

Free Expression and Wartime: Lessons from the Past, Hopes for the Future

By Margaret A. Blanchard

The recent Persian Gulf War raised once again issues of censorship, news manipulation by government sources, unwillingness to tolerate dissent at home, and the conviction that only political conservatives combine to limit First Amendment rights during wartime. An examination of eighteenth and nineteenth century wars shows that the problems are as old as the United States itself. An understanding of the background of such controversies may be useful in preparing a defense for First Amendment rights in future conflicts.

► Historians sometimes justify their work by tossing around a few choice but clichéd quotes. There is the tried and true statement by George Santayana that “those who cannot remember the past are condemned to repeat it.” And if that is not sufficient to convince a non-believer of the importance of history, there’s Shakespeare’s “the past is prologue to the present.” If those two phrases do not induce a person to believe in the importance of history to today’s world, then....

Recent events, however, have made it abundantly clear that clichés, no matter how eminent their source, simply will not do when it comes to proving the relevance of the historical context to current freedom of expression problems in the United States. When a prominent First Amendment scholar privately admits a lack of knowledge about the background of the subject and notes that such information might make arguments in favor of freedom of expression more forceful, then the academic community must take note. A careful study of American history shows a long and disturbing lineage for many recent repressive practices in the area of freedom of expression, especially when the nation is caught up in an armed conflict. The question becomes, however, whether such knowledge will aid in the fight for expanding First Amendment values. Issues confronted recently in the Persian Gulf War would not have been strange in the 18th and 19th centuries, as the following examples demonstrate.

1. *Censorship of information reaching the American people during wartime.* The Persian Gulf War brought great cries of concern — at least in some circles — about restrictions placed on journalists trying to

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cover the conflict. For the first time in American history, reporters were essentially barred from accompanying the nation's troops into combat. Journalistic interviews with military personnel were observed by public information officers, and the resulting stories were carefully screened before dissemination. In addition, information about the war was carefully sifted and sorted and fed to journalists via internationally televised news conferences. The only live news that seemed to be reported dealt with incoming Scud missile attacks, and data on those assaults were limited.

Other restrictions were in place as well — all due, said journalists and their supporters with varying degrees of intensity to: the military's desire get even with the press for besmerching the military's reputation in Vietnam; the administration's goal of keeping American citizens unable to make informed decisions about whether the nation should be involved in the war in the first place; and the administration's desire to hide the nation's true motives for going to war. Led by a president who pledged that "this will not be another Vietnam,"¹ military officials, with an eye on satellites in the sky and on television receivers in Saddam Hussein's office, made little information available.

Some reporters cried that their First Amendment rights were being violated. Some journalists even claimed that the First Amendment rights of the American people were being abused.² And some journalists simply took the information that was spoon-fed them and reported the war that way. Those reporters who complained based much of their argument on the way in which the Vietnam War had been covered. Arguing that that war set the model for all future coverage of military operations, journalists noted that during the Vietnam War, reporters pretty much went where they wanted to go and reported what they wanted to tell about. Forgetting about the limitations placed on the Grenada and Panama experiences and restrictions in effect before Vietnam, reporters in the Persian Gulf assumed that the Vietnam War experience was the operative model. Coverage of Vietnam, however, was grounded on many political considerations that were not present in previous or subsequent encounters.

Indeed, a look at one of the nation's earliest wars shows great concern on the part of the president and the military over just how the press was behaving and over how much disagreement with the nation's war aims should be allowed. The Mexican War was controversial because many abolitionists saw it as an attempt to add territory that would turn into slave states. The press was a problem because the war broke out a dozen or so years after the penny press appeared in the nation's major cities and because a limited telegraph network was now available to serve the nation's newspapers. And the president was a problem because James K. Polk was one of the most sensitive presi-

1. "No Vietnam," *Newsweek*, 10 December 1990, 24-25.

