on the legal definition of treason and how it applied to Homestead:

> When a large number of men arm and organize themselves by divisions and companies, appoint officers and engage in a common purpose to defy the law, to resist its officers, and to deprive any portion of their fellow citizens of the rights to which they are entitled under the constitution and laws, it is a levying of war against the state, and the offense is treason; much more so when the functions of the state government are usurped in a particular locality, the process of the commonwealth, and the lawful acts of its officers resisted and unlawful arrests made at the dictation of a body of men who have assumed the functions of a government in that locality... Aliens domiciled within the state, and

---


who enjoy its protection, owe temporary allegiance to it are answerable for treason.  

In contrast to his predecessor Judge Agnew, Chief Justice Paxson made it clear that for the charge of treason to be committed the group did not have to ‘extend to every portion’ of a state’s territory’. 96 He held it was sufficient that the strikers usurped the power of the state ‘in a particular locality’ for the charge of treason. 97 More importantly, the then-Pennsylvania Chief Justice disagreed with his predecessor on the intentions of the striking workers. Their disagreement on intentions – which was being mirrored in homes across America – elucidates why treason is a wicked problem. 98 For Paxson, it was treason by the ‘maxim of criminal law that a man must be presumed to have intended that which is the natural and probable consequence of his acts. Thus, if a man assaults another with a deadly weapon, or aims a blow at a vital part, the law presumes that he intended to take life.’ 99 Judge Paxson’s words perfectly articulate how all the forces discussed in this chapter – contrasting rights, the scale of strikes, immigration and the economic consequences – point to why Homestead is not only relevant to the origins of American counter-espionage, but why it is crucial for it to be painstakingly

95 His charge is quoted in Senate Report no.1280, pp. xvii-xix; and Burgoyne, Homestead, pp. 205-206.
96 ibid.
97 ibid.
99 His commitment to individual rights meant he also held all the striking workers responsible, not just the Advisory Committee of the AA. See: Senate Report no.1280, pp. xvii-xix; and Burgoyne, Homestead, pp.205-206.
explored and assessed. A task not previously undertaken but one that this section endeavours to begin.
THE HOMESTEAD ‘MASSACRE’

The historian is – as German philosopher Friedrich von Schlegel so eloquently put it – ‘a prophet looking backwards.’¹ Similarly, but more acidly, Malcolm Bradbury’s History Man observed that history is merely hindsight raised to the level of a profession.² Yet, knowing how events ultimately unfolded is a gift to the social scientist interested in causation. More precisely, knowing the moment in time when the course of history changed and being able to explore it in detail is also a gift.

In terms of understanding the rise and fall of America’s traditional counter-espionage culture, the single most important date is 6 July 1892 – the Homestead Strike. The importance of the day is embodied by the federal legislature’s response, which stripped from the government the ability to hire detectives and guards from private firms. In turn, this paved the way for a federal government monopoly on the use of counter-espionage (both offensive and defensive). However, you will not find the date listed in any official or semi-official history of American counter-espionage.³ As the literature on the history of American counter-espionage within Intelligence Studies has concentrated on wars, Homestead’s relationship to counter-espionage is absent from the narrative. As such, the burden of proof is on

¹ In German: ‘ein rückwärts gewandter Prophet’.
³ The events at Homestead and their consequences are literally unmentioned in all Officials’ reports and books listed in Chapter One. See footnote twenty-one.
this chapter to demonstrate how significant that day was as a prelude to America’s new counter-espionage culture that would develop later in the Progressive Era.

The place to start is with one of the most impressive recent studies of the Pinkerton Detective Agency, David Ricardo-Williams’ *Call in Pinkerton’s*.\(^4\) In the first chapter he makes a claim that would likely confound most scholars in Intelligence Studies: ‘Curiously, the [Pinkerton] agency had virtually no wartime role in espionage or other investigations on behalf of the United States government [during the First World War]; in fact, it did more espionage for the French government and, of greater importance, even more for the Canadian government.’\(^5\) Ricardo-Williams is correct; on the surface this phenomenon is peculiar. As previous chapters have illustrated, the US had not organised a permanent counter-espionage bureaucracy (outside of war). Moreover, Pinkerton operatives were in high demand by large corporations across the US and by foreign governments and police forces.\(^6\) They were skilled experts in catching criminals and spies. Why then would the federal government not take advantage of this readymade home-grown secret security service and its operatives at the times of crisis, even in the


\(^5\) ibid., pg. 29.

short-term? The answer is as straightforward as it is perplexing: Congress in 1893 — at the end of a bill brought under the Department of Interior — made it illegal to employ private detectives or operatives from private detective firms in any government service. The prohibition specifically named the Pinkerton Detective Agency, in large part due to its fame as the foremost detective agency of its day, but also because of the backlash against the agency that was generated following the notorious Homestead Strike.7

This chapter deals with Pinkerton’s role in the Homestead Strike – ‘an epic in labor history’ – that equally ought to be considered ‘an epic’ in Intelligence Studies.8 Remarkably, while the story of Homestead is well told in Social and Labour History, how it connects to counter-espionage is unexamined.9 Much of the notoriety Pinkerton gained was due to its role in labour disputes breaking strikes. Much of that notoriety is deserved. The record on Homestead, however, needs to be corrected. It has, unfairly, become the cautionary tale against the evils of private policing and private security.10

---

7 A discussion of the Consequences of Homestead follows in the next chapter.
9 Cohen was the first to make the claim of the Homestead strike being ‘one of the most widely known and thoroughly researched strikes in American history’. See: Steven R. Cohen, ‘Steelworkers Rethink the Homestead Strike of 1892’, Pennsylvania History, Vol. 48, No. 2 (April, 1981), pg. 155.
Here, I endeavour not to defend Pinkerton, but to provide a more even-handed depiction of the strike; rooted in accounts from that time, and also the values of the time. Using the values of the time is particularly important. Too many histories on this subject are guilty of ‘presentism’ and project today’s standard back into to the nineteenth century, which divorces the events from their context. The ultimate purpose of this chapter is to properly situate Pinkerton’s actions, as once the event is carefully dissected, the ‘anti Pinkerton-law’ – dealt with in the next chapter – can be recognised for what it was – an overreaction to public outcry.

THE STORIFICATION OF HOMESTEAD

On 27 February 1989, Representative Michael McNulty (D-NY) submitted H.R. 2949, a ‘Study of Nationally Significant Places in American Labor History, Authorization’, for consideration by the 101st Congress. The purpose of the study was ‘to identify the key sites in American labor history, including the history of workers and their work, of organizing, unions and strikes, of the impacts of industrial and technological change, and of the contributions of American labor to American history.’ It would eventually be passed by the 102nd congress and become law on 17 August 1991. With a budget of $250,000 and a three-year time-span, the eventual study endeavoured to ‘identify, evaluate, and nominate as national historic landmarks those districts, sites, buildings, and structures that best illustrate or commemorate American labor history in its fullest variety’. On the basis of the study, new park units and sites connected to the history of American labour ‘in order of

---

12 ibid.
importance or merit’ would be made national landmarks. In the findings of the American Labor History Report, the first ‘national historic landmark’ nominated was the ‘Bost Building, Homestead, Pennsylvania’ – the building that ‘served as union headquarters in the 1892 Battle of Homestead.’

The Homestead Strike was a turning point in the history of American unionism, beginning a rapid process of decline for America’s steel unions that lasted until the Great Depression. This is an uncontroversial historical judgement made time and again. I do not dispute it here, nor would I wish too. However, the strike, more specifically its legacy and consequences, are neglected by those who have contributed to the historiography of American counter-espionage. Pinkerton’s tales of daring in dime novels are the early twenty-first century equivalent of super-hero movies, being both extremely popular and frequent for much of the mid-nineteenth century.

---

13 ibid.
16 See footnote two.
17 Allan Pinkerton, Claude Melnotte as a Detective, and Other Stories (Chicago, IL: W. B. Keen, Cooke & Co, 1875); Allan Pinkerton, The Expressman and the Detective. Chicago, IL: W. B. Keen, Cooke & Co., 1874); Allan Pinkerton, The Molly Maguires and the Detectives (New York, NY: Carleton, 1877); Allan Pinkerton, The Spy of the Rebellion; Being a True History of the Spy System of the United States Army During the Late Rebellion (New York, NY: Carleton, 1883); D.W. Stevens, The James Boys and Pinkerton; or, Frank and Jesse as Detectives. New York Detective Library 396 (New York, NY: F. Tousey, 1890); William Ward, Jesse James’ Nemesis; or, The Pinkerton Oath. Adventure Series 15. (Cleveland, OH: A. Westbrook, 1908). For a
Homestead Strike, however, was not just notable for its precipitous role in marking the decline of American unionism, it is also a critical moment in the decline of the private detective in America. This was a necessary corollary to the decline of America’s traditional counter-espionage culture, which had been dominant for almost half a century. Its decline would pave the way for the creation of a centralised federal bureaucracy that dealt with the security of the state outside of war.¹⁸

To understand the impact of the strike on the private detective business in America, it is necessary first to provide a précis to the strike itself. This is particularly important in the case of the Homestead Strike as many texts on the subject are severely hampered by clear and persistent impetuses to fit the ‘Homestead Massacre’ into a meta-narrative of class conflict and capitalist oppression in the US.¹⁹ Undeniably, the episode is important chapter in the full list of Dime Novels, see: Pamela Bedore, *Dime Novels and the Roots of American Detective Fiction* (London: Palgrave Macmillan, 2013), pp. 189-190.


history of labour in US, but precisely because of the storification of those who
wish to see the event deified in the annals of social and labour history.\textsuperscript{20} I am
not suggesting that the writing of history should merely be descriptive, the
historian ought to make judgments about causation; but the desire to
conform and uphold one’s ideological precepts ought to not over-ride the
need to uphold impartiality.\textsuperscript{21} However, all the actors involved in the

\textsuperscript{20}ibid. Unsurprisingly, as Homestead is a seminal moment in the history of American
labour relations, the strike has been almost exclusively scrutinised by Labour and
Social Historians. As there is a selection bias at play in those drawn to those
disciplines – with their interests including developments of labour unions, strikes,
protest movements and industrial relations – they lean towards the striking workers.
The histories range from being works of historical activism to being generally
excellent studies with slight biases.

\textsuperscript{21} The conclusion reached by American labour historian Bernard Hogg in July 1944 –
that ‘most of the accounts seem to be plagiarisms on Arthur Burgoyne,
Homestead’ – is still partly true in twenty-first century (though I would not state it as
forcefully as Hogg). The reason Hogg’s identifying Burgoyne’s Homestead as the
most influential text is significant is because it was written in 1893 at the request of
organised labor. Hogg’s own research on Homestead – in the form of an
unpublished PhD thesis, \textit{The Homestead Steel Strike of 1892} – is also largely

1892 (Pittsburgh, PA: University of Pittsburgh Press, 1992). For narrative and
ideology on the strike, see: Steven R. Cohen, \textit{Reconciling Industrial Conflict and
Democracy: The Pittsburgh Survey and the Growth of Social Research in the United
States} (Unpublished Ph.D. Dissertation, Columbia University, 1981); Jeremy Brecker,
\textit{Strike!} (Boston, MA: South End, 1997); Charles McCollester, \textit{The Point of Pittsburgh:
Production and Struggle at the Forks of the Ohio} (Pittsburgh, PA: Battle of
Homestead Foundation, 2008), pp. 140-147. The Strike is rendered in poetry, see:
(Fayetteville, AR: University of Arkansas Press, 2007), pp. 62-66. It has also been
immortalised in song, see: ‘\textit{The Homestead Strike}’: \textit{The Homestead Strike Songster}
(New York, NY: n.d.), reprinted in Philip S. Foner, \textit{American Labor Songs of the
Nineteenth Century} (Urbana, IL: University of Illinois Press, 1975), pg. 243; ‘\textit{The Fort
that Frick Built}’: Printed card, AFL Archives, (Washington, DC: n.d., 1892), reprinted
in Philip S. Foner, \textit{American Labor Songs}, pg. 243; ‘\textit{Father Was Killed by the
Pinkerton Men}’: Sigmund Spaeth, \textit{Weep Some More, My Lad}
244; George Swetnam, ‘Song of a Strike’, (1892), reprinted in Linda Schneider, ‘The
Citizen Striker: Workers’ ideology in the Homestead Strike of 1892’, \textit{Labor History,
Vol. 23, No. 1} (1982), pg. 60. Lastly, the strike has been made into a one-hour
documentary video, see: \textit{The River Ran Red}, dir. and prod. Steffi Domike and Nicole
Fauteaux, 1993.
Homestead strike are ‘villains’ – Andrew Carnegie and Henry Clay Frick, the capitalist bosses; the Amalgamated Association of Iron and Steel Workers (henceforth, AA); the Pinkerton Detective Agency; the anarcho-communists on the side-lines, and perhaps even in some people’s eyes the non-unionised workers. Despite the multitude of actors, the history of the strike is told, almost exclusively, from the perspective of organised labour. The solitary narrative on Homestead has shut out the perspectives of non-union workers (many of whom were black), the business and the Pinkerton guards.

sympathetic to the workers and their cause and has equally served as a base text for later studies. One of the major drawbacks of some of the more recent scholarship on Homestead is a tendency to interpret the strike in terms of modern values and concepts. This is also known as presentism. One example of presentism across post-1950s scholarship on Homestead is their handling of the Homestead workers’ wages. In real terms – Workers in the Homestead Mill were making between $1.40 per day at the lowest to $11.2 per day at the highest. Those numbers in modern America would be considered appalling for a steelworker. In 1892, however, it was significantly more than what the average American worker was earning. It was significantly more than what workers in Europe could expect to earn (see footnote forty-two). The majority of recent scholarship surveyed in this chapter only points out wages were going down whilst profit for the company was going up. However, when one takes into account that it was the nineteenth century, that the steel and iron industry was going through a phase of creative destruction, and Carnegie had recently invested millions into upgrading equipment at the Mill (a financial risk), the strike looks different. The problem lies in analysing the strike through the prism of present standards of living and present levels of resource scarcity, which wholly strips the actions of one of the parties involved from its necessary context.

For many picket line crossers, especially during nineteenth century strikes, were regarded as the lowest of the low. Men who betrayed their working-class comrades who were striking to get all workers a better wage. However, animosity from unionised workers to non-unionised workers at Homestead is as much about different incentive structures and race as it is about intra-class conflict. It is not a coincidence that the AA, until 1889, did not allow unskilled labourers to join – the majority of whom were blacks, Slavic or from other less established immigrant communities in the US. Paul Krause, an American Social Historian with a focus on race and ethnicity, has written one of the most comprehensive accounts of Homestead that incorporates perspectives from non-unionised African-American workers. See: Paul Krause, The Battle for Homestead, 1880-1892: Politics, Culture, and Steel (Pittsburgh, PA: The University of Pittsburgh Press, 1992).

It should also be noted that attempted strikebreakers were ‘mostly black and some foreign’ and the unions were white and, according to William Weihe the President
For the remainder of this chapter I endeavour to reassess the events at Homestead, bringing in new perspectives, including those of the guards who were attempting to perform elementary defensive counter-espionage duties on the day. The task is necessary for two reasons: first, to presage the ground for the following chapter were the consequences following Homestead, which precipitated an expansion of American counter-espionage, are assessed. Second, to incorporate into Intelligence Studies one of the moments that seem of paramount importance in discerning the expansive trajectory of American counter-espionage. Homestead is a vital case study to explore in understanding how counter-espionage intersects with individuals outside the regularly presented setting of states in war dominant in the literature.24

---

THE STRIKE

Succinctly, the Homestead Strike was an industrial lockout and strike which began on 30 June 1892 in Homestead Pennsylvania which cost the lives of twelve people.\(^{25}\) The strike pitted the company’s management (which included owner American industrialist and philanthropist Andrew Carnegie and American industrialist Henry Clay Frick), the strike-breakers (replacement workers) who had been hired, and the Pinkerton against members of the AA, who worked for the company.

Ostensibly, the strike was precipitated by a failure of the management of the Steel Mill — which in July had 3,800 employees — to reach an agreement with part of the workforce represented by the AA.\(^{26}\) Negotiations broke down on three key terms the two parties could not come to agreement on. The first was a change of the minimum tonnage rate from $25 dollar to $23 dollars, desired by the company.\(^{27}\) The second was a change to the expiration of the

\(^{25}\) It is referred to a lot of ways: the Siege of Homestead, the Homestead Strike, the Homestead Lockout, the Homestead Massacre or the battle on Monongahela. For continuity sake with previous historiography on the subject, I refer to it here exclusively as ‘the Homestead Strike’, but understand and appreciate it was technically a ‘lockout’ as the company closed its doors first.

\(^{26}\) The AA represented the iron and steel workers, not the machinist, blacksmiths, carpenters and other grades – about 325 other people in the mill. See: H. R. Report No. 2447, pg. 76.

\(^{27}\) ‘Tonnage rate’ is easiest to think about as a minimum wage. The compensation of steel works was ascertained by arbitrarily fixing the price of 4x4 standard Bessemer steel billets at $25.00 per ton as the minimum, and a slide scale above that according to the fluctuations in price of steel billets. The market price of these at the time the contract was entered into was $26.50 per ton. The company wanted to lower it to $22.00, the AA wanted it to stay the same but at the end moved to $24.00 – the management’s final offering was $23.00. Technological improvements made in the mill increased the number of tons produced per person, and so caused the wages of many of the tonnage men to be very high. In the testimony of both sides given before the committees of both the House and the Senate appointed to
scale in the future, so instead of its expiring on 30 June, for it to expire on 31st December.\(^{28}\) Lastly, the management desired reductions in staffing levels across the Mill – an overall average of about twelve per cent to different classes of workmen.\(^{29}\)

Carnegie, who was in Scotland at the time, gave Henry Frick — his operations manager — carte blanche to do whatever necessary to end the deadlock by the deadline of the previous contracts that expired on 1 July.\(^{30}\) Before becoming the chairman of the Company, and its manager during the strike, he had been for many years engaged in the manufacture of coke. In that industry, Frick had been engaged in bitter conflicts with his workmen. The story between Frick and the employees meant he had a reputation that preceded him. That reputation was not likely to promote friendly feelings among his employees in the Carnegie Works.\(^{31}\)

On the 23 June, one day before the limit fixed, a committee of twenty-five workers went to the offices of the Company at Pittsburgh, and held a

---

\(^{28}\) ibid. The company wanted it to move to the end of the year, as business was lower and customer contracts ended at that time. The Union wanted June because that is when output was at its highest.

\(^{29}\) H. R. Report No. 2447, pg. 126. The Homestead Mill was paying more money than its national competitors; and in the past year the company had made huge investments in technology (automatised hydraulic machinery), which increased output and reduced the need for not just workers but skilled workers.


conference with the manager, Frick and the superintendent, John A. Potter.\textsuperscript{32} It resulted in nothing. Neither side was willing to make serious concessions. When the meeting ended, it was clear that there was rising discontent on both sides. At the conference, the firm informed the AA that the Mill would continue to operate up until 1 July, but then the company would impose a lockout, as they had already informed the workers.\textsuperscript{33} The date was selected as that was the expiration date of the previous contract agreed between the management and workers from 1889, three years prior. Frick added that after 24 June, the company would negotiate with men individually as opposed to with an association.\textsuperscript{34} Both Frick and Potter – the general superintendent of the steel mills – had grave concerns about what would happen if an agreement could not be reached before the deadline. Anger towards the company was mounting. Whilst negotiations were ongoing, each morning the workers woke up to find effigies of the pair hanging throughout the works.\textsuperscript{35} As such, Frick and Potter expected violence and resistance if an agreeable settlement was not reached.

A settlement was unlikely, however, as the workers had both history (in terms of previous negotiations and (the threat of) violence on their side. The previous $25 tonnage rate was ‘negotiated’ three years earlier in July 1889.

\textsuperscript{32} Between 1891 and 1911, the official spelling of the city was ‘Pittsburg’, as opposed to the original and modern spelling ‘Pittsburgh’. When I refer to the city, I use the modern spelling. Quotes or footnotes from the period discussed use the spelling ‘Pittsburg’.

\textsuperscript{33} H. R. Report No. 2447, pg. 76; and ‘More Pinkerton Investigation’, Chicago Tribune, 3 August 1892. I focus more on the House Committee report than the Senate Committee report as they took up the question first and examined Homestead more thoroughly. The Senate took a wider remit, looking at the use of private guards in general.

\textsuperscript{34} ibid, pg. 76.

'Negotiated' is in quotes, as Carnegie officials agreed it staring down the barrel of a gun. Carnegie officials conceded that after the 1889 strike the AA essentially ran the Homestead site. The union contract contained fifty-eight pages of footnotes defining work-rules at the plant and strictly limited management's ability to maximise output. The 1889 strike is likely how the strikers expected the 1892 strike to go again. After initial talks failed on 1 July, the striking iron workers seized the town and drove off train loads of strikebreakers, many of them black, on 10 July. The workmen took total possession of the establishment. The incumbent sheriff of Allegheny County – sent in to restore order – proved incapable of doing his job and was 'powerless' to give protection or prevent destruction. The county sheriff could not control the rioting strikers because he could not find sufficient people who were willing to be sworn as deputies. They were afraid for their lives. Rightly so, when the sheriff did eventually get 150 deputy sheriffs who were sent to the Homestead Mill from Pittsburgh – the county seat – they 'were driven back and had their hats and coats taken from them', and were not permitted to enter the works.

In 1889, the Union held the advantage and the workmen's terms had been accepted, and so there had been no long strike. For its part, the AA saw substantial gains after the 1889 strike. Membership doubled, and the local union treasury had a balance of $146,000. The Homestead union grew

---

36 Brody, Steelworkers in America, pg. 53.
belligerent, and relationships between workers and managers grew tense.\textsuperscript{40} The AA probably believed they would win again.

Evidently the Company had in 1892 no expectation that the civil authorities would be effective before the lockout began, Frick had set 24 June as a deadline for the AA to accept his last offer. Failing that, on 1 July, the Amalgamated workers would be locked out. In the meantime, with the lessons of the 1889 strike firmly in mind, Frick had a nine-foot board fence, topped with barbed wire, built around the works and electric search lights installed. Frick also arranged for 300 private Pinkerton guards to be brought in, should the need arise, to protect plant property and other workers.\textsuperscript{41}

The Pinkerton agency had linked up before with Mr. Frick during a coke strike, when the company supplied 150 to 200 watchmen a day. He preliminarily arranged for Pinkerton men, some 300, to protect the facility and the perimeter, but not to go off the premises of the facility – so as not to provoke the striking workers. The price agreed was $5 dollars per man a day with $1 dollar going to each man himself.\textsuperscript{42} Pinkerton, from the perspective

\textsuperscript{40} Brody, Steelworkers in America, pp. 54-55.
\textsuperscript{41} Frick dealt with a Capt. Hinde, a Pinkerton representative. H. R. Report No. 2447, pg. 42
\textsuperscript{42} ibid., pg. 33. The Pinkerton men’s daily wage earning was significantly less than the steel workers at Homestead. The Pinkerton Agency charged $3 per day for the services of a regular operative, $8/day for a supervisor, and $12/day for Pinkerton himself. The average wages paid by the firm of Carnegie, Phippls & Co. at Homestead to laborers in the 199-inch plate mill, which was the largest in the works, was about $5/day. Put that in perspective, laborers in the US in 1880/90s made, on average approximately, $1.32/day, while engineers and machinists made $2.17/day. For Pinkerton wages see: Sigmund A. Lavine, Allan Pinkerton: America’s First Private Eye (New York, NY: Dodd, Mead & Company, 1963), pg. 21; For Homestead union worker wages, see: H. R. Report No. 2447, pg. iii; and for average US worker wages see: United States Department of Commerce, Historical Statistics of the United States: Colonial Times to 1970, Vol. 1 (White Plains, NY: Kraus, 1989), pg. 165.
of Homestead’s management, could fulfil the role of not only breaking the strike, but also protecting the mill itself. In Frick’s own words: ‘we felt that for the safety of our property, and in order to protect our workmen, it was necessary for us to secure our own watchmen to assist the sheriff and we knew of no other source from which to obtain them than from Pinkerton agencies, and to them we applied.’

As the 1 July approached, the works were shut down. On the 29th and 30th of June, in one department after another, fires were allowed to go out, and a ‘dead silence succeeded the accustomed roar and clangour … No agreement had been reached with the skilled workmen of the Amalgamated Association, and the works were closed’. By 1 July, when the company’s promised lockout was undertaken against the Amalgamated workers, the strikers formed an Advisory Committee, headed by Hugh O'Donnell, that proceeded to usurp the powers of government in Homestead, which ‘ruled the place with an iron rod’. The entire population of Homestead, from the Burgess down, was with the striking AA. The works of the Company were surrounded, and guards were posted about them.

Sheriff William H. McCleary, the incumbent law enforcement officer in Allegheny County, was ludicrously unable to deter the strikers or restore the semblance of order. Strikers formed a human barricade around the Carnegie works and refused to allow anyone to enter for any purpose. The Advisory Committee, from the beginning, made it clear that their primary concern was

---

44 Taussig, Homestead Strike, pg. 311
45 New York Times, 2 July 1892, pg. 1; and Taussig, Homestead Strike, pg. 313.
46 Other than Strikers and select company men.
to deny non-union men access to the plant. All strangers were stopped and interrogated. If any seemed at all suspicious, they were ordered to leave the town or face physical violence, or worse.

On 4 July, McCleary received a notice from the attorneys of the company that there was a strike, that they feared destruction of their property, and that it needed to be protected.47 On the 5 July, McCleary issued a proclamation: ‘...the rights of the workmen to work and the right of the owners to operate their works will be fully protected, and in case of failure to observe these instruction all persons offending will be dealt with according to law’.48 The sheriff, however, could not measure up to his rhetoric. He went to Homestead in person, and endeavoured to do his duty. He had a meeting at Homestead with the Advisory Committee, and evidently thought he had reached an agreement by which he would be allowed to put his deputies in the works. So McCleary gathered and dispatched twelve over-zealous deputies to guard the works. The workmen permitted them to check the premises, but they were not permitted to enter or stay. They were ‘compelled’ to return to Pittsburgh with something more than persuasion.49

The sheriff also sent out 400 notices to citizens asking them to report as deputies on 7 July at 9:00 am for duty at Homestead as a posse comitatus, to furnish their own arms and food, as the law required. On the morning only twenty-three reported in, a day late twenty-nine more men arrived.50 Although Frick did not know this, the Sheriff could not get any deputies to

49 ibid., pg. xx; and New York Times, 6 July 1892, pg. 1.
50 ibid., pg. 57.
go up to the mill to protect the property.\textsuperscript{51} He told the committee that he ‘knew’ it was not safe to go up to the mill with only fifty-two men. According to the sheriff, the majority who refused to serve did so as they did not want to ‘go up there and take the chance of being killed’.\textsuperscript{52} McCleary telegraphs to Pennsylvania’s governor, Robert E. Pattison, from 6 July ‘rung the bell’ in much the same way.\textsuperscript{53}

Under such conditions, when the state failed to provide even the modicum of security, large employers – like the Carnegie Company – with great property interests at risk would call upon other agents. In the nineteenth century and the early twentieth century, the private sector offered such defensive counter-espionage solutions to businesses.\textsuperscript{54} In this instance it was

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{51} ibid., pg. 56.
\item \textsuperscript{52} ibid., pg. 62.
\item \textsuperscript{53} The following is one of six telegrams McCleary sent to the governor: ‘The works at the homestead are in possession of an armed mob; they number thousands. The mill owners this morning attempted to land a number of watchmen when an attack was made on boats and 7 men on boats were badly wounded, a number of men on shore were killed and wounded; how many cannot say. The boat later came down and was fired on from the shore and pilot compelled to abandon pilot house. I have no means at my command to meet emergency; a large armed force will be required; any delay may lead to further bloodshed and great destruction of property. You are, therefore urged to act at once.’ For all six telegrams see: ‘Testimony of WM. H. M’Cleary’, in \textit{H. R. Report No. 2447}, pp. 57-59.
\end{itemize}
\end{footnotesize}
Pinkerton, the agency could furnish a large number of watchmen trained to guard and protect property from potential vandalism. On 4 July the 300 Pinkerton men Frick had arranged began their journey towards the mill. The arrival and planning of the guards was arranged with ‘absolute secrecy’ so no demonstration could be made en-route. The watchmen were to assembled at Ashtabula, Ohio, no later than the morning of 5 July, and were taken by train to McKees Rocks, upon the Ohio river below Pittsburgh, where they were transferred to two barges towed by a tug boat each. The Sheriff’s Chief Deputy – Joseph H. Gray – would meet the Pinkerton men at Bellevue station, just north of McKeess Rocks, and accompany them on the barges up to homestead. A sheriff was needed in case the men were required to be used as a posse. The barges, and their tugboats, were provided by a local business man, William B. Rodgers, who was in the coal and general steamboat business.

Once on the barges, the plan was to have the Pinkerton men land within the enclosures of the Homestead mill, disembark and secure the facility. The Barges would then be used to bring in non-union men so the Mill could begin operation again. The waterways were used so they would not ‘pass along any railroad, through any streets … so as ‘not to interfere with anybody’ or

---

55 The watchmen were mostly drawn from Chicago and New York.
57 ibid.
60 The barges were also refitted with bunks, so they would not have to sleep in the town and increase the chance of spillover violence or dispossession.
without causing ‘any breach of the peace or tending to excite the men who
gone on strike … the sole desire was to avoid by all means a breach of the
peace and inciting or aggravating a riot.’

It did not take long for the plan to fail. Quite soon on Monongahela river, a
boat’s engines broke down and it was disabled. The boat could not be
repaired for the remainder of the journey. The remaining tug boat – Little Bill
– would have to tow both barges, and left the disabled tugboat to lie there
for it to be repaired or towed later. On Little Bill was Mr. Gray, who was
representing the Sheriff, several of Potter’s assistants, Potter himself, Captain
Rogers and his crew. The Pinkerton men were on the barges, relaxing. They
had been given uniforms, guns and ammunition as a contingency, but they
were boxed up.

The movement was well planned; but it was discovered by the strikers
upriver. On the 6 July, during the dull grey dawn of a supposed summers
morning, the flotilla was spotted coming down the Monongahela river toward
Homestead. Whistles were blown, guns were fired, very largely at least, high
in the air, to arouse the people, but some bullets ricocheted off the barge.
Two-thirds of the Pinkerton men were asleep until the firing on the boats
commenced near Homestead around twenty-five minutes, about a mile and
a half, before they reached the landing spot. A thousand-man mob had
assembled at the landing site within five-minutes.

---

61 ‘Testimony of Henry C. Frick’, in H. R. Report No. 2447, pg. 35; and ‘Testimony of
64 ‘On Pinkerton Detectives’, The Pittsburgh Post-Gazette, Saturday 9 July 1892.
When the boats reached their destination, at around 6:00am, the mob crashed through the fence, charged into company property. Some men from the mob moved towards the barges and announced the men aboard were forbidden from coming ashore, whilst others prevented the guards from the flotilla from tying up and the putting out of the gang plank. Despite the blockade, some Pinkerton guards, with their leader, Captain Frederick Hein de, attempted to disembark. According to the owner and captain of the boats – the aforementioned local businessman William Rodgers – a young man ‘threw himself flat on the stage’ as he, with others, had the ‘evident intent’ of attempting to get on the barges.  

Meanwhile, on the barges, the Pinkerton guards were trying to keep the men on the shore off with oars. Hein de stepped to front towards the gang plank to shove the prone man aside. Then, according to multiple accounts, the young man lying over the plank pulled out a revolver and ‘fired the first shot that did any damage’. Heinde was shot through the thigh. The shot knocked

---

65 ‘All Quiet On the Lock’ The Pittsburgh Post-Gazette, Monday 11 July 1892.
66 This includes; A journalist on the scene, W.M.L. Danahey; the boat’s captain William Rodgers and John Kennedy, an employee of Capt. Rodgers. Kennedy claimed that the first shot was ‘at the men on the barges’ and that he was standing ‘at the lower end of the barges; … on the inside barge next to the shore, and I could see everything that was going on’. It also includes Deputy Sheriff Gray, whose account of events aligns with few exception, with the boat’s captain, Rodgers. Also when asked Gray swore ‘most positively’ that ‘no gun was fired from that boat until after there had been very considerable firing from the front’ See Testimonies of W.M.L. Danahey, William Rodgers, John Kennedy and Deputy Sheriff Joseph H. Gray, in H. R. Report No. 2447, pp.139-141; pp. 51-54; 133-138; 115-124; One of the shortcuts a reader can make to ascertain the biases of the writers on the Homestead Strike, is who they claimed fire first. The question, however, is wholly irrelevant a smoke screen by defenders of the strikers to justify their violence. As if judgements of history would be less severe if the shots fired were in self-defence. What is certain that the workmen were resisting by force entrance on the property of the Company, an act wholly illegal.
him over backward. A torrent of fire swept the men on the plank.\textsuperscript{67} Heinde was hit again. Another guard, named Klein, was killed instantly. Four others were wounded.\textsuperscript{68} In his testimony, Rodgers then goes on to claim that the crowd ‘began firing from the bank, as well as on the river’s edge near the barge’.\textsuperscript{69} Two Pinkerton men were shot at this time at the head of the barge, and one was shot at the stern of the boat. All this happened ‘before the Pinkerton men fired’.\textsuperscript{70} Rodgers noted that the guns the Pinkerton men had were in boxes with ‘other stores’ on the boats before they arrived. When firing commenced from a distance ‘they unpacked the arms, and were engaged in it during the firing’.\textsuperscript{71} The unpacking continued whilst those onshore continued to fire – suggesting the Pinkerton men were not landing expecting a fire fight.

The Deputy Sheriff, Joseph Gray, corroborates this account saying that, whilst on the boat, he boarded at quarter to midnight on the 5 July, he did not see any arms.\textsuperscript{72} Potter’s claimed to only see eight rifles, once the firing had started and the Pinkerton unpacked the rifles.\textsuperscript{73} Moreover, the wooden barges had not been prepared for firing by sheet-iron lining, making preparation for defence impossible. Lastly, Potter, Captain Heinde, other Pinkerton officers and Deputy Sheriff Gray were called into the superintendent’s cabin. In the meeting Potter and Gray informed the

\begin{flushleft}\textsuperscript{67} Leon Wolff, \textit{Lockout: The Story of the Homestead Strike of 1892} (London: Longman’s, 1965), pg. 110. \\
\textsuperscript{68} ibid. \\
\textsuperscript{70} ibid. \\
\textsuperscript{71} ibid. \\
\textsuperscript{73} ‘Testimony of John A. Potter’, in \textit{H. R. Report No. 2447}, pg.130. \end{flushleft}
Pinkerton officers that under no circumstances, except in self-preservation, or until someone in their party was wounded or killed, should the men fire.  

Most of the eyewitnesses examined claimed the men on the barge did not fire first or fire back until several shots were fired from the riverbank. Firing both ways lasted anywhere between two to ten minutes, mostly from the shore, then it ceased. Two strikers were killed and several more were injured. Two men on the bank were also killed and several others wounded. The men on shore retreated behind the barricades, ironically the ones Frick had installed to protect the mill. There were several Pinkerton men seriously wounded. Gray and Rodgers, plus three to five leaders of the watchmen and potters met and decided that the wounded had to be taken care of. Thus,

75 This includes a report from a journalist, W.M.L. Danahey, who claimed the shots were fired from the bank first. According to Pinkerton one agent, Klein had been shot dead and five other ‘watchmen’ shot and wounded before the men began to unload the weapons and fire in self-defence. And a crewman from the boat, John T. McCurry, who was shot in the groin, told a Chicago tribune reporter ‘I have my god to meet, and if I am to die now I am willing to take an oath that the workmen fired first, and that the Pinkerton men did not shoot until some of their number had been wounded’. Also John W. Holway, one of the approximately twenty-five people in total questioned by the Senate’s investigation, makes similar claims, though he was hugely critical of Pinkerton. After Homestead – under questioning from Senator J. H. Gallinger, Chairmen of the Senate Committee – he claims he was as an innocent victim, hoodwinked by his Pinkerton employer. Lastly, some worker eye-witness testimonies collected later indicate fire from the shore first. See: ‘Testimony of John W. Holway’, in Senate Report no.1280’, pp. xiv-xv, 68-79; also see: ‘Testimony of W.M. L. Danahey’, in H. R. Report No. 2447, pp.139-141; ‘Story of a Boathand’, Chicago Tribune, 7 July 1892; and John Fitch, ‘The Steel Workers, vol. 3’, pp.108-137.
76 I say ‘mostly from the shore’ as men in the barge interviewed by Pinkerton said they withheld their fire as the strikers placed ‘women and children in front’ and fired ‘from behind them’. The victims of the exchange of gunfire seem to attest to the lack of indiscriminate fire from the barge, as none of the dead or seriously injured on the day were women or children. ‘Testimony of Robert A. Pinkerton’, in H. R. Report No. 2447, pg. 190.
Little Bill would go back for medical attention, whilst the Pinkerton men on the barges were to remain, on the assumption that the crowd that had amassed and now dispersed would not return, and in an hour or two a peaceful landing could be had. None of the men on Little Bill were eager in their testimonies to make an overt act, and order something like a charge.\textsuperscript{78}

The tugboat pulled back from the site and headed towards Port Perry to get the wounded on a train, and made arrangements for them at the hospital so they could receive medical attention for their wounds, otherwise they would have bled out. According to Rodgers, six were shot – five made it back and one died before getting to the hospital.\textsuperscript{79}

According to Deputy Sheriff Gray, when the boat went to take the wounded back, the Pinkerton men on the barge would go into the mill and take possession without further resistance, as the mob had retreated from the river bank. However, Rodgers’ steely first mate, Kennedy, made it clear that no Pinkerton men left the vessel to attempt to take possession of the property once the firing had ceased, the tugboat had withdrawn, and the barge was alone. ‘They were very much frightened; they were quiet’ he told the committee.\textsuperscript{80} In effect, the remaining Pinkerton guards aboard the two barges were held under a gilded siege, punctuated with intermittent gunfire.

