

Authoritarian Spirits: Congress, the Espionage Act and Punishing WikiLeaks

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Global Research, May 28, 2019

Region: [USA](#)

Theme: [History](#), [Law and Justice](#)

The time was 1917, and for anyone keen to impress us about any liberal feelings on the part of President Woodrow Wilson, the following should be said. Having deemed the United States too proud to fight, he proceeded to commit the very same to the first global industrial conflict of its kind and overturn every reservation against backing the Franco-German alliance. Initial constipation and weary restraint gave way to a full-blooded commitment against Kaiserism.

In doing so, the nasty instrument known as the Espionage Act of 1917 came into being, a product of disdain in the face of the First Amendment's solemn words that "Congress shall make no law... abridging the freedom of speech, or of the press."

The Espionage Act, also known as 18 USC 793, has been a bother to a good number in the legal profession. It was, [according to](#) Charles P. Pierce, "the immortal gift of that half-nutty professor, Woodrow Wilson, and his truly awful attorney general, A. Mitchell Palmer." Even then, Wilson was [disappointed](#), given that the final document was somewhat more diluted from its initial concentrate featuring wide-ranging press censorship and the targeting of anarchists.

In the [words](#) of law academic Stephen Vladeck, the law "draws no distinction between the leaker, the recipient of the leak, or the 100th person to redistribute, retransmit, or even retain the national defence information that by that point is already in the public domain."

The overstretch with prosecuting Julian Assange is comprehensible, in so far as security concerns are a psychosis, a junkie's fascination with secrecy. Applied to Chelsea Manning in 2011, it led to the imposition of a 35-year sentence that was subsequently commuted. The [superseding indictment](#) against Assange and WikiLeaks goes even further in its inventive paranoia, seeking to implicate the publisher as instigator and, effectively, the entire process of distribution. Seek, receive, and be damned.

While Assange will never fit neatly into any categories of obedience and observance, the crude scope, and motivation behind the use of the Espionage Act, remains. The descriptions in the immediate aftermath of the law's passage are worth nothing. In October 1918, Wisconsin Senator Robert La Follette [rose to proclaim that](#),

"Today and for weeks past honest and law-abiding citizens of this country are being terrorized and outraged in their rights by those sworn to uphold the laws and protect the rights of the people."

The senator spoke of a state of unnecessarily wild and zealous policing. Unlawful arrests had been perpetrated; people thrown into jail had been “held incommunicado for days, only to be eventually discharged without even having been taken to court, because they have committed no crime.”

The Espionage Act was not used sparingly, becoming a weapon of choice to criminalise efforts to obstruct the war effort with mere words. Elizabeth Baer and Charles Schenck were some of the first notable targets, accused of mailing some 15,000 anti-war flyers to potential conscripted recruits urging peaceful disobedience.

On appeal to the Supreme Court, the First Amendment was shorn in a palpable trimming of civil liberties. In its place was the modifying “clear and present danger” test, showing that the courts were, [even more than Congress](#), keen to impute severe intentions on how broad the Espionage Act was meant to be. (Indeed, most senators had to admit they had little clue on what the provisions of the Act actually meant.)

In the [words](#) of Justice Oliver Wendell Holmes,

“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”

Rather grimly, the judicial bench made the all too willing concession to the urges of the warring state.

“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.”

Other socialist activists of the form and determination of Kate Richards O’Hare also fell foul of the law, being sentenced to five years for violating its provisions. Socialist party members C.E. Ruthenberg, A. Wagenknecht and Charles Baker also faced prison terms for aiding and abetting those failing to register for the draft.

One of the most notorious victims of the Espionage Act was the leading founding member of the Socialist Party of America, Eugene V. Debs. Debs found himself in prison as a result, having given a public speech inciting his audience to interfere with military recruitment whilst referring to the harsh fate of his fellow socialist activists. His assessment of the situation was appropriately brave. “I would rather a thousand times be a free soul in jail than to be a sycophant and coward in the streets.”

On appeal, the US Supreme Court affirmed, in a [unanimous opinion](#) delivered by the persistently unsympathetic Justice Holmes, the harsh line it had taken in *Schenck*. Debs’s sympathy for individuals opposing the draft and interfering with the recruitment process was punishable and beyond the scope of protection. The speech, even if did mention socialism interspersed with a range of other observations, was “not protected by reason of its being part of a general program and expressions of a general and conscientious belief.” Quibbling be thy name.

While the United States is currently not officially at war, it can hardly be said to be at

peace. Engaged in low, slow burning conflicts on several continents, the US imperium continues its warring peace endeavours with a certain insatiability. The case against Assange is an attempt to internationalise the punishment of those who would dare publish, write or discuss matters at the heart of what Gore Vidal did title, with much sorrow, the National Security State. But as Senator La Follette observed with steely warning, taking aim at the Espionage Act, "More than in times of peace it is necessary that the channels for free public discussion of governmental policies shall be open and unclogged."

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