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The Abuse of Civil Liberties in World War I

Abstract: Wartime pressures to protect national military and security interests inevitably create threats to civil liberties. This essay reviews the abuses of the period, carried on by public officials as well as citizens who saw themselves as acting on their behalf. There was a remarkable range of targets—with few spies to find, broadly defined disloyalty sufficed. The attempt to create a unified, loyal culture extended to wide areas of the culture, such as the teaching of history, aided by volunteers. The public and private efforts brought ruined reputations, imprisonments, public shaming, murders, and awful behavior on the part of courts and citizens. These were bad times for civil liberties. This essay reviews the history and explores the legacies.

Keywords: civil liberties, spies, subversives, saboteurs, immigration, Progressive reform, Woodrow Wilson, Espionage Act

Wartime pressures to protect national military and security interests inevitably create threats to civil liberties. Governments have a legitimate interest in guarding information about military strategy, movement, and technology. Since the Revolution, the United States has engaged in counterespionage, alongside a corresponding effort to limit the flow of information and the freedom of citizens to speak, publish, and move to protect the whole population from greater harms. The civil liberties trade-offs involved in removing actual spies or subversives and saboteurs and preventing the publication of troop movements would be acceptable in an emergency situation. But the temptation to overreach—to define subversives broadly and to see any negative information about the fate of American troops as subversion—is a constant.¹

During and after World War I, the reins on that temptation were light. The political atmosphere encouraged excess. Suspicion of immigrants and

support for immigration restriction was building. Germany had been roundly demonized by its own actions and British propaganda. The moralism of Progressive reform encouraged stark good versus evil thought, and reforms in the period had enlarged the power of government at all levels. Violent labor unrest rattled American industry, and socialists and others on the Left pressed against the boundaries of Progressivism. They were among the large number of Americans whose loyalty might be questioned. Many Americans were grateful to have not been dragged into the war and voted for that as recently as 1916. Those of Irish or German ancestry were not necessarily keen to fight against Germany or on the side of the British. Add in a Progressive president willing to make America's entry into a moral crusade and an explosion was almost predetermined.

Just as the war itself was a deadly mismatch between classic military tactics and lethal new technology, a gap between ambitions to ensure loyalty and the administrative capability to realize them made a bad situation worse. The United States had developed the rudiments of an administrative state in the Progressive era, but it lacked the reach to locate and punish dissent that loud sectors of public, Congress, and the Justice Department demanded. That meant that the capability existed to punish offenders under new laws that criminalized speech, but finding all of those who were not completely on board was beyond the manpower of the Justice Department. Relying on self-organized citizens to do this work not only made it possible to bypass rules of evidence but also opened up the possibility of using the law to satisfy personal grudges and all sorts of unrelated grievances. Meanwhile, the federal government had experience in monitoring the mail and refusing service to offending publications. It was also poised to take advantage of the resources of the new advertising and publicity industries.

As the armistice ended the threat of German subversion, the target morphed to agents of the new Soviet Union—the Red Scare of the late 1910s and early 1920s. That as much as wartime repression of speech cemented the reputation of this period as uniquely repressive. This essay reviews the abuses of the period, carried on by public officials as well as citizens who saw themselves as acting on their behalf. There was a remarkable range of targets—with few spies to find, broadly defined disloyalty sufficed. The attempt to create a unified, loyal culture extended to wide areas of the culture, such as film and the teaching of suitably anti-German history. The public and private efforts brought ruined reputations, imprisonments, public shaming, murders, and awful behavior on the part of courts and citizens. These were bad times for civil liberties, and the legacies remain with us.

Although the United States maintained neutrality in the war engulfing Europe, President Woodrow Wilson worried about threats to the nation from Germany and the loyalty of American citizens, especially the foreign born. As a prelude to Wilson's Third Annual Message in December of 1915, the administration released a report detailing the existence of a \$27,000,000 fund to support German interests in the United States. The largest portion went to support of a counterrevolution in Mexico, where the United States had been engaged in a military misadventure. The rest went to such items as sea raiders, detective work, lecturers, and foreign language publications. This capped months of news about German espionage operations targeting bridges, transportation networks, and munitions production, efforts that involved both destruction and fomenting labor unrest. In addition, Secretary of State Robert Lansing announced that the United States would expel German military and naval attaches who had been implicated in an espionage network.²

Wilson's address laid out the administration's proposal for rearmament, a plan in the works since the sinking of the *Lusitania* in May. While congressmen listened in silence to those ideas, there was a "wave of enthusiasm," according to a *New York Times* report, when Wilson claimed that "the gravest threats against our national peace and safety" came not from Germany but from Americans who were "welcomed by our generous naturalization laws" who now "have poured the poison of disloyalty into the very arteries of our national life." A bipartisan "great round of handclapping" greeted Wilson's urging that "such creatures of passion, disloyalty, and anarchy must be crushed out."³

Despite the enthusiasm, Congress did not rush to pass the security measures that the administration deemed necessary to combat the threats. Attorney General Thomas Gregory believed that "new conditions of warfare by propaganda" required curbs on speech as well as provisions to go after saboteurs. His proposal did not move from committee to a vote in 1916; in February 1917, a bill passed the Senate, but the House adjourned before a vote. Despite fresh evidence of sabotage, most notably the explosion at the Black Tom munitions depot in the New York Harbor, Congress did not seem to share Gregory's or Wilson's sense of urgency.⁴

That changed with Wilson's speech asking Congress to declare war and the quick passage of a joint resolution in April, 1917. Not waiting for Congress to act, Wilson moved quickly on executive orders to protect against internal threats and to encourage unity of purpose. One enabled the attorney general to register enemy aliens and arrest or imprison those found to be dangerous under the Proclamation regarding Enemy Aliens. Another

empowered department heads to remove government employees deemed to be disloyal. A third enabled censorship of telegraph messages sent outside of the country. Finally, the Committee on Public Information, under progressive journalist George Creel, had capacious responsibilities. It would be effective at whipping up enthusiasm for the war and hatred of the Hun using the best practices in multimedia advertising. Information—or propaganda—was its portfolio, but it would also have a hand in censorship, in publishing, entertainment, and education.

