The Right to Advocate Violence

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Words vs. Deeds

THE proposals of the Fish Committee to Congress, recent decisions of the courts, and heated comments in the press on revolutionary propaganda raise anew the old question of what language should be made punishable.

This is to many a confusing issue in law and public policy, both as an academic proposition and in determining what cases the champions of civil liberty shall defend. For the sake of making it clear to our friends and of restating our own position, we summarize the law, the facts and our stand.

The traditional principle of free speech holds that mere utterances should never be made a crime; that nobody should be prosecuted for utterances unless an overt act is actually committed or attempted. Any person who by speech incites to such an act is then equally responsible with the person who commits it or attempts it. The line is sharply drawn between words and deeds, or attempted deeds. (Criminal libel is of course excepted.)

When that position is put in such specific language as to cover the right of persons to advocate "violence, murder or assassination," it sounds shocking to those who confuse defense of the right to an utterance with advocacy of the utterance itself. They forget Voltaire's dictum, the basis of free speech defense: "I detest what you say, but I will fight with my life for your right to say it."

The confusion results primarily from the use of the word "advocate." Advocacy in the sense of specific solicitation to commit an act of violence sounds sinister. Advocacy in the sense of favoring, believing or supporting a doctrine, seems far less sinister. Therefore those who favor suppressing doctrines always talk about suppressing specific incitements.

In his recent appearance before the Fish Committee at Washington, Roger N. Baldwin, answering questions as to where the Civil Liberties Union draws the line for prosecution, made it clear that we draw it only at deeds or attempted deeds or at a definite solicitation to an act committed. The usual fool questions about defending advocates of "murder or assassination" were asked,

and the fragmentary press reports of his replies disturbed some of our friends who mistook defense of the right to utter an obnoxious idea with its advocacy.

The Law

THE traditional principle of free speech, recognized in law and in public policy both in the United States and Anglo-Saxon countries for over a century up to the world war, tolerates any language, however extreme. In Hyde Park, London, forum of free speech for years, one may advocate the assassination of kings and be protected, if necessary, by the King's police. But one may not utter with impunity a specific solicitation to others to assassinate the King.

In the United States the law ordinarily has made the same distinctions. In many states specific solicitations to commit definite acts of violence have been punishable for years, even though no act is committed. Some states punished mere utterances—"blasphemy" or "seditious libel" under ancient statutes, and a few condemn advocacy of violence under the "anti-anarchy" acts passed after the assassination of President McKinley—though no prosecutions were brought under them until after the war.

But federal law never made utterances a crime, however violent, until the Supreme Court decisions in the war. Conspiracies were punishable even in the absence of acts—but never individual utterances. When the Supreme Court of the United States during the war sustained the right of Congress to punish language, it laid down the rule that in each case there must be a "clear and present danger" of an overt act following the utterance. The "clear and present danger" however must be to the State itself.

But the court has since gone far beyond that. It has sustained the many state laws defining "sedition" and "criminal syndicalism" on the theory that the state has a right to protect itself from advocacies of violence, however general these advocacies may be. Even a remote tendency to violence at some future date is held by a majority of the Supreme Court as proper ground for sustaining statutes punishing mere language. The court now punishes what was not punishable before,—mere theories and beliefs and even mere mem-

bership in an organization holding forbidden beliefs. Justices Brandies and Holmes, who subscribed originally to drawing the line at a "clear and present danger," have since dissented from all the later decisions in which the court drew the line somewhere else. The "clear and present danger" test of war days has never been since applied. For all practical purposes it no longer exists.

Note the language of Justice Holmes in reply to the majority opinion of the Supreme Court of the United States that "incitements" should be punished. Said he:

> "Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result."

And addressing himself definitely to the majority opinion sustaining a conviction for advocating a revolutionary dictatorship of the proletariat, he said:

> "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."

