
CIVIL LIBERTIES

AND

NATIONAL DEFENSE



AMERICAN CIVIL LIBERTIES UNION

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New York, N. Y.

CIVIL LIBERTIES are always put to a sharper test in time of crisis. Fear and excitement, demands for national unity, efforts for national defense, all tend to impose tighter restrictions on dissenters, critics and opponents of government policies. The balance of forces by which the rights of minorities are protected always becomes shakier under the threat of involvement in war.

The Civil Liberties Union takes no position on military defense nor the involvement of the United States in the war. Whatever course the nation follows it is clear beyond question that the maintenance of democracy is the first charge on our loyalties.

But the contention is apparently gaining ground that democracies are helpless in a contest with dictatorships because of their tolerance of dissent. It is evident that freedom of speech, press and assembly are vital to the national defense of a democracy. Public policies cannot be fairly determined without free discussion. **Any notion that we can defend democracy by adopting Hitler's methods already dooms us in advance. If we concede that, Hitlerism can conquer the United States without arms.**

DEMOCRACY demands that all minorities, whatever their policies, shall have the right to carry on their propaganda. But civil liberty does not, of course, extend to acts against democracy nor to espionage and sabotage. Those should be severely dealt with by our already wholly adequate laws.

Whatever may be regarded as subversive elements in the field of political opinion, short

of acts in violation of the law, can be far better dealt with in the open than underground. No democracy can lay claim to that name if it forces any minority movement into an underground secret conspiracy. **A fighting spirit in defense of democratic rights is the best guarantee that Americans can offer against totalitarianism.**

This survey of the national issues in relation to civil liberties is intended to indicate the points of present danger to civil liberties and the action required.

The Department of Justice

BY FAR the most powerful agency of the federal government in relation to civil liberties is the Department of Justice. It has complete jurisdiction over:

1. The enforcement of statutes relating to utterances and publications construed to advocate certain prohibited doctrines.
2. The enforcement of all laws relating to aliens.
3. Final advisory power in regard to the disposition of conscientious objectors under the military training act.
4. Enforcement of the statute requiring registration of organizations engaged in military training or advocating the overthrow by violence of any government.

Under a special proclamation by the President the F.B.I. is charged with the investigation of "subversive activities"—an obviously dangerous grant of broad powers easily extended into the field of political opinion. Despite this grant of powers the Department of Justice up to the present has held within reasonable

bounds the operations of the F.B.I. The Civil Liberties Unit of the Department of Justice, operating through investigations by the F.B.I., is a salutary influence in checking local violations of civil rights by officials, even though it has instituted no prosecutions.

No action required, except to counteract pressures on the Department for repressive policies.

The Dies Committee

THE continuance of the Dies Committee (the special committee investigating un-American activities) by the House of Representatives with an appropriation of \$150,000 for fifteen months, gives free rein to one of the most irresponsible and hysterical agencies of the government, as proved by its record over three years. The lurid charges made by the committee or its chairman against a host of progressive and liberal agencies as Communist, and its unfair methods of publicizing all sorts of baseless charges have created a misinformed public opinion only too ready to sanction repression. The committee's demand for the outlawry of organizations reflecting the interests of foreign dictatorships strikes at civil liberty itself.

A similar attitude appears to characterize the several legislative investigating committees created by state legislatures to accomplish like purposes, either in the general field of "subversive activities" or in relation to the public school system.

Action required: constant check on these inquiries, with public protest against repressive activities, and resort where necessary to the courts.

Freedom of the Press

THE federal government has wide powers in law over the distribution of printed matter by mail and by express. It has wide powers over the importation of printed matter from abroad.

The Post Office Department may exclude from the mails by the decision of a single lawyer (its solicitor) any matter which he deems to be "seditious" or "obscene." A section of the war-time espionage act is still in force authorizing the post office department to exclude all matter which "advocates or urges treason, insurrection, or forcible resistance to any law of the United States." Under the obscenity laws the Post Office Department may exclude anything which in the judgment of the solicitor is obscene—including birth control information or the advocacy of "anarchy or assassination" (a phrase included in the obscenity statute). The Post Office Department may also revoke the second-class mailing privileges of periodicals held to violate the law, and it may hold undeliverable all mail matter addressed to those publications whose second-class mailing privileges are revoked.

These broad powers of the Post Office Department have not been used in recent years, but they may be invoked at any time. Any attempt to apply them to political or other opinions should be fought.

The Customs Bureau may exclude from the United States all printed matter imported from abroad which is held to be obscene or seditious; but it must on demand of the importer put the final determination of exclusion before a federal court. These powers have been in recent years

very liberally exercised—with the exception of seizures early in 1941 of material originating in the dictatorships, seized and ordered destroyed professedly on the ground of anonymity or failure to register with the Secretary of State.

The Department of Justice, under a new law, may prosecute the authors and publishers of any matter held to advocate the "overthrow of the government by force and violence" or any matter tending to cause "disaffection in the armed forces." The statute, passed in the summer of 1940, has not been invoked. If it is, it should be promptly tested in the courts.

