

FEB-JI 25, 1927.

*William McAdoo*

42-5007-20-B

**City Magistrates' Court,**  
CITY OF NEW YORK,  
300 MULBERRY STREET.

THE PEOPLE, ETC.  
vs.  
BENJAMIN GITLOW.

Charge:  
Criminal Anarchy

THE PEOPLE, ETC.  
vs.  
JAMES LARKIN.

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McADOO, C.C.M.—These defendants are charged with violating sections 160, 161, 162, 163, and 164 of the Penal Law of this State, which deals with the crime denominated therein criminal anarchy. This it proceeds to describe in distinct and unequivocal terms. We are therefore not called upon to discuss the meaning of the word "anarchy" in its common use, or dictionary definition. The statute makes certain actions felonious, and the name which it gives to such acts is not of importance in determining this case. This act, in the wisdom of the law making power, was deemed necessary by conditions which sprung up unlooked for in this country. This big-hearted, strong, young country, up to the time of this enactment tolerant and charitable to the discontent begotten by old-world millennial feuds and injustices amongst those who came to our shores, admitted the greatest latitude to angry vaporings and vituperative abuse of all governmental agencies.

The American mind up to that time could not conceive that even a very small portion of aliens hopelessly incorrigible to American civic influences, amongst immigrants to this country like myself—immigrant and son of immigrant—would fail to repay with loyalty and love, devotion to the institutions of a democratic state which admitted us to every privilege and opportunity.

This case turns upon whether or not the published manifesto of the Communist Party, taken in connection with the trend of thought shown by the articles in both numbers of the paper called *The Revolutionary Age*, and more particularly the illuminative statements of one of its authors, the defendant Larkin, is in violation of the statute under consideration.

The connection of these defendants with the writing, publishing, circulating and selling of the manifesto is convincing beyond doubt, and need not be further discussed. This is especially so in the case of Gitlow, who

arranged and paid for the printing and attended to the circulation and sale of the paper containing the document in question.

We are therefore called upon to examine the manifesto itself. This paper is to be taken in its entirety. According to the statement of the defendant Larkin, it had several authors but one mind, and we are dealing here, as Mr. Justice Hughes of the Supreme Court said in a decision some years ago, with a state of mind. What did these defendants intend by the language used in the manifesto?

The manifesto starts out with a bitter arraignment and condemnation of what it calls the moderate Socialist Party (for its strategic policy) and the American Federation of Labor and organized skilled artisans generally. It accuses the Socialist Party of having betrayed socialism, especially in aiding and abetting the military operations of different foreign countries during the recent war. The existing political state and all the social and economic conditions which exist under it are condemned without measure. It is declared to be beyond redemption and must be utterly and thoroughly destroyed, root and branch. To this end, all reformatory measures intended to beget social and economic conditions are denounced and the Communist Party is pledged to refrain from aiding parliamentary action. Voting by ballot and participating in government is to thwart the coming of the revolution. Everything is to be done to make social and economic conditions worse and not better, so as to produce universal unrest and discontent, later on to be goaded into desperation. The Socialist Party and the labor unions, in so far as they take part in parliamentary or governmental action of any kind, are utterly condemned and held up as public enemies. If one man is desperately discontented he must be a disease carrier to others, until the whole body is infected. The terms most frequently in use in the paper are "the political mass state," meaning a class state; "control of the industrial process," meaning the power to stop production; "when the workers stop the state dies;" "mass action, industrial in origin, becomes political in action," that is, mass action in universal strike throttles and starves the political state. This, says the manifesto, is revolutionary socialism in action, as defined by Karl Marx.

Having the law in view, the document is a little guarded as to what direct action means but must be read in connection with the statements of Larkin. The organized government mentioned in the statute is yet too strong for those who wish to destroy it to speak plainly. The manifesto not only does not condemn the anarchists, as the term is generally used, but is most friendly and conciliatory. Fearing that it might give offense to those who openly call themselves anarchists it says, "The attitude toward the state divides the Anarchist (and Anarcho-Syndicalist), the moderate Socialist and revolutionary Socialist. Eager to abolish the state (which is the ultimate purpose of revolutionary Socialism), the Anarchist (and Anarcho-Syndicalist) fails to realize that the state is necessary in the transi-

tion period from Capitalism to Socialism." In other words, after the revolutionary Socialists have killed the state and suppressed or exterminated the bourgeoisie, they ask time to recover their breath and fill up the interregnum with a shadow of government. He would certainly be an unreasonable anarchist who would not agree with this.

