

## **Witch hunts and war scares: Political repression in America from the Puritans to the Patriot Act**

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I'd like to begin my discussion of political repression in America by telling you the story of Prudence Crandall. I imagine she's not a household name in South Africa, but actually she's not one in the United States either.

She was a young Quaker educator who opened a school for girls in her hometown of Canterbury, Connecticut in 1831. The school was quite successful and attracted the daughters of the town's leading citizens. There was a small African American community in the area and a young black woman asked Crandall if she could matriculate. Crandall, who was a free-thinking type, agreed and informed her students' parents that she would be admitting African Americans. The white families were disturbed and threatened to withdraw their daughters.

But, instead of backing down, Crandall decided to transform the school into one that educated black women. This upset the townspeople even more. Prodded by some of the village's leading citizens, the local town meeting passed several resolutions condemning her proposal. But Crandall was stubborn, and with the help of the nascent abolitionist movement recruited nearly twenty young black women from New York, New England, and elsewhere and began to hold classes in the spring of 1833.

The community fought Crandall's school. The town merchants refused to sell supplies to the school, the Congregational church barred its students from services, the local rowdies threw garbage at the girls, and the Canterbury authorities tried to prosecute them under a 1650 vagrancy law that prescribed fines and whippings for housing "paupers" without the town's permission.

Then a neighboring lawyer got the Connecticut legislature to rush through a measure prohibiting the education of African Americans from out of state unless the local municipality approved. Crandall was soon arrested and hauled off to jail -- admittedly only for one night. She was tried twice, before her conviction was overturned on a technicality the following year.

Meanwhile, the attacks on her academy intensified: the merchants' boycott continued, the local doctor refused his services, her students were threatened, manure was dumped into the well, stones thrown through the windows, and an attempt was made to burn the building down. Though ultimately victorious in court, the harassment was so severe that Crandall decided to give up. She got married, closed the school, and moved to the Midwest.

Within a few years, the public mood had changed. The Connecticut legislature repealed the law under which Crandall was prosecuted, with its main author admitting that he “could weep tears of blood for what he had done. Even so, it took more than fifty years before the good folk of Canterbury, Connecticut officially apologized for what their ancestors had done and got the state to pay the aged teacher an annual pension of \$400.

I've told the story of Prudence Crandall in some detail because it illustrates many of the key elements of American political repression that I'm going to be talking about this evening -- elements that I think distinguish the way in which the United States has traditionally suppressed dissent.

To begin with, there was little violence.

Although political repression has permeated American history, compared to the horrors of the Third Reich or Stalin's purges or Latin America's dirty wars not to mention what happened here in South Africa during the apartheid era, it has been relatively mild. Prudence Crandall spent all of one night in prison, none of her pupils were hurt, and the building that housed her school still graces the village green in Canterbury, Connecticut.

True, there have been some bloody moments in the American past -- especially with regard to racial issues and working class unrest. But most of the time, the American establishment has managed to maintain itself in power without having to resort to violence.

During the McCarthy period in the late 1940s and 1950s, for example, only two people -- Ethel and Julius Rosenberg -- were killed and a few hundred went to prison or were deported. The main sanctions were economic -- about 15,000 people lost their jobs. Yet, mild as they were, those sanctions were quite efficacious. Effective political dissent essentially disappeared.

Another element of American political repression that Prudence Crandall's story illustrates is its collaborative nature. Both the public and the private sector participated in the assault on Crandall and her school.

Not only did she have to defend herself against a criminal prosecution with all the economic and psychological hardships that confronting the state imposes, but she also faced the hostility of her own community whose members harassed and ostracized her and her students. Ultimately, when official measures failed to close Crandall's school, her neighbors' actions did.

It is common to view political repression as a function of the state; the institutions of civil society, we assume, serve as a barrier against the government's violations of individual rights. What Crandall's story shows us, however -- and I could have drawn upon similar instances of public-private collaboration from almost every epoch of American history -- is how effectively dissent has been marginalized and suppressed when the tasks of doing so are divided between the state and civil society.

Because the Constitution limits what the state can do, it has fallen to private citizens -- particularly in the workplace -- to do the work of repression that official agents cannot do. For example, while the First Amendment prohibits the government from issuing prior restraints upon the press, it does not prevent publishers and editors from censoring their reporters. And while the Fifth Amendment prescribes due

process for the imposition of criminal sanctions, it requires no such procedures for the imposition of economic ones. Employers can fire people for political reasons – and do so all the time. Thus has it been throughout American history: what government cannot do, society does instead, and vice versa.

