

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 4: The Early National Era – Democratic Rights/Free Speech/National Free Speech Controversies

The War of 1812

The War of 1812 is a prominent counterexample to claims that free speech is regularly restricted when the United States is engaged in combat. The United States and England fought fiercely from 1812 to 1814. prominent New Englanders vehemently criticized what they called “Mr. Madison’s War.” Nevertheless, the national government made little effort to restrict political dissent. War critics in Maryland and Pennsylvania were victims of mobs, often supported by local officials. Still, little official repression took place.

During the first years of the war, an interesting role reversal took place. Americans think that in wartime federal justices must protect political dissenters from elected officials who want to limit political criticism of the military effort. During the War of 1812, Supreme Court Justice Joseph Story was the leading proponent of laws prohibiting political dissent. Concerned that “offenders, conspirators, and traitors are enabled to carry on their purposes almost without check” Story insisted that the national government must “give the Judicial Courts of the United States power to punish all crimes and offenses against the Government, as at common law.” These crimes and offenses included sedition. President Madison refused to yield to these pleas. Committed to the libertarian stance he took during the Sedition Act debates, Madison refrained from championing a new sedition bill.¹

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UNIVERSITY PRESS

¹ See Donald R. Hickey, *The War of 1812: A Forgotten Conflict* (Urbana: University of Illinois Press, 1989), 52–71.