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**HATED IDEAS**  
**AND**  
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**HAZEL DICKEN-GARCIA**  
**GIOVANNA DELL'ORTO**

**MARQUETTE BOOKS LLC**  
**SPOKANE, WASHINGTON**

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**For**  
**JOHN D. STEVENS**  
**and**  
**DARIO and PAOLA DELL'ORTO**



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Hazel Dicken-Garcia  
Giovanna Dell'Orto  
Fall 2007

## INTRODUCTION

# JOURNALISTS AND TOLERANCE FOR HATED IDEAS

A May 4, 1861, *Harper's Weekly* column titled "Go, or Keep Still" warned readers of acts not to be tolerated in the war just begun.<sup>1</sup> "Every man who, by word or deed, sympathizes with rebellion should be marked and watched ... to see that he does no mischief." The writer declared that "every attack upon private property or upon individuals" must be "as sternly discountenanced as treason and traitors." He added that giving "aid and comfort to the enemy" was an act that the "Constitution declares ... to be treason."<sup>2</sup> Although exactly what the writer meant by doing "mischief" is unclear, he was unambiguous that, in a climate where "every man is a friend or foe," identifying the "foe" off the battlefield required vigilance about words and deeds.

We begin this book with the *Harper's Weekly* column because journalists, who often invoke First Amendment protection for freedom of the press, might be expected to appeal for vigilance *against* suppression. But did they do that during the Civil War? This book focuses on journalists' views about rights to express hated ideas as they reported on four events during the war's first two years.<sup>3</sup> The term "hated ideas" here means ideas despised by one person or a

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<sup>1</sup>The cover of that 1861 issue is reproduced on the cover of this book.

<sup>2</sup>*Harper's Weekly: A Journal of Civilization* 5: 227 (New York, May 4, 1861): 274.

<sup>3</sup>At the time, American press reportage generally included commentary. The term "coverage" is used throughout this book to mean both journalists' commentary about, and reporting of, events and issues.

group, regardless of whether the ideas are held by a minority or majority of a population.

There exists no set of agreed-upon hated ideas in the United States. As this book shows, what was hated on one side of the dispute (e.g., abolition) during the Civil War was cherished on the other side. Furthermore, the legal tradition in the United States is that ideas do not lose First Amendment protection because they may be hated by some or even a majority. John Lofton, historian and former chief editorial writer at the St. Louis *Dispatch*, wrote that “the truest measure of the press’ commitment to freedom of the press is its willingness to defend the First Amendment rights of those with opinions differing from its own or of the proponents of unpopular ideas.”<sup>4</sup>

It must be stressed that this book is not about “hate speech,” a term increasingly used since the late twentieth century that signifies a particular stage in the history of expression rights (i.e., a view that hate is a criterion for negating speech rights). The belief is that, some speech may be so powerful in shaping opinions that it can breed hatred and cause civil disturbances and even physical injury.<sup>5</sup>

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<sup>4</sup>John Lofton, *The Press as Guardian of the First Amendment* (New York: Columbia University Press, 1980): xiii.

<sup>5</sup>The perception of the power of “hate speech” in shaping attitudes is evident in the outlawing of public use of some words. And the facts that some individuals have been victimized – brutalized and even murdered – because of race and lifestyle has made people aware as perhaps never before that language can be taken by some to legitimize attitudes and actions.

Use of the term “hate speech” may have begun amid the controversy surrounding a planned march by Nazis through a predominantly Jewish community in Skokie, Illinois, in the late 1970s. Regarding the Skokie controversy, see Donald A. Downs, *Nazis in Skokie: Freedom, Community, and the First Amendment* (Notre Dame, Ind.: University of Notre Dame Press; distributed by N.Y.: Harper & Row, 1985); James L. Gibson and Richard D. Bingham, *Civil Liberties and Nazis: The Skokie Free-Speech Controversy* (New York: Praeger, 1985); David Hamlin, *The Nazi/Skokie Conflict: A Civil Liberties Battle* (Boston: Beacon Press, 1980); Aryeh Neier, *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom* (New York: Dutton, 1979).

<sup>5</sup>Literature referring specifically to “hate speech” seems to date from the mid 1990s. See Richard L. Abel, *Speaking Respect, Respecting Speech* (Chicago: University of Chicago Press, 1998); Richard Delgado and Jean Stefancic, *Must We Defend Nazis?: Hate Speech, Pornography, and the New First Amendment* (New York: New York University Press, 1997); Owen M. Fiss, *The Irony of Free Speech* (Cambridge,

The First Amendment protects five rights: freedom of religion, speech, press, assembly, and petition for redress of grievances.<sup>6</sup> This book focuses on free speech; that is, it is concerned with rights to speak, publish and disseminate ideas. More specifically, this book focuses on journalists' views about freedom of expression from mid-September 1861 through mid-June 1863.

Words hated by Southerners and Northerners were not necessarily the same, and, on both sides, the most hated ideas related in some way to slavery. Of course, during the war, journalists pledged their allegiance to the larger social system with which they identified, which meant the Confederate States of America (C.S.A.) for Southern journalists and the Union for Northern journalists. The Confederate Constitution was modeled after the federal Constitution and duplicated the First Amendment except for title and placement in the document. A fundamental difference, however, is that the U.S. Constitution does not mention slavery, whereas the C.S.A.

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Mass.: Harvard University Press, 1996); Henry Louis Gates Jr. et al, *Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights and Civil Liberties* (New York: New York University Press, 1994); Steven J. Heyman, ed. *Hate Speech and the Constitution* (New York: Garland Publishing, 1996); Laura J. Lederer and Richard Delgado, eds. *The Price We Pay: The Case Against Racist Speech, Hate Propaganda, and Pornography* (New York: Hill & Wang, 1995); Gara LaMarche, ed., *Speech and Equality: Do We Really Have to Choose?* (New York: New York University Press, 1996); Laurence R. Marcus, *Fighting Words: The Politics of Hateful Speech* (Westport, CT: Praeger, 1996); Madeleine Schater, *Law of Internet Speech* 2nd ed. (Durham: Carolina Academic Press, 2002); Steven Shiffrin, *Dissent, Injustice and the Meanings of America* (Princeton: Princeton University Press, 1999); Samuel Walker, *Hate Speech: The History of An American Controversy* (Lincoln, Nebraska: University of Nebraska Press, 1994); James Weinstein, *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine* (Boulder, Colo.: Westview Press, 1999); Nicholas Wolfson, *Hate Speech, Sex Speech, Free Speech* (Westport, CT: Praeger, 1996); Martha T. Zingo, *Sex/Gender Outsiders, Hate Speech, and Freedom of Expression: Can They Say that About Me?* (Westport, CT: Praeger, 1998).

<sup>6</sup>Robert F. Madgic, Stanley S. Seaberg, Fred H. Stopsky and Robin W. Winks, *The American Experience: A Study of Themes and Issues in American History*, 2nd ed. (Menlo Park, CA; Reading, MA; London; Don Mills, Ontario: Addison-Wesley Publishing Co., 1975): 739-740.

Constitution explicitly supported slavery.<sup>7</sup> Also, abolition and emancipation were hated ideas in the South. Although Northern and Southern journalists worked in warring social systems,<sup>8</sup> their writings, almost without exception, referred to the Federal Constitution. Therefore, unless specified otherwise, references throughout this book to the Constitution mean that document.

In this book about journalists' views, the interest is in locating evidence of tolerance for broad, diverse and controversial nineteenth-century ideas that were hated by a substantial portion of the antebellum population. The book differs, therefore, from work primarily about suppression of one idea or movement – such as work

<sup>7</sup>William Lee Miller, *Arguing About Slavery* (New York: Vintage Books-A Division of Random House, Inc., 1995, 1998), 21. Whereas the writers of the U.S. Constitution avoided using the word "slave" or "slavery," the C.S.A. Constitution said explicitly: "No bill of attainder, ex post facto law, or law denying or impairing the right of property in Negro slaves, shall be passed." Miller (p. 522, n. 21) says he quoted the C.S.A. Constitution, dated 1861 (available in the University of Virginia Library). The C.S.A. Constitution can be read in the Museum of the Confederacy in Richmond, Va.

<sup>8</sup>Of the many sources that discuss the war as a breakdown of democracy, see William E. Gienapp, "The Crisis of American Democracy: The Political System and the Coming of the Civil War," and William H. Freehling, "The Divided South, Democracy's Limitations, and the Causes of the Peculiarly Northern American Civil War," in Gabor S. Boritt, ed., *Why the Civil War Came* (New York: Oxford University Press, 1996), pp. 79-124, and 125-175, respectively.

Maury Klein, *Days of Defiance: Sumter, Secession and the Coming of the Civil War* (New York: Vintage Books, 1999), has carefully documented efforts to use the institutions of democracy to resolve the crisis during the five months preceding the firing on Fort Sumter. See also T. Harry Williams, "Disruption of the Union: The Secession Crisis, 1860-1861," in Leonard Levy and Merrill D. Peterson, general eds., *Major Crises in American History: Documentary Problems, 1689-1861* (New York: Harcourt, Brace & World, Inc., 1962): 461-537.

The Gettysburg Address, Nov. 19, 1863, reflects Lincoln's deep concern about "repairing" the breakdown in democracy as he pondered whether the Civil War would doom "this great experiment" and concluded in a determined statement that "'government of the people, by the people, for the people' would not 'perish from the earth.'" Charles B. Strozier, *Lincoln's Quest for Union: Public and Private Meanings* (New York: Basic Books, Inc., 1982): 62-63.

See also Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990), for a thorough discussion of the relative strengths and weaknesses of the North and South in forty-two policy areas.

by Russel B. Nye and Leonard I. Richards, both of whom have detailed anti-abolition violence.<sup>9</sup> It also differs from work focused on censorship, because, although references to military censorship necessarily recur here, political ideas figure more prominently. The effort was to identify hated ideas at the time and what journalists' said about rights to circulate those ideas. Furthermore, this book focuses on journalists' views, whereas most relevant literature about journalism and the war generally emphasizes the degree of press freedom that existed and ties it to specific government actions or events. Unlike literature about restrictions of rights, this book focuses on whether tolerance for hated ideas existed among journalists.

The very work of journalists as reporters of issues and events in any era necessarily involves relaying and purveying ideas, all kinds of which journalists today are expected to report on with detachment. Today, it is *verboten* for journalists to show hatred for ideas except in editorial commentary. Nineteenth-century American reportage, however, melded fact and opinion and typically conveyed journalists' attitudes about subjects they reported. Consequently, Civil War press content clearly shows hated ideas on both sides. Indeed, much language reflects rampant racism too offensive to repeat, so the rare examples here are included only to provide historical accuracy and essential evidence. Such language in no way reflects views of anyone associated with writing or producing this book.

