

ADRIAN BRETTE

Free Speech in the Civil War

Abstract: During the Civil War, many Americans were prepared for censorship if free speech undermined preserving the Union. Journalists were unable to obtain timely accurate information on the military campaigns either for fear of helping the enemy or depressing morale at home. Self-censorship was far more important than official suppression of free speech, as spontaneous popular pressure curtailed freedom of expression at the beginning of the war and later on the army performed a similar function. For Federals, commitment to preserving the Union required treating Confederates as ubiquitous seditious conspirators. Combatting this internal enemy, in turn, especially in the Border States, required extensive suppression of free speech. Later in the conflict and right across the Union, the critical and urgent need to fill the ranks led to official censorship of any words that might discourage volunteering, and this conflicted with freedom of religion as well as speech and the press.

Keywords: Conspiracy, sedition, treason, self-censorship, expression, intimidation, propaganda, prepared news, enlistments, Civil War

The American Civil War took place when the right of free speech had new importance in liberal thought. The Crimean War of 1854–56 between Britain and France on one side and Russia on the other stimulated an intense debate specifically about free speech in wartime, and some British leaders emerged as champions of free speech. Yet while the Atlantic World appeared to be moving toward free speech as one of the essential freedoms of the individual, during the Civil War many Americans were prepared to restrict free speech. The Union and Confederacy were democracies whose success in the war would be determined by public opinion and in similar fashion both agreed that speech should be suppressed if it undermined either Confederate independence or preservation of the Union. Allowing dissenting voices the freedom of criticism, even with the constructive goal of holding the government to

account and improving its performance, had to give way to these higher goals. As President Abraham Lincoln said, “I must violate a piece of the Constitution so that all the rest may be saved.” Likewise, journalists in both the Union and Confederacy were usually unable to obtain timely, accurate, information on the military campaigns either for fear of helping the enemy or depressing morale at home. Another thing the Union and Confederacy had in common was a willingness of their citizens to self-censor and also encourage others to do the same.¹

The Union’s task was harder because the war was for many of its people both less popular and more complex than it was for the Confederacy. In the Confederacy, commitment to independence required suppression of unionist speech, a public suspension of disbelief as to any chance of failing to achieve independence, and warnings of the dire consequences of submission to Federals. This essay focuses on the Union and how spontaneous popular pressure curtailed freedom of expression at the beginning of the war and later the army performed a similar function. For Federals, commitment to preserving the Union required treating Confederates as ubiquitous seditious conspirators. Combatting this enemy, in turn, especially in the Border States, required extensive localized and official suppression of free speech. Later in the conflict and across the Union, the critical and urgent need to fill the ranks led to official censorship of any words that might discourage volunteering, and this conflicted with freedom of religion as well as speech and the press. Although Union officials suppressed free speech at certain times and places, self-censorship proved equally—and arguably more—potent.²

Although mid-nineteenth century Americans continued to rhetorically claim free speech as a historic natural right under the first amendment—after all, Marylanders in early 1862, facing restrictions on free speech by Union occupiers, asserted such a right by printing and circulating among themselves the Virginia and Kentucky resolutions—the transatlantic world witnessed an evolving debate about the place of free speech in liberal thought. Centralization of authority and the growth of democracy itself challenged freedom of speech by means of propaganda and self-censorship. Alexis de Tocqueville worried about the conforming pressures of an egalitarian democracy in the United States suppressing free speech. Self-censorship would mean Americans deciding not to take full advantage of their rights to free speech and free press. Tocqueville also speculated whether citizens’ obedience to norms determined by the need to appear and behave as equals would empower the federal government, which would benefit from not having to police unacceptable forms of speech itself.³

Meanwhile across the Atlantic, the French dictator lacked confidence in his people's ability to patriotically self-censor in wartime. For much of the decade before Tocqueville's death in 1859, two years before the Civil War broke out, France had been under the despotic rule of Napoleon III, whose regime in turn revealed something of a paradox about free speech, at least in wartime. In 1855, during the Crimean War, Napoleon declared that "at every stage of civilization in which we are, the success of arms, however brilliant they may be, is transitory. In reality, it is public opinion that wins the last victory." Nevertheless, the increased importance of public opinion in wartime served to restrict free speech in France. The emperor, to win the war and realizing his power relied on the support of the people, decided the press had to be censored and his agents paid for editorials delivering the right message. Meanwhile police collected information on private conversations and public sermons and speeches by politicians and priests alike.⁴

France's ally moved in the opposite direction and toward more free speech in wartime. During the 1850s, the importance of freedom of speech was advancing in the most powerful and influential power in the world at the time, Great Britain. This development was not surprising, as dominant nations in history tended toward idealism. John Stuart Mill's *On Liberty* was published in 1859, and Mill argued that "suppression [of free speech] robs both dissenters and holders of power." For, he explained, "complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action." Mill wrote during the time of the formation of the Liberal Party whose policies were based on free trade and the exchange of ideas. One of its leaders, William Gladstone, emerged as an important defender of free speech. In 1850, after visiting Naples' overcrowded prisons, he published a series of widely read and pungently written pamphlets condemning the Kingdom of the Two Sicilies. Its regime censored free speech as it persecuted the natural leaders of society and, as a result, undermined religion, economic prosperity, and the rule of law. The absolute rulers of this southern Italian state were "a negation of God erected into a system of government." The government was illegitimate because it suppressed the expression of "virtue when united with intelligence," leading to the "total inversion of all moral and social ideas." In particular, Gladstone condemned the persecution—by means of "arbitrary arrests and managed trials"—of those he believed to be "the most cultivated and progressive part of the nation," middle-class lawyers and journalists. The Catholic Church was at the forefront of censorship; its priests acted as "informers and perjurers" to crush dissent and restrict liberties of those who valued freedom. American

readers of Gladstone's pamphlets, especially nativist Know-Nothings alarmed at Catholic immigration from Ireland and Germany, came to see the Catholic kingdom as the antithesis of their own system of republican self-government.⁵

The emergent liberal creed also valued limited government, which in turn relied on the participation of active citizens in a network of voluntary associations cooperating with local government to superintend moral, charitable, educational, and welfare services. Only free speech enabled the transmission of moral and religious ideas that were essential for civic activism. Critically public and private thought and speech would have no division, for it was private initiative that alone drove progress and improvement. To this end, and against the opposition of entrenched interests in the aristocratic House of Lords, Gladstone led the campaign to repeal what he termed "taxes on knowledge," various duties on newspapers, which were abolished between 1855 and 1861. Within a few years, Britain had joined the United States with having mass circulation newspapers. Only the existence of free speech and free press would enable the "public welfare" and national interest to become understood and its leaders able to challenge elite special and class interests that hitherto had tended to dominate government.⁶

The power of this free speech movement was demonstrated when it flourished in Britain during the Crimean War. Indeed, a growing number of liberal journalists and politicians believed an unfettered right to free speech to be of particular importance in wartime, against the wishes of more traditional elite leaders. In 1854, John Delane, the editor of *The Times*, resisted attempts by the administration of Lord Aberdeen to censor critical coverage of the conduct of the Crimean War on the grounds that it gave succor to the enemy. The paper published letters from soldiers and officers highlighting the deplorable conditions that the troops suffered together with exposing the lethargy and incompetence of the commanders. There were even allegations that the paper paid soldiers' families to publish private correspondence. Nevertheless, Delane resisted these calls for censorship, arguing that it was in the national interest to expose the maladministration in the army and incompetence in the War Ministry. For too long, Delane and other radicals argued, war had been perceived as an aristocratic pastime in the service of narrow class interests, but it was the middle- and working-class soldiers doing the fighting and they had a right to be heard. The government fell from power in early 1855, replaced by one led by Lord Palmerston, a man who had an acute understanding of a free press and public opinion and was a close associate of Delane's. Once uncensored, the British public's support of the war increased, as did their ambitions for the goals of the war, and they were disappointed with the hasty

compromise Treaty of Paris in 1856 that ended the war and was championed by Napoleon III.⁷

Nevertheless, this triumph of free speech in Britain was contingent and had to be continuously defended. The lust for power by the few always instinctively clamped down on this liberty for the many, despite the higher and necessary purpose that free speech fulfilled. In 1858, news broke that a plot to assassinate Napoleon III in Paris had been planned in London. These revelations led to French demands for a clampdown on the activities of refugees in London, including making a conspiracy to plan a murder a felony rather than a misdemeanor. When Palmerston agreed with the French ambassador, Count Walewski, on the need for this measure, there was an outcry against an apparent attempt by foreign absolutists to limit British freedoms—Gladstone saw limiting speech as “a blow and a discouragement to that sacred cause in every country in the world” and yet another administration collapsed. The lesson of this episode was clear: “We talk of progress,” Gladstone insisted, “We believe that we are advancing but there is a downward and backward movement.” Mill agreed, warning of the consequences of times of “temporary panic when fear of insurrection drives ministers from their propriety.” Mill also worried about leaving free speech in the hands of a majority in a democracy and wondered that although the public backed free speech on this occasion, there was also the risk at another time “the government makes itself the organ of the general intolerance of the public.” Free speech was caught between traditional censoring despots, including Napoleon III, who saw an increasing need to control and manipulate public opinion and the novel coercive power of the majority in a democracy insisting all on conforming to its voice.⁸

There were specific issues that rendered free speech during a civil war especially fraught. Neither side believed it could afford the luxury of a change of administration during the conflict on the grounds of a scandal caused by free speech as the British were able to indulge with during the Crimean War. The Confederacy and Union shared the same limited means of curtailing free speech available to the mid-nineteenth-century state. The military on both sides interfered extensively with the telegraph and kept reporters well away from the theatre of war. Meanwhile there was much more limited and sporadic interference with the mails and printing presses.

