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Book Review: Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism. by Geoffrey R. Stone

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Book Reviews

PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM. By Geoffrey R. Stone.[1] New York. W.W. Norton and Company. 2004. Pp. 730 + xx. $ 35.00.

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OVERVIEW

Geoffrey R. Stone has written a long and important book on free speech in wartime. The book proceeds chronologically from the "half war" with France and the Sedition Act of 1798, through the Civil War, World War I, World War II, the Cold "War," the Vietnam War, and a very brief discussion of the "War" on Terror. A few wars get short shrift, such as the War of 1812 and the Mexican War. But Professor Stone discusses the free speech issues in the wars he covers in admirable detail.

Stone not only discusses historic episodes. He also discusses constitutional questions the episodes raise, both in terms of past and present legal understandings. By looking at the past in light of free speech and other legal doctrines Stone often illuminates both the past and the law. For example, Stone discusses the case of Clement Vallandigham who was arrested for making an anti-war speech in Ohio. Lincoln defended the arrest by asking, "must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert?" (p. 111). Stone notes that Lincoln's claim is dubious in light of current free speech doctrine: ordinarily people may not be reduced to reading or hearing material suitable for the simple-minded (pp. 110–11). Similarly, Stone looks at prosecutions for attempting to cause insubordination or refusal to serve in the

1. Harry Kalven, Jr. Distinguished Service Professor of Law, University of Chicago.

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armed forces in light of the general law of attempt as it existed at the time. He also looks at scholarly criticism written at the time (*e.g.*, pp. 161, 163, 175, 179).

Occasionally, the book moves beyond war and free speech to related issues. For example, it covers the incarceration of American citizens and non-citizens of Japanese descent during World War II, and the substantial deprivations of fair process in the case of the thousands of people forced out of federal employment in the government's Cold War loyalty program. Stone looks not only at statutes and prosecutions, but also at wider phenomena, such as criticism in the Illinois legislature of the University of Chicago for allowing a student Communist group to exist. Robert Hutchins, the president of the University, is one of a number of leaders in the struggle for freedom of discussion whose brief biographies enrich the book.

Some readers will find some of the stories familiar. I learned much from Professor Stone's discussion of World Wars I and II, the Cold War, and the Vietnam War. In any case, Professor Stone's object is not simply to write a monograph for law professors and historians on hitherto obscure free speech episodes. He seeks a far wider audience. He hopes the larger story he tells will contribute to the defense of liberty.

> Because the protection of liberty ultimately "lies in the hearts of men and women," citizens must understand and internalize the value of civil liberties and the need—indeed, the duty—to tolerate and even to *consider* dissenting views. They must appreciate why civil liberties matter and why *they* have a responsibility to protect them. They must understand that even well-meaning individuals are tempted to do things under the influence of mob mentality that "they would be entirely ashamed to do on their own." (p. 536).

His basic point is surely right. In the long run, the Court reflects dominant political views. At their best, courts can cabin bigotry[3] and check hysteria[4] in the short run. Whether they should do so, and if so when, is the subject of a raging political debate today. Still, if dominant political views are and remain hostile to strong constitutional protection for dissent or other claims of liberty, those claims will not fare well in the courts.

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3. *E.g.*, Loving v. Virginia, 388 U.S. 1 (1967); Lawrence v. Texas, 539 U.S. 558 (2003).

4. *E.g.*, Herndon v. Lowry, 301 U.S. 242 (1937); West Va. Bd. of Educ. v. Barnette, 319 U.S. 624 (1943); Bond v. Floyd, 385 U.S. 116 (1966).

On that score, reading *Perilous Times* can be discouraging at times—even from a short run perspective. Congress passed, the President signed, and the courts enthusiastically enforced the Sedition Act of 1798. In effect, the Sedition Act made "false" opinions about President Adams or the Federalist Congress a crime. At the same time, the Sedition Act left Vice President Thomas Jefferson (Adams' expected opponent in the upcoming presidential election) without any legal protection against the slings and arrows of outraged Federalists. During the Civil War, Union General Ambrose Burnside arrested Democrat Clement Vallandigham for making an anti-war speech and tried and convicted him before a military commission. This act was ratified by President Lincoln. During World War I, dissenters were given long jail sentences for political opposition to the war and the draft, and the courts generally upheld the convictions. At least, as Stone points out, the victims of the Sedition Act could only get two years in jail. In World War I, sentences between ten and twenty years were typical. World War II saw the incarceration of the Japanese for the duration of the war.

