"Almighty God has created the mind free. All attempts to influence it by temporal punishment, or by civil incapacities, tend only to beget habits of hypocrisy and meanness."

Amnesty for Political Prisoners

Address Delivered in Washington, D. C. on April 17, 1919
By
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Amnesty for Political Prisoners

Address delivered at mass meeting April 17, 1919, at Washington, D. C., under the auspices of the Washington Citizens' Committee

By J. L. Magnes.

It is a very hopeful sign that in the capitol of the nation a Citizens' Committee should have been formed to ask for amnesty for the political prisoners of America. It was high time that this be done. It is difficult to believe that America should be behindhand in adopting a liberal and generous attitude towards its political heretics. The armistice has been signed. The war presumably is over. Why, then, should we not set free those prisoners whose offense lies primarily in the fact that their religious, or political, or economic views have differed from the views of the great majority of their fellow-citizens? In January, a petition for the release of political prisoners was presented to the British Government by a large group of men distinguished in political, ecclesiastic, and artistic affairs. This petition was signed by 83 Members of Parliament, by 17 bishops, by a large number of clergymen of various denominations, by men such as Viscount Bryce, Viscount Morley, Mr. Augustine Birrell, Sir John Simon, the Earl of Crewe, Lord Buckmaster, Mr. Arthur Henderson, Professor Gilbert Murray, Mr. H. G. Wells, Mr. G. B. Shaw, Mr. G. K. Chesterton, Mr. Arnold Bennett. In Italy, shortly after the signing of the armistice, the King granted complete amnesty to all political prisoners. In Germany all political prisoners were liberated; and this is true also of all the other governments of Central Europe. Shall it be said that the defeated in their anguish have set their political prisoners free,
and that some of the victors in this stupendous conflict for liberalism and democracy are unwilling to trust themselves to perform an act of reparation, of generosity, and of common sense?

I beg to present for the consideration of this meeting a set of resolutions looking toward an amnesty for all political prisoners in American jails, or at liberty under bail pending trial or appeal. I am hopeful that this meeting will adopt these resolutions and will cable them to the President of the United States at Paris for his consideration:

WHEREAS, the end of the fighting upon the fields of Europe finds in American prisons, civil and military, or at liberty under bail pending trial or appeal, upwards of a thousand men and women whose offense is essentially of a political rather than a criminal nature, and

WHEREAS, these men and women have been prosecuted or imprisoned primarily because in advocating their beliefs or in voicing their dissent they have expressed or acted upon opinions which are contrary to those held by a majority of their fellow-citizens, and which have been deemed the official evidence of their offense. Now therefore,

BE IT RESOLVED, That it is the sense of this gathering of citizens, in mass meeting assembled at Washington, D. C., that the further imprisonment in the United States of a body of political heretics is unworthy of the generosity of a great people, contrary to the democratic idealism which inspires the foreign policy of our country, and violative of the traditions of freedom to which our government is dedicated, and

BE IT FURTHER RESOLVED, That we accordingly urge upon the President, upon the Attorney General of the United States and the Secretary of War with all the earnestness at our command, the necessity of granting an immediate general amnesty (1) to conscientious objectors, (2) to all other political prisoners, whose religious, political, or economic beliefs form the basis of their prosecution.

At the beginning of March, the then Attorney General of the United States, Mr. Gregory, addressed a letter to the President on the eve of his retirement, declaring that the persons convicted under the Espionage Act are in no sense “political prisoners.” The present Attorney General, in whose sense of justice and fair play I have implicit confidence, and who is a man of liberal and progressive tendencies, seems to be burdened with
much of the heritage of his predecessor. Last week, on April 11, he issued a statement similar to the one prepared under the Gregory regime. He denied that there are political prisoners. His words are: "There are no men in prison because of the expression of their views on social, economic, or political questions, including the war."

Moreover, he appears to deny the correctness of the figures given in the resolution before this meeting. To use his words, these figures are "so exaggerated, in fact, that I cannot help suspecting the overstatement to be deliberate. . . . . It thus appears that current statements to the effect that there are 1,500 political prisoners in the penitentiaries and jails of this country are the result of either frenzied imagination or deliberate intent to deceive the public." He then declares that there are only 179 prisoners confined in jails and penitentiaries for violation of the Espionage Act. If, he says, the I. W. W. cases in Chicago and California are to be added, the total number would be about 300.

