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WAR PRISONERS



BY

CLARENCE S. DARROW

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War Prisoners

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ADDRESS BY
CLARENCE S. DARROW

AT THE
Garrick Theatre, Chicago, Illinois

NOVEMBER 9, 1919



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WAR PRISONERS

I am not certain whether I shall please many of you in my view of this subject. Anyhow, I mean to discuss it honestly with myself, and I am not interested in whether anybody accepts my views or not. If they accept them, I have more responsibility, because the views may be wrong.

I want to discuss this subject from the standpoint of man, as he is, not as he will be under the socialistic commonwealth or any other ideal or impossible state of society. I want to discuss it with reference to today and the near future, which is a million years anyhow; and with man as man, or rather man as one of the animal creation—more intelligent than the ape, but ruled by the same emotions as the rest of the brute creation. Those emotions, feelings, perhaps are somewhat modified by a larger brain, but still essentially, and for all scientific purposes, are like that of the so-called lower animals.

Fine-spun theories about what society ought to be, to my mind, have little place in a discussion of this sort. The scientist takes man as he is and discusses questions with reference to that, and does not expect to judge his flying qualities, for instance, by the bird, his swimming qualities by the fish, or his spiritual qualities by angels. That is the way I take him; and that is the way I wish to take him for this discussion.

I approach this question as one who believed in this war. Not because I love war; for I hate it. Not because I do not wish that in the economy of nature there might be something else. But I believe that man is a fighting animal, and that the United States had nothing to do but fight. I shall discuss it from the standpoint of one who, from the time Belgium was invaded, believed that it was the duty of the civilized world to drive the last German back to the Fatherland! And this, utterly regardless of whether those Germans were better or worse than the people who were driving them back.

I believe in man as a mechanism, and an imperfect one at that, and I considered the invasion of the Germans into France and Belgium just the same as I would have considered the rising of a tide that should be stopped for the protection of the people that it would overrun. I discuss it as a man who believed that the duty of the United States' government was plain; that to protect our integrity and dignity as a nation we had to fight, serious as that fight was, and much as war meant.

I cannot discuss it in any other way. I believed in it then. I believe in it now.

The question to me as to this line of prisoners coming from the war is not what was the duty of the United States during the war, but the duty of the United States, now that the war is finished, and the need is gone.

I believe that the first law of nature is self-preservation and that this law applies to nations as well as to individuals. And, I can imagine no state of society where it will not apply to nations as well as to individuals. And I can say this, assuming that a time comes in many nations when they should be overthrown, or destroyed, and not even assuming that our nation will be an exception to the rest. The instinct of life goes with living; and this is true with the individual, the family, the community, the state, the nation, and the race. Self-preservation is the highest of all laws, and I believe it is so recognized by every one in their own conduct, if not in their philosophy.

I have heard many men, and women, for whom I have a high regard, complain of the violation of "Constitutional rights" during the war. Now, I try to be honest with myself, at least. I have no doubt but what constitutional rights were violated over and over again during the war, and since—and before. In the main, I, as one individual, was willing to see constitutional rights violated during the war. I would have hoped, and did wish that there might be fewer of those violations; that the barbarous and medieval penalties might be less severe, and of course that all the people I know would escape—but that is a personal emotion. At the same time, believing as I did in this war, that it was just and necessary, that the first law of individuals and nations is self-preservation, I did not worry so much about the means of self-preservation.

The most ardent pacifist; the most ardent friend and believer in the release of all conscientious objectors and all war prisoners—none of these people really care much for constitutional rights. They believe, like everybody else, in having their own way. They are strong for constitutional rights when they think those constitutional rights will help their cause. And they do not believe in the constitutional rights of other people when they think they will hurt their cause. I have seen few radicals who were against the war, from whatever motive, who were not strong for the government of Lenine and Trotsky in Russia. Now, my sympathies are with them, as against

the old regime. I know that they have committed atrocities. I know that they have disregarded the rights of individuals, which are deeper than constitutional rights. I know that they have killed almost indiscriminately, and everybody else knows it. I believe also that they did what seemed necessary to do to maintain themselves. And of all the excuses that were made for them, the chief one is that the world was against them and they had to do it! They did have to do it? Every body of people who are undertaking to accomplish something, like every individual who is undertaking to accomplish something, seldom bothers about trifles. The thing to be done is to be done. And, if laws and institutions and constitutions are in the way, so much the worse for laws and institutions and constitutions!

Now, you people, who are disciples of Bolshevism—whatever that is—all believe it, and yet you cannot help criticising the American government for violation of constitutional rights in which you do not believe yourselves! The person who complains about constitutional rights does not do it out of any love for constitutional rights. He does it because he and his friends are hurt. And, if he and his friends could win, a little matter of the constitution would not stop him, and it stops nobody.

