

4 X 8 37
CB/GC
CABIN
BRANCH

HX 837

.U5

1907

Copy 1

THE CRIMINAL ANARCHY LAW

— AND —

On Suppressing the Advocacy of Crime

A LECTURE

— BY —

THEODORE SCHROEDER

68 E. 59th Street, New York City

ATTORNEY FOR THE FREE SPEECH LEAGUE



PUBLISHED BY
THE MOTHER EARTH PUBLISHING ASSOCIATION
NEW YORK, 1907

THE CRIMINAL ANARCHY LAW

AND

On Suppressing the Advocacy of Crime

A LECTURE

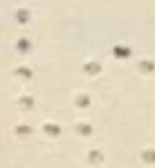
BY

THEODORE SCHROEDER

63 E. 59th Street, New York City

ATTORNEY FOR THE FREE-SPEECH LEAGUE

"Of all the miserable, unprofitable, inglorious wars in the world is the war against words. Let men say just what they like. Let them propose to cut every throat and burn every house—if so they like it. We have nothing to do with a man's words or a man's thoughts, except to put against them better words and better thoughts, and so to win in the great moral and intellectual duel that is always going on, and on which all progress depends."—*Hon. AUBERON HERBERT, M. P., in Westminster Gazette, Nov. 22, 1893.*



PUBLISHED BY
THE MOTHER EARTH PUBLISHING ASSOCIATION
NEW YORK, 1907

HX 837
.U5
1907

Gift.
Author.
(Person).
16 F 1907

21

H.K. 5.1 Mr 01

THE "CRIMINAL ANARCHY" LAW.

Sec. 468-a. Criminal Anarchy Defined:

Criminal Anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

Sec. 468-b. Advocacy of Criminal Anarchy:

(1) By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or

(2) Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publically displays any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or

(3) Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

(4) Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine: is guilty of a felony and punishable by imprisonment for not more than 10 years, or by a fine of not more than \$5,000, or both.

Sec. 468-c. Liability of Editors and Others:

Every editor or proprietor of a book, newspaper or serial, and every manager of a partnership or incorpo-

rated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make the publication and whose act was disavowed by him as soon as known.

Sec. 468-d. Assemblages of Anarchists:

Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section 468 of this title, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation is guilty of a felony and punishable by imprisonment for not more than 10 years, or by a fine of not more than \$5,000, or both.

Sec. 468-e. Permitting premises to be used for assemblages of anarchists:

The owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by section 468 of this title, or who, after notification that the premises are so used permits such use to be continued, is guilty of a misdemeanor and punishable by imprisonment for not more than 2 years, or by a fine of not more than \$2,000 or both.

Sec. 469. Witness' Privilege:

No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in this title, upon the ground that the evidence might tend to convict him of a crime. But such evidence shall not be received against him upon any criminal proceeding.

ON SUPPRESSING THE ADVOCACY OF CRIME

(From the stenographic report of a lecture.)

BY THEODORE SCHROEDER.

THE ever growing complexity of our social organism, with its creation of new relations and new conditions of human existence, constantly requires the re-interpretation and unprecedented application of our constitutionally guaranteed liberty. In making these new interpretations and applications, the judicial, as well as the popular mind, is prone to read into the Constitution its own prejudices, superstitions, or personal and class interests. It is the purpose of this discussion to discover the essential and fundamental, rather than the superficial, elements of these problems as they relate to our guarantee for liberty of speech and press.

Under the pressure of misconceptions, arising wholly from the superficial aspects of the problem, it has come to pass that in almost every controversy arising from an exercise of the liberty of speech and press, the official action has been in favor of its abridgment. The total absence of any serious protest against these denials demonstrates how the thoughtless public is incapable of seeing that the liberties of speech and press are the foundations of all other liberty; and, that by permitting them to be frittered away, all other liberty is being endangered.

In our military possession of the Philippine Islands we find executive authorities arresting an American editor for republishing our own Declaration of Independence. The excuse offered was that the Declaration of Independence would tend to incite Filipinos to insurrection; since, not illogically, they might conclude that we ourselves, in our government of them, were repudiating our own declaration about liberty and denying a fundamental liberty of theirs.

In Porto Rico we find an American editor subjected to seventy or more arrests, and, finally, in practical effect, banished from the island as the one condition under which he could escape, what might prove, life imprisonment. His offense consisted only in publishing what he believed

to be true concerning some carpet-bag officials, appointed by the President. We have heretofore been led to believe that one might tell the truth from good motives; but, in the case of this editor, the court denied him an opportunity of proving his allegations to be true. These officials, though acting under the Constitution of the United States, assumed to set aside the provision guaranteeing freedom of speech and press, on the pretext that, to discredit American officials would promote insurrection among native Porto Ricans. The authorities in Washington were not sufficiently imbued with any love for liberty to even induce a reprimand of the petty officials, who had undertaken thus to amend the Federal Constitution.