We are glad that the Attorney General has made this statement. It is a tribute to the power of an ever-growing public opinion to find him beginning to take the public into his confidence. The issue is very clearly drawn. We dispute his views, and we challenge his figures. We charge that there are political prisoners in this country, both in the jails and at liberty under bail pending trial or appeal. We charge that these political prisoners are being punished primarily and essentially because of the expression of their religious or their political or their economic and social beliefs in relation to the war. It is true that technically and legalistically these political prisoners are being punished for presumed violations of the Espionage Act and of the Selective Service Act. We contend, however, that in almost every instance it can be shown—and it has been shown—that these political prisoners are being punished primarily and essentially, not for overt acts committed by them, but because of the expression of their beliefs and convictions on religious, political, economic, and social questions, including the war.

As to the figures just issued by the Attorney General, we charge that they convey an impression which is apt to be misleading. We do not accuse the Attorney General of deliberate
intent to deceive the public. But we challenge him to point out where the statement has been currently made that there are 1,500 political prisoners in the jails and penitentiaries of this country. As far as I am aware, that statement has been made nowhere by any responsible person or agency. Certainly it has not been made by the National Civil Liberties Bureau, for which I speak here tonight. The Attorney General is careful to say that there are only 239 now in actual confinement. We have no means of disputing these figures. What we do declare without fear of contradiction is, that there are at least 1,500 political prisoners including both those actually now in confinement and those who are either out on bail, or whose cases are up on appeal, or who are convicted awaiting imprisonment, or who are under indictment awaiting trial. The fact that a number are actually in prison is of great importance to the prisoners themselves. For us, however, there can be no material difference as to whether political prisoners are actually serving their sentences, or are about to serve their sentences, or are in danger of being imprisoned. When we speak of political prisoners, we speak of all those together who are now inside the jails and penitentiaries, or who are legally threatened with being sent there. And when we appeal for amnesty, it is for all alike.

We cannot, unfortunately, give you figures as to the precise number of political prisoners in and out of the jails. We have repeatedly endeavored to secure this information from the office of the Attorney General, but without success. We wrote last on January 14, before the present incumbent took office. We stated that “this information is desired for the preparation of a memorandum to be submitted to the President for the purpose of petitioning him to grant a general amnesty with respect to such of these persons as have been indicted or convicted primarily upon the basis of their beliefs.” Under date of January 20, the Department of Justice informed us that it “is now so busy that it cannot afford to undertake the preparation of the list you request. So far as this Department is aware, no person has been indicted or convicted primarily upon the basis of his beliefs.” Despite this refusal to give us precise information, our figures may be accepted as on the whole reliable. On June 30,
1918, Attorney General Gregory issued a report on indictments and convictions under the Espionage Act. Of the 363 prisoners then convicted, only 20 have been released through commutation of sentence. At that time 496 prosecutions were pending, and since that time hundreds of new prosecutions have been added. Moreover, the figures of the Attorney General as to the I. W. W. are inaccurate. He himself admits that the convicted Chicago and California I. W. W. might well be added to his totals now in confinement. He says that there are 121 of these, whereas we have the names of 144; and his statement makes no mention whatever of the 96 I. W. W., most of whom are now in jail in Wichita, Kansas, and Omaha, Nebraska, and Spokane, Washington. Some of these men have been confined to jails under the most revolting circumstances for the past year and a half because they have not been able to raise bail while awaiting trial.

Moreover, the Attorney General's statement contains another omission which justifies our characterization of it as apt to be misleading. He makes no reference whatsoever to the conscientious objectors. It is true that the conscientious objectors are not in prison, because of any violation of the Espionage Act. They are imprisoned because of violation of the Selective Service Act, which comes within the jurisdiction of the Department of War. According to our best information and belief, there are now in prison 375 conscientious objectors. The Attorney General may answer by contending that his statement was an analysis only of those in prison for violations of the Espionage Act. Nevertheless, the Attorney General says absolutely and without equivocation that there are no political prisoners in the penitentiaries and jails of this country. He knows perfectly well that when political prisoners are spoken of, conscientious objectors are certainly included. We hesitate to believe that the omission of any reference whatever to the fact that there are political prisoners outside of those under the jurisdiction of his own Department was a deliberate intent to deceive the public.

The Attorney General in his statement further says that many of those in prison "obstructed the draft in other ways, as for instance, by armed resistance, by stirring up fraudulent claims for exemption from military service, and other methods."
It should be pointed out that we have no concern whatever or in way with such persons. We would, of course, be interested to know their number in relation to the prosecutions and convictions under the Espionage Act. This number would probably be found to be exceedingly small, if we may judge from the fact that according to the last official report of the Attorney General’s office there has not been a single conviction under the Espionage Act—the spy act—of a spy, or an enemy agent. However this be, we are not concerned with any one who has obstructed the draft through armed resistance or through stirring up fraudulent claims for exemption from military service, or by other methods. If ever we have helped defend prisoners guilty of physical violence, it has been without our knowledge. We do not believe in the philosophy or the practice of violence. We are concerned solely with political prisoners, that is, with the more than 1,000 men and women who are now in prison or under indictment, not for what they have done, but because, primarily, of the expression of their religious, their political, their economic, their social beliefs, including the war.