2. Some journalists did protest such restrictions, leading Congress to hold hearings on the military's policies. Among those testifying was Sidney Schanberg, who had made his reputation covering Indochina during the years of the Vietnam conflict. See Testimony of Sidney Schanberg, Hearing before the Senate Committee on Governmental Affairs on Pentagon Rules on Media Access to the Persian Gulf War, 20 February 1991, typescript copy, 2, 6-7. Schanberg joined a handful of other journalists in challenging those rules in court as well. See *The Nation Magazine v. Department of Defense*, 59 U.S.L.W. 2655 (SDNY 1991). Although this likely was the first such legal action of its kind, the suit was dismissed on grounds of mootness because the war ended so quickly. The basic issue of whether the government is restricting First Amendment rights through limiting press access to a military action remains unsettled.

dents ever to face the slings and arrows of an outraged press.³

Much of the president's concern focused on news leaks that flowed like a fast-running river from within his own administration. He regularly found details of his secret diplomatic plans revealed in the press. The most embarrassing such disclosure centered on his efforts to bring the dictator Santa Ana back to power based on a pledge from the Mexican general, who had butchered the defenders of the Alamo, that he would negotiate a peace settlement. Other missions likewise were publicized.⁴ When Polk sent Nicholas P. Trist, the man who ultimately negotiated the end of the war, to Mexico as peace emissary, details were front-page news despite the president's special precautions to keep the Trist mission confidential.

The president's efforts at promoting secrecy were firmly grounded in his belief that "had his [Trist's] mission and the object of it been proclaimed in advance at Washington...[that] there are persons in Washington, and among them the editors of the *National Intelligencer*, who would have been ready and willing to have despatched a courier to Mexico to discourage the government of that weak and distracted country from entering upon negotiations for peace." Articles in Whig newspapers such as the *Intelligencer* "against their own government and in favour of the enemy, have done more to prevent a peace than all the armies of the enemy." The president believed that "Mexican papers republish these treasonable papers and make the ignorant population of Mexico believe that the Democratic party will shortly be expelled from power in the United States, and that their friends (the Federal alias Whig party) will come into power." If the war was prolonged, the president wrote in his diary, "it is to be attributed to the treasonable course of the Federal editors and leading men."⁵

The president's plans for secrecy were useless, however, as the complete details of Trist's assignment soon appeared in the *New York Herald*. "The statement is so accurate and minute that the writer must have obtained information on the subject from someone who was entrusted with the secret," Polk said. Unable to believe that a member of his cabinet was the source, the president focused his attentions on a clerk in the State Department who happened to be a Whig. "I have not been more vexed or excited since I have been President than at this occurrence," he confided to his diary. "The success of Mr. Trist's mission I knew in the beginning must depend mainly on keeping it a secret from that portion of the Federal press and leading men in the country who, since the commencement of the war with Mexico, have been giving 'aid and comfort' to the enemy by their course." Their goal, of course, was the hope "that they might gain some political advantage in the next Presidential election by it."⁶ The president was so concerned that he himself took a hand in the interrogation of the clerk about the leak. Although unable to find the source of the leak at the time, specula-

3. For a discussion of criticism of Polk and his war efforts see John H. Schroeder, *Mr. Polk's War: American Opposition and Dissent, 1846-1848* (Madison: University of Wisconsin Press, 1973); and Samuel Eliot Morison, Frederick Merk and Frank Freidel, *Dissent in Three American Wars* (Massachusetts Historical Society, 1970; reprint, Cambridge, Mass.: Harvard University Press, 1973), 33-63 (page citations to reprint edition).

4. See Anna Kasten Nelson, "Secret Agents and Security Leaks: President Polk and the Mexican War," *Journalism Quarterly* 52(1975):9-14, 98.

5. Polk, *The Diary of a President, 1845-1849*, 16 April 1847, ed. Allan Nevins (London: Longmans, Green, 1952), 218.

6. *Ibid.*, 21 April 1847, 219-20.

tion since has focused on Secretary of State James Buchanan, a man with presidential ambitions of his own, as the source of many of the disclosures of diplomatic information.

Compounding many of Polk's problems were the techniques used by American newspapers to gather news from the field of battle. Many of the penny papers had correspondents on the scene, and they generally provided good information. In fact, at times, data gathered by these first American war correspondents were better than that prepared by military sources. Reporters, for instance, prepared casualty lists that were more complete and accurate than those gathered by the army. And much to Polk's dismay, these reporters often managed to get their information into print before army couriers got the same data to the president. The newspapers of the era also had the disconcerting practice of carrying copies of letters written to family, friends or to the publication itself from soldiers in the field. Much of the information contained in these letters was incorrect and highly biased against Polk and his administration.⁷

Although American forces in Mexico won stunning victories in 1847, the war did not end. Instead, the troops became an army of occupation, and Mexican forces began a guerrilla war of attrition. Reporters no longer had battles to cover and turned to reporting mounting casualties and the misbehavior of American soldiers. Opposition to the war increased as the army became bogged down in Mexico. As disapproval mounted, Polk's only remaining hope was to conclude an honorable peace treaty that would result in the California and New Mexico territories being ceded to the United States. Presidential negotiator Trist, however, was having difficulties, and his problems, as expected, were front-page news.

