

Where was the First Amendment?
Trials Under the Espionage and
Sedition Acts During WWI

by

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Before the passage of the Espionage and Sedition Acts of 1917 and 1918, the United States government sought to curb anti-war efforts with prosecutions under remaining Civil War conspiracy statutes. However, these statutes were not effective on persons acting or speaking out against the war alone because by definition a conspiracy requires more than one person.¹ To close these loopholes and successfully control public discussions and actions that may have harmed the war effort, Congress passed the Espionage Act in June of 1917². This Act censored speech, behavior and publication of information that *intended* to undermine the US war effort, or aid her enemies.³ However, this element of intent allowed some anti-war speech to go unpunished. Occasional acquittals under the Espionage Act, and violence against political dissidents prompted congress to pass the Sedition Act almost a year later. The Sedition Act was very similar to the Espionage Act, except for the inclusion of a section which forbid the utterance or publication of "disloyal, scurrilous or abusive language" regarding the US, her flag, her military or her government.⁴ This closed the loophole created by the element of intent, and its effect was to "ban dissent of any kind."⁵ These Acts and their effects came into direct conflict with the First Amendment of the Constitution which clearly prevents congress from "abridging

¹ Shirley J Burton, "The Espionage and Sedition Acts of 1917 and 1918: Sectional Interpretations in the United States District Courts of Illinois," *Illinois Historical Journal* 87(1) (1994), 41.

² Scott A Merriman, "An Intensive School of Disloyalty: The C.B. Schoberg Case Under the Espionage and Sedition Acts In Kentucky During World War I," *Register of the Kentucky Historical Society* 98(2) (2000), 181.

³ Jennifer D. Keene, *The United States and the First World War* (Harlow, England: Pearson Education Limited, 2000), 99. (excerpts from the Espionage and Sedition Acts)

⁴ Ibid.

⁵ Merriman, 182.

the freedom of speech, or of the press...and to petition the government for a redress of grievances.”⁶ This paper will explore the reasons why different Americans were prosecuted under the Espionage and Sedition Acts. While some cases will be mentioned in brief for context, the cases of C.B. Schoberg, Kate Richards O’Hare, Eugene Debs and Dr. Marie Equi will be closely examined to find the answers to that question. This work will also argue that the Espionage and Sedition Acts were used to enforce traditional cultural values and that these people were targeted because they in some way violated social norms.

Since the time that these laws were enacted, numerous scholars have examined the machinations and effects of the Espionage and Sedition Acts, as well as the cases and people tried under them. Stephen Kohn provides the reason that many scholars study the use of the Espionage and Sedition Acts when he points out that “these laws, many of which still remain on today’s statute books, represent an overt and serious threat to freedom of thought and expression. The fact that they were systematically used in the past and their constitutionality was upheld by the Supreme Court of the United States speaks to the ominous potential for their misuse in the future.”⁷ While there is general agreement with Kohn that the passage of these Acts led to the abridgement of civil liberties, each historian has viewed this process from a different angle. Some scholars document the lives of those who were targeted with these acts

⁶ “United States Constitution,” Kermit L. Hall, *Major Problems in American Constitutional History, Volume I: The Colonial Era Through Reconstruction* (Lexington: D.C. Heath & Co., 1992), xviii.

⁷ Stephen Kohn, *American Political Prisoners: Prosecutions Under the Espionage and Sedition Acts*. (Westport: Praeger Publishers, 1994), 2.

for their courageous opposition to war and social inequality.⁸ Others focus on specific aspects of charges or trials. A third group of scholars examine these prosecutions as a symptom and effect of other cultural biases, as is done in this study.⁹

John Vacha and Nancy Krieger are examples of scholars who documented the lives of those who were targeted with these Acts for their opposition to war and social inequality. In "Treason in Canton," Vacha chronicled the life and times of Eugene Debs, discussing his childhood and ascent in the Socialist party. Vacha's article focused on the Socialist and anti-war speech Debs gave in Canton, Ohio which he was arrested and tried for under the Espionage Act. Vacha also discusses contemporary public opinion of Debs; he was simultaneously viewed as a "saint" and "the devil incarnate" by the American public.¹⁰ Krieger published a similar article, "Queen of the Bolsheviks" detailing the life of another political activist, Dr. Marie Equi. Krieger uses Equi's life experiences, social work, public image and trial under the Espionage Act as a tool to describe the social and political climate of before and during WWI and to give an illustration of someone who fought to change it.¹¹ These articles contain the underlying assumption that Debs and Equi came into conflict with authorities because the beliefs and ideologies they disseminated clashed with accepted 'American' social norms.

⁸ For examples, see - John E. Vacha, "Treason in Canton! The Trial of Eugene Debs," *Timeline* 18(6) (2001), 2-17; Krieger, Nancy. "Queen of the Bolsheviks: The hidden history of Dr. Marie Equi," *Radical America* 17(5) (1983), 55 – 73.

⁹ An example of this - Kathleen Kennedy, *Disloyal Mothers and Scurrilous Citizens: Women and Subversion during World War I* (Bloomington: Indiana University, 1999).

