

DIE ENTSTEHUNG, WEITERENTWICKLUNG UND BEACHTUNG DER GRUND-/ UND MENSCHENRECHTE – THE ANTI-WAR MOVEMENT

KOMPETENZORIENTIERTE AUFGABENSTELLUNG: THE ANTI-WAR MOVEMENT IN THE U.S. & THE ESPIONAGE ACT

Gegenwartsbezug: Aufgrund des "Espionage Act" soll der ehemalige NSA-Mitarbeiter und Whistleblower Edward Snowden angeklagt werden. Der im Irak eingesetzte US-Soldat Bradley (jetzt: Chelsea) Manning wurde aufgrund des Gesetzes verurteilt. Die Entstehungsgeschichte des Gesetzes geht zurück auf den Eintritt der USA in den Ersten Weltkrieg.

AUFGABEN - Tasks

1. Fasse kurz zusammen, welche wichtigen Bestimmungen der „Espionage Act“ (**Material 2**) enthält und auf welche von der US-Verfassung garantierten Rechte sich das Flugblatt aus dem Jahr 1917 im Zusammenhang mit der Wehrpflicht (**Material 3**) bezieht.
2. Erörtere die Argumente in der Urteilsbegründung für die strafrechtliche Verurteilung des für das Flugblatt „Assert Your Rights“ verantwortlichen Charles Schenck vom Supreme Court (**Material 4**).
3. Beurteile die Entscheidungen des Supreme Court und des Komitees des U.S.-Kongress (**Material 4 und Material 6**) und nimm Stellung zur Frage des Spannungsverhältnisses zwischen Grund- und Verfassungsrechten einerseits und strafgesetzlichen Bestimmungen wie dem „Espionage Act“ (**Material 2**) andererseits.
4. Diskutiere unter Bezugnahme auf die **Materialien 8 und 9** die Bedeutung von Fragen wie die Überwachung von BürgerInnen (und des Internets) durch Geheimdienste einerseits und die Geheimhaltung von für die Öffentlichkeit relevanten Informationen andererseits in Bezug auf die Beachtung von Grund- und Menschenrechten in der Gegenwart. Nimm dabei auch Stellung zu Aussagen wie „he betrayed his country“ (Er hat Hochverrat begangen) betreffend Edward Snowden (**Material 8**)!
5. Vergleiche die zwei Propagandamaterialien (**Material 7**) aus dem historischen Raum des Kriegseintritts der USA 1917. Wie lässt sich die jeweilige Kernaussage zusammenfassen? Welche Wirkung soll erzielt werden?
6. Diskutiere und nimm Stellung zu mindestens **drei** der folgenden Aussagen (**Discussion**). **Mindestens eine** der Aussagen muss **aus** den **Nummern 6.) bis 12.) gewählt** werden. Begründe deine Ansichten!

Discussion:

Lies die Aussagen und entscheide, wie zutreffend du diese findest. Finde auch Argumente für deine Entscheidung!

	Trifft voll zu	Trifft überwiegend zu	Trifft eher nicht zu	Trifft nicht zu
1. In spring 1917, there was no doubt about the fact that the Entente would win the War.				
2. There were strong economic interests (profit motives) behind U.S. President Wilson's decision to enter the war in 1917.				
3. The main reason for U.S. President Wilson's decision to enter war in 1917 was "to make the world a save place for democracy."				
4. In spring of 1917, there was a national consensus for war in the U.S. and a spontaneous popular urge to fight in the war on the side of the Allies.				
5. In 1917, the Socialist Party made remarkable gains in municipal elections. This shows that there was a significant opposition against the government's decision to enter the war.				
6. The Espionage Act, by prosecuting free speech and writing, violates the First Amendment to the constitution - "Congress shall make no law ... abridging (einschränken) the freedom of speech, or of the press."				
7. Obstructing the recruiting of soldiers and denouncing the War efforts of the U.S. government in 1917 can be compared to the action of a man falsely shouting fire in a theatre and causing a panic.				

