

The Constitution in Crisis

The Red Scare of 1919–1920

A Unit of Study for Grades 9–12

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PREVIEW COPY
INCLUDING THE COMPLETE FIRST LESSON

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NATIONAL CENTER FOR HISTORY IN THE SCHOOLS
University of California, Los Angeles

INTRODUCTION

APPROACH AND RATIONALE

The Constitution in Crisis: The Red Scare of 1919–1920 is one of nearly seventy teaching units published by the National Center for History in the Schools that are the fruits of collaborations between history professors and experienced teachers of both United States and World History. The units represent specific issues and dramatic episodes in history from which you and your students can pause to delve into the deeper meanings of these selected landmark events and explore their wider context in the great historical narrative. By studying a crucial turning point in history, the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected issues and dramatic moments that best bring alive that decision-making process. We hope that through this approach, your students will realize that history is an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow's history.

Our teaching units are based on primary sources, taken from government documents, artifacts, journals, diaries, newspapers, magazines, literature, contemporary photographs, paintings, and other art from the period under study. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to recreate for your students a sense of 'being there,' a sense of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian's craft, discovering for themselves how to analyze evidence, establish a valid interpretation, and construct a coherent narrative in which all the relevant factors play a part.

CONTENT AND ORGANIZATION

Within this unit, you will find: Teacher Background Materials, including Unit Overview, Unit Context, Correlation to the National Standards for History, Unit Objectives, and Introduction to *The Constitution in Crisis: The Red Scare of 1919–1920*; A Dramatic Moment; and Lesson Plans with primary and secondary source documents. This unit, as we have said above, focuses on certain key moments in time and should be used as a supplement to your customary course materials. Although these lessons are recommended for use by grades 9–12, they can be adapted for other grade levels.

The Teacher Background section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the specific Dramatic Moment to the larger historical narrative. You may consult it for your

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own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.

The Lesson Plans include a variety of ideas and approaches for the teacher which can be elaborated upon or cut as you see the need. These lesson plans contain student resources which accompany each lesson. The resources consist of primary source documents, any handouts or student background materials, and a bibliography.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of facts and meaningless dates but rather as an endless treasure of real life stories and an exercise in analysis and reconstruction.

TEACHER BACKGROUND

I. Unit Overview

The anticommunist hysteria of 1919–1920 capped a decade during which the American people had experienced the most unsettling changes since the 1860s. Recent immigrants from southern and eastern Europe had filled to overflowing ethnic neighborhoods in American cities. At the same time, millions of rural whites and African Americans migrated from the Jim Crow South to northern cities. Through out the country, reform politics from Progressivism to Socialism became highly organized, and political views were more forcefully debated than usual. World War I brought these trends together. During and after the war, the federal government and other agencies attacked supposed American enemies of the nation and many native-born citizens led local witch-hunts against any one not, in their opinion, “100 percent American.”

This unit is designed to instill in the student the recognition that the guarantees of the Bill of Rights are fragile and must be secured by a commitment to principles. When exaggerated fears of political, racial, or ethnic groups are encouraged, the basic freedoms of Americans can be lost.

II. Unit Context

The lesson may be introduced as either an immediate follow-up to the study of World War I or as a culminating study of the radical labor movement of the early twentieth century. It offers a good prelude to the study of restrictive immigration laws of the post-war period. The lessons focus on the fragile nature of the Bill of Rights and the dangers that result from unreasoned response to real or imagined threats to national interests. The lesson could be tied to an earlier study of the Alien and Sedition Acts of 1798 and as a bridge to later readings on the McCarthy era in the 1950s.

III. Correlation to National History Standards

The Constitution in Crisis: The Red Scare of 1910–1920 provides teaching materials to support the *National Standards for History, Basic Edition* (National Center for History in the Schools, 1996). Lessons within this unit address **Standards 2C and 3A of Era 7, *The Emergence of Modern American (1890–1930)***. Lessons have students analyze the impact of government policies on civil liberties and assess state and federal government reactions to the growth of radical movements during and immediately after World War I.