Polk was livid when he discovered that so many newspapers and magazines were openly discussing what he considered to be a secret mission. Foreign policy, particularly in wartime, Polk believed, was best conducted confidentially. His anger only increased as he sent the draft treaty to the Senate for ratification. Having warned the Senate to avoid releasing any information about the treaty because the Mexican government had not yet ratified the document, the president was appalled to discover the details of the accord spread across the pages of the *New York Herald* on March 13, 1848, barely a week after Senate ratification. *Herald* publisher James Gordon Bennett implied that the newspaper had had the treaty for some time before the text was printed; the delay was to allow the Senate to debate freely. Publication of the treaty text was followed by details taken from the president's official correspondence that had been sent to the Senate along with the pact.⁸

Polk wanted to know how the *Herald* obtained these documents. The Senate conducted an investigation, calling before it John Nugent, author of the stories about the treaty, who refused to reveal the source of his information. He claimed patriotism motivated the publication, said it was done in the public interest, and steadfastly refused to reveal his source of information. Nugent was cited for contempt of the Senate and

7. See Thomas William Reilly, "American Reporters and the Mexican War, 1846-1848" (Ph.D. diss., University of Minnesota, 1975); and Tom Reilly, "The War Press of New Orleans": 1846-1848," *Journalism History* 13 (1986):86-96.

8. See Everette E. Dennis, "Stolen Peace Treaties and the Press: Two Case Studies," *Journalism History* 2 (1975):6-14.

ordered confined to a committee room by day and to the home of the sergeant at arms by night. Newspapers denounced the Senate's action, and the reporter eventually was released — but the incident led to a federal court hearing that established the important principle that “each house [of Congress] has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy.”⁹ Although Polk had been unable to stem the tide of information that flowed from his administration, the problem that so plagued his wartime years did provide an important legal precedent on the president's side.

2. *Deliberate twisting of information by government sources to manipulate public opinion.* This reprehensible practice generally is dated to the news management techniques of the John F. Kennedy administration, especially during the Cuban Missile Crisis. Governmental mismanagement of information then continued through the credibility gap spawned by the false data provided by Lyndon B. Johnson in his efforts to conceal a growing U.S. involvement in Vietnam. But it reached its peak during the Reagan administration when a purposeful disinformation campaign was waged against the nation's enemies — and say some critics against the nation itself. And some critics of the Bush administration accuse it of misleading the nation during the Gulf War in order to convince the American people to follow his lead into battle.

The major argument against such government practices is, of course, that Americans need truthful information in order to make wise decisions. James Madison, who is considered the father of the Bill of Rights, acknowledged the connection between information and the proper functioning of society when he wrote in 1822, “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”¹⁰ Madison had lived through an era in which the manipulation of information was the key to nation making. Whether he approved of such twisting of information to build support for the colonial grievances against the mother country may never be known, but accurate information was scarce during the Revolution.

The campaign against the 1765 Stamp Act, for instance, was marked by misreporting and by propaganda, much of which was engineered by patriot journalists themselves and then widely circulated as the truth. One example during the Stamp Act crisis focused on the reporting of the Virginia Resolves, introduced into the Virginia House of Burgesses by Patrick Henry and passed by that body. The patriot communication system got the resolves, which condemned the tax, out quickly. That system did not, however, tell readers that few members of the lower house were present when the resolves were passed. Nor were readers informed that the final resolve, which said that the tax was an attempt by Parliament to destroy American freedom was rescinded the next day before the House of Burgesses adjourned. In addition, the House of Burgesses originally enacted five resolves; some newspapers in the

9. *Ex parte Nugent*, 18 Fed. Cas. 471, 483 (1848).

10. James Madison to W. T. Barry, 4 August 1822, *Writings of James Madison*, ed. Galiard Hunt (New York: G.P. Putnam's Sons, 1910), 9:103.

colonies printed six or seven resolves and said they were enacted by the Virginians.

