

**[Bonus] AFD Ep 371 Links and Notes - The Alien Registration Act / Smith Act of 1940
[Bill/Rachel] - Recording May 4**

- On our [bonus episode about the American Protective League](#), we talked about the implications of the Espionage Act of 1917 and the Sedition Act of 1918 on leftists and immigrants and anti-war activists. In 1940, in the run-up to the US entry into WW2, the United States adopted similar provisions once again in the Smith Act (also known as the Alien Registration Act, although it's very important to emphasize before we dive into this that it was only partly about immigrants and many of its Title I provisions applied to everyone). Unfortunately, this law is basically intact, albeit largely forgotten, on the books today, which poses an ever-present sword of damocles over the American Left ... if the US government ever needed a pretext beyond other laws they use to crack down.
- Legislative text (only ~6 pages):
<https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/54/STATUTE-54-Pg670.pdf>
- https://en.wikipedia.org/wiki/Smith_Act (some problems with this article)
 - Set criminal penalties for advocating the overthrow of the U.S. government by force or violence, and required all non-citizen adult residents to register with the federal government.
 - "It shall be unlawful for any person...with the intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or ... organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof."
 - For immigrants convicted of these crimes, they could potentially face deportation (as had happened with the [Red Ark deportations](#) in 1918), but for everyone else hefty fines (up to \$10,000) and absurd prison time (up to 10 years) were the penalties. [At the time, in 1940](#), \$10,000 would have been equal to more than 10 years of the median man's annual wages. After completing whatever penalty was applied, a US citizen was ineligible for 5 years to be hired by any part of the US government including the work relief programs of the New Deal then in effect.
 - Amended a 1918 law to clarify that immigrants could be deported for membership in or affiliation to such radical organizations at any point since entering the country, even if they had quit subsequently. Also added weapons and drugs violations as cause for deportation. (Specifically heroin.)
 - The US Attorney General (subject to override power by the US Congress) had some discretion for certain affluent immigrants of good character, with American dependents, or appropriate racial stock (so to speak) to decide either to let them freely leave the country to some third country of their own choosing on their own dime or to have a suspended removal proceeding and remain in the US. You really have to wonder what type of person they had in mind who could be both convicted under the Smith Act crimes but also needed protection from deportation or special treatment. (Maybe rich Nazi sympathizers?) This exemption also did not

apply retroactively to those targeted by the 1918 law and the Red Ark deportations.

- Title III required registration and fingerprinting for all immigrants in general, which required nearly 5 million residents of the US to report to the Post Office for processing beginning in late August 1940. The Post Office was not only conveniently dispersed geographically but also already had fingerprinting equipment on hand to fingerprint all holders of postal savings accounts.
 - When the US entered the war over a year later, the government used the registrations and fingerprints to arrest nearly 3,000 “enemy aliens.” (This figure is separate from broader US west coast internment of Japanese-Americans in 1942, which was largely conducted with US Census Bureau data instead and obviously included a lot of US citizens, naturalized or born here.)
- Other provisions prohibited agitating for mutiny or other insubordination by US service members, presumably for civilians outside the military since inside activities would be subject to military justice and codes
- Agitating against territorial governments like Puerto Rico or Hawaii was also not allowed. There was also a mention of the Panama Canal Zone to be dealt with by executive order, although more for the immigration controls than for agitation.
- The legislation had been introduced in June 1939 and passed the US House in July 1939, just over a month before the start of the war in Europe, but it stalled until June 1940, when the Senate passed it without a recorded vote the day before the collapse of the French government during the Nazi invasion and a couple weeks after the Dunkirk evacuations. The final version was passed the day of the French armistice and signed into the law by President Franklin D. Roosevelt several days later.
- The collapses of Spain and France in the mid-1930s and 1940 respectively were blamed on internal domestic subversion by the US press of the time. The New York Times wrote in August 1940 of the new law: “The Alien Registration Act was merely one of many laws hastily passed in the first spasm of fear engendered by the success of fifth columns in less fortunate countries. Suddenly the European war seemed almost at our doors, and who could tell what secret agents were already at work in America? So, partly because some such bill would be adopted anyway, and partly because the step, normally distasteful, appeared inevitable, the Administration sponsored the legislation.”
<https://timesmachine.nytimes.com/timesmachine/1940/08/25/96932000.pdf>
- Howard Smith: https://en.wikipedia.org/wiki/Howard_W._Smith
 - Democratic Congressman from Virginia
 - Vehemently anti-labor and anti-civil rights
 - A conservative Democratic opponent of much of the New Deal after the first couple years
 - He tried to roll back any and all labor protections, especially after the war began: <https://www.mtsu.edu/first-amendment/article/1048/smith-act-of-1940>
 - Had worked during World War I on the Department of Justice team that was expropriating US property from citizens of the Central Powers who might be using their US property to assist the governments of their home countries in the war effort. This team led by future Attorney General A. Mitchell Palmer permanently seized some 30,000 trusts with assets of well over half a billion dollars including most famously the Bayer chemical company that held the patent on aspirin: https://en.wikipedia.org/wiki/Office_of_Alien_Property_Custodian