Let me go a little deeper into that because I want to make it clear. What are constitutions and laws? They are simply the customs and traditions and habits of people written into statutes and constitutions. They are embedded there until they are a part of the foundation, and it takes some violent revolution, either with force or without it, to change them. It is a simple matter. That is exactly the meaning of a constitution. And all law and much of the progress of the world has been made in absolute violation of constitutions and laws and everybody knows it.

And deeper than constitutions and laws is the will of the people, and when that will is strong enough—I do not care who the people are, whether socialists or capitalists or philosophers—when the will of the people is strong enough, it overrides them. It always has, and it always will. So, to my mind, it amounts to nothing, for nobody pays any attention to it unless it serves his purpose. I prefer to meet this question squarely upon the facts of life and upon the philosophy of existence and of government.

Man persists. He lived long before any constitutions were made; he wrote his constitutions out of human life and human

experience; and he will be here probably long after all constitutions die. He and his life are the fundamental things, and nothing can get in the way of man and his life; nothing can get in the way of it that does not meet with a catastrophe. The people, if you get enough of them, are supreme. I am not obsessed with the people. They are cruel; they are unimaginative; they are unintelligent to the last extreme. Long ago I stopped passing panegyrics on the people. But this is true about them, when you get enough of them thinking the same way on any subject they have their way! And, the last thing they stop to inquire about is whether their way is "constitutional" or not!

I know there are lawyers of more or less integrity and scholarship who say there have been no convictions during this war, on account of freedom of thought and speech; that there have been no restrictions on constitutional liberty. I do not wish to cloud this issue in any such way. Men have been sent to prison during the last two years for expressing their honest conviction. They have been sent to prison for speaking freely the things they could have spoken before the war started. Everybody knows it, whatever they say. There is one excuse the government had, and only one, and to my mind this excuse is quiet sufficient. And that is, that we are engaged in something that was deep and fundamental, and whether everybody agreed with the government or not, there were enough who agreed, who thought war was necessary, to carry it on at the time. And no matter who the majority is, however liberal or radical, or what it sought, this majority would have done exactly the same thing. So, the question is not whether we have violated the constitution; the question is, what should be done now?

All these things are easily understood by one who, for a few moments will forget his point of view, and try to look the facts in the face. I do not ask anybody to believe that this war was just. If you can imagine a war, as most of you can, which you would think was just, as for instance, a class war, you know you would do just the same as the others did. And you know just the same thing has been done in Russia. And nobody can say it was right or that it was wrong. It was just in the nature of things, like a glacier plowing its way across the continent, nothing else. I have talked with a good many pacifists who said they did not believe in war; but I have noticed how their eyes kindled and their cheeks reddened when they heard of a victory of the Bolsheviks! Nobody liv-

ing is indifferent to war. Nobody living who can reach that state of philosophical nothingness so they can look at a dog fight and not choose their dog. It is not human nature, because man does not live by intellect. If he did life would be short! He lives by human feelings, and human emotions, which are the moving forces of life, and his sympathies and feelings go out, and he takes sides. When anybody tells me they didn't care who won, I—well, what is the use of saying?

I was sorry to see many people sent to prison. I do not believe in prisons, anyway. I knew that a great injustice was done individuals. And I want to be honest about this question, too. I know that probably the great majority of people who were sent to military and civil prisons during this war were high-minded, conscientious people, and had committed no real wrong; that is, so far as they themselves were concerned, they were utterly devoid of any criminal intent. And criminal intent is supposed, in law, at least, to carry moral turpitude with it. There was no moral turpitude mixed up with it. Most of them, I will not say all. But I must remain true to my philosophy until I change it—which might be next week. I do not believe there is such a thing as moral turpitude. I am a fatalist; I do not believe in free will; I think every human being is a machine, and has no more control over his actions than a "Wooden Indian". But, society sorts out criminals as those men whose acts imply a moral turpitude which I do not believe in. Under this definition, most of the people who were sent to prison during the war were not criminals; there was no moral turpitude in it.

Of course, while I do not believe in prisons, I do believe that there are people who must be restrained of their freedom so that I can get along! Insane people; morons; people so distinctly anti-social, from some cause or other, that we cannot live in any comfort with them, need to be restrained, without any regard to right or wrong; they ought to be given a good time, perhaps better than they could have if they were not in prison. But, restraint is necessary, and I can imagine no state of society where we would not need restraint. So, of course, to one of my views, it makes no difference whether one has moral turpitude or not. The only question is, who is dangerous, and when I say dangerous, of course I mean dangerous to me. As a state, I would say dangerous to the state. Of course, if enough people who were dangerous to the state could get together, they might overthrow the state and send the other people to jail; but that is the chance you take.