Included among those extra resolves was a rather harsh statement questioning the loyalty of anyone who accepted the stamp tax. If any person claimed that Great Britain had the right to enact such a tax, this measure said, that person "shall be Deemed, AN ENEMY TO THIS HIS MAJESTY'S COLONY."¹¹ The source of the extra resolves is unclear, although Henry may have included them in his original proposal, which was amended on the floor. If this hypothesis is correct, then Henry's draft of the resolves likely was distributed to colonial newspapers for use before their introduction rather than waiting for the version enacted by the Burgesses. The goal of colonial propagandists clearly was to push other legislatures into going on the record against the stamp tax by showing the bravery of Virginians — in a very special and distorted light.

Another example of this manipulation occurred during the Townshend Act crisis when, in 1767, the British imposed taxes on tea, paper, wines, oil, glass, lead and paint. To bolster colonial dissent, which had reached a high point during the Stamp Act controversy of 1765, John Dickinson wrote his famous Letters from a Farmer in Pennsylvania. Dickinson, a Philadelphia lawyer, cast himself in the role of a self-educated farmer who had researched the problems caused by the acts and by the suspension of the New York Assembly. As a patriot, he took pen in hand and wrote twelve letters that argued the colonial position against the British measure, focusing mainly on the notion that the Townshend Acts were designed to raise revenue and thus could not be imposed on the colonies by Parliament without violating basic precepts of the English constitution. The letters gave the impression of being spontaneously written, with all but the first coming in response to comments received from other colonists. In fact, Dickinson wrote all of them at one time and developed the alleged comments and criticisms to his positions himself and then answered those points himself. The letters were carefully placed to ensure maximum dissemination within the colonies, and eventually they were reprinted in most colonial newspapers.¹²

The success of the Farmer's Letters in fomenting discontent among the colonists paled in comparison with the efforts that Boston journalists began in 1768. Dickinson's essays had appealed to the intellect of their readers, putting forth well-reasoned arguments for opposition to British tax measures. When British troops moved into Boston in the fall of 1768, however, patriot leaders produced the "Journal of Occurrences," a series of newspaper columns that condemned British behavior in a much more emotional manner. In doing so, the patriots pioneered techniques that would be used by succeeding generations of Americans to build support for controversial actions, especially in wartime. Sam Adams and his patriot colleagues in the Boston area wrote the "Journal of Occurrences," which was designed to spread news of British atrocities against the people of Boston throughout the

11. Quoted in Edmund S. Morgan and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution*, 2d ed. (Chapel Hill: University of North Carolina Press, 1963; reprint, New York: Macmillan, 1962), 129 (emphasis included) (page citations to reprint edition).

12. See Carl F. Kaestle, "The Public Reaction to John Dickinson's *Farmer's Letters*," *Proceedings of the American Antiquarian Society* 78 (1968): 323-59.

colonies. "Violences are in the midst of us," one of the special columns proclaimed, "and the sun as well as the moon and stars, witnesseth to the shameful prostitutions, that are daily committed in our streets and commons."¹³ The material that followed told of the moral offenses that the British committed against the Bostonians — including playing music at the changing of the guard on Sunday. Some officers even played cards rather than attending services! Deserters were lashed publicly in the Boston Common. And the purity of the city's women was threatened by the soldiers who were not above seducing innocent young girls for momentary pleasure.

Throughout the "Journal's" ten-month existence, its writers were very careful never to publish anything that would cast the British soldiers in a favorable light. To build emotional contempt for possible future enemies, the authors wanted to show the soldiers as the most venal, corrupt, uncaring, unprincipled men on the face of the earth. The column was carefully constructed — it never contained names or addresses of victimized individuals. Dates were used to give credibility, but they usually were so far in the past that fading memories made corroboration or refutation difficult. And, finally, the columns were published outside of Boston first, just in case someone in the city might be able to successfully dispute their contents.

Patriot leaders continued to seize upon any incident to further heighten animosity toward the British throughout the colonies. The next major opportunity to twist information came with the Boston Massacre, the killing of five civilians in the city's streets by British soldiers. Rabid patriot leaders kept this event before the citizens of Boston and the colonies until the Revolution appeared on the horizon. A famous engraving by Paul Revere that circulated widely helped keep the killings fresh in the public's memory as well. Purporting to show just what happened in the shooting, the engraving contained several errors, including the fundamental one of showing British regulars firing point blank into a crowd of civilians while omitting the clubs that the civilians had carried to harass the soldiers.¹⁴

The misreporting and twisting of information continued into the Revolution itself. News of the first real fighting of the war, the Battle of Lexington and Concord, for instance, was portrayed almost from the very beginning so the British again appeared as inhumane creatures and the patriots as persecuted heroes.¹⁵ The version of the battle most reproduced throughout the colonies was written by Isaiah Thomas, the strongly patriotic editor of the *Massachusetts Spy*. Thomas's account came out later than others because he went to the scene of the battle and gathered information on the fighting. Through Thomas's story, colonists learned that the British not only initiated the battle by firing the first shot but that they behaved barbarically throughout the encounter.

