

Schenck v. United States



Group: Addie Harvey, David Dong, Amy Jimenez, Samantha
Mendoza, Katie Seger, & Erin Greenfield

Case Facts

In the midst of WW1, Charles Schenck and Elizabeth Baer handed out leaflets that urged citizens to ignore the military draft because it violated the Thirteenth Amendment prohibition against involuntary servitude. The leaflets advised for only peaceful action to be taken.

Schenck was charged with conspiracy against the Espionage Act of 1917 by attempting to prevent military recruitment. Schneck and Baer were convicted of violating this act but were appealed under the first amendment.

Schenck and Baer's leaflets:

Sample of Circular introduced in evidence

LONG LIVE THE CONSTITUTION OF THE UNITED STATES

Wake Up, America! Your Liberties Are in Danger!

The 13th Amendment, Section 3, of the Constitution of the United States says: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The Constitution of the United States is one of the greatest bulwarks of political liberty. It was born after a long, stubborn battle between king rule and democracy. (We see little or no difference between arbitrary power under the name of a king and under a few misnamed "representatives.") In this battle the people of the United States established the principle that freedom of the individual and personal liberty are the most sacred things in life. Without them we become slaves.

For this principle the fathers fought and died. The establishment of this principle they sealed with their own blood. Do you want to see this principle abolished? Do you want to see despotism substituted in its stead? Shall we prove degenerate sons of illustrious sires? The Thirteenth Amendment to the Constitution of the United States, *quod*—above, embodies this sacred idea. The Socialist Party says that this idea is violated by the Conscription Act. When you conscript a man and compel him to go abroad to fight against his will, you violate the most sacred right of personal liberty, and substitute for it what Daniel Webster called "despotism in its worst form."

A conscript is little better than a convict. He is deprived of his liberty and of his right to think and act as a free man. A conscripted citizen is forced to surrender his right as a citizen and become a subject. He is forced into involuntary servitude. He is deprived of the protection given him by the Constitution of the United States. He is deprived of all freedom of conscience in being forced to kill against his will.

Are you one who is opposed to war, and were you misled by the vocal capitalist newspapers, or intimidated or deceived by glib politicians and rogues into believing that you would not be allowed to register your objection to conscription? Do you know that many citizens of Philadelphia insisted on their right to answer the famous question twelve, and went on record with their honest opinion of opposition to war, notwithstanding the disconcerting efforts of our rulers and the newspaper press to prevent them from doing so? Shall it be said that the citizens of Philadelphia, the cradle of American liberty, are so lost to a sense of right and justice that they will let such monstrous wrongs against humanity go unchallenged?

In a democratic country such men must have the right to say whether he is willing to join the army. Only in countries where uncontrolled power may be a despotic force do subjects go right. Such a man or men have no place in a democratic republic. This is tyrannical power in its worst form. It gives control over the life and death of the individual to a few men. There is no man good enough to be given such power.

Conscription laws bring to a bygone age. Even the people of Germany, long suffering under the yoke of militarism, are beginning to demand the abolition of conscription. Do you think it has a place in the United States? Do you want to see unlimited power handed over to Wall Street, chosen few in America. If you do not, join the Socialist Party in its campaign for the repeal of the Conscription Act. Write to your congressmen and tell him you want the law repealed. Do not submit to intimidation. You have a right to demand the repeal of the law. Exercise the right of free speech, peaceful assembly, and petition the government for a redress of grievances. Come to the headquarters of the Socialist Party, 1326 Arch Street, and sign a petition to congress for the repeal of the Conscription Act. Help us wipe out this stain upon the Constitution.

Help us re-establish democracy in America.
Remember, Federal vigilance is the price of liberty.
Down with autocracy!
Long live the Constitution of the United States! Long live the Republic!

Books for Sale at

SOCIALIST PARTY BOOK STORE AND HEADQUARTERS

1326 ARCH ST. PHILA. FIBERT 3121

(OVER)

ASSERT YOUR RIGHTS!

Article 6, Section 2, of the Constitution of the United States says: "This Constitution shall be the supreme Law of the Land."

