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What's this?

▶ **Civil Liberties in Wartime**

▶ **ALSO THIS WEEK:**



July 13, 2007

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In his discussion with Bill Moyers, Bruce Fein remarked on what he thinks is hampering discussions of civil liberties and executive privilege in Congress today: "That's what it comes down to. How can I in 30 seconds rebut the claim that [I'm] weak on terror?" The conflict between civil liberties and national security is age-old, as the quotations below illustrate. In the United States it's certainly as old as the nation itself.

Take a poll and [talk back](#) about civil liberties and national security on the blog.

*In time of war the laws are silent. --Marcus Tullius Cicero (106–43 B.C.), Roman orator, philosopher, statesman.*

*If the fires of freedom and civil liberties burn low in other lands they must be made brighter in our own. --Franklin D. Roosevelt, 1938*

*The history of liberty is a history of resistance. The history of liberty is a history of limitations of government power, not the increase of it. --Woodrow Wilson*

*What a strange time it was! Who knew his neighbor? Who was a traitor and who a patriot? The hero of to-day was the suspected of to-morrow... There were traitors in the most secret council-chambers. Generals, senators, and secretaries looked at each other with suspicious eyes. --M. E. W. Sherwood on spying in Washington, D.C., in 1862-1863, when it was a Civil War camp.*

**THE ALIEN AND SEDITION ACTS, 1798**



John Adams legacy has been clouded by the four laws enacted by the Federalist-controlled U.S. Congress under his watch. Provoked in part by unease over the French Revolution, privateering on the seas, and diplomatic maneuvers from Britain, the laws were also

**TOUGH TALK ON IMPEACHMENT**  
 BILL MOYERS JOURNAL explores the talk of impeachment with Constitutional scholar Bruce Fein, who wrote the first article of impeachment against President Bill Clinton, and The Nation's John Nichols, author of THE GENIUS OF IMPEACHMENT

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"That's the really important thing about "free speech"...you can figure out the HUGE DAMAGE th..." - Anna D

created to undermine Thomas Jefferson's Republican Party, who sympathized with the French Revolutionaries.

The Naturalization Act changed the time of residence necessary for citizenship (and thus voting) from five to 14 years. Coincidentally, immigrants tended to vote Republican. The Alien Act and the Alien Enemies Act gave the President the power to imprison or deport aliens suspected of activities posing a threat to the national government.

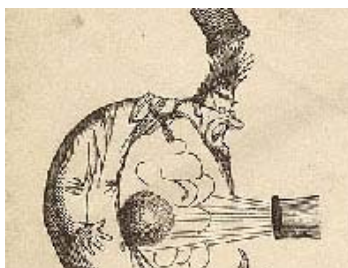
The Sedition Act posed the biggest challenge to civil liberties, undermining the core of the First Amendment protections of free speech and press. It prohibited spoken or written criticism of the government, the Congress, or the President.

"That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President..." **Sedition Act, 1798**

### SUSPENSION OF HABEAS CORPUS, CIVIL WAR

President Lincoln interfered with freedom of speech and of the press and ordered that suspected political criminals be tried before military tribunals. Probably Lincoln's most controversial act was suspending the writ of habeas corpus, a safeguard of liberty that dates back to English common law and England's Habeas Corpus Act of 1671. Habeas corpus says that authorities must bring a person they arrest before a judge who orders it. The U.S. Constitution says: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." But Lincoln suspended habeas corpus without waiting for Congress to authorize it.

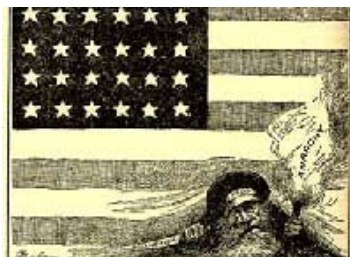
Lincoln's action meant that individuals could be arrested and held without formal charges being lodged against them. The ruling brought Lincoln into conflict with the Chief Justice of the United States, Roger B. Taney. The case was that of John Merryman, a Southern sympathizer who had organized soldiers to burn bridges in Maryland. Taney ruled that Lincoln's order violated Article 1, Section 9, of the U.S. Constitution, which gave only Congress the power to suspend habeas corpus. Lincoln ignored the ruling. Congress ratified the suspension in 1863.



Civil War scholars generally point to the large pockets of anti-war sentiment in the Union states as a justification for his wartime suspension of civil liberties. Today there are many "Confederate" Web sites which label Lincoln a "dictator" for these wartime acts.

"The President certainly does not faithfully execute the laws, if he takes upon himself legislative power, by suspending the writ of habeas corpus, and the judicial power also, by arresting and imprisoning a person without due process of law." --**Ex Parte Merryman by Chief Justice Roger B. Taney, Maryland Circuit Court (1861)**

### WORLD WAR I, RED SCARE AND PALMER RAIDS



The same Woodrow Wilson who lauded the limitations of government in the quotation above, acted quite differently when his government went to War in 1917. Soon after declaring war on Germany and its allies in 1917, Congress ruled that the U.S. mail could not be used for sending any material urging "treason, insurrection or forcible resistance to any law." It punished offenders with a fine of up to \$5,000 and a five-year prison term. The

government soon banned magazines including THE MASSES and THE NATION from the mails for expressing anti-war sentiment.

