

Running a Presidential Campaign from Prison

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Larry Bernstein:

Welcome to What Happens Next. My name is Larry Bernstein. What Happens Next is a podcast which covers economics, politics, and history.

Today's topic is Running a Presidential Campaign from Prison.

This is a bait and switch because this episode is not about Trump. Instead, it is about Eugene Debs who ran his 1920 presidential campaign from a Federal penitentiary in Atlanta.

Our speaker is Ernie Freeberg who is a Professor of American History at the University of Tennessee. Ernie wrote a book entitled Democracy's Prisoner: Eugene Debs, the Great War, and the Right to Dissent.

I want to learn from Ernie about the political trial that sent Debs to prison. Why did the Supreme Court endorse his verdict that limited free speech during World War 1. And how did Debs present his political ideas to the public despite his warden's restrictions. I want to find out if the Debs voters were energized to vote because of their outrage caused by his imprisonment.

Buckle up.

Ernie, please begin with your opening 6-minute remarks.

Ernie Freeberg:

As the leader of the Socialist Party, Debs in 1920 ran for president for his fifth time the Atlanta Penitentiary. During this campaign, he was allowed only one short letter to the newspapers each week in the jailhouse to the White House campaign. It was a fascinating paradox.

Why would the government let a convicted traitor run for president and campaign from his cell? And why did almost a million Americans vote for him, especially considering there were only 20,000 socialists in the country at the time?

Debs had been in prison before. In the 1890s, he led the American Railway Union in organizing the largest strike of that era, the Pullman strike. He went to jail for violating a court injunction for six months. While he was there, he was convinced that both mainstream parties were in the lap of plutocracy. And when he came out of jail, he helped found the Socialist Party and ran as its presidential candidate every four years.

Some radicals considered that only violence would bring down capitalism. But Debs preferred a political solution, what he called a revolution at the ballot box. Debs and his movement were a rising threat, especially when he got 6% of the vote in 1912.

Many at that point were expecting a war between labor and capital, but instead, a different war broke out in Europe in 1914. At the start, most Americans wanted nothing to do with the war, and Wilson promised American neutrality. But by April 1917, he reversed course and asked Congress to declare war.

The socialists were the best organized opponents of American entry into the war, and they said that this was a war to protect JP Morgan's loans to the allies. It was a rich man's war and a poor man's fight.

The Wilson administration developed an orchestrated propaganda campaign. And it was enormously successful in stirring up anger against suspected traitors, German immigrants, pacifists and so forth.

The government also chose to silence critics of the war by passing the Espionage Act of 1917, still in a different form in the books now. No spies were ever prosecuted under the Espionage Act in this period, but the law did allow the government to go after those who publicly spoke against the war. The Espionage Act was used to arrest about 2000 people. 1200 of them were convicted in addition to Debs. These were pacifists and radical labor leaders. Some of them were just people who said something that didn't sound patriotic to somebody at a bar.

Debs's crime was a speech that he gave in June of 1918 in Canton, Ohio at a picnic. Most of what Debs said was the same thing he'd been saying for almost 20 years. The working class fight the battles; the working class make the supreme sacrifices; the working class shed their blood and have never had a voice in either declaring war or making peace. It's the ruling class that invariably does both. You're fit for something better than slavery and cannon fodder. Debs knew that they were federal agents in the audience taking down his every word, and it was those words that were deemed illegal.

Debs was arrested, and at the trial government prosecutors claimed that he was not being denied his right to speak. Debs was urging young men to avoid the draft, which is a crime, one of those exceptions to First Amendment protections. A few months later, his conviction was upheld in a controversial decision. Debs served only three of his 10 years thanks to a massive protest movement that grew steadily in the months after the war ended.

A broad coalition formed that supported the amnesty movement. This is the first massive free speech protest movement in the nation's history. And one of the most important but forgotten

protest movements in our past. The best-known legacy of that amnesty movement was the formation of the American Civil Liberties Union, which was founded to protect conscientious objectors, many of whom were tortured in military prisons in this period. And when they were released, they turned to getting political prisoners out of jail. One of the best strategies that the Amnesty Movement used was to run Debs for President in 1920. Wilson wanted this to be a referendum on his idea of a League of Nations, but the socialist said instead, this should be a referendum on the government's attack on free speech that's why close to 1 million Americans decided to vote for Debs in 1920 as a protest vote.

