

Civil Liberties and War

Chapter 5
of

**AMERICA AT WAR:
PUBLIC OPINION DURING WARTIME, FROM WORLD WAR II TO IRAQ**

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Chapter 5: Civil Liberties and War

The tradeoff between security and civil liberties is always difficult to navigate in a democratic society. As Sniderman, et al. (1996) argue, “Liberty is contestable because it unavoidably collides, when choices must be made, with other values.” (1996, 244). During times of national crisis, liberty does not always prevail. In the days and weeks after 9/11, evoking earlier eras in the nation’s history, some commentators warned that the government’s offensive against terrorist activity might subvert the democratic foundations of American society and change the very way that ordinary citizens thought about their civil liberties. Elisa Massimino, the director of the Washington office of the Lawyers Committee for Human Rights cautioned that the Patriot Act would lead America down a troubling road: “These kinds of provisions, once they infect a country’s justice system, are incredibly hard to cure” (New York Times, October 26, 2001). Would the public willingly cede their basic liberties to government authorities for the promise of protection from unknown threats? Would they offer up the rights of groups of minorities as sacrifices for that cause?

In late 2001, a number of organizations conducted in-depth investigations of America’s commitment to civil liberties and political tolerance to answer just these questions. The overall tenor of these findings provided mixed support for critics such as Massimino. On the whole, support for civil liberties was lower than it had been before the attack (Pew Center for the People and the Press Report, September 19, 2001).¹ On the other hand, many scholars found that aggregate support for civil liberties policy remained quite strong. For instance, Davis and Silver (2004) found that a majority of the public took the pro-liberty position on two-thirds of questions

¹ These findings can be found at <http://people-press.org/reports/display.php3?PageID=30> (accessed May 18, 2007).

involving the tradeoff between security and civil liberties.² While U.S. citizens may indeed have been willing to accept greater restrictions on some liberties after 9/11, even in the wake of that devastating terrorist attack, residual support for protecting civil liberties remained fairly strong.

However, not all citizens were so accepting of these basic liberties. As I will discuss in more detail below, the overall picture of support for civil liberties may then have been one of moderation, but that support was tempered by fear and trust. Some citizens held steadfast in their support for liberties. Others – those who feared continued attacks, but trusted the government – were quite willing to grant the government a wide berth in navigating the War on Terror.

These patterns of opinion should be familiar to scholars of American politics. In this chapter I show that civil liberties judgments during wartime differ in depth and scope – not in kind – to civil liberties judgments during times of peace. Put simply, the structure of civil liberties judgments remain the same in times of war and in times of peace. Any change in how individuals reason about civil liberties during war are a result of public reaction to a change in the magnitude of threat, not a shift in the underlying dynamics of opinion. Civil liberties judgments during war are simply an extreme realization of “normal politics.” Thus, as in previous chapters, we can understand the nature of public opinion during war by looking to the same kinds of processes that motivate domestic politics. However, breaking somewhat from the theme of the last three chapters, I find an important exception to this rule; the political implications of civil liberties during wartime may differ in some important respects from ordinary civil liberties judgments. In particular, I make the novel argument that differences

² Support for these liberties ranged from a slim majority of 53 percent who thought that the government should not be permitted to “arrest and detain a non-citizen indefinitely if that person is suspected of belonging to a terrorist organization” to a near-unanimous support level of 92 percent who believed that people who participate in nonviolent protests against the U.S. government “have the right to meet in public and express unpopular views as long as they are not violating the law.” These findings are largely consistent with other polls taken at that time (see Huddy et al. 2002), though it should be noted that some polling organizations found a shallower commitment to civil liberties (See discussion below).

among individuals in support for war determines in part their support for civil liberties during time of threat and conflict. Perhaps most troubling for the prospects of an open democratic society, the supporters of a war are the most enthusiastic about suppressing the speech of others, including their opponents.

This chapter begins with a discussion of the formation of civil liberties judgments during times of peace. I focus on the findings of the political tolerance literature, explicitly drawing links between support for the rights of marginal groups and support for civil liberties more generally. In both cases, a salient threat – whether from a particular group in society or from an undifferentiated and ambiguous menace – reduces support for general civil liberties. I then draw on data from a 30-year span to show that any threat – even one ostensibly unrelated to the target of a particular civil liberties judgment – leads individuals to restrict the rights of others in times of peace. Moreover, I find direct parallels between the public’s reactions to the attacks on the Pentagon and the World Trade Center and the structure of civil liberties judgments at a very different time in American history. As was the case in the months after 9/11, when they are threatened, individuals who trust the government are more willing to cede their liberties to political authorities than those who do not trust politicians in Washington. Having established the general principles which structure public opinion concerning civil liberties, I examine data from over 60 years of U.S. history and demonstrate that these same factors – namely threat and, in some cases, group attachments and enmities, including partisan attachments – drive civil liberties judgments during times of war.

Civil Liberties and Political Tolerance

When considered in the abstract, Americans have long expressed broad support for civil liberties. In 1938, 92 percent of respondents said that they “believe in freedom of speech.” Forty years later, McClosky and Brill (1983) found that 90 percent of Americans supported “free speech for all, no matter what their view might be” (see also McClosky 1964; Prothro and Grigg 1960). But, as noted above, civil liberties are rarely contemplated in the abstract. In practice, as Gibson and Bingham (1985) observe, support for civil liberties must be weighed against other values and beliefs.

Much of the work conducted in the wake of 9/11 directly considers the balance between support for civil liberties and government efforts to provide for the safety and security from terrorism (Davis 2007; Davis and Silver 2004; Huddy et al. 2005; Jenkins-Smith and Herron 2006). Though level of support for particular civil liberties may have diminished in reaction to the events of 9/11 and its political aftermath (see below), these findings regarding judgments about those liberties in the wake of the attack comport with the findings of studies of civil liberties during times of peace.

Scholars who study public support for civil liberties generally follow one of two research traditions. Some scholars choose to study the types of questions which concern the proper scope of government restrictions on basic civil liberties for a society as a whole. A second set of scholars instead study “political tolerance” – the extension of fundamental rights to particular groups in society. Researchers in the first tradition essentially ask, “What should we let the government do to us (as a society as a whole)?” Scholars of political tolerance instead ask, “What should we let the government do to others?” Though almost all scholars have studied

these two sets of judgments as distinct processes, the two traditions are, in large part, different sides of the same coin. Both literatures address the treatment of the same general civil liberties, such as free speech and free association. Moreover many scholars in both traditions look to similar explanatory factors, such as the prevailing political climate and demographic variables such as education. Of course, some important differences exist between the two types of questions. The discussion in the last chapter of the treatment of Japanese-Americans demonstrates that, in studies of political tolerance, affect towards disliked groups can play a large role in determining civil liberties judgments. However, as Sniderman, Brody, and Tetlock (1991) have shown, respondent judgments about the rights of particular groups are at least as reflective of “principled” support for general democratic norms as they are about affect towards those particular groups.³ Put another way, following Chong (1993), there are two classes of considerations on civil liberties issues: (1) considerations of principles and rights and (2) considerations about the people and groups that are involved in the issue, including considerations about how the issue might affect oneself. The general tradeoff questions and the tolerance items differ in the balance of these relevant considerations, but both give us a window into general judgments regarding civil liberties.⁴

Drawing these parallels between societal and group-specific measures of commitment to civil liberties is valuable because the largest body of theoretic and empirical work on liberties

³ Sullivan et al (1982) also find that belief in democratic norms was one of the strongest predictors of political tolerance.

⁴ Echoing Davis, I find important linkages between the two research traditions. He writes, “Individual citizens were asked to tolerate government’s encroachment on civil liberties in the same way that many unpopular groups in American society challenge the democratic resolve of many of it’s citizens” (2007, 58). At an empirical level, scholars have observed a great deal of overlap between the two types of questions in studies of civil liberties after 9/11. Skitka et al. (2004) use a composite measure of support for civil liberties and find that both questions which concern the liberties of minority groups and a measure asking if the Bush administration has gone too far in restricting civil liberties to fight terrorism scaled on the same dimension. Similarly, Schildkraut (2002) finds that support for granting the police the power to stop and search: (1) anyone, (2) people who fit a terrorist profile, and (3) any Arab or Muslim are predicted by many of the same independent variables, most notably being worried about being a victim of an attack. As I demonstrate below, I find similar empirical overlap in the context of World War II.

comes out the political tolerance tradition. The proper measurement of political tolerance – the extension of civil liberties to groups that express ideas in opposition to ones own – has been the subject of volumous debate in political science. Seminal studies of public support for civil liberties in the 1950s by Stouffer (1955) examined respondents’ willingness to grant free speech to particular groups that lay outside of mainstream of society at that time, namely socialists, atheists, and Communists. Stouffer found strong support for restricting the rights of these groups. Researchers who studied public willingness to extend liberties to these same groups in the early 1970s found remarkable increases in tolerance. Some authors attributed these trends to changes in society that created a political climate more tolerant of dissent (Davis 1975; Nunn, Crockett, and Williams 1978). These increases, however, turned out be largely illusionary. Sullivan, Pierson, and Marcus (1982) demonstrated that while Americans were, on the whole, more tolerant in the 1970s of the particular groups that Stouffer investigated in the 1950s, this increase in tolerance did not extend to other controversial groups in society. When Sullivan and his colleagues measured an individual’s willingness to extend free speech to groups that an individual said she disliked, they found levels of political intolerance comparable to that found by Stouffer. Sullivan, Pierson, and Marcus therefore concluded that any apparent increase in tolerance was a result of an increase in the likeability of socialists, atheists, and Communists, not an increase in general support for civil liberties.⁵ Thus, Sullivan et al. proposed instead measuring tolerance using their “least-liked” strategy where a researcher first asks which groups a respondent dislikes and then assesses tolerance toward those groups. This measurement strategy has been widely adopted in the study of tolerance (though see Gibson 1992).