8.	Debs and other socialists, by obstructing the recruitment of soldiers for the American army, were striking the sword from the hand of the nation while she was engaged in defending herself against a foreign and brutal power.				
9.	There is no substantial difference between the German "Junkers" (Großgrundbesitzer) and the American landlords. Both of them profiteer from the work done by the ordinary people, accumulating the wealth in their hands. (Material 5)				
10.	The master class has always declared the wars; the subject class has always fought the battles. The master class has had all to gain and nothing to lose, while the subject class has had nothing to gain and all to lose — especially their lives. (Material 5)				
11.	In Kriegszeiten können sich auch Rechtsstaaten mit langer Tradition von demokratischen Verfassungen relativ rasch in Polizeistaaten verwandeln.				
12.	Die Ursache für die Einschränkung verfassungsmäßiger Grundrechte wie der Versammlungsfreiheit im Jahr 1917 war ...				

Material 1: Hintergrundinformation - Verfassung und Erster Weltkrieg in Österreich und Deutschland

In praktisch allen europäischen Staaten, egal wie alt (z.B. Großbritannien) oder wie jung (z.B. Deutschland) ihre Traditionen der parlamentarischen Kontrolle der Regierung und der demokratischen Verfassungen im Jahr 1914 auch immer gewesen sein mögen, wurden mit Kriegsbeginn im Sommer 1914 nach und nach viele, von der Verfassung garantierte Grundrechte wie die Versammlungsfreiheit oder die Meinungsfreiheit bis auf weiteres eingeschränkt oder außer Kraft gesetzt. Es herrschte ein Ausnahmezustand. In Österreich wurde der Regierung mit dem „kriegswirtschaftlichen Ermächtigungsgesetz“ ermöglicht, sämtliche Entscheidungen autoritär, das heißt ohne Zustimmung des "Reichsrats" (= Parlaments), zu treffen. In Deutschland gingen viele Entscheidungsbefugnisse von der Regierung auf die oberste Heeresleitung unter der Führung von Feldmarschall Hindenburg über. Spätestens seit Ende 1914, als sich der deutsche Regierungschef Bethmann Hollweg beunruhigt darüber zeigte, dass der Krieg noch nicht - wie versprochen - mit einem Sieg geendet hatte, wurden wichtige Entscheidungen alleine von der obersten Heeresleitung getroffen.

Material 2: Espionage Act (May 1917)

Whoever, when the United States is at war, shall wilfully 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 wilfully make or convey false reports, or false statements, or say or do anything [...] with intent to obstruct the sale by the United States of bonds [...] or the making of loans by or to the United States, [...]

Or whoever, when the United States is at war, shall wilfully cause or incite insubordination, disloyalty, mutiny, or 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, and whoever, when the United States is at war, shall wilfully utter, print, write, or publish any disloyal [...] 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 [...] And whoever shall wilfully 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 favour 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 imprisonment for not more than twenty years, or both...."

<http://www.firstworldwar.com/source/espionageact1918.htm>

Material 3: Leaflet distributed to World War I draftees by the Socialist Party in the summer of 1917

[...] The 13th Amendment to 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 Socialist Party says that any individual or officers of the law entrusted with the administration of conscription (Wehrpflicht) 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 (Einberufungsbefehl). [...] To draw this country into the horrors of the present war in Europe, to force the youth of our land into the shambles and bloody trenches of war crazy nations, would be a crime the magnitude of which defies description.

[...] A conscript (zum Wehrdienst verpflichteter) is deprived of his liberty and of his right to think and act as a free man. He is forced into involuntary servitude. He 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 venal capitalist newspapers, or intimidated and deceived by gang politicians into believing that you would not be allowed register your objection to conscription? [...] "Do not submit to intimidation," "Assert your rights, your right to assert your opposition to the draft" and "If you do not assert and support your rights, you are helping to deny rights which it is the solemn duty of all citizens and residents of the United States to retain."

LONG LIVE THE CONSTITUTION OF THE UNITED STATES

Wake Up, America! Your Liberties Are in Danger!

The 13th Amendment, Section 1, 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."

