



Americans Toss Lady Liberty Overboard During Crises

Ted Galen Carpenter

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Americans take great pride in their country's commitment to the values enshrined in the Declaration of Independence and the Constitution. At the top of that list are the rights enumerated in the first ten amendments to the Constitution — the Bill of Rights. Americans are fond of contrasting the protections that freedom of speech, due process of law, equal protection of the law, and other fundamental rights enjoy in the United States, with their absence in many other nations. The historical record shows, however, that U.S. political leaders and much of the public have been extremely quick to sacrifice such liberties during apparent national-security crises. Three episodes over the past century illustrate that unfortunate tendency.

The weak commitment to liberty during times of stress became glaringly apparent during World War I. Although a majority of Americans probably supported U.S. entry into that conflict when Woodrow Wilson sent his war message to Congress in April 1917, most initially seemed to do so with reluctance. Sizable pockets of anti-war sentiment remained among certain ethnic (especially German-American and Irish-American) communities and committed socialists. Only 73,000 men enlisted in the military during the first six weeks of the war, which caused a worried Wilson to embrace conscription. The president also created the Committee on Public Information to promote the war effort and discourage dissent. Denver journalist George Creel led that effort, immediately establishing a “voluntary” censorship code for the press. Frank Cobb, editor of the *New York World*, later described the overall mission of the Creel Committee:

Government conscripted public opinion as they conscripted men and money and materials. Having conscripted it, they dealt with it as they dealt with other raw materials. They mobilized it. They put it in the charge of drill sergeants. They goose-stepped it. They taught it to stand at attention and salute.

The Wilson administration's propaganda strategy stressed two themes. One was glorification of the U.S. war effort as an idealistic crusade to advance freedom, democracy, and peace throughout the world. The other theme was the caricature of Imperial Germany as a loathsome

menace to all of those values. U.S. propaganda personalized that threat by focusing on the “Beast of Berlin,” Kaiser Wilhelm II. The German people became “the Hun,” despoiling Europe and threatening the Western Hemisphere.

Espionage and sedition

And woe to anyone who dared publicly to challenge that narrative. Rumors of espionage and sabotage (mostly unfounded) swept the country, and “patriotic” groups, such as the National Security League and the National Protective Association, which the Wilson administration supported and encouraged, formed to deal with the imaginary menace. The vigilantes demanded a display of “100 percent Americanism” from all members of their communities. Suspect persons were threatened, forced to publicly kiss the American flag, and subjected to beatings. In some cases, they were literally tarred and feathered.

The harassment of groups considered potentially disloyal sometimes reached ludicrous proportions. Several states passed legislation prohibiting the teaching of German or the conduct of religious services in that language. Statues of prominent Germans, including Revolutionary War hero Friedrich von Steuben, were removed from parks, and the Cincinnati government even banned pretzels from free-lunch counters in local saloons. Such episodes indicate that more-recent silly displays of jingoism, such as the congressional drive to rename French fries “freedom fries” to express displeasure with Paris’s lack of support for the U.S.-led Iraq War, had a long, embarrassing history.

Threat inflation and war hysteria produced especially nasty results during World War I. Wilson’s initial answer to opponents of the war was the Espionage Act of 1917. Although Congress passed that measure in the heat of wartime, the administration had contemplated imposing censorship even before the United States entered the war. As early as August 1916, Secretary of War Newton D. Baker urged Congress to enact a censorship statute regarding the war in Europe. Two months before the declaration of war, Rep. Edwin Webb (D-N.C.), chairman of the House Judiciary Committee and one of the administration’s closest legislative allies, introduced such legislation. Webb’s measure authorized life imprisonment for anyone who circulated or published military information, false statements, or reports “likely or intended to cause disaffection in, or interfere with the success of, the military or naval forces of the United States.”

With some modest differences in language and a reduction of the life imprisonment penalty, the Espionage Act was strikingly similar to the earlier Webb bill. Such premeditation suggests that the Espionage Act was not merely a wartime overreaction. Instead, it reflected a troubling desire by Wilson administration officials to silence anyone who disagreed with their conduct of foreign policy. They exploited a crisis to implement their pre-existing intolerance.