This unit like wise integrates a number of specific Historical Thinking Standards including: analyze cause-and-effect relationships and multiple causation, consider multiple perspectives (**Standard 3, Historical Analysis and Interpretations**); formulate historical questions, obtain historical data from a variety of sources (**Standard 4, Historical Research**); and, evaluate the implementation of a decision: (**Standard 5, Historical Issues-Analysis and Decision Making**).

IV. Unit Objectives

- ◆ To understand the historical context in which the Red Scare occurred.
- ◆ To evaluate the impact of the wartime Espionage and Sedition acts on free speech guarantees of the First Amendment.
- ◆ To explain the Supreme Court's decisions in the Schenck, Abrams, and Gitlow cases.
- ◆ To recognize the importance of dissent in a free society.
- ◆ To analyze the impact of fear on society.
- ◆ To recognize the long-range impact of policy decisions on internal affairs.

V. Introduction to *The Constitution in Crisis: The Red Scare of 1919-1920*

Prior to United States' entry into World War I, a passionate debate raged over American national policy toward war-torn Europe. This was partly because the nation had never taken part in a European war and the majority of voters did not wish to become involved. Another source of passion was the fact that many ethnic and political groups advocated, for their own specific reasons, policies favorable to one European coalition or the other, and were opposed to President Wilson's official and traditional policy of neutrality. In the national election of 1916, both major parties tried to convince voters that they would keep the country out of war and to intimidate those who were not 100 percent American.

When President Wilson led the country into war in 1917, he inspired Americans with his cause to establish democracy and national self-determination throughout the world, but the underside of this quest was a campaign against dissidents who took issue with the government's policies. The administration especially exerted pressure on American socialists after the Bolsheviks seized control of the Russian Revolution at the end of 1917. The Bolsheviks consolidated their power by signing a separate peace treaty with the Germans. American leaders regarded this move by their former ally as a betrayal and hence looked upon all American socialists with greater suspicion than ever.

Wartime mobilization had provided an escape for thousands of African American workers wishing to leave the segregated South. Southern blacks undertook a great migration to northern industrial cities to work in railroad yards, shipyards, packing houses, steel mills and coal mines. Conditions worsened when American soldiers returned home after the war to find that no provisions existed for reintegrating them into the workforce. At the same time, unions raised demands to secure better conditions for workers including an eight-hour workday, and

struck when opposed by employers. Unemployment and inflation also contributed to riots staged by white working men against blacks in numerous cities. By the beginning of 1919, moreover, the country began to be alarmed by a number of mysterious bombings, most of which were never tied to any specific culprits.

During 1919 over four million workers took part in 4,000 strikes. Dramatic events followed closely upon one another. In reaction to news that police had discovered a number of mail bombs, police and others in many towns mobbed socialists' May Day parades. In July, the worst race riot of the year broke out in Chicago, after a black youth swimming at a segregated white beach was hit by a rock and drowned. In the days that followed, thirty-eight people died; fifteen whites and twenty-three blacks. Over five hundred others were injured. In September, it was Boston's turn to experience chaos when the unionized police struck: an army of National Guardsmen and citizens seized control, denounced the union as communist, and hired a non-union police force. On September 22, hundreds of thousands of steel workers went on strike, and the U. S. Army besieged Gary, Indiana. On November 1, 400,000 coal miners began a long strike.

Throughout the rising crisis, President Wilson devoted himself to foreign affairs and gave broad authority to Attorney General A. Mitchell Palmer to silence political dissidents. The President was laid low by cerebral thrombosis on October 2. Palmer hoped to be the Democratic party's nominee for the presidency in 1920. Thus, throughout much of 1919 he resisted political pressure to take extreme measures against dissidents that might cost him votes. He organized the General Intelligence Division (GDI), later the FBI, a special antiradical division within the Justice Department, and put a young man named J. Edgar Hoover in charge. Only when he was sure that he had a mandate from the president and many interest groups did he conduct an all-out attack on various radical organizations. Between November 1919, and March 1920, the police arrested thousands of people around the country and the government deported over 800 dissidents to Russia. Concurrently, local civic organizations purged governments, schools, and church organizations of all those who were, in their opinion, too radical. The Palmer raids constituted the most massive assault on civil liberties in twentieth-century American history.

