

*Distant Battles, Intimate Consequences*

*Lessons from the American "Home Front" during World War I*

**Policy Memo by Harry Blain**

## **Introduction: War, Democracy and Repression**

What does war do to a democracy? Political scientists have frequently asked this question in reverse, debating why democracies go to war (Mansfield and Snyder 2007), how they prosecute wars (Reiter and Stam 2002), their prospects for winning wars (Lake 1992), and the ostensible tendency of democracies to avoid war with each other (Doyle 1983; McDonald 2015). Yet with some notable and important exceptions (e.g. Kahler 1984), studies of the impact of war on democracies are largely confined to countries undergoing democratic transitions, where important stabilizing institutions – such as constraints on executive power – are weak or non-existent (Mansfield and Snyder 2002). It is often taken for granted that, in contrast, “stable democracies” with well developed “checks and balances” are purveyors of “peace, prosperity and respect for civil liberties” (Mansfield and Snyder 2002, 334).

I challenge this view, arguing that even a textbook “stable democracy” – with an independent judiciary, bill of rights, and constraints on executive power – is vulnerable to domestic political repression during war. My definition of “repression” is three-dimensional, distinguishing between the range of core civil liberties abridged by the government (*breadth*), the extent to which any one of these liberties is limited (*depth*) and the life-span of emergency measures after war ends (*longevity*).<sup>1</sup> I focus on the United States during the First World War not only because its recent “centennial” has generated insightful reflections on its legacy (e.g. Stone and Bollinger 2018), but also because, in theory, it is not a case where we should intuitively expect to see significant repression: a wealthy and consolidated democracy entering briefly into a foreign conflict, with a sober-minded political scientist in the White House. The historical record starkly exposes the limits of these assumptions.

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<sup>1</sup> This differs somewhat from Goldstein’s (1978, p. xvi) widely-cited definition: “Political repression consists of governmental action which grossly discriminates against persons or organizations viewed as presenting a fundamental challenge to existing power relationships or key governmental policies, because of their perceived political beliefs.”

## **Lesson 1: Local elites will exploit the panic and confusion of war**

According to the mythology laid down by James Madison in the *Federalist Papers*, a wide dispersion of political power constrains authoritarian impulses. If no single institution or individual can dominate society, he argued, then civil liberties would gain extra protection beyond simply their written acknowledgement (see Gibson 1990). In this view, local, regional, and national actors provide the important “vertical” checking and balancing to complement the “horizontal” separation among the judicial, executive, and legislative branches of government. Subnational political units might also be more receptive to dissent and protest than the distant central government (Gerken 2018, 68-81). However, when Madison was finished selling his new constitution to reluctant New Yorkers, he more freely expressed his fear that state governments were just as, if not more, predisposed to repression than the Congress – pushing this perspective to a national audience as the Bill of Rights was debated (Amar 1999, 3-20). Which Madison was correct?

Although the history of the American civil rights movement has lent much support to the state-fearing Madison (Gerken 2018, 68), scholars of war and civil liberties frequently blame repression on excessive executive power or “overreach” at the national level (e.g. Stone 2005; Walker 2012). Applied to the First World War, proponents of this view have accused President Wilson of intellectual disdain for the constitution, grandiose visions of a progressive, homogenous society, and over-sensitivity to dissent, especially compared to other wartime presidents, such as Abraham Lincoln (Stone 2005, 553-54; Neely 1991; kinder comparisons include Randall 1951, 511-531). To be sure, the Wilson Administration presided over a broad and deep apparatus of wartime repression, with 1,055 Americans arrested under its Espionage Act and 3,600 (including a socialist presidential candidate) under its “Sedition” amendment. Wilson’s Justice Department also created a punitive deportation regime for “foreign radicals,” and collaborated with vigilante groups in the search for so-called Fifth Columnists. Key

constitutional protections – such as freedom of speech and association, as well as the right to due process – were clearly violated by the national government (Jaffe 2012, 204; Murphy 1979; Kennedy 1980).

However, this national picture obscures the extent to which repression varied regionally. Just thirteen of the nation's eighty-seven federal judicial districts accounted for nearly half the number of Espionage Act prosecutions for the entire war (Kennedy 1980, 83; Scheiber 1960, 46-49). The archives of the American Civil Liberties Union (ACLU) – itself a product of WWI – reveal particularly harsh crackdowns in states with the two most active labor movements of the early 20<sup>th</sup> Century: The avowedly anti-capitalist Industrial Workers of the World (IWW) and the more accommodationist and rural Non-Partisan League (NPL). Nine such states passed censorship laws, while fifteen enacted “criminal syndicalism statutes” which all but criminalized labor organizing (Peterson and Fite 1956, 18). States with a major IWW presence included California, Montana and Arizona, while the NPL found most of its support in the mid-west. Despite facing the far less militant NPL, Minnesota's leaders stood out as some of the leading practitioners of state-level repression, with the Governor creating a Commission for Public Safety which “closed saloons and moving picture theaters, directed a census of alien land ownership, established a policy of ‘work or fight,’” and “tested people for loyalty and pro-Germanism” (ibid, 19). In short, restrictions on civil liberties during the First World War did not just come from the top down. They were products of local and regional opportunism.