Ironically, it was Warren Harding, a conservative Republican, no friend of socialists who had won the 1920 election, and he decided to let Debs out of jail in Christmas 1921 to help the country return to normalcy. He rolled back many of the harshest measures including severe post office censorship of radical publications.

Debs came out of jail with his health damaged. It wasn't too good to begin with. He emerged from prison with his party largely destroyed both by government persecution during the war and also by a split with the emerging communist party. Many young leftists decided to give up on the ballot box and pursue the Bolshevik solution instead. Debs spent the rest of his life trying to rebuild the socialist party, and he was predicting an imminent socialist revolution when he died in 1926.

Larry Bernstein:

Debs was originally a Democrat and a union leader. He organized the Pullman national strike. The Democratic President Cleveland used the courts to end the Pullman strike when the union interfered with the delivery of the US mail. Debs went to prison for six months for that.

Debs came out of prison radicalized and that pushed him out of the Democratic Party. Tell us if his 1895 Pullman Strike imprisonment changed his view of the law and dissent.

Ernie Freeberg:

He was convinced that the system was corrupt. On the other hand, he was a great believer in the democratic process and the possibility of using it to convince a majority of Americans who were working class that it would be in their interest to vote in radical change, to push the influence of big capital out of politics.

He's both very radical but also a great believer in American democracy and in the principles of free speech. Radicals up until the early 20th century had a wide ability to speak. There were socialists on every urban street corner pushing the cause. The story of World War I is an effort to clamp down on free speech, particularly on the left.

Larry Bernstein:

Before Wilson there had been tolerance of criticism of the government during wartime. Lincoln was denigrated by the northern press during the civil war, and he tolerated it and fought for his ideas in the public press without resorting to prison sentences for his opponents. Why does the Wilson Administration abandon Lincoln's example and lock up those rabblers who called for dodging the draft?

Ernie Freeberg:

It's important to recognize the situation that Wilson was in in 1917. It was at a crisis moment where it was not clear which side was going to win. The government was about to draft 4 million men to go overseas. It didn't seem possible. The Wilson administration felt the need to commandeer public opinion in a new way. Between Lincoln's time and the progressive era, the tools of strong executive power had been developed by Teddy Roosevelt and Wilson. The federal government had already contained much more power administratively. Wilson sincerely believed that this was a people's war and a noble sacred cause. He considered dissenters to be dangerous and had the tools to shut them out in a way that was not available to Lincoln.

Larry Bernstein:

Wilson is a liberal Democrat, yet he lashes out against Debs who is politically to his left. But you would have expected that the Republicans like Harding would have been much harsher on Debs than Wilson. Yet it's Wilson who seems to really have it out for Debs. Why does Wilson despise Debs and hope that he rots in jail?

Ernie Freeberg:

The Republicans despised Debs plenty as well. Harding letting him out was a reflection of the post-war period, Harding's personality, and his policy goals. Many socialists voted in 1916 for Wilson because they said he was going to try to maintain peace. And his vision of a post-war world with the League of Nations is close to what the socialists had been hoping for. So, they were stunned when Wilson proved to be so intractable and alienating to people to the left. You can blame it on his personality. Wilson was quite a self-righteous person, and he was under war pressure.

Larry Bernstein:

Why didn't Wilson pardon Debs and the other political prisoners after the war ended? This would have allowed Debs to run a normal presidential campaign and not make him out to be a martyr.

Ernest Freeberg:

When Wilson was about to leave the office, people said, surely now he's going to clear the decks and let these people out of prison. And he said, I feel responsibility to all those young men who

did their duty and went over and died in France. And to let Debs out would be to excuse him for not supporting the war effort. Wilson became increasingly brittle emotionally and had a stroke. And part of it might be psychological as well as political.

Larry Bernstein:

The concern about Debs wasn't in a vacuum. Anarchists and other leftists were violent. J Edgar Hoover began his career at the FBI investigating individuals who bombed Wall Street. Hoover was instrumental in deporting the anarchist Emma Goldman to the Soviet Union. Give us context for why there was fear of violence that provoked Debs's imprisonment.