<http://www.english.illinois.edu/-people-/faculty/debaron/380/380reading/schenckpamphlet.html>

Material 4: The Supreme Court's decision in the case Schenck vs. U.S. in 1919

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. ... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.

[...] The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. 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.

Zitiert nach: Howard Zinn, A People's History of the United States. Abridged Teaching Edition (New York 2003)

Hintergrundinformation: In August of 1917, Mr. Charles Schenk, general secretary of the Socialist Party, was arrested in Philadelphia and held responsible for the fifteen thousand leaflets (Material 3) distributed by the Socialist Party. He was tried and found guilty for violating the Espionage Act. Schenk appealed, arguing that the act, by prosecuting speech and writing, violated the First Amendment to the Constitution.

Material 5: Eugene Debs' Speech against the war (1918)

[...] Who is it that makes this land valuable while it is fenced in and kept out of use? It is the people. Who pockets this tremendous accumulation of value? The landlords. And these landlords who toil not and spin not are supreme among American "patriots." [...] The lord of the land is indeed a superpatriot. This lord who practically owns the earth tells you that we are fighting this war to make the world safe for democracy—he who shuts out all humanity from his private domain; he who profiteers at the expense of

the people who have been slain and mutilated by multiplied thousands, under pretense of being the great American patriot. It is he, this identical patriot who is in fact the archenemy of the people; it is he that you need to wipe from power. It is he who is a far greater menace to your liberty and your well-being than the Prussian Junkers on the other side of the Atlantic ocean.

And still our plutocracy, our Junkers, would have us believe that all the Junkers are confined to Germany. It is precisely because we refuse to believe this that they brand us as disloyalists. They want our eyes focused on the Junkers in Berlin so that we will not see those within our own borders. I hate, I loathe, I despise Junkers and junkerdom. I have no earthly use for the Junkers of Germany, and not one particle more use for the Junkers in the United States.

They tell us that we live in a great free republic; that our institutions are democratic; that we are a free and self-governing people. This is too much, even for a joke. But it is not a subject for levity; it is an exceedingly serious matter.

Wars throughout history have been waged for conquest and plunder.[...] And that is war in a nutshell. The master class has always declared the wars; the subject class has always fought the battles. The master class has had all to gain and nothing to lose, while the subject class has had nothing to gain and all to lose—especially their lives. [...]

Yours not to reason why;
Yours but to do and die.

That is their motto and we object on the part of the awakening workers of this nation.

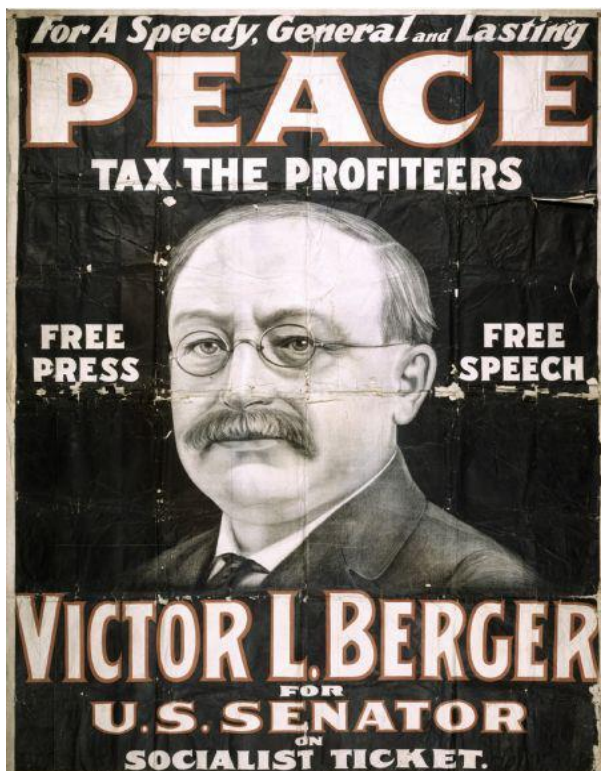
Hintergrundinformation: The most famous case that came before the Supreme Court was that of Eugene Debs. Debs had won 6% of the votes when he had taken part in the 1912 elections for presidency. In June of 1918, Debs spoke to an audience for two hours about his comrades who were in jail for violating the "Espionage Act".