Although Wilson signed the executive orders in April, Congress debated the same security bill proposed in 1916. The sticking point was the administration's demand for press censorship: publishing an item that the president found to be potentially useful to the enemy could result in a 10-year jail term and a hefty fine. That provision naturally mobilized the powerful newspaper and publication industries, and it did not make it through the House vote. Proposals to bypass the civilian legal system and instead deal with violations in military tribunals also failed. But the bill that passed, the Espionage Act gave plenty of censorship tools to the Justice Department. One provision punished those who "willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces ... or to promote the success of its enemies ... or shall willfully case insubordination, disloyalty, mutiny, or refusal of duty" of the military or obstructed recruitment. This was language vague enough to empower prosecutors to define "promoting the success of the enemy" captiously. The Postmaster General received sweeping power to deny use of the mails to publications that counseled "forcible resistance to any law of the United States." The Trading-with-the-Enemy Act extended the Postmaster General's powers by requiring foreign-language newspapers to submit translations of material concerning the war—a financial burden beyond the means of many German-language publications—for clearance. An executive order creating the Board of Censorship filled remaining gaps by allowing the search of mail leaving the country.⁵

The Justice Department convicted no actual spies or saboteurs on Espionage Act violations. It did sweep up Socialists, radicals of various stripes, unlucky Germans, pacifists, and members and associates of the Industrial Workers of the World (IWW). But that catch was not enough for Congress. The Sedition Act of May, 1918, swept up even casual utterances of an astonishing variety. They included doing or saying anything that might disrupt bond sales; speaking or writing anything scornful of the government, the military, or the flag; taking any action that might be construed as

resistance to the United States or as aid to the enemy; or behavior or speech that opposed the interests of the United States or supported the enemy. Gregory argued that some district courts construed the Espionage Act too narrowly, which in turn “angered communities ... resulting sometimes in unfortunate violence and lawlessness and everywhere with the inadequacy of the Federal law.” Perhaps he had in mind the incidents of tarring and feathering, lynching, and kidnapping, which was the fate of a group of miners, many of them IWW members, who were taken from their homes, abused, and abandoned in the desert outside of Bisbee, Arizona. Cheerfully reported in local newspapers, the perpetrators went free. “Doubtless some governmental action was required to protect pacifists and extreme radicals from mob violence,” law professor Zechariah Chafee, Jr. noted drolly, “but incarceration for a period of twenty years seems a very queer kind of protection.”⁶

The nebulous descriptions of forbidden conduct made the Sedition and Espionage Acts especially dangerous to civil liberties. They resulted in some 2,000 prosecutions. The most famous of these was the arrest of Eugene Debs, the Socialist candidate for the presidency, most recently in 1912 (in 1920 he ran again from prison, the last of his four tries). A speech he gave in Canton, Ohio, in June of 1918 carefully avoided the draft and potential Espionage Act triggers. But he received a ten-year prison sentence for his persistent criticism of the Wilson administration, American intervention in a war that, he argued, enriched capitalists, and praise for fellow Socialists who stood by their principles and landed in jail. The Bureau of Investigation, the forerunner of the FBI, and the Military Intelligence Division, meanwhile, hounded the National Civil Liberties Bureau because of its defense of the IWW and other dissident groups.⁷

With a body of law in hand that gave government significant power to remove “obscene” materials from the mail and curb the rights of labor radicals and anarchists, the Supreme Court heard challenges to the government’s power to limit speech. In a series of cases decided in 1919, after the war was over, the Court found the Espionage Act did not violate the First Amendment under emergency conditions. Justice Oliver Wendell Holmes enunciated a rough test of the ability of the government to restrict speech in the first case, *Schenck v. the United States*. If there was a good test case for the government, this was it: Charles Schenck, acting for the executive committee of the Philadelphia Socialist Party, printed and distributed flyers urging men eligible for conscription to refuse to submit to involuntary servitude prohibited by the Thirteenth Amendment. Finding Schenck guilty did not require a creative

reading of the Espionage Act. In a unanimous verdict, the Court upheld the conviction. Holmes's delineation of the boundaries of freedom of speech shaped subsequent decisions. The "clear and present danger" test echoed the existing "bad-tendency" doctrine that held that directly causing illegal action was not necessary for speech to be dangerous. The clarity and immediateness were even less obvious in *Debs*, given his care in not urging listeners to disobey the law. Still, Holmes and the Court found nothing novel in his case to reverse the conviction. The potential of words to persuade—not action that followed speech—was enough to convict in the view of the Court.⁸

