

Social Conflict and Control, Protest and Repression (USA)

By [Lon Strauss](#)

Summary

The United States Congress passed the Espionage Act on 15 June 1917. The Act allowed the Department of Justice to prosecute any person who obstructed the war effort, whether by active sabotage or influencing others to avoid registering for the draft. The majority of the approximately 2,000 cases prosecuted under the Espionage Act dealt with interfering with the draft. As the military expanded after America entered the war, so too did intelligence agencies in order to catch subversive persons and bring them to justice. However, their surveillance of the public led to conflict over interpretations of civil liberties and the establishment of a “surveillance state.”

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Introduction

On the rainy evening of 2 April 1917, President [Woodrow Wilson \(1856-1924\)](#) addressed a joint session of Congress to request a declaration of war against [Germany](#). A little over a month later, the President signed into law the [Selective Service Act](#), which established a military draft. Wilson explained his confidence that every citizen desired to do his part to help win the war, but in the new [total war](#) of the 20th century, not all could go fight the Germans. Conscription offered the Wilson administration a way to manage the people’s contributions by retaining skilled workers in factories and weeding out the physically and mentally unfit from those who would don a military uniform. Some Americans, however, viewed the draft as an infringement upon their freedom to choose, since it forced men to join the military. Thus, not

all Americans were willing to have the federal government manage their wartime participation, or even require that they participate.

Various groups, such as [pacifists](#) (religious or otherwise) and socialists, questioned [America's](#) entrance into the war and its adoption of conscription. Fearing these groups' power to persuade others and to wreak havoc on the machinery of mobilization, Congress passed the Espionage Act in June 1917. Legislators were especially concerned about protecting the fighting spirit of the nation's young men and specifically decreed it to be unlawful to "cause disloyalty" or to "obstruct the draft."¹

Disloyalty, however, was often in the eye of the beholder. When socialists espoused a philosophy of international equality – that workers had no reason to kill each other – many in Congress, the Wilson administration, and governmental investigative organizations claimed they were being disloyal. When an unrecognized religion such as the International Bible Students Association claimed conscientious objection and preached against war, military and civil authorities declared them to be disloyal. In order to stop groups deemed disloyal from influencing draft-age men, military intelligence officers, Bureau of Intelligence agents, vigilante groups, and others investigated them, kept them under watch, broke into their offices, and seized their documents and literature – sometimes with warrants, sometimes without, sometimes openly but more often covertly. These efforts to squash dissent represented one of the most egregious attacks on civil liberties in the history of the United States.

Selective Service

The United States' entrance into the First World War not only thrust Americans onto the world stage, but also tested some of their most fundamental constitutional beliefs. When the United States decided to manage its manpower resources through Selective Service, it encountered a form of opposition that would otherwise have remained on the fringes of the war effort: conscientious objection. [Conscientious objectors](#) came from all walks of life. They used religion, politics, or simply personal pacifism to justify their objections to participating in the war effort. Some men objected only to military service, but would participate in other forms of work that might aid the war. Others outright refused to assist in any area that might be perceived as part of the war effort.²

The Selective Service Act required Americans between the ages of twenty-one and thirty-one to register. The first registration day was on 5 June 1917; there were three registration days in total throughout America's involvement in the war. Of the 4 million American men who donned a uniform, about 67 percent went through the draft. On that first day, about 10

million men registered. Yet, not all Americans agreed that conscription was constitutional. [Tom Watson \(1892-1966\)](#), a leading figure of the Populist Movement, and [Harry Weinberger \(1888-1944\)](#), a New York litigator, argued that Selective Service violated the Thirteenth Amendment prohibiting “involuntary servitude.” They also thought that by giving exemptions to clergymen and divinity students the new law also violated the separation of church and state in the First Amendment. The Supreme Court unanimously upheld conscription as constitutional in January 1918.³