So, during the war, I can find no honest criticism, from my point of view, for the forcible detention of those who were actually in the way of carrying it on. I might say that it was not the best way. I think people got unduly excited, and I think we were all a bit crazy during the war and haven't got over it yet! I think the people could have been left to say more and print more and do more with perfect safety to the country. And when I mean the country, I mean for the prosecution of the war. I think they could, and I think they should. But, that in nowise affects the fundamental proposition, which is true to life, and true in philosophy, that the individual or the state has the right—I do not like to use the word "right", for it does not mean anything—the individual or the state always will protect its life in great emergencies, and it will never be especially careful about the means. Of course, it may be careful about the means when the danger is slight, but it will never be careful about the means when the danger is imminent and great. Individuals and states are just alike in this.

Now, having said so much, let us see what the present situation is. There are a great many things that the typical objector does not consider. The United States found itself in a war and it was a big one. In a very few months we made America a military camp. I am not going to discuss whether that was right or wrong; I am going to assume it was right. It makes no difference whether it was right or wrong. We, the majority, were powerful enough to do it, and we did it. This work was done quickly. A stupendous work which taxed all the energies and wealth and industry of the country. It was done hurriedly and still with great efficiency, on the whole. Mistakes, of course, were made, even in the line of getting at the result intended. But, it was a wonderful piece of efficient work. Officers were placed in responsible positions without training or skill or experience to fill those positions. Courts martial were organized by men who were in no way qualified to conduct them. And, it was all done in the mad heat of war, when nobody was sane. You cannot fight when you are sane, whether you fight a country or your neighbor. You must be mad, which means crazy. It was all done in the fiercest period of hatred, deep and intense, which always goes with war, and which does not prove that war is necessarily wrong. I am not interested in that question, because it happened. I would be very silly to argue with an earthquake. And one is just as silly to argue with a war when the war is on.

These elemental forces cannot be argued with. Never could be, and, well, I fancy, I do not know—but I fancy never

will be. It was absolutely necessary that great mistakes and great injustices should happen in a machine thrown together in this way, laboring under this condition, in intense excitement and great peril to the world.

That mistakes occurred; that they were serious and many, is beyond any sort of question. I do not blame anybody for them. They happened; they would happen again. The question for me is what are we going to do about it now? I do not blame Mr. Wilson or Mr. Baker, whom I have known for fifteen years, and know to be an intelligent, high-minded, humane man, one of the best I ever knew. Both he and Mr. Wilson have so managed their work that they have lost the friendship of both the conservatives and radicals. And you are doing pretty well when you do that! I know one is doing well, for I have done it myself! And I want to say that I fully believe—though it does not prevent me from saying what I think on this question—that I fully believe it will not be very long until Mr. Wilson will show where he stands on this question—that he stands for humanity and mercy! Now, you can see whether I have prophesied right or not. If he does not do it, it will not prevent my saying what I think about it! I think it should be done, and done quickly.

Now, I am for giving everybody a fair show. And one should consider the work Mr. Wilson has had to do, the condition of his health, and the serious difficulties in his position, and judge honestly instead of condemning, unthinkingly. I read the other day what one of the pillars of the Progressive Party said about him—Senator Poindexter of out west somewhere—he said that President Wilson had encouraged anarchism and bolshevism more than any other man in America, and both he and Baker have received the most brutal, extreme, unrelenting condemnation by that class of people who pride themselves as being one hundred per cent American—whatever that means. So, I am willing to suspend judgment.

Now, let us see some of the general causes of the great difficulty that brings about these mistakes. There are three or four classes of people that I want to speak about. There are those people, some sixteen thousand in 1918, who were condemned by courts martial. In the main they received barbarous, extreme and medieval sentences. What are some of the general causes? In the first place, under an obsolete tradition, every court martial was made up of officers; no private could be tried by privates. He was tried by officers. These officers were young, inexperienced and clothed with an ex-

traordinary power—a power of life and death. And they were boys who, of course, could not know much—I was once a boy myself. These were officers in a business entirely new to them. Every private was tried by them, and ninety-four per cent of all the privates were convicted. Only six per cent got away. When there was a charge made against an officer, the officer was tried by officers. Only thirty per cent of the officers were convicted, as against ninety-four per cent of the privates. Upon the face of it, this system is far removed from democracy; it is far removed from what is better, a certain, humane sympathy that goes with people who are substantially alike; it would be impossible that great injustices should not result, and the broad figures show it. Ninety-four per cent of the privates placed on trial were convicted and thirty per cent of the officers convicted.

They were defended by people who were appointed from the regiment, generally not lawyers. It is all a lawyer can do to defend a man right. Men, without experience; boys, utterly unable to do the job. As Colonel John Wigmore said, a very large percentage had no defense made for them. They never had any real review of their cases. And, military officers, in the last analysis, really pronounced the sentence. If there was any review, it was not by a real court. These decisions were really not judicial decisions, but military orders, under which men were sentenced to the severest penalties, ranging all the way from one to ten, twenty, thirty, forty, fifty years, and death. Then, in a civil case, after you have been tried and acquitted, you are out of it; you cannot be tried again. But, in these military trials, if, six times in a hundred, a boy escaped, and the officers at headquarters were not satisfied with it, they could order a new trial; and they did, over and over again, sometimes two or three times, which is barbarous in the extreme.

