

in the same hands, the First Amendment has suffered the same fate.

This failure of Mr. Holmes to recognize the sane and solid moral principles which find expression in our national agreement that government shall be carried on only by consent of the governed is obvious at every turn of his writing. His romantic morality has no chance whatever when it comes into conflict with his clear-eyed, tough-minded technology. The outcome of such a battle is readily seen in the well-known letter to Mr. Wu, in which he enters vigorous and radical objection to the moral idealism which says that, under our form of government, every citizen has, and has a right to have, dignity---the dignity of men who govern themselves. With scorn for such idealism, Mr. Holmes writes, "I don't believe that it is an absolute principle or even a human ultimate that man is always an end in himself---that his dignity must be respected, etc. We march up a conscript with bayonets behind to die for a cause he doesn't believe in. And I feel no scruples about it. Our morality seems to me only a check on the ultimate domination of force, just as our politeness is a check on the impulse of every pig to put his feet in the trough."

One pig against another! Or, perhaps better, a lot of pigs against one! What shall we say of the man who thus explains the courtesies and the moralities of human society? Harold Laski has just closed a glowing tribute to his revered master with the words, "I have known no man who lived on the

heights in whom nobility and kindness were at once so effort-
less and so spacious in their dignified serenity." And many
of us who knew him, closely or not so closely, in and around
his home on Eye Street in Washington, were deeply moved by
the same affection and admiration. But to say that is to
speak of the personal quality of Mr. Holmes, rather than of
his ideas. And it was a set of ideas, a theory of morality,
which ran deeply through all his reflections and seeped down
into his interpretations of the Constitution. It is that set
of ideas, that theory of morality, which we must critically
judge if we seek to determine the validity of the opinions
which Mr. Holmes wrote.

Many of us, I am sure, agree with him that the dignity
of man is not an absolute principle, if by that is meant a
principle of the universe. So far as we can see, the non-
human universe has no moral principles. It neither knows
nor cares about human dignity, nor about anything else.
And further, we may agree that respect for human dignity is
not a human ultimate. That attitude of mutual regard is crea-
ted and justified only insofar as groups of men have succeeded
in binding themselves together into a fellowship which, by
explicit or implicit compact, maintains a "way of life."
And that goal is, for humanity as a whole, still far off. But
when, in the face of our Constitution, someone says that a
fellow citizen has no "dignity" which "must be respected"---
that is another matter. To say that is not merely to ignore

the Constitution. It is to deny it. Mr. Holmes, in those words, flatly repudiates the moral compact on which our plan of self-government rests. And, especially, he breaks down the basic principle of the First Amendment. As one makes this accusation, one must, of course, recognize the difference between the intention of our institutions and their success in realizing that intention. Everyone knows how partial is our achievement in the maintaining of self-government. In large measure, we live and act without dignity. But the essential point is that we are pledged together to create a society in which men shall have the status of governors of themselves. They must move, not with bayonets behind, but with purposes ahead. And if we fail in that, as we do, we must have "scruples about it." If we submit to our failure without regret, without scruple, we have abandoned the Constitution. We have divided our community into the "we" who have dignity and the "they" who have not. The battle of the Constitution has been lost.

4

Now, with these reflections of Mr. Holmes in mind, we are ready, or should be ready, to take the final step in our argument. We must now read and try to interpret the famous dissenting opinion in the Abrams case, in which Mr. Holmes explicitly stated the positive theory of the Constitution insofar as it relates to the principle of the freedom of speech. The opinion reads, in part, as follows:

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Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based on imperfect knowledge. While that experiment is part of our system I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the government that the First Amendment left the

common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of July 14, 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech."

These words are beautifully written. They are at once provocative and deeply moving. Mr. Justice Frankfurter has said of them, "It is not reckless prophecy to assume that his famous dissenting opinion in the Abrams case will live so long as English prose retains its power to move." And Max Lerner, speaking with like hot admiration, has told us, "I can add little to what has been said of Holmes' language. It has economy, grace, finality, and it is the greatest utterance on intellectual freedom by an American, ranking in the English language with Milton and Mill."