Palmer's Justice Department tried to continue the witch-hunt, but the public became skeptical and Palmer earned little credit by his raids. When a huge bomb exploded in Wall Street on September 20, 1919, the public was not aroused by the claims of the Justice Department that it was the work of a nationwide plot by radicals. The residual hysteria of some people persisted in the nativist, anti-Catholic, and anti-black movements in the 1920s.

V. Lesson Plans

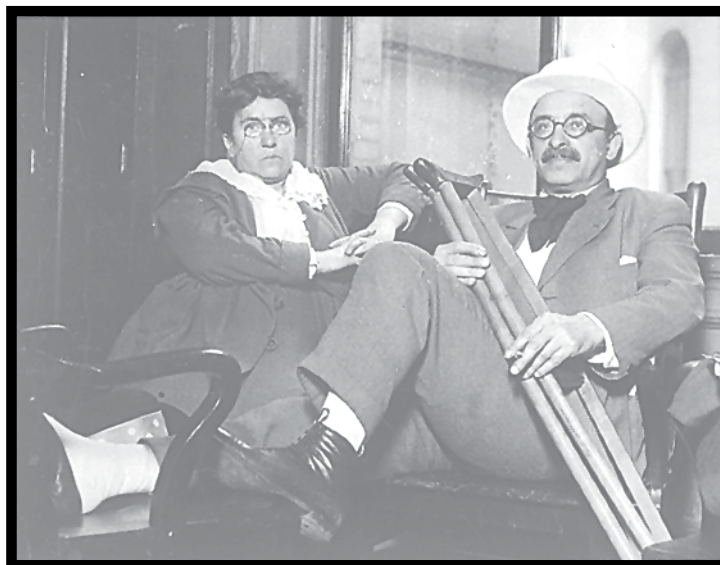
1. The Law
2. The Case Against the Reds
3. The Courage of Their Convictions
4. Role Playing: A Meeting of the Minds

DRAMATIC MOMENT
“THE SOVIET ARK”
(Primary Source)

On December 21, 1919, the *Buford* set sail from New York carrying 249 people deported to Russia by the United States government, the first large deportation in American history. Hundreds more were deported in the following weeks. The group on the “Soviet Ark;” as it was called, included two long-term federal prisoners named Emma Goldman and Alexander Berkman, anarchists convicted of opposing the federal draft of soldiers during World War I, who were dubbed by the press as the “Red Queen” and “Red King.” Most of the remainder of the *Buford* group were guilty of no crime, but adhered to ideas regarded by national leaders as dangerous. Attorney General A. Mitchell Palmer justified this action by explaining that:

“Like a prairie fire, the blaze of revolution was sweeping over every American institution of law and order. . . . It was eating its way into the homes of the American workman, its sharp tongues of revolutionary heat were licking the altars of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with libertine laws, burning up the foundations of society. “

— A. Mitchell Palmer. *Forum*. LXIII: 174



Emma Goldman and Alexander Berkman
July 9, 1917

National Archives, NWDNS-165-WW-164B(6)

LESSON ONE

THE LAW

A. Objectives

- ◆ To evaluate the impact of the Espionage and Sedition Acts on free speech guarantees of the First Amendment.
- ◆ To be able to explain Justice Oliver Wendell Holmes' reasoning in the *Schenck* case.
- ◆ To evaluate Justice Oliver Wendell Holmes' views of free speech and expression through his dissent in the *Abrams* and *Gitlow* cases.