⁵ However, Mueller (1988) notes that since Communists were not the most disliked group for *all* citizens in the 1950s, general tolerance almost certainly rose since that time.

Research in this tradition has found that the correlates of tolerance are similar to the predictors of a commitment to civil liberties found by scholars in the months following 9/11. One of the strongest findings in the tolerance literature is that conditions of threat – more precisely, perceptions of conditions of threat – increase support for restrictions on civil liberties (Marcus et al. 1995, Sullivan, et al. 1982). Looking in the 1950s, Stouffer found that respondents who felt that American Communists who were a danger to the United States were more likely to support restrictions on civil liberties than those who felt that Communists posed no danger. Sullivan et al (1982) extended this analysis, measuring threat by asking respondents to describe the group they liked the least using a series of paired polar adjectives – for instance violent/nonviolent and unpredictable/predictable. They found that respondents were most intolerant of those groups they found normatively threatening – groups that were viewed as “violent,” “dangerous,” or “untrustworthy.”⁶ In this view, threat – both its sources and its effects – are best viewed at the group level. This conclusion seems on its face to be somewhat different from that of the authors discussed above. For instance, Davis and Silver (2004) and Huddy et al. (2005) both examined individuals’ general psychological reaction to threat and its effects on civil liberties more generally.⁷ The broader view adopted by these authors is, however, consistent with more recent work by Sullivan and his colleagues. Marcus et al (1995) found that those respondents who feel threatened by many groups from across the ideological spectrum – individuals high on “threat predisposition” – were most willing to restrict the civil liberties of any and all marginal groups. In fact, the effect of general threat was even stronger than that of threat from the least-liked group – what they call the “standing decision” regarding threat (see also Feldman and Stenner

⁶ Mueller (1988) argues that this measure, in fact, is better conceived as a measure of group dislike than as a measure of group threat.

⁷ Both sets of authors found that personal threat – the level of concerns for one’s own safety – had only a small effect on civil liberties judgments, they found that sociotropic threat – fear that the United States might suffer another terrorist attack – had a large effect on opinion.

1997; Stenner 2005). Thus, while threats from particular targets may be significant predictors of intolerance, in times of peace as in times of war, it is general notion of threat – whatever its source – that lead to support for restrictions on civil liberties.

The Politics of Fear

Data from the General Social Survey (GSS) allows us to put this assertion to a systematic test. As expected, the similarities between findings in the wake of 9/11 on the one hand and Sullivan et al. on the other regarding the relationship between threat and civil liberties extend across a 30-year period covering times of war and peace. The GSS asks respondents about their willingness to extend rights to five diverse targets from across the political spectrum, namely racists, militarists, atheists, homosexuals and Communist.⁸ This measurement strategy is consistent with Sullivan, Pierson, and Marcus's admonition not to focus questions on political targets of one ideological stripe. Following convention, I constructed an intolerance score by computing the percent of the time a respondent supports restricting the civil liberties of a particular group in a particular realm.⁹

⁸ Specifically the GSS asks if the target group should be permitted to engage in three public activities: (1) deliver public speeches, (2) have books that they write be available in public libraries, and (3) teach in colleges and universities. In effect, the GSS casts a wide net, hoping to find some disliked target group for every respondent. As Gibson notes, "the use of a broad range of fringe groups, as in the GSS, provides everyone an opportunity to express his or her intolerance." (1992, 574). Gibson (1992) demonstrated that though the GSS battery and the content-controlled "least-liked" tolerance questions advanced by Sullivan and his colleagues were not highly correlated, the use of either variable led to similar conclusions regarding the determinants of tolerance. Gibson concludes that either measurement approach is adequate for measuring tolerance. I therefore use the GSS data to measure variation in levels of intolerance, both across individuals and over time.

⁹ Recently, Mondak and Sanders (2003; 2005) and Gibson (2005) carried out a debate over the best way to analyze trends in tolerance over time. Mondak and Sanders note that assessing trends in tolerance through the GSS battery is difficult because changes in tolerance might arise through true increases or decreases in tolerance or it might arise through changes in affect toward the specific target groups used by the GSS. In essence Mondak and Sanders argue that the problems identified by Sullivan et al. might contaminate the GSS data. Proceeding from Sullivan et al.'s definition of tolerance – "Political tolerance exists when respondents allow the full legal rights of citizenship to groups they themselves dislike" – Mondak and Sanders argue that tolerance is inherently dichotomous; advocating the restriction of the rights of any group constitutes intolerance. Adopting a dichotomous measurement strategy, the authors argue, sidesteps the problem caused by changing attitudes towards groups. As long as there is one group that a respondent dislikes, once can measure tolerance and changes in tolerance. Gibson writes that this position is incorrect, arguing that a continuous measure is preferable on theoretic grounds. Here I adopt Gibson's strategy, but check my results using Mondak and Sanders's dichotomous measure.

The GSS questions concerning threat are more limited. The GSS has asked one item relating to fear of crime fairly consistently over the last 30 years. It reads, “Is there any area right around here – that is, within a mile – where you would be afraid to walk alone at night?”¹⁰ This item is less than ideal for a number of reasons. First, the item is phrased in a generic way with few response options; it does not allow us to discriminate among respondents in terms of their levels of threat. Furthermore, the item asks about personal threat, which, as several scholars have noted, exerts a less powerful influence on political tolerance than a societal threat (see Davis 2007 for a review). At the same time, the particular limitation of this item allows for a strong test of the effects of threat on civil liberties judgments. The GSS item does not make reference to any of the groups included in the civil liberties battery and is therefore conceptually orthogonal to those judgments. A finding that threat influences civil liberties judgments here – with a somewhat poorly specified and operationalized concept of threat – provides strong evidence of some relationship between general fear and civil liberties.

I predicted an individual’s intolerance score as a function of the threat variable, controlling for factors plausibly associated with both levels of intolerance and threat.¹¹ As expected, I find that those respondents who are threatened by their neighborhood are more willing to tolerate restrictions on civil liberties than those who are not.¹² This effect is not

¹⁰ GSS included the item on the 1973, 1974, 1976, 1977, 1980, 1982, 1984, 1985, 1987, 1988, 1989, 1990, 1994, 1996, 1998, 2000, 2002, and 2004 surveys.

¹¹The control variables were: age, education, region, and city size. The full model results are presented in the Appendix. I pooled the data across all years, including fixed effects for study year, using 1972 and 1973, as the baseline (the model would not converge if I included a separate dummy variable for 1972). I also ran these analyses separately in each year. The effect of the fear variable varied somewhat from year to year, and was not always statistically significant. However, the effect was always positive, ranging from 0.02 to 0.08

¹²I also ran my analysis with a measure of authoritarianism that was available in some of the surveys, under the assumption that individuals who scored high on the authoritarianism scale would be both more threatened by their neighborhood and less tolerant of political dissent. While authoritarianism had a large effect on intolerance, the inclusion of that measure did not change the effect of the threat variable.

particularly large – threatened respondents are the equivalent of three points on a 100 point scale less tolerant than other respondents – but the difference is statistically significant.¹³

The relationship between threat and intolerance is even stronger when I use better measures of threat, which are contained only on a single survey. In 2000 respondents were asked how afraid they were of nuclear war.¹⁴ This measure taps the preferred concept of sociotropic threat – the threat to the nation as a whole, as oppose to a particular threat to the respondent – and allows a greater gradation of levels of threat in the response. Analysis parallel to the “fear of neighborhood” question above indicates that respondents who think war is more of a threat today scored 13 points higher on the 100 point tolerance scale than those who thought it was less of a threat.¹⁵