Prof. Ernst Freund of the University of Chicago Law School, a recognized authority, in his book on the "Police Power" as long ago as 1904, said in discussing the criminal anarchy statutes:

> "The constitutional guaranty of freedom of speech and press and assembly demands the right to oppose all government and to argue that the overthrow of government cannot be accomplished otherwise than by force; and the statutes referred to, in so far as they deny these rights, should consequently be considered as unconstitutional."

The Facts

IN ALL our experience of the last twelve years in handling free speech cases all over the country, we do not know of a single case of a specific incitement to violence by any radical. Nor in all the cases of I.W.W.'s, Communists and others which we have han-

dled, was there any incitement to violence even in general terms. Not a single act of violence has ever been proved against a member of the I.W.W. or Communist Party in the last decade in connection with any of the political or industrial activities of those organizations. Acts of violence in strikes are common, chiefly by strikers against strike-breakers. But that has nothing to do with radical propaganda. Such acts of violence are common on the part of orthodox trade-unionists affiliated with the A. F. of L. Anyone familiar with strikes knows that the leaders always counsel against such violence. We know of no strike leader convicted for inciting even that form of violence, so common in strikes. But we know of scores of convictions of radicals under state sedition and criminal syndicalism laws punishing advocacies of violence, in which nothing was proved but the expression of general radical views in speech or print, or mere membership in an organization construed to advocate violence.

We know, however, of many cases of advocacy of violence by reactionaries against radicals, strikers and Negroes. Lynching of Negroes in the south is commonly condoned or encouraged in public and private utterances. Excited employers or professional patriots often advocate violence against reds and strikers. Yet we do not believe in prosecuting any such incitements.

Hundreds of Negroes, Catholics, aliens and others opposed by the Ku Klux Klan have been mobbed, tarred and feathered and beaten during the last ten years. Over two thousand cases of mob violence were cited in an official investigation of Klan activities in the state of Oklahoma alone. And yet not a single person committing or inciting these violent acts against strikers, Negroes or radicals has ever been punished.

It is plain, therefore, that those who defend majority prejudices or property rights may not only advocate but practice violence against their enemies without fear of prosecution, while they call for the police and prosecution against mere radical doctrines. It is not methods of violence they fear, but the ultimate objects of revolutionary propaganda. The history of the last twelve years since the courts approved penalties on mere language has

shown that those who advocate violence in maintaining the existing order may do so with impunity while those whose program suggests violent changes in the remote future are punished.

Our Stand

IT MAY well be argued in the light of the facts that any such discussion of where to draw the line for prosecution of violent language is academic, since no cases directly involving advocacy of violence to persons arise. But so many cases arise in which class violence by radicals is imputed, that a clear-cut definition of the right to advocate it is necessary.

The Civil Liberties Union stands on the traditional principle of drawing the line between word and deed or attempted deed (and direct incitements to such deeds). We do not accept the recent decisions of the Supreme Court of the United States. We hold that the best way to avoid violence is to let people advocate any doctrine, however revolutionary, violent or radical their language may be. The essential basis of free speech is that it is a safety-valve against explosions. Suppression, not free speech, makes for conspiracies and ultimate violence.

Nobody can tell what the effect of mere words will be. As Benjamin Franklin said: "Of course the abuses of free speech ought to be suppressed, but to whom dare we entrust the duty of doing it?" No man is able to exercise wisely the power of declaring what ideas are dangerous enough to be jailed and what are not. One man's opinion would differ from the next, and who is right? The opponents of free speech say the line should be drawn short of an overt act. They hold that even general language advocating violence will produce violence. All the facts of history are against them. Conditions, not words, produce violence.

The Civil Liberties Union is opposed to all violence, whether by the government, employers, Klansmen, "patriots" or by strikers or radicals. It should be clear from our statement of the facts and public policy that unlimited free speech is the best antidote to violence, and that the suppression of free speech by the violence of government or self-appointed "patriots" produces the very evils it purports to prevent.