B. Lesson Activities

1. Hand out **Documents A** through **F**.
2. Divide the class into six collaborative learning groups and assign each group the corresponding primary source reading. Give each group a focus question (or questions). Encourage the groups to go beyond the assigned focus question(s). Each group should select a recorder and report their responses to the questions raised in the group.

Questions are provided for each reading followed by suggestions as to what students should consider in preparing their responses.

Learning Group Focus Questions

Learning Group One (Document A)

1. What do you consider the major aspects of the Espionage Act from this excerpt?
 - a. Students should note the crimes listed in the act and the punishment for espionage;
 - b. Point out the increased power granted the federal government by the act;
 - c. Note that the act strictly restricts the use of search warrants;
 - d. Some attention should also be given to the use of the mails for "illegal purposes."
2. Was the Espionage Act a violation of liberties guaranteed in the Constitution and Bill of Rights?

3. Why or why not?
 - a. Most students will probably respond that it was in violation of constitutional guarantees. Reasons may vary but must include reference to the First Amendment.
 - b. A good response would also refer to the Fourth, Fifth, Sixth, and Eighth Amendments.
 - c. Those who may argue that it was not a violation of the Constitution may indicate that the guarantees of the Bill of Rights are not absolute. They should refer to the Supreme Court's decisions regarding the constitutionality of this act.

Learning Group Two (Document B)

1. What do you consider the major aspects of the Sedition Act?
 - a. Students should note the number of offenses enumerated as violations of the Sedition Act and the punishments accorded to these offenses.
2. Was the Sedition Act a violation of liberties guaranteed in the Constitution and Bill of Rights?
3. Why or why not?
 - a. Most students will probably respond that it was in violation of Constitutional guarantees. Reasons may vary but must include reference to the First Amendment. A good response would also refer to the Fourth, Fifth, Sixth, and Eighth Amendments..
 - b. Those who may argue that it was not a violation of the Constitution may indicate that the guarantees of the Bill of Rights are not absolute. They should refer to the Supreme Court's decisions regarding the constitutionality of this act.

Learning Group Three (Document C)

1. How did the Supreme Court respond in the *Schenck* case?
 - a. Students should note the special circumstances under which the case was heard and cite Justice Holmes' clear and present danger argument in the *Schenck* case.

Learning Group Four (Document D)

1. What was the purpose of the leaflets?
 - a. The leaflets were designed to arouse the public to oppose the American Expeditionary Force's intervention in Russia.

2. Were Abrams and his associates protected by the First Amendment guarantee of free speech?
 - a. Most students will probably argue that Abrams did have the right to express his views even though they were contrary to the wartime policy of the United States.
 - b. Students who may disagree should indicate that free speech is not an absolute guarantee and may be limited by circumstances; in this case U.S. involvement in World War I.

Learning Group Five (Document E)

1. What was the basis of Justice John H. Clarke's opinion in the *Abrams* case?
 - a. Justice Clarke expressed the view that Abrams' actions were designed to hurt the war effort.
2. On what did Justice Holmes base his dissent?
 - a. Justice Holmes argued the importance of dissent and challenged the view that Abrams' actions were injurious to the security or defense of the nation.
3. Which of the two arguments seem to be most reasonable? Explain your opinion.
 - a. Answers may vary, although most students will probably agree with Justice Holmes.
 - b. Students should cite reasons for their opinions and support them by specific references to the document.

Learning Group Six (Document F)

1. What was the basis of Justice Edward Terry Sanford's opinion in the *Gitlow* case?
 - a. Justice Sanford noted that the First Amendment did not provide absolute rights to freedom of speech or the press.
 - b. He noted that the state has the obligation to protect itself from unlawful means to overthrow it and that the state need not wait until violence is apparent before taking action.
2. On what did Justice Holmes base his dissent?
 - a. Justice Holmes argued that the state does not have the right to limit ideas.

- b. He argued that the nature of the document *Gitlow* printed and circulated could not have incited violence because it lacked the eloquence that could have made the document inflammatory.