Ernie Freeberg:

Yeah, that's fair enough. On the one hand, you can look at Eugene Debs as a person who believes in the ballot box, believes in free speech, who is simply part of the American political landscape. But he was a revolutionist. His argument was that there had been an American revolution to get rid of monarchical power. There had been a revolution during the Civil War to overthrow the slave masters, and the next logical step was for working people to seize control of the workplace through the ballot box. And he was surrounded by people who thought that violence would be necessary. Not a lot of anarchist violence in the scheme of things, but certainly there was always the threat of that with the Haymarket bombing.

And as you're suggesting after World War 1, the government used that opportunity to deport anarchists like Emma Goldman. Debs, as part of that conversation, was always asked about violence and said, only in self-defense against capitalist attacks. And it's important the bombs stand out to us. It's easy to forget that there was actual massive labor/capital conflict in strikes, massacres, and use of militia through thousands of strikes. So, the threat of a possible war between labor and capital seemed very, very real to people at that time. And Debs was one very important voice in that.

Larry Bernstein:

The Debs prosecution was a political trial. Let's start with the investigation. The FBI went to a Canton Ohio picnic with a professional transcriber to spy on him. If anybody else had said something as innocuous as Debs said that day, nobody would've cared. But with Eugene Debs, the Feds parsed each word to see if they could charge him with a felony. Was the Debs indictment political in nature?

Ernie Freeberg:

Debs always claimed that it was. Certainly, he was targeted because he had influence, although it's interesting to notice how many anonymous people were also convicted under the sedition laws. There was an era of surveillance. The government encouraged people to spy on their neighbors and to report anybody who seemed insufficiently patriotic. While clearly Debs was a

very visible target, the U.S. attorneys in Washington were not sure it was a good idea to convict him to turn him into a martyr.

It was the Cleveland prosecutor who decided that this would be good for his career to go after Debs. It was political because there was no evidence that anybody in this audience in Canton Ohio was convinced not to register for the draft. That was the charge against him. While it's the Espionage Act, no spies were convicted under the act. Instead, it was used for anybody who seemed to be discouraging participation in the war effort. The evidence was very, very thin. So yes, Debs was marked for his political beliefs rather than anything that happened there.

Larry Bernstein:

So a clever prosecutor concocted a felony indictment and then convinced an unsympathetic jury to convict. Tell us about prosecutor discretion and political trials.

Ernie Freeberg:

The standard for the jury was to determine whether the speaker had a bad intent, and it was called the bad tendency test. Those who were trying to defend Debs made the argument that if you put a radical like Debs in front of a jury of middle-class people, they're going to assume that Debs had bad intent that he's a bad guy, and he wants to overthrow America. It's not just what he says, but it's what he might've meant that he can be prosecuted for.

Larry Bernstein:

Let's start with jury and venue selection. Debs thinks this is going to be a show trial in front of a hostile judge and jury. Tell us about Debs's anger and frustration with the legal system.

Ernie Freeberg:

It was assumed the jury pool that showed up in Cleveland were middle class farmers and businesspeople. There were no people with political sympathy. The judge clearly ran the trial in a way that conviction was a foregone conclusion. Debs expected that, and he used the trial to make a speech on behalf of socialism. To make the argument that if Jefferson and Washington had been caught by the British as revolutionists, they would've been hung. That the abolitionists that we admire now as liberators were themselves denied free speech at the time. And that marginal, radical, uncomfortable voice of progress had always been punished. He recognized that he was in a hostile environment. He also had the opportunity there to speak to the whole country. Interestingly, no newspaper would publish what he said in Canton, Ohio for fear that if they put those words in print, they themselves might be guilty of violating the Espionage Act. So, nobody knew exactly what he said, but he got to speak to the country through his trial.

Larry Bernstein:

Debs took the stand to defend himself at the trial. The prosecutor thought that Debs hurt his cause by showing his bad intent of undermining the war effort and the draft. Did it matter that Debs took the stand?

Ernie Freeberg:

Oh, not at all. He knew he was going to be convicted. He had seen all his comrades be convicted one way or the other. There were times in his incarceration where people came to him and said, "We think we can get you out on a legal technicality." And he rejected that and said we need to be putting the government on trial, and the only way I can do that is to be forthright about my opinions and to accept my punishments rather than try to use the legal system to evade conviction.