Most importantly, the GSS data allows us to directly investigate the proposition that general threat – rather than the particular fear of war or foreign attack – determines in part the civil liberties judgments of individuals. Davis and Silver (2004) explore the relationship between threat and trust in government and find that those individuals who trusted the federal government were also willing to give up their liberties. However, citizens’ level of trust in government

¹³ I also conducted analysis on trends in mean intolerance levels and mean threat over the last 30 years. These two trends follow somewhat different trajectories, but are clearly related. The correlation between the two series is .60 and a bivariate regression of intolerance levels on the threat measure indicates that a 10 percent increase in the proportion of people expressing fear in a given year is associated with a .08 movement on aggregate intolerance score (where 0 represents the most tolerant position and 1 is the least tolerant position). Moreover these results hold even accounting for the mid-1990s increase in the fear of crime. Using 1990 as the breaking point for the analysis, the correlation between tolerance and threat actually increases after 1989. Before 1990, the two series are correlated at 0.57, but after 1990, the correlation rises to 0.69. The effect of a 10 percent increase in fear level drops from 0.06 in the first time period to 0.03 in the second period, but remains statistically significant. Using the Mondak and Sanders approach, I find the same basic results, though the relationships are somewhat weaker. The threat and intolerance measures are correlated at 0.45 and regression analysis indicates that a 10 percent increase in the proportion of people expressing fear is associated with a .03 increase on aggregate intolerance score – an increase of more than one standard deviation. The convergence of the two sets of results should not be surprising since the continuous tolerance measure and the binary tolerance measure are correlated at 0.86. In any case, the data suggest that increases in aggregate levels of threat are related to increased support for restrictions on civil liberties.

¹⁴ Specifically, the GSS asked, “Are the following threats [nuclear war] to the United States greater, about the same, or less today than they were 10 years ago?”

¹⁵ This effect is statistically significant as well. I also ran the analysis using the three responses to the nuclear war variable as dummy variables and confirmed that the effect of the nuclear war threat variable is linear.

moderated the impact of the perceived threat of another attack. Fear of terrorism had no effect on civil liberties judgments for respondents who expressed low levels of trust. On the other hand, among respondents who placed a great deal of trust in the government, greater concern about another attack was associated with much lower support for civil liberties (Davis and Silver 2004).¹⁶ Davis and Silver's work is unique on this score; though it may not be surprising that those individuals who place the most trust in the government are the most willing to allow the government to restrict liberties, to my knowledge, no other scholars have explored the effect of political trust on civil liberties judgments. There is, however, no reason to believe that the cause of that fear should be particular to the terrorist attacks of 9/11. Citizens should cede authority to a trusted actor when they are fearful, no matter the source of that fear.

In 1987, in addition to the civil liberties item and the threat question, the GSS asked respondents how much they trusted the government.¹⁷ Analysis of the relationship among trust, fear, and civil liberties indicate that in a very different context, using very different measures the same pattern found by Davis and Silver unfolds. Among those who trust the government, the effect of feeling threatened in one's neighborhood increases support for restrictions by nine percent of the tolerance scale; among those who do not trust the government, being fearful of one's neighborhood increases support for restrictions by four percent of the scale, a statistically significant difference.¹⁸

¹⁶ Jenkins-Smith and Herron (2006) also find that trust in government is positively related to preferences for security over liberty. However, unlike Davis and Silver the authors do not explore the relationship between trust in government and threat,

¹⁷ The GSS trust item reads, "How much of the time do you think you can trust the government in Washington to do what is right – just about always, most of the time only some of the time, or almost never?" This item is identical to one of the two items used by Davis and Silver in their analysis discussed above (the other item read, "Is the government run by a few big interests, or is it run for the benefit of all people?")

¹⁸ Given the potential importance of partisan judgments in determining political trust, I also include party identification as a control variable in this analysis. It should be noted, however, that there appear to be no statistical relationship between trust in government and partisanship at this moment in time (Hetherington 2007).

Certainly threat is not only reason that people support restriction on civil liberties. But it is clear that the effects of threat and trust are part of a more general process that extends beyond simply the case of a large attack, such as 9/11. Thus in the realm of civil liberties, as in other aspects of war, it seems that public opinion follows patterns familiar from the ebb and flow of normal domestic politics.

Civil Liberties after September 11th

As discussed above, the public's judgments concerning civil liberties were somewhat in flux in the wake of 9/11. Overall support for civil liberties was lower than it had been before the attacks. But that picture is a single snapshot (though see Davis 2007).¹⁹ To further explore civil liberties in the wake of 9/11, I turn to a series of polls taken by the Pew Center for the People and the Press. The Pew Center has asked several questions concerning civil liberties over the last 10 years. Three of these items were asked repeatedly and allow us to trace opinion change over time. The first question is roughly analogous to Davis and Silver's general civil liberties item and reads, "In order to curb terrorism in this country, do you think it will be necessary for the average person to give up some civil liberties, or not?" This question provides an especially valuable source of trend data because it was asked by Pew twice before September 11th, in both March 1996 and June 1997. The other Pew questions concerning civil liberties followed a similar theme, but were worded in slightly different ways. Specifically, Pew asked a second item in 2001 and 2002 which read, "What concerns you more right now? That the government will fail to enact strong, new anti-terrorism laws, or that the government will enact new anti-terrorism laws which excessively restrict the average person's civil liberties?" A third item was asked beginning

¹⁹ Davis explores change in civil liberties judgments from 2001 to 2004, using panel data. Some of this work is discussed below.

in 2004 and read, “What concerns you more about the government’s anti-terrorism policies, that they have not gone far enough to adequately protect the country or that they have gone too far in restricting the average person’s civil liberties?”

The over-time trends for these questions are presented in Figure 5.1. Before the attacks of September 11th, a significant majority believed that it would not be necessary to sacrifice civil liberties to curb terrorism. In the immediate wake of the attack, support for that position dropped sharply.²⁰ The September 2001 Pew survey also asked about support for a number of other measures relating to restrictions on civil liberties. While these items differed in form from the Davis and Silver tradeoff questions, they provide a similar picture of the depth of support for civil liberties. Several proposed policies restricting civil liberties engendered high support. For instance, seventy percent of respondents favored a requirement that citizens carry a national identity card to show to a police officer on request. But respondents did not extend a blank check to the government. Only 26 percent favored allowing the U.S. government to monitor personal telephone calls and e-mails. Furthermore, a majority of 57 percent of respondents opposed “allowing the U.S. government to take legal immigrants from unfriendly countries to internment camps during times of tension or crisis” (though, echoing the Japanese experience during World War II, 29 percent supported this position and 14 percent said that they did not know where they stood on the matter). Thus, the effect of the terrorist attack on support for civil liberties was clear. For whatever reason – the increased salience of threat, the unified elite positions in the immediate wake of the attack, or some combination of the two – September 11th changed the

²⁰ The Pew general civil liberties item indicates a lower level of support for the civil liberties position than the Davis and Silver survey described above. Recall that Davis and Silver found majority support for the civil liberties position in the tradeoff between security and civil liberties. The different results for the two surveys might be a result of slight differences in question wording. However, the results might also result from a fluke of the data. Davis and Silver replicated the general civil liberties/security tradeoff question in a 2003 survey. While aggregate support for most of the civil liberties items remained stable across the two surveys (Davis 2007). There was a 10 point drop in the civil liberty position in the general question. This pattern runs counter to both the expected results and the Pew data. Perhaps, then, the initial Davis and Silver results represent something of an outlier.

way that the country as a whole thought about civil liberties. Backing for restrictions on civil liberties – both in the abstract and in specific – rose in the wake of the attack relative to the peaceful times three years earlier.

Following the immediate aftermath of September 11th, however, the tide quickly turned. Support for civil liberties climbed significantly, reaching a majority position by August 2003 and nearing by 2004 the highs found in the late 1990s. The quick recovery in the erosion of support for the position of protecting civil liberties was mirrored in other poll taken at that time (see Huddy et al. 2002). Further poll data suggests that support for civil liberties has climbed even further since that time, as Figure 5.1 demonstrates.²¹

Not everyone, however, was so quick to embrace the pro-civil liberties position. Cross-sectional analysis of the Pew data indicates that the effects of threat persisted long after 9/11. Pew measured threat using both sociotropic and personal threat questions on surveys from 2001 to 2004. Consistent with the findings reported above, sociotropic threat had a larger effect than personal threat on every survey. Regardless of the measurement strategy, those respondents most threatened by the possibility of a future attack were most supportive of restricting civil liberties.²²

²¹ As noted above the question asking “do you think it will be necessary for the average person to give up some civil liberties” was not asked after 2004. However, the parallel item measuring whether “the government has gone too far in restricting civil liberties” followed the same upward trend in support as the general civil liberties question in the time after 9/11. There is therefore reason to think that the third Pew question – which is worded in a manner similar to the government anti-terrorism question asked in 2001 and 2002 – captures general trends in civil liberties. Since support for the civil liberties position has been increasing since 2004, it stands to reason that general support for civil liberties has been rising as well.