¹⁰ Vacha, 3.

¹¹ Krieger, 55.

Neither author questions this assumption or considers the broader goals or effects of the Espionage and Sedition Acts.

David Sterling belongs to the group of scholars who explore a particular aspect of a trial. He focused on a more specific aspect of a case tried under the Acts. He published an article entitled "In defense of Debs," which examined the legal aspects of Debs's case; unlike Vacha and Krieger, Sterling purposely left out the social context of the trial and conviction. Instead, he filled another important historiographic niche by pointing out the lengths that Debs's lawyers went to defend him and later to overturn his conviction. This study goes against many other historians' argument that Debs offered only the first amendment as his defense and refused to allow his counsel to vigorously fight the charges.¹² While Sterling claims to ignore the political and social aspects of the case, he does point out the large number of Socialists who were arrested just before Debs, as well as Debs's feelings of guilt for remaining free while others were tried for making the same public stand that he was.¹³

Like these authors, Scott Merriman examines one specific case in "An Intensive School of Disloyalty: The C.B. Schoberg Case Under the Espionage and Sedition Acts In Kentucky During World War I". However, he examines this case as a symptom of larger issues by comparing the Schoberg case to the cultural climate during WWI as well as stereotypical trials under the Espionage and

¹² David L. Sterling, "In Defense of Debs: The Lawyers in the Espionage Act Case," *Indiana Magazine of History* 83(1) (1987), 17 – 18.

¹³ *Ibid*, 19.

Sedition Acts.¹⁴ Merriman points out that racism against German-Americans was rampant during the war, so it was not surprising that Schoberg and his friends were targeted by popular vigilante groups. However, he also points out that this case was unique because the conversations that led to Schoberg's conviction were entirely private, and because Schoberg was neither a Socialist nor poor like the typical defendant in a WWI espionage case.¹⁵ Similarly, Shirley Burton looks at a variety of cases tried in Illinois under the Espionage and Sedition Acts to emphasize the diversity of people and reasons for their trials in "The Espionage and Sedition Acts of 1917 and 1918: Sectional Interpretations in the United States District Courts of Illinois."¹⁶ While Merriman points out one case that doesn't fit the stereotype, Burton describes numerous occurrences.

Like Burton, Kathleen Kennedy examines multiple cases in an effort to demonstrate the use of the Espionage and Sedition Acts as a result of cultural bias; focusing specifically on the trials and circumstances of women. In *Disloyal Mothers and Scurrilous Citizens: Women and Subversion during World War I*, she outlines the cases of Emma Goldman, Rose Pastor Stokes as well as Kate Richards O'Hare and discusses the plight of political and professional women.¹⁷ Kennedy argues that the social climate and legal system during the war served

¹⁴ Merriman, 180 – 182.

¹⁵ Ibid, 183.

¹⁶ Burton, 42 – 3.

¹⁷ Kennedy, vii.

to create and enforce the idea of “patriotic motherhood” in which women were responsible for bearing and raising men to defend the nation.¹⁸

Similarly, David Ruderman analyzed the effects of the Espionage and Sedition acts by combining the methods of Merriman and Kennedy. In “Petrel Under Prosecution: Dr. Marie Equi and the Espionage Act of 1917,” he details the life and trial of Marie Equi and argues that she was “deliberately sought out” by authorities not just because of her opposition to the war or her radical social views, but because she did not conform to traditional gender roles.¹⁹ I would argue that the two conclusions are virtually identical because legally enforcing a moral value, as Kennedy contends was done by these Acts, is accomplished through arrests, trials and convictions which is what Ruderman argues.

While Kennedy and Ruderman look at how the Acts were used in specific instances, Burton looks at a variety of cases and statistics and discusses the climate of fear and hate which was at the root of prosecutions based on race. She argues that

in an atmosphere of high international tensions and domestic stress exacerbated by a vast influx of aliens, World War I became one of the most nativist and xenophobic periods of American history. Not even during the emotionalism and volatility of the Civil War was freedom of speech so suppressed and disloyalty so broadly defined.²⁰

Advocates of the Acts argued that they would aid in the avoidance of public violence against those who expressed anti-war sentiments by allowing the

¹⁸ Kennedy, xix.

¹⁹ David Ruderman, “Petrel Under Prosecution: Dr. Marie Equi and the Espionage Act of 1917,” (Ph.D. diss., Lewis and Clark College 1997), 4.

²⁰ Burton, 41-42.

perpetrators legal recourse in place of vigilantism.²¹ Fear and hate based attacks had already occurred, there was mob violence against the International Workers of the World (IWW) in addition to horse whippings and tar and featherings against other “disloyal” citizens.²² There was also a general “anti-German hysteria” which resulted in the changing of street and business names as well as the prohibition of teaching the German language in public schools.²³ As the proponents of the Espionage and Sedition Acts had hoped, private citizens used them to bring prosecution against Germans, Socialists, IWW and others who they feared to be un-patriotic,²⁴ although it remains unknown whether they would have resorted to violence if the judicial measures had not been available. Not only were minorities, Socialists, pacifists and others prosecuted, but anyone who attempted to uphold their rights could be associated with them and subjected to the same treatment.²⁵

As will be supported later, each of the cases discussed will be revealed as attacks against the defendants as a result of this fear-based hysteria. Debs and O’Hare were outspoken Socialists who openly challenged the notion of war. O’Hare was also a woman who refused to conform to the traditional gender roles associated with being a wife and mother. Marie Equi was involved with the IWW, a Socialist as well as a lesbian; all of these qualities made her a prime target for prosecution under these Acts. C.B. Schoberg, however, was none of these

²¹ Ibid, 44-45.

