AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Democratic Rights/Free Speech

*Henry Adams*, **Shall We Muzzle the Anarchists?** (1886)[[1]](#footnote-1)

*Henry Brooks Adams was born in Boston in 1838, the son of Charles Francis Adams (who served as the American minister to Great Britain during the Civil War), the grandson of President John Quincy Adams, and the great-grandson of President John Adams. Having graduated from Harvard and begun studying the law, Henry Adams accompanied his father to England during the war. When he returned to the United States, he took up journalism and scholarship, producing myriad works that gave vent to his pessimistic view of human nature and the failings of American democracy. His history of the presidencies of Thomas Jefferson and James Madison was one of the significant works of American history written in the Gilded Age, and his posthumously published memoirs was an early winner of the Pulitzer Prize.*

*His essay on free speech and the anarchists reflected his early exposure to the English political theorist and economist John Stuart Mill and is part of what Mark Graber has characterized as the “conservative libertarian tradition” on free speech in nineteenth century America.[[2]](#footnote-2) That tradition emphasized free speech as simply one of the many personal liberties possessed by individuals in a free society and protected from governmental interference is similar ways and to a similar degree as any other individual liberty.*

*The anarchist movement posed a particular problem for Americans working in the liberal tradition in the late nineteenth century. Anarchists called for a fundamental rejection of the American form of government and for existing social and economic institutions and often embraced terrorism and violent revolution as acceptable means for advancing their political goals. In the months before Adams published this article, a group of anarchists was convicted of throwing a bomb at police during a labor rally at Haymarket Square in Chicago, Illinois, which triggered a melee between police and unionists that resulted in a number of deaths and injuries. The bombing led to a law enforcement crack-down on anarchist groups in Chicago and elsewhere, while trade unionists and radicals alike mobilized against law enforcement and the capitalist class. For Adams and others, the difficult question to be confronted was where to draw the line between the tolerance of the expression of radical ideas and the punishment of criminal conspiracies and behavior.*

“In regard to liberty of writing and speech,” says Jeremy Bentham, “I would place matters on exactly the same footing as that in which they are in the Anglo-American United States.” The practice thus heartily indorsed consists in perfect freedom of utterance. By the first amendment to the Federal Constitution Congress is forbidden to encroach upon this fundamental right of personal liberty, and the policy which finds such expression in the organic law of the central government may be accepted as properly portraying the practice in the several States. As is well known, the early Federalists endeavored to introduce unusual punishments for the offense of criticizing either the policy of the government or the conduct of officials, and the “sedition law,” as it was termed, passed during the administration of John Adams, met with the approval of the court. But the reception of this law by the people emphatically declared that they believed in no sort of censorship, for the indignation which it aroused could not be allayed except by the humiliating defeat of the party that passed it. So far as I am aware, there has been no subsequent attempt on the part of the civil authority to control the expression of opinion, or to limit the sphere of criticism upon the government or upon the existing order of society. It is true that during the late war certain papers which advocated the cause of rebellion were suppressed in districts where martial law had not been declared; but such acts were defended as war measures, and proceeded from the military authority. It may then be said without reserve that the American people have, thus far in their history, acted upon the belief that individual freedom, exercised under conditions of strict responsibility, is sufficient guarantee for that personal security the enjoyment of which is the best test of a just society.

Have we now, after a hundred years’ experiment, come to a point in our development as a nation when this policy must be reversed? It seems unnecessary to remark that the occasion for undertaking such an inquiry is the disclosure that have been made in Chicago concerning anarchist organizations, and the perpetration of the crime, altogether unusual in the United States, of using infamous weapons to strike terror into the minds of a peaceful community. We can no longer treat with amused indifference the threats of those who propose to establish a new heaven upon this old earth by means of indiscriminate murder. How then shall we treat them? . . .

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The considerations by which Mr. Mill urges that government should interfere as little as possible with public discussion are the following: -- 1. By interfering to suppress opinions or experiments in living you may resist truths and improvements in a greater or less degree. 2. Constant discussion is the only certain means of preserving the freshness of truth in men’s minds and the vitality of its influence upon their conduct and motives. 3. Individuality is one of the most valuable elements of well-being, and you can only be sure of making the most of individuality if you have an atmosphere of freedom, encouraging free development and expansion. 4. Habitual resort to repressive means of influencing conduct tends more than anything else to discredit and frustrate the better means, such as education, good example, and the like.

The readiness with which we admit these propositions shows that they form a part of our inheritance of thought; and yet we demure when the principles . . . are urged to shield the utterances of anarchists, whose avowed purpose is the destruction of that personal security now guaranteed to every citizen by a carefully developed system of constitutional law. Listen, for example, to the following, which is said to come from the pen of a respectable citizen of Toledo, Ohio:

“The capitalists’ golden bags and the bondholders have denied us all rights. They would make us slaves. Our only hope is in earnest, organized action. Burn, kill, and destroy until we force the autocrats to terms. We have lost hope in God, hope in humanity, and hope in the world at large. Let ever man do his duty. This is a time when the working man will either become a slave or a master. Choose between the two, and choose at once. Let us give no quarter and ask none; only let us stand by each other, and each man at his post. If we must die, let us die like men and not slaves.”

