

## **A Loss of Liberty: The Development of Press Censorship in Washington D.C. from Bureaucratic Experiment to Presidential Sanction**

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### **I. Introduction**

On July 4, 1861, President Lincoln called Congress into a special session to explain the actions he had taken to suppress rebellion. He challenged the men before him with a question that lay at the heart of this national crisis, “Must a government, of necessity, be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?” President Lincoln assured Congress that the reason for war was to maintain a Constitutional government founded on individual liberties, and furthermore, that restrictions were only to be “partial and temporary departures, from necessity.”<sup>1</sup>

However, in the months that followed, Northerners were left to wonder whether their liberties would survive the war at all. The First Amendment’s guarantee of press freedom was an early casualty in the American Civil War. Many scholars have debated the constitutionality of the censorship imposed on the press, expounded on its inefficiency, or even claimed its necessity. But few have focused on *how* censorship developed and the way in which it became legalized. At a time when we are once again at war, it is important to realize how the laws of war can affect the delicate balance of liberty and security in our country. During the Civil War, it appears that this balance was tipped toward security as press censorship developed on the experimental whim of numerous officials and stumbled into legal standing. This resulted from a lack of established government policy on relations with the growing news industry, a narrow understanding of press freedom, and untested presidential war powers. This abbreviated account will address the development of press censorship in Washington D.C. from bureaucratic experiment to presidential sanction.

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<sup>1</sup> *The American Annual Cyclopaedia and Register of Important Events of the Year 1861* (New York: D. Appleton, 1867), 604, 606.

## II. The Press Dilemma

In the 1850s and 60s, the American news industry underwent transformative change. Newspapers rejected their role as “mouthpieces” for political parties and became the peoples’ advocates in the democratic process. This functional shift coupled with advancement in telegraph technology resulted in exponential circulation and readership growth.<sup>2</sup> The United States became “a newspaper-reading nation” with an intense interest in politics.<sup>3</sup>

As secession ripped through the nation, the booming press industry was uniquely positioned to shape public opinion. The American people hungered for the news. Oliver Wendell Holmes wrote in a popular journal, “We must have something to eat and the papers to read. Everything else we can do without . . . Only bread and the newspaper we must have.”<sup>4</sup> Newspapermen eagerly responded to this demand. Editor Henry J. Raymond of the New York *Times* exclaimed that their words, powered by the telegraph, reached an audience “as wide as the Union. . .with the emphasis of lightening.”<sup>5</sup> The press wielded considerable societal influence as it charged headlong into the business of wartime coverage.

Initial press coverage of the American Civil War was unrestricted and quickly raised national security concerns. Northern newspapers routinely leaked sensitive information about Union military strategy and operations, which quickly fell into Confederate hands.<sup>6</sup> Many newspapers also threatened

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<sup>2</sup> The number of dailies increased from a mere 138 in 1840 to an astounding 372 with a seven-figure readership in 1860. Frederic Hudson, *Journalism in the United States, 1690-1872* (New York: Harper and Brothers Publishers, 1873), 770-772.

<sup>3</sup> In 1860, there were 4, 051 newspapers and periodical publishing in the United States. Eighty percent were political in nature. U.S. Civil War Centennial Commission, *The United States on the Eve of the Civil War: as Described in the 1860 Census* (Washington DC: Government Printing Office, 1963), 51.

<sup>4</sup> *Atlantic journal*, September 1861 as quoted in Luis M. Starr, *Bohemian Brigade: Civil War Newsmen in Action* (1954. Reprint, Madison, WI: University of Wisconsin Press, 1987), 55.

<sup>5</sup> Menahem Blondheim, “Public Sentiment Is Everything: The Union’s Public Communications Strategy and the Bogus Proclamation of 1864.” *The Journal of American History* 89, no. 3 (December 2002). Accessed through History Cooperative online where the article is displayed without pagination.

<sup>6</sup> In the early months of war, newspapers were often traded in friendly camp exchanges. Confederate General Robert E. Lee and his fellow officers made a habit of reading Northern papers, before devising military strategy. As security tightened, southern sympathizers found ways of continuing the news feed. A creative few in Illinois sent

the Union position with their harsh criticisms of the war and the Lincoln administration, which corroded the public support so vital to this domestic quarrel.<sup>7</sup>

The Federal government was unprepared to deal with these challenges. There was no established precedent for handling libel or dealing with a wartime press. Legislation offered minimal guidance as the First Amendment doctrine that exists now had not been developed yet.<sup>8</sup> Acting in the void of policy, the Lincoln administration and its supporters began experimenting with their own solutions to the press dilemma.