Article 1 (Amendment) says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Article 9 (Amendment) says: "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

The Socialist Party says that any individual or officers of the law entrusted with the administration of conscription regulations, violate the provisions of the United States Constitution, the Supreme Law of the Land, when they refuse to recognize your right to assert your opposition to the draft.

If you are conscientiously opposed to war, if you believe in the commandment "thou shalt not kill," then that is your religion, and you shall not be prohibited from the free exercise thereof.

In exempting clergymen and members of the Society of Friends (popularly called Quakers) from active military service, the examination boards have discriminated against you.

If you do not assert and support your rights, you are helping to "deny or disparage rights" which it is the solemn duty of all citizens and residents of the United States to retain.

Here in this city of Philadelphia was signed the immortal Declaration of Independence. As a citizen of "the cradle of American Liberty" you are doubly charged with the duty of upholding the rights of the people.

Will you sit contenting politicians and a necessary capitalist press wrongly and unjustifiably mould your thoughts? Do not forget your right to elect officials who are opposed to conscription.

In leading fact or silent consent to the conscription law, in neglecting to assert your rights, you are (whether knowingly or not) helping to sustain and support a most infamous and inhuman conspiracy to abridge and destroy the sacred and cherished rights of a free people. You are a citizen, not a subject! You disagree with your officers of the law to be sent far from your home and office, not against you.

They are your servants. Not your masters. Their wages come from the expenses of government which you pay. Will you allow them to usurp your rights? The fathers who fought and died to establish a free and independent nation here in absence were as opposed to the militarism of the old world from which they had escaped; so kindly alive to the dangers and hardships they had undergone in fleeing from political, religious and military oppression, that they handed down to us "certain rights which must be retained by the people."

They held the spirit of militarism in such abhorrence and hate, they were so apprehensive of the formation of a military machine that would insidiously and secretly advocate the invasion of other lands, that they limited the power of Congress over the militia in providing only for the calling forth of "the militia to execute laws of the Union, suppress insurrections and repel invasions." (See general powers of Congress, Article I, Section 8, Paragraph 15.)

No power was delegated to send our citizens away to foreign shores to shoot up the people of other lands, no matter what may be their internal or international disputes.

The people of this country did not vote in favor of war. At the last election they voted against war.

To draw this country into the horrors of the present war in Europe, to force the youth of our land into the slaughter and bloody trenches of war-crazed nations, to be a crime the magnitude of which defies description. Words could not express the condemnation such cold-blooded ruthlessness deserves.

Will you stand idly by and see the Method of Militarism reach birth across the sea and fasten its tentacles upon this continent? Are you willing to submit to the degradation of having the Constitution of the United States treated as a mere scrap of paper?

Do you know that the word "democracy" means a free people, your country and not hate for others? Will you be led astray by a propaganda of jingoism, masquerading under the guise of patriotism? No medicine so plausible, please show a "war for democracy" can befool the masses. Democracy cannot be shot into a nation. It must come spontaneously and purely from within.

Democracy must come through liberal education. Upholders of military ideas are unfit teachers. To advocate the propagation of other people through the prosecution of war is an insult to every good and wholesome American tradition.

"There are times that try men's souls."
"Eternal vigilance is the price of liberty."
You are responsible. You must do your share to maintain, support and uphold the rights of the people of this country.

Is this world wide where do you stand! Are you with the forces of liberty and light or war and darkness!

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Question

Did the Espionage Act violate Schenk's right to Freedom of Speech under the First Amendment?
Where Schenck's actions ever protected by the free speech clause?

Conclusion

Ultimately, the United States Supreme Court ruled on March 3rd, 1919 that freedom of speech, afforded to American citizens by the First Amendment, can be restricted if the words spoken/printed are deemed to present a danger to society. Congress ruled that this was within its wartime authority and Schenck's actions were not protected by the free speech clause.

Future Implications

The decision in *Schenck v. United States* provided a basis for the regulation of content of freedom of speech during wartime. It further impacted society as the court established when freedom of speech is not unlimited and absolute; the court can regulate and decide in certain instances where, when, and how free speech may be used. Especially if it presents a “clear and present danger”.

Cases that followed:

- *Debs v. United States* (1919)
- *Frohwerk v. United States* (1919)
- *Gitlow v. New York* (1925)