



CONSTITUTIONAL CONNECTION

To create a context for this lesson, students complete
Constitutional Connection:
War and the Constitution.

WILSON AND THE ESPIONAGE ACT



OVERVIEW

President Woodrow Wilson worried about the influence of subversive elements in the United States—including at first German-Americans and Irish-Americans, and later socialists, communists, and anarchists. In 1915, Wilson asked Congress to pass laws designed to “crush out” the “creatures of passion” who he believed might topple the US government. Congress heeded this call with the Espionage Act of 1917, amended by the Sedition Act in 1918. Criticized by some as unconstitutional, these laws were defended by Wilson and Congress as war measures to enhance the security of the United States.

OBJECTIVES

Students will:

- ✎ Understand Woodrow Wilson’s fear of the “poison of disloyalty” in the US.
- ✎ Understand challenges to civil liberties in the US before and during World War I.
- ✎ Assess constitutional limits on free speech and whether they change during wartime.
- ✎ Evaluate the constitutionality of the 1917 Espionage Act.

CRITICAL ENGAGEMENT

QUESTION

Was the Espionage Act of 1917, signed into law by President Woodrow Wilson, a constitutional war measure?

MATERIALS

✎ **Handout A:** Woodrow Wilson and the Espionage Act



✎ **Web Resource:** Anti-German Propaganda and Additional Trial Exhibits found at www.ArticleII.org/War/Units

✎ **Handout B:** Wilson’s Request

✎ **Handout C:** The Espionage Act (1917)

✎ **Handout D:** “No Conscription” Newsletter

✎ **Handout E:** The “Trial of Emma Goldman”

BACKGROUND/HOMEWORK

Have students read **Handout A: Woodrow Wilson and the Espionage Act** and answer the questions.

DAY ONE

WARM UP [15 minutes]

- A. Using available technology, print out or project images of posters found at www.ArticleII.org/War/Units.
- B. Have students examine the images and conduct a large group discussion about the to answer the questions:
 - What is the topic of these posters?
 - How are the different individuals portrayed? Why?
 - What is the goal of these posters?
 - What can you conclude about the “tenor of the times” in the US before the country entered World War I?

ACTIVITY [20 minutes]

- A. Have a student assume the persona of Wilson and read the excerpt from his 1915 State of the Union Address on **Handout B: Wilson’s Request**. Encourage the student playing Wilson to read dramatically.
- B. Tell students that recently, one modern member of Congress said about this speech, “[Wilson’s] plea ... astonishes still, as much for its passion as for what it proposes... No president had ever spoken like that before; none has since.” How does Wilson’s speech sound to modern ears? Do students find it “astonishing” or unique? Why or why not?
- C. Distribute **Handout C: The Espionage Act (1917)**. Read the law together and clarify any questions students have.

WRAP-UP [15 minutes]

- A. Distribute **Handout D: “No Conscription” Newsletter** and allow students to skim over it. Ask individual students to read it aloud dramatically (a paragraph each). Have the entire class read the last six lines aloud together dramatically. Ask the class: What is this newsletter asking you to do? Did the author of the “No Conscription” newsletter violate the Espionage Act?
- B. Tell students that next class they will put the newsletter’s author, Emma Goldman, on trial. Distribute **Handout E: The “Trial of Emma Goldman.”**
- C. Assign the following roles: Narrator, Emma Goldman, Lead Counsel for Miss Goldman, US Attorney, Leon Frank Czolgosz, President Woodrow Wilson, and three to five judges.
- D. Let students know they can stick to the script or add to it as appropriate. They should not omit any parts, though.
- E. Prepare copies of Additional Trial Exhibits at www.ArticleII.org/War/Units and allow students to make use of the exhibits. Students who do not play a role may serve as “assistant counsel” to the attorneys on either side, as “law clerks” for the judges, or in other supporting roles of your creation (e.g. Theodore Roosevelt; J. Edgar Hoover; congressional supporters of the Act; World War I soldiers; Kate Richards O’Hare, Rose Pastor Stokes.).
- F. Encourage students to file “*amicus* briefs” (e.g. short, historically accurate statements in support of either the prosecution or the defense).

DAY TWO

ACTIVITY [30 minutes]

- A. Arrange the classroom with a desk for a “witness stand,” an open area for attorneys to stand, and enough chairs for judges.
- B. Using their guide on **Handout E**, have students present the trial.
- C. At the conclusion of the trial, you may wish to distribute or project the 1918 *New York Times* story found at www.ArticleII.org/War/Units.

