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1941

The Right to Hear

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Recommended Citation

Horack, Frank Edward Jr., "The Right to Hear" (1941). *Articles by Maurer Faculty*. 1225.
<https://www.repository.law.indiana.edu/facpub/1225>

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him the right to make the statements attributed to him. If the words were actually spoken by him, they may reasonably be considered as manifesting a spirit of intolerance. Perhaps here we reach the end of the requirements of tolerance. For we are entitled at least to be intolerant of intolerance. The New Jersey legislature has not long ago enacted a so-called group-libel statute, making criminal the utterance of remarks calculated to incite racial or religious hatred or prejudice. Thus is a limitation upon freedom of expression given sanction in the interests of the

general welfare. Its efficiency and desirability will be determined only in the consequences to follow.

The tolerance exemplified by Jefferson is a wondrous treasure until it is abused. It is inextricably intertwined with good taste. As Jefferson said, "It is the manner and spirit of a people which preserve a republic in vigor. *A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.*" We cannot afford to let the canker grow.

JOHN E. MULDER



THE RIGHT TO HEAR

IN every crisis the demand for restrictions on the freedom of speech seems plausible because of the compelling needs of national security and defense. Implicit in the demand for restriction is the possibility that free speech will be the tool for its own destruction. That it has this capacity cannot be doubted. Nor can it be denied that foreign agents have used the privilege to further their own subversive influence.

Thus the demand for the curtailment of speech must be seriously considered. Why curtail speech? Because it will be believed? Because it will incite action? Because it will destroy or impair the operation of government? Any or all of these consequences may result. The question is simply this: Is the probability of these occurrences sufficient to justify the limitation of unrestricted speech? Can we judge between these two equally important interests of the American people—between the

security of government and our individual freedoms?

Important as is the right of free speech, if the exercise of it results in the destruction or serious impairment of government, it should be limited. Even the greatest aggrandizement of individual right does not justify the destruction of the state, except, of course, for anarchists. Thus a defense of the unlimited right of free speech cannot be founded on the right of the speaker. It must have a firmer base. That firmer base is *the right to hear*—to hear all facts and theories, all truths, half-truths, and even untruths concerning the political, social, and economic society in which we live.

The individual right of speech is significant only because it is the best means of insuring the collective right of all men to hear. Deprive them of that right and popular confidence in government turns to mass suspicion. Suppress the means of political discussion and

popular participation in government is superseded by ignorant obedience or uninformed hatred. The permanent strength of government depends upon a strong, well-informed, and confident citizenry. Confidence does not breed in the darkness of suppression.

There are no short cuts to the truth. The wisest men of their times persecuted Galileo, daVinci, Servetus, and many others. Rousseau, Des Cartes, Pascal, Moliere, Comte, Maupassant, Zola, to mention but a few, were never admitted to the French Academy. The Royal Society failed to honor many of the greatest men of England. Contemporary evaluation by men of admitted ability failed to recognize the genius that time proved great.

Men tend to judge truth by the standards they have; new truths need new standards. Only after two centuries of persecution have we learned that in the field of science advancement frequently is made by denying the existing "truths." In social science the unconventional is still heresy. Thus in political matters more than elsewhere we must defend vigorously the right of men to hear the new, the untried, the shocking. Time has proved that no man is wise enough to decide what other men shall hear. Holmes' judgment "that the best test of truth is the power of the thought to get itself accepted in the competition of the market" is well buttressed by historical experience. Those in authority usually resist change and deprecate opposing policies; change and improvement in government can best be realized by appeal to the electorate. It may be objected, at this point, that if the wisest men cannot determine the truth then certainly the less qualified members of society are not capable of distinguish-

ing truth from falsity. Although I have full confidence in the ability of the total citizenry (as distinguished from all its individuals) to arrive at defensible judgments, even without that confidence I should still defend the right of all to hear.

In a democracy men are entitled to make their own decisions. If the judgment of the many is inadequate the remedy must be found, as Brandeis said, in "more speech, not enforced silence." The security of popular government depends upon a strong and liberal educational system—a system which embraces not only the formal system of schools and colleges, but also the informal participation of individuals, civic organization, clubs and assemblies.

If those who speak falsely are openly challenged by the defenders of our system, certainly the impact of numbers and of integrity and responsibility should favor the democratic process. The difficulty is that few of us are willing to expend the time and effort that defense requires. It is so much easier to silence an opponent than to answer him that we select through indolence the lazy way. If our freedom means anything to us it is worth fighting for; it is worth talking about. We should meet challenge with reply—falsity with truth. To prohibit the charge rather than to refute it may imply its validity—to answer is to destroy it.

The greatest threat to democracy lies in our own unwillingness to preserve the rights that only democracy guarantees. I do not think that we are so indolent that we will not meet the attack, reveal the falsehoods, and disclose as Thomas Jefferson said, that "we have nothing to fear from the demoralizing reasonings

of some, if others are left free to demonstrate their errors."

In his famous concurring opinion in the *Whitney* case, Brandeis asserted that "freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assemblage discussion would be futile; that the greatest menace to freedom is an inert people." Here is a clear expression of the goal of free speech—the participation of the people in the process of government. This standard of collective responsibility in government is a safer base for the defense of the individual speaker than his own more immediate right to speak. The violence of his ideas, the color of his language, the abhorrence of the principle for which he stands may frequently obscure reason and distort judgment. In deciding when he can speak and how much he can say let us remember that his pro-

tection is incidental. The real protection is to those of us who participate democratically in the process of government. Are we prepared to act with less than all the information that is available? Can we vote intelligently if we know only one side? Who shall decide what we shall hear? Whom do we wish to place in judgment on our judgment? Most of us do not speak—at least publicly—on the affairs of the nation; but all of us participate in the selection of representatives and exercise our judgment on the policies government pursues. This being the case let us recognize that the right we defend is not the right of some isolated and often misguided speaker; we defend our own right to hear—our right to have all the information and all the interpretations necessary for an intelligent preservation of the democratic process.

FRANK E. HORACK, JR.



BRANDEIS - APOSTLE OF FREEDOM

IN *Schenck v. United States*, 249 U. S. 47, 52, a unanimous Supreme Court proclaimed the now-familiar test of clear and present danger, defining the extent to which Congress may constitutionally interfere with free speech: "The question in every case is whether the words used 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. It is question of proximity and degree."

Schenck was convicted for violation of the Espionage Act of 1917. The

nation was at war. Popular feeling bordered on hysteria. Holmes and Brandeis joined the court in affirming the conviction because in their judgment the facts fell within the requirements of the test of clear and present danger. The test is a denial of the theory that free speech is a right absolute in nature. It is based upon expediency; it acts as a guide in the determination of the conflict between the necessity of protecting the existence of the nation and at the same time preserving for the individual the greatest freedom of expression possible in view of varying circumstances. Difficulties arise in its application to