

Schenck v. United States (1919)

Historical Background

A major effort to promote national unity accompanied America's involvement (1917-1918) in World War I. As a part of this effort, Congress enacted a number of laws severely restricting 1st Amendment freedoms to curb antiwar dissent. In 1917, Congress passed the Espionage Act, which set stiff penalties for uttering and circulating “false” statements intended to interfere with the war effort. Any effort to cause unrest in the military forces or to interfere with the draft was forbidden. In 1918, Congress passed a Sedition Act—the first such act in 120 years—which made it a crime to interfere with the sale of government securities (war bonds) and also prohibited saying or publishing anything disrespectful to the government of the United States.

The Committee on Public Information, a collection of leading writers and journalists, effectively functioned as a propaganda arm of the government, distributing some 75 million pieces of literature on behalf of the war effort from 1917 to 1918. But the strict conformity demanded by the government in wartime invited an element of hysteria. Dissenters were often forcibly silenced and jailed for their views. Among the best organized organs of dissent against the war was the Socialist party. Its leader, Eugene V. Debs, was sentenced to 10 years in prison for his statement that while the “master classes” caused the war, the “subject classes” would have to fight it. A Butte, Montana, mob dragged antiwar labor-organizer Frank Little through the streets before they hung him from a railroad trestle. In Washington, the House of Representatives refused to allow Milwaukee representative Victor Berger, a Socialist elected in 1918, to take his seat, despite his service in that chamber from 1911 to 1913. Berger, too, had been jailed for his antiwar views. Berger was allowed back into the chamber from 1923 to 1929.

Circumstances of the Case

Charles Schenck was the general secretary of the Socialist Party of America. Socialists believed that the war had been caused by and would benefit only the rich, while causing suffering and death for the thousands of poor and working-class soldiers who would do the actual fighting in Europe. Party officials not only opposed the war, they urged American workers to oppose the war as well.

Schenck participated in many antiwar activities in violation of the Espionage Act, including the mailing of about 15,000 leaflets urging draftees and soldiers to resist the draft. He was arrested and charged with “causing and attempting to cause insubordination in the military and naval forces of the United States” and with disturbing the draft. He was arrested, tried, convicted, and sentenced to prison for violating the Espionage Act of 1917, and he appealed his case to the Supreme Court.

Constitutional Issues

Were Schenck's political statements protected by the free speech section of the 1st Amendment? What was the meaning of the 1st Amendment's statement that “Congress shall make no law...abridging the freedom of speech”? Were there different standards for protected political speech during peacetime and in war? Was the Espionage Act constitutional or did it violate the 1st Amendment? Should Schenck remain in prison?

Arguments

For Schenck: The Espionage Act was unconstitutional. Schenck and the Socialist party were persecuted for opposing what they felt was an “immoral war.” The 1st Amendment was specifically included in the Constitution to protect political speech, and to prevent a “tyranny of the majority.” The 1st Amendment protections would be meaningless if Congress could choose where and when citizen's rights may be diminished.

Schenck proceeded to argue that the draft was a violation of the 13th Amendment as it required citizens to enter a state of slavery. American citizens should be able to choose the morality of entering a war, and not be forced into fighting a war they find immoral.

For the United States: A nation at war is justified in taking steps to insure the success of its effort to defend itself. The case involves congressional draft policy, not the 1st Amendment. Statements critical of the government cannot be tolerated *in a crisis*. The nation cannot allow an effort to deprive the armies of necessary soldiers. The actions and words of the Socialist party were a danger to the nation. The Espionage and Sedition acts, by contrast, were legitimate and appropriate in a time of war.

Decision and Rationale

The Court's unanimous (9-0) decision was written by Justice Oliver Wendell Holmes. In it, the Court upheld Schenck's conviction, declaring the Espionage Act a reasonable and acceptable limitation on speech in time of war.

In the operative passage of the decision, Holmes wrote, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic." Holmes argued that "The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

In short, the Court held that reasonable limits can be imposed on the 1st Amendment's guarantee of free speech. No person may use free speech to place others in danger. "Protected political speech" was diminished in time of war.

The *Schenck* case stands as the first significant exploration of the limits of 1st Amendment free speech provisions by the Supreme Court. Its clarifications on the meaning of free speech have been modified, rewritten, and extended over the years. Flowing directly from this case, two schools of legal thought on the protections of the Bill of Rights emerged. One "absolutist" group felt that the Constitution meant to tolerate no interference by government with the people's freedoms, "absolutely none." More widely held was the "balancing doctrine," which suggested that the right of the people to be left alone by a government had to be "balanced" against "compelling public necessity."

The Hollywood Ten (1947)

In 1947, the House of Un-American Activities Committee (HUAC), which was chaired by J. Parnell Thomas, started an investigation into the Hollywood Motion Picture Industry.

The HUAC interviewed 41 people who were working in Hollywood. These people were interviewed voluntarily and were known as friendly witnesses. During their interviews, they named nineteen people who they said held left-wing views.

Ten of those people refused to answer any questions during the hearings thus became known as the Hollywood Ten. They were [Alvah Bessie](#), [Herbert Biberman](#), [Lester Cole](#), [Edward Dmytryk](#), [Ring Lardner Jr.](#), [John Howard Lawson](#), [Albert Maltz](#), [Samuel Ornitz](#), [Adrian Scott](#) and [Dalton Trumbo](#). The ten men claimed that the First Amendment of the United States Constitution gave them the right to refuse to answer questions about their beliefs. The HUAC and, subsequently, the courts disagreed and all ten men were found guilty of contempt of congress. Each of them was sentenced to between six and twelve months in prison.

In June 1950, *Red Channels*, a pamphlet listing the names of 151 writers, directors and performers was published by three former FBI agents and a right-wing television producer named Vincent Harnett. They claimed all 151 people had been members of subversive organizations before the Second World War, although none had been blacklisted yet. The names were collected from [FBI](#) files and from a detailed analysis of the Daily Worker, a newspaper published by the American Communist Party.

A free copy of *Red Channels* was sent to employers in the entertainment business. All the people named in the pamphlet were eventually blacklisted until they appeared in front of the HUAC and convinced its members their radical past had been renounced.

Edward Dmytryk, one of the original Hollywood Ten, previously had financial problems because of divorcing his first wife. When he was faced with having to sell his plane, he was encouraged by his new wife to try to get his name removed from the blacklist.

On April 25, 1951, Dmytryk went before the HUAC again. This time he answered all their questions including the naming of 26 former members of left-wing groups. Dmytryk also told the committee how people such as John Howard Lawson, Adrian Scott and Albert Maltz had put him under pressure to make his films express the views of the Communist Party.

This was extremely damaging to those members of the original Hollywood Ten because they were involved in court cases with their previous employers during that time. Once these men refused to name names, their own names were added to the blacklist that had been drawn up by the Hollywood film studios