

The Sedition Act of 1798 and the Espionage and Sedition Acts of 1917–1918—A Comparative Activity

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For use in conjunction with “The Sedition Act Trials,” by Bruce A. Ragsdale, available at <http://www.fjc.gov/history/home.nsf>. A unit in the Teaching Judicial History Project, developed by the Federal Judicial Center in partnership with the American Bar Association’s Division for Public Education.

Activity Objectives

By studying debates on loyalty, sedition, and threats to national security during the 1790s and World War I, students will be able to:

- explain the circumstances that lead to the passage of the Sedition Act of 1798 and the Espionage Act of 1917;
- compare and contrast the provisions of the Sedition Act of 1798 and the Espionage and Sedition Acts of 1917–1918; and
- explain and evaluate the opposing arguments regarding the necessity of limiting free speech in wartime.

Essential Questions

- What prompted the United States to enact the Espionage and Sedition Acts of 1917–1918?
- Were the Espionage and Sedition Acts necessary to ensure the security of the United States or were they a means of prohibiting legitimate political dissent?
- Could the Sedition Acts of the Adams and Wilson administrations have been enacted without playing upon the fear for the nation’s safety?
- How did the Sedition Acts of 1917–1918 differ from the 1798 legislation?
- What is the role of dissent in time of war?
- Did the Sedition Acts of 1798 and 1918 violate the First Amendment’s protection against any law “abridging the freedom of speech, or of the press”?

Legal Issues Raised by the Sedition Acts

The passage and enforcement of a sedition act raise several important legal questions regarding freedom of speech and the press, including:

- What limits may Congress or the federal courts impose on the Constitution’s protection of free speech and a free press?
- Do the same guarantees of free speech in time of peace enjoy constitutional protection when the nation is at war?

Estimated Time Frame

Three to five class periods.

Recommended Prep Work

Students will need to understand the political context of the Sedition Act trials. Teachers should review “The Sedition Act Trials,” by Bruce A. Ragsdale (PDF available online at <http://www.fjc.gov/history/home.nsf>). Teachers may wish to assign “The Sedition Acts Trial: A Short Narrative” (pp. 1–8) (from “The Sedition Act Trials”). Students will also need to understand the political background of the Espionage Act of 1917 and the Sedition Act of 1918. Teachers can review Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism* (New York: Norton 2004): Chapter 3: “World War I: ‘Clear and Present Danger’?” pp. 135–233.

Make Copies of the Following Documents

1. The Sedition Act of 1798 (Document 1) (pp. 45–46, “The Sedition Act Trials,” by Bruce A. Ragsdale)
2. Espionage Act of 1917 (Document 2)
3. American Dissent (Worksheet 1)
4. Sedition Act of 1918 (Document 3)
5. Compare and Contrast Graphic Organizer (Worksheet 2)

Description of the Activity

Step 1 (½ to 1 day)

Have students read the Sedition Act of 1798 (Document 1, pages 45–46 of “The Sedition Act Trials,” by Bruce Ragsdale). Brainstorm the events that led to the passage of the Sedition Act. List student responses on the board. If necessary, review American reaction to the French Revolution and events such as President Washington’s Neutrality Proclamation, the Citizen Genet Affair, the XYZ Affair, the undeclared naval war with France, and passage of the Alien Acts. Discuss the perceived need for a sedition act in the context of an undeclared war with France in 1798.

Step 2 (1½ to 2 days)

Divide the class into small groups to research opposition to the entry of the United States into the war in 1917. Within groups, have students complete the “American Dissent” worksheet. Discuss the efforts of dissenting groups and the tenor of public response to American entry into the war.

Following a general class discussion, distribute excerpts from the Espionage Act of 1917 (Document 1). Have each group discuss the document, taking into consideration the historical context of the time in which it was enacted. Ask students to consider questions such as:

- Why would the Wilson administration support enactment of the Espionage Act?
- Was there reason to fear that Americans of German ancestry or alien residents of the United States might be disloyal?
- What was the threat to the United States in the months after declaration of war?
- In what ways were threats to American security in 1798 and 1917 similar?
- In what ways was the Espionage Act of 1917 similar to the Sedition Act of 1798? How did the two acts differ?

