

Free Speech as Safety Valve (1919)

*John Q. Barrett**

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On a Saturday evening in March 1919, attorney Robert H. Jackson, age 27, attended a lecture at Jamestown (New York) City Hall. The lecturer, a lawyer named Winter Russell, was a somewhat prominent American Socialist.¹ The lecture occurred in a period of global turmoil, devastation caused by the just-concluded Great War and, in the United States, ideological clashes, violence, law enforcement excesses and widespread unease.

Jackson, who had just completed a short term as Jamestown's corporation counsel and was building a private law practice, attended Russell's lecture by assignment. Jamestown's mayor had appointed Jackson and other lawyers to serve on a committee that evening to "censor" the lecture. It was anticipated, at least by some Jamestown leaders, that Russell's speech might cause disruption and need to be shut down.

Russell delivered a scathing speech. He attacked the U.S. government for its recent prosecutions of Socialist Party leaders Eugene V. Debs and Victor L. Berger for claimed crimes that really were, as Russell saw things, right principles and human ideals. Russell criticized the federal judges who had sentenced Debs and Berger to prison. But no censorship

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). An earlier version of this essay was posted to my Jackson Email List on March 17, 2011.

For an archive of selected Jackson List posts, many of which have document images attached, visit www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju.

To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to barrettj@stjohns.edu.

¹ Cf. *Seven Are Indicted Here; Court Orders Quick Trial in Anti-Draft Case*, N.Y. TIMES, June 5, 1917, at 2 (reporting the court appearance of "Winter Russell, who has been advertised as a supporter of the "Goldman-Berkman No-Conscription League" and as counsel for a defendant charged with conspiracy for "the circulation or attempted circulation of pamphlets and other documents urging men not to register today, and if they do register to resist service if they are drawn in the selective service draft"); *Sailors Resent Pacifist Talk; With Flying Wedge They Start to Clean Up Slackers*, WASH. POST, Aug. 25, 1917, at 2 (reporting Winter Russell's announcement, from the steps of Philadelphia's Arch Street Theater to a crowd of "more than 1,000 pacifists," that "six well known socialists" would not be speaking at a scheduled meeting there "because of the inability to get the license").

occurred—Jackson and his colleagues watched, listened and, at the end of the evening, returned to their homes.

Jackson stewed, then wrote. On Monday, he delivered this letter to the mayor, who was his mentor and friend, and to the Jamestown newspapers:

Dear mayor:

According to the duty which you thrust upon me, I attended the Socialist meeting last Saturday night addressed by Winter Russell, and desire to report to you that so far as I observed, there was no infraction of the letter or the spirit of our laws, and I desire to take this opportunity to decline any further service upon committees of this character and to respectfully suggest that they be discontinued.

The speech at this meeting consisted of a bitter attack upon the government for prosecuting, and upon the courts for convicting Eugene V. Debs for his attacks upon President Wilson and his policy. He [Mr. Russell] denounced it as an attack upon free speech and complained that Debs was serving a long term in jail, while Theodore Roosevelt had not been prosecuted tho he called the president's policy "treasonable," and other attacks by richer and more influential men had passed unnoticed. He [Russell] concluded with the usual dreamy nonsense about the time when four hours shall constitute a working day. He predicted that if the government continued its policy of imprisoning men like Debs and Berger, it would bring on a revolution.

I see nothing illegal in any of this. That we have a right to criticize a conviction was pretty thoroly established when the whole North arose in indignation at the conviction of John Brown, and when Abraham Lincoln made bitter attacks upon the Supreme Court of the United States because of the Dred Scott decision.^[2] I suppose there is nothing treasonable in dreaming about a four-hour day, that is merely moonshine.

² See *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), available at www.law.cornell.edu/supct/html/historics/USSC_CR_0060_0393_ZS.html.

I must admit that I never understood why men like Roosevelt and [Senator Henry Cabot] Lodge are immune from laws which condemned Debs and Berger. Not that I believe Roosevelt and Lodge should be prosecuted, but I believe that a Socialist has as good a right to criticize a Democratic president as a Republican has. In fact, Mr. Mayor, the whole speech was very moderate compared with those attacks upon the government which I have been reading at the hands of eminent senators and gentlemen.

