



FIRST AMENDMENT IN HISTORY

FEBRUARY 13, 2007 - THE SEDITION ACT OF 1918

RESOURCES

- <http://citizenbee.org/user/StudentGuide.aspx?id=697>
- http://www.firstamendmentcenter.org/faclibrary/case.aspx?case=Schenck_v_US
- http://www.pbs.org/wgbh/amex/wilson/filmmore/fm_act.html

ACTIVITY

The United States instituted a military draft during World War I. More than 24 million men registered for the draft, and over 2.5 million men were actually drafted into the military. Not all Americans supported the war. A large pacifist movement developed in opposition to it. In 1917, Congress passed the Espionage Act, which made it a crime to, among other things, “obstruct the recruiting or enlistment service.”

The next year, Congress amended the Espionage Act by passing the Sedition Act of 1918. The law was designed to silence opposition to the War, which Congress and President Woodrow Wilson believed threatened the nation’s chances of victory. The Sedition Act read, in part: “Whoever, when the United States is at war, shall willfully utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States or the Constitution of the United States... shall be punished by a fine of not more than \$10,000 or the imprisonment for not more than twenty years, or both.” The government justified the restrictions on speech by claiming that the government’s interest in fighting World War I outweighed individuals’ right to free speech.

Socialist Party member Charles Schenck opposed the war as well as the military draft. Schenck distributed leaflets urging recently drafted men to resist the draft. He condemned the federal government, the war and the draft with very strong language, but he advocated only peaceful resistance. Schenck was charged with violating the Espionage Act of 1917, as amended by the Sedition Act of 1918. Schenck challenged his conviction on First Amendment grounds. His case went to the Supreme Court, which had to consider if freedom of speech is an absolute right and, if not, under what circumstances it may be limited.

The Court unanimously upheld Schenck’s conviction, agreeing that certain kinds of expression, which would be constitutionally protected in peacetime, can be punishable when the nation is at war. The Court ruled in *Schenck v. US* (1919): “The character of every act depends upon the circumstances in which it is done...The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.” Because Schenck had advocating resisting the draft, his words had the “effect of force” and were not protected by the First Amendment.

In later World War I cases, the Court upheld the convictions of individuals who had criticized the US and the War, saying the speech created a “dangerous tendency.” Since 1919, the question of whether and how free speech can be limited in wartime has continued to challenge American society.

QUESTIONS

1. What did Sedition Act of 1918 criminalize?
2. How did the government justify the law?
3. Why was Charles Schenck charged with violating the Espionage Act of 1917, as amended by the Sedition Act of 1918?
4. How did the Supreme Court rule in Schenck’s case?
5. Do you agree with the Court that the Sedition Act was a justifiable restriction on speech in wartime?



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ANSWERS

1. The Sedition Act of 1918 made it a crime to “willfully utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States or the Constitution of the United States.”
2. The government justified the restrictions on speech by claiming that the government’s interest in fighting World War I outweighed individuals’ right to free speech.
3. Schenck distributed leaflets urging recently drafted men to resist the draft.
4. The Court unanimously upheld Schenck’s conviction, agreeing that certain kinds of expression, which would be constitutionally protected in peacetime, can be punishable when the nation is at war.
5. Some students will agree with the Court, saying that a necessary price of freedom is the curtailment of some liberties during wartime. Schenck had gone beyond merely opposing the war, and had advocated resistance to military recruitment—an interference with national security. Others will disagree, saying that even during wartime, citizens have an unqualified right to free speech. They may say that laws such as the Espionage Act of 1917 and Sedition Act of 1918 become “slippery slopes” leading to more and more restrictions on types of speech.