Leaflet distribution on the public streets or house-to-house is protected by decisions of the United States Supreme Court and is not subject to interference except under the general statutes relating to obscenity or the special federal statute recently enacted and noted above.

Freedom of the Radio

UNDER the law the Federal Communications Commission has no power of censorship whatever over radio programs. It has the power to revoke licenses or not to renew them. All licenses come up for annual review. The Commission may refuse to renew a license on the ground that a station does not operate "in the public interest, convenience or necessity." There is no fixed definition of this vague phrase.

The Commission has recently indicated that stations must deal fairly with all sides of controversial issues to hold their licenses—a provision which is also enforced by the code of the National Association of Broadcasters, representing about ninety per cent of the industry. Under that code no time is sold for the discus-

sion of controversial issues. Such issues are discussed on "sustaining programs" for which no payment is exacted. The only exception to this is in political campaigns where, according to law, all candidates have access to equal facilities on the air and where radio stations customarily charge their usual rates.

These provisions are a great gain for freedom on the air but need constant vigilance to insure their fair enforcement.

Under the law the President may take over and operate every radio station in the United States by mere proclamation in a time of national emergency. According to the chairman of the Federal Communications Commission there is no prospect that this power will be invoked, either as to the regular radio stations or the short-wave stations which reach foreign countries. Nor does there seem to be any likelihood that restraints will be imposed on foreign-language stations.

Action required: Any attempt to interfere with the present freedom of the radio should be contested.

Censorship

VERY few cases of interference with the stage or the publication and distribution of books have marked recent years. Very few motion pictures have been censored, although the power to do so is exercised by censorship boards in seven states and by municipal authorities in several cities. Censorship on political grounds has marked the administration of these powers in recent years only in Pennsylvania, New York and Chicago.

Action required: court tests in particular cases.

Schools and Colleges

COMPARATIVELY few issues of academic freedom either for teachers or students have arisen either in the schools or colleges in the last year or two. Notable among them was the action of a court in New York City voiding the appointment of Professor Bertrand Russell by the Board of Higher Education; the refusal of many college authorities to permit student organizations to invite the secretary of the Communist Party, Earl Browder, while under indictment; and attacks on school textbooks as "subversive" by patriotic and commercial organizations.

Pressures on educational freedom are constantly brought by agencies insisting upon conformity by schools and colleges to majority doctrines. Legislative investigations of the school system with a view to exposing "subversive activities" have marked several states, notably New York.

Action required: court tests in individual cases and opposition to all dismissals or discriminatory action on grounds of opinion or mere membership.

The Rights of Labor

ALTHOUGH the rights of labor have been placed upon a much firmer foundation in recent years by passage of the National Labor Relations Act, similar state acts, and by anti-injunction laws, efforts are being made to undermine particularly the national legislation. Proposals are widely pressed to curtail the right to strike in defense industries by providing for

"cooling off periods" in order to give mediation a chance to operate. Various proposals for compulsory arbitration are also widely discussed. All of them curtail the civil rights of trade unions.

While the decisions of the United States Supreme Court on legislation protecting labor's rights have been on the whole favorable, a recent decision concerning peaceful picketing where violence may be even indirectly involved threatens that right.

In the states proposals in the interests of national defense which may endanger labor's rights have been making headway. One of them, a model anti-sabotage act, is so written as to put into the hands of unfriendly local prosecutors weapons against trade unions. No adequate reason appears for state legislation in protecting defense industries when the national government already has full authority. Bills to create home guards to replace the national guard called into service may also create an agency dangerous to labor's rights unless specific safeguards are included.

Action required: Opposition to all legislation restricting labor's rights to organize, strike and picket.

Jehovah's Witnesses

WIDESPREAD attacks on Jehovah's Witnesses by prosecution and mob violence have marked the last year, due chiefly to the hostility aroused by the refusal of members of that organization on religious grounds to salute the flag. Their literature attacking organized religion is also a cause of hostility. Hundreds of

their members have been arrested or mobbed and driven out of communities while attempting to distribute their literature. Scores of children have been excluded from the public schools for refusing to salute the flag. Criminal prosecutions have been brought against a number of Jehovah's Witnesses in connection with the distribution of their literature or their refusal to salute the flag.

Since Jehovah's Witnesses are scattered all over the country and zealous in spreading their propaganda, they have become more frequent objects of attack than the members of any other unpopular minority. As in Canada during war-time—where they have been declared an illegal organization—they are quite the most numerous victims of war-time passions.

Action required: constant vigilance and effort are obviously necessary to protect their rights through the courts, by the Department of Justice, and by pressure on public officials.

The Rights of Communists

LAWs particularly aimed at members of the Communist Party have been passed both by Congress and state legislatures within the last year. Congress has made criminal the advocacy of the "overthrow of the government by force and violence," a doctrine attributed to Communists. It has excluded from the WPA all Communists and Bundists. It has required the registration with the Secretary of State of all agents of foreign principals in the United States, and registration with the Department of Justice of all organizations engaged (1) in private military training (aimed at the German-American Bund) and (2) organizations with

foreign political connections advocating the overthrow of the United States government or any other government (aimed at the Communist Party). As the result of this registration act the Communist Party severed its formal connections with the Third International at Moscow.