While Americans like to believe that the moments of political repression that mar our history are aberrations, produced by extreme situations, and carried out by marginal individuals, Crandall's experiences show something very different.

Not only were the people who led the campaign against Prudence Crandall among the most highly respected individuals in the town, but they also operated through the most important institutions in the community -- the town meeting, for example, the traditional symbol of American self-government, the local Congregational Church, and even the state legislature of Connecticut.

What this shows, of course, is that repression in the United States is no anomaly, but rather a normal part of the American political system -- a mainstream phenomenon whose perpetrators are as often the community's leading citizens as they are its local hoodlums.

And, in fact, the participation of so many different types of individuals and institutions is another important feature of the American style of political repression -- or perhaps I should say, repressions. For one of the most striking characteristics of that repression has been its protean nature and the fact that it takes so many different forms.

Most of those forms are completely legal. And this, too, is another characteristic of American political repression. It operates almost entirely within the law and, in many cases, is the law. Except for the attempted arson and a barrage of rocks thrown at her school, almost all the travails visited upon Prudence Crandall by the good folk of Canterbury were completely constitutional. The merchants who boycotted the school and the doctor who refused his services were quite within their rights, as were the local authorities who threatened to whip her pupils. Though Crandall was ultimately exonerated by the judiciary, it was on a technicality.

In most cases of political repression, as we shall see, the courts have been just as complicit in suppressing dissent as any other social actor.

Crandall's legal victory and the reparations she finally received show us yet another aspect of American political repression. Its victims are almost always vindicated in the end -- an indication, of course, that the original repression was unjustified from the start. As Supreme Court Justice Thurgood Marshall put it fifteen years ago, "History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure & [W]hen we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to regret it."[\(1\)](#)

American history is littered with those regrets. Just as Crandall received an official apology from the Connecticut state legislature, Congress voted reparations for the Japanese-American victims of the World War II internment camps, and the New York City School Board awarded the teachers fired during the McCarthy era their pensions and back pay. The courts have also tried to make amends, ruling, for example, that the suspension of habeas corpus during the Civil War or the attempt to force the Communist party members to register with the government during the Cold War

violated the constitution. The problem here is that most of these decisions were rendered long after the damage had been done.

Finally, we must look at what caused Crandall's troubles -- her challenge to the racial and gender mores of her society. Here again, her story is not unique. Almost all the political repression that pervades American history has been directed against ethnic, racial, or religious minorities or those individuals, groups, and movements that are perceived to endanger the nation's political and economic rulers or its cultural or moral well-being.

Because American political repression is so diverse, the story of Prudence Crandall, while illuminating many aspects of that repression, does not reveal them all.

But, before I begin to analyze those other components, I'd like to walk you through some of the highlights -- or perhaps I should say low points -- of the history of political repression in the United States.

Although we can find examples of that repression at almost any moment in the American past, it is clear that there were more violations of people's rights at some periods than at others.

Take the seventeenth century, for example. Tolerance was not a characteristic of the devout English Puritans who first settled in New England. Exile was one of the milder punishments that religious dissenters received (some were hung) -- and this was even before the fury of the Salem and other witch trials was unleashed.

There was more political freedom in the eighteenth century. The colonists liked to pride themselves on their devotion to liberty, but, as it turns out, the ruling elites coveted that liberty for themselves, not for their critics.

That one-sided view of free speech reached its apex at the end of the century with the Alien and Sedition Acts of 1798. A war scare with France provided the opportunity for the then-ruling Federalist party to pass legislation designed to muzzle its political opponents by criminalizing "any false, scandalous and malicious" writings or publications critical of the government, Congress, or the president.

The Federalists' political opponents, members of the newly formed Republican party (now the Democratic party), correctly realized that this statute was designed to silence them. And, just as they feared, the government took advantage of the new law to launch prosecutions against the leading Republican newspapers that forced some to shut down. Even so, despite the obviously partisan nature of the Sedition Act and its clear violation of the First Amendment's guarantee of a free press, both judges and juries went along with the process.

The rest of the nation, however, did not and essentially rendered the measure moot by electing the Republicans' leader Thomas Jefferson president in 1800.

The Sedition Act left a legacy: for more than a century, the federal government refrained from outlawing any form of speech.

