

First Amendment: Right To Peaceable Assembly

Powers of Congress
Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

—First Amendment, 1791

The Case

The right of peaceable assembly,” Chief Justice Charles Evans Hughes wrote in *De Jonge v. Oregon* (1937), “is a right cognate [closely linked] to those of free speech and free press and is equally fundamental.” Before that decision, the Supreme Court had ruled that freedom of assembly was designed to enable citizens to petition the government. Therefore, freedom of assembly was tied to the petition process. In the *De Jonge* case, however, the Court extended the right to freely assemble to protect the right of individuals to freedom of association—the right to join political parties, interest groups, clubs, and other organizations.

The question arises, however, does the First Amendment protect an individual’s right to join an organization that the government considers subversive? To protect national security, can the government restrict the right of assembly and association?

In *Whitney v. California* (1927), the Supreme Court decided that:

The fundamental rights—such as the right of free speech, the right to teach, and the right of assembly may not be abridged or denied. But although the rights of free speech and assembly are fundamental, they are not absolute. Their exercise is subject to their restriction, if the particular restriction proposed is required in order to protect the state from destruction. . . . The necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the state constitutionally may seek to prevent.

—JUSTICE LOUIS BRANDEIS, 1927

The “clear and present danger” doctrine later became a major issue when the government began to arrest and convict accused subversives, primarily Communist party members.

Background

During World War I, a number of Socialists, Communists, and others who spoke out against the war were convicted under the Espionage Act of 1917 and the Sedition Act of 1918. Then, after the Russian Revolu-

tion disclosed that communist agents had worked in both the Agriculture and Treasury Departments during the 1930s.

In September 1949 Americans learned that the Soviets had detonated their first nuclear device. In February 1950 Klaus Fuchs admitted giving the Soviets information on A-bomb construction while

More About the Case

After World War II, many Americans believed that the Soviet Union was trying to spread communism throughout the world. This fear was reinforced when the Canadian government uncovered a Soviet spy ring that had been passing secrets about the development of the atomic bomb to Moscow. Subsequently, the House Un-American Activities Com-

tion in 1917, the federal government restricted the activities of the American Communist party and punished party members as criminals.

Soon state legislatures passed criminal syndicalism laws—laws that made it a crime to call for the violent overthrow of the nation's social, political, and economic systems.

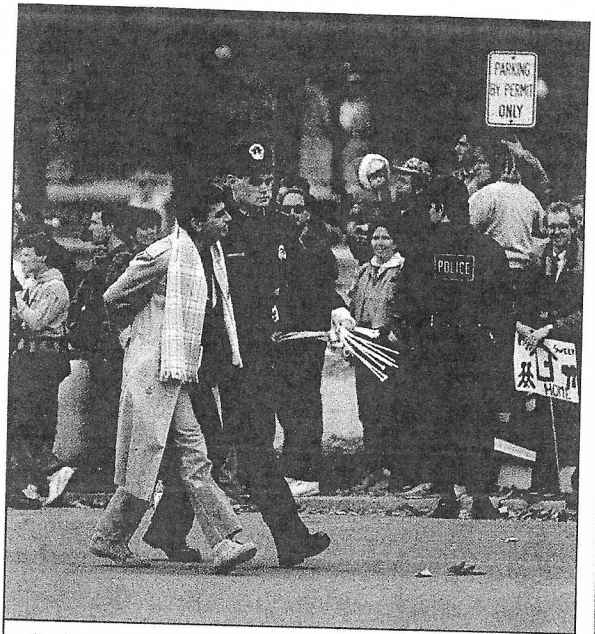
In *Whitney v. California* (1927), the Supreme Court reviewed the case of Charlotte Anita Whitney, who in 1919 attended the convention where the Communist Labor party of California was organized. Because the party taught “criminal syndicalism,” Whitney was convicted and sentenced for violating California's Syndicalism Act of 1919. The prosecution successfully argued that membership in the party indicated she had committed a crime. The Supreme Court upheld the conviction.

McCarthyism The Soviet Union was the United States' ally against Nazi Germany during World War II. Americans, however, remained deeply suspicious of the Soviet Union's intentions to spread its communist ideology to the United States. After the war, authorities learned that Communists had infiltrated two federal departments during the war. When the Soviets exploded an atomic bomb, the nation learned that a spy ring operating in the United States had provided the Soviet Union with vital atomic secrets. Faced with charges of being soft on Communists, and with a presidential election drawing near, President Harry S Truman ordered a Loyalty Review Board to find and discharge government employees suspected of being security risks.