²² Interestingly, at the same time that there was a large rise in support for the protection of civil liberties from January 2002 to August 2003, sociotropic threat dropped only marginally. In January 2002, 62 percent of respondents were “very worried” or “somewhat worried” that there would soon be a terrorist attack in the United States. In August 2003, 58 percent of respondents took such a position.

The Emergence of Partisanship

The continued effect of threat on opinion was not the only evidence that the familiar forces of domestic politics shaped the dynamics of civil liberties after 2001. Partisanship has largely been ignored in the tolerance literature, but it is a predisposition that, as demonstrated in Chapter 3, is critical for understanding the structure of opinion during wartime.²³ Davis (2007) found that partisanship did not play a role in determining support for civil liberties in the immediate aftermath of 9/11, arguing that a sense of patriotism in late 2001 was instrumental in causing Democrats and independents to accept conservative positions. However, as blind patriotism faded over time, partisanship emerged as an important fault point on civil liberties and the relationship between partisanship and the civil liberty-security trade-off decision increased.

Pew did not measure party identification in its September 2001 survey, so it is not possible to independently confirm the nature of partisan divisions in the immediate wake of the attack. However Pew measured the respondent's partisanship in every other survey represented in Figure 5.1. We can therefore explore trends in the degree of polarization in civil liberty judgments along party lines. Before September 11, the available evidence suggests that Democrats and Republicans came to similar judgments regarding the civil liberties/security tradeoff. Republicans were, in fact, slightly less supportive of civil liberties restrictions, though this difference was small and statically insignificant. However, Figure 5.2 presents a picture of a growing partisan gap from 2002 onward, in line with developments on other issues associated with the Bush administration (Jacobson 2007). In January 2002, relatively small differences emerged between Democrats and Republicans. These differences have increased tremendously over time. By 2006, the civil liberties tradeoff question exhibited the same pattern of partisan

²³ Sullivan et al. (1982) used partisan attachment to estimate the "least-liked" groups of respondents, but did not explore the direct effects of partisan identification.

polarization found in measures of support for the Iraq war discussed in Chapter 3 (see Figure 5.3). Aggregate support for civil liberties grew as 9/11 receded into the past, but partisan identifiers rejected the security position of that tradeoff at different rates. At the same time, as the data from the late 1990s suggests, the emergence of the partisan gap on civil liberties judgments does not represent a return to equilibrium. The gap between Democrats and Republicans instead represents the emergence of a new fault line mirroring political debate on issues of both war and peace more generally (Jacobson 2007). The Pew data therefore leads to an important conclusion. The events of September 11 had an immediate impact on the tradeoff between security and civil liberties, but public opinion quickly exhibited the contours of normal politics not only in the levels of support for civil liberties but also in the partisan divisions that mirror the politics of the day.

Civil Liberties and War

Partisanship and perceived threat are both important determinants of support for war. But it could be that the state of war might change the overall structure of civil liberties judgments in certain ways. The question is how attitudes toward the international realm might spill over to domestic politics and affect civil liberties judgments.

From 2001 to 2006 Pew used different questions to gauge respondents' willingness to engage in aggressive foreign action. In the wake of September 11th, Pew asked "Do you favor or oppose taking military action, including the use of ground troops, to retaliate against whoever is responsible for the terrorist attacks."²⁴ Between 9/11 and the U.S. invasion of Iraq in 2003, Pew

²⁴ This question was asked in two ways as part of a questions wording experiment. Half the sample was asked the retaliation question. The other half were asked the same question but with the qualification "even if it means that U.S. armed forces might suffer thousands of casualties?" Including the casualty caveat reduced support for retaliation somewhat, but effect of the retaliation variable on support for civil liberties was the same for both forms. I ran analysis including a dummy for question form and an interaction between form and the question. The coefficients were non-significant and I therefore combined the two for purposes of analysis.

asked respondents if they would support an invasion. After March 2003, Pew asked respondents a common version of the retrospective support question on Iraq, “Do you think the U.S. made the right decision or the wrong decision in using military force against Iraq? Though these different items registered different levels of support, in all cases those respondents most supportive of military action – real or hypothetical, retrospective or prospective – were most willing to support restrictions on civil liberties, even controlling for those factors we know to influence both attitudes towards liberties and support for war, such as partisanship.²⁵ Figure 5.4 presents the effect of an increase in support for restricting liberties associated with a move from opposition to support for military action on six questions asked in the September 2001 survey.²⁶ Two of the items are taken from the over-time trends presented in Figure 5.1. On the question of whether a respondent would be willing to trade civil liberties for security, supporters of military action were 13 percent more likely to advance restricting civil liberties than were opponents. On the question of whether the respondent was concerned that the government would unnecessarily enact new strong anti-terrorist laws, supporters of retaliation were 17 percent more likely to express concern that government would fail to enact tough anti-terrorist laws. Similar differences exist on the other civil liberties questions, ranging from 6 percent on support for a national identification card question to 20 percent on support for allowing the government to monitor phone and e-mail conversations. These effects persisted even after the mean levels of support for

²⁵ As noted above, Pew did not ask partisanship on September 2001 survey. The analysis of data from this survey does not therefore include party identification. This fact does not invalidate the results presented here. Indicators are that in the wake of 9/11, partisanship had little effect on civil liberty judgments. Davis and Silver find no partisan differences on civil liberties questions in their late 2001 survey. Furthermore, the Pew data suggests that these differences took several months to develop into a significant cleavage; as Figure 5.2 shows, the partisanship gap on civil liberties questions was only about 5 points in January 2002.

²⁶ Huddy et al (2005) find that sociotropic threat increased both support for military intervention and restrictions on civil liberties. In order to account for the possibility that the relationships I find here are spurious, I included measures of threat – both individual-level and sociotropic threat – in my analyses, when available. Including the threat measure diminished somewhat the effect of war support on support for civil liberties, but the relationship between the two variables remained statically and substantively significant. In order to preserve continuity, the figures present the estimates without the controls for threat.

civil liberties increased from 2002 to 2006. As figure 5.5 demonstrates, in every survey during that time, supporters of war were more likely to advocate restricting civil liberties than were opponents.²⁷

An Aside: Support for the Vietnam War and Civil Liberties

The results concerning the relationship between support for war and support for restrictions on civil liberties in the present day are strong and robust. It is possible, however, that these results are particular to the present political climate. In the immediate wake of 9/11, the link between a desire for an aggressive military response and the adoption of measures designed to ensure security could have resulted from a sudden shift in elite rhetoric or the existence of a salient threat to the United States. Over time, however, the political climate changed greatly. As Figure 5.2 demonstrates, from 2002 onward, a large gap opened between Democrats and Republicans on questions of adopting restrictions on civil liberties, just as it did on questions of support for aggressive military action throughout the world. (Jacobson 2007; see Chapter 3). I can account for the extreme polarization along partisan lines in judgments concerning both military action and civil liberties judgments by accounting for partisan attachments in my statistical analyses, as I do above. But perhaps even measures of partisanship cannot fully capture the polarizing effect of the current political climate. To test the generality of these findings, we it would be useful to examine the nature of this relationship in a less politically polarized time.

Such a task is easier said than done. There exists very little individual-level survey data concerning civil liberties judgments during times of war. Potentially fruitful times, such as the

²⁷ These first differences are generated from logit analysis which control for the partisanship and demographic characteristics of the respondents.

Korean War era are devoid of data.²⁸ Fortunately, however, some relevant data exists from the Vietnam era. Louis Harris and Associates asked in November 1965 and May 1967 a pertinent question about free speech and dissent: “Do you think people have the right to conduct peaceful demonstration against the war in Vietnam, or do you feel people don’t have that right.” This question is phrased in a less general manner than the items analyzed from the present day, reflecting the era in which it was asked. As Erskine notes in a review of polling questions on civil liberties, “the semantics of the late 1960’s in particular turned from simple freedom to speak to the right to protest and organize protests (1970, 483). As a result, the question is not an ideal indicator of civil liberties judgments.²⁹ However the Harris surveys are useful in two respects. First, both of these surveys contain rich measures of support for the Vietnam War. It is therefore possible to create reliable scales of attitudes toward the war.³⁰ Second, and more important for present purposes, the polls were conducted at times that allow us to gauge the effect of war support on civil liberty judgments in political contexts that differ significantly from the present day. The 1965 poll was carried out at a time when support for the war was high among both Democrats and Republicans. The 1967 poll was conducted after the emergence of the cleavage within the Democratic Party that lead to the decline in support for the Vietnam War, but before the emergence of partisan polarization on the war (see Chapter 3 for discussion). Republicans were somewhat more supportive of protecting civil liberties than Democrats but, unlike the

²⁸ For instance, Stouffer’s study of political tolerance, conducted in the aftermath of the Korean War, does not contain a single question about attitudes toward military action.