Federal agencies were part of an expanded bureaucracy, supplemented by private group, which implemented the new American security program. On both the military and domestic side, considerable bureaucratic infighting over which agency would take the lead—Treasury, State, Justice, or branch-specific military intelligence—meant that efforts to centralize data collection and investigation failed. For the purposes of civil liberties the Bureau of Investigation (BOI), the Postmaster General, and the Committee on Public Information (CPI) were the most significant. Housed in the Justice Department, the BOI was a Progressive-Era bureaucratic success story. Its prosecution of Mann Act violations in the midst of the "white slavery" scare—its willingness to track down what were basically cases of runaway girls as potential cases of women trafficked across state lines—gave it a boost in manpower and public visibility. The CPI, headed by George Creel, a progressive journalist and early Wilson loyalist, organized the massive publicity for the war and war bonds, sending out speakers and producing the iconic posters depicting the evil Hun, Uncle Sam, the patriotism of saving food and fuel, and the necessity of service. Even as Creel touted the CPI as being in the persuasion rather than suppression business, it had a central role in censorship, approving (or not) film, books, magazines, and educational materials. The mechanism for censorship resided with Postmaster General Albert Sidney Burleson, a former congressman and supporter of William Jennings Bryan. Part of the cluster of Southerners in Wilson's cabinet who worked to resegregate the civil service, he also approached his censorship responsibilities with enthusiasm. Because the postal service reached into all corners of the nation and small newspapers and magazines required access to the mails, it was a choke point for communication. His zeal exceeded Wilson's and Creel's at times, but not by enough to force the administration to do more than lightly tap the brakes.⁹

Like other industries in wartime, the surveillance business faced a manpower shortage as it ramped up work. Agencies went on a hiring spree but also counted on eager volunteers to help. Historians who had criticized

German academics for losing scholarly detachment to become cheerleaders for the state turned around to do the same when the United States intervened. Most were good progressives and sought to serve, just as they had in many reform causes. J. Franklin Jameson, managing editor of the *American Historical Review*, assembled a group of seventeen historians committed to finding a way to help the government in wartime. The National Board for Historical Service and volunteer scholars offered research services to the CPI and lent a hand in the implementation of the Espionage Act by translating potentially subversive foreign-language documents. Although the American Historical Association, as a professional organization, did not take a position on the war, its leadership steered both the journal and another publication, *History Teachers Magazine*, toward articles useful to the government's position. The *American Historical Review* sought out articles on the special relationship between Great Britain and the United States, whereas the magazine targeting teachers provided patriotic materials for classroom use. The National Board for Historical Service produced a series of pamphlets for the CPI, more accurately characterized as propaganda than scholarship. It also sponsored survey text on the origins of the war based on documents provided by the government. Meanwhile, scholars who had worked in German history, even the history of the distant past, found their works scrutinized for suspiciously insufficient criticism of Germany—lacking the clairvoyance to anticipate that Germany would be the enemy years before the war. In one case, a book was cancelled by a publisher, with the connivance, the author believed, of an author of a competing text.¹⁰

He still had a job, unlike others whose violations, as slight as deficient patriotism or hatred of Germany, meant dismissals. Boards of trustees at large public and private universities sacked at least twenty professors, who sometimes never learned the details of the charges. Others left before an inevitable dismissal. The atmosphere made for hard times for who studied the wrong topics—German history, language, or literature for example—or once held now-forbidden views. Personal popularity among colleagues saved some professors' jobs, but those who had not ingratiated themselves received no support. It was safest to get on board. Even the progressive stars of the academic world, such as Charles Beard and John Dewey, backed the war once the United States entered. Beard wished to "help eliminate Prussianism from the earth." Dewey hoped the war would be a progressive project, leading to a better peacetime world in which the spirit of service would replace private interests with the public good.¹¹

The destruction of the professors' reputations and careers, often with the cooperation of colleagues and with little more evidence than accusations from unnamed sources, did not set them apart from the rest of the population, nor did voluntarily pitching in. Civilians rolled bandages, knitted socks, volunteered at canteens for servicemen, supported the Red Cross, bought war bonds, and gave patriotic speeches. Hundreds of thousands of Americans joined patriotic societies, but the public service was not what Dewey had in mind: scores of local groups on watch for evidence of disloyalty, sabotage, and slacking in both military service and the voluntary food and fuel saving campaigns promoted by the government. Although such work did not uncover spies, it did enforce conformity and created fear. A "slacker," identified as an Austrian, "stood in the way of a 100 per cent contribution to the second Red Cross war fund" at a steel plant in Pittsburgh. A "delegation," unidentified in the story, "took him by the heels and soused his head in barrel of red paint; then turned him around and put him in feet first." He was docked a day's pay to cover his contribution and lost his job. Only 80% of the eligible residents of Greene County, Tennessee, had contributed to the War Savings Stamps drive. The names of those in arrears or who had contributed "an inadequate amount" would be turned into the state director of the drive "for investigation." Those who had no good reason to avoid their voluntary duty could not be arrested because they had broken no law. But they could be shamed. Their names would be published in the county newspaper and also sent to every soldier from the county. Whether public shaming would go further than that embarrassment was a risk the 20% had to weigh in deciding whether to pay up.¹²

