

Free Speech—for Whom?

by **ROGER WILLIAM RIIIS**

WHAT, IN YOUR opinion, is a revolutionary utterance?

There was a man, beloved by some, detested by others, who said:

The country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional rights of amending it, or their revolutionary right to dismember or overthrow it.

Is that “red”?

When a Columbia professor asked a number of persons who they thought made that statement, some said Lenin, some Stalin; and they added that they disagreed strongly with it. When the professor told them that Abraham Lincoln said it, they became thoughtful and admitted that of course it was perfectly true.

What, then, is a revolutionary utterance? Does it depend on who speaks or on the idea he expresses or on the attitude of the listeners?

This is no academic question. It involves the big problem of freedom of speech, which is extraordinarily important to Americans today. When the National Labor Relations Board says that Henry Ford must not tell his employees what he thinks about unions, is the Board interfering with his right to free speech, or is it not? Think that over for a moment.

Freedom of speech is one of the civil liberties, and on our maintenance of the civil liberties depends our democracy. Again, this is no academic matter. The tide of dictatorship which has risen since the World War shows as yet no sign of recession; and the dictatorships today openly challenge the life of the democracies. If we value our democratic system, we shall do well to ponder constantly and deeply on its foundations and its defenses.

The civil liberties are the basic essential for a democracy, as they are its bulwarks. The first step which a would-be dictator must take is to abolish the civil liberties, because, as long as he faces free discussion and a free ballot, he

cannot establish himself as a dictator. Contrariwise, just so long as we preserve our civil liberties, we shall preserve our American democracy. Democracy is the rule of the people; the rule of the people depends on their knowledge and discussion of public questions. Unless thought and its expression are free, the people cannot exercise the management of their nation. History shows that the alternative is always orderly progress with the civil liberties or violent changes without them.

Politicians nowadays talk a lot about the civil liberties. When any subject becomes popular with the politicians, it's a fairly sure sign that the subject is turning over and over, deep in the public mind. The intensified interest in the subject today is owing probably to two wholly opposite causes—the world menace of the dictators on the one hand and, on the other, the achievements of the American Civil Liberties Union. This organization has since 1918 made itself the guardian of free speech in this country; and it is well to look a little into the Union's work and character.

There are certain maxims to hold in mind, when thinking about civil liberties:

1. Freedom of thought, freedom of expression have brought about the progress of the human race. They are the means by which man has climbed from barbarism.

2. Practically, it is good sense not to suppress an unwelcome doctrine, because attempted suppression always ensures the much wider spread of that doctrine. Every time we assault a Fascist or a Communist, we give him a martyr's chance to answer back and provide him with an infinitely wider and more attentive audience. A well-known publisher says that, if he brings out a book at \$2.50 and it is suppressed, he can sell out the edition at \$20 a copy. Suppression is the lifeblood of propaganda.

3. Once we acknowledge that freedom of ex-

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pression is a human right, we must remember that it is *everyone's* right. It is not for only us and those who agree with us. It is especially for the thought we hate, as Justice Holmes put it.

It is not possible, under this principle, to say, as did a Jersey City supporter of Dictator Hague, "There's plenty of free speech in New Jersey if you talk right." It is not possible to say, as Heywood Broun did recently, that freedom of speech by employers should be curtailed in the interests of social advance. Hitler, Mussolini, and Stalin say exactly such things. The reason for freedom of speech is to give the truth a chance to emerge. One need have no fear that the truth will not emerge (not *your* truth or *my* truth but *the* truth) — if only there is no tampering, no qualifying, no suppression anywhere throughout the process.

But does that mean that a man should be permitted to denounce the civil liberties? Isn't that an insane thing to permit? No, it's not an insane thing to permit. Let the man denounce them; we don't have to listen. He is uttering a stupid doctrine, because he is advocating suppression; we must not fall into his error and adopt suppression. "The test of a truth is the ability of a thought to get itself accepted in the open competition of the market place." How does that sound, in comparison with its opposite — "Get that guy! I don't like what he's saying. I'm afraid of him!"?

4. Eternal vigilance is the price of the civil liberties. It always has been. Mankind, led in this by the Anglo-Saxon political genius, has been nearly eight centuries developing the high concepts of the civil liberties. They didn't just happen.

The barons forced them from King John, and, not content with a general promise, they wrote them down and made John sign them, in Magna Carta. But eternal vigilance was necessary; later, the British had to protect and extend the civil liberties by means of the Petition of Right. Again, the British erected another milestone in the bill of rights; and, a century and a half ago, Americans took up the struggle by writing the civil liberties into the basic law of their land. To do this, we went to the extent of amending our constitution ten times before we even adopted it. Until George Washington undertook to see that the civil liberties were guaranteed in the Constitution, the people shrewdly refused to adopt it.