One could create different categories of hated ideas, of course, but the purpose here is not to generate typologies. Rather, we focus on ideas that fall into two broad categories: ideas repugnant to people on different sides of the Civil War and ideas presumed to aid the enemy. The former category includes abolitionism, slavery and emancipation. The latter includes ideas seen as interfering with the conduct of war, such as facilitating desertions, persuading people to the opposing side's position, and criticizing the government, officials, policies, conduct of the war, or even the idea of war. The *Harper's Weekly*

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<sup>9</sup>Russel Blaine Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (Urbana: University of Illinois Press, 1972; reprinted by permission from Michigan State University Press, 1963); Leonard I. Richards, "Gentlemen of Property and Standing": *Anti-Abolition Mobs in Jacksonian America* (New York: Oxford University Press, 1970): 29.

column quoted at the beginning of this introduction alludes to words fitting this category. In the abstract, ideas presumed to aid the enemy do not differ as a category between sides of a war, even though the specific ideas hated on each side will almost certainly differ.

Ideas in the second category were institutionalized, so to speak, as hated ideas by censorship, which is defined here as a form of systematic and official suppression. Censorship involves officially mandated stoppage (for any length of time), by the government or military, of circulation of information and ideas. Officially shutting down a newspaper, controlling telegraph dispatches and arresting persons for seditious behavior are censorship acts. Forcible closure of the Chicago *Times* and the arrest and trial of Clement Vallandigham also are examples of censorship.

Suppression is defined here as a broader activity that encompasses censorship. That is, all censorship is suppression, but not all suppression is official or systematic. The word “suppression” appears in news coverage during the war and generally means any interference with circulation of information and is used similarly in this book. So, suppression means attempts by governmental and non-governmental entities – however successful – to stop circulation of information and ideas, but censorship refers only to governmental and military actions. Mob actions against individuals and organizations are examples of suppression because they are not official, legal, or systematic acts established by institutions.

Ideas in the first category – repugnant to some people – are likely to be targets of suppression during societal crises, war or other upheavals. Specific ideas that some find repugnant may differ radically from one side of a conflict to another. Ideas presumably hated by large portions of the public during the Civil War include emancipation and gradual manumission (presumably hated by most Southerners but not by most Northerners), slavery (hated by African Americans – save possibly the few who owned slaves – and many Northerners), secession and copperheadism (hated by most Northerners).

In practice, of course, people rarely distinguish boundaries between the two categories, especially in the midst of societal crises like war. Differentiating words that may directly aid the enemy from

words that simply are repugnant remains, in fact, the central problem regarding protection of expression rights. General Order No. 90, written by Gen. Ambrose Burnside, on June 3, 1863, shows how censorship aimed at words in the first category gravitates toward prohibiting circulation of merely political ideas:

That freedom of discussion and criticism which is proper in the politician and the journalist in time of peace, becomes rank treason when it tends to weaken the confidence of the soldier in his officers and his Government. When this insidious treason, striking at the very root of military power [appears], it is the bounden duty of the Commanding General to expel it from his lines, with a heavier hand than he would drive from his camp the villain who would scatter a material poison that would enervate and decimate his soldiers.<sup>10</sup>

The difficulty lies in perception and interpretation. Words seen by some to “weaken the confidence of the soldier in ... his Government” may be harmless expressions of mere political opinions. But such words during wartime are generally perceived and treated as useful to the enemy.

Ideas that are simply repugnant to some also differ according to time and circumstances. Each era has its hated ideas, and the issue here is the degree to which journalists tolerated expression of ideas that were hated on either side during the Civil War. The extensive antebellum efforts to suppress the abolition movement suggest that most people at the time would not protect ideas they hated. The tide of Northern opinion regarding abolition turned by mid-century, but other ideas became hated, as manifested during reconstruction-era hostility toward political enfranchisement of African Americans and later efforts to suppress views of socialists, anarchists, and communists.<sup>11</sup> Indeed, American history from the beginning is littered

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<sup>10</sup>“Documents and Narratives,” in Frank Moore, ed. *The Rebellion Record: A Diary of American Events* vol. 7. (New York: D. Van Nostrand, Publisher, 1864): 2-3

<sup>11</sup>For treatment of some suppression movements in late 19th- and early 20th century America, see Nathaniel John Hong, “The Development, Use, and Judicial Review of United States Immigration law to Suppress Free Speech: The Anarchists’

with intolerance, and different ideas were hated in different eras because cultural values and experiences, which are always changing, shape what is both valued and hated. Historian Margaret Blanchard wrote that “American reaction” to suppression “is based on how acceptable the idea espoused is to the prevailing definition of Americanism. At times, when the nation is beset by internal and external challenges, the definition ... contracts sharply.”<sup>12</sup>

It bears repeating that this book is not about censorship, per se, but about hated ideas and the willingness of journalists on both sides of the conflict to extend protection to such ideas. Core questions driving the research in this study include: What did Northern and Southern journalists say about freedom of expression? Particularly, did they say it extended to ideas they hated? Four events in the first two years of the Civil War were selected for study of press coverage because they involved suppression and were expected to generate discussion of expression rights. The events are outlined in Chapter Three, and coverage of them is treated in subsequent chapters: suppression, including arrests of editors, in Baltimore, Maryland, in September 1861 and February and June 1862; 1862 developments in emancipation plans and the 1863 implementation; the May 1863 arrest, trial, conviction and exile of Ohio Congressman Clement Vallandigham; and the June 1863 forcible closing of the *Chicago Times*.

Because many hated ideas were ideas presumed useful to the enemy, some coverage of virtually all of the events fit this category. But it is important to reiterate that ideas in the one category run into and often become inseparable from ideas in the second category (ideas repugnant to some). Suppression in Baltimore, Maryland, and Chicago, Illinois, and the prosecution of Vallandigham involve words deemed injurious — treated by some as direct threats — to the war effort. But the same words also involve copperheadism, a deeply hated

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Experience, 1886-1924,” MA thesis, University of Minnesota, 1980; John D. Stevens, *Shaping the First Amendment: The Development of Free Expression* (Beverly Hills: Sage, 1982): 44-54; Margaret Blanchard, “Seeking Conformity: Freedom of Expression in the Age of Enterprise,” in *Revolutionary Sparks: Freedom of Expression in Modern America* (New York and Oxford: Oxford University Press, 1992): 3-37.

<sup>12</sup>Blanchard, *Revolutionary Sparks*, xiii.

idea in the North that falls into the category of ideas repugnant to some.

Emancipation, which also falls into the category of ideas that some found repugnant, may seem at first blush not to belong with the other events here, but it was inextricably related to the war effort. It might be considered an issue rather than event, but events evolve into issues and issues provoke events, and emancipation is illustrative of this truism. Events in emancipation development jolted contemporaries and generated abundant press coverage.

Emancipation was the most hated idea in the South and was hated by some in the North. The 1830s and 1840s, particularly in the Southern states, have been called the most repressive period in American peacetime history<sup>13</sup> because of efforts to prevent the printing, circulation and reading of abolition materials. Nye, in detailing efforts prompted by Southerners' fears of overthrow of "established institutions" (Tunis Wortman's words cited in Chapter One) – namely slavery – traced the development of abolitionism from a fringe movement to a Northern accepted symbol of imperiled democratic freedoms. Suppression permeated society. The gag rule impeded discussion of slavery in Congress from 1836 to 1844, while educational institutions across the North prohibited such discussion, and anti-slavery materials were denied mail privileges.<sup>14</sup> Southern states enacted laws curtailing expression rights (the Virginia Code of 1848, for example, made it a crime to merely say one had no right to own slaves).<sup>15</sup> Mobs engaged in violent suppressive activities, especially across the North. Some Northern journalists, as well as some Northern legislators, sought to prevent spread of "incendiary" abolitionist "propaganda."<sup>16</sup> No idea at the time (and perhaps in the

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<sup>13</sup>Harold L. Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, (Indianapolis: The Bobbs-Merill Co., Inc., 1967): xxv.

<sup>14</sup>Nye, 41ff.; Robert Trendel, "The Expurgation of Antislavery Materials by American Presses," *Journal of Negro History* 58: 3 (July 1973): 271-290; Clement Eaton, "Censorship of the Southern Mails," and "Freedom of the Press in the Upper South," chs. 6-7 in *Freedom of Thought Struggle in the Old South* (New York: Harper & Row, 1955): 162-215.

<sup>15</sup>Nye, 156; 175.

<sup>16</sup>John Nerone, *Violence Against the Press* (New York: Oxford University Press, 1994): 84-110.

whole of American history) generated so much suppression as the idea of abolition — all because of fear of emancipation. During the Civil War, some argued that slavery itself constituted the ultimate suppression of expression rights.

Emancipation merits attention also because it was central to the war and its outcome. What it portended for the nation's future stirred strong feelings. That is, hatred for the idea of emancipation was born of fears of what it would mean for daily life, especially in the South, and the course of the American nation. Emancipation would change the nation, structurally, socially, economically and politically; some compared the Emancipation Proclamation to the 1776 Declaration of Independence. It would change the South and reshape the nation's future. Ultimately, emancipation would remove rigid, old barriers to free expression about slavery-related subjects and to free expression of a sizable U.S. population — African Americans held in bondage.

Until early 1862, the role of emancipation in the war was the unacknowledged "elephant in the room." After Lincoln presented an emancipation plan to Congress in early 1862, Southern hostility to the idea intensified — albeit evidence of censoring any pro-emancipation views in the South was not found (but people may not have expressed such views due to fear). After March 1862, when people began to talk of emancipation as a purpose of the war, perceptions of its ramifications inspired much hate-filled commentary in newspapers. The immense press coverage — especially in the South — from early in the second year of the Civil War made clear the need for lengthy treatment here to do justice to the powerful hatred for this one idea. Hence, two chapters treat Southern and Northern press coverage of emancipation.

The three other events may be seen as reflecting stages of suppressive behavior evolving from logistical — trying to preserve order — to efforts to wipe out hated ideas. In the first events studied, Union authorities arrested editors and officials in Maryland in 1861 because they feared the power of newspapers sympathetic to the South, and they feared that state legislators would vote to secede if allowed to meet. The Northern newspapers studied showed virtually no response to acts against the press at the time. Southern editors used

arrests of editors and closing of newspapers as evidence that the North was a destroyer of civil liberties.

The 1863 cases of speech and press suppression provoked more intense reaction by those conducting the war and by journalists. Military authorities sought aggressively to eradicate hated ideas and their circulation; journalists generally seemed inclined to agree regarding the speech case – although they were less complacent than in 1861 – but some actively resisted press suppression, regardless of how hated the ideas a newspaper circulated. Coverage in the press case, especially, shows some editors basing arguments on principle more than during earlier suppression events. A few journalists, however, vehemently agreed with military authorities that the copperhead Chicago *Times* should be shut down.