The Confederates fought a war for independence. To be in public life, Confederate citizens agreed with that goal on which there was no room for dissent—unionists were silenced, deported, or cordoned off in out-of-the-way upland areas. Meanwhile enslaved African Americans understood that if they

wanted any voice, they had to flee to Union lines. Within that parameter of an agreed end of independence, there was a lively debate as to the means to get there, especially but not only in private correspondence and the secret sessions of the Confederate congress. Permitted public speech stayed away from attacking the army, focusing instead on personal attacks, and this criticism in turn targeted more civilian politicians, especially Confederate government officials, rather than military officers. President Jefferson Davis, unlike Lincoln, never found it necessary to suppress newspapers, even though there was in them plenty of vitriolic criticism of his administration. There was little accurate reporting on military news, and abuse of generals was limited, unless they happened to be, as in the cases of Gens. Albert Sidney Johnson and Braxton Bragg, closely associated in the public mind with the President. After he took command of the Army of Northern Virginia, Gen. Robert E. Lee forged an effective partnership with Davis, but he was always able to keep a certain distance from him in the public mind. The effectiveness of the self-imposed parameters on acceptable public speech created a stubborn faith in a Confederate future that in retrospect was also a delusion charted in *Colossal Ambitions*, which at the time sustained a powerful sense of Confederate nationalism that necessitated faith in eventual independence.⁹

The consensus on what could and what could not be said in public did fray later in the war. For a long time, the vision of the Confederate nation included the retention and expansion of slavery. Self-censorship about slavery's future relaxed during the last six months of the war once Lee had publicly called for the enlistment of male African Americans of military age in exchange for their freedom, and that of their families, after the war ended. Thereafter, and in part managed by politicians such as Judah P. Benjamin, the secretary of state, newspapers debated amelioration of slavery and the extent of a gradual, partial emancipation and the postwar status of freedpeople. At the same time, a division opened between public confidence and private misgivings about the future of the Confederacy as a whole. Politicians publicly continued to exude certainty that something will turn up, sustained by the propaganda dominating newspapers and political speeches that detailed the atrocities at the hands of Federal soldiers, a fate that awaited all southerners—including African Americans—should the Union somehow triumph. Private doubts as to whether the Confederates would be able to prevail had always existed but were never expressed publicly. Dissent was instead usually expressed by detachment from the Confederate project and, very rarely, flight across Union lines. There were protests, but these were for economic motives not against the war or for the Union. Also permitted speech included speculations as to the

future relations with the United States and other countries; Davis and his colleagues always knew coexistence, even cooperation, with their neighbor would be essential for their survival. It was those publicly advocating for the breakup of the Union who were silenced, as had happened to one of Davis's secretaries of war, Leroy Pope Walker. Confederates always wanted a short war ending in negotiation with the Union, not an endless war of conquest, and that governed what could be said in public.¹⁰

Federals regarded the Civil War in a very different light from that of the Confederates, and this perception had implications for free speech. To Federals, the war was in order to suppress an internal conspiracy led by a clique of slaveholders. Although in some practical matters—for example, both the blockade and treatment of prisoners of war—the Lincoln administration fought the war as if it was between two nations in accordance with international law, these concessions to the Confederacy's sovereignty made it if anything more vital to also treat the conflict domestically as a civil war to crush an insurrection. The rebellion had to be understood as a vast conspiracy against a monstrous enemy, which—even if led by an unrepresentative cabal of slaveholders—also had its dupes and hirelings everywhere in the United States, not only in the South, and with whom any kind of coexistence was impossible. This condition led rapidly to a crisis of free speech, driven by a spontaneous bottom-up pressure of self-censorship, which dramatically limited freedom of expression. Then, as the war drew on, government agencies attempted to police what “manner be temperate, and do not pass the bounds of fair discussion,” which was most fraught over the enlistment of troops. The army later emerged as an effective umpire on what free speech—even for the antiwar Copperhead Democrats—was permitted. The limits imposed on free speech always varied in time and place.¹¹

Demands for public displays of loyalty to the Union greeted the news of the Confederate shelling of Fort Sumter on April 12, 1861. Although rural areas probably did not exhibit the same mania, this phenomenon of expression manifested itself in a similar fashion in Baltimore and New York. George Templeton Strong, the diarist and later treasurer of the Sanitary Commission, witnessed and participated in insisting that homes, businesses, and—eventually—churches in New York display the Union flag or colors. In part this pressure was from the crowds that gathered outside the offices of the prominent proslavery, pro-Democratic Party, pro South newspapers, intimating that these businesses would be advised to fly the stars and stripes from their windows. These episodes were not mob rule in so far as the crowd was good humored, waving hats—the individuals were more middle class

than working class—once the flag was unfurled and “cheering lustily” after the police had leisurely moved them on. Nevertheless, it is easy to imagine that a huge crowd, however respectable, would have appeared intimidating, as it made a successive series of “domiciliary visits” to the offices of the *Journal of Commerce*, the *Express*, the *Day-Book*, and the *Daily News*. Prominent opposition pressmen were targets for more coercive treatments; James Gordon Bennett, the editor of the *New York Herald*, was “hooted” all the way up Fulton Street. Self-censorship also caused sudden revolutions in individuals’ publicly expressed opinions; in a week the *Herald* somersaulted from denouncing Lincoln to denouncing Davis, while a “Mr. Bell was a rank traitor sixty days ago, he is very loyal now.” On occasion the crowd’s behavior resembled those who had “tarred and feathered” loyalists during the Revolution; for the sin of flippant irreverence “Poke” Wright, a Locofoco, was publicly humiliated in the street and “required to go down on his knees & hurrah for the flag.”¹²

This sort of coercion to silence was present in the more complicated and volatile circumstances of Baltimore where the potential for violence was far greater. The news of the Confederate firing on Fort Sumter was received with indignation, and as a result the city became suddenly unionist and intolerant of secessionist opinion. “An individual, said to be from North Carolina, appeared in the street with a secession cockade in his hat,” Frederic Bernal, the British consul observed, “but the opposition was so great that he had to return to his hotel under protection of the police.” Nor was this an isolated incident; down in the harbor, anonymous individuals repeatedly and forcibly tore down a secession flag from a vessel’s mast and paramilitary “minute” men threatened to prevent a “secession party” attempt to fire guns in celebration of news of the surrender of Fort Sumter. The role of the police appeared to be neutral in protecting all freedom of expression, but most of the people seemed more determined to stamp out any public expression of support for secession and the Confederacy.¹³

Within a few days, the reality of violence and the approach of war suddenly shifted the parameters of what was constituted permitted speech and expression in Baltimore. Virginia’s secession on April 17 shocked the population and swung many behind secession who had been wavering before, and then, on April 19 the Sixth Massachusetts regiment arrived en route to Washington and had to cross the city on foot between stations. Encountering a brick-throwing crowd, the soldiers opened fire and fought their way through to the station, leaving twelve civilians and four soldiers dead and many more wounded. Suddenly it was public displays of unionist opinion that were unacceptable, and secessionists in the ascendant and formerly “[s]trong