Material 6: The case of Victor L. Berger

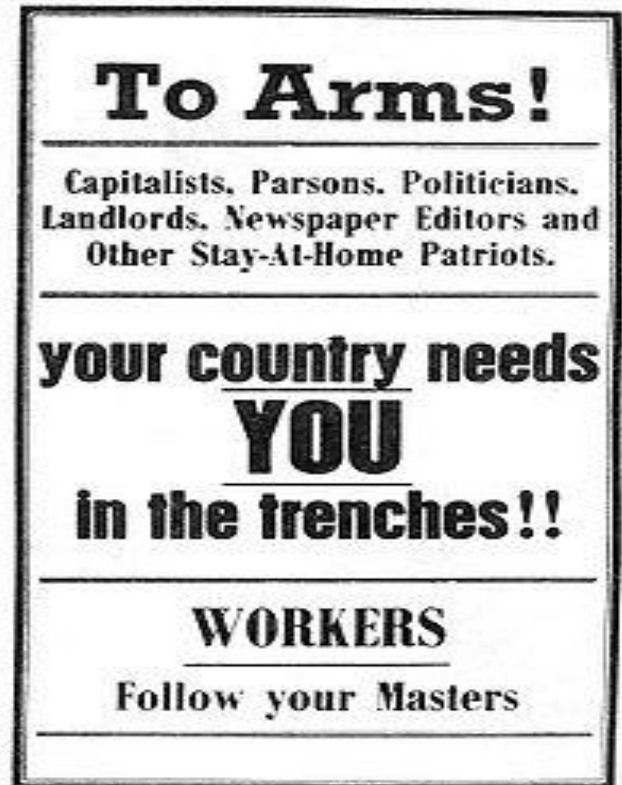
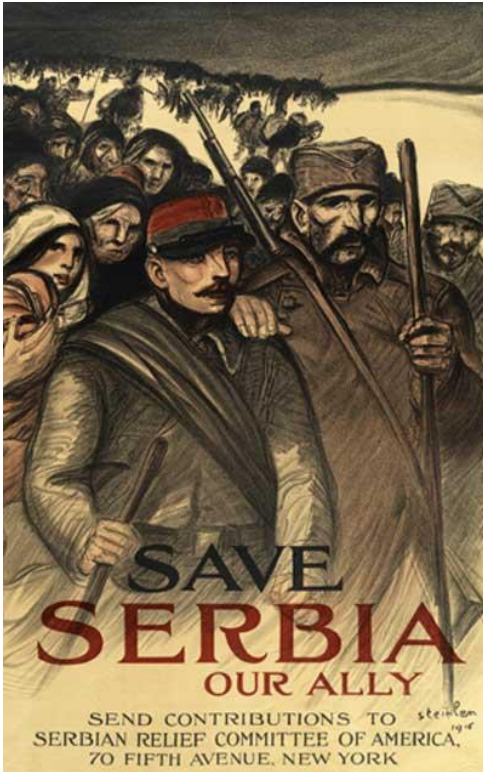
Victor Luitpold Berger (February 28, 1860 in Nieder-Rehbach/Siebenbürgen, Österreich-Ungarn – August 7, 1929 in Wisconsin, USA) was a founding member the Socialist Party of America.

Born in Austria-Hungary, Berger immigrated to the United States as a young man and became an important and influential socialist journalist in Wisconsin. He helped establish the so-called Sewer Socialist movement. Also a politician, in 1910, he was elected as the first Socialist to the U.S. House of Representatives, representing a district in Milwaukee, Wisconsin.

In 1918 Berger was indicted for violating the Espionage Act after having published his anti-militarist views. In spite of his being under indictment at the time, the voters of Milwaukee elected Berger to the House of Representatives in 1918. When he arrived in Washington to claim his seat, Congress formed a special committee to determine whether a convicted felon and war opponent should be seated as a member of Congress. On November 10, 1919, they concluded that he should not, and declared the seat vacant. Wisconsin promptly held a special election to fill the vacant seat, and on December 19, 1919, elected Berger a second time. On January 10, 1920, the House again refused to seat him, and the seat remained vacant until 1921. The verdict was eventually overturned by the Supreme Court, and Berger was elected to three successive terms in the 1920s.