In several of the states the Communist Party has been presumably excluded from the ballot by laws barring parties advocating force and violence. This provision has been construed in several states as applying to the Communist Party. In California all parties with international connections are excluded from the ballot.

In New York and one or two other states persons held to believe in the overthrow of government by force and violence have been excluded from public employment, including the teaching profession. No court test has as yet been made of the application of this law to members of the Communist Party. In addition to this special legislation the state sedition and criminal syndicalism laws, most of which were passed some twenty years ago, make criminal the advocacy of political or economic changes by violence. In recent years they have been applied only to members of the Communist Party.

Action required: Opposition to all forms of discrimination against the civil rights of Communists, on precisely the same basis as others, and tests in the courts of statutes aimed at their alleged doctrines.

The Rights of the Bund

SPECIAL legislation aimed at the activities of the German-American Bund has taken three forms (in addition to exclusion from W.P.A.):

1. The passage of state laws making criminal all utterances or publications attacking persons on the ground of race or religion.

2. Laws to prohibit private military training (and the federal law requiring registration of organizations engaging in it).

3. Laws to prohibit the wearing of military uniforms by civilian organizations.

The latter two types of legislation do not violate civil liberties since they are directed against preparations for the use of force. The Union supports them. The laws aimed at race and religion obviously interfere with civil liberty and can be used against many other groups than the German-American Bund, the Italian Fascists, Christian Front and the like. They should be opposed.

Rights of Aliens

UNDER the Alien Registration Act of 1940 almost five million aliens in the United States have been registered and fingerprinted by the Department of Justice, which has exclusive jurisdiction over them. Thousands of aliens were discovered who did not enter the country legally, and, since they are all liable to deportation, some provision should be made to regularize their entry, as was done with all aliens entering the country prior to 1924. Many of them are political refugees.

As a practical matter it is virtually impossible to deport any aliens during the state of war abroad. Proposals have therefore been made to establish places of detention or "concentration camps" for aliens who cannot be deported. A bill to this effect passed the House in the last session of Congress and is again pending. It should be opposed.

A host of bills extending the grounds of deportation and exclusion have been before every session of Congress in recent years. One of them, to exclude and deport aliens who advocate "*any change*" in the American form of government, has once passed the House and is again before that body. It should be fought.

The courts have not finally passed upon the issue as to whether mere membership in the Communist Party involves the advocacy of the "overthrow of the government by force and violence"—a belief which makes any alien deportable, as well as "disbelief in organized government." Congress amended the law in 1940 to provide that even past membership in any such organization renders an alien deportable, however brief the membership or however complete the alien's repudiation of his former connections. It should be tested in the courts.

Conscientious Objectors

THE military training law provides that men opposed to participation in all war by reason of religious training and belief may be given either (1) non-combatant service in the army, or (2) service of national importance under civilian direction.

No provision is made for other than *religious* training and belief, nor for *total* exemptions for *any man on any ground whatever*. The law is less liberal in those respects than the British war-time conscription act. In practice the interpretation of religious training and belief is being stretched to include all forms of conscience, whether *religious or political*.

Recognized conscientious objectors are being assigned to work camps under the auspices of religious organizations. So far the only prosecu-

tions of conscientious objectors have been directed against those who mostly on religious grounds refused to register. Several scores of such men have been sentenced to prison terms varying from a few months to five years. Provisions for their special parole to undertake work of national importance under civilian direction have been adopted.

Action required: Paroles of objectors sentenced, and equalization of service on parole. Assistance on appeals from local boards.

The Rights of Negroes

DISCRIMINATION in law against Negroes has been somewhat modified by decisions of the United States Supreme Court affecting criminal trials and the right of Negroes to higher education. But discrimination against Negroes in the government service is prevalent, particularly in relation to the national defense program, where Negroes are commonly either excluded from certain services or segregated in comparatively menial positions.

Action required: Aid in breaking down segregation in the military forces and the government service.

The Poll Tax in the South

EIGHT southern states require the payment of poll taxes as a condition of voting. The result has been to reduce the electorate in these states to around twenty per cent of the total adult population. The restriction is being

contested along three lines: (1) a bill in Congress to overcome the disfranchisement of so many voters in federal elections; (2) a proceeding in the federal courts to remove the disqualification in federal elections; (3) organized effort within the states to remove the restraint on the right to vote in all elections.

Action required: all three lines of effort should be supported.

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ALL supporters of civil liberties are urged to report violations involving local officials to the Civil Liberties Unit of the Department of Justice, Washington, D. C.

Copies of all clippings, letters, etc. involving incidents should be sent to the American Civil Liberties Union.

The Union or its local branches should be called upon for prompt action in the courts or otherwise wherever any issues arise.

Local committees should be formed where none exist.

Send to your local newspapers for publication letters of comment on any issue of civil liberties which arises.

Added vigilance is the obligation of all those who believe that, whatever comes, American democracy must survive intact.

This is a large order for our friends. We urge each of you to select those issues which most arouse you and to act on them. Further information on any issues may be obtained by writing to the Union.

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