C. Suggested Follow-Up Questions for General Class Discussion

1. Why were the Espionage Act and Sedition Act of 1917 and 1918 passed? (Answers should include the administration's attempts to secure support for the war through the establishment of the Creel Commission and the limitation of the rights of dissenters in an attempt to provide a united home front.)
2. Taken within the context of the entry by Americans into the war, could the government have anticipated similar opposition to the Espionage and Sedition Acts? (Answers will vary. Most students will probably respond that the administration should have expected opposition to these acts. Students may argue that many believed that limitations on basic rights were warranted as a necessary measure during wartime.)
3. How can you account for Justice Holmes' decision in the *Schenck* case and his dissenting opinions in the *Abrams* and *Gitlow* cases? (In the *Schenck* case Holmes based his decision on the circumstances of war and clear and present danger. In the *Abrams* case he did not consider the leaflets to be a threat to the security of the government and held them to be a legitimate expression of opinion guaranteed by the First Amendment. His opinion in the *Gitlow* case hinged on the issue of incitement; he questioned how the document could have aroused anyone to revolution; therefore, he held it to be within the confines of the First Amendment guarantee to freedom of speech.)

Espionage Act (Primary Source)

On June 15, 1917, less than ten weeks after the official United States entry into the war, Congress passed the Espionage Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Title I Espionage

SECTION 1. That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation . . . or (b) who ever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, obtains . . . anything connected with the national defense; or (c) whoever for the purpose aforesaid receives or obtains . . . any document knowing or having reason to believe, at the time he receives . . . it, that it has been taken by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of . . . any document . . . relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer of the United States entitled to receive it; or (e) whoever, being in trusted with or having lawful possession . . . of any document relating to the national defense, through gross negligence permits the same to be removed from its proper place or custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both.

SECTION 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government . . . any document . . . or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit, any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States . . . or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

SECTION 3. Whoever, when the United States is at war, shall willfully make or convey false reports . . . with intent to interfere with the operation or success of the military . . . of the United States, or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both.

SECTION 5. Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this title shall be punished by a fine or not more than \$10,000 or by imprisonment for not more than two years, or both.

SECTION 6. The President in time of war or in case of national emergency may by proclamation designate any place . . . in which anything for the use of the Army or Navy is being prepared . . . as a prohibited place for the purpose of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense.

Title XI Search Warrants

SECTION L. A search warrant authorized by this title may be issued by a judge of a United States district court, or by a judge of a State or Territorial court of record, or by a United States commissioner for the district wherein the property sought is located. . . .

SECTION 3. A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched.

SECTION 4. The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce and require their affidavits. . . in writing. . . .

SECTION 5. The affidavits or dispositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. . . .

SECTION 8. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. . . .

SECTION 18. Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault . . . any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. . . .

SECTION 21. An officer who in executing a search warrant willfully exceeds his authority, or exercises it with unnecessary severity, shall be fined not more than \$1,000 or imprisoned not more than one year.

Title XII Use of Mails

SECTION 1. Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter, or thing, of any kind, in violation of any of the provisions of this Act is hereby declared to be nonmailable matter and shall not be conveyed in the mails. . . . Provided, That nothing in this Act shall be so construed as to authorize any person other than an employee of the Dead Letter Office . . . or other person upon a search warrant authorized by law, to open any letter not addressed to himself. . . .

SECTION 3. Whoever shall use or attempt to use the mails or Postal Service of the United States for the transmission of any matter declared by this title to be non able, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. . . .



Woodrow Wilson

President Wilson signed the Espionage Act a few months after his second inauguration.

Library of Congress, LC-USZ62-85704

The Seditio Act (Primary Source)

The Seditio Act, proposed as an amendment to the Espionage Act, was enacted into law on May 16, 1918.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section three of title one of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June fifteenth, nineteen hundred and seventeen, be, and the same is hereby, amended so as to read as follows:

SECTION D. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever when the United States is at war, shall willfully cause or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and 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, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States into contempt, scorn, contumely, or disrepute, or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and who ever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both. . . .