Material 7: Propaganda im historischen Raum des Kriegseintritts der USA 1917



Material 8: Auszüge aus der Berichterstattung der Zeitung "The Guardian" vom 28.5.2014

[...] In a television appearance on Wednesday morning, [US-secretary of state] Kerry said that if Snowden were a "patriot", he would return to the United States from Russia to face criminal charges. Snowden was charged last June (2013) with three felonies under the 1917 Espionage Act. "This is a man who has betrayed his country," Kerry told CBS News. "He should man up and come back to the US."

[...] As an employee of a defense contractor working in an NSA facility, Snowden copied and removed top-secret documents estimated in a Pentagon report to number 1.7m. Snowden gave the documents to Glenn Greenwald, then a Guardian journalist, and others. The first reports based on the documents were published in the Guardian in June 2013.

Michael German, a fellow at the New York-based Brennan Center for Justice, said the "pre-trial abuse that was inflicted on Chelsea Manning", stood out as an example of an aggressive application of the law. Manning was convicted last year of violating the Espionage Act and other charges and sentenced to 35 years in prison. Before her trial, Manning was held for nine months in solitary confinement under conditions later deemed "excessive" by a military judge.

<http://www.theguardian.com/world/2014/may/28/snowden-return-us-kerry-face-charges-espionage>

Material 9: Auszüge aus einem Kommentar von Glen Greenwald in der Zeitung "The Guardian" vom 22.6.2013

[...] In what conceivable sense are Snowden's actions "espionage"? He could have - but chose not - sold the information he had to a foreign intelligence service for vast sums of money, or covertly passed it to one of America's enemies, or worked at the direction of a foreign government. *That* is espionage. He did none of those things.

[...] What they [the U.S. government] hate are leaks that embarrass them or expose their wrongdoing. Those are the only kinds of leaks that are prosecuted. It's a completely one-sided and manipulative abuse of secrecy laws. It's all designed to ensure that the only information we as citizens can learn is what they want us to learn because it makes them look good. The only leaks they're interested in severely punishing are those that undermine them politically. The "enemy" they're seeking to keep ignorant with selective and excessive leak prosecutions are not The Terrorists or The Chinese Communists. It's the American people.

<http://www.theguardian.com/commentisfree/2013/jun/22/snowden-espionage-charges>

Zusatzmaterial: Ellis Washington, a former editor of the *Michigan Law Review*, writes about the Supreme Court's decision in the case *Schenck vs. U.S.* in 1919 as "traitorous jurisprudence":

The hypothetical scenario of "falsely shouting fire in a theatre" is the one most frequently cited judicial quote when people seek to regulate speech they find objectionable, but in this case there are two major problems with citing it:

1. By sacred oath, every judge in America vows to zealously defend the U.S. Constitution including the Bill of Rights, which Holmes in the Schenck case blatantly did not do. This federal "law" signed by President Wilson violated the freedom of the press, so Schenck should have been freed and the power of Congress to pass that law voided by the First Amendment.
2. Holmes offered no evidence that Schenck "falsely" stated anything; Schenck's allegedly criminal activity was in printing and distributing the text of the 13th Amendment to the Constitution, and his opinion of what conduct that text involved. Therefore, his comparison to false speech is irrelevant.

In a rational world, at the publication of this tyrannous (and unanimous) decision by Supreme Court Justice Holmes who had the arrogance to "dispose" of the First Amendment to the Constitution, the House of Representatives should have immediately filed Articles of Impeachment against Justice Holmes for violating his sworn oath "to protect and defend the Constitution against all enemies foreign and domestic" and promptly removed him from the bench by a supermajority of the Senate. No justice, no president, no legislature can summarily "dispose" of any clause in the Bill of Rights as protecting what was perfectly understood by the Framers as unalienable, God-given rights designed to protect We the People from government tyranny.