Of all the groups guarding the nation against subversion and disunity, from the Boy Spies to the Nathan Hale Volunteers, the largest and most infamous was the American Protective League (APL). Numbering 250,000 members at its peak, the APL, by its own account of its origins and impact, first emerged in Chicago a few months before the United States intervened, providing additional cars for the use of the BOI. Claiming auxiliary status to the Justice Department, it also boasted of its connections to the War, Navy, State and Treasury departments, and the Fuel and Food Administration. Highlighting their badges and claim to next-to-law-enforcement status, the APL ran full-page advertisements in newspapers across the country inviting all patriots to join in the adventure of spy, subversive, and slacker chasing. "No other one cause contributed so much to the oppression of innocent men as the systemic and indiscriminate agitation against what was claimed to be

an all-pervasive system of German espionage,” concluded an assistant to the attorney general.¹³

Hundreds of thousands of tips, as many as 3,000 a day, poured into the BOI. The APL generated many of them; other groups and individuals added to the pile. The vast majority brought annoyance and embarrassment to the target. The APL investigated a rumor that a Berkley, California, family was hoarding food. They visited the house and toured the basement to discover “25 or 30 cases of foodstuffs.” The investigators were satisfied with the family’s explanation that the seven-person household bought their cases of soda biscuits and canned goods at wholesale once a year. The receipts checked out, and without an excess amount of wheat flour found, they were left alone, perhaps to wonder which of their neighbors was the snitch. Herman Schurer, Jr., a Meriden, Connecticut, policeman, could boast of a history of patriotic Americanism—nagging people to buy their war stamps, even stopping cars to remind drivers and forcing an Italian American who criticized his new nation to kneel on the ground and kiss a flag. But a group of men who had previous run-ins with him and the local police claimed that he had made comments criticizing the president, Congress, and the war effort. When his case eventually went to trial, he was found not guilty of violating the Sedition Act. Still, the accusers extracted their revenge on Schurer, who lost his job and returned to the community more damaged than vindicated.¹⁴

Schurer benefitted from a judge who carefully instructed the jury about the presumptions of innocence, which perhaps allowed its members to think about the accusers’ motives rather than the policeman’s surname. Others were not so lucky. Three elderly men in Kentucky were dealt a bad hand. The local Citizens Patriotic League was suspicious of the German community in Covington and surreptitiously planted a dictograph machine at the men’s cobbler shop. For months detectives listened in, hoping to overhear sedition. What turned out to be close enough were private conversations between three men remarking about such things as how the war was about money, not principle, Germany’s skillful generals, and how the American troops would be slow to arrive in France. They also sang in German. The men were convicted and sentenced to terms of five to ten years.¹⁵

With the Espionage and Sedition Acts on the books and a substantial portion of the citizenry ready to act on the vaguest threat to nation, it was best to censor one’s speech. Men were imprisoned for using profanity in arguments and for letting it slip that that Wilson was an ass (in 1916 Wilson won with 49.25% of the vote, so a good number of people probably had such thoughts). Others met the same fate for showing a pamphlet to people who were not

eligible for military service that Christ's teachings forbade fighting and for saying unpatriotic things at the dinner table in front of family and guests. Even a patriotic gesture could go sideways. Robert Goldstein, a colleague of D.W. Griffith, finished a film, *The Spirit of '76*, before the United States entered the war. It was a kind of prequel to *The Birth of a Nation* that told the story of American independence from Patrick Henry through the defeat of Great Britain. But suddenly it was hard to acknowledge that the United States and England had not always been allies. A particular problem was a depiction of the Wyoming Massacre, the Patriot defeat in Pennsylvania's Wyoming Valley in 1778. The film portrayed the British as brutal killers of civilians and rapists, which was the contemporary historical interpretation. Cutting offending scenes was not enough. The film was seized; Goldstein's business was bankrupted; he was convicted under the Espionage Act for criticisms that might cause Americans to reconsider the Anglo-American alliance. He was sentenced to ten years in a federal prison.¹⁶

People were willing to believe wild rumors about German influence in the United States, especially when it fit their prior convictions or current grudges. Rumors spread throughout the South that German agents were inciting insubordination among Blacks who otherwise were entirely content with their lives as cheated, underpaid, and abused sharecroppers and tenant farmers. No evidence ever emerged of German agents trying to convince Blacks that their lot was bad and better opportunities might be found in the North. There was no evidence that a fondness for Germany accounted for critical views of race in America on the part of some radicals and pacifist ministers. Still, planters and businessmen demanded investigations—even of Blacks who served in the military. They, after all, might spread the idea that all was not well in the South. Even the richest man in the nation could fall under suspicion. Henry Ford had made promises about providing engines and ships faster than any other company. When nothing rolled off the lines, the suspicion developed that he or the engineers in charge, with troubling German surnames, were deliberately hampering the war effort. That merited a special investigation headed by Charles Evans Hughes, the former Supreme Court justice and 1916 Republican presidential candidate.¹⁷

The hostility toward the IWW went beyond even that of Americans of German ancestry. Germans had been second only to the Irish among immigrant groups to the United States through the nineteenth century, so the population was large and dispersed. In contrast, the IWW was small and concentrated in Western mining, lumber, and shipbuilding towns. It did, however, have romance attached to it in portions of the American left, which

admired charismatic figures like Big Bill Hayward and saw it as a purer alternative to the stodgy American Federation of Labor, tied to both the war and Democratic Party. The industries that Wobblies tried to organize were important to war production, and their unwillingness to follow the AFL in a no-strike pledge made its existence infuriating to both much of the Wilson administration and the owners of firms Wobblies tried to organize. The mob action in Bisbee, Arizona, directed against Wobblies, was one explanation for why the amendments summarized as the Sedition Act were necessary: without a tougher law, citizens taking the law into their own hands might spiral out of control. The BOI ran with the law as a way to break the organization. More than 100 Wobblies spent the war (and some years after) in jail on Espionage and Sedition Law violations that mostly had to do with charges of sabotage, organizing efforts, and opposition to the war as a benefit to capitalists. Given their anarchist tendencies and hostility toward state institutions, they often opposed efforts by civil liberties lawyers to free them.¹⁸

