anonymous results. Singular events are contingencies, resulting from the contests of arbitrary wills and the collisions of incalculable forces.

This skepticism of the "pragmatic" attitude toward the past is also due to the recognition that statesmen, as elements of the stream of history themselves, cannot entirely step outside it to dam it up or even to redirect its flow. The very idea is ahistorical. At most, leaders can use their relative and partial knowledge of the dynamics and directions of history, as Roosevelt Brian Truster Adolf A Berle expressed it, in "navigating the rapids."

There is yet another reason for the hesitancy of historians to try to predict the future, a reason due not to cynicism but to optimism and faith in the resourcefulness of man. The great French historian Marc Bloch called this notion "the paradox of prevision": When men are confident enough in the truth of their own dire forecasts to take action upon them, they may thereby undercut the basis of their initial prognostication, rendering it "false." Prediction is thus defeated by prevention. As the aged Emperor Tiberius Claudius Drusus, in the recent television production of Robert Graves' *I, Claudius*, said to his son, Britannicus, after the youth ignored a Sibylline oracle indicating that he must flee to Scotland, "Perhaps you will confound the prophecies." Britannicus didn't. But many others in history have, with a thoroughness Sibyl herself would have had difficulty in foretelling. Even basic trends, such as projected population increases, have been turned, as in modern China. To be sure, other factors besides sheer foresight — famines, plagues, and wars — have accounted for many of these fortunate reversals. In the last analysis, however, even the most revolutionary changes in living conditions must work through individual human consciousnesses — and consciences.

This, I believe, is a glimpse of what it means to "think historically."

Conflicts Between National Security and Press Freedom

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The freedoms applying especially to journalists include, in the American view, the opportunity, subject to laws and regulations aimed at preserving national security, to enter all countries, to travel within them, to have nondiscriminatory access to sources of information, to gather information, to transmit information by telecommunication and by mail without censorship, and to leave without molestation.[1]

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1. U. S. Department of State, Division of Historical Policy Research, *State Department Bulletin*, Vol. 18, March 14, 1948, pg. 337.

Since the U. S. State Department issued this statement in 1948, the United States has been seeking an international agreement that would guarantee press freedom. Such an agreement, however, seems even more remote today than it did before the Cold War. A major reason why is that the press freedom enjoyed by our domestic reporters runs headlong into concepts of national security when transferred beyond our shores and even to foreign correspondents within the United States.

The State Department statement pinpointed this difficulty by noting that the freedoms applying to journalists are "subject to laws and regulations aimed at preserving national security." These laws—particularly laws prohibiting espionage—render the foreign correspondent's "freedoms" vulnerable to the defense-motivated whims of the country in which he is working. That a foreign correspondent often faces the same legal and political barriers as the espionage agent illustrates the conflict between national security and press freedom. That these conflicts are present even within the United States confirms the difficulty of extending domestic ideals of individual freedom and access beyond our borders.

The case of Associated Press correspondent George Krimsky, who was expelled from the Soviet Union in early 1977, illustrates this vulnerability. Krimsky was accused by a Soviet journal of engaging in espionage for the U. S. Central Intelligence Agency and compared to the cinema superspy James Bond. Both Krimsky and the Associated Press denied the charges and the U. S. State Department lodged a formal complaint. The Soviet Union, it was generally assumed, was using its espionage laws merely as a pretext to suppress an annoying foreign correspondent who had been associating with several dissidents.

When the Soviets refused a U. S. request to rescind Krimsky's explusion order (the action often taken in espionage cases), the United States retaliated by expelling a Tass correspondent working in Washington. This retaliation enabled the Soviets to accuse the United States of violating human rights while arguing that their explusion of Krimsky was done only to protect national security. In short, by using its espionage laws against Krimsky, the Soviet Union was able to provide an acceptable "legal" rationale for an action that the United States would like to consider a violation of human rights.

Freedom of the press has a perplexing relationship with national security in all societies. Limitations on press freedom are often a product of a nation's individual sense of its security needs. These perceptions naturally vary. Each nation interprets its laws and regulations in accordance with its own perspective on security. For example, Krimsky's alleged violations of Soviet national security included recruiting a Tass news agency worker as an informant, getting a Soviet serviceman drunk to obtain information, and trading valuable store coupons for information. What is considered good reporting in the United States may be a violation of national security in the Soviet Union. A country's press freedom, in this sense, rests on the definition it gives to national security in its espionage laws.

