
A REVIEW OF SILENCING THE OPPOSITION: GOVERNMENT STRATEGIES OF SUPPRESSION OF FREEDOM OF EXPRESSION BY CRAIG R. SMITH, EDITOR

Kevin Goldberg*

Craig R. Smith draws on his experience as a professor and Director of the Center for First Amendment Rights at California State University, Long Beach, as editor of *Silencing the Opposition: Government Strategies of Freedom of Expression*. He is also the main author, with help from Stephanie Makela, Karen Rasumussen, Andrew Sachs and Sharon Downey. Smith, laudably, teaches by example, tracing recurring patterns to demonstrate how those in power attempt to maintain the status quo by giving dissenters the choice of assimilation or elimination. An attention to detail accomplishes this goal and demonstrates how unchecked governmental abuses can create as much violence, dissension, and even physical harm as the government intends to avoid. Smith's only failure is that he does not lead by example. This book serves as a reminder that the First Amendment is the most vital freedom we have, and perhaps the only check available to those without political power. However, the book does not follow its own conclusion that the First Amendment is the strongest weapon available to citizens in a democratic state, especially when injustice threatens that democracy.

The book explores seven "incidents" in American history in which the threat of war or civil violence prompted a suppressive response by the government. These responses do not always take

the form of restrictions on speech; they are often laws of general applicability which have the effect of preventing the minority from actively defending itself. Smith shows how the party in power attempted to force its opponents to conform to popular views throughout our Nation's history. He also catalogues the catastrophic results of these abridgements, summarizing his results by stating: "governmental forces have used rhetorical strategies in simple and sophisticated ways to silence opponents. And further, if we study which strategies are effective, how they evolve, and how they are unmasked, we will be better able to combat them in the future."¹ To support his views, Smith asks the reader to be patient as he travels forward through history: "My hope is that the reader will proceed through these chapters with an open and inductive mind, and then meet me at the conclusion where we can draw together the lessons of the studies."² One weakness of this book, however, is that each chapter, while replete with historical discussion, anecdote, and factual underpinning, fails to tie together and analyze this information as is needed so that all but the most intelligent reader can adequately make sense of the rapid-fire history lesson he or she has just completed.³

The first chapter examines the Alien and Sedition Acts.⁴ A brief review of the Constitutional

* Kevin Goldberg is an associate at the Washington, D.C., law firm of Cohn & Marks.

¹ CRAIG R. SMITH, *SILENCING THE OPPOSITION: GOVERNMENT STRATEGIES OF SUPPRESSION OF FREEDOM OF EXPRESSION* xi (1996).

² *Id.* at x.

³ The author does not include himself in a list of "the most intelligent" readers, perhaps a major factor fueling this bit of criticism.

⁴ The Alien and Sedition Acts included four major laws. The "Naturalization Act" extended the number of years of

residence required before full citizenship from five to 14 years. The "Act Concerning Alien Enemies" authorized the President to order the expulsion of "dangerous" enemies during peacetime. The "Act Respecting Alien Enemies" authorized the apprehension, restraint, and removal of enemy aliens during times of war or undeclared hostilities. Finally, the "Sedition Act" prohibited conspiracy against the United States government as well as the writing, printing, uttering or publishing of false, scandalous, or malicious writings against the United States government. *Id.* at 8.

Congress and The Federalist Papers divines the original intent of the Founding Fathers with regard to the First Amendment. Smith then examines the evolving crisis that led to the passage of the Alien and Sedition Acts. A combination of internal and external threats such as war with Great Britain, the French revolution, and a steady influx of immigrants caused the Alexander Hamilton-led Federalists to fear domestic upheaval. Swept up in this furor, the country allowed the Alien and Sedition Acts to be imposed in a manner intended to keep the rulers in power. Smith notes that the Acts were never reviewed by the Supreme Court despite the fact that about two dozen persons were arrested under the Acts with at least fifteen indictments; eleven of these persons were tried, with ten found guilty.⁵ The chapter then examines the counterattack mounted to the government oppression. This counterattack, by the Thomas Jefferson-led Democratic-Republicans, was the beginning of an expansive reading of the First Amendment. It also marked one of the first forays into political debate in the history of the young nation. These actions culminated in the fall from power of the Federalists and one of the First Amendment's strongest proponents becoming our nation's third President.