The uneasy peace held until Little Bill attempted her return, around 11:00am, to tow the stranded barges and broke the restless quiet that had held temporarily between the Pinkerton guards on the water and the strikers on

\textsuperscript{78} ibid., pg. 47.
\textsuperscript{79} ibid.
shore. Once the boat was in range, men from the shore opened fire once again. The fire was not only from small arms, but .45 calibre Winchesters and from two civil war cannons that had been turned and used against the barges and boats.\textsuperscript{81} Though almost all the cannon balls missed the ships, one shell hit a barge and tore off the roof, exposing the men inside, who went into panic.\textsuperscript{82} The firing was so intense against the tug boat, the pilot and engineers fled their posts for shelter, and the boat was set adrift. Fortunately, the vessel drifted away from the hail of gunfire emanating from the shore and not into it, and \textit{Little Bill} was (eventually) carried by the current out of range.

For many of the Pinkerton men, \textit{Little Bill} drifting downriver must have represented their last hope of rescue; it was now a false dawn. The reality of the situation was setting in among the Pinkerton men and morale was low. The strikers were also not yet finished attempting to reap bloody vengeance for their dead. First, they set fire to a raft loaded with oil-soaked wood, which they propelled towards the barges.\textsuperscript{83} The Pinkertons could see the flaming raft floating menacingly toward them. Fortunately, however, the raft burned itself out and sunk before reaching either vessel. The relief of the Pinkerton men would be short lived – the strikers next set fire to a railcar laden with barrels of oil, which they pushed down the hill toward the river bank. This time, the Pinkerton guards were only spared when the car stopped on the wharf before again reaching either ship.\textsuperscript{84}

With each attempt to burn the men alive, the schemes became wilder and more sinister. The strikers also tried to dynamite the ships, using the smoke

\textsuperscript{81} Krause, \textit{The Battle for Homestead}, pg. 22.
\textsuperscript{82} ibid.
\textsuperscript{83} Wolff, \textit{Lockout}, pp. 116-128.
\textsuperscript{84} ibid.
as cover; that failed. They next poured oil into the water around the ships, trying to create a slick that they could then ignite – this also failed. All the while, the strikers pounded the barges with volleys of gunfire that claimed the life of one Pinkerton, Thomas Connors, who slowly bled to death from his wound.85

After the failed rescue attempt, with wounded on-board screaming and bleeding out and ongoing gun and cannon fire in the background, for many the only options left were imminent death or surrender. The majority of men wanted to surrender; a few believed they would be killed if they did so. The decision was made to surrender, but it was not taken lightly. One man was so determined not to surrender he shot himself through the skull rather than leave his fate in the hand of the strikers. The Pinkerton guards tried to signal their surrender twice by raising a white flag, both times the flag was greeted by gunfire.86

At about 6:00 p.m., two Pinkertons emerged from one of the barges, holding white handkerchiefs. The mob wanted to kill them on the spot, but O’Donnell and other Advisory Committee members got the strikers to agree to let them negotiate surrender terms. They proceeded to negotiate with O’Donnell and two other advisory committee members. O’Donnell described the terms of surrender. He promised them safe passage from Homestead. More important, he personally guaranteed the Pinkertons’ safety, a crucial part of getting them to leave the (relative) safety of the ships’ cabins. Yet, as O’Donnell escorted the first group of Pinkertons off the ships, the crowd

85 ibid.
86 ibid, pg. 116.
began screaming, ‘KILL THE DETECTIVES!’ It quickly became apparent to the Pinkerton watchmen that he would be unable to keep his promise.

What followed next, O’Donnell almost entirely omitted from his testimony. The committee’s final report described ‘the character of the injuries inflicted upon the Pinkertons ... were too indecent and brutal to describe.’ Though, since the report the information has come to light. It is worth sharing to underscore the saliency of this chapter’s pursuit, of providing a less partisan narrative so an analysis of the counter-espionage consequence of Homestead can take place. The strikers were not strictly virtuous nor the Pinkertons entirely depraved.

The Pinkerton men were marched through the town, but the strikers formed a ‘gauntlet’ nearly 600 yards long through which the men were forced to march. From both sides, the strikers tripped and hit the Pinkertons and ‘inhumanly’ beat them. Men and women used whatever was handy — sticks, clubs, rifle butts, stones — to beat the defeated agents. They were also robbed of their watches, money and clothing, clubbed and stoned. One woman even knocked a Pinkerton’s eye out with the tip of her umbrella. The gauntlet seriously injured approximately half the Pinkertons. One of them, James O’Day, was so badly beaten that he later threw himself from a train due to the delirium, caused by the ‘fearful beating after having surrendered’. All the while, shocked reporters watched on. Two watchmen

87 Krause, The Battle for Homestead, pg. 33.
89 Taussig, ‘Homestead Strike’, pg. 315.
91 ibid; and H. R. Report No. 2447, pg.191.
92 Kahan, The Homestead Strike, pg. 81.
men – the aforementioned Connors and Edwards, who had been wounded during the firing – were beaten and eventually succumbed to their wounds.

After the majority of Pinkerton men had passed through the gauntlet into the works, the strikers descended on the barges, stripped the ships of useful items then finally, achieving what they had been attempting for most the afternoon, set them ablaze. Once the burning ships disappeared into the Monongahela, the crowd assembled the beleaguered and battered Pinkertons to march through Homestead’s streets. Taussig recounts, ‘Beaten, bruised, half dead with hunger, wounds, and fright, they were kept in a large rink, or theatre, until midnight, when they were marched under guard of the Amalgamated Association.’\textsuperscript{93} The large rink served as a temporary jail, but the abuse from the residents did not stop. The violence got so intense that some of the workers appointed by the advisory committee to guard the Pinkerton men hand to use physical force to protect them from further beatings. Only the intervention of Burgess McLuckie prevented the situation from deteriorating into vigilante murder. At midnight, they were marched under guard by the members of the AA to the railway station, and transported by special train out of Allegheny County.\textsuperscript{94}

\section*{AFTERMATH}

The 'battle' of July 6th, as the newspapers throughout the country described it, was, for a moment, a victory of the strikers.\textsuperscript{95} Homestead soon was more thoroughly than ever under the governorship of the AA’s Advisory

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{93}Taussig, ‘Homestead Strike’, pg. 315.
\item \textsuperscript{94}ibid.
\item \textsuperscript{95}ibid.
\end{itemize}
\end{footnotesize}
The state no longer had any sway in the town as the committee had fully usurped its power. In the aftermath of Pinkerton’s defeat both local law enforcement and private sector counter-espionage had failed. The Advisory Committee’s reign, however, would be short lived. Frick asked Pennsylvania’s Governor, Robert Emory Pattison, for help. Pattison responded by sending in 8,500 soldiers of the state National Guard. Four days later, state troops occupied the plant without incident. The power of the Advisory Committee quickly vanished.

General Snowden, the man in charge of the Pennsylvania militia, was no fan of the striking workers. He was sure that ‘Philadelphians can hardly appreciate the actual communism of those people. They believe the works are their’s [sic] quite as much as they are Carnegie’s.’ Conditions at Homestead he characterised in three words: ‘revolution, treason, and anarchy’. Later, after the strike, General Snowden did not hesitate to say for publication that, in his opinion, death would be rather a mild penalty for members of the Advisory Committee. Unsurprisingly then, when his soldiers marched in, they ignored to the advisory committee and deferred to the sheriff under whose orders the troops, in the eye of the law, were acting. It was the same sheriff – Mc Cleary – whose deputies had been so unceremoniously hustled out of the town on the 5 July. The plant was turned over to the militiamen on 12 July. By 15 July, the plant was again operational with non-union men,

---

97 Pittsburgh Chronicle Telegraph, 30 July 1892.
but the state militia was still needed. By 22 July, non-union black workers and unionised white workers were engaged in a race war.  

Black iron puddlers from Richmond, Virginia were assaulted in the street; their separate boarding house (Company property) dynamited. Many local businesses refused to serve Pennsylvania’s first black steelworkers. Racial tensions exploded on 13 November when two-thousand white workers attacked the families of fifty black families living in a shantytown. Gunfire was exchanged; many were severely wounded.

Homestead equally roused those anarcho-communists who saw the strike as a crucial confrontation against capitalism in a series of clashes within an emergent class war. During the strike, on the 23 July, Alexander Berkman, a leading anarchist who would eventually become well known for his writings in the twentieth century, attempted to assassinate Frick. After missing two shots, Berkman was tackled to the ground, though he did manage to pull out a dagger and stab Frick three times. Berkman’s scheme was planned with Modest Stein and Emma Goldman. The assassination attempt failed to arouse the working class to unite and revolt against the capitalist system. In fact, the act drew wide censure and isolated those in the newspapers who had written sympathetically on the strike. It is important to add, there is no evidence that this act was in any way instigated by the strikers, or by anyone associated with them, but certain strikers were not done concocting their own dastardly schemes. Early in 1893 it was carried in the newspapers that certain

100 Hogg, *Homestead Strike*, pg. 111.
102 ibid.
103 Skrabec Jr., *Henry Clay Frick*, pp. 132-133.
104 ibid.
men prominent in the strike had been arrested for trying, in the course of the summer, to poison non-union workers inside the works. The accused were tried in court and convicted by a jury.\textsuperscript{105}

Strikers in other Carnegie-owned plants where members of the AA were employed continued through the course of July. This only delayed the inevitable.\textsuperscript{106} After a hopeless struggle, the strike was officially declared ‘off’ by the AA on 20 November. The men employed were thereafter dealt with individually, and were employed on the terms which the company had laid down in the letter on 30 May.

The House Committee investigating Homestead pushed Frick as to why he had not pressed the sheriff to furnish 300 men from the county to ‘do their duty as citizens and protect you in your property rights?’ His answer was the same he had given numerous times: the sheriff in the 1889 strike had failed to do so. Urban police departments were a relatively new thing (the first modern police force was founded in Boston in 1838) and many towns and villages continued relying on sheriffs, an office that was clearly inadequate to deal with the large-scale labor uprisings that began taking place in the nineteenth century. As economist Taussig whimsically put it shortly after the strike, ‘the sheriff’s duties are chiefly of a formal sort in the enforcement of suits and judicial proceedings. His deputies are mild and inoffensive personages. The authority to summon a posse of citizens is hardly more than a form. A serious exigency unhorses him.’\textsuperscript{107} Pinkerton filled a gap that state government was woefully unprepared for. It was securing the state, before

\textsuperscript{105} Taussig, ‘Homestead Strike’, pg. 317.
\textsuperscript{106} Sympathetic and solidarity strikes also occurred at some of the non-union works and non-Carnegie-owned plants in Pittsburgh and the neighbourhood.
\textsuperscript{107} Taussig, Homestead Strike, pg.312.
the concept of national security was in use. It offered defensive counter espionage services – as detailed earlier – as well as offensive solutions too.

At the committee following the fiasco, Robert Pinkerton claimed that the ‘watch’ business and the ‘detective’ business were separate, or as he put it ‘two different institutions’. However, the reality of his family’s business was more complex, with both complementing each other. His brother, William, claimed at the hearings that when attempting to deal with bank and train robbers they had paid for information from criminals and had used criminals, but not in the use of ‘peace officers’. On William’s part, this was a clever use of language. Peace officers by their very verbiage and nature are non-offensive. However, the evidence is almost immutable that offensive methods of counter-espionage were often used alongside ‘peace officers’ when the opportunity presented itself, especially if it meant defusing a crisis quickly for a client.

Yet, from the available documentary evidence it is difficult to tell the proportion of Pinkerton’s overall work that one might call ‘investigative’ (bringing criminals to justice); ‘passive/defensive’ (security and guarding); and that would be classified as ‘preventative’ (infiltration and spying). Also those cases that called for a combination of activities, as the three concepts – detection, investigation and prevention – worked best in tandem. However, what is clear from the files, and from the investigation into the Homestead Strike, is that the agency was retained by major corporations and

110 Allan Pinkerton, Robert and William’s father, and founder of the agency that bears his surname makes this clear in his books. Accepting a case in one of his biographical novels, Allan Pinkerton noted that ‘a criminal enterprise could be successfully broken by infiltration’, his favourite method of ‘detection’. See: Horan, The Pinkertons, 162.
So effective was this technique employed by the agency, that in 1888, for example, two Pinkerton detectives were able to have themselves elected as voting delegates of the Reading, Pennsylvania, local chapter of the Brotherhood of Locomotive Engineers, and in that capacity attended the union's annual convention, providing ‘elaborate reports on the issues and discussions’ immediately thereafter. Moreover, a later witness to the House committee on Homestead, Terrence V. Powderly, claimed one man named Frank McGrane had become a member of the Knights of Labor under another name, prompted by a Pinkerton detective, in order to ‘worm himself’ into the organisation, and, if possible, ‘implicate them in some unworthy transactions’. Powderly also produced two affidavits from men in the New York Central Strike in August 1890, that claimed their men were encouraged by a Pinkerton detective named Peter McCallan to incite the workers by acting as agent provocateurs.

Pinkerton’s role in the ‘Homestead Massacre’ was, however, the strike that prompted congressional backlash. As Taussig put it at the time, ‘the hatred of the labour classes against the Pinkertons ... is beyond description. They are regarded as vile hirelings, assassins employed by monopolists for the oppression of the labouring man.’ He was not wrong. When asked why the

---

112 Morn, _The Eye that Never Sleeps_, pg. 98; _Pinkerton Reports of the Annual Convention of the Brotherhood of Locomotive Engineers_, Burlington Papers, Newberry Library (Chicago).
113 Name might have been McCrane. ‘Testimony of Terrence V. Powderly’, in _H. R. Report No. 2447_, pg. 227.
114 Ibid., pg.230
115 Ibid.
Pinkertons faced hostility and their landing resisted, one of the members of the Advisory Committee, O’Donnell, answer was illuminating: ‘Pinkertons are armed invaders – men who are thoroughly antagonistic to all labouring interests and allies of the capitalists.’\textsuperscript{116} John McLuckie, union member and Burgess of the borough, added that: ‘our people as a general thing think they [the Pinkertons] a horde of cut-throats, thieves, and murderers and are in the employ of unscrupulous capital for the oppression of honest labor.’\textsuperscript{117} That Pinkertons were at the mill ‘under pay, and the person who employed that force was safely placed away by the money that he has wrung from the sweat of the men employed in that mill, employing in their stead workmen to go there and kill the men who made his money.’\textsuperscript{118}

William Pinkerton’s explanation as to why his men were so hated seems to be accurate – and is precisely why this re-examination of Homestead was needed: ‘the acts of the strikers, after our men surrendered, would be a disgrace to savages. Yet, because done in the name of organized American labor, sympathy, if not encouragement, is shown for such deeds by part of the press and political demagogues.’\textsuperscript{119} This is not just true of the press and politicians in 1890s but also of some early historians that provided the first narrative on Homestead that attempted to justify or contextualise the actions of the strikers. The best example is from one of the most influential Labour Historians on the historiography of Homestead, J. Bernard Hogg, who wrote: ‘If a band of determined but ordinarily peaceable men suddenly became transformed into a blood-thirsty mob, and if their wives displayed traits long thought obliterated from civilized people, it must be remembered that for

\textsuperscript{116} H. R. Report No. 2447, pg. 97.
\textsuperscript{117} ibid., pg.100
\textsuperscript{118} ibid., pg.105.
\textsuperscript{119} ibid., pg. 191.
the first time the Pinkertons were at bay and the accumulated wrath of labor was wreaked upon them.’ In essence, Pinkerton was experiencing the rational consequences of its role as a counter-espionage bureau in suppressing labour in defence of the day’s dominant political ideology.

Even if it was a private firm, Pinkerton behaved like state counter-espionage bureaus the world over, breaking the law to uphold the law. The strategy of blending offensive (often illegal) methods of counter-espionage with permissible defensive methods was myopic, and could not but fail. Even if Pinkerton was in the right at Homestead, in the past it had stepped outside the law one too many in confronting striking workers. If the agency did not have such a blemished history, perhaps it could come out from the Homestead Strike unscathed. The agency’s reputation (both good and bad) and the public, press and political frenzy following the strike meant Pinkerton could not escape the consequences Congress would impose. The agency would bring itself down, and in its slow decline, trigger the emergence of a federal counter-espionage bureau.

---

120 Hogg, ‘Public Reaction to Pinkertonism’, pg. 179.
121 Perhaps not, someone else would likely have taken their place.
CONSEQUENCES OF HOMESTEAD

The action of 6 July, and events connected therewith, led to twelve dead, very many wounded, 163 indictments for conspiracy, aggravated riot, treason, and murder; though no convictions followed. Following the Homestead Strike almost all parties wanted to put the debacle behind them, especially the Pinkerton National Detective Agency. During the strike and its subsequent aftermath, the public attitude toward organised labour started to shift from open hostility to acceptance. Conversely, the attitude towards private detectives and their role in undermining the strikes and worker’s ‘rights’ moved from acceptance to open hostility. Homestead was a public relations nightmare for Pinkerton, which attracted national attention and then national outcry. To those within the labour movement, Pinkertons were ‘criminals of the lowest order-men who were not allowed to live in civilized society, but ... like rats and other vermin, make their habitation in the slums and sewers of the great cities, and only come out of their holes when they are employed by him [Pinkerton] to commit murders.’

---

When not being compared to vermin, they were also being compared to the Hessian mercenaries during the Revolutionary War – or Russian Cossacks.\(^3\) Similarly, the official organ of the Knights of Labor spoke for wage-earners when it argued that Pinkerton guards were ‘from the lowest class of society—a class notoriously unprincipled, worthless and venal.’\(^4\) These types of denouncements, before and after Homestead, were to be expected from organised labour – they had been the principle target of Pinkerton intrigue and received the blunt end of their illicit practices for over a decade. The statements are a clear example of preaching to the choir. What changed after Homestead, however, was Pinkerton found itself ‘denounced in a barrage of editorials’ in most leading newspapers.\(^5\)

Criticism was not new. In 1887 editors of The Nation had argued that the reliance of business on mercenary forces was evidence that the ‘nation had sunk into a form of medieval barbarism similar to the feudalism of the twelfth century’. But the hostility was now of a different magnitude.\(^6\) Across the country, papers lambasted Pinkerton. The New York Times’s Editorial of 7 July 1892 wrote: ‘There is no doubt that the employment by capitalists of a large


\(^6\) Pinkerton’s Men, The Nation, 27 Jan 1887, pg. 70.
force of trained private police in case of trouble with workmen has a very exasperating effect. A force of this kind causes fierce antipathy where regular officers of the law might command respect and submission.’ The Boston Advertiser said ‘to call them [Pinkertons] officers of the law is to make a mockery of language.’ The St Joseph News decried, ‘the only good thing to be discerned in the horrible event of yesterday is the fact that it may be the beginning of the breaking up of this infamous Pinkerton organisation.’ The Atlanta Constitution struck similar beats, ‘when capitalists employ hirelings to defend themselves or their property they forfeit the protection of the state. The Pinkertons are as obnoxious as any other mob.’ Lastly, the Chicago Tribune, the leading paper from the city which Pinkerton called home contended: ‘For these purposes they [Pinkerton guards] are worse than useless. They provoke riots rather than quell them, and cause disorder instead of allaying it. They are no good.’

Following Homestead – on the question of ‘Pinkertonism’ – an astonishing degree of unanimity across the country was exhibited. From almost all sectors of society came censure and objection to the employment of private detectives. However, though the public and media were explicit in their condemnation of Pinkerton, and their use as guards and strike breakers, this did not necessarily materialise as sympathy and solidarity with the cause of

---

7 The New York Times, 7 July 1892, pg. 4.
8 It is necessary to also point out that Chicago probably had some of the worst labour-related riots and strikes. Other papers which had leader articles unfavorable to the Pinkertons include: Boston Advertiser; Philadelphia Ledger; Topeka Capital; Detroit Free Press; St. Joseph News; Atlanta Constitution; Kansas City Star; Quincy Whig; Boston Journal; Elgin News; Rockford Republican; Philadelphia Record; New York World; Joliet News; New York Times; New York Commercial Advertiser; Omaha Bee; New York Press; the Washington Critic; New York Herald; and lastly (but by no means least, as it was the most scathing) the Chicago Tribune. See ‘The Pinkertons’, Chicago Tribune, 10 July 1892 and ‘The Critic’, Chicago Tribune, 9 July 1892.
the Amalgamated Association of Iron and Steel Workers. The majority of the public were not willing to jettison America’s twin economic rights that had thus far built the nation, private property and freedom of the individual together with their inalienable right of contract. The fact that the strikers took over the facility and prevented the use of non-union workers was perceived as subversive and caused much chagrin outside organised labour.10

Strong anti-Pinkerton sentiment was enough, however, to get the attention of the national legislature. Since the public felt so strongly on the subject, it was inevitable that politicians would get involved. The publicity of the event, the public outrage plus the exposure participation in an enquiry would garner, meant congressmen would pile on the bandwagon in condemnation of Pinkerton. This condemnation, in turn, would ultimately lead to a federal prohibition on hiring private guards or detectives. However, legislation generated by a moral panic that is thrown together without much contemplation is a common source for poorly considered policy. The intentional foundational values that had constricted the creation of centralised counter-espionage would ultimately be critically undermined by the restrictions on private police in America (the unintentional foundational value).

10 Congressional Record, 52nd Cong., 1st sess., Vol. 23, pt. 6 (Washington, DC: Government Printing Office, 1892), 22 July 1892, pp. 6554-6555. Provides an example of twelve newspapers between 6 July and 16 July had leader articles that expressed the opinion that ‘the employer or manager of any business has a perfect right to manage and conduct his business in his own way to please himself’.

257
Homestead was the bloody labour dispute that drew the ire of Congress and precipitated the collapse of private sector counter-espionage. Before then, few in Congress supported getting involved in the issue. The issue gathered pace in 1890 after the New York Central Strike, when John Quinn (D-NY), a New York congressman, presented a petition to Congress asking that they outlaw the private guard industry, to little avail.\footnote{Aaron Brenner, Benjamin Day and Immanuel Ness (eds.), \textit{The Encyclopedia of Strikes in American History} (Armonk, NY: M. E. Sharpe, 2009), pg. 52.} In January 1892 populist Congressman, Thomas E. Watson (P-GA), began his fight against ‘standing body of armed militia which corporations can hire,’ introducing a resolution and a bill calling for an investigation and control of such agencies.\footnote{Thomas E. Watson, \textit{People’s Party Campaign Book: Not a Revolt, It Is a Revolution} (New York, NY: Arno Press, 1892), chap. XV, pp.127-198.} His bill lay in committee and ‘went to sleep there’. Even after an impassioned plea from the floor and in committee, no action came of it.\footnote{Congressional Record Vol. 23, pt.1-6 (52nd Cong., 1st sess.), 9 February 1892, pg. 993; 12 May 1892, pp. 4222-4225 and 7 July 1892, pp. 5862-5868. Also see: C. Vann Woodward, \textit{Tom Watson: Agrarian Rebel} (New York, NY: Oxford University Press, 1963 [1938]), pp. 203-506.}

On 12 May 1892, William Jennings Bryan (D-NE) told Congress to applause that ‘governments are organized to protect life and property. These functions should not be transferred to private individuals and hired detectives until we are ready to acknowledge government a failure. It is not fair to compel corporations to protect their property in this way, nor is it right that the safety and even life of the citizen shall be imperilled by a private and irresponsible soldiery. Let public order be preserved by public authority.’\footnote{Congressional Record Vol. 23 (52nd Cong., 1st sess.), 12 May 1892, pg. 4225; and Thomas Weston Tipton, \textit{Proceedings and Collections of the Nebraska State Historical Society, Second Series, Vol. IV.} (Lincoln, NE: The Nebraska State Historical
speech, the national legislature finally considered his proposal to outlaw hired guards.\textsuperscript{15} However, the House Judiciary Committee tempered the momentum that had propelled the bill, and eventually sent back to the House wording that limited the ban to the operation of railroad trains.\textsuperscript{16}

The public’s backlash against Pinkerton following the debacle at Homestead changed everything. A number of congressmen moved from disinterest in the use of private guards to leading the outcry for legislation against them. After Homestead, both houses of congress lined up to condemn what was understood as ‘rampant Pinkertonism’.\textsuperscript{17} The opportunism and politicking was not lost on Watson, who had spent the first half of the year struggling to get the attention of his congressional colleagues. On the day after Homestead he rose out of his seat in the House and in dry humour declared: ‘It is a very pleasant thing to notice how much the approach of a Presidential election quickens up political movements’.\textsuperscript{18} But, his good humour did not last for long. Towards the end of his denouncement of Pinkertonism he censured his colleagues who had buried his earlier bill: ‘

You let that proposition sleep in your committee room until dead men lay in the streets and widow’s weeds had been thrown around desolate wives. But now that your Presidential election approaches and you want to play to galleries and to pretend friendship for the

\textsuperscript{15} Congressional Record Vol. 23, pt. 5 (52nd Cong., 1st sess.), pp. 4223-4225.
\textsuperscript{16} ibid., 7 July 1892, pg. 5862.
\textsuperscript{17} Phrase from: Charles A. Siringo, \textit{Two Evil Isms: Pinkertonism and Anarchism, by a Cowboy Detective Who Knows, as He Spent Twenty-Two Years in the Inner Circle of Pinkerton’s National Detective Agency} (Chicago, IL: C.A. Siringo, 1915).
\textsuperscript{18} Congressional Record Vol. 23, pt. 6 (52nd Cong., 1st sess.), pg. 5862.
workingman, you bring in a resolution at this later hour, when the shedding of blood might have been prevented had you acted in time.\textsuperscript{19}

The resolution Watson spoke of was introduced on July 6th by George F. Williams and required an investigation and report on the ‘character of the employment of the Pinkerton men in the present disturbances at Homestead, Pa’.\textsuperscript{20}

It is difficult to disentangle Congress responding to public concern of Homestead and congressmen attempting to gain votes during an electoral season. However, both certainly played important roles in the 52nd Congress’s rapid response. It is worth noting that in the historiography of Homestead, scholars have neglected to connect the ‘public outcry’ to party-politics in an election year.\textsuperscript{21} When looking through the relevant primary

\textsuperscript{19} ibid.

\textsuperscript{20} The Senate was also interested with the operations of private detective agencies more generally. In addition to Pinkerton, smaller imitations like the Thiel Detective Agency, Illinois Detective Agency, US Detective Agency, and Mooney and Boland’s Detective Agency were taken under investigation. See: Committee on Labor and Education, \textit{Investigation in Relation to The Employment for Private Purposes of Armed Bodies of Men, Or Detectives, In Connection with Differences Between Workmen and Employers}, Senate Report no.1280, 52nd Cong., Second Sess., 1892-1893 (Washington, DC: Government Printing Office, 1893), pp.121-25. [Henceforth, ‘\textit{Senate Report no.1280}’]; and Morn, \textit{The Eye That Never Sleeps}, pg. 103. For the creation of the House subcommittee to investigate and report on ‘the character of employment of the Pinkerton men in the present disturbances at Homestead, PA’ see: Congressional Record Vol. 23 (52nd Cong., 1st sess.), 6 July 1892, pg. 5820. For the launch of a similar investigation by the Senate see: Congressional Record Vol. 23 (52nd Cong., 1st sess.), 6 July 1892, pg. 5796.

sources it seems obvious that a desire among politicians to be seen ‘to do something’ played as important a role as responding to legitimate public consternation. In any event, in the House, a sub-Committee on the Judiciary Committee would conduct the inquiry into both the Pinkerton Agency and the Homestead Riot. It was instructed to ‘investigate the employment of Pinkerton detectives by corporations engaged in the transportation of interstate commerce and the United States mails, and in connection with the labor troubles at Homestead, Pa.’

Finding a legitimate rationale was the first challenge, as investigating Homestead itself was a complex endeavour as – prima facie – it was an internal affair of a state. One congressman questioned whether if, under the Constitution, they could ‘pursue an investigation with regard to the recent occurrences in Pennsylvania’. The response from a member of the committee, and how Congress circumvented the problem, is given in the answer: they could do so as it ‘comes under the tariff law’. The transportation of interstate commerce and US mail are both enumerated powers in the US constitution: thus, so including them opened up the strike


24 ibid., pg. i.
25 Congressional Record Vol. 23 (52nd Cong., 1st sess.), 7 July 1892, pg. 5860.
The committee was on solid ground; as shown earlier, Pinkerton made its names on the railroads, and a number of corporations that engaged in the transportation of interstate commerce and the carrying of US mail had, on several occasions, employed Pinkerton guards – including the Union Pacific, the Chicago, Burlington and Quincy, the Lake Shore, and the New York central Railroad companies.  

In the execution of the aforesaid orders of the House, William C. Oates (D-AL), William D. Bynum (D-IN), Charles J. Boatner (D-LA), Ezra B. Taylor (R-OH), and Case Broderick (R-KS), were appointed to the judiciary sub-committee. The sub-committee proceeded to Pittsburgh then Homestead, Pennsylvania and on July 12, 13, 14 took the testimony of eighteen witnesses. The Sub-committee reconvened in Washington DC, 22 July 1892, for the purpose of taking further testimony. The instructions to the committee were the same as above but added: ‘… the number so employed, has provoked breaches of the peace or caused the destruction of property, and of the material facts connected with their alleged employment, and report the same to the house by bill or otherwise at any time.’ On 7 February 1893, the reported was ‘laid on the table and ordered to be printed.’

The Senate also took up the matter, but later. On 2 August 1892, a sub-committee of the full committee of Education and Labor held meetings and

---

26 US. Const. Art. I, Sec. VIII, c. 3 (Commerce Clause); and Art. I, Sec. VIII, c. 7 (Postal Clause).
28 ibid., pg. III.
29 Ezra B. Taylor (R-OH) resigned from the subcommittee and George W. Ray (R-NY) substituted him.
31 ibid., pg. iii.
examined witnesses in the cities of Chicago, Pittsburgh and New York. The seven senators appointed to the committee were Jacob H. Gallinger (R-NH), William A. Peffer (R-KS), Henry C. Hansbrough (R-ND), Charles N. Felton (R-CA), Wilbur F. Sanders (R-MT), Edward D. White (D-LA) and David B. Hill (D-NY). It took testimonies from representatives of both capital and labour, as well as men directly connected with the administration of local, state and federal law. Its remit was also slightly wider and more philosophical. The Senate’s committee considered why private detective firms existed; and then assessed and reported on, ‘what legislation, if any is necessary to prevent furore unlawful use or employment of such armed bodies of men for private purposes.’ Lastly, the committee was ‘to make a report on [how] to more effectively organise employment of the posse comitatus in the District of Columbia and Territories of the US’. The Senate committee was less concerned with getting into the particulars of Homestead. The House sub-committee had already performed this task.

With a fully developed press, the members of both committees were as partisan and concerned with posturing as they are today. However, the second goal of the Senate committee’s report and hearings strongly suggests that they had already come to the conclusion that what Henry Frick had done at Homestead was illegal. Most of the members seemed more interested in condemning and showing hostility towards Pinkertonism than participating in the hearings. For the first two days, the 17 and 18 November, only two members, Peffer and the chair, Gallinger, turned up. It was on

---

32 See Senate Report no.1280; and Congressional Record Vol. 23 (52nd Cong., 1st sess.), 2 August 1892, pg. 7005.
33 Senate Report no.1280, pg. i.
34 ibid.
35 ibid.
those first two days the views of private detective firms were heard and not only from the Pinkerton agency but also from its competitors, including Thiel’s Detective Service, the United States Detective Agency, Mooney and Boland Detective Agency, and the Illinois Detective Agency, but only on their role in policing labour unrest.\textsuperscript{36} The senate’s report was ordered and printed on 10 February 1893.\textsuperscript{37}

THE ‘ANTI-PINKERTON ACT

Whilst the sub-committee in the House was meeting, and the finer details of the Senate and sub-committee were being fleshed out, movements were being made on the floor of the House. The Grand Army of the Republic was to meet between 21-22 September in 1892 in Washington, DC. Up to 400,000 people were expected to attend.\textsuperscript{38} Clearly the reunion and parade, which would see DC’s population tripled, presented unique challenges to public order. To partly meet this challenge the Chief of Police of the District of Columbia recommended that twenty-five to thirty Pinkerton men might be employed.\textsuperscript{39} Before Homestead, and while both committees were being formed in both houses, the Modus operandi of the federal government was to make use of Pinkerton men on an ad-hoc basis. Using Pinkerton guards

\textsuperscript{36} ibid.
\textsuperscript{37} ibid, pg. 1.
\textsuperscript{39} Congressional Record Vol. 23 (52nd Cong., 1st sess.), 15 July 1892, pg. 6224.
after Homestead was no longer acceptable. Instead, to meet that challenge, the Senate committee that dealt with the Sundry Civil appropriations bill envisioned that ‘to meet the expenses for maintaining public order in the District of Columbia on the occasion of the national encampment of the Grand Army of the Republic, to take place in said District in September, 1892, $9,000: Provided, that policemen borne on the rolls of the police force of the cities of New York, Philadelphia and Baltimore may be employed, and none other outside of the District of the Columbia’.

The senate would provide funds, if policemen were taken from specific pre-arranged and agreed upon police departments. The wording was finessed, as it specified the police that could be used, as opposed to saying who could not be brought in: Pinkerton men.

However, for many in the House this wording was not strong enough, and the prohibition of Pinkerton detectives needed to be categorical and permanent. One such representative was John Joseph O’Neill, a populist Democrat from Missouri, who pushed to replace the sentence where police forces were specified with the following: ‘...Provided, that no member of the Pinkerton force shall be employed.’ In proposing the change O’Neill left no doubts to those in the House as to his motivations: ‘I propose that the House make this expression of its sentiment, and I think it will carry a good lesson when the House of Representatives deliberately and publicly prohibits the employment of that class of men in the work of the government.’

O’Neill wanted to harness public backlash to push the House against private guards

---

40 ibid., pg. 6223.
41 ibid. Negotiations were held with police chiefs from those cities for their cooperation.
42 ibid., 15 July 1892, pg. 6224.
43 ibid.
44 ibid.
in the aftermath of Homestead to pressure for a ban against Pinkerton. O’Neill was not alone. Several members of the house bellowed in agreement, ‘that is right.’ 45 O’Neill was well aware that legislation like this would ordinarily require a separate bill and lengthy debates in both houses, but he also saw an opportunity, which he grabbed firmly with both hands as he understood ‘that the only time you get a chance to let in a little daylight on these bill is on such an occasion as this, when they are under consideration in Committee of the whole.’ 46

From his first amendment on the floor of the house, over time O’Neill’s modifications became wider in scope and in breadth. The amendment he ended up pushing raised plenty of eyebrows in the Republican dominated senate: ‘It shall not be lawful for any officer of the government authorized to make contracts, nor any officer in the District of Columbia, to contract with any person, firm, or corporation who employ Pinkerton detectives or any other association of men as armed guards; and no employé of said Pinkerton detective agency, or similar agency, shall be employed in any government service or by any officer of the District of Columbia.’ 47 The senate committee for the Sundry Civil Appropriations Bill observed, ‘this amendment seems to have been drawn without very much care … and may be far-reaching in its effect’ as it would not only prohibit the employment of Pinkerton detectives, but it would also prevent the US government signing contracts with any individual, firm or corporations who have contracts with Pinkerton. O’Neill’s attempt to widen the scope caused controversy and brought voting on the Sundry Civil Appropriation Bill down to the wire. 48 Everything else within the

45 ibid.
46 ibid.
47 ibid, 25 July 1892, pg. 6689.
48 ibid., 15 July 1892, pg. 6224.
Bill had been agreed, and had been for some while, except this amendment, number 177. It was now the last day, 5 August, in the dying hours of the first session of the 52nd Congress. Time was running out.

The wording that had been agreed out of conference was ‘that no employé of the Pinkerton Detective Agency or similar agency shall be employed in any Government service or by any officer of the district of Columbia.’ 49 Those from the House conference that had negotiated with the Senate pointed out the good that Pinkerton had done protecting trains and interstate mail; and that O’Neill’s amendment would prevent the US government from making contracts with rail or mails companies, as they often had to call on Pinkerton for protection, due to the vastness of the nation. 50 These companies too would be unfairly punished for protecting their property and liberty by using the free market.

