
The Right of Criticism:

Address in Defense of *The Call* Before Assistant Postmaster General Dockery, Washington, DC — October 15, 1917

by Morris Hillquit

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I do not propose to go into a detailed defense of the charges made or implied by the reading of the various articles from *The New York Call* by the solicitor for the department [William Lamar], at this time. As we all understand it, *The Call* will have an opportunity to reply specifically and definitely to each and every one of such articles, of which opportunity we shall be very glad to avail ourselves.

What I propose to do now, and that very briefly, is to state our general position, and I hope I can make it so clear that there will be no misunderstanding on the subject.

The articles read by my learned opponent are, I presume, typical of those he desires to quote in support of his contention that the second class mailing rights should be withdrawn from *The New York Call*. They present a variety of subjects, some directly connected with the conduct of the war, others entirely unconnected. For instance, a criticism of the administration in choosing Senator Elihu Root to represent this country in Russia; a cartoon indicating in a general way that the administration might well pay heed to the existing social needs of this country before taking care of the European situation; a criticism of the conduct of the Department of Justice in giving out for publication certain charges against members of the Industrial Workers of the World while a criminal prosecution is pending against them and before any chance has been given them to present their side to the public; a criticism of Governor [Joseph] Burnquist of Minnesota and his refusal to permit a lawful organization [the People’s Council of America for Democracy and the Terms of Peace] to meet

in the state of Minnesota; a general political criticism of the administration, claiming that it had been duping and hoodwinking the people; then certain articles in opposition to the war, and criticism of the conduct of the war and articles in favor of peace. this, I believe, fairly summarizes the general tenor of the articles so far read.

I assume from Mr. Smith's tone of voice that he does not agree with the spirit of these articles. It is possible that you, Governor, as a citizen of the United states, and in your capacity of such citizen, absolutely disagree with the principles raised in these articles; but what I want you to bear in mind is that we are not here on the question of the general correctness or incorrectness of our views. We are here on a charge that we have violated certain specific provisions of an act of Congress, and the contention is made that the alleged violation of such provisions should deprive us of a certain right which we have heretofore enjoyed, and which is essential to the continuance of our existence. I respectfully submit that no proof has been adduced before you to sustain such charge and contentions.

In the first place, it must be borne in mind that *The Call* is the organ and spokesman of the Socialist Party. The Socialist Party is an opposition party, and frankly so. It is just as much opposed on political grounds to the present administration as ordinarily the Democratic Party would be to a Republican administration, or the Republican Party to a Democratic administration. In all the many years of the existence of this republic each political group has been conceded the right to criticize, and not merely politely and decorously, but in a pretty vehement tone of voice, the party in opposition. That is precisely what the Socialists are doing today.

I wish to call your attention to the fact that our motives, the motives of the Socialist Party, and the motives of *The New York Call*, as its spokesman, have not been impugned in this hearing. No attempt has been made, no attempt can be successfully made, to assail our motives. It cannot be claimed that we are actuated by mercenary motives, by motives of malice or hate, or by any motives other than purely patriotic, as we understand that term. All that has been shown is that between our conception and the prevailing conception which finds expression in the present administration there is a radical difference. We admit there is, but we claim the right to entertain such divergent views, and we say more than that we have not done.

So that the position of the Socialist Party and of *The New York Call* be fully understood, let me state to you now Governor, that the

Socialist Party is frankly, unequivocally, opposed to war, and that it has been opposed to our entering the war. There was no need of reading these special articles. Every line printed in *The Call* on that subject made its position absolutely clear and unambiguous, and in taking this position *The Call* again expresses the position of the Socialist Party. We believe that war is one of the greatest of social evils. We do not believe that this war, or any war, can possibly tend to the improvement of social conditions of the masses or to the alleviation of human suffering. We absolutely reject war between nations as an instrument of social progress. We do not believe that war can be conducive to establishing a world democracy. We do not believe that a democracy can be imposed upon any people. We believe that the people of each country must evolve their own political and industrial democracy. There is another reason why we are opposed to war, and that is, because we believe, and again, honestly, sincerely believe, that its burdens fall primarily upon the masses of the poor, upon the working classes of the community, and we believe, further, that war is the fruit of evil social conditions.

I should like at this point to clear up one common misunderstanding about the Socialist position. When we Socialists say that the war is of capitalist origin, the phrase is vulgarly interpreted to mean that the war was deliberately made by a number of individual capitalists for the purpose of making profits. That is not what we want to imply. Even in the article of Prof. Scott Nearing's, quoted by the learned solicitor, the author states very clearly that the capitalists did not want war, that they consider war barbarous; but conditions were stronger than they. The existing industrial order is bound to drive nations into war. In other words, the Socialists believe that under the existing conditions of competitive industry, of the struggle for markets, first at home, then, when these are exhausted, for markets abroad, a struggle in which the manufacturing and mercantile classes of all leading nations are necessarily involved, arises a new policy of imperialism, which must lead to diplomatic intrigues and militarism and eventually must create wars. It is that system, the competitive system of private industries prevailing in the world today, which the Socialists blame for the outbreak of all modern wars and this world war.

