

THE DEBS CASE

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Published by the
BETTER AMERICA FEDERATION OF CALIFORNIA
724 South Spring Street, Los Angeles

THE question, "WHY IS DEBS IN PRISON," is frequently asked of speakers at patriotic meetings and often discussed by groups of men in places like Pershing Square and South Los Angeles Street, Los Angeles; West Madison Street, Chicago; and the radical sections of Milwaukee, New York and other large cities. While in prison Debs polled nearly a million votes for President as the candidate of the Socialist Party. Prior to his imprisonment he had been on four different occasions a candidate for President; the first time in 1900 as the nominee of the Social Democratic Party; and again in 1904, 1908 and 1912 of the Socialist Party. Petitions have been presented to the President of the United States asking that he be pardoned. The notion is entertained by many that Debs is a POLITICAL PRISONER; that some unusual procedure was adopted to put him in confinement; that he violated no law; was not tried by a jury, etc. It is therefore pertinent to inquire into the facts and circumstances concerning this celebrated case.

Although we associate extreme radicalism with foreigners, Eugene V. Debs, one of the leading apostles of such radicalism, is not a foreigner but a native born citizen of the United States. It is the belief of many careful students that he ought not be classed with the intellectual or so-called scientific group of radicals, but rather with those who connected themselves with the movement because of ill treatment received at the hands of large corporations and governmental officials.

For Debs was sent to prison for violating an injunction when he was directing the great railway strike in 1894, and this brought much criticism upon the Federal Judge who issued the injunction, from many other than radical sources. The law was later amended to better safeguard the rights of the defendant in injunction proceedings, mainly on account of the agitation due to Debs' imprisonment in that case.

Those who know Debs personally admire and respect him and many love and worship him. Poets like James Whitcomb Riley have sung his praises, and his most ardent

enemies have never denied that in his personal life he is honest, chaste and courageous. Therefore, it is extremely painful for the writer, whose sympathies have always been with men and movements for the advance of humanity, to state it as his conclusion that in the present case to be considered, Debs is properly in prison and should not be released until he acknowledges his error in violating a law of Congress and promises to obey all laws in future.

On September 9, 1918, in Cleveland, Ohio, before the Hon. D. C. Westenhaver, United States District Judge for the Northern District of Ohio, Eugene V. Debs was brought to trial on an indictment containing ten counts, returned on June 29, 1918, by a Federal Grand Jury. He was prosecuted by the United States Government, represented by Edwin S. Wertz, Esq., U. S. District Attorney and F. B. Kavanagh, Esq., Assistant U. S. District Attorney, and had defending him the following counsel: Seymour Stedman, Esq., leading member of the Chicago bar, who later ran for Vice-President on the Socialist ticket with Debs; William A. Cunnea, Joseph Sharts and Morris M. Wolf, Esq. A jury was impanelled after the defendant's counsel had challenged many of the prospective jurors for cause, and had used up his ten peremptory challenges (in a case like this the defendant can object to ten who seek to sit on the jury and give no cause for such objection.) Every man who presented himself for a seat in the jury who had a civil war record or any patriotic connections, was challenged by the defense, and after a careful sifting out of talesmen, a jury was finally selected which, impartial observers say, was as good a one as could have been secured under the circumstances.

The charge on which Debs was tried was based on a speech delivered by him at Canton, Ohio, on June 16, 1918, wherein it was claimed he had violated Section 3 of the law passed by Congress shortly after we entered the war and amended on May 16, 1918, which is known as the *Espionage Law*.

The trial lasted four days and was exciting and dramatic. Seven spectators, including Rose Pastor Stokes, were

Espionage Act did not conflict with the Constitution of the United States. Continuing the Court said:

“The act was passed to protect the public peace and the public safety in time of war. The constitutional guarantee of free speech and a free press does not forbid the enactment of a law to protect the public peace and safety. *In the last analysis the question for us today is whether the evidence proves beyond reasonable doubt that defendant intended to do the things forbidden by the law.* Disapproval of the war or advocacy of peace is not a crime unless the words uttered shall be wilfully intended by the person uttering them to have the effect and consequences forbidden by law.”

Of the ten counts in the indictment four were stricken out on motion of the government and the Court ordered two out, leaving four to the jury. After six hours deliberation the jury found Debs guilty on three of the four counts submitted to them as follows:

First—Attempting to incite insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces.

Second—Obstructing and attempting to obstruct the recruiting and enlistment service.

Third—Uttering language intended to incite, provoke and encourage resistance to the United States and to promote the cause of the enemy.

“I haven’t one word of complaint either against the verdict or the trial,” said Debs after hearing the verdict, *“the evidence was truthful, it was fairly presented by the prosecution, the jury was patient and attentive and the judge’s charge was masterly and scrupulously fair.”*

Two days later on September 14, 1918, the Court sentenced Debs to ten years imprisonment (20 years and \$10,000 fine might have been given for each of the three counts on which he was convicted), and allowed him his liberty on bail, pending decision on his appeal to the United States Supreme Court.

In sentencing him Judge Westenhaver said: “I do not regard the idealism of the defendant as expressed by him-

held in contempt by the court and fined from \$10 to \$25 each for applauding the opening address of Debs' counsel.

The government proved its case conclusively by a dozen witnesses. It was shown among other things that Debs had stated at the meeting that "the purpose of the allies in the war was the same as that of the central powers—'plunder'"; that his hearers should regard themselves as something better than "cannon fodder"; that he had praised the Bolsheviki and I. W. W. and had counselled the audience not to worry about charges of treason being instituted against him or them.