Professor Stone chronicles First Amendment casualties in the Cold War in considerable detail. At the loyalty hearings, the accused employee had a right to counsel, but not to confront his accuser or even to know the accuser's identity. At hearings, people were asked how many times they had voted for Henry Wallace. Wallace was the Democratic vice presidential candidate in 1940 and the Progressive Party candidate in 1948; in 1948, the American Communist Party endorsed Wallace. People were also asked if they had read novels by Howard Fast or listened to records by Paul Robeson and what their feelings were about racial equality (p. 346).

Only during the Vietnam War did the Court substantially protect anti-war dissent. In his conclusion Professor Stone asks, "Can we do better?" In light of this rather dismal record, it is a pertinent question.

Still, as Stone makes clear, the picture is more complex than the preceding paragraph suggests. Thomas Jefferson won the election of 1800, the Sedition Act expired, Jefferson pardoned the violators, and Congress eventually repaid the fines. During the Civil War, some Republicans as well as abolitionists joined Democrats in protesting suppression of anti-war speech. The protest helped to contain repression. (The Civil War Congress also passed legislation that attempted to limit military arrests and military trials of civilians in non-combat areas, but the Lin-

coln administration ignored the law.[5]) Stone shows that the Congress debated the World War I Acts used to punish speech and made serious attempts to limit their scope. But the courts, swept away by the "riptide of war fever" (p. 179), generally ignored the limited readings they could reasonably have given to the acts (pp. 146–180). While President Roosevelt asked his Attorneys General for Smith Act prosecutions on the eve of World War II, his Attorneys General were unenthusiastic and only a few prosecutions emerged (pp. 252–55).

According to Stone, "it is often repeated as a form of conventional wisdom that the Supreme Court will not decide a case against the government on an issue of military security during a period of national emergency" (p. 549). Supporters of the claim cite decisions like the ones upholding the incarceration of the Japanese in *Korematsu*[6] and the conviction of officials of the Communist Party in *Dennis*.[7] Stone insists that this "does not give the Court its due" because there "are many counter examples" (pp. 549–50). He lists a number, including cases that upheld First Amendment rights of American fascists and Communists in a series of criminal prosecutions and denaturalization proceedings during World War II and the *Barnette* decision protecting the right of pacifist Jehovah Witness children not to salute the flag in 1943 (p. 550).

Though it came out too late for inclusion in his book, the Supreme Court decision in *Hamdi v. Rumsfeld*[8] is an additional example. There the Court held that the president may not unilaterally imprison American citizens as "enemy combatants" and deny them any access to counsel or to a hearing to determine guilt. The majority provided significant protection, though it fell short of the robust, historic protections Justice Scalia would have accorded—absent congressional suspension of the writ of habeas corpus.[9] Still, it substantially limited the President's claim to unilateral power.

5. MICHAEL KENT CURTIS, FREE SPEECH, "THE PEOPLE'S DARLING PRIVILEGE:" STRUGGLES FOR FREEDOM OF EXPRESSION IN AMERICAN HISTORY 307, 339 (2000) [hereinafter, CURTIS, FREE SPEECH].

6. Korematsu v. United States, 323 U.S. 214 (1944).

7. Dennis v. United States, 341 U.S. 494 (1951).

8. 124 S. Ct. 2633 (2004).

9. *Id.* at 2660 (Scalia, J., dissenting).

LESSONS FROM THE PAST?

For those concerned with maintenance of free speech and civil liberty in periods of crisis, *Perilous Times* provides vicarious experience from history and subjects that experience to legal analysis. There are lessons one might draw from this vicarious experience. Some are depressingly current.

1. Hysteria distorts the law and the Constitution and undermines free speech.

The first lesson is one emphasized by Justice Robert H. Jackson: while power to wage war is essential, it is also especially dangerous to liberty. As Jackson wrote in 1948, the war power is "the most dangerous one to free government in the whole catalogue of powers."[10] He explained that this was because it

> usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by judges under the influence of the same passions and pressures. Always . . . the Government urges hasty decision to forestall some emergency . . . and pleads that paralysis will result if its claims to power are denied . . . .[11]