O’Neill was not satisfied, for him the current wording was beside the point as what ‘every section of this land’ objected to ‘is their [Pinkerton’s] use as armed guards’, and their ‘sending of these armed guard from one state into another.’ 51 Homestead was still clearly at the forefront of O’Neill’s mind. The Republican congressman from Pennsylvania, Henry H. Bingham (R-PA), tried to persuade O’Neill by reminding him that both Houses of Congress now had committees underway investigating the Homestead debacle, and that he would almost certainly get greater support for his proposals if he waited until they reported back. O’Neill was not swayed. He was only willing to compromise with members of the Senate down to incorporating a provision

49 ibid., 5 August 1892, pg. 7119.
50 ibid.
51 ibid., 5 August 1892, pg. 7120.
that prevented the sending of armed guard from one state into another, as ‘the people would accept that’ if they could not secure his entire amendment. It was a compromise ‘that meant something.’\textsuperscript{52}

Bingham also tried to sway him by reminding him that his modifications challenged the ‘life of nation’ as it would make it impossible for the government to authorise any officer to enter into contract for ‘army or naval ordnance metal, as well as steel plates for armoured vessels or defensive fortifications material.’\textsuperscript{53} This, however, was precisely O’Neill’s point, he wanted to \textit{force} change. He wanted to not only outlaw the hiring of Pinkertons but also send a message to corporate America, especially the Carnegie Company. If private business could not be told by the national legislature what measures they could resort to in protecting their property rights, due to constitutional concerns, O’Neill would apply pressure from a different angle. Despite Carnegie being a self-professed pacifist, the Homestead Mill was making ‘armor plates’ for US war vessels. The site had secured a contract with the US government to make components for warships. It was for approximately 6,000 tons of armour plate, ranging in thickness from four to twenty inches.\textsuperscript{54} O’Neill’s amendment would put overbearing pressure on the Carnegie Company, and all other iron and steel manufactures, by forcing them to choose between employing Pinkertons or losing lucrative government contracts.\textsuperscript{55}

\textsuperscript{52} ibid.
\textsuperscript{53} ibid., 5 August 1892, pg. 7121.
\textsuperscript{54} \textit{H. R. Report No. 2447}, pp. 3, 45 to 49 (For the full contract).
\textsuperscript{55} ibid, another reason Homestead was a counter-espionage issue. See: Congressional Record Vol. 23 (52nd Cong., 1st sess.), 5 August 1892, pg. 7121. O’Neill suggested the deal was worth $4,000,000 (around $96,500,000.00 today using a GDP deflator).
Throughout the committee hearings on Homestead and debates on O’Neill’s amendment, the Pinkerton Detective Agency was being exploited for political advantage. It was particularly evident on the last day of the first session. The incumbent President, Benjamin Harrison, was a Republican. The party also enjoyed a majority in the Senate, whilst the House had a Democrat majority. In the House – where support for O’Neill’s amendment developed – Republicans who supported the Senate’s amendment were denounced by Democrats as, forgetting ‘their duty to the people’ by representing corporations and wealth by ‘cowardly surrendering to the plutocracy of the senate’.⁵⁶ O’Neill rose to make his final plea to his colleagues, it was a riveting speech:

it is a grand thing, in a free land, where you find a responsive legislature, one that feels the pulse of the people and keeps in line with them. Do not let this House act the coward. Do not let this House weaken because the elements of concentrated wealth and capital oppose measure of this kind. Let me tell you right here and now that the only menace to the Republic lies in the danger that may come from the improper use of concentrated wealth and corporation power with its own militia to compel submission by the people to its unjust exactions. In the interest of peace and good will among men put your heel upon these armed guards, or you may have civil war; because no body of free American workingmen will be crushed by any

⁵⁶ Congressional Record Vol. 23 (52nd Cong., 1st sess.), 5 August 1892, pg. 7122.
bend of hired assassin brought in for the purpose of striking them to the earth when they are contending for their rights.\footnote{ibid., pp. 7120-7121. Italicise added. O’Neill speech, and its alluding to civil war, further underline the stakes of Homestead and why it must be connected to counter-espionage.}

His impassioned plea was met with applause from the floor and from the gallery so rambunctious that the Speaker had to censure the gallery.\footnote{ibid.} O’Neill’s appeal, however, was not enough. The wording from the report was put to a vote. O’Neill – and the noes –counted 14, the ayes 169. The Civil Appropriations bill was finally put to bed.

The wording which eventually became law – and still exists today – could have been much worse. It was far-cry from its original wording that specified police departments, to be used in DC if needed. In the final wording it still had far reaching consequences – but not in the way O’Neill probably hoped, as it indirectly fostered the creation of ‘government Pinkertons’. Still, the objections of O’Neill and other representatives shifted the debate from how best to prevent the hiring of twenty-five to thirty Pinkerton men at a forthcoming public celebration, to how best to punish companies or firms that used Pinkerton men. By raising the stakes, they were able to negotiate down to a prohibition that explicitly prevented Pinkerton men being hired by the federal government. A compromise that seemed relatively tame.

Ultimately, however, the legislation passed was notably problematic. It was forged against the backdrop of a moral panic in a partisan Congress that had an election in November firmly in mind. The President, Benjamin Harrison, would pay for his support of business during and after the strike at the polls.
In the election of 1892, working men would turn to the Democrats, which contributed significantly to his defeat.\textsuperscript{59} Harrison’s support of business raises questions about why he did not simply veto the Bill. Even if he had wanted to, however, the provision could not be vetoed as it had been incorporated within a Civil Appropriations Bill. A veto would have jeopardised the funding for several other projects and agencies.

The fifty-second Congress put the cart before the horse, by drafting and passing a prohibition specifically targeting Pinkerton in the wake of Homestead, well in advance of either committee publishing their investigations. It was discussed while passions were inflamed, and the process lacked proper scrutiny or deliberation to ensure the Constitution was observed, and the rights of states maintained.

In common with most moral panics, righteous indignation over unchecked Pinkertonism disappeared as quickly as it had arrived. After the Presidential Election in November, and by the end of the second session of the fifty-second Congress on 3 March 1893, in Congress the Pinkerton Detective agency was only brought up a couple of times – both times related to the printing of reports conducted into Homestead.\textsuperscript{60} The anti-Pinkerton bill flew completely under the radar,\textit{The New York Times} reported on 6 July 1893 that ‘the pension and census offices, the whisky trust, the Pan-American canal and the pacific mail companies, the Watson-cobb charges, the Pinkerton system and homestead troubles, the maverick and spring garden bank failure, and the Ellis island immigration station were investigated by

\textsuperscript{60} Congressional Record Vol. 24 (52nd Cong., 2nd sess.), pg.1409; Senate Report no.1280, pg. 1297 and \textit{H. R. Report No. 2447}, index and pg. 130.
congressional committees, but nothing came of the reports submitted.’\textsuperscript{61} The \textit{Times} was only partly correct, the original anti-Pinkerton law, which was agreed upon at the end of the first session and was part of the Sundry Civil Appropriations Bill, became permanent on 3 March 1893, and read as follows: ‘That hereafter no employee of the Pinkerton Detective Agency, or similar agency, shall be employed in any Government service or by any officer of the District of Columbia.’\textsuperscript{62}

The committees themselves spawned no new bills. On 3 March 1892, the prohibition came at the very end of a bill brought under the Department of Interior that dealt with repairs, lighting and the hiring of a clerk, mechanic, gardeners and labourers for the capitol grounds. Though it may have come at the end of a list from which it was wholly disconnected, the law would be enforced.\textsuperscript{63} At least four times – in September 1919, February 1926, July 1927, August 1928 – the 3 March 1893 Anti-Pinkerton Act was upheld and used to prevent further uses of private detective services by the federal government.\textsuperscript{64} It is among the most substantial pieces of legislation in the origins of American counter-espionage and drew much of its force from moral panic, political opportunism and union lobbying, allowing little time for sober consideration.\textsuperscript{65}

\textsuperscript{63} 27 US Stat. at L. (1893), pp. 368 and 591. Both are under the Department of the Interior’s section on ‘Public Buildings’.  
\textsuperscript{65} For union lobbying claim see: Bowman, ‘Transforming Installation Security’, pg. 55.
THE CONCLUSIONS OF THE COMMITTEES

Remarkably, the anti-Pinkerton bill was passed before either sub-committee had laid their findings before their congressional colleagues; this was due to O’Neill steamrolling in the House. But would the reports have made a difference? If O’Neill was absent that day would the end result still have been the same? Would the committees’ findings lead Congress to a doubling down on admonishing Pinkerton? Obviously, it is impossible to know for certain, but on the evidence it seems that no ‘anti-Pinkerton law’ would be on the books today. Both reports –though critical of Pinkerton, sometimes scathingly so –reinforced the central pillars of American politics discussed in previous chapters in relation to counter-espionage: federalism, inalienable (Lockean) rights and separation of powers. Just like the Congressional Record in relation to the Anti-Pinkerton Act, in the historiography on Homestead the committees’ conclusions have been depreciated and over looked.66

The committee reports have been overlooked because historians from the post-New Deal Era onwards have engaged in ‘presentism’ – judging historical actors and their values through the prism of modern standards.67 There seems to be a fundamental misunderstanding (wilful or otherwise) of the committees’ conclusions and what the media, the public and national legislatures themselves saw as their roles within the existing constitutional

---

66 Literally, none of the Officials’ books have assessed the consequences of the Anti-Pinkerton Act for counter-espionage.
framework. It is possible that if a Homestead-like event happened today, Congress could just altogether ban private security companies, and few quarters of American society would raise substantial objections – perhaps even the president could do so by Executive Order. Indeed, after 9/11 this happened with the creation of the Transport Security Administration (TSA), overnight, ending private security in airports. The power of state legislatures over the past century has been severely diminished; concordantly whilst the power of the national legislature, and executive, has continued to ascend. So statements like: ‘an overriding concern for private property influenced much of Congress’s thinking’ is false. As is the claim that ‘Surely, our time traveler would remark, the dominance of private policing represents the failure of the state, and a crisis in public confidence.’ Or, lastly, that ‘the result’ of the committee’s findings ‘was a charade…they merely passed the buck’. A number of historians who have explored the aftermath of Homestead are applying modern American legislative jurisprudence to the strike, looking at the material consequences for Pinkerton, seeing a lack of direct interventionist punitive action at the federal, sometime state, level; and concluding that the consequences were actually non-consequences.

The overwhelming concern of committee members – in both houses – was not private property. Its conclusions do not represent a failure of the state, or a passing of the buck. The overwhelming concern of both sub-committees was the role of government and not enforcing a solution on states, which

---

68 See Introduction for more details.
69 Smith, From Blackjacks to Briefcases, pg. 19; and Robert Smith, ‘The Business Community’s Mercenaries: Strikebreakers and Union Busters’ in Brenner, Day & Ness (eds.), Strikes in American History, pg. 53. He makes the same claim in both books (using the same exact words).
71 Churchill, ‘Pinkerton to PATRIOT’, pg. 23.
would be considered unconstitutional, and not in the national legislature’s jurisdiction. The House committee were reaching; they wanted to regulate, ‘the Federal government is one of delegated powers, and we must find the power in Constitution, or it does not exist’.\footnote{H. R. Report No. 2447, pg. 235.} However, they were aware that they had no mandate by any ‘article and section of the constitution’ to pass such measures.\footnote{ibid., pg. 234.} ‘Article IV, which guarantees to each state a republican form of government, and says that they ‘shall be secured against invasion’ was a blunt instrument and liberal reading of the letter of the law not in keeping with nineteenth century legislating.\footnote{ibid., pg. XV.}

The federal government was saying to state governments that they were failing to make ‘ample provision for all these contingencies’ which are states’ to deal with, as domestic and police regulation – maintaining domestic order – is found among its reserved powers.\footnote{ibid., pg. XIV.} The committee clearly upheld constitutional norms at that time, acknowledging ‘every state may make and enforce whatever police regulation it pleases pertaining to the health, morals, and happiness of its people not inconsistent with the Constitution of the United States’.\footnote{ibid., pg. xiv.} Congress did not just uphold constitutional norms pertaining to the federalist character of the nation, but the norms on the freedom of the individual and their inalienable right of contract: ‘Congress has the constitutional right to regulate interstate commerce, but has no right to say what citizens shall be employed by the carriers of interstate commerce nor the amount of wages which shall be paid by such carriers to any of their employees; nor what kind of a uniform, if any, they shall wear; nor whether

\footnote{H. R. Report No. 2447, pg. 235.}
\footnote{ibid., pg. 234.}
\footnote{ibid., pg. XVIII.}
\footnote{ibid., pg. xiv.}
\footnote{ibid., pg. xiv.}
they shall bear arms openly, which is not unlawful; or in short that while Congress may regulate, facilitate, and protect interstate commerce it has no right to intermeddle with the private contract and acts of the companies engaged in such transportation between them and their employee.’ 77 The committee concluded that ‘it rests with the States to pass such laws as may be necessary to regulate or prohibit the employment of Pinkerton watchmen or guards within their respective jurisdictions.’ 78

Even the minority report, which was much more critical of Pinkerton, struck a similar tone: ‘The execution of the laws by high officials should not be farmed out to private individuals in the paid employ of private persons or corporations. The evil, however, serious as it is, is one over which the Federal Government has no jurisdiction or control.’ 79 It was not the case that those on the Committees simply absconded – they recognised the constitutional process they operated in and expected the states to respond as they deemed necessary. And respond the states did, passing anti-Pinkerton legislation themselves. Indeed, some states had already started to respond to Pinkertonism before Homestead. This included both Montana and Wyoming. Both states had ‘made constitutional provisions forbidding the importation of nonresidents for police work’ in 1889. 80 Missouri had passed legislation to the same effect the same year, and Georgia had followed suit in 1890. In 1891, New Mexico, Washington, Minnesota, and Kentucky had joined in, while ‘New York and Massachusetts passed kindred laws in 1892, shortly before the Homestead violence’. 81 After Homestead, ‘anti-Pinkerton

77 ibid.
78 ibid.
79 ibid., pg. xvii. Thomas Ringland Stockdale (D-MO) was the only member unable to agree with the other members.
81 ibid.
legislation’ snowballed, lawmaking bodies across the US (including Congress for the District of Columbia, noted above), that referred specifically to armed groups, detective agencies, and often the Pinkerton detective agency by name. On 25 and 28 February 1893, West Virginia and North Carolina passed laws forbidding armed guards from entering their states. On 4 March, South Dakota passed a similar law. In April, both Nebraska and Wisconsin passed anti-Pinkerton legislation, as did Texas and Pennsylvania in May, and Illinois in June. By 1899, six more states followed, and a total of twenty-four states plus the District of Columbia forbade armed guards from entering their jurisdiction.

Undoubtedly, some of the post-Homestead legislation from states was motivated by the committees’ investigation, whose conclusions would have been carried in local newspapers – especially those with large working communities. One of those conclusions which both the House and Senate committees reached was placing the blame squarely on states for failing to provide public protection for the employers’ ‘unquestioned right to defend their private property’.


83 See Morn, The Eye That Never Sleeps, pg.107 (noting that by 1899, twenty-four states and the District of Columbia prohibited armed guards from entering their jurisdictions). Morn correctly observes that the laws had little effect because the agencies could recruit private police within states. Also See: Morn, The Eye That Never Sleeps, pp. 107-08; and J. Bernard Hogg, Public Reaction to Pinkertonism’, pp. 179-180. Hogg claims twenty-six states passed legislation.

The Senate report, however, was less critical of the state and more critical of the Carnegie Company and the use of private guards against striking workers. Terrence V. Powderly, Grand Master Workman of the Knights of Labor, testified to both sub-committees in condemnation of the methods of the Pinkertons, and argued that the detective agency had obstructed interstate commerce or the transportation of the mails. The Senate sub-committee agreed with Powderly eliciting ‘the fact from various sources … especially with labor organizations’ who made ‘very great complaints against the use of Pinkerton guards or watchmen.’ On this basis, both committees pondered laws to regulate or prohibit the practices of Pinkerton, which they characterised ‘as a sort of private military or police force’. The Senate committee concluded that nothing could incite deeds of violence among organised labour more than Pinkerton men, and that using them would result in hostile demonstrations and bloodshed. Therefore, corporations or associations should never be allowed, ‘without the consent of the state in which the trouble occurred,’ to employ Pinkerton watchmen in large numbers.

Gallinger, who wrote the preamble to the Senate report, cleverly used Andrew Carnegie’s own words against him. Carnegie liked to consider himself a ‘friend of labour’, making pronouncements like ‘working people have my full sympathy, and I always lend a helping hand.’ He also called ‘socialism’ the ‘grandest theory ever presented’, which he was convinced

---

85 Knights of Labor was a nationwide labour union whose goal was to organise all American workers, skilled and unskilled, into a large union united for workers’ rights and committed to economic and social reform.

86 Senate Report No.1280, pg. xiv.

87 ibid.

88 ibid.
would one day rule the world. The words Gallinger used, however, were from an article in which Carnegie wrote that labour will 'hereafter be more respectfully treated and its claims more carefully considered' and that 'There is an unwritten law among the best work-men: "Thou shalt not take thy neighbor’s job." No wise employer will lightly lose his old employees. Length of service counts for much in many ways.' Carnegie became a victim of his own pro-union writing when Gallinger eagerly seized on his pronouncements in the press to point out the hypocrisy of the response of the company bearing his name: ‘If Mr. Frick had acted upon the views laid down by Mr. Andrew Carnegie in his article on ‘the results of the labor struggle,’ in the Forum Magazine, which in a recent letter to the chairman of this committee Mr. Carnegie reaffirms, and had further extended negotiations with his workmen, the homestead might have been avoided.’ Though the Senate sub-committee was not happy with the company’s response and use of Pinkertons, it did concede that America had evolved beyond ‘olden times’ where the ‘“posse comitatus” (the power of the people vested in the sheriff) was relied upon to subdue all violators of good order and peace in a community ... it is doubtful whether that means can be relied upon at the present time, especially in mining and manufacturing communities’.

The Senate sub-committee was not just quick to blame the Carnegie Company for their use of private guards against striking workers, they were

---

90 Article was originally printed in 1886 Forum, see Andrew Carnegie, The Gospel of Wealth and Other Timely Essays (New York, NY: The Century Co, 1901), pg. 146.
91 Senate Report no.1280, pg. xiii.
92 ibid., pg. iv.
also much more sympathetic to the workers than the owners: ‘it should not be forgotten that labor is the source of all wealth and that the labouring man has a right to expect a fair share of the profits of his labor.’ These ideas were not widely popular yet, but they were starting to gain traction and represented a new strain in American political thought. Senator John Palmer (D-IL) echoed the same sentiment. He argued that the ironworkers had the right to be in the mill, and that right had been earned by their years of service there, ‘not as the law is generally understood, but according to the principle of the law which must hereafter be applied to the solution of these troubles.’

Outside of the Labour movement in America, however, few mainstream voices were raised in support of these contentions. In fact, Palmer garnered pointed criticism for his comments. ‘What is this but socialism pure and simple?’ wrote the *Pittsburgh Commercial Gazette*. ‘If this does not strike at individual liberty and the right of property in the most direct and dangerous manner, then no socialist ever assailed those rights.’ Homestead really did represent the clashing of two different value sets, where ultimately conservative forces in America were more persuasive and numerous. Thus, although both committees were critical of Pinkerton, critical of the company for hiring Pinkertons and felt the whole affair was avoidable, their collective moorings to the Constitution prevented them from going further than submitting that it was an internal affair within a state, and supporting the federal government’s ban against the use of private detectives. However, this

---

93 ibid., pg. xiii.
94 Congressional Record Vol. 23 (52nd Cong., 1st sess.), pp. 5824-5825.
95 *Pittsburgh Commercial Gazette*, 12 July 1892.
96 Progressive values, in the end, would ultimately become more persuasive and numerous. See the next chapter, 7, for Progressive Era changes and the La Follette Committee, *Hearings* for changes made in the New Deal Era.
status-quo, which had held fairly firm for nearly a century, would not last much longer.

**PERVERSE RESULTS AND ‘PREVENTIVE’ MEASURES**

If there are any particular distinctions to be noted between the pre- and post-Homestead periods, they are that the locus of anti-labour operations shifted mainly from guards to a greater reliance upon infiltrators and under-cover work. The legislation at both the state and federal level did not deter private detective agencies from continuing to profit from labour-related work. Robert Pinkerton made that quite clear in his testimony: ‘My feelings at the present time are that we would decline to put men into another state where legislation has been that we could not swear them in, although I believe we would have a right under the law; that is to put private watchmen on the ground on private property’. Moreover, most of the ‘anti-Pinkerton laws’ states introduced did not prevent the drawing of guards from within a state. Nevertheless, despite both these facts, William Pinkerton indicated in an interview that the agency would furnish no more guards, and according to a caustic critic it supplied none after 1892 for quite some time. In addition, a spokesman for his agency, quoted by historian James Horan in his book *The Pinkertons: The Detective Dynasty That Made History*, declared that the ‘work of supplying watchmen [during labour disputes] is extremely

---

98 *Senate Report no. 1280*, pg. 253.
dangerous and undesirable and for that reason we prefer not to furnish watchmen in such cases.’

Despite Pinkerton’s partial withdrawal, all the legislation was doomed to failure; other firms happily filled the vacuum created by Pinkerton’s departure – nature abhors a vacuum. The public backlash and the anti-Pinkerton legislation it spawned failed to touch upon the larger questions: the role of the private sector in law enforcement; the proper relation between capital and labour; and the changing conceptions of the economic rights of citizenship. The issue could not be fixed by any legislation, but by capitulation. The Anti-Pinkerton laws actually had a perverse result – that is, the proposed solution actually made the problem worse.

As the conditions underpinning the strikes were not addressed, and private guards were demonised, companies that wanted to break strikes had to resort to increasingly to underhanded tactics, described earlier. Not only did the legislation prevent the federal government making use of the skills developed in the private sector, the illicit practices that Powderly and other labour men had relayed to both committees, which they so reviled, now expanded. As none of the legislation crafted differentiated between the ‘preventative’ and ‘investigative’ wings of counter-espionage, and because of the significant backlash from Homestead, the technique of undermining strikes before they could begin became the preferred method for private detective firms and their industrial clients. As the legislative movement that corresponded with a public desire for change passed, the poor anti-Pinkerton bills crafted at the federal level, and the tepid response from states would

\[100\] Quoted in Horan, The Pinkertons, pg. 357.
stay on the books – making the situation worse.\textsuperscript{101} The Pinkertons did not withdraw from the business of \textit{repressing} labour radicalism, they just shifted tactics and gears. Frank Morn, in his historical account of the Pinkerton agency, describes the first two decades of the twentieth century as a ‘golden age’ of the private police.\textsuperscript{102} Private detective firms, including Pinkerton, now did ‘not handle strike work but rather “prevent[ed] strikes,’” as Captain B. Kelcher of the CBK Detective Bureau in New York informed one prospective client.\textsuperscript{103}

As time passed, the business went further underground to avoid the harsh spotlight of public scrutiny garnered by muckraking newspapermen that swirled during the Progressive Era.\textsuperscript{104} By the 1920s and early 1930s the Pinkerton Agency provided ‘operatives for use in large industrial plants to report on union activities’, and according to Horan, by 1936, ‘30 percent of the firm’s business was made up of its industrial services, aside from providing uniformed guards and criminal investigation.’\textsuperscript{105} It is safe to conclude that this was probably a perverse inversion of what both state assemblies, or indeed, the Senate and House committees had desired.

\textsuperscript{101} It was not until the 1936 \textit{La Follette Committee Hearings} shone a bright harsh light on these illicit acts they would properly be called into question. The Pinkerton Agency eventually shifted from detective/investigative work to security work, at least in part, due to criticism emanating from the hearings.

\textsuperscript{102} Morn, \textit{The Eye That Never Sleeps}, pg.169. For example, in Philadelphia private detective firms grew from fourteen in 1900 to thirty-seven in 1908, and in Chicago from thirty-four in 1910 to fifty-eight in 1918.

\textsuperscript{103} Smith, \textit{From Blackjacks to Briefcases}, pg. 80.

\textsuperscript{104} Two excellent books (both exposés) of ‘labour spies’ include: Morris Friedman, \textit{The Pinkerton Labor Spy}; and Sidney Howard and Robert Dunn, \textit{The Labor Spy: A Survey of Industrial Espionage} (New York, NY: Republic Pub. Co., 1921), pp.1-200 (Originally printed by the \textit{New Republic}). Also see: Siringo, \textit{Two Evil Isms}; and \textit{La Follette Committee Hearings} that investigated and publicised abuses of detective agencies, including Pinkerton.

\textsuperscript{105} Horan, \textit{The Pinkertons}, pg. 507.
Legislation that focused on preventing guards entering from out of state after Homestead, rather than strictly prohibiting methods not in keeping with the law, only accelerated support for a change connected to the economic rights of citizenship.

**THE ULTIMATE IRONY**

The ban passed by the Federal government was by no means expansive. Clearly, it was also not toothless as some labour historians have argued. But what the prohibition did certainly do is unleash a new climate of undercover work and pave the way for federal expansion into counter-espionage (both offensive and defensive).

The conclusions of this chapter are as much ironic as they are perverse. First, the legislation that was meant to bring an end to ‘Pinkertonism’, only transformed it into something much more frightening, as Pinkerton – and plenty of detective/security firms – shifted tact and focused on ‘offensive’ methods of counter-espionage (such as labour spies, infiltration and agent provocateurs). Any underhanded means was tolerated if it could break a strike, as states focused on making the wrong activities criminal. Second, that the act which removed the private sector from counter-espionage was not due to the above unscrupulous activities, but a bungled attempt to regulate a more legitimate service, wholly in keeping with defensive counter-espionage – providing guards for a facility. Although the Pinkerton men may have been lambasted in the press at the time, and still by some historians today as a ‘private army’, the accounts of the day do not support that assertion. The thousands of acts undertaken by private detective firms,
including Pinkerton, which were underhanded, did not ultimately catch up to them until La Follette Committee in 1936. Legislating private security firms after Homestead was the equivalent of charging a ruthless mob boss for tax evasion.

Lastly – the most perversely ironic of all – the legislation that was meant to remove counter-espionage from America’s cities, towns, mill and factories only paved the way for government Pinkertons. The Homestead Strike did end up costing the agency one of its most important clients and allies: the federal government. Prior to this law, the Justice Department, as shown previously, had regularly hired the Pinkerton Agency to carry out investigations. But anti-Pinkerton legislation from the fifty-second Congress cut both ways. Oddly, while permitting private undercover work it simultaneously also left the Justice Department without a much-needed counter-espionage investigative force, laying the foundation for the creation of the Bureau of Investigation only fifteen years later.

The prohibition was a blunt instrument only preventing the federal government from hiring private detectives. The moral panic combined with the partisan nature of labour politics at the time, led to an over-the-top decision that had far reaching ramifications. Congress ought to have differentiated between ‘preventative’ and ‘investigative’ methods of counter-espionage and cordoned off those methods of preventative counter-espionage – agent provocateurs and labour spies – that resided in a legal grey zone.
Robert Pinkerton listed six recent strikes which were what he called ‘secret labor organizations’ that had ‘sought to murder and to destroy property’.\textsuperscript{106} In his testimony he told the committee that ‘if men cannot lawfully act as private watchmen in a large manufacturing plant, then it must follow that the bank or the private house or office cannot be protected or guarded’.\textsuperscript{107} He was only partly correct, as he had not considered a third-way – namely, government taking wholly over his family’s business. I finish here with Murray Kempton’s excellent summary of what Robert – understandably – failed to see materialising just a few decades ahead: ‘The replacement of Allan Pinkerton, dealer in detectives for Wealth during the late nineteenth century, by J. Edgar Hoover, supervisor of detectives for Commonwealth, must be the only episode in our social history to realize Marx’s prescription for the transformation of capitalistic private property into socialised property. For, as Pinkerton was the only great acquisitor of the nineteenth century whose legacy has since been nationalized, Mr. Hoover’s Federal Bureau of Investigation is unique among our public institutions as an example of the triumph of the socialist idea’.

\textsuperscript{106} H. R. Report No. 2447, pg.192.  
\textsuperscript{107} ibid.  
SECTION IV
OUT WITH THE OLD IN WITH THE NEW: REMAKING COUNTER-ESPIONAGE CULTURE

The spirit of America transformed at the beginning of the twentieth century. America's dominant political culture changed, as George Dangerfield put it, ‘from the great dictum that central government is best when it governs least to the great dictum that central government must sometimes intervene strongly on behalf of the weak and the oppressed and the exploited.’

Many factors contributed to this important shift in America’s political culture, from which America’s traditional approach to counter-espionage was by no means immune. There are several pertinent factors that we need to focus upon in tracing the trajectory of change. The analysis includes the persistence of immigration, money in politics, industrialisation and America being a victim of its own success in the previous century.


like the long subjugation of groups in America not white and male, a failure of unbridled capitalism, a partial collapse of America’s constitutional framework and the country’s imperialist land hunger. Many scholars have questioned which of the above factors made the most important contribution to America’s cultural transformation.

At a general level of analysis, it would be persuasive to observe that all the above factors contributed to ‘the strange death of republican America’. However, this answer contains contradictory explanations, and even removing those conflicts, the answer would still likely be over-determined. I will not attempt to answer the question here, as it is not crucial to do so in

---


order to make progress in this chapter, which focuses on when this all changed and its connection to counter-espionage. This chapter argues that the Progressive Era is where America’s traditional counter-espionage culture began to unravel; and the foundations of America’s current counter-espionage culture were laid.

In the historiography of American counter-espionage – incorrectly – the primary explanation for the expansion has been wars – sometimes the First, but usually the Second World War or the Cold War. To borrow from Dangerfield again, ‘one thing I am sure will eventually be established. That extravagant behaviour of the post-war decade, which most of us thought to be the effect of the war, had really begun before the War. The War hastened everything in politics, in economics, in behaviour but it started nothing.’

The first half of this chapter I will contend that the greatest driver in the expansion of US counter-espionage was progressive politics. The

---


6 Dangerfield, Strange Death of Liberal England, pg. viii.
explanation of the expansion of counter-espionage is, however, bi-causal and so this constitutes only part of the explanation. British inspiration in the drafting of both the 1911 Defense Secrets Act and the 1917 Espionage Act is the other factor that had a significant role in altering the nature of expansive US counter-espionage bequeathed to Americans in the twenty-first century, and this will be explored later in this section.

All three Progressive Era Presidents – Theodore Roosevelt, William Taft and Woodrow Wilson – contributed to removing America’s traditional counter-espionage culture and supplanting it with a new expansive one. Starting with Roosevelt, who created the Bureau of Investigation in 1908, who gave the federal government the ability to investigate federal crimes; Taft, who created America’s first law making espionage a federal crime in 1911; and Wilson, who expanded on the 1911 Defense Secrets Act in creating the Espionage Act in 1917. The changes made in relation to counter-espionage demonstrate a consistent direction of travel: the shift from a system built on inalienable rights to a system of governance where any right could be overridden for the attainment of social progress.

A more consequentialist approach to rights was a logical consequence of progressive politics and their approach to political power.\(^7\) Since the

Progressive Era is vital in understanding why an expansion of counter-espionage took place, this chapter will turn first to how progressive politics inevitably created the conditions for this expansion. Roosevelt’s specific blend of progressivism is particularly important to analyse, as aside from being responsible for the creation of the Bureau of Investigation, he was instrumental in the US playing a more prominent role on the international stage. His imperialist vision for America, combined with his progressive moralising, is fundamental in understanding how and why the first twenty years of the twentieth century inexorably transformed America’s traditional counter-espionage culture.

Lastly – as in the previous section on the Homestead Strike in relation to counter-espionage – official and semi-official histories that have dominated the historiography of American counter-espionage have spent little time researching (and dedicated even fewer words to paper on) the relationship between counter-espionage and progressive era politics. The overwhelming majority of general and (semi-)official histories have focused on the relationship between war and counter-espionage.\(^8\) This chapter suggests that

---

the dyadic relationship between progressivism and domestic spying is crucial to understanding the expansion of American counter-espionage. As such, its omission from previous accounts is a pernicious as it is peculiar.

THE MAN MEETS THE MOMENT

On 6 September 1901 the 25th President of the United States, William McKinley, entered the Temple of Music to give a short ten-minute reception at the Pan-American Exposition in Buffalo, New York.9 Whilst the President was inside the auditorium, throngs of people waited within to attempt to meet him. Outside the Temple of Music, a dense crowd, fully fifteen thousand in number, gathered to catch a glimpse of the President, even if they could not greet him.10 Floor seating had been removed from the auditorium and rearranged to create a levee, running from the south-east doors through which the public would be admitted, to the southwest exit, through which the people were to exit the building. The lane was scarcely

9 All the governments of the western hemisphere were invited to attend. It occupied 350 acres with buildings whose architecture reflected the style of the Spanish Renaissance. The major theme of the exposition extolled the wonders of the new source of power - electricity.
10 John D. Wells, ‘The Story of an Eye-Witness to the Shooting of the President’, Collier’s Weekly, 21 September 1901. At the time Wells was working for the Buffalo Morning Review.
wide enough for the public to pass single file.\textsuperscript{11} McKinley, well-versed in retail politics, could shake hands with up to fifty people per minute. In the 1.2 seconds McKinley spent with a person, he would grip their hand in a way to prevent his fingers being squeezed and move them quickly south-west towards the exit.\textsuperscript{12}

Over half way through, a 12-year-old, Myrtle Ledger of Spring Brook, New York, who was accompanied by her mother, asked McKinley for the red carnation he always wore on his lapel.\textsuperscript{13} The President obliged, then resumed work without his trademark good-luck piece. The Secret Service men looked suspiciously towards the next in line, a tall stocky ‘negro’ who appeared fidgety as he nervously trudged towards the President.\textsuperscript{14} The security detail’s concern, however, was quickly abated, as the gentlemen wanted nothing more than to shake hands with the president. The next man along the line – often described in newspaper cuttings at the time of being of ‘average size and ordinary appearance, in no way distinct’ – approached the president.\textsuperscript{15} The twenty-eight-year-old man shuffled towards McKinley with his right hand wrapped with a handkerchief. Ordinarily the rules enforced by Secret Services were that those who approached the President must do so with their hands open, empty and out. However, it had been a hot September day, which meant many gentlemen had handkerchiefs in hand or in their pocket ready

\begin{thebibliography}{10}
\bibitem{11} ibid.
\bibitem{13} Doug Storer, “‘Amazing but true’ - an interview with Myrtle Ledger’, \textit{The Evening Independent}, 7 September 1984.
\bibitem{14} Wells, ‘The Story of an Eye-Witness’.
\bibitem{15} ‘Chief Executive the Victim of the Most Cowardly Anarchist’, \textit{The San Francisco Call}, Saturday 7 September 1901, pg. 1; and ‘M’Kinley is shot down’, \textit{Chicago Eagle}, Saturday 14 September 1901, Vol. 24, pp. 1-12.
\end{thebibliography}
to wipe their sun-beaten brow. As the President reached for the young man’s left hand, the handkerchief drifted slowly down towards the floor, unveiling a revolver. Suddenly the sharp pop of the weapon rang out noisily twice, as one paper put it, ‘clear above the hum of voices, the shuffling of myriad of feet and vibrating waves of applause that ever and anon swept here and there over the assemblage’. There was a brief moment of almost complete silence. The first bullet bounced off McKinley's chest. The second ripped through his stomach. The 28-year-old shooter was dragged away by Secret Services agents; the President was carried out on a stretcher to an electric-powered ambulance. There was a moan from the crowd at the sight of the President’s ashen face.

It has been regularly claimed, particularly by contemporary writers, that the shooter – Czolgosz – was not motivated by his anarchist politics. That the real underlining motive of his crime was his mental instability combined with the crushing poverty and isolation he felt in his youth. Just as a few decades back it was popular to suggest he was likely abused by his step-mother, or back further still, that he was simply insane or driven by egotism. With no

---

17 ‘The President Still Lives’, *The Chanute Daily Tribune* [from Chanute, Kansas], Saturday 7 September 1901, pg. 1.
18 Leech, *In the Days of McKinley*, pp. 595–596.
degree of confidence can I make a firm statement to the conscious or subconscious motives that animated Czolgosz’s action. I will, however, take Czolgosz’s explanation of his deed by his own words, so as not to minimise his own agency and the gravity and responsibility of the decision he would bear the burden of for the remainder of his (short) life: ‘I shot the president because he was the enemy of the people, the good working people. I am not sorry for my crime’ and ‘I killed President McKinley because I done my duty. I didn’t believe one man should have so much service and another man should have none.’ Like Britain’s Victorian Era, America’s Gilded Age was punctuated by assassination attempts, and McKinley’s assassination was a *propagande par le fait*, political action (often violent) meant to be exemplary to others.

---


On 5 May 1901, before the Liberty Association of the Franklin Liberal Club in Cleveland Ohio, Emma Goldman gave a lecture entitled ‘The Modern Phase of Anarchy’ – an incendiary and emotionally rousing talk on political assassination and the glory of martyrdom. Czolgosz sat in the audience listening attentively and approached her during the talk to ask what books she would recommend for him to go away and read. Only four months after that talk, Czolgosz worked his way through the crowd in Buffalo and shot McKinley. Following the shooting, as much sympathy poured out for the dying President, rage mounted against anarchists, much of which was directed at Goldman who the police and press blamed for inspiring Czolgosz. After the shooting she defiantly declared, ‘as an anarchist, I am opposed to violence. But if the people want to do away with assassins, they must do away with the conditions which produce murderers’.

She was not a lone voice in America advocating propagande par le fait. She was also not the only person to justify it by rooting it in the inequality produced by America’s capitalist laissez faire economy. Luigi Galleani, a leading anarchist militant in both Italy and North America, who is best known for his activities as the editor of the US-based Italian language anarchist newspaper, La Cronaca Sovversiva (The Subversive Chronical), published between 1903 and 1918, articulated most vividly what the propaganda of the

---


deed was, why it happened and what the eventual goal was.\textsuperscript{24} His writing is particularly alluring as he not only attempted to explain and defend individual acts of violence, but encouraged them.\textsuperscript{25} Moreover, his analysis incorporates the structure-based interpretations of Czolgosz’s actions rooted in the oppressive economic conditions and poverty Czolgosz grew up in.\textsuperscript{26} The

\textsuperscript{24} Galleani wrote the articles from Cronaca Sovversiva from 17 August 1907 to 25 January 1908. They were first published as a volume in 1925, in La Fine Dell’Anarchismo (The End of Anarchism?). The End of Anarchism is an expanded version of an earlier article that Galleani wrote and appeared under the same title some twenty years earlier as a reply to an assertion by a former militant, Saverio Merlino, that the anarchist movement was no longer vital or significant. The Article, originally conceived as a rebuttal, developed into Galleani’s own conception of anarchist-communism. His theoretical framework – in the world of Errico Malatesta, one of the most influential figures in the history of anarchism – wrote it was ‘a lucid statement of the ever present problems of anarchism in relation to the would-be revolutionary movements’. Although Galleani arrived in the US the year after Czolgosz’s assassination of McKinley, his writing collected in the 1925 volume, The End of Anarchism, provides (in my view) one of the best explications of the ideology that motivated Czolgosz. It is especially the case alongside Malatesta’s own Talk About Anarchist Communism, Alexander Berkman’s What Is Communist Anarchism?, and Nicolas Walter’s About Anarchism. The combined are a classic exposition of the subjects. See: Luigi Galleani (Max Sartin and Robert D’Attilio, Trans.), The end of Anarchism? (Orkney, UK: Cienfuegos Press, 1982 [1925]); Errico Malatesta, Talk about Anarchist Communism between Two Workers (San Francisco, CA: Free Society, 1898); Alexander Berkman, Now and After: The ABC of Communist Anarchism (New York, NY: Vanguard Press, 1929) [also published as What Is Communist Anarchism? Prison Memoirs of an Anarchist]; and Nicolas Walter, About Anarchism (London: Freedom Press, 1969).