The sentences were such as to shock a person who has had any experience of civil life or the courts. For instance, these courts martial provided for a review at headquarters, and a person had to go to the Adjutant General and from there to the Commander-in-Chief. Down in Texas, they sentenced thirteen negroes to death, and to make sure of it, they killed them thirty days before the record ever got to the court of appeals. A reversal of the sentence would have done no good. Twelve men, experienced and old in the service, in one of the camps, all non-commissioned officers, who had been out somewhere in the evening, and were unlawfully arrested by

the officers in charge of the camp, were told to train, stand formation and drill. They refused on the ground that army regulations forbid men under arrest to drill. They were sentenced from fifteen to twenty-five years.

Now, of course, in any system of criminal procedure, the punishment ought to bear some relation to the offense. Here were twelve officers who were illegally arrested, ordered to parade and drill while under arrest, by young, inexperienced officers, and they refused. Fifteen to twenty-five years. Is there any chance to defend any such thing? It is idle to say that these were times of war and military discipline must be maintained. It must be. But the maintenance of military discipline does not call for any barbarity like this and like what was commonly practiced in the sentences in the camps. Any number of these instances can be given. One only has to look them over, read the history of them, to find out what they mean.

In France, on one occasion, four boys, all under twenty, were sentenced to death, two for sleeping on their post, and two for disobeying an order to drill, because of cold and exhaustion. A man was appointed to defend them, another boy, absolutely inexperienced, and he plead them guilty. They were sentenced to death. News of it reached Washington. On investigation it was shown that the two boys who slept had been working so long that it was impossible for them to keep awake. The same has often happened to locomotive engineers who have been compelled to run day and night until exhausted. They could not help going to sleep. And the others were so tired out they could not march or drill and it should never have been asked of them. Mr. Baker pardoned two of these and reduced the sentence of death to three years in the case of the other two. And he did this against the protests of the army officers. Now, I am not criticising the army officers. Everybody has an extravagant idea of his business. Everybody thinks the world rests upon him and his profession, and the army is no exception to it. It believes in discipline though the heavens fall. Of course no one will question that a considerable amount of discipline is necessary; but they have overdone it. It is utterly unknown to the civil law. No free people could consent to it for a moment in times of peace, and yet the whole record of all these criminal trials was substantially the same. Fortunately, the news of these cases got to Mr. Baker in time, and he had the patience to examine the papers. Excepting for this accident and the humane action

of the Secretary, these four boys would have been shot without having been defended, without a chance, and with no opportunity to disclose the facts. There are instances of men, absent without leave, just left the camp as some of you might leave your work and go to a baseball game—might; or to a convention, more likely. Some of them absent without leave, for a few hours, some under strong extenuating circumstances, who got sentences ranging from six days to twenty-five years.

There was no machinery to do this work any more than there was machinery for furnishing camps and cantonments. It had to be made at once and out of the material they had, without a chance to educate those who were in charge of the serious business of judging their fellowmen. And it is a serious business, which needs experience, sober-mindedness and charity. All of this was necessarily lacking in most of these trials. One can take the records, which are easily obtainable, and find case after case of this sort.

Of course there were some courts martial that were more humane than others. Men of a broader vision. Some defendants better defended than others. And there was the greatest difference and diversity in the various camps of the United States and in France.

Our military law has come down from the old-time British law; at a time when nobody but the nobility could be officers and nobody but the peasants were private soldiers. There were very few of the nobility and a good many of the peasants, which made the commanders few and the army large. Of course the commanders did it all. England has modified the proceedings. So has France, but America has not. I am not here to criticise so much what we have done, although it is wrong and cannot meet the feelings of justice or democracy of the average American, but I am here to see what shall be done with the manifold mistakes and cruelties that resulted from it all.

I need not go over these cases in detail. In one year there were sixteen thousand of them. A court of review was absolutely powerless to review them if it had been a court, and it was not a court; it was a commanding officer issuing orders.

These boys really had no trial that could resemble a trial. They had no semblance of what is called a trial when one is charged with an offense. We, in America, as in England, have cherished trial by jury as one of the priceless safeguards of freedom and of life. And yet none of those sixteen thousand

had any such trial; not one. We have treasured the right of a man to be defended in court by some one competent to defend him, yet almost none of them had any such chance. A lot of inexperienced boys, going out with their lives in their hands to do the best they could, and caught in this terrible malestrom and sacrificed. The least the American people can do is to save what is left of them, and do it quickly!