Another vicious infringement of liberty has grown out of the development of our government by injunction. In labor difficulties, very frequently, we find courts issuing injunctions against strikers, which, under the pain of imprisonment, prohibit them from talking with the strike breakers, or even from walking upon the streets adjacent to their former places of employment. Here again the infringement of freedom of speech, by judicial injunction, would probably be justified, by those who can justify it, with the statement that such conversation might lead to a conspiracy in the restraint of trade, should the new employee decide to join the strikers. In passing it is worthy of note that no injunction is ever issued against employers to restrain them from conversation with one another, because it might lead to agreements in restraint of competition as employers.

In Idaho a few years since many striking miners were herded in outrageously unsanitary "bull-pens" by the militia of the State. An editor, who foolishly believed the Constitution of Idaho to be of some importance, propounded some questions in his paper, calculated to bring out that this conduct of the militia was unauthorized by law and in violation of law. For asking these questions, as to the source of the authority for the military conduct, he was also arrested and placed in a "bull-pen" with the others. Here, again, a petty official, deriving his sole authority under the Constitution, assumed to set it aside, primarily because another in the exercise of his freedom of the press, guaranteed by the Idaho Constitution, was personally offensive to this official. Perhaps those intelli-

gent enough to frame a defense for such conduct would justify the abridgment of freedom by saying that such publication would tend to encourage resistance to the authority of the militia. It seems never to occur to those in power that others may properly inquire into the sufficiency of their authority and rightfully resist, even to the taking of life, if necessary, the exercise of power by persons holding office, when no adequate authority for its exercise can be found in the laws and Constitution.

Similarly we find in Colorado, at the time of the recent labor disturbances, that a Socialist editor was promptly arrested for exercising his right of freedom of press in criticism of local military authorities. Still insisting that he had the constitutional right to express whatever opinion he saw fit, about the conduct of military officials, the celebrated general, in charge of the official outrages, considered that he had sufficiently denied the right of the editor by saying, "to hell with the Constitution."

Another most clear instance of a denial of freedom of speech and press is in the laws which have for their avowed object the suppression of obscene literature. We are now suppressing serious scientific discussions of the physiology, hygiene, ethics and psychology of sex, as well as some sane advocacy of unpopular opinions about the sociologic problems arising from sex. This is done, because in the unhealthy minds of some persons the epithet "obscene" can be applied to such books. The pretense is made that such books promote sexual immorality, and they are suppressed sometimes where that dreaded immorality is not even a statutory offense, and where the sole purpose of the suppressed print is to inquire if some conduct, lauded a moral, is not in fact immoral.

Another, and in some respects the most dangerous invasion of liberty of press, has developed out of a constructive contempt of court. With the abolition of government by divine right, we came to believe that we might with propriety criticise the official conduct of every public servant. However, since in contempt proceedings, as a rule, judges are law-makers, judge and juror combined, our judiciary has very often considered itself as still far too sacred for criticism. Recently in Colorado, Ohio and New York, editors have been punished for contempt of court, which consisted of criticism published in their news-

papers, and not in the presence of the court; and therefore having no direct tendency to disturb its orderly proceeding. In Colorado, perhaps in the other States also, proof of the truth was excluded. Judges, who under such circumstances punish their critics for contempt, simply because the criticism is not of such lady-like character as to be pleasing to the esthetic judicial sense, are committing a most extraordinary outrage on the freedom of the press. With but very slight extension this constructive contempt of court will, in the very near future, develop into the régime of an infallible tribunal, disposing of the property and liberty of citizens, and at the same time expunging the right of an adequate appeal to a public conscience for the reversal of iniquitous rules of injustice, by appropriate legislation, or election day protest. Once establish such an infallible judiciary, and the precedent will soon warrant a re-establishment also of the infallibility of legislators, and executives.

Another most extraordinary clamor has come against the discussion of the negro problem in the North. In Philadelphia a play was suppressed, which was obnoxious to the negro population. In Brooklyn a similar clamor for its suppression was unsuccessful. In Chicago loud protests were heard against an address by Senator Tillman. However, there the authorities fortunately still deemed it more important to suppress disorder which might possibly result from discussion than to suppress freedom of speech itself. Last winter in New York City there was a public debate held in a church, as to whether or not Socialist propaganda should be suppressed by law. These are other straws showing the tendency of our time.