We do not wonder that the Attorney General’s office is so eager to have it appear that there are no political prisoners in America. To deny the existence of existing political facts seems to be the altogether too familiar method of our legal and militarist systems in times of war. Moreover, to admit that we have political prisoners would make the barbarous length of their sentences and their bestial tortures in prison entirely out of proportion to their offenses, and it would establish a most unfavorable comparison with Czarist Russia and Kaiserist Germany. In Kaiserist Germany, Karl Liebknecht was sentenced to four years’ imprisonment for having gone out to the German forces on the Eastern front and distributed handbills among them calling upon them to revolt against their officers. But, in New York City a number of young men and a young woman were indicted and convicted for using intemperate language in handbills opposing American intervention in Russia and calling for a strike of protest against American intervention in Russia. The young men were sentenced to twenty years, the young woman to fifteen years, for this political offense; and the remarks and be-
behavior of the Court in connection with the trial can be characterized as nothing short of a disgrace to American judicial procedure. In Czarist Russia, the distinction between "politicals" and "criminals" is a familiar conception. Although political prisoners might be exiled and tortured, they were always regarded as in a class by themselves—kept by themselves, permitted to get food and clothing from outside, permitted to read, to study, and to write. In America where, theoretically, we have no political prisoners, our actual political prisoners are herded with murderers, thieves, moral perverts, and unfortunate degenerates of all kinds; and they have been put into black holes, manacled to the bars of their cells nine hours a day (at least one of them for fifty consecutive days), and given but two slices of bread and a pitcher of water a day, forced to sleep in their underwear on damp and draughty cement floors—in one prison at sea level—until the minds of some have given way, and for others death has come as the sole release. Of course our rulers cannot admit that there are political prisoners in this country. The pity of it is that they can justify such treatment even for the worst and most dangerous of criminals. It is true that on December 6, 1918, the Secretary of War ordered that manacling to the bars of cells cease, but in all other respects political prisoners are this day—this night—subject to torture, to brutality, similar to that which I have but merely indicated to you. At the present moment, we have been informed that at least 16 conscientious objectors are now in solitary confinement at Fort Leavenworth for no real reason other than that they are conscientious objectors.

Most of the conscientious objectors now in prison are at the military barracks at Fort Leavenworth. There are many degrees and categories of conscientious objection to war,—so many, in fact, that at one time the War Department had listed sixteen varieties. Amusing as this may seem to some, this interesting fact bears testimony to the religious freedom which America in the past has granted to the devotees of every religious sect. It is because of America's splendid tradition of religious liberty that it must be disappointing to thoughtful men that the whole problem of the conscientious objector has not been handled with sufficient intelligence and sympathy. Ask the War
Department and they will probably tell you, just as the office of the Attorney General does, that there are no political prisoners in America, that the conscientious objectors are not serving their terms because of their beliefs and opinions. This also is technically, legalistically correct. Conscientious objectors have violated the substance, though most of them have complied with the specific provisions of the Selective Service Act. They refused to become party of the military machine. For this they have always been ready, frankly and fearlessly, to accept such punishment as might be meted out to them, if only that punishment might be meted out to them frankly and honestly as the inevitable punishment for their convictions. But what is it that our legal and military sophistry is punishing them for? Not, it is said, for the conscientious views and beliefs of these men, but for infractions of military rules and regulations. Bearded Huttrians are sent into the Spanish dungeon at sea level on Alcatraz Island in San Francisco Bay. For five days they are given but one glass of water and not a morsel of food. They are in their underwear. They have no bed or blankets. Beside them lie soldiers' uniforms which, in accordance with the doctrines of their sect, they may not put on. They have broken the military rule requiring each man to put on a uniform. It is for this that they are thrown into the dungeon, so the legal technicality reads; but you know, and I know, that they have refused to obey this military rule because of their conscientious objections to war. And so with the other conscientious objectors. There is no question as to the sincerity of the convictions of most of them. A special board of the War Department testifies to that. They are one after the other sentenced to 10, to 20, to 30, to 40 years—sentenced for life—because this one refused to salute, that one to do work in a military prison, the other to put on a uniform, and so forth through the endless round of military regulations necessarily in force at a disciplinary barracks. These conscientious objectors may be right, they may be wrong; It is not now a question as to the soundness of their beliefs. But there can be no question that they are political prisoners, that they are imprisoned because of their views, no matter what the technical charge may be against them; and there can be no question, further, that the tortures
which they are undergoing are due to their beliefs and conscientious convictions, and not to their depravity or to the technical offenses with which they are charged.