Despite Northern journalists' apparent acquiescence during the September 1861 Baltimore suppression, editors in both the North and South had shown deep concern about the U.S. Constitution about two months earlier. Editors in both the North and South reported Lincoln's July 4, 1861, explanation to Congress for his actions after the April firing on Fort Sumter and discussed constitutional implications of Lincoln's unprecedented assumption of war powers. This is notable because eleven Southern states by then functioned under the C.S.A. Constitution and technically owed no allegiance to the U.S. Constitution. This debate, outlined in Chapter Two, serves as a backdrop for subsequent chapters about editors' attitudes toward hated ideas. More specifically, in Chapter Two, editorials from twenty-two newspapers (identified in that chapter) are discussed.

Remaining chapters are based on coverage in fourteen newspapers – seven from the North and seven from the South. Despite efforts to achieve diversity of political position and views in newspapers selected to study, most of the newspapers used are mainstream because of limited availability of others. The seven Northern newspapers include one from a border state, one copperhead and one abolition newspaper, but diversity among Southern newspapers is virtually non-existent.

The following briefly identifies the fourteen newspapers studied for chapters three through nine. Editors named edited the selected newspapers during the Civil War and, unless otherwise specified, were

assumed to have written the editorials as cited.<sup>17</sup> (Note that the style used does not italicize cities in newspapers' names and sparingly uses "The" as part of titles. More information about the newspapers appears in Appendix I.1.)

**Baltimore (Md.) Sun:** Published in a politically divided border state; established in 1837 by Arunah S. Abell.

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<sup>17</sup>Important sources about newspapers include: Frank Angelo, *On Guard: A History of the Detroit Free Press* (Detroit: Detroit Free Press, 1981); Francis Brown, *Raymond of the Times* (New York: W.W. Norton & Co., Inc., 1951); Fayette Copeland, *Kendall of the "Picayune"* (Norman: University of Oklahoma Press, 1943); James L. Crouthamel, *Bennett's New York Herald and the Rise of the Popular Press* (Syracuse: Syracuse University Press, 1989); Thomas E. Dabney, *One Hundred Great Years* (Baton Rouge: Louisiana State University Press, 1944); Elmer Davis, *History of the "New York Times," 1851-1921* (New York: The New York Times Co., 1919); Horace Greeley, *Recollections of A Busy Life* (New York: J. B. Ford & Co., 1869); Gerald W. Johnson, Frank R. Kent, H. L. Mencken, and Hamilton Owens, *The Sunpapers of Baltimore, 1837-1937* (New York: Alfred A. Knopf, 1937); Philip Kinsley, *The Chicago Tribune: Its First Hundred Years* (New York: Alfred Knopf, 1943); Augustus Maverick, *Henry J. Raymond and the New York Press* (Hartford: A.S. Hale and Co., 1870); Richard Kluger, *The Paper: The Life and Death of the New York Herald Tribune* (New York: Alfred A. Knopf, 1986); George S. Merriam, *The Life and Times of Samuel Bowles*, 2 vols. (New York: Century, 1885); Carl R. Osthaus, *Partisans of the Southern Press: Editorial Spokesmen of the Nineteenth Century*. (Lexington: The University Press of Kentucky, 1994); James Parton, *The Life of Horace Greeley: Editor of the New York Tribune* (New York: Mason Brothers, 1855); John J. Scanlon, *The Passing of the Springfield Republican* (Amherst, MA: Amherst College, 1950); Don C. Seitz, *The James Gordon Bennetts: Father and Son, Proprietors of the New York Herald* (Indianapolis: The Bobbs-Merrill Company, Publishers, 1928); R. W. Smith, *Samuel Medary & The Crisis* (Columbus: Ohio State University Press, 1995); James Brewer Stewart, *William Lloyd Garrison and the Challenge of Emancipation* (Arlington Heights: Harlan Davidson, 1991); Henry Luther Stoddard, *Horace Greeley, Printer, Editor, Crusader* (New York: G. P. Putnam's Sons, 1946); John L. Thomas, *The Liberator: William Lloyd Garrison, A Biography* (Boston: Little, Brown, 1963); Glyndon van Deusen, *Horace Greeley: Nineteenth Century Crusader* (New York: Hill and Wang, 1953); Justin E. Walsh, *To Print the News and Raise Hell!: A Biography of Wilbur F. Storey* (Chapel Hill: The University of North Carolina Press, 1968); James Weeks, "The Civil War's Greatest Scoop," *American Heritage* (July-August 1989): 100; Lloyd Wendt, *Chicago Tribune: The Rise of a Great American Newspaper* (Chicago: Rand McNally, 1979); Harold Williams, *The Baltimore Sun, 1837-1987* (Baltimore: Johns Hopkins University Press, 1987).

**Charleston (S.C.) *Daily Courier*:** Founded in 1803, the oldest newspaper in South Carolina; edited by Richard Yeadon, who enthusiastically supported the Jefferson Davis administration.

**Charleston (S.C.) *Mercury*:** Founded in 1822; edited by Robert Barnwell Rhett, a fervent supporter of secession credited with facilitating South Carolina's secession; he relentlessly attacked the Davis administration throughout the war as too weak on defense of slave traders' interests.

**Chicago (Ill.) *Tribune*:** Founded in 1847 in Abraham Lincoln's home state; staunchly Republican and a strong defender of Lincoln; edited by Joseph Medill.

***Crisis, The*:** A leading copperhead periodical founded in Columbus, Ohio, on January 1, 1861, by Samuel Medary; *The Crisis* strongly supported C. L. Vallandigham.

***Liberator, The*:** Founded in 1831 in Boston, Mass.; edited by William L. Garrison, a staunch abolitionist who criticized all that impeded abolition of slavery.

**Mobile (Ala.) *Advertiser and Register*.** Result of a merger in 1861; edited by John Forsyth, whose obituary in the *Atlanta Constitution*, according to Carl Osthaus, called him "as prominent in shaping the politics of the South as either [A Confederacy "founding father" and Secretary of State Robert] Toombs, or [former Virginia Governor Henry] Wise, or [Charleston *Mercury* editor Barnwell] Rhett."

**New Orleans (La.) *Picayune*:** Founded in 1837; edited by Alva M. Holbrook.

**New York *Herald*.** Founded in 1835; edited by James Gordon Bennett, who, having opposed abolition for years, was widely accused of harboring Southern sympathies during the Civil War. He appears, rather, to have supported what served his pecuniary interests, alternately seeming sympathetic to the South and fervently against the "rebellion."

**New York Times:** Founded in 1851; edited by Henry J. Raymond, a strong supporter of Abraham Lincoln.

**New York Tribune:** Founded in 1841; edited by Horace Greeley, an ardent advocate of abolitionism who generally supported the Lincoln administration but was unpredictable.

**Richmond (Va.) Dispatch:** Established in 1850; edited by Oliver P. Baldwin.

**Richmond (Va.) Enquirer:** Founded in 1804; edited at different times during the war by Bennett De Witt, Richard M. Smith, and Nathaniel Tyler; seen as the organ of Jefferson Davis.

**Richmond (Va.) Examiner:** Founded in 1847; edited by John M. Daniel.

Depending on the duration of events under study, editions of all fourteen newspapers were read for two weeks to more than a month. Newspaper items referring to the selected events, freedom of the press and freedom of expression in general were collected. To reiterate, the interest was in how journalists reported and reacted to hated ideas, how they defined freedom of expression and the press and what limits they suggested for those freedoms. Above all, did they endorse protection of rights to express hated ideas?

The chapters that come after Chapter Two address ways suppression and freedom of expression were involved in the selected events and the press' coverage of them in the war's early stages. To explore attitudes, chapters address what journalists said about freedom of expression. How did they define it? What did they state as limits? What did editors say about censorship? Was it ever permissible? How much freedom did they grant for ideas they hated?

Chapter Three briefly outlines the events about which press coverage was studied from mid-September 1861 through mid-June 1863. Chapters Four through Six briefly outline the coverage of those events in fourteen newspapers, with Chapters Five and Six devoted to Southern and Northern coverage, respectively, of emancipation. Chapter Seven presents journalists' statements about freedom of

expression, its definition and limits. Chapter Eight covers journalists' statements about censorship, and Chapter Nine addresses tolerance for ideas they hated. Chapter Ten offers some conclusions.



## Chapter One

# CONTEXT FOR FREEDOM OF EXPRESSION DURING THE CIVIL WAR

Two New York *Times* editorials published about a month after the April 9, 1865, agreement to end the Civil War provide a departure point for considering journalists' views about freedom of expression at the time.

The writer of the first editorial wrote as if he assumed readers would not tolerate secrecy surrounding the approaching trial of those accused of conspiring to assassinate President Abraham Lincoln. That May 11 editorial also berated the use of a military commission instead of a civil court for the trial. Publicizing evidence, the editorialist<sup>1</sup> wrote, "might prevent the arrest of some persons implicated in the crime," but, he asked, how important must such arrests be if fear that some might escape prosecution was enough to "justify the profound secrecy?" The writer stressed "various weighty reasons" for regret that capturing suspects was "made the pretext or occasion of introducing into our criminal procedure so extraordinary an anomaly as trial by a Military Commission for a capital offense with closed doors, and with an oath of secrecy imposed on all persons taking part in the

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<sup>1</sup>Editorials were rarely signed. Throughout this book, it is assumed that the newspaper editor wrote editorials unless otherwise specified and that, in any case, editorials reflected editors' views. Terms like "editorialist" and "writer" have been used for those who wrote editorials to avoid monotony in repetition of either term. New York *Times* editor Henry J. Raymond, a staunch Republican, was deeply involved in party activity, so it is uncertain how many *Times* editorials he wrote during these years. In 1863, for example, he was seeking political office and may have been away from his newspaper office much of the time.

proceedings." Postponing the trial until "publicity could do no harm" – even if that meant a six-month delay – would be "infinitely better" than introducing "in this country so novel a tribunal, and one so repugnant to the spirit of our institutions." Such a practice was unprecedented in "the history of any free country," the editor asserted, and even the "worst European despotisms" had seldom dared resort to such practices.

Only evidence in open court would prevent unfounded rumors, he argued, and any people influenced by the "judge advocate's edited, expurgated version" must be very simple-minded. No one person, regardless his or her views, would value "revelations made under conditions in which every rule of evidence is set at naught, and even the experience of everyday life treated with contempt." Would foreign powers, he asked, "really believe that peace has been restored [in America] when a most atrocious crime has to be tried and punished by a military court sitting in secret in the national capital, and in a country in which all secret things, and above all, secret trials, have always been held in abhorrence?"