Title XII of the said Act of June fifteenth, nineteen hundred and seventeen, be, and the same is hereby, amended by adding thereto the following section:

SECTION 4. When the United States is at war, the Post Master General may, upon evidence satisfactory to him that any person or concern is using the mails in violation of any of the provisions of this Act, instruct the postmaster at any post office at which mail is received addressed to such person or concern to return to the postmaster at the office at which they were originally mailed all letters or other matter so addressed, with the words Mail to this address undeliverable under Espionage Act plainly written or stamped upon the outside thereof, and all such letters or other matter so returned to such postmasters shall be by them returned to the senders thereof under such regulations as the Postmaster General may prescribe.



IT HAPPENS ABOUT LIKE THIS.

—Donahay in the *Cleveland Plain Dealer*.

IT HAPPENS ABOUT LIKE THIS

Doheny, *Literary Digest*, January 13, 1920
Originally appeared in the *Cleveland Plain Dealer*
Available: *Red Scare Image Database*

<<http://newman.baruch.cuny.edu/digital/redscare/HTMLCODE/CHRON/RS127.HTM>>

Schenck v. United States
(Primary Source)

The *Schenck* case tested the constitutionality of the 1917 Espionage Act. In the case the defendants argued that the act violated their First Amendment right of free speech. The defendants, using the mails to send circulars to men who were subject to be drafted into the armed forces, argued that the conscription act was unconstitutional and urged draftees to assert their rights and resist conscription. Justice Holmes delivered the opinion of a unanimous Court:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. 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. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in Section 4 punishes conspiracies to obstruct as well as actual obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime. . . .

Judgments affirmed

249 U.S. 47 [1919] as cited in Commanger, *Documents of American History*, #426

**Registration of Affidavit of Alien Enemy for
Henry Albert Schenk**
United States District Court, Phoenix Division
National Archives, NRHL-21-AZDC1-175
02/07/1918

Page One

UNITED STATES OF AMERICA
Department of Justice

REGISTRATION AFFIDAVIT OF ALIEN ENEMY

This registration affidavit must be filled in and sworn to in triplicate and accompanied by four recent photographs of the registrant, not larger than 2 by 3 in size, on this page will be kept on file. All four photographs should be placed by registrant across the face of this photograph so as not to obscure the face, the eyes or the nose. If registrant is unable to mark in the signature space and other blank spaces a plain ink impression of the face, the eyes or the nose, the signature space, etc., may be marked with the initials of the registrant, who will fill in the description and take the fingerprints of the registrant. All registration officers are authorized to administer this oath to persons registering as alien enemies.

I, Henry Albert Schenk hereby register as an alien enemy
(Print name of registrant)

at Flagstaff, Arizona and make the following statements
(City where affidavit is signed and state or territory)

and answers under oath:

Page Three

Sworn to before me this 7th day of February, 1918
 at Flagstaff, Arizona
James E. Jones
(Signature of official)
Notary
(Official title, judge or post office)

Left thumb print, if registrant can not write.

Henry Albert Schenk

DESCRIPTION OF REGISTRANT.
(To be filled in by registration officer.)

Age	<u>27</u> years.	Month	<u>October</u>	Season	<u>Autumn</u>
Height	<u>5</u> ft <u>10</u> in.	Color	<u>Regular</u>		
Weight	<u>165</u>	Hair	<u>Light Brown</u>		
Forehead	<u>High</u>	Complexion	<u>Fair</u>		
Eyes	<u>Gray</u>	Face	<u>Regular</u>		
Nose	<u>Regular</u>				
Distinctive marks					
Name	<u>Henry Albert Schenk</u>				
Address	<u>Flagstaff, Arizona</u>				

Anti-Government Leaflets

(Primary Source)

Jacob Abrams, Hyman Lachowsky, Samuel Lipman and Molly Steimer were charged under the Sedition Act with agitating against the United States Expeditionary Force sent to Vladivostok and Murmansk in 1918 following the Russian Revolution. On August 23, 1918 Abrams and the co-defendants in the case threw leaflets from a building in New York that attacked the President and United States policy. The leaflet in English stated:

The Hypocrisy of the United States and Her Allies

“Our” President Wilson, with his beautiful phraseology, has hypnotized the people of America to such an extent that they do not see his hypocrisy.