I can well understand the view—though I do not share it—that a country can have no use for conscientious objectors in war time. I can well understand the view of the militarist, be he soldier or editor or professor, or clergyman, who contends that in war time there is no room for diversity of opinion, and that all political heresy must be punished adequately. If conscientious objection or any other divergent political opinion be in any way a hindrance to the prosecution of a war, I can well understand the militarist who says frankly and honestly that this divergence of opinion must be crushed. But when men are punished for their convictions, why shall it be pretended that they are punished for something else? Why go through all the forms of legality in order to read out of existence the undeniable fact that men are imprisoned and tortured because of their opinions and beliefs? Why not do away with the hypocrisy and red tape of it all; and say frankly that in war time men may not have conscientious objections to war? Instead of this direct and simple and straightforward facing of the problem, we have the equivocal attitude of a frightened and decrepit liberalism which creates “politicals,” then denies their existence, then tolerates their persecution, then seeks one technical excuse after another to have their number diminished without ever becoming conscious of the fact that there is a social, a political, a religious problem involved, and that upon the solution of this problem and problems similar to it, depends the very future make-up of our government and of western civilization. What has become of the great galaxy of distinguished pro-war liberals who threw themselves into the prosecution of the war heart and soul in order that they might be of greater aid thereafter to democracy in America? Why have not our preachers and our churches regarded the problem of conscientious objection as their own? In England the tradition of religious and political liberty seems to be more deeply rooted than in the United States. All through the war men of leading in different political parties have expressed themselves in rela-
tion to this important question. Only a month ago Lord Hugh Cecil, one of the intellectual leaders of England's political conservatives, and an ardent advocate of the righteousness of the war, addressed his brilliant mind once again to the problem presented by the conscientious objectors. He says: "I speak only of the imprisonment of those objectors who are, as the Home Secretary frankly says, good and religious men. To keep such men under confinement either for no object or to coerce them into doing what they sincerely think is wrong, is to incur a degree of moral responsibility which it is not easy to describe in language of becoming moderation. I venture, therefore, to appeal to all who agree with me in thinking that in a Christian State persons admittedly good and religious ought not to be punished for declining, even perversely, to do what their consciences forbid. I do so, not so much for the sake of the objectors as for the sake of the nation, now involved in grave wrongdoing, and I ask every one who shares my opinion to remonstrate with his representative in Parliament and with the Government, and to free our nation from the serious guilt of a persecution at once cruel and irreligious."

How strange now seems the statement of the Attorney General: "There are no men in prison because of the expression of their views on social, economic, or political questions, including the war."

Let us examine this assertion further in relation to those who are in prison or who have been indicted for violations of the Espionage Act. I cite a few typical examples.

John Sommerfield Randolph, said to be descended from a signer of the American Declaration of Independence, was convicted under the Espionage Act in the United States District Court, sitting in Auburn, N. Y., in the fall of 1918. The testimony against him was that he had said in private conversation (1) That the Government was "rotten" and that the officials in Washington were "a bunch of robbers and crooks;" (2) that he was a revolutionist and a Socialist as his forefathers had been before him, and (3) that he would go to jail before he would be conscripted and fight.

He was convicted and sentenced to pay a fine of $300 and to be imprisoned for ten years. He is now at Atlanta serving this sentence.
William Powell and his wife, on May 26, 1918, went to call at the house of one of their relatives, Inez Lefke, at Lansing, Michigan. In the course of their visit an argument arose about the war. Powell said to Mrs. Lefke (1) that the stories of German atrocities were lies and were part of a paid propaganda; (2) that he was not satisfied with the United States and could not believe in the President; and (3) that the war was a rich man's war. Somebody told the United States Attorney and Powell was indicted, tried and convicted. The judge sentenced him to serve twenty years in prison and to pay a fine of $5,000. The Powell family got together their savings, sold the Liberty Bonds which Powell had previously bought, and paid the fine. It took practically everything they had. Powell is now serving his sentence in the penitentiary at Leavenworth. Mrs. Powell is endeavoring to support herself and five children as best she can.