- Oddly enough he was very active for decades on Equal Rights for Women (ERA)
- He was unseated in 1966 in a Democratic primary challenge from the left, but this marked a convenient opportunity for conservative Democrats to make the jump to the Republicans permanently, which they did
- Bridges v Wixon <https://supreme.justia.com/cases/federal/us/326/135/>
 - Harry Bridges was a radical labor organizer from Australia. The Alien Registration Act was used to attempt to deport him, based on his “affiliation” with the CPUSA and the Marine Workers Industrial Union (IWW). Bridges, a member of ILWU and organizer of the maritime workers’ strike of 1934 (which we discussed [in episode 344](#)), was never a member of either the CPUSA and MWIU. Furthermore, “affiliation” has a strong legal meaning that rises higher than “sympathy” for an organization.
- Minneapolis case (1941) <https://www.mnopedia.org/event/smith-act-trial>
 - Members of the Socialist Workers Party (SWP) and Teamsters union local 544 were arrested under the Smith Act for their labor organizing. Many SWP members had organized the Minneapolis Teamsters Strike of 1934 ([episode 346](#)), and still held leadership positions.
 - *J. Edgar Hoover, director of the FBI, worried that the SWP’s anti-war position and its ability to organize transportation workers threatened national security. If transportation workers were to strike, it could disrupt the national war effort. Hoover was given permission by the President to spy on those with leftist or communist politics. On June 27, 1941, FBI agents raided the SWP headquarters at 919 Marquette Avenue in Minneapolis and 138 East Sixth Street in St. Paul.*
 - At this point the Nazis had invaded the Soviet Union and Soviet-backed American communists were now realigned with the Roosevelt Administration, so prosecutions (for the most part) began reorienting toward non-Soviet-backed leftists, such as Trotskyites.
 - *The trial began on October 27, 1941, with twenty-eight defendants (the judge later dismissed charges against five). The prosecution, represented by Victor Anderson, began its case on October 29. They argued that the Trotskyists were using their influence in local 544 to disrupt the nation’s industrial sector as a precursor to revolution. They cited the existence of the “Union Defense Guard”—a unit formed to fight the fascist threat of the Silver Shirts—to argue that the defendants advocated violent resistance. According to Anderson, Marxist ideas were inherently seditious because they predicted and supported revolution.*
 - *The defense countered the accusation that they were planning violence by explaining their Marxist view that the fall of capitalism was inevitable and would involve violence. They did not advocate that violence; rather they predicted it. Furthermore, the SWP was a legitimate political party working within the government system. The accusation that their beliefs were illegal, they argued, was a violation of their first amendment rights to free speech.*
 - *On December 1, 1941, after fifty-six hours of deliberation, the jury handed down its verdict. It acquitted five defendants and found the remaining eighteen guilty of alleging seditious speech, publications and associations. On December 8, the eighteen were sentenced to prison. The longest term served was sixteen months.*
- There were some scattered investigations or prosecutions of Nazi sympathizers or vaguely Klan types under the Smith Act but mostly they disappeared or switched to supporting the US government after Pearl Harbor, so it was never a priority for the DOJ
- Postwar Communist trials:
 - https://en.wikipedia.org/wiki/Smith_Act_trials_of_Communist_Party_leaders
- Dennis v United States (1950-51): <https://www.oyez.org/cases/1940-1955/341us494>

- Dennis and other CPUSA leaders did not have the First Amendment right to free speech, publication, and assembly because the CPUSA advocated the violent overthrow of the government
- Yates v United States (1956-57): <https://www.oyez.org/cases/1956/6>
 - Conclusion: *The Court interpreted the Smith Act in the following manner: First, the term "organize" was construed to mean the creation of a new organization, making the Act inapplicable to subsequent organizational acts. Second, the Court drew a distinction between the "advocacy and teaching of forcible overthrow as an abstract principle" and the "advocacy and teaching of concrete action for the forcible overthrow of the Government." The Court recognized that instances of speech that amounted to "advocacy of action" were "few and far between."*
- In 1961, the US Supreme Court restricted the application of the Smith Act somewhat so that Communist Party membership was not a sufficient criterion for deportation. The person had to actually participate actively in the group's activities promoting or inciting revolutionary overthrow of the US government:
<https://www.mtsu.edu/first-amendment/article/1048/smith-act-of-1940> The law is still on the books, but the US government hasn't seriously prosecuted anyone under it since 1961.