Reassemble the class and have each group briefly discuss the efficacy of the Espionage Act and evaluate the need for such an act; each group should support its opinions with historical data.

Step 3 (1–2 days)

Provide each group with a copy of the Sedition Act of 1918 (Document 3). Before having the groups examine the document, explain that President Wilson, concerned that dissent was having a harmful effect on morale, encouraged Congress to strengthen the Espionage Act of 1917. Congress, by a vote of 48 to 26 in the Senate and 293 to 1 in the House of Representatives, amended the Espionage Act. The amendment basically changed Section 3 of the earlier act and added a section granting the postmaster general the authority to censor the mailing of anti-war propaganda. The act took effect on May 16, 1918. Have groups discuss the events that prompted Congress to amend the Espionage Act and how the amendment strengthened the original act. Ask students to explain if they believe the Sedition Act was an appropriate response.

Distribute the Compare and Contrast Graphic Organizer (Student Worksheet 2). Have students complete the worksheet illustrating the similarities and differences in the Sedition Acts of 1798 and 1917–1918. Consider questions such as:

- How were the acts similar?
- How did they differ? What accounts for the differences?
- What limits, if any, should be placed on free speech during wartime?
- Do you believe these acts were compatible with the guarantees of freedom of speech and the press in the First Amendment? Explain.

Assessment

Have students select one of the following modes of assessment in which they respond to the assertion, “The Sedition Act of 1798 and Espionage and Sedition Acts of 1917–1918 violated the First Amendment’s protection against any law ‘abridging the freedom of speech, or of the press.’”

1. Write a persuasive essay or position paper (individual).
2. Construct an exhibit (backboard with exhibits).
3. Create a documentary (may include a website or PowerPoint presentation).
4. Script and perform a dramatic presentation.

Response to the prompt should follow the National History Day model. You may wish to have students work individually or in small groups (the persuasive essay must be an individual project). Use the National History Day judging forms (available at <http://www.nationalhistoryday.org/JudgingCriteria.htm>) to evaluate these projects.

Alternative Modalities and Enrichment Activities

Research the indictment and trials of two defendants, one from a case stemming from the Sedition Act of 1798 and the other from the Espionage and Sedition Acts of 1917–1918. Have students explain what the government wished to gain from these prosecutions and the political ramifications of the trials.

Students may find it difficult to read and comprehend legal statutes. Before introducing the documents, go over the reasons for the style of writing and expressions often used in legislation. Instead of distributing documents for individual or group reading, read each of the documents to the class or conduct a “read-around,” frequently stopping to ensure understanding. As in all cases when dealing with documents that present special challenges, have students work in small groups or pairs to rewrite the document in standard English to ensure comprehension.

Alternative Content Areas

American government classes could expand upon the lesson by investigating the trial of Matthew Lyon, in the U.S. Circuit Court for the District of Vermont, before Justice William Paterson (October 1798), for violation of the Sedition Act, and the trial of Eugene V. Debs, in the District Court of the Northern District of Ohio, before Judge D.C. Westenhaver, Cleveland, Ohio (September 1918), for violating the amended Espionage Act (Sedition Act of 1918).

The trial of Matthew Lyon for seditious libel is available as a Google Book online (Francis Wharton, *State Trials of the United States During the Administration of Washington and Adams* [Philadelphia: Carey and Hart, 1849]).

Have students read selections from Debs' speech before the Ohio State Socialist Party Convention in Canton on June 16, 1918 (available in *Eugene V. Debs Speaks*, Jean Y. Tussey, ed., New York: Pathfinder Press, 1970, pp. 243–79). Four days later Debs was indicted by a federal grand jury on ten counts under Section 3 of the Espionage Act as amended (Sedition Act of 1918). The prosecution used the Canton speech as evidence in the case along with other of Debs' public statements on the war and his praise for men and women who had previously been convicted for disrupting the draft and for vocal opposition to the war. Students could be encouraged to read Debs' statement to the court upon conviction (available in *Writings and Speeches of Eugene V. Debs*, New York: Hermitage Press, 1948, pp. 437–39).