It soon became evident that authorities would use the statute’s vague provisions to suppress the mere circulation of anti-war literature. But the Wilson administration still was not satisfied. Just months later, it proposed amendments to the Espionage Act, and Congress passed them in May 1918. Those amendments were informally called the Sedition Act. At least theoretically, the Espionage Act required the government to prove that injurious consequences to national security would result directly from prohibited utterances. The Sedition Act dispensed with that obstacle and extended the power of the federal government over verbal and printed expressions of opinion regardless of consequences. Moreover, the substantive provisions in the statute were so vague as

to seem calculated to exert the maximum chilling effect on freedom of expression. The act forbade “disloyal, profane, scurrilous, or abusive” remarks about the form of government or military forces of the United States. Such language was so broad that it could mean virtually anything prosecutors wished it to mean. And there was soon an abundance of prosecutions.

The World War I experience was appalling on several levels. There was more freedom of expression in France, although the front lines of the invading German army were sometimes less than 50 miles from Paris, than there was in the United States, more than 3,000 miles from the carnage. Worse, the repression underscored an authoritarian streak in the Wilson administration and the overall Progressive movement. Implicitly, officials feared that unless the country was regimented and dissenters silenced, the public might come to regard the Wilsonian crusade to “make the world safe for democracy” as a bloody fraud.

Journalist Walter Karp documents how Wilson personally fostered the atmosphere of intolerance, and he argues that it betrayed a frightening character flaw.

Cherisher of the “unified will” in peacetime, Wilson proved himself implacable in war. Despising in peacetime all those who disturbed “the unity of our national counsel,” Wilson in wartime wreaked vengeance on them all.... Nothing was to be said or read in America that cast doubt on the nobility of Wilson’s goals, the sublimity of his motives, or the efficacy of his statecraft. Wilson’s self-elating catch phrases were to be on every man’s lips or those lips would be sealed by a prison term.

The short-term effects of the wartime repressive apparatus, especially the Espionage and Sedition Acts, was extremely damaging to the fabric of American liberty. More than 2,000 people were prosecuted under those laws, the overwhelming majority for merely criticizing the government. The real motive for the legislation is evident when not a single enemy spy was convicted for violating the Espionage Act. Some of the prosecutions reeked of partisan political vengeance. Socialist Party leader Eugene V. Debs, for example, received a 10-year prison term for daring to give a speech expressing his distaste for the war.

A menacing bureaucracy developed to enforce the new ideological conformity. By 1920, a little more than a year after the war ended, the Federal Bureau of Investigation, which Karp accurately terms an institutional “swaddling fattened on war” had already amassed files on some two million people that the bureau considered dangerous or disloyal. And that development underscored a key aspect of the domestic hysteria that accompanied America’s entrance into World War I. Neither the mentality nor all the mechanisms of repression disappeared when the fighting ceased. Debs and numerous other political prisoners continued to languish until Warren G. Harding finally commuted their sentences. Indeed, foreign-policy hawks in the 21st century still look longingly at the Espionage Act as a possible weapon to use against ideological opponents.

New enemies

When the war ended, only the designated target of patriotic wrath shifted. The defeated Hun could no longer be cited as the threat to America, but a new Satanic threat conveniently emerged in the form of Russia’s Bolshevik Revolution. Despite the acute weakness of the political Left in the United States, following the defenestration of the anti-war Socialist Party, Wilson

administration officials fomented public fears that the republic was on the brink of a communist revolution. A proliferation of sometimes violent labor strikes and the discovery of bomb plots against some prominent public officials in the late winter and early spring of 1919 gave such allegations a patina of credibility. State legislatures expelled Socialist members, vigilante groups assaulted radical activists, and mobs vandalized the offices of numerous left-wing publications. The treatment meted out to dissenters during the war thus continued even though combat had ceased.

