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# Civility and Dissent During Wartime

By Geoffrey R. Stone

I like civility. I like it in my classroom, I like it in my law school. I like it in my university. Civility is good. It helps keep *me* on top. Nonetheless, beware those who champion civility. You can usually assume that they have nothing to lose by maintaining the status quo. You can imagine them saying, "All is right with the world. I like things as they are. Let's all be civil."

Civility also may be good for less self-interested reasons. When the stakes in a dispute are low, incivility can cause more trouble than the dispute is worth. Incivility can bruise feelings, create enmity, and trigger vengeance. It can raise the stakes irrationally. Thus, a general presumption against incivility is sensible. It can be counterproductive and seriously destructive of the larger values of the community.

But what if the stakes are high? What about incivility *then*? Sometimes, incivility may be necessary to make a point effectively, to shake complacency, or to rouse "the people." A burning flag, a well-aimed insult, a scream of protest may be just what the doctor ordered to stir people to anger and awaken their consciences. As the Supreme Court has said, our nation has made a "profound commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks."

If there is one circumstance in which the stakes may be sufficiently high to justify unpleasantly sharp attacks, it must surely be on the question of war or peace. Should we send our



A protester silently expresses her dissent of the war in Iraq during an anti-war rally in Chicago's Federal Plaza.

Associated Press, AP

young men and women off to suffer and die? Should we kill and maim men, women, and children? Should we attack another nation, even if it has not attacked us? These are issues of life and death. If you believe strongly that your nation is about to embark upon a murderous course of action without moral or political justification, how can you just sit by and watch? If incivility is *necessary* to call the question, how can you justify not being uncivil?

## A History of Dissent

In fact, we have a long history of uncivil dissent in our nation in times of national crisis. In 1798, when the United States was on the verge of war with France, the world's mightiest power, the Republicans, led by Thomas Jefferson, bitterly opposed the Federalist war policies. Congressman Matthew Lyon declared that under President Adams "every consideration of the public welfare" is "swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice."

James Callender, a Republican journalist, went even further, proclaiming:

the reign of Mr. Adams has been one sustained tempest of malignant passions. As President, he has never opened his lips, or lifted his pen without threatening; the grand object of his administration has been to calumniate and destroy every man who differs from his opinions. He has contrived a French war, an American navy, a standing army, an additional load of taxes, and all the other symptoms of debt and despotism merely for the sake of yoking us into an alliance with the British tyrant.

Surely, this statement is uncivil.

During the Civil War, President Lincoln was subjected to a constant barrage of vituperation. His opponents labeled him "the gorilla" and "the widowermaker." A popular screed of more than 200 lines began:

With a beard that was filthy and red,  
His mouth with tobacco bespread,  
Abe Lincoln sat in the gay white house,  
Awishing that he was dead—  
Till his tongue was blistered o'er,  
Then in a voice not very strong

He slowly whined the Despot's song;  
Lie! Lie! Lie!

The *Boston Pioneer* screamed in 1863 that "the support of Lincoln" was "treason to the Republic," and the *Bangor Democrat* published another verse that was all the rage among war critics:

You saw those mighty legions, Abe,  
And heard their manly tread;  
You counted hosts of living men—  
Pray—can you count the dead?  
Look o'er the proud Potomac, Abe,  
Virginia's hills along;  
Their wakeful ghosts are beckoning  
you,  
Two hundred thousand strong.

In 1864, the Newark *Evening Journal* editorialized:

Mr. Lincoln has called for another half million men. Those who wish to be butchered, please step forward. We hope that the people of New Jersey will put their feet down and insist that not a man shall be forced to engage in the Abolition butchery, and swear to die at their own doors rather than march one more step to fulfill the dictates of the mad fanaticism which has destroyed the best government the world ever saw. . . . Let the people rise as one man and demand that this wholesale murder shall cease.

There were terrible antidraft and antiwar riots during the Civil War, in which hundreds of people died.

During World War I, furious antiwar protests were organized by pacifists, socialists, women's groups, anarchists, and others who believed this was not a war to "make the world safe for democracy" but rather a war to "serve the interests of the capitalists." Consider Emma Goldman's plea, which was published just before the United States entered the war:

At this critical moment it is imperative for every liberty-loving person to voice a fiery protest against the participation of this country in the European mass murder. [It] is unthinkable that the American people should want war. During the last thirty months they have seen the frightful carnage in the warring countries. They have seen . . . millions of wounded and dead, . . . the spread of insane, motiveless hatred among the peoples of Europe, . . . and the famine, the suffering and the anguish gripping

the war-stricken countries. . . .

We are told that the "freedom of the seas" is at stake and that "American honor" demands that we protect that precious freedom. What a farce! . . . Would it not be well to look into this magic thing, "the freedom of the seas," before we sing patriotic songs and shout hurrah? The only ones who have benefited from this so-called "freedom of the seas" are the exploiters and the dealers in munitions. . . . Out of international carnage they have made billions.

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## **The federal government prosecuted some 2,000 people during World War I for protesting the war or the draft.**

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### **Attacking Dissent During Wartime**

Why is dissent in wartime often so harsh, so uncivil? First, as I have already noted, the stakes are high. For those who will die, or whose loved ones will die or be maimed, there is every reason to put all the chips on the table. If you believe your nation is going wrong on a massive scale, acting immorally or profoundly unwisely, squandering its resources and its youth, creating a more dangerous world, there is plenty of reason to shriek.

Second, in wartime the general public inevitably rallies around the flag. Patriotism is feverish. Anyone who speaks against the war is tarred with disloyalty, accused of insulting the nation and putting its soldiers at risk. It is hard to be heard in such circumstances—and it is dangerous. In the face of war hysteria, it takes courage to say "no."

