

Rejecting Securitisation: Organised Civil Resistance Against the USA Patriot Act

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Abstract: The legislation and implementation of the US Patriot Act have opened up a field of political discussion with securitisation at its centre. Although the expansion of authoritative power under the securitisation discourse seems irresistible as the decisions of the political elites in federal bureaucrat was announced, there is still room for civilian action practices in the political process under the theoretical framework dominated by the discourse. This article discusses the anti-securitization discourse established by civilian political resistance groups represented by the ACLU, as well as their political practices of overturning the Patriot Act. By evaluating the significance of the impact of popular movements on the local and federal legislative and judicial branches, the paper attempts to discuss the effectiveness of popular resistance to securitisation. The article aims to construct the interactive process of authoritative and popular political subjects, and further evaluate the effect of actual political resistance in a securitisation event.

Keywords: Political Theory, Securitisation, the US Patriot Act, Civil Rights, Political Resistance

1. Introduction

The USA PATRIOT Act was enacted on 26 October 2001 in the wake of the 9/11 terrorist attacks. In public statements, the Bush administration has interpreted the act as having as its purpose to secure citizens and the nation by legitimising a wider range of law enforcement measures, enhancing the ability of law enforcement to detect and prevent terrorism in the face of entirely new media and means [1]. However, the expansion of public power demonstrated in the Act and its implementation has raised concerns about the conflict between national security and individual rights, and in turn, has led to intense controversy against the bill. Takes the Patriot Act as a case of securitization, this paper would discuss the resistance of the audience that does not accept the discourse of securitisation, which in this context is the movement of organisations aiming to support the civil rights guaranteed by the Constitution.

This paper will discuss whether these groups have effectively become a social force against the discourse of securitization, demonstrated by whether they have succussed in protecting civil rights from violation of expended government power through their interactions with other social agents. Drawing on securitisation theory, the first part of the paper will discuss the anti-securitisation discourse developed by pro-rights organisations in the context of the Patriot Act. The second part will further discuss the impact of the actions of these groups on both local and federal judicial and legislative institutions, in order to assess their effectiveness in protecting civil rights. In general, the

paper argues that these grassroots campaign movement organisations have produced a tangible anti-securitisation discourse and have succeeded in protecting civil rights in localised contexts by interacting with lower courts and local municipalities. However, the groups' influence at the federal level has been limited, which draw pessimistic inferences over the assessment of whether or not they have actually created an institutional force to resist securitisation.

2. Securitisation discourse and its counter-discourse

The paper presents the US Patriot Act as a case of rights violations due to securitisation. By labelling an issue as an existential threat and giving it absolute urgency, security actors contribute to moving it out of the realm of normal political debate and into the realm of extraordinary measures, including suspending the political rules of the norm [2]. The discourse of the war on terror made national security a prerequisite for civil liberties. For example, the information gathering permitted by Section 215, is justified by the need for timely suppression of terrorism, even though such action would violate the rights of non-suspect citizens to be free from investigation guaranteed by the Fourth Amendment and the First Amendment [3, 4]. The restriction of civil rights has become the de facto focus of many security policies [5], which became the base for civil rights violations committed by government power.

With acts of terrorism being defined as acts of war, political elites on the federal level demonstrated their acceptance of securitisation. The securitisation theory emphasises the interactive relationship between the proposer of the discourse and the audience. The changes in social relations brought about by the securitisation process are established in specific inter-subjective social actions. Through linguistic acts, the audience of the discourse formally or informally chooses to accept or reject the transformation of a problem that was not previously perceived as a security threat into a recognised security problem that requires a specific response [6]. The bureaucracy system as political elites, which includes elected politicians and career bureaucrats who are formulators and enforcers of policies and bills, become the frontline in the audience to be confronted with securitisation actors [7]. During the legislative process of the Patriot Act, as terrorism became a visible threat to U.S. property and U.S. citizens, support for the implementation of securitisation measures became the most urgent congressional agenda. Congress moved away from its original divisions to achieve significant consensus. Congress voted overwhelmingly and quickly passed the Patriot Act, demonstrating that both Republican and Democratic members of the House and Senate were willing to transfer their power to the executive branch in order to expedite the implementation of responses to the terrorist threat. [7].