The Schenck case occurred in 1919. That's almost 100 years of Supreme Court traitorous jurisprudence whereby justices like Holmes in their arrogance, consistently "disposed" of our sacred constitutional liberties protected by the Bill of Rights. Holmes' tyrannical legacy exists today in President Obama's National Defense Authorization Act¹, while the Congress, the president, the courts and most American citizens do virtually nothing to vindicate our sacred liberties bought and paid for by the blood of our forefathers.

Ellis Washington was a former editor of the *Michigan Law Review*. He is an instructor at Spring Arbor University and the American College of Education. Washington's latest book is "*The Nuremberg Trials: Last Tragedy of the Holocaust*" (2008).

Zitiert nach: <http://www.wnd.com/2012/04/oliver-wendell-holmes-traitorous-jurisprudence/>

Vocabulary

blatantly offenkundig

objectionable unzulässig, verwerflich

unalienable unveräußerlich

to void ungültig machen

to disparage herabsetzen

traitorous verräterisch

to vindicate verteidigen

zealously eifrig

THE ANTI-WAR-MOVEMENT IN THE UNITED STATES AND THE ESPIONAGE ACT (1917)

When he was elected in 1912, President Woodrow Wilson promised that the United States would stay neutral in the case of a European conflict. When the war broke out in 1914 he said: "There is such a thing as a nation being too proud to fight." But in April of 1917, the Germans had announced they would have their submarines sink any ship bringing supplies to their enemies ("uneingeschränkter U-Bootkrieg"); and they had already sunk a number of merchant vessels. Wilson now said he must stand by the right of Americans to travel on merchant ships in the war zone. According to historian Howard Zinn, it was unrealistic to expect that the Germans should treat the United States as neutral in the war when the U.S. had been shipping great amounts of war materials to Germany's enemies. In 1915, the British liner *Lusitania* was torpedoed and sunk by a German submarine, causing the deaths of 1,198 people, including 124 Americans. The United States claimed the *Lusitania* carried an innocent cargo. Actually, the *Lusitania* had carried thousands of cases of shells and other war materials. Her manifests were falsified to hide this fact, and the British and American governments lied about the cargo.

There were substantial "economic necessities" behind U.S. President Wilson's decision to enter the war in 1917 as well. In 1914, a serious recession had begun in the United States, the industries were working far below capacity. But by 1915, war orders for the Allies (mostly GB) had stimulated the economy, and by April 1917 more than \$2 billion worth of goods had been sold to the Allies ("Entente-Mächte"). GB had also become a market for American loans at interest. The J.P. Morgan bank was lending money in such great amounts as to both make great profits and tie American finance closely to the interest of a British victory in the war against Germany.

¹ The National Defense Authorization Act (NDAA) was signed by U.S. President Obama in December 2011. It authorizes this president and all future presidents to order the military to lock away civilians picked up far from any battlefield, in indefinite detention without charge or trial based on suspicion alone. It could permit any president to send the American military to imprison people anywhere in the world, even where there is no armed conflict and no threat to Americans.

Since February 1917, when a Revolution started in Russia, it became increasingly unclear who would win the War. But U.S.-American troops were badly needed on the Western front as well. From September 1914 onwards, the battle lines had remained virtually stationary in France for three years. Each side would push forward, and then back, then forward again- for a few yards, a few miles, while the corpses piled up. From the first days of the war, the killing started very fast, and on a large scale. In August 1914, a volunteer for the British army had to be 5 feet 8 inches to enlist. By October 1914, the requirement was lowered to 5 feet 5 inches. That month there were thirty thousand British casualties, and then one could be 5 feet 3 inches. In the first three months of war, almost the entire original British army was wiped out. Mutinies (Meuterei) were beginning to occur not only in the Russian, but in the French armies as well. In 1917, out of 112 divisions, 68 would have mutinies (one division has between 10.000 and 20.000 soldiers).

On April 6, 1917, the U.S. Congress declared war upon the German Empire. Despite the words of Wilson about making "the world safe for democracy," Americans did not rush to enlist. A million men were needed, but in the first six weeks after the declaration of war only 73,000 volunteered. Entering the war in 1917 demanded the creation of a national consensus for war in the U.S.