²⁹ Harris conducted a poll in 1970 that, in addition to the Vietnam protester question described above, asked a long battery of questions about civil liberties. Unfortunately, this survey did not ask about support for the Vietnam War, so it is not possible to perform comparable analyses in this survey. I did, however, correlate the Vietnam question used in my analyses with the more general questions and found a significant correlation. Thus, even granting problems with my dependent variables here, I find that the Vietnam protest item does relate to the more general concept of interest.

³⁰ Scale details are available from the author upon request.

present day, the gap between the in-party and the out-party was very small.³¹ These polls therefore enable us to gauge whether attitudes towards war are correlated with attitudes concerning civil liberties in a very different time in history.

The majority of respondents on both Harris surveys supported the rights of the protesters. In November 1965, 58 percent of respondents agreed that individuals should have the right to conduct peaceful demonstrations and in May 1967, 61 percent took the pro-civil liberties side. As in the present day, however, this support was tempered among those most supportive of war. Figure 5.6 presents the effect of levels of war support on the probability of advocating a restriction on the right of protest. Though the surveys were conducted in different political contexts and use somewhat different indexes of war support, the results are the same; supporters of the Vietnam War were the most enthusiastic about restricting the liberties of its opponents. In 1965, moving from an extreme anti-war position to an extreme pro-war position increased the probability of supporting restrictions on protesters by 20 percent; in 1967 a comparable movement on the war support scale increased support for restrictions by 28 percent. In sum, though the measures of commitment to civil liberties may not be as deep or broad as the measures found in the present day, in both cases, the conclusion regarding the link between support for military action and commitment to tolerance are the same. Supporters of war are the most eager to restrict the liberties of others in society.

Civil Liberties during WWII

Following the themes of previous chapters, World War II was not a unique moment in American history from the standpoint of considering public opinion on civil liberties. The mass

³¹ Specifically, Republicans were about four percent more supportive than Democrats of the pro-civil liberty position.

public reacted in ways similar to Vietnam and the present day, and – more importantly for the argument in this book – public opinion regarding civil liberties was largely structured in ways consistent with patterns found in the domestic arena.

Comparable over-time data on support for civil liberties is somewhat thin for the World-War II era. However, Gallup and OPOR asked several items that directly tapped support for free speech. The first question concerned support for the rights of Fascists and Communists; a second item asked about the rights of “radicals.” Both of these questions were first asked in 1938, before open hostilities began and were then asked at several points during the war.³² These questions, of course, are problematic in some respects. Most important, they both are affected by the concerns of comparability raised by the work of Sullivan et al (1982). Public sentiment towards Communists and radicals undoubtedly changed during the course of the war, as U.S. relations with Russia developed into an alliance (albeit one of convenience). Before the war began, large segments of the population viewed Communists as a threat to America – a threat even greater than fascism. For instance, when Gallup asked in 1939, “Which do you think is the greater danger to America – the Communists living in this country or the Nazis living in this country?” 49 percent of respondents replied that Communists posed the greater threat compared to the 44 who said Nazis.³³ While Gallup did not define the term “radicals,” its historical association with the Communist party undoubtedly colored respondent’s responses to the second civil liberties item. With Germany’s attack on Russia in June 1941, the meaning of the target groups changed.

³² These questions were the second stage in a branching question. Gallup first asked, “Do you believe in freedom of speech?” Upwards of 92 percent of respondents said they did believe in free speech. As in the present day, the introduction of specific target groups dropped support greatly.

³³ These aggregate data have not yet been weighted according to the procedures outline in Berinsky (2006). Later version of this paper will incorporate the proper weighting procedures, but early analysis indicates that using the weights will not alter the conclusions of the trend analysis.

Communists – and perhaps “radicals” – might not have been worthy of embrace, but these groups were de facto allies of the U.S. in 1941 and formal allies by 1942.

It is, however, possible to indirectly account for the effect of changes in the sentiment towards the particular groups targeted by the civil liberties question. As noted in Chapter 4, a common question asked during World War II was, “Do you think Russia can be trusted to cooperate with us when the war is over?” If we assume that individuals who do not trust Russia have greater negative affect towards radicals than those who do trust the Soviet Union, this question can be used as a rough proxy for negative sentiment towards “radicals.”³⁴ I therefore examine trends in tolerance among both the full sample and the subset of respondents who said they would not trust Russia after the war.

I present the trend data for the two free speech items, and two other items relating to civil liberties that are phrased in a more general manner – support for unconditional free speech and the belief that “people should be allowed to speak on any subject” in Figure 5.7.³⁵ The measures on the two questions that make reference to target groups in June 1938 provide a baseline of support for the rights of all three groups before the war.³⁶ As the graph demonstrates, even before active fighting began, only a minority supported free speech for any of the marginal groups. Consistent with opinion data from the present day, the introduction of a salient international threat diminished support for civil liberties even further. The interesting point here is that support for civil liberties declined *before* the U.S. was attacked at Pearl Harbor. Thus, the onset of the climate of threat did not seem to occur in the immediate wake of Pearl Harbor as some might

³⁴ It could also be that individuals who did not trust Russia felt more threatened by radicals, which would lead to the same effects in the trend data

³⁵ Figure 5.7 therefore contains both tradeoff items and tolerance items.

³⁶ In later surveys, Gallup asked about Fascists and Communists together, but in 1938 Gallup used a split sample format where one-half of respondents were asked about Communists and the other half were asked about Fascists. The level of support for civil liberties was within 1 percent between the two groups, so in Figure 5.7, I present a tolerance score that averages across the two items

expect, but rather during the early days of the war in 1940 and 1941. As figure 5.7 demonstrates, Gallup's question about "Fascists and Communists" shows a decline in support for extending civil liberties – to marginal groups in particular – after 1940.³⁷ Thus the data suggest that the gathering storm of war led to support for general restrictions on civil liberties.

Unfortunately the data do not exist to trace support for free speech for Fascists and Communists after U.S. began active combat. OPOR did, however, repeat the Gallup question concerning free speech for radicals several times from 1942 to 1945. In July 1942, support for free speech stood 8 percent below the baseline reading in 1938. The trend data on the item concerning Fascists and Communist suggests that support for free speech may have dropped even further in the intermediate years, but without the data, it is impossible to say for sure. In any case, from July 1942 until the end of the war, support for civil liberties recovered – even among those respondents who did not trust Russia – exceeding the baseline readings from 1938. Thus, though the period of "threat" had a longer duration in World War II, occurring before the U.S. entered into the war, following the pattern observed in the present day, support for civil liberties seems to have recovered quickly from the initial threat.

The individual-level deterrents of civil liberties judgments are also similar in many respects to those found in the first decade of the 21st century. For instance, the effect of threat follows a familiar pattern. Though there are no consistent individual-level indicators of threat, two surveys taken a year apart before U.S. entry into the war asked "do you think that Axis will attack us if Britain defeated." Though this measure does not tap the "worry" dimension of the current questions, it can serve as a rough proxy for sociotropic threat. In July 1940, among those

³⁷ These trends could be an artifact of changes in the international sphere. While Communists and Fascists were disliked in the late 1930s, in 1940 and early 1941, they were increasingly seen as the enemy. However, the readings in January 1941 and July 1941 on support for unconditional free speech show a downward trend as well, indicating that the decline in support for the questions relating to Communists and Fascists reflects a general trend.

respondents who expressed an opinion, 62 percent believed the Axis would attack the U.S. By July 1941, this figure had risen to 73 percent. More importantly, as in the present day, those respondents who felt threatened by the Axis were more supportive of restricting civil liberties than respondents who did not feel threatened. In July 1940 respondents who believed the Axis countries would attack the U.S. were four percent more likely to support free speech restrictions than respondents who did not feel so threatened. In July 1941, feelings of threat reduced support for free speech by eight percent.³⁸ On the other hand, as during the Vietnam War, partisanship did not have the impact on civil liberties judgments it does in the present day. While Democrats were less supportive of protecting civil liberties than were Republicans during the war, these differences were rather small. Furthermore, much of the partisan difference can be accounted for by controlling for education level – a factor that was associated with both increased support for civil liberties and the tendency to vote for Republican candidates in this era.

However, returning to familiar patterns, the relationship between support for war and restrictions on civil liberties in the period prior to U.S. entry into the war also mirrored those of the post 9/11 era. Figure 5.8 presents the effect of war support on intolerance for four polls taken from November 1940 to July 1941. In all cases those most supportive of increased U.S. involvement were more supportive of restricting speech. This relationship holds on both questions that relate to tolerance towards specific groups and on more general questions relating to free speech.

