

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era – Democratic Rights/Free Speech/Advocacy

---

**Debs v. U.S., 249 U.S. 211 (1919)**

---

*Eugene Debs was the leading American socialist during the Republican Era and an antiwar activist. On June 16, 1917, Debs gave a speech in Canton, Ohio, which condemned the war and praised persons who refused to be inducted into the army. He was immediately arrested and charged with violating the Espionage Act of 1917. Debs was convicted at trial and sentenced to ten years in prison. He appealed to the Supreme Court of the United States.*

*The Supreme Court of the United States unanimously sustained Deb's conviction and sentence. Justice Holmes's opinion for the court did not use the "clear and present danger test." What standard did Holmes use? Is that standard consistent with the standard employed in Schenck v. United States (1919)? Suppose a political conservative had given a speech claiming that American soldiers were being given inadequate weapons. Could that speech have induced persons not to submit to the draft? Could that speech have been punished under the Espionage Act?*

*While in prison, Debs ran for president. He received almost one million votes.*

JUSTICE HOLMES delivered the opinion of the Court.

...  
The main theme of the speech was Socialism, its growth, and a prophecy of its ultimate success. With that we have nothing to do, but if a part or the manifest intent of the more general utterances was to encourage those present to obstruct the recruiting service, and if, in passages, such encouragement was directly given, the immunity of the general theme may not be enough to protect the speech. The speaker began by saying that he had just returned from a visit to the workhouse in the neighborhood where three of their most loyal comrades were paying the penalty for their devotion to the working class—these being Wagenknecht, Baker, and Ruthenberg, who had been convicted of aiding and abetting another in failing to register for the draft. . . . He said that he had to be prudent, and might not be able to say all that he thought, thus intimating to his hearers that they might infer that he meant more, but he did say that those persons were paying the penalty for standing erect and for seeking to pave the way to better conditions for all mankind. . . .

There followed personal experiences and illustrations of the growth of socialism, a glorification of minorities, and a prophecy of the success of the international socialist crusade, with the interjection that "you need to know that you are fit for something better than slavery and cannon fodder." The rest of the discourse had only the indirect, though not necessarily ineffective, bearing on the offences alleged that is to be found in the usual contrasts between capitalists and laboring men, sneers at the advice to cultivate war gardens, attribution to plutocrats of the high price of coal, &c., with the implication running through it all that the working men are not concerned in the war, and a final exhortation." . . . The defendant addressed the jury himself, and while contending that his speech did not warrant the charges said, "I have been accused of obstructing the war. I admit it. Gentlemen, I abhor war. I would oppose the war if I stood alone." The statement was not necessary to warrant the jury in finding that one purpose of the speech, whether incidental or not does not matter, was to oppose not only war in general, but this war, and that the opposition was so expressed that its natural and intended effect would be to obstruct

recruiting. If that was intended and if, in all the circumstances, that would be its probable effect, it would not be protected by reason of its being part of a general program and expressions of a general and conscientious belief.

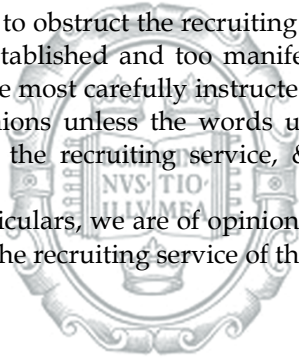
...

There was introduced also an "Anti-War Proclamation and Program" adopted at St. Louis in April, 1917, coupled with testimony that, about an hour before his speech, the defendant had stated that he approved of that platform in spirit and in substance. . . . This document contained the usual suggestion that capitalism was the cause of the war and that our entrance into it "was instigated by the predatory capitalists in the United States." It alleged that the war of the United States against Germany could not "be justified even on the plea that it is a war in defense of American rights or American honor." It said:

"We brand the declaration of war by our governments as a crime against the people of the United States and against the nations of the world. In all modern history there has been no war more unjustifiable than the war in which we are about to engage."

Its first recommendation was, "continuous, active, and public opposition to the war, through demonstrations, mass petitions, and all other means within our power." Evidence that the defendant accepted this view and this declaration of his duties at the time that he made his speech is evidence that, if in that speech he used words tending to obstruct the recruiting service, he meant that they should have that effect. The principle is too well established and too manifestly good sense to need citation of the books. We should add that the jury were most carefully instructed that they could not find the defendant guilty for advocacy of any of his opinions unless the words used had as their natural tendency and reasonably probable effect to obstruct the recruiting service, &c., and unless the defendant had the specific intent to do so in his mind.

Without going into further particulars, we are of opinion that the verdict on the fourth count, for obstructing and attempting to obstruct the recruiting service of the United States, must be sustained. . . .



OXFORD  
UNIVERSITY PRESS