This vigorous assertion in 1865 of rights to open trials shows a strong view of journalists' rights to information (without barriers of secrecy or what were later called "gag orders") and to report as they deemed fit. A journalist's role as serving the public is intimated, especially in the denigrating reference to a "judge advocate's edited, expurgated version," and in suggestions that open trials best serve interests of the accused and the public and that the press must have access in order to fulfill its function of informing the citizenry. The writer may have also assumed the press required access in order to serve as a watchdog on governmental institutions in the public's behalf – that is, to disseminate information about how the public's business was being conducted.

Surprisingly, an editorial the next day seems to negate the first editorial. Stressing that the first editorial intended no criticism of government, the writer of that second editorial said that "the language used in discussing this subject [secrecy in the trial] in this journal yesterday, should not be understood as impeaching in any degree the motives of the government," which had "nobly and abundantly" earned public confidence. "We deem it only just that this confidence

... should be extended ... in the new and more awful emergency so suddenly thrust upon" government officials.

Reassuring readers that civil liberties were safe, he warned "patriots" against second-guessing governmental acts: "*And the idea that the course they have taken proceeds from any disregard of the great principles of civil liberty, or from any purpose to subvert those principles, is one which no patriot has a right to indulge*" [emphasis added]. The writer cautioned that the public did not know the facts "essential to a just opinion" on the subject and "due regard for justice" required that the government's evidence should "not yet be made public." It was not asking too much to expect people "to accept this assurance as prompted solely by regard for the public good, and as based on facts which the future will disclose." This would not "strain" "public confidence"; and the public's "perfectly natural" "anxiety to read the evidence" should not cause "hasty distrust and denunciation" of officials who had "nobly proved their claim to the confidence and gratitude of the nation." [See Appendix 1.1 and 1.2 for the complete editorials.]

The first of these two editorials – asserting a right of access to legal proceedings – counters a long-held view that press rights received little attention or explication in the nineteenth century,<sup>2</sup> when journalists served political parties and when statements, particularly in antebellum America, about press rights generally seem aimed to defend parties more than constitutional principles. According to the 1860 census, 80.02 percent of the four thousand and fifty-one U.S. periodicals were political,<sup>3</sup> and, although profitability accelerated

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<sup>2</sup>See Paul L. Murphy, *The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR* (Westport, CT: Greenwood Publishing Co., 1972): 4-10. Margaret Blanchard's research about 19th-century developments in freedom of press and speech at the state level revised this view. See Margaret A. Blanchard, *Americans First: Newspapermen Second?* (Ann Arbor: University Microfilms, 1981); *Revolutionary Sparks*: op. cit; Bill Chamberlin and Charlene Brown, *The First Amendment Reconsidered* (New York: Longman's, 1982). See also Donna Lee Dickerson, *The Course of Tolerance: Freedom of the Press in Nineteenth-Century America* (Westport, CT: Greenwood, 1990).

<sup>3</sup>Joseph C.G. Kennedy, Superintendent U.S. Bureau of the Census, Eighth Census, 1860, *Preliminary Report on the Eighth Census, 1860* (Washington, D.C.: Government Printing Office, 1862): 103. Editor Duff Green, although notoriously

rapidly and competitive organs multiplied from the early 1830s, “newspapers in the 1850s,” Lorman A. Ratner and Dwight L. Teeter Jr. write, “still functioned without rules that might have guided or restrained them and without evident understanding of the desperately high stakes involved as a war of words helped bring on a war of bullets.”<sup>4</sup> A decade later, however, Civil War journalists showed keen awareness of First Amendment press freedom rights, according to Michael Kent Curtis, who has written that many Americans saw this right by 1860 as transcending states’ rights arguments. “By 1859-60 the idea that free speech and press were national rights or ‘privileges’ that no state should abridge was commonly being expressed” in congressional debates by Republican Party members, although state-centered and nation-centered visions collided that year in congressional debates, Curtis writes.<sup>5</sup>

Civil War correspondents went to great lengths to overcome constraints on reporting – risking banishment from the field, injury on the front lines, capture, imprisonment, and death.<sup>6</sup> Even while

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partisan himself, responded to the introduction of a patronage bill by a political opponent: “We refer to that ... which tends to convert this sentinel of freedom [the press] into a spy of power... It is a most solemn truth ... that if liberty shall ever expire in our country, it will die of the poisonous draught of corrupt patronage.” *United States Telegraph*. Feb. 7, 1826; cited in Culver H. Smith, “Propaganda Technique in the Jackson Campaign of 1828,” *East Tennessee Historical Society Publications* 6 (1934): 53. Brian R. Gabriel, in “The Melancholy Effect of Popular Excitement’: Discourses about Slavery and the Social Construction of the Slave Rebel and Conspirator in Newspapers” (Ph.D. diss., University of Minnesota, 2004), recounts intense partisan coverage of John Brown in 1859.

<sup>4</sup>Lorman A. Ratner and Dwight L. Teeter, Jr., *Fanatics & Fire-Eaters: Newspapers and the Coming of the Civil War* (Urbana and Chicago: University of Illinois Press, 2003): 19.

<sup>5</sup>Michael Kent Curtis, *Free Speech, ‘The People’s Darling Privilege’: Struggles for Freedom of Expression in American History* (Durham and London: Duke University Press, 2000): 270.

<sup>6</sup>Louis M. Star, *Reporting the Civil War: The Bohemian Brigade in Action, 1861-65* (New York: Collier Books, 1962, 1954): xvi, 30-32. See also J. Cutler Andrews, *The North Reports the Civil War* (Pittsburgh: University of Pittsburgh Press, 1983, 1955) and J. Cutler Andrews, *The South Reports the Civil War* (Pittsburgh: University of Pittsburgh Press, 1985; Princeton University Press, 1970); Charles Carleton Coffin, “Antietam Scenes,” *Century Magazine*, New Ser. X (June 1886): 315-319; Charles Carleton Coffin, *My Days and Nights on the Battlefield* (Boston: Estes and Lauriat,

resisting constraints, however, they expressed contradictory views about the use of constraints – as exemplified by the two New York *Times* editorials. The contradictory positions likely stemmed in part from conflicting loyalties and prevailing norms for freedom of expression at the time and in part from a societal upheaval that raised free-expression issues in unprecedented ways. Both 1865 New York *Times* editorials show concerns about both journalistic and constitutional principles, but the second shows subordination of those principles to governmental dictates. The editorialist apparently almost immediately reconsidered the first editorial<sup>7</sup> and – either of his own volition or at the prompting of others – quickly published the second,

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1865); Lorenzo Livingston Crouse, "The Army Correspondent," *Harper's New Monthly Magazine* XXVII (Oct. 1863): 627-633; Emmet Crozier, *Yankee Reporters, 1861-1865* (New York: Oxford University Press, 1956); Thomas Gubak, "General Sherman's War on the Press," *Journalism Quarterly* 36 (Spring 1959): 171-176; Brayton Harris, *Blue & Gray in Black & White: Newspapers in the Civil War* (Washington and London: Brassey's, Inc., 1999); Oliver Jensen, "War Correspondent: 1864," *American Heritage* 31 (Aug.-Sept. 1980): 48-64; Kluger, *The Paper*: op. cit., 95-105; Frederick Palmer, "A War Correspondent's Story of Gettysburg," *Hearst's Magazine* XXIV (July 1913): 70-83; Louis L. Snyder and Richard B. Morris, eds., *A Treasury of Great Reporting* 2nd ed. (New York: Simon and Schuster, 1962): 129-138; 144-158; Bernard A. Weisberger, *Reporters for the Union* (Boston: Little, Brown and Co., 1953).

<sup>7</sup>Of course, another may have written the first, and New York *Times* founder/editor Henry J. Raymond – who had been close to Lincoln and a staunch supporter of the Lincoln administration – may not have seen it before it was published; but it does seem likely that Raymond wrote the second. Raymond earlier reversed editorials after Lincoln suggested that he reconsider positions taken and write more favorably of the administration.

It was common for editors to leave assistants in charge during absences. As an assistant to James Watson Webb during the 1840s, Raymond ran the New York *Courier and Enquirer* during Webb's absences, and Raymond later left his associate, William Henry Hurlbert, in charge of the *Times* when he went to report the Franco-Austrian conflict in 1859. See Brown, *Raymond of the Times*, 45-92; 169. Charles Dana was in charge of the New York *Tribune* during editor Horace Greeley's absences. See Janet E. Steele, *The Sun Shines for All: Journalism and Ideology in the Life of Charles A. Dana* (Syracuse: Syracuse University Press, 1993): 29-47.

expressing loyalty to government above any professional journalism ideology.<sup>8</sup>

Journalists' contradictory views may also have been due, in part, to the "bad tendency" test of words, which, Curtis and others explain, prevailed as grounds for suppression in nineteenth-century America.<sup>9</sup> Because the bad tendency test could be variously interpreted, leaving limits on expression unclear, journalists might challenge constraints as unnecessarily restrictive, on the one hand. But, on the other hand, they could also justify suppressing ideas they hated because of words' presumed bad tendency to cause harm.

American journalists discussed expression rights long before the Civil War, of course, but history of those discussions remains scattered through literature about other subjects. The closing of the first colonial American newspaper by authorities after only one issue may have deterred establishment of another for fourteen years and assured that

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<sup>8</sup>A classic work about theories undergirding journalists' approach to their work (and implying journalism ideology, albeit tied almost entirely to notions of press freedom) is Frederick S. Siebert, Theodore Peterson, and Wilbur Schramm, eds., *Four Theories of the Press* (Urbana: University of Illinois Press, 1956). Discussion of media ideologies by John Nerone, *Violence Against the Press*, relates indirectly to journalism professional ideology — see especially 15-17.

Among scholars who have specifically discussed journalism ideology are J. Herbert Altschull, *From Milton to McLuhan: The Ideas Behind American Journalism* (New York: Longman, 1990); Jeffery Smith, *Printers and Press Freedom: The Ideology of Early American Journalism* (New York: Oxford University Press, 1988); Gay Tuchman, *Making News* (New York: The Free Press, 1978).

Work on news framing led to treatment of professional ideology — often more indirectly than directly — as a necessary part of explaining the phenomenon of framing. See, for example, Roya Akhavan-Majid and Jyotika Ramaprasad with Melissa Boyster, "Framing Beijing: U.S. Daily Newspaper Coverage of the Fourth U. N. Conference on Women and the NGO Forum," *Mass Communication and Society* 1: 3-4 (1998): 131-152; Zhongdang Pan and Gerald Kosicki, "Framing Analysis," *Political Communication* 10 (1993): 55-76.