Union men harangued the crowd, declaring they were no longer such.” Yet the situation remained in flux; Benjamin Franklin Butler, the general in command of those Massachusetts troops, swiftly used his political skills, in particular exploiting the symbolism of Fort McHenry as Maryland’s “Bastille” to intimidate secessionists with the threat of cruel punishments and encourage unionists, and soon had success as, once again, “The Union men have plucked up courage to declare abroad their opinions.” On April 29, the commissioner of police “wisely issued an order prohibiting the display of any flag.” This order clearly was not obeyed in Baltimore. In early May, the Union flag began to return to staffs; although, for the time being, it had to share the public displays with Confederate symbols, reflecting divided public opinion and momentary toleration of its expression in the Border State.¹⁴

Curbs on freedom of expression were often in advance of more direct moves to suppress free speech. These symbols meant more than a signal of affinity or patriotism in the abstract. To display the stars and stripes meant support for “law and order,” an intention to suppress “privy conspiracy,” and—above all—a desire to perpetuate “national life.” Foreigners in particular were suspected of disloyalty. Edward Mortimer Archibald, the British consul in New York, noted, “it has been demanded of me to hoist the ‘stars and stripes’ on the [consulate] building.” He and his colleagues warned British aliens resident in the Union to be careful to avoid political controversies and, right to the very end of the war, they had to cater to the recurring need to publicly demonstrate their loyalty and assuage suspicion. When Lincoln was assassinated, British aliens resident in New York unanimously agreed with their consul at a public meeting in the Hotel Astor that it was “expedient to make known their grief” by immediately wearing black crepe badges in public.¹⁵

Freedom of speech and religion were inseparable in the mid-nineteenth century. Liberal thought reinforced the first amendment that the only source of morality was from the unfettered speech of the people. The evangelical movement of the Second Great Awakening asserted the primacy of the individual conscience and action, yet suddenly, the demands of the Civil War imposed a collective and national conformity; the struggle was understood to be one between good and evil, and places of worship of all denominations had to accommodate this dichotomy, perhaps even announce a conversion to a new form of faith. Churches were subjected to unprecedented pressures across the Union. In Baltimore the solution to any conflict of interest was simple: “Congregations were dismissed from the churches without services being performed.” In New York, pressure on churches was also present

even as services continued; Strong and his fellow prominent congregants—including General John A. Dix, President Buchanan’s last treasury secretary—of Trinity Church, Wall Street, a bastion of the Church of England in America, called on the Rev. Dr. William Berrien to fly the flag from its steeple. They expected Berrien to demur due to his “fogeyism” (he had been rector since 1830 and probably disapproved of “low” church spontaneous evangelicalism because it undermined liturgical worship), but in this “memorable hour of excitement,” which must have resembled a revivalist meeting, the traditionalist cleric wholeheartedly agreed. Other Anglican priests were not so nimble in adjusting to the transformed context. In Newport, Rhode Island, the Rev. L. P. W. Balch prayed in his service for both the current presidents and then started to preach a secession-supporting sermon. His congregation, on finding their calls for him to stop ignored, then bodily expelled the priest from his own church.¹⁶

The press followed on the need for conformity whether in Chicago, Boston, Portland, Philadelphia, San Francisco, Buffalo and even in New York, where its newspapers before the war had a reputation for being notoriously disputatious. “Journalizing is a serious job just now,” Strong summed up on April 18, requiring “perfect unanimity, earnestness, and readiness to make any sacrifice for the support of law and national life.” Even before the crowds gathered silently outside Democrat newspaper offices, Strong predicted on April 15 that opinions that diverged from supporting the Lincoln administration would become self-censored because “growing resentment against their treasonable talk will soon make them more cautious in its utterance.” Due to rapid military censorship of telegraphs and journalists kept at arm’s length by generals and politicians alike, it was not high-minded purpose, as Strong hoped, but rather ignorance that drove press coverage. Newspapers were deprived of copy, and journalists fabricated reports and relied on rumors. In this context, newspapers tended to focus on personalities and not policies and it was in personal attacks that the “sublime swagger of their talk” continued. For example, newspapers demanded Lincoln arrest Supreme Court Chief Justice Roger B. Taney for hearing the Merryman case and called for Baltimore to be flattened in the wake of the April 19 riot. Strong wondered if there was a strategic rationale in the chorus of exaggeration, hyperbole, and “unblushing mendacity” emanating from the press. The demand for a single voice also had a strategic purpose, any appearance of Northern unity disappointed Confederates who had hoped to divide the North and that in turn “made them desperate.”¹⁷

American journalists were mainly subjected to what amounted to bureaucratic censorship that put them at a distance from the scene of battle, rendering them reliant on old news, official reports published months after the campaign had ended, rumor, and fabrication. In essence this informal control was Tocqueville's soft despotism in action; other than the military-controlled telegraphs, there was not much formal censorship but rather a process of limiting news that in turn enfeebled accurate press coverage. Localized official suppression did also occur. In Maryland and other Border States, manipulation was also in evidence as well as a more vigorous embargo on any information about the progress of the conflict almost as soon as the war started. "My sources of information have been greatly curtailed," complained Bernal, "and I am like everyone else reduced to the 'prepared' news of the orthodox journals." By May 9, "prepared" had become tantamount to a "war of propagandism." Given "a perfect dearth of reliable information," Baltimore having been cut off from the outside world when the railroad and telegraph lines were severed to the north, it was hardly surprising that speculation and opinion took the place of facts. The effectiveness of this "war of propagandism" had its limits, and it backfired with negative attacks on those politicians in Kentucky and Maryland who clung to a neutral position in the summer of 1861. On June 21, Bernal considered that "the rabid articles of the northern papers are working harm to the Union cause in the Border States." Soon "prepared news" was necessary elsewhere in the North.¹⁸

Newspaper coverage of the war, however prestigious the paper and the journalist, had to accommodate the requirement for this prepared news. The Civil War for the United States was not the equivalent of the Crimean War for Britain. When William Howard Russell of *The Times* was too candid in his assessment of the armies' performance at the Battle of First Bull Run, there was an outcry across the North. He had earlier spent two years with the British army in Crimea, freely spoke to the soldiers, and exposed the failures of the British authorities and commanders, notwithstanding complaints from Lord Raglan, the commander, that reports were useful to the enemy, revived the morale of Russian troops, and that even the Russian Czar himself read and was cheered by Russell's articles. Russell was evenhanded and accurate in his reporting of the first significant clash of arms in the war, but he was not forgiven for likening the Union army's chaotic retreat to that of the Chinese in the Taiping Rebellion. He insulted the Confederate army as well, adding of the Union flight, "just as its victory had been secured by the superior cowardice of the South." Anglophobia played a role in the reaction; on meeting Russell earlier when they went on a tour of Fort Monroe, Strong referred to the

Irishman's "Anglican deprecation of everything outside England," suggesting an impression of both Russell's arrogance and an elite New Yorker's resentment of any condescension.¹⁹

Journalists had to exercise tact and restraint even when they were telling the truth and dispensing facts during such a sensitive time for Americans. Russell learned a lesson in diplomacy in a fashion similar to that of novelist Anthony Trollope's fictional American senator whose public lecture in London had degenerated into a riot. "I cannot tell you how much I respect both your purpose and your courage," Lord Drummond, the senator's host told him, but then added, "I don't know how far it is wise for a man to tell any other man, much less a nation, of all his faults." Russell had an awkward reception when he came as a guest to dinner at the New York Club months after his Bull Run article dropped; many club members considered it "bad taste in extending the hospitality of the club to a man who was writing slanders against us and our cause to the most important paper in Christendom." Although on this occasion heavy drinking defused the situation, the U.S. military authorities soon made it clear that Russell would not be allowed near any scene of fighting during the next campaign season. In early 1862, he was told to report to Fort Monroe if he wished to obtain a pass to join the Army of the Potomac. When Russell arrived at the post, he was told the officer concerned was on leave and Russell needed to return at a later date. Once this charade repeated itself a couple of times, Russell got the message and left for Britain. The Civil War would not any longer be subject to his searing critical coverage. Great independent journalism would not be a feature of the Civil War. American journalists who demonstrated a similar independence of spirit received similar treatment; in essence constructive criticism was very hard to do without giving offense, although Russell came in for special treatment, reflecting the feeling that "Britain, not being with them must necessarily be against them is patent" across the North.²⁰

By the end of 1861, Lincoln gradually secured the Border States for the Union, and during this time permitted speech narrowed. Restraints on freedom of expression and the press had been at first determined by popular pressure in Maryland, and that meant both unionist and secessionist opinion and emblems were displayed. It was not until September 1861 that this coexistence of competing symbols completely came to an end when authorities ordered shopkeepers to remove prints and photographs of prominent Confederate generals and politicians from their windows, together with medals, music frontispieces, and envelopes with secession emblems. Clothes in red and white—the Confederate colors—had also to be removed from sale,

and even children had to dress appropriately, a nurse was detained for allowing her young charges to wear red and white socks.²¹