Abraham Lincoln's suspension of the writ of Habeas Corpus during the Civil War provides the government suppression in Chapter Two. Lincoln actually suspended this writ three times during the war, a period during which 13,535 citizens were arrested. These excesses, as is often the case, had an indirect impact on the First Amendment by restricting the ability of those citizens to speak out on their own behalf or for others to speak for them. The suspension of the writ of Habeas Corpus led to the seizures of newspaper information and other publications. Further, free exchange of political views was also restricted. Nine members of the Maryland Senate, as well as the clerk of the Senate, were arrested in 1871 so that the Maryland Legislature would be unable to convene and vote for secession. The chapter concludes by noting the competing interests that ex-

isted during the Civil War: the civil liberties held by all persons as balanced against President Lincoln's need to ensure the survival of the nation. Smith attempts to show how Lincoln anguished over the decision to use extraconstitutional measures to restrict the press and the public for the greater good, providing one of the few instances in which Smith agrees that government suppression of opposition should not be summarily condemned.

The Radical Republicans of the Reconstruction are the major players in Chapter Three. The interesting twist to this chapter is that the conflict that occurs is within one political party and exists between two branches of government – the legislative and executive branches.⁶ President Johnson allowed himself to be portrayed as a threat to the nation, as the Radical Republicans capitalized on the recent Civil War to show that stronger action than that offered by President Johnson was needed. Republican Congressmen took to the Senate floor in vigorous debate and also used available media outlets to make their position known. As Smith notes, “their zeal was fired by threats real and imagined. They were able to translate that zeal into rhetorical appeals to voters who empowered them to carry out the most important changes in the Union since the adoption of the Bill of Rights. It is a lesson that should not be lost on a democratic republic such as our own. Rhetoric, as Gorgias said, is a powerful lord with narcotic power over an audience, particularly a democratic one.”⁷

Chapter Four is the jewel of the book. Smith notes two differences that instantly pique one's interest to this section, which deals with the suppression of Native American culture. First, it spans a greater time period than other cases, with the main focus on 1870-1895. Second, it is an attempt to silence an entire culture rather than a politically active group. Smith does an excellent job of outlining the four suppression strategies that were used in overlapping fashion: isolation, annihilation, transformation and marginalization. *Isolation* occurred when early settlers treated the

⁵ One of those found guilty was Congressman Matthew Lyon of Kentucky, who became the first member of Congress convicted of a crime while in office. He was not the last. *Id.* at 8-9.

⁶ Legislation was introduced by Senator Charles Sumner of Massachusetts that would have required that seceding states be limited to the status of territories and need Congress-

sional approval to reenter the Union. Lincoln disagreed with this plan, preferring instead a measure by which a seceding state would be able to reenter upon approval of an oath by one-tenth of the state's voters to support the Constitution. Johnson also supported this plan during his Presidency. *Id.* at 54-55.

⁷ SMITH, *supra* note 1, at 77.

Native Americans like a separate nation, furthering rifts that already existed due to cultural and language differences. In addition, the government began a series of broken promises during which it violated over 370 treaties with the Native American tribes by 1980. Native Americans had no recourse to courts to fix these remedies and began to pull away from the European culture altogether. *Annihilation* was derived from a feeling of cultural superiority held by Europeans. It resulted in "passive annihilation" of the Native Americans due to their exposure to heretofore unencountered diseases, "active annihilation" due to the taking of necessary resources by the Europeans, and "military annihilation" in the name of Manifest Destiny. *Transformation* occurred when isolation was no longer possible. The lack of space on the North American continent resulted in an attempt by the Europeans to force their customs and beliefs on the Native Americans and assimilate them into the mainstream culture. The most striking efforts were religious conversion attempts and the suppression of Native American religious practices. Finally, *marginalization* involved the condemnation and/or minimization of actions and problems of the less influential culture. The strength of this chapter is Smith's analysis of the tactics used by Native Americans that worked in resisting suppression. For instance, he notes that Native Americans made their most substantial gains when they adopted the principles and tactics of the dominant culture, including recent legal activities which have garnered much progress.⁸