Once U.S. entered the war, not only did mean levels of free speech change, but contrary to the findings from the present day, the effect of war support on levels of free speech seems to have faded as well. As was the case in Chapters 3 and 4, I am limited in my analysis of the

³⁸ This individual level analysis employs procedures described in Berinsky (2006). The multivariate results are included in the Appendix.

effects of war support by the nature of the data. But, as before, I use support for the stated policy of unconditional surrender as a measure of war support. In the early period of the war, as expected, opposition to making peace with the German army was positively related to opposition for free speech. Over time, however, the relationship between the two quantities diminished. These results are presented in Figure 5.9. In April 1942, the association between the two variables was reduced by half, and by early 1945, it had reversed sign. One complication with this analysis is that I am limited in the over-time analysis to a single imperfect measure of war support. If we look at the refusal to make peace with Hitler item rather than the German army form of the question as the war support variable in April 1944, the relationship between war support and civil liberties restrictions tightens. Those least supportive of allowing Hitler to unconditionally surrender are 8 percent more likely to support restricting the free speech of radical, and effect 8 times as large as the effect reported in Figure 5.9 for the same time period. This result does not, however, change my interpretation of the over-time change in the effect of war support presented in Figure 5.9. During World War II, unlike the present day, an overall rise in support for civil liberties coincided with a reduction in the difference between those most supportive of stated U.S. war aims and the rest of the population.

Conclusion

In a democratic society, conditions of war inevitably lead to worries about civil liberties. As the analysis presented in this chapter demonstrates, such fears may be well-founded. War can diminish support for civil liberties both directly and indirectly. The environment of fear and threat created by a state of crisis lead some citizens to support greater restrictions on certain basic

democratic rights. Moreover, supporters of military action are generally most willing to suppress civil liberties.

War, however, does not inevitably threaten the foundations of democracy. Support for civil liberties may dip with the onset of conflict, but in the aggregate, support for such liberties recovers quickly. Moreover, the emergence of familiar domestic cleavages may in practice limit the scope of restrictions on liberties. Such a process can be seen in the post-9/11 era. While Republicans embraced both the general spirit and the particular provisions of the Patriot Act, over time Democrats came to reject these measures. As long as the opposition party maintains an independent position, the government may not be able to run roughshod over individual rights. Moreover, even in times of partisan consensus there may be checks on the power of government. During World War II, for instance, the effect of support for aggressive military action on civil liberties judgments was large initially, but faded over time. In sum, for good and – as the case of the treatment of Japanese Americans during World War II demonstrates – for bad, civil liberties during times of war often follow the familiar patterns of civil liberties during times of peace.