### III. Experimenting with Censorship

Experimentation with censorship did not originate from the federal government, but rather unexpectedly from the civilian sector. By April of 1861, D.C. telegraph employees initiated a practice of forwarding alarming dispatches containing government action, troop movements, or treasonous material bound for Southern cities to President Lincoln in anticipation of war. The American Telegraph Company (ATC) followed this action by voluntarily cutting its Washington-Richmond line. The company president, Edward S. Sanford, then established the first guidelines for censoring material “injurious to the government” after requesting input from officials in Washington.<sup>9</sup> These civilian actions laid the foundation for further development of censorship by government officials.

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newspapers down the Mississippi River in glass bottles. J. Cutler Andrews, *The North Reports the Civil War* (Pittsburgh, PA: University of Pittsburgh Press, 1955), 648; Bernard Weisberger, *Reporters for the Union* (Boston: Little, Brown, 1953), 76.

<sup>7</sup> In August 1861, the *New York Journal of Commerce* printed a list of one hundred papers in the Northern states that opposed the “present unholy war.” Dean Sprague, *Freedom Under Lincoln* (Boston: Houghton Mifflin, 1965), 142-143. For further argument, see James G. Randall, *Constitutional Problems under Lincoln* (New York: D. Appleton, 1926), 489.

<sup>8</sup> James G. Randall, *Constitutional Problems*, 480-481; Daniel Farber, *Lincoln’s Constitution* (Chicago: University of Chicago Press, 2003), 171.

<sup>9</sup> All of the following references to this source concern the author’s summation and quotation of unpublished hearings held by the Judiciary Committee’s review of censorship in January and February of 1862. The hearing record is comprised of 800 handwritten pages. Richard B. Kielbowicz, “The Telegraph, Censorship, and Politics,” 97-98; See also the selectively published 14-page report submitted on March 20 to the House of Representatives, *Telegraph Censorship*, 37th Cong., 2nd sess., 1862, H. Rpt. 64.

The first occurrence of government censorship happened almost by accident. On April 19, reporters had flocked to the telegraph office in Washington with news of the Sixth Massachusetts stoning by a secessionist mob in Baltimore, but a military guard blocked their entrance. Unbeknownst to them, Colonel Charles P. Stone had unraveled a Confederate plot to smuggle flour aboard a steamer and requested that the telegraph lines be kept silent until he could bring the conspirators into custody.<sup>10</sup> This cooperative arrangement inadvertently blocked the potentially damaging story, and seems to have inspired the federal government to attempt more pervasive censorship.

The War Department began experimenting with censorship soon after. On April 26, Secretary Simon Cameron authorized Tom Scott, vice president of the Pennsylvania Railroad, to monitor information about troop movements passed over the Washington-Annapolis telegraph line.<sup>11</sup> Scott's role quickly expanded to include censoring press dispatches that contained government information, military or otherwise, not intended for the public. Scott had no training and little guidance as the new head censor.<sup>12</sup> Nevertheless, a primitive and localized telegraph censorship grew out of his inexperienced bumbling.

As legal justification for such action, Secretary Cameron cited the fifty-seventh article of war passed by Congress in 1806 which dictated that anyone "holding correspondence with, or giving intelligence to, the enemy, either directly or indirectly" would be subject to punishment up to the death penalty.<sup>13</sup> General Winfield Scott, the Commander-in-chief of the Union Army, issued the Cameron-approved order on July 8, 1861, "Henceforth the telegraph will convey no dispatches concerning the

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<sup>10</sup> Benjamin Perley Poore, *Perley's Reminiscences of Sixty Years in the National Metropolis* (Philadelphia, PA: Hubbard Brothers, 1886), 78; Emmet Crozier, *Yankee Reporters: 1861-1865* (New York: Oxford University Press, 1956), 56-57; Louis M. Starr, *Bohemian Brigade*, 37-38.

<sup>11</sup> *War of the Rebellion: Official Records of the Union and Confederate Armies* (Washington, 1880-1991), series 1, 2:600. This source is hereafter abbreviated as *OR*.