A people has to overhaul its civil liberties now and then, to protect itself from its rulers as well as from itself. What about us, today?

II

THERE IS NO better place to seek data on the civil liberties than in the office and files of the American Civil Liberties Union. Founded shortly after the World War as a reaction against wartime emergency legislation, this extraordinary organization, unique to America, is denounced by many as "red" and supported by many as a necessary public servant. Everyone who examines its work, however, admits that it is diligent and active and a propaganda organization of very unusual ability. It has the knack of throwing the spotlight on any given situation — as currently on Mayor Hague. It is important for us to know this self-styled Civil Liberties Union, which undertakes to preserve our most cherished rights. Can we trust it?

The Union has an office of several rooms on Union Square in New York City. It employs ten persons and pays annual rent of \$1,500. It is controlled by a board of directors, thirty-one in number, which meets every Monday, and a national committee of eighty, which meets annually and functions by mail on larger questions during the year. The work is managed by Director Roger N. Baldwin, who receives a salary of \$3,000 for what is essentially a twenty-four-hour-a-day job. The directors and national committeemen include eighteen lawyers, seventeen professors and teachers, six businessmen, five social workers, five union executives, one union organizer. In political complexion, they show seventeen Democrats, ten Socialists, four Republicans, one Communist, and fifty-two independents, without regular affiliation.

The Union's annual budget averages \$30,000, which is contributed by over 5,000 people (an average gift of \$6). There are 4,363 givers of amounts from \$1 to \$10. (I can state positively, if it will make you feel better, that the Union is not financed from Moscow.) The number of contributors is rising steadily. These supporters include many persons widely known in Republican and Democratic political circles, as well as numerous conservative business leaders.

Originally the conception of Mr. Baldwin,

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the Union can hardly be discussed without some words about its dynamic director. Mr. Baldwin is a New Englander, of earliest American ancestry. The Baldwin apple derived its respected name from his family. He is a man in the middle forties, of remarkable energy and executive ability and with a conscious, complete, well-rounded philosophy. Part of his philosophy gives him a hatred of violence; he believes that every human life is dignified and important and that every human life should be given its chance for its own free growth. We all believe that — but we do not all reach the logical conclusion that compulsion of another person's beliefs is wrong and that we should do something to stop such compulsion. Mr. Baldwin devotes his life to that.

Setting out from the start to defend the civil liberties, the Union has hewn to the line as closely as human fallibility permits. Inevitably, it became the defender of the underdog, because it is he whose liberties are most frequently infringed. No one muzzles a senator or a bank president. It is charged that the Union defends only reds; the Union replies that it does not make up its cases, that they are made for it by those who violate the civil liberties. It does defend communists; it also defends, for exactly the same reasons, Nazis and the Ku Klux Klan — defends not their doctrines but their liberty to make them known.

The normal development of any individual case is about as follows: A newspaper editor in a small town, let us say, is "framed" by political enemies and jailed on a trumped-up charge. The editor himself (or friends) appeals to the Union's office for help. The case is discussed at the weekly meeting of the directors; the specific civil-liberties issue is debated; and a decision is made to enter or reject the case. Untold times this question is asked by a board member: "Where is the civil-liberties issue in this case?" Many borderline cases are rejected because no such issue is clear.

Once a case is accepted, the Union's powerful machinery is set in motion. Court records are obtained; the able lawyers of the Union sift them out, prepare answering papers and briefs, conduct the case in the court. Meanwhile, the publicity department goes to work. Often, the publicity is as valuable as the legal steps, especially when the case is a flagrant one. Would-be local dictators hate the spotlight.

From its office in New York the Union handles approximately 200 cases a year. At any given time it has from 30 to 80 active jobs on hand. Its branches handle perhaps as many more local cases. It cannot, of course, take up every instance of infringement of civil liberties in the land but it does work on many of them; and no other organization does any work in this field.

III

THE UNION's most famous achievement is one of its most clear-cut — the Scopes "monkey" trial in Tennessee. It attracted world-wide attention and showed the length to which legal repression can go.

When Tennessee in 1925 adopted a law prohibiting the teaching of evolution in schools, the Union offered, in a widely printed press release, to finance the case of any teacher who would resist the law and thereby get it tested in the courts. A Tennessee businessman named Rappelyea, who was a friend of a high school biology teacher, telegraphed to ask whether the Union would defend his friend, John Thomas Scopes, if Rappelyea made a complaint against him. The offer was accepted, the complaint made; and the Union's lawyer, Arthur Garfield Hays, took the job on. William Jennings Bryan volunteered for the defense, and Mr. Hays enlisted Clarence Darrow and Dudley Field Malone on his side. The Union financed the entire defense, raising over \$10,000 by appeals to scientists. The lawyers volunteered their services.