The Espionage and Sedition Acts

The President and Congress feared the influence that dissidents might have on draft-age men. At the very least, an “ignorant” person speaking openly with conviction against the war might sway some individuals to agree. At the worst, German agents would take advantage of naïve Americans’ peaceful intentions during wartime. Attorney General [Thomas Watt Gregory \(1861-1933\)](#) summed up the general feeling by stating that opponents to the draft were either weak-willed or overly influenced by those specifically attempting to discourage draft-age men from registering.⁴ Thus, Congress passed the Espionage Act in June 1917. The Act contained sections for censoring the written and spoken word. The most often utilized section, however, was Section 3 of Title I that prohibited anyone from speaking or writing anything that would negatively affect Americans’ – especially draft-age men’s – support for the war. Government agencies would use the law as broadly as possible, though some officials continued to push for harsher addendums. In 1918, they would get them when Congress expanded the definition of disloyalty with the Sedition Act, which was mostly a revision of Section 3, Title I of the Espionage Act. The fact that politicians mainly amended this particular section of the Espionage Act is revealing. They included more specifics against publishing “dangerous” material and defined additional prohibitions on interfering with the military, as well as causing contempt for the U.S. government, Constitution, or the American flag. In all likelihood, they were directing this new provision at socialists, Bolsheviks, and anarchists. The socialist leader [Eugene V. Debs \(1855-1926\)](#) was convicted in November 1918, after Congress amended this Act. Likewise, [Victor L. Berger \(1860-1929\)](#) and other socialists stood trial later in 1918 and 1919, after legislators strengthened the act.⁵

Legal Assaults on Free Speech

There were over 1,900 judicial proceedings during and after the war considering issues of free speech. The Supreme Court cases all occurred after the Armistice; thus the lower courts had the most influence through rulings on interpretations of the Espionage Act and free speech in wartime. Since the Sedition Act was passed closer to the end of the war, it did not

overly influence the legal course of prosecutions during or after the war. All of the major Supreme Court cases of 1919 were cases where federal prosecutors indicted people under the Espionage Act. Additionally, for the most part judicial rulings followed popular public opinion or, more to the point, were influenced by the same wartime pressures which led to a backlash against criticism, dissent, pacifism, and radical thought. Once the war ended, so did those pressures that influenced the prosecutions in the first place. Thus no major Sedition Act cases went as far or had as much influence as those under the Espionage Act.⁶

The final and most influential word, of course, was produced by the Supreme Court. First, Justice [Oliver Wendell Holmes \(1841-1935\)](#) expressed one of the most important rulings on the First Amendment in American history in *Schenck v. United States*. The prosecutors charged the defendants with violating the Espionage Act. [Charles Schenck](#), General Secretary of the Socialist Party in the US, had mailed 15,000 circulars against conscription to men who had already been drafted. The pamphlet argued that Selective Service was unconstitutional and only benefited the moneyed interest. The nine Supreme Court justices unanimously upheld the ruling against the defendants. Representing the court's opinion, Holmes explained that the socialist pamphlets represented a "clear and present danger" by "falsely shouting fire in a theater." The Chief Justice argued that the defendants targeted drafted men; therefore their intent must have been to obstruct the draft. Additionally, Holmes argued that the government had the right to restrict the freedom of speech more in times of war, even when the First Amendment protected the same language in times of peace.⁷

In the second case, shortly after the *Schenck* ruling, the Supreme Court once again unanimously upheld a conviction in *Frohwerk v. United States*. The defendants had published articles in the *Missouri Staats-Zeitung* newspaper questioning the constitutionality of the draft and the reasons for entering the war. The publishers did not target draft age men, as Schenck had, and may not have intended to disrupt conscription. However, based on the evidence at hand, Holmes ruled that the papers could fall into the hands of draft eligible men and therefore negatively influence them - a situation that may have been the defendants' intent.⁸

In one of the most famous cases of the war, 1912 Socialist Party Presidential candidate Eugene V. Debs stood trial for violating the Espionage Act. In June 1918, standing near a prison in Canton, Ohio where three socialists were held, Debs gave a speech extolling the economic ideology of socialism. The prisoners had been convicted of violating the Espionage Act by urging young men to evade the draft. He called the three prisoners "martyrs of freedom," and although he did not directly address his opinion against conscription or the war, a jury later found him guilty of violating the Espionage Act. Debs appealed, but the

Supreme Court unanimously upheld his conviction. Once again, Justice Holmes relayed the court's opinion by stating that his praise of three people already convicted for violating the Espionage Act amounted to a violation, as well. Though Debs addressed a socialist gathering, draft age men could have been in attendance and taken his praise to mean that they too should obstruct the draft.⁹