Once again, instead of dampening the flames of hysteria, the Wilson administration fanned them and sought to exploit the atmosphere for political advantage. Attorney General A. Mitchell Palmer not only authorized a crackdown, symbolized by the infamous Palmer raids in January 1920 that detained suspects without trial, he sought to expand the government's already frightening system of repression through enactment of a new peacetime sedition act. Not only would such legislation have made permanent the wartime restrictions of the 1918 Sedition Act, but it would have broadened the definition of what constituted sedition.

Fortunately, a GOP-led Congress balked at such a power grab, and the worst of the war hysteria and repression began to fade. But historian Robert K. Murray correctly concludes that in 1919 and 1920, "America's soul was in danger." The nation was "deserting its most honored principles of freedom — principles which had made it great and given it birth." He had little doubt about the primary culprit. "The war was largely to blame. During the conflict the demand for absolute loyalty had permeated every nook and cranny of the social structure." Even when peace returned, the American public "was still thinking with the mind of a people at war."

That legacy has never entirely disappeared. It is more than a little unsettling that some current pro-war political leaders regard the Espionage and Sedition Acts with fondness. A few years before he was elected to Congress, Sen. Tom Cotton (R-Ark.), then a young Army officer in Iraq, circulated an open letter that urged jail terms for journalists he believed had violated the Espionage Act by publishing articles on terrorist financing. Directing his ire at *New York Times* reporters who had broken the story, Cotton stated that

having graduated from Harvard Law and practiced with a federal appellate judge and two Washington law firms before becoming an infantry officer, I am well versed in the espionage laws relevant to this story and others — laws you have plainly violated. I hope that my colleagues in the Department of Justice match the courage of my soldiers here and will prosecute you and your newspaper to the fullest extent of the law. By the time we return home, maybe you will be in your rightful place: not at the Pulitzer announcements, but behind bars.

Such intemperate sentiments would be worrisome enough coming from garden-variety pundits. (Shrill neoconservative columnist Ann Coulter actually suggested that reporters who revealed state secrets or otherwise undermined U.S. military missions should be prosecuted, convicted, and executed as traitors.) But it is much more menacing coming from a U.S. senator and rising GOP political star. Cotton and his allies might well be in a position some day to revive the repressive nightmare that the Espionage and Sedition Acts created during World War I.

World War II

When America entered a new global war following the Japanese attack on Pearl Harbor in December 1941, the commitment to liberty suffered another severe blow — this time highlighted by the persecution of an ethnic minority.

Although the atmosphere of political intolerance was noticeably milder in World War II than in the first global conflict, that was largely because no significant anti-war movement existed after Pearl Harbor. But a menacing attitude toward even mild dissenters lurked just below the surface, and it would not have taken much for it to have blossomed. Pervasive press censorship again became the norm, and the Roosevelt administration harbored an authoritarian mentality toward even mild criticism of how it was handling the war effort. Roosevelt himself believed that articles in the *Chicago Tribune* and other conservative newspapers critical of Washington's allies, especially Britain and the Soviet Union, might warrant prosecution under the 1917 Espionage Act. "The tie-in between the attitude of these papers and the Rome-Berlin broadcasts," the president fumed in one especially over-the-top tirade, "is something far greater than mere coincidence."

Liberal supporters of the administration urged him to take action against such critics. Freda Kirchwey, editor of the *Nation*, asserted that the "treason press" in the United States constituted "an integral part of the fascist offensive." Supposedly disloyal publications "should be exterminated exactly as if they were enemy machine guns in the Bataan jungle." Roosevelt himself was only a shade more tolerant. He privately asserted that freedom of the press was "freedom to print correct news," and freedom to criticize government policy "on the basis of factual truth." He saw "a big distinction between this and freedom to print untrue news." Responsible public officials, he implied, would be the proper judges of the truth or falsity of a news article.