WRAP UP [20 minutes]

Debrief the class, asking students:

- ✎ Did Emma Goldman break the law?
- ✎ Was the law she was accused of breaking, the Espionage Act, constitutional?
- ✎ Was the Supreme Court correct to uphold her conviction under the Espionage Act?

HOMEWORK

- A. Have students explain whether they believe the Supreme Court was correct to uphold the constitutionality of the Espionage Act and Emma Goldman’s conviction. They can express their view by: writing one paragraph; creating a poster or flyer; or drawing a political cartoon.
- B. Ask students to respond to the following prompt with a short essay: What if the Espionage Act were passed today? Would it be well received? What similarities and differences apply?

EXTENSIONS

- A. Have students research the release of the 1917 film “Spirit of 76” and the subsequent arrest, conviction and jailing of its producer, Robert Goldstein. Why was Goldstein arrested? Was his conviction just? Why or why not?
- B. Have students learn more about the trial of Italian anarchists Sacco and Vanzetti. Students can begin their research at www.law.umkc.edu/faculty/projects/ftrials/saccov/saccov.htm.

THE ISSUES ENDURE

The challenge to civil liberties in the US did not end with the conclusion of World War I. More than 4,000 suspected communists and anarchists were arrested across the US from 1918-1921 in what came to be known as the Palmer Raids. Have students research the Palmer Raids, along with violations of civil liberties during World War II, the Vietnam War, and the War on Terror. They should write a two- to three-page essay answering the question: Using history as a guide, do laws “excused on the plea of necessity in wartime” in fact tend to become the “fixed rule” once war is over?

A WOODROW WILSON AND THE ESPIONAGE ACT

World War I began in Europe in 1914. The United States supported the Triple Entente (France, Great Britain and Russia) and opposed the Triple Alliance (Germany, Austria-Hungary, and the Ottoman Empire). President Woodrow Wilson feared the influence of German immigrants in the United States. Fear of disloyal immigrants was widespread across the US. Wilson said, “Any man who carries a hyphen around with him carries a dagger that he is ready to plunge into the vitals of the republic.”

Many state governments banned the teaching of German in schools. California judged German as “a language that disseminates the ideas of autocracy, brutality, and hatred.” German street names were changed; many began calling sauerkraut “liberty cabbage.”

Eventually, German u-boat (submarine) attacks, anti-German propaganda, and the possibility of a German alliance with Mexico made US entry into the war unavoidable for Wilson. On April 17, 1917, Wilson, who had campaigned for a second term with the slogan, “He kept us out of war,” asked Congress for a declaration of war against Germany. Congress granted his request two days later.

CIVIL LIBERTIES DURING WORLD WAR I

Wilson sent a conscription (military draft) bill to Congress prior to the declaration of war. The draft was detested by many lawmakers as a violation of civil liberties. Some in Congress called it “involuntary servitude,” and “another name for slavery.” The Speaker of the

House said there was “little difference between a conscript and a convict”—both had lost their liberty. Despite the initial controversy, Congress passed the Selective Service Act in May, six weeks after the declaration of war. The Supreme Court upheld the constitutionality of the law.

Challenges to Bill of Rights protections for people accused of crimes came with the American Protective League (APL). This group was made of private citizens, authorized by the Attorney General, and worked with federal law enforcement agencies (the FBI did not yet exist) to report disloyal words or deeds. The APL was accused of illegally detaining citizens. Wilson knew about the APL but took no action to stop its activities.

CHALLENGES TO THE FIRST AMENDMENT

One of the most serious limitations of freedom of speech and press came with the Espionage Act of 1917. This law made it a crime to “cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States.”

In October of 1917, Wisconsin Senator Robert LaFollete defended freedom of speech in wartime. He said, “I think all men recognize that in time of war the citizen must surrender some rights for the common good which he is entitled to enjoy in time of peace. But sir, the right to control their own Government



according to constitutional forms is not one of the rights that the citizens of this country are called upon to surrender in time of war. ...I am contending, Mr. President, for the great fundamental right of the sovereign people of this country to make their voice heard and have that voice heeded upon the great questions arising out of this war.”

Neither the President nor Congress were persuaded. Instead, Congress passed and Wilson signed an amendment to the Espionage Act with even more restrictive limits on speech and press in 1918. It was a crime to “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 [to] willfully display the flag of any foreign enemy, or ... willfully ... urge, incite, or advocate any curtailment of production ... or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and [to] 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.”

In the landmark case *Schenck v. United*

States (1919), the Supreme Court upheld the Espionage Act. In a unanimous ruling, the Court held that while such a limit on the First Amendment would not be constitutional in peacetime, the law was constitutional because the nation was at war. The government’s interest in fighting World War I outweighed individuals’ right to free speech.