Mrs. Rose Pastor Stokes had been invited to come to Kansas City to deliver a lecture early in 1918 before the Business Women's Dining Club. Upon her arrival in town she was violently attacked by the "Kansas City Star," and her views seriously misrepresented. At the instance of members of the Woman's Club, Mrs. Stokes consented to be interviewed by a reporter from the "Star." The next day there appeared an article wholly misrepresenting her position. It was headlined "Mrs. Stokes for Government and Against War at the same time." She at once wrote a letter of correction to the "Star." In the letter the following phrase occurred: "No government which is for the profiteers can also be for the people, and I am for the people while the government is for the profiteers."

The letter was sent by the "Star" to the District Attorney before it was published, but publication was not forbidden. The "Star" printed it and Mrs. Stokes was promptly indicted upon the basis of the letter for having created insubordination and mutiny in the military forces and for having obstructed or attempted to obstruct the enlistment and recruiting service. Upon no other evidence of activity against her country, Mrs. Stokes was convicted and sentenced to serve ten years in prison.

Saliendra Nath Ghose and some other young Hindus for some years resident in this country, are members of the Indian Nationalist Party. Together with Agnes Smedley, an American citizen, they circulated a pamphlet entitled "The
Isolation of Japan in World Politics." The pamphlet contained an abstruse consideration of Asiatic politics. In one chapter it was suggested that in case of a revolution in India it would be to the interest of Japan to side with the revolutionists. Miss Smedley, Mr. Ghose, and others also wrote letters to the President and to the Ambassadors of various neutral countries urging upon their consideration the case of the Indian Nationalists for freedom. These letters purported to be written by Miss Smedley and the others as representatives of the Indian Nationalist Party. For these two offenses, Miss Smedley, Mr. Ghose, and the others were indicted under the Espionage Act by a Federal Grand Jury in California. Miss Smedley and Mr. Ghose were arrested in New York City. Mr. Ghose was held in prison under $25,000 bail for upwards of ten months, after which it was reduced to $6,000, which sum has been raised. The trial of the case is still pending.

The Rev. Clarence H. Waldron, a minister of Windsor, Vt., came into contact with the Espionage Act in November, 1917. Mr. Waldron was one whose earnest faith in a literal interpretation of the Sixth Commandment had led him to a complete religious pacifism. A federal Grand Jury indicted him for alleged violation of the Espionage Act, charging that he had obstructed the country's military program by oral statements and by distributing a pamphlet entitled "The Word of the Cross." Mr. Waldron was subsequently acquitted on the count of his indictment charging oral statements. The pamphlet which he had distributed set forth the teachings that it was wrong for a Christian to kill his fellowmen and that accordingly participation in any war was contrary to the law of God and the teachings of Christ. The pamphlet contained such statements as the following: "Surely if Christians were forbidden to fight to preserve the Person of their Lord and Master they may not fight to preserve themselves or any city they should happen to dwell in. Christ has no kingdom here. His servants must not fight. Better a thousand times to die than for a Christian to kill his fellow."

Mr. Waldron was first tried near his home and the jury disagreed. His second trial took place at Burlington. The trial of Hans Taucher and his fellow-conspirators for attempting to dynamite the Welland Canal had just been concluded. Public feeling was running high. Mr. Waldron was
convicted and sentenced by Judge Howe to serve fifteen years' imprisonment in the Federal Penitentiary at Atlanta, Ga. He was released April 1 by commutation, but he has not been restored to his civil rights, lost because of the heinous crime committed by him.

On November 30, 1918,—19 days after the armistice had been signed—Morris Zucker delivered a speech in Brooklyn. In his speech for which he was indicted and convicted, Mr. Zucker said in substance: (1) That he was thankful that more than half the civilized world had pledged allegiance to the red flag of International Socialism; (2) that the atrocities and casualties of the war were no greater than the normal casualty list of capitalist industry; (3) that he had claimed exemption under the draft law here but would be proud to fight in the class war in revolutionary Germany or Russia; (4) that military machines eventually crush the forces that create them and that the American soldiers who have served abroad will bring back Socialistic doctrines that will be dangerous to the capitalists of America; (5) that the peace conference will prepare an imperialistic treaty which the Socialist countries will refuse to sign as Russia refused to sign the treaty of Brest-Litovsk; (6) that in a year the United States will acknowledge the red flag of democracy. For this speech, delivered after the armistice, he was convicted and sentenced to 15 years' imprisonment.

