

proved over and over in the history of every industrial country. Protective legislation has been necessary in order to give to the job a character that can appeal to women who are not driven into industry by extreme want. Such legislation is as necessary in the American states today as it ever was. It is as much the obligation of the states as it ever was to require the men who enjoy the privilege of the employer's status to conform to decent requirements as to both wages and hours.

But suppose they refuse to conform, and displace their women workers by men? They can not. They have to have labor, and there are not men enough to fill the jobs. Never in our history, except in the late war, have American employers complained so bitterly of the shortage of labor. We got little immigration during the war and the prospects of a great influx of workers from Europe are, from the employers' point of view, extremely dark. Hundreds of thousands of our alien workers are going back to Europe.

The industrial conditions of today point to an increasing, not a diminishing need for women workers. That means that the present time offers one of those rare opportunities when decent conditions of employment for women workers can be introduced and made permanent without even the temporary displacement of women. It is a thousand pities that at such a time the course of legislation in the most populous industrial state in the union should be subject to sabotage by a politician like Speaker Sweet whose economics is more antiquated and calamitous than even his politics. Yet he is not a Tsar, absolutely to veto every progressive measure he can not understand or understands too well, unless the rest of us, citizens of New York State, are serfs.

The Advocacy of Force and Violence

THE new inquisitors argue that their whole purpose is to prevent the overthrow of the government by force and violence. They are either mistaken or they are not candid. Plenty of law now exists against the overthrow of the government by force and violence. Section 332 of the U. S. Criminal Code punishes any one who "aids" in the commission of a crime; who "abets"; who "counsels"; who "commands"; who "induces"; who "procures". Section 6 punishes "two or more persons . . . who conspire to overthrow, put down, or to destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any

law of the United States." No language could be plainer. Nor could it more effectively expose the hollowness of the argument that the new legislation is to protect the American government from overthrow by force and violence. Legislation to do that is on the statute books. The United States has not waited a hundred and thirty-one years to make force and violence illegal.

The new inquisitors are in pursuit of something far different from power to protect America against force and violence. They are out to secure power to prosecute opinions which some one like Speaker Sweet might regard as "inimical" to the best interests of the state: they are proposing legislation so loosely drawn that an opinion can be prosecuted if an official thinks that it might under any circumstances lead any person to consider force and violence. The traditional doctrine upon which American freedom is based prosecutes hostile *acts*; and words only when they lead directly to such acts. The new legislation is aimed at the prosecution of opinion which *might indirectly be construed* as leading to a hostile act. The rule of law which has inspired American practice was laid down by the Supreme Court in the Schenck decision:

The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

That is the principle which the frightened guardians and the nervous watchmen are attacking. Every aspect of this American rule of freedom annoys them. "The question in every case": they do not want every case to be examined separately; they want wholesale raids, and "drives." "Whether the words are used in such circumstances": they are in no mood to consider circumstances; for them as for primitive man words, names, symbols are magically potent. "A clear and present danger": they are too excited to prove that: a boy, his head full of dreams about the millennium, calls himself an anarchist because he disbelieves in all force, revolutionary or governmental; the law falls on him like a load of bricks not because he is "a clear and present danger" but because he has used the word "anarchist" in one of the less well-known meanings ascribed to it by the dictionary.

The rule enunciated in the Schenck decision is the conclusion of experience as to how under the complex circumstances of society, liberty and order can be reconciled. It is this rule which is at stake. It is *this* rule, and not any absolute rule of freedom, which all lovers of liberty are called upon to defend.

What is the defense? Why has experience led men to the conclusion that it is unwise to suppress

words, except when they are directly and unmistakably the stimulus to a crime? Experience has led to the conclusion first because civilized men find that there is no very close connection between words and deeds. If one man says to another who has just stepped on his foot: "I'd like to murder you" only the Lusk Committee would ask for a warrant. When Mr. Roosevelt stood at Armageddon and battled for the Lord, nobody in his senses went down to Oyster Bay to look for bombs. For in those comparatively reasonable days everybody who was listened to knew that most fervent movements, from the Salvation Army on, use warlike metaphors to enlist enthusiasm. "This is a fight between the people and the interests" "The people must recapture power from the politicians" "Down with the bosses" "A war against profiteers" "The capture of the state by the working class." That is the language of politics. Any one of those phrases might create force and violence. "The question in every case" says the Supreme Court is whether it does.

But the hysterics do not stop there. They are not content to attack phrases which in nine hundred and ninety-nine thousand cases in a million are nothing but the symbols of deep conviction. They argue that the abstract belief in certain doctrines is equivalent to advocating force and violence. Senator Poindexter thinks that a man who "advocates the Soviet Government of Russia" is a criminal. The argument is that such a belief constitutes advocacy of "lawless force" etc. The American doctrine hitherto has been that beliefs were no concern of the state. The new doctrine is that if you believe in anything, which as a matter of fact, could not be introduced except by force or violence, then you are outlawed. Hitherto you have been at liberty to believe in a monarchical form of government. As a matter of fact you could not introduce monarchy into America without force and violence. Hitherto you have been at liberty to believe whatever you chose to believe; you collided with the law only when you did something which was criminal. In future, if the witch doctors succeed, every word and every thought must pass official scrutiny because some words and some thoughts under certain circumstances may provoke certain individuals to commit crimes. That is what is meant, that is what has always been meant, by the abolition of freedom of speech and conscience.