\textsuperscript{25} In 1914, Galleani published a collection of articles about militant anarchism under a pseudonym, ‘Mentana’, entitled Faccia a Faccia col Nemico (‘Face to Face with the Enemy’). In Face to Face with the Enemy, originally a regular article of Galleani’s in Cronaca Sovversiva from 1903 to 1919, he retells stories of trials staged against anarchists in the nineteenth century, mostly in France. In doing so, he gushes about the virtuous anarchist assassins as martyrs and heroes. See: Luigi Galleani [Mentana], Faccia a Faccia col Nemico: Cronache Giudiziarie dell’ Anarchismo Militante, Vol.1 [no other volumes] (East Boston, MA: Edizione del Gruppo Autonomo – Tipografia della Cronaca Sovversiva, 1914).

\textsuperscript{26} Galleani, The End of Anarchism, pp. 55-56. Galleani explains why regicide is inevitable (and partly justifiable) by comparing it to a boiler with a gauge indicating excess pressure, or water – with too little water or too much pressure resulting in an explosion.
‘individual act of rebellion’, like Regicide, was for Galleani ‘a necessarily intermediary phenomenon between the sheer ideal or theoretical affirmation and the insurrectionary movement which follows it and kindles the torch of the victorious revolution...The Ideal, a solitary aspiration of poets and philosophers, is embodied in the martyrdom of its first heralds and sustained by the blood of its believers. Their sacrifice raised as a sacred standard leads the first heroic but doomed insurrections and triumphs in the end through revolutionary deeds, the joy and glory of all’.\textsuperscript{27}

Galleani explained why men like Czolgosz, ‘almost always arise from the twilight of oppression and suffering, from the proletariat’.\textsuperscript{28} That their deeds were a logical outcome of the social order which kept the poor living in despair and once awoken by a vision of an egalitarian society that they could on a daily basis ‘abolish abuses, avoid misfortunes, restrain the injustices and violence of the exploiters and the oppressors, and start humanity on the path of security, well-being and happiness’.\textsuperscript{29} Propagande par le fait was not only about individual acts of rebellion, but was also an accumulator that would lead to a proletariat revolution in the long run. In the short-term Propagande par le fait had advantages as well: ‘A king dies and another takes his place. But the king who picks up the crown with his father’s blood on it learns prudence, moderation, wisdom. He restores the national covenant and refrains from violence and abuse’.\textsuperscript{30}

The strongest convictions of anarchists (or anarcho-communists) of the early twentieth century was the futility of engaging with conventional politics, an

\textsuperscript{27} ibid., pp.53-54.
\textsuperscript{28} ibid.
\textsuperscript{29} ibid., pg. 57
\textsuperscript{30} ibid., pg. 61
unwavering belief in the righteousness of their cause, and – most crucial but often forgotten – a Whig (or Hegelian) interpretation of history. If Czolgosz’s convictions are taken at face value, clearly from the above, he welcomed ‘martyrdom’; and his frustration with an American society that was firmly in the grip of capitalism was a primary motivating factor in his regicide, as was his belief in the eventual attainment for future generations of a communistic paradise. He individual act of violence was part of something bigger than himself. It was to be the spark that would light the fuse of the working classes to revolution, just like the planned assassination attempt of Henry Frick in 1892, by Alexander Berkman, Emma Goldman and Modest Aronstam was meant to be. Both violent acts were a rallying call in the form of assassination.

Indeed, even Galleani, an anarchist to the end, was ever more hopeful for the future, despite repeated setbacks, deportation, the rise of fascism in his home country of Italy, and multiple stints in prison. For the anarchists, all acts – even those most heinous – were justified, stirred by a perverse commitment to the righteousness of a cause. They also had, in essence, a religious-like belief in the eventual attainment of a communist utopia. Within these parameters killing the President – indeed even a local police constable with a family – was ultimately justifiable, as humanity was moving in one direction, passing through historical stages towards a classless, egalitarian society. Individual acts of violence – propaganda of the deed – were harbingers of this process, which could by their logic only serve to accelerate the attainment of a utopia.

Physiologically speaking, it is likely that Czolgosz considered being part of something bigger than himself as giving his life meaning, something he had not previously had. Regicide ordinarily refers to killing of a king. Here, I use it in the wider sense, in the killing of a sovereign.
Thus, as contradictory as it may seem, to the anarchist, assassination would bring forth new life. Not life in the corporeal sense, but in the ontological. The murder of a significant political figure would reconfigure the political landscape in unalterable ways, especially if it were the King. It would jolt a society beset with the rigor mortis that was capitalist economic systems and create, foster and sustain impetuses for radical change. Their unwavering faith in the tenets of anarchism (or Marxism), however, meant the end result was never questioned. It was almost cosmically deterministic. It was destined. A single act of grand violence could bring about the revolution.

What happens, however, if this process is not inevitable? If the parameters of the political universe are not deterministic? If the Marxist theories of history are wrong? If the crown prince waiting in line behind the King is actually more comfortable, more willing – and because of the assassination – more able to create and use tools of political repression? To engage those tools of counter-espionage to persecute those who are willing to shoot at the president for their belief in a communist anarchist utopia; or perhaps even use those tools against those who desire it but are not willing to use violence to bring it about?

McKinley died eight days after he was shot, succumbing to gangrene caused by the bullet wounds. His assassin would not long outlive him; justice was swift. His trial began on 23 September and a guilty verdict presented the next day after a jury had deliberated for only an hour. Czolgosz was electrocuted by three jolts, each of 1800 volts, in Auburn Prison on 29 October 1901, just forty-five days after his victim’s death. He was pronounced dead at 07:14.32

Riding in the presidential funereal train, political boss and Senator from Ohio, Mark Hanna, could not hide his discontent with the man soon to become president, the then Vice-President, and blurted out ‘I told William McKinley it was a mistake to nominate a wild man at Philadelphia. I asked him if he realized what would happen if he should die. Now, look that damned cowboy is the President of the United States!’ The Cowboy he was referring to was Theodore Roosevelt, the new King.

Sometimes in history the man and the moment meet. Theodore Roosevelt was the man and the new century – following the previous one which saw a demographic explosion, the development of new rights, urbanisation and industrialisation – was the moment. In the decades after Abraham Lincoln, power had resided in Congress. As noted in the introduction to the previous chapter, the period in between Lincoln and Roosevelt is notable for having forgettable presidents. The mark they left on the executive office is as difficult to recall as they are. Roosevelt was the antithesis of these men. He

---

33 It is important to note that there is a question about the accuracy of the quote as the recollections of its provider – H.H. Kohlsaat, editor of the Chicago Times-Herald – have been called into question. For quote and debate on its accuracy see: Nathan Miller, Theodore Roosevelt: A Life (New York, NY: William Morrow. 1992), pg. 355.
left a permanent mark on America’s political landscape – most indelibly on the apparatus of securing the state, notwithstanding his imprint being wholly unassessed by official and semi-official histories on the origins of counter-espionage.

He was the youngest president in history, at 42; the first to be born in a city; the first president to mediate a labour dispute; the first president to go down in a submarine; the first president to leave the country whilst in office. Roosevelt was the first president to win a Nobel peace prize; and often overlooked, he was the first president to understand the news cycle and use it to his advantage to get his side of the story out. He was not afraid to speak his mind or communicate his ideas, and in doing so he fundamentally changed the relationship between the press and the presidency.

The press had designated work spaces on the second floor the White House, but for most of the nineteenth century, reporters concentrated most of their political coverage on Congress and its activities. However, when the West Wing opened in 1902, Roosevelt made sure it contained the White House’s first official press room. He would meet with reporters directly and daily, something no president had done before. As Donald A. Ritchie – Historian of the United States Senate – perfectly summarised, “Roosevelt was the first chief executive to perceive that the “aggregation of humanity” under the

37 Elmer E. Cornwell Jr., Presidential Leadership of Public Opinion (Bloomington, IN: Indiana University Press, 1965), pg. 17
39 He would often have reporters interview him during his daily shave. See: Donald A. Ritchie, *Press Gallery: Congress and the Washington Correspondents* (Cambridge, MA: Harvard University Press, 1991), pg. 203
Capitol dome [Congress] could match a colorful presidential personality. He acted to create public opinion that Congress would be obliged to follow’.  

Thomas Jefferson, who is often considered one of the great authors of correspondence in the history of prolific writers in America, wrote about 22,000 letters. Roosevelt wrote over 150,000, making him the most productive correspondent in American Presidential history. He could claim centre stage, set the agenda and get his message out in a way previous presidents had not bothered to do. As Historian Richard Hofstadter fittingly observed, ‘It is hardly an exaggeration to say the progressive mind was characteristically a journalistic mind’. This shared mind-set greatly contributed to Roosevelt’s ability to understand the news cycle. He did not invent the ‘bully pulpit’ – his two heroes, George Washington and Abraham Lincoln – had laid the foundation. Roosevelt, however, certainly updated it, expanded it and perfected it; and from it ‘would focus the charge of a national movement to apply an ethical framework, through government action, to the untrammelled growth of modern America’. It was Roosevelt that elevated the presidency above Congress by creating a sense of

40 ibid.
45 This was true for other Progressive Presidents, William Taft and Woodrow Wilson too.
46 Goodwin, The Bully Pulpit, pg. 18.
excitement about the executive.47 He was a moral crusader, a born leader of men – but wholly unpredictable. Describing Roosevelt, the British ambassador to the US from 1912 to 1918, Sir Cecil Spring-Rice, reminded his colleagues, who were startled after meeting the man himself, ‘you must always remember the President is about six’.

Most importantly, the new President was a staunch advocate of the rising ‘Progressive Movement’. Progressives – including Roosevelt, and later presidents William Taft and Woodrow Wilson – believed that the federal government’s guiding hand was necessary to foster social justice in an industrial society. Roosevelt had no tolerance for corruption and little trust of those he called the ‘malefactors of great wealth’.49 Once President, he immediately went after the party machine and bosses, to make the executive – not the legislator – the dominant branch of government and where national solutions would be devised and implemented; and progressivism would become the dominant national force for the next two decades.

Though Roosevelt executed solutions to the problems facing the lives of ordinary Americans, which garnered popular support, he did so by stepping far outside the bounds of powers ‘expressly delegated’ to the President in Article II of the Constitution. His stretching of the Constitution was not limited to interventions into the economy, but also eventually extended into law enforcement and counter-espionage. However, as a sufficient number of

47 See footnote thirty-six.
Americans supported the outcomes he proposed in curtailing the excesses of modern industrialised capitalism, they (like him) paid no heed to the processes and safeguards a constitutional republic necessitated, which were intended to ward against arbitrary government powers. The same approach focused on executive actions and outcomes would eventually be applied to problems perceived by progressive presidents to national security issues, domestic in nature, where processes and constitutional safeguards would once again would be flouted.

Roosevelt was a moralist, whose father had taught him to view the world in terms of right and wrong, and see himself as the defender of the right.\(^50\) He also did not suffer from self-doubt. When the Republican Party bosses blocked him from winning the nomination in 1912, Roosevelt declared the party must stand ‘for the rights of humanity, or else it must stand for special privilege.’\(^51\) After failing to secure the nomination of the Republican Party, he decided he simply create his own third party. Officially, it was known as the Progressive Party. Unofficially, it was called the ‘Bull-Moose Party’ after Roosevelt told a reporter ‘he felt as strong as a bull-moose’ and promised to increase federal regulation and protect the welfare of ordinary Americans.\(^52\)

His rationale for creating this party and not bowing out, after failing to secure the nomination of his party despite going into the convention with a substantial delegate lead over his rivals, is illuminating. It encapsulates wholly

\(^{50}\) Ward, *The Roosevelts*, pg. 377 [eBook].


\(^{52}\) Ward, *The Roosevelts*, pg. 521 [eBook].
what progressives – all progressives including those outside the party – were all about. Roosevelt was a student of history, and unsurprisingly, after his father, his hero was Abraham Lincoln. Roosevelt knew the Republican Party was brought into existence in 1854 as a rare third party to challenge the existing system. If one could do this in the 1850s, why could Roosevelt not do it in 1912? If there was good that needed to be done, he would do with or without the support of his Party. The searing focus on outcomes that he and other progressives championed would equally be applied to the perceived problems facing the nation, from the economy to national security.

Roosevelt soured on the two main parties after failing to secure the Republican nomination. He argued both parties were husks, and that neither was addressing modern industrial life. According to Roosevelt, both the Republican and Democratic parties were stuck in the politics of past generations, and a third party was needed to bring the crucial issues to the forefront. While in England for the funeral of King Edward VII in May 1910, Roosevelt predicted that American society would erupt into a civil war between labour and capital. His solution was progressivism; channelling Lincoln, he argued ‘Labor is the superior of capital and deserves much the higher consideration’, and that the only thing which could save the country from a social revolution (like the type which would eventually occur in Russia in 1917) was to clean up politics and provide a more equitable share of wealth to the workers. He believed the only way to save capitalist America from

54 ibid.
55 ibid.
56 ibid.
57 ibid.
itself was to have a social democratic gradualist revolution, which was called progressivism. It was not just a third way; it was genuine ideology.

Perhaps it is best to think of Progressivism, even at this early stage, as an attempt to blend American liberty with developing concepts of universal equality. Social democracy, but with a particularly American feel. In 1909 Herbert Croly published the Progressive-era bible, *The Promise of American Life*.\(^\text{58}\) Roosevelt had read Croly's book, which called for the nationalisation of political life, and was greatly influenced by it.\(^\text{59}\) In Roosevelt’s famous ‘New Nationalism’ speech on 31 August 1910 in Osawatomie, Kansas, you hear now-familiar themes espoused by all progressives still to this day, such as ‘special interests’, the necessity of regulating the corporations, and the clear distinction between ‘human rights’ and ‘property rights’.\(^\text{60}\) This is the single best speech which exemplifies the Progressive ethos. In it, Roosevelt called for, among many other things, a national health service to include all existing government medical agencies; social insurance, to provide for the elderly, the unemployed, and the sick; an eight-hour workday; a federal securities


\(^{59}\) After reading Croly’s *The Promise of American Life*, Roosevelt wrote the following: ‘In Mr. Herbert Croly’s “Promise of American Life”, the most profound and illuminating study of our National conditions which has appeared for many years, especial emphasis is laid on the assertion that the whole point of our governmental experiment lies in the fact that it is a genuine effort to achieve true democracy—both political and industrial.’ Admiration (and influence) certainly went both ways between the two men, as John Milton Cooper has noted. See: Theodore Roosevelt, ‘Nationalism and Popular Rule’, *Outlook* 98 (21 January 1911), pp. 96–101. Reprinted in *Works*, vol.19, pp.10-30; Cooper, *The Warrior and the Priest*, pg. 147.

commission; farm relief. It also expressed a need for workers’ compensation for work-related injuries; an inheritance tax; a Constitutional amendment to allow a Federal income tax; women’s suffrage; direct election of Senators and primary elections for state and federal nominations.\(^\text{61}\)

The main theme of Roosevelt’s ‘New Nationalism’ was an attack on what he saw as the domination of politics by business interests, which allegedly controlled both established parties. Roosevelt said, ‘the man who wrongly holds that every human right is secondary to his profit must now give way to the advocate of human welfare, who rightly maintains that every man holds his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it’.\(^\text{62}\) Only two decades earlier, as attested by the events at Homestead, this would have been an unthinkable thing for a presidential nominee to say as property was private and an inalienable right.\(^\text{63}\) This moral aggrandisement compelled the creation of a centralised federal bureau to ensure the enforcement of the law. Once it existed, the spirit of ‘new Nationalism’ Roosevelt imbued America with would quickly ignite a wave of nativism and turn the force towards policing the morals and loyalty of citizens.

There was a new strain in American political culture that called for social justice, and the attainment of it through a strong federal government with a president who saw his role as ‘the steward of the public interest’.\(^\text{64}\)

\(^{\text{61}}\) ibid.

\(^{\text{62}}\) ibid.

\(^{\text{63}}\) See the conclusion reached after Homestead – chapter five – from both houses of Congress.

Progressives were convinced of the necessity of more federal government involvement in all the affairs of the nation, from welfare legislation; national defence; government reform and regulation aimed at reducing patronage; environmental conservation; and regulating big business so that its actions did not negatively affect the common welfare. The reasoning underlining the use of the federal government as a means of safeguarding the common welfare, necessitated a bureau responsible for investigating. A law that prevented logging in western forest lands, for example, meant nothing if it had no enforcement mechanism to accompany it; and once the mechanism was organised into a central bureau and staffed by professionals, it could then be reoriented or expanded to investigate espionage, loyalty, treason or sedition if a law was passed – even if that law itself subverted the Constitution.

An approach that emboldened the executive would trickle into every crevice of law making, that would eventually include counter-espionage. Other than through looking at campaign speeches, this ‘stewardship’ can be seen in the number of Executive Orders issued by Progressive Era presidents. Woodrow Wilson and Theodore Roosevelt together issued double the number of their twenty-five predecessors combined.\(^{65}\) The same argument, but to a much lesser extent, could be made looking at progressive presidents’ use of vetoes.\(^{66}\)


\(^{66}\) An uptake in the use of presidential vetoes began earlier with the 22nd President Grover Cleveland. Though Cleveland’s use of vetoes had a different impetus from the use by progressive presidents. For information on presidential vetoes: United
The Progressive Party would be short lived, promptly disintegrating in 1916 as Theodore – set to take the party’s nomination – pulled back. This, however, was not a disintegration of the progressives’ platform, just the party. The reforms espoused by progressives remained hugely popular and the work done by Roosevelt and Taft – which included the Department of Commerce and Labor being established in 1903; the Food and Drug Administration created in 1906; the Bureau of Investigation in 1908 and the Mann Act, which made it a felony to engage in interstate or foreign commerce transport of ‘any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose’ – would be expanded upon by Woodrow Wilson, who had pulled the rug from under the Republicans and Progressive parties by adopting the progressive platform.

Under the Democratic Wilson presidency, further progressive policies ensued. These included the creation of the Federal Reserve Board in 1913; the Federal Trade Commission in 1914; an executive gazette – the Official Bulletin – in 1917; a new anti-trust statute—the 1914 Clayton Antitrust Act to replace the Sherman Act; expanded farmers access to credit, workman compensation and a ban on child labour.\textsuperscript{67} In the century’s first twenty years, nearly every American institution experienced some reform despite conservative opposition. According to Edward S. Corwin, a foremost historian on the Constitution, the period was characterised by ‘the most

\textsuperscript{67} The Official Bulletin was published for only two years. It was the precursor to the Federal Register, which began in 1936, in which all new regulations were published. See Daniel P. Moynihan and Larry Combest, Secrecy: Report of the Commission on Protecting and Reducing Government Secrecy (Collingdale, PA: DIANE Publishing, 1997), pg. A-1.
complete, sustained, and altogether deliberate neglect of the formalities required by Article IV and the supplementary Acts of Congress that has thus far occurred.  

The above are all probably actions the majority of people living in the US would support today. The majority of that which has been discussed so far as it pertains to progressive policy would not be considered egregious. However, progressivism cuts both ways and resulted in the expansion of federal government power into ‘national security’ where counter-espionage would be greatly expanded. Political power in America was a zero-sum game. For the executive to amplify its powers it was necessary for it to be siphoned from other branches of the federal government and state governments. This siphoning allowed the more powerful presidency to inaugurate a centralised bureaucracy responsible for enforcing federal crimes and instituting counter-espionage legislation, both of which would eventually be routinely deployed in service of intolerance and political repression, which invariably accompany secret services. This would be the case not just at home, but abroad. With the election of Roosevelt and progressive zeal, America started to look from the outside less like a republic and more like an imperial power. The consequences of this switch would profoundly influence the apparatus of America’s existing counter-espionage system.

---

So how does all this Progressivism, which fundamentally altered the role of the federal government and the relationship between each branch, fit into counter-espionage? Historiographies of American history and its political tradition have tended to hone in on the societal, economic and political changes that progressives pioneered in the early twentieth century. The Intelligence Studies literature’s absolute lack of engagement with progressivism only further highlights the prevalence of a devotion to the narrative of pre-war American ignorance on intelligence matters.

Progressive presidents, however, did not draw an arbitrary line in the sand to determine where executive power would be exercised and where it would not. Progressivism in practice by the White House was an underlying ideological anchoring, a set of principles a president turns to when determining policy or responding to a crisis – be it interstate prostitution trafficking or ‘intestine enemies’. Fundamentally, I would summarise the Progressive approach thusly: centralised power, central bureaucracy and government intervention. Ultimately, the mandate received from the people

---


for a presidential response to national problems would be applied to problems outside the social and economic spheres, which challenged America’s traditional counter-espionage culture. Progressive presidents would attempt to ameliorate international discombobulation, loyalty, espionage and sedition using the interventionist methods that had been used in the social and economic arenas.

During his second year at Harvard in 1877, Roosevelt would begin writing his first book. It was a 498-page history entitled the *Naval War of 1812*. The book would be published in May 1882, during Roosevelt’s first term as a Member of the New York State Assembly.\textsuperscript{71} Almost everywhere the book was well received and garnered complimentary reviews in the press, not merely for its historical scholarship but for its nuanced thesis.\textsuperscript{72} In the book, Roosevelt argued that the US nearly lost that war because it did not have a navy ready, and that the war was prolonged and made more difficult as a result of national unpreparedness.

The conclusion he reached was given to the reader as a notable warning for America in the future: the nation needed to enter into a state thorough preparedness – as thorough preparedness for war was the surest guarantee of peace. Preparedness would become Roosevelt’s obsession for the succeeding thirty-five years he served in various public roles. During his time as the Assistant Secretary of the Navy, the Vice Presidency and then as President, he warned at every opportunity of the folly of persistent disregard.


\textsuperscript{72} Bishop, *Theodore Roosevelt and His Time*, vol. 1, pg. 39.
of external and internal threats, and the failure to prepare. In his preface, written in 1882, he said:

The operations of this war on land teach nothing new it is the old, old lesson that miserly economy in preparation may in the end involve a lavish outlay of men and money which, after all, comes too late to more than partially off-set the evils produced by the original shortsighted parsimony. It was criminal folly for Jefferson and his follower, Madison, to neglect to give us a force either of Regulars or of well-trained Volunteers during the 21 years they had in which to prepare for the struggle that any one might see was inevitable.

...The necessity for an efficient Navy is so evident that only our almost incredible shortsightedness prevents our at once preparing...\(^73\)

In a condensed history of the same war, which he wrote for _The Royal Navy: A History_ fifteen years later in 1897, he reiterated his earlier views, saying: ‘There never was a better example of the ultimate evil caused by a timid effort to secure peace and the refusal to make preparations for war than that afforded by the American people under the Presidencies of Jefferson and Madison’.\(^74\) It is probably easiest to think of Roosevelt’s approach to governance as the antithesis of Thomas Jefferson’s. Roosevelt thought that the President had the right to use any and all powers unless they were

\(^73\) ibid; and Roosevelt, _The Naval War of 1812_, preface.

specifically denied to him. Jefferson thought war abhorrent – his ‘Passion was peace’ – and not the means by which civilised peoples should solve disputes.\textsuperscript{75} As such, he followed Washington’s foreign policy of neutrality and pursued a policy of economic embargo in an attempt to avoid becoming embroiled in Napoleonic Wars. Theodore Roosevelt was the opposite – ‘he was the very image of a war-loving martinet’.\textsuperscript{76}

It should come as no surprise that Roosevelt thoroughly despised Jefferson, and never forgot Jefferson’s ‘cowardly infamy’ as President in failing to build an adequate army and navy, and placed on his doorstep blame for the humiliating defeats inflicted by the British on the US during the War of 1812 in his book.\textsuperscript{77} He resented Jefferson’s taking chances for peace, which in his mind meant not preparing for war. He also condemned Jefferson as one of the principle creators of ‘the nullification doctrine’, outlined in the Kentucky and Virginia resolutions, which was drafted to combat President John Adams’ Alien and Sedition Acts.\textsuperscript{78} Roosevelt, as a bulwark of executive power, would


thoroughly oppose any measure or constitutional theory that limited the President to act – what he saw – as the will of the people. Roosevelt, by rather tortured logic, also blamed Jefferson for the Civil War, as he was ‘the father of nullification and therefore secession’.  

Though Roosevelt expressed preparedness through the language of naval warfare and ships, it was not exclusive to building up the navy. Preparedness seeped into everything, including counter-espionage. If the country was to go to war, preparedness would also mean intelligence, both domestic and foreign. It meant hiding your own intentions and capabilities from international rivals, whilst seeking out theirs. It meant a concept of ‘national security’ and national interest. It meant warning against foreign threats and fifth columns – which Roosevelt eventually took to calling ‘hyphenated Americans’ – that attempted to sow the seed of dissent domestically.

Roosevelt cared about preparedness because he wanted the twentieth century to be the American century. The consensus of history on this point is close to unanimous, Roosevelt was an imperialist – the chief architect of ‘the large policy’. It is clear because Roosevelts was not ambiguous about his goals and how he thought they could be achieved. For Roosevelt, war was a

---

79 Works, vol. 7, pg. 64.  
80 See chapter nine for more on hyphenated Americans  
means to fulfil national destiny. He was a militarist and this comes out in plenty of his national pronouncements on foreign policy.\textsuperscript{82} The clearest example of this was when Roosevelt was still serving as Assistant Under-Secretary to the Navy in a speech he gave on 2 June 1897 to the Naval War College, he was only six weeks into the job. Up to that point in America’s history, it was arguably the most belligerent speech given on the nature of US foreign policy. In short, he told the assembled recruits that the British Empire was showing signs of decline and that America was going to take its place in the world. He declared that nature abhors a vacuum and that only one country, and one country alone, can fill that vacuum; he would do his part to make sure it would be the US, and that they should do theirs to ensure it too.\textsuperscript{83}

The address is notable as it was the first elaborate and policy-oriented expression of Roosevelt’s views on the subject of national preparedness. He had first given expression to these views in his aforementioned history of The Naval War of 1812; repeated them in his Life of Benton, in 1887; and in his condensed history of the war of 1812, which he wrote in 1896 for the English Naval History, but in each of these instances he had written briefly and in general terms.\textsuperscript{84} It was Roosevelt’s corollary to the Monroe Doctrine, which split the world between civilised and uncivilised nations. Roosevelt, with his blend of paternalistic progressivism and his imperialist predisposition, added to the Monroe Doctrine that ‘civilised’ nations ought to rule and govern the ‘un-civilised’ nations. The logic of preparedness compelled counter-espionage.

\textsuperscript{82} Ward, The Roosevelts, see section ‘the Supreme Triumphs’, pp. 243-250 [eBook].
\textsuperscript{83} ibid.
\textsuperscript{84} Bishop, Theodore Roosevelt and His Time, vol.1, pp. 70-92.
Roosevelt was unequivocal and direct from the first sentence of his carefully prepared address at the Naval War College in Newport, Rhode Island, at the opening exercises:

A century has passed since Washington wrote “To be prepared for war is the most effectual means to promote peace”. We pay to this maxim the lip loyalty we so often pay to Washington’s words; but it has never sunk deep into our hearts...The truth of the maxim is so obvious to everyman of really far-sighted patriotism that its mere statement seems trite and useless; and it is not over-creditable to either our intelligence or our love of country that there should be, as there is, need to dwell upon and amplify such a truism. ... In this country there is not the slightest danger of an overdevelopment of a warlike spirit, and there never has been any such danger ... All the great masterful races have been fighting races ... Cowardice is the unpardonable sin. No triumph of peace is quite so great as the supreme triumphs of war. It may be that at some time in the dim future of the race the need for war will vanish; but that time is as yet ages distant.... It is through strife, or the readiness for strife, that a nation must win greatness.85

Published in full in the principal newspapers, the address attracted widespread attention and aroused animated discussion. It was universally recognised for what it was: the clarion call for a new note in the conduct of

national affairs. Nothing similar to it had been said by a public official. As the editor of his collective letters, Joseph Bucklin Bishop, noted ‘It was the voice of Roosevelt, and of Roosevelt alone, and it stirred the country like the sound of a trumpet’.\(^{86}\) From the comments of the newspapers, it was welcomed as a positive change. With few exceptions, the leading journals of the country expressed warm approval of the address.\(^ {87}\)

When he gave the speech, he had little ability to follow through with its promises and pronouncements, but with an assassin’s bullet he would ascend to the presidency only four years later, the youngest president in the country’s history. With the vigour and youthfulness of a man much younger than he, at 42-years old, Roosevelt was now in the White House to turn his words into deeds and transform America. The American expansionism that Roosevelt had advocated as the Assistant Secretary of the Navy would succeed beyond his expectations. America would begin its transformation in earnest into world power: it would annex Hawaii, wrestle control of the construction of the Panama Canal from Colombia and drive Spain from the new world, dominate Cuba and Puerto Rico; and wrestle the Philippines from the Spanish, then subjugated them. The combination of Roosevelt’s obsession with national preparedness and a policy that entangled America in foreign affairs – a marked shift from America’s foreign policy since George Washington – created the very conditions that necessitate legislation and a centralised bureau that deals with internal threats. As great powers jostle for supremacy, they spy on one another and foment dissent; by conquering ‘uncivilised nations’ fifth columns arise to resist occupation.

\(^{86}\) ibid., pg.77.
\(^{87}\) ibid., pp.77-78.
The next titan of Progressivism, Woodrow Wilson, followed in the same mould of his predecessors. Wilson, however, looked upon war with rather more sober eyes and less romanticism than Roosevelt. Though lacking Roosevelt’s romanticised longing and enthusiasm for war, Wilson’s expansion of the executive and ‘proselytizing idealism’ would unavoidably draw America directly into the international arena; and once in the arena, dealing with international diplomacy and great power politics, sedition acts and secret service bureaus appear my justifiable.

The term most frequently applied to Woodrow Wilson in the literature with respect to international affairs is ‘idealist’. In contrast, the expression ‘power-hungry’ is rarely used. Yet a scholar not unfriendly to him has written of Wilson that ‘he loved, craved, and in a sense glorified power.’ Musing on the character of the U.S. government while he was still an academic, Wilson wrote: ‘I cannot imagine power as a thing negative and not positive.’

Though Wilson, unlike Roosevelt, did not venerate war, his progressive principles would equally induce him into action internationally if he perceived an injustice to ensue for long enough. Equally, it would induce him to advocate for espionage and sedition acts. If Roosevelt was an imperialist who was not reluctant to use economic, military or intelligence power to further national interests and aims; Wilson was only a few rungs lower on the ladder of the legitimate use of force – he was equal measures a liberal.

---

internationalist and interventionist. As soon as he became President, prior to leading the country into the First World War, his actions in Latin America were anything but peaceful. Even Arthur S. Link (whom Walter Karp referred to as ‘the keeper of the Wilsonian flame’) wrote, of Mexico, Central America, and the Caribbean: ‘the years from 1913 to 1921 [Wilson’s years in office] witnessed intervention by the State Department and the navy on a scale that had never before been contemplated, even by such alleged imperialists as Theodore Roosevelt and William Howard Taft.’ The protectorate extended over Nicaragua, the military occupation of the Dominican Republic, and the invasion and subjugation of Haiti (which cost the lives of some 2,000 Haitians) were landmarks of Wilson’s policy. All was enveloped in the haze of his patented rhetoric of ‘freedom’, ‘democracy’, and the ‘rights of small nations’ – which will appear again later.

Passivity was not an acceptable response; and once at war Wilson would launch himself into it with the same unflinching righteousness with which he approached domestic ills – an approach driven by centralisation and a strong executive office unfettered by the Constitution. Wilson – like Roosevelt – would cajole, push, intervene and stretch the office of the executive until the underlining conditions that precipitated the intervention were eliminated. It is why during the First World War, and in its aftermath, he would pursue enemies of his policies with a relatively new centralised federal bureau armed

---


with even newer regressive legislation – the Espionage Act in 1917 and the Sedition Act in 1918 – that authorised persecution of aliens and Americans alike. Progressives were always on the side of the angels, which in a black and white world, meant their opponents were on the side of the devil.

During the First World War Wilson, on 8 January 1918, would also insist upon his Fourteen Points, a statement of principles for world peace, despite the skepticism of his main Allied colleagues. He proposed a peace in which all the warring parties and neutrals would join a League of Nations, an organisation that would guarantee to all nations ‘fundamental rights, equal sovereignty, freedom from aggression, freedom of the seas, and eventual disarmament.’\textsuperscript{93} The League of Nations, he announced, would ‘insure peace and justice throughout the world.’\textsuperscript{94}

To the concept of American exceptionalism, Wilson added the evangelism which necessarily goes with liberal internationalism. Concepts of ‘collective security’ and ‘democratisation’ invariably created points of friction with states which still saw their foreign affairs through the prism of national interest, or those regimes that did not desire to democratise. Neither Wilson nor Roosevelt were ‘Peace Progressives’. The concept of a truly peaceful progressive is quite oxymoronic. If the injustice or inequality were great enough, then individual rights would need to make way for collective ones. Progressives of all stripes had already given up on the principles of separation of powers and Lockean rights as a result of the large-scale exploitation that

\begin{footnotesize}
\textsuperscript{93} ibid.
\textsuperscript{94} ‘Woodrow Wilson, “Must this War Proceed?” A Note to the Belligerents Asking for a Definite Statement of Peace terms’, 18 December 1916’, in Oliver Marble Gale (ed.) Americanism: Woodrow Wilson’s Speeches on War (Chicago, IL: The Baldwin Syndicate, n.d. pg.198), pg. 19.
\end{footnotesize}
came with the industrial age. Wilson’s approach domestically was not non-coercive, so it would it logically follow that it would be so in dealing with belligerent states abroad. Both presidents left an enduring influence on American foreign policy, which bound the office to institute an expansion of counter-espionage bureaucracies; Wilson with his liberal internationalism and Roosevelt his imperialism.

Neither could support neutrality in the European war for long, as it was antithetical to a progressive approach. Roosevelt was certainly quicker to give up the ghost than Wilson, as a result of his fetishising of war. As such, between the beginning of World War One in 1914 and when America eventually declared war on the central powers in 1917, Roosevelt was convinced that Wilson’s attempt to maintain America’s neutrality before the war was objectively evil. He wrote to Julian Street, a reporter and author of *The Most Interesting American*, a book on Roosevelt:

> Wilson’s constituents who have been most active in speaking about preparedness have been the German-Americans and other hyphenated Americans, the professional pacifists, the flubdubs and the mollycoddles, all of whom have united in screaming against preparedness and in applauding him; just as their spiritual ancestors applauded Thomas Jefferson over a century ago when he announced that “our passion was peace,” and reduced the regular army to nothing and laid up the navy and refused to continue building it and stated that the nation in

---

95 Brands, *The Last Romantic*, pg. 753.
arms, the militia without any training or trial, would be fit to defend us. 96

From the moment the war began in 1914, Roosevelt sided with the Entente powers. Progressivism was, in the Burkean sense, an ‘armed doctrine’, with Roosevelt certainly being more militaristic, but no less self-righteous. ‘More and more’ he wrote to a British journalist and newspaper proprietor, ‘I come to the view that in a really tremendous world struggle, with a great moral issue involved, neutrality does not serve righteousness; for to be neutral between right and wrong is to serve wrong’. 97 Roosevelt could not bear that he and his country would not have a central role in the great struggle of the age. 98 Roosevelt’s response, and his justification for the absolute necessity for his country to go to war against Germany encapsulates – starkly – a central tenet of progressivism: action. This inability to refrain from acting would make the entrenching of counter-espionage in government predictable once the circumstances would align.

For a warrior, which Roosevelt was a caricature of, or a ‘Presbyterian moralist’ priest, which Roosevelt caricatured Wilson as, passivity in the face of gross injustice, be it inequality within the interior or a perverse flouting of international law, could not go answered. 99 Neither was fearful about using the executive to do what he felt was necessary, if they believed it to be so. The same impetus that drove them to ameliorate the conditions of the

---

96 Theodore Roosevelt and His Time, vol. 2 pg. 388.
98 Brands, The Last Romantic, pg. 754.
99 Cooper, The Warrior and the Priest, pp. 1-4
working poor drove them to war and the creation of counter-espionage bureaucracies to maintain its successful completion.

A NEW AMERICA

Following the seismic shifts in the American political landscape by Franklin Roosevelt’s ‘New Deal’ – which borrowed more than just the language of his fifth cousin’s ‘Square Deal’ – the legacies of both Theodore Roosevelt and Wilson have been eclipsed. It is true the progressive agenda would not reach its zenith until the 1930s. Nevertheless, it is still vital when assessing the origins of America’s counter-espionage/domestic security apparatus to delve back further into history to the progressive presidents of the early twentieth century. For without a trailblazer there would be no paths to follow through the political wilderness. Furthermore, Franklin Roosevelt’s ‘New Deal’ administration – in terms of counter-espionage – added nothing which earlier progressives had not already bestowed to him.