An American teacher, reading those words, may join heartily in praise of the rhetorical excellence of the opinion. But its meaning, its logic, have no such excellence. In form it is, as Mr. Lerner says, one of our greatest utterances. But in content Mr. Holmes, here as elsewhere, has spoken eloquently for an American Individualism whose excesses have weakened and riddled our understanding of the meaning of intellectual freedom. To that negative criticism, however, two exceptions must be made.

First, no one who is sensitive to the human values at stake in the case under consideration can fail to thrill with admiration of the gallant conclusion in which Mr. Holmes condemns the judgment of his colleagues. In the lower court, after one of the most disgraceful trials ever held in the history of the nation, a group of helpless, ineffectual Russian immigrants had been literally thrown to the wild beasts of prejudice and hatred which war had let loose upon the country. And their crime was that they had advocated policies which, at the same time, were being urged upon President Wilson by some of his wisest advisers. Those advisers were not indicted and convicted and punished, even though their words might have been expected to have far greater effect. But the defenseless rebels were sentenced to jail for periods ranging up to twenty years. For his castigation of that shameful legal crime, Mr. Holmes will be remembered and honored so long as the Constitution endures.

And, further, we must accept and applaud the assertion that the Constitution is an experiment, in the sense in which all life is an experiment. Our plan of government, being based on imperfect knowledge, must be forever open to amendment, forever on trial. It will change as social conditions change, and as human insight changes. And no one can tell in advance how slow or how quick, how superficial or how radical, those changes will be. We, the People, acting under the Constitution, will decide, from time to time, on that issue. And our successors

will be free, as we are, to determine what form, for them, the government shall take.

But the remarks of Mr. Holmes upon the central issue of the case before him---upon the testing of truth and upon the using of truth in the service of the common welfare---have no such adequacy. He does not, I am sure, at either of these points, give us, as he intends to do, "the theory of our Constitution."

First, there is undeniably a genuine, though partial, validity in the dictum that "the best test of truth is the power of the thought to get itself accepted in the competition of the market." It rightly tells us that the only truth which we self-governing men can rely on is that which we win for ourselves in the give and take of public discussion and decision. What we together think at any time is, for us, our truth at that time. And, in the sense in which words are here used, that test of truth is not merely the "best" test. There is no other. But that partial insight has often been interpreted by the individualism which Mr. Holmes represents, to be a total characterization of the truth-seeking process. And, in that form, it has become, in our American public life, a fruitful source of intellectual irresponsibility and of the errors which irresponsibility brings. We Americans, when thinking in that vein, have taken the "competition of the market" principle to mean that as separate thinkers, we have no obligation to test our thinking, to make sure that it is

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worthy of a citizen who is one of "the rulers of the nation." That testing is to be done, we believe, not by us, but by "the competition of the market." Each one of us, therefore, feels free to think as he pleases, to believe whatever will serve his own private interests. We think, not as members of the body politic of "We, the People of the United States," but as farmers, as trade-union workers, as employers, as investors. We plan and vote for cotton or beets or silver or steel or wheat. Our ideas belong to the East or the West or the North or the South or the Middle. And our aim, as we debate in those capacities, is not that of finding the truth. The competition of the market will take care of that. Our aim is to "make a case," to win a fight, to make our plea plausible, to keep the pressure on. And the intellectual degradation which that interpretation of truth-testing has brought upon the minds of our people is almost unbelievable. Under its influence, there are no standards for determining the difference between the true and the false. The truth is what a man or an interest or a nation can get away with. That dependence upon intellectual laissez-faire, more than any other single factor, has destroyed the foundations of our national education, has robbed of their meaning such terms as "reasonableness" and "intelligence," and "devotion to the general welfare." It has made intellectual freedom indisastrous and the beautiful words of Mr. Holmes have greatly contributed.

But the other argument of Mr. Holmes, which deals with the using of truth as well as its testing, bears more directly upon our constitutional question. It may be summarized in two statements. First, says Mr. Holmes, men are naturally intolerant.

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And they are rightly so. Suppression of the hostile opinions of others is justified. It is justified on grounds of self-preference, backed by force. But, second, men have learned by experience that intolerance does not pay. We need the truth as a basis for our actions. But the truth is better attained if men trade ideas freely than it is if each man stays within the limits of his own discoveries. A man's ideas must, therefore, be subjected to the competition of the market. His own self-interest requires of him that his right and natural disposition toward suppression must give way before the clear necessity of trading ideas with anyone else who is studying the same problems.