Perilous Times documents recurring triumphs of hysteria. For example, in passing the Sedition Act, Federalists saw (or said they saw) a conspiracy to ruin the government by false statements (pp. 36–38). During World War I, courts upheld long prison sentences for express and even implied criticism of the war and draft. Even a movie about the American Revolution landed its producer in jail because it portrayed atrocities by British soldiers. (In World War I, the British were our *allies*). When representatives of the National Civil Liberties Bureau went to officials in the Wilson administration to plead for restoration of mailing privileges for *The Masses* and other journals, the administration responded by denying mailing privileges to the National Civil Liberties Bureau itself. The publications the administration banned included the Bureau's pamphlet on free speech (p. 183). With implicit support from the government, "private" organizations engaged in break-ins, bugging offices, searches of bank and medical records aimed at Americans of German descent. Vigilantes ransacked homes, tarred and feathered, whipped a minis-

10. Woods v. Miller Co., 333 U.S. 138, 146 (1948) (Jackson, J. concurring).
11. *Id.*

ter before he could speak to an anti-war rally, and also murdered people (p. 157).

Another example of hysteria was the incarceration of the Japanese. Although no acts of espionage or sabotage were documented and military leaders said the danger of a Japanese invasion was quite remote, advocates from General John DeWitt to columnist Walter Lippmann called for incarcerating the Japanese. They did so although the FBI had already rounded up those it considered dangerous and said it had the situation well in hand. Remarkably, Lippmann and DeWitt treated the absence of any acts of sabotage or espionage as proof of a disciplined conspiracy just waiting for the right moment to strike (pp. 292–94). Roosevelt followed the General's advice.

2. Meaningful democracy requires free speech, especially in wartime.

Stone's account lets us hear from Congressmen, Senators, lawyers, and others involved in these free speech controversies. One theme is the centrality of free speech for democracy. Here, for example, is Stone's account of Gilbert Roe, attorney for the Free Speech League, arguing before a congressional committee against suppression of dissent during World War I:

> Roe noted that "the people . . . retain their right at the next election to return to Congress Senators and Representatives . . . who are opposed to the continuation of the war." How, he asked the committee, is any voter "to form an intelligent opinion" on this question "unless there is the fullest discussion permitted of every phase of the war, its origin, its manner of prosecution, and its manner of termination? (p. 150, ellipses in original).

3. The idea that the opposition is loyal (though misguided), a central tenant of democratic government, is often threatened in wartime.

Accepting the opposition as legitimate and loyal is crucial for healthy democracy. If one's opponents are not only misled, but disloyal enemies of the nation, then extreme measures to suppress them seem justified. Federalists saw political opposition as a dangerous Jeffersonian conspiracy to destroy the nation. Jeffersonian Republicans (correctly) insisted that their criticism was simply the democratic process at work. As Republican Albert Gallatin noted, the "dangerous 'conspiracy'" charged by the Federalists consisted of speeches and writings "expressing an

opinion that certain measures of Government have been dictated by an unwise policy, or by improper motives, and that some of them were unconstitutional" (p. 38). Gallatin rejected the claim that Republican criticism of the Adams administration "is seditious, is an enemy, not of the Administration, but of the Constitution" (p. 38). Such a claim, Gallatin noted, is "subversive of the Constitution" (p. 38). This third lesson—the attack on the democratic concept of a loyal opposition—is inextricably linked to a fourth.

4. Politicians use the crisis in an effort to entrench themselves and destroy their political opponents.

Political leaders often exploit a crisis in an effort to eliminate the opposition and to entrench themselves. Since democracy requires a healthy opposition and the democratic rationale for free speech involves the importance of multiple perspectives, silencing the opposition or dissenters is a bad thing. For example, the Federalists attempted to use the undeclared war with France to destroy the Jeffersonian party and to entrench themselves in power (p. 34). During the Cold War, the chairman of the Republican National Committee announced that the "Democratic party policy... bears a made-in-Moscow label" (p. 312) and Richard Nixon described the Democratic Party as the "party of communism" and described President Truman and Democratic presidential nominee Adlai Stevenson as "traitors" (p. 339).

5. The dangers of hysteria and political abuse provide cogent arguments for a strong version of the clear and present danger test.

Today, as during other times of crisis, we are tempted to relax speech protective tests such as that in *Brandenburg v. Ohio*[12] to one more like the test of the *Dennis* plurality. Stone asks if we can act against a 90% chance of a smaller evil by suppressing speech, why should we not be able to act against 1% chance of a far greater evil (p. 409). His answer is that a close temporal connection increases confidence that the prediction of serious harm has some validity (p. 409).