The US military occupiers quickly insisted that the Maryland police cease being evenhanded in their treatment of unionists and secessionists. On June 28, 1861, Gen. Nathaniel Prentice Banks—another politician (a former Speaker of the House) turned soldier—ordered one thousand soldiers to arrest the police commissioner Colonel Kane. Kane had been responsible in Baltimore for the policy of police neutrality when it came to displaying flags. The fact that Kane also had a reputation for being “free spoken and has strong southern sympathies” was sufficient for him to be arrested, even if he and his supporters had “totally given up the idea of opposing the Government in any way” and were “content to bide their time.” The justification for such detentions were anticipatory and defensive; terms used were “self-preservation” and “military necessity,” and in the case of Kane, if he was not a danger in June 1861, he might well be so in the future. Bernal considered the rationale for this caution to be informed by lies akin to the Popish plot in seventeenth-century England, which was a long and implausible story of a Catholic conspiracy against the life of King Charles II involving clumsily forged letters. “All this I believe arises from false reports told by Union men of plots, and conspiracies going on here,” the consul wrote to Lord John Russell, the British Foreign Secretary, “which I have a firm belief are as of no existence as were those of Titus Oates.” Two factors reduced Federal toleration of secessionist mutterings and increased censorship in Maryland during the summer of 1861: the approach of state elections in November and frustration over the slow progress of the war dooming hopes of a rapid Union victory.²²

The aftermath of the Battle of Bull Run prompted a further clamp down on secessionist speech in Maryland. Banks had effectively declared martial law when, in the aftermath of Kane’s arrest, he placed the police under the command of the provost marshal, a Colonel Kenly who was “a man of very doubtful antecedents.” For Bernal’s pro-Confederate friends, Kenly symbolized the intolerance of the mob silencing the speech of elite slaveholding gentlemen. Among other outspoken individuals, Kenly’s subordinates arrested two newspaper editors on September 13, 1861: Mr. F. K. Howard of *The Exchange* and Thomas W. Hall of *The South*. Mrs. Howard gave the British Consul lurid details of the bad conditions the men suffered in detention at Fort McHenry: no light, little food, squalor, and no bedding. As well as this deterrence, the newspapers were effectively closed, with both papers’ proprietors and successive editors also arrested. Even a newspaper with no opinion pieces and editorial comment—that is, just printing the “facts”—was “suppressed.”

The following year, a memorial that prominent Baltimore citizens submitted to Congress concluded that these acts had collectively “destroyed freedom of speech and of the press” in Maryland. The immediate objective was to ensure that the Democratic or Peace Party would be unable to print ballots on Election Day in November 1861 and, as a result, “left their opponents in quiet possession of the polls.” The exercise of democracy in wartime required the suppression of free speech because the Lincoln administration’s preferred candidates had to win the election.²³

This electoral triumph did not lead to a restoration of free speech in Maryland. The newspapers remained suppressed, and the political prisoners continued in custody. While the border state remained vulnerable to Confederate incursions and the loyalty of public opinion suspect, Federals forbade that hallmark of free speech: open debate. The ebb and flow of military fortunes in the eastern theatre determined official evaluations of the loyalty of Marylanders. There was a moment in the early summer of 1862, during a time when the war looked likely to end quickly with Union guns then audible at the Confederate White House in Richmond, when censorship appeared likely to be relaxed. Major General John Ellis Wool took command of the Middle Department at Baltimore in June 1862, and the appointment was regarded as a conciliatory move by opponents of the Union’s crackdown on dissent. It was the Confederate military revival that began soon afterwards, which ensured suppression of speech would continue in Maryland. For, early the following month, in the aftermath of the Seven Days’ Battles against Lee’s Army of Northern Virginia, Gen. George B. McClellan and the Army of the Potomac retreated from their positions, down the Peninsula of Virginia, to Harrison’s Landing. Given the proximity of this development across the Chesapeake, it would be impossible to stop news of this reverse from reaching Baltimore. The military authorities were determined to stamp down on any pro-Confederate conspiracy in Maryland, and on July 7, Wool told an unnamed Baltimorean “Gentleman” that “he could think what he pleases, but he should not talk” and warned “he was determined to arrest anyone who did so.” Once Wool had filled McHenry to capacity, he assured the potential Rebel that “he would send them to break stones” with the dregs of society and common criminals—the “Riff-Raff.” On the one hand, this episode suggests a toleration that known malcontents, such as this individual, were allowed their liberty provided they kept silent; on the other hand, the warning was palpable that not only was speech to be criminalized but also status in society was no protection from what would have been perceived as being punished akin to

enslaved people, not as political prisoners. Wool, a seasoned veteran, would have known this.²⁴

Given the lack of support Confederates received from the inhabitants when they did invade Maryland in early September 1862—albeit the Army of Northern Virginia only traversed more unionist districts inland—such restrictions on free speech appeared at the time to be both necessary and effective. After the Confederates retreated from the state in consequence of their defeat at Antietam on September 17, 1862, Maryland settled into a silent, perhaps sullen state of little news, but there was no more repetition of draconian and symbolic efforts of suppression, such as more political prisoners and newspaper suppression. Any assessment of the wisdom of the policy of suppression must contend with the fact that while twenty thousand military age male citizens fled from Baltimore and its environs to join Confederate armies, twice the number of Marylanders, forty thousand, served on the Federal side. Across the Union more generally, the question of free speech would also be intimately tied to the question of whether and how to compel civilians to become soldiers.

Farther from the front and also connected with political calendars and the progress of the war, state and federal governments acted to suppress free speech. Even in distant California, “several arrests have been made of persons reported to have given utterance to opinions favorable to the Confederate cause,” and they were confined in Fort Alcatraz. The Pennsylvania State Assembly allowed for the crime of verbal treason, as part of aiding and abetting in any way the enemies of the legitimate government, putting under suspicion those individuals who “knowingly and willingly shall aid any enemies in open war against this state,” including “persuading others to enlist for that purpose.” An act of war would include “carrying on a treasonous correspondence with them, or be in any wise concerned in forming any combination or plot or conspiracy.” Forbidden speech therefore curtailed reporting on the war because it would include supplying any intelligence that would benefit the Confederacy or secessionist supporters in the Union. But it was the following clause that in reality had most repercussions because it extended treason to include any “endeavor to persuade any person from entering the service ... or shall use any threats, or persuasion, or offer any bribe, or hold out any hope of reward, with the like intent to induce any persons or person to abandon said service.” The complexity of procedures to get soldiers to enlist, probably unforeseen by the legislators in Philadelphia at the beginning of the war, would ensnare many individuals into committing acts of forbidden speech. Many prominent Democrats had to become more

cautious in what they said because being under “the mere suspicion of being engaged in a treasonable intercourse with the South” would lead to the individual being “liable to be seized” and “his papers examined.”²⁵

The notion of the common good served as justification for the suppression of an individual’s free speech in emergencies. In a pamphlet, Horace Binney, Jr., the head of the Philadelphia Bar, judged that “public safety” was at times a higher interest and principle than personal liberty. However, Binney also argued that the applicability of this higher law had to be limited to time and to place where the exercise of otherwise legal speech had become an act of suspected complicity with rebellion. This public safety limitation of free speech would only be allowed when and where civilian courts were unable to function. Where that emergency was the case, suppression of free speech would be extensive because “the methods and devices of rebellion are infinite.” Speech would itself be an act of rebellion because “covert” as well as “open” rebellion was possible. Whereas this “precautionary principle”—preventing “treason in purpose” from becoming “treason in act”—would be inadmissible as evidence in civilian courts, it was “abundantly sufficient” in times of rebellion when forbidden speech would lead to “detention for a season.” This sort of speech included “an intercepted letter, an overheard conversation, a known proclivity, an unusual activity, an unusual transaction.” It need be “a suspicious fragment and no more,” the rest of the conspiracy “disguised or lying hid.”²⁶