History was made in Dayton. Scopes lost his case there, but the cause of free speech triumphed; the doctrine that Tennessee sought to suppress had unprecedented national publicity.

Another clear-cut job but of routine type was the Union's work in a silk strike in Paterson, New Jersey. The strikers were locked out of their hall by the police and could find no other meeting place. They appealed to the Civil Liberties Union.

Since no other meeting place was available and no law forbade assembly on city property, Mr. Baldwin, whom the Union sent over to Paterson, organized a parade of strikers to the city-hall steps. The chairman of the group started reading the bill of rights, and the police at once arrested him, with six others, and broke

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up the group with clubs, injuring many. Mr. Baldwin was indicted for illegal assembly. The Union at once held, under its own auspices, a meeting in the same hall from which the strikers had been ejected and had as speakers an Episcopal bishop, a distinguished lawyer, and a member of the Colonial Dames. There was no police interference. The Union then organized a second meeting under the joint auspices of itself and the strikers. After these two successful meetings under different auspices, the strikers demanded their hall and got it for their own meetings.

Mr. Baldwin was convicted and sentenced to six months in jail. Arthur T. Vanderbilt, ex-President of the American Bar Association, carried an appeal before the highest New Jersey court and won a unanimous and ringing verdict, upholding freedom of assembly. Freedom of assemblage was definitely won and established in Paterson.

IV

NO CIVIL-LIBERTIES issue which has ever come before the country has been more fundamental than one which has been raised by the National Labor Relations Board. When the Board rebukes Henry Ford for telling his men not to join a union, is it interfering with Ford's freedom of speech or is it not? The question is important to examine, because it is right down among the roots of the civil liberties.

The Wagner act is the law of the land. It forbids employers to coerce employees on the issue of joining a union. The Labor Board believes that any utterance from an employer to his men on the subject of unions must of necessity be coercive, because of the economic position the employer occupies with relation to his employees. This theory holds that, since the Wagner act is the law and forbids coercion, the Labor Board is right in charging Henry Ford with violating the law when he speaks out on the subject of unions. No question of freedom of speech is involved, it is urged, but simply a question of interpreting the law; labor needs such legal reinforcement in order to equalize its power with that of employers.

Head on with this idea clashes the conviction that freedom of speech is freedom of speech, whether Henry Ford's or John Lewis', that to forbid a man freedom of speech because he occupies a certain economic position is in-

iquitous. This theory points out the danger of allowing any federal board to stake out any subject whatsoever and to forbid 100-per-cent open, free public discussion of that subject by anyone at any time or place. To allow a government, by law or otherwise, to sort out permissible subjects for discussion is to permit the first step away from democracy. If labor needs reinforcement to equalize its position with that of its employers, let the reinforcement take the form of increased propaganda, of more and wider free speech by labor; but on no account resort to suppression of anyone's opinion.

The two views are most interesting because of their implications.

Those who would censor free speech when they believe it amounts to coercion are primarily concerned over the status of labor; they want labor to improve its position. They are, in essence, social repair men, anxious to rebuild society on fairer lines.

Those who with equal passion urge that freedom of expression is for every one of us; that, if such freedom does seem to injure one group or another, the injury is temporary and desirable in comparison with impairment of the civil liberties — these persons are moved by loyalty primarily to the civil liberties. They would establish a principle today in order that it may protect all mankind tomorrow.

The Civil Liberties Union has met this issue. In the summer of 1938, the Union made representations to the National Labor Relations Board, pointing out that the NLRB finding in the Ford case left reasonable doubt as to the status of the employer's freedom of speech. The Union asked permission to have its own representative at the hearings of the case, in order to present a brief on the civil-liberties issue involved.

This was a step of first-rate significance, not only in the administration of the Wagner act but in the protection of civil liberties. Too, it was a clear reply to those who charge that the Civil Liberties Union defends only reds. Henry Ford is scarcely a hireling of Stalin.

In several other findings of the Labor Board, the Civil Liberties Union has taken a different stand.

Notable among them was the case of the Muskin Shoe Company, in which the NLRB rebuked the company for circulating among its employees a pamphlet, denouncing the C.I.O.,

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which consisted largely of extracts from a congressional speech by Representative Clare Hoffman. Here the Civil Liberties Union held that it need not join issue with the Labor Board because the Labor Board had laid no restrictions on any future utterances, had only disapproved a past utterance.