²² Ibid, 45.

²³ Merriman, 183.

²⁴ Ibid, 182-183.

²⁵ Burton, 45.

things. He did not openly oppose the war, in fact it will be shown that he was a financial supporter. He was targeted solely as a result of the German heritage.

While there were two men besides Charles Bernard (C.B.) Schoberg convicted, the cases are generally referred to as the *Schoberg* case. It is a poignant example of the racism discussed by Burton and Merriman as well as blatant violations of the First Amendment which were involved in many of the trials under the Espionage and Sedition Acts. It is also an example of how private organizations used the acts to target classes of people generally suspected of disagreeing with American participation in WWI. The Citizen's Patriotic League in Kentucky was a local group whose intent was to ensure that Northern Kentucky supported the war. "Their slogan was '100 percent American.'"²⁶ While their motivation is unknown, this group targeted Schoberg's shoe shop "as a hotbed of German sentiment in Northern Kentucky," and hired a detective agency to install a dictograph in the store's grandfather clock.²⁷ Detectives from the agency sat in the basement of the building that the shoe shop was located in for approximately five months. They used the dictograph to listen to "whispered conversations and [take] notes over the ticking and tolling of the grandfather clock" which the device had been planted in.²⁸ These notes were the basis of the prosecution's case against Schoberg as well as the six other men who were arrested in association with the shoe shop conversations.

²⁶Jim Reis, "'Americanism' triumphed in espionage trials of 1918," *The Cincinnati Post Online*, March 31, 1997, www.kypost.com/opinion/reis033197.html, accessed 11/12/04.

²⁷ Ibid; Merriman, 179, 186.

²⁸ Merriman, 187.

Schoberg was a 66 year old German immigrant who had come to the U.S. when he was about 5 years old. Prior to his arrest he had been a police officer, town marshal and had served on the Latonia city council; on the stand, Schoberg described himself as a "loyal American."²⁹ Henry Feltman was also convicted based on the transcripts from the dictograph. This 'anti-American' had bought \$1000 in savings stamps, \$45,000 worth of liberty bonds and certificates of indebtedness, and donated \$250 to the Red Cross, in which his wife and daughters were active workers.³⁰ Schoberg was accused of making statements that the press was not honest in its portrayal of the war, as well as expressing frustration with the Red Cross, and saying that he "will see them in hell before the get any of my money." The prosecution also accused him of making disloyal statements that the majority of prominent men in the U.S. were of German descent and that Abraham Lincoln's father was German.³¹ There were also witnesses who testified that they heard Schoberg singing in German; he countered this with the claim that he did not speak German, but Dutch.³² Feltman was accused of stating that Germany would win the war, and, along with Schoberg, complaining about the amount of money America and the Red Cross were asking for.³³ In clear violation of First Amendment, both of these men, as well as Henry Kruse were convicted, fined and sentenced to jail for comments they made to each other in a private business. This was despite the

²⁹ Reis; Merriman, 184.

³⁰ Reis; Merriman, 191.

³¹ Merriman, 189.

³² Ibid, 190.

³³ Ibid, 193.

difficulties with the dictograph, including the trouble of attributing the different voices to the accused men and hearing the conversations over the sounds made by the grandfather clock.

As demonstrated above, the men convicted in the Schoberg case publicly supported the war. Clearly their prosecutions were driven by anti-German sentiment. Whether they made the alleged statements or not, the Citizen's Patriotic League had no reason to suspect or investigate them other than their ethnicity.

These were not the only cases where people were charged and convicted for privately stating opinions about the war; Burton recounts similar cases tried under the Espionage and Sedition Acts in Illinois. For example, Amanda Murphy grew frustrated with multiple solicitations by the Red Cross and was convicted after she lost her temper and swore, "God damn this war and God damn President Wilson too and God damn the Red Cross nurses...don't another one of you come on this place; not a cent do we give to the Red Cross."³⁴ In addition to suppressing anti-war sentiments such as Murphy's, Burton points out instances where the Act was used to force observance of patriotic duties such as food conservation, the purchase of Liberty Bonds and respect for the Flag. Henry Lowe was indicted for making comments that government officials as well as the president were not eating the food substitutes and that America should feed its own people instead of sending wheat to other nations.³⁵ In another case,

³⁴ Burton, 49.

³⁵ Ibid, 49-50.