An anonymous writer opposed Binney’s argument on the grounds of its ambiguity and scope for corruption of government officials enforcing censorship. The censor invariably would—as Mill had earlier warned—conflate “[h]is own safety he may think with that of the public.” The pamphleteer agreed with Tocqueville that complacency of citizens and their trust in officials would enable censorship because “the people of this country have hitherto enjoyed so much liberty” that “they are not sensitive or anxious upon the subject.” As a result, the population might not notice that free speech, due to the broad construction of the meaning of conspiracy and treason, would now be treated as an illegal action, as opposed to a legal thought. As a result, many citizens would find themselves unwitting criminals, on “the margin of disobedience,” unaware of the “slippery nature of the soil they occupy on the border between permitted and forbidden speech.” Suddenly Americans would be “suspected of being suspected” and, perhaps, being charged with “probable cause of suspicion.”²⁷

In addition to the extension of the definition of the crime of treason, religious-inspired pacifism also played a role in the first official moves by the

Lincoln administration to suppress free speech outside of the Border States during the nervous aftermath of the Battle of Bull Run. The *Christian Observer* was “seized and confiscated for preaching peace, and deriding the war as unholy.” Meanwhile Strong considered amidst the disappointments around him that there were “consolatory facts” in news that a Grand Jury had been presented with evidence that the antiwar *Journal of Commerce* and the *Daily News* and one or two other sympathizing newspapers were deemed to be “nuisances” and might then be indicted on these grounds. The progress of the war determined the pace of suppression. Following Gen. Ulysses S. Grant’s successes in Tennessee and McClellan’s advance on Richmond arose growing hopes for an early end of the war throughout the first half of 1862; this changing context suggested that these initial moves for censorship would not be followed up. However, this promising situation was transformed by a Confederate military recovery leading to offensives into both Maryland and Kentucky. Midterm elections and the move toward emancipation as a policy added to the political tensions at home, where the apparent fall off in volunteering appeared to be connected to disloyal practices.²⁸

The surprising and unwelcome prospect of a longer war meant that in the summer of 1862 the Lincoln administration decided to both adopt emancipation as a war measure to hit the Confederate war economy and extend recruitment of troops. Despite historians’ focus on the topic of slavery, it was the enlistment of troops—and the implied threat of conscription to follow—that aroused most opposition and led to suppression of speech. The timing of the July 1862 call by the Lincoln administration for the states to contribute their quotas—based on congressional district representation in the House—to make up 300,000 three-year volunteers, mattered. In contrast to the enthusiasm of a year earlier, the initial response was underwhelming and there were some calls for the Union to follow the Confederacy’s example and introduce conscription. However, Lincoln and many of the state governors feared the consequences such a policy would have for the electoral fortunes of the Republican Party in the November 1862 midterms, and Secretary of War Edwin M. Stanton compromised and combined an additional call for 300,000 nine-month volunteers, with the inducement of a federally funded one-hundred-dollar bounty for each volunteer and accompanied by the warning that if the quotas were not met, conscription would follow. No one wanted conscript soldiers; therefore, the government attempted to increase the incentives for volunteering, and that meant silencing any dissenting voices. “All U.S. marshals and superintendents, chiefs of police in any town, city, and district,” Stanton ordered on August 8, had the power to “arrest and imprison

any person who may be engaged by act, speech, or writing in discouraging volunteer enlistments, or in any way giving aid and comfort to the enemy, or in any other disloyal practice against the United States.”²⁹

Prepared news or propaganda in newspapers that suggested the war was almost over was timed for this enrollment drive in the summer of 1862. For weeks before the long-awaited and hard-fought Union victory at Antietam, journalists insisted—with no evidence—that Lee and/or General “Stonewall” Jackson had been crushed or captured. The press suggesting that the war would end soon and the hard fighting was already over might in theory entice hesitant volunteers to take the plunge and enlist. “Among the various means of promoting recruiting,” Archibald reported to Russell in September 1862, “none has been more efficient than the unscrupulous propaganda of false statements respecting the conditions, movements, and operations of respected armies in the field.” Citizens would not want to become soldiers to fight in an endless war but might be tempted to rush to the colors and be seen to do their bit for the republic before the Confederacy collapsed. “The impressions created by these false reports that the rebels are about to fall an easy prey to the overwhelming forces of the Union greatly helped stimulate the ardor, as well as swell the numbers of volunteers.”³⁰

The risk was if this fake news was subsequently found out to be over-optimistic about the present condition and future prospect of the Union armies. “The process by which they have been undeceived upon this point has damped their ardor,” Archibald wrote of this recent wave of volunteers who had arrived at the front only to witness Confederate victories and advances with the prospect of more hard fighting to follow. Not only were these new volunteers demoralized; they also distrusted those who had misled them, “and it is not likely to increase their faith in the leadership of those who could sanction so reprehensible a course of procedure.” Propaganda had its limits; there were enough complaints about the quality of Union troops without a grievance about being invited to enroll under false pretenses being added in. Yet the higher necessity remained: if the Union armies’ performances were not strong enough and the war was dragging on, whatever the demands of free speech, the growing need for additional men in uniform would mean additional manipulation, if not control and even suppression of free speech.³¹

For the Union’s war effort, the policy of encouraging volunteers by threats and subterfuge was a short-term success. The two calls collectively drew in over 400,000 three-year volunteers and another 100,000 for nine months, giving the Union sufficient soldiers for now. The significance for free speech

was twofold: first, evangelical Christians may have been instrumental in the reform movement, including support of abolitionism, but many also opposed war. Second, the definition of forbidden, harmful speech extended because any words that undermined volunteering might well lead to a draft in the future, and to avoid that worse outcome any speech interpreted as discouraging enlistment had to be suppressed. The higher laws of military necessity and self-preservation had effectively become more onerous, intrusive, and censorious. After this crisis, which lasted until the passage of the Enrolment Act and the first draft in March 1863, the debate settled down with a degree of permitted opposition speech—but there was a great deal of friction before that happened.

The prospect of an endless war frustrated an evangelical preacher who believed it delayed the coming of the millennium. On Sunday, August 31, 1862, the Campbellite minister Judson D. Benedict gave a sermon far from the frontlines, not in restive Democratic New York City but in solidly Republican upstate New York. The Campbellites were part of the American Restoration Movement, believing that Union and democracy were God's chosen instruments to enable people to live according to the ancient Gospel, vital to prepare for the coming millennium. Benedict preached to a mass congregation of between three and four hundred people in the town of Aurora in the Finger Lakes region, the heart of the old burnt-over district that was so prominent during the Second Great Awakening. Benedict chose as his theme the Sermon on the Mount and stressed its message of peace and that Christians should not engage in war of any kind. Turning to the call for troops and what it meant for his flock, he declared that men of military age should not volunteer, but if there was going to be a draft, the preacher advised them not to resist it and instead "submit cheerfully to any penalty that the law might impose." Presumably well-off congregants could contribute toward a collection of commutation money that might be payable in lieu of enlisting or perhaps pay for a substitute. Benedict stressed that, although he personally wanted the Campbellites to be treated like Quakers and be exempt from any draft, he also asserted the primacy of the individual conscience in deciding whether to enlist or even volunteer because the decision "was one for every man to decide for himself according to his understanding of the Word of God."³²

Notwithstanding this important caveat to a message of objecting to volunteering, a complaint was made about Benedict's sermon and the authorities acted quickly in response. Within forty-eight hours of delivering his sermon and before breakfast on Tuesday, September 2, Deputy Provost

Marshal Stevens called on Benedict. According to Benedict's later testimony, the officer served no paper and offered no explanation for the arrest, simply stating "I have an unpleasant duty to perform, I have come to arrest you—I assume you are willing to go with me without opposition?" "Most certainly," the preacher replied. The cleric then was detained by the military for a couple of weeks before being handed over to civilian custody at a prison in Buffalo in what appears to have been a pretty chaotic manner. The military's decision to get Benedict out of their custody was probably prompted by a petition of prominent citizens of Aurora, led by general of the militia Aaron Kelly, the town's leading businessman, sometime member of the New York State Assembly, and deputy sheriff of Erie County, whose unimpeachable loyalty to the Union cause was testified by the fact that he had earlier raised three regiments to fight in the Civil War. The result of this lobbying was that Benedict appeared in court on Thursday, September 23 before Judge Nathan K. Hall, and in the packed courtroom was a journalist from the *Buffalo Courier*.³³

The trial gave clarification on what now constituted illegal speech. William Allen Dart, the U.S. attorney for the northern district of New York, announced that Benedict was charged with "uttering seditious language, tending to discourage enlistments, and (more generally) calculated to weaken the confidence of the people in the government." In mitigation, the petitioners had already deposed that they had "attentively listened to the said sermon" and "can put no such construction on it." In his oral arguments, Albert Savin, the defense attorney, adopted a wise approach of not directly challenging the legality of Stanton's order; instead, he followed Binney's logic and claimed such suppression of free speech should only apply in places currently under martial law. Savin singled out Baltimore as a place where such restrictions on free speech were "entirely justifiable" because it was where "such dangerous conspiracies against the federal government" existed. This situation did not apply in Erie County, where the lawyer was "thoroughly convinced that there cannot be found twenty real disloyal persons among the 14,000 voters residing." The court agreed with the defense, free speech should be protected unless there was evidence that it could be the visible part of a dangerous conspiracy indicated by an overt and substantial minority of secessionist support.³⁴