The moment government officials can prosecute for beliefs, and not simply for acts or for words that are integral to acts, they enter a realm for which they are totally unfitted. It is intolerable that men who become postmasters or prosecuting attorneys for their eminent services to the party should

have the smallest legal power over thought. They have all they can do if they confine themselves to enforcing the law against acts which endanger the public peace. No man is wise enough to be trusted with power over other men's beliefs. Let him prove that in a particular case a particular word has resulted in a particular act leading to a particular crime, and he is within his province. Beyond that he cannot and dare not go in a land where free men reside.

The government official must not deal with beliefs, or with discussion that is not directly the provocation of an overt act, because in the last analysis freedom of thought is the condition of human progress. The ages are eloquent with that truth and fierce in their condemnation of those who deny it. Thought is experimental. It is born of curiosity and of need and nourished by expression. The very essence of human reason is the ability to project mentally and to test imaginatively all the possible adjustments of man to his environment. Freedom is its condition, because only out of an abundance of possibilities can the mind select the most probable course. Inject into that process of testing and experiment the coarse hand of an official and the threat of punishment, and you thwart at its source the productivity of reason. It does not make the evil less that the persecution falls upon the humbler members of the state. For tyranny exercised anywhere reverberates everywhere. By the suppression of the most despised alien, the curse of sterility is laid upon the social effort of the whole community. The fears and the threats generated there traverse all layers of society, and men do not dare to think honestly and fearlessly about their subjects because they cannot help thinking about the punishment that awaits them. That is the reason why to civilized men intolerance is an unpardonable sin.

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The Storm Cellar*

WHEN in 1917 I first read the generalization about history, that in a war the belligerents are likely to exchange national characteristics, I was faintly interested. Just now my interest is grave. My own country illustrates most dramatically the bad end of the exchange. Germany and Russia, shedding their old despotisms, have a strong probability of settling into interesting democracies. England, not much injured mentally by the war, is leading the world in preparing for industrial democracy, as she has so long led the larger nations in political democracy. France is somewhat less free in mind than before the war, but the change is slight compared to ours. The United States in five years, mainly in three years, has passed into a despotic spirit comparable only to what Russia and Prussia were before 1914.

I know that for the fear, cruelty and vagueness now oppressing our country the reasons are excellent. Our repressiveness is based on danger to the republic; on plots turned up by the police; on potential revolution; on the need of law and order; on patriotism. It is based on exactly the reasons always put forward by the German and Russian oligarchies. The excuse behind the reasoning, however, is slimmer than in either of the foreign despotisms. The Tsar actually was in constant physical peril. A Russian princess said to me: "Our first mistake was when we freed the serfs. Since then the peasants have been always thinking they could get more." The Kaiser and his shining ones faced not only the vengeance of France, the mysterious possibilities of Russia, the far seeing menace of England, but they dealt with a growth in socialism that was rapid and in their minds degenerate. We are a nation with natural resources undiminished; protected by the oceans; with centuries of British free tradition behind us; with all our hundred millions, except possibly one man in every million, accepting our general form of government; and yet we are abandoning the grand old Anglo-American traditions and taking over those of the Tsars and Kaisers.

Nor is that the worst. England from time to time has gone through panics of thought-control, but always there have been men of eminence to rise and defy the frightened animal, and such men have kept the country's spirit great. On my re-

turn to America last December what struck me was the silence of such liberal leaders as remain. A few editors, a few clergymen have kept their nerve. Even a few politicians and lawyers spoke a little after Charles E. Hughes took the lead. But how many, alas, whom we had counted liberal, have found one excuse and another for joining the pack and crying down the trail!

There are many forms of courage, of which we may distinguish three. That the physical form is highly developed in all modern nations, recent most heroic endurances have proved. If moral courage means the willingness to brave penalties in defense of simple moral convictions, that species is not so rare as intellectual courage, or willingness to make sacrifices for our own thought-out intellectual beliefs. In America this intellectual courage has shown itself in those realms in which we are interested. Many a business man has put his own lonely thought into execution. But mental independence has been singularly lacking in the general realms of thought, because for a long time we have not been interested in thought. In the present crisis, if we had possessed any seriousness about the bases of liberty, our leaders could not have been divided into those who helped to stampede the country into a pitiful Prussianism and those who acquiesced in the stampede.

I would not overstate the case, and therefore it should be added that many individuals have been kept silent not from cowardice, but from a sense of futility that is so often felt in American life by minorities. These persons feel that they have no power to lead the many out of their mania and that the public will of itself emerge when in the infinitude of God's wisdom the time is ripe. I wish to state their case fairly, and Ironquill has done it for them:

"Once a Kansas zephyr strayed
Where a brass-eyed bird-pup played.
And that canine bayed
At that zephyr, in a gay
Semi-idiotic way.
Then that zephyr, in about
Half a jiffy, took that pup,
Tipped him over, wrong side up,
Then it turned him wrong side out.

And it calmly journeyed thence,
With a barn and string of fence."

The moral drawn by Ironquill is exactly that of the public at the present moment:

* A chapter from the book, *The Advancing Hour*, to be published in the spring by Boni & Liveright.