. . . You people of America were deceived by the wonderful speeches of the masked President Wilson. His shameful, cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington and vicinity.

The President was afraid to announce to the American people the intervention in Russia. He is too much of a coward to come out openly and say: “We capitalist nations cannot afford to have a proletarian republic in Russia.” Instead, he uttered beautiful phrases about Russia, which, as you see, he did not mean, and secretly, cowardly, sent troops to crush the Russian Revolution. Do you see how German militarism combined with allied capitalism to crush the Russian Revolution?

This is not new. The tyrants of the world fight each other until they see a common enemy – WORKING CLASS – ENLIGHTENMENT as soon as they find a common enemy, they combine to crush it.

In 1815 monarchic nations combined under the name of the “Holy Alliance” to crush the French Revolution. Now militarism and capitalism combined, though not openly, to crush the Russian Revolution.

What have you to say about it?

Will you allow the Russian Revolution to be crushed? You: Yes, we mean you the people of America!

THE RUSSIAN REVOLUTION CALLS TO THE WORKERS OF THE WORLD FOR HELP.

The Russian Revolution cries: WORKERS OF THE WORLD! AWAKE! RISE! PUT DOWN YOUR ENEMY AND MINE!

Yes friends, there is only one enemy of the workers of the world and that is CAPITALISM.

It is a crime, that workers of America, workers of Germany, workers of Japan, etc., to fight the Workers’ Republic of Russia.

AWAKE! AWAKE, YOU
WORKERS OF THE WORLD!
REVOLUTIONISTS

P.S. It is absurd to call us pro-German. We hate and despise German militarism more than do your hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House.

A second leaflet was in Yiddish.

WORKERS—WAKE UP.

The preparatory work for Russia's emancipation is brought to an end by his Majesty, Mr. Wilson, and the rest of the gang; dogs of all colors!

. . . Workers, Russian emigrants, you who had the least belief in the honesty of our government must now throw away all confidence, must spit in the face the false, hypocritic [sic.], military propaganda which has fooled you so relentlessly, calling forth your sympathy, your help, to the prosecution of the war. With the money which you have loaned or are going to loan them, they will make bullets not only for the Germans but also for the Workers Soviets of Russia. Workers in the ammunition factories, you are producing bullets, bayonets, can non, to murder not only the Germans, but also your dearest, best, who are in Russia and are fighting for freedom.

You who emigrated from Russia, you who are friends of Russia, will you carry on your conscience in cold blood . . . as a helper to choke the Workers Soviets. . . . Will you be calm spectators to the fleecing blood from the hearts of the best sons of Russia?

. . . Workers, our reply to the barbaric intervention has to be a general strike! An open challenge only will let the government know that not only the Russian Worker fights for freedom, but also here in America lives the spirit of revolution.

Do not let the government scare you with wild punishment in prisons, hanging and shooting. We must not and will not betray the splendid fighters of Russia. Workers, up to fight.

Three hundred years had the Romanoff dynasty taught us how to fight. let all rulers remember this, from the smallest to the biggest despot, that the hand of the revolution will not shiver in a fight.

Woe unto those who will be in the way of progress. Let solidarity live!

—THE REBELS.