Would the denial of the right to use such language tend to “resist truths”? Does discussion of this sort preserve the “freshness of truth in men’s minds”? Does it savor of the “atmosphere of freedom,” or would its suppression “frustrate the freedom of good example”? It seems evident that the argument of Mr. Mill is addressed to a different sort of expression from that which is disclosed in the quotation thus casually selected. He refers to discussion, and to such exhortation as may properly follow impassioned discussion; he would not lend the authority of his name to the free use of language which becomes the first step in crime. So far as the expression of opinion is concerned, I see no reason why the theory of free discussion is not as fully applicable to the anarchists today as to those who dissented from the established order of society at any time in the past; but having made this concession, it seems that the full requirements of the doctrine of liberty have been complied with. The right of self-protection is as essential a part of the doctrine of liberty as the right of self-assertion. . . . Discussion respecting the nature of property or the equity of modern methods of distribution cannot fail to disclose more clearly and settle more firmly what is true. But the language which goes beyond discussion and incites to civil crimes comes to be an offense accessory to the crime, and so far as the moral right is concerned may be prohibited, in order to prevent the crime to which it leads. The reasoning upon which such a conclusion rests is the same as that which allows the law to prohibit the carrying of concealed weapons.

There is but one conceivable condition on which the warfare of terrorism may be defended by the moral code of liberty, and that is when the organic law of the country fails to provide for peaceful revolution. But this is not the case in the United States. Here the will of the people when legally expressed becomes the supreme law of the land; and, when a set of desperate men endeavor to terrorize a peaceful community into cowardly compliance with their wishes, they act in a manner for which no theory of liberty makes provision. They place themselves outside the law by refusing to carry on their agitation according to the law; and the law is not to be blamed if it accepts the sentence which such men pronounce against themselves and treats them as outlaws. . . .

Giving, then, a definite answer to the question first asked, we may say: Free discussion is essential to a society that seeks the enjoyment of true liberty and consequently finds support in sound reason; but the doctrine of free discussion does not contemplate such license to press and speech as will endanger the peace and tranquility of the community. . . .

But the most important question yet remains. Assuming that anarchist opinions, when expressed in such a manner as to incite naturally to crime, can claim no protection from the doctrine of liberty, would it be wise for the police authorities to enter upon a policy of repression?

There are two reason why such a proposal cannot meet with hearty approval. The practicability of a measure cannot be fully determined by the immediate results that may be expected from it, but its probable remote effects must likewise be taken into account. It cannot be denied that public opinion fails to distinguish clearly between the ends for which working men are striving, which in themselves are perfectly legitimate, and may be attained in a legitimate manner, and the purposes of those men whose theory of agitation implies the destruction of the law which guards personal security. And there is great danger that a policy of public surveillance established over the latter would be gradually extended in the former, and so ultimately result in the curtailment of such agitation as lies wholly within the boundaries of liberty. . . . But, in the second place, there is danger that a policy of repression would strengthen the hands of the anarchists themselves. . . . No greater misfortune could befall our civilization than the union of all the discontent classes under anarchist sentiments, and our safety against such a calamity lies in holding clearly before the minds of mend the fact that he law itself provides for peaceful revolution, and that a reign of terror is not only unnecessary but would be disastrous to the establishment of a new order of industrial society. . . .

. . . . Whether sane or bereft of reason, when men mix dynamite with the pyrotechnics of their oratory, society has the right to take measures of self-protection. But this protection, as it appears to me, may be the best secured by a rigorous enforcement of the laws now upon our statute books, rather than by the enactment of new laws that shall endeavor to define a new crime. Nothing would play more directly into the hands of these agitators than the establishment of some method of procedure, or the adoption of a policy of police supervision, which might give color to the claim that the offenses committed by their followers are political offenses. The truth is, that the anarchist rioters are ordinary criminals and should be dealt with as such.

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. . . . To say nothing of its influence on character, it is quite doubtful if Americans would submit to the petty annoyances necessary for rendering police surveillance effective.[[3]](#footnote-3)\* . . .

1. Excerpt taken from Henry Adams, “Shall We Muzzle the Anarchists?” *Forum* 1 (July 1886): 445. [↑](#footnote-ref-1)
2. Mark A. Graber, *Transforming Free Speech* (Berkeley: University of California Press, 1991), 17-49. [↑](#footnote-ref-2)
3. \* It may be doubted if Americans generally understand what police surveillance really means. My own acquaintance with this detestable system was acquired while a student in Berlin, during the vigorous enforcement of the anti-Socialist laws. I did not find it pleasant to be obliged to show a passport before a hotel proprietor would be willing to assign me a room. It was a disagreeable necessity imposed upon me that I should look into each morning’s paper under the list of books *verboten* [forbidden], to see which ones in my possession next should be put under lock and key. And I confess to having indulged a modified degree of anger when, as I was quietly whistling upon the street to drive away my melancholy, a policeman touched me on the shoulder with the remark: “*Pfeifen wird nicht gestattet* [Whistling is not allowed].” And my capacity for contempt was exhausted when I heard a prominent professor of the greatest university in the world reply to a student, who asked permission to make a special study of the progressive income tax, “*Mein Gott! Das ist aber etwas gefahrlich* [My God! That is something dangerous.].” Commend me rather to the practice of Anglo-Saxon liberties depends upon punishment of crime for both public and private security. [↑](#footnote-ref-3)