I repeat, we do not believe that a number of capitalists of their own free will deliberately came together and decided: "Let us make war." By no means. They did not want war. War is not pleasant, or

even profitable, except for special classes, of whom we will speak later. Now, this is not a novel theory. We have been expounding it for the last 60 years or thereabouts. It has come to be a well-recognized theory, technically known as the economic interpretation of history. It has been accepted, not merely by the Socialists, but by a number of other schools of thought. I might mention, for instance, that in this country one of the greatest authorities on the subject, Professor [Edwin] Seligman of the Department of Economics of Columbia University, a non-socialist, has frankly accepted it. If, then, the department takes the position that the theory that this war is a capitalist war, in the sense in which I tried to explain it, is an act hostile to the government, it will outlaw a school of historical thought, something that no government has heretofore attempted.

There is, however, another and more direct implication in our theory that the war is a capitalist war, and that is something that men of various party affiliations have maintained from time to time, something, in fact, we all know — namely, that there are a few special classes profiting from the conduct of the war, munition manufacturers primarily; that it is in the interest of their business to foment war, and that they thrive upon it. The numerous revelations in that direction in every country of Europe and in the United States that have been made within the last 10 or 20 years are matters of history.

They cannot be denied, and we Socialists call attention to this one contributing, although not primary, feature of modern war.

When we say, on the other hand, that we stand for peace, we are likewise very often misunderstood. In a very reputable magazine recently that statement was interpreted to mean a desire for an immediate, separate peace, for the withdrawal of the United States from the war. That is not what we mean. The Socialists would be the last class of people to advise our government to withdraw from the war, now that it is in it, and to leave all the nations in Europe to their own destinies. Socialism is an international movement, not a narrow nationalist movement. What we do say is, We want a speedy but general and negotiated peace, and we express our belief that the wisest, as well as the most effective policy of our government at this time would be to make the first move in the direction of such a peace. We maintain that the terms of such a peace have been formulated time and time again; formulated by the revolutionary government of Russia; formulated in different language by the Pope of Rome; formulated, perhaps most eloquently by the President of our own country on several occa-

sions, and lately again in his reply to the Pope. Our government does not think that this is the opportune time to initiate such a move for peace. The Socialists believe it is. The Socialists believe that nothing can be gained by delay, and everything lost. Now, this is a difference of opinion, but there is no law, there can be no law, which could prohibit us from entertaining our own opinions on such vital subjects. Socialists, outside of being Socialists, are also citizens, and as such they claim all of the rights guaranteed to every citizen by the constitution. They claim a right to criticize our administration, to criticize its war policies, to advocate peace, to defend the economic standards of the workers during the war. They also claim the right to protest against all violations of our constitutional rights. We do not conceal the fact that the Socialist Party, for instance, protested most vigorously against the action of this department in withdrawing the second class mailing privileges from a number of Socialist papers and against the procedure which was followed in such cases. We believe that this department has exceeded its rights. We believe that this department has not dealt in a fair, lawful manner with these papers. It has deprived them of their property, of their very life and existence, without due process of law. Here, again, you may not share our views on this subject, but we have a right to maintain these views, and I wish here to say the espionage law has not changed that right.

Assume that the policy advocated by the administration is the only wise policy; assume that our policy is absolutely erroneous; assume (for you cannot accept it as a fact — only history can judge between two divergent opinions) that you have the absolute monopoly of truth and wisdom, and that we are all wrong. Assume further that Congress has a right to say that only certain opinions should be tolerated and only the expression of such opinions should be allowed. I do not believe it has such a right. I believe that the constitution expressly prohibits it. But assume that Congress might enact a law prohibiting the expression of any criticism of the government policies in this war. Congress has not seen fit to pass any such law. Congress has deemed it wise to express the limitation on our constitutional rights very definitely and we claim that this department cannot by the process of interpretation or by its own regulations in any way enlarge these limitations.

Now as to the espionage law, whose provisions are invoked in this proceeding against us, let me read you these two paragraphs:

“Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of the enemies...”

“Whoever shall convey false information or statements (statements of facts; not opinions, not conclusions, but information or statements of facts) calculated to interfere with the operation of the army or calculated to aid the enemy...”