Perhaps more central to the peculiar difficulties of exporting a given national perspective on the press freedom/national security trade-off is the anomalous position of the foreign correspondent. When press freedoms are viewed through lenses colored by national security, the distinction between spies and foreign correspondents becomes blurred.

It may be unreasonable to expect a country to distinguish in its espionage laws between a foreign correspondent and a spy. Both obtain information for readers who are willing to pay for it. One reports directly to the government while the other reports to the public. At times the government and the public are interested in different information, but certainly their interests would often overlap. For example, *The New York Times* and the U. S. Central Intelligence Agency would be equally interested in Syria's defense capabilities. A journalist's acquisition of this information could conceivably be termed a violation of Syrian national security.

Revelations by the Central Intelligence Agency indicate that the agency recognizes this similarity between spies and correspondents. Correspondents have served as C. I. A. agents and spies have posed as correspondents. Former C. I. A. official Ray S. Cline testified before the House Intelligence Committee's oversight subcommittee that "it is only the extravagant post-Watergate pretension to purity and morality that suggests to some journalists that they should preserve a reputation for 'cloistered and fugitive virtue' at the expense of a healthy relationship with the parallel profession of newsgatherers in the C. I. A."[2]

The threat of arrest or expulsion under a country's espionage laws exists not only in the Soviet Union, but in most other countries of the world. Espionage laws have been invoked against foreign correspondents in the Central African Empire, Norway, Japan, and the United Kingdom.

The United States has been an outspoken critic of foreign reluctance to ratify an international agreement on press freedom and arbitrary treatment of foreign correspondents. Implicit within this criticism is the supposition that the United States is somehow different. Yet the United States itself has been unable to resolve the conflict in its espionage laws between national security and press freedom. American security perspectives result in a differentiation between foreign and domestic news personnel. American espionage laws are as vague as their foreign counterparts and would enable the United States to be equally arbitrary in its treatment of foreign correspondents.

The U. S. espionage statutes were the first Congressional attempt to deal on a comprehensive basis with the interrelated problems of information and national security.[3] Three different bills, two conference reports, and 300 pages

2. "Colby Acknowledges That U. S. News Organizations Picked Up Bogus C. I. A. Accounts," *The New York Times*, Dec. 28, 1977, p. 12.

3. 18 U. S. Code 792-799. Of the eight statutes only two, 793 and 794, are important to this analysis.

of debate in the Congressional Record spanning two sessions signify Congressional concern about the 1917 legislation and its impact on both free speech and freedom of the press.

American espionage statutes were enacted largely to protect "national defense" arrangements from internal subversion. Unfortunately the statutes contain no clear definition of "national defense." To limit the reach of the statutes, Congress chose to limit to whom the statutes would apply.[4] It did this by inserting an intent standard of culpability restricting application of the espionage statutes to a vaguely defined category of persons "obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation."[5]

During Congressional debates, opponents and proponents of the intent standard agreed that this standard would exempt domestic newspapers and their reporters from the reach of the statutes as long as no guilty purpose could be proven for their actions. As Representative Graham of Pennsylvania said, "anyone who merely publishes matters here at home and does it in the discharge of what seems to him to be a duty by way of criticism ought not to be prosecuted nor punished under any portion of the bill."[6]

Implicit in this reasoning is the view that a domestic reporter may publish information that would normally fit within the bounds of the espionage statutes, but still not be prosecuted successfully because he would fail to have the required state of mind. This domestic exemption was thought necessary by many members of Congress in order that the espionage statutes not infringe on the First Amendment.[7]

Congress did not extend a similar safeguard to foreign correspondents. This distinction between the foreign and domestic newsperson was not drawn purposefully because Congress never considered the situation of the foreign correspondent. Nevertheless, while the domestic reporter is legally protected by

4. Harold Edgar and Benno C. Schmidt, Jr., "The Espionage Statutes and Publication of Defense Information," 73 *Columbia L. R.*, May 1973, p. 929.

5. 18 U. S. Code 793 (a). The intent standard appears in slightly different form in the various subsections of sections 793 and 794. But the same terminology is generally retained, except in subsections 793 (d) and (e), where no intent standard is included. Edgar and Schmidt argue, however, that no enforcement mechanism is included in these two subsections and thus they lack any real force.