It is also of importance when assessing the legacy of progressive presidents not to focus only on the success. They were great domestic reformers, trust-busters and social-justice warriors. Equally, when reconstructing their legacies, the consequences of progressive ideology in national defence, political repression and civil liberties need to be considered. The good cannot be separated from the bad, as the politics that informed domestic intervention in economics equally stimulated interventions that trampled over civil liberties by making government spying a virtue. There is no separating them, as the following two chapters on the statutes and bureaucracy that dealt with counter-espionage will attest.
Both Roosevelt and Wilson had designs to break with the precedent set by Washington to serve only two terms,\(^{100}\) a precedent created by Washington and solidified by Jefferson over a fear of perpetuity in office and the republic slipping into a monarchy.\(^{101}\) A monarchy, by Jefferson’s assessment, being the ultimate manifestation of an executive who has seized too much power and become corrupt, ‘Whenever a man has cast a longing eye on [offices] a rottenness begins in his conduct.’\(^{102}\) Progressives hardly cared about written traditions, let alone unwritten ones if there was still good to be done in public office and it could be done by staying there.

In the \textit{Federalist Papers no.}47 James Madison examined the separation of powers among the executive, legislative, and judicial branches of government.


government under the proposed US Constitution. He argued that the Constitution balanced the government well with the separation of powers among the executive, judiciary and legislature. Madison acknowledged that the three branches intertwined but asserted that the blending did not violate the principle of separation of powers. He attributed the widespread support of a separation of powers to Montesquieu, according to whom tyranny resulted when one branch of government simultaneously holds the powers of another branch. Roosevelt and other Progressive Era presidents were not tyrants; that is certainly too strong a word. They did, however, usurp a great deal of power from state governments and congress in order to fulfil their agendas, and their ability to do so broke the chains that had previously bound the country to the Constitution and limited counter-espionage.

In 1902, Pennsylvania workers were once again making national headlines. Miners were on strike asking for higher wages, shorter workdays and the recognition of their union from the company. Winter was approaching, and the strike threatened to shut down the winter fuel supply to all major cities. From the purest of motives and intentions, Roosevelt feared the country would suffer, as ‘A coal famine in the winter is an ugly thing, and I fear we shall see terrible suffering and grave disaster’, and determined that he had to intervene. No president had ever done so before. Roosevelt was told in plain terms by his Attorney General, Philander Knox, that he had no authority to do so under the constitution, but he did it anyway. Of the hundreds of

104 Herbert D. Croly, Marcus Alonzo Hanna (New York, NY: Macmillan,1912), pg. 399.
large labour disputes that had transpired in recent memory, this was the first time in the country’s history in which the federal government intervened. Only twenty years earlier, not even a full generation, all America’s central institutions – from congress to the press – almost unanimously declared the federal government had no role in the Homestead Strike affair. Roosevelt, however, would not be denied. He established a fact-finding commission that suspended the strike. His intervention was a successes, the strike never resumed, as the miners received a ten per-cent wage increase and reduced workdays from ten to nine hours; the owners got a higher price for coal, and were not required to recognise the trade union as a bargaining agent.

Looking purely at the outcomes, the President ignoring constitutional constraints and processes and intervening was clearly a good thing – many Americans at the time also thought so. The conclusion was obviously more desirable than the madness at Homestead in 1892 – or plenty of other labour disputes that had turned violent in between the two. But as one grateful Harvard Sophomore aptly concluded in a letter home to his mother that October, ‘now the strike is settled the coal has begun to come in small quantities. In spite of the president’s success in settling the trouble, I think that [he] makes a serious mistake in interfering – politically, at least. His tendency to make the executive power stronger than the Houses of Congress

is bound to be a bad thing, especially when a man of weaker personality succeeds him in office.’ The Harvard sophomore was Theodore’s fifth cousin, Franklin D. Roosevelt.

GOVERNMENT PINKERTONS

If any citizen of the United States shall accept, claim, receive or retain, any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any Emperor, King, Prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.¹

The quote above is from a proposed amendment to the US Constitution, entitled The Titles of Nobility Amendment in early 1810. The amendment, like the earlier Title of Nobility clause, was roused by the republican principles of government that determined titles of nobility had no place in an equal and just society as they invariably led to corruption – as could be seen in European nations and their conduct of domestic and foreign affairs.² It was

---

¹ 2 US Stat. at L. (1810), 613.
² For example, Alexander Hamilton in Federalist No. 22, where he says: ‘One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption’. Also Thomas Paine: ‘Dignities and high sounding names have different effects on different beholders. The lustre of the Star and the title of My Lord, over-awe the superstitious vulgar, and forbid them to inquire into the character of the possessor: Nay more, they are, as it were, bewitched to admire in the great, the vices they would honestly condemn in themselves. This sacrifice of common sense is the certain badge which distinguishes slavery from freedom; for when men yield up the privilege of thinking, the last shadow of liberty quits the horizon’. See: Alexander Hamilton [Publius], ‘Federalist No. 22: The Same Subject Continued: Other Defects of the Present Confederation’ in Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (18 December 1787); and
approved by the 11th Congress on 1 May 1810, and then sent to the state legislatures for ratification, where the amendment has since never been approved, lacking, at that time, the approval of only two state legislatures.\(^3\) Unmistakably, the amendment itself is inherently linked to treason, as it deals with loyalty, citizenship and subversion. It handled these concepts tactfully so as to ensure it did not cross the line of treason in the Constitution, which is the article it was meant to be a supplementary measure of. It would, however, strip US citizenship from any citizen who accepted a title of nobility from a foreign country, and ensured they could not hold public office.

There is speculation that Congress proposed the amendment in response to the 1803 marriage of Napoleon Bonaparte's younger brother, Jerome, to Betsy Patterson, the *soi-disant* Duchess of Baltimore, Maryland.\(^4\) The grandson of Jerome and Betsy Bonaparte, the great-nephew of Emperor Napoleon, was Charles Joseph Bonaparte – who in 1906 would become the 46th United States Attorney General who created the Bureau of Investigation. Without the dawdling of two states, and US counter-espionage history, as we know it today, would have looked different. The trajectory of US counter-espionage has numerous such pivotal moments, just like the assassination of William McKinley and Joseph O’Neill’s anti-Pinkerton amendment. Fatefully, when Britain mounted a sophisticated multipronged campaign to draw America into the First World War, it would use people’s

---


\(^3\) I say ‘has never’ and ‘at that time’ as Congress put no time limit on the amendment it could still be approved today, though it would need ratification by twenty-six additional states now, see: Jol A. Silversmith, ‘The "Missing Thirteenth Amendment": Constitutional Nonsense and Titles of Nobility’, *Southern California Interdisciplinary Law Journal*, Vol. 8, No. 2 (1999), pg. 577.

love for titles and distinctions. Britain, during the war but before America’s entry, made provisions whereby the wife of an important American newspaper proprietor would be hostess to a Count, or the wife of a senator would entertain a Duke, a Marquis or an Earl. It was considered to be one of the most reliable means of winning Americans to the Entente cause.

Historians have the advantage of knowing how history unfolds – this disposes the historian toward a certain degree of hubris. When assessing the trajectory of the past, moments, individuals and events leap out at you and conveniently start to form a pattern connecting these seemingly singular events. That pattern eventually takes the form of a narrative. These narrative patterns, when presented, then look inevitable—as if history could not have unfolded in any other way. The passage of the creation of the Bureau of Investigation is one of those moments in history that could have unfolded many different ways, with a change of only one other seemingly unconnected event. Along with the aforementioned role of Theodore Roosevelt, Charles Joseph Bonaparte played a crucial role in the creation of ‘government Pinkertons’. From its inception, the Department of Justice’s Bureau of

---

6 ibid.
7 The Term ‘Government Pinkerton’ is from Edward O. Wolcott (R-CO) who – ironically bearing in mind sixteen years later the impetus of the Bureau of Investigation was linked Land Fraud in the West – was opposing cutting the expenses of the Land Office in Western States that assisted homesteaders and channeled the cut expenses into appropriation towards special agents for the Department of Interior. Wolcott bellowed, ‘…special agents who in my experience in Colorado, work nothing but evil. I have never known a more oppressive lot of people inflicted upon a country than the special agents sent from the Department here, who work as a sort of detective agency and who endeavor to undo that which people have endeavored to do legitimately and honestly. More harm and less good is accomplished by special agents of this Department that in any other department of the Government with which I am acquainted. They are Government Pinkertons.’
Investigation was a creation of the executive branch. Congress’ role was secondary, and would continue to be so far past this thesis’ area of examination. The fears expressed by Congressmen over the creation of the Bureau of Investigation, however, highlight the juxtaposition between traditional concerns rooted in the threat that secret security services pose to society; and the approach of Progressive Era politics that mandated the creation of centralised bureaus, staffed by experts and directed by the executive.

After the private sector was legislated away, the creation of the Bureau of Investigation was the first step in a new system that resulted in the expansion of American counter-espionage. The gradual climb of the Bureau of Investigation would start during the Roosevelt administration. Its ascension was slow but consistent; until it soared over America’s traditional counter-espionage culture, which had existed for a century.

A SPECIAL DETECTIVE FORCE

When Bonaparte was appointed Attorney General in March 1907, he was already convinced that the Department of Justice needed its own special detective force. He believed that since its founding in 1789, the position of Attorney General had ‘completely changed’ for the better. Over time, the Attorney General and the Department of Justice accrued ‘duties’,
‘supervision’ and ‘control’ over US attorneys, marshals, as well as an ‘extremely wide field’ of responsibilities from a steady increase of federal legislation since 1870.9 Bonaparte was of the strong opinion that the previous system – which gave each department a small detective force – was inferior to a centralised bureau. He suggested ‘it would conduce to unity, and consequent harmony and efficiency of administration, if all detective duties, which are directly connected with actual or contemplated civil or criminal proceedings, should be entrusted to a detective force organized substantially on the basis of the force of special agents now employed by this Department’.10 He envisioned one large centralised bureau that would include most, if not all, of the functions the Pinkerton Detective Agency had undertaken for most of the nineteenth century, including at Homestead, like ‘the protection of public functionaries or the guarding of public property.’11

From his first annual report for the fiscal year 1907, Bonaparte raised with Congress that the Department of Justice did not have its own special detective force.12 Bonaparte, like President Roosevelt who appointed him, was a progressive who defended central executive control over such a force under the cover of efficiency and cost-effectiveness. A detective force was, however, a logical consequence of progressive politics. The cheapest solution would have been to avoid creating new federal laws requiring a federal investigatory force. Nevertheless, as Bonaparte saw the status quo – wherein the Justice Department relied on the Treasury Department ‘loaning’

9 ibid. passim.
10 ibid, pg.10.
11 ibid, pg.10.
detectives – as woefully inadequate and no longer able to fulfil the Department’s more rigorous investigative requirements.

The tenets of the Progressive movement, championed by Roosevelt, brought the federal government into new areas of law enforcement. With the passage of the Sherman Anti-Trust Act in 1890, and the sharp rise in anti-trust cases which followed during Roosevelt’s presidency, the Department of Justice was incapable of handling potential investigations.\textsuperscript{13} Instead of having to borrow US Marshals or Secret Service agents, Bonaparte argued that the Department of Justice ought to have ‘had a small, carefully selected, and experienced force under its immediate orders, the necessity [of using other detectives]...might be sometimes avoided with greater likelihood of economy and a better assurance of satisfactory results.’\textsuperscript{14} In correspondence with Roosevelt, Bonaparte took to calling it a ‘special detective force’ – by 1910, it would bud into the Bureau of Investigation, and eventually blossom into the Federal Bureau of Investigation in 1935 under J. Edgar Hoover.

The process was not smooth however, even if Bonaparte was an astute politician who understood the narratives necessary to persuade sympathetic Congressmen to back his band of ‘special detectives’. He would attempt to sway Congressional leaders by appealing to the popular ideology of the day: progressivism, claiming repeatedly greater efficiency and economy. Bonaparte also told members of Congress they would be able regulate the duties and scope of the detective force through statute.\textsuperscript{15}

\textsuperscript{15} ibid.
Bonaparte’s real intentions, however, were clear: he wanted his own body of detectives. In his testimony before a House Appropriations Subcommittee on 17 January 1908, Bonaparte reiterated the proposed establishment of a departmental detective force, again employing the familiar language of Roosevelt’s administration of economy and efficiency. He told the subcommittee that ‘it would tend to more satisfactory administration and also to economy if instead of being obliged to call upon [the Secret Service] for this service we had a small, a very moderate, service of that kind ourselves. I think the best plan would be to have a service of that kind under the control of the Department of Justice and let it, if necessary, assist other departments in cases of emergency.’

Bonaparte insisted once again – in April 1908 hearing – that the Department of Justice’s special detective force would ensure efficiency and economy. House members were sceptical of the Attorney General’s claims on the desirability of creating such a special detective force. They were, however, more concerned with the current system, of the Secret Service loaning agents to the Department of Justice. As one of America’s leading experts on the

---

16 During February and March 1908, following Bonaparte’s second request, the committee held a series of hearings on the Secret Service’s loaning detectives to the Department of Justice, which compound Congress’ concerns. See: United States Congress, House, Hearings before Subcommittee of the House Committee on Appropriations, Deficiency Appropriations for 1908 and Prior Years, Urgent Deficiency Hearings, 60th Cong., 1st sess. (Washington, DC: Government Printing Office, 1908), pg. 202. [Henceforth, Deficiency Appropriations for 1908 and Prior Years, Urgent Deficiency Hearings].

Bureau, Athan Theoharis has argued that congressional legislators were ‘reflecting the “strong states’ rights” and libertarian sentiments of an earlier day’ and that they ‘justified their actions as essential to safeguard representative government and prevent the evolution of “a Federal secret police”’.

In other words, an upholding of the traditional anchoring of the past hundred between government and the existence of a counter-espionage bureau.

Congressman Walter Smith (R-lA), when enquiring over the use of the Secret Service agents questioned whether the Attorney General felt Congress’ antagonism was ‘evidence of the hostility to what might be called a spy system.’

Bonaparte returned to familiar ground, focusing on the necessity for such a force to create ‘efficiency’ and ‘cost effectiveness’ as well emphasizing the need partly due to the changing nature of crime in America. He argued that ‘crime is all the time becoming less and less local in character’ and the current system of investigation used by the Department of Justice was woefully inadequate.

Later in his testimony, Bonaparte made the same argument and connected it to the same logic that had fuelled progressive interventions into the economy: ‘the growth of the country is such and the enormous increase in facilities of communication and the, so to speak, “cosmopolitization” of crime ... is such that you are compelled now to have a central agency to deal with it.’

In essence, what Bonaparte was saying was that the country had changed in profound ways, and as such the system of law enforcement needed to change with it.

---


19 Sundry Civil Appropriations Bill for 1909, pg. 776.

20 ibid., pg. 777.

21 ibid., pg. 779.
Bonaparte’s argument had a certain logic to it. In the industrial age where robber barons, train bandits or anarchist assassins could do more harm than could be imagined by the framers of the Constitution in the eighteenth century, the role of the federal government needed to change. It was a progressive argument, however, that could be made ad infinitum in support of the creation or expansion of any federal bureaucracy. Nevertheless, the perceived risk to the people from a centralised secret service that motivated the framers to curtail treason was still relevant in the first decade of the twentieth century, and prompted Congressional kickback. Concern about the perils that a federal detective force posed to the principles of limited government and to the inalienable rights of Americans was particularly prevalent among an informal alliance of conservative Republicans and Southern Democrats.

Congressman Joseph Swagar Sherley (D-KY), for example, argued that such a force struck some in Congress as not ‘being in accord with the American ideas of government to undertake, by a system of spying on men and prying into what would ordinarily be designated as their private affairs, to determine whether or not a crime has been committed and to make the efficiency of a Department dependent not so much upon the presentation in an orderly and legal way of a case properly brought as upon the nosings of the secret-service men. There seems to be a growing tendency to look to the employment of special agents whose chief attribute is their ability to spy.’ Seconding Congressman Sherley’s concern, Congressman George Waldo (R-NY) put the central issue in even starker terms: ‘[If] we believe in a central secret-service bureau, such as there is in [czarist] Russia today ... it would be a great blow

\[\text{ibid., pg. 779.}\]
to freedom and to free institutions if there should arise in this country any such great central secret-service bureau as there is in Russia.'

Bonaparte responded to these point by suggesting ‘if you have a man who is permanently employed in a Department and whose retention depends on his faithful discharge of his duty, and not on the fact of his making work for himself, then you avoid whatever there is of evil in the suggestion you mention.’ On a similar question earlier, he had told members of the committee that they had said ‘the spy system applies rather to the method of doing the work than to the work itself. We are obliged to have people who will investigate and report on the facts attendant on crimes or suspected crimes, and the protection of the community makes it very desirable that you should have as efficient a force as you can.’ This was a straightforward consequentialist argument in line with progressive thinking at that time. Spying by government – to borrow the title from one of the semi-official histories – was a form of ‘honorable treachery’. The intent of domestic spying by government is just, since the intent behind the spying was to protect the common welfare.

Making this argument, Bonaparte carefully attempted to morph the concerns raised by Congress on the threat and nature of domestic spying into the sanitised domain where questions of proper management and oversight live.

---

24 Sundry Civil Appropriations Bill for 1909, pg. 779.
25 ibid., pg. 779.
Accountability and oversight would not be provided by Congress, but by Bonaparte himself, as the panopticon supervisor. He failed, however, to change the mind of those sceptical Congressmen. Contrarily, in a move that was ‘un-expected and embarrassing’ for the department, the House Appropriations Subcommittee stopped Bonaparte’s ability to ‘loan’ Secret Service detectives rather than complying with his request for the appropriations necessary to establish a special detective force.27

The Chairman of the House Appropriation subcommittee, James Albertus Tawney (R-MN), was deeply opposed to Roosevelt’s progressive approach to power – succinctly, that what was not forbidden by the law was therefore allowed.28 Tawney, like other Congressmen on the committee, was concerned with executive overreach. He endeavoured to reassert Congress’ constitutional prerogative to appropriate funds, with the consequence of limiting the Secret Service solely to the investigation of counterfeiting and the protection of the President.29 Tawney’s committee would insert a clause to the 1909 Sundry Civil Appropriations Act (passed in May 1908) which would make it illegal for other government departments to borrow Secret Service detectives.30 While the Senate’s version of the appropriations bill was without this clause, House members held firm on its inclusion within the combined bill, which after conference, was sent to the President to sign. Roosevelt now had an opportunity to veto the ‘Sundry Civil Appropriations

---

28 The President would get his revenge against Tawney, for his ‘stonewalling’ as Roosevelt would support a Progressive Republican – Sydney Anderson – who unseated him in the 1910 election.
29 Appropriations for 1908 and Prior Years on Urgent Deficiency Hearings, pp. 202-203.
Act for 1909’, but unwilling to jeopardise funding for necessary progressive programmes over this single clause, the President begrudgingly signed the act into law. 31 This was, however, only the first round.

**ROUND TWO**

The debate on Bonaparte’s ‘special detective force’ highlighted Congressional fears of the consequences of a centralisation that led directly to domestic spying. It was not the end of the debate, however, Bonaparte would eventually get his force; and the questions Congress had asked of the Attorney General in the appropriations hearings would be raised once again as congressmen looked to balance the government’s need for progressive style criminal investigations with the public’s right (and historic expectation) to be free from spying.

In his annual message – read out in the Senate on the first day of the second session, 7 December 1908 – Roosevelt went on the offensive, denouncing the new rules forbidding the loaning of Secret Service detectives from the Treasury Department to the Department of Justice. In his message, Roosevelt claimed that the Congressional action was ‘of benefit only, to the criminal classes’. 32 If deliberately introduced for the purpose of diminishing the

---


32 This portion of his annual message, and his special message of 4 January 1909, was based on his earlier lobbying from April in the first session, writing to the House Speaker, Joseph Cannon, where he argued that the provision would, ‘materially
effectiveness of war against crime it could not have been better devised to this end.\textsuperscript{33} In a special message to Congress from 4 January 1909, he further clarified his view: ‘there is no more foolish outcry than this against “spies”; only criminals need fear our detectives.’\textsuperscript{34} For a while during the second session, Congress went back and forth, but Roosevelt’s hostile response to the new ruling, and his slinging accusations of corruption at Congress won him no friends or allies in potentially overturning the decision.\textsuperscript{35}

Roosevelt, however, did not need allies in Congress. If he could, he would have run the country from the Oval Office. More importantly, he would go over the heads of the people’s representatives and appeal directly to them. He would stand in the Bully pulpit to advocate his agenda – especially if that agenda was muckraking and progressive reform, which had widespread support.\textsuperscript{36} Roosevelt spoke directly to the people in plain language on why their Congress was preventing the Secret Service loaning detectives to the Department of Justice: ‘The chief argument in favor of the provision was that the Congressmen did not themselves wish to be investigated by Secret Service men… it is true that the work of the Secret Service agents was partly responsible for the indictment and conviction of a Senator and a

\begin{flushleft}
\end{flushleft}

\textsuperscript{33} Congressional Record vol. 43, pg. 24.
\textsuperscript{34} ibid., pp. 462-463
\textsuperscript{35} ibid., pp 459, 462, 661 and 662.
\textsuperscript{36} See chapter seven, for Roosevelt’s understanding of newspaper reporting
Congressman for land frauds in Oregon. I do not believe that it is in the public interest to protect criminals in any branch of the public service.'

Roosevelt painted a picture, giving recent examples of corruption, referring to past investigations uncovering antitrust or land fraud involving Senators Joseph B. Foraker (R-OH), Benjamin Tillman (D-SC) and Representative Walter Smith (R-IA) – three congressmen who had been a persistent thorn in the side of his administration. He added that, ‘some of the persons involved in these violations were of great wealth and of wide political and social influence. Both their corporate associations and their employees made the investigations not only difficult but dangerous.’ He then hammered home the point of why the executive needed to have a dedicated special detective force: ‘no more striking instance can be imagined of the desirability of having a central corps of skilled investigating agents who can at any time be assigned, if necessary in large numbers, to investigate some violation of the Federal statutes, no matter what branch of public service.’ Roosevelt also lauded a ‘centralized investigatory agency as the only efficient way to solve such cases.’

Roosevelt’s desire, like Bonaparte’s, was to create a new force, or transform the Secret Service into a centralised special detective force that could be

37 ibid., pg. 461.
38 Congressional Record vol. 43, pg. 461.
39 ibid.
40 ibid.
utilised by any executive department to deal with a variety of new federal crimes.\footnote{This idea was in keeping with the progressive emphasis on the importance of efficiency and executive control.} House members – frustrated by Roosevelt tarnishing them as corrupt – were not as eager as the President to jettison the principle of separation of powers, a prerogative they could claim from the Constitution.

The Chairman of the Appropriations Committee, and the first to speak, was Tawney. He made exactly this point, emphasising the importance of the separation of powers and traditional legislative process. He said the ‘arbitrary ... use of the great power of any one of the branches of our Government in this respect, if allowed to pass unchallenged, will go further to undermine the confidence of the people in their Government than all other agencies combined. Undermine the confidence of the people in any one of the three coordinate branches of Government and you have done more to destroy the foundation upon which that Government rests than could be accomplished in any other way’.\footnote{Congressional Record Vol. 43, pg. 660.} His remarks were greeted with applause.

Congressman Sherley attempted to steer the debate away from Congressional corruption back towards executive corruption and the fear of ‘spies and the importance of the separate branches of government’. After dissecting the President’s analysis of his prior statements, Congressman Sherley returned to his argument from the previous session: ‘A secret service force had inherently in it the possibilities of abuse.’\footnote{ibid., pg. 671.} Sherley claimed the President’s real motive behind his annual message to Congress was a desire to centralise power. Sherley had appositely disentangled Roosevelt’s rhetoric, intended to pressurize Congress to reverse their decision, from its
real intention. The desire of the President and his Attorney General – the argument they had been making since 1907 – was centralised control, cost effectiveness and efficiency. Sherley’s warning echoed those of the framers on the liberty, security trade off: ‘I recall no instance where a government perished because of the absence of a secret service force, but many there are that perished as a result of the spy system. If Anglo-Saxon civilization stands for anything, it is for a government where the humblest citizen is safeguarded against the secret activities of the executive of the government. It stands as a protest against a government of men and for a government of law… the individual citizen of the country.’ 44 Congress would ‘heretofore guard with jealous care the sacred rights of those citizens, and hedge about such service with all the safeguards essential to the preservation of the people’s liberties. Whatever may have been the wisdom of Congress, I glory in the fact that it was this motive that activated the House in the performance of its duty when legislating against a spy system.’ 45 In essence, Sherley was reasserting the traditional relationship between domestic spying and the federal government that the President was attempting to dispose of.

On the surface, it seems as if Congressman Smith, who also rose to explain Congress’ motives, better explained the sentiment of the majority in the committee and in Congress as he began by conceding that ‘We ought to be able to agree that some detective force is necessary in the enforcement of the criminal laws.’ 46 However, Smith was in Lockstep with the Chairman and Sherley in expressing a prevalent fear of a special detective force that resulted in a comprehensive domestic spying regime via a slippery slope.

44 ibid.
45 ibid.
46 ibid., pg. 671.
Smith continued ‘that, on the other hand, in a free country, no general system of spying upon and espionage of the people, such as has prevailed in Russia, in France under the empire, and at one time in Ireland, should be allowed to grow up … The question now is not should a legal detective force be created in the Department of Justice, but was Congress subject to just criticism for destroying at its last session the system which had grown up of using the counterfeiting force in the Treasury Department for miscellaneous purposes.’ The problem did not involve the use of detectives, Smith argued. Members of Congress feared ‘a central police or spy system in the Federal Government.’ Going further, Smith pointed out that ‘every department has been and now is given ample funds and authority to procure evidence and to detect criminals. If the criminals are not unearthed, it is not due to the provision about which the President complains, but it is due entirely to the inefficiency of his administration.’

Smith’s point in objecting to the President’s accusations was to show that Congress was not driven by fear of investigations by Secret Service detectives, but rather by a fear of centralised power in the executive. The same fear that motivated the framers of the Constitution to push counterespionage downwards towards states. The new provision, preventing the loan of detectives to the Department of Justice was, in this context, a clear reinforcement of this long-held fear, dating all the way back to the founding of the Republic. Congressman John J. Fitzgerald (D-NY) rallied behind the Chairman, Smith and Sherley, adding: ‘There has been an effort once or twice to create a general police system under the Federal Government,’ but that it had always failed; and if a federal attorney needs an investigator, Fitzgerald

47 ibid., pg. 672.
48 ibid.
suggested, ‘he could find one locally like all other attorneys would do’.\footnote{ibid.}
Fitzgerald, like the others on the committee, was reinforcing the federal nature of law enforcement that had been prevalent throughout America’s history.

Representatives Tawney, Smith, Sherley and Fitzgerald clearly articulated vastly different views from the country’s progressive President Roosevelt and his Attorney General on growing executive power and a centralised special detective force.\footnote{The President did have his (progressive) defenders, the most vocal of which were Congressmen Michael E. Driscoll (R-NY), Herbert Parsons (R-NY) and Joseph B. Bennett (R-KY).}

\section*{HUBRIS}

Bonaparte had done all he could to try and convince Congress to support the progressive approach to federal law enforcement. Equally, President Roosevelt weighed in and took the debate directly to the public, adding to the Attorney General’s argument the need for a robust and commanding executive branch to prosecute powerful criminals, especially in Congress. Congress, however, remained unmoved; Bonaparte was trapped. After the 1909 Sundry Civil Appropriation Act, approved on 27 May 1908, ‘it became impossible for this Department to avail itself of the services of the Secret Service at all after 1 July 1908’.\footnote{Letter from Charles J. Bonaparte to Theodore Roosevelt, 14 January 1909, pp.6-7.}
Bonaparte sought Congress’ approval for his own force, but, ironically, came away with less than he had before. On top of being prevented from hiring from within the federal bureaucracy, Bonaparte also could not avail himself of detectives from America’s premier private security firms, as many of his predecessors had. They were unavailable to him because of the Anti-Pinkerton Act passed by Congress in 1893 following the Homestead Strike.\(^{52}\)

In a letter from the Attorney General to the President on 14 January 1909, Bonaparte noted and referred specifically to the 3 March 1893 anti-Pinkerton Act as one of the reasons the department needed its own detectives: ‘that the law expressly forbids this Department to employ a trained detective from any responsible private agency and yet has made no express provision for any public agency of the like character to render the same indispensable service’.\(^{53}\)

Bonaparte had run out of options. The Department of Justice could no longer make use of the private sector or second agents from the Department of the Treasury. A shameful retreat, however, was not an option Bonaparte or the President could countenance – too many progressive policies depended on the enforcement arm of federal government. Without enforcement, laws could be flouted and the momentum built up by progressives over the past decade could be flung into reverse. So Bonaparte took the only real option left available to him. With audacity befitting his family name, in an act evocative of his great uncle’s unwillingness to accept his own fate, he charged – openly flouting the decision of Congress by organising a corps of special agents.

\(^{52}\) Explored in Section II on private sector counter-espionage and the Homestead Strike.

\(^{53}\) Letter from Charles J. Bonaparte to Theodore Roosevelt, 14 January 1909, pg. 5.
Within days of the 1 July 1908 deadline, the Attorney General began reorganising the Justice Department to deal with the imminent loss of access to Secret Service detectives. Bonaparte banded together the sundry investigators of the Department and nine Secret Service agents, who were permanently hired as Justice special agents; and on 26 July 1908, Bonaparte ordered Department of Justice attorneys to refer investigative cases to the Chief Examiner, Stanley W. Finch, who would determine if there were special detectives under his direction available to investigate them.\(^{54}\)

By August 1908, the detectives had established themselves as the investigative arm of the federal Department of Justice. The Department of Justice with the Attorney General as its head, was now ‘the direct agency through which the President discharges his constitutional duty to “take care that the laws be faithfully executed” in all those cases in which proceedings, criminal or civil, in courts of justice constitute the necessary or appropriate means of enforcement.’\(^{55}\) In essence, Bonaparte was suggesting the Department of Justice would be the implement through which the President’s will was enacted.

It must be noted (as this point is missed due to a failure to connect the Bureau’s founding to Progressive Era politics) that the special detective force was never meant to be a mere implement to catch land fraudsters, loggers and lurid congressmen. It was always intended to grow and cover whatever

---


\(^{55}\) Letter from Charles J. Bonaparte to Theodore Roosevelt, 14 January 1909, pg. 4.
purpose – including treason, sedition or allegiance – the President saw fit; it was the logical consequence of the ideological pillars progressivism rested on. Bonaparte considered the department, from its very inception, to be a counter-espionage bureau that took a while to fructify: ‘this department is charged with the duties of detecting crime, collecting evidence, securing information necessary for the effective enforcement of the law, and making preliminary inquiries to ascertain whether crimes have, in fact, been committed - in short, with what are generally understood to be detective duties’.  

While the Department of Justice now had its own investigative force, the word ‘force’ was hardly suitable in these early years whilst this force was finding its feet. Its detectives had no legal authority to carry fire-arms or make arrests, instead it was forced to rely on the cooperative of local law enforcement bodies for both.  

This was a lack of what the Secret Intelligence Bureau in Britain would call ‘executive functions’ a year later (in 1909) – the power to make arrests. As in Britain, the prevention of the Secret Intelligence Bureau having ‘executive functions’ could have been a constricting factor on the growth of the Department of Justice’s early special detective force. It would have necessitated the department working in tandem with state and local law enforcement bodies – reinforcing America’s traditional counter-espionage culture.  

56 ibid.  
58 The National Archives (NA), KV 1/39, The Experience of M.I.5. from 1909 to 1918, 1921, pp.24-25.
The detectives’ lack of executive function would be short lived. Bonaparte would write to Roosevelt that ‘by reason of this radical change and vast expansion of its [Department of Justice] duties, it has become, each year, more and more imperatively necessary that this Department should have some executive force directly subject to its orders’. The detective force was destined to expand, in keeping with progressive notions of enforced centralisation rather than voluntary federalisation. Bonaparte’s progressivism, which inculcated a belief in centralising and efficiency, went beyond what Sir Vernon Kell across the Atlantic Ocean would push for his preventative branch detectives: executive functions. It is true that the Bureau could only investigate crimes which fell within federal jurisdiction, but those categories also continually expanded and the manacles that were meant to prevent the Bureau from becoming a domestic spy service would eventually shatter. It expanded so quickly that private agencies like Pinkerton found their investigative retainers dwindling.

Bonaparte’s audacious move in creating a special detective force meant that he would have to rationalise his gambit not only to the President – who would obviously be on board – but eventually to Congress, which on principle had already expressed opposition. If Congress opposed Bonaparte’s handiwork, it could easily terminate the force by not allocating it the necessary funds. As Congress had acted implacably against his wishes the last session, he likely envisioned a battle with Congress to convince them of the desirability, necessity of his action. Bonaparte revealed the creation of a special detective

---

59 Letter from Charles J. Bonaparte to Theodore Roosevelt, 14 January 1909, pg. 7
force to Congress that autumn in his annual report to Congress for fiscal year 1908; Bonaparte defended this decision, claiming that ‘through the prohibition of its further use of the secret service force, contained in the Sundry Civil Appropriation Act, approved 27 May 1908, it became necessary for the department to organize a small force of special agents of its own.’

To allay congressional anxieties that he had created a European-style secret police, Bonaparte listed the steps that he would take as Attorney General. Bonaparte, however, did not drift too far from his progressive mantra of cost-effectiveness of centralisation and the efficiency wrought by executive control. He specifically attempted to assuage concerns by suggesting the Attorney General would keep a firm grip on what his detectives were up to via daily summaries. Bonaparte stressed that if any investigations by his detectives started to seep into the private affairs of citizens he would hold them accountable.

As Bonaparte created the special detective force during a recess the first opportunity Congress would have to discuss his unilateral gambit would occur later in 1908, following that year’s congressional and presidential elections. Though the Republican Party did worse than it had in the 1904 election, in the 1908 election the party still did incredibly well. It controlled the White House – with William Taft, Roosevelt’s hand-picked successor, winning a huge margin – and Republicans retaining control of both the Senate and the House in a clean sweep.

---

Back in session, Congress was eager to commence debates over the necessity and desirability of a special detective force within the federal government. Influential members of Congress were vocal over their fears of a centralised detective bureau. However – counter-intuitively – the majority of Members in Congress expressed no misgivings about his special force, with some in the House actually praising Bonaparte’s efforts as representing the will of the people. Similar debate occurred in the Senate, again with the overwhelming majority of Senators praising the Attorney General for the initiative his showed in creating an executive department to conduct investigations in the proper manner.  

The lack of fanfare was likely due to the progressive platform just having received a fresh mandate from the electorate. A fight over a few detectives, which Roosevelt had cleverly spun as Congress fearing investigations on itself, was becoming less likely. The conclusion of historian Kathleen Dalton in *Theodore Roosevelt: A Strenuous Life* is on point. Dalton observed that Roosevelt held the moral high ground in a battle which would not have boded well for the legislative branch. The dominant perception in the country was that Congress was more worried about what federal investigations poking into the lives of its members would dig up, than domestic spying or the principle of separation of powers. Roosevelt had seized the agenda and set the narrative. His progressive reform in federal law enforcement was now understood as a desire to create a detective force capable of investigating

---

63 Congressional Record Vol. 43, pp. 2191-2192.
65 ibid., pg. 342
the very congressmen who created laws – an extremely popular idea that conjured no images in the mind of secret police.\textsuperscript{66}

Bonaparte also understood the iron laws of bureaucracy and ascertained that once a special detective force existed, it would mean that the Department of Justice ‘now had a secret service force of its own which will no doubt be increased as future needs demand it.’\textsuperscript{67} Congress appropriated more funds than ever to investigate and prosecute crime; clearly concerns over a secret police evaporated and the sole remaining concern going forward was to guard against centralisation within one department within the federal executive. When Bonaparte met members of the House Appropriations Committee on 11 February 1909, he was subjected to only unobtrusive questioning.\textsuperscript{68} Congressman Smith even pointed out that ‘while you stated in your report this year, in effect ... that you were compelled to organize a force, you were only compelled to do what you had twice recommended to Congress’.\textsuperscript{69} As Athan Theohairs has noted, ‘the establishment of the Bureau ‘contravened the spirit of Congress’s action of 1907 and 1908’.\textsuperscript{70} Nevertheless, The line of questioning taken by members of the Committee on the Attorney General’s desire to create a centralised secret service, combined with the warm response Bonaparte’s unilateral manoeuvre received, reflected Congress’ growing deference to the President with respect to the expansion of the executive into new uncharted territories.

\textsuperscript{66} ibid.
\textsuperscript{67} Congressional Record Vol. 43, pt. 3, pg. 2183
\textsuperscript{68} ibid., pp. 2181-2184
\textsuperscript{70} Theoharis, \textit{A Comprehensive Reference}, pg. 3.
deference, however, would eventually result in the linking of a permanent federal detective force to offensive counter-espionage.