Already one per cent. of the population of the United States hold 99 per cent. of all its property. It is estimated, if the present rate of concentration of wealth shall continue, that within a century one hundred families will own 99 per cent. of all the property. With the power on the part of the owners of such concentrated wealth to befuddle the mind of the public, through ownership of practically all popular periodical publications, and by their ability to purchase the election and the votes of those in power and to insure a "sane and safe" judiciary to explain away our constitutionally guaranteed liberties, the time may not be far distant when we shall have the legis-

lative suppression of any adverse criticism upon political and economic theories, which are not advantageous to the rich few.

After the assassination of President McKinley a newspaper reporter attempted to get an interview with a United States Senator, who had had some personal differences with the President. The Senator declined to be interviewed, saying that because of his past personal differences he would have nothing to say. For exercising his freedom of speech by simply announcing that he had nothing to say, a large number of United States Senators, I think it was a majority, sent telegrams to a Southern paper, declaring their willingness to vote for his expulsion from the United States Senate. Here there was not even the excuse that the Senator's offending silence promoted crime, and it is a most glaring illustration of the instability of freedom, even with the most dignified, and, presumable, the most enlightened body of men that can be gathered in the United States. It is sad to contemplate how slender is the thread whose severance terminates our liberties.

Under the influence of that same unreason and epidemic of hysteria, ingeniously developed to the highest pitch of excitement by our conscienceless press, came into existence that multiplicity of state and national laws, directed against the mere abstract opinions entertained by people calling themselves Anarchists. All this came in spite of the fact that there was no evidence whatever that Czolgosz was an Anarchist. However, the word Anarchist was an effective epithet, and, hereafter all those to whom it could be even metaphorically applied must be denied their freedom of speech and of press, no matter how harmless or justifiable might be their political creed.

Under our present anti-anarchist laws, this government has established itself as an international police-force for the protection of all tyrants. Under our Federal statutes a foreigner who teaches "the propriety of unlawfully assaulting or killing any officer" in the "organized government" of a cannibal chief, or of a human butcher acting under authority of an arbitrary brute, crowned as a Tzar, though such immigrant is not an anarchist, and desires only to establish a more humane rule, such a foreigner is denied admission to the United States as unfit

to touch our sacred soil, and is deported to take such punishment as may be meted out to him by those from whom he was fleeing.

Within a few days it was reported that Russian officials are demanding that a refugee, who escaped from Siberia, shall be deported from these United States because he is advocating the cause of, and raising money for, the Russian revolution. If the law is impartially enforced his deportation will follow.

Under the laws of New York State one may be guilty of advocating "criminal anarchism" without advocating anarchism or being an anarchist in fact. This of course is a fair sample of legislative intelligence. A Social Democrat from Germany, who in New York merely advocates the establishing of a German republic without the permission of Kaiser Billy the war lord; or the Irish nationalist who in New York verbally asserts the propriety of overthrowing the organized government of England within Ireland's domain; the Russian or American patriot who would advocate the overthrow of the Tzar's absolutism, and his Cossacks' official brutality, "by any unlawful means," though no lawful ones are provided; or whoever is voluntarily present at such discussion, is liable to five years' imprisonment and a fine of \$5,000 besides. The owner, agent, superintendent or janitor of a building who permits it to be used for any of the above discussions is liable to a fine of \$2,000 and two years imprisonment. Furthermore, every editor and publisher of such articles as are above described, and innumerable such as have been published in our great dailies with impunity, is by this law presumed guilty of "criminal anarchy" until he proves himself innocent.

The metropolitan journals have nearly all violated this law, and no one protests. If relying upon these precedents, some unpopular victim of general prejudice, who is too poor to adequately defend his liberty, prints such matter, at once the luckless devil is pounced upon with a great flourish of righteous authority, and the use of unpopular and question-begging epithets, is sufficient to insure an unquesting public approval.

The unfortunate one goes to his prison cell, perhaps for advocating something most people believe in, or something the mob does not even understand, and then

it thanks God that a "criminal Anarchist" has been made safe.

In all these cases, if we may take the justification for the abridgment of the liberty of speech to be made in good faith, the question involved is this: May a citizen advocate that which others esteem to be of immoral or criminal tendency? Since an affirmative answer to the latter implies an affirmative answer to the former, the problem in its broadest sense may be thus stated: Has any one the constitutional right to advocate the moral righteousness of conduct which the law has declared criminal?