After researching both cases, have students determine the commonalities of the two cases and explain the charges against each of the defendants, the possible political motivations behind each indictment, conflicts over jury selection, and any peculiarities in the court proceedings. Were these political trials? Were they conducted in a fair and open manner? Why do you think Debs appealed his conviction? Considering court precedent, what chances do you think Debs would have before the U.S. Supreme Court?

Have students read the unanimous opinion of the Supreme Court in *Debs v. United States*, 249 U.S. 211 (1919), written by Justice Oliver Wendell Holmes. Evaluate Justice Holmes' reasoning in affirming the judgment of the lower court. Why do you think Justice Holmes did not specifically cite "the clear and present danger" test he had articulated in the *Schenck* case a week earlier? According to Justice Holmes, what limits may be placed on free speech during wartime?

Expand the lesson by having students read anti-Vietnam War statements by presidential candidate George McGovern in 1972 or by Ohio Congressman Dennis Kucinich in opposition to the Gulf War in 2003. Consider questions such as:

- Would either of these political leaders have faced charges of sedition under the Espionage and Sedition Acts?
- Were threats to American national security in 1972 and 2003 different from those in 1798 and 1918?
- Has the public become more tolerant of political dissent than in previous generations? Why or why not?

Involving a Judge

Invite a judge to speak to the class on the types of First Amendment cases that come before the federal courts today. What limits on free speech are permissible today?

Contact the local bar association and arrange for two attorneys with different perspectives on the USA Patriot Act to appraise the utility of the legislation and to provide a “cost/benefit” analysis of the act’s expansion of law-enforcement authority. Following the presentation by the attorneys, conduct a class discussion on the public reaction to domestic and foreign threats resulting in the passage of the Sedition Act of 1798, the Espionage and Sedition Acts of 1917–1918, and the Patriot Act of 2001.

Standards Addressed

*United States History*¹

Era 3: Revolution and the New Nation 1754–1820s

Content Standard 3B

- The student understands the guarantees of the Bill of Rights and its continuing significance.

Era 7: The Emergence of Modern America (1890–1930)

Content Standard 2C

- The student understands the impact at home and abroad of the United States involvement in World War I.

Standards in Historical Thinking

Chronological thinking

- Distinguish between past, present, and future time.
- Reconstruct patterns of historical succession and duration in which historical developments have unfolded, and apply them to explain historical continuity and change.

Historical Analysis and Interpretation

- Draw comparisons across eras and regions in order to define enduring issues as well as large-scale or long-term developments that transcend regional and temporal boundaries.

Historical Issues-Analysis and Decision-Making

- Marshal evidence of antecedent circumstances and current factors contributing to contemporary problems and alternative courses of action.
- Identify relevant historical antecedents and differentiate from those that are inappropriate and irrelevant to contemporary issues.

1. National Standards for History, National Center for History in the Schools, University of California Los Angeles, 1996. Available online at <http://nchs.ucla.edu/standards/>.

National Standards for Civics and Government²

- Students should be able to evaluate, take, and defend positions on issues in which fundamental values and principles may be in conflict.
- Students should be able to evaluate, take, and defend positions on issues regarding political rights.
- Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limit of rights.

Specialized Concerns

For adapting the lesson in an American government class it is necessary for students to have access to the Internet to retrieve the recommended documents.

Glossary

abet	assist, support
conscription	draft, recruitment
contumely	rude language
scurrilous	outrageous, scandalous, shameful or disgraceful
sureties	guarantees, collateral or security

2. National Standards for Civics and Government, Center for Civic Education, Calabasas, California, 2007. Available online at <http://www.civiced.org/index.php?page=stds>.