Now it would appear to any fair-minded person from this recital of typical cases that these defendants were convicted or imprisoned primarily upon the basis of their beliefs. But the Attorney General denies this, and he is technically, legalistically correct in his denial. As a matter of fact, in every case the Constitutional right of free speech is freely admitted by the representatives of the Attorney General and by the Court. Technically and legalistically, these persons have been convicted or imprisoned not so much for what they said, as for unlawful intent in what they said, and for the possible consequences of their willful statements in obstructing, or attempting to obstruct, the progress of the war. Our records indicate that two-thirds of the convictions under the Espionage Act have been of persons accused of statements in private conversation. The evidence of unlawful intent was in almost every case based upon the utterance, not of a criminal intention, but of an unpopular opinion.
But not alone this. In almost every instance, the defendant was questioned as to his views on political and economic questions in general. Attorney General Gregory recognized indeed that the evidence as to wilful intent had been in many instances "indirect or circumstantial in character, and that it has happened that in cases of this type injustices resulted because of the all-prevalent condition of intense patriotism at the time." Moreover, in nearly every case the patriotic feelings of the jury were deliberately played upon. In nearly every case, the evidence of actual and tangible injurious consequences from the utterance in question was entirely lacking, and the jury was permitted—indeed, it was usually urged—to infer unlawful intent on the part of the defendant on the theory that injurious consequences would naturally result from the diffusion among reasonable men of views similar to those held by the defendant. The issue between us is clear. The Attorney General contends that these defendants were indicted, convicted, or imprisoned primarily upon the basis of their unlawful intent to obstruct the war, and upon the possible consequences of their utterances. We contend that these defendants were indicted, convicted or imprisoned primarily upon the basis of their unpopular opinions, to which they gave expression in a time of great national excitement. The Attorney General calls these defendants common criminals. We call these defendants political prisoners.

But, whatever be the technical aspect of these prosecutions, we are profoundly convinced that in calmer times, they will prove deeply offensive to the American people. If there be any doubt of this, it is but necessary to recall the fate of the infamous Sedition Law of 1798, a statute far less drastic than the Espionage Act. It will be remembered that the Federalist party was swept from power because of this law, and that the first act of President Jefferson was to grant a general amnesty for all persons convicted under it, and that Congress repaid every fine imposed under it, with interest to the last penny. So long as one political prisoner remains in prison or with the threat of prison hanging over him, so long will the public opinion of America clamor for his release. Political issues in America and elsewhere have been based upon facts of much less importance than the ex-
istence of a single political prisoner. The number of political prisoners is of but minor importance. Alfred Dreyfus was but one man, and because of him the reactionaries of France were routed from office. The Attorney General thinks that it is perhaps a frenzied imagination that pictures hosts of political prisoners unjustly languishing in solitary cells. We would ask that he give a more fundamental consideration to the question at issue. Under the Sedition Law of 1798 there were only 25 convictions. If there be only one political prisoner, the principle at stake is just the same as though there were 100,000.

A general amnesty for all political prisoners is the only way out of this quagmire of legalistic quibbling. The power of granting amnesty or reprieve is granted to the President by the Constitution. The logic of our legal and military Departments would seem to be without flaw. They have the law, they cite the law, they enforce the law by paragraph and verse. Scripture is used at times for similar purposes. But the institution of amnesty is doubtless due to the knowledge that the logic of the law sometimes leads to absurdities and inhumanity. In times of public danger even the courts of justice have been known to lend themselves to political ends. The time has come to sweep away the cobwebs that have gathered about American traditions of free speech, peaceable assemblage, free press and the right of petition. And the way to do this is through the repeal of the Espionage Act and a general amnesty for all political prisoners.

Amnesty has been granted before in America. From the time of Washington up to the war with Spain, full, free, and unconditional pardon has always been granted to rebels and all other prisoners of war. In 1815, the insurgents of the Island of Barataria near New Orleans were granted a reprieve because, as the writ phrased it, "They have manifested a sincere repentance and have abandoned the prosecution of the worse cause for the support of the best." During the Civil War offers of pardon and of reinstatement into their regiments were frequently made to deserters; and a full pardon was offered in 1863 "to all persons who have directly or by implication participated in the existing rebellion." In 1868, President Johnson granted a full pardon and amnesty for the offense of treason in these memorable words:
"Whereas, it is desirable to reduce the standing army, to bring to a speedy termination military occupation, martial law, military tribunals, abridgement of the freedom of speech and of the press and suspension of the privilege of habeas corpus, and the right of trial by jury, such encroachment upon our free institutions in time of peace being dangerous to public liberty, incompatible with the individual rights of the citizen, contrary to the genius and spirit of our republican form of government, and exhaustive of the national resources... I proclaim and declare, unconditionally and without reservation, to all and every person who, directly or indirectly, participated in the late insurrection or rebellion... a full pardon and amnesty for the offense of treason." This proclamation does not in any way concern itself with the fundamental question of free speech and civil liberties in war time. But it has the merit of recognizing frankly that the civil liberties of the citizen had been abridged and suppressed during the war—something which our present governors have not yet indicated that they recognize today.