Some fears over domestic spying and the potential for abuse remained. A pair of congressmen, Sherley and Tawney, on the House Appropriations Committee continued to pressurise the Attorney General on further safeguards that could be put in place to ward against the establishment of a secret police. While Bonaparte contended executive control was the most fitting solution, Sherley and Tawney maintained that Congress ought to have the ability to apply legislative limits, or the ability to control funds.71 However, within a year of this debate on how best to protect Americans from a domestic surveillance, Congress acted to increase the scope of federal crimes, thereby expanding the areas under the purview of the Detectives from the Department of Justice.72

From this point onward, a step backwards was never taken. It was only a matter of time until the new detective force would be called on for the purpose of domestic spying. It was an opening salvo towards permanent offensive counter-espionage, and it was a devastating strike to America’s traditional counter-espionage culture. On 3 March – the last day of the 60th

71 Ibid.
72 The legislation passed expanding the Bureau’s coverage was the White-Slave Traffic Act of 1910, popularly known as ‘the Mann Act’, which prohibited interstate or foreign transportation of an individual with the intention of engaging such individual in sexual activity or prostitution. The passage of this act, in effect, increased the powers of the Department of Justice’s Bureau of Investigation tremendously. The passing of the Act would also shorten the leap the Bureau would have to jump from Anti-trust enforcement to the murky waters of counter-espionage, as it gave the Bureau a national and inter-state enforcement mandate. Importantly, the back door logic used to introduce the Mann Act to circumvent federalism was the same used in 1892 to investigate into Homestead: regulating inter-state commerce. See: 36 US Stat. at L. (1910), 825-827.
Congress – an ad-hoc committee on the Secret Service recommended that authorisation of both Department of Justice and Treasury detective forces be made part of the regular appropriations bills.\textsuperscript{73} President Roosevelt and his Attorney General would leave their respective offices the next day. Two days later, George Wickersham – the new Attorney General – issued a formal order creating the Bureau of Investigation. Within two years, Congress would triple the size of the Bureau and greatly expand its investigative scope.\textsuperscript{74}

In time, the safeguards Bonaparte had originally proposed proved to be futile. As the department grew exponentially, it was no longer feasible for the Attorney General to personally review the summaries of the daily reports of all his agents. As the Bureau’s detectives burgeoned they were dispersed in offices across the country.\textsuperscript{75} At first, agents investigated mostly white-collar and civil rights cases, including anti-trust, banking, copyright violations, fraud, land fraud, naturalisation, and peonage (forced labour). However, eventually Bureau detectives would focus on violations of murkier statutes created in the Progressive Era, related to cases of sedition, espionage, treason, allegiance and other issues tied to ‘national security’. Bonaparte’s numerous reassurances that his force would never investigate ‘the private matters of men’ disappeared within a decade as ‘the private matters of men’ became matters of public jurisprudence.\textsuperscript{76} Instead of investigating anti-trust violations and land fraud cases, the newly created Bureau would eventually morph into a true offensive counter-espionage bureau – a government Pinkerton.

\textsuperscript{73} Fox, ‘The Birth of the Federal Bureau of Investigation’.
\textsuperscript{74} ibid.
\textsuperscript{75} Theoharis (ed.), A Comprehensive Reference, pg. 6
\textsuperscript{76} Sundry Civil Appropriations Bill for 1910, pg. 1038
THE JUMP INTO ‘NATIONAL SECURITY’

In 1987, Harold C. Relyea, a scholar of American government at the Congressional Research Service for over three decades, made an astute observation of a change that occurred at the beginning of the twentieth century: ‘A perusal of the Federal statutes indicates that national security suddenly began to appear with some frequency as the undefined term in laws enacted around the time of U.S. involvement in World War I.’77 As a concept, ‘national defence’ was not broad enough; it was the purview of admirals and generals and their dockyards and bases, arsenals and orders of battle. National security meant something more. It went beyond traditional concerns of military planners and into the realm of protecting the character of the state and the safety of citizens against a diverse range of threats using a variety of methods. One such threat was communism, and one such method were detectives from the Bureau of Investigation.

If progressivism was the political system that wrought the Bureau, the war was the means by which it crept into the domain of counter-espionage. The war paved the way for the Justice Department’s role in preventing sabotage, chasing spies suppressing dissent, all in the name of ‘national security’. The First World War served as a trial run for a decades-long struggle to monitor and harass critics of America’s foreign and domestic progressive policies. The department’s work, too, provides an example of the less pleasant legacies of the progressive heritage – namely, how the centralised bureaucracies favoured by many progressives as a solution to civic and economic problems could be deployed in the service of intolerance. The Bureau was the purest

progeny of progressivism’s desire for cost efficiency, centralisation and executive control that undermined America’s traditional approach to counter-espionage (which had existed for over a century and endeavoured to limit domestic spying).

As noted above, the war pushed the Bureau into offensive counter-espionage.\(^78\) To fund these wartime measures, Congress would increase the Bureau’s funding from $455,698 in 1914 to $1,746,224 in 1918.\(^79\) However, unlike the conclusion of previous American wars, where the mechanisms of domestic spying were eventually deactivated, the Bureau’s annual appropriation would continue to rise after the war to $2,457,104 in 1920.\(^80\) Its appropriations through the rest of the nineteen twenties and early thirties would settle at around 2.2 million.\(^81\) Franklin Roosevelt’s entry into the White House in 1936 would see the Bureau’s annual appropriation swell to five million, a benchmark year as the Bureau’s budget would grow year on year to present date.\(^82\) Congress’ regular incremental increases to both the Bureau’s funding and personnel was tacit endorsement of the organisation’s wider remit, which included domestic spying. No permanent bureau had previously been created — outside of war — with a remit that included such responsibilities. The prevalence of the Bureau of Investigation detectives’ counter-espionage mandate before the Second World War not only connects the expansion of counter-espionage to progressivism, but further highlights

---

\(^78\) Williams, ‘Without Understanding’, pg. 101.
\(^79\) Theoharis, A Comprehensive Reference, pg. 4.
\(^80\) ibid.
\(^81\) ibid.
\(^82\) ibid.
the falsity of America’s ‘pre-war innocence’, at least in relation to counter-espionage.\textsuperscript{83}

America’s eventual entry into the First World War, and the ensuing Red Scare, inflamed the nation’s passions and stoked fears over ‘intestine enemy’. The Bureau took full advantage of these heightened anxieties, adding the tools of offensive counter-espionage to its responsibilities and repertoire, an expansion made eminently more justifiable once war had been declared. The Bureau quickly expanded out from beyond draft raids enforcing the Selective Service Act of 1917, and from early that year, began monitoring both immigrants and native-born radicals. In February of 1917, Congress enacted the Immigration Act, which authorised the deportation of alien anarchists and revolutionaries. Then, in June, Congress enacted the Espionage Act, an act that in reality lowered the bar for what would have historically been considered treason. It was then used to clamp down on various forms of political dissent.\textsuperscript{84}

In response to these new duties, the Department of Justice established an ‘Alien Registration Section’ and employed an eager young, ambitious attorney, J. Edgar Hoover.\textsuperscript{85} This appointment, at time brimming with anti-alien sentiment, marked an important beginning for Hoover.\textsuperscript{86} He stood at the intersection between law enforcement, radicalism and immigration, a nexus he thrived and built his reputation on. Eventually, it would deliver him

\begin{thebibliography}{9}
\bibitem{Theoharis} Theoharis and Cox, \textit{The Boss}, pg. 48. Also see chapter nine on the Espionage Act for more.
\bibitem{Hoover} Hoover was employed on 26 June 1917. See: Kessler, \textit{The Bureau}, pg. 573.
\bibitem{Anti-alien} For more on anti-alien sentiment see chapter nine.
\end{thebibliography}
all the way to the top of the Bureau.\textsuperscript{87} Once America entered the war in 1917, this nativist anti-alien sentiment would lead to a sharp increase in the Bureau's offensive counter-espionage powers. Two years later, the Bureau would not relinquish these powers, even after Germany’s surrender.

The Bureau’s monitoring of Aliens actually began before a legal statutory basis existed. As early as 1914, according to an official report presented to the US Senate, the Bureau had developed a list of ‘suspicious aliens’ prior to US entry into the First World War in which it classified aliens into five categories: (1) those who ought to be arrested immediately should the US become involved in a war with Germany (98 names); (2) those required to post a bond for their continued availability (140 names); (3) those strongly suspected (574 names); (4) those still under suspicion (589 names); and (5) those cleared of specific charges (367 names).\textsuperscript{88} Before the legislative framework was in place in 1917, Bureau officials began to increase domestic spying of both alien and foreign-born citizens’ political beliefs and affiliations. It is worth repeating that no pre-war law permitted the Bureau’s detectives to investigate citizens’ allegiance or ideological anchorings except in the case of a direct violation of federal law. This restriction led the then-Attorney General, the democratic-progressive Thomas Watt Gregory, to request that Congress make such a law. The national legislator willingly obliged; thus authorising the Department of Justice to commence investigations that


amounted to domestic surveillance – one more step on the route away from America’s traditional counter-espionage system.89

The Justice Department’s response to war in Europe was a predicable consequence of the progressive politics that dominated American life in the early twentieth century. Progressives, Democrat or Republican, chosen solution to the nation’s problems (the creation of professionally staffed federal ‘experts’ in a centralised bureau) was not limited to only the economic and social arenas, it was an approach that extended to how government ought to secure the state.90 Just as progressive reformers had sought to expand the power of government to regulate business and provide for the common welfare, they would also extend the government into quelling public dissent against the dominant social order (progressivism in this case) under the auspice of catching foreign spies and agitators. Indeed, the First World War spurred the development of covert methods of surveillance and harassment used for the next hundred years. These methods of offensive counter-espionage would eventually be turned and used against advocates of racial equality.91 However, the origins of a permanent bureau responsible

for counter-espionage lie not in the war, but the Progressive Era, where another progressive president, this time a democrat, would facilitate a permanent shift towards the routinisation of domestic spying. He was Woodrow Wilson.

INTO WAR

On 31 January 1917, Germany announced it would commence unrestricted submarine warfare, this meant American vessels in the vicinity of the British Isles could find themselves in the crosshairs of German U-boats. Earlier that month, Germany’s Foreign Minister, Arthur Zimmermann, secretly instructed Germany’s ambassador to Mexico, via telegram, to propose a military alliance between Germany and Mexico in the event of the US entering the war. The British intercepted the telegram and turned it over to the Wilson administration, which in turn made the message public on 1 March 1917. Later that month, German U-boats sent a number of American cargo ships to the bottom of the Atlantic, and by 2 April 1917, Wilson would appear before a joint session of Congress to ask for a declaration of war against Imperial Germany. The US entry into the war increased the ferocity and propensity

---

and Mark Ellis, Race, War, and Surveillance (Bloomington, IN: Indiana University Press, 2001).
with which aliens, various leftist, pro-German Americans, and anti-war/anti-British campaigners were pursued by the Bureau.

The ethnic dimension of the war stoked fear of fifth columns and internal conspiracy in aid of external threat, at First German but eventually also Bolshevistic. In September 1917, the country’s popular former-President, Theodore Roosevelt, encapsulated the savagery of the nativism that gripped the country as it readied itself to enter the Great War:

I honor England for all that she is doing; but I wish us to do as well, for otherwise we shall have no right to be more than a looker-on at England’s peace, at the allies’ peace unless, indeed, in the unbelievable event that our Government should make us traitorous to our duty, and secure a base peace which would really be Germany’s peace, a peace without victory, a peace welcomed by all the Huns within our gates, by all the pacifists and pro-Germans, by all the shirkers and slackers and soft fools; a peace which would make high-spirited Americans bow their heads with shame.\footnote{Theodore Roosevelt, \textit{The Foes of Our Own Household} (New York, NY: George H. Doran Company, 1917) pg. 54. He also gave a speech in Kansas that featured in the paper. Roosevelt in a speech said ‘The men who oppose the war; who fail to support the government in every measure which really tends to the efficient prosecution of the war; and above all who in any shape or way champion the cause and the actions of Germany, show themselves to be the Huns within our own gates and the allies of the men whom our sons and brothers are crossing the ocean to fight’. See: \textit{The Kansas City Star}, 1 October 1917, pg. 8,}

Roosevelt argued that Americans should condemn Germany, but they should also ‘regard with contempt and loathing the Americans who directly or indirectly give her aid and comfort’ – using the words for treason in the
Constitution. As with the expansion of MI5 in Great Britain, one consequence of the ‘Hun within’ syndrome was the development of a pattern of offensive counter-espionage to deal with an essentially external threat. However, also as in Britain, the expansion of counter-espionage developed largely not because of this external threat, but from the perception of the threat from within. Allegiance to the state and the war would now be the arbiter that would determine the ire of the Bureau. An examination of the records of the Justice Department reveal that once the US entered the First World War, the Bureau engaged in a sweeping and secret effort to suppress opposition to the war once it had begun. The importance of this

96 ibid.
subterranean struggle cannot be understated, neither can its connection to progressivism. The project was, as historian William H. Thomas Jr. appropriately postulates, ‘a logical fulfillment of the progressives’ faith in government’.  

In countless cases, department detectives paid cautionary visits to suspected opponents of the war, advising them to stop talking about the war or demanding that they support the war effort. Targets of the department’s investigations included pacifists, isolationists, socialists, union organisers, clubwomen, ministers, Irish-, African- and German-Americans. Homes, schools, workplaces, churches—all also came under the Justice Department’s gaze, which deployed undercover operatives in the hopes of eliciting unguarded comments by Americans regarding the war. This system of domestic spying was far removed from America’s traditional counter-espionage culture. It resembled only the brief two years, between 1798 and 1800, when the John Adams administration hounded immigrants


100 ibid., pg. 4.
101 ibid.
and persecuted political opponents with the Alien and Sedition Acts. But, even then, no permanent bureau was erected and empowered by the federal government to entrap civilians this way – it was a malignant growth from progressives’ conviction in the efficiency of centralised executive power in the service of the common good.

The Justice Department focused much of its attention on the Left – socialists, communists and anarchists. Shortly after the Congressional Declaration of War, a Socialist Party conference in St. Louis condemned American entry into the conflict, resolving that, ‘The American people did not and do not want this war ... They have been plunged into this war by the trickery and treachery of the ruling class of the country’. Public opinion makers vilified the party’s stand: ‘Every socialist who still clings to the socialist party’, declared an Illinois newspaper, ‘is a Hun within the gates.’ Many suspected the radical labour union, the Industrial Workers of the World (IWW), of trying to impede the war effort; Roosevelt, for example, claimed that ‘organizations like the IWW are criminally aiding German propaganda in this country.’ Under the federal war-time sedition laws, prominent Socialists and IWW members were found, prosecuted and imprisoned by detectives.

---


103 As quoted in Peterson and Fite, Opponents of War, pp. 8–9.

104 Belleville News-Democrat, 26 March 1918, pg. 4.

105 Philadelphia Inquirer, 16 August 1917, pg. 1.

106 For example, the weekly reports on the activities of communists, socialists, anarchists, IWW members or anyone reported as sympathetic to these ideologies or organisations from Boston can be found in: OG 202600 to 202622, RG65, BI, NARA.
The cases within the Bureau’s files, however, only represent a small number in a wider programme aimed at stemming seditious behaviour. Only a small quantity of Bureau investigations resulted in indictments or trials that would leave a paper trail. The *modus operandi* Department of Justice detectives would most frequently utilise was primitive, browbeating those accused of dissident or disloyal behaviour to cease and desist and show more patriotism towards America and its war aims.\(^{107}\)

The Justice Department’s campaign against various forms of dissent would also draw on practices that had evolved in the nineteenth and early twentieth centuries among the nation’s private detective agencies, like Pinkerton.\(^{108}\) Historian Frank Morn – in his much needed history of the Pinkerton Detective Agency, ‘*The Eye That Never Sleeps*’, – was correct when he wrote ‘Much of what Hoover had done for the public and the police...had been done earlier by Allan Pinkerton and his two sons. Pinkerton had invented most of the devices used by Hoover. The director of the FBI “found the tablets already engraved; no further exercise was demanded of him except some tracing at the edges.”’\(^{109}\) Some detectives in the Bureau of Investigation were former ‘private-eyes’ and were used to dealing with labour unrest. In 1917 and 1918, the Justice Department would use informants working under-cover, like Werner Hanni, to spy on suspected opponents of the war – including with

\(^{107}\) Thomas Jr., *Unsafe for Democracy*, pg. 31.


the clergy.\textsuperscript{110} In Portland Oregon the Bureau depended on a female informant, known as ‘Fifty’, who working undercover conducted investigations, and occasionally organised social gatherings, with women alleged pro-German sympathies.\textsuperscript{111}

The work of these informants represented the future of the Bureau. In the post–Second World War Red scare, the Bureau would again utilise undercover informants as method of counter-espionage, counter-subversion.\textsuperscript{112} It was during the war that the Bureau gained experience and took a more offensive approach. The methods, techniques and skills of offensive counter-espionage would not atrophy, even after Germany had surrendered, when counter-espionage bureaus would traditionally have been shut down.

\textsuperscript{110} Hanni’s supervisor at the Bureau was Marshal Eberstein, agent in charge in Omaha. Many of Eberstein’s reports during the war contain narratives from Hanni. See for example: Report of Marshal Eberstein Report, 10 July 1917, OG 37705; 10 August 1917, OG 44308, RG65, BI, NARA; Eberstein Report, 29 January 1918, OG 133065, RG65, BI, NARA; and Eberstein Report, 14 March 1918, OG 159368, RG65, BI, NARA. Also see: Thomas Jr., Unsafe for Democracy, pp.56-64, for examples undercover operations conducted by the Department of Justice targeting religious figures. Also see Jennifer Fronc, New York Undercover: Private Surveillance in the Progressive Era (Chicago, IL: University of Chicago Press, 2009), pp.145-170.

\textsuperscript{111} Her reports, and other informants, can all be found in the OG files. For some examples see: Reports of Fifty, for period of 8 January 1918, OG 80140, RG65, BI, NARA; 18, 19 January 1918, OG 80140, RG65, BI, NARA; 13 February 1918, OG 137269, RG65, BI, NARA; 20 February 1918, OG 72778, RG65, BI, NARA; 27 April 1918, OG 179944, RG65, BI, NARA; 1 May 1918, OG 179395 RG65, BI, NARA; 20 June 1918, OG 231053, RG65, BI, NARA. Also see reports of Elton Watkins, who specifically identifies her as an informant. See: Report of Elton Watkins, 15 May 1918, OG 80140, RG65, BI, NARA.

With the end of the war, the Bureau assured Congress that following the war its ‘budget could be cut back to peacetime levels.’\textsuperscript{113} The Attorney General, A. Mitch Palmer – who sat on the progressive wing of the democratic party – had other plans. In his 1919 annual report, he stated that ‘between November, 1918, and January, 1919, the number [of detectives] remained about stationary.’\textsuperscript{114} To curb this trend of decreased funding, the Attorney General had to find a new internal threat. In that same report, Palmer stressed this new threat to domestic tranquillity: social and economic unrest, which was ‘rife throughout the world; the United States [was] not exempt.’\textsuperscript{115} According to Palmer, this threat required an increase in the Bureau’s work, necessitating ‘a slight increase in the number of special agents.’\textsuperscript{116} Congress would eventually oblige.

Palmer’s alarmism (which called for more agents) had earlier antecedents. The 1917 Russian Revolution added weight to pre-existing fears of labour agitators which had been percolating since the Homestead Strike. The Bureau latched onto Bolshevism as the means to continue domestic spying, as partisan advocates of ideologies like anarchism and communism could now be connected to a state. The general strike in Seattle in February 1919, for example, represented a new development in labour unrest that the war

\textsuperscript{115} ibid.
\textsuperscript{116} ibid.
gave Bureau detectives the ability to suppress. On 9 January 1919, the Bureau’s Chief, A. Bruce Bielaski, before the Judiciary Committee brought ‘attention to “radical” anti-militaristic organizations which were trying to amalgamate...on the model of the Russian Soviet councils.’\textsuperscript{117} Organised labour at Homestead in 1892, elicited some sympathy – especially once Pinkerton’s role was uncovered. Now, in 1919, as one state had turned communistic every strike and union in America was perceived as a potential threat to the state and a legitimate target for government Pinkertons.

Nevertheless, the fears of Bielaski, and others within the Bureau like Hoover, were confirmed when Galleanists — followers of the anarchist Luigi Galleani — carried out a series of bombings in America between April to June 1919.\textsuperscript{118} By the end of April, some thirty letter bombs had been mailed to prominent government officials, businessmen and law enforcement officials by Galleanists.\textsuperscript{119} While only a few made it to their intended targets – and not all those that did make exploded – some people did suffer injuries.\textsuperscript{120}

On 2 June 1919 a second wave of bombings occurred, with several larger bombs detonated by Galleanists in America’s largest cities, including one that caused structural damage to the Washington, DC home of Bielaski’s boss, the Attorney General Mitchell Palmer.\textsuperscript{121} In this second wave of bombing at least one person was killed – night watchman William Boehner. Fear was heightened as these large explosions occurred across the nation, but also in the nation’s capital at the Home of the country’s Attorney

\textsuperscript{117} Lowenthal, \textit{The Federal Bureau of Investigation}, pg. 48.
\textsuperscript{118} Avrich, \textit{Sacco and Vanzetti}, pp. 140-143, 147, 149-156.
\textsuperscript{119} ibid.
\textsuperscript{120} ibid., pg.141. For example, the housekeeper of Senator Thomas W. Hardwick (D-GA) had her hands blown off and severely injuring Senator Hardwick's wife.
\textsuperscript{121} ibid.
The fear was also elevated by flyers that accompanied each bomb, declaring war on capitalists in the name of anarchism being carried across local papers. These June bombings provided the stimulus for the Bureau to act swiftly. The Attorney General and the Bureau’s chief seized on the crisis, asking for greater funds and manpower from Congress, announcing a ‘thorough reorganization in order to improve [the Department of Justice’s] anti-radical capabilities.’ Congress had initially been hesitant to fully fund the Bureau’s reorganisation, acquiesce to its appropriation requests or back its anti-radical operations. The moral panic that followed the bombings would assuage any concerns that remained in Congress, and the Bureau would (once again) expand from its humble origins of a handful of detectives with no executive function. It is also salient to point out that – for the first time in America’s history – the implements by which offensive counter-espionage was brought to bear on the populace were expanded after war, not contracted as had

---

123 Avrich, Sacco and Vanzetti
124 Schmidt, Red Scare, pg. 149.
always previously happened. Galleani, and eight of his disciples, deportation order came three weeks after the wave of bombings in June. The deportation, however, was not due to any direct connection to those who planted the bombs – the 1918 Immigration Act meant government prosecutors no longer needed to prove direct connection. A ‘resident alien’ could be deported if they had ever professed anarchist beliefs.

Attorney General Palmer created the General Intelligence Division on 1 August 1919, with J. Edgar Hoover at the helm. He instructed this new division ‘to handle the investigations connected with the ultra-radical activities in the United States ... collecting evidence and data upon the revolutionary and ultra-radical movement for use in such proceedings as might be instituted against individuals or organizations involved in the same.’ With post-war anti-radical hysteria at its peak, teaming with the Department of Labor’s Immigration Division, the General Intelligence Division orchestrated a series of raids against alien and radicals in November 1919 and January 1920.

The Attorney General’s report on the November 1919 raids stated that the focus of the General Intelligence Division was ‘directed particularly to the activities of the Union of Russian Workers ... an organisation in which the members dedicated themselves to the carrying out of anarchistical ideas and

126 See Chapter one ‘state of exception’
127 See: ‘Luigi Galleani Deportation File’, August 1919, Casefile 54235/33, RG85, EN9, 5600 series, US Immigration and Naturalization Services, NARA.
tactics.’ The Bureau, working in cooperation with the Department of Labor, arrested 300 leaders of the union across eleven American cities. In promulgating this effort, the Attorney General extolled the deportation of two of the country’s most well-known anarchists, Emma Goldman and Alexander Berkman. These were the same Goldman and Berkman who, during the Homestead Strike in 1892, plotted and attempted to assassinate the chairman of the Carnegie Steel Company, Henry C. Frick. The pair had been in prison since 15 June 1917, and Hoover would write whilst they were in jail that it was ‘beyond doubt’ that they were ‘two of the most dangerous anarchists in this country and return to the community will result in undue harm.’

Following the November Raids, prominent congressmen supported the Attorney General’s push for a new Anti-Sedition statute that would expedite the Department of Justice deporting radicals. The push, however, was short-lived and aborted before the end of the congressional session. Instead,

\[\text{\cite{130}}\]
\[\text{\cite{131}}\]


in the aftermath of the January raids, congressmen began lining up to condemn the Attorney General’s Department for overstepping its legal boundaries by conducting arrests and seizures without probable cause or search warrants.\(^{135}\) Allegations were also levied of overcrowding and unsanitary holding facilities, as well as brutal physical abuse of the 3,000 detainees (approximately) who had been arrested.\(^{136}\) The resulting debates and congressional hearings following the raids did irreparable damage to the career of the Attorney General, Palmer, a man once thought of as a future occupant of the White House. Regardless, the sails for the Bureau of Investigation were firmly fixed and the wind at its back, its future role in offensive counter-espionage secure. The backlash from the raids did not take the Bureau out of the business of counter-espionage to political subversion and everything in-between. The political aftermath also did not burn J. Edgar Hoover, whose star ascended as he was elevated to Assistant Chief of the


Bureau on 10 May 1924 whilst still heading the General Intelligence Division.\textsuperscript{137}

The new director of the Bureau of Investigation, appointed in March 1921 following the fallout from the Palmer Raids, was William J. Burns. Burns made it clear to Congress, if there was any doubt, that the Bureau was not getting out of the counter-espionage business: the General Intelligence Division was still ‘carefully observing and following the trend of the ultra-radical movement in the United States, including the activities of anarchists, communists, and syndicalists.’\textsuperscript{138} Burns would last a little under three years in the role. The next director after ‘America’s Sherlock Holmes’ was J. Edgar Hoover – a man who had made his name utilising the methods of offensive counter-espionage.\textsuperscript{139} Hoover would stay at the helm of the Bureau for nearly half a century and serve under nine Presidents. His reign at the top, and his

\textsuperscript{137} Theoharis, A Comprehensive Reference, pg.171.
\textsuperscript{138} United States Department of Justice, Annual Report of the Attorney General of the United States for the Year 1921 (Washington, DC: Government Printing Office, 1921), pg. 130. It is worth pointing out Burns had headed a private detective agency that rivaled Pinkerton – the William J. Burns International Detective Agency. It rivalled Pinkerton in its penetration of radical groups and labour unions. It is also worth pointing out that the principal qualification of an applicant to the Bureau was that he had been previously employed as a private detective or by detective agencies. In some instances, ‘prior employment and experience’ meant the William J. Burns International Detective Agency. Undoubtedly former, private detectives went public and worked for the Bureau. See; United States Commission on Industrial Relations (Francis Patrick Walsh and Basil Maxwell Manly eds.), Industrial Relations: Final Report and Testimony, Submitted to Congress by the Commission on Industrial Relations Created by the Act of August, 23, 1912, Vol. 5 (Washington, DC: Government Printing Office, 1916), pg. 5011; see also ‘Memorandum for the Director: Re: Early History of the Bureau of Investigation, United States Department of Justice, Los Angeles, California, 19 November 1943. <https://www2.fbi.gov/libref/historic/history/historic_doc/findlay.htm> (13 August 2016).
\textsuperscript{139} See: Unterman, Uncle Sam’s Policemen, chap. 7 [eBook]; and Frank Morn, ‘The Eye that Never Sleeps’, pg. 176.
drive during his tenure to make the Bureau the country’s premier counter-espionage organisation, is now the stuff of infamy. The purpose of this chapter was to connect the ‘FBI’ to its ‘pre-history’ and the progressive politics that generated and nurtured it. Once connected, the expansion of the Bureau and its notorious climb appear predicable; and provide the ultimate refutation of America’s traditional counter-espionage culture that attempted to prevent this precipitous rise of a permanent centralised bureau responsible for domestic spying.

What is left when exploring the unravelling of America’s traditional counter-espionage arrangement are the statutes that accompanied the Bureau, which (like the organisation) still exist today: The 1917 Espionage Act.

---

NEW STATUTORY SCAFFOLDING FOR COUNTER-ESPIONAGE

Exploring the expansion of American counter-espionage is not only about the transition from security bureaus organised during war-time to a permanent federal bureaucracy. The expansion from ad-hoc use of private sector detectives to the Bureau of Investigation was accompanied by a corresponding broadening of the theoretical/legislative concepts of spying, sedition, espionage and political repression. ‘Counter-espionage’ became ‘counter-intelligence’, ‘treason’ became ‘espionage’, and ‘national defence’ would eventually become the all-encompassing ‘national security’. Within the Intelligence Studies literature research (especially among Officials) has focused primarily on the origins of the bureaucracies in America that dealt with counter-espionage. As such, the corresponding expansion of the statutes of spying are only partially explored.¹ In understanding the

expansion of American counter-espionage, of equal importance to the institutions of domestic spying is the formation of the 1917 Espionage Act.² A law to this day, largely intact, that is used against foreign spies and domestic whistle blowers.

The transition from Constitutional treason to the 1917 Act begins in 1911 with the little known Defense Secrets Act (henceforth, DSA) – a statute as much a product of progressive politics as it was British inspiration. If during the Revolutionary War, America’s treason clause was built on successive British statutes designed to block the invention of constructive treason, the Espionage Act was equally built on later British legislation concerning counter-espionage. However, if the British statutes of 25 Edward III and 7 William III attempted to hem in the sovereign’s ability to execute domestic surveillance, Britain’s 1889 and 1911 Official Secrets Acts were designed to

unleash the ability of government to prosecute using arbitrary powers. Thus, erecting the last pillar necessary for an expansive, permanent counter-espionage culture in America.

Unlike the creation of the Bureau of Investigation, which was forged during Roosevelt’s progressive administration, this accompanying statutory and theoretical expansion of counter-espionage was embarked upon by Roosevelt’s heir-apparent, William Taft. Taft’s intelligence and security policy – like the man himself – has become obscured by Roosevelt’s long shadow. It was a shadow, however, that Taft was happy to be in. The twenty-seventh president entered the White House determined to implement, continue and expand on Roosevelt’s progressive programmes, foreign and domestic. Like the creation of the Bureau of Investigation, the 1911 ‘Act to prevent the disclosure of national defense secrets’, had its own unique impetus, but it was equally impelled by Roosevelt’s ‘big stick’ foreign policy, the ever looming threat of anarchism/communism and progressivist ideology that induced interventions in new, unfamiliar areas.3

DEFENSE SECRETS ACT OF 1911

Obviously, the DSA’s own stimulus was to protect military information. It was Congress’ first attempt to do so. Before passage of that act, the only federal laws of general applicability relating to espionage were statutes dealing with treason, unlawful entry into military bases, and the theft of governmental property.4

In January 1911 progressive-Republican Representative Ruben Moon (R-PA) submitted a report with House Resolution 26656 calling for a bill ‘to prevent the disclosure of national defense secrets.’ In what would become the Defense Secrets Act of 1911, congressman Moon related how a British subject in Calcutta, India, found detailed notes on American defensive works on Corregidor Island, ‘the main stronghold of the United States in the Philippines,’ and reported the find to the State Department. In early 1911, Taft was still grappling with the consequences of Roosevelt’s ‘big stick’ policy. The Moro Rebellion against American rule in the Philippines persisted, but the fact that this information made its way to India suggested more powerful foreign powers could make use of it as well. Representative Moon gave examples from the Panama Canal, the Philippines, and elsewhere, in which sketches or blueprints of military installations had been available to foreign parties, sometimes for money. He also cited a recent war, the Russo-Japanese War, where he argued knowledge of the enemy had been decisive: most modern wars have been settled quickly by reason of the preparation of the belligerents … In this contest of preparations, the question of knowledge on the part of the enemy is of vital importance’. Congressman Moon added that such Knowledge ‘may indeed settle the contest.’

---

7 ibid., pp. 1-3. The Governor of Moro Province between 1909 and 1913 was John Perishing.
In contrast to other nations with a ‘developed system of national defense,’ Representative Moon pointed out that the US was unique in that it ‘has no such law and our national defense secrets as a consequence have no protection against spies’ noting how spies caught in America had evaded harsh punishments normally meted out in other nations for espionage. The contrasting nation Moon had in mind was clearly the UK, which in the late nineteenth century during the Crimean War first introduced restrictions on speech having defence or security implications. In August 1889, the Official Secrets Act (OSA) was passed by Parliament, imposing prohibitions on the disseminating information about British military facilities, warships, and weapons. The bill eventually passed by Congress in tone, language, measures and aims was a facsimile of Britain’s 1889 OSA. When Richard W. Parker (R-NJ) during

---

9 ibid., pp. 1-3.
11 In 1911 the scope of the OSA was broadened to give the government full discretion over what information would be considered secret or confidential. Ironically – that same year – in the UK the country tightened up its Official Secrets Act. placing of the onus of proof on the defendant, who now had to prove his or her innocence. For those convicted under section 1, the prosecution had no responsibility to prove one’s guilt; one could be denied the chance to argue that he or she was acting in the interest of the state or show that the government was in error to what those interests were. On the OSA, See: David Vincent, The Culture of Secrecy: Britain, 1832-1998 (Oxford: Oxford University Press, 1998), pp. 78-128; Peter Hennessy, Whitehall (London: Fontana Press, 1990), pp. 346-7, 349; Jonathan Green, Encyclopedia of Censorship (New York, NY: Facts on File Inc., 2005), pg. 407; David Vincent Hooper, Official Secrets: The Use and Abuse of the Act (London: Secker & Warburg, 1987); and Christopher Moran, Classified: Secrecy and the State in Modern Britain (Cambridge: Cambridge University Press, 2013), pp. 23-52. Also see: Arvin S. Quist, Security Classification of Information, Vol. 1: Introduction, History, and Adverse Impacts (Oak Ridge, TN: Oak Ridge Classification Associates, 2002), pg. 21; Andrew Patterson, Jr., ‘Confidential’ – The Beginning of Defense-Information Marking (New Haven, CN: Yale University unpublished manuscript, 1980), pg.6. quoted in Quist above.
the debate, which took place in the House on 6 February 1911, was asked ‘if the language in this bill is substantially in the form of foreign statues. He replied the Act is ‘Almost exactly in the form of the English Statute. We have stricken out the presumption of intent; we thought that was not fair.’

The Act also paralleled the British OSA by adjusting the penalties depending upon whether a foreign power was involved or not.

The American ‘official secrets act’, therefore, did not perfectly parallel the British OSA. in two key areas it had noticeable difference. Firstly, it specifically dealt only with defence information and not with any or all 'official information' and, secondly, although it makes the communication of information by an official in breach of his trust an offence, it does require that the communication be 'wilful', whilst the British Act, as the American draftees were aware, presumed intent from the nature of actions themselves. The British Act presumes that certain actions are evidence of an offence unless one can prove otherwise. No mens rea is required in order that an offence be committed under the OSA.

The bill entitled ‘An Act to prevent the disclosure of national defense secrets’, sparked no serious debate like the anti-Pinkerton legislation, and no objections in either the House or Senate and, upon the third reading, was passed on 3 March 1911. The act made it an offence to unlawfully obtain information respecting national defence by entering any place ‘connected’ with such defence without authority. The statute also imposed penalties of

---

13 ibid.
14 Defense Secrets Act.
up to ten years imprisonment for possession of ‘information respecting the national defense’.\(^{15}\)

In essentially plagiarising UK legislation, Congress had unwittingly put the country on the path to dynastic treason – with its catch-all phrases and wide jurisdiction – a path the framers avoided. The Act created the existence of something called ‘national defense secrets, but provided no further definition.\(^{16}\) During the debate on 6 February, William Stiles Bennet (R-NY) identified the shortcoming in the concept of ‘defense secrets’ posed the following hypothetical to his colleagues: ‘In the Harbor of New York there are a number of forts. Suppose a tourist going down through the harbor, having a camera, which is not an uncommon thing for tourists to have, should take a photograph of Fort Hamilton or Fort Wadsworth or Fort Lafayette, would that be a violation of this statute?’\(^{17}\) Bennet was assured on the day by congressional colleagues that the bill had been well considered and the parameters were sufficiently narrow that very few innocents would suffer with the guilty.

Ironically, in Britain’s House of Commons the same continuum fallacy was also raised during the parliamentary debate updating the OSA in 1911. A liberal backbencher, William Byles (MP for Salford North), raised objections to the updates in the OSA but was given the same assurances Congressman Bennet was given: the bill had been well considered, it was necessary to catch spies and it would not be uncharitably interpreted to suppress citizen’s civil

\(^{15}\) ibid.


\(^{17}\) Congressional Record Vol. 46 (61st Cong., 3rd sess.), 6 February 1911, pg. 2030.
The concerns of both Congressman Bennet and the Right Hon. Byles were legitimate, and would later prove to be well founded. In both countries, counter-espionage legislation with ambiguous phrasing would be (il)liberally interpreted so the innocent would suffer with the guilty. It was a blow to America’s civil liberties; and although the boundaries of the act in 1911 were limited, the concept of ‘national defense’ left the door open to abuse and widening it further. The broadening of this specific act did not take long. The Espionage Act in 1917, and the Sedition Act the following year, built substantially on the language of the DSA; which in turn was built off Britain’s ‘most illiberal pieces of legislation ever placed on the statute books’, the OSA.

On 13 January 1941, in Gorin v. United States, the Supreme Court would debate on the exact meaning of the term ‘national defense’. Gorin provides an illustration of how eventually, via the Supreme Court, a broad definition would come to pass and encompass a large amount of behaviours and speech. In Gorin, the Court affirmed the defendant’s conviction because the trial judge narrowed the statute at issue by requiring the federal government to prove knowledge and provided the jury with an acceptable definition of national defence, a key factor in the crime. In effect, the federal government did the ‘narrowing’ as the decision provided the government with the authority to define the meaning of national defence, which it had (intentionally) never done with any precision. The broadness of ‘national defense’ permits the federal government today to prohibit a range of

---

19 I say this specific act because it actually presaged the ground for the Espionage Act.
20 Moran, Classified, pg. 23.
individuals’ actions ‘for reasons of national defense’. As in Gorin, the Court found:\textsuperscript{21}

Finally, we are of the view that the use of the words ‘national defense’ has given them, as here employed, a well understood connotation. They were used in the Defense Secrets Act of 1911. The traditional concept of war as a struggle between nations is not changed by the intensity of support given to the armed forces by civilians or the extension of the combat area. National defense, the Government maintains, ‘is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness.’ We agree that the words ‘national defense’ in the Espionage Act carry that meaning.\textsuperscript{22}

National defence, and also national security, are important concepts tethered to counter-espionage, as they are within the statutes alleged spies, saboteurs and seditious men are charged with. By allowing criminal prosecutions under ‘a generic concept of broad connotations’, as reaffirmed later in Gorin, a problem without a remedy was created.\textsuperscript{23} It also lowered the high bar the US started with on treason by allowing ‘new-fangled’ definitions to form.