The focus on the IWW arose out of the Wilson administration's hostility toward the renegade organization, using both the Army and the Justice Department to destroy the organization. But the prosecutions of its members and prosecutions more generally also owed to the traditional decentralized structure of the Justice Department. It never asserted central control, and district attorneys had a good deal of latitude in bringing cases. Despite the presence of a large military base from which troops left for France, a sizable (and potentially disloyal) Irish and German population, and no doubt with antiwar barroom chatter, Massachusetts brought no cases. Thirteen of the eighty-seven federal districts generated nearly half of the cases—1,046 out of the 2,168. Two of those districts, the Southern District of New York (New York City) and the Northern District of Illinois (Chicago) might be expected to have brought a good number of cases because of the size of their populations. But most of the rest were relatively small—Arizona, Western Texas, Western Washington, Western Wisconsin, and North Dakota, for example. Prosecutors, out to draw clear lines around what constituted Americanism and often responding to local political pressures, successfully prosecuted Wobblies for obstructing the war effort.¹⁹

As opponents of intervention, socialists and pacifists drew the attention of prosecutors. In addition to Debs, popular speakers including Emma Goldman and Kate Richards O'Hare got jail time for speeches, the latter for making the mistake of delivering a speech in North Dakota. The same speech had passed muster in other jurisdictions, but there it merited a five-year sentence. Twenty-seven South Dakota farmers were not pacifists, but they worked up

petitions complaining that their district had an unfairly high draft quota, suggesting that there ought to be a referendum on the war. Although the right to petition would seem to be solidly constitutional, they were sentenced to one year in prison. Judges sometimes stepped in to stop prosecutorial overreach. One dismissed a case forwarded by a federal attorney in Missouri, who thought saying “To hell with Wilson; I am a Republican,” deserved jail time.²⁰

Had that case gone to a jury, the man’s fate would have been up to whether the man was unpopular, the bravery of the judge, the extent to which the area was gripped in fear, and the composition of the jury pool. The trial of ten men for the murder of Robert Prager illustrates the point. Prager, born in Germany, came to the United States in 1905 as a seventeen-year-old. Working as a baker in stops around the Midwest, his attachment to the United States blossomed after Wilson’s war speech. He applied for citizenship and was rejected in his attempt to join the navy because he was blind in one eye. Hearing that mining paid better than baking, he moved to Collinsville, Illinois, and applied to join the United Mine Workers local union. Rejected—because he was suspected of being pro-German, a Socialist, or just a difficult person is hard to say—Prager continued to press his case. Warned to leave town, he became the target of a drunken mob. Local officials failed in their effort to hide him away from the mob. He was hung after performing rituals that were part of similar actions—forcing Prager to kiss a flag and sing patriotic songs. The indicted men felt confident enough to make incriminating statements to newspaper reporters, which they recanted at trial. The jury, especially those of German ancestry, was under intense pressure to acquit, lest they too became the target of a mob chasing down the unpatriotic. “I guess nobody can say we aren’t loyal now,” said one after acquitting the men after a ten-minute deliberation.²¹

Violence and abuse directed against members of unpopular groups began to generate enough bad publicity that federal officials pushed back. George Creel launched a campaign warning that the mob action hurt the image of the United States as a force for democracy in the world. Attorney General Gregory warned volunteer sedition agents to leave the work to professionals unless specifically directed to take action. Hoping to both give the APL something useful to do and to address concerns about too many young men avoiding conscription, the Justice Department directed the APL to take part in “slacker raids.” These were surprise roundups of young men at public venues such as theaters, train and bus stations, bars, boardinghouses, baseball stadiums, and hotels, after which they would be taken to detention centers where their draft status would be checked. The APL, whose members had already participated in the business of turning in deserters at \$50 per head, had raids in the works

even before the go ahead from the Justice Department. Beginning in Minneapolis in March 1918, agents detained tens of thousands of men, some for extended periods while authorities tracked down missing paperwork. The return on investment was slight. Some 10,000 officials questioned more than 150,000 men in the Chicago raid, which produced 20,000 men detained, 1,200 of whom were sent to the army for further investigations. Nearly all of them were released. That dismal result did not discourage a larger raid in New York in September. It began with closing off entrances and exits of all transportation stops and moved from there to closing off entire city blocks. The three-day dragnet produced 199 draft dodgers and eight deserters, along with criticism even from pro-Wilson *New York World* of “this ravishing of the very spirit of American institutions.”²²

The reaction against the slacker raids helped push the APL out of the semiofficial law enforcement business. Their absence removed one layer of enforcement, but the Espionage and Sedition Acts still discouraged the prudent from making the sort of critical remarks that had been normal banter in stores, bars, and among neighbors before the war. The same restraint held for the press. With the Postmaster General’s power to bankrupt publications as well as the threat of jail and fines for writers and editors found guilty of Sedition Act violations, the federal government was in the business of censorship. Like citizens in ordinary life, much of the press engaged in self-censorship.