The defense offered no evidence. Debs did not even take the witness stand in his own behalf to deny the charge. Instead he made a long speech to the jury, principally about Socialism and Bolshevism, and when the attorney for the prosecution objected to remarks not connected with the case the court said: "I think we will let him talk in his own way."

The gist of Debs' speech to the jury was *against the justice of the law he was accused of violating*; and when reminded that it represented the voice of a majority of the American people, retorted that history proved that on great questions it was the minority and not the majority that had been right. He quoted Wendell Phillips as saying that "the glory of free men was to trample unjust laws under foot."

"I have no dispute with the evidence presented by the government," he said, "no criticism for the prosecution,—I would not take back a word of what I believe right to save myself from the penitentiary. I am accused of crime but I look the Court in the face; I look the jury in the face; I look the world in the face; for in my heart no accusation of wrong festers."

He spoke for an hour and a half, and on finishing he thanked the Court for its consideration to him, and bowing very low, sat down.

In charging the jury the Court declared that *the Socialist Party was not on trial and that defendant was not being tried because he was a member of the Socialist Party, but solely because of his Canton speech.* He ruled that the

self as any higher, any purer, or any nobler, than the ideals and idealism of the thousands of young men I have seen marching down the streets of Cleveland to defend the Constitution and the laws of their country and the flag. Any one who strikes the sword from the hand of those young men, or causes another young man to refuse to do his duty when called to serve by their side, or any one who obstructs the recruiting service, does just as much injury and wrong to our country as if he were a soldier in the ranks of the Germany army. *Defendant's stand is anarchy pure and simple and not socialism at all as I understand the term.* I appreciate the defendant's sincerity, I may admire his courage, but I cannot help wishing he might take better note of facts as they are in the world at the present time."

Six months later, on March 10, 1919, the United States Supreme Court by a unanimous decision sustained the conviction of Debs and shortly after he was put in prison.

Speaking for the highest court in the land, Mr. Justice Holmes said that Debs had been found guilty of a wilful attempt to obstruct recruiting, and that the jury had been properly instructed by the lower court.

"The main theme of the Debs speech was socialism, its growth, and a prophecy of its ultimate success," said the learned Justice. "With that we have nothing to do, but a part of the manifest intent of the more general utterance 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."

Referring to statements made by Debs while addressing the jury, in which he 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," Judge Holmes said: "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 these circumstances, that would be its probable effect, it would not be protected by reason of its being part of a general program and expression of general and conscientious belief."

So here we have the facts in the case gathered from impartial sources. An American born and living in the country 63 years, knowing that disobedience to law was punishable, deliberately violated a United States Statute lawfully enacted by Congress, and whose right to pass such law was sustained by the Supreme Court of the United States, the highest court in the land. He is indicted by a grand jury, tried before a duly qualified court and jury, is represented by counsel, offers no evidence in his own behalf, admits he got a fair trial, is found guilty and the conviction is sustained by the highest court in the land.

A petition for his pardon cannot and ought not be entertained unless Debs admits he did wrong and promises not to violate laws in future. This he positively refuses to do.

Why should Debs be immune from prosecution when he violates the law? If it were left to a person to decide what law he would obey and what law he would violate, lawlessness would be the rule instead of the exception. Debs is not a political prisoner. *There is no such thing as a political prisoner in a free government like ours.* One is called a political prisoner in a country where there is a revolt against autocracy. No one can be imprisoned in this country unless he has violated the law and been tried and convicted according to law.

Why then did Debs go to prison so willingly? There is only one answer—to advance the cause he was leading. And this cause was not one in behalf of his country, but one that he was pleased to term *humanity*. The Socialists of the enemy countries supported their governments in the war, but Debs not only would not sanction support of his government by his party, but gave the enemy countries an added advantage by offering the aid of himself and friends. He offered himself as a martyr and, ignoring all legal customs, made a stump speech to the jury and staged a

theatrical performance,—holding hands with Rose Pastor Stokes as the jury filed in with its verdict and receiving applause from his sympathizers present, thus attempting to turn a Court of Justice into some kind of a public forum or political gathering. This disrespect for the proprieties of judicial procedure and his contempt for law brands Debs as unworthy of American citizenship.

All this talk about his kindness and gentleness and good personal life is childish when you consider that he was endangering the lives of two million brave American men, who were on the other side of the Atlantic defending civilization from brutal and arrogant Prussianism, and also endangering a hundred million others on this side, in addition to encouraging trampling on the flag under which he was born and which protected him so many years, and attempting to break down the morale of the American people in the most critical period of the history of the nation.

“To find Gene Debs guilty of disloyalty to his country will mean the conversion to our cause of many of the millions in this country who either know or have heard him,” said Rose Pastor Stokes when the verdict was announced.

There you have it, “*conversion of millions to our cause,*” that’s it,—not loyalty to the United States Government nor love and respect for the flag nor obedience to law but “*conversion of millions to our cause.*”

We must all realize that there is room in the United States for only one kind of people—*loyal American citizens* ~~or~~ *those willing to become such,* and it makes no difference whether born here as Debs was or abroad as Hillquit was, a place among freemen should be denied those who in peace or war give aid and comfort to the enemy.

So let loyal and true Americans pay no more heed to this loose talk about Debs being in prison. He belongs there and if on his release he again violates the law, back he will go. The noticeable difference between our form of government and the old autocratic idea is that *ours is a government of laws.*

The true American respects and obeys law.