Figure 5.1

**Pew Center for the People and the Press: Support for Civil Liberties
1996-2006**

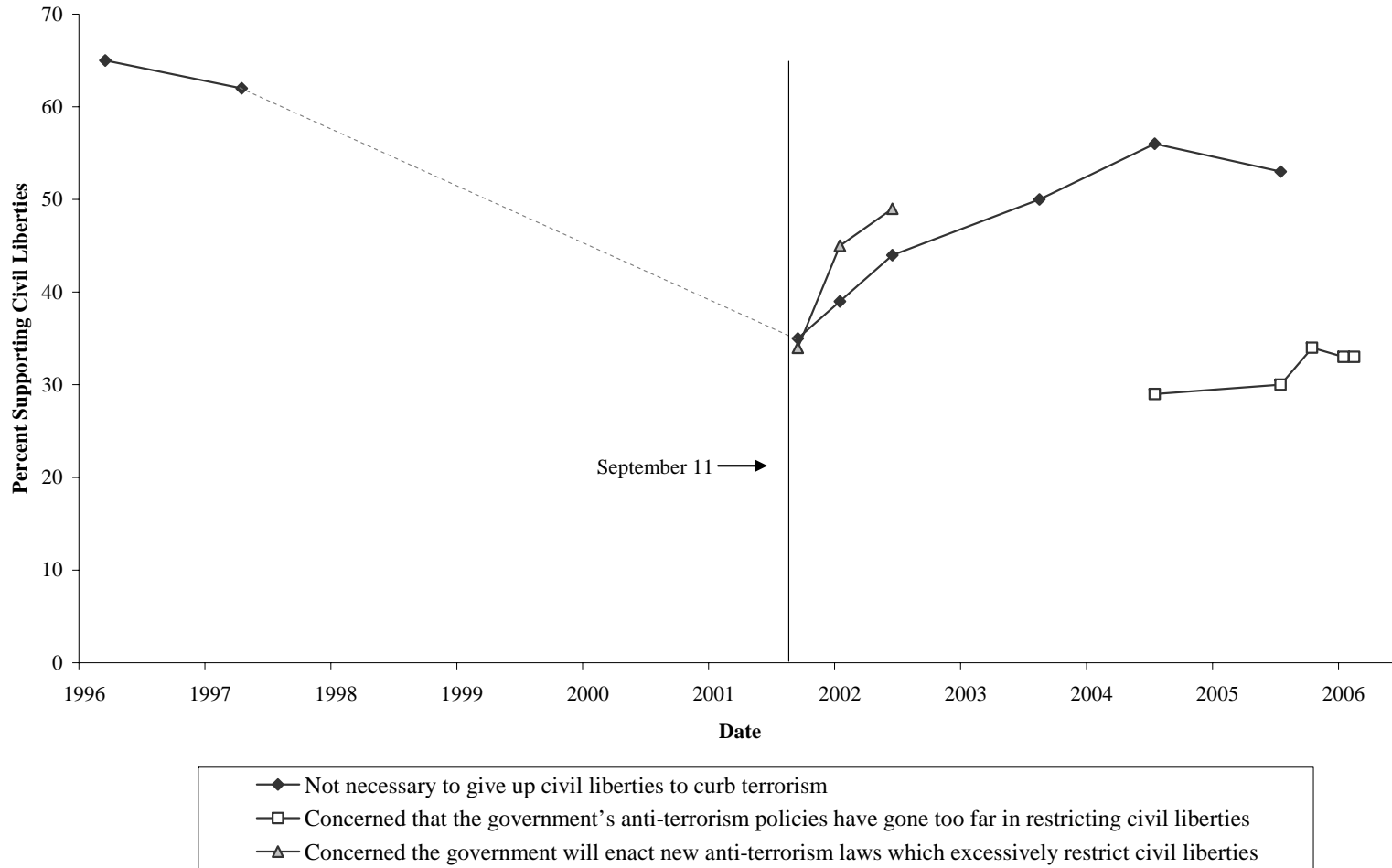


Figure 5.2

**Pew Center for the People and the Press: Partisan Gap in Support for Civil Liberties
1996-2006**

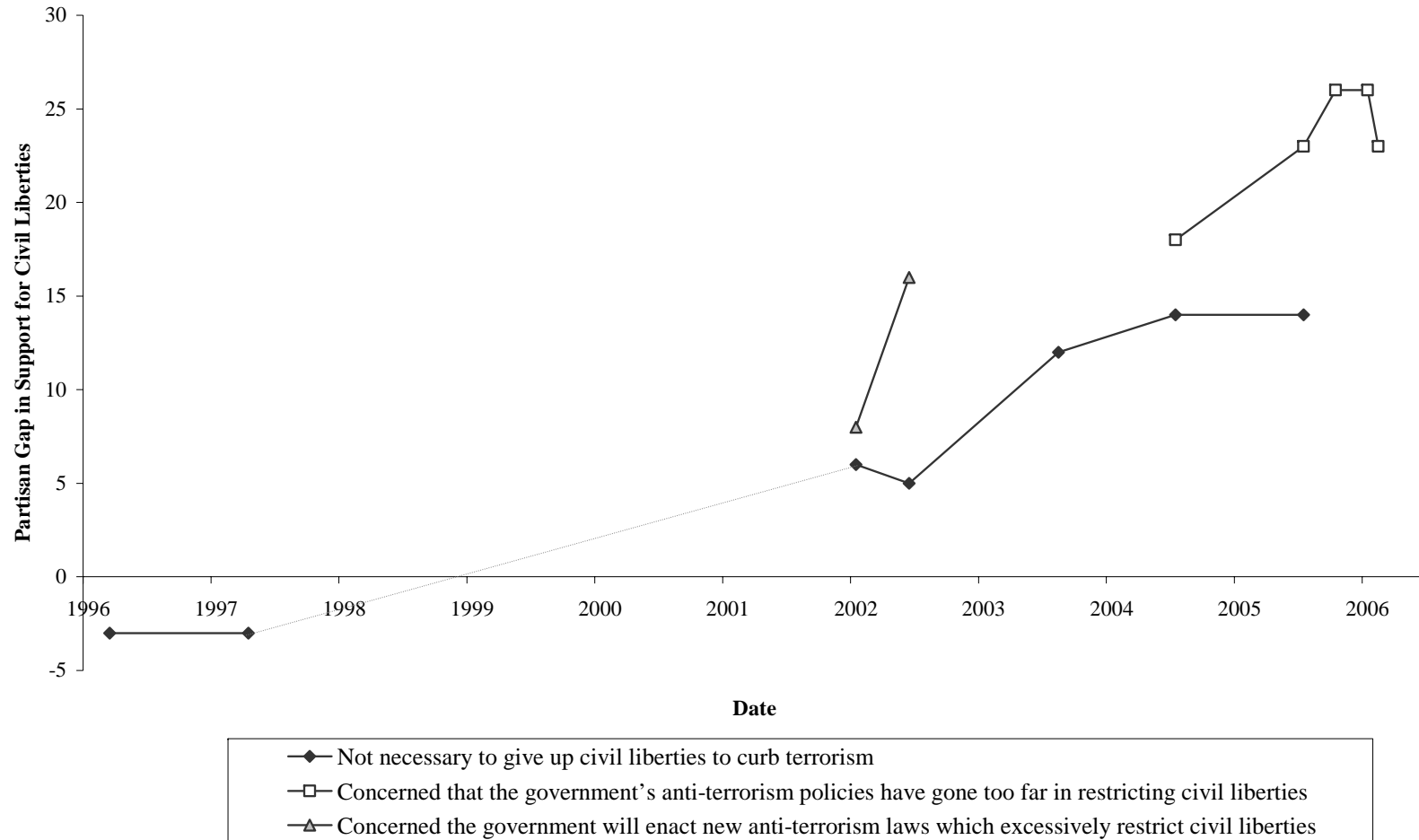


Figure 5.3

**Pew Center for the People and the Press: Support for Civil Liberties:
January 2006**

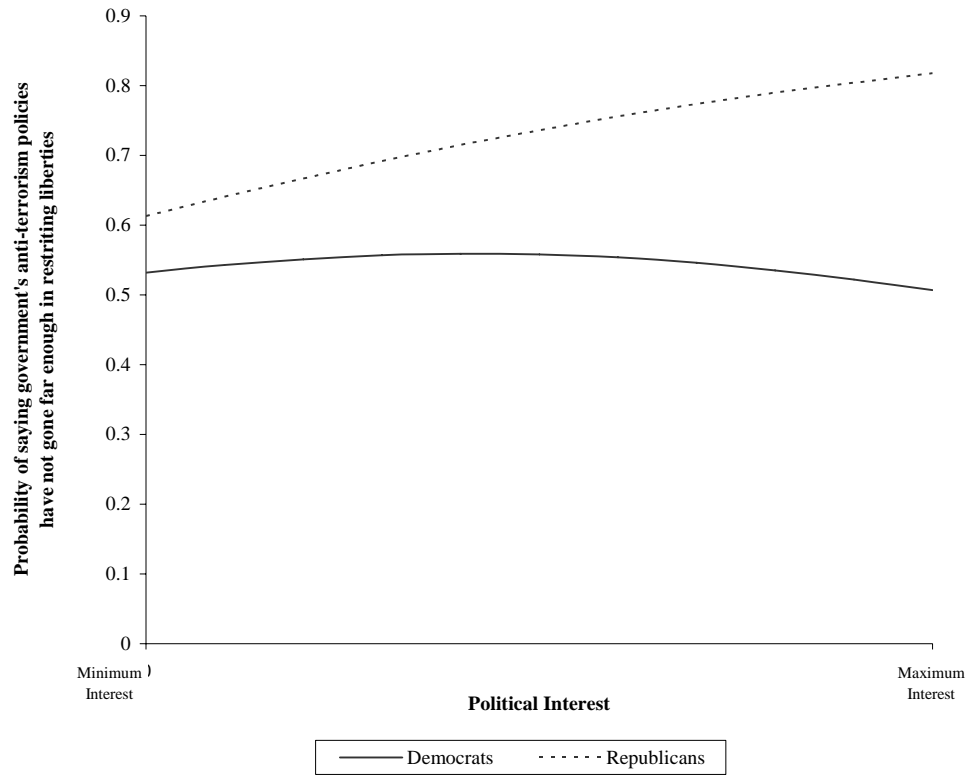


Figure 5.4

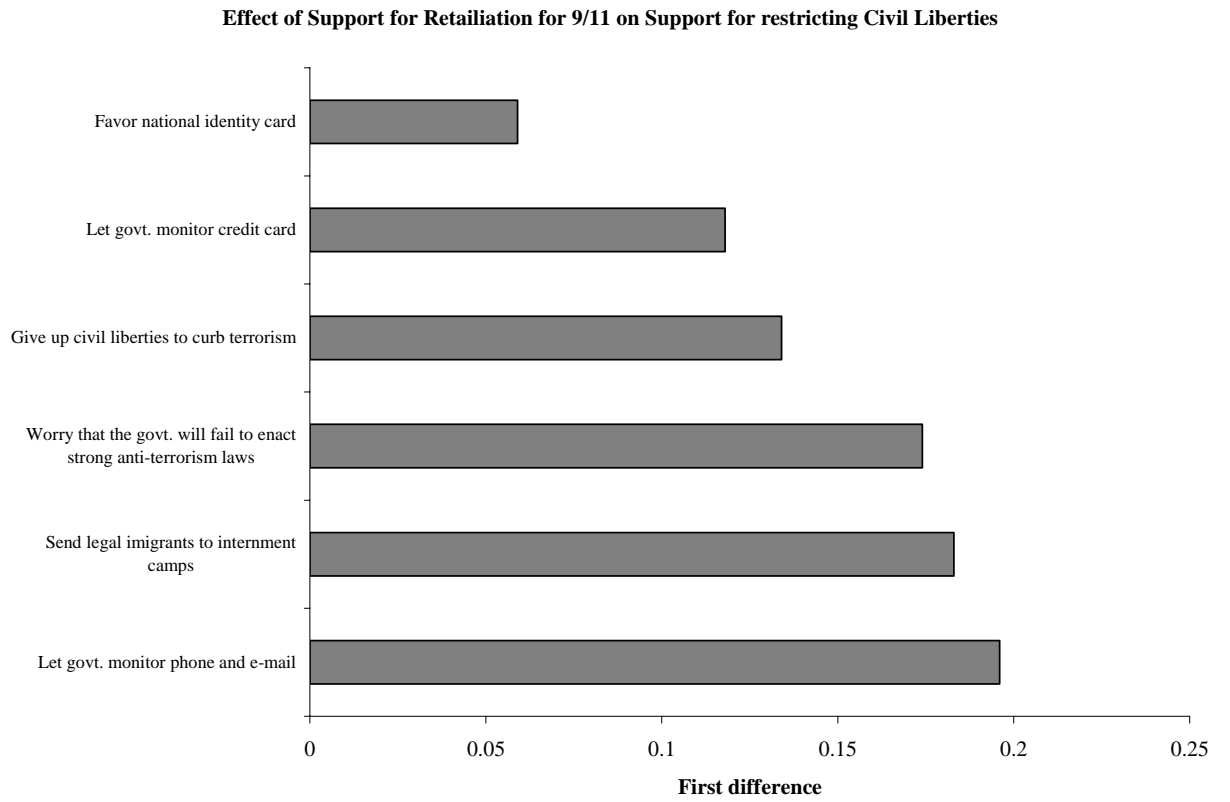


Figure 5.5