Both the *Buffalo Courier* journalist and the petitioners challenged Stanton's order on the grounds of the difficulty in recognizing disloyal practices as a legal term. Its inherent lack of clarity meant "every arresting officer is left to interpret as his prejudices, his passions, and his interest, may

incline.” The present dire and, more importantly, contentious situation of the war would render illegal speech both easy to commit and impossible to define objectively. Importantly, censorship could be abused as a political weapon by officials, given there were well-known political generals leading Union armies. For example, the journalist explained, a Democrat policeman “might conclude that to speak disparagingly of the military conduct of General McClellan was a disloyal practice and tended to discourage volunteer enlistments; while another [Radical Republican] might consider the abuse of McClellan a virtue and hold the expression of a doubt of the superlative ability of Frémont as a disloyal practice of the deepest dye.” To rule such “disloyal practices” illegal, the journalist concluded, “might suppose that any person who read aloud the newspaper accounts of the retreat of General Pope’s army ... and express a doubt as to the competency of that General, was discouraging enlistments and giving aid and comfort to the enemy.”³⁵

As well as potentially suppressing valid and constructive criticism of the war effort for political purposes, any conviction of Benedict would have had more direct consequences for freedom of religion. Peace doctrines had been preached before and during the Civil War, and separatist congregations much more influential and numerous than the Quakers might be vulnerable. Furthermore, potentially disloyal speech had been protected. In the winter of 1861 before the adoption of emancipation by the Lincoln administration, the Plymouth Brethren had welcomed Rev. Dr. George B. Cheever to preach at the Plymouth Church of the Pilgrims in Brooklyn before an audience of 2,000. In his fiery abolitionist sermon, Cheever had declared that “no Christian in any way could give aid to the administration in the prosecution of the war without sinning against God” if it led to reunion with slavery still in place. Those words were far more direct than those of Benedict in their “language calculated to weaken the confidence of the people in the government,” let alone discouraging people to volunteer to fight for the Union as it then was. However, although some conservative supporters of the Lincoln administration disapproved of the radicalism of the sermon, especially when it was printed as a pamphlet, “nobody believed Dr. Cheever should be arrested.” Such pragmatic accommodation was necessary between a government needing to fight a huge war reliant on public opinion, with the narrowness, isolation, and absence of perspective natural to devout idealists including abolitionists. Nevertheless, a preacher’s “strong conviction of duty” might not provide a sufficiently convincing defense of free speech for the Lincoln administration if it interrupted the vital supply of soldiers volunteering. This problem remained acute because the president hesitated to apply

conscription with an election nearing. Conscription would limit the harm antiwar sermons posed by allowing congregants to disobey a preacher's command with good conscience, but at the same time the process of the draft provided yet more scope for individuals to offer harmful and therefore potentially illegal speech.³⁶

The prospect of financial reward incentivized individuals to interfere with the recruitment process and, therefore, potentially utter forbidden speech. To forestall the fraught need to conscript men, the system of bounties introduced in September 1862 was extended. Municipalities, counties, districts, and states might each offer their own bounties, and given the sums involved, in today's money payouts of three to five thousand dollars, bounty jumpers and bounty brokers established themselves. One creative individual managed to qualify himself for thirty-three bounties and thus make a fortune before being caught. Filling the ranks had become a business, and morally distasteful it was to some observers; as early as August 1862, "notwithstanding the large bounties offered," Archibald fastidiously cautioned, "the enlistment enthusiasm appears to be very spasmodic. The fighting part of the 'Rebellion' is becoming very distasteful hereabouts" in New York City. Individuals, including non-U.S. citizens ineligible for the draft, uttered forbidden speech as they tried to dissuade individuals from enlisting, either to offer themselves as paid substitutes instead or persuade the would-be volunteer to instead to subscribe to a club to fund commutation fees or take up the services of the bounty broker on commission. The upshot was that individuals who were financially vested in delaying or preventing eligible men from volunteering gathered around the recruitment centers. This chicanery meant "Imprisonments for discouraging and speaking against enlistments, are commencing." Consul Archibald's underlining of the word demonstrated his worry about the ease of now uttering forbidden speech.³⁷

The recruitment tents in City Hall Park in Manhattan were well patrolled, and the British consul was regularly called upon to deal with British resident aliens being arrested for illegal speech. On August 27, William A. MacDonald was arrested for "publicly discouraging enlistment in the U.S. army," which constituted an act "against the peace and security of the country." Alfred Phillips, Alex Chisholm, and Hugh Boyle were all detained at Fort Lafayette "for interfering with enlistment; having endeavored to dissuade a person from enlisting at a recruiting station while in the act of joining the army." However, resident aliens were a minority of those arrested by Provost Marshal John A. Kennedy for "assumed treasonable language and conduct," and a group of ten was taken to Fort Lafayette in late August on the pretext of "the alleged

offence of violating the order of the War Department in regard for the enlistment.” Custody turned out to be brief; they were all suddenly released the following Wednesday, September 10.³⁸

Just as with the contemporaneous detention and release of the recalcitrant preacher Benedict, it was the critical war situation that drove these alternating clamp downs on free speech and then their arbitrary relaxation. The press during early September 1862 had been crowded with erroneous optimistic accounts of war news and this complacency turned to a sense of panic when news broke of Lee’s victory at the Battle of Second Bull Run followed by his invasion of Maryland. This magnitude of Confederate success could no longer be concealed, and earlier attempts at fake news—reports of Confederate armies allegedly destroyed to encourage enlistments—were now revealed to be false. There was less popular toleration of restriction of free speech at a time when there was “the revulsion of feeling caused by the mismanagement of the war” arising from the “incapacity and imbecility of the government.” The upshot was that the local and state administrations thought it politic to relax limitations on what could be said in public and that those individuals accused of treasonable language against the draft had their offenses simply voided by the postponement of the draft. Later, after the draft riots in July 1863, New York City would raise a sum in lieu of its quota of soldiers to again defuse heavy-handed curtailment of free speech.³⁹

Nevertheless, the war’s military crisis in the late summer and early fall of 1862 did not mean an era of a right to absolute free speech had arrived, just a less intrusive presence of government suppression. Besides, self-censorship remained after the announcement of the news of the victory at Antietam and the Preliminary Emancipation Proclamation. “The comments of the [Democratic Party] press are naturally restricted and qualified by a consideration for the present exigencies of public affairs.” Papers of all persuasions agreed on the need to vigorously prosecute the war and to refuse to join any talks directed at a compromise peace with the Confederacy. The suppression of opposing views spread during the first two years of the war. Governor Israel Washburn Jr. of Maine had earlier declared that “At the present time and under existing circumstances, a conditional Union man is an unconditional traitor.” By 1863, *The New York Times* warned the *New York Tribune* that recommending negotiations with the Confederacy was too much. The *Times* claimed that the war had polarized opinion and “he that is not for me, is against me” nothing conditional, no “ifs and buts” would be tolerated. More conformity of opinion, which had once seemed only appropriate for one-party-states such as Maine, where the Republicans won over 60% of the vote in

1860, now also seemed applicable for much more divided states such as New York. The conduct of the war and policies including emancipation could be constructively criticized “with as much freedom as under present circumstances, can be expected.” Even with or perhaps because of this self-restraint, Democrats won the gubernatorial and state assembly elections in both New York and New Jersey in November 1862. Legitimate therefore was that “expression had been given to a feeling of general discontent with the condition of public affairs.”⁴⁰