<sup>9</sup>Curtis, 10-14. The "bad tendency" doctrine, an important theory and pervasive belief in nineteenth-century America, meant that words could be suppressed simply because they were deemed as possibly causing harm at some time.

the second newspaper did not aggravate authorities.<sup>10</sup> From at least 1721, when James Franklin began publishing America's fourth newspaper,<sup>11</sup> relatively continuous discussion of press restrictions in colonial America culminated in the new nation's First Amendment to prohibit congressional interference with expression. Jeffery Smith has argued that eighteenth-century American journalists shared an ideology encompassing freedom-of-expression issues,<sup>12</sup> and Wallace B. Eberhard has shown that journalists in 1830, while resisting efforts to curtail reporting about trials, vividly articulated free-press/fair trial issues that were not overtly confronted until well over a century later. Eberhard quotes an editorial that said pre-trial publicity "excited" and "inflamed" opinions against the accused. The editorialist argued that the "community from which a jury is to be taken is influenced by ... disclosures" that arouse emotions and make the jury "very incompetent to the dispassionate consideration of facts as applicable to particular individuals."<sup>13</sup>

Despite occasional articulations like this early on, support for free expression has by no means been consistent through American history. Eloquent defenses of First Amendment rights in the abstract at different times have not necessarily translated into practice, and expressions in the abstract and in practice have not been sustained over time. The early American record, which shows trial-and-error efforts at working out the meaning of the First Amendment in the abstract and in practice, includes passage of the Alien and Sedition Acts just seven years after the 1791 ratification of that amendment. Those laws, which aimed, in part, at anti-Federalist newspapers that purveyed ideas hated by Federalists,<sup>14</sup> marked a first stage in

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<sup>10</sup>Sidney Kobre, *The Development of the Colonial Newspaper* (Gloucester, MA.: Peter Smith, 1960): 13-27; Anthony R. Fellow, *American Media History* (Belmont, CA.: Thomson/Wadsworth, 2005): 20-22.

<sup>11</sup>Kobre, 29-36; Fellow, 24.

<sup>12</sup>J. A. Smith, *Printers and Press Freedom*, op. cit.

<sup>13</sup>New York *Courier and Enquirer*, May 18, 1830: 1; June 8, 1830: 4. Quoted in Wallace B. Eberhard, "Mr. Bennett Covers a Murder Trial," *Journalism Quarterly* 74: 3 (Autumn 1970): 458

<sup>14</sup>James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1956): 95-111; chapters nine through seventeen provide accounts of press cases.

America's confrontations with hated ideas. The editors "selected for prosecution" under those laws were "precisely" those who ran newspapers "from which most of the lesser opposition papers copied their political material,"<sup>15</sup> says historian Lucas Powe Jr.

Anger at those laws bolstered public support for freedom of expression for a time. Among historians who say that opposition to the Alien and Sedition laws helped elect Thomas Jefferson president in 1800 is Donald H. Stewart, who wrote, "Indisputably, the Sedition Law was a key issue in the 1800 campaign."<sup>16</sup> And Leonard Levy said the 1798 sedition law prompted articulations of a new libertarian press theory in the United States.<sup>17</sup> The eight convictions of journalists under the sedition law,<sup>18</sup> all of whom were anti-Federalists,<sup>19</sup> might seem insignificant until considered as a proportion of total newspapers (fewer than 200) published in 1798<sup>20</sup> and as a proportion (nearly half) of the total seventeen convictions. Responding to the laws along partisan lines, journalists filled newspapers with a level of anger at hated ideas not seen since in the American press.<sup>21</sup> But most free-

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<sup>15</sup>Lucas A. Powe, Jr., *The Fourth Estate and the Constitution: Freedom of the Press in America* (Berkeley: University of California Press, 1991): 60. See also Donald H. Stewart, *The Opposition Press of the Federalist Period* (Albany: State University of New York Press, 1969): 465-486; and J. M. Smith, 185-197.

<sup>16</sup>Stewart, 486.

<sup>17</sup>Leonard W. Levy, *Freedom of the Press from Zenger to Jefferson* (Indianapolis: The Bobbs-Merrill Co., Inc., 1966): xix-xx, lxx-lxxvi.

<sup>18</sup>J. M. Smith, 185.

<sup>19</sup>J. M. Smith, 185-187. Smith, who spent many years conducting research about the Alien and Sedition Laws, says there were seventeen indictments but does not specify the total journalists indicted, tried and convicted; Fellow, 80, says there were fourteen indictments, eleven trials, and eight convictions of journalists.

<sup>20</sup>This number was arrived at by counting newspapers listed by Clarence S. Brigham, *History and Bibliography of American Newspapers, 1690-1820*, 2 vols. (Worcester, MA: American Antiquarian Society, 1947). Alfred McClung Lee says 242 newspapers were publishing in 1800, but not all lasted the entire year. *The Daily Newspaper in America* (New York: MacMillan Co., 1937): 712-717. See also William A. Dill, *Growth of Newspapers in the United States* (Lawrence: University of Kansas, April 1928).

<sup>21</sup>Among milder statements typifying the partisanship, an anti-Federalist newspaper before Jefferson's inauguration said the firing of a county court clerk for writing "Oration on Political Delusion" showed that the "state oligarchy intends to exercise power while it still has it and persecute men for voicing principles that

expression debate of the 1798 laws occurred in pamphlets challenging their constitutionality and in congressional discussions about renewing the laws.<sup>22</sup>

Some of the pamphlet writers and congressional speakers used the concept of hated ideas, but not those literal words. James Madison wrote in 1799 that people arguing a cause “must expect and *intend* to excite ... unfavorable sentiments,”<sup>23</sup> and he advocated their right to do so. But turn-of-the-19th-century libertarian Tunis Wortman, who expressed similar views — and, in Levy’s opinion, articulated the most expansive meaning of freedom of expression up to that time — suggested that ideas finding no acceptance in public opinion can be persecuted (as hated, therefore). Wortman said that “the current of public opinion must always be presumed to pursue a direction in favor of established institutions,”<sup>24</sup> although he also said a just government need not fear being misrepresented. Arguing that a republican form of government could not be libeled, he said the only effective weapon against falsehood was dissemination of truth. Wortman generally argued for the widest possible latitude for expression,<sup>25</sup> which, presumably, included hated ideas.

How many shared Madison’s and Wortman’s views is unknown, but their words proved prophetic. Approximately thirty years after they wrote these words, vast numbers tried to “excite ... unfavorable sentiments” (Madison’s words) for and against abolition in a period of

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have obtained the people’s sanction.” *The Sentinel of Freedom* (Newark, N.J.), Jan. 20, 1801: 2.

<sup>22</sup>Pamphlets include George Hay, *An Essay on the Liberty of the Press* (Philadelphia, printed 1799, reprinted by Samuel Pleasants, Junior, 1803); James Madison, Virginia General Assembly, House of Delegates, *The Virginia Report of 1799-1800 Touching the Alien and Sedition Laws* (New York: De Capo Press, 1970); John Thomson, *An Enquiry, Concerning the Liberty, and Licentiousness of the Press* (New York: Johnson and Stryker, 1801); Tunis Wortman, *A Treatise Concerning Political Enquiry, and the Liberty of the Press* (New York: George Forman, 1800).

See Levy, “The House Debates the Sedition Act,” *Freedom of the Press*, 171-186; Jenks’ *Portland Gazette*, Feb. 16: 2; Feb. 23, 1801: 1, contains reports of the debate.

<sup>23</sup>Madison, *The Virginia Report of 1799-1800*, 226-227.

<sup>24</sup>Tunis Wortman, *A Treatise Concerning Political Enquiry*, in Levy, ed., *Freedom of the Press from Zenger to Jefferson* (Indianapolis: The Bobbs-Merrill Co., Inc., 1966): 236.

<sup>25</sup>Wortman, in Levy, ed., *Freedom of the Press*, 230-235.

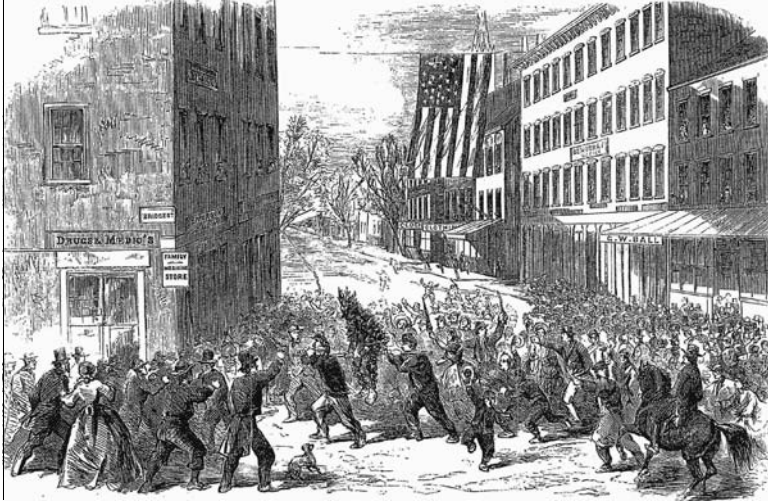
public opinion supporting “a direction of established institutions” (Wortman’s words). Madison’s and Wortman’s views are not prevalent in journalists’ discussion at the time, but scholars agree that Americans’ discussion of freedom of expression at the constitutional level first peaked in the wake of the 1798 Alien and Sedition Acts and that the U.S. Congress enacted no such laws again until the 1917 Espionage Act and 1918 Sedition Act.<sup>26</sup>

The period from the 1830s, when tensions erupted into a major societal upheaval over abolishing slavery, until the Civil War in the 1860s marks a second significant stage in Americans’ confrontation with hated ideas. The decade was marked by aggressive efforts to abolish slavery – an idea so widely hated that equally aggressive counter efforts were exerted to suppress it. In the resulting societal tension, controversy over slavery severely tested expression limits as efforts to prevent circulation of the idea of abolition included violence, destruction of press equipment, and harassment of speakers. African American editors, all of whom advocated abolition from the beginning of the first black newspaper in 1827, endured harassment and difficulties in attracting advertisers and other financial support,<sup>27</sup> and

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<sup>26</sup>Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, xix-xlv. Murphy wrote that “Federal repressive legislation,” except for the Alien and Sedition Act of 1798, “had been almost nonexistent” before World War I. See Murphy, *The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR*, 22. On the Alien and Sedition Acts, see James Morton Smith, *Freedom’s Fetters: op. cit.*; and John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Atlantic-Little, Brown and Co., 1951).