But clarity of vision requires that we differentiate between two possible conditions. If such advocacy of crime has resulted in the commission of the crime advocated, then the promoter becomes liable as a principal, or as an accessory before the fact. In that case penalties are meted out to him for his participation in the subsequent crime, not for its mere fruitless advocacy.

That case must be carefully distinguished from the one in which the advocacy of crime is without any directly resultant criminal act. Here I am concerned only with the latter. The problem then is: Can a man, under our Constitution guaranteeing liberty of speech and press, be properly punished for his fruitless advocacy of crime? It seems to me that if we are to reason upon the matter only in general terms, that then Professor Cooper in the following language has given us an unanswerable argument for an affirmative answer to our question.

"Indeed, no opinion or doctrine, of whatever nature it be, or whatever be its tendency, ought to be suppressed. For it is either manifestly true or it is manifestly false, or its truth or falsehood is dubious. Its tendency is manifestly good, or manifestly bad, or it is dubious and concealed. There are no other assignable conditions, no other functions of the problem.

"In the case of its being manifestly true and of good tendency there can be no dispute. Nor in the case of its being manifestly otherwise; for by the terms it can mislead nobody. If its truth or its tendency be dubious, it is clear that nothing can bring the good to light, or expose the evil, but full and free discussion. Until this takes

place, a plausible fallacy may do harm; but discussion is sure to elicit the truth and fix public opinion on a proper basis; and nothing else can do it."

However, the importance of the problem deserves more specific consideration and discussion. Let us begin by assuming that one may be properly punished for even the fruitless advocacy of that which tends to crime, and see where such a conclusion leads us to. I have written several arguments against the inexpediency of suppressing "obscenity." The net results of those arguments in opposition to the suppression of obscene literature is that, on the whole, it is more beneficial to tolerate all obscenity in books than to allow, as we now do, the suppression of all thorough or searching discussion of sex problems. In other words, I am justifying, on the whole, the moral righteousness of so-called obscene literature. Necessarily my argument for the legislative and judicial annulment of those laws might encourage some one to violate them.

If under our constitutions we are not protected in the right to advocate the moral righteousness of that which the statute denounces as crime, it would seem to follow that in such a case, as the one I have just stated, the Legislature may properly prohibit us from adequately arguing for the repeal or amendment of our present criminal code. This is an intolerable proposition. On the other hand, if the Legislature cannot prohibit such arguments, then it follows that the constitution does protect the citizens in advocating the moral righteousness or anything which the law denounces as criminal.

If the contrary doctrine could be established, it would only be necessary to make some line of conduct criminal, as a preliminary justification for prohibiting all discussion of the subject. And it must be apparent, if we admit that we have no right to advocate the moral propriety of conduct which the statute denounces as crime, that then we are admitting that there is practically no invasion of the liberty of speech which can not be legally accomplished. Already it is crime to smuggle dutiable goods into this country in violation of our tariff laws. To denounce a protective tariff as immoral and a robbery of the masses for the benefit of the protected monopolists is a legitimate argument for its abolition. However, such

argument necessarily tends to encourage some toward the crime of evading the tariff. If then we have not the right to advocate the moral righteousness of that which the law denounces as a crime it would seem that Congress has the power to make a protective tariff the creed of a divinely established economic institution, which must be and thus can be maintained as a thing above criticism. It follows, therefore, that no line can be drawn between the unlimited freedom of speech and press (holding the speaker and publisher responsible for the direct but actual consequences of their utterances), and that condition where we will have no freedom of speech and press as a matter of right, but only as a matter of legislative or judicial permission.

We may next inquire as to what must have been the intention of the framers of our constitution with reference to this problem. We can best gather that intention if we make inquiry as to the character of the abridgments of freedom of speech and press which had theretofore existed and against which they sought to protect themselves and others in the future. We recall that prior to the Revolution there was a union of church and state. Religious observances were enforced by the criminal law. Blasphemy, which was one of the number of excuses for invading the liberty of speech, consisted of language calculated to discredit the established religion, and tending to induce others to commit religious crimes, such as avoiding church attendance, and denying the correctness of what was there thought. In other words, our forefathers had been punished for advocating the verity and morality of that which was immoral and criminal under the existing law, and desired to make it impossible for others thereafter to be punished for the like advocacy of that which was of criminal tendency.

Another of the abridgments of the liberty of speech and press was the prohibition against seditious libel—of utterances which tended toward insurrection, rebellion and the general overthrow of the government. All of the participants in the American Revolution and all those who helped to bring it about, had no doubt been guilty of seditious speech and seditious libel; and apparently for the very purpose of protecting future generations in the right to advocate sedition and revolution, did they put

in the Constitution a guarantee for the freedom of speech and of press, and omit the making of any exception.