One of the more famous passages tells readers that the British "pil-

13. *Boston Under Military Rule, 1768-1769, as Revealed in a Journal of the Times*, ed. Oliver M. Dickerson (Boston, 1936), 86, quoted in Thomas C. Leonard, "News for a Revolution: The Exposé in America, 1768-1773," *Journal of American History* 67(1980):30.

14. See Robert W. Smith, "What Came After?: News Diffusion and Significance of the Boston Massacre, 1770-1775," *Journalism History* 3(1976):71-75, 85.

15. See Frank Luther Mott, "The Newspaper Coverage of Lexington and Concord," in *Highlights in the History of the American Press*, ed. Edwin H. Ford and Edwin Emery (Minneapolis: University of Minnesota Press, 1954), 86-99; and John H. Scheide, "The Lexington Alarm," *Proceedings of the American Antiquarian Society* 50(1940):49-79.

laged almost every house they passed by, breaking and destroying doors, windows, glass, etc., and carrying off clothing and other valuable effects." Only the bravery of the colonial troops kept the British from carrying out their intention "to burn and destroy all before them," Thomas said. But the bravery of the patriots was not sufficient to save all, he sadly reported. "The savage barbarity exercised upon the bodies of our unfortunate brethren who fell is almost incredible. Not content with shooting down the unarmed, aged, and infirm, they disregarded the cries of the wounded, killing them without mercy, and mangling their bodies in the most shocking manner."¹⁶ Such prose introduced the Revolution to the people of the colonies.

3. *Unwillingness to tolerate dissent during wartime.* Another key feature of the recent Persian Gulf controversy was the reluctance of many Americans to tolerate those who dissented against the war — or at least to tolerate them graciously. With yellow ribbons and flags dotting the countryside, Americans once again indulged in a "my country right or wrong" orgy. Not only were those who protested in the streets the targets of disparaging remarks, but members of the Congress who in the debate over authorizing the president to use force in the Gulf voiced their objections or voted against the resolution were labeled as unpatriotic. On the verge of war, how could any American not support the government's goals?

Such questions came to the fore during the War of 1812 as well. This was another unpopular war, and although opposition was centered in the Federalist strongholds of New England, pockets of disaffection existed throughout the country. Most dissidents had strong Federalist backgrounds and firmly believed that the wrong president was leading the nation into the wrong war and that the ramifications of Madison's folly would be irreversible damage to American commercial interests. Basic moral and social values also were threatened by the hardships of war. To many, the new nation seemed too frail to withstand wartime pressures.¹⁷

Even before the feeling of futility brought on by Madison's re-election set in, however, there were voices of immoderation among Federalists. John S. Mitchell, co-editor of the Savannah, Georgia, *American Patriot*, wielded one of the earliest pens against the war. Mitchell used the columns of his newspaper to attack every administration move, saying that almost all of Madison's actions were "characterized by such peculiar imbecility, such wanton disregard of every dictate of honor"¹⁸ and that no Madison proposal, no matter how farfetched, would take the editor by surprise. When he questioned the government's invasion of Florida, however, a group of Savannah Republicans visited him, beat him and threatened him with death should he continue publication. The Federalist newspaper went out of business.

A similar fate met opponents of war in Baltimore, Maryland, a stronghold of Republican support for the war. The major target here was Alexander Contee Hanson, editor of the *Federal Republican*, the

16. *Massachusetts Spy*, 3 May 1775, quoted in Calder M. Pickett, *Voices of the Past: Key Documents in the History of American Journalism* (Columbus, Ohio: Grid, 1977), 51.

17. See J.C.A. Stagg, *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic, 1783-1830* (Princeton, N.J.: Princeton University Press, 1983); and Lawrence Delbert Cress, "Cool and Serious Reflection: Federalist Attitudes Toward War in 1812," *Journal of the Early Republic* 7 (1987):123-45.