## **Lesson 2: The judiciary does not protect civil liberties**

With Madison's “Federalist” vision buckling in the elected branches of government during the First World War, the federal judiciary became the last line of defense for dissenters. Independent courts of law are frequently described as robust guarantors of civil liberties,

particularly in large-N comparative studies reliant on Freedom House’s “Freedom in the World” rankings (e.g. Davenport 2007). Yet from the Supreme Court down, judicial checking and balancing was notably absent during the Wilson era. Reliable data are difficult to find, but a variety of first-hand testimonies in the ACLU files and elsewhere seem to confirm Peterson and Fite’s assessment of how justice operated in practice: “Local magistrates, judges, and juries... were often the most intolerant, the most harsh, and least likely to be concerned about the preservation of fundamental rights” (Peterson and Fite 1956, 41). High-profile federal cases such as the 1918 mass trial of 101 IWW leaders in Chicago also reflected a broken judicial process, as “the jury eventually found each of the defendants guilty on four different counts after deliberating for less than an hour, or about nine seconds per count” (Goldstein 1978, 118).

However, it was from the bench of the Supreme Court that the Wilson Administration received its clearest judicial blank check. The Court endorsed the prosecution and incarceration of Socialist Party leader Eugene Debs after he praised draft resisters and urged further opposition to the war during a speech in Canton, Ohio (*Debs v. United States, 1919*). Philadelphia-based socialists Charles Schenck and Elizabeth Baer were also informed that the First Amendment did not offer them protection from the Espionage Act (*Schenk v. United States, 1919*), while Jacob Abrams and his socialist comrades were emphatically denied any right to criticize American intervention in the Bolshevik Revolution (*Abrams v. United States, 1919*).

In U.S. First Amendment folklore, these cases are usually remembered for Justice Oliver Wendell Holmes’s eloquent dissent in *Abrams*, where he argued that “the best test of truth is the power of the thought to get itself accepted in the competition of the market” (Stone, 2005, 207). Less remarked upon is the theory laid down by Holmes in *Schenk*: “When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them

as protected by any constitutional right.” On this principle, the government’s right to prosecute mere *advocacy* of draft resistance – even in the most abstract terms – was upheld by the nation’s highest court.

### **Lesson 3: Repression Sticks**

Since at least the Roman Republic, all representative governments have accepted the notion that national survival must, at times, trump individual liberties. “Is there, in all Republics, this fatal weakness?” asked Abraham Lincoln at the outset of the American Civil War. “Are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?” Both Rehnquist (2000) and Rossiter (1948) use Lincoln’s reflections as the rhetorical framing device for their works on “civil liberties in wartime” and “constitutional dictatorship.” The latter – along with other Civil War scholars (e.g. Hyman 1973) – defends Lincoln’s martial law declarations and suspensions of *habeas corpus* on the grounds that they were temporary. Indeed, for Rossiter (1948), this is an overarching lesson from the experience of democracies fighting modern, “total” wars: They can bend and partially break their constitutions to meet the demands of survival, but also return to regular democratic government when the crisis passes. If we accept this claim about the Civil War (Agamben 2005 challenges it) can we say the same of WWI?

The fact that eight whistleblowers were pursued by the Obama Administration under the 1917 Espionage Act immediately muddles the time-bound repression predicted by Rossiter (on Obama’s use of the Act, see Glennon 2016). The Act lay dormant for decades after WWI, but it was never repealed. In itself, this is a large step away what we might call the “Cincinnatus model” of wartime repression, under which those who are granted extraordinary powers automatically relinquish them when the threat subsides (Rossiter 1948). However, the Espionage Act remained a loaded weapon, and it was first fired in its modern form by the Nixon

administration (Strauss 2018, 123-140). Sub-sections 1d and 1e, punishing the disclosure of classified information, were applied to Daniel Ellsberg, whose leak of the Pentagon Papers exposed a blazing trail of official lies about the Vietnam War. Ellsberg gave the Papers to American journalists, rather than foreign governments – far from any conventional understanding of “espionage.” Nixon pursued him anyway, but amid rebukes from the Supreme Court and the escalation of the Watergate Scandal, the administration eventually backed down. Similarly, none of the Obama Administration’s targets were accused of actual spying (ibid). Chelsea Manning gave classified information to *WikiLeaks*; Jeffrey Sterling to *The New York Times*; Stephen Jin-Woo Kim to *Fox*; Edward Snowden initially to *The Guardian*. Of course, there is a strong argument defending government secrecy in these sensitive realms. Nevertheless, it is a strange inversion of checks and balances when wartime laws are applied in times of peace, rather than peacetime laws as constraints during war.

By the standards of post-9/11 Congressional action – when legislators took just one week to pass the Authorization for the Use of Military Force resolution – the WWI lawmakers were paragons of patience and sober thinking. They did not just take more time to pass the legislation, they debated and amended it, choosing to water down initial drafts that permitted wide latitude for suppression of the press (Stone 2005, 146-153). To be sure, the “Sedition” provision was hasty and ill-considered, but the initial process was proper. There were no wild assertions of executive power, no declarations of martial law, no internment camps, and no Guantánamos. Yet it is noteworthy that the clumsy and chaotic executive unilateralism of the Lincoln administration did not outlast the Civil War, whereas this thoughtful legislation remains useable today. Repression, it seems, can stick – even when authored by the nation’s most deliberative and democratic branch of government.

### **Conclusions and generalizations**

One case can only go so far – and WWI is no different. Generalizing from this event is complicated by the cauldron of domestic tensions that existed in the United States prior to the war: an unprecedented increase in immigration and nativist backlash; a powerful socialist movement; a high-minded “progressive” political class seeking to re-make society. However, the questions I have posed in this paper are invitations to comparativists seeking generalized theories across time and place: How, why, and under what conditions do democracies engage in wartime repression? What are the limits of judicial independence? How do distant conflicts affect local politics? Why do temporary wartime restrictions on civil liberties become permanent? My own research takes up these challenges in studying American political development and elaborates on the themes developed here. I hope it can encourage more historically-grounded work on the endless debates surrounding war, democracy, and civil liberties.

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