Is it not perfectly clear that what was intended to be prohibited by this paragraph was the giving of misleading information to our armies or the giving of useful information to the enemy, with reference to the operation and conduct of the war? This is an “espionage” law, Mr. Governor, a law defining the crime of espionage, or serving the enemy, of betraying the country. It does not attempt to prohibit the expression of divergent views or criticism. It is a prohibition against misleading the actual military or naval operations of this country by false information, of a military character, no doubt, or by giving out information to the enemy. If we had given false information of military operations which might prove detrimental to the conduct of the war, that would be an act of similar guilt. That is one part of it. Now, this is the other part:

“Whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military forces of the United States.”

That is perfectly clear. “Whoever shall cause or attempt to cause mutiny or willful refusal to serve.” What is meant is a definite organized attempt to physically obstruct the military operations of the United States. It can be read in no other way. It is not “Whosoever shall express an opinion which might tend, or might, in the opinion of any government department, tend to cause dissatisfaction in the ranks of the army.” No, it is, “Whoever shall willfully cause or attempt to cause insubordination, disloyalty or mutiny.” It is very specific. What it had in view was willfully obstructing the recruiting or enlistment service of the United States to the injury of the service of the United States — willfully obstructing the service, the recruiting service, not, again, expressing opinions which might in some way tend to weaken the effectiveness of recruiting, but actually interfering

with the recruiting service physically. The crime here defined is punishable with a fine of not more than \$10,000 and imprisonment for not more than 20 years. The penalty itself shows the intent of the legislature. It is a 20-year term of imprisonment, it is a capital crime that this paragraph has in view. It is the crime of treason, and what that crime of treason means has been fully defined by our courts. We are accustomed to use loose language in this connection. We call anything treason that does not agree with our conception; but it is not treason as defined by law; it is not treason made punishable by 20 years in prison. That "treason" has been defined by our courts as "the act of levying war against the United States or adhering to their enemies, giving them aid or comfort." No other act can be declared to constitute the offense. "Congress shall neither extend, nor restrict, nor define," says the court in the case of the *United States v. Great-house*, 28 Federal Cases 18, and in the celebrated case of Aaron Burr, Chief Justice [John] Marshall — and he certainly may be considered an authority — says: "it is not only that war be levied, but it is also necessary to perform the act of levying war." In other words, what this provision of the espionage law sought to strike were acts, well defined acts, not opinions, not views of any kind.

Now, there is another provision of this act which reads:

"Every letter, circular, post card, picture print, commercial photograph, newspaper, pamphlet, book or other publication or mailing matter of any kind in violation of any of the provisions of this act is hereby declared to be non-mailable matter and shall not be carried in the mails, or delivered through any post office, or by any letter carrier."

By virtue of this provision, the Post Office Department has adopted new regulations, and these regulations vary in language somewhat from the language of the law. The difference in language you will find in Section 431, Paragraph 3, of the Post Office regulations:

"Paragraph 1 above relates to mail matter of any class which is in violation of any of the provisions of the act of June 15, 1917, known as the espionage bill, and applies specifically to matter which is *intended* to interfere with the operation or success of the military forces of the United States, or to promote the success of the enemies, or which is *intended* to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of

the United States, or which is intended to obstruct the recruiting or enlistment service of the United States.”

Now, this language is much broader than the language of the law, and the Post Office Department, through its solicitor, thereupon proceeds one step further, and, instead of using the word “intended,” uses the word “tends.” It respectfully submit that the Post Office Department cannot by any rules or regulations enlarge the scope of a congressional enactment and cannot prohibit an act which Congress has not prohibited. The regulations of the Post Office Department either mean exactly the same thing as the act of Congress or they mean more. If they mean more, they exceed the authority of the Post Office Department and are a nullity. If they mean the same thing, then we must go back to the act of Congress itself to test our right to publish the matter cited against us.

I respectfully submit that matter published in any periodical is lawful if it is not punishable as a crime under this statute. First, certain specified acts are made crimes, punishable by 20 years imprisonment. Then another paragraph provides for the exclusion of such matter from the mail. The matter which may be excluded from the mails, therefore, is the same matter which is made a crime under this act; and the test in every one of these cases is whether such matter is criminal under the provisions of this law.

There is another weighty legal ground for holding that this proceeding is entirely irregular and unauthorized. We are called here before you, Governor, to show cause why our second class mailing rights should not be revoked on the ground that *The New York Call* “is not a newspaper or periodical within the meaning of the law, having published matter made unmailable under the provisions of the act of June 15, 1917,” the espionage law. Your assumption is that a newspaper, or periodical, which at any time prints any matter in violation of the law thereby ceases to be a newspaper or periodical within the meaning of the law. There is not the slightest basis in law for such assumption. The matter of second class mail and the right of newspapers or periodicals to second class mail privileges is defined by statute, and the statute is perfectly clear and unequivocal as to the requirements for admission to the second class mail. Here they are:

“The conditions upon which a publication shall be admitted to the second class mail are as follows:

1. It must regularly be issued at stated intervals, as frequently as four times a year, and bear a date of issue and be numbered consecutively.
2. It must be issued from a known office of publication.
3. It must be formed of printed paper sheets, without board, cloth, leather or other substantial binding such as distinguishes printed books for preservation from periodical publications.
4. It must be written and published for the dissemination of news of a public character or devoted to literature, the sciences, arts or some special industry and having a legitimate list of subscribers.”