Is that the theory because of which the Constitution forbids the abridging of the freedom of speech? It is a part of it, but only, I am sure, a secondary and individualistic part. No one can deny that the winning of the truth is important for the purposes of self-government. But that is not our deepest need. Far more essential, if men are to be their own rulers, is the demand that whatever truth may become available shall be placed at the disposal of all the citizens of the community. The First Amendment is not, primarily, a device for the winning of new truth, though that is very important. It is a device for the sharing of whatever truth has been won. Its purpose is to give to every voting member of the body politic the fullest possible participation in the understanding of those problems with which the citizens of a self-governing society must deal. When a free man is voting, it is not enough that the truth is known by someone else, by some scholar or administrator or legislator. The

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voters must have it, all of them. The primary purpose of the First Amendment is, then, that all the citizens shall, so far as possible, understand the issues which bear upon our common life. That is why no idea, no opinion, no doubt, no belief, no counterbelief, no relevant information, may be kept from them. Under the compact upon which the Constitution rests, it is agreed that men shall not be governed by others, that they shall govern themselves. But the competitive individualism of Mr. Holmes, when it gets hold of him, drives out of his mind the existence of that compact. As he thus reads the First Amendment, his interest is directed, not toward the public freedom which is required for the purposes of self-government, but toward the private freedom of this or that individual who is seeking to understand. And for that reason, he robs the amendment of its essential meaning—the meaning of our common agreement that, working together as a body politic, we will be our own rulers. That meaning is the highest insight which men have reached in their search for political freedom. And Mr. Holmes—at least in his "clear and present danger" thinking—misses it.

5

Here, then, are the charges which I would bring against the "clear and present danger" theory. They are all, it is clear, differing forms of the basic accusation that the compact of self-government has been ignored or repudiated.

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First, the theory denies or obscures the fact that free citizens have two distinct sets of civil liberties. As the makers of the laws, they have duties and responsibilities which require an absolute freedom. As the subjects of the laws, they have possessions and rights, to which belongs a relative freedom.

Second, the theory fails to keep clear the distinction between the constitutional status of discussions of public policy and the corresponding status of discussions of private policy.

Third, the theory fails to recognize that, under the Constitution, the freedom of advocacy or incitement to action by the government may never be abridged. It is only advocacy or incitement to action by individuals or nonpolitical groups which is open to regulation.

Fourth, the theory regards the freedom of speech as a mere device which is to be abandoned when dangers threaten the public welfare. On the contrary, it is the very presence of those dangers which makes it imperative that, in the midst of our fears, we remember and observe a principle upon whose integrity the entire structure of government by consent of the governed rests.

Fifth, the Supreme Court, by adopting a theory which annuls the First Amendment, has struck a disastrous blow at our national education. It has denied the belief that men can, by processes of free public discussion, govern themselves.

"Congress shall make no law...abridging the freedom of speech..."

That principle of the Constitution tells us that we may attack the Constitution in public discussion as freely as we may defend it. It gives us freedom to believe in and to advocate socialism or communism, just as some of our fellow citizens are advocating capitalism. It declares that the suppressive activities of the Federal Bureau of Investigation, of the un-American Activities Committees, of the Department of Justice and its Immigration Service, of the President's Loyalty Order—all these are false in theory and therefore disastrous in practice. It tells us that such books as Hitler's *Mein Kampf*, or Lenin's *The State and Revolution*, or the *Communist Manifesto* of Engels and Marx, may be freely printed, freely sold, freely distributed, freely read, freely discussed, freely believed, freely disbelieved, throughout the United States. And the purpose of that provision is not to protect the need of Hitler or Lenin or Engels or Marx "to express his opinions on matters vital to him if life is to be worth living." We are not defending the financial interests of a publisher, or a distributor, or even of a writer. We are saying that the citizens of the United States will be fit to govern themselves under their own institutions only if they have faced squarely and fearlessly everything that can be said in favor of those institutions,

everything that can be said against them.

The unabridged freedom of public discussion is the rock on which our government stands. With that foundation beneath us, we shall not flinch in the face of any clear and present-or, even, terrific-danger.