State legislatures, however, felt no such compunctions and, especially in the South, where the protection of slavery seemed a matter of extreme urgency, they imposed all manner of restraints on the circulation of abolitionist propaganda, while making it illegal to teach slaves to read. Even in the North, as Prudence Crandall's experiences

demonstrate, abolitionists encountered considerable harassment from both public and private citizens in the early years of the 19th century.

The Civil War provoked another assault on personal freedoms. On several occasions, the federal government revoked the writ of habeas corpus and imposed martial law, rounding up and incarcerating people without a trial or any semblance of due process. This occurred mainly in the border regions where actual fighting was taking place, but critics of the war were also arrested, as well as people accused of interfering with the draft.

President Lincoln, his eye on the military situation at all times, cared little for constitutional niceties. Confederate sympathizers in Maryland were attacking Union soldiers on their way to Washington, D.C., and it was possible that the nation's capital might be cut off. With the survival of the Union at stake, Lincoln explained "Are all the laws, *but one*, to go unexecuted, and the government itself go to pieces, lest that one be violated?" Or, as a later Supreme Court Justice would put it, was the Constitution to become "a suicide pact"?

Significantly, although the Supreme Court refused to countenance the government's actions, its rulings had little impact -- either then or later. Nor did the rest of the nation oppose Lincoln's violations of people's rights. Even today, while recognizing the injustices involved in the application of military law to civilians, it is hard to argue with Lincoln's logic. In this case (and it may be the only one in American history), the fate of the nation really was at stake.

Not long afterward, during the Reconstruction period in the South, political repression took the form of the extralegal activities of the Ku Klux Klan and other white supremacist groups. This open terrorism, designed to destroy the Southern Republican party and keep the former slaves in a subordinate position, was perhaps the most vicious moment of political repression in all of American history, one that in its use of violence to enforce the racial status quo veers dangerously close to what we would later call fascism.

Though the large-scale violence of the immediate post-Civil War era abated, we cannot overlook the persistence of Southern political repression throughout the rest of the 19th century and the first half of the 20th. Because it viewed its black citizens as a source of cheap agricultural labor, the white South used economic sanctions, criminal prosecutions, and lynchings to keep them from asserting their rights.

The desire for cheap labor also characterized the other main exercise of political repression in late 19th and early 20th century America -- the attempt to suppress most forms of working-class collective action. Here, again, the amount of repression rose and fell in response to perceived threats to the status quo. Strikes, demonstrations, and attempted assassinations provoked the strongest reactions from the powers that be.

Bloodshed was common; America's labor history is marked by much more violence than that of any other industrialized nation. But even when the authorities eschewed armed force, other techniques like legal injunctions, criminal proceedings, unemployment, and blacklists served just as effectively to break unions and suppress radical movements.

Both public and private authorities participated in the crack-down on working-class unrest. Sometimes it was the local, state, or even the federal government that

subdued a strike or halted a demonstration; but sometimes it was a company's own private army that did the job. The collaboration went in both directions. Corporations subsidized local red squads in big city police departments while state and federal judges handed down injunctions that broke strikes.

It is important to bear in mind that the outbreak of World War I coincided with this period of repression against working-class and radical organizations. As a result, many of the wartime measures that were invoked ostensibly to protect the nation's security also served the function of keeping the workplace under control.

The war was not popular in the United States. German- and Irish-Americans opposed it, as did most of the nation's radicals including the Socialist party and the syndicalist Industrial Workers of the World or Wobblies as they were called.

The administration of President Woodrow Wilson responded -- in force. Once again, it became a crime to criticize the government. The Espionage and Sedition Acts of 1917 and 1918 barred interference with the draft. They also made it illegal to make "disloyal & scurrilous or abusive" comments about the government or to say anything to bring Armed Forces into "contempt, scorn, & or disrepute." In addition, the Postmaster General, who was given the power to ban seditious literature from the mails, used it to shut down most of the nation's left-wing press.

With the help of the newly formed FBI, the Justice Department rounded up and prosecuted over 2000 people under the Espionage and Sedition Acts, including Eugene V. Debs, the Socialist Party's candidate for president, a Milwaukee, Wisconsin, Congressman, and all the leaders of the IWW.

Private citizens collaborated as well. With the Wilson administration's blessing, they formed vigilante groups to harass (and even occasionally lynch) German Americans, draft dodgers, Wobblies, and anyone whose patriotism was deemed insufficiently enthusiastic.

