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Censorship and Free Speech

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U. S. Office of Censorship

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CENSORSHIP AND FREE SPEECH

BYRON PRICE*

There are special reasons why all of us should be proud and grateful to be here today. In the years of peace and security we neglect too often to count the blessings of liberty; but in the troubled world of 1942 we have cause for thanksgiving that we live in a land where the courts are open, and where attorneys at law may gather and discuss their own conceptions of freedom.

To mention freedom and censorship in the same breath might appear a contradiction of terms; for censorship is by its very nature ruthless and arbitrary. It invades privacy and suppresses free enterprise, sacrificing individual interest for national interest without compunction. Yet there is, in reality, no contradiction, and there need be no conflict.

We have been able to preserve freedom in this nation because we have looked upon it as a relative, and not an absolute principle. Our free Constitution has stood the test of time because our courts have viewed its provisions as fluid and elastic, to be applied for the greatest good of the greatest number according to the circumstances and requirements of our recurring national crises. The right of free speech is a relative right. I need not point out to a group of lawyers that no one can maintain a constitutional right to commit libel or slander, or indulge in indecency of expression. Neither can any one contend successfully that the press, the radio, or any individual has a right in wartime to be criminally careless with information, or preach sedition.

Justice Holmes, one of the great liberals of jurisprudence, who devoted his lifetime to the exposition and defense of civil liberties, stated the wartime limitations of freedom in a sentence which deserves to receive in these times the prayerful attention of every American citizen. "When a nation is at war," he said, "many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured as long as men fight."

Censorship is a necessary evil of wartime. We have known it in some form during every war in our history. In present times, when war is all-out and globe-encircling, cen-

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ensorship is a vital weapon. Its function is to attack the communications of the enemy, to hamper him on every front and every flank, to keep from him vital information of our own war effort and to gather such information as may be possible about his plans and purposes. Surely it cannot be disputed that this is not only a useful but an indispensable part of total warfare such we know today.

The question, then, is how far should these restraints be permitted to go, and in what manner should they be accomplished? The answer is that they should be permitted to go as far as may be consistent with our free form of government, but that they should be accomplished strictly within the framework of "due process" of law.

Essentially the Office of Censorship has two functions. On the one hand it censors all communications entering or leaving the country, by mail, cable, radiotelegraph, radiotelephone, or any other method of communication. On the other hand, in the domestic field, it administers Codes of Wartime Practices for press and radio and so withholds certain information of military value from circulation even at home. In a legal sense these operations are of a distinctly different character, although in a practical sense they are interwoven intimately with one another.

The Censorship of international communications rests upon a solid legal foundation. We are censoring the mails and cables under specific Congressional enactment, embodied in the First War Powers Act by which the wartime authority of the Commander-in-Chief was defined. In this field a wide discretion is placed in the hands of the censor; in fact, even "absolute discretion" is conferred by the Executive Order creating the Office of Censorship, and the Director of Censorship is made responsible to no one but the Commander-in-Chief.

Now again this may appear a harsh method, inconsistent with the processes of freedom; but I do not think it will so appear when you consider the harsh realities of modern warfare. Censorship is a military weapon. To regard it in any other light or to use it in any other fashion would result in travesty. The binding link between the operations of censorship and the operations of our armed forces should never be forgotten, nor should any censor be permitted to forget that he is dealing simply and solely with the processes

of war. Censorship is neither a guardian of private morals nor a snooper into the violations of peacetime laws. Every member of our staff keeps constantly before him this basic principle: What does not concern the war does not concern censorship.

The "absolute discretion" given the censor is no more inconsistent with liberty under the law than is the operation of the military draft, or the restraints of rationing, or the right of arbitrary action which must be given to military commanders in the field.

Furthermore, the discretion must be absolute if the effort is to succeed. While we are attacking the communications of the enemy, it is important also that we keep our own legitimate lines of communication open, and this is one of the great problems of censorship. If we are to conduct the far-flung business of war efficiency, the mail must move in orderly regularity and with a minimum of delay by censorship. In such matters as the vital field of ocean shipping, for instance, cables must clear rapidly, once we are satisfied that proper safeguards have been observed. There is no time to convene a grand jury or submit to the ordinary legal requirements of ordinary times. The exigencies of war are breathless upon our doorstep, and will not wait.

The second part of the responsibilities of the Office of Censorship relates, not to international communications, but to the circulation of harmful information within the country itself. This undertaking rests, in essence, upon the voluntary enlistment of newspapers, broadcasters, and other agencies of dissemination. The Government, by consent, plays the part of umpire. It informs press and radio what classes of information would be helpful to the enemy if disseminated freely within the States. It asks that such information be kept out of circulation unless disclosed by an official source; but there is no compulsion unless the information concerned is of so secret and vital a nature that its disclosure would constitute violation of the long-existing statutes dealing with espionage.