AFTER THE WAR

The challenges to civil liberties in the US did not end with the conclusion of hostilities. In 1920, Attorney General A. Mitchell Palmer ordered raids on homes, meeting places, and offices of suspected radicals. Palmer said in 1920, “The tongues of revolutionary heat were licking the altars of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with libertine laws, burning up the foundations of society.” Six-thousand people, mostly foreign-born, were arrested in the Palmer Raids, as they came to be known.

The 1918 Sedition amendments to the Espionage Act were repealed in 1921. Much of the original 1917 Act, however, remains federal law.

❧ CRITICAL THINKING QUESTIONS ❧

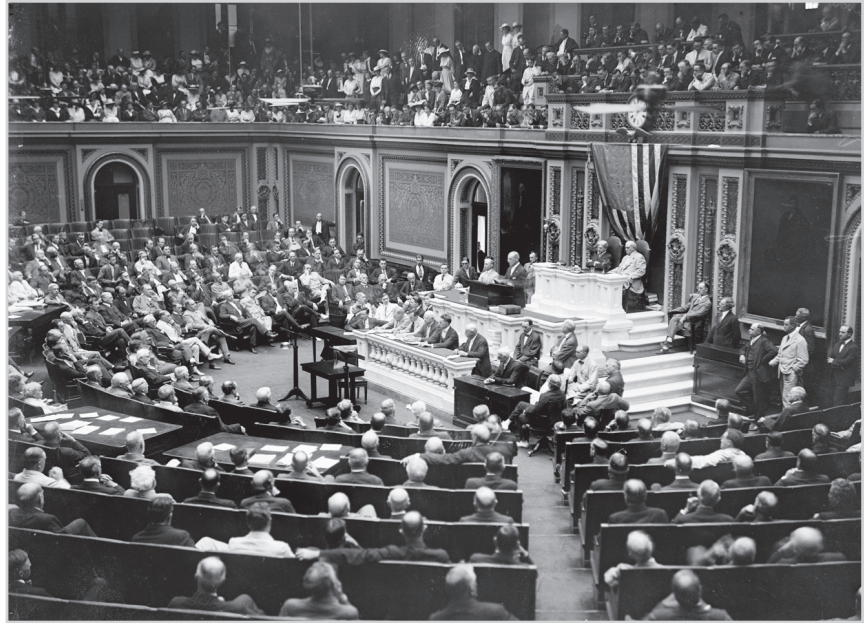
1. Other than the Espionage Act, name two challenges to civil liberties in the US during World War I.
2. What did the Espionage Act of 1917 outlaw?
3. Why did Wisconsin Senator LaFollete object to the Espionage Act?
4. How was the Espionage Act amended in 1918?
5. Do you believe the Supreme Court was correct to uphold the constitutionality of the Espionage Act? Explain.
6. One modern historian has said, “Never until World War I did the suppression of freedom enjoy the almost unanimous support of the various agencies of the government—national, state, and local.” What information and resources would you need in order to evaluate this claim?



WILSON'S REQUEST

Directions: Read the excerpt from President Woodrow Wilson's State of the Union Address, December 7, 1915.

The gravest threats against our national peace and safety have been uttered within our own borders. There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life; who have sought to bring the authority and good name of our Government into contempt, to destroy our industries wherever they thought it effective for their vindictive purposes to strike at them, and to debase our politics to the uses of foreign intrigue. ...A little while ago such a thing would have seemed incredible. Because it was incredible we made no preparation for it. We would have been almost ashamed to prepare for it, as if we were suspicious of ourselves, our own comrades



and neighbors! But the ugly and incredible thing has actually come about and we are without adequate federal laws to deal with it. I urge you to enact such laws at the earliest possible moment and feel that in doing so I am urging you to do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.



THE ESPIONAGE ACT (1917)

Directions: Read the excerpt from the Espionage Act.

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 and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, 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.



“NO CONSCRIPTION” NEWSLETTER

NO CONSCRIPTION!

*CONSCRIPTION [the military draft] has
now become a fact in this country.*

Freedom of speech, of press and assembly is about to be thrown upon the dung heap of political guarantees. But crime of all crimes, the flower of the country is to be forced into murder whether or not they believe in war or in the efficacy of saving democracy in Europe by the destruction of democracy at home....

We oppose conscription because we are internationalists, antimilitarists, and opposed to all wars waged by capitalistic governments. We will fight for what we choose to fight for; we will never fight simply because we are ordered to fight....

We will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

We are not unmindful of the difficulties in our way ... [but] we feel confident in arousing thousands of people who are conscientious objectors to the murder of their fellowmen and to whom a principle represents the most vital thing in life.