<sup>27</sup>Among histories of the black press are Lionel C. Barrow Jr., “‘Our Own Cause’: *Freedom’s Journal* and the Beginnings of the Black Press,” *Journalism History* 4: 4 (Winter 1977-78): 18-22; Martin E. Dann, ed., *The Black Press, 1827-1890* (New York: Capricorn Books, 1971); Frederick G. Deitweiler, *The Negro Press in the United States* (Chicago: University of Chicago Press, 1922); Lauren Kessler, *The Dissident Press: Alternative Journalism in American History* (Beverly Hills: Sage Publications, 1984); Charlotte G. O’Kelly, “Black Newspapers and the Black Protest Movement: Their Historical Relationship, 1827-1945,” *Phylon* XLIII (Spring 1982): 1-14; Bernard Rubin, ed., *Small Voices & Great Trumpets: Minorities and the Media* (New York: Praeger, 1980); Bernell Tripp, *Origins of the Black Press, New York, 1827-1842* (Northport, AL: Vision Press, 1992); Roland E. Wolseley, *The Black Press, U.S. A* (Ames: Iowa State University Press, 1971).



Tarring and feathering of Ambrose L. Kimball, editor of the Essex "Democrat" Haverhill, Mass., a rebel-sympathising (sic) journal. (From *Frank Leslie's Illustrated Newspaper*, Aug. 31, 1861)

non-African Americans opposing slavery fared little better. William Lloyd Garrison suffered continual harassment after he founded the abolitionist *Liberator* in Boston in 1831.<sup>28</sup> One mob in 1835 chased down Garrison to prevent him from addressing an anti-slavery meeting, then bound him and dragged him through Boston streets until police intervened and locked him in jail for his safety.<sup>29</sup> Mobs destroyed the press of James G. Birney, who published the antislavery *Philanthropist* in Cincinnati, Ohio,<sup>30</sup> and a mob murdered editor Elijah Lovejoy in 1837 because he published abolition articles in the St. Louis *Observer*.<sup>31</sup>

<sup>28</sup>Nye, 123-125; Doris Faber, "I Will Be Heard": The Life of William Lloyd Garrison (New York: Lathrop, Lee and Shepard Company, 1970): 63, 74-82.

<sup>29</sup>See Curtis, 117-170, and Nye, op. cit., for discussion of suppression during the abolition crisis. Other relevant sources are: Frederick May Holland, *Frederick Douglass: The Colored Orator*, rev. ed. (New York: Haskell House Publishers, Ltd., 1969; first published, 1891): 149-189; Faber, 70-82; Kessler, 21-34; Thomas, *The Liberator: William Lloyd Garrison, A Biography*, op. cit.; See also Tripp, op. cit.

<sup>30</sup>Nye, 128-135.

<sup>31</sup>Nye, 145-149.

Lovejoy's often-quoted words suggest he believed hated ideas were protected: After an Alton, Illinois, public meeting about Lovejoy produced a resolution that freedom of speech "does not imply a moral right ... to freely discuss the subject of slavery," he vowed that no public meeting would dictate his ideas, saying, "If you give ground an inch, there is no stopping place." But few other journalists expressed such an encompassing view of expression rights at the time, and editorial defenses of Lovejoy were rare, even after he died defending his press from a mob bent on stopping the dissemination of the idea of abolition.<sup>32</sup> Among the few who did defend expression in reference to Lovejoy's murder, New York *Evening Post* editor William Cullen Bryant wrote after Lovejoy's death, according to Nye, that the "right to discuss freely and openly ... all political questions ... is a right as clear and certain, so interwoven with our other liberties, so necessary, in fact, to their existence, that without it we must fall at once into despotism and anarchy... ."; and, treating the issue as transcending slavery, Bryant called free expression "vital to the liberties of the entire Union."<sup>33</sup>

By the height of the abolition movement, in the mid-1830s, U.S. newspapers had increased to nearly two thousand.<sup>34</sup> The U.S. penny press movement, which began in 1833, spawned journalistic innovations that stabilized and shaped the American newspaper industry.<sup>35</sup> Developments in the North in advertising sales, circulation competition, and unprecedented growth, especially, marked 1830s journalism. But the vast majority of those newspapers were pro-slavery – or at least they showed no open opposition to slavery – and many actively opposed abolition. Before 1830, a few abolition newspapers had published in the South, but Nat Turner's revolt

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<sup>32</sup>Nye, 145-146.

<sup>33</sup>Nye, 150.

<sup>34</sup>See Dill, *op. cit.*

<sup>35</sup>Daniel J. Czitrom, *Media and the American Mind: From Morse to McLuhan* (Chapel Hill: University of North Carolina Press, 1982): 3-19; William E. Huntzicker, *The Popular Press, 1833-1865* (Westport, CT: Greenwood Press, 1999); Dan Schiller, *Objectivity and the New; The Public and the Rise of Commercial Journalism* (Philadelphia: University of Pennsylvania Press, 1981); Michael Schudson, *Discovering the News: A Social History of American Newspapers* (New York: Basic Books, 1978).

against slavery in 1831 led Southerners to act against abolition as a deeply hated idea. They denied circulation of abolitionist ideas in newspapers and through the mails and secured a “gag” rule prohibiting discussion of slavery in Congress.<sup>36</sup> Effective from May 6, 1836, the gag rule was strengthened and then renewed with each congressional session until 1844.<sup>37</sup>

Nye concludes that, ultimately, manifestations of hatred for the idea of abolition helped turn the tide of opinion in the North. Suppressive episodes like the murder of editor Lovejoy for publishing abolitionist material and the congressional gag rule against discussion of slavery provoked a re-conceptualization in the North of expression rights as extending to hated ideas — at least if that was deemed necessary to protect rights of the (white) majority. (Nye says evidence that the South, in trying to protect and extend slavery, was willing to infringe basic civil and personal rights exacerbated sectional differences that culminated in the Civil War.<sup>38</sup>)

It is important to stress that hatred for the idea of abolition was not confined to the South. Except for the few African American journalists, comparatively few abolitionists, and even fewer sympathizers among the mainstream press, antebellum journalists denied abolitionists’ rights to expression. Mainstream Northern journalists participated in suppressing abolitionists’ rights by denying abolitionists access to their newspaper pages, editorially attacking and ridiculing them, appealing for legal and extralegal actions against them, and producing and printing material to counter their appeals. At the same time, mainstream journalists participated in — and in some cases led — anti-abolitionist meetings.<sup>39</sup> Some examples follow.

The venerable Hezekiah Niles, founder in 1811 of *Niles’ Weekly Register* in Baltimore and widely regarded as the most fair-minded editor of his era, often expressed dislike for slavery but nevertheless denied free expression for abolitionists. Condemning the *Emancipator* and circulation of the *Liberator* among African Americans, Niles, referring to Garrison, said he would “not argue ... with the *madness*”

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<sup>36</sup>W. L. Miller, 179-269; Nye, 29, 45-53, 80-81, 120-121, 153.

<sup>37</sup>W. L. Miller, 476-487.

<sup>38</sup>Nye, 313-315.

<sup>39</sup>Richards, 29,

of someone who claimed to support emancipation while doing so much harm. "It is a great misfortune, that persons so potent to do good may have a mighty power to do evil," he wrote.<sup>40</sup> Benjamin Day, editor of the first successful penny newspaper, the *New York Sun*, refused to print a black man's letter to the editor about a pending civil rights bill in the New York legislature. Referring to his newspaper's motto, "The Sun Shines For All," Day told the man that the motto did not include black men<sup>41</sup> and charged him fifteen dollars to print the letter as an advertisement. James Gordon Bennett, founder of the *New York Herald* in 1835 and Day's first serious competitor, appealed for action against anti-slavery forces and was among the leaders of at least one anti-abolitionist meeting.<sup>42</sup>

Near the height of turmoil about abolition, Bennett wrote in an 1835 editorial that "The abolitionists, a few thousand crazy-headed blockheads" had so "terribly scared" fifteen million people "that the ordinary operations of laws against evil doers are thrown aside as too slow." Arguing for regulation of public opinion, Bennett wrote, "These abolitionists should not be allowed to misrepresent New York."<sup>43</sup> And a few years later, as an 1850 anti-slavery meeting convened in New York, Bennett wrote: "When free discussion does not promote the public good it has no more right to exist than a bad government... . It should be overthrown. That half a dozen madmen should manufacture opinion for the whole community is not to be tolerated."<sup>44</sup> Near the eve of the Civil War, according to journalism historian David Mindich, Bennett wrote in an 1858 editorial that the *Herald* had been for more than twenty years the "only Northern journal that has unfailingly vindicated the constitutional rights of the South."<sup>45</sup>

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<sup>40</sup>Norval Neil Luxon, *Niles' Weekly Register* (Baton Rouge: Louisiana State University Press, 1947): 1-4, 39, 281-283. Luxon cites a column in the *Register*, XLI, Oct. 22, 1831: 145-46.

<sup>41</sup>Kessler, 22.

<sup>42</sup>Richards, 29.

<sup>43</sup>*New York Herald*, Sept. 1: 1853: 3

<sup>44</sup>*New York Herald*, May 7, 1850. Quoted in George M. Fredrickson, ed., *William Lloyd Garrison* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1968): 113-114.

<sup>45</sup>David T. Z. Mindich, *Just the Facts: How "Objectivity" Came to Define American Journalism* (New York and London: New York University Press, 1998): 47.

Two other leading editors during the era, Horace Greeley and Henry J. Raymond, showed sympathy for abolitionists. Greeley, who arrived in New York in 1831 at age twenty and struggled through most of the decade to become an established journalist, was cautious about slavery early on. But in the 1850s, eloquent anti-slavery editorials in the New York *Tribune* identified Greeley with the abolitionist cause and perhaps led to his being the one mainstream editor generally mentioned in histories of the era. Historian Allan Nevins wrote that “Greeley’s role in this particular drama which ended with the Emancipation Proclamation was as great as any statesman’s save Lincoln,” and that no one else “did so much to rally the north in unyielding opposition to the spread of slavery.”<sup>46</sup> Ralph Waldo Emerson considered Greeley so influential that he wrote from Minneapolis during an 1856 speaking tour that “Greeley does the thinking for the whole West at \$2 per year for his paper.”<sup>47</sup>

Raymond, a teenage student during the worst 1830s abolition tumult, later strongly opposed slavery extension; but he seemed uncertain about how emancipation could be accomplished and often tried to reassure Southerners, especially after the 1854 emergence of the Republican Party, that Northerners intended no harm to Southern institutions — one of which certainly was slavery. While working at the New York *Courier and Enquirer* in the late 1840s, Raymond so angered owner James Watson Webb by writing anti-slavery editorials that Webb fired him and rewrote his last *Courier and Enquirer* editorial. (Raymond, who then founded the New York *Times* in 1851 and later became active in the new Republican Party, supported Lincoln and emancipation during the Civil War.)<sup>48</sup>

Several theories exist about the press and free expression during societal upheavals. One, which seems a truism, is that the press predominantly supports and maintains the social (political) system by

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<sup>46</sup>Allan Nevins, *American Press Opinion: Washington to Coolidge: A Documentary Record of Editorial Leadership and Criticism, 1785-1927* (New York: D. C. Heath and Co., 1928): 112-113; See also Van Deusen, *Horace Greeley: Nineteenth-Century Crusader*, 213-232.