> It is difficult to predict future events. As a general rule, the farther out in the future the event, the less confident we can be of our predictions. Insisting on a close temporal connection between speech and harm increases our confidence that the

12. 395 U.S. 444 (1969).

> prediction has some validity. Moreover, in a free society the suppression of speech should be a last, not a first, resort. Unless the feared harm is imminent, and there is *no alternative* to restricting speech, the government should use other methods to prevent the harm. The temptation to suppress dissident speech on the pretext or the honest, but mistaken, belief that it is dangerous is both natural and pervasive. Insisting on a close temporal connection and a high likelihood of serious harm assures us that the *danger* and not abhorrence of the ideas that is driving the government's action (p. 409).

Strong protection for speech does not, Stone emphasizes again and again, leave the government impotent. It simply requires that it target the crimes and harms rather than dissenting speech.

The other approach, of course, is some variation of the bad tendency test. As one court put it, speakers must be held responsible for the "natural and probable tendency and effect" of their words. By this view, attacking the wisdom or justice of the war would undermine the war effort by "undermining the spirit of loyalty" (p. 171). As one commentator at the time noted, the shrewd among those who wish to undermine the war effort could pose as attempting to influence public opinion to change the law. By that view, the harm in suppressing some democratic discussion was outweighed by the harm to the war effort from allowing such criticism (p. 219).

6. Laws and Constitutions Are Not Enough. It matters who we have in positions of power.

A government of laws, not of men, is a cherished ideal. But as Jerome Frank once wrote, it is also an impossible one. We need instead, he said, a government of the right sort of laws enforced by the right sort of people.[13]

Perilous Times highlights again and again the importance of the people chosen to enforce the laws. In spite of failures and shortcomings, civil liberty and free speech fared far better, he suggests, because of Attorneys General such as Gerald Ford's Edward Levi, and Franklin Roosevelt's Francis Biddle, Frank Murphy, and Robert Jackson. Stone also gives us brief and moving portraits of the legislators and lower court judges who swam against the current of repression during World War I, for exam-

13. JEROME FRANK, GOVERNMENT IS HUMAN, *in* JEROME FRANK, A MAN'S REACH: THE PHILOSOPHY OF JUDGE JEROME FRANK 84 (Barbara Frank Kristein, ed., 1965).

ple. Stone concludes that when national leaders did not whip up hysteria against dissent, free speech fared far better (pp. 533–34).

SOME ADDITIONAL PERSPECTIVES AND RESERVATIONS

There are more lessons one could draw from this fine and instructive book. Instead, I will express a few reservations.

To a considerable extent, Stone views free speech through the lens of wars and the First Amendment. This is one of the book's virtues. It highlights many important parts of the picture, but like all perspectives leaves others in comparative darkness. Stone notes that "the First Amendment restricts *only* the government . . . . If Columbia University, a private institution, fires a teacher for being a member of the Socialist Party, its action does not violate the First Amendment. If a mob tars and feathers a speaker . . ., it does not violate the Constitution" (p. 6). True enough. But some readers might draw the wrong conclusion.

It is a mistake to confuse the First Amendment with free speech. The issue is difficult and paradoxical. Still, the claim that Columbia University and the mob in the hypothetical are undermining *free speech* is important, legitimate, and often substantially correct—even though there is no federal judicial remedy for a private attack on free speech.[14] (There may be legal remedies for assault, breach of contract, etc.)

If private suppression is sufficiently pervasive and persuasive, the government does not need to suppress. Private censors will do the work for it. Furthermore, the United States has a rich tradition of recognizing that mob attacks on speakers are an attack on free speech and the constitutional rights of American citizens. The reaction to the killing of Elijah Lovejoy is one example. Lovejoy was defending his anti-slavery press from the latest in a series of mobs that had destroyed his press.[15] The Court's decision that Congress had no power under the Fourteenth Amendment to punish private conspiracies motivated by the specific intent to silence opposition helped to hobble efforts to combat the Ku Klux Klan.[16] The result contributed to ena-

14. *Compare* United States v. Cruikshank, 92 U.S. 542 (1876) *with* United Brotherhood of Carpenters v. Scott, 463 U.S. 825 (1983).