But it was the repression directed against Japanese aliens (even longtime residents) living in the United States and their American citizen offspring that marked World War II's most egregious abuse. The Office of War Information encouraged news stories and films from cooperative Hollywood producers that used crude stereotypes for the portrayal of Japanese. In account after account, the Japanese people were depicted not only as congenital aggressors but as scarcely human. Typical of the administration-orchestrated propaganda was a radio program, *A Lesson in Japanese*, narrated by actor Frederic March, which contained the following intellectual gem:

Have you ever watched a well-trained monkey at a zoo? Have you seen how carefully he imitates his trainer? The monkey goes through so many human movements so well that he actually seems to be human. But under the fur, he's still a savage little beast. Now, consider the imitative little Japanese who for seventy-five years has built himself up into something so closely resembling a civilized human being that he actually believes he is just that.

Given such prejudice, it was unsurprising that public support in the West Coast states (where most Japanese and Japanese-Americans resided) for imprisoning them became a potent movement. To its everlasting shame, the Roosevelt administration took the path of least political resistance and trampled the civil liberties of more than 110,000 people, approximately 80,000 of whom were American citizens.

Three months after Pearl Harbor, the War Department proposed to "relocate" all persons of Japanese descent from the three West Coast states. The underlying sentiments were not subtle.

Gen. John DeWitt, head of the Western Defense Command, concluded that “in the war in which we are now engaged, racial affinities are not severed by migration. The Japanese race is an enemy race.” At first, the military command favored only a limited forced relocation — away from military and other sensitive installations — rather than a total evacuation, but pressure from state and local officials (and major interest groups) for the latter soon became overwhelming. Nativist groups had agitated for exclusion long before the war. One activist, using the moniker Native Son of the Golden West, stated candidly that “this is our time to get things done that we have been trying to get done for a quarter of a century.”

Wartime hysteria was at the root of that campaign, but mundane economic motives also played a role. Agricultural associations and small business groups stood to gain directly if their competitors were expelled. One public-opinion survey concluded that “those who regard Japanese as economic competitors tend to be more opposed to them.” Some 60 percent of the Japanese Americans were small vegetable and fruit farmers, and many were extremely efficient, successful operators. Once the evacuation order was issued, most had no choice but to sell their properties quickly — typically at fire-sale prices to Caucasian neighbors. The beneficiaries not only saw troubling competitors taken out of action, they were able to expand their productive land holdings, often for 20 to 30 cents on the dollar. In the weeks leading up to relocation in February 1942, members of Congress from California, Oregon, and Washington hounded the War Department to adopt a comprehensive removal program.

The ostensible military justification was extremely weak. Japanese military forces posed, at most, a remote danger to the West Coast of the United States, and there was no credible evidence that Japanese Americans constituted a fifth column. Moreover, residents of Japanese descent were never removed from Hawaii, even though that territory was much closer to the war zone. The Roosevelt administration deprived 110,000 people of their basic rights because of political and economic pressure, not military necessity. Innocent people were herded into relocation centers surrounded by barbed wire, where armed personnel in guard towers forced them to remain until (conveniently) after the 1944 elections. It is not an exaggeration to describe those facilities as concentration camps.

Sad to say, the U.S. Supreme Court failed in its duty to protect the constitutional rights of those victims, even though there were no trials or any other semblance of due process. In the case of *Hirabayashi v. United States*, the Court in 1943 unanimously upheld the constitutionality of Roosevelt’s executive orders excluding certain persons (i.e., those of Japanese ancestry) from certain parts of the country designated as military areas (including all of the West Coast states). The Court specifically held that racial discrimination was justified in this case because individuals sharing an ethnic affiliation with an enemy state could pose a greater threat than those of different ethnicity. A year later, in *Korematsu v. United States*, the Court ruled that the need for national security outweighed the need to protect Korematsu’s individual rights. Merely being a member of a suspect ethnic group was sufficient cause for detention and relocation. Individual liberties not only took a back seat, they weren’t even in the vehicle. It was not until the 1980s, when Congress awarded financial compensation to the survivors and their families, that there was an implicit admission of government misconduct.