Effect of Support for the Iraq War on Negative Civil Liberties Judgments

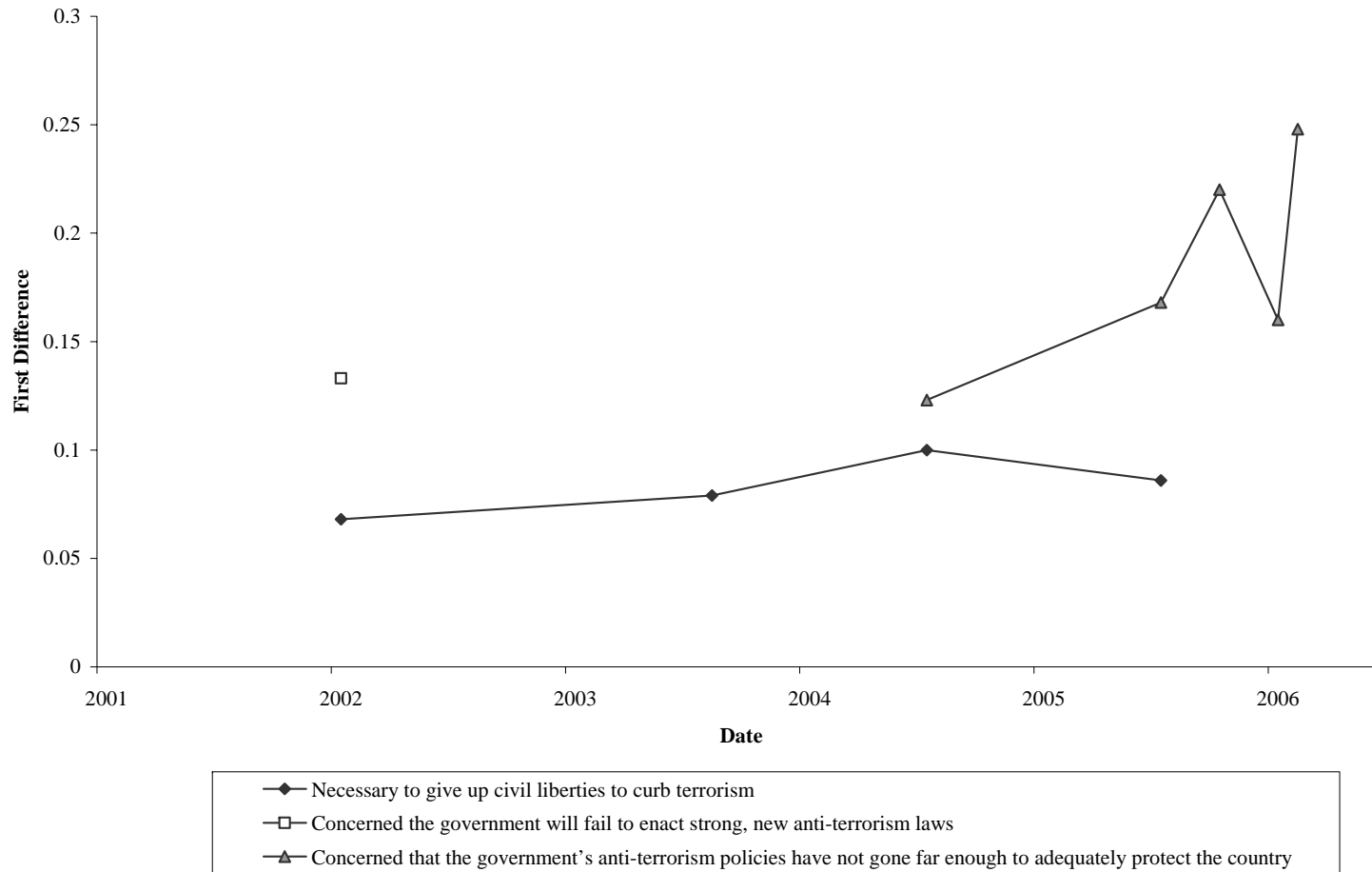


Figure 5.6

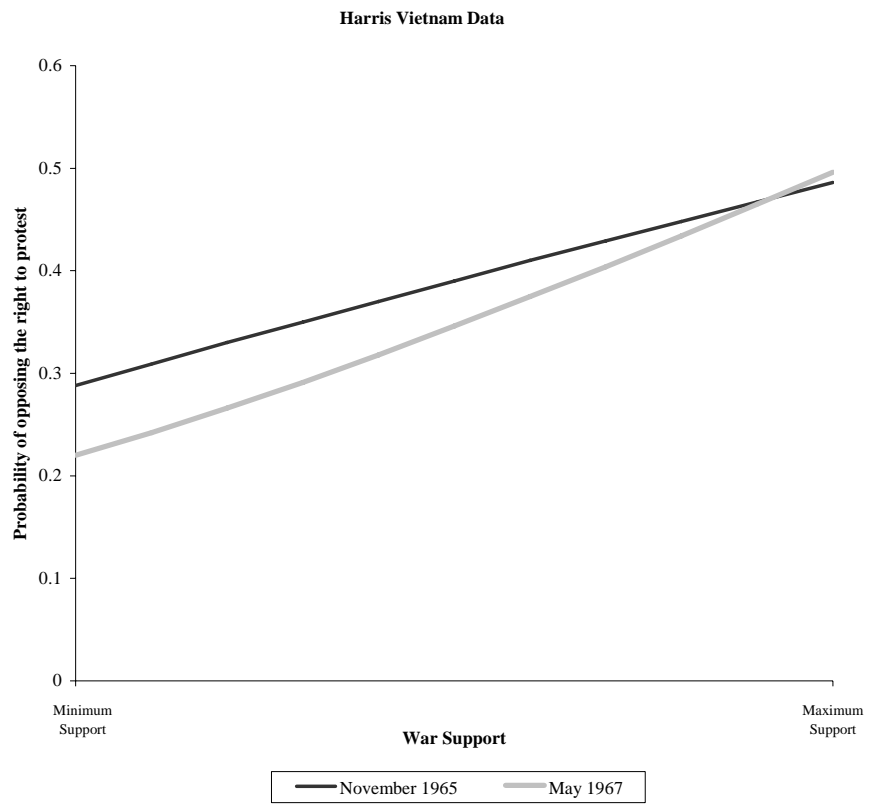


Figure 5.7

Support For Civil Liberties: 1938-1945



Figure 5.8

Effect of Support for World War II on Negative Civil Liberties Judgments

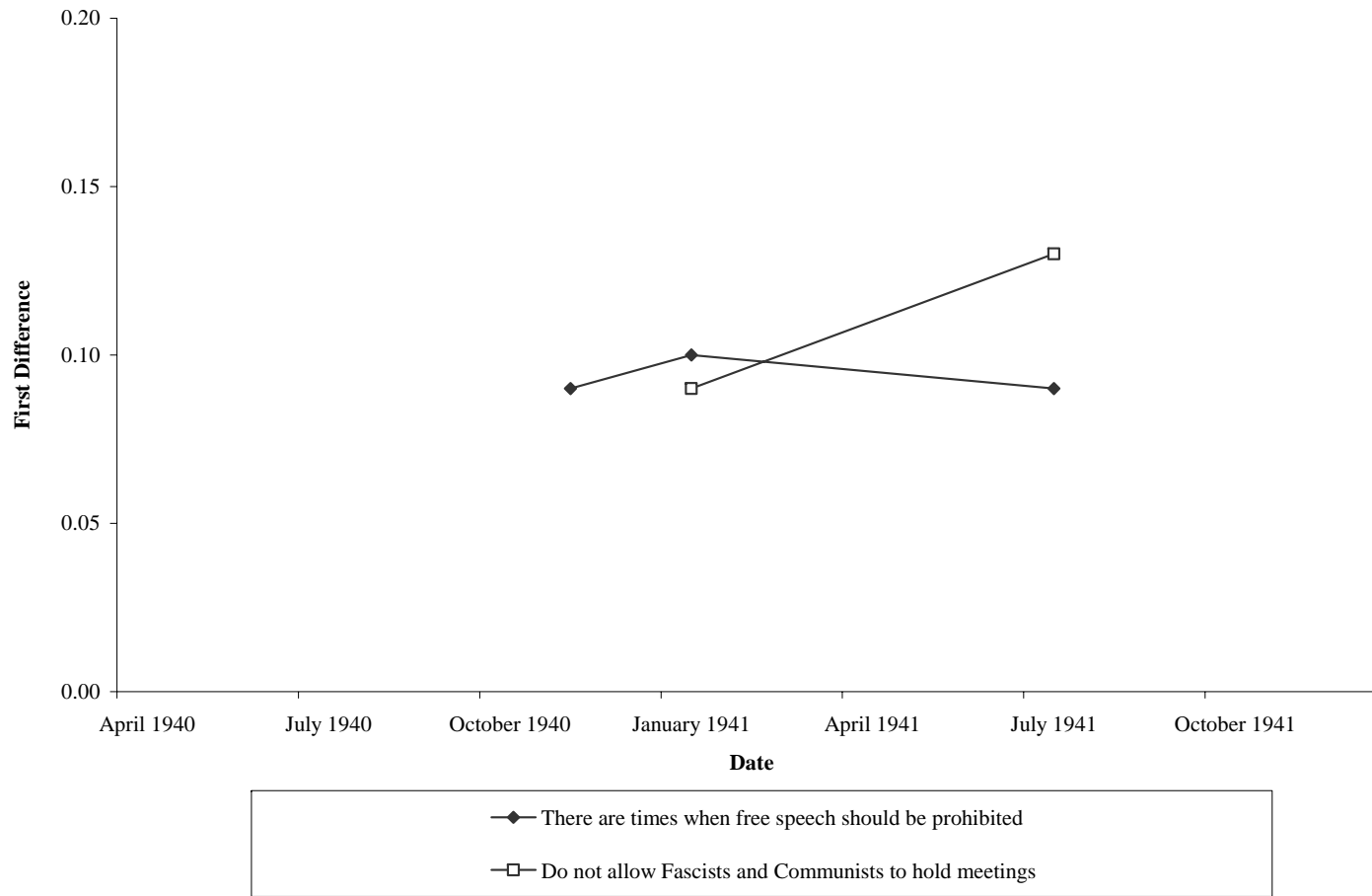


Figure 5.9

Effect of Support for World War II on Allowing Free Speech for Radicals



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