The Supreme Court would continue to uphold the convictions of the lower courts under the Espionage Act, although Justice Holmes would reverse himself in the case of *Abrams v. United States*. Jacob Abrams and several associates denounced capitalism and American intervention in the [Russian Revolution](#) by distributing two pamphlets, one in English and another in Yiddish. They exhorted their fellow workers to rise up and initiate a general strike. The Supreme Court upheld their convictions, citing the previous rulings in *Schenck* and *Frohwerk*. Justices Holmes and Louis Brandeis dissented, stating that the short pamphlet by otherwise unknown persons did not prove an immediate or present danger to the United States. Regardless of Holmes's sudden shift, the split over Abrams proved that Holmes's earlier ruling in *Schenck* with a "clear and present danger" set the foundation for interpreting the First Amendment.¹⁰

Future courts and activists would have to contend with Holmes' creation of a "clear and present danger" test, deciding when it applied and if it was even valid. Just as importantly, the modern civil liberties movement rose out of the sedition debate during the First World War. Defendants' appeals to the Supreme Court during the war kept the dialogue over civil liberties alive. Much was also accomplished by a variety of civilian organizations. The National Civil Liberties Bureau (NCLB) supported defendants caught on the wrong side of the Espionage Act. The organization's director, [Roger Nash Baldwin \(1884-1981\)](#), believed that everyone deserved a proper defense, especially when emotions were running high during wartime. He lent his support to the Wobblies (Industrial Workers of the World or I.W.W.), conscientious objectors, socialists, and others. Like many others who sought to keep the discussion over civil liberties in the forefront of Americans' thoughts, Baldwin's activities put him on many government watch lists. Activities by the NCLB and Baldwin, as well as the debate in the courts, ensured that the discussion over civil liberties remained contested during and after the war.¹¹

Expansion of Intelligence Agencies

Community voluntary organizations throughout the nation assisted government agencies in apprehending "disloyalists," acts that revealed Americans' desire for an apparatus to safeguard citizens at home. All government agencies conducting surveillance during the war

expanded exponentially. The Office of Naval Intelligence dated to the 1880s but focused mostly on ports and naval installations. They conducted very little domestic surveillance prior to 1917. The Military Intelligence Division (MID) did not exist as an organization in April 1917 (the War Department had disbanded it in 1908), but by May, MID had been revived. Congress had established the [Bureau of Investigation](#) within the Justice Department in 1908; however, it was comprised of only about three hundred personnel in April 1917. The last major government investigative arm was the Secret Service, which Congress decided early on did not have the authority to conduct broad domestic investigations outside of its purview within the Treasury Department.

Due to the dearth of investigative personnel, all government agencies relied upon groups such as the American Protective League (APL), a volunteer vigilante organization that peaked at a membership of 250,000 across the nation. The APL embodied the entrenched political and cultural biases that influenced surveillance throughout the war. [Emerson Hough \(1857-1923\)](#), APL member and chronicler, summed up the organization's worldview by stating that the APL had to keep tabs on "Bolsheveki, socialists, incendiaries, I.W.W.'s, Lutheran treason-talkers, Russellites [International Bible Students Association], [Victor] Bergerites, all other-ites, religious and social fanatics, third-sex agitators, long haired visionaries and work-haters from every race in the world."¹² Several other organizations sprang up in the pre-war and war years to check perceived anti-American activities, including the National Security League, American Defense Society, Volunteer Intelligence Corps, and others. The American Protective League lost both public and governmental support in September 1918 after a three day slacker raid in New York City. An estimated 20,000 to 25,000 members interrogated between 300,000 to 500,000 New Yorkers over three days starting on 3 September. They focused on theaters, ball parks, and subway stations, searching for men without their draft registration cards in anticipation of the third and final registration day on 15 September. During these three days they detained about 60,000 men; however, the military only held about 199 men as actual draft dodgers. Editorials lambasted the raid and the Senate picked up the charge. It became clear that the majority of citizens preferred the government to conduct such operations without relying upon large unprofessional vigilante groups who accosted law abiding citizens and disrupted lives, yet had no legal authority to do so. In the future government agencies, such as the Federal Bureau of Investigation (FBI), would handle the surveillance, investigating, and holding of suspicious people.¹³