And this is especially true because, in time of war, the government quite

naturally attempts to whip up a mood of anger and even hatred against those deemed "disloyal." In 1798, for example, when we were on the brink of war with France, the Federalists warned the nation of imminent "bloodshed, slaughter and pillage." President Adams accused dissenters of attempting to "sink the glory of our country and prostrate her liberties at the feet of France." Federalists accused their Republican critics of treason. Congressman "Long John" Allen raged that "were France herself to speak through an American mouth, I cannot conceive" what it would say "more than what we have already heard" from the Republicans. Congressman Robert Goodloe Harper accused Jefferson's Republicans of preparing the people for the "base surrender of their rights."

In this incendiary atmosphere, the Federalists enacted the Sedition Act of 1798, which effectively made it a crime for any person to criticize the president, Congress, or the government of the United States with the intent to bring them into contempt or disrepute. Lyon and Callender were tried, convicted, and jailed for the remarks I quoted earlier.

In World War I, President Wilson evinced little patience for dissent. He warned that disloyalty "must be crushed out" of existence and insisted that disloyal people "had sacrificed their right to civil liberties." In November 1917, Attorney General Charles Gregory, referring to war dissenters, declared: "May God have mercy on them, for they need expect none from an outraged people and an avenging government."

Because there had been no direct attack on the United States and no direct threat to our national security, the Wilson administration needed to create an "outraged people" in order to exhort Americans to enlist and to make the many sacrifices that war demands. To this end, Wilson established the Committee for Public Information, a government propaganda bureau that produced a flood of inflammatory pamphlets, news releases, speeches, editorials, and motion pictures all designed to instill a hatred of all things German and of all persons whose loyalty might be open to doubt.

The Committee on Public Information and the Department of Justice actively encouraged patriotic “citizens groups” to support the cause. These groups turned in tens of thousands of persons suspected of harboring disloyal thoughts, and, with implicit immunity, engaged in breaking and entering, bugging offices, and examining bank accounts and medical records. Vigilantes ransacked the homes of German Americans and attacked those who questioned the war. In Texas, six farmers were horsewhipped because they declined to contribute to the American Red Cross. In Illinois, an angry mob wrapped a person suspected of disloyalty in an American flag and then murdered him on a public street.

The federal government prosecuted some 2,000 people during World War I for protesting the war or the draft. Many of them were sentenced to prison terms ranging from ten to twenty years. Thousands of noncitizens were summarily deported for their “un-American” views. In 1918, Congress enacted the Sedition Act of 1918, which declared it a crime for any person to criticize the president, Congress, the government, the Constitution, the military, or the flag of the United States.

The mood of the nation during World War I was captured nicely by Judge Charles Amidon, one of the few judges during the war to stand up to the tide of repression. Commenting on the experience of trying prosecutions of war dissenters, Amidon observed:

Most of the jurymen have sons in the war. They are all under the power of the passions which war engenders. [During this period, otherwise] sober, intelligent business men . . . looked back into my eyes with the savagery of wild animals, saying by their manner, “Away with this twiddling, let us get at him.” Men believed during that period that the only verdict in a war case, which could show loyalty, was a verdict of guilty.

### **The Paradox of Dissent**

It is interesting to ask why people are so hostile to dissent during wartime. In part, of course, as Judge Amidon observed, this derives from the

compelling fact that many young lives are in peril. Anything perceived to increase the danger to our soldiers, who are, after all, our own sons and daughters, is understandably feared and despised. Moreover, no one wants to hear that his son or daughter, friend or neighbor, is putting life and limb at risk for an unjust or unworthy cause. Still less can they hear that after a death. Thus, rage against dissent inevitably lurks just beneath the surface, and it is easy pickings for any political leader who wants to set the rage aflame.

And this is even more so because dissent against a war is readily equated with disloyalty. This often puzzles civil libertarians who see a clear difference between dissent and disloyalty. But in fact, dissent is, in an important sense, disloyal.

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Dissent in wartime looks in two directions. On the one hand, in arguing that a war is wrong, or is being mishandled, or should be ended, dissent seems a healthy part of democratic debate. On the other hand, that very same dissent can be seen as lending aid and comfort to the enemy. A nation is more likely to fight fiercely and well if it believes its opponent is indecisive and divided. Public disagreement about a war strengthens the enemy’s resolve and deepens its will to fight. If it is disloyal to strengthen the enemy’s mettle, then dissent fits the bill.

The paradigmatic violation of the First Amendment is when the govern-

ment punishes political dissent. In the more than 200 years of our history, virtually every instance in which the United States has directly punished political dissent has occurred during wartime. In peacetime, and in times of relative tranquility—which, by my definition, make up roughly 80 percent of our history—the United States has *never* punished political dissent. This is revealing. It tells us a great deal about our constitutional values and our traditions.

The great danger is that fear, intolerance, and repression will still dissent in time of war. War inexorably generates a climate of conformity and hysteria that are the preconditions for what Jefferson called “the reign of witches.” This must be resisted, even if civility is the price.

It is often argued that given the sacrifices we ask citizens (especially soldiers) to make in a time of war, it is a small price to ask others to surrender some part of their peacetime freedoms to help the war effort. As members of Congress argued in defense of the Sedition Act of 1918, surely the people can hold their criticism in order to maintain the national unity that is essential to the war effort.

This is a seductive but dangerous argument. To fight a war successfully, it is necessary for soldiers to risk their lives. But it is not necessarily “necessary” for others to surrender their freedoms. That necessity must be demonstrated. And this is especially so when free speech is at issue. Criticism in wartime can help us make better decisions about how to conduct the war, whether our leaders are leading well, and whether to end the war. Those questions simply cannot be put in suspension during a war, as much as our leaders and our fellow citizens might want us to do so.

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