<sup>47</sup>Henry Luther Stoddard, *Horace Greeley, Printer, Editor, Crusader* (New York: G. P. Putnam’s Sons, 1946): 93.

<sup>48</sup>Brown, 92-115.

helping sustain dominant values. This was as true before the Civil War as it has been since.<sup>49</sup> Reflecting another theory, Myron Nilles, who studied the local Civil War era press, summarized some scholars' observations that social systems and the press respond predictably to conflict and change: External conflict tends to produce internal cohesion and facilitate and maintain societal consensus as common values become increasingly emphasized in resisting external threats.<sup>50</sup> The Civil War involved two sections of the nation, each of which, as an external threat to the other, unified the "enemy" section, leading to exaggeration of distinctions of one section from the other. Proposition II, stated by historian Fredrick S. Siebert, about societal response to stressful change, certainly can be applied to the Civil War: "The area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."<sup>51</sup> Some literature about the Civil War emphasizes the dilemma posed by dual needs to assure the common good and to maintain individual rights — a dilemma brought on by such a crisis in a democracy. (Scholars generally agree that Lincoln always chose the common good over individual rights. Northern mainstream journalists generally agreed with Lincoln.)

Scholars disagree about the war's impact on civil liberties and on American journalism, however. Dickerson, who wrote about freedom

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<sup>49</sup>For sources about functionalist theory, see Charles Harper, *Exploring Social Change* (New York: Prentice-Hall, 1989); Robert A. Nesbit, *Social Change and History* (New York: Oxford, 1969); Tichenor, Donohue and Olien, *Community Conflict and the Press*, op. cit.; Donohue, Tichenor and Olien, "Mass Media Functions, Knowledge and Social Control," *Journalism Quarterly* (Winter 1973): 652-659; Olien, Donohue and Tichenor, "Media and Stages of Social Conflict," *Journalism Monographs* 90 (November 1984). The clash of values and ideas, plus the problems of covering a war so close to home, may have prompted talk about free expression issues, but those issues would likely be subordinated to the larger system.

<sup>50</sup>Myron Arnold Nilles, "Newspapers in Transition: A Study of the *Winona Republican* and the *LaCrosse Democrat*, 1855-1866." MA thesis, University of Minnesota, 1994: 77-81. Nilles cited especially Tichenor, Donohue and Olien, *Community Conflict and the Press*, (Beverly Hills: Sage, 1980): 84, 90, 217, 224; and Morris Janowitz, *The Community Press in an Urban Setting* (Chicago: University of Chicago Press, 1967): 9, 11-14, 25.

<sup>51</sup>Fredrick S. Siebert, *Freedom of the Press in England, 1476-1776* (Urbana: University of Illinois Press, 1965), 10.

of expression across the nineteenth century, concluded that the Civil War experience added “to the debate over the boundaries of freedom of the press and even increased people’s understanding of the vital role the press could play in times of upheaval.” But it also showed “that a war at home can stress the Constitution beyond its own strength, forcing government to temporarily suspend cherished guarantees.” Hence, “military necessity” became “an acceptable exception” to First Amendment guarantees — an exception that, with the U.S. Supreme Court’s blessing, has been “subscribed to by every wartime administration since.”<sup>52</sup> Mark E. Neely, Jr. challenges previous interpretations of the civil liberties record during the war, based on his research about who was arrested and why. He concluded that “The clearest lesson is that there is no clear lesson in the Civil War — no neat precedents, no ground rules, and no map. War and its effect on civil liberties remain a frightening unknown.”<sup>53</sup> Most arrests were not “political” and “would have occurred whether the writ [of habeas corpus] was suspended or not,” Neely says, adding that “civil liberties, as the Lincoln administration handled them,” lacked the “power to shake American society.”<sup>54</sup>

Others, however, offer different conclusions. For example, Reed Smith, who focused on one copperhead newspaper and editor, cited Harold Nelson’s conclusion that, during the Civil War, “[j]ournalists learned that ‘total war meant some compromise of democratic forms, including even freedom of the press,’” and the government learned that people “needed information” if it were to get maximum support during wartime. Smith himself concluded that “redefining the limits of the opposition press has remained a question in every subsequent American war.”<sup>55</sup> Jeffery Smith, in a book about press freedom during wars in successive presidential administrations, says Civil War restrictions provided a model for excusing abuses of expression rights:

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<sup>52</sup>Dickerson, 180-181.

<sup>53</sup>Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties*, (New York and Oxford: Oxford University Press, 1991): 235.

<sup>54</sup>Neely, 233-234.

<sup>55</sup>Reed W. Smith, *Samuel Medary & the Crisis*, 157.

"Lincoln's willingness to tamper with the Constitution became a model for the assumption of executive branch power over the press."<sup>56</sup>

Noting the ready forgiveness of Lincoln then and since, perhaps because his "eloquence and humanity made him, according to polls of both scholars and the public, the most respected person in American history," Smith says that Lincoln, nevertheless, taught "his successors how power could be seized in troubled circumstances." Smith concluded, "With the shackles of the Constitution removed, the president may be regarded as a dynamic, even heroic figure, but the people will be less free."<sup>57</sup> Law professor and former law school dean Geoffrey Stone, on the other hand, praises Lincoln's high regard for the Constitution and concludes that, considering the dimensions and unprecedented nature of the upheaval the Civil War constituted, "it can fairly be said, on balance, that the nation suffered only a very limited – and largely unsystematic – interference with free expression during the Civil War."<sup>58</sup> Military officials, Stone argues, posed a much greater danger to expression rights than did Lincoln.

Regarding the war's effect on journalism, some say the Civil War, treated as both symbolizing and provoking the greatest change in nineteenth-century American society, simply entrenched journalistic trends underway. But others argue the war experience drastically affected journalism. Some scholars have located the birth of modern American journalism in the Civil War years.<sup>59</sup> One has said that "the very conception of what a newspaper was underwent revolutionary changes,"<sup>60</sup> and another has said the war wrought a revolution in journalism.<sup>61</sup>

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<sup>56</sup>Jeffery A. Smith, *War and Press Freedom: The Problem of Prerogative Power* (New York and Oxford: Oxford University Press, 1999): 121.

<sup>57</sup>J. A. Smith, *War and Press Freedom*, 125.

<sup>58</sup>Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime* (New York and London: W.W. Norton, 2004): 133-134.

<sup>59</sup>Edward L. Carter, "The Revolution in Journalism During the Civil War," *Lincoln Herald* 73 (Winter 1971): 229-241. Carter uses the term "modern" in discussing several journalistic developments during the war but does not state specifically that the modern newspaper was "born" out of the Civil War.

<sup>60</sup>Kluger, 97.

<sup>61</sup>Carter, op. cit.

Reporting Civil War news certainly was the greatest challenge American journalists had faced up to that time, and that very experience – even while entrenching trends underway – helped shape the profession, views of journalistic work, and aspiring journalists. Providing the first systematic coverage of events away from home offices, more than three hundred correspondents, called “specials,” traveled with troops across the nation to report on battles, generals, and army life.<sup>62</sup> Efforts to meet the unprecedented demand for news established and expanded newsgathering methods, making the telegraph an appendage to journalism. Those efforts, which also increasingly emphasized news over partisan opinion, made the Sunday newspaper a permanent part of journalism, and created an unprecedented newspaper-reading habit in the United States.<sup>63</sup> The potential impact of journalists’ views about hated ideas was therefore expanded and intensified during these processes.

Revisionist historians have argued that the meaning of free expression was hardly definitive during creation of the First Amendment, and the extent to which protection for hated ideas figured in its fashioning is unclear. Relevant literature rarely addresses hated ideas; it generally focuses on either the conceptual history and philosophical foundation of press freedom or its evolving interpretations and rarely integrates both. Such division seems to be at the heart of views about the nineteenth century as the “forgotten years of First Amendment scholarship.”<sup>64</sup> Blanchard, perhaps the first to revise nineteenth-century First Amendment history, summarized existing scholarship: “The roots of freedom of the press up to about 1800 are popular with researchers caught up in the quest to understand what the framers of the First Amendment really meant ... . Then, generally, the study of press freedom jumps to the twentieth century ... with little done so far on freedom of the press in the nineteenth century.”<sup>65</sup> Blanchard found much development in

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<sup>62</sup> Andrews, *The North Reports the Civil War*, 60-75.

<sup>63</sup> Andrews, *The North Reports the War*, 6-7; 31-34.

<sup>64</sup> Robert W. T. Martin, “The ‘Free and Open Press’: The Foundation of Modern American Democratic Press Liberty,” Ph.D. diss., University of Minnesota, 1997, p. 272.

<sup>65</sup> Blanchard, *Revolutionary Sparks*, xi.

expression history at the state level. And Norman L. Rosenberg, after an exhaustive study of the history of libel, wrote in a 1986 book that, “Contrary to most accounts, American lawyers did discuss ... free speech ... during the years between the Sedition Act of 1798 and World War I.”<sup>66</sup>

Literature generally supports the view that the meaning of First Amendment rights of speech and press has accrued over time, and much literature emphasizes the era of the amendment’s origins as quite suppressive. Siebert, a constitutional historian who studied speech and press in England across the three centuries before American Independence, says that, despite a pattern of decreasing governmental control and increasing defiance by printers and journalists, the English press was not really free until around the time of the American Civil War.<sup>67</sup> Further, seditious libel, a mechanism for suppressing hated ideas in England, carried over to colonial America and the new nation, despite advances toward a freer press that included eliminating prior restraint, allowing truth as a defense and advocating punishment for only overt acts.

Levy, in *Emergence of a Free Press*, supporting conclusions in his earlier landmark study of expression rights in colonial America, asserts that the American Revolution generation intended no significant change in the tradition inherited from England regarding the press.<sup>68</sup>

Writers of the First Amendment, according to the general argument, gave too little thought to its deeper implications to have considered its application to hated ideas. Levy claims, for example, that, because of party battles, even defenders of press freedom did not give the concept much thought or know what it meant.<sup>69</sup> The “drafting and adoption of the First Amendment,” he asserts, “does not suggest

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<sup>66</sup>Normal L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel*. (Chapel Hill and London: The University of North Carolina Press, 1986): 177.

<sup>67</sup>Siebert, *Freedom of the Press in England*. See also Leonard W. Levy, *Emergence of a Free Press* (New York and Oxford: Oxford University Press, 1985).

<sup>68</sup>Levy, *Emergence of a Free Press*, xii; 282-307.