The Armistice did not end the repression, for the possibility that the Bolshevik revolution might spread to the New World terrified America's leaders. At the same time, a massive strike wave swept the nation's industries and some anarchist organizations and individuals tried to set off bombs, including one that blew up on the front steps of the home of Attorney General A. Mitchell Palmer.

An ambitious politician under pressure from congressional conservatives to do something, Palmer went into action. Because it was easier to crack down on foreigners than to prosecute citizens who were protected from arbitrary procedures by the Bill of Rights, the government rounded up and incarcerated thousands of allegedly radical immigrants, holding them under deplorable conditions, often for weeks at a time, and ultimately deporting about a thousand of them.

By the time the Palmer raids ended, early in 1920, the danger of revolution had passed. A group of attorneys and public officials mounted a belated campaign against the violations of people's rights and managed to bring the Red Scare to a halt. Even so, the Supreme Court condoned all the government's wartime and postwar actions. And, in fact, it was not until the 1930s that the justices finally declared that the First Amendment prohibited the state from prosecuting people for what they said or wrote.

But within a few years, the Court was again allowing the government to violate people's rights. This time, it was with regard to the expulsion of the Japanese Americans from the West Coast and their internment in what were essentially concentration camps for much of World War II.

Responding to panicky rumors about sabotage and spying, the Roosevelt administration insisted that military necessity required relocating all the region's Japanese Americans, citizens and non-citizens alike. It was a racist decision; the government claimed that men and women of Japanese descent were so alien and inscrutable that it was impossible to ascertain their loyalty on an individual basis.

Once again, the Supreme Court deferred to the administration. Citing the wartime emergency, it gave the government a free hand with regard to the Japanese Americans on the West Coast. It wasn't until the war was almost over that the government closed down the camps and the Court ruled against the internment program. By then, the Japanese Americans had lost all their property and had been deprived of their freedom for several years.

World War II was the "good war." Its relative popularity meant that there was little serious opposition to the conflict. Even so, the Roosevelt administration tried to silence what critics there were, using a 1940 sedition act, the so-called Smith Act that prohibited teaching or advocating the overthrow of the government, to prosecute some native fascists and Trotskyists.

The Cold War engendered another wave of political repression. Senator Joe McCarthy was only the most notorious of the thousands of government officials and private citizens who invoked the threat of domestic communism to unleash what was to become the most widespread and longest lasting episode of political repression in American history.

Most of that repression occurred in accordance with a two-stage procedure. The first stage, that of identifying the alleged subversives, was usually handled by an official agency like the FBI or a congressional investigating committee; the second stage, the application of sanctions, was done by an employer who fired the men and women identified during the first stage. There were criminal prosecutions, of course, as well as a whole panoply of loyalty oaths, blacklists, deportations, and other forms of official and unofficial harassment.

And again, the judiciary abandoned the field. It refused to intervene against the anticommunist witch hunt for nearly a decade. When the Supreme Court at last began to protect people's rights, it did so mainly on procedural grounds. By then, however, much of the American left had been silenced or marginalized.

The social unrest of the 1960s stirred up another wave of political repression. There were some high profile political trials of the most outspoken opponents of the Vietnam War, but most of the repression was more covert. Undercover agents, police surveillance, and secret counterintelligence programs sought to disrupt student radicals, black nationalists, and whatever groups J. Edgar Hoover and his allies felt threatened the status quo.

Watergate brought much of that repression to a halt. The revelations of official wrongdoing that surfaced in the wake of President Nixon's futile attempt to conceal his political transgressions led, once again, to a widespread revulsion with the

government's repressive behavior and to reforms that were designed to prevent a recurrence.

There were oversight committees, guidelines, and, perhaps most important, the Freedom of Information Act. The secrecy that had become such an important component of political repression would, it was hoped, become a thing of the past. A well-informed public would be able check the government's outrages and protect political freedom.

Or so it was hoped.

In the twenty-five years following the implementation of these reforms, there were no major violations of people's rights. The low-level background noise of ordinary, day-to-day repression continued -- much of it in the workplace or else directed against partisans of national liberation struggles and revolutions elsewhere in the world. There was FBI surveillance of Central American support groups during the 1980s, harassment of Palestinian nationalists, and the incarceration of ever-growing numbers of young, black men in prisons throughout the United States.