The repression of dissident views continued after the war was over, under Wilson's Attorney General A. Mitchell Palmer and his assistant, J. Edgar Hoover. In December of 1919, in their most famous act, Palmer's agents seized 249 resident aliens who were promptly shipped to the Soviet Union.

All manner of ideas were suspect in this climate — union activities, feminists, advocates of birth control and proponents of Cubism all found themselves under suspicion. In 1920, THE NATION documented the case of "The Most Brainiest Man," a Connecticut clothing salesman was sentenced to six months in jail simply for saying Lenin was smart.

"The tongues of revolutionary heat were licking the alters of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with libertine laws, burning up the foundations of society." --A. Mitchell Palmer, "The Case Against the Reds"

[See more images of The Red Scare](#)

### WORLD WAR II — JAPANESE INTERNMENT

Soon after the bombing of Pear Harbor, President Roosevelt, also quoted above, signed Executive Order 9066, which authorized the military to remove Japanese-Americans from America's West Coast. The removal was designed to protect military bases and manufacturing plants from "Fifth Column" sabotage or Japanese attack. In this case it was not foreign nationals who were moved into camp, but also American citizens of Japanese descent. In total 110,000 persons of Japanese ancestry were relocated from the West Coast to 10 American concentration camps in seven states: California, Wyoming, Idaho, Utah, Arizona, Colorado and Arkansas. The relocated consisted of both the Issei, first-generation immigrants who were barred from U.S. citizenship, and their children, the Nisei, born in this country as U. S. citizens. Two-thirds of those incarcerated were U.S. citizens. Those citizens were forced to sell their businesses, homes and farms at rock-bottom prices — they lost their hold on their American lives and citizenship.



In 1980, President Jimmy Carter signed legislation to create the Commission on Wartime Relocation and Internment of Civilians (CWRIC). In 1983, the CWRIC issued its findings in PERSONAL JUSTICE DENIED, concluding that the incarceration of Japanese Americans had not been justified by military necessity.

With the [The Civil Liberties Act of 1988: Redress for Japanese Americans](#) the U.S. apologized to Japanese Americans for this grave injustice and this Act was signed into law, authorizing the payments of \$20,000 to each person who had been evacuated in the 1940s.

"A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation's resolve to rectify injustice and to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustices were done to Japanese Americans during World War II." --President George Bush, 1988

[Read Executive Order No. 9066](#)

### HUAC AND MCCARTHYISM



Senator Joseph McCarthy's name has become a byword for the abuse of civil liberties and the malignant use of publicity to silence people of dissenting viewpoints. However, what we generally lump under the rubric of McCarthyism has longer, deeper roots.

A main implement of the Cold War Red Scare was the House of Un-American Activities Committee (HUAC), set up by Congress under Martin Dies in 1938 to investigate people suspected of unpatriotic behavior. By 1947 HUAC had turned its attention to Hollywood and the public airwaves. The Committee called many people to testify about "Communist" influence in the industry. Those testifying were encouraged to "name names" of those they knew with ties to the Communist Party or with leftist agendas (anything from labor activism to support for Spanish Civil War refugees to civil rights activism). Ten "unfriendly witnesses" took the Fifth Amendment but were found guilty of contempt of Congress and each was sentenced to between six and twelve months in prison.

Soon after, in June, 1950, came the publication of RED CHANNELS, a pamphlet written by former FBI agents purporting to list the of leftists in the entertainment industry deserving of blacklisting for their leftist views.

On 9th February, 1950, Joseph McCarthy, a senator from Wisconsin, made a speech claiming to have a list of 205 people in the State Department known to be members of the American Communist Party. The list of names was not a secret and had been in fact published by the Secretary of State in 1946. McCarthy and his friend, J. Edgar Hoover, were off and running — instituting four years of hearings in the superheated atmosphere of the Cold War. Many of the domestic spying techniques employed under Hoover's stewardship of the F.B.I. at this time were later ruled unconstitutional.

Indeed, McCarthy went virtually unchallenged for several years until some leading figures, most notably, Edward R. Murrow, took on the Senator for his tactics. However, it was really his hearings questioning the soundness of the guardian against the Communist menace, the U.S. Army, that brought him down. In 1954 censure motion in the Senate condemned his conduct by 67 votes to 22.

## REFERENCES AND READING:

### Online NEWSHOUR: Civil Liberties

Online NewsHour sits down with editors from THE WALL STREET JOURNAL, THE ST. LOUIS POST-DISPATCH, THE BOSTON HERALD, and The SAN FRANCISCO CHRONICLE to discuss former Attorney General John Ashcroft's defense of the Bush Administration's anti-terrorism policies in front of a Senate committee. Visitors to the site may read the transcript or watch the entire debate online.

### The White House: Homeland Security

The United States Department of Homeland Security homepage alerts citizens to the current threat level posed to the nation, as well as links to current press releases and recent speeches

### Online NEWSHOUR: Domestic Security

Online NEWSHOUR investigates the Domestic Security policies of the Bush Administration, particularly the PATRIOT Act, as it was recently reauthorized in 2006. The revised and reauthorized PATRIOT Act is dissected into new parts, and Online NEWSHOUR explains what these new revision mean to the American people.

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