Larry Bernstein:

The judge sentenced him to 10 years. He's placed in a federal penitentiary in Atlanta and then a few months later the Socialist Party nominated Debs to be its presidential candidate. The Socialist Party was the third largest political party at the time. It's not the Republicans or the Democrats, but it's still a major political party.

But how can a presidential candidate campaign from prison? What can he say? To whom can he say it? And how? Will the government tolerate a political prisoner presidential candidate to speak to the public? Tell us about what it was like to run in 1920 a major US presidential campaign from a federal prison.

Ernie Freeberg:

A real coup for them was that the prison allowed Debs to accept a nomination from a socialist delegation who came to the steps of the Atlanta penitentiary and presented him with a bouquet of roses and honored him with the nomination, which he accepted. This became a news reel that was shown across the country, outraging many mainstream newspapers and critics. Here is an audience clapping for this radical who's in jail. But once that was done, they clamped down considerably.

Debs was not allowed access to newspaper reporters, but instead he could send out a 500-word essay once a week to the newspapers. Not a lot of newspapers published those. Most of the radical press had been silenced by the post office use of the Espionage Act and denied mailing privileges. So, he had to rely on the mainstream press. He was not a policy guy. These are much more romantic rhetorical flourishes that he sends out. It's the fact that he is running more than anything he has to say that catches people's attention.

Larry Bernstein:

Debs is the socialist candidate, but the public seemed most interested in his anti-war message and his imprisonment for speaking his views. This excites some voters but upsets the American Foreign Legion and some parents who lost their sons in the Great War.

Ernie Freeberg:

The general idea that the socialists were un-American that this was an alien ideology gnawing away at the very core principles of American democracy. The war intensified those feelings and provided the rationale and the legal apparatus to put them in prison. Plenty of people would've supported putting Debs in prison and the war is a catalyst for this.

There's a strong movement after the war from returning veterans organized in the American Legion who considered Debs and the others to be imprisoned for good reason and pushed Wilson and then Harding not to grant amnesty. On the other side, you have the American Civil Liberties Union and a broader coalition of commitment to free speech. Many progressives who had supported the war recoiled at the development of hatred toward suspected traitors, the vigilante violence that was used against people like Debs and others. There's a mixed reaction where some people are feeling like Debs was right, the war was a mistake. So, there's some sympathy for Debs even as others are pushing Wilson and then Harding to keep them in prison. Debs would've died in prison certainly if he had not been let out early.

Larry Bernstein:

Next topic is Debs's appeal to the Supreme Court where there is a 9-0 decision against Debs. The opinion was written by one of America's greatest Supreme Court Justices Oliver Wendell Holmes, and the very liberal Justice Louis Brandeis concurs. Tell us about Holmes's opinion and why this case went 9-0.

Ernie Freeberg:

Many liberals were hoping that the Supreme Court would look at the overreach of the Espionage Act and pull back, but they don't. Holmes, who is remembered as a champion of free speech for later decisions, wrote the decision because Debs was the most high-profile case. They clustered it with a decision about Charles Schenck a socialist who had passed out a pamphlet arguing that the draft was a violation of the 13th amendments as an involuntary servitude, and that people should write to their congressman if they want to complain about this. He was convicted under the Espionage Act.

This was the direct case that the Supreme Court took up. And Holmes's argument is free speech means one thing in times of war and another thing in times of peace. Congress has a primary obligation to promote national safety. So, in moments of crisis, free speech is a secondary value that Congress needs to consider. It's a 9-0 to send Debs off to prison. Debs is not surprised, but

many liberals who are supporters of Oliver Wendell Holmes, in other matters, are surprised. They start to lobby him and let him know that they feel like this is a mistake.

Larry Bernstein:

Zachary Chaffee, who was a famous Harvard Law Professor and one of the leading first amendment scholars, attacked the Holmes opinion. Afterwards, Holmes changed his free speech philosophy from a bad tendency intent to a clear and present danger test.