The foreign-language press, subject to special restrictions that required material dealing with the war to be translated for preclearance, was the easiest censorship target. Some newspapers suspended operation during the war, unable to afford or unwilling to work with the restrictions. The *New-Yorker Staats-Zeitung* simply avoided potentially dangerous material, “gradually converting this paper into a ‘colorless neutral organ,’” according to a BOI official. The BOI encouraged some foreign-language newspapers to continue publication because they were potentially effective conduits for pro-American material. The BOI replaced the editors of another, which had been run by men of questionable loyalty. The editors and staff of the *Philadelphia Tageblatt* did not get off as easily. Five were charged with treason. Although those charges failed, violations of the Espionage Act stuck, with three of the men convicted to five years in prison.²³

Printed material leaving the United States—even the *Saturday Evening Post*—caught the eye of censors who found material that might be discouraging to America’s allies. The solution in those cases was the removal of the offending article, with the rest of the magazine going on its way. Radical

publications, even circulating within the United States, faced greater scrutiny and punishment. *The Masses*, a New York-centric magazine popular among labor and lifestyle radicals, had flirted with censors in the past for articles on free love and birth control that, as intended, offended and shocked the bourgeoisie. The August 1917 issue contained a cartoon, a poem, and articles that attacked the war. The Postmaster General determined that the entire issue should be barred from the mails, despite President Wilson's mild disapproval of the action. The publishers went before Judge Learned Hand, asking for a restraining order. Hand complied, advancing what seemed to him to be a sensible test that balanced security and free speech. The offending items did not urge others to break the law and therefore were allowable. His test did not stand on appeal. Instead, anything, no matter how remote, that might impede recruiting violated the law. Meanwhile Postmaster Burleson found that the entire issue, not just the items at trial, was banned from the mails. Reaching back to a nineteenth-century law, he also determined that when a magazine skipped an issue, it no longer qualified as a regular periodical. Therefore it would not qualify for second-class postage. Without that, the magazine folded.²⁴

Burleson's decision sat poorly with liberals. The well-connected, including Max Eastman, whose intervention failed to save *The Masses*, and Oscar Garrison Villard of *The Nation* protested Burleson's aggressive threats to free speech and debate. Prudence dictated that even mainstream magazines—*The New Republic* and *The Nation*—ought to avoid running advertisements raising funds for the defense of jailed Wobblies. *The Nation* stayed within the law in asking, "Why is Roosevelt Unjailed?" The article placed lines from a recent Theodore Roosevelt speech in contrast to a series of obscure people whose statements, often milder than the ex-president's, brought charges under the Sedition Act. The point was how the law worked against "the insignificant, the weak, and those unable to defend themselves."²⁵

That may have been so. Certainly indicting an ex-president—thus potentially jailing two of Wilson's opponents in the 1912 election—would have been a sensation. But Roosevelt, who had nothing but scorn for un-American Socialists and Wobblies, was also a persistent critic of what he saw as the equally un-American curbs on free speech and the press. The Wilson administration, Roosevelt observed "has used the very great powers of the government to stifle honest criticism," which made it "a matter of some danger for any man and especially any newspaper to speak the truth if that truth be unpleasant to the governmental authorities in Washington." He carried on a running battle with Burleson, claiming that the post office department barred

an issue of the *Metropolitan Magazine* because of two articles critical of Wilson but not the war and also threatened *Collier's* and the *New York Tribune*. Meanwhile, the pro-Wilson newspapers owned by William Randolph Hearst got a pass, despite statements criticizing the Allies that often passed for sedition in other venues. Bursleson claimed that his office received more complaints about Roosevelt's seditious criticisms of Wilson than about Hearst's newspapers. There was obvious partisanship in Roosevelt's defense of press freedom, but it was a useful reminder about the suppression of the press from someone whose patriotism was unquestioned.²⁶

With the Armistice having put an end to the fighting and President Wilson preparing for peace negotiations in December 1918, Gilbert Roe asked why the Espionage Act designed to protect a nation at war was still the law of the land. Roe knew the First Amendment law and politics: his first job after law school was in future senator and war critic Robert LaFollette's firm. He consulted on *Debs* and other cases as part of his work for the Free Speech League. Even in the Civil War, curbs on civil liberties, Roe argued, were carried out by the military and ended with the surrender of the Confederacy. As there was no evident effort to repeal the law, the answer seemed clear. "Who, when exercising arbitrary power, ever proposes to repeal the law which silences criticism of the manner in which such power is exercised?" he asked. Only public demand for repeal and for the pardons of those convicted of violating had a chance of being effective in restoring liberty.²⁷

Instead of a retreat from wartime restrictions, the campaign against slackers, spies, and the Hun turned quickly to a campaign against Bolsheviks. The Red Scare of 1919 and the early 1920s had its roots in the hostility of Wilsonians toward the communist left and a nation on edge over race riots and a wave of strikes, some of which turned violent. A series of coordinated bombings, one targeting the home of the new attorney general, A. Mitchell Palmer, as well as a foiled plot targeting industrialists and public figures, brought a crackdown on socialists, anarchists, and communists. The Justice Department rounded up radicals and anarchists, deporting a group to the Soviet Union. The "Palmer Raids" that followed—a poorly planned and executed effort to locate and prosecute other suspected radicals—more resembled the slacker raids than a competent law enforcement operation. Reaction against the violation of civil liberties destroyed Palmer's political ambitions—an irony in that he began his job by releasing a good number of prisoners jailed on Espionage and Sedition Act charges and cut any remaining ties with the APL.²⁸