Peter Holzamacher was convicted and imprisoned for referring to the American flag as “a dirty rag.”³⁶ Additionally, the *New York Times* and *Stars and Stripes* reported in the winter of 1918 that the Mayor of Fayetteville, Texas and ten of his citizens were arrested and charged under the Espionage Act for flying a German flag at the Germania Club in their city.³⁷

What is important to note about most of these particular examples is that the U.S. citizens who were tried under the Espionage and Sedition acts were not the leaders of public movements against the war effort or outspoken Socialists. In the Schoberg case seven old men discussed the war with their friends in a private business, they were not attempting to start a rebellion or aid the enemy.³⁸ But these defendants do have something else in common: they were all by nature or deed “un-American.” Schoberg and his friends were viewed as foreigners from an enemy nation, Amanda Murphy expressed her frustration with a patriotic organization, the Mayor of Fayetteville and his associates flew an enemy flag, and Henry Lowe expressed his distrust of the U.S. government. This obviously indicates that the Espionage and Sedition Acts were aimed at more than national security; further, it implies that they were used to target citizens who were by birth or choice associated with rival countries or those whose speech was anti-nationalist or anti-war in sentiment – regardless of its potential or actual effect.

³⁶ Ibid, 50.

³⁷ “Flew German Flag in Texas.” *New York Times*, 14 February 1918, p. 8; *Stars and Stripes*, 15 March 1918, p. 4.

³⁸ Reis.

Stephen Kohn presents other cases tried under these acts, and points out how the government used them to silence entire dissident movements.³⁹ John Alex MacDonald was a member of the IWW, which was a “radical group” that “organized exploited workers who labored in lumber camps, mines and migrant camps.” This group was virtually destroyed as large numbers of its leaders were tried under the Espionage and Sedition Acts.⁴⁰ MacDonald was also an editor for the *Industrial Worker*. He was sentenced to ten years in Leavenworth and served more than five; he described the prison as “a damnation sordid, soiled, small, unpicturesque and mouldy as a decaying corpse.” Due to his publication of a poem entitled “A Patriot” in the *Industrial Worker*, the government refused to grant MacDonald clemency, even though he had tuberculosis.⁴¹ In addition to this case, Kohn lists hundreds of other cases where “union leaders, anti-war activists, Socialists and other dissidents [were] rounded up and arrested under the sedition laws.”⁴²

The trial and conviction of Kate Richards O’Hare is an example of these attacks on the leaders of dissident movements. She began her involvement in politics with labor unions while working in the Kansas City machine shop her father opened after the family farm went under in 1887. After 1901, she joined and became increasingly involved with the Socialist party.⁴³ O’Hare wrote that she was greatly disturbed by the poverty she witnessed in Kansas City and that

³⁹ Kohn, 1.

⁴⁰ Keene, 38.

⁴¹ Ibid, 116-117.

⁴² Ibid, 3.

⁴³ Kennedy, 19.

she stumbled across Socialism during her involvement in the unions which was part of her fight against poverty and the social ills it caused.⁴⁴ While going to school to learn more about Socialism, O'Hare met her husband, Frank, and in her own words their story became "the story of the Socialist movement, it [became their] life."⁴⁵ The two "stumped the Midwest and Southeast...and helped establish the Socialist party as a major political force, especially in Oklahoma."⁴⁶ They preached their message anywhere where they felt that the "economic pressure made men and women receptive" to their philosophy, which included street corners, colleges, ghettos, country school houses and legislatures.⁴⁷ As a result of this speaking campaign, she became a well known Socialist. While the prosecutions' reliance on her defamation of patriotic motherhood will be discussed, her reputation as a Socialist leader cannot be ignored as a part of her conviction and severe sentence. In connection with her political stance, the Judge in her case was encouraged by superiors to make an example out of O'Hare by punishing her severely.⁴⁸ After sentencing her to five years in a federal prison, the Judge defended his action by attacking her successful promotion of Socialism as instilling "in the hearts of men...a conscious feeling that they are being deprived of their just earnings by some invisible power."⁴⁹

⁴⁴ "How I became a Socialist Agitator," Philip S. Foner and Sally M. Miller eds., *Kate Richards O'Hare: Selected Writings and Speeches* (Baton Rouge: Louisiana State University Press, 1982), 36-39.

⁴⁵ *Ibid*, 40.

⁴⁶ Kennedy, 20.

⁴⁷ "How I Became a Socialist Agitator," Foner and Miller, 40.

⁴⁸ Kennedy, 21.

⁴⁹ Kennedy, 21-22.

Specifically, O'Hare was indicted under the Espionage Act for attempting to interfere with the draft after she gave a speech to a small group which was largely made up of women and children. What was surprising about these charges is that O'Hare had given the identical speech over a hundred times during her campaign for Socialism.⁵⁰ She gave this controversial address in the same month that Congress passed the Espionage Act. As one of the first trials under the Act, the Judge's instructions to the jury as well as O'Hare's conviction set "the tone of conservative expectations" for later cases.⁵¹ While her speech was generally about the benefits of the war for capitalism, the Justice Department based its charges on statements from O'Hare's speech regarding the effect that the war had on motherhood. The content of the statements used in the charges was disputed by O'Hare. The government alleged she stated that soldiers who enlisted "for service in France would be used for fertilizer...and that the women of the U.S. were nothing more nor less than brood sows to raise children to get into the Army and be made into fertilizer." However, O'Hare contended that she really said:

"When the governments of Europe and the clergy of Europe demanded of the women of the warring countries that they give themselves, in marriage or out, in order that the men might 'breed before they die' – that was not a crime of maddened passion – it was the crime of cold blooded, brutal selfishness – and by that crime, the women of Europe were reduced to the status of breeding animals on a stock farm."⁵²

⁵⁰ Kennedy, 18.