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Abrams v. United States

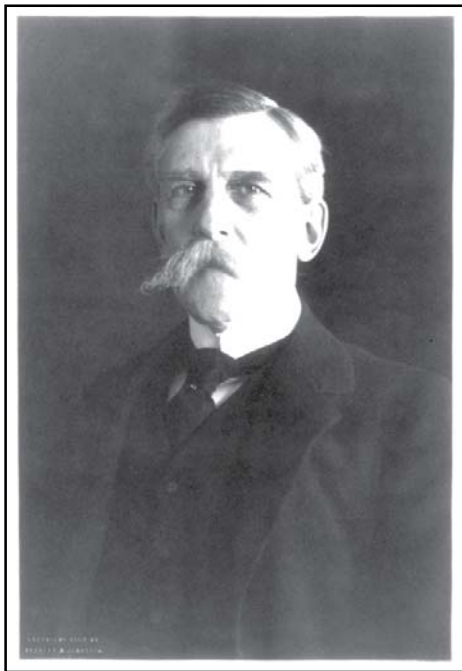
(Primary Source)

Jacob Abrams and his co-defendants had been convicted under Sedition Act of 1918. The Supreme Court heard the case on appeal in 1919 and in a seven to two decision ruled against the defendants. Justice John H. Clarke wrote the majority opinion:

“ . . . It will not do to say . . . that the only intent of these defendants was to prevent injury to the Russian cause. Men must be held to have intended, and to be accountable for, the effects which their acts were likely to produce. Even if their primary purpose and intent was to aid the cause of the Russian Revolution, the plan of action which they adopted necessarily involved, before it could be realized, defeat of the war program of the United States, for the obvious effect of this appeal, if it should become effective, as they hoped it might, would be to persuade persons . . . not to aid government loans and not to work in ammunition factories. . . .

[250 U.S. at 621 as cited in Chafee, *Free Speech in the United States*, p. 129.]

Justice Holmes wrote the dissent with the concurrence of Justice Brandeis:



Oliver Wendell Holmes
Library of Congress
LC-USZ62-58677
1902

“ . . . In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litmus paper; I will add, even if what I think the necessary intent were show; the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed that they avow – a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right even to consider in dealing with the charges before the Court.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or you power and want a certain result with all you heart you naturally express your wishes in law and sweep

away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States though many years has shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, 'Congress shall make no law . . . abridging the freedom of speech.' Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

Mr. Justice Brandeis concurs with the foregoing opinion.

250 U.S. 616 [1919] as cited in Henry Steele Commager, ed. *Documents of American History 10th ed.* (Englewood Cliffs, NJ: Prentice Hall, 1988), 427.

Gitlow v. People of New York

Benjamin Gitlow was convicted in 1920 of violating New York's Criminal Anarchy Act and sentenced from five to ten years at hard labor. The Criminal Anarchy Act had been passed in 1902 as a result of the assassination of President McKinley and revived during the "Red Scare." The New York court held that communism was not "a condition which could be fairly regarded as an organized government" and therefore justified using the anarchy statute in charging Gitlow. The Supreme Court heard the case on the basis of the constitutionality of the New York Criminal Anarchy Act under the Fourteenth Amendment's due process clause.

Justice Edward Terry Sanford wrote for the majority:



Benjamin Gitlow
Library of Congress
LC-USZ62-83357, n.d.

" . . . It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. . . .

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. . . .

And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitu-

tional State. Freedom of speech and press, said [Justice] Story does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties. . . . It does not protect publications prompting the overthrow of government by force; the punishment of those who publish articles which tend to destroy organized society being essential to the security of freedom and the stability of the State. . . . And a State may penalize utterances which openly advocate the overthrow of the representative and constitutional form of

government of the United States and the several States, by violence or other unlawful means. . . . In short this freedom does not deprive a State of the primary and essential right of self preservation; which, so long as human governments endure, they cannot be denied. . . .

That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen., The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency. . . .

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of th State unwarrantably infringing the freedom of speech or press; and we must and so sustain its constitutionality. . . .

268 U.S. 652 [1925] as cited in Stanley I. Kutler, *The Supreme Court and the Constitution: Readings in American Constitutional History, 3rd Edition* (New York, W.W. Norton & Co., 1969), 331–3.

Justice Holmes Wrote in Dissent:

“ . . . It is said that his manifesto [Gitlow's statement] was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance or starting a present conflagration.”

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