WWI and American Civil Liberties

The overzealous activities of military intelligence officers, Bureau of Investigation agents, and

members of groups such as the APL, as well as the complicit legal system during the First World War went beyond what contemporaries and historians have labeled as war hysteria. Historians have long connected the [Red Scare](#) to negative perceptions Americans held of socialists and anarchists in the aftermath of the late 19th century industrial strife, especially after the Haymarket Riot in 1886 and assassination of President [William McKinley \(1843-1901\)](#).¹⁴ Government personnel, middle and upper class citizens, and members of the judiciary were motivated by long-standing cultural influences coupled with wartime opportunism in their pursuit of radicals, pacifists, and others. Their actions were a continuation of thoughts and attitudes connecting the prewar to the post-war period.

Wartime persecution of dissenters laid the foundation for the post-war Red Scare during which Attorney General [Alexander Mitchell Palmer \(1872-1936\)](#) pursued immigrant foreign radicals through the [Palmer Raids](#) and the Red Scare Between February 1919 and January 1920 Americans witnessed approximately 3,600 strikes involving about a quarter of American labor. Palmer targeted immigrant socialists, communists, anarchists, Wobblies (members of the I.W.W.) and any other perceived radicals. In the raids, Department of Justice agents arrested about 16,000 suspects and deported about 247 people, including famous anarchist [Emma Goldman \(1869-1940\)](#), mostly without warrants.

With the quick [demobilization](#) of the army in 1919 and 1920, including the demobilization of the Military Intelligence Division, intelligence officers could offer mainly moral support and only some limited information to the Department of Justice. However, some former MID officers took part in the raids as civilians. These raids, including the Palmer Raids, were made possible by the Espionage and Sedition Acts. Congress did not repeal the latter until 13 December 1920, and legislators kept and revised the Espionage Act throughout the 20th century, and it remains an active American law.¹⁵

In the wake of the post-war Red Scare, MID intelligence officers worked with the War Plans Division to formulate America's first domestic war plan. War Plan White specifically detailed how the army should protect the United States from an internal class war. Military Intelligence Division officers described the political and industrial nature of "the revolutionary movement" in America with a focus on anarchists and socialists. Their wartime activities prepared the military intelligence officers and the War Department for what they perceived as the long fight against socialism and Bolshevism in the decades to come. Thus, intelligence officers' activities from 1917 to 1918 heralded a new phase of government and military surveillance unprecedented in the years prior to 1917. Their experience had implications in the immediate post-war years and beyond.¹⁶

Conclusion

Key figures such as John Edgar Hoover (1895-1972), who would go on to turn the FBI into a formidable internal security agency, gained experience targeting perceived radicals and keeping watch over American citizens through surveillance during World War I and the years afterward. The Secret Service expanded and led investigations into organized crime. Due to their wartime experience, Americans moved further away from a reliance on volunteer organizations, such as the APL, to be the watchdogs of society. Government officials would still call upon civilians to remain vigilant in times of crisis, but it became the government's responsibility to investigate and handle any information citizens provided. Americans also maintained their antipathy to large and intrusive peacetime armies, instead preferring that civilian government agencies be the custodians of national security, leading to the expansion of the FBI and creation of the Office of Strategic Services (OSS), the forerunner of the Central Intelligence Agency.

The wartime Espionage Act cases influenced how Americans would interpret the First Amendment and other civil liberties in peace and war. Courts moved away from punishing speech that could be interpreted as a call to action against the government. Instead, later judges accounted for Americans' desire for open political debate. They would emphasize that a "present danger" must be imminent and the speech exceedingly egregious in order for the law to intervene. However, this change in the interpretation of free speech did not stop government personnel from investigating Americans, both secretly and publicly. American acquiescence to government authority paved the way for a rising security state, and coupled with an unchecked culture of political paranoia influenced events throughout the 20th century.^{[17](#)}

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Notes

1. Ferrell, Robert H.: Woodrow Wilson and World War I, 1917-1921, New York 1986, p. 1. [↑](#)
2. Selective Service Regulations. Prescribed by the President Under the Authority Vested in Him by the Terms of the Selective Service Law, Act of Congress Approved May 18 1917, Washington, D.C. 1917, p. iii; Capozzola, Christopher: Uncle Sam Wants You. World War I and the Making of the Modern American Citizen, New York 2008, pp. 26-8; Chambers III, John Whiteclay: To Raise an Army. The Draft Comes to Modern America, New York 1987, pp. 179-183. Chambers offers a superb examination of the debate over conscription and its implementation. [↑](#)