That there was no spontaneous urge to fight is suggested by the strong measures taken.

- Congress voted overwhelmingly for a draft (= Verpflichtender Kriegsdienst)
- An elaborate propaganda campaign throughout the country
- Harsh punishment for those who refused to get in line.

George Creel, a veteran newspaperman, became the government's official propagandist for the war; he set up a Committee on Public Information to persuade Americans the war was right. It sponsored 75,000 speakers, who gave four-minute speeches in five thousand American cities and towns. The national press cooperated with the government. The New York Times in the summer of 1917 carried an editorial: "It is the duty of every good citizen to communicate to proper authorities any evidence of sedition (Aufbruch) that comes to his notice." In 1918, the Attorney General said: "It is safe to say that never in its history has this country been so thoroughly policed."

Why these huge efforts? On August 1, 1917, the New York Herald reported that in New York City ninety of the first hundred draftees claimed exemption (Befreiung vom Wehrdienst). Senator Thomas Hardwick of Georgia said "there was undoubtedly general and widespread opposition on the part of many thousands ... to the enactment of the draft law. Numerous and largely attended mass meetings held in every part of the State protested against it." Ultimately, over 330,000 men were classified as draft evaders (Wehrdienstverweigerer). The day after Congress declared war in April 1917, the Socialist party had met in emergency convention in St. Louis and called the declaration "a crime against the people of the United States." In the summer of 1917, Socialist antiwar meetings in Minnesota drew large crowds - twenty thousand farmers-protesting the war. In the municipal elections of 1917, against the tide of propaganda and patriotism, the Socialists made remarkable gains. Their candidate for mayor of New York, Morris Hillquit, got 22 percent of the vote, five times the normal Socialist vote there. Ten Socialists were elected to the New York State legislature. In Buffalo (NY), the party vote went from 2.6 percent in 1915 to 30.2 percent in 1917. In Chicago, the party vote went from 3.6 percent in 1915 to 34.7 percent in 1917.

Schools and universities discouraged opposition to the war. At Columbia University, J. McKen Cattell, a psychologist and an opponent of the war, was fired. A week later, in protest, the famous historian Charles Beard resigned from the Columbia faculty, charging the people responsible with being "reactionary and visionless in politics, narrow and medieval in religion. ..." In Congress, a few voices spoke out against the war. The first woman in the House of Representatives, Jeannette Rankin, did not respond when her name was called in the roll call (Abstimmung) on the declaration of war. On the next roll call she stood up: "I want to stand by my country, but I cannot vote for war. I vote No."

In June of 1917 Congress passed the Espionage Act. From its title one would suppose it was an act against spying. However, it had a clause that provided penalties up to twenty years in prison for "Whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination (Ungehorsam), disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States." (see **Material 2**). The Espionage Act was used to imprison Americans who spoke or wrote against the war. Two months after the law passed, a Socialist named Charles Schenck was arrested in Philadelphia for printing and distributing fifteen thousand leaflets that denounced the draft law and the war. The leaflet (see **Material 3**) recited the Thirteenth Amendment (Zusatz zur Verfassung). It said that the Conscription Act (Verpflichtung zum Wehrdienst) violated the provision against "involuntary servitude" ("Knechtschaft"). Conscription, it said, was "a monstrous deed against humanity in the interests of the financiers of Wall Street. [...] A conscript (zum Wehrdienst verpflichteter) is deprived (beraubt) of his liberty and of his right to think and act as a free man." And: "Do not submit to intimidation (Einschüchterung)." Schenck was indicted (angeklagt), tried, found guilty, and sentenced to six months in jail for violating the Espionage Act. It turned out to be one of the shortest sentences given in such cases. Schenck appealed, arguing that the Act, by prosecuting speech and

writing, violated the First Amendment to the constitution: "Congress shall make no law ... abridging (einschränken) the freedom of speech, or of the press."