If Chapter Four is the zenith of interesting chapters in the book, Chapter Five may be its nadir. Entitled "Silencing the Union Movement," this section lacks the anecdotal spark that makes other chapters flourish. Two major strategies of government suppression are encountered: (1) immediate and direct acts of intimidation by the government and (2) specific administrative acts passed by state and federal legislatures. The chapter begins with an examination of the societal factors in place after the Civil War that led to the government suspension of the labor unions' First Amendment rights. It then reviews the tech-

niques employed by the government to suppress the labor unions. Finally, the significance of First Amendment suppression for the labor movement is discussed. This chapter does highlight one interesting element that is not present in the other cases – external factors that aided governmental suppression of information, factors that arose simply by chance, yet which justified the government's actions in the eyes of the public. While the labor movement received particular attention from the government as a result of its active political advocacy, circumstances beyond its control fueled this suppression.⁹ Administrative suppression weakened labor unions, who had their speech, print, and assembly activities curtailed by legislation and force, as well as the arrest of workers on such trumped up charges as vagrancy, conspiracy, contempt of court, and rebellion.

Chapter Six, "The McCarthy Era," introduces a rather important ingredient to the mix – television. Smith opens the chapter by stating, "[i]n a previous book, I have advanced the thesis that new technologies prove so threatening that they are almost always regulated by those in power. This was certainly true of Gutenberg's printing press with the movable type and it was equally true of the film industry's 'silent pictures.'"¹⁰ The activities of Senator Joseph McCarthy are scrutinized. Smith notes that McCarthy's rise to power occurred because he had mastered a tactic popular among suppressionists – carefully selecting groups, such as isolationists, missionaries returning from China and other Communist countries, the military and Catholics (who were opposed to the atheistic characteristics of Communism), to receive and further spread his message. McCarthy sold such groups on the idea of isolationism. He then focused their attention on "fringe" or "radical" groups who were already viewed with suspicion. The entertainment industry took much of the brunt. Labor unions also felt the sting, as statutes allowing loyalty oaths were passed in thirty-two states. However, as is often the case, the media was able to fight through the initial restrictions to effect change not only for itself, but the greater good: "Fortunately, a significant number of the printed press assumed their

⁸ *Id.* at 110. Unfortunately, this means that the subordinate culture must adapt itself to the means and ends of the dominant culture to protect itself. *Id.* at 112.

⁹ For instance, the assassination of President McKinley

led to the passage of a series of anti-anarchist laws that had a direct impact on labor unions.

¹⁰ *Id.* at 151 (citing CRAIG R. SMITH, *TO FORM A MORE PERFECT UNION* (1993)).

historic role of guardian of the First Amendment, while at the same time uncovering the truth about Senator McCarthy, despite his threats.”¹¹ Television further exposed McCarthy, as the public did not like what it saw when given the opportunity to objectively view McCarthyism at work. While McCarthy’s words sounded plausible, television offered facial expressions that belied him. The chapter offers a detailed discussion of how television changed the way America viewed politics, years before the introduction of cable television or C-Span.