I want to refer to another class of victims of the war feeling. Now, mind, I am not criticising the feeling, its intensity or its cause. I fancy I was a part of it, though I always meant to keep my head during it, and perhaps did fairly well. But, it was a terrible feeling which swept over the world, and moved the people of the earth as they were never moved before; it was a feeling which made men forget everything but the war; they would forget their lives, even their property, some of them; their families, their friends, everything but the war. And, it not only reached our military courts, but our civil courts, and barbarous and extreme penalties were pronounced there, which ought to be set aside, and set aside quickly! For expressing opinions against the war, men were subjected to a penalty of twenty years' imprisonment. And judges always pronounced the longest term. Once in a while some very soft-hearted man would make it ten.

There is only one possible excuse for it, and that is the excuse that I have heard some judges make, that it was never intended to carry them out, but they should last during the war. That excuse would be good to me if they only last during the war!

The Espionage Act is manifestly unconstitutional, although the courts have said it is constitutional—it makes no difference to me in my judgment of it; I might very likely have held it constitutional if I had been a judge, I don't know. But I would have held it constitutional, like a railroad ticket, "For this trip and train only".

The Constitution forbids Congress to enact any law in restraint of the freedom of the press and freedom of speech, and nothing can be plainer than that this was a law restraining the freedom of speech and the press. It does not need argument, and I would respect the judges and lawyers more if they placed it on the line of public necessity, than I would if they make the miserable quibbles that somehow they could distinguish between this law and some other law, and that it was really constitutional.

I have said to you that I believed in this war from the beginning. I know there were a good many people who did not, some of them as honest as I, possibly some of them as intelligent; I would not say about that, but anyway, as honest. You never can find any question that everybody agrees on. They may say they agree, but they do not. There is always bound to be a difference of opinion among men on any subject; that comes from the different sized hats they wear and the different nervous systems they got from their great, great, great grandmother. This country had a large German element; it had a large Irish element, hostile to England, and a large Jewish element, hostile to Russia; it had people here from every country on earth who were bound to be influenced more or less by their likes and dislikes of the various European countries at war. Then, we had people who did not believe in war in any way; who thought they were pacifists, but who still like to see their side win, although they would not admit it; there were people who honestly thought that the United States should not be in this war. Not strange; not at all strange. It would be strange if there were not tens of thousands of people in America who honestly hold these opinions. And I know of no way to tell whose opinion is right and whose opinion is wrong. The only way I have of knowing whether your opinion is right is by comparing it with mine. That is the only way anybody ever has of doing. I am willing to admit that among the thousands of opinions I hold there is very likely somewhere, some one of them twisted, but if you ask me about each opinion separately I can defend every one of them and be sure they are right. And that is very reasonable because if I could not defend them I would change so I could not be wrong from my own standpoint.

We had all kinds of people in this country, with all kinds of views. Every other country had the same, but perhaps to a smaller degree than we because most of the other countries are more homogeneous in their populations. Men and women were not permitted to make an argument or speech against the war. Of course, I am making no complaint, I had perfect freedom of speech during the war. I do not see why anybody else should complain; I did not have any trouble! You could discuss the war perfectly freely, so long as you were for it! Now, I am not quarreling with that. I think I like the British method better. They let you discuss it. If it got too hot, they would mob you. That is much better because it does not leave a law on the statute books to do mischief after it is over. I know perfectly well that there are limits that must be placed

at times like the ones we have passed through and I know perfectly well, if the law does not place the limits, men and women will place them! So it is small difference which way it is done.

For instance, a great many people did not believe in the draft, in conscription! I did not. Although I will confess that my reason was not quite the same as some of yours. I thought it would be revolting to the Americans, and we would have harder work getting an army that way, and still I also feel, as I felt then, that it was a terrible thing to make a young man go and fight in a foreign land. It is. I believe that it was necessary. Whether I am right or wrong, nobody can tell. But I never saw the time that I did not know perfectly well what it meant and what a serious thing it was. I was a little amused by many people of my age or even younger, who told young men of twenty how sorry they felt that they were so old they could not fight! I did not see any reason why they should not be permitted to fight if they wanted to.

There were people, of course, who did not believe in conscription; who felt it an express violation of their individual rights. And it is not at all strange that they should feel that way. Everybody is not a philosopher and cannot go to the foundation of things, and I do not know as I could if I had been in the draft age. I cannot tell. We passed these laws and enforced them drastically because in the opinion of the majority in power, it was necessary for carrying on the war. I say that it would not have made any difference whether we passed them or not. In times when a country is at war, and when people's feelings are intense over the war, they will not permit men to oppose the war at home; I do not care who the men are, it would have made no difference. Human nature is deeper than law, and if these laws had not been passed, it would have been dealt with outside of the law. That was done in our Civil War. As wise and humane and kindly a man as Lincoln, found Vallandigham, who was running for Governor in my home State of Ohio, making violent speeches against the war; he was taken and set down in the other lines and told he belonged there. Lincoln had the right to. I don't know exactly what right means. People talk about rights. He had the power to do it and he did it. Over and over again newspaper offices were destroyed; men were mobbed during the Civil War. And during the Revolutionary War, a large number of people were forcibly driven from the United States because they sympathized with the revolution.