Alarming assaults on civil liberties again occurred from time to time during the four-decade-long Cold War struggle with the Soviet Union. The excesses of McCarthyism during the early and mid 1950s were the most prominent examples, but the FBI's monitoring and attempted disruption of anti-war and civil-rights groups during the 1960s also were troubling episodes. However, the most egregious developments, reminiscent of the abuses during the two world wars, have taken place in the years following the September 11, 2001, terrorist attacks.

George W. Bush's administration made bold assertions about the alleged extent of presidential authority to disregard legal and constitutional norms in waging the war on terror. And as in previous crises, ulterior motives were evident. National-security and federal law-enforcement agencies exploited the public's panic to implement long-sought-after powers. Most notably, they achieved their goal of greatly enhanced authority to engage in domestic surveillance of suspects without dealing with warrants or other pesky constitutional constraints.

The administration cited the president's "inherent" power under the Constitution to protect the nation from foreign and domestic enemies and the Authorization for the Use of Military Force, the measure that Congress passed shortly after the 9/11 attacks. The AUMF, the president and his advisors argued, granted the president extremely broad powers to prosecute the conflict, since it authorized him to "use all necessary and appropriate forces" against any nations, organizations, or individuals responsible for 9/11.

The centerpiece was the claimed authority to detain "enemy combatants," either aliens or U.S. citizens, without providing them access to U.S. civilian courts. That position was at least plausible when confined to "enemy combatants" seized outside the United States, if those persons were not U.S. citizens. But the administration went far beyond that assertion. The president and his national-security team argued that given the nature of the terrorist threat, the entire planet was a potential battlefield. Consequently, suspected enemy combatants captured on U.S. soil were not entitled to those protections either.

The extent of the corrosive effects that such attitudes spawned was on horrific display in a December 2005 comment by John Yoo, who had served as a high-level official in Bush's Justice Department. Yoo was one of the authors of the infamous "torture memos," which argued that the president could lawfully order water boarding and other extreme interrogation techniques against terrorist suspects. During a Chicago debate, Yoo's opponent asked him whether it was legal "if the president deems that he's got to torture somebody, including by crushing the testicles of the person's child." Yoo's reply: "I think it depends on why the president thinks he needs to do that."

For a time, it looked as though the extraordinary assertions of presidential power against parties accused of involvement in terrorist activities might ebb with the end of the Bush presidency. Candidate Barack Obama was caustic about the Bush administration's record:

This Administration also puts forward a false choice between the liberties we cherish and the security we demand. I will provide our intelligence and law-enforcement agencies with the tools they need to track and take out the terrorists without undermining our Constitution and our freedom.... No more ignoring the law when it is inconvenient. That is not who we are. And it is not necessary to defeat the terrorists.... Our Constitution works. We will again set an example for the world that the law is not subject to the whims of stubborn rulers, and that justice is not

arbitrary. This administration acts like violating civil liberties is the way to enhance our security....

Those noble words are now bitterly ironic. Obama not only has persisted in the practices of the Bush administration, he has adopted measures that make the Bush-era abuses seem tame. Whereas Bush and his advisors asserted the right to imprison accused parties, including U.S. citizens, indefinitely without trial, the Obama team asserts the right to execute accused persons, including U.S. citizens, without trial or even any independent review. Obama exhibits an alarmingly casual dismissal of the constitutional rights of American citizens. At a National Defense University speech in May 2013, he argued that when it involves an accused terrorist, “his citizenship should no more serve as a shield” from lethal drone strikes ordered by the president, “than a sniper shooting down on an innocent crowd should be protected from a SWAT team.”

An especially disturbing feature of the current assault on due process rights is the prominence and influence of persons who defend the president’s alleged authority to imprison or even execute accused terrorists without trial. *Washington Post* columnist Charles Krauthammer mocked those who dispute the president’s authority to order lethal drone strikes on people, including U.S. citizens, who are alleged to be aiding terrorist groups. He argues that “thousands of Americans died at Antietam without due process,” and “when we stormed the beaches at Normandy, and Americans approached a German bunker, I don’t think anyone asked, ‘Is there a German-American here? I want to read you the Miranda rights.’”