⁵¹ Kennedy, 19.

⁵² *The Right to his Day in Court: Shall Lawyers Defend Those Deemed Adversaries of our Government?* (New York : National Civil Liberties Bureau, 1919), 3 – 4.

While these two statements may seem to be virtually identical, their main difference is that the statement O'Hare claimed to have made does not directly criticize the United States' involvement in the war or the status of American women whose sons are sent to fight in it.⁵³ It is also important because the prosecution in her case chose to focus on these statements and their effect on mothers or their draft-age sons. The judge's instructions were also important because they directed the jury to consider "the general purpose and feeling on the part of the great majority of the American people that this war must be won...[and] that there is only one way to win a war, and that is to have men, soldiers."⁵⁴ He also ordered the jury to convict her if they found that her speech would have had the potential to discourage men from enlisting; although he specifically waived any requirement that the government would have to prove her speech actually deterred anyone.⁵⁵ Using these instructions to their benefit, the prosecution argued that her alleged statements would have undermined the draft by convincing women not to raise or encourage their sons to fight in the armed forces.

Her case is relevant to this study because it is an example of how the Espionage Act was used to enforce "patriotic motherhood," traditional political values as well as support of U.S. involvement in WWI. Kennedy points out that while there was some anti-Socialist rhetoric used in her trial, the justice department primarily "indicted her for alleging that the war corrupted

⁵³ Kennedy, 19.

⁵⁴ *The Right to his Day in Court*, 46.

⁵⁵ *Ibid.*

motherhood.”⁵⁶ Additionally, it illustrates the division of the country over the issues of free speech and civil liberties. In closing at her trial, O’Hare stated that more than more than 100,000 Americans “know me personally...have listened to my voice, looked in my face...,” she also pointed out the millions who had read her work.⁵⁷ While there is no substantiation or refutation of these numbers, O’Hare operated during the “‘golden age’ of the Socialist party of America;”⁵⁸ before war opposition decreased its numbers, the Socialist party had secured two elections to congress, more than 70 mayors and countless smaller offices.⁵⁹ It follows that many of those who had met O’Hare, attended her speeches or read Socialist publications which included her writings would have supported her right to free speech and opposed her imprisonment. Socialist and other liberal publications that O’Hare’s supporters would have read, most likely would have similarly asserted that her right to give this speech was included in the First Amendment of the Constitution.

The defense also argued that her indictment was a veiled attack on the Nonpartisan League that had backed O’Hare’s infamous speech;⁶⁰ this accusation of foul play would seem to be supported by the fact that justice department officials had been in attendance on numerous occasions when she had delivered the same speech in other locations and not accused her of sedition in any of

⁵⁶ Kennedy, 19.

⁵⁷ Foner and Miller, 176.

⁵⁸ Foner and Miller, 1. (introduction)

⁵⁹ Wikipedia. “Socialist Party of America.”

http://en.wikipedia.org/wiki/Socialist_Party_of_America (accessed 5/16/05)

⁶⁰ Kennedy, 23.

these instances.⁶¹ Similarly, the National Civil Liberties Bureau published accounts that emphasized that her trial was a tool used by a feuding faction of the Democratic Party in Bowman North Dakota where she gave the speech. The NCLU as well as O'Hare pointed out that all of the witnesses for the prosecution were associates of James Phelan, the leader of the "stand pat faction" of the Democratic Party which opposed the Nonpartisan League faction that had invited her to speak.⁶² The NCLU also pointed out that while 135 people witnessed O'Hare's speech, only 2 testified that she "used the language attributed to her," and both were "political adherents of Phelan's."⁶³

O'Hare was not similarly defended in the popular press. The *New York Times* printed only one brief article on her trial and conviction, which stated that she was guilty of "making utterances in a speech at Bowman, N.D., last Summer tending to discourage obedience to the military registration." The article also mentioned that witnesses testified to her declaration that "'mothers who raised their sons to be 'cannon fodder' were no better than 'a farmer's brood sow.'" The article also pointed out her Socialist ties.⁶⁴ More telling than what the *Times* reported, however, is what it left out. While the witnesses who testified to her statements were mentioned, the article did not even allude to their extremely small number or questionable credibility. It also left the impression that there was no credible refutation of the allegations. While it is possible that the *Times*

⁶¹ Ibid, 18.

⁶² *The right to his day in Court*, 2 – 3; Foner and Miller, 173.

⁶³ *The Right to his Day in Court*, 3.