The common enemy, against which all organized revolutionary effort is to be directed, is the bourgeoisie or middle class of people—from the owner of the department store to the keeper of the small shop, from the great steel works to the little smithy on the village street, from the president of a college to the bookkeeper in the office, and always to include what they denominate as the main props of the "capitalistic" state, the pulpit, the army and the police. These forces are to be utterly beaten down and destroyed. The state is to be owned and controlled by the proletariat. This proletariat is to consist in bulk of hitherto unorganized manual laborers, but does not include farmers, who in the nature of things as owners of property would be denominated as bourgeoisie and looked upon as enemies.

Having overthrown organized government, the state is therefore to be in the possession of a class. It is noticeable that throughout this paper it is always the proletariat that is to rule and not the majority of the whole people; it is class rights that must be dominant. Under cries of "liberty," the voice of the majority is to be stifled by force. Counsel for defendants says the Soviet Government in Russia is opposed to anarchists. If you dissent in any degree from those then in control, as now happens in that country, you are denominated an anarchist and at once shot. All dissidents are anarchists. For instance, "'Do you agree with the Soviet?' 'I do not.' 'To the slaughter house with him, he is an anarchist'." The bitter intolerance which this paper exhibits towards any possible difference of opinion might well be called to the attention of dilettante parlor Socialists and pseudo-Anarchists who are looking for nervous excitement and notoriety, and to easy-going gentlemen in and out of juries or civic forums who are condemning the zeal of the officers of the law in the pursuit of this and kindred organizations, and here let us remind them that in this projected revolution, as in those hitherto enacted, the Jacobins are to swallow or to destroy the Girondists.

Certainly those of us who are bound by the decisions of the Supreme Court of the United States, as evidenced in the case of Jacob Abrams, et al., vs. United States, convicted of distributing in this city inflammatory placards and circulars, will not have any doubt as to what is the law of the land in dealing with such people.

According to the manifesto, the revolutionary Socialists, calling themselves the Communist Party, confronted with this common enemy which is to be destroyed, organized government as it exists today, the "capitalistic" state as they call it, and the hated bourgeoisie, how are they going to effect the revolution? Does the manifesto tell us? It does, in very plain terms,

with, it must be admitted, a tinge of subtle evasiveness, intended for a defense in court.

How is this revolution to be accomplished? The manifesto gives the battle cry and slogan in practically two words, *coercion and suppression*. The mass action strike is to paralyze all the industries of the country, depriving millions of people of the necessities of life, paralyzing the armed forces of the United States, making the soldier and the policeman impotent and silencing of such voices in the pulpit as are not in accord. This is the first stage, coercion by absolutely and unqualifiedly illegal means, unlawful practices and a criminal conspiracy deliberately invented to carry out the purposes intended. These strikes are called mass action and have nothing whatever to do with the efforts for increase of wages or lessening of hours or the betterment of the workers. It is a militant uprising of the red revolutionists. At this point the state is given the option that it must either suicide or be killed. Wherein does this differ from professed anarchy?

If the great middle classes of the country, which include organized labor as at present, do not surrender at once all their property and possessions and commit their lives to the tender mercies of the raging proletariat, what is to be done with them? The manifesto makes it perfectly plain. If they resist they are to be suppressed. What does suppression mean? It means that if they continue to resist they must be exterminated; while the money from the banks and other repositories flows into the coffers of the leaders of the revolutionary communists, the blood of the doomed class will flow in the gutters. If this is not violence, if this is not anarchy, if this is not directly, openly and brazenly a defiance of the Penal Law of this State, what is? Well-meaning gentlemen tell us that we should not interfere with the incendiary when he is preparing the torch, we should only apprehend him when he is setting fire to the building. This statute is a preventative measure. It is intended to head off these mad and cruel men at the beginning of their careers. It is intended to put out a fire with a bucket of water which might later on not yield to the contents of the reservoir.

A few years back if any one had said that in this year of grace 1919 there would be in the City of New York, known to the authorities, between seventy and eighty official headquarters of a criminal organization like this, well equipped with money and the rooms bulging with literature, more dangerous to our civilization than the microbes of disease to the human body, he would have been laughed at. Nearly eighty recruiting barracks for this red army in the City of New York, with thousands of members and apparently unlimited money, from at home or abroad. Is this money part of the vast treasure seized in Russia? If this is not, in the language of the statute, an attempt to overthrow and destroy the organized state, what is? To fail to enforce this law therefore, under the circumstances, would be on the part of public officers, judicial and otherwise, a species of treason against the state itself—at least the betrayal of a sacred public trust.