But there is another basic distinction between the amnesties of the past and that for which we ask today. When our past wars were over and victories won, it was possible to talk of the "late insurrection or rebellion," or of repentant persons who had abandoned the worse cause for the best. With the ending of our present war, the issues have by no means been settled. The stupendous social conflict, which the Great War emphasized, is now being carried on with increased intensity all over the world. The war under the war, the struggle of classes, the industrial and economic battle is now at the centre of men's minds. Many of our political prisoners, among others the Socialists, the I. W. W. and Eugene V. Debs, are unrepentant radicals and are now in jail or about to be sent there, not so much because they were dangerous in the war just past, as because they may be dangerous to certain classes and interests in the war that is now on. It is my conviction—although it is hazardous to forecast in these strange and unaccustomed days of a new democracy—that the conscientious objectors will be pardoned with the coming of the peace. Despite the fact that some of the absolutists among them hold theories of the State and its functions and powers quite
subversive of many of our current and conventional notions, their offense is commonly regarded as having been committed against the recent war alone. Besides, our tradition of religious liberty is not to be flouted for all too long. An acid test of our democracy will, after all, be the treatment meted out to those political prisoners, whose political, economic, and social views as to the coming conflict may be of importance.

What will happen to the Chicago and California I. W. W., for example? Here are men and women who were convicted of conspiracy to obstruct the war. How was this conspiracy proved against them? That they came together to conspire, or that they wrote to one another, or communicated with one another in any way? No. It was not even attempted to prove this. By a conspiracy in the commission of certain overt acts? No. It was not even attempted to prove that all defendants were in any way aware of overt acts alleged to have been committed by some of the individual defendants in pursuance of the conspiracy. Nor were any specific acts of violence or sabotage connected with any particular defendant. The theory of the Government seems to have been that the illegal agreement or conspiracy could properly be inferred from membership in the organization and belief in its philosophy; and that, once the constructive agreement had been established by proof of membership and belief, each defendant thereby became chargeable with the overt acts of any defendant in pursuance of the alleged conspiracy. This means that the precedent has been established that any member of an organization may be convicted because of the inherent contrariness of the organization as a whole. If it is desirable to break up the I. W. W., would it not be more decent to do as they do in Canada, and forbid membership in the I. W. W. at all? We should at least know what was considered good and what harmful for us by our superiors.

What will happen to Eugene V. Debs, now in a West Virginia prison? With many thousands of my fellow countrymen, I have been trying my best to understand the theory upon which he has been imprisoned. It is difficult for the lay mind to understand the devious ways of our legislators and our courts. We are told that free speech has not been abridged; and then we are told by
the Attorney General that "Debs was convicted, not because of his political or economic views, but because he plainly violated the laws of the land" in a speech. Is it a wonder that many are tempted violently to criticize American courts of justice? The first amendment to the Constitution says plainly: "Congress shall make no law ... abridging the freedom of speech, or of the press." But the Supreme Court has now ruled in the Schenck and Debs cases that Congress can pass any law it chooses abridging the right of free speech in order to prevent certain "substantive evils." In other words, if Congress thinks that the exercise of free speech may bring about certain dangers or substantive evils, Congress may abridge the right of free speech. It is not put quite as bluntly as that. Congress cannot, in accordance with the Constitution, candidly and honestly and straightforwardly make a law directly forbidding the expression of a particular opinion or point of view. But Congress may forbid certain definite things, says the Supreme Court, such as wilful obstruction of recruiting; and, perhaps, (those preparing coming legislation may know), this theory will be extended to general strikes, or membership in an organization, or anything else, so long as these things, in the opinion of Congress, are "substantive evils." If criticism of a particular public policy adopted by the Congress may lead, in the opinion of Congress, to someone's breaking the law established by that policy, that criticism may be crushed.

Criticism may indeed lead some people to law-breaking and other evils. That is a matter of course. That is a danger which is inherent in all criticism. That is one of the reasons tyrannies are so deathly afraid of criticism. The sounder and stronger and more cogent a criticism is, the more danger there is that it will lead to dissatisfaction with prevailing public policy: But we pretend to be a democracy, we have calculated with both the advantages and the disadvantages of criticism, and we have pretended to believe, in this choice of risks, that the advantages outweigh the disadvantages. Debate, discussion, argument, condemnation, suggestion, free speech—that we have assumed to be the very essence of our democracy. We now learn that Congress may, in carrying out any public policy, pass laws forbidding criticism of that policy as likely to give rise to "substan-
tive evils.” Would it not be a cleaner way of going about it, if a frank attempt were made to amend the Constitution, to the effect that free speech is guaranteed only under certain conditions—in time of peace, for instance, but not in time of war, or in the discussion of certain kinds of political and economic truth and not in others? In Spain they do it much more simply. They merely announce: “Constitutional guarantees are suspended until further notice.”