6. 55 CONG. REC. 1719 (1917).

7. The Pentagon Papers Case, *New York Times Co. v. U. S.*, 403 U. S. 730, seems to indicate that this exemption may no longer hold. The case was argued not on the basis of the espionage statutes but on the basis of the President's inherent power to prevent "grave and irreparable danger" to the public interest. In ruling against the government, however, several Supreme Court justices ventured outside the bounds of the injunction proceeding and suggested strongly that the government would likely be successful if it brought suit against the newspapers involved under terms of the espionage statutes.

the intent standard, which was designed to protect internal debate on national security issues, the foreign correspondent lacks this protection. Unlike the domestic reporter, his intent is not to contribute to internal debate but to debate in a foreign country. He would thus satisfy the necessary motivational requirements of the espionage laws in the normal course of doing his job. Regardless of how readers use the foreign correspondent's information, it must provide some "advantage" to the reader, be he a government official or private citizen. The foreign correspondent appeals to a market and that market will purchase the story (buy the newspaper or listen to the broadcast) only if it provides some form of advantage. In writing and researching the story, the foreign correspondent would be conscious of this advantage. A foreign correspondent who obtains what the courts interpret to be "national defense" information would fall within the language of the espionage statutes, having the necessary "intent or reason to believe" that the information could be used to the "advantage" of a foreign nation.

The courts have generally followed the lead of Congress by defining "national defense" broadly and relying on the intent standard of culpability to determine guilt.[8] Only one case, *U. S. v. Heine,*[9] has gone against this trend and attempted to limit the scope of "national defense" information. Yet even in this case, the distinction between the foreign correspondent and the domestic reporter is retained, although at a reduced level.[10]

In the United States, then, if the courts view "national defense" broadly, the espionage statutes could pose a severe threat to the foreign correspondent.

8. See *Gorin, v. U. S.* 312 U. S. 30 (1941), *Gros v. U. S.* 138 F. 2d 261 (9th Cir. 1943), and *U. S. v. Heine* 151 F. 2d 813 (2d Cir. 1945).

9. 151 F. 2d 813 (2d Cir. 1945).

10. Until *U. S. v. Heine* the courts had followed the lead of the 1917 Congress and defined "national defense" broadly, relying on an intent standard of culpability. The information that had been ruled to either injure the United States or provide another country some form of advantage had included mere newspaper clippings and personal observations about war preparation (*Gros v. U. S.*) and Naval Intelligence files on Japanese activities in the United States passed on to the Soviet Union (*Gorin v. U. S.*). The question of whether non-restricted information was covered by the espionage statutes was the chief focus of *U. S. v. Heine.* In the opinion of the court, written by Circuit Judge Learned Hand, the defendant satisfied the "intent or reason to believe" standard of culpability. Nevertheless, Judge Hand followed neither precendent nor Congressional intent and acquitted the defendant. Hand was uneasy about the broad scope of "national defense" information and extended the ruling of *Gorin v. U. S.,* holding that if it is lawful to transmit information which the government has made public, it should also be lawful to transmit information which the government has never considered withholding at all. Judge Hand also stated that "whatever it was lawful to send throughout the country it was lawful to send abroad." This could be interpreted to mean that the foreign correspondent would be afforded the same protection from the espionage statutes as the domestic reporter. Yet it is more likely this relationship was never considered. Even so, this does not mean that information the government restricts is automatically "national defense" information. The courts can still determine whether the government has restricted the information properly. It is likely, however, that the government's classification of

If viewed more narrowly, the threat is lessened but not eliminated. Our own legal fabric differentiates between foreign and domestic reporters in a manner typical of legal systems across the globe. The threshold of intervention may indeed be higher in this country than in others, but a distinction is still drawn between the foreign and domestic correspondent. Legitimate national security concerns prevent the easy exportation of domestic notions of press freedom to the international sphere, a fact which should be recognized at home as well as abroad.

information would generally be accepted by the courts. Thus, just as in the Soviet Union, information the government wishes to restrict is off-limits to foreign correspondents. If a foreign correspondent persists and successfully obtains this off-limits information, he will be subject to prosecution under the country's espionage laws.