No one claims that the modern state is free from evils nor denies that progressive reformation is absolutely essential to the maintenance of justice and democracy, but all these are obtainable under the constitutional forms of our government.

The basis of our government is a written constitution, in which it differs from nearly every other country in the world. Great Britain, to whose socialistic party the defendant Larkin refers, is living under a government where Parliament makes the constitution every day that it is in session. Parliamentary dominancy in its elasticity is instantly responsive to public opinion expressed at the polls.

Our government can only be constitutionally and legally changed by the terms of the constitution itself. The constitution absolutely forbids in every letter of it such things as coercion and suppression. Amendments to it must be made with great deliberation and much time. It provides for its own safety against hasty action. The people and the states must both act before any change can be made. A red, revolutionary, proletarian class government could not be established here unless the constitution is destroyed. Primarily, all changes both as to the laws and the persons who administer under them are effected by ballot voting at elections. The war has proven it to be a government of stability and centralization when necessary to meet emergencies. It is well, too, to remember in this connection that we are still at war, no legal peace having as yet been arrived at, and we are to construe this law under these conditions—the aftermath of the bloodiest and greatest war the world has ever seen. The manifesto itself declares that this is the golden opportunity of the red revolutionists. Is this not a call to action for those who are sworn to uphold the laws of their country? Are we, who are the ministers of the law, to ignore this challenge? Are we to lose ourselves in legal subtleties and nice disquisitions and historical references, and bury our heads in clouds of rhetoric about liberty of speech? Liberty of speech! It is the very breath and soul of every American; it is the essence of our republicanism and we guard it with such jealousy that we have hitherto tolerated its abuse into a license which now threatens our institutions. Are there no limits to liberty of speech? Can these men openly state that they intend to destroy the state, murder whole classes of citizens, rob them of their property, and then escape under the plea of liberty of speech? We are told the human mind must be free. Is the human mind entitled in civilized society to germinate poisonous and criminal thoughts and then scatter them abroad to beget anarchy, robbery and chaos? Are we to say to this formidably organized army, with its recruiting barracks in our midst, forward with your battle cry of coercion, suppression, murder and robbery, called euphemistically expropriation. If the law failed to meet such a situation as this, loyal, honest and law-abiding citizens might well despair.

These two defendants, Gitlow and Larkin, are beyond doubt two of

the prominent leaders in this revolutionary scheme. They are men of intelligence, with considerable experience in public affairs, and all this either from honest fanaticism, gross egotism, venomous class hatred, criminal ambition, conceited ignorance on great subjects, or muddled thought they have perverted into the most dangerous channels. As they stand today, as against the organized government specified in this statute, they are positively dangerous men.

I notice in the statement of Larkin, made to the District Attorney, a latent spirit of the conservative spirituality of the people whence he sprung, when he dissented as against the "God-killers." Possibly he had in mind the spirit of the Paris Commune, when it controlled that city in the early seventies. One of the chiefs of the Communist Party, after which this is modeled, giving a pass to a clergyman to visit some of the condemned bourgeoisie in prison, wrote, "Admit the bearer, who says he is the servant of a person called God."

I am of the opinion beyond any doubt, reasonable or otherwise, that these defendants in their writing, concocting, drawing, collaborating and confederating in the production, printing and circulation of the manifesto, are clearly guilty as charged in the complaint. I may also add that in my opinion every member of this criminal organization, who knowingly subscribes to the manifesto and the rules under which he becomes a member of the party, is equally guilty of violating the statute, and that the act of one in this widespread conspiracy, in this respect is the act of all, however physically separated, and that no overt act beyond that is necessary to make the case complete against them.

"I declare myself for the coercion, suppression and extermination of a whole class of my fellow-citizens and the expropriation of all of their property"; I join an organization and comply with its rules and sign its manifestoes and probably pay in my dues, and accept its card of membership. What greater overt act, short of actual, physical violence, can I commit than that? I need not in this connection refer to the cases in our courts of Johann Most and the one in which an opinion was delivered but a few days ago by the Supreme Court of the United States and referred to above. The principles of the law as to collective action in such crimes as this is well established and laid down in our books from the day the first white man put his foot on this continent to the present moment, and it is not necessary to quote them here.

Defendants are held for the action of the Grand Jury.

Dated, November 14, 1919.