It is useless for us to have a cold chill every time the Socialists have a meeting. We have embarked upon a policy as a government of imprisoning people who oppose the government. Many of our eminent and well meaning citizens are rubbing their hands and saying, "Now that we have Debs in jail and Berger convicted, Socialism will die out." So said the Czar when he saw his political enemies exiled to Siberia; so said Louis the Fourteenth before the French Revolution; so said the Sanhedrin when they thought to kill out Christianity by crucifying Christ; so said the priesthood when they thought to kill out the Reformation by inquisitions.

Indignation meetings are the natural result of conviction of men like Debs and Berger, one several times a candidate for president of the United States who polled 897,000 votes in 1912, the last time he ran, and the other elected by the people of his district to represent them in Congress. I have read somewhat of history, and I just now fail to recall any government which has set about the suppression of unrest by putting popular citizens or class leaders in jail which has not stirred up a revolution, and I do not expect the United States to be any exception to a rule so universal. The prosecution of Debs and Berger is a tragic blunder. Sound law perhaps, but bad state policy, provoking class hatred and social unrest.

Mr. Mayor, I am opposed to Socialism and its insidious and vicious policy but I am equally opposed to those short-sighted people who expect to stamp it out by persecution. I am opposed to spying upon and persecuting and prosecuting and searching the Socialists, for they thrive

on it. No doctrine of military necessity now requires suppressing opposition to the draft. All that is past. Appointing smelling committees to go to these meetings merely advertises the meeting. I think half the joy that the Socialists found in the Winter Russell meeting was in the knowledge that they were being watched, which proved to them that they had finally got under somebody's sensitive skin and after I had heard the speech, I confess I felt a little ridiculous and I looked at the other members and they looked as ridiculous as I felt. Mr. Mayor, it is quite time that we quit letting these Socialists make fools of us.

Our forefathers were a canny crowd. They knew that free speech and a free press constitute the greatest safety valve that can be devised. They provided for it in this country, that is they thought they did, so that people who have grievances can meet and discuss them and solicit votes and carry on their opposition peaceably. The inevitable result of suppressing public gatherings and free speech is private gatherings and covert acts of violence and then the mob and then revolution. In every country which is now suffering from Bolshevism the government has for years tried stamping it out by suppressing free speech, exiling, and imprisoning labor leaders and radicals, preventing public gatherings, and in general adopting the very measures which seem to be getting some standing in respectable circles in the United States. We cannot adopt one half so drastic a measure against the Socialists as Russia did nor one half so effective, yet Russia failed, as we shall fail if we attempt similar methods. Bolshevism has gained the least ground in the countries allowing the greatest freedom of discussion and the most ground where most oppressed and penalized.

When Civilization is in convulsions, it seems to me not only petty but rather dangerous to be sitting on the safety valve. I think that our assumption of the right to censor what shall be said in these workingmen's meetings is like our conviction of their leaders in that it seems to add to the hatred and bitterness already existing between capital and labor, and that if we desire these two great forces to co-operate we

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should cease to do these things which provoke antagonism
and arouse slumbering hatred.

Very respectfully yours,

Robert Jackson³

³ *Free Speech Safety Valve*, JAMESTOWN POST, Mar. 19, 1919 (publishing Letter from Robert H. Jackson to Mayor Samuel A. Carlson, Mar. 17, 1919); “*Bob*” *Jackson on Censorship*, JAMESTOWN EVENING JOURNAL, Mar. 19, 1919 (same). An image of the second article is attached at the end of this file.

"BOB" JACKSON ON CENSORSHIP

Protests To Mayor Against Committees Named to Censor Socialist Addresses

OPPOSED TO SOCIALISM

Mr. Jackson Also Opposed to Short-Sighted People Who Would Stamp It Out With Persecution—Joy For Socialists At Recent Lecture To Know They Were Watched.

Robert H. Jackson, a member of the committee appointed by Mayor Carlson to censor the lecture of Winter Russell, a Socialist, in the City Hall auditorium last Saturday evening, has written the following letter to the mayor in which he suggests that it is time to discontinue such censorship. The letter:

March 17, 1919.

Honorable Samuel A. Carlson,
Jamestown, New York.

Dear mayor:

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