Within these parameters of permitted opposition speech, the newly elected Democratic governor of New Jersey, Joel Parker, gave his inaugural on January 20, 1863, and avoided expressing any open desire for a ceasefire and negotiation with the Confederacy. Instead, he used historical examples of the damage restraints on free speech inflicted during the secession crisis two years before, when Parker argued self-censorship, majority tyranny, and the silencing of opponents collectively damaged debate, removed a vital sense of perspective from the leadership on both sides, and led to policy mistakes. The conspiracy theory of a cabal of slaveholders plotting the overthrow of the republic was, according to Parker, greatly exaggerated and an example of how “wrong impressions furnished with partial information” led to the secession crisis. “Politicians, to gain place and power indulged in the most abusive of epithets. The rostrum, the pulpit, and the press, fanned the flame of hate. Publicists ridiculing the resources, morals, and courage of the people of a whole section were scattered broadcast over the land.” The result of this polarization of public opinion was the triumph of the extremists on both sides: “The voice of reason was hushed by the storm of passion and angry strife. Ultraism ruled the hour, and the councils of moderation and conciliation were unheeded.” Having blamed the breakup of the Union on the failure to exercise the right of free speech, Parker then by implication upbraided the Lincoln administration for its current policy of censorship. In accepting war, its citizens “had a right to expect that their own constitutional privileges would be respected. They did not expect that in order to suppress rebellion, the inalienable liberties of the loyal citizens [would] be sacrificed.”⁴¹

In accordance with Mill’s theory on the importance of free speech and consistent with Parker’s own moderate views, the Governor argued that ending censorship would empower the administration. Parker argued that suppression of free speech and other rights weakened the government and its war effort as “a general consciousness of insecurity of rights” undermined any power derived from the people. Above all, it would not be possible to conquer the Confederacy unless the people of the United States were united. In order to

achieve that unity, “all must control their passions and sacrifice their prejudices. We must have due regard for the opinions of others” and, in a clear reference to Stanton’s August 8, 1862, order, “not be prone to impute disloyalty to those who entertain adverse views as to questions of policy.” By 1863 therefore, the Democratic Party appeared to have carved out some permitted speech and freedom to criticize the Lincoln administration, justified by history, on matters relating to the conduct of the war.⁴²

For at least the last two years of the war, the most effective agent of censorship was the army itself, composed of hundreds of thousands of armed voters increasingly censorious of those who, by their choice of words, undermined morale by advocating an early compromise peace with the enemy. Soldiers claimed that Copperhead Democrats had portrayed the war as unjust and if allowed to continue with this kind of speech would lead to the necessity of conscripts replacing volunteers in the ranks. Therefore, the army, whether directly as in the suppression of the draft riots in New York or indirectly in its warnings to Illinois Copperhead Democrats, acted as a powerful constraint on Democrats giving too much voice to their discontent. By 1863 the need to fill the ranks had indeed become critical. In March 1863, Congress passed the Enrollment Act, which declared that all men aged between twenty and forty-five were eligible to be conscripted. Four calls then followed: one in July 1863 and three more in 1864. As with the earlier calls for volunteers, states had quotas to fill but now had the formal process of conscription to top the numbers up when necessary. No soldier in the field wished to fight along side conscripts.

From 1863, the soldiers in the field became the vanguard of an intolerant (of dissent) radical unionism, culminating in their overwhelming support for Lincoln in the presidential election of 1864. In order to achieve that triumph, the opposition had to be censored, corralled, and controlled into something acceptable. An example of this pressure to moderate different opinions can be seen in the Midwest in early 1863. The context of the war was a difficult one for unionist speech and a promising one for Peace Democrats; militarily the war looked in stalemate with a recent defeat at the Battle of Fredericksburg and the progress of the Vicksburg Campaign looking uncertain at best. The March 1863 Enrollment Act rather than the earlier Emancipation Proclamation had diminished the popularity of the Federal and state governments. Controversial policies and a poor military performance united to stimulate a surge of Copperhead support in the Illinois state assembly. The Illinois regiments stationed in Memphis, Tennessee, denounced individual Copperhead Democrats and more generally warned them that the “War on Secession”

was not “confined to the South” and that “the habits of destroying the property and taking the lives of traitors,” which the soldiers had learned in their advance through Tennessee, were so sufficiently engrained “that they did not think they would leave off the habit when they got home.” It was clear that the threat of the soldiers restrained freedom of speech by intimidating opponents of the Lincoln administration into silence. The Illinois Copperhead Democrats had, according to the soldiers, crossed a line between acceptable and unacceptable speech when they called for an armistice and a national convention of the states, even if they technically still supported the restoration of the Union.⁴³

It was the army that provided the backstop for the government when the greatest crisis of the war came in the summer of 1864. Two of the three calls that year for more troops, one in March and the other in July, strained the enthusiasm of the volunteers, and by the time of the latter there was intense frustration at the shattering once again of expectations of an early end to the war with Grant’s by then prolonged clash with Lee in the Overland Campaign in Virginia and Gen. William T. Sherman’s slow advance through Georgia toward Atlanta. In this context, it followed that, as Archibald put it, the “[v]oice of the Peace Democrat Party is working its effect.” By August, with military deadlock coinciding with the party conventions heralding the approach of the 1864 presidential election, the Democrat press was testing the limits of permitted speech by “becoming bolder and more bold in its tone of censure of the mismanagement of the war.” Lincoln feared the possibility that he might lose the election, and the opposition press in turn was anxious, lest the intimidation of the press might be extended to Democrat voters in general, and thus was “fierce in its denunciations of undue power used by the Government in influencing the election.” The barrier to Democrat electoral success and the main suppressant of opposition speech was the Republican Party’s buildup of an immense and powerful constituency in the army of citizen soldiers, well paid by “voluntary enlistment under an offer of economic bounties, paid partly by municipal, partly by federal, and largely by private institutions,” and the estimates for each bounty were now twelve thousand dollars in today’s money. As the consul concluded, Lincoln as “commander-in-chief of the armies, would necessarily tend to give a control to the Party in power in deciding the soldiers’ votes.”⁴⁴

The army by the final year of the war acted as the control and censor of free speech, particularly in that most contentious area of enlistments. Legitimate expression of dissent was confined to abstract rights, historic rights, and the narrow present criticism of operational management and tactics in the war, about which newspapers were usually in any event ignorant, given

the journalists' distance from the front lines—thus the generic or personal ad hominem nature of criticism. For enough northerners, the war's significance in deciding the question of the survival of the republic justified silence and obedience and loyalty to the citizen soldier. From the beginning of the conflict, the portrayal of Rebels and their northern allies as a vast nationwide conspiracy had been an indispensable tool of censorship and self-censorship. This internal nature of the enemy meant vigilance and precautionary principle as the threat of a Trojan Horse remained ubiquitous. For example, at many times in the war, Confederates hoped for, and Republicans feared, another secession wave leading the formation of a new confederacy of midwestern states. But throughout the war outside the Border States at least, a draconian official enforcement of censorship was impossible and the incidents of a crackdown tended to be counterproductive when they were attempted in August and September 1862. The way to abridge harmful speech in wartime was done most effectively by compliant self-censorship by most Americans. These limitations would be perceived as less onerous and visible when a legitimate loyal opposition was permitted, dedicated to working toward the common goal of reunion with no preconditions and to raise the performance of the real focus of loyalties: the president, commanders, and armies when they seemed most in need of constructive criticism.

Arizona State University

NOTES

1. Lincoln quote from Robert H. Bork, *The Tempting of America: The Political Seduction of the Law* (New York: Simon & Schuster, 1990), 54.

2. J. Cutler Andrews, *The North Reports the Civil War* (Pittsburgh: University of Pittsburgh Press, 1955) and *The South Reports the Civil War* (Princeton, NJ, Princeton University Press, 1970); Arthur Bestor, "The American Civil War as a Constitutional Crisis," *The American Historical Review* 69, no. 2 (1964): 327–52; William A. Blair, *With Malice towards Some: Treason and Loyalty in the Civil War Era* (Chapel Hill: The University of North Carolina Press, 2014); Archibald Cox, *The Role of the Supreme Court in American Government* (New York: Oxford University Press, 1976; 1981), 1–55; Donald T. Critchlow, *American Political History, A Very Short Introduction* (New York: Oxford University Press, 2015), 46–66; Michael Kent Curtis, "Lincoln, Vallandigham, and Anti-War Speech in the Civil War," *William & Mary Bill of Rights Journal* 7, no. 1 (December 1998): 105–92; Amy Greenberg, *A Wicked War: Polk, Clay, Lincoln, and the 1846 U.S. Invasion of Mexico* (New York: Knopf, 2012); Robert S. Harper, *Lincoln and the Press* (New York: McCraw-Hill, 1951); Forrest McDonald, *States' Rights and the Union: Imperium in Imperio, 1776–1876* (Lawrence: University Press of Kansas, 2000), 165–215; James M. McPherson, *Battle*

Cry of Freedom: The Civil War Era (New York: Oxford University Press, 1988); Mark E. Neely Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991) and *Lincoln and the Democrats: The Politics of Opposition in the Civil War* (New York: Cambridge University Press, 2017); Rush Welter, *The Mind of America, 1820-1860* (New York: Columbia University Press, 1975).

