**War can have a deep impact on the homefront, especially when it comes to repressing dissent. What happened during World War I?**
**MARY DUDZIAK**: World War I is an example of a war overseas that deeply affected individual rights at home. In his speech to Congress requesting a declaration of war against Germany, President [Woodrow Wilson](http://en.wikipedia.org/wiki/Woodrow_Wilson) emphasized that "if there should be disloyalty, it will be dealt with with a firm hand of repression." There was great suspicion of American immigrants, including Germans, and tension over immigrants heightened after war was declared. There was also concern about foreign espionage and sabotage. In this atmosphere, Congress passed the [Espionage Act of 1917](http://en.wikipedia.org/wiki/Espionage_Act_of_1917) and then the [Sedition Act of 1918](http://en.wikipedia.org/wiki/Sedition_Act_of_1918).

President Wilson also created the [Committee on Public Information](http://en.wikipedia.org/wiki/Committee_on_Public_Information) (also known as the Creel Committee, after its chair, journalist [George Creel](http://en.wikipedia.org/wiki/George_Creel)). The Committee was charged with encouraging American war support, and it became, in essence, a purveyor of domestic propaganda. The committee also censored media reporting about the war. In this way, the Wilson Administration sought to manage public opinion during the war through suppressing dissent and critical reporting, and by working to generate pro-government information. The Administration also prosecuted dissenters.

Although we tend to focus on the suppression of dissent during this era, there were important and influential pacifist activists and organizations—in contrast with our present era. There are protests now about some military actions, but not an influential peace movement.

**Can you describe the content and effect, during World War I, of both the Espionage Act and Sedition Act?**
**MARY DUDZIAK**: It is often said that the 1917 Espionage Act was the first federal statute suppressing dissent since the [Alien and Sedition Acts](http://en.wikipedia.org/wiki/Alien_and_Sedition_Acts), but there have actually been other laws criminalizing speech and dissent between 1798 and 1917. [The Comstock Act](http://en.wikipedia.org/wiki/Comstock_laws) (1873) criminalized the dissemination of information about birth control, and it was used to prosecute [Margaret Sanger](http://en.wikipedia.org/wiki/Margaret_Sanger) and others who dissented from government regulation of sexuality. We also have to keep in mind that the principal sources of regulation of speech in the 19th century would have been state and local laws. In addition, you don't always need a special statute to criminalize speech. When woman suffrage activists were arrested for picketing in front of the White House in 1917, they were charged with obstructing traffic. This doesn't mean that the Espionage and Sedition Acts weren't really important. But U.S. history is full of repression of speech before 1917, sometimes directed at religious minorities, women, people of color, labor activists and radicals.

So the Espionage Act and Sedition Act were important, repressive statutes that were enacted amid a climate of war-era xenophobia, and that also built onto pre-existing methods of regulating and repressing speech.

The 1917 Espionage Act was passed in two months after Congress declared war. In many ways it was a straightforward criminalization of the release of defense-related information. For example, it made unlawful going to a naval yard or submarine base to obtain information about defense installations "with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation." But the statute went beyond that and made it unlawful to convey documents, photographs, and information in other forms that related to the national defense to any foreign government, or the citizen or subject of a foreign government, "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation." This provision was punishable during wartime by death or imprisonment for up to 30 years.

The Espionage Act was amended in 1918 by the more controversial Sedition Act of 1918. It regulated speech and protest more broadly, making it illegal to encourage resistance to the draft, or to "utter, print, write or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States or the Constitution of the United States, or the military or naval forces of the United States." This made anti-war protest punishable by up to $10,000 or 20 years in prison.

The Wilson Administration made ample use of these Acts, prosecuting over 2,000 people during the World War I years. Although the Sedition Act was repealed in 1921, the original Espionage Act, as amended, remains part of federal law.

**Did the Supreme Court rule on the Espionage and Sedition Acts?
MARY DUDZIAK**: In a series of important cases, the U.S. Supreme Court upheld the Espionage and Sedition Acts. In [Schenck v. United States](http://en.wikipedia.org/wiki/Schenck_v._United_States%22%20%5Ct%20%22_parent) (1919), [Charles Schenck](http://en.wikipedia.org/wiki/Charles_Schenck), a socialist party leader, and others were convicted for attempting to obstruct the draft and cause insubordination in the armed services by printing and mailing antiwar flyers. One side of the flyer began with "Long Live the Constitution of the United States," and it quoted the 13th Amendment, which bars slavery and involuntary servitude.

Justice [Oliver Wendell Holmes](http://en.wikipedia.org/wiki/Oliver_Wendell_Holmes%2C_Jr.) wrote the opinion for the Court. In ordinary times, the defendants would have been able to express these views, he suggested. But "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." For Holmes, the circumstances mattered.

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.