Two guiding principles govern this entire procedure. The first is that the requests for suppression must not be so restrictive that they will keep the American people in ignorance of the progress of the war. In a democracy, the public is entitled to essential information. It is entitled to

know about the tough realities of this war, and it must not be subjected to such a blackout of news as now pervades totalitarian countries. In its approach to this problem the Government has followed consistently the democratic belief that American news columns and American broadcasting can remain the freest in the world and still keep vital information from the enemy.

No one should be deceived into believing that a voluntary censorship will ever function perfectly. With every publisher and every broadcaster his own censor, there will always be honest differences of judgment within the framework of the Codes we have provided. Yet so universal has been the loyal cooperation of these industries that incalculable good is done every day by the withholding of information about troops and ships, and munitions and tanks and planes.

Is it too much to ask that the process now be carried one step further and that the public itself participate in censorship? If restraints can be accepted by publishers and broadcasters, whose livelihood depends upon disseminating facts, why should any individual consider himself above a similar cooperation with his Government? In a sense, every one of us became a broadcaster as soon as he was old enough to talk, and he became a publisher as soon as he learned to write. No American is doing his share unless, as a part of his self-discipline, he remembers always that the enemy is listening and is thankful for even the smallest scraps of military information.

A second principle underlying domestic voluntary censorship is that it deals only with information, and does not invade the realm of editorial or other opinion. Every request made by the Government has been confined to some topic of factual information. There has been no request that any publisher or any broadcaster refrain from expressing his opinion or from indulging in criticism.

The Government's requests are unquestionably a restraint upon normal operations, but I do not think it can be argued that they are a restraint upon any right bestowed by the Constitution. In a broad sense, the freedom guaranteed by the First Amendment has been accepted as a freedom to criticize, to protest, to petition, to speak opinions freely; but not as a right to play fast and loose with facts.

In the realm of opinion and criticism, it is highly essential that there be no arbitrary action by the Government. It is essential that "due process" be observed at every step, so that the line between honest criticism and actual sedition will be drawn only according to the long established methods of duly constituted courts. This entire field, therefore, lies beyond the purview of censorship. It is one of the responsibilities of the general statutes and of the regular law enforcement agencies of the Government.

As for censorship itself, I would be the last to deny that its arbitrary powers in the realm of information involve some dangers. It has been the lesson of history that censorship feeds on itself and that once any man is given the authority of suppression, the tendency is to expand that authority more and more until we arrive at a system of intellectual slavery. I can assure you that we will not and cannot forget that we are operating an American censorship. The President himself in that statement of policy which forms the charter of our operations instructed that censorship must be administered "in harmony with the best interests of our free institutions." None of us can ever forget for a moment that one of the things we are fighting for is freedom and that the war would not be worth winning if destruction or even permanent impairment of free speech became the price of victory.

Nor should we forget that temporary sacrifices do not necessarily constitute an unmixed evil. Our period of national struggle should make us eventually a stronger, rather than a weaker, nation. We can take courage in the sage observation of Cicero: "Freedom suppressed and again regained bites with keener fangs than freedom never endangered."

We have not been a nation accustomed to great outlays for military preparation in peacetime; and when war comes we must pay doubly for the years of detachment. In such a war as now confronts us, not one of us can plead immunity. We have been speaking of constitutional guarantees and of legal processes; but in wartime, and especially in a war like this, can not even lawyers admit that there is a force higher and more potent and more significant than any force of law?

In such moments we come down to essentials, and the one essential thing today is that every American make war

on the enemy. The individual may not agree that the war was necessary. His theories of law and of government may not accord with those of other nations who are fighting by our side. His constituted leaders may not be the leaders he would have selected. But how much does all of that matter? The one question is "Are you, and you, making war on the enemy?"

A citizen does not surrender a civil right merely by not exercising it. Every one of us has a right, without hindrance under the law, to be a bad neighbor—to be quarrelsome and inconsiderate and altogether disagreeable, to return evil for good, to denounce his friends, and so to become a handicap and a disgrace to his community. Perhaps there are those who look upon such conduct as a proper assertion of American independence. But that is not the way wars are won, and it is not the way this war will be won.

Behind the might of our national armies we must have, for victory, a national will to win, a national acceptance of individual sacrifice in the interest of a national unity. And that doesn't apply just to the other fellow, it applies to every one of us.

That faithful friend of the legal fraternity, John Doe, will not win the war, although I have no doubt he will do his part. Let it lie heavily upon the consciences of the rest of us whether we are giving him the help he must have.