Document 1

The Sedition Act of 1798

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty, and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties or his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. And be it further enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be

lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

[Document Source: *U.S. Statutes at Large* 1 (1845): 596–97.]

Document 2

Espionage Act of 1917

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

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 (d) whoever lawfully or unlawfully having possession of, access to, control over, or being entrusted with any document . . . relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same . . . ; or (e) whoever, being entrusted with or having lawful possession or control of any document . . . relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or . . . 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.

Sec. 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, or to any faction or party or military or naval force within a foreign country, . . . 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 this section in time of war shall be punished by death or by imprisonment for not more than thirty years . . .

Sec. 3. 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 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.

. . . Sec. 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 of not more than \$10,000 or by imprisonment for not more than two years, or both. . . .

[Document Source: *U.S. Statutes at Large* 40 (1919): 217.]

Student Worksheet 1

American Dissent

1. What was the position of radical labor movements, such as the Industrial Workers of the World, toward U.S. entry into World War I?
2. What stance did the American Socialist Party take upon U.S. entry into the war?
3. What women's organizations opposed the war?
4. How did opposition groups attempt to disrupt conscription?
5. Why was there popular opposition to recent immigrants from Southern and Eastern Europe?
6. What position did Irish American organizations take regarding U.S. entry into the war?

Document 3

The Sedition Act of 1918 (excerpt)

Section 3. 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 . . . 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, 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 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 war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever 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 the imprisonment for not more than twenty years, or both: Provided, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service

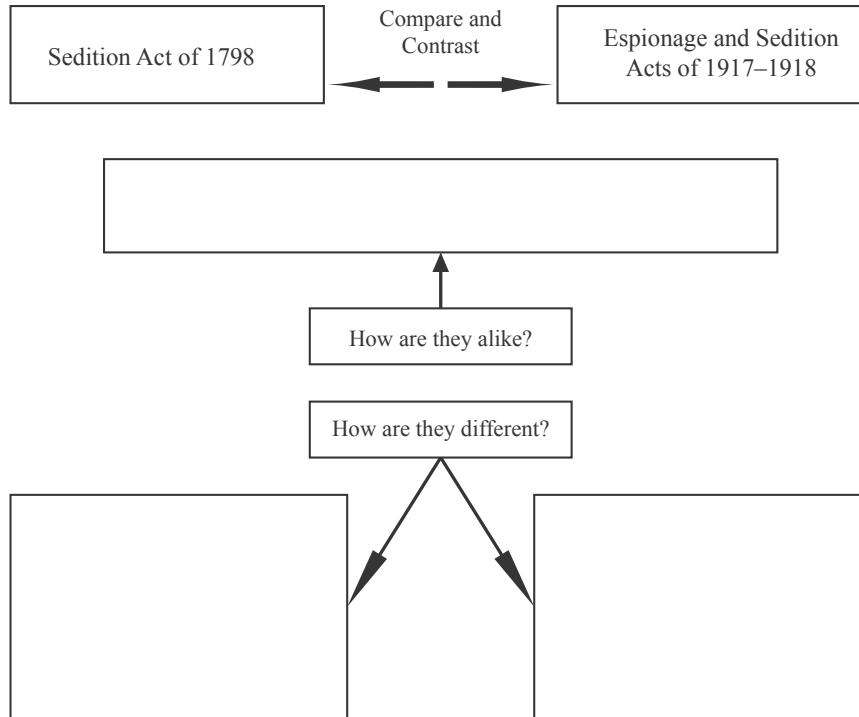
Section 4. When the United States is at war, the Postmaster General may, upon evidence satisfactory to him that any person or concern is using the mails in violation of any of the provisions of this Act, instruct the postmaster at any post office at which mail is received addressed to such person or 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.

Approved, May 16, 1918.

[Document Source: *U.S. Statutes at Large* 40 (1919): 553–54.]

Student Worksheet 2

Sedition Acts



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