When James Madison argued before the Virginia Assembly in behalf of a resolution condemning the Alien and Sedition Law of 1798, he said: “It must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means to carry out limited powers.” Our written Constitution is supposed to have done away with unlimited powers. Congress is limited in its powers over free speech. Yet it accords to itself unlimited means to carry out its limited power over free speech; and it is upheld by the Supreme Court in its seizure of unlimited powers over opinion and belief. Well may we recall Thoreau’s words, uttered in 1858: “Freedom of speech? It hath not entered into your hearts to conceive what these words mean. The church, the state, the school, the magazines think they are liberal and free. It is the freedom of the prison-yard.”

Need I emphasize the fact that in advocating justice to the Socialists, or the I. W. W., or to Debs, or to any one else, we are not necessarily in accord with all of their views and policies? They may be right, they may be wrong. But it has been the English-speaking tradition of political freedom, at least ever since Milton’s Areopagitica in 1644, to let the other side be heard, to demand fair play and free speech and a free interplay of minds, just because you happen to differ.

While this decision of the Supreme Court stands, we must recognize not only that freedom to criticize is not an assured right, but also that the force, cogency and probable rightness of criticism may be made criteria of criminality.

An earlier Supreme Court cited as “almost an authoritative declaration of the scope and effect” of the First Amendment, the language of Thomas Jefferson’s preamble to the Virginia
Toleration Act of 1785. We can no longer, under these new decisions, cite this language as interpretive of existing American rights and policy. But we can still cite it as truth:

"Almighty God has created the mind free. All attempts to influence it by temporal punishment or burdens, or by civil incapacities, tend only to beget habits of hypocrisy and meanness.

"To suffer the civil magistrate to intrude his power into the field of opinion, or to restrain the profession or propagation of principles, on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all liberty, because he, being, of course, judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own. It is time enough for the rightful purpose of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

And let me quote another President—President Wilson, who in his book "The New Freedom" goes to the heart of the matter:

"I believe that the weakness of the American Character is that there are so few growlers and kickers among us. We have forgotten the very principle of our origin if we have forgotten how to object, how to resist, how to agitate, how to pull down and build up even to the extent of revolutionary practices, if it be necessary, to readjust matters."

"We must learn," he says, "we free men, to meet as our fathers did, somehow, somewhere, for consultation. What are the right methods of politics? Why the right methods are those of public discussion. The only thing that can ever make a free country is to keep a free, hopeful heart under every jacket in it. The whole purpose of democracy is that we may hold counsel with one another so as not to depend upon the understanding of one man, but to depend upon the common counsel of all."

A history of amnesty shows that pardon is granted by those in authority upon auspicious occasions. When the king was crowned the prisoners were pardoned; when the crown prince was married, when the heir to the thorne was born, when great victories were achieved, when the country was saved from pestilence and the enemy, amnesty was granted, the prisons were opened, generosity prevailed. Now the President of the United
States is coming back from the momentous meeting at which the
nations of the world have gathered. May we not expect that at
such a time he will come to his own people and say: “In the new
world that is being born, we need the co-operation of all men,
of all parties, of all classes, of all opinions and beliefs. We can-
not afford to be without the aid of the least significant of them;
and we must summon to our help those of strong and radical
views, however much we may differ from them. For only thus
can the traditions of democracy and of liberalism be justified,
and only thus can we prove ourselves worthy of the new day of
reconciliation and of freedom. Therefore, I declare a full and
free amnesty to all political prisoners.”

What will it avail the peoples of the world to have a League
of Nations, if it be not a League of free peoples, of free democ-
racies? Without free speech, free discussion, freedom of assem-
blage, a free press, free minds and free souls, our democracy
is but a sham and hypocrisy. And may we not for the future
take Emerson’s word to heart?

“If there be a country where knowledge cannot be
diffused without perils and statute law; where speech is
not free; where the post office is violated; mail bags opened
and letters tampered with; where liberty is attacked in the
primary institution of social life; where the laborer is not
secured in the earnings of his own hands; where suffrage
is not free and equal,—that country is in all these re-
spects not civil but barbarous, and no advantage of soil,
coast or climate can resist these suicidal mischiefs.”
## National Civil Liberties Bureau

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