\textsuperscript{21} US Code (2012), sec. 798(b).
\textsuperscript{22} Gorin v. United States (1941), 312 US 19, pg. 28.
\textsuperscript{23} ibid.
THE 1917 ESPIONAGE ACT

The 1917 Espionage Act would fully exploit the ambiguities the DSA had created. Along with the anti-Pinkerton Act and the creation of the Bureau of Investigation in 1908, the Espionage Act is part of the tripod that undermined and eventually removed America’s traditional counter-espionage culture. It is also the cornerstone of the present Espionage Statutes – the body of federal laws that protect ‘national security information’.

Oddly, the war that was meant to make the world ‘safe for democracy’ wrought the worst erosion of civil liberties in the US since President John Adams’ 1798 Alien and Seditions Acts. One hundred and nineteen years later the country would again be gripped by nativism wrapped in the language of patriotism, eerily re-enact similar debates and pass similar regressive legislation. It is, however, not serendipitous as the same forces that drove the Adams’ Alien and Sedition Acts also drove Wilson’s Espionage and Sedition Acts: An expansive paternalistic view of government, an international crisis, a desire to suppress domestic dissent and a covetous gaze to Britain for a legislative blueprint. However, whilst the Alien and Sedition Acts were repealed or allowed to expire, the ‘Espionage and

24 Traditional system of counter-espionage and treason outlined in section one. The Espionage Act is important because it is what spies are charged under; and, over time, it has been developed and been used against whistle-blowers and leakers of defence information.


Sedition Acts’ still represent a significant component of the infrastructure of US counter-espionage in place today.\textsuperscript{27}

Undoubtedly, it is necessary for a state to defend itself against subversion and spies in war. However, the Espionage Act, and the slate of legislation that accompanied it, was disproportionately aimed against those unsupportive of the Wilson administration and the War. The Constitution set the bar high for treason, and the Espionage Act, effectively lowered that bar so aliens, minorities, pacifists, socialists and anarchists could be prosecuted for crimes of the same nature of treason: disloyalty to the state. It is important to remember that the bar for treason the framers set was intentionally high, and situated within the Constitution to ensure that it would be onerous to lower; to prevent a constructive treason statute being developed and used against the people. The laws – the Espionage Act, Alien Enemies Act, the Trading with the Enemy Act, the Sabotage Act, the Alien Act and the Sedition Act – were stoked by a powerful wave of nativism, drafted as war loomed at the height of progressivism. Moreover, the lack of clarity in the laws – especially in the Espionage and Sedition Acts – permitted the government to use laws not to catch spies but as a means of suppressing dissent.

\textsuperscript{27} It is Important to note, the Alien Enemies Act was not repealed and was revised and codified in 1918 for use in the First World War. It would also be used by President Franklin Roosevelt to imprison Japanese, German and Italian aliens during the Second World War. See: Terri Diane Halperin, \textit{The Alien and Sedition of 1798: Testing the Constitution} (Baltimore, MD: John Hopkins University Press, 2016), pg. 6; J. Gregory Sidak, ‘War, Liberty, and Enemy Aliens’ \textit{New York University Law Review}, Vol. 67, No. 6 (1992), pp. 1412-1419. For an excellent experiential account on internment during the Second World War, see: Keiho Soga, \textit{Life Behind Barbed Wire: The World War II Internment Memoirs of a Hawai‘i Issei} (Honolulu, HI: University of Hawaii Press, 2008).
Before exploring the passage of the Espionage Act to illustrate the covalence of factors – unbridled progressivism, a flurry of nativism, a looming international crisis and replicating ‘old world’ precedents on treason – it’s important to evaluate what was in the Act. The Act is not straightforward, so it is necessary to clarify what was so pernicious within it, and why it was not in keeping with America’s traditional counter-espionage culture. Moreover, all the above is compounded by the fact the Act has survived largely unaltered for nearly a century.

On 15 June 1917, the Espionage Act came into effect. The Act provided the federal government with a new sweeping weapon that not only targeted foreign ‘spies’ but targeted dissent. In brief, there were three key facets of the 1917 Act; first, it was a ‘classic’ espionage law, which punished spying or the inducement to spy. It prohibited the wilful communication of knowledge concerning ‘anything connected with the national defense’ to one ‘not entitled to receive it’. It also eventually included a sedition component that provided up to twenty years in jail and a $10,000 fine for anyone found guilty of making false statements, inciting disloyalty, obstructing enlistment, uttering contempt of government or provoking resistance to the United States. Lastly, it empowered the Postmaster General to exclude from the mail issues of newspapers and periodicals that he felt were subversive.

---

30 Espionage Act.
During the debate on the proposed espionage statute, some members of Congress wanted to carry over to the new Act the provision from the 1911 DSA that required intentionality, but did not require an intent to do harm for an offence to be committed. Most members of Congress argued that this would inhibit the ‘innocent’ person from seeking to discover defence information in the exercise of his rights of citizenship.\textsuperscript{31} Several close votes occurred, most of them along party lines, but in the end an intent to inflict harm became a requirement which any successful prosecution had to prove.\textsuperscript{32} Thus, the information-gathering activities proscribed by the 1911 DSA were made criminal in the 1917 Act, for the most part, only when performed with ‘intent or reason to believe that the information is to be used to the injury of the United States or to the advantage of any foreign nation.’\textsuperscript{33}

In addition, the 1911 DSA’s vague proscription against communication of defence material to a person ‘not entitled to receive it’ was brought forward into the Espionage Act without significant change. As such, Benno Schmidt – one of the most distinguished Professors of Constitutional Law – argued that some sections of the statute are in a state of ‘almost unbelievable confusion’.\textsuperscript{34} Unlike Britain’s 1911 OSA – which on the last two pages

\begin{flushright}
31 Robertson, ‘The Politics of Secret Intelligence’, pg. 245.
33 Espionage Act.
\end{flushright}
provides ‘interpretation’ of expressions – the statute did not define what was ‘connected to the national defense’, nor did it provide a clear basis for determining who was ‘entitled to receive’ that knowledge. Notwithstanding these deficiencies borne from casting a net too wide in attempting to protect government secrets, the drafters of the legislation still were content to adopt the language of the 1911 DSA throughout. Thus, section 2 of the Espionage Act provided that:

Whoever, with intent or reason to believe that it is to be used to the injury or the United States or to the advantage of a foreign nation, communicated, delivers, or transmits, or attempts to, or aids, or induces another to, communicate, deliver or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country,

... or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly and document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defence, shall be punished by imprisonment for not more than twenty years.\(^{35}\)

As Harold Edgar, another distinguished law professor, and Schmidt pointed out in their 1973 article on the publication of defence information: ‘this provision raises several major questions of interpretation: 1) What is meant by “communicates, delivers, or transmits... to any foreign government, or to any citizen thereof?” Is publication of a newspaper that is certain to reach

\(^{35}\) Espionage Act.
foreign hands within the scope of this language? 2) What "documents, writings, ... or information" are covered by the concept "relating to the national defense?" 3) What is the mental element required by the language "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation?" 36 Since the sixty-fifth Congress passed the Espionage Act, there has been confusion over their interpretation because of the unclear language used, the new concepts it introduced and the lack of definitions it provided for those new concepts. 37 The problem with an act that has a wide scope and loose interpretations is under the certain circumstances – a progressive presidency, a looming international conflict and heightened anxieties over foreign threats – it will be interpreted ‘liberally’, setting an illiberal precedent. 38

Though the Espionage Act adopted the vague language of 1911 statute, numerous important distinctions existed between the two statues. One such distinction was the punishments, which were made more severe. For obtaining information, the prison sentence was raised from one year to two years and the fine was increased ten-fold from $1,000 to $ 10,000. For providing the obtained information to a foreign power, the punishment went from ten years to twenty years; or worse still during war – thirty years or death.

Another crucial distinction – that actually brought the Espionage Act more into sync with Britain’s 1911 OSA – was the removal of the requiring of proof

38 This is particularly damaging in a common law system, as once a precedent has been established it is difficult to put in reverse, and opens the statute to various forms of suppressing dissent by limiting various forms of speech.
of a preparatory act for an espionage conviction. The DSA required proof that one who provided information to a foreign government also committed one of the acts covered in the separate prohibition on the handling of national defence information. That is, the prohibition in section 2 of the DSA on communicating national defence information to a foreign government required, as a predicate, a violation of section 1 on entering a protected place to obtain national defence information or gathering, receiving or communicating such information.\(^{39}\) Thus, although the DSA linked classic espionage to certain preparatory acts (often already illegal), it required proof of the preparatory acts for an espionage conviction. In any event, the Espionage Act of 1917 eliminated the DSA’s linkage between classic espionage acts and the remaining statutory prohibitions – making espionage itself a crime, something that had never existed before.

Curiously, some books and articles intimate the similarities between the 1911 DSA and the 1889 OSA, while the obvious similarities between the 1911 OSA and the 1917 Espionage Act have gone undetected.\(^{40}\) Aside from the language carried over from the DSA – itself lifted from the British 1889 OSA – it would seem the 1911 British OSA was equally raided for legislative insight by the congressional judicial committees in drafting the Espionage Act.

For example, section 1 (c) of the Espionage Act is analogous to section 4 of the 1911 OSA – which extend punishment to those who induce or help others

\(^{39}\) Defense Secrets Act.

breach the respective acts.41 Section 5 of the Espionage Act, on the crime and punishment for harbouring spies, is also in the 1911 OSA section 7. The same is true of section 6 of the Espionage Act in mimicking section 3(c) of the 1911 OSA, the former gives the president ‘in times of war’ or ‘national emergency’ the ability to designate any place other than those set forth in subsection: (a) of section 1 ‘as a prohibited place for the purpose of this title.’42 The OSA does much the same but gives this executive function to the Secretary of State, the difference reflecting the progressive focus on executive control prevalent in America at the time. Lastly, section 8 of the Espionage Act and section 10 (1) of OSA both gave the government the ability to apply their respective Acts to jurisdiction and territories not contiguous to their respective national boundaries.43 Combined with the language carried on from the 1911 DSA, the Espionage Act reveals substantial British heritage.

When the framers were crafting a treason clause at the Constitutional Convention, the 1917 Espionage Act was the type of statute they resisted. They understood it would put the country on the path to constructive treason. As noted earlier, the treason clause was placed in the Constitution as an attempt to prevent future governments lowering the threshold for crimes considered treason. That safeguard had now failed. At that Convention, the framers looked to Britain – then both their mother country and enemy – for statutory basis to limit treason. Jump forward to 1917, and America’s Congress had turned its back on one of the Republic’s most

41 United Kingdom, the Official Secrets Act 1911 (1 & 2 Geo. 5 c 28); and Espionage Act;
42 ibid.
43 ibid.
important political contributions – the limiting of treason – by again looking to Britain, but this time for a blueprint to broaden the parameters of treason.

PRESAGING THE GROUND FOR AN ESPIONAGE ACT

As detailed earlier, Congress had only recently grappled with the dual issues of preventing spies and protecting information related to national defence. The DSA was not perfect. It created a new crime that had previously not existed and was greatly influenced by British legislation. Nevertheless, it spawned no major backlash or controversy upon its passing. When Congress came to reconsider these issue in 1917, the climate of opinion was wholly different; and as such the passage of the two acts was very different. The DSA passed through Congress with relative ease and few objections, likely because it reflected an awareness that the publication of defence-related information might pose a problem for military preparedness. In contrast – as Edgar and Schmidt first observed – ‘three-hundred pages of the Congressional Record attest to the attention given to the Espionage Act’, which was first introduced two days after President Wilson announced to a joint session of Congress on 3 February 1917 the severance of diplomatic relations with Germany. A back and forth debate stretched over the two frenetic sessions and encompassed three bills and two conference reports.

A major anxiety in Congress mirrored earlier concerns during debates on the creation of the Bureau’s special detective force. It centred on the powers which an espionage statute would give to the President to close off debates

---

on matters relating to defence and war. This was the same concern that
mounted opposition to John Adams’ Alien and Sedition Acts, a concern of
the President using statutes as a tool of suppressing dissent against the
government. Anxiety about enemy spying, triggered by American entry into
the First World War, accounted for some of the increased consideration, but
curiously most of the significant debate was not provoked by concern over
‘classic’ espionage.\footnote{ibid.} Concern was primarily provoked by disloyalty of

The Espionage Act was not wholly unexpected; concern over disloyalty and
espionage had been percolating in the background quietly for decades,
linked to the rise of foreign ideologies. Put into one continuous linear
narrative, previous events discussed in the current and previous section –
including the Haymarket Riot, the Homestead Strike, the attempted
assassination of Henry Clay Frick and the assassination of President William
McKinley – all elucidate that concern had existed, for the most part, and was
quietly mounting. That quiet discontent would become loud and
rumbustious as Europe descended into total war and disloyal acts and beliefs
could be linked to a foreign state; an occurrence that did not exist previously.
It was irrelevant that Imperial Germany was actively hostile to internationalist
movements. Certainly, Germany was less tolerant towards communists and
anarchists than America – indeed it is why many Germans fled and were
attracted to the US in the first place – America now had an enemy, and any

\begin{footnotes}
\footnotetext[1]{ibid.}
\end{footnotes}
disloyalty to the state could not be tolerated; including disloyalty of those wholly unsympathetic to Germany’s war aims.\textsuperscript{48}

With early twentieth century progressivism, a new intense focus was placed on the state, ‘Normally moderate, reasonable men and women would grow hysterical confronting unnamed, unseen, frequently non-existent dangers’.\textsuperscript{49} Disclosures in 1914 and 1915, of German and Austrian espionage and sabotage in the US prompted the Bureau of Investigation, who had been tasked with unravelling Central Power conspiracies, to conclude the department ‘had no laws adequate to deal with the insidious methods of internal hostile activities.’\textsuperscript{50} The Justice department’s conclusions must have shocked President Wilson, who noted in early August, that he was ‘… sure that the country is honey-combed with German intrigue and infested with German spies. The evidence of these things are multiplying every day.’\textsuperscript{51}

Wilson’s sympathies certainly lay with the Entente Powers, but he was unsure whether America would eventually be forced into join the war. Nevertheless, by mid 1915 – borrowing a page from Roosevelt’s playbook – Wilson called for a massive increase of the defence budget, a larger navy, and a 400,000-man army in what he was now calling ‘preparedness’. By early 1916 the National Defense Act and the Navy Act, which provided for the biggest naval

\textsuperscript{48} For instance, pacifists. Obvious, fears were heightened when Bolsheviks took over Russia and Communists held the reins of power within a state.


expansion in America’s history, were passed.\textsuperscript{52} Most Americans were with Wilson, their sympathies lay with Britain and the Entente and they thought America should be prepared, if not willing, to send troops into the fray in a far off war in the old world. Around the same time, mid 1915, Wilson became increasingly more intolerant of his opponents and ‘opponents of preparedness.’\textsuperscript{53} Soon Wilson’s concern over clandestine foreign influence began to seep into his public pronouncements.\textsuperscript{54}

In October 1915, Wilson told the Daughters of the American Revolution, assembled in Washington, ‘America stands apart in its ideals; it ought not to allow itself to be drawn, so far as its heart is concerned, into anybody’s quarrel … America has a great cause which is not confined to the American continent. It is the cause of humanity itself.’\textsuperscript{55} Wilson then singled out aliens and naturalised citizens as objects of widely held suspicion. He told the audience he believed most foreign-born citizens were loyal, but that he was ‘in a hurry … for an opportunity to have a line-up and let the men who are

\begin{footnotesize}
\begin{itemize}
  \item[\textsuperscript{54}] William H. Thomas Jr., \textit{Unsafe for Democracy: World War I and the U.S. Justice Department’s Covert Campaign to Suppress Dissent} (Madison, WI: University of Wisconsin Press, 2008), pg. 19.
\end{itemize}
\end{footnotesize}
thinking first of other countries stand on one side, and all those that are for America, first, last, and all the time on the other side. It was one in a series of public addresses Wilson would make expressing concern over foreign influence and unpatriotism.

Those close to Wilson were encouraging him to marry this concern of disloyalty with legislation, in typical progressive fashion. In November, while Wilson was drafting his last State of the Union before the 1916 election, his private secretary and close political confidant, Joe Tumulty, would advise him to include a request within the address for legislation to curtail subversion and sabotage. Wilson had rejected this idea once before. Tumulty, however, would appeal to Wilson’s sense of political expediency, noting that the country was ‘dissatisfied with our seeming indifference toward the propaganda initiated by our hyphenated friends.’ The State of the Union, he added, ought to also include a strongly worded rebuke upon those who would ‘poison and control public opinion.’ Another of Wilson’s close allies and respected advisors provided similar counsel. On 20 November 1915, Wilson’s Secretary of State Robert Lansing would write the President urging that he include in the forthcoming State of the Union address: ‘[S]ome suggestion as to legislation covering foreign intrigues in our internal affairs such as conspiracies to blow up factories, to encourage strikes, to interfere with industrial operations, to gather information of this government’s secrets,

56 ibid.
57 In modern parlance a president’s private secretary is the White House Chief of Staff. See: Scheiber, The Wilson Administration, loc. 186 [eBook].
59 ibid.
etc., etc’. 60 Those within Wilson’s inner circle shared and helped to shape the President’s concerns about clandestine foreign influence and the need for legislation aimed at sedition.

As noted earlier, German propaganda and espionage were already undoubtedly concerning Wilson, though initially he remained reluctant to include such subjects in his State of the Union address. Despite this initial reluctance, Wilson accepted Tumulty and Lansings’ advice. However, Wilson made one significant adjustment. In his message to Congress he decided to focus public attention upon disloyal foreign-born Americans, away from the intrigue of the German government. 61 Wilson would devote significant space to the two-headed dragon of espionage and unpreparedness in his 7 December 1915 third Annual Message on the State of the Union, Wilson said of the War in Europe, ‘We have stood apart, studiously neutral’. He then told the joint session and the nation:

There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life; who have sought to bring the authority and good name of our Government into contempt, to destroy our industries wherever they thought it effective for their vindictive purposes to strike at them, and to debase our politics to the uses of foreign intrigue...

---

61 Scheiber, The Wilson Administration, loc. 189 [eBook].
… A little while ago such a thing would have seemed incredible. Because it was incredible we made no preparation for it. We would have been almost ashamed to prepare for it, as if we were suspicious of ourselves, our own comrades and neighbors! But the ugly and incredible thing has actually come about and we are without adequate federal laws to deal with it. I urge you to enact such laws at the earliest possible moment and feel that in doing so I am urging you to do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out...62

No President since John Adams in 1798 had spoken like that.63 Wilson had evidently abandoned the position – that the number of disloyal foreign-born was inconsequential – he had stated before the Daughters of the American Revolution only two months earlier. Wilson cast aspersions upon the loyalty of foreign-born Americans at a time when it might have helped him electorally in the upcoming presidential race. By drawing all opponents of preparedness into one large camp – which now included African-, Irish- and German-Americans, anarchists, socialists, pacifists, and communists – through his speech he had made them ‘one common enemy’ that could only vote for him through gritted teeth.64 Wilson also raised the question of fundamental loyalties to the level of national debate in an election year – a debate intrinsically linked to counter-espionage. He told the nation that times

63 Moynihan, Secrecy, pg. a-9.
had changed and that the country now needed new federal laws to deal with disloyalty.

Borrowing the rhetoric of preparedness from his old political sparring partner Theodore Roosevelt, Wilson would frequently call into question the patriotism of his political rivals, contributing significantly to an atmosphere of suspicion and intolerance in which nativism and a favourable climate for political repression could flourish. Wilson’s speeches in 1916 contained no positive statements on the strength of cultural and ethnic diversity in America.65 A marked departure from statements he had while President of Princeton University.66 Of the benefits of heterogeneity, the President was now asking, ‘… what kind of fire of pure passion are you going to keep burning under the pot in order that the mixture that comes out may be purged of its dross and may be the fine gold of untainted Americanism?’67

The progressive wings of both the Democratic and Republican party were uniformly speaking in the language of allegiance to the state and raising the spectre of disloyalty of ‘hyphenated Americans’, fostering a hospitable environment for domestic political surveillance after the election. Theodore Roosevelt, a man his daughter Alice described wanting ‘to be the corpse at

65 Scheiber, The Wilson Administration, loc. 189 [eBook].
every funeral, the bride at every wedding and the baby at every christening’ would not be outdone. This was especially the case on the issues of war and patriotism.\textsuperscript{68} Despite losing to Wilson in the 1912 election, Roosevelt remained an indomitable figure in progressive politics. When the war began in 1914, Roosevelt quickly became an implacable supporter of the Entente powers, and pushed for harsher policy against Germany, especially regarding their use of submarine warfare. Roosevelt harshly denounced the policies of Wilson, calling it a failure regarding the atrocities in Belgium and the violations of American rights.\textsuperscript{69} In 1916, out on the hustings for Charles Evans Hughes, Roosevelt repeatedly denounced Irish-Americans and German-Americans, whom he described as unpatriotic and disloyal by supporting neutrality.\textsuperscript{70} In his famous ‘America for Americans’ speech in St. Louis on 31 May 1916, he decried what he termed ‘hyphenated Americanism’ and the ‘moral treason’ for putting the interests of other nations ahead of America’s. An act that was not just un-American, but was ‘anti-American to the core’.\textsuperscript{71}

Both parties’ leaderships were pushing preparedness and ‘reidentified hyphenism and radicalism’ in the public consciousness.\textsuperscript{72} With both Wilson and Roosevelt publicly raising the spectre of immigrant disloyalty, German- and Irish-Americans sought other choices for the 1916 presidential contest.

\textsuperscript{68} Howard Teichmann, Alice: The Life and Times of Alice Roosevelt Longworth (Englewood Cliffs, NJ: PrenticeHall, 1979), pg. 51.
\textsuperscript{71} Roosevelt, ‘America for Americans’, in Progressive, pp. 77-85.
But in a two horse race most would eventually settle on the Republican nominee, Supreme Court Justice and former-New York Governor, Charles Evans Hughes. He was, however, a lesser of two evils. He was a moderate-progressive who had received the backing of Roosevelt and the progressive movement.\(^{73}\)

Nevertheless, the support of ‘hyphenated Americans’ for Hughes, both before and after his nomination as the Republican candidate, allowed Democrats to portray him and his party as agents of German influence.\(^{74}\) Right after the conclusion of the Republican Convention, in June 1916, Wilson, speaking to a Flag Day gathering in Washington DC in an implicit attack on Hughes, warned that America was under threat from within: ‘There is disloyalty in the United States, and it must be absolutely crushed. It proceeds from a minority, a very small minority, but a very active and subtle minority. It works underground, but it also shows its ugly head where we can see it; and there are those at this moment who are trying to levy a species of blackmail, saying, “Do what we wish in the interest of a foreign sentiment or we will wreak our vengeance at the polls.”’\(^{75}\)

Wilson drove the point of immigrant subversion home again in September claiming that ‘the passions and intrigues of certain active groups and

---


\(^{74}\) Thomas, *Unsafe for Democracy*, pg. 19.

combinations of men amongst us who were born under foreign flags injected the poison of disloyalty into our most critical affairs, [and] laid violent hands upon many of our industries.\textsuperscript{76} Hughes' hitman, Roosevelt, returned fire at Wilson and the Democrats, who, in supporting the Republican nominee, denigrated ‘those professional German-Americans who seek to make the American President in effect a viceroy of the German Emperor.’\textsuperscript{77} Both sides in the 1916 election would resort to depicting their rival as under the influence of foreign powers, which could only have deleterious consequences after the election, with passions being deliberately inflamed.

Wilson, in a hard-fought contest, would go on to defeat Hughes (separated by 23 electoral votes and 594,188 popular votes).\textsuperscript{78} The 1916 presidential campaign would, however, reinforce the fear among Americans that the nation was perforated with those whose loyalty lay with a foreign power.\textsuperscript{79} As such, the back and forth accusations from both parties played an important part in augmenting America's fears of 'intestine enemies'. In the crosshair were German Americans, but not solely German-Americans – any immigrant with a hyphenated identity was now a potential disloyal citizen, including African-Americans who had been in the country since its founding.\textsuperscript{80} It was a dangerous torrent that would create a toxic atmosphere for the second session of the sixty-forth Congress.

\textsuperscript{76} Quoted in ibid., pg. 178.
\textsuperscript{77} Quoted in ibid., pg. 174.
\textsuperscript{78} The election hinged on California, where Wilson managed to win by 3,800 votes and its thirteen electoral votes and thus Wilson was returned for a second term. See: Edgar E. Robinson, \textit{The Presidential Vote, 1896-1932} (Stanford, CA: Stanford University Press, 1934), pg. 17.
\textsuperscript{79} Luebke, \textit{Bonds of Loyalty}, 172–183.
THE PASSAGE OF THE BILL

The above prologue to the Espionage Act is necessary due to the rapidity by which the Act was considered and passed. The actual debate in Congress was just under twelve weeks in the spring of 1917. From the outset the mandate was not to construct legislation aimed at curbing only foreign espionage. The lifelong progressive, Attorney General Thomas W. Gregory, desired legislation adapted to the ‘new conditions of warfare by propaganda,’ hence the eventual inclusion of sedition provisions to curtail freedom of speech and the press.\(^1\) It was a foreseeable outcome once progressive solutions to state-craft were combined with the nativist sentiment that had gripped the country during the election. The Assistant Attorney General Charles Warren was assigned the task of drafting such laws. On 3 June, 1916, seventeen separate bills were sent to Congress.\(^2\)

In submitting the recommendations to the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House, and to the Judicial Committee of each body, the Attorney General stated the reasons which have caused him, acting on behalf of the United States, to request legislation of this kind and at this time from the Congress:

---


Many acts committed in the United States in serious violation of its sovereignty and against its peace and the safety of its citizens are not now punishable by any Federal criminal law; others are punishable only under unsatisfactory statutes passed in relation to conditions altogether different from those now prevailing.\(^{83}\)

Despite the urgency and timeliness with which the Attorney General forwarded the proposals, at first Congress dithered. The Justice Department’s proposals of June 1916 were referred to committee in both houses, but Congress adjourned without acting upon them. On 5 February 1917, two days after Germany began unrestricted warfare on all vessels – including American merchant ships – to strangle British supply lines, the US broke diplomatic relations. Statues to define and punish espionage were introduced by allies of the President, both democrats and progressives: in the Senate by Lee S. Overman (D-NC) and the House by Edwin Y. Webb (D-NC).\(^{84}\)

At first, the Executive Department got its way – the initial Administration bill, S. 8148, on 20 February the Senate combined thirteen of the seventeen bills and passed the measure by a wide margin. Then, however, the fourth estate – the press – brought their pressure, to bear on Congress, especially in connection with the most sweeping of the prohibitions on publication of defence information. As the newspapers’ ire mounted, so did Congressional reluctance to enact sweeping proposals. The House did not act on S. 8148,

---


\(^{84}\) The full passage of these early proposal can be read in the summary, see: Homer Cummings and Carl McFarland, *Federal Justice: Chapters in the History of Justice and the Federal Executive* (New York, NY: Macmillan, 1937), pg. 414, passim.
and the Senate Judiciary Committee rethought the matter. At a cabinet meeting of 20 March, Attorney General Gregory asserted that ‘German intrigues’ were afoot but complained of the ‘helplessness of his Department under existing laws.’

While Congress debated, war in Europe continued and Germany grew more desperate. The combination of its unrestricted submarine warfare and its secret diplomatic overture to Mexico proposing an alliance against America going public, spurred President Wilson in asking Congress to abandon America’s neutrality. Wilson’s speech asking for Declaration of War foreshadowed later hysteria that would greatly contribute to the passing of the 1917 Espionage Act. In his address, Wilson cited espionage as an example of the hostile intent of the ‘Prussian autocracy’:

[From the very outset of the present war it has filled our unsuspecting communities and even our offices of government

---

with spies and set criminal intrigues everywhere afoot against our national unity of counsels, our peace within and without, our industries and our commerce. Indeed it is now evident that its spies were here even before the war began.\textsuperscript{87}

He also spoke to domestic subversion, stating that ‘if there should be disloyalty, it will be dealt with with a firm hand of stern repression.’\textsuperscript{88} Inaugurated less than a month before, Wilson had been re-elected not least for his slogan ‘he kept us out of war’.

Wilson was also careful to reject mere self-defence in justifying war, thereby marking another profound break with traditional American foreign policy. In his message urging Congress to declare war on Germany, President Woodrow Wilson presents the progressive understanding of foreign policy: America had a duty to spread liberty across the world, it must be made ‘safe for democracy’. On 4 April 1917, the Senate voted for war, 82 to 6, and a day later, the House voted likewise, 373 to 50.\textsuperscript{89}

After the declaration of war, both houses debated versions of the Wilson administration’s drafts, S. 2 and H.R. 291, that included press censorship—but the Administration would not win acceptance of broad prohibitions. First, both the House and Senate committees narrowed the scope of provisions that limited public access to defence installations by requiring some culpable

\textsuperscript{87} ibid., ‘Address to a Joint Session of Congress, 2 April 1917’, in Link (ed.), The Papers of WW, vol. 41, pg. 421.
\textsuperscript{88} ibid.
purpose beyond satisfaction of curiosity. Second, and most important, the administration could not, despite vigorous efforts, secure enactment of any form of censorship provision, even though it accepted increasingly narrow formulations of the prohibition. House Speaker Champ Clark (D-MO) declared that censorship of the press was ‘In flat contradiction of the Constitution’ and progressive (but traditional isolationist) Hiram W. Johnson and conservative Henry Cabot Lodge condemned it. On this second point the American Press universally objected to being censored, which Wilson deemed ‘absolutely necessary to the public safety’. Despite the President’s intransigence in the face of almost universal opposition, the provision was defeated in the house on 31 May by a vote of 184 to 144. Once it was dropped, however, the rest of the bill sped through.

Common perception was that once Wilson’s censorship had been defeated, wide criticism and general Press coverage of the Espionage Act substantially decreased. In addition, ‘after its [press censorship] elimination, a majority of the national lawmakers apparently believed that the bill could not be used to suppress critical opinion’. Wilson also specifically denied that the Espionage Act would be used to suppress criticism of the administration. Congressman

---

91 ibid.
94 As such, the Senate did not take a vote, see: The New York Times, 1 June 1917.
95 Mock and Larson, Words that Won the War, pg. 41.
96 Peterson and Fite, Opponents of War, pg. 16.
were at best mistaken, at worst misled. At least two of the twelve titles of the act impressed directly upon the first amendment. Section 3 of Title I, for example, provided the punishment of a $10,000 fine or imprisonment for up to twenty years or both, for those who, when the US was at war:

> willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or
> Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States.\(^98\)

With later sedition amendments, this section was wielded by the Department of Justice to prosecute over 2,000 cases – disproportionately targeting people on the left.\(^99\) At least 1,055 Americans were convicted under it, among them more than 150 leaders of the Industrial Workers of the World (IWW).\(^100\) Eugene Victor Debs, one of the most influential socialist leaders in US history and the Socialist Party of America’s choice for President in 1912

---


\(^99\) It did not just target people on the left. James A. Peterson, a Republican candidate for governor of Minnesota, was also arrested and sentenced to four years for making anti-war speech during the state’s gubernatorial election. See: Stephen Martin Kohn, American Political Prisoners: Prosecutions Under the Espionage and Sedition Acts (Westport, CT: Greenwood Publishing Group, 1994), pg. 124; also see section: The Return of ‘and Sedition’ below.

\(^100\) The figures here are derived from statistics in Scheiber, The Wilson Administration, loc. 425-448 [eBook].
(who won six per cent of the popular vote), was also indicted.\textsuperscript{101} It is also absolutely essential to remember that despite all the blunderbuss over claims of America being infested with spies, \textit{not one} genuine spy or saboteur was sentenced during the First World War.\textsuperscript{102} The Espionage Act was driven through during a time of heightened anxieties, but that alone would not have got the statute through Congress. It was also a product of the progressive approach to policy-making. The Act was given impetus by the executive, empowered a centralised federal bureaucracy (the Bureau), and ameliorated a perceived social ill (disloyalty).

\textbf{THE RETURN OF ‘AND SEDITION’}

It is also important to remember that the Espionage Act was not the only pernicious statute passed during the war under the auspice of ‘national defence’, though historians have primarily focused on it. The war initiated a torrent of legislation that attempted to defeat enemies at home, something the progressive Wilson administration perceived as essential to national security. The bevy of other security acts included: the Threats against the President Act, 14 February 1917; Proclamation regarding Alien Enemies, 6 April 1917; Confidential Executive Order regarding Federal Employees, 7 April 1917; Creation of the Committee on Public Information, 14 April 1917; Executive order relating to cable and land telegraph lines, 28 April 1917; The

---

\textsuperscript{101} Six per cent of the popular vote in 1912 was 901,551 votes. Debs was at the forefront of a swift crack down of the Socialist Party by the federal government after the 1916 election. ibid; and Kohn, \textit{American Political Prisoners}, pg. 94.

Trading with the Enemy Act, 6 October 1917; The Sabotage Act, 20 April 1918 The Alien Act, 16 October 1918 and last but by absolutely no means least pernicious, the Sedition Act, 16 May 1918.¹⁰³

The Sedition Act is worth providing extra details on here as it was used to suppress ‘disloyalty’ and silence opposition against the war. The progressive Postmaster General Albert S. Burleson and Attorney General Gregory jostled with one another in quashing what they considered to be treasonable utterances.¹⁰⁴ And within a year the President asked Congress for amendments to strengthen the Espionage Act. Representative Webb once again stepped forward in the House to offer a bill that appealed to all ‘superpatriots who yearned for extreme repression, a bill designed to frighten and ultimately silence many Americans who favored restoration of traditional freedom of expression’.¹⁰⁵ Webb, was on the progressive wing of the Democratic Party. In 1913, Webb was one of the principal sponsors of an Act bearing his name – the Webb-Kenyon Act – which prohibited the shipping of alcohol across state lines.¹⁰⁶ Webb’s bill was modelled after

¹⁰³ The Postmaster General in the Trading with the Enemy Act of 1917 received the power to ban foreign language and other publications from the mails; and the Alien Act of 1918 permitted the deportation of alien anarchists or those who believed in the use of force to overthrow the government. Time and space does not permit me to go into great detail into all these statues, but all had elements but for more information see: The figure is derived from statistics in Scheiber, Wilson Administration, loc. 314-582 [eBook].
¹⁰⁵ Scheiber, Wilson Administration, loc. 520 [eBook].
Montana’s statute to curb the Industrial Workers of the World, and had wide support in both houses, Senate Democrats voted almost unanimously in favour of the bill; the House vote was marked by only one negative vote.\textsuperscript{107}

The bill was an amendment to the Espionage Act and would become known as the Sedition Act. Under the Sedition Act it became illegal to:

\[\ldots\text{ make false reports, or false statements }\ldots\text{ with the intent to obstruct the sale by the United States of bonds utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution }\ldots\text{ or the military or naval forces }\ldots\text{ or the flag }\ldots\text{ or the uniform of the Army or Navy }\ldots\text{ or any language intended to bring the form of government }\ldots\text{ or the Constitution }\ldots\text{ or the military or naval forces }\ldots\text{ or the flag }\ldots\text{ into contempt, scorn, contumely, or disrepute willfully display the flag of a foreign enemy urge, incite, or advocate any curtailment of production in this country of any thing or things }\ldots\text{ necessary or essential to the prosecution of the war.}\textsuperscript{108}\]

The Sedition Act established new law that had only one precedent within American history: The Sedition Act of 1798. The amendment was not being used against foreign agents, but became a means of politically harassing anarchists, socialists, and other political dissidents. Under these statutes, pro-

\textsuperscript{107} Although forty-six abstained and 134 did not vote. See: \textit{The New York Times}, 5 May 1918; and \textit{The New York Times}, 8 May 1918.

German newspapers and speakers and far more often, left-wing and other radical anti-war voices, were suppressed and punished.

Samuel Eliot Morison, one of the most decorated historians of all time in terms Literary prizes, puts it best in *The Growth of the American Republic*:

Under these harsh laws the government instituted widespread censorship of the press; banned two Socialist newspapers from the mails; held up circulation of a tax-journal, *The Public*, because it advised that more of the costs of the war should be borne by taxation; and banned Thorstein Veblen’s *Imperial Germany and the Industrial Revolution* ... A hapless film producer was sentenced to ten years in jail for producing a film on the American Revolution called *The Spirit of Seventy-six*, because it was thought that it might excite anti-British sentiments; a Vermont minister was sentenced to fifteen years’ imprisonment for citing Jesus as an authority on pacifism.\(^{109}\)

Now what constituted seditious behaviour varied but it shared a common theme: opposition to the wartime government. Virtually every form of resistance to or criticism of the government became a potential crime.