CHAPTER IV

Reflections

NO ARGUMENT about principles is, I suppose, ever finished. But the argument of these lectures seems to the writer of them, peculiarly incomplete. They constitute, it seems to me, not an inquiry, but only the beginning of an inquiry. Even if it be agreed that the "clear and present danger" formula denies rather than expresses the meaning of the Constitution, even if we are convinced that the guarantee of the freedom of public discussion which is provided by the First Amendment admits of no exceptions, plunged at once into a multitude of bewildering questions. Those questions relate both to theory and to practice. And this book makes no pretense of having specifically dealt with them. In these closing reflections, the attempt will be made to indicate some lines along which further study of the meaning of the freedom of speech might go.

1

There is immediate and urgent need that We, the People of the United States, should win clarity of mind on that mutual agreement of ours concerning speech, which is recorded in the First Amendment.

These lectures have tried to show that the "clear and present danger" formula, as dealt with in the discussions of the Supreme Court, has not been able to keep either its original meaning or its validity. In the keen, shrewd competition of that market place, its verbal victory has become equivocal and empty. But in the wider market of popular discussion, the dominance of the seductive phrase, in its original meaning, is clear and unmistakable. Our people are, in general, convinced that, by authority of the Supreme Court, whenever or wherever the "American Way of Life," so-called, is criticized, is declared inferior to some other set of beliefs and institutions, we are, under the Constitution, justified in resorting to the suppression of civil liberties, including the freedom of speech. This disloyalty of ours to our own plan of government, with all its dreadful consequences, now threatens to run riot through every phase of American life, including that of government. And, for that threat of disaster, the Supreme Court, on the ground of its acceptance of the phrase, must be held largely responsible. May a teacher venture to suggest that the time has come when the court, as teacher, must declare, in unequivocal terms, that no idea may be suppressed because someone in office, or out of office, has judged it to be "dangerous?"

2

If, however, as our argument has tried to show, the principle of the freedom of speech is derived, not from some supposed

"Natural Right," but from the necessities of self-government by universal suffrage, there follows at once a very large limitation of the scope of the principle. The guarantee given by the First Amendment is not, then, assured to all speaking. It is assured only to speech which bears, directly or indirectly, upon issues with which voters have to deal — only, therefore, to the consideration of matters of public interest. Private speech, or private interest in speech, on the other hand, has no claim whatever to the protection of the First Amendment. If men are engaged, as we so commonly are, in argument, or inquiry, or advocacy, or incitement which is directed toward our private interests, private privileges, private possessions, we are, of course, entitled to "due process" protection of those activities. But the First Amendment has no concern over such protection. That pronouncement remains forever confused and unintelligible unless we draw sharply and clearly the line which separates the public welfare of the community from the private goods of any individual citizen or group of citizens.

What, then, is the distinction between, and the relation between, the common good and our many different private goods? On no problem of our national life is the American mind more confused than on this problem.

And nowhere else is the need for clarity and sanity more imperative.

Every one of us, of course, recognizes, in words, the distinction between public and private welfare. We know, clearly or vaguely, that under the American plan of self-government every citizen has two radically different sets of purposes and hence two radically different relations to the governing authority, which he and his fellows maintain. If men are free, they have two sets of values. They "care for" their country. But they care, also, for themselves. On the one hand, each of us, as a citizen, has a part to play in the governing of the nation. In that capacity, we think and speak and plan and act for the general good. On the other hand, each of us, as an individual or as a member of some private group, is rightly pursuing his own advantage, is seeking his own welfare. In the first of these roles, we are voters, lawmakers, rulers. Taken together in that role, We, the People, are the government. But, in the second role, we are, as individuals, governed. Our constitutional agreement is that each man's individual possessions and activities shall be subject to regulation by laws which he is bound to obey. His private rights, including the right of "private" speech, are liable to such abridgments as the general welfare may require.

Here, then, are our two sets of human interests and activities, which, under the Constitution, are given, and must be given, fundamentally different status. How are they related? What is the bearing of the common good on my goods—and upon yours? Are they identical? Are they different, but congruous? Are they opposed? Are they mutually indifferent to one another? Unless this relation can be made clear, nothing which has to do with political freedom can be understood.