15. CURTIS, FREE SPEECH, *supra* note 5, at 216–27.

16. *See generally*, ROBERT KACZOROWSKI, THE POLITICS OF JUDICIAL INTERPRETATION: THE FEDERAL COURTS, DEPARTMENT OF JUSTICE AND CIVIL RIGHTS, 1866-1876 chs. 7–9 (1985). For a brief discussion of the road not taken see Michael Kent Curtis,

bling one of the longest and most successful suppressions of the rights of free speech, voting, and association in American history.

The caveat about ignoring "private" suppression as we evaluate free speech history relates to a second implication (and perhaps not an intended one) of the Stone book. It is that free speech has been safe most of the time, through most of our history. The real problems arise, Stone suggests, in wartime—though Stone has wisely expanded what counts as a "war." "In peacetime, in times of relative tranquillity, which (by my count) make up roughly 80 percent of our history, the United States does not punish individuals for challenging government policies" (p. 5).

What this perspective overlooks is a long history beginning with suppression of anti-slavery speech in the Southern states (before the Civil War) and continuing as "private" and public suppression for many years afterwards. At least from the 1830s through the Civil War, the Southern states, in effect, made it a crime to criticize the institution of slavery. By 1860 in North Carolina, uttering ideas that would have the tendency to make slaves or free blacks discontent (as most indictments of slavery would) was a felony punishable by death for the first offense. It was a felony for years before that. While Lincoln and Douglas did not agree on much in their famous 1858 debates, they agreed that Republicans could not campaign in the South.[17] The Southern state laws were only the tip of the suppression iceberg. Mobs and vigilance committees enforced conformity.

Closely related to the issue of the pervasiveness of suppression is the "rebound theory." By that theory, we suppress in times of crisis, but we soon rebound. First I will set out the rebound theory, then Stone's limited support of it, and then my reservations about his limited support.

A recurring theme in disputes over free speech in times of crisis is the idea that we need not worry because the suppression is temporary and things will return to normal after the crisis ends. That claim was part of Abraham Lincoln's defense of the *military* arrest and trial of Democratic politician Clement Val-

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John A. Bingham and the Story of American Liberty: The Lost Cause Meets the "Lost Cause," 36 AKRON L. REV. 617, 652–661 (2003), part of a symposium at the University of Akron School of Law devoted to Bingham.

17. CURTIS, FREE SPEECH, *supra* note 5, at 282.

landigham for making an anti-war speech. "Nor am I able," Abraham Lincoln wrote,

> to appreciate the danger apprehended by [his critics] that the American people will, by means of military arrests during the Rebellion, lose the right of Public Discussion, the Liberty of Speech and the Press, . . . throughout the indefinite peaceful future . . . any more than I am able to believe that a man could contract so strong an appetite for emetics during temporary illness as to persist in feeding upon them during the remainder of his healthful life (p. 112).

Stone ultimately rejects the "don't worry, we rebound" approach. He notes that suppression of free speech in times of crisis is a dramatic assault on civil liberty, even though the commitment to free speech rebounds (p. 531). "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, not merely presumed" (p. 531). The claim, according to Stone, is particularly misguided where freedom of speech is involved because of the democratic right to make decisions related to the war (p. 531).

Furthermore, Stone strongly rejects the idea that courts should simply defer to the president or congress in times of crisis. He sees the idea of "judges as protectors of freedom" as a distinctive American contribution. Instead of deferring, Stone suggests the courts should "consciously construct constitutional doctrines that will provide firm and unequivocal guidance for later periods of stress" (p. 548).

Still, in an admirable effort at objectivity, Stone notes that the "rebound" argument has something to be said for it—in the case of short wars.

> If rights, once lost, could not later be regained, then civil liberties would be in a permanent downward spiral. But that is not the case. In fact, after each of our six episodes, the nation's commitment to free speech rebounded, usually rather quickly, sometimes more robustly than before . . . . As long as wars are of reasonably limited duration, this is an important consideration in assessing the long-term dangers of suppressing dissent in wartime (pp. 530–31).

As Stone implicitly notes, the rationale is particularly dubious when applied to a "war" such as the "war" on terror which is likely to continue for many, many years. Beyond the ones Stone

notes, there are additional problems with the "don't worry, we always rebound" claim. I have reservations even about Stone's limited concession as to its merit.