18. *Savannah American Patriot*, 14 April 1812, quoted in John E. Talmadge, "Georgia's Federalist Press and the War of 1812," *Journal of Southern History* 19 (1953):496.

leading Federalist newspaper in the South. Shortly after war was declared, Hanson denounced it as "against the clear and decided sentiments of a vast majority of the nation." He pledged to "use every constitutional argument and every legal means to render as odious and suspicious to the American people, as they deserve to be, the patrons and contrivers of this highly impolitic and destructive war."¹⁹

Hanson continued printing after his press was destroyed. He denounced the Republican-backed mob that had for weeks been wrecking havoc on Baltimore Federalists. Such violence, he said, was "a daring and desperate attempt to intimidate and overawe the minority, to destroy the freedom of speech and of press." Harkening back to the Republican support for the French in the 1790s, he added that the mob hoped "by putting down the opposition through a system of French revolutionary terror, to insure the continuance in office of men whose dismissal they fear would be rendered certain by an exposure of their misdeeds, folly and infatuation."²⁰ The folly was all Hanson's, however, as his new office was destroyed, with one of its defenders beaten to death, one maimed for life, and several others, including Hanson, seriously injured.²¹

Opponents of war, however, were not intimidated by such actions. Federalists in Congress and in state legislatures became even more obstructionist. The best militias in the United States were not made available for federal use during the war because the governors of Massachusetts and Connecticut refused to put them at the service of the president. These staunch Federalists cited states' rights arguments to support their positions. Federalists in New England refused to help finance the war through loans and continued to trade with Great Britain throughout the conflict. Young men in New York, distressed because that state's governor did make the militia available for federal use, refused to report for military duty.²²

In the face of such resistance, Republican members of Congress began to consider the possibility of prosecuting the Federalists. Representative Felix Grundy of Tennessee considered "those who systematically oppose the filling of the loans, and the enlistment of soldiers...guilty of moral treason." Although he would not infringe on the rights of individuals to "express their opinions freely against the expediency of having declared the war, or those who, from choice, withhold their own money from the public service," he targeted those who "after the respective laws were passed, exerted their influence to prevent others from carrying them into effect."²³ Such behavior, said Representative John C. Calhoun of South Carolina, "has in all ages and countries ever proved the most deadly foe to freedom."²⁴

Antiwar feeling reached its peak in 1814 when representatives of several New England states met in Hartford, Connecticut, to discuss possi-

19. *Federal Republican*, 20 June 1812, quoted in John Lofton, *The Press as Guardian of the First Amendment* (Columbia: University of South Carolina Press, 1980), 50.

20. *Federal Republican*, 27 July 1812, printed in *Niles' Register*, 8 August 1812, 379-80, quoted in Donald R. Hickey, "The Darker Side of Democracy: The Baltimore Riots of 1812," *Maryland Historian* 7(1976):7.

21. See Hickey; Paul A. Gilje, "The Baltimore Riots and the Breakdown of the Anglo-American Mob Tradition," *Journal of Social History* 13(1980):547-564; Frank A. Cassell, "The Great Baltimore Riot of 1812," *Maryland Historical Magazine* 70(1975):241-258; and Donna Lee Dickerson, *The Course of Tolerance: Freedom of the Press in Nineteenth-Century America* (New York: Greenwood Press, 1990), 39-54.

22. Harvey Strum, "New York Federalists and Opposition to the War of 1812," *World Affairs* 142(1980):178.

23. Congress, House, 13th Cong., 2d sess., *Annals of Congress* (15 January 1814), 993.

24. *Ibid.*, 999.

ble amendments to the Constitution to prevent future unpopular wars. Some Republicans felt that the Hartford Convention was simply a cover for a Federalist plot to form a New England Confederation that would secede from the Union. Whether such an effort would have developed eventually is, of course, unknown, but the meeting in 1814 was limited to suggested changes in the Constitution. Nothing came of these suggestions because the war ended soon thereafter.²⁵

One thing that needs to be kept in mind in any discussion of dissent during the War of 1812 is that no matter how bad criticism of him became, James Madison took no steps to limit speech. His followers may well have taken action against Federalists who opposed the war effort, but the president proposed no such actions on his own. That fact may well indicate that the American people are perfectly able to take on dissenters in wartime on their own without congressional enactments or presidential pronouncements.