Resist conscription.

Organize meetings.

Join our League.

Send us money.

*Help us to give assistance to those who come in
conflict with the government.*

*Help us to publish literature against militarism
and against conscription.*

NO CONSCRIPTION LEAGUE
20 East 125th St., New York



THE TRIAL OF EMMA GOLDMAN

Directions: Read over your assigned role and be ready to play your part in the “trial.” (The lines of historical individuals are all direct quotations and/or paraphrases of quotations.)

NARRATOR: Emma Goldman came to the United States from Russia when she was a teenager. She had lived under the tyranny of the Czars and was an anarchist—she believed society should have no government. By the time she was in her twenties, she began lecturing to groups of thousands on the evils of capitalism, marriage, and war. She was very controversial. President Theodore Roosevelt called her a “madwoman ... a mental as well as a moral pervert.” She also had ties to violent individuals and groups.

When the US entered World War I in 1917, President Wilson signed a draft bill and a military draft was begun. Wilson also signed the Espionage Act, which, among other things, made it a crime to resist the draft.

Goldman believed governments did not have the just power to wage wars. She believed a military draft was a form of slavery. To express her message, she founded the No Conscription League. On June 15, 1917, federal marshals entered and ransacked Goldman’s apartment. They found, among other papers, the list of names of people who subscribed to *Mother Earth*, a journal published by Goldman. Goldman and her partner were charged with conspiracy to resist the draft, a federal offense under the 1917 Espionage Act. She was tried by a jury and convicted. Her case has now been appealed to the Supreme Court.

JUDGE A: Is the government ready to make an opening statement?

US ATTORNEY: Yes, your honor. Miss Goldman’s arrest is justified. Because she was personally opposed to World War I, she worked to found the “No Conscription League.” The

purpose of this organization was not only to express ideas, but to actively encourage and offer support to people who resist the draft. This is not speech but action.

Furthermore, though she says she does not believe in the war, she has shown herself to be a supporter of violence when it suits her needs. Miss Goldman met with Leon Frank Czolgosz [Chol-gosh]. As you know, this is the man who assassinated President McKinley. Czolgosz was influenced by Miss Goldman’s words, and asked her to introduce him to her anarchist and socialist friends. She was rightly arrested and convicted under the Espionage Act.

JUDGE A: Is the defense ready to make an opening statement?

ATTORNEY FOR MISS GOLDMAN, MS.

ANN R. KIST: Yes, your honor. Emma is not a dangerous radical. She has done nothing more than share her ideas. She believes the pen is mightier than the sword, and abhors violence. She has won the admiration of people like George Orwell and John Dewey. Emma has been a constant victim of paranoid laws in the name of national security, as well as anti-immigrant harassment from private citizens. Now she is charged with conspiracy. How can there be a conspiracy? She has stated everything out in the open. And there is no proof she actually caused anyone to resist the draft.

Yes, some of the things she has said rightfully turn our stomachs. But that doesn’t change the fact that they are just words. And in America, we don’t put people in prison for their words. Even if those words, in this case, are questioning the constitutionality of the draft.



THE TRIAL OF EMMA GOLDMAN (CONT.)

JUDGE B: Is the government ready to call its first witness?

US ATTORNEY: The United States calls Leon Frank Czolgosz. Mr. Czolgosz, can you tell us when you first met Miss Goldman?

CZOLGOSZ: She set me on fire when I heard her give a speech called “The Modern Phase of Anarchy.” She lectured about political assassination and the glory of martyrdom.

US ATTORNEY: And it was four months later that you shot and killed President McKinley, is that correct?

CZOLGOSZ: Yes.

JUDGE C: Any questions, Ms. Kist?

Ms. KIST: Mr. Czolgosz, I am confused. Did Miss Goldman order you to kill the President?

CZOLGOSZ: No.

Ms. KIST: And did she assist you in any way in the assassination?

CZOLGOSZ: No.

JUDGE D: You may step down.

US ATTORNEY: The United States calls President Woodrow Wilson. Mr. President, you signed the Espionage Act into law. Can you tell us the purpose of this law?

WILSON: The gravest threats against our national peace and safety have been uttered

within our own borders. There are people pouring the poison of disloyalty into the very arteries of our national life. I urged Congress to enact such laws to save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.

Ms. KIST: Mr. President, is there any proof that my client actually caused anyone to resist the draft?

WILSON: No.

JUDGE A: You may step down.

[If assigned by your teacher, additional witnesses, or exhibits should be presented here.]

US ATTORNEY: The United States calls Emma Goldman to the stand. Miss Goldman, you defended the assassin Leon Czolgosz, didn't you?