Why, few of the really respectable people of the United States believed in the revolution! That was carried on by the hoodlums and George Washington! Preachers, lawyers, judges and bankers were mostly all with England. Why not? They were not losing anything. New Brunswick was settled by the loyalists, who were driven out by the mobs during the Revolutionary War. They did not need any law for it. Human nature is law enough when it is awakened. Human nature, is deeper than law. It gets back to the very fount of life and life depends on it. It has always happened and always will happen. So, whether these things were done by law or not, made little difference. And I am interested, now that the war is over, in correcting the manifold barbarities which grew out of the frenzy of the time.

I could not tell you how many men and women have been convicted under the Espionage Act. I do not know. I do know that in the temper of the country; in the temper of juries and courts, they could not have the fair trial that any citizen, whether American or otherwise, ought to have. I know they could not have a calm, deliberate, human judgment upon the facts of their cases. I know that for some trifling offenses and which were freely allowed before the war; for doing what under the Constitution of the United States every citizen had the right to do since America was a nation; I know that these sentences, from five to ten years, even twenty years, were given, right and left to all comers, almost without discrimination.

These men and women for the most part were honest. They were speaking their convictions as much as I was speaking mine. There was no question of bravery in it. They were braver because it does not take bravery to go with the crowd. The newspapers always tell about the fearless judge who hanged a man. A fearless judge who hanged a man! He is fearless so far as the man goes, but he may be a coward so far as the newspapers go. We might as well say "a fearless hunter who killed a rabbit!"

These people, for the most part, were conscientious, and they were brave, and largely, they are in prison today. You all know of the case of Eugene Debs! No braver, truer, kinder man ever lived than Eugene Debs! No such man ought to be in jail in any country, unless under the strongest need, which I never believe existed here! And certainly it cannot be excused when all need is gone. You remember Kate O'Hare? Ten years for each of these. She, a kindly, humane,

intelligent woman. Rose Pastor Stokes, who has not yet reached jail, who for an interview in the Kansas City Star, which did not reflect her opinions, wrote a letter to the Kansas City Star, which they placed in the District Attorney's hands and then convicted her of attempting to interfere with the draft; no chance for any one to see it, unless the Kansas City Star gave it to the world. Ten-year sentence—ten years.

The case of four young Russian Jews, three boys and a girl, is specially outrageous. These enthusiasts were circulating leaflets calling on the Government to withdraw our soldiers from Russia. For this they were sentenced to twenty years each in the penitentiary.*

*Appended hereto is the dissenting opinion of Justice Holmes of the Supreme Court as published in the daily press. This was concurred in by Justice Brandies.

Assume, for the sake of argument, that in times of war, what any of these said should not have been said because it interfered with the right of self-defense of a nation. What proportion is there between the offense and the penalty? What relation does it bear to the administration of justice in the United States? So far as meeting out justice to an individual is concerned, it is simply a mockery. If it is a question of defense of a nation, then the need is gone. The prison doors should now be opened!

Everybody takes advantage of a war, good and bad alike. They take advantage of everything. Everybody is edging up on you in this world. I have always found them that way; trying to put something over. War time is a good time to put over prohibition! A good time to put over any old scheme, under the necessities of war. A good time to raise the price of beef; a good time to put over repression of free speech; a good time to get rid of agitators and disturbers. Of course, if you can put it over under the necessity of war, then you are all right, anyhow. Eternal vigilance is the price of liberty as well as a lot of other things. Men have to be everlastingly watchful or something will get away from them, if they have it.

Under the Espionage Act, advantage has been taken to try and convict many people whose offenses were not against the Espionage Act at all. Why have the I. W. W.'s been unmolested year after year in this country, until the Espionage Act was passed? And then everything that they were said to have done since their organization is brought in as an offense against the government and against the law that is only two years old?

Why? Somebody wanted them. Maybe they ought to get them. I don't know. But if they do, it ought to be done in the clear light of day! It ought to be under statutes fitted to their case and not as a war necessity, like prohibition!

The Espionage Act has done its work and is now a nuisance and a menace and should be promptly repealed.