4. *Only conservatives attempt to limit free speech.* Underlying much of the criticism of governmental action during the Gulf War was the notion that had a liberal president been in office, things would have been much different. Individuals who held such views had remarkably short memories, for they forgot the limitations on information put in place by John F. Kennedy and Lyndon B. Johnson during the conflict in Vietnam. Even more important, the assumption that only conservatives will attempt to limit the press or to limit dissent flies in the face of history. Abraham Lincoln, who for his era certainly was no conservative, would be a prime example to the contrary.

As a wartime president, Lincoln immediately appreciated the importance of having a united country behind him. The difficulty was that residents of the North were significantly divided not only over how the war should be pursued but over whether it was necessary at all. Many so-called Peace Democrats, individuals who desired an immediate end to the conflict, lived in the North. In addition, Northern states had strong pockets of Southern sympathizers who, if they could not end the war, tried to aid the Confederate cause.²⁶ The border states — particularly Maryland, Kentucky, and Missouri — presented grave security problems because public opinion in those areas was even more divided. Holding these states was a key to the preservation of the Union. To maintain Union dominance, Lincoln sought to suppress disloyal sentiment by suspending the writ of habeas corpus, the constitutional provision that protects American citizens from groundless arrest. Lincoln's action meant that individuals could be arrested and held without formal charges being lodged against them.²⁷ Thus, in Maryland, Kentucky, Missouri and elsewhere, troublesome individuals were arrested for the revolutionary ideas that they were advocating — meaning separation from the Union and adherence to the Confederacy.²⁸

25. See James M. Banner, Jr., *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (New York: Alfred A. Knopf, 1970), 294-350.

26. See James G. Randall, *Constitutional Problems Under Lincoln*, rev. ed. (Urbana: University of Illinois Press, 1961).

27. According to the Constitution, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Constitution, art. I, sec. 9. This language means that individuals who are arrested must be brought before judges and that formal charges must be presented against them or else they must be released from custody when the writ is in effect.

28. See Dean Sprague, *Freedom Under Lincoln* (Boston: Houghton Mifflin, 1965).

Although the Constitution provides for suspending the writ, the language does not specify who can authorize such a suspension. The leading opponent of the president's action was the Chief Justice of the United States, Roger B. Taney, sitting as circuit judge for Maryland. Taney had been called upon to rule in the case of John Merryman, a strong advocate of the Southern cause, who not only had spoken out for the Confederacy but also had raised a company of soldiers to serve in its army and was connected with the burning of bridges in Maryland to keep Union soldiers from using them. Merryman's lawyers sought to have him released on the grounds that he was being illegally held without formal presentation of charges. Taney ordered Merryman released and denounced the president for undercutting a basic right of the American people. By suspending habeas corpus, the president could arrest and hold anyone indefinitely without trial — an action that Taney thought subverted the constitutional process.²⁹ Lincoln ignored the 85-year-old jurist's order. The case never reached the Supreme Court; Merryman was eventually released and never heard from again.³⁰

Northern fears continued to grow. Congress met in special session to consider war-related issues beginning July 4, 1861. Lincoln told congressmen that suspension of the writ of habeas corpus had been essential to quell dissent in certain strategic areas. Although the government had unbounded ability to arrest individuals under the suspension, the president stressed that such power had been used carefully. Some members of Congress questioned the constitutionality of the president's actions, but military problems kept Congress from acting to confirm or deny Lincoln's power.³¹

The Battle of Bull Run, fought just outside Washington, only increased governmental eagerness to suppress opposition to the war. Also contributing to a wave of suppression that engulfed the country was the return home of the so-called three-month volunteers. Many of these limited-term soldiers had participated in the Union defeat at Bull Run, and they returned home full of anger at the Confederacy and at anyone who dared to support the Southern cause. Repression of all things Southern increased substantially. Among the victims of this increased anger were newspaper editors who regularly attacked Union leadership in Washington and the field performance of local troops. Mob violence occurred in such towns as Concord, New Hampshire; Bangor, Maine; and Haverhill, Massachusetts, as soldiers attacked newspapers critical of their efforts. Newspaper editors also found it dangerous to promote the growing peace movement in their columns.

Battlefield losses and stories of inept generals and troops led to increasing calls to end the war in 1861. Lincoln and his advisers met the growing panic with additional arrests. By this time, individuals all over the country had been apprehended for speaking or writing against the war. Newspaper stories appeared criticizing the policy of arbitrary arrests and the holding of political prisoners. As panic increased in the

29. *Ex parte Merryman*, 17 Fed. Cas. 144 (1861).

