

# The Heresy of Prudence

by Murray N. Rothbard

I am greatly disappointed in Mr. Frank Meyer's column of November 10.<sup>1</sup> Despite the challenging title of his column ("Principles and Heresies"), his erudition, and his generally brilliant perception, Mr. Meyer is ultimately a Middle-of-the-Roader. For some time, he has endeavored to square the circle and simultaneously integrate liberty and statism, reason and tradition, radicalism and conservatism. It has been a noble course, but I'm afraid it must be as futile as any attempt to reconcile mutually contradictory propositions.

In his discussion of liberty and the clear-and-present danger notion, Mr. Meyer runs smack up against one of these fundamental contradictions: liberty vs. tyranny. Liberty calls for absolute freedom of speech and expression; tyranny calls for suppression of opinions disagreeable to those who wield the guns. Anxious to blend a mixture of the two (a mixture which will preserve libertarian principle *and yet* justify the incarceration of a handful of Communist pamphleteers), Mr. Meyer runs aground on a dilemma. A man of principle, he becomes forced, in the name of "prudence," to mix principle and heresy.

My disappointment stems from Mr. Meyer's previous eloquent attacks on the current cult of "moderation." For "prudence" is apparently but an antiquated version of this modern vice. Consider Mr. Meyer's opinion that principled rights conflict, and therefore that, in an imperfect world, prudence must somehow, even "hypocritically," decide between them. But on what grounds? I am afraid that this is an *abdication* of right reason, and not its application. Any such prudential decision must be on vaguely emotional grounds, rather than rational ones.

Anyone who believes in the existence of a natural law discoverable through right reason (as Mr. Meyer and myself both do), *must* also believe that this natural law is self-consistent. Outside of the irrational world of the Hegelian dialectic, there can be no conflicting truths, nor contradictory but true propositions. And since the rights of man are deducible from natural law, these rights *cannot* conflict with one another. If one discovers a contradiction, one has also discovered an

error in one's process of reasoning. We must not surrender reason at its most critical point by meekly accepting contradiction. We must go further to seek out the error and discard it.

As Mr. Meyer has himself pointed out, the Aristotelian "golden mean" bears no relation to the attempt by hawkers for "moderation" or "prudence" to weaken high principle. Aristotle's virtues properly apply to cases where *more* or *less* of a certain act changes its qualitative merits. Thus, "too little" food and "too much" food are both bad for the individual. But politics is an entirely different matter. For here we are dealing with acts that remain qualitatively identical regardless of number: e.g., the murder of 10 people is the same type of act as the murder of 100. In neither case do we abandon principle. In one, we uphold the rational principle of "optimum food"; in the other, the rational principle of "abstaining from murder."

Turning to the problem of free speech, the "clear and present danger" criterion is evidently a vague and woolly one, and, indeed, Mr. Meyer hardly bothers to defend its merits in detail. It is not based on objective acts, but on subjective interpretation that can legitimately differ from one person to the next. It is therefore no proper criterion for a court of law. Further, I submit that by no stretch of the imagination could even this criterion apply to the Dennis case.<sup>2</sup> No one has tried to claim a *present* danger that Mr. Dennis and his colleagues will seize power in America. In fact, he was convicted of a clear and present danger of *advocating* such seizure, not of committing it.

Mr. Meyer, and his fellow middle-of-the-roaders, are inconsistent even on their own terms. For they wish to punish a "clear and present danger" of crime, while permitting currently *active criminals* to go scot-free! The government is, every day, committing acts against our liberty – I think we would all agree on that. And yet, instead of indicting the currently operating criminals, they would turn the full guns of the State on a handful of people who would merely *like* to be despots someday in the future. Further, if we (as we must if we are anti-Socialist) bracket socialism as well as communism as criminal, then Mr. Meyer must propose to send to jail every socialist pamphleteer also – and on some arguable definitions of "socialism," we might find ourselves calling for the imprisonment of a good 95% of the American population!

Furthermore, Mr. Meyer does all true libertarians a disservice by inferring that only Leftists advocate absolute freedom of speech. Genuine libertarians believe in completely free speech for all people (segregationists as well as Communists) and insist that it be conjoined with economic and other aspects of individual freedom. I would even go further than most simon-purists and reject the concept of "incitement to riot" as a justification for suppression. Anyone who believes in free will (as Mr. Meyer clearly does) must believe that each man is fully responsible for his own actions, and therefore cannot pin any blame for his crime on some other fellow's "incitement."

Would I ever punish speech under any circumstances? Only when this speech is a *direct threat* of criminal action. In short, if I walk over to someone menacingly and say that I will kill him unless he hands me his wallet, I am committing a direct threat of crime, and this is properly punishable by a jury. I believe that such actions have always been punished at law, without benefit of Smith Acts, or fancy "criteria."

I would like to take this opportunity, once and for all, to set the record straight on the famous old cliché: "after all, no man has a right falsely to shout fire in a crowded theatre." This formula of that old cynic, Justice Holmes, has been used time and again as an excuse for all manner of tyranny. Just exactly *why* does no man have this right? Is this really a case where libertarian principle must give way to a diluting "prudence"? There are two possibilities: either the shouter is the owner of the theatre or he is not. If he is the owner, then he is clearly violating the evident contract which he made with the patrons: to put on a play which the patrons can watch – a contract which they executed in cash. By disturbing this performance, he is violating the contract. If the shouter is *not* the owner, then he is clearly trespassing on the owner's property. He was permitted on that property on the ground that he would peacefully watch the play, a contract which he is obviously violating. The false shouter of "fire," therefore, is punishable *not* because free speech should be restricted, but because he is violating the property right of others. And property right, in libertarian principle, is one of the basic natural rights of man.

Rights correctly discovered by reason, therefore, cannot conflict. Liberty for all *can* be thought through on the basis of rational principle. There is no need for the fatal weakening of principle with the base alloy of "prudential" heresy.

### Notes

1. Frank Meyers, "Principles and Heresies," *National Review*, (November 10, 1956). *Dennis v. United States* (1951).
2. For a summary, see <http://www.oyez.org/oyez/resource/case/100/>.