<sup>69</sup>Leonard W. Levy, *Freedom of Speech and Press in Early American History: Legacy of Suppression* (Cambridge: Harvard University Press, 1960): 176ff. Levy’s treatment of John Wilkes (147ff), and the House debates of the First Amendment (224 ff), are indicative of this view. See also Levy, *Emergence of a Free Press*, 149, 234.

an intent to institute broad reform," since it originated from the political battles of Federalists and Anti-Federalists over the power of the central government rather than from high principles.<sup>70</sup> Levy says the First Amendment was drafted in vague and narrowly understood terms and that no broad libertarian theory existed in the United States before the end of the eighteenth century.<sup>71</sup> And he also argues that colonial Americans did not realize that freedom of expression meant that others were free to promote ideas one might hate.<sup>72</sup>

Among scholars embracing Levy's views are Dwight Teeter and Don Le Duc, who frame the press freedom issue in individual-natural-rights versus social-good arguments. Teeter and Le Duc say that the First Amendment was a "political afterthought," ill-defined by its drafters and heavily qualified to provide punishment for unspecified "abuse" of freedom.<sup>73</sup> This view is borne out by the fact that many staunch liberty defenders in American history have about-faced on free expression issues when they became subjects of stinging criticism. For example, Thomas Jefferson as a U.S. president sought prosecutions of journalists despite his often-quoted liberal statements about press freedom.<sup>74</sup> Such turnabouts continued, even as governmental restrictions diminished with time, especially regarding issues that divided public opinion.<sup>75</sup>

Lofton, who studied whether the American press has acted over time as defender of First Amendment rights, supports Levy's conclusion that 18th-century newspapermen and politicians did not see press freedom as encompassing every idea.<sup>76</sup> Lofton also concluded that editors have been far less libertarian about hated ideas than have interpreters of the First Amendment.<sup>77</sup> More to the point of this book,

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<sup>70</sup>Levy, *Legacy of Suppression*, 214-235.

<sup>71</sup>Levy, *Legacy of Suppression*, viii. See also J. M. Smith, 426-427.

<sup>72</sup>Levy, *Legacy of Suppression*, 18.

<sup>73</sup>Dwight Teeter and Don Le Duc, *Law of Mass Communication* (Westbury, N.Y.: Foundation Press, 1995): 9-11; 20-21.

<sup>74</sup>Leonard W. Levy, *Jefferson and Civil Liberties: The Darker Side* (Cambridge: The Belknap Press of Harvard University Press, 1963): 59-69.

<sup>75</sup>Lofton, 45-49. J. C. Miller, *Crisis in Freedom*, 231-233; Levy, *Jefferson and Civil Liberties*, 56-59.

<sup>76</sup>Lofton, 1; 10-11.

<sup>77</sup>Lofton, 279; 284.

Lofton argues that unorthodox opinions were hardly tolerated in colonial America, and the situation improved little with the rise of the partisan press in the early 19th century. Throughout American history, mainstream media have largely ignored concerns of those expressing dissent, and dissenters have been left to fend for themselves against suppression, according to Lofton.

Richard Buel, Jr., seeking an historical explanation for the apparent contradiction during the American Revolution that printers could “justify simultaneously the absolute freedom of their own press and the ruthless repression of adversary printers,”<sup>78</sup> ultimately concluded that cultural change over time explains the phenomenon. Buel wrote that eighteenth-century Americans assumed a legitimate state could be assaulted by words alone, that a patriot press provided a revolutionary force bringing public unity, and that any other use of the press justified suppression (which happened often and with popular support in the American Revolution era). Such views, he argued – in agreement with Levy – gave way in the early nineteenth century to a libertarian notion that “a genuinely popular government has nothing to fear from free expression.”<sup>79</sup>

But libertarianism clearly did not prevent suppression of hated ideas thereafter in America. Through the 1820s and after, such efforts as anti-masonry, anti-Catholicism, and anti-foreignism (or American nativism), and anti-abolition movements exemplify assaults on ideas contrary to the “current of public opinion” (to again use Wortman’s words), or hated ideas.<sup>80</sup> Journalists of the mainstream press (the dominant, generally highest-circulation newspapers) in the antebellum North and South who proclaimed themselves true defenders of expression rights readily denied abolitionists the right to express and circulate their views in the 1830s climate of intensifying mob

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<sup>78</sup>Richard Buel, Jr., “Freedom of the Press in Revolutionary America: The Evolution of Libertarianism, 1760-1820,” in Bernard Bailyn and John Hench, eds., *The Press and the American Revolution* (Worcester, MA: American Antiquarian Society, 1980): 62.

<sup>79</sup>Buel, 96.

<sup>80</sup>For early American suppressive movements, including anti-abolitionism, see Alice Felt Tyler, *Freedom’s Ferment: Phases of American Social History to 1860* (Minneapolis: The University of Minnesota Press, 1944): 351-395; 463-547.

violence.<sup>81</sup> And, during the Civil War, Dickerson notes, “with few exceptions, editors wailed as loudly against the censorship of their telegraphic dispatches as they railed against government’s refusal to suppress opposition journals.”<sup>82</sup> Lofton wrote that, among Civil War newspapers, only the New York *Times* supported press freedom for the Chicago *Times* before Lincoln made clear he would not tolerate suppressing it. In a statement that calls to mind the two New York *Times* editorials quoted earlier, Lofton comments: “This tendency merely to endorse the government’s posture hardly indicates a readiness by editors to take a bold and independent position on behalf of freedom of the press.”<sup>83</sup>

Scholars differ on the degree of press control in the South during the Civil War, although recent research undermines the long-held contention that the Southern press was severely suppressed; and many have called Northern censorship efforts ineffectual while noting that Lincoln tolerated vitriolic criticism throughout the war rather than seek new laws.<sup>84</sup> Nilles cites an example of controversial political ideas

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<sup>81</sup>Lofton, 79, ff.

<sup>82</sup>Dickerson, 179-180.

<sup>83</sup>Lofton, 110.

<sup>84</sup>Regarding expression rights in the North, see Neely, op. cit.; Thomas F. Carroll, “Freedom of Speech and of the Press During the Civil War,” *Virginia Law Review* IX (May 1923): 516-551; James G. Randall, “The Newspaper Problem and Its Bearing Upon Military Secrecy During the Civil War,” *American Historical Review* 23 (Jan. 1918): 303-323. See also Harold M. Hyman, *Era of the Oath: Northern Loyalty Tests During the Civil War and Reconstruction* (Philadelphia: University of Pennsylvania Press, 1954); Arnold Shankman, “Freedom of the Press During the Civil War: The Case of Arnold D. Boileau,” *Pennsylvania History* 42: 4 (Oct. 1975); Craig D. Tenney, “To Suppress or Not to Suppress: Abraham Lincoln and the *Chicago Times*,” *Civil War History* 27: 3 (Sept. 1981)); Donald Bridgman Sanger, “The *Chicago Times* and the Civil War,” *Mississippi Valley Historical Review* XVII (March 1931): 557-580; John Glen, “William Tecumseh Sherman and Free Expression,” in David B. Sachsman, S. Kittrell Rushing, Debra Reddin van Tuyll, eds., *The Civil War and the Press* (New Brunswick, NJ, and London: Transaction Publishers, 2000): 407-417; Robert Harper, *Lincoln and the Press* (New York: McGraw-Hill, 1951): 100-172; Andrews, *The North Reports the Civil War*, 70, passim.

Among sources about expression rights in the South, see Robert Neil Mathis, “Freedom of the Press in the Confederacy: A Reality,” *The Historian* 37: 4 (Aug. 1975); John Robbins, “The Confederacy and the Writ of Habeas Corpus,” *Georgia Historical Quarterly* 55: 1 (Spring 1971); Quintus Wilson, “The Confederate Press

when, as late as 1864, a *La Crosse (Wisconsin) Democrat* front-page drawing of Lincoln captioned “The Widow Maker of the 19th Century and Republican Candidate for President” ran for six weeks before the election. The editor called Lincoln “a murderer” and anyone who voted for him a “traitor”; and, on a chilling note, he wrote that, if Lincoln were “elected to misgovern for another four years, we trust that some bold hand will pierce his heart with a dagger point for the public good.”<sup>85</sup>

A war that figuratively reached everyone’s doorstep posed the acute problem for governments of both the North and South of protecting freedom of expression while curtailing information that might help the enemy. The problem may have been more serious in the North because of the greater number of publications.<sup>86</sup> In any event, scholars have noted the need for censorship to overcome the ease with which news could reach enemy forces and to help maintain public morale.<sup>87</sup>

These dual needs – to keep information from the enemy and to maintain public morale – led to the two kinds of suppression in the North: *Military* censorship was intended to assure secrecy of military strategies, and *political* censorship was intended to prevent obstruction of the Union cause, especially in the form of published criticism of the government, its officers and conduct of the war, according to Quintus

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Association: A Pioneer News Agency,” *Journalism Quarterly* 26 (June 1949): 160-166; Debra Reddin van Tuyl, “Journalists First, Rebels Second: An Examination of Editorial Reaction to the President’s Proposed Conscription of Newspapermen,” in Sachsman, Rushing and van Tuyl, 437-449; Andrews, *The South Reports the Civil War*, 540-541.

<sup>85</sup>Nilles, 31.

<sup>86</sup>Four thousand and fifty-one periodicals published in the North contrasted with just eight hundred and forty-four in the eleven states that became the Confederacy, according to the 1860 U.S. Census.

<sup>87</sup>Dickerson, 144-147; Quintus C. Wilson, “A Study and Evaluation of the Military Censorship in the Civil War” (MA thesis, University of Minnesota, 1945): 29.

Wilson.<sup>88</sup> Journalists usually circumvented military censorship.<sup>89</sup> But political suppression may have been more direct and effective – and less justifiable – for it targeted ideas most likely to be hated, and conspicuously so.

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<sup>88</sup>Wilson, “A Study and Evaluation of the Military Censorship in the Civil War,” 3-5.

<sup>89</sup>Wilson, “A Study and Evaluation of the Military Censorship in the Civil War,” 147ff., notes constant friction between journalists and any authority threatening freedom of expression. See also Thomas Gubak, “General Sherman’s War on the Press,” *Journalism Quarterly* 36 (Spring 1959): 171-176; Nerone, especially chapter 5; Dickerson, op. cit.; Blanchard, *Revolutionary Sparks*.

Some earlier relevant sources include: Andrews, *The North Reports the Civil War and The South Reports the Civil War*; Carroll, op. cit.; Harper, *Lincoln and the Press*, op. cit.; Joseph J. Mathews, *Reporting the Wars* (Minneapolis: University of Minnesota Press, 1957); James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1989); Joe Skidmore, “The Copperhead Press and the Civil War,” *Journalism Quarterly*, 16 (December 1939): 345-355; Starr, op. cit.; Leon Whipple, *The Story of Civil Liberty in the United States* (Westport, CT: Greenwood Press, 1970).