Even though a figure of the enemy in the name of terrorism has been officially created, many people do not agree that their rights can be unprincipledly given up in the name of national security. One of the representatives of such popular perception are civil pro-rights organisations. These civil political organisations would bring together the preferences of members of society and act as instruments of collective action. They would advance public opinion through political agenda in an organised and clearly identifiable form [8]. In contrast to the official narrative, which supported the legislation by claiming security as a prerequisite for civil rights, civil pro-rights groups explicitly opposed the expansion of public power. The American Civil Liberties Union and the Bill of Rights Defense Committee, for example, argue that the official discourses rest on false premises which contrary to constitutional principles. Civil rights granted by the Constitution should not be sacrificed to security [9]. The Patriot Act, and its subsequent derivative legislations, gave the government overly broad powers compared to the necessary means to cope with suspected terrorist threats [10]. Meanwhile, its advocacy of information non-disclosure undermines the role of the courts, Congress, and the public in constraining and monitoring political power [11]. For civil rights activists, these problems mean that the Patriot Act turns its back on the principles espoused by the Constitution, and

thus goes against the rights and institutional design that sit at the core of the American community. Through their public statement, civil pro-rights organisations demonstrated the discourse they have devoted in. As part of public scrutiny, these groups would initiate interventions within the established institutional framework to confront unjust judicial implementation and legislation, in order to restore civil rights guaranteed by constitutional principles.

Overall, with public opinion being materialised into social movement organisations, there was a narrative of counter-securitisation in popular discourse underneath the securitisation of federal institutions. Since the solidarity in public opinion brought about by the initial shock of the terrorist attacks declined over time [12] and as the bill's review timeline approached, the discussion on maintaining securitisation became more intense. Further, the next part of the paper will discuss whether the resistance from civil society has been effective in protecting civil rights.

3. Civil resistances and their effects

Specific scenarios about civil rights would be established through the practices of various social subjects. The organised civil rights movement intends to protect the rights of citizens against the effects of the Patriot Act through localised and concrete actions. The impact of these efforts in both micro and macro scenarios will be discussed in this part, in order to evaluate the effectiveness of civil activism resistance against securitisation discourse.

Civil resistance organisations have gained the most tangible results by resisting the Patriot Act through judicial intervention. With the Supreme Court reserving clear judgment in cases related to the Act, federal district court judges have considerable discretion [13]. This meant that stopping judges from following deference to the executive branch in specific cases is crucial for enabling judicial intervention and thus preserving civil rights, especially when judges could be influenced by lack of professional knowledge about national security or received incomplete information which made them less inclined to overrule military and political officials [14, 15]. By becoming parties to PATRIOT Act cases, including by sending lawyers under their affiliation to file lawsuits or becoming *amicus curiae* to file reports, civil pro-rights organisations, represented by groups such as the ACLU and EFF participated in the judicial process as interest groups. According to a quantitative study based on a database of 108 cases in the District Courts between 12 September 2001 and 31 January 2011, the results they have obtained are remarkable. Civil pro-rights interest groups were involved in 23.1 per cent of the cases, and cases brought by these groups were 75 per cent less likely to be ruled in favour of the government than cases brought by other subjects [13]. This finding suggests that the exertion of influence by civil resistance groups does gain results for supporting civil rights in specific cases.

Meanwhile at the legislative level, the civil movement attempted to gain more persistent results in public politics by pushing for municipal, county, and state-level resolutions in opposition to Patriot Act ordinances. An example of such local bills is the resolution of the Northampton, Massachusetts, City Council on May 2, 2002, which calls on local law enforcement to continue to uphold residents' freedoms of speech, religion, assembly, and privacy. They would reject unreasonable secret searches, seizures, and trials by federal law enforcement even though these actions are authorised by the Patriot Act [16]. In advancing such resolutions, the more locally developed the civil rights organisations is, such as a local ACLU branch with higher membership as a percentage of the population, the faster local councils can pass resolutions against the act. With shared civil liberties goals, by merging with existing progressive political communities, pressure groups against the Patriot Act mobilised a broad network of social movements, making the local legislative movement based on the Bill of Rights the largest grassroots movement in US history. The organised resistance movement became a critical bridge between public opinion and the translation of local legislative outcomes [17].

Up to this point, the achievements of civil resistance groups are commendable. Not only have they protected the rights in specific cases by prompting judges to make decisions that favour limiting the government's power, but they have also influenced local resolutions to advance their claims into long-term policy and generate wider public debate within the framework of popular constitutionalism [18]. Nonetheless, these outcomes can hardly be considered as catalysed a more macro-level change to the Act. This casts uncertainty over the effectiveness of pressure groups' actions.