GOLDMAN: As an anarchist, I am opposed to violence. But if the people want to do away with assassins, they must do away with the conditions which produce murderers.

US ATTORNEY: You say you are opposed to violence, but didn't you help a man try to assassinate a Carnegie Steel manager? You assisted in getting a pistol for the man who shot and wounded him, didn't you?

GOLDMAN: I ... insist on my right of free speech. If the police stop me, then it is up to them to explain why... As long as I live I must be a crusader. What I think, what I feel, I must speak. Not for a hundred, not for five hundred years will the principles of anarchy triumph. But what has that to do with it?



THE TRIAL OF EMMA GOLDMAN (CONT.)

US ATTORNEY: I am confused about your definition of the word “speech.” Didn’t you offer to help people resist the draft? Is that speech, or action? Isn’t the entire purpose of the No Conscription League to undermine America’s efforts in World War I? You believe governments have no right to make war, don’t you?

GOLDMAN: Yes. In May 1917, I helped launch the No-Conscription League. We oppose all wars waged by capitalist governments. We believe that the militarization of America is an evil that far outweighs any good that may come from America’s participation in the war. We will resist conscription by every means in our power. If America had entered the war to make the world safe for democracy, she [America] must first make democracy safe in America.

US ATTORNEY: And when you distributed the No-Conscription League newsletter, you were trying to increase opposition to the draft in the United States, is that right?

GOLDMAN: Yes.

JUDGE B: Ms. Kist, do you have any questions?

Ms. KIST: You’ve been accused of having associations with violent people. What do you say to this?

EMMA GOLDMAN: As to killing rulers, it depends entirely on the position of the ruler. If it is the Russian Czar, I most certainly believe in dispatching him to where he belongs. If the ruler is as ineffectual as an American President, it is hardly worth the effort. There are, however, some potentates [rulers] I would kill by any and all means at my disposal. They are ignorance, superstition, and bigotry—the most sinister and tyrannical rulers on earth.

Ms. KIST: And why did you write the things you did?

EMMA GOLDMAN: The people are asleep; they remain indifferent. They forge their own chains and do the bidding of their masters....

Ms. KIST: You maintain your innocence in this trial, then?

EMMA GOLDMAN: The free expression of the hopes and aspirations of a people is the greatest and only safety in a sane society. ...The State is itself the greatest criminal, breaking every written and natural law, stealing in the form of taxes, killing in the form of war and capital punishment...

Ms. KIST: Thank you.

JUDGE C: Your closing statements, please.



THE TRIAL OF EMMA GOLDMAN (CONT.)

US ATTORNEY: There can be no question that Miss Goldman broke the law. The Espionage Act clearly states that it is a crime to “willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or ... willfully obstruct the recruiting or enlistment service of the United States.” Her newsletter’s goal was undoubtedly to do just that. Congress has the constitutional power to raise an army and provide for it, and also to prevent people from interfering with it in time of war.

Furthermore, Miss Goldman is in the United States because we are gracious enough to have her. But she is an alien. The United States is justified in sending her back to Russia. It is ridiculous to think the United States must tolerate a non-citizen exercising her “blessings of liberty” by calling for and even working to bring about the destruction of the US.

Ms. KIST: Yes, Miss Goldman’s ideas are shocking. But I am not asking you to like her. I am asking you to acknowledge that her words are protected by the First Amendment to the Constitution. Maybe she broke the law by disobeying the Espionage Act—I will discuss that later—but the Espionage Act is unconstitutional. The First Amendment says “Congress shall make no law ... abridging the freedom of speech, or of the press, or of the right

of the people peaceably to assemble....” Notice that the amendment does NOT say “except when we are at war,” or “except when dangerous ideas are involved.” It says “NO LAW.”

The US attorney quoted a section of the Espionage Act, but s/he left out an important part. The Act says those actions “to the injury of the service or of the United States” are criminal. Where is the injury? The government has shown no evidence that my client actually harmed the interests of the United States in this war. There is no proof that my client’s speech caused anyone to actually resist the draft. She published out in the open, so there can be no conspiracy.

JUDGE D: The United States has the constitutional power to punish people who resist the selective draft law. Miss Goldman was charged with conspiracy to resist the draft, a federal offense under the 1917 Espionage Act. She had two arguments in her defense: First, there was no conspiracy because what she did was not secretive but out in the open. Second, there was no proof that she caused anyone to disobey the conscription law.

Both of her arguments are absolutely without merit. What Emma Goldman did was a crime, even if she didn’t succeed in her goal of getting people to resist the draft. This court finds her guilty.