The Supreme Court's decision was unanimous and was written by its most famous liberal judge, Oliver Wendell Holmes (see **Material 4**). He said the leaflet was undoubtedly intended to obstruct the carrying out of the draft law. Was Schenck protected by the First Amendment? Holmes said: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. ... The question in every case is whether the words used are used in such circumstances as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Holmes's analogy was clever and attractive. Few people would think free speech should be conferred on someone shouting fire in a theater and causing a panic. But did that example fit criticism of the war? Was not Schenck's act more like someone shouting, not falsely, but truly, to people about to buy tickets and enter a theater, that there was a fire raging inside? Was not the war itself a "clear and present danger," indeed, more clear and more present and more dangerous to life than any argument against it?

The most famous case that came before the Supreme Court was that of Eugene Debs. Debs had won 6% of the votes when he had taken part in the 1912 elections for presidency. In June of 1918, Debs spoke to an audience for two hours about his comrades who were in jail for violating the "Espionage Act". Debs was arrested for violating the Espionage Act. There were draft-age youths in his audience, and his words would "obstruct the recruiting or enlistment service." Debs refused at his trial to call a witness on his behalf. He denied nothing about what he said: "I have been accused of obstructing the war. I admit it. Gentlemen, I abhor (verabscheue) war. I would oppose war if I stood alone.... I have sympathy with the suffering, struggling people everywhere. It does not make any difference under what flag they were born, or where they live." The jury found him guilty of violating the Espionage Act. The judge denounced those "who would strike the sword from the hand of this nation while she is engaged in defending herself against a foreign and brutal power." He sentenced Debs to ten years in prison. He ran for president in the 1920 election while in prison at the Atlanta Federal Penitentiary and received more than 900,000 votes, slightly less than he had won in 1912. Debs appeal was not heard by the Supreme Court, but after three years in jail, he was released by President Harding in 1921.

Several thousand people were tried and around 900 went to prison under the Espionage Act. In 1917, Kate Richards O'Hare, spoke out against "the women of the United States [being] nothing more nor less than brood sows, to raise children to get into the army and be made into fertilizer." She was arrested, tried, found guilty, and sentenced to five years in the Missouri state penitentiary. In Los Angeles, a film was shown that dealt with the American Revolution and depicted British atrocities against the colonists. It was called "The Spirit of '76". The man, who made the film, Frank Montgomery, was prosecuted under the Espionage Act because, the judge said, the film tended "to question the good faith of our ally, Great Britain." He was sentenced to ten years in prison.

The Post Office Department began taking away the mailing privileges of newspapers and magazines that printed antiwar articles. "The Masses", a socialist magazine of politics and literature, was banned from the mails. It had carried an editorial in the summer of 1917, saying, among other things: "For what specific purposes are you shipping our bodies, and the bodies of our sons, to Europe? For my part, I do not recognize the right of a government to draft me to a war whose purposes I do not believe in."

This substantial opposition was put out of sight, while the visible national mood was represented by military bands, flag waving and the mass buying of war bonds (Anleihen). A popular song of the time was: "I Didn't Raise My Boy to Be a Soldier." It was overwhelmed, however, by songs like "It's a Grand Old Flag," and "Johnny Get Your Gun." But the magnitude of the campaign to discourage opposition says something about the spontaneous feelings of the population toward the war.

The war ended in November 1918. Fifty thousand American soldiers had died, and it did not take long, for bitterness and disillusionment to spread through the country. This was reflected in the literature of the postwar decade. A Hollywood screenwriter named Dalton Trumbo would write a powerful and chilling antiwar novel about a torso and brain left alive on the battlefield of World War I, "Johnny Got His Gun".²

Vocabulary

Amendment to the constitution – Zusatzgesetz zur Verfassung

conscript – Zum Wehrdienst Verpflichteter

draft – Verpflichtender Wehrdienst

insubordination – Ungehorsam

levity – Leichtfertigkeit

mutiny – Meuterei, Befehlsverweigerung

pretense – Vortäuschung

sedition - Aufruhr

Verwendete Literatur: Howard Zinn, A People's History of the United States. Abridged Teaching Edition (New York 2003)

² Zinn 2003, S. 267 - 271