Chapter 7 is significant for the superlative treatment given to a popular subject. Smith compares and contrasts the styles of Presidents Johnson and Nixon in dealing with anti-Vietnam War sentiments. As in Chapter Four,¹² Smith employs a series of terms to describe the activities of each commander-in-chief that lead to an organized, easy to follow explanation of government suppression. These strategies take four forms: co-optation, condemnation, circumvention and coercion. *Co-optation* is the strategic incorporation of an adversary’s goals, functions, or beliefs into one’s own framework. It utilizes appropriation (the conveyance of messages without the use of the press) and deflection (the distortion of facts by offering sympathy to opposition). *Condemnation* is designed to denounce and place blame on an intended group. It incorporates marginalizing – discrediting the press by circumscribing and trivializing its respective missions and voices – and demonizing – characterizing protesters and the press as subversive and harmful to America’s efforts in Vietnam. The third tactic, *circumvention*, involves the invasion and bypass of conventional or appropriate communication channels to direct or control the flow of information. It relies on controlling the time, setting and content of interactions with reporters (preemption) and passive and blatant obstruction of the media’s informational and critical functions while also discounting dissenters’ rights to be heard (avoidance). Finally, *coercion* involves legislative sources of power that result in (1) harassment and (2) sanctioning. He notes that both presidents were able to suppress opposition to their policies, although they

had distinct results in this regard, due to two basic differences between them: (1) the divergent characters of each president accounted for specific tactical choices that worked better or worse than those used by the other and (2) they operated within different contextual constraints.

It bears repeating that this text is a highly intellectual, dense review of historical fact. The authors have effected a comprehensive review of conditions precedent to each crisis, a succinct description of the methods employed by the government, and on analysis of the resultant backlash that occurred in each situation. The density of the material easily could have overshadowed its utility. There is a vast repository of knowledge presented, all of which must be studied in order to fully appreciate the intricacies of government suppression of information. Fortunately, this information is presented in a manner that makes it digestible. Each chapter is structured to break down the material in an organized fashion. Most of the chapters consist of a problem/solution approach, where historical background is presented, followed by a treatment of the methods of suppression. Smith then recounts the methods by which the opposition countered the suppression, dealing separately with the two major forces that acted as a check on governmental abuse of power: the press and the public. Whenever possible, such as Chapters Four¹³ and Seven,¹⁴ Smith compartmentalizes and labels the forms of suppression. He then attacks each method in each chapter’s conclusion. The facts are presented in anecdotal fashion. For instance, Chapter One is simply a chronological tracing of our nation’s early history from the Constitutional Congress through the passage of the Alien and Sedition Acts to the beginning of Jefferson’s Presidency. *While Silencing the Opposition: Government Strategies for Suppression of Freedom of Expression* is not beach reading, it does read like a novel at times, letting the reader enjoy the information as though he or she were reading a novel. Interesting facts wait around each corner to surprise the reader. Examples include the arrest and incarceration of Congressman Lyon from Kentucky,¹⁵ the revelation that much of McCarthy’s focus on the entertain-

¹¹ *Id.* at 166.

¹² *See supra* text on Chapter 4, at 103.

¹³ This chapter deals with suppression of Native American culture. *See supra* text on Chapter 4, at 104.

¹⁴ Chapter Seven discusses the Vietnam Era. *See supra* text on Chapter 7, at 106.

¹⁵ *See supra* note 6.

ment industry involved a vicious attack on the Screen Actors Guild, whose president at the time was Ronald Reagan,¹⁶ and an exhaustive list of renowned authors who were investigated during this period, including H.L. Mencken, Robert Frost, Thomas Wolfe, Dorothy Parker, Truman Capote, Lillian Hellman, Adlous Huxley, Carl Sandburg, Sinclair Lewis, Pearl Buck, William Faulkner, Ernest Hemingway and John Steinbeck.¹⁷

That aside, the conclusions reached by Smith at the end of each chapter and at the end of the book are troubling because these conclusions, when stated, prove insightful. Such insight is instantly recognized and leaves the reader begging for more. Smith draws on his own crisis/suppression/counterattack methodology (or as Smith describes it: birth, growth, and decline) to demonstrate how suppression of First Amendment rights may result in greater recognition and respect for those rights:

Not surprisingly, the beginning of the decline of restrictive actions by Presidents, Congress, or radical movements correlates with increased activity by the opposition. This usually takes the form of responsible persons within the system using freedom of expression to exert authority and to demonstrate leadership in the interest of restraint. As radicals' threats to their opponents increase, the opponents' programs and rhetoric become more systematic.¹⁸

The entire work catalogues the various methods that the government uses to sustain power: legal, forceful, excessive use of propaganda, extralegal methods (such as the withholding of mail, the breaking of treaties, etc.) as a reminder that suppression of speech and of ideas does not always result from the direct regulation of our speech rights. Certainly, restricting one's right to disseminate his or her ideas will have a suppressive effect. However, society must be aware of other methods that have the same effect. Smith's examples make us aware of all of these. He presents the instances in which the right to speak freely has been repressed, such as the Alien and Sedition Act, the loyalty oaths placed upon the labor movement and the careful measures used to pick and choose speakers and messages during the Viet-

nam War. Ever more important are those other methods of suppression. Examples such as the suspension of Habeus Corpus and the tactics used to move Native Americans to the fringe of the continent demonstrate how the right to speak is useless without a podium from which to disseminate one's message and without a listener to hear that message. Yet, Smith also demonstrates how the Framers of the Constitution were well aware of possible government abuse and imposed the system of checks and balances in the Constitution to address the possibility of governmental abuse of its power. Along with this government structure, the Bill of Rights provides a check that private persons can use to ensure that their rights are not violated; he reminds us that "the First Amendment protects citizens from intrusions by their federal government, specifically, from the Congress, which was instructed to 'make no law abridging' those rights."¹⁹ In so doing, he affirms the place of the First Amendment as the most important amendment because it provides even the most common citizen the ability to persuade the entire society.

In that sense, the main problem with the work is that it does not fully carry out its own edict. If expression is our best weapon to preserve democracy and raise our collective thinking, the book does not add to the marketplace of ideas. The reader is expected to consume the historical matter and fill in the gaps enough on his own to see how government suppression of power has endangered our civil liberties in a series of repeated patterns since our Nation was born. I realize that this work is intended for a higher intellectual sphere and that the intended reader will be able to draw many of the conclusions for himself; indeed, I would feel patronized if I were spoon-fed the answers at the end of each chapter. However, Craig Smith has many intelligent things to say on this subject and he is doing a disservice to those who might draw from his theory and further the cause of the First Amendment.

In the conclusion of this book, Mr. Smith makes two very interesting points regarding groups of which he can be considered a member. In addressing the role of the media in combating

president of that organization was Fidel Castro.

¹⁶ *Id.* at 173.

¹⁷ *Id.* at 240.

¹⁸ *Id.* at x.

¹⁶ SMITH, *supra* note 1, at 158. Not to be outdone, the author of this review dutifully points out that this investigation did not go far enough for its own purposes, as one of the card-carrying members of the SAG during Reagan's tenure as

government suppression, Smith states, “[a]s we have seen in case after case, journalists in this country were very instrumental in ending crises, revealing unfair tactics, and creating sympathy for the marginalized.”²⁰ He later recognizes that if the problem does not go away on its own, opinion leaders must step forward to protect the political system from being damaged by the deprivation of First Amendment rights.²¹ He also notes that the national media often assumed the task of protecting our most important rights, especially freedom of expression, and that the media often did this

“at great risk, but such courage was critical to prevent extremists from further infringing on key civil liberties.”²² Smith acknowledges the obvious fact that these seven cases are not isolated events in American history; they will recur in the future. We need strong voices to speak out on this subject and provide leadership to fight the continuing battles. Craig R. Smith has the necessary tools to lead. I hope that he will continue as a responsible member of society and write more books on this subject for use in future fights.

²⁰ *Id.* at 234.

²¹ SMITH, *supra* note 1, at 240.

²² *Id.*