<sup>12</sup> Louis M. Starr, *Bohemian Brigade*, 58; Bernard Weisberger, *Reporters for the Union*, 90-91.

<sup>13</sup> *OR*, series 3, 1:390.

operations of the Army not permitted by the Commanding general.”<sup>14</sup> Thus the War Department, acting on executive authority, extended the military regulation intended for spies and traitors to include the censorship of civilian journalists. Of course, the infrastructure needed to effectively enforce this communications policy had yet to be established.

In July of 1861, the War Department gained direct control of the Washington telegraph office, after a government merger with ATC. This development significantly improved Tom Scott’s ability to regulate press dispatches sent in and out of the capital.<sup>15</sup> However, telegraph censorship at this stage was still a rather feeble institution. It was impossible to constrain information from reaching the presses when telegraph offices in other prominent cities such as New York, Baltimore, and Philadelphia were not under government control.<sup>16</sup>

Postmaster General Montgomery Blair had developed an alternative means of censorship by manipulating the mail system. He excluded dissentious or “treasonable” newspapers from circulation, which financially destroyed them, because at the time most papers were sold by subscription and delivered by mail. Postmaster Blair justified his actions by invoking the Blackstonian “no prior restraint” definition of press freedom. The newspapers were free to publish what they wanted, but he “could not be called upon to give them circulation.” Furthermore, Blair claimed to have acted in the void of congressional action and invoked special war powers as an extension of the executive branch. This practice lasted until the Post Office was placed under the War Department in 1862.<sup>17</sup>

In the meantime, General McClellan had made a “Gentlemen’s Agreement” with reporters. They agreed not to publish anything that would aid the Confederacy, and in return, General McClellan agreed

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<sup>14</sup> *OR*, series 3, 1:324.

<sup>15</sup> The American Telegraph Company was one half of the near duopoly of the nation’s telegraph lines. See Robert Luther Thompson, *Wiring a Continent: The History of the Telegraph in the United States, 1832-1866* (Princeton: Princeton University Press, 1947), 373-406.

<sup>16</sup> James G. Randall, *Constitutional Problems*, 483.

<sup>17</sup> As quoted in Jeffrey A. Smith, *War and Press Freedom: the Problem of Prerogative Power* (New York: Oxford University Press, 1999), 101-102; Dean Sprague, *Freedom under Lincoln*, 144-147.

to see that the press received appropriate information as soon as possible. This arrangement soon failed as editors and government officials inevitably differed on what was appropriate to print.<sup>18</sup> Early attempts at censorship of any sort were simply insufficient against the persistent, lead-hungry reporters.

These varied censorship experiments were also undermined by politically-motivated favoritism. Government officials would solicit a willing reporter to promote their agendas in exchange for insider information or privilege. In one such instance, Secretary Cameron licensed Samuel Wilkeson of the New York *Tribune* to send uncensored dispatches from Washington, which resulted in the publication of a defamatory article about certain generals. In his memoirs, reporter Henry Villard described the secretary as having “a shrewd way of tempting journalists by implications and insinuations into publishing things about others that he wished to have said without becoming responsible for them.” However, Secretary Cameron was eventually held responsible for his indiscretions and reassigned to St. Petersburg, Russia in early 1862.<sup>19</sup>

After the Wilkeson affair, Secretary of State William H. Seward decried Cameron’s mismanagement of telegraph censorship and vowed to take the matter into “[his] own hands.”<sup>20</sup> In September 1861, Secretary Seward instructed H.E. Thayer, the newly-appointed head censor at the Washington telegraph office, to send all questionable dispatches to the State Department instead of directing them to the “overworked” Cameron.<sup>21</sup>

Secretary Seward proved as ineffectual as his predecessor, though. His management of telegraph censorship veered even farther from military matters and into the realm of politics. Seward neglected to develop the guidelines for telegraph censorship beyond prohibiting anything that could aid

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<sup>18</sup> Louis M. Starr, *Bohemian Brigade*, 66. For details about the agreement and the people involved see Judiciary Committee, *Telegraph Censorship*, 37th Cong., 2nd sess., 1862, H. Rpt. 64.