Ernie Freeberg:

It's important to set this in the context of what's happening in 1919 as the war ends, because immediately following the war, rather than a return to normalcy, there is a ramping up, as you have mentioned, Wall Street bombings, and bombs that don't go off that are sent to various people including Oliver Wendell Holmes. There is what's remembered as the first Red scare, which leads the Justice Department under Palmer to go after radicals, to deport Emma Goldman and to round up and arrest lots of people on minimal pretense simply because they're associated with organizations. Chaffee is part of that protest. He himself is no radical, not a liberal, but he is seeing this as a disruption of the American freedom. The Debs case is folded into this hysteria. It's a reflection of the post-war anxiety.

Holmes is led to reconsider six months later. Five anarchists are convicted under the Espionage Act. It comes to the Supreme Court. They're not even talking about World War I. They're convicted for throwing a leaflet off the roof in downtown Manhattan that argues that the government has sent troops to try to put down the Bolshevik Revolution and that Americans should protest this. They're convicted. It comes to the Supreme Court and this time, six months after sending Debs to prison, Holmes changes his mind in the Abrams decision and suggests that ideas need to be won in the marketplace. And that only when there is imminent danger or immediate threat to the public should the government intervene with free speech. It's a dissent and it's supported by Brandeis, so it doesn't help the Abrams defendants who are deported. This becomes the foundation of modern free speech law. Holmes hearing the reaction against his decision in the Debs and Schenck cases from his liberal allies. He clearly changes his mind with the Abrams decision.

Larry Bernstein:

It is stunning that the US Postmaster General would deny newspapers and magazines the right to use the US mail and effectively censor political opinions.

Ernie Freeberg:

Burleson is a Texas ally of Wilson who was the Postmaster. Under the Espionage Act, when it was first put forth by Wilson would give the government direct censorship power over the press, and there was a lot of pushbacks among mainstream newspapers at that point against this, and

they managed to take that out so that the Wilson administration did not have direct control to censor the press. The press at that point argued we're patriotic, we're supportive of the war, and this is a dangerous precedent. We should not put this into the bill. But what was put into the bill was to give the postmaster the right to make decisions about not providing mailing privileges to anything that was contributing to undermining the war effort. And Burleson used this power very broadly, and a lot of these magazines were absolutely on the margins economically already.

The Appeal to Reason Socialist Newspaper published out of a little town in Kansas had a circulation of 700,000. Even the Nation, which was a mainstream liberal progressive paper, was threatened by Burleson. Others went to court to defend themselves. Some won, some lost, but they lost business and went under or else buckled and agreed. There was a choke hold on information.

Larry Bernstein:

I end each podcast with a note of optimism. What are you optimistic about as it relates to free speech, political dissent, and trying political candidates?

Ernie Freeberg:

The positive lesson of Debs's experience is that there was an emerging coalition that was supportive of tolerance for dissent. The movement emerging out of World War 1 is to make real the promises of the First Amendment to allow for maximum free speech in a democracy.

Larry Bernstein:

Thanks to Ernie for joining us today.

If you missed last week's podcast, check it out. The topic was The Modern Muslim State. Our speaker was Malika Zeghal who is a Professor in Contemporary Islamic Thought and Life at Harvard. She just published her book entitled The Making of the Modern Muslim State: Islam and Governance in the Middle East and North Africa.

Malika explained why Muslim states like Morocco, Tunisia, and Egypt integrated Islam with the state and what that means for women's rights and religious minorities. In addition, we discussed the rise of Muslim authoritarian states and the future implications for tolerance and democracy in the region.

I would like to make a plug for next week's podcast about President Lincoln and immigration.

Our speaker will be Harold Holzer who won the Lincoln Prize for his book Lincoln and the Power of the Press. Harold has a new book entitled Brought Forth on This Continent: Abraham Lincoln and American Immigration. I want to learn from Harold why Lincoln wanted more

Europeans to move to the US. Many were Catholics from Ireland and Germany who were generally Democratic urban voters, and I want to find out how Lincoln persuaded many of these new citizens to switch their allegiance to the Republicans during the civil war.

You can find our previous episodes and transcripts on our website whathappensnextin6minutes.com. Please subscribe to our weekly emails and follow us on Apple Podcasts or Spotify.

Thank you for joining us today, good-bye.

Check out our previous episode, [The Modern Muslim State](#), [here](#).