⁶⁴ "Five Years for Woman who Denounced Draft: Mrs. O'Hare, Socialist Editor and Lecturer, Sentenced by Judge in North Dakota." *New York Times*, 15 December 1917, p. 5.

did not cover O'Hare's case to avoid shedding light on the extreme violation of civil liberties, it could also be argued that her case was simply not high profile enough to warrant more attention. However, its bias against her in the small article which it did publish makes it clear that the paper was either too afraid of censure to publish the article with her defense included, or it was simply a part of the propaganda machine which spread the already rampant fear and hatred.

The case of Eugene Debs was similar to Kate Richards O'Hare because Debs was also known as a Socialist leader.⁶⁵ Like O'Hare, Debs began his revolutionary career by working in the unions, in his case it was those in the railroad industry. He led a railroad strike in 1894, and when mail was held up as a result, the government demanded that the strike be called off. As a result of his refusal (along with other members of the union) to call off the strike, he was convicted of obstruction and sentenced to a 6 month incarceration.⁶⁶ The strike and conviction catapulted him to fame; when he was released and returned to Chicago, more than 100,000 "admirers" celebrated his arrival. Two years later, in 1896, he publicly announced his embrace of Socialism. After this point he began to travel and speak on social justice; his personal magnetism "made him the most visible symbol of American Socialism."⁶⁷ Beginning in 1900, Debs ran for the presidency on the Socialist ticket on five separate occasions. In the first

⁶⁵ "Debs Loses Appeal; To Serve Ten Years: Supreme Court Sustains Conviction of Socialist for Obstructing Enlistment." *New York Times*, 11 March, 1919, p.3.

⁶⁶ Vacha, 8.

⁶⁷ *Ibid*, 9.

election he secured less than 100,000 votes, but increased that number to more than 897,000 votes in the 1912 campaign and 920,000 in 1920.⁶⁸

Debs and O'Hare were both leaders of the Socialist movement, but were also friends and comrades. Debs was recorded as telling O'Hare that "I cannot yet believe that they will ever dare to send you to prison for exercising your constitutional rights to free speech, but if they do...I shall feel guilty to be at large."⁶⁹ When the time came, Debs was true to his word, and set out to get himself arrested. Because the government had "practically wiped out" the Socialist press, Debs only medium to protest the war and convictions under the Espionage Act was public speeches.⁷⁰ He traveled throughout the Midwest taunting officials by giving blatantly anti-war lectures and attacking the president.⁷¹ On June 16th, 1918, he gave a speech in Canton, Ohio in which he argued that "the maser class has always declared the wars; the subject class has always fought the battles."⁷² Less than two weeks later, a grand jury indicted Debs in the same manner as O'Hare; for attempting to impede enlistment or recruitment in the armed forces under the Espionage Act.⁷³ He was convicted and sentenced to 10 years in a federal prison.⁷⁴ Debs's case is relevant because like O'Hare, he was an outspoken Socialist who was targeted because of his "un-

⁶⁸ Ibid, 10,17. (I deduced the number 5 because the "Debs Loses Appeal" article said he had run 4 times, but was printed before his final bid for the presidency)

⁶⁹ Ray Ginger, *The Bending Cross: A Biography of Eugene Victor Debs* (New Brunswick: Rutgers University Press, 1949), 350.

⁷⁰ Ibid, 353.

⁷¹ Ibid, 354.

⁷² Vacha, 5.

⁷³ Ibid, 6.

⁷⁴ Ibid, 15.

American" views. His speech did not attack the war in Europe or the United States' involvement in it directly, but all war in general. As in O'Hare's case, the government argued that his statements may have discouraged men from enlisting, and that was enough to convict him.

Like O'Hare's case, Debs's provides a look into the division of the nation over the war and civil liberties. His biographer, Ray Ginger argued that while most citizens hadn't worried about the suppression of the Socialist party, the arrest of Debs was different because he was well known and respected both inside and outside of the party.⁷⁵ The *New York Times* reported that on March 14th, 1919 Socialists crowded into a theater to listen to John Reed speak and swear that "either Gene Debs would get out of jail, or we would all get in."⁷⁶ The *Independent* published an article by John Spargo in 1920 which vehemently argued for Debs to be pardoned. Spargo pointed out that "even the most despotic and autocratic of governments have always granted pardons and amnesty to all such 'criminals' as Mr. Debs after every war." Moreover, Spargo argued that there was a difference between "offenders" like Debs who disagreed with war, and those who actually sought to help the enemy.⁷⁷ While Burton and other scholars have obviously shown the rampant fear and hatred against those who opposed the war, these articles provide proof that there was another, public side of the debate about Debs's guilt. It is also important to note, however, that

⁷⁵ Ginger, 360.

⁷⁶ "Would Join Debs in Jail: Cleveland Audience of John Reed Swears it Unless He is Freed." *New York Times*, 15 March 1919, p. 6.

⁷⁷ John Spargo, "Democracy Must not be Vindictive." *The Independent* vol. 103 (September 11 1920), 304.

both of these articles were written after the war had ended. Because the laws specified that they were only in effect while the nation was at war, those in protest were not at real risk for prosecution when they advocated for Debs's release.