30. See Sherrill Halbert, "The Suspension of the Writ of Habeas Corpus by President Lincoln," *American Journal of Legal History* 2(1958):95-115; and Harold M. Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York: Alfred A. Knopf, 1973), 81-98.

31. The writ of habeas corpus was also suspended in the South — but under the authority of the Confederate Congress upon the request of President Jefferson Davis. See John B. Robbins, "The Confederacy and the Writ of Habeas Corpus," *Georgia Historical Quarterly* 55(1971):83-101.

North during August and September 1861, Secretary of State William E. Seward, who ran the program, ordered the arrests of hundreds of individuals without charges.

New York City, a stronghold of pro-Southern feelings, was a favorite arena for these arrests. Because of financial ties to the South, bankers and merchants were constantly under suspicion and often apprehended. Others picked up in Seward's dragnet included priests, police officers, merchants — anyone who at any time had expressed disloyal feelings. The mayor of New York, known for his sympathy for the Confederacy, almost fell victim to arbitrary arrest. Even individuals making speeches favorable to the South in Central Park were picked up, as were persons caught carrying Confederate money. Seward was determined to halt any pro-Southern discussion as well as any talk of peace. The arrests, of course, failed to stop the talk of peace. The arrests, however, did seem to stop the mob violence. Union men in the various communities realized that all they had to do to stop an individual from speaking of peace was to report that person to the authorities. Arrest was swift, and the speaker's voice was silenced — at least temporarily.

By 1862, the Union's position in the war had changed. The fight was going better; optimism was returning. In mid-February 1862, Lincoln issued a general amnesty for political prisoners. Suppression of political dissent had been necessary during the first months of the war, the president said, because of confusion and disloyalty. Now, the nation knew the difference between loyal and disloyal speech and behavior, and political prisoners could be released. The president's statement did not foreclose the possibility of future arrests, but he placed authority for such actions in the hands of Secretary of War Edwin Stanton, whose reputation for restraint was better than Seward's. Arrests did continue after February 1862 but to a far lesser degree. In 1863, Congress enacted legislation affecting the suspension of the writ of habeas corpus, providing access to the court system to individuals arrested and requiring lists of persons so arrested to be sent to federal courts. If grand juries found no cause to indict these prisoners and if they would take an oath of allegiance, they were ordered released.³²

Conclusion

During the Persian Gulf War many Americans felt as if they were experiencing something new in terms of suppression of dissent, restrictions on reporters, manipulation of information and the like. As the events highlighted above from the Revolution, the War of 1812, the Mexican War and the Civil War show, such an assessment of the situation could not be farther from the truth. In times of crisis, government leaders often feel that they can rule without the consent of the governed. That practice has a long heritage in this country and will take a long time to root out. Only by knowing this fact can Americans who care about participation in government be properly equipped to fight the battle that needs waging to ensure informed involvement in all kinds of decision making. By treating each instance of wartime restrictions as totally unexpected, we may indeed be perpetually doomed to repeat our history.

32. Alfred H. Kelly, Winfred A. Harrison and Herman Belz, *The American Constitution: Its Origins and Development*, 6th ed. (New York: W.W. Norton, 1983), 313.

If the past is any indication of the future, governmental efforts to restrict dissent and press activity in wartime should be no surprise. What may be the surprise is that such restrictions have continued for two hundred years without being changed. What the two hundred years should show is that no matter how strong the challenge to an administration's wartime plans, the nation has not fallen apart. In addition, no matter how poor — in the military's estimation — the press's performance, it has not cost the nation a victory.³³ Continued efforts at suppression and repression of the free flow of information, on the other hand, may well cost the nation some of its most prized freedoms.

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33. Most experts on the Vietnam War believe that government unwillingness to act as if the nation was really at war — including being honest with the people about the status of events in Vietnam — was the cause of the American problems there rather than press coverage. See Daniel C. Hallin, *The Uncensored War: The Media and Vietnam* (New York: Oxford University Press, 1986); Kathleen J. Turner, *Lyndon Johnson's Dual War: Vietnam and the Press* (Chicago: University of Chicago Press, 1985); and William M. Hammond, *Public Affairs: The Military and the Media, 1962-1968*. United States Army in Vietnam Series (Washington, D.C.: Center of Military History, United States Army, 1988).