There is one other class that I want to speak about. They are the conscientious objectors! There are a good many of them in jail. I think they should be released, too. Of course, you have to remember in all this discussion my premise—the war was right, and necessity knows no law. I just read yesterday a very able address on the conscientious objectors, which was full of poor philosophy. The government thought it necessary to have conscription; it had the power to have it and did have it. Of course, they had the power to say who should go to war, provided people would obey it and go; which they did. The statement I read said the law exempted only conscientious objectors who belonged to churches. And that this was because they thought a church member could be better trusted if he was a conscientious objector than others. That was not the purpose of the law. The government had the power to make any provision about men who should go to war that it wanted to. The government of the United States provided that only conscientious objectors in regular standing, in some well known religious organization, could be exempt. Why? Because, of course, there were tens of thousands of people in the draft who would not want to go, and would have said they were conscientious objectors when they simply did not want to go. Had the government provided that no conscientious objector could be sent to war, of course, it would have been a loop-hole for tens of thousands to get out of the terrible burden and danger of going to fight. Of course, I would not blame any of them for doing it; although I am glad they went.

That law, to my mind, was absolutely reasonable. There is no reason for exempting a conscientious objector. I remember having a talk with one of the government officials about it, in reference to pardoning some of them. He said some of them used it because they were afraid to fight. Well, I said, if I was doing it, I would pardon a man who believed in war and who was afraid to fight, sooner than I would a man who was not afraid to fight but had some foolish notions about it. I think the fact that a man is afraid to fight is about the best reason he can give. It is a reason that appeals very strongly

to me. Of course a man cannot help being a coward, although physical courage is very common; it is moral courage that is rare. Most all men fight well, with guns and with their fists. A person who has the courage of his convictions, well, he is an idiot, and cannot be afraid.

Take a coward. What is the physical process? I said I am a mechanist. A man is a machine; he gets an impression of something in front of him; it sends an impression from the eye to the brain and from the brain to certain nerve centers and various organs of the body, secretions are emptied into the blood and nervous system and he acts mechanically. Take a cross section of a man's blood who is afraid and the man who is normal. They do not look alike. Take the cross section of a man's blood when he is in anger and when he is normal. They are not the same. Nobody does anything except from mechanical reasons. Being afraid to fight is simply a reaction; nothing else. Certain secretions from the spleen and other organs of the body are emptied into the blood in fear, which cause a reaction, so that a man cannot help running. It is out of the question to go forward; he has to go back. He is no more responsible for it than a manikin is for its actions; the manikin and the man move when the strings are pulled, and that is all there is to it.

The coward's case is better even than any of the rest; but take the conscientious objector. In the first place, they were conscientious. Assume they were conscientious. All of them were either conscientious or afraid to fight. Assume they are conscientious. They do what they think they ought to do, whether their notions are right or wrong; no man can act from a higher motive than to follow his conscience, such as it is. It is a very poor guide to the truth, of course. About the poorest guide to truth there is, because conscience is made up of thousands of inherited traditions, that come from the Lord knows where; some of them from the apes and some of them from much less intelligent ancestors; but it is the best we have, and none can do better.

The man who conscientiously believed that we should not have been in the war and believed it was wrong to kill—there are people outside of the insane asylum who think that—the man who conscientiously believes that it is always wrong to kill and refuses to kill, is following the highest law that is given to man to obey. And, while the law might have been right, in my opinion it was right, that there was no reason for excepting conscientious objectors, still their action lacks the

material element of crime, which is moral turpitude. They are very likely braver than some one who went to war, because there are some people who went to war because they were afraid to face the contempt of their fellowmen.

Some people believe in conscription and some do not. I did not, at first. But, whether it is a voluntary system or a system of conscription, it is all conscription, anyway. England, out of five million soldiers, raised the first four million by volunteers. But, how did they volunteer? Some of them it is true, volunteered because they believed in it, because the picture of Belgium and France furnished an emotion which they could not control, and perhaps did not wish to control. Some of them volunteered out of a sense of duty; some out of conviction, but a very large number volunteered because life was intolerable if they did not. They were shunned by their neighbors and associates and their friends; they were refused jobs; they were ostracised by society; they were cut off from the world. That is conscription, although the name is volunteer.

When you meet any of these boys face to face and they tell you the truth, they will tell you what a horrible thing it is to take your life in your hands and fight. I have the greatest respect for those who did the fighting. I believe they did a job that had to be done, and that whether the world will be better for it or not, it would have been worse without it. I have feelings of respect and admiration for them and sorrow, too, but I know what the truth is. I know many thousands of them did not want to go. And the government, at least, believed that had they not used conscription, they could not have assembled an army in any such time as was needed to win the victory.

These questions ought to be discussed as facts and not as questions of sentiment. You cannot settle questions that way. Men act emotionally; but when the day of judgment comes, they should look at the facts as they are. It was my good fortune to go to France before this war was finished. On the lower decks were several thousand troops; not officers or shirkers, like the rest of us civilians on the upper deck, but common soldiers. I could hear no laughter there; no songs. They were calm and silent and wondering. Of course, when they got into camp, they did the best they could with life. I have seen them shaking dice while the cannons were booming around them. They got used to it. But the boys going to war, went to war with the most serious thoughts of what they

were leaving behind, and what they went to face. I remember one day one of these common soldiers suddenly rushed back to the end of the ship and jumped over into the ocean and of course was lost. This showed the dread he had. And there was a dread buttoned under the jackets of most of them. It was a hard job. Nobody has the right to speak of it lightly or to misinterpret the depth of the sacrifice or the reasons that moved the boys.