Technically right in a narrow legal sense, the Union erred in this. If a government board says to you, "You were wrong in mentioning high taxes yesterday," you readily understand that, if you mention high taxes tomorrow, you will have trouble with that board. The Civil Liberties Union should be so sensitive to impairment of civil liberties from any direction that it would bristle instantly. It should at once deny the right of any governmental board to comment at all on the legality of any person's expression of opinion.

It should, specifically, condemn the Labor Board when the latter says that an employer must not "disparage" labor unions. *To disparage* means to speak lightly of. The Civil Liberties Union has upheld the right of free

thinkers to speak lightly of God, and it may properly be expected to uphold the same freedom for other human beings discussing less vital subjects.

Despite an occasional lapse, however, the thoughtful student of our democracy can find few pieces of work more worth doing than the work the Civil Liberties Union has undertaken for the past twenty years. If some quarrel with the way the Union does that work, it is because they feel it is too radical. Those persons should themselves enlist actively in the fight and thereby add their own more conservative element. It is a fact that criticism of the Union has come most frequently from extreme conservatives; it is a parallel fact that extreme conservatives have taken no share in defending the civil liberties. Defended they must be, and, if nobody but liberals and radicals is willing to undertake that defense, it ill becomes the shirking conservatives to complain.

Get out your copy of the Constitution and refresh your mind on your bill of rights. It is those brief paragraphs which keep us free men.



In an early issue:
"The Press Can Do No Wrong,"
by H. L. Smith

Europe as It Is Today

Sixteen years of bitter history, culminating in the partition of Czechoslovakia, have vindicated these prophecies of the late Otto H. Kahn, first published in THE FORUM for September, 1922. The Editors believe that recent world events have made them worth rereading. It may be noted that the writer was a German-born Jew, the son of naturalized American parents who had returned to their native land before his birth.

by OTTO H. KAHN

Condensed from THE FORUM for September, 1922

EVER SINCE, in the spring of 1919, the proposed principal conditions of the peace treaty became known, I have done what was within my feeble capacity to advocate reconsideration or mitigation of certain aspects, and to point out the grave results inevitably bound to follow insistence upon, and attempted realization of, these conditions. The course of events has borne out, only too fully, these predictions. No more shortsighted and destructive "settlement" was ever inflicted upon the world, from the point of view alike of friend and foe, than the so-called peace treaties with Germany, Austria, Turkey, Hungary and Bulgaria.

I had occasion, during my stay in Europe, to visit Austria. Whatever the degree of punishment and atonement justly due for the crime of their Government in unchaining the war, nothing more tragic can be imagined than the utter misery of that gifted and amiable people who have been one of the civilizing forces among the nations, and to whom the world owes so much in the field of science, music and literature. It is appalling to contemplate, especially, the dreadful conditions among the middle classes, their semi-starvation and, in some cases, actual starvation.

Forced, by the treaty of St. Germain, into economically almost impossible frontiers, hampered and crippled by its terms (even though some of these have since been mitigated or suspended) the Austrian people are singled out, less, really, by design than by bungling on the part of the treaty makers, for particularly cruel and hopeless suffering. Forbidden, in defiance of the famous doctrine of self-determination, to measurably relieve their economic conditions by affiliation with their neighbor, Germany — a prohibition defensible in itself,

but vitiated by a treaty which has rendered Austria impotent to stand alone; harassed, humiliated and maltreated by other adjoining states on whom they depend for their trade and for some of the very necessities of existence, they are deprived even of the possibility of escape from their wretchedness by emigration, because they cannot afford the means to emigrate over-seas, and the doors of the neighboring Danube States are closed to them. At the same time, millions of their brothers — again in defiance of that assumedly sacrosanct doctrine of self-determination — have been torn away from their Austrian allegiance and placed under the domination of Czecho-Slovaks, Roumanians or Italians.

And yet there are still persons of professedly liberal tendencies to be found in America, who prate about the "liberal" spirit of the peace treaties and who unctuously give thanks that the treaty-makers of Versailles, St. Germain, Sèvres, etc., departed so beneficently from the ways of old diplomacy. Presumably, such defenders are not fully acquainted either with the general purport of these treaties, their deviation from solemn declarations repeatedly made during the war by the allied spokesmen, their non-conformance to the plighted faith of the armistice terms, or the calculated meanness of their details.

The tragedy is that President Wilson had both the true vision of a wise and just peace and the power to enforce it, but failed deplorably in realizing that vision.

Such as Europe is today, America has been a strong factor to make her, through our participation in the war and through President Wilson's part in the peace negotiations. We cannot, in decency or in wisdom, disregard that responsibility. The European nations — both