The *Cleveland Press* reported the case in a different light, stating that "His Canton speech, even now being spread broadcast thru all of Germany and all German trenches, will kill more American soldiers than all German submarines that hunt for American transport ships." The *Cleveland Plain Dealer* similarly denounced Debs's speech as unpatriotic and asked "What are the federal authorities going to do about it?"⁷⁸ The *Times* published a comparable article after his conviction which argued that Debs willfully broke the law and deserved to be punished. The author described him not as "a martyr, but a defeated fighter" who made the mistake of relying on the constitution which he was an enemy of to protect him. The author felt that Debs "had the courage of his convictions. He challenged the law and his challenge has been met. There is no reason for sympathy with Debs, except such as goes to a fighter who asks no odds."⁷⁹ These articles provide us with a snapshot of public opinion at the time the Espionage and Sedition Acts were in full force, before the war ended. In these articles, the popular press did not question the constitutionality of the laws nor the hypocrisy of stifling dissent during a war for democracy. Debs was not a danger to national security, he never traded secrets with the enemy or even

⁷⁸ Vacha, 5.

⁷⁹ "The Case of Debs." *New York Times*, 12 March 1919, p. 6.

made an active attempt to obstruct the draft; he merely shared his genuine feeling that the war was not in the best interest of the nation or the world – just as the “patriots” had done by disseminating their pro-war propaganda.

Like Debs and O’Hare, Marie Equi was an outspoken political dissident, however, unlike O’Hare and Debs Equi did not limit her offences to patriotism to her support of Socialist ideologies. She was not only a forceful woman and a member of the IWW, but a lesbian as well. Equi was involved in “progressive, women’s, Socialist, radical labor and anti-imperialist” movements.⁸⁰ In Oregon, she was both feared and hated for her attack of politicians as well as industrialists and other leaders who she felt were responsible for oppressing those who were already poverty-stricken.⁸¹ Her love and concern for people in need led her to become a doctor, and after completing school she began treating working class women and their children. It was also during this time, just after the turn of the century, that she began to advocate for women’s right to vote and for their involvement in social reform.⁸² In addition to her un-American social views, Equi was made famous by her publicized clashes with the police and others.

The *Oregonian* mentioned “special correspondents of radical magazines” who were responsible for spreading Equi’s ‘propaganda;’ based on this article it can be inferred that these were liberal publications which portrayed Equi’s

⁸⁰ Krieger, 55.

⁸¹ Ibid, 56.

⁸² Ibid, 57.

actions and views in a favorable light.⁸³ However, the *Oregonian*, as Portland's conservative newspaper, tended to publish her activities in a less than favorable light. On July 18, 1913 she was reported as swinging "a wicked looking section of gaspipe in her hands and [screaming] that she would kill anyone who tried to make her stop talking."⁸⁴ Two days earlier she made headlines when she forced her way into the police station, punched a deputy in the face at which point she was tossed into the street where she landed on her hands and knees; she then re-entered the station and hollered insults at the police until she was allowed to see her detained comrades.⁸⁵ While the paper did mention that she was trying to see friends that had been arrested, it left out that she was enraged because in addition to assaulting audience members, police had pulled one of her very pregnant associates off of the box where she was speaking and hauled her into jail.⁸⁶ This is typical of the coverage found throughout articles in the *Oregonian*; while her unruly and illegal behavior is used to present her as nearly crazy, there is little mention of her treatment by police or her message. In addition, the *Oregonian* articles examined in this study did not mention Equi's positive activities which included the medical help she provided for poor women and children; nor did it mention the service she provided in wake of the San Francisco Earthquake in 1906 for which Theodore Roosevelt gave her an award.⁸⁷ Rather, the paper recounted stories such as her stabbing of an officer with her hatpin,

⁸³ "Propaganda Spread During Equi Trial." *Oregonian*, 20 November 1918, p.18.

⁸⁴ "Officers Charge Rioters." *Oregonian*, 18 July 1913, p.5.

⁸⁵ "Dr. Equi 'Biffs' Deputies." *Oregonian*, 16 July 1913, p.3.

⁸⁶ Krieger, 59.

⁸⁷ *Ibid*, 57.

which the *Oregonian* rumored to be poisoned, while he was transferring her to the county jail.⁸⁸ In this incident, the paper quoted the Sheriff as saying that “I want to warn certain women that they went too far last night and that they cannot expect to be treated as women if they act like hooligans.”⁸⁹ This sentiment reflects the prosecutions attitude in her trial as well as that of the press covering her trial because she refused to conform to the social standards set for women, and refused to accept the social and economic situation as it stood. It also illustrates how the *Oregonian* reported the story from the side of the police without providing details on Equi’s motivations.