The federal statutes that Wilson heralded caught radicals, pacifists and other dissenters in an extensive web. The total number of indictments ran into the thousands; Alexander Mitchell Palmer, Woodrow Wilson’s last Attorney

General reported from 1918 and 1919 that there were 988 convictions, and 968 in 1918-19, for a total of 1956.\textsuperscript{110} The pre-emptive raids directed by Palmer in November 1919 (aka. The Palmer Raids) netted by January 1920 approximately 16,000 suspected anarchists and communists, of whom 249 were deported.\textsuperscript{111} It is worth noting again that during the First World War, none charged under the espionage act were ‘spies’ in the classic sense presented in most counter-espionage histories.\textsuperscript{112}

The subverting of America’s traditional counter-espionage culture was not only upheld by the legislative and executive branches of government, but also the judicial branch, which also had strong progressive voices on the Court. The executive, by nature of the progressive approach, had a central role in creating the implements of oppression. The legislative branch role was of less importance as they essentially co-signed on the statutes. The judicial is perhaps the most significant, at least in terms of legacy of the three, as they not only determined the apparent constitutionality of Espionage and Sedition Acts – also co-signing off on the Act – but they also set the standard applied by the Court to free speech issues related to advocacy of violence for half a century.\textsuperscript{113} The cases began the process of developing criteria for

\begin{itemize}
    \item \textsuperscript{110} Chafee, \textit{Freedom of Speech}, pg. 387; Walter Nelles, \textit{Espionage Act Cases: With Certain Others on Related Points} (New York, NY: National Civil Liberties Bureau, 1918), pg. 81.
    \item \textsuperscript{111} See chapter eight on the Bureau of Investigation’s role in domestic spying. Also see; Brock Millman, \textit{Polarity, Patriotism, and Dissent in Great War Canada, 1914-1919} (Toronto: University of Toronto Press, 2016), pg. 22.
    \item \textsuperscript{112} See footnote 102.
    \item \textsuperscript{113} It was replaced in 1969, when the court established stronger protections for speech in \textit{Brandenburg v. Ohio}. The Court’s decision held that ‘the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action’. \textit{Brandenburg} is now the standard applied. See \textit{Brandenburg v. Ohio}, (1969), 395 US 444, pg. 447.
\end{itemize}
permissible limitations on speech, which quickly developed into a slippery slope. Although the espionage and sedition acts were challenged early, the Court showed little interest in making a quick decision on their constitutionality.\footnote{Melvin I. Urofsky, \textit{March of Liberty: A Constitutional History of United States Since 1865} (New York, NY: McGraw-Hill, Inc., 1988), pg. 608.} As a result, some half-dozen cases did not reach the Supreme Court until the spring of 1919, after the end of hostilities.

The precedent established by the Court in its consideration of these Acts comes from the 3 March 1919 \textit{Schenck v. United States}. In writing that opinion on behalf of the Court, Justice Oliver Wendell Holmes articulated the 'clear and present danger' test.\footnote{\textit{Schenck v. United States} (1919), 249 US 47, pg. 52.} The opinion of the Court affirmed that Congress had a right to limit speech in an attempt to limit certain ‘evils’. Holmes wrote:

\begin{quote}
The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force ... The question in every case is whether the words used are used in such a circumstance and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.\footnote{ibid.}
\end{quote}

The unanimous opinion written by Holmes shows – perhaps better than any other possible indicator due to the level of education of a Justice – the 180 degree turn on the concept of the inalienability of rights, once a bedrock of
America’s political tradition. It also highlights how the consequentialist approach of progressivism intersected with America’s traditional counter-espionage culture, and how its unravelling was justified.

Appointed by President Roosevelt in 1902, whilst serving in the Supreme Court, Holmes supported efforts by the President for economic regulation that made him a darling of progressive movement. The same progressivist concerns he had supported before the war in the economic realm were now being applied to national security and speech. In the short space of time between Homestead and the First World War, the almost sacrosanct right of freedom of contract – which was upheld by the Pennsylvania state legislature and court – had evaporated, as had the high bar for treason and the ironclad right of free speech.

Subsequent to Schenck, Justice Holmes also wrote the opinion, for a unanimous court, upholding the conviction of Eugene V. Debs on 10 March 1919. Debs was an American union leader, one of the founding members of the IWW and former Socialist Party candidate for for President. As the candidate of the Socialist Party of America in 1912 He had received 900,369 votes, 6.0 per-cent of all votes cast (Wilson received only 41.9 per-cent).

On 16 June 1918, Debs delivered a speech in Canton, Ohio, which made an anti-war argument and expressed solidarity with three men – Wagenknecht, Baker and Ruthenberg – who had been sentenced for failing to register for

---

117 Level of legal education being an indicator of awareness of precedents and previous generations jurisprudence.
119 Robinson, The Presidential Vote, pg. 17.
Debs also condemned the imprisonment of Kate Richards O’Hare for obstructing the draft.\textsuperscript{121} Such a speech was now illegal under the Espionage Act. For his efforts, Debs would find himself in a court, convicted and sentenced under the Sedition Act.\textsuperscript{122} As with the earlier \textit{Scheck vs US} and later \textit{Abrams vs. US}, he ultimately appealed his case to the Supreme Court. The Court, however, decided against Debs and maintained the power of the Espionage Act. Debs was sentenced to ten years imprisonment on each of three counts to be served concurrently, and his loss of citizenship was upheld.\textsuperscript{123}

Though Holmes dissented his ‘clear and present danger’ test was applied in the 10 November 1919 \textit{Abrams v. United States} Supreme Court decision, which upheld the constitutionality of espionage and sedition legislation.\textsuperscript{124} In a microcosm, illustrating that once a principle was no longer absolute, intentions alone were not enough to protect it being flouted. The Justice Department now had a mandate, the Espionage and Sedition Acts, and a means, the bureau of investigation, to discreetly continue oppressing pacifists, socialists, minorities and anarchists. As Daniel P. Moynihan so eloquently put it, ‘As never before, as never since, the American Presidency, with the cooperation of Congress and the courts, was obstructing democracy in the name of defending it’.\textsuperscript{125} The cases of Debs, Schenck and Abrams, all

\begin{flushleft}
\textsuperscript{120} Moynihan and Combest, \textit{Secrecy}, pg. a-14.  \\
\textsuperscript{121} ibid.  \\
\textsuperscript{122} ibid.  \\
\textsuperscript{123} On Wilson’s last day as President, Congress repealed the 1918 amendment to the Espionage Act, known as the Sedition Act. As a result, on Christmas Day 1921, President Warren G. Harding commuted Debs’ sentence. See: Bacon, et al, \textit{The Encyclopedia of the United States Congress}, vol. 2, pg. 774.  \\
\textsuperscript{125} Moynihan and Combest, \textit{Secrecy}, pg. a-14.
\end{flushleft}
in 1919, were the first in Supreme Court history to adjudicate on a claim of protection under the First Amendment. In essence, the US had gone 142 years without a law protecting critical expression. The legislation that necessitated First Amendment protection was the Espionage Act.

On the broadening out of the concept of espionage, the three branches of government reinforced each other, instead of fulfilling their constitutional mandate to perform proper checks and balances on one another. Other forces would eventually emerge to challenge what was all too quickly becoming a status-quo with the Espionage and Sedition Acts. The cases marked the beginning of the modern civil liberties tradition in American. There had been no such tradition in the nineteenth century, as the federal government had not broadened the meaning of treason limiting certain forms of speech. Indeed, the ACLU itself sprang from the National Civil Liberties Bureau, formed in 1917 to provide legal assistance to those prosecuted under the Espionage Acts.126

THE END OF AN ERA

Ironically, in his earlier careers as a historian and President of Princeton, Wilson had advocated for full freedom of expression, and his writings reflected an understanding expressed by the framers of the Constitution: that war eroded civil liberties.127 Only two decades prior to the war, in October 1899 at Princeton, Wilson eloquently defended the principle of free speech

---


127 Thomas, Unsafe for Democracy, pg. 20.
telling a gathering of scholars that dissent had an honourable heritage: ‘We have been told that it is unpatriotic to criticize public action. Well, if it is, then there is a deep disgrace resting upon the origins of this nation. This nation originated in the sharpest sort of criticism of public policy. We originated, to put it in the vernacular, in a kick, and if it be unpatriotic to kick, why, then, the grown man is unlike the child. We have forgotten the very principle of our origin if we have forgotten how to object, how to resist, how to agitate, how to pull down and build up, even to the extent of revolutionary practices if it be necessary, to readjust matters.’\(^{128}\) In such a short space of time, and with the power of the Presidency, he went from that to this after the war: ‘I cannot say too often – any man who carries a hyphen about with him carries a dagger that he is ready to plunge into the vitals of this Republic whenever he gets ready’ and ‘if I can catch any man with a hyphen in this great contest I will know that I have got an enemy of the Republic.’\(^{129}\) He delivered this address on 25 September 1919, in Pueblo Colorado, shortly before collapsing while touring the nation to muster popular support for a League of Nations in the aftermath the First World War.\(^{130}\)

For the next seventeen months, Wilson was so enfeebled he could barely write his own name. All communication with the president went through his


\(^{130}\) As Frank Wu aptly pointed out, his hatred of hyphenated American was strange, when one considers the campaign he headed for the establishment of the League of Nations that were opposed by nativist Americans – though he tried to claim it was opposed by German- and Irish- Americans. See: Frank H. Wu, Yellow: Race in America Beyond Black and White (New York, NY: Basic Books, 2003), pg. 239.
Although Wilson’s health improved somewhat, he never fully recovered and the Republican-led Senate subsequently rejected the Treaty of Versailles, which established the League of Nations – it was the death knell of the progressive movement. For Wilson, this must have been the bitterest pill to swallow. He had trampled on the civil liberties at home whilst pursuing his activist internationalist foreign policy that promoted those values abroad. Ultimately, Wilson’s progressivism abroad, and at home, collapsed under the weight of its own hypocrisy – leaving the future of America republicanism less secure, with a growing permanent counter-espionage bureau and an ‘new-fangled’ espionage statute.

America had gone full circle and was no longer mimicking the practices of a regime their republic had been designed to ward against. The First World War was important, but progressivism compelled solutions contrary to America’s traditional counter-espionage culture. The Alien and Sedition Acts of 1798, which had so decisively been rejected by the people of not befitting the republic, were now being upheld by every branch of government. America had now adopted the legislation that had been the cornerstone of that repressive regimes everywhere: an expansive Espionage and Sedition Act which punished people for their thoughts and the arbitrary place of their birth. However, a byzantine focus on socialist, anarchist and German- and Irish-American citizens meant that the Justice Department missed the actual


espionage going on in America: espionage by Britain to subvert the country’s neutrality and draw America into the war.

Adams lost the election of 1800 partly due to the young nation’s opposition to the Alien and Sedition Acts, which were perceived as being inconsistent with the nature of the republic. When Thomas Jefferson (who won the election) became President, he quickly moved to dismantle the illiberal statutes and overturn prior convictions. After Wilson’s slow physical deterioration the Democrats turned to the well-liked progressive reformer, James M. Cox, who would carry the torch of progressivism into the election of 1920. The Republicans would select, like Cox, a fellow Ohioan and newspaperman, US Senator Warren G. Harding. Unlike Cox, however, Harding was not a progressive, his campaign promise to the American people was a ‘return to normalcy’ – a restoration of the more familiar way of life before the First World War.

Despite all efforts, Cox was trounced at the polls.\(^{133}\) The public had grown weary of the progressivism of the Wilson years, and Harding’s call for a ‘return to normalcy’ resonated.\(^{134}\) The 1920 election was not a repeat of 1800. The twenty-ninth president was no Jefferson, and after twenty years of forceful executives the dynamic of the country had changed. No dismantling of the counter-espionage statues or bureaus took place. Neither Harding nor any subsequent President put the Bureau in full reverse or repealed the Espionage Act.\(^{135}\)


\(^{135}\) Only the Sedition Act component was repealed by Congress.
It was in the Progressive Era, in those two decades at the start of the twentieth century, that the apparatus for a new expansive, permanent counter-espionage culture was created.
In 1963 Allen Dulles – the first civilian Director of Central Intelligence, and one of the men most responsible for the expansion of US intelligence (including counter-espionage) – published a book of professional reflections called *The Craft of Intelligence*. Dulles explained his motivations to the reader in the foreword: ‘Since returning to private life in November of 1961, I have felt that it was high time that someone... should tell what properly can be told about intelligence as a vital element of the structure of our government in this modern age’. For Dulles, like the progressive presidents of the first quarter of the twentieth century, the onset of modernity made intelligence a ‘vital element’ of government. The circumstances in and around America, the Cold War and the threat of communism, meant that a country with no previous permanent intelligence bureaucracy now needed one. It was the same argument used by Theodore Roosevelt, William Taft and Woodrow Wilson in justifying not just the creation of the Bureau of Investigation and the Espionage Act but all agencies, statutes and programmes of the Progressive Era. For Dulles, however, the pivotal moment was the Cold War:

In United States history, until after World War II, there was little official government intelligence activity except in time of combat. With the restoration of peace, intelligence organizations which the stress of battle had called forth

---

were each time sharply reduced, and the fund of knowledge and the lessons learned from bitter experience were lost and forgotten. In each of our crises, up to Pearl Harbor, workers in intelligence have had to start in all over again.\textsuperscript{2}

There are two important propositions to unpack in this quote. First, Dulles is right on one count – for the majority of America’s history, espionage functions were expanded in wartime and contracted upon peace. It was similar to other regressive changes made during states of exception, like the suspension of elections, censoring of the media and the banning of public meetings and manifestations, measures which were all rescinded upon peace. In terms of intelligence being a non-permanent function, Dulles clearly sees this as a weakness of the American system – where I see it as a distinct strength. It demonstrates an understanding that wars call for special measures so they can be prosecuted in a secure environment, but that ultimately secret services are a threat to civil liberties in the long run.

Second, Dulles’ generalised synopsis of the trajectory of US intelligence, often also advanced by historians, detaches the creation of a counter-espionage apparatus from the Progressive Era and fixes it to the necessities of the Cold War, which required permanent intelligence as a tool of statecraft. The narrative offered by Dulles misses the ‘long tail’, which contributed greatly to the eventual creation of the CIA and an alphabet soup of other organisations, and is thus historically inaccurate. More importantly, it clouds our understanding of how intelligence agencies in America became ‘permanent’. It sanitises the process by linking it to war as opposed to linking

\textsuperscript{2} ibid., pg. 27.
it to a political philosophy of government interventionism, both domestically and internationally. Progressive Era ‘liberalism’ was a pathbreaker for New Deal ‘liberalism’, to which Dulles, and others, incorrectly attribute the origins of US Intelligence, including counter-intelligence. The New Deal Era and the Second World War only solidified this new counter-espionage culture, they did not provide the impetus – this came earlier. The war, for all intents and purposes, continued to make counter-espionage permanent. It was a culmination of almost fifty years of the unpicking of US traditional counter-espionage culture.

In this thesis, I have argued that America’s initial counter-espionage culture from the Revolutionary Era was supplanted in the Progressive Era by a new more expansive state-based approach, a claim currently not present in the literature. In forwarding this argument this thesis revealed how America changed from a nation that partly defined itself at the outset by constricting the state apparatus of domestic spying to creating one of the largest domestic security systems. It found that the major drives of this change were progressive politics, British inspiration and the failure of private security. It makes this claim by showing that by the end of the Progressive Era you have:

(a) the removal of the use of the private sector in any form of counter-espionage;
(b) an expectation of the federal government handling counter-espionage (progressive politics);
(c) the creation of the Bureau of Investigation;
(d) the Espionage Act, greatly moulded by Britain; and finally,
(e) J. Edgar Hoover at the helm.
In the first section I comprehensively examined how the overwhelming majority of the literature has focused on ‘counter-intelligence’ from the Second World War onwards, and has used America’s Revolutionary Era—incorrectly—to justify the use of state counter-espionage today. I explored and rejected this claim, suggesting instead the incubator of America’s newer, more expansive, counter-espionage culture is linked to early twentieth century progressive politics.

In the second section I showed how the framers of the Constitution in the Revolutionary Era in fact grappled with concepts like treason and spying as they endeavoured to create a new state with a new social compact. A social compact – distinct from Great Britain – that set a new high bar for treason; curtailed the use offensive counter-espionage outside of war; subsumed counter-espionage into law enforcement; and protected individual liberties by separating powers in the general government, employing federalism and a Lockean (natural) conception of rights which made them inalienable. For example, to show how American counter-espionage actually operated during the Revolutionary War, I reassessed the treason of Thomas Hickey, one of the most well-known and analysed treasons in American history. The case has most frequently been deployed to show how impressive Washington was as a spy master. I, however, through Popperian situational analysis, explored the Hickey treason through a new prism, to show how America’s initial approach to counter-espionage fed into the investigation of his alleged treason and his trial.

The third section dealt with the frequently-overlooked influences of private sector detective firms. Private sector counter-espionage was an unavoidable corollary of America’s initial counter-espionage culture above, which made
no provision for a permanent federal body responsible for monitoring domestic subversion outside of war. This section also dealt with the downfall of private sector counter-espionage in the form of a federal statute banning the hiring of private detectives after the national calamity at Homestead, Pennsylvania in July 1892. It was the first barrier that was necessary to eliminate for the creation of the Bureau of Investigation in 1908 and later espionage statutes.

This third section was also where my overall methodological approach, situational analysis, can principally be detected.\(^3\) I simultaneously outlined the various physical and non-physical components at play in the 1892 strike; the various actors involved; their motivations and interests; the alternatives and causally how a steel strike in Pennsylvania resulted in a federal ban on the hiring of private detectives. In a microcosm, a demonstration of the strength of attempting to search for ‘situational logic’, and a rejection of the overwhelming majority of histories on the Homestead Strike, which have taken a macro ‘methodological collectivist’ approach to exploring the causes and consequences of the strike.\(^4\)

The fourth and final section lays bare the two countervailing influences that germinated and contributed to the rapid expansion of American counter-espionage once the private sector was circumvented: progressive politics and British legislation, the latter providing a blueprint for new and expansive counter-espionage statutes driven-through by the former. These influences


\(^4\) Popper, *The Poverty of Historicism*, pg. 82. For more, please also see chapters four and five.
took palpable form in the creation of the Bureau of Investigation, along with the Defense Secrets Act of 1911 and the Espionage Act of 1917.

In terms of impact of the above exploration and revelations, this thesis provides a strong argument that important pillars of America’s counter-espionage apparatus today (the FBI and the Espionage Act) are in fact not rooted in the Revolutionary Era or the Constitution, as intimated by much of the literature. Moreover, this thesis shows how in some instances America’s new counter-espionage culture that sprung up in the progressive era fundamentally undermines America’s original constitutional order.

One important facet that distinguishes my research fundamentally from all others on the origins of US counter-espionage, is its thorough amalgamation of intelligence into the histories of broader disciplines, for example International Relations and American history writ large. As such, this thesis fulfils the founding mantra of Intelligence Studies, as first articulated by Christopher Andrew and David Dilks in 1984, connecting intelligence to broader disciplines – in every section it has persistently addressed a ‘Missing Dimension’. Consequently, it makes important contributions not only to Intelligence Studies but to other disciplines it bridges across to – for example, American Political, Labour and Social History, International Relations, Security Studies, Criminology, Political Theory and Economics.

In terms of ‘intelligence-centric’ contributions, this thesis makes an important one to the literature on foundational principles related to definitions at the

---

heart of the subject. In the introduction, this thesis makes a key contribution by defining ‘counter-intelligence’ in a new way, theoretically, not by methods but by ends. The case study I use to illustrate this point, and underline the strength of my definition from all those previously, is the Homestead Strike. At Homestead my new theoretical approach (situational analysis) to counter-espionage is attested by analysing contrasting concepts of rights, the scale of strikes, immigration and the economic consequences and why Homestead (and similar events) ought now to be addressed by those within Intelligence Studies.

Crucially, in the ontological sense the thesis’ most important contribution is correcting what has been found to be a mostly incorrect historical record that connects the expansion of US counter-espionage to the modern era. For the first hundred years of America’s history the country had a culture and political traditions that firmly limited counter-espionage, based on the idea that secret police in the long run represented a threat to individual liberties. However, current narratives wrongly suggest the expansion of modern counter-espionage are linked to either the Second World War or the Cold War. I reject this claim, suggesting instead the incubator of America’s newer more expansive counter-espionage culture is linked to early twentieth century progressive politics, a new and valuable finding.

Moreover, this thesis is correcting the historiography of counter-espionage and the Revolutionary Era, noting the essential relationship was one of constriction, not expanded intelligence. It then goes on to link America’s foundational principles (the use of counter-espionage during wartime only; the subsuming of counter-espionage under law enforcement; and US constitutional values) in the resultant unique market created in the US for
private sector counter-espionage bureaus in the nineteenth century. This market gives rise to another important claim, previously unmade, that in terms of understanding the rise and fall of America’s traditional counterespionage culture, the single most important date is 6 July 1892 – the Homestead Strike. None of the literature from Intelligence Studies has made one of the above points, let alone all of them. Nor has one piece of research that purports to examine the origins period of US counter-espionage had its primary focus on any one of the influences I have identified – Britain, the private sector or progressivism – let alone all three. As such this thesis has brought an entirely new meta-narrative to bear on the origins of US counter-espionage.

Lastly, this thesis has put the role of the UK into its proper place in terms of understanding the evolution of US counter-espionage. One of the important pieces of knowledge this thesis has unearthed is the pre-second world war bridge between Britain and the US, over which the legislation of political repression was transported. This legislation, and other tools of political repression – as acknowledged by both Howard Vincent of Scotland Yard and William Pinkerton of Pinkerton – were in fact of French design.\(^6\) It is equally important that further research be conducted on the transfer of the tools of political repression from the European continent to the English-speaking world.

Did the onset of modernity necessarily change the underlying political culture of American counter-espionage, as suggested above by Dulles and by progressive presidents in the last chapter? Put another way, is change in the state’s relationship with counter-espionage an inevitable corollary of technological and social progress and, if not, can America ever ‘go back’ to its traditional relationship with counter-espionage?

In 1908 Winston Churchill wrote that as society had changed, he had become ‘acutely conscious of the fact that political freedom, however precious, is utterly incomplete without a measure of social and economic independence’.

Churchill was underlining the logic of ‘New Liberalism’ in the UK, which was similar in nature to Progressivism in the US. It espoused the idea that government needed a more active role in regulating business; businesses from detective agencies to health-care providers. Before the twentieth century, the political tradition of both Britain and America (more so the latter) embodied what historian Robert Kelley has called ‘The Transatlantic Persuasion’ — a laissez-faire liberal ethos that celebrated individual economic opportunity, religious tolerance and fiscal conservatism. The majority of individuals within both nations welcomed a small state; and celebrated the primacy of the marketplace and the legal doctrines upon which it depended, particularly ‘freedom of contract’. As Section two on Homestead demonstrates the primacy of these values that were reinforced

---

by every institution of American life, from the press to the president, even at a very late stage of the nineteenth century. However, at the turn of the century, support for what can broadly be described as ‘limited government’ had begun to collapse and many issues from the realms of politics, economics and security came under the purview of the federal government. This meant new rights, workers securing governmental aid, and federal investigative agencies for new crimes.

America shifted from an agrarian economy to an industrial economy. Americans moved into cities, worked in factories, improved transportations and dramatically increased production of goods and wealth with the harnessing of electricity. The thirteen colonies that founded the US in 1787 were a world away from the forty-five states in 1896. Yet one thing that had not changed greatly was America’s conception of rights. These rights were written into the Constitution as inalienable and the government’s role was to be the guardian of them. They were written by men who envisioned an agrarian society, not a highly industrialised one, and perhaps that is why change was inevitable. A Lockean concept of rights, as pertaining to those in the Constitution, worked for an agrarian society; and now, for many, it was not working for an industrialised one. The magnitude of everything that followed in the wake of modernity changed the nature of rights.

Social context governs all. Suppose, for example, ten settlers armed with muskets moved to a deserted island with plentiful resources. If they decided to draw up a constitution, declaring they each have an inalienable right to defend themselves, this would not be a surprising proclamation. However, if 350,000,000 people live on the island and they have the ability to 3d-print guns, the sanctity of that right might begin to be questioned with the body
count. The inalienability of that right may even become more acute if ‘an atomic bomb the size of a melon’ with the ability to instantly extinguish the lives of millions in seconds could be 3d-printed. Consequentialist arguments develop out of deontological ones to make the majority of individuals safer at the expense of a formerly inalienable right.

This was the impetus for men like Theodore Roosevelt, who saw drastic inequalities from ‘freedom of contract’ and was elected on a mandate of giving America a ‘square deal’ – government as the counter-balance to big business. The logic above of guns and economics equally could be applied to why counter-espionage bureaus are ‘vital’ in the Industrial Age but were not vital in the Revolution Era. As with the example above, having a very high bar for treason makes sense with ten people on an island. Some in a society would want that bar lowered if they were one of 350,000,000 and those who actively desired to do harm could travel unmolested, protected by the height of the bar. Giving a definitive answer to whether change in the state’s relationship with counter-espionage is an inevitable corollary to industrialisation is not as important as determining whether America can go back.

The last two thirds of this thesis attempts to demonstrate why America changed and what that meant for counter-espionage. The deeper, partly-philosophical, partly-empirical questions underlining why America changed, though aiding our understanding, are essentially unalterable and irreversible. Industrialisation happened. Progressivism Happened. One could argue that the political principles within the Constitution are timeless, and eminent

---

statesmen and philosophers have advocated them from antiquity. Men from
Greece and Rome who, like the framers, feared ‘mob rule’ because they
understood that if the passions of the people were inflamed, they would be
tossed about by the ever-shifting winds of popular opinion. This is particularly
true with the history of counter-espionage as its expansion has historically
been linked to moral panic.\(^\text{10}\) In building their constitutional republic, the
framers understood that the state needed to have solid foundational
principles, regardless of how old the principles were.

Regardless of why things changed, the merits of the constitutional system
and how it relates to counter-espionage, the system has indeed now
changed irreversibly. The Federal Bureau of Investigation has grown over a
century and is now a perennial institution of American life, not just of counter-
espionage or law enforcement. In 2016, the Bureau employed around 35,000
people and its budget request for the following year was $9.50 billion.\(^\text{11}\) The
Bureau has not grown so significantly in spite of public opposition, but
because the majority of Americans have continually prioritised security
concerns over civil liberties. The most recent example – from February 2016
– was the fifty one per cent of Americans who, responding to a Pew Poll,
agreed that Apple ought to unlock iPhones to assist ongoing FBI
investigations.\(^\text{12}\)

\(^{10}\) This is not just the case for America, the same could be said for Britain.
\(^{11}\) FBI Director James B. Comey, ‘Statement Before the House Appropriations
Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies
August 2016).
\(^{12}\) Only thirty-eight per cent supported Apple in not unlocking iPhones for the
Bureau. For the poll see: ‘More Support for Justice Department Than for Apple in
Dispute Over Unlocking iPhone’ Pew Research Center, 22 February 2016.
Of course changes can be made on the margins, curtailing some of the excess of America’s new expansive counter-espionage culture, but the old one cannot return. Technological change, urbanisation, industrialisation and persistent high levels of immigration have all fed into a change in the root political values of the country. A shift back towards the values espoused in section one is near impossible. There is no instant ‘cure’, ‘solution’, or ‘fix’ to the political repression and threat of civil liberties linked to counter-espionage; and anyone who claims there is operating wholly within ideal theory. This is because they are writing in the kind of abstractions that do not relate to the human experience. The expansion of counter-espionage in America in the twenty-first century is too far-gone to be reversed.\(^\text{13}\)

The simile offered by George F. Will is apt: ‘the presidency is like a soft leather glove, and it takes the shape of the hand that’s put into it. And when a very big hand is put into it and stretches the glove – stretches the office – the glove never quite shrinks back to what it was.’\(^\text{14}\) Progressive presidents have stretched the glove. The proliferation of the notion that the current counter-espionage structure of the US is anathema to the constitutional system is not going to undo 100 years of its building. Even in the exceptionally unlikely event that the US national security state is substantially dismantled, the prevention of its reconstruction would not just require a constant state of hyper vigilance – it would need a change in the political ethos of the majority of Americans. At Homestead, a general catastrophe that

\(^{13}\) One way you could try to change a culture is to write a book that shows the change. But – even then, with something like counter-espionage in America – cultural changes have gone so far to make such change extremely unlikely.

could have been easily averted, almost all Americans – including the federal government – looked to the state of Pennsylvania ‘to do something’. In 2016, if an event of similar magnitude happened, Americans would immediately look to the president. That started in an almost unbroken chain from Theodore Roosevelt to the present day.

The expectation on the federal government – specifically the executive office – to ameliorate challenges outside those strictly endorsed by the Constitution is not going anywhere. It is not going anywhere because the same individuals who decry the expansion of the national security state also desire ‘the state’ to deliver healthcare, set a minimum wage and provide federal mandatory minimums for crimes. You cannot have it both ways; it is a trade-off, an opportunity cost. The philosophy of government that gets people from Roosevelt to Wilson elected, two very different men despite their progressivism, is the lens through which they perceive solutions to political problems. A president cannot be simultaneously interventionist and non-interventionist at their core. A focus purely on outcomes – reducing poverty, securing the nations, protecting the environment, etc. – has rendered processes meant to protect inalienable rights irrelevant. As such, it is clear now that the security apparatus of the state will continue to expand to where the only difference between the FBI and the Stasi is the intentions of the men and women who turn up to work.

Lastly, the creation of the current ‘panopticon state’ is an abstraction of tyranny that would have been unfathomable to the framers of the Constitution.\textsuperscript{15} To them, the proposition of a government that could know

\textsuperscript{15}Panopticism is named after the Panopticon, originally developed by French philosopher Michel Foucault in his book \textit{Discipline and Punish}, which in turn is from
more about you than your wife and children at the stroke of a few keys would be as alien as the equipment used to conduct such surveillance. Permanent counter-espionage bureaucracies in America, which are close to the attainment of ‘total information awareness’, are not developments confined to the twenty-first century. They were over a hundred years in the making.

BIBLIOGRAPHY

PRIMARY SOURCE

US National Archives and Records Administration, College Park, MD (NARA)

Record Group 60. General Records of the Department of Justice:
Classified Subject Files.
Docket of Presidential Warrants Issued, 1917–18

Record Group 65. Federal Bureau of Investigation:
Miscellaneous Files, 1908-22
Bureau Section Files, 1920-21
Record of the American Protective League
Records concerning violations of Mexican neutrality ('Mexican Files')
Investigative Case Files of the Bureau of Investigation, 1908-22 ('Old German Files')
Civil Rights (class 44)
Treason (class 61)

US Government Misc.
Also available from:

‘Memorandum for the Director: Re: Early History of the Bureau of Investigation, United States Department of Justice, Los Angeles, California, 19 November 1943.
<https://www2.fbi.gov/libref/historic/history/historic_doc/findlay.htm>

UK National Archives, Kew, London (NA)
KV 1/9, ‘Kell’s Bureau’s six-monthly progress reports, 1909-1914.
KV 1/38, ‘F’ Branch Report.

ATTORNEY GENERAL REPORTS


MISC. REPORTS


CONGRESSIONAL HEARINGS


**CONGRESSIONAL RECORDS**


**CONGRESSIONAL REPORTS**


NEWSPAPERS AND MAGAZINES

Belleville News-Democrat
Chicago Eagle
Chicago Tribune
Collier’s Weekly
Foreign Policy
Harper’s Weekly
McClure’s Magazine
New York Times
Philadelphia Inquirer
Pittsburgh Commercial Gazette
Pittsburgh Post-Gazette
Reynolds’s News
The Chanute Daily Tribune
The Evening Independent
The Guardian
The Kansas City Star
The San Francisco Call
The Washington Post
Time Magazine
Tri-Weekly Gazette and Bulletin (Williamsport, PA)
Village Voice
Workingmen’s Advocate

ACTS

UK

Statute of 25 Edward III (1350).

7 & 8 William III. (1696).

The Official Secrets Act 1911.


US


**US COURT CASES**

*Frederick Ker v. People of the State of Illinois* (1885), 119 US 436.

*Debs v. United States* (1919), 249 US 211.

*Schenck v. United States* (1919), 249 US 47.


*Klayman et al., v. Obama et al.* (Dkt 13, 2013) 13-0851.

**UK COURT CASES**

*Ex parte Susannah Scott*, 9 B&C 446, 109 ER 166 (United Kingdom King’s Bench Divisional Court, 1 January 1829).


Bacon, Thomas (ed.), *Laws of Maryland at Large*, 1637-1763 (Annapolis: s.n., 1765), Assembly of 25 February to 19 March 1638, No. 22.


Luder (ed.), *Howell’s State Trials*, (s.l.: s.n., 1810).


**SECONDARY SOURCES**

**JOURNAL ARTICLES**


Christison, John Sanderson, ‘Epilepsy, Responsibility and the Czolgosz Case: Was the Assassin Sane or Insane?’ Kansas City Medical Index-Lancet, Vol. 23, No. 1 (1902), pp. 10-17.

Churchill, Ward, ‘From the Pinkertons to the PATRIOT Act the Trajectory of Political Policing in the United States, 1870 to the Present’, CR: The New Centennial Review,


Engineering and Mining Journal, Vol. 54 (July 9, 1892).


_____________________, ‘Rev. of Medical Aspects of the Czolgosz Case’, Alkaloidal Clinic, Vol. 9, No. 3 (1902), pp. 275-76.

_____________________, ‘Thaw and His Mental Status’, Alienist and Neurologist, Vol. 29 No. 2 (1908), pp. 193-207.


BOOKS & BOOK CHAPTERS


Adams, Samuel, A State of the Rights of the Colonies (s.l.: s.n, 1772).


__________________________, *The Storm Birds: Soviet Post-War Defectors* (London:


Calhoun, Frederick S., Uses of Force and Wilsonian Foreign Policy (Kent, OH: Kent State University Press, 1993).


Cobbett, William, Wright, John and Hansard, Thomas Curson (eds.), *The Parliamentary History of England, from the Earliest Period to the Year 1803: From which Last-mentioned Epoch it is Continued Downwards in the Work Entitled ‘Hansard’s


Gale, Oliver Marble (ed.), *Americanism: Woodrow Wilson’s Speeches on War* (Chicago, IL: The Baldwin Syndicate, n.d.).


___________, (Max Sartin and Robert D’Attilio, Trans.), *The end of Anarchism?* (Orkney, UK: Cienfuegos Press, 1982 [1925]).


Gerhardt, Michael J., *The Forgotten Presidents: Their Untold Constitutional Legacy*


______________, Dirty Tricks or Trump Cards: U.S. Covert Action and Counterintelligence (Washington, DC: Pergamon-Brassey's, 1995).


Gosnell, Harold F., Boss Platt and his New York Machine (New York, NY: Russell and


Halstead, Murat, *The Illustrious Life of William McKinley, Our Martyred President* (Chicago, IL: s.n.,1901).


Hülsmann, Jörg Guido, Mises: The Last Knight of Liberalism (Aurburn, Al: Ludwing Von Mises Institute, 2007).


Jefferson, Thomas, A Summary View of the Rights of British America (Williamsburg, VA: s.n., 1774).


Klosterman, Chuck, *But What If We’re Wrong?: Thinking About the Present As If It Were the Past* (New York, NY: Penguin USA, 2016).


_________________________________________________________ 


Locke, John, Second Treatise of Government (s.l.: s.n.,1689).


Luebke, Frederick C., Bonds of Loyalty: German Americans and World War I (DeKalb, IL: Northern Illinois University Press, 1974).

Lukes, Steven, 'Methodological Individualism Reconsidered', in Michael Martin and Lee C. McIntyre (eds), Readings in the Philosophy of Social Science (Cambridge, MA: MIT Press, 1994).


Macintyre, Ben, Operation Mincemeat: The True Spy Story that Changed the Course of World War II (London: Bloomsbury, 2010).


_________, *Windows into the Soul Surveillance and Society in an Age of High Technology* (Chicago, IL: The University of Chicago Press, 2016).

Mason, George, *Virginia’s Declaration of Rights* (s.l.: s.n., 1776).


Otis, James, *Rights of the British Colonies Asserted and Proved* (s.l.: s.n., 1764).


____________, *Claude Melnotte as a Detective, and Other Stories* (Chicago, IL: W. B. Keen, Cooke & Co, 1875).


____________, *The Spy of the Rebellion: Being a True History of the Spy System of the United States Army During the Late Rebellion* (Hartford, CN: M.A. Winter & Hatch, 1883).


__________, ‘Three Worlds’ the Tanner Lecture on Human Values, Delivered at the University of Michigan, 7 April 1978.


______________, *The Foes of Our Own Household* (New York, NY: George H. Doran
Company, 1917).


Schrag, Peter, Not Fit for Our Society: Immigration and Nativism in America (Berkeley, CA: University of California Press, 2010).


Siringo, Charles A., *Two Evil Isms Pinkertonism and Anarchism by a Cowboy Detective Who Knows, as he Spent Twenty-Two Years in the Inner Circle of Pinkerton’s National Detective Agency* (Chicago, IL: C.A. 1915).


Smith, Maurice H., *The Writs of Assistance Case* (Berkeley, CA: University of California


Swisher, Carl B., American Constitutional Development (Boston, MA: Houghton Mifflin, 1943).


Thatcher, James, A Military Journal During the American Revolutionary War, from 1775 to 1783 (Boston, MA: Richardson & Lord, 1823).


__________, Chasing Spies: How the FBI Failed in Counterintelligence but Promoted the Politics of McCarthyism in the Cold War Years (New York, NY: Ivan R Dee, 2002).

__________, and Theoharis, Jeanne, These Yet to Be United: Civil Rights and Civil Liberties in America Since 1945 (Toronto: Wadsworth Publishing, 2002).


**WEBSITES**


‘J. Edgar Hoover Memorandum on Anarchists for Mr. Creighton’, 23 August 1919
Washington, DC: Department of Justice.

Laing, Keith, ‘GOP Chairman: TSA was a “big mistake”’, The Hill, 18 March 2015.
<http://thehill.com/policy/transportation/236130-gop-rep-creating-tsa-was-a-mistake>.


<http://www.history.ac.uk/ihr/Focus/Whatishistory/obrien.html>.