3. "Resolutions passed in 1798–99 by the legislatures of Virginia and Kentucky defining the powers granted under the constitution to the federal government. These resolutions have been reprinted here for private circulation" (Baltimore, 1862); Alexis de Tocqueville, *Democracy in America*, 2 vols. (New York: George Dearborn & Co., 1840; repr., New York: A.A. Knopf, 1945), 2:317–22.

4. Orlando Figes, *Crimea: The Last Crusade* (New York: Penguin, 2010), 311–13. Napoleon quoted in Figes, *Crimea*, 311.

5. John Stuart Mill, *On Liberty and Other Essays*, ed. John Gray (New York: Oxford University Press, 1991), 20–61; H. C. G. Matthew, *Gladstone 1809-1874* (New York: Oxford University Press, 1986), 50, 80–81, 96; Richard Shannon, *Gladstone: Peels Inheritor, 1809-1865* (New York: Penguin Putnam, 1999), 228–34, 238–42, 246.

6. Matthew, *Gladstone*, 106, 113–14, 135; Shannon, *Gladstone*, 406, 414, 416–17, 421, 433, 436–37, 440–42, 445.

7. Figes, *Crimea*, 148–49, 310.

8. Robert Blake, *Disraeli* (London: Methuen, 1969), 378, 381, 404; Shannon, *Gladstone*, 342, 346.

9. Emory Thomas, *The Confederacy as a Revolutionary Experience* (Columbia: University of South Carolina Press, 1971), 75; Adrian Brettle, *Colossal Ambitions: Confederate Planning for a Post-Civil War World* (Charlottesville: University of Virginia Press, 2020).

10. Bruce Levine, *Confederate Emancipation: Southern Plans to Free and Arm Slaves during the Civil War* (New York: Oxford University Press, 2006); Judah P. Benjamin to Fred. A. Porcher, December 21, 1864, box 1, Robert Douthat Mead Papers about Judah P. Benjamin, 1930-1970, Accession #9989, Special Collections, University of Virginia Library, Charlottesville; Catherine Ann Devereux Edmondston, *Journal of a Secesh Lady*, eds. Beth G. Crabtree and James W. Patton (Raleigh: the North Carolina Division of Archives and History, 1999), 50.

11. Mill, *On Liberty*, 59.

12. George Templeton Strong, *The Diary of George Templeton Strong*, 4 vols., eds. Allan Nevins and Milton Halsey Thomas (New York: Octagon Books, 1952), 3:119–123.

13. Frederic Bernal to Lord John Russell, April 15, 1861, Piece 784, "Consuls at Baltimore Barclay Bernal," Class 5, Group FO, Public Record Office at the National Archives, London, UK (collection hereafter cited as PRO).

14. McPherson, *Battle Cry of Freedom*, 285; Bernal to Lord Lyons, April 20, Bernal to John Russell, April 29, May 13, 20, 1861, Piece 784, PRO.

15. Strong, *Diary* 3:124; Archibald to John Russell, April 27, 1861, Piece 778, "America Consul at New York Archibald January to June 1861," PRO; *New York Herald*, April 19, 1865; Archibald to Earl Russell, April 19, 1865, Piece 1023, "America Consul at New York Archibald January to June 1865," PRO.

16. Bernal to John Russell, April 22, 1861, Piece 784, PRO; Strong, *Diary*, 3:124, 136–37.

17. Bernal to John Russell, April 22, 1861, 121, 123–24, 138, 144; Bernal to John Russell, May 30, June 14, 1861, Piece 784, PRO. The consul was present when Taney issued his writ to release Merryman from detention and he described the Chief Justice as “a venerable old man of over eighty years of age—but still in full possession of his intellect—a lawyer unsurpassed in all the world—whose boast it is that no decision by him has ever been reversed—calmly but boldly in a crowded court annunciate that great bulwark of Anglo Saxon liberty, the doctrine of Habeas Corpus. I was introduced to the Chief Justice at the conclusion of the proceedings, & could not forbear telling him (privately), how it had gratified me to hear him asserting principles so dear to Englishmen. He made a very feeling reply; that he had been brought up to study, & revere, the English Common Law, and that, pained as he was to be so obliged, at such a moment, he would not shrink from asserting its glorious principles, which were likewise those of the [U.S.] Constitution.”

18. Bernal to John Russell, June 24, September 9, 1861; Maryland General Assembly, House of Delegate, Committee on Federal Relations, *Report of the Committee on Federal Relations in Regard to The Calling of a Sovereign Convention* (Frederick MD: E. S. Bailey, 1861).

19. Figes, *Crimea*, 308–10; Strong, *Diary*, 3:164, 170–74, 200–1; Charles Kortwright to John Russell, June 4, 1861, Piece 787, Philadelphia PRO.

20. Anthony Trollope, *The American Senator* (London: Chapman and Hall, 1876–77; repr. Oxford: Oxford University Press, 2012), 544.

21. Bernal to John Russell, September 10, 1861, Piece 784, PRO.

22. Bernal to John Russell, June 14, 28, July 2, 16, 1861, Piece 784, Enclosure of Memorial, Bernal to Earl Russell, November 29, 1862, Piece 847, “America Consuls at Baltimore Boston Buffalo Bernal Lousada Donohoe January to December 1862,” PRO; John Miller, *James II: A Study in Kingship* (London: Methuen, 1978), 87–89, 100, 112.

23. Bernal to John Russell, June 28, August 19, September 13, October 14, November 8, 1861, Piece 784, Enclosure of Memorial, Bernal to Earl Russell, November 29, 1862, Piece 847, PRO.

24. “The details of the recent battles in front of Richmond are wrapped in such a mass of confused, and contradictory accounts, and rumours, that it’s almost impossible to arrive at their results—One thing is clear—that inasmuch as the Confederates fully calculated on surrounding, and capturing, the greater portion of Gen. McClellan’s army they have, so far, failed. On the other hand, the raising the siege, the capture of guns, stores and prisoners fully entitles them to claim a decided success.” Bernal to John Russell, July 7, 1862, Piece 847, PRO.

25. M. Lane Booker to Russell, October 15, 1862, Piece 849, “America Consuls at San Francisco Booker,” PRO Enclosure in Kortwright to Russell, April 22, September 2, 1861, Piece 787, PRO.

26. Enclosure in Kortwright to Russell, January 20, 1862, Piece 845, “America Consuls at Philly Kortright Crump January to December 1862,” PRO; Strong, *Diary*, 3:135.

27. Enclosure in Kortwright to Russell, February 25, 1862, Piece 845, PRO.

28. Kortwright to Russell, September 2, 1861; Strong, *Diary*, 3:175.

29. *Opinion of Judge N. K. Hall, of the U.S. district court for the Northern District of New York, on Habeas Corpus in the case of Rev. Judson D. Benedict; and Documents and Statement of Facts Relating Thereto* (Buffalo, NY: Joseph Warren & Co., 1862).

30. Archibald to Earl Russell, September 4, 1862, Piece 842, "America Consuls at New York Edwards Archibald July to December 1862," PRO.
31. Archibald to Earl Russell, September 4, 1862, Piece 842.
32. Denis Donahoe to Earl Russell, October 7, 1862, with enclosures, Piece 847, PRO.
33. Opinion of Judge Hall, 23–24, 28.
34. Opinion of Judge Hall, 22, 28, 34.
35. Opinion of Judge Hall, 7–8.
36. Opinion of Judge Hall, 21–22.
37. Archibald to James Murray, August 19, 1862, Piece 842, PRO.
38. Archibald to Earl Russell, September 4, 13, Archibald to John Kennedy, August 30, John Kennedy to Archibald, September 1, 1862, Piece 842, PRO.
39. Archibald to Earl Russell, September 13, 1862, Piece 842, PRO.
40. Archibald to Earl Russell, September 24, 1862, Piece 842, PRO; *Address of Governor Washburn to the legislature of the State of Maine January 9, 1862* (Augusta, ME: Stevens & Sayward, 1862), 6; *New York Times*, February 7, 1863.
41. "Inaugural address of Joel Parker, Delivered at Trenton, Upon Taking the Oath of Office as Governor of the State of New Jersey, January 20th, 1863" (Trenton, NJ: David Narr, 1863).
42. Inaugural address of Joel Parker, 12, 15.
43. *New York Times*, January 26, 1863.
44. Kortwright to Earl Russell, August 6, October 31, 1864, Piece 974, PRO.