Equi was finally prosecuted under the Espionage Act for a speech she gave on June 27th, 1918. Unlike Debs and O’Hare, she was convicted for statements in her speech that the prosecution argued promoted the success of America’s enemies, discredited the U.S. flag, as well as obstruction of the draft and operation of the military.⁹⁰ As in the press, the bias was clear at her trial. The judge blatantly favored the prosecution by overruling the defense’s clearly valid objections and even allowing one key prosecution witness to refuse to answer questions asked by Equi’s attorneys. The defense argued that Equi’s trial was being used as a weapon by the lumber trust against her and the IWW. They based this accusation on a previous Chicago trial where the IWW was framed by logging companies; however when the defense attempted to question a key prosecution witness about his place of employment, (which was a lumber

⁸⁸ “Officers Charge Rioters” p.5.

⁸⁹ “Equi Biffs Deputies,” p.3.

⁹⁰ Ruderman, 38-40.

and logging company) the judge allowed the witness to escape answer by claiming that it was classified information.⁹¹

The prosecution also called a myriad of character witnesses whose purpose was not to attest to the statements made during her “criminal” speech, or to prove her intention to disrupt the draft or war effort, but to prove that she was disloyal and disruptive to the peace.⁹² An example of the prosecution’s tactics can be seen in its questioning of Portland Detective Dan Kellaheer who was sent by the police to record any objectionable statements made by Equi during a street corner speech in October 1917.⁹³ In spite of numerous defense objections that the testimony was irrelevant to the trial, Kellaheer read his description of Equi’s speech from his official report. The speech was important to the prosecution’s case not only because it included some anti-war sentiment, but because Equi had used “vulgar and offensive language” in a mixed gender setting which showed her to be radical as well as in rebellion against “traditional gender roles.”⁹⁴ When the defense attempted to defend her views by asking a prosecution witness if President Wilson’s previous anti-war sentiment caused his loyalty to be called into question, the witness glibly responded that the President was not the one on trial. Again revealing its bias, the *Oregonian* reported this

⁹¹ Ibid, 41-2.

⁹² Ibid, 48.

⁹³ Ibid, 42.

⁹⁴ Ibid, 44.

mention of the President's past statements as "propaganda...planted insidiously by the defense."⁹⁵

Ruderman succinctly described the prosecution's tactics and motives by stating that

It's no wonder that those who testified about Equi's bad reputation for loyalty were men in positions of power who would have felt threatened by Equi's 'mannish' behavior: Chief Deputy of the U.S. Marshalls, the Sheriff, the Police Chief, judges and the Mayor. ...The government was able to essentially put Equi's entire life on trial, for it was her entire life to which they objected.⁹⁶

Only two witnesses were called by the prosecution to testify about the speech for which she was on trial. The rest of their witnesses' sole job was to defame her character. To support his assertion that the government was specifically targeting Equi for her un-womanly behavior, Ruderman points out that three policemen as well as three army officers testified that they were sent out on separate occasions in plain clothes to gather information against Equi while she was speaking "in places normally reserved for men: the streets and at public meetings."⁹⁷

This brief examination of the prosecution's case as well as the press coverage of her actions and trial makes it clear why Equi was targeted with the Espionage Act. She was not only Socialist like Debs and O'Hare, but she made stands on other social issues which were considered un-American. At the time she was being targeted by law-enforcement, homosexuality was considered an

⁹⁵ "Propaganda Spread During Equi Trial."

⁹⁶ Ruderman, 49.

⁹⁷ Ibid, 48.

incurable genetic defect at best, but more commonly a depraved perversion.⁹⁸ She also refused to conform to gender roles by speaking in mixed gender settings, using profane language and openly attacking the police. This view of her was further exacerbated by her support of women's rights and suffrage. Like Schoberg, Debs and O'Hare, Dr. Equi was considered a threat because she was considered un-American.

What all of the cases presented make clear is that the titles of the Espionage and Sedition Acts were incredibly misleading. While authors like Vacha and Krieger show how these Acts affected individual lives, this study purports to reveal more. As Ruderman and Kennedy argue, when looked at together with other evidence, the trials of various US citizens show a pattern of forced compliance with traditional American social and cultural norms. In the Schoberg case, old men were sitting around in a private business talking about the war with their friends, not trying to start a rebellion or aid the enemy, although the government argued that they were trying to help Germany.⁹⁹ Schoberg was targeted because of his ethnicity, there is no other reason that he would have been chosen for surveillance. Kate Richards O'Hare was tried under the Espionage Act, not for relaying information to the enemy, but for speaking out against the European leaders for forcing their women to have children and raise them to be sent off to war. She was punished not just because of her anti-war stance or because of the partisan politics of which she was a victim, but also

⁹⁸ Krieger, 57.

⁹⁹ Reis.

because she challenged traditional notions of what it meant to be a patriotic mother. Like O'Hare, Eugene Debs was silenced because he was effective, and the messages he gave conflicted with the patriotic propaganda the government disseminated to maintain support for the war. He, like O'Hare, was a known leader in the Socialist party and was similarly targeted as un-American. Equi was targeted too because of her outspoken views and un-American sentiment, but she was also tried because she did not conform to traditional gender roles and because of her prominence in the IWW. The Espionage and Sedition Acts were clearly not solely for protection of the country during a time of war, they were meant to silence any opposition, and were used to purge the country of any undesirable or disruptive movements. They were also used to enforce patriotism and social norms upon those who were considered to be out of bounds.

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