3. Kriedberg, Marvin A./Henry, Merton G.: History of the Military Mobilization in the United States Army 1775-1945, Washington, D.C. 1955, p. 278; Capozzola, Uncle Sam Wants You 2008, pp. 28-30; Chambers, To Raise an Army 1987, pp. 184, 186-7. ↑
4. Capozzola, Uncle Sam Wants You 2008, p. 28. ↑
5. United States: The Statutes at Large of the United States of America from April 1917 to March 1919. Concurrent Resolutions of the Two Houses of Congress and Recent Treaties, Conventions, and Executive Proclamations Amendment to the Constitution, Vol. XL, Washington, D.C. 1919, pp. 219, 553; Chafee, Zechariah: Free Speech in the United States, Cambridge 1967, pp. 50-51; Stone, Geoffrey: Perilous Times. Free Speech in Wartime. From the Sedition Act of 1798 to the War on Terrorism, New York 2004, pp. 186-187; Johnson, Donald: Wilson, Burleson, and Censorship in the First World War, in: The Journal of Southern History 28/1 (1962), pp. 48-50. ↑
6. Chafee, Free Speech in the United States 1967, pp. 3, 85; Stone, Perilous Times 2004, p. 201. ↑
7. Chafee, Free Speech in the United States 1967, pp. 80-82; Stone, Perilous Times 2004, pp. 192-195. ↑
8. Chafee, Free Speech in the United States 1967, pp. 82-84; Stone, Perilous Times 2004, pp. 195-196. ↑
9. Chafee, Free Speech in the United States 1967, pp. 84-85; Stone, Perilous Times 2004, pp. 196-198. ↑
10. Stone, Perilous Times 2004, pp. 203-207. ↑
11. Ibid, pp. 230-1; Johnson, Claudius O.: The Status of Freedom of Expression under the Smith Act, in: The Western Political Quarterly 11/3 (1958), pp. 472-5, 479; Cottrell, Robert C.: Roger Nash Baldwin and the American Civil Liberties Union, New York 2000, p. 100. ↑
12. Hough, Emerson: The Web, New York 1919, p. 180. ↑
13. McCoy, Alfred W.: Policing America's Empire. The United States, the Philippines, and the Rise of the Surveillance State, Madison 2009, pp. 296-297; Capozzola, Uncle Sam Wants You 2008, pp. 41, 45-50; "History of Military Intelligence Division." Unpublished Manuscript. In: RG 319, Entry 270, Box 21 (College Park, MD: National Archives and Research Administration II), pp. 22-4; Jensen, Joan M.: Army Surveillance in America, 1775-1980, New Haven 1991, pp. 161, 175; Chambers, To Raise an Army 1987, pp. 74-75. ↑
14. Schmidt, Regin: Red Scare. FBI and the Origins of Anticommunism in the United States, Copenhagen 2000, pp. 25-7; Talbert, Jr., Roy: Negative Intelligence. The Army and the American Left, 1917-1941, Jackson 1991, pp. 173-175, 182-184 ↑
15. Stone, Perilous Times 2004, p. 230. ↑
16. War Plans White. Appendix No. 2, 24 September 1920, in: Record Group 165, Box 294,

Folder 242-13 Appendix 2 War Plans White, College Park, MD; Jensen, Army Surveillance in America 1991, p. 190. ↑

17. In fact, at the time this article was written, there were five pending cases in federal courts where violations of the Espionage Act of 1917 were cited. ↑

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External Links

- [Abrams v. United States \(Cornell University Law School\) \(Primary Source\)](#)
- [Emerson Hough, The Web, 1919 \(Internet Archive\) \(Book\)](#)
- [Frohwerk v. United States - 249 U.S. 204, 1919 \(Justia\) \(Primary Source\)](#)
- [Schenck v. United States -249 U.S. 47, 1919 \(Justia US Supreme Court\) \(Article\)](#)
- [The Montana Sedition Project \(University of Montana School of Journalism\) \(Database\)](#)
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