If then we take a broad outlook upon our problem, whether we view it from a standpoint of mere expediency or from the viewpoint of the framers of our Constitution, we must conclude that, under their guarantees, it is the right of every man to advocate the moral righteousness of anything, even though such conduct has been denounced by the statute as a crime; and that every such advocacy was intended to be protected against punishment, excepting only the one condition, that a criminal act follows, as a direct and designed result of his utterances; and, in that event, he is to be punished for the subsequent crime and his intentional participation in it, and not merely for his utterances, as such.

If in accord with the intention of their framers our several constitutions guarantee freedom of speech and press to advocate sedition and revolution, holding individuals responsible only for an actual resultant invasion, then it must follow that Anarchists are clearly acting within their rights so long as they are content merely to talk to those who are willing to listen, and this no matter what may be the opinions which they express.

Some "radicals," who object to a censorship of sex literature, join with others to justify the censorship of Anarchist literature. They would limit freedom of speech at the advocacy of what *they* consider "invasive" crimes, sexual "crimes" not being regarded *by them* as invasive.

Herein they are more reactionary than the conservatives who framed our charters of liberty, and those of us who still rely upon constitutions, because these documents recognize no such exception to our guaranteed freedom of speech and press. Mr. Comstock only disagrees with these "radicals" on what constitutes an invasion. He would tell you that anything which "destroys all faith in God," or "discourages the sinners using common sense and being on the safe side," or impairs or is opposed to the present legalized monogamy, is a direct invasion and destruction of the integrity and very fabric of the social organism. Such "radicals" forget that the line of partition between invasion and defense is always the very matter in issue, and their assumption that all persons are agreed with them upon what is an invasion is a mere

begging of the whole question. Necessarily then every person has an equal right to disagree with any other, and verbally to express that disagreement whether it is about economics, theology, the ethics of sex or of justifiable homicide.

The laws of every civilized country recognize some homicide as justifiable. Laws and opinions differ as to the conditions which make it so. That question is therefore always a legitimate subject for debate.

I have read of a few theoretical non-resistants, but I doubt if any of these, who have a vigorous flow of good red blood in their arteries and who, under the tortures of the inquisition did avoid anesthesia, would not justify any practical use of violent resistance to such tyranny if exercised upon themselves.

Where is the beginning of tyranny, and where the limit of its silent endurance, and what the necessary degree of directness in fixing the responsibility for it, are all legitimate questions for debate, either in the abstract or concrete. Such discussions are conducive to a better understanding between rulers and the ruled. From the frankest of such criticism the rulers might be warned to re-examine the justice of their laws, as well as to inform themselves, or their partisan defenders, as to where is the need for correcting unjust criticism before a brooding over the matter, under compulsory silence, produces an unwarranted slaughter.

Like all natural phenomena, Anarchists of the violent type are not uncaused effects. If a man has been judicially declared sane enough to be electrocuted, for killing an official against whom he had no personal grievance, then surely the character and ethical sufficiency of his alleged humanitarian justification are a legitimate matter of unabridged inquiry and discussion.

I am not more infallible in my opinions about the ethics of justifiable tyrannicide than I am about those upon sexual psychology, or sexual ethics, or the thirty-nine articles of faith. If, then, I would maintain inviolate my right to express disagreement with others about religion, or another's right to express disagreement with Mr. Comstock about sexual ethics, I must also defend every man's right to express disagreement with me as to what constitutes justifiable homicide or tyrannicide.

JAN 28 1907

For the reasons here outlined, I feel it my duty to protest against all laws which punish the mere expression of unpopular opinions, not having resulted in other acts prohibited by law. Every such abridgment of the freedom of speech or of press is a dangerous precedent from which will grow other like abridgments, until we enjoy any liberties only as a matter of permission and not as a matter of right.

Every such law is destructive of the fundamental equalities of human opportunity, and violative of the rights guaranteed by our constitutions. By these considerations I am impelled, at the risk of being misunderstood, or of deliberate misinterpretation, and of great unpopularity, to insist on both the legislative and judicial annulment of all anti-Anarchist laws, and every other law abridging even in the slightest degree the means of inter-communication between sane adult humans.





MOTHER EARTH

A Monthly Magazine
Devoted to Social
Science and Literature

10c. per Copy

\$1.00 per Year

EMMA GOLDMAN, PUBLISHER

308 EAST 27th STREET, NEW YORK

ALEXANDER BERKMAN

PRINTER

308 East 27th St., New York

