

## COMMITTEE COMMENTARY

For over two hundred years, our First Amendment right of free expression has epitomized the American commitment to protection of civil liberties. In *Perilous Times*, author Geoffrey Stone offers an ambitious historical account of free speech doctrine. America's safeguarding of free speech and tolerance for dissent, Stone asserts, has been especially precarious during times of war. He argues why we "must preserve the spirit of liberty in times of crisis" to "fulfill the daunting responsibilities of self-governance." From the Sedition Act of 1798, when the United States found itself on the verge of war with France, to the major wars of the twentieth century—World War I, World War II, the Cold War, and Vietnam—Stone examines our nation's history of curtailing civil liberties in wartime, providing a scholarly analysis of the causes and consequences of these actions. In efficient prose, *Perilous Times* highlights specific examples of restrictions on civil liberties, from President Lincoln's multiple suspension of writs of habeas corpus during the Civil War to the post-9/11 passing of the Patriot Act. Well researched and readable, Stone's timely book allows us to examine the origins of the troubled waters that our nation navigates in the war against terrorism and forces us to consider the effects that wartime actions can have on the most fundamental of American rights.

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Geoffrey R. Stone, *Author*



## EXCERPT

### Chapter 1: The "Half War" with France

The years between 1789 and 1801 marked a critical period in American history. In an atmosphere of fear, suspicion, and intrigue, the nation's new Constitution was put to a test of its very survival. Bitter internal conflicts buffeted the young nation, even as it found itself dangerously embroiled in a fierce struggle between the French Republic and imperial Britain.

It was in this political cauldron that the United States first faced the challenge of reconciling the First Amendment with the felt necessities of wartime. The ensuing conflict led Congress to enact the Alien and Sedition Acts of 1798, revealed sharp divisions in the nation's nascent understanding of "the freedom of speech," and yielded fundamental lessons that have shaped our national values to this day.

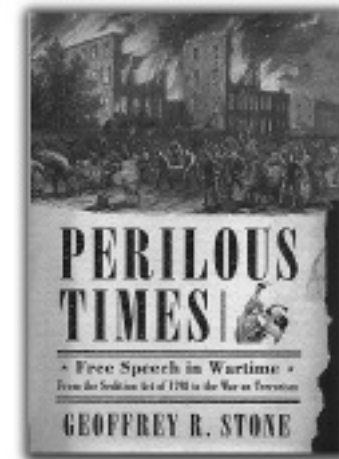
We tend to romanticize the "founding fathers," but they were subject to petty jealousies, partisan squabbling, and deep distrust, especially of one another. Moreover, they were unsure of the constitutional system they had put in place. It was, after all, an experiment. As they embarked upon an adventure in self-governance, they had no precedents to guide them. When the issue was war and peace, they disagreed bitterly over how much to risk on an untested idea.

As we have seen, one goal of the First Amendment is to foster the development of certain values and character traits among citizens, values and traits that are essential to a well-functioning self-governing society—tolerance, skepticism, independence of mind, critical judgment, distrust of authority. Today, perhaps more than we appreciate, we have integrated many of these values into our national character and gained confidence in our constitutional system. But in America's first decade, at a time when almost all nations were run by monarchies, the First Amendment had not yet had time to do its work. For the founding generation, the First Amendment was unexplored terrain.

In the contest over the Sedition Act of 1798, the nation confronted a profound test of its commitment to "the freedom of speech." The themes that emerged in this struggle have returned in different forms throughout our history. Although the context changes from 1798 to 1861 to 1917 to 2004, the most fundamental questions recur. Are those who dissent in time of war "disloyal"? Do the demands of war justify the suppression of dissent? How do we

distinguish the "real" necessities of war from the partisan exploitation of a crisis? Can we rely upon judges and jurors to preserve civil liberties in the highly changed atmosphere of wartime?

As the founding generation worked its way through these issues, it began to articulate and test the fundamental tenets of the freedom of speech.



*Perilous Times* retails for \$35.00 hardcover and \$17.95 paperback and is available from W.W. Norton and booksellers nationwide. To learn more about the book, go online to [www.wwnorton.com](http://www.wwnorton.com).