Section 411:

“Mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals and as frequently as four times a year and are within the conditions named in Section 1214.”

That is all. Not a word about containing or not containing mailable matter. Now, I claim *The Call* complies with all the above requirements.

Mr. Wood here interrupted by saying: “I just wanted, Mr. Hillquit, to submit that the law speaks of *mailable* matter.”

Mr. Hillquit replied: “Mr. Wood, that is very clever of you. The law reads: “Mailable matter of the second class shall embrace all newspapers or periodical publications—”

“Mailable matter of the second class shall embrace” means all matter to be mailed in the second class should embrace certain things. To construe it in any other way would be certainly reading into it something that was never intended to be read into it. I will proceed a step further and say that if we should that as follows: “Second class matter shall embrace all newspapers and other publications which are issued at stated intervals and contain mailable articles,” if I should so distort and change the language of the law, and give it a different meaning, even then this proceeding would be absolutely unauthorized. Let me tell you why: If I print in one issue of *The Call*, say the issue of October 1, an obscene picture or criminal article, that issue of October 1 thereby becomes unmailable. Can you assume, then, that *The Call* at all times in the future will be unmailable, will contain unmailable matter? Depriving the paper of its second class mail privileges is in effect an adjudication that *The Call* as a publication is un-

mailable, and will be unmailable, i.e., will contain unmailable matter at all times. Now, there is no such thing. There is absolutely no provision of law in the constitution by which any administrative department of the government, or the government itself, could prejudice nonexistent publications. How can you tell that the issue of *The Call* of tomorrow, and a week and a month hence, will contain unmailable matter, assuming that that would be ground for the withdrawal of second class privileges? All the law does is to punish the offense as such. My associate, Mr. [S. John] Block, suggested the following illustration. He said to Mr. Smith: "Whatever is unmailable is, of course, unmailable in any classification. Suppose you detect me today writing a letter which contains obscene or fraudulent matter, or is unmailable for any other reasons. you stop me from doing it. Suppose I write a similar letter tomorrow, day after tomorrow, and a week in succession. Will the United States Post Office Department maintain the right to hereafter debar me from the mail and not permit me to write any letters to be sent through the mail?" Of course, that would be absurd. But just so absurd would be this proceeding before you.

I want to say this in conclusion: While we maintain our right to do our own thinking and to print and circulate our thoughts on any political subject, whether it agrees or does not happen to agree with the opinions of the party in power, we do fully recognize that we are bound by law, and we recognize our duty as citizens to obey the law. The Socialists never advocate the violation of laws. We always advocate proper, orderly changes of the law, if the law does not suit the people, through the established political machinery of the country. *The Call* as such has always obeyed the law, and obeyed all laws in connection with the prosecution of the war. *The Call* was opposed to our entering into the war, but, when the war was declared, I challenge the solicitor to point out a single line counseling or advising the readers of *The Call*, or anybody else, to oppose the operations of the war. We were opposed to conscription; we are still opposed to the principle of compulsory military service. But the act was passed. We protested until the last moment, but *The Call* has at no time advised any individual to refuse to submit to the act after it became law. *The Call*, as the Socialist Party, fights for a principle; but they fight in a civilized way to change the laws and institutions which they consider obnoxious. Some of these articles were read by my distinguished friend on the other side with great emphasis; one in particular, one that pointed

out that the cause of all wars and all evils was the modern system of exploitation of labor and advocating a change of the system. He considered this absolute treason. Where would our country be now, where would our democratic institutions be now, if the founders of this republic denied the full and free exercise of the right to criticize existing political and other institutions by persuasion? How can you change institutions or laws by persuasion if you are not allowed to persuade? It will never do to say that such rights of criticism are permitted in ordinary normal times, but will not be permitted in critical times or times of war. The constitution was made for all times — times of war and times of peace. Congress at no time has undertaken to set a limit to the expression of mere political opinions or criticism, and all that we have said, and all that we have done, has been within these limits.

So, in considering the case, I ask you not to be guided by your own personal views. It may be that you are right; it may be that you are wrong; it may be that we are right; it may be that we are wrong; we have a constitutional right to be wrong, if we are wrong. It is only in the clash of opinions, in the discussion of vital issues, that progress is made and truth established. Progress can never come, truth will never be established, by the stifling of opinions, even if such opinions are unpleasant to the administration or to the government at a given time.

Edited by Tim Davenport

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