Probably the most serious threat to dissent and democracy was that of the "soft" political repression that came from the neoliberal assault on the public sphere and the growing corporatization of everyday life. Unorthodox voices were not censored directly, but because of media concentration and the increasing focus on the bottom line throughout American society, it was hard for them to find an audience.

After September 11, 2001, the more traditional forms of political repression returned. Within a matter of days, the Justice Department had cobbled together a 342-page piece of legislation -- the US Patriot Act, an acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism."

There was almost no congressional debate. Not only were the nation's legislators eager to rally around the flag during a national crisis, but they and their staff assistants were in no position to analyze the complex bill. An anthrax scare had thrown them all out of their offices; and the measure, which essentially consisted of amendments to already existing laws, was so technical and hard to read that it took a group of lawyers from the American Civil Liberties Union several weeks to figure out what it said.

Let me read you a piece of it:

Section 2516(1) of title 18, United States Code, is amended--

(1) by redesignating paragraph (p), as so redesignated by section 434(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1274), as paragraph (r); and

(2) by inserting after paragraph (p), as so redesignated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-565), the following new paragraph:

`(q) any criminal violation of section 229 (relating to chemical weapons); or sections 2332, 2332a, 2332b, 2332d, 2339A, or 2339B of this title (relating to terrorism); or'.

342 pages of this stuff --- So you can appreciate why in the hyped up atmosphere of 9/11 only one Senator and a few dozen Representatives voted against the bill.

The law, which was a compilation of measures that the Justice Department had been seeking for several years, essentially loosened the restraints on government surveillance that had been in place since the late 1970s. Now the FBI could spy on people simply by assuring a special court that the surveillance had some relation to terrorism. It could also indulge in "sneak and peak" searches, breaking into people's homes to look for evidence without having to tell the occupants that they had been there until much later, if at all.

And then there was Section 215. Not only did this part of the Patriot Act allow federal agents to obtain records from banks, colleges, bookstores, libraries, and internet service providers among others, but it imposed a gag rule on the people who had to supply those records. Thus, librarians, for example, could not tell their patrons that the government was looking at what books they had been reading.

The Patriot Act was just the tip of the iceberg, a symbol of the Bush administration's much broader assault on civil liberties and individual freedoms. There were also a host of executive orders that increased the government's secrecy as well as granted it such powers as the right to listen in to telephone conversations between prisoners and their attorneys and to create special military courts for so-called "enemy combatants." Many of these measures were specifically designed to let the executive avoid judicial scrutiny of its activities.

At the same time as the administration was expanding its powers and insisting that its actions were above the law, the Immigration and Naturalization Service was rounding up over a thousand Muslim immigrants from the Middle East and South Asia, holding them incommunicado for weeks and sometimes months at a time, and refusing to release their names to the public. As the Department of Justice's own inspector general explained in a report in June 2003, the government's mistreatment of these prisoners -- none of whom were ever charged with terrorism -- also included solitary confinement, beatings, and incarceration even after they had been cleared of all charges.

And then there are the torture sessions at Abu Ghraib and Guantanamo and who knows what other secret prisons to which the CIA and Pentagon have spirited people around the world.

While the most egregious outrages have been perpetrated against foreigners, who have many fewer rights than American citizens, there have been serious invasions of citizens' rights as well. Most of the abuses have been at the hands of the federal government, but the private sector and civil society have also been involved.

There are, for example, the "no fly" lists of political undesirables who have been barred from domestic flights within the United States for reasons that the government refuses to divulge. There are the similar lists of alleged terrorist sympathizers that the Treasury Department wants philanthropic organizations to consult before awarding grants. As a result, most major foundations began to worry that they might be accused of indirectly financing terrorism and so made their beneficiaries sign affidavits that they are not diverting money to the wrong causes.

But, as we well know, one person's terrorism is someone else's national liberation struggle. And it is quite possible that had these guidelines existed at an earlier time, those of us who supported the ANC might well have ended up on such a list.

The current assault on political freedom and individual rights is large and growing and it is possible that it will so chill political debate in the United States that it will become impossible for a future ANC to gain public support.

But, I'd like to set such speculations aside and, in the time remaining, go back to my earlier analysis and look at how the contemporary crackdown on people's rights compares to the earlier moments of American political repression. Obviously, there are differences. History never repeats itself exactly; we do learn something, if not enough, from the past.