Many members of Congress, however, believed that the subversives continued to be a threat. In 1950 Congress debated the Internal Security Act, which Truman believed was so broad that it violated individuals' constitutional rights. The President felt compelled to send a message directly to Congress. He told them:

Legislation now pending before Congress is so broad and vague in its terms as to endanger the freedoms of speech, press, and assembly protected by the First Amendment. . . . This kind of legislation is unnecessary, ineffective, and dangerous.

—HARRY S TRUMAN, AUGUST 8, 1950



Acting on Personal Beliefs

In Washington, D.C., well-known radio personality Casey Kasem was arrested at a demonstration in support of the homeless.

Anticommunist activities in the United States peaked in the 1950s. A survey taken in the mid-1950s revealed that more than 50 percent of those questioned believed that all known Communists should be imprisoned regardless of their rights.

The Smith Act The Alien Registration Act of 1940, better known as the Smith Act, had called for the registration and fingerprinting of all aliens. More importantly, it was designed as the first peacetime sedition act since 1798. Section 2 of the Smith Act made it:

Unlawful for any person . . . with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing any government in the United States by force or violence.

—ALIEN REGISTRATION ACT, 1940

working on the Manhattan Project. A few months later, Ethel and Julius Rosenberg were charged with passing nuclear secrets to the Soviet Union. They were found guilty and executed in 1953.

In 1948 a former communist, Whittaker Chambers, accused Alger Hiss, a former State Department offi-

cial, of spying for the Soviet Union during the late 1930s. Because the statute of limitations had run out, Hiss could not be charged with treason. He was convicted of perjury, however, and served more than three years in jail.

The government first used the Smith Act in 1943 when the authorities arrested and later convicted the leaders of a socialist group headquartered in Minneapolis. The court of appeals upheld the conviction, ruling that Congress had decided the leaders of the socialist group had posed a “clear and present danger” in advocating the overthrow of the government. The Supreme Court refused to review the case. Five years later the Justice Department arrested and prosecuted 12 leaders of the American Communist party. The Supreme Court in *Dennis v. United States* (1951) upheld the convictions.

Later cases, however, modified the findings of *Dennis v. United States*. In *Yates v. United States* (1957), 14 convictions under the Smith Act were overturned or dismissed. The Court ruled that just advocating a belief in an action was not enough. What had to be shown was “that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than to merely believe in something.”

Two later cases, *Scales v. United States* (1961) and *Noto v. United States* (1961), specifically dealt with the question of membership in the Communist party. In the *Scales* decision the Supreme Court upheld the constitutionality of the membership clause of the Smith Act. In the *Noto* case, the result was just the opposite. Communist beliefs were present but the actual planning on how to put them into action was never proved. Instead the Court ruled:

We held in Yates, and we reiterate now, that the mere abstract teaching of Communist theory, including the teaching or moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.

—*NOTO V. UNITED STATES*, 1961

The Red Scare declined and prosecutions under the Smith Act ended as the nation entered the 1960s. The question of limits on the right of freedom of assembly, however, did not end. During the Vietnam War, the government investigated several groups such as Students for a Democratic Society that openly opposed the war. Although the Supreme Court heard no cases, protesters were jailed on many occasions. The Persian Gulf War brought new groups of

protesters. The government closely scrutinized groups such as the National Coalition to Stop U.S. Intervention in the Middle East and the National African American Network Against U.S. Intervention in the Gulf. Because American victory was swift, the protests ended without incident.

Significance

Throughout the 1950s most Americans were convinced that Communists threatened national security. A loyalty oath that was required for labor union officials and many public employees challenged people’s right of free assembly and association. The oath required people to deny membership in listed subversive organizations, mainly communist and left-wing organizations.

Cases challenging loyalty oaths failed. Several years later, during the 1960s, however, the Supreme Court reconsidered its earlier decisions. In 1967 the Court ruled in the landmark case of *Keyishian v. Board of Regents* that loyalty oaths required for teachers were unconstitutional.

To date, the Communist party and antiwar groups have been the only major organizations singled out for close scrutiny. Whether this will remain the case in the event of a real or a perceived threat to the nation’s security in the future remains to be seen.

Examining the Case

Reviewing Facts

1. Explain the reasoning behind the statement that the “rights of free speech and assembly are not absolute.”
2. Identify the cases that established or used the doctrine of “clear and present danger.”
3. Describe how many Americans viewed the Soviet Union after World War II.

Critical Thinking Skills

4. Understanding Cause and Effect What were the causes of McCarthyism?
5. Drawing Conclusions What do you think might happen to First Amendment rights in a future national emergency? Why?