There is no need, after the war is over, for keeping a conscientious objector who thought he was doing right, or a man who was afraid to fight.

There are a lot of by-products of war; some of them good; some of them bad. Good and evil in this world come in mixed doses, and sometimes you cannot distinguish between the good and the evil. The thing that you thought was evil may work for good and the thing you thought was good may work for evil. Everything is mixed and involved. Every one is anxious to take advantage of what there is. A strong element of society, under the cry of a sort of super-patriotism is today doing all that can be done to crush out the liberties of the American people! They would leave it an offense to speak and to write and to print; under the guise of what they call patriotism, they would say institutions must not change, and yet this is a world of change. They would seize those whom they believe to be against them, send them to jail, because they are violating the powers that be. They would indiscriminately deport all aliens who express opinions they do not wish to hear. They would put to shame the founders who dedicated America to freedom and made of it the asylum for the poor and oppressed of every land.

Again I say, eternal vigilance is the price of liberty! Freedom cannot be maintained by constitutions. Bancroft, in his Constitutional History of the United States, wrote down long ago, that when the spirit of liberty had fled from the hearts of the people, real freedom was sacrificed under the forms of law!

The only way to keep liberty alive is to keep it alive in the hearts of the people; otherwise it must perish from the earth. The world has gone through a terrible ordeal. It is only to be expected that chaos and disorder, all kinds of conflicting theories and views would spring from it. It is a day of flux. Every man, every party, every seat and every ism, is trying to get the best out of a chaotic world.

In the midst of it all, those who can think, and those who dare think, above everything else that man can strive for, ought to keep alive the spirit of liberty and the enthusiasm for liberty! For it is only in the open discussion and the free expression of views, that there is a chance to find the truth. No man can speak his convictions, no man can write them, and no man can print them, with the fear of the jail in his heart! He must speak them freely and unafraid. Even if he speaks extravagantly and wildly and foolishly, he must be left to do it freely, or the world will lose his thought; and it will lose the thought of the greatest and bravest who have done the most for the civilization of the world!

I never was a superpatriot—whatever it means. For me, this country is the best. I was born here. I have lived here all my life. I know its peoples; was raised under its institutions; I know its opportunities are greater; its freedom has been better; for me, it is the best country in the world! But that does not make me close my eyes to the defects in this country! Neither does it make me close my eyes to the virtues of other countries! There is no nation so wise that it cannot learn from others. There is no individual so well educated that he cannot learn from the humblest if he will keep his eyes open and his mind free. But you cannot speak in the face of the prison, and you cannot write with chains around your wrists! And we had better give up every institution or system that we strive for, rather than give up liberty!

All that this country has had in the past; all that it has stood for; all that makes life worth while, came from freedom. And it will be a sad day, indeed, when the minds of the people shall be so deadened, and the blood of our people shall flow so sluggishly that they will forget the old traditions and safeguards that have made us great. It will be a sad day, when for gold or power or institutions or social systems, we will give up that freedom, without which human life is of no avail!

**Dissenting Opinion of Judge Holmes of U. S. Supreme Court in case of
Abrams et al vs. U. S.**

"I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is greater in time of war than in time of peace, because war opens dangers that do not exist at other times.

"But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress cannot forbid all efforts to change the mind of the country.

"Now, nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man would present any immediate danger that its opinions would hinder the success of the Government arms or have any appreciable tendency to do so.

"I do not see how any one can find the intent required by the statute in any of the defendants' words. * * * The only object of the paper is to help Russia and stop American intervention there against the popular Government—not to impede the United States in the war that it was carrying on.

"IN THIS CASE, SENTENCES OF TWENTY YEARS' IMPRISONMENT HAVE BEEN IMPOSED FOR THE PUBLISHING OF TWO LEAFLETS THAT I BELIEVE THE DEFENDANTS HAD AS MUCH RIGHT TO PUBLISH AS THE GOVERNMENT HAS TO PUBLISH THE CONSTITUTION OF THE UNITED STATES, NOW VAINLY INVOKED BY THEM.

"Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litimus paper, I will add, even if what I think the necessary intent were shown, the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges, but for the creed that they avow—a creed that I believe to be the creed of ignorance and immaturity, which, when honestly held, as I know no reason to doubt that it was held here, but which, although made the subject of examination at the trial, no one has a right even to consider in dealing with the charges before the court.

"Persecution for the expression of opinion seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. * * *

"Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experi-

ment is part of our system, I think that 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 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 arguments of the Government that the first amendment to the Constitution left the common law as to seditious libel in force. History seems to me against the notion.


"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'."

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