One thing, however, that we have *not* learned is how to protect the Bill of Rights during an emergency.

Almost every major outbreak of political repression has been occasioned by a crisis - usually a war or some kind of domestic unrest.

And, as we have seen, the established authorities almost invariably cite national security when they suppress political freedom, claiming that the legal protections of peacetime are too cumbersome to allow for an effective response to the current threat. 9/11 is no exception.

Actually, the invocation of a crisis is a universal concomitant of political repression. Even in already repressive societies, abuses intensify as military conflict approaches. The Stalin era purges were justified, in part, as necessary to prepare the Soviet Union for war, while the Third Reich increased its use of terror over the course of World War II.

In United States, this pattern characterized political repression from the start. As early as 1675, when the Native American coalition that launched King Philip's War seriously threatened the survival of the Massachusetts Bay colony, the Puritan elders scurried to protect themselves from what they viewed as God's wrath by rounding up Quakers and other heretics. The Alien and Sedition Acts accompanied a military build-up and preparations for a war with France. The Nat Turner slave revolt of 1830 precipitated the most extreme suppression of free speech in the antebellum South, while the Civil War, as we have already seen, provoked major depredations against constitutional rights. A similar crack-down occurred after the so-called Haymarket massacre in 1886, when a bomb was thrown into the middle of a police unit at a working class rally in Chicago.

And so it went: World War I spawned a major offensive against dissent; the Bolshevik revolution, strikes, and anarchist bomb threats generated the postwar Palmer raids; World War II brought the Japanese internment; and the Cold War produced McCarthyism.

But this is not the whole story, for these outbreaks of political repression did not just well up spontaneously during emergencies. Sometimes they did. Sometimes, for example, as with the Patriot Act and the Japanese-American internment, they were, at least in part, the desperate actions of a confused and beleaguered administration that felt a need to calm a panicky nation by appearing to be in control of the situation.

But often, it turns out, these oppressive measures were also the product of considerable pressure from groups and individuals who took advantage of the crisis to implement a preexisting agenda. Thus, for example, though the Japanese relocation program was in large part the product of exaggerated fears about domestic sabotage, it was also a response to the long-time desire of big California growers to eliminate the competition they were facing from the highly efficient Japanese truck farmers.

Electoral politics also figured in these crackdowns. Thus it was that the 18th century Federalists seized upon the threat of war with France to weaken their political opponents in preparation for the 1800 presidential elections. Similarly, A. Mitchell Palmer was hoping to jumpstart his campaign for the 1920 Democratic presidential nomination. And Franklin Roosevelt deliberately kept the Japanese American internment camps in operation until after the votes were counted in 1944.

Other agendas impinged as well. The nation's economic elites wanted to eliminate the threat of unionization at the end of the 19th century. FBI Director J. Edgar Hoover wanted to expand his agency's jurisdiction over internal security in the aftermath of World War II. And Harry Truman wanted to create a loyalty-security program for federal employees in 1947 in order to prevent a newly elected Republican congress from fashioning a more draconian one -- though he soon regretted how seriously repressive his own program had become.

Nor was he alone.

American history is full of inadvertent consequences, of repressive measures whose authors had no intention of eliminating dissent or violating the Bill of Rights, of liberals who went along with restrictions on political freedom that they then deplored.

Whether we will have to apologize yet again for the current wave of political repression in the United States is hard to tell.

In many respects, the Bush administration's crackdown on individual rights and political freedom is more blatant and more extreme than that of any earlier regime. Never before has the executive tried to accumulate power, avoid accountability, and ignore constraints in such a provocative manner.

And yet, there is opposition. The Supreme Court rebuffed the Bush administration's attempt to deny its prisoners access to attorneys and to the courts. Over 350 states, cities, and towns have passed resolutions against the Patriot Act. And the public opposition to the Act's expansion has, so far, been able to keep the administration from implementing much of the increased surveillance it has sought, although it has sometimes gained its objectives by stealth or by simply disobeying the law.

Obviously, last year's election has not helped matters.

Still, the American people do have an underlying respect for the Bill of Rights -- even if it is more often rhetorical than real. And it is possible that the lessons of the past may bolster the opposition to the current denial of freedom and, thus, prevent further incursions against dissenting opinions and individual rights. I certainly hope so.

SKINNER v. RAILWAY LABOR EXECUTIVES' ASSN., 489 U.S. 602 (1989).