drawing of the line is committed, not exclusively but finally, to the Supreme Court. In this section, we consider a number of areas in which the necessity to draw lines has arisen.

Punishment of Advocacy.—Criminal punishment for the advocacy of illegal or of merely unpopular goals and ideas did not originate in the United States with the post-World War II concern with Communism. Enactment of and prosecutions under the Sedition Act of 1798[683] and prosecutions under the federal espionage laws[684] and state sedition and criminal syndicalism laws[685] in the 1920s and early 1930s have been alluded to earlier.[686] But it was in the 1950s and the 1960s that the Supreme Court confronted First Amendment concepts fully in determining the degree to which government could proceed against persons and organizations that it believed were plotting and conspiring both to advocate the overthrow of government and to accomplish that goal.

The Smith Act of 1940[687] made it a criminal offense to knowingly or willfully to advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing the government of the United States or of any state by force or violence, or to organize any association that teaches, advises, or encourages such an overthrow, or to become a member of or to affiliate with any such association. No case involving prosecution under this law was reviewed

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[683] Ch. 74, 1 Stat. 596 (1798).

[684] The cases included Schenck v. United States, 249 U.S. 47 (1919) (affirming conviction for attempting to disrupt conscription by circulation of leaflets bitterly condemning the draft); Debs v. United States, 249 U.S. 211 (1919) (affirming conviction for attempting to create insubordination in armed forces based on one speech advocating socialism and opposition to war, and praising resistance to the draft); Abrams v. United States, 250 U.S. 616 (1919) (affirming convictions based on two leaflets, one of which attacked President Wilson as a coward and hypocrite for sending troops into Russia and the other of which urged workers not to produce materials to be used against their brothers).

[685] The cases included Gitlow v. New York, 268 U.S. 652 (1925) (affirming conviction based on publication of "manifesto" calling for the furthering of the "class struggle" through mass strikes and other mass action); Whitney v. California, 274 U.S. 357 (1927) (affirming conviction based upon adherence to party which had platform rejecting parliamentary methods and urging a "revolutionary class struggle," the adoption of which defendant had opposed).

[686] *See* discussion under "Adoption and the Common Law Background," and "Clear and Present Danger," *supra*. *See also* Taylor v. Mississippi, 319 U.S. 583 (1943), setting aside convictions of three Jehovah's Witnesses under a statute that prohibited teaching or advocacy intended to encourage violence, sabotage, or disloyalty to the government after the defendants had said that it was wrong for the President "to send our boys across in uniform to fight our enemies" and that boys were being killed "for no purpose at all." The Court found no evil or sinister purpose, no advocacy of or incitement to subversive action, and no threat of clear and present danger to government.

[687] 54 Stat. 670, 18 U.S.C. § 2385.