We cannot, of course, in a few words analyze adequately all the implications of the Constitution with respect to public and private goods. Nor, it must be said, could we do so if many words were available. The human relations involved in the distinction between the general welfare and individual advantage are deeply and permanently perplexing. We can mention here only a few phases of the relationship which touch upon the problem of the freedom of speech.

In the Preamble to the Constitution there are listed in summary fashion the items of public interest which the body politic of the United States has adopted as its own. These are: A more perfect union, justice, domestic tranquillity, the common defense, the general welfare, the blessings of liberty. These ends or purpose We, the People, hold in common. For these we plan and

work together. They are the objects of our common loyalty. How, then, do they bear upon our distinctive desires and activities as separate individuals?

In answer to this question, five observations may be made.

First, in our American society, as we intend it to be, the public interest is not another different interest superimposed upon our individual desires and intentions. It is compounded out of them. It includes nothing which is not included by them. The common purpose is made up out of the separate purposes of the citizens. So far as possible, it combines them all.

But, second, since human interests are in constant conflict with one another, they cannot all be realized. We cannot make the common good by simply adding them together. To give play to one of them means often to deny play to others. And, for this reason, the public interest cannot be merely the totality of the private interests. It is, of necessity, an organization of them, a selection and arrangement, based upon judgment of relative values and mutual implications.

Third, the judgments which a government makes between interests are based upon such general principles as unity, justice, tranquillity, defense, welfare, equality, liberty. For the sake of these common demands

as expressed in impartial laws, any given individual in any given situation may be required to suffer the loss of his life, his liberty, his property, his happiness. And the government which guards the common welfare is authorized, by due process, to make and, if need be, to enforce the decision that those sacrifices are needful. Some millions of the young men and women of our nation and of other nations have recently learned, and are still learning, by actual experience what that statement means.

Fourth, the activities of the government as it cares for the public interest and, thereby, for the private interests which constitute it, are both negative and positive. On the one hand, the government protects individuals and groups by enforcing prohibitions against arson, monopoly, murder, and the like. On the other hand, by supplying such facilities as roads, postal service, parks, pensions, collective bargaining, soil conservation, libraries, schools, colleges, and a host of other forms of social wealth, We, the People, carry on constructive enterprises which individuals, as such, cannot so well carry on for themselves and for their fellows.

And, fifth, it should be noted that the Constitution does not, in principle, prescribe what share of the

activities needed for furthering the common good shall be directly exercised by the government and what share shall be reserved to individuals, acting separately. At this point, there is sharp division of opinion among us. There are members of our body politic who tell us that the public interest is best served when government action is reduced to a minimum and especially when it is kept negative in character. But just now, the nation as a whole seems to be moving rather swiftly and decisively—as is the world as a whole—in the opposite direction. More and more, we Americans are initiating new forms of positive government action for the common good. Between these two tendencies the struggle becomes every day more open and more intense. And as we wage that conflict it is well to remember that the logic of the Constitution gives no backing to either of the two combatants, as against the other. We are left free, as any self-governing people must leave itself free, to determine by specific decisions what our economy shall be. It would be ludicrous to say that we are committed by the Constitution to the economic cooperations of socialism. But equally ludicrous are those appeals by which, in current debate, we are called upon to defend the practices of capitalism, of "free enterprise," so-called, as essential to the freedom

of the American Way of Life. The American Way of Life
is free because it is what we Americans freely choose—
from time to time—that it shall be.

3

The statement that the First Amendment stands
over the freedom of public speech but is indifferent to
the rights of private speech has sharp and, at times,
decisive implications for many issues of civil liberty
now in dispute among us. It would be a fascinating
and important task to follow those implications as they
bear upon the rights to freedom which are claimed, for
example, by lobbyists for special interests, by advertisers
in press or radio, by picketing labor unions, by Jehovah's
Witnesses, by the distributors of handbills on city
streets, by preachers of racial intolerance, and many
others. In all these cases the crucial task is that of
separating public and private claims. But such dis-
cussion would go far beyond the limits of the present
inquiry. I must, however, mention one new issue which
is startling, and even shocking in its threat to what
has been traditionally regarded as one of our primary
"public" freedoms. We have assumed that the studies
of the "scholar" must have, in all respects, the