<sup>19</sup> *Memoirs of Henry Villard* (1904; repr., New York: Da Capo Press, 1969), 1:172; Frederick W. Seward, *Seward at Washington as Senator and Secretary of State: A Memoir of His Life, with Selections from His Letters, 1861-1872* (New York: Derber and Miller, 1891), 45.

<sup>20</sup> From the reexamination of Samuel Wilkeson, Jan. 31, 1862, “Allegations of Government Censorship” as quoted by Menahem Blondheim in “Public Sentiment Is Everything”.

<sup>21</sup> From the testimony of H.E. Thayer as quoted in Richard B. Kielbowicz, “The Telegraph, Censorship, and Politics,” 101-102.

or comfort the enemy and his censors which, with their rather limited knowledge of public affairs, only exacerbated inflamed press relations.<sup>22</sup> Frustrated reporters learned to evade the Washington censors by writing telegraph dispatches in code and sending others to their editors by courier or mail. These apparent gaps in censorship allowed for military news to slip through, but reporters' efforts to get around censorship slowed, and sometimes silenced, news that would otherwise damage support for the war.<sup>23</sup> Therefore, despite the obvious shortcomings of these bureaucratic experiments with censorship, they accomplished the desired effect of mediating public opinion.

#### IV. Legalizing Telegraph Censorship

The attempted control of mass information raised concerns in the House of Representatives. In December of 1861, the House organized a Judiciary Committee "to inquire if a telegraphic censorship of the press has been established in this city [Washington], if so, by whose authority, and by whom is it now controlled."<sup>24</sup> The committee concluded, after several months of hearings, that censorship had indeed been established and expressed with alarm that, "Despatches[sic], almost numberless, of political, personal, and general character have been suppressed by the censor."<sup>25</sup>

However, any intention the Judiciary Committee had of shutting censorship down was inadvertently hindered by an act of Congress. During the investigation, Congress had passed a bill, which allowed the president to seize control of all rail and telegraph lines for "when in his judgment the public safety may require it."<sup>26</sup> The statute was merely a wartime precaution, which reserved the lines for government needs, but it effectively legalized censorship. Within a matter of days, President Lincoln had

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<sup>22</sup> Bernard Weisberger, *Reporters for the Union*, 90-91. Censors had a reputation for indiscriminately removing all information that pertained to military operations, diplomacy, or criticisms of government officials. For a reporter's perspective, see L.A. Gobright, *Recollection of Men and Things*, 322-323, 318.

<sup>23</sup> Brayton Harris, *Blue and Gray in Black and White: Newspapers in the Civil War* (Washington, D.C.: Batsford Brassey, 1999), 151.

<sup>24</sup> *Congressional Globe*, 37th Cong., 2nd sess., 1861, 32:19.

<sup>25</sup> Judiciary Committee, *Telegraph Censorship*, 37th Cong., 2nd sess., 1862, H. Rpt. 64.

<sup>26</sup> *OR*, ser. 3, 1:899.

taken control of the nationwide telegraph network and appointed the new War Department secretary, Edwin M. Stanton, to oversee a more cohesive censorship policy. The committee's hands were tied. They admonished the president to "not interfere with the free transmission of intelligence by telegraph when the same will not aid the public enemy in his military or naval operations," but made no further protest.<sup>27</sup>

## V. Presidential Sanction

Before Congress' legislative misstep, the president had eluded direct ties with press censorship and simply allowed his cabinet members a long leash in their experiments. However, he latched onto this loophole and bent the statute to his own ends by invoking executive power. This power is mentioned in Article II of Constitution, but was largely untested at the time.<sup>28</sup>

James Madison explained that while the Constitution had been "penned with the greatest technical skill and passed on the fullest and most mature deliberation," it was "obscure and equivocal" until defined by further discussion and lawmaking.<sup>29</sup> In light of this, a certain amount of elasticity in the law was prescribed for matters of public safety. As Madison reasoned, "means of security can only be regulated by the means and danger of attack. They will, in fact, be ever determined by these rules and by no others," for it is "in vain to oppose constitutional barriers to the impulse of self-preservation." Alexander Hamilton added that in dangerous circumstances "no constitutional shackles can be wisely imposed."<sup>30</sup> All of which boiled down to the belief that the government had been allotted extra-constitutional authority in times of war. And furthermore, John Quincy Adams argued that this special

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<sup>27</sup> *Congressional Globe*, 37th Cong., 2nd sess., 1861, 32:19.