Krauthammer seems unable or unwilling to make any distinction between actions taken against combat personnel in the midst of action on a battlefield and a calculated White House decision to execute an American citizen, absent the immediacy of an ongoing firefight. Unfortunately, his perspective is far from rare.

Discarded luxuries

Defenders of civil liberties are frustrated and worried about that situation. In a *Salon* article condemning drone strikes on U.S. citizens accused of aiding al-Qaeda, journalist Glenn Greenwald expressed dismay regarding the public’s attitude. What is most striking, he wrote, “is not that the U.S. Government has seized and exercised exactly the power the Fifth Amendment was designed to bar,” although that was terrible enough. “What’s most amazing is that citizens will not merely refrain from objecting, but will stand and cheer the U.S. Government’s new power to assassinate their fellow citizens, far from any battlefield, literally without a shred of due process.”

Similar public passivity is evident regarding the tremendous expansion of surveillance powers in the name of national security. Edward Snowden’s leak of thousands of National Security Agency documents revealed not only that the NSA has spied on innocent citizens, but lied about it to Congress and the American people. The “dragnet” nature of the NSA’s surveillance makes a mockery of the Fourth Amendment’s prohibitions against unreasonable searches and seizures, as millions of communications have been monitored even when there is not a shred of evidence that the parties have engaged in terrorist activity. And the tepid reforms of the recently passed USA Freedom Act curb those abuses just marginally.

The ever-watching “Big Brother” government of George Orwell’s dystopian novel *1984* is now perilously close to being a reality. National-security bureaucrats and their defenders behave as though they regard *1984* not as a cautionary tale, but a “how to” manual.

The intolerance of dissent that emerged during the two world wars has also resurfaced after the 9/11 attacks. A typical, ugly example was a column by neoconservative writer David Frum in the March 25, 2003, issue of *National Review*. Frum’s lengthy screed, “Unpatriotic Conservatives” directed much of its fire at conservative realists, including previous right-wing stalwarts such as Pat Buchanan and Robert Novak, who dared question any aspect of the Bush administration’s war on terror — especially the insistent drive for war against Iraq, a country that had nothing whatever to do with 9/11. Frum then linked a wide array of conservative war critics to a few supposed anti-Semites, tarring all of them with that brush. He accused conservative skeptics of “having made common cause with left-wing and Islamist antiwar movements in this country and in Europe. They deny and excuse terror.” Even worse, “some of them explicitly yearn for the victory of their nation’s enemies.” One can certainly hear echoes of Freda Kirchwey’s infamous World War II-era *Nation* article “The Treason Press” and similar smears of anti-war figures such as Eugene Debs in World War I.

Some push-back is finally taking place against both war hysteria and the civil liberties abuses that it fosters. Sen. Rand Paul (R-Ky.) has been especially critical about the ominous path America’s political leaders are treading:

The discussion now to suspend certain rights to due process is especially worrisome, given that we are engaged in a war that appears to have no end. Rights given up now cannot be expected to be returned. So we do well to contemplate the diminishment of due process, knowing that the rights we lose now may never be restored.

He added, “As Ben Franklin wisely warned, we should not attempt to trade liberty for security. If we do, we may end up with neither.”

But in the years since the September 11 attacks, fundamental rights have again been under siege, and the most recent assault is even more worrisome than its predecessors. Not only has governmental disdain for civil liberties rivaled the record in previous crises, but as Senator Paul points out, a “war on terror” by its very nature has no discernible end. In other words, rights diminished or eliminated are not likely to be revived in a postwar setting, because there may never be a postwar setting.

Unfortunately, too many officials and opinion leaders act as though the civil liberties protections contained in the Constitution are luxuries to be discarded in times of trouble. Nothing could be more inaccurate or pernicious. Those guarantees become even more relevant when the nation is under stress, for the historical record shows that is the setting in which gross abuses of power are most likely to occur.

Ted Galen Carpenter is vice president for defense and foreign policy studies at the Cato Institute. Dr. Carpenter is the author of seven books and the editor of ten books on international affairs.