If the war had ended with the retirement of the Sedition Act and people quietly going home, perhaps the repressive history of the war would not have been so infamous. But the Red Scare made certain that this history would not, unlike the Spanish Flu pandemic, be forgotten. In accounting for what amounted to an attack on radicals and immigrants coming from Democratic progressives, one line of scholarship blamed Wilson's cabinet, especially Burleson and Gregory. But only the most extreme Wilson defender can leave him off the hook: Wilson may have murmured misgivings about Burleson's enthusiasm for censorship, but at the very least it was not important enough to him to stop it. On the whole this line of analysis finds something valuable in the American tradition of civil liberties, even when wartime conditions demand some restrictions. Another interpretative strand finds little progressive about progressivism. Rather, the World War I crackdown on real or imagined radicals was simply an extension of a violent, antiradical, and racist history of which reform was a part. For scholars in the 1960s and 1970s, progressives defended capitalism against threats as staunchly as did conservatives. Targeting socialists and the IWW merely continued the late-nineteenth-century use of state power against labor. In the most recent example of this continuity argument, World War I excesses built on a long history of racist and xenophobic violence, in this case borrowing techniques of intimidation and torture used in the American war in the Philippines.²⁹

Whatever the sources of the Wilson administration's enthusiasm for denying civil liberties, the legacies are substantial. Three stand out. First, the prosecution of Espionage and Sedition Act cases created a new body of focused on First Amendment law. The foundational cases—*The Masses*, *Schenck*, and *Debs*—turned in part on the potential bad effects, however remote, that a speaker intended. In his dissent in *Abrams v. United States* (1919), Justice Holmes drew on the work of civil libertarians like Zechariah Chafee, Jr. and flipped the “clear and present danger” language he had used in *Schneck*. Instead of permitting government prosecution, it limited power to prosecute speech to situations where harm was imminent so as to protect a “marketplace of ideas.” Although Holmes and Justice Louis Brandeis, who came at the case from a slightly different angle, were on the losing side, civil libertarians began to gain influence on First Amendment law. The National Civil Liberties Bureau came out of the wartime experience compromised by decisions its leadership made that allowed its survival, but its postwar incarnation as the American Civil Liberties Union would pick up the fight for free speech.³⁰

Second, the left's bitter experience with the manipulative and restrictive side of progressivism brought disillusionment with that set of ideas. For those

who now called themselves liberals, dissent took pride of place. For *The Nation* in 1918, a willingness to defend dissenting opinions whether they came from the famous or the obscure was patriotism—real Americanism. This new patriotism, unlike Roosevelt’s version, celebrated opposition to rather than a defense of the nation. This and a related distrust of “the people,” who had been the core of progressivism in contrast to “special interests,” was a legacy for liberals of how progressivism became repression. Dissent and a suspicion of the people defined a new liberalism that emerged from the war.³¹

The Espionage Act itself is the final legacy. Although Congress repealed the Sedition Act in 1918, the core of the Espionage Act remained intact. As Gilbert Roe anticipated, the energy for repeal was not forthcoming from inside government. Meanwhile, a movement demanding that it be taken off the books did not emerge. It remains to do mischief still.

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NOTES

1. Jeffrey Rogg, “The Spy and the State: The History and Theory of American Civil-Intelligence Relations,” (PhD diss., Department of History, Ohio State University, 2021).
2. “\$27,000,000 Spent Here By Kaiser?” *New York Times*, December 5, 1915; “Attaches ‘Objectionable,’” *New York Times*, December 4, 1915.
3. “Congress Cheers As Wilson Urges Curb on Plotters,” *New York Times*, December 8, 1915.
4. Gregory quoted in Harry N. Scheiber, *The Wilson Administration and Civil Liberties, 1917-1921* (Ithaca, NY: Cornell University Press, 1960), 12; Jules Witcover, *Sabotage at Black Tom: Imperial Germany’s Secret War in America, 1914-1917* (New York: Algonquin Press, 1989).
5. Scheiber, *Wilson Administration*, 13–23; John Lord O’Brien, *National Security and Individual Freedom* (London: Cambridge University Press, 1955), 49–50.
6. Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press, 1942), 41.
7. Nick Salvatore, *Eugene v. Debs: Citizen and Socialist* (Urbana: University of Illinois Press, 1982); Robert Hargreaves, *The First Freedom: A History of Free Speech* (Phoenix Mill, UK: Sutton Publishing), 255–60; Eric T. Chester, *Free Speech and the Suppression of Dissent during World War I* (New York: Monthly Review Press, 2020), chap. 3.
8. David M. Rabban, *Free Speech in its Forgotten Years* (New York: Cambridge University Press, 1997), Schenck v. United States 249 U.S. 47 (1919); Thomas Healy, *The Great Dissent: How Oliver Wendell Holmes Changed His Mind—and Changed the History of Free Speech in America* (New York: Henry Holt, 2013).
9. Theodore Kornweibel, Jr., “Investigate Everything”: *Federal Efforts to Ensure Black Loyalty During World War I* (Bloomington: Indiana University Press, 2002), 13–20;

Jessica R. Pliley, *Policing Sexuality: The Mann Act and the Making of the FBI* (Cambridge: Harvard University Press, 2014); and Alan Axelrod, *Selling the Great War: The Making of American Propaganda* (New York: Palgrave, 2009).