Human rights protections in district court cases did not influence higher courts. For the judiciary, although the Supreme Court has demonstrated an insistence that the rule of law cannot be sacrificed for the war on terror, it has no intention of further advancing changes in the Act. In cases such as *Rasul v. Bush*, *Hamdi v. Rumsfeld*, and other Supreme Court decisions, the justices have insisted on at least some legal procedures and judicial transparency need to be restored when the case is related to the rights of individuals to limit the government's willingness to favour unilateral decision-making [15]. However, these actions did not contain more radical intentions, such as declaring certain sections in the Patriot Act unconstitutional. The Supreme Court has struck down some executive branch requirements such as indefinite detention, but only because Congress has not passed a law permitting such actions. However, once Congress passes such a law, the opportunity for judicial intervention is greatly reduced [14]. The Supreme Court has shown the intention to act in a submajoritarian manner with respect to problems related to the Fourth Amendment, that is, when there is a balancing test between the government's asserted need and the nature and importance of the individual's interest, the Court tends to favour the former even if such government power is not accepted by a majority of the public [19]. Accordingly, the Supreme Court has worked to reinterpret the Fourth Amendment to cover both physical and non-physical governmental intrusions. They would like to strike a new justified balance between the executive branch's new need for national security and the Constitution's provision of civil rights [20], thus rationalising the policy of securitisation. This means that while civil pro-rights efforts have had an impact in district court decisions, they have not significantly affected attitudes in the Supreme Court about the relationship of the Patriot Act to the Constitution.

The situation in the Congress is even more confusing, and the significance of civil resistance's influence could be biased. In response to the Court's decision, Congress, as the legislative branch, ensures that the executive branch's power does not exceed what the majority of the public is actually willing to support by providing statutory procedural limits [19]. Congress has demonstrated a willingness to reassert its role of oversight in subsequent reviews of the act. More voices have emerged among members of the Congress to discuss the appropriateness of the Patriot Act [21]. However, such phenomenon was just limitedly influenced by organized civil freedom movements. Most intuitively, the activities of pro-rights groups did not directly lead to any federal legislative changes in the relevant sections. Under the premise that federal law supersedes local law, municipal resolutions just could provide limited legal justification for local governments that are unwilling to cooperate with federal agencies [17]. At the same time, Anti-Patriot Act proposals by members of Congress have been particularly ineffective, no matter it is from either individual or bipartisan initiatives, since they have not garnered the necessary support [22]. Perhaps we can attribute the increase in controversy in Congress, and pro-rights gains such as preventing the perpetuation of controversial regulations and advancing the time for review of these regulations, to the pressure of public opinion environment brought about by grassroots activism, however factors such as the reduction of external terrorist pressures or the eruption of the scandals of 2005 and 2013 are also not negligible. This makes it unclear to assess the validity of pro-rights organisations' actions on congressional influence, which made the appropriate conclusion be that the civil movements' influence on underpinning the expansion of the anti-securitisation discourse in Congress is limited.

In short, civil rights campaigns have achieved remarkable successes at the micro level through intervention in local justice and legislation. They have reclaimed the political oversights and civil

rights espoused in the Constitution in localised scenarios. However, the impact of these movements at the federal level has not been significant, which means that they can hardly be assessed as groups that actually underpin resistance to the securitisation discourse at the macro level.

4. Conclusion

Borrowing from the theory of securitisation, this paper has discussed the resistance to the Patriot Act by civil pro-rights organisations. Based on the established institutional framework and principles provided by the Constitution, these campaign organisations produced a discourse of opposition to the securitisation supported by federal political elites. The groups-initiated interventions to counter unjust judicial implementation and legislation in order to work towards the restoration of the civil rights guaranteed by the principles of the Constitution. However, while their actions in the lower courts and local councils protected the rights of specific parties and communities from the erosion of the securitisation scenario, the impact of these activities did not extend further into the federal judicial and legislative processes, while these institutions represent the core of sovereignty. Such situation could reveal that in the conflict between the Patriot Act and pro-rights organisations, while the anti-securitisation discourse was effective within a limited localised scenario influenced by civil movements, it did not develop sufficient capacity to reverse the securitisation scenario at the national level.

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