First, I am dubious about the idea of a self-contained short repression. The "temporary" suppression provides a precedent for the next crisis, as one can see comparing rationales in the Civil War and World War I. Lincoln's decision to ratify and *defend* the *military trial* of Vallandigham for making an anti-war speech seems to have shaped the thinking of Oliver Wendell Holmes in *Schenck*[18] and *Debs*.[19] Like Lincoln, Holmes embraced a "wartime is different" rationale for "temporary" suppression of speech. Like Lincoln, Holmes embraced a bad tendency rationale—the speech of a "wily agitator" must be suppressed because it can induce a "simple-minded soldier boy" to desert (p. 111). That was so, Lincoln asserted, even though Vallandigham did not "specifically and by direct language" advocate breaking the draft law.

Stone has a more sympathetic account of Lincoln's view. According to Stone, Lincoln's view gave free scope for criticism so long as criticism was coupled with an admonition to obey the law (pp. 112–13). He derives this principle from the fact that Lincoln (inaccurately) said that Vallandigham was not arrested simply for making an anti-war speech and from the fact that Lincoln (inaccurately) claimed that Vallandigham did not counsel against law violation (pp. 113–14).

If this makes Lincoln's justification for suppression of speech less objectionable, it leaves his approach to due process sadly inadequate. Lincoln justified the Vallandigham prosecution based on a crime with which Vallandigham was not charged and for which no evidence was offered at his military "trial."[20]

One long-term problem with the rebound theory then is that it provides a suppression rationale for the next crisis, and crises are not rare events in human history. (One can think of the American South as being in a permanent state of crisis over slavery through the Civil War and in a race crisis for many years thereafter.)

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18. Schenck v. United States, 249 U.S. 47 (1919).

19. Debs v. United States, 249 U. S. 211 (1919).

20. CURTIS, FREE SPEECH, *supra* note 5, at 310–14 (the charge and evidence against Vallandigham); on the larger Vallandigham story, Lincoln's shifting position, and the effort to expel a Democratic representative from Congress for making an anti-war speech, *see generally id.* at 300–56.

There is a second additional problem with the rebound defense for suppression. While Stone is right that free speech has often recovered rather quickly from temporary suppression (at least since the 1930s), it is also true that it often has not. That is so, at least, if you expand the focus to include "private" suppression and if you look at what was going on in the states. As noted above, anti-slavery speech was suppressed both by law and private violence in the South in the years before the Civil War. There were serious problems in the North as well. With the end of slavery, Southern laws punishing anti-slavery speech became moot. But in a deeper sense, the suppression of anti-slavery ideas lived on in the South—in the violent suppression of the Republican party and of political activity by blacks after Reconstruction. In one form or another, this repression of political rights continued until the 1960s. One hundred and thirty years is a long time before a bounce back. From this larger perspective, the 80-20 free speech repression ratio is less accurate.

Still, as Professor Stone notes, our record of admitting past mistakes (in calmer times) has been impressive.

> The Sedition Act of 1798 has been condemned in the "court of history," Lincoln's suspensions of habeas corpus were declared unconstitutional by the Supreme Court in *Ex parte Milligan*, the Court's own decisions upholding the World War I prosecutions of dissenters were all later effectively overruled, and the internment of Japanese Americans during World War II has been the subject of repeated government apologies and reparations. Likewise, the Court's decision in *Dennis* upholding convictions of the leaders of the Communist Party has been discredited, the loyalty programs and legislative investigations of that era have all been condemned, and the efforts of the U.S. government to "expose, disrupt and otherwise neutralize" anti-war activities during the Vietnam War have been denounced by Congress and the Department of Justice (p. 529).

On Christmas day, 1921 President Harding pardoned Eugene Debs and twenty-one others who had been convicted of speech crimes during World War I, and President Coolidge later released the remaining prisoners. Senator Borah, who had worked for pardons said, "I am delighted that a President of the United States has discovered the First Amendment to the Constitution and has had the courage to announce the discovery" (p. 232). This record of apology is impressive, but there are always

doubters whose views of these events are likely to gain greater support in times of stress.[21]

We have, in comparatively recent years, done a fine job of recognizing past mistakes. The recognitions may reflect long-term learning. Or they may reflect the transitory triumph of a more civil libertarian tradition. Professor Stone is optimistic, and I hope he is right. In the end, as he notes, civil liberty will be secure only to the extent that the values it reflects are internalized and demanded by the American people. Books such as *Perilous Times* can help to advance that goal.

21. *See, e.g.*, Jim Schlosser, *Groups Call on Coble to Resign Chair*, GREENSBORO NEWS & RECORD, Feb. 8, 2003, at B-1, describing Representative Howard Coble's recent defense of the internment of the Japanese.