10. Carol S. Graber, *Mars and Minerva: World War I and the Use of the Higher Learning in America* (Baton Rouge: Louisiana State University Press, 1975); Lewis Paul Todd, *Wartime Relations of the Federal Government and the Public Schools, 1917-1918* (repr. ed., New York: Arno Press, 1971).

11. Graber, *Mars and Minerva*, 174–80; Beard quote, 88. For a list of teachers and public officials, see National Civil Liberties Bureau, *War-Time Prosecutions and Mob Violence Involving the Rights of Free Speech, Free Press and Peaceful Assemblage* (New York, National Civil Liberties Bureau, March, 1919), 44–45.

12. *Americus (Georgia) Times-Recorder*, October 13, 1918; *Martinsburg (West Virginia) Evening Journal*, July 3, 1918; and *Greeneville (Tennessee) Daily Sun*, July 27, 1918. The publication of the names of “slackers,” both for military service and fund drive contributions, was common. A search on “slacker list” for 1917 and 1918 in the Library of Congress Chronicling America newspaper database produces more than 15,000 pages. See also Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York: Norton, 1979), 127–32 for further examples.

13. Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (New York, Oxford University Press, 2008), 121–23; Emerson Hough, *The Web: The Authorized History of the American Protective League* (Chicago: Reilly and Lee, 1919); John Lord O’Brian, quoted in Chafee, *Free Speech in the United States*, 65.

14. R. D. Holabird to Samuel Pond, re: Frank J. Foran, July 29, 1918, National Archives and Records Administration, Records of the U.S. Food Administration, RG4, Master Correspondence File, American Protective League File; Daniel G. Donalson, *The Espionage and Sedition Acts of World War I: Using Wartime Loyalty Laws for Revenge and Profit* (El Paso, TX: LFB Scholarly Publishing, 2012), 34–39.

15. Adam Hochschild, *American Midnight: The Great War, A Violent Peace, and Democracy’s Forgotten Crisis* (New York: Mariner Books, 2022), 154–56.

16. Chafee, *Free Speech in the United States*, 53–55.

17. Kornweibel, Jr., “Investigate Everything”; Paula Baker, *Curbing Campaign Cash: Henry Ford, Truman Newberry, and the Politics of Progressive Reform* (Lawrence: University of Kansas Press, 2012).

18. Chester, *Free Speech and the Suppression of Dissent*; Hochschild, *American Midnight*.

19. Scheiber, *Wilson Administration and Civil Liberties*, 45–47; Chester, *Free Speech and the Suppression of Dissent*, chaps. 6–7; Chafee, 59–60.

20. Hochschild, *American Midnight*, chap. 8; Chafee, *Free Speech in the United States*, 58; Scheiber, *Wilson Administration and Civil Liberties*, 47.

21. Peter Stehman, “Lynching of Robert Prager (1918),” in *Madison Historical: The Online Encyclopedia and Digital Archive for Madison County, Illinois*, last modified February 5, 2019, <https://madison-historical.siue.edu/encyclopedia/lynching-of-robert-pra-ger-1918/>.

22. Capozzola, *Uncle Sam Wants You*, 41–53; Murphy, *World War I and the Origin of Civil Liberties*, 125–26.

23. James R. Mock, *Censorship 1917* (repr. ed. New York: De Capo Press, 1972), 142–45.
24. Chafee, *Free Speech in the United States*, 42–51; Capozzola, *Uncle Sam Wants You*, 152–55; Murphy, *World War I and the Origin of Civil Liberties*, 99–101, 196–98.
25. “Why is Roosevelt Unjailed?” *The Nation* 107, no. 2784 (1918): 546.
26. *New York Times*, May 11 and 26, 1918; *Chicago Daily Tribune*, May 20 and 26, 1918; *The Outlook*, March 20, 1918, 434.
27. Gilbert E. Roe, “Repeal the Espionage Law” (address delivered before the Civic Club of New York, December 3, 1918), *The Dial* 66, no. 7, January 11, 1919.
28. Robert K. Murray, *Red Scare: A Study of National Hysteria, 1919-1920* (New York: McGraw Hill, 1955); Beverly Gage, *The Day Wall Street Exploded: A Story of America in its First Age of Terror* (New York: Oxford University Press, 2009).
29. Murphy, *World War I and the Origin of Civil Liberties*, 16–25; William Preston, *Aliens and Dissenters: Federal Suppression of Radicals, 1903-1933* (Cambridge, MA: Harvard University Press, 1963); Hochschild, *American Midnight*; Chester, *Free Speech*.
30. Rabban, *Free Speech in its Forgotten Years*; and Chester, *Free Speech and the Suppression of Dissent*, chap. 3.
31. On redefinitions of liberalism and citizenship in the wake of World War I, see Fred Siegal, *Revolt Against the Masses: How Liberalism Undermined the Middle Class* (New York: Encounter Books, 2014); Stuart I. Rochester, *American Liberal Disillusionment in the Wake of World War I* (University Park: Pennsylvania University Press, 1977); and Capozzola, *Uncle Sam Wants You*.