absolute protection of the First Amendment. But with the devising of "atomic" and "bacteriological" knowledge for the use of, and under the direction of, military forces, we can now see how loose and inaccurate, at this point, our thinking has been. Under present circumstances it is criminally stupid to describe the inquiries of scholarship as merely "the disinterested pursuit of knowledge for its own sake." Both public and private interests are clearly involved. They subsidize much of our scholarship. And the clashes among them may bring irretrievable disaster to mankind. It may be, therefore, that the time has come when the guarding of human welfare requires that we shall abridge the private desire of the scholar—or of those who subsidize him—to study whatever he may please. It may be that the freedom of the "pursuit of truth" must, in that sense, be abridged. And, if such action were taken with that motivation, the guarantee of the First Amendment would not, in my opinion, have been violated. As I write these words, I am not taking a final stand on the issue which is here suggested. But I am sure that the issue is coming upon us and cannot be evaded. In a rapidly changing world, another of our ancient sanctities—the holiness of research — has been brought under question.

If the meaning and validity of the First Amendment be derived from the principles of self-government, still another very serious limitation of its scope must be recognized. The principle of the unqualified freedom of public speech is, then, valid only in and for a society which is self-governing. It has no political justification where men are governed without their consent. For example, in such social institutions as an army or a prison or an insane asylum, the principle of freedom of speech is neither relevant nor valid. Those communities are not governed by the consent of their members. That statement should, perhaps, be mitigated in the case of an army whose soldiers are also citizens of a free body politic to which the commanders of the army are responsible. And, in lesser degree, the same limitation holds true for the management of an asylum or a prison. And yet, in all these cases, the immediate fact of control without consent remains. Policies and actions are not decided on the basis of general discussion and voting by the group. There is, therefore, no political ground for the demand that discussion within the institution shall be free from abridgment.

The same irrelevance is evident when we examine the military control of a nation which has been conquered in war. On December 16, 1944, General Eisenhower issued a proclamation prescribing plans for education in Germany during military occupation. One section of his order reads as follows: "German teachers will be instructed to eliminate from their teaching anything which: (A) Glorifies militarism, expounds the practice of war or of mobilization and preparation for war, whether in the scientific, economic, or industrial fields, or the study of military geography; (B) Seeks to propagate, revive, or justify the doctrines of Nazism or to extol the achievements of Nazi leaders; (C) Favors a policy of discrimination on grounds of race or religion; (D) Is hostile to or seeks to disturb the relations between any of the United Nations. Any infringement of these provisions will be cause for immediate dismissal and punishment."

In those words, which would be utterly intolerable if applied to the teachers of the United States, the official representative of the nations which had fought for freedom, denies freedom of speech to the German teachers. And that decision, whether wise or unwise, cannot be challenged on the ground that it violates the freedom of teaching. During the period of military occupation, Germany is not self-governing. She, and

her teachers, must therefore be subject to orders which they have no part in making. Her will, if she has one, must give way before an alien will or, it may be, before a number of wills which are alien, not only to her but also to each other. And as long as that is true, German teachers, unlike Socrates, unlike the teachers of our American schools and colleges, have no political right to teach what they believe true.

5

This book has, I hope, succeeded in expressing the passionate devotion of one American citizen to the principle of the freedom of speech. And yet passions may blind us, as well as lead us. It will not do to pour out all our passion for freedom into such a cause as that which the First Amendment represents. When all that concerns our argument has been felt and said, the stark fact remains that the First Amendment is a negation. It protects. It forbids interference with something. And that protection can have value only as the "something" which is protected has value. What, we must ask, would be the use of giving to American citizens freedom to speak if they had nothing worth saying to say? Or —to state the principle less baldly

—surely it is true that the protection of public discussion in our nation takes on an over-increasing importance as the nation succeeds in so educating and informing its people that, in mind and will, they are able to think and act as self-governing citizens. And this means that far deeper and more significant than the demand for the freedom of speech is the demand for education, for the freeing of minds. These are not different demands. The one is a negative and external form of the other. We shall not understand the First Amendment unless we see that underlying it is the purpose that all the citizens of our self-governing society shall be "equally" educated.

