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BY

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WITH

Foreword by Eden Phillpotts.

"We acknowledge a great indebtedness to Mr. Whyte for putting before us, in a compact, readable form, what is not only in all essentials a sound, but in addition a lofty, treatise,raising the subject to a level which has often been considered a close preserve for supernaturalism."
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FREEDOM OF SPEECH AND THE CENSORSHIP

By PROFESSOR J. B. BURY

(Author of "The History of Freedom of Thought," etc.)

MISGIVINGS have been felt during the present War at the policy of the Government in yielding to the alleged necessity of placing restrictions on the free expression of opinion. I am not thinking of the people, comparatively few, who have personally suffered from the censorship, but of others who, though far from wishing to publish anything that could embarrass the Government in the conduct of the War, have been unable to help feeling something like dismay at coercive measures that seemed to defy and menace the principles which Mill's classical essay *On Liberty* were supposed to have definitely established. Misgivings of this kind have been expressed from time to time, and must be entertained by many who have not expressed them—misgivings as to the defensibility of a censorship of opinion in any circumstances whatever. Is this coercion justified by the reasons, *prima facie* cogent, which prompted it; by the desirability of suppressing speech and discussion which might weaken, however little, our efforts in the struggle or those of our Allies, or encourage, however little, the efforts of our enemies, or play, however slightly, into their hands? If we have to admit that some coercion is unavoidable in our present situation, is the general doctrine laid down by Mill, and widely accepted as almost axiomatic, in jeopardy? Can a theoretical principle be sound if its adherents, under the stress of harsh facts, are driven to admit exceptions, or to resort to new interpretations?

The importance of the doctrine that perfect liberty of discussion is a fundamental condition of social progress was recently impressed upon the Working Men's Club and Institute Union in the presidential address delivered last May by Mr. J. J. Dent, who kindly sent me a copy of his thoughtful discourse. He quoted some remarks of mine, among which was this:—

The considerations of permanent utility on which it [the doctrine in question] rests must outweigh any calculation of present advantage which, from time to time, might be thought to demand its violation.

In writing these words in the days before the Flood—it was 1912—I thought as little of a situation such as that which now

confronts the allied countries as Mill did when he wrote his essay in the middle of the nineteenth century. Does this statement require modification? When common-sense declares that restrictions on the publication of opinions at such a crisis as this are necessary, is common-sense mistaken, or can the doctrine of freedom be reconciled to it, without losing its general validity?

The political theory which is developed in Mill's essay, and lies behind most of his arguments, was widely held in Victorian England as self-evidently true. It coincides in general spirit with the doctrines of Bentham and Spencer. In Europe, outside England, it never prevailed. Government is regarded as an evil, unfortunately indispensable, and its legitimate functions are contracted to the narrowest possible limits. This view, which inspired the old Liberalism, has been discredited by later criticism. It rests on assumptions concerning the nature of society and the social relations of the individual which do not sustain a penetrating scrutiny, and probably no political thinker would now accept it as a true theory of the functions of the State.

Yet, even when the rightful action of the State is reduced to Mill's minimum, the principle which he lays down as entitled to govern absolutely the dealings of society with the individual might be held to cover the present case. The principle is that

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.

This principle would clearly entitle a Government to apply compulsion if it is convinced that the publication of certain opinions would cause the risk of prolonging a war or of weakening the defence of the society against its enemies, as this risk means the risk of causing harm to others.¹

But, it will be said, while a Government has indisputably a right to take legal measures to prevent harm to others, is it not unwisdom and contrary in the long run to social utility to limit that complete freedom of speech which is a fundamental condition of progress so important that it ought to prevail over all considerations of immediate expediency? Granting that the publication of certain opinions is in present circumstances distinctly undesirable, that it may tend to jeopardize our victory, yet, from a higher point of view, the maintenance of free speech is of such radical and permanent importance that to curtail it is as unjustifiable as it would be, say,

¹ Such a coercion is a milder exercise of the rights of society than conscription, for which Mill implicitly supplies the justification in Chapter IV when he says that the individual is bound to bear his share "of the labours and sacrifices incurred for defending the society or its members from injury and molestation."

to reduce a population temporarily to a condition of slavery for the sake of ensuring victory in an admittedly good cause.

An answer to this might be attempted by reverting to the reasons which establish freedom of discussion as an overmastering principle. They are developed in Chapter II, the most valuable part of Mill's essay, because it is not compromised by the precariousness of his political theory. It would be too long to reproduce or even condense his arguments here, but their upshot is that perfect freedom of discussion is the only means of attaining such certainty as a fallible being may attain.

The beliefs which we have most warrant for have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded. If the challenge is not accepted, or is accepted and the attempt fails, we are far enough from certainty still; but we have done the best that the existing state of human reason admits of; we have neglected nothing that could give the truth the chance of reaching us.

Hence the supreme social utility of unstified discussion. There is a debatable subject, and the free expression of opinions is the means of ventilating it and approaching the truth. To silence any opinion is an injury to society, is (to use Mill's words) "robbing the human race." But observe what the assumption is. The sphere in which truth is to emerge by unrestricted freedom of speech is the sphere of argumentative debate; it is not the sphere of arms. If, for instance, the issue between the Entente and the Central Powers were being fought with word and pen, and not on the battlefield, it would be criminal in any of the Entente Governments to silence the voices of minorities among their own people who supported the views of the Central Powers. But when the debate is being conducted on the battlefield the issue is removed from the sphere of argument, where alone prevail the conditions in which the free expression of opinion can be of supreme social utility. It may, therefore, be argued that in these circumstances the principle ceases to be unreservedly valid so far as the questions are concerned which have been committed to the arbitration of Mars.

This answer is not altogether satisfactory. Especially, it does not meet the point that the principle whose suspension it would justify has such universal validity that it is wrong to over-ride it for the sake of any immediate particular utility. A truer answer is that every social principle is subject to the general limiting rule that it must not endanger its own existence. In circumstances where its operation means its possible destruction a self-contradiction emerges; and in such a case we are not really true to it if we risk its permanent interests by adhering to it absolutely. *Fiat justitia, ruat caelum* is a maxim which would lose its validity in a case where the catastrophe involved the disappearance of justice itself. Apply this to the present situation. The large majority of

our society see in the War a defence of freedom against tyranny; we are convinced that our enemies threaten the cause of liberty throughout the world. If the unreserved maintenance of the particular liberty of discussion endangers in any way the triumph of a cause which includes itself, that is a self-contradiction which can be reasonably overcome only by sacrificing the lesser to the greater, the temporary to the permanent. War offers an analogous case. If a society devoted to the idea of universal peace and abhorring physical violence as a supreme evil encounters a situation in which resort to physical violence is the only means of rescuing the world from an order founded on physical violence, it must transgress its principle in order to save it. The principle ceases to be valid at the point at which its operation would be suicidal.

If we agree that all general principles of conduct are limited by the more general principle that they must not frustrate or destroy themselves, the statement quoted from myself at the beginning of this paper is not compromised by the admission that a certain censorship of opinion is necessary during the present War.