Holmes also wrote the majority opinion in [Debs v. United States](http://en.wikipedia.org/wiki/Debs_v._United_States), upholding the Sedition Act in the prosecution of labor leader [Eugene Debs](http://en.wikipedia.org/wiki/Eugene_V._Debs). Later that same year, the Court again ruled on a prosecution for anti-war protest in [Abrams v. United States](http://en.wikipedia.org/wiki/Abrams_v._United_States). After a summer of scholarly criticism of Holmes' opinions, this time he dissented, along with Justice [Louis Brandeis](http://en.wikipedia.org/wiki/Louis_Brandeis), dismissing the idea that the Abrams defendants' attempt to distribute pamphlets had a realistic chance of impeding the war effort. Holmes wrote, in a passage that would be much quoted in later years:

When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution.

These cases have sometimes been viewed as the starting point for modern First Amendment jurisprudence. David Rabban [has shown](http://www.cambridge.org/US/academic/subjects/history/american-history-general-interest/free-speech-its-forgotten-years-18701920%5D), however, that although the war years are important, the free speech analysis in World War I built upon earlier ideas from the turbulent era before the war.

**ZACH DORFMAN: As you said, the Sedition Act of 1918 was repealed soon after the conclusion of the World War I. However, the Espionage Act, though altered, is still very much the law of the land. Can you tell us a little bit about the history of the Espionage Act in the twentieth century?**

**MARY DUDZIAK**: Espionage Act prosecutions dropped dramatically after World War I, and in 1921 President [Warren G. Harding](http://en.wikipedia.org/wiki/Warren_G._Harding) would pardon Eugene Debs and others convicted during the war who were still in jail. But the Act was used in important later cases, including the prosecution of [Julius and Ethel Rosenberg](http://en.wikipedia.org/wiki/Julius_and_Ethel_Rosenberg) during the Cold War. The [Nixon](http://en.wikipedia.org/wiki/Richard_Nixon) Administration brought Espionage Act charges against [Daniel Ellsberg](http://en.wikipedia.org/wiki/Daniel_Ellsberg) for release of the [Pentagon Papers](http://en.wikipedia.org/wiki/Pentagon_Papers), but the case against him was dismissed. It has not been used widely in the intervening years until the [Obama](http://en.wikipedia.org/wiki/Barack_Obama) Administration brought Espionage Act charges against several people for leaking classified information.

**ZACH DORFMAN:**[**Edward Snowden**](http://en.wikipedia.org/wiki/Edward_Snowden)**, the NSA leaker, and**[**Chelsea (née Bradley) Manning**](http://en.wikipedia.org/wiki/Chelsea_Manning)**, of Wikileaks, have been charged (and in Manning's case, convicted) of violations related to the Espionage Act. Was the law's original intent to prosecute leakers? If not, what was its intent?**

**MARY DUDZIAK** : The Wilson Administration and Congress had anti-war/anti-government activists and immigrants in mind when the original Espionage Act was passed, but the Wilson Administration's effort to control information, censor the press and promote domestic propaganda doesn't support the idea that the World War I era would have been friendlier to leakers. Both Wilson and Obama have used their prosecutorial power to try to control information.

The language of the Act does support prosecution of someone with "*intent or reason to believe* that it is to be used to the injury of the United States or to the advantage of a foreign nation" (emphasis added). Even if Snowden and Manning did not intend to injure the United States or aid other nations, they clearly had "reason to believe" that other nations could be advantaged by their leaks. So it is not surprising that the Espionage Act is the statute relied upon for Snowden and Manning.

**ZACH DORFMAN: Did World War I affect rights in other important ways? Is there an impact of World War I on rights that tends to be forgotten?**

**MARY DUDZIAK:** The 19th Amendment, giving women the right to vote, was ratified during the World War I years. When President Woodrow Wilson finally threw support behind the amendment, he emphasized that women had sacrificed for the war effort, and this was a reason that women should get the vote. The woman suffrage movement had been at work for decades, with gains in some states. But women did not have a federal constitutional right to vote until 1920. The 19th Amendment is an example of the way sometimes rights are expanded during war.

**ZACH DORFMAN: What are the major continuities, if any, between the legal environment surrounding civil liberties and national security in the United States today from that environment during World War I? What are the differences?**

**MARY DUDZIAK:** Although there are many differences, there are some comparisons that can be made between the World War I years and our times. There is more robust judicial protection of free speech rights now than there was during World War I. This is in part because free speech jurisprudence has developed since that era. There are important precedents from the intervening years that shape courts' approach to free speech nowadays. In some ways, speech itself is also more free nowadays. We can communicate our ideas easily through social media. But the U.S. government also has much greater capacities. It is only through leaks that the American people have learned of the nature of government surveillance. Control of ideas that the government thinks are dangerous can take different forms—such as putting a person on a "no fly list." An ominous feature of contemporary security policies is that people targeted can be unaware and unable to challenge the basis for their targeting, as illustrated when the Supreme Court denied legal standing to individuals attempting to challenge surveillance by the National Security Agency.