<sup>28</sup> The executive branch had hardly made itself known since the Presidency of Andrew Jackson. The White House personnel numbered less than six until the presidency of Ulysses S. Grant. The Attorney General position was not considered full-time until 1855, and there was a complete absence of executive involvement in policymaking. Daniel Farber, *Lincoln's Constitution*, 118-119.

<sup>29</sup> Federalist 37 (Madison) in *The Federalist Papers*, ed. Isaac Kramnick (New York: Penguin, 1987), 244-245.

<sup>30</sup> Federalist 41 (Madison); Federalist 23 (Hamilton) in *The Federalist Papers*, 267, 185.



“war power” was entitled to the “Executive” as well as to Congress.<sup>31</sup> Constitutional interpretations such as these allowed President Lincoln to act on little more than political savvy and personal judgment.

Before his presidency, Lincoln had been a critic of such executive license. He had advocated the supremacy of Congress and staunchly opposed Jacksonian attempts to expand executive power.<sup>32</sup> After becoming president, Lincoln quickly changed his mind with rising tide of secession. He explained, “I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to preservation of the Constitution through the preservation of the nation.”<sup>33</sup> In February of 1862, these measures came to include using the telegraph to censor the press.

President Lincoln defended his action as he had done in the special session of Congress, by posing a question. He asked whether a boy who deserts should be shot while the “wily agitator” whose newspaper article incites him to do so goes unpunished. Answering for himself, the president stated, “I think that, in such a case, to silence the agitator and save the boy is not only constitutional but withal a great mercy.” He continued, “If I be wrong on this question of constitutional power my error lies in believing that certain proceedings are constitutional when, in cases of rebellion or invasion, the public safety requires them. . . .”<sup>34</sup> In President Lincoln’s estimation, censorship was legal by virtue of necessity.

Several years later, President Lincoln reiterated this position in a letter to Editor A.G. Hodges. He maintained that sacrificing certain civil liberties was necessary in order to preserve the Constitution and the nation as a whole, “By general law, life and limb must be protected; yet often a limb must be

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<sup>31</sup> *Congressional Debates*, 24th Cong., 1st sess., 1836, Vol. 7, pt. 4: 4038-4039.

<sup>32</sup> Abraham Lincoln was a Whig for the majority of his political career, and these views stood in line with the Whig platform. For more see *The Papers of Henry Clay: Candidate, Compromiser, Elder Statesmen*, vol. 10. Ed. Melba Porter Hay (Lexington: University Press of Kentucky, 1991), 50-51.

<sup>33</sup> Letter to A.G. Hodges on April 4, 1864, in *Complete Works of Lincoln*, Eds. John G. Nicolay and John Hay (New York: F.D. Tandy, 1905), 2:508.

<sup>34</sup> Letter to Erastus Corning and Others, June 12, 1863, in Roy P. Basler, *The Collected Works of Abraham Lincoln* (New Brunswick, NJ: Rutgers University Press, 1953), 6:264-266.

amputated to save a life; but a life is never wisely given to save a limb.”<sup>35</sup> In this pathos-evoking rhetoric, the President sanctioned the use of censorship once more.

## VI. Conclusion

Freedom of the press was sacrificed in the name of “a more perfect union.” The Lincoln administration and its supporters believed that the Union cause was threatened by newspapers that routinely leaked military information and published inflammatory dissent. In the void of an established government-press relations policy, experimentation with censorship began. This account followed the development of press censorship in Washington D.C. from bureaucratic experiment to presidential sanction. Along the way, the Judiciary Committee’s investigation failed to shutdown censorship, and Congress inadvertently perpetuated it by allowing President Lincoln to seize control of the telegraph network. He was then able to invoke untested executive war power to officially sanction telegraph censorship of the press.

Perhaps the last question President Lincoln posed was how much his actions would impact the wartime administrations to follow as they attempt to balance security and liberty whilst preserving our democratic republic. As our current administration conducts this juggling act, it is important that we remember previous losses of liberty and acknowledge evolving Constitutional interpretations so that we may be vigilant about the future. Let us hope that we will not be left to wonder like the Northerners whether our liberties will survive the war.

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<sup>35</sup>Joel Benton, ed., *Greeley on Lincoln and Mr. Greeley’s Letters* (New York: Baker and Taylor, 1893), 70.