I cannot, in these closing pages, discuss the methods, the successes and failures, of our national education—though my argument is only a fragment unless that is done. It is essential, however, to mention one typical failure which, since it has to do with the agencies of communication, falls within the field of our inquiry. The failure which I have in mind is that of the commercial radio.

When this new form of communication became available, there opened up before us the possibility that, as a people living a common life under a common agreement, we might communicate with one another freely

with regard to the values, the opportunities, the difficulties, the joys and sorrows, the hopes and fears, the plans and purposes, of that common life. It seemed possible that, amid all our differences, we might become a community of mutual understanding and of shared interests. It was that hope which justified our making the radio "free," our giving it the protection of the First Amendment.

But never was a human hope more bitterly disappointed. The radio as it now operates among us is not free. Nor is it entitled to the protection of the First Amendment. It is not engaged in the task of enlarging and enriching human communication. It is engaged in making money. And the First Amendment does not intend to guarantee men freedom to say what some private interest pays them to say for its own advantage. It intends only to make men free to say what, as citizens, they think, what they believe, about the general welfare.

As one utters these words of disappointment, one must gratefully acknowledge that there are, working in the radio business, intelligent and devoted men who are fighting against the main current. And their efforts are not wholly unavailing. But, in spite of them, the total effect, as judged in terms of educational value, is one of terrible destruction. The radio, as we now have it, is not cultivating those qualities of taste,

of reasoned judgment, of integrity, of loyalty, of mutual understanding upon which the enterprise of self-government depends. On the contrary, it is a mighty force for breaking them down. It corrupts both our morals and our intelligence. And that catastrophe is significant for our inquiry, because it reveals how hollow may be the victories of the freedom of speech when our acceptance of the principle is merely formalistic. Misguided by that formalism we Americans have given to the doctrine merely its negative meaning. We have used it for the protection of private, possessive interests with which it has no concern. It is misinterpretations such as this which, in our use of the radio, the moving picture, the newspaper and other forms of publication, are giving the name "freedoms" to the most flagrant enslavements of our minds and wills.

6

Our final reflection brings us again face to face with that curious quality of paradox by which all interpretations of self-government are affected.

On the one hand, We, the People of the United States, are a body politic. Under the Constitution, we are agreed together that we will be, by corporate action, self-governed. We are agreed that as free men,

politically equal, we alone will make the laws and that, as loyal citizens, equal before the laws, we will obey them. That is our social compact—the source both of our freedoms and of our obligations.

From that compact are derived the "just powers" of the government which we establish. That establishment does not mean that someone else, other than ourselves, has authority over us. It means that, in such ways as we may choose, we have taken authority over ourselves. It does not mean that we have lost our political freedom. It means that, by eternal vigilance, we are continually creating and securing it. So far as the compact is effective, we are not subservient to any Fuehrer or Dictator. But we are bound by obligations—obligations to one another and to the common cause in which we all share.

But, on the other side of the paradox, are the claims of an individualism which, when it becomes excessive, refuses to acknowledge the validity of political obligations. Men are, as they say, willing to work and sacrifice for the common good. But they are not willing that any political authority, even their own, shall require them to do so. Our blind and unthinking faith in the scheme of competitive strife which we so falsely call the "American Way of Life" blinds us to the meaning, and even to the existence, of the political agreement by which all our social

institutions are inspired and directed.

How, then, shall we, the members of the body politic, become more clearly and effectively aware of our compact with one another? To bring that about is, I am sure, the primary task of American teaching. Our young women and men who enter into citizenship must learn what it means to be a member of a self-governing society. Our older citizens, if they have won that understanding, must be saved from losing it. It is the basic need of that understanding which finds partial and negative expression in the First Amendment. The guarding of the freedom of public discussion is a preliminary step in the unending attempt of our nation to be intelligent about its own purposes.

If, then, we seek to understand as its source that guarantee of the freedom of speech which the Constitution provides, I suggest that we pay heed to the sayings of two great teachers of freedom. Side by side, with the Socratic "Know Thyself", let us place the saying of Epictetus, "The rulers of the state have said that only free men shall be educated; but Reason has said that only educated men shall be free." That is why, in the last resort, ". . . Congress shall make no law . . . abridging the freedom of speech."