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The Price of Dissent: Freedom of Speech and Arkansas Criminal Anarchy Arrests

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THE PRICE OF DISSENT:
FREEDOM OF SPEECH AND ARKANSAS CRIMINAL ANARCHY ARRESTS

THE PRICE OF DISSENT:
FREEDOM OF SPEECH AND ARKANSAS CRIMINAL ANARCHY ARRESTS

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in Communication

By

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Henderson State University
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ABSTRACT

Following World War I and the Bolshevik Revolutions, America's Red Scare began, inciting fanatical patriotism and an alleged threat of anarchy that gripped a nation with fear. Paranoia about communists, socialists, and anarchists divided the country and resulted in many states, including Arkansas, passing criminal anarchy laws. Since a majority of those accused of anti-American activities were involved in labor disputes, Arkansas makes for an interesting case study; not only did it have a relative lack of labor disputes, it still passed anti-Bolshevik laws.

The purpose of this research is to develop an understanding of the ways in which dissenters have been effectively silenced by the controlling power and the consequences of that hegemonic silence. To illustrate this, I will use a First Amendment framework to examine four incidents: the 1934 arrest of George Cruz in Mississippi County; the 1935 arrest of Ward Rodgers in Poinsett County; the 1935 arrest of Horace Bryan in Sebastian County; and the 1940 arrest of Nathan Oser in Polk County. In analyzing these cases, I argue that limitations on freedom of speech serve the agenda of the establishment. Furthermore, these limitations serve to economically punish dissenters and rhetorical construct dissenters as criminals.

This study proposes a new perspective on the negative effect that First Amendment limitations can have on America society. These cases are indicative of the politically charged environment that existed in the South during the Red Scare and illustrate the ways that power is used to silence poor and working class Americans.

This thesis is approved for recommendation
to the Graduate Council.

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CHAPTER 1

INTRODUCTION TO THE STUDY

“Congress shall make no law ... abridging the freedom of speech or of the press; or the right of the people peaceable to assemble, and to petition the government for a redress of grievances.”

— *The First Amendment of the United States Constitution*¹

In any society, the general opinion of agitators is greatly impacted by the local and federal government's response to the dissenting message. In the years that followed the American Revolution, the meaning of the revolutionary transformed from hero and freedom-seeker to traitor and malefactor. Revolutionaries, once renowned for their valorous quest of liberty, were accused by the local and federal governments of threatening peace and freedom by speaking out against the government.

Regardless of the nature of one's cause, the First Amendment guarantees citizens of the United States speech that is free.² However, there have been many instances of the government overstepping its bounds in attempts to silence the public that dared to disagree. From criminal anarchy and syndicalism charges to the scornful treatment of those involved in social movements, American criminal law has been used to eliminate anyone that presents a threat. There exists an ongoing struggle between liberty and power. Thus, understanding how the agitator has been both legally and culturally controlled by the federal and local United States government is critical to the advancement of contemporary social aspirations.

If, indeed, freedom of speech should be unabridged as the Constitution so promises, then specific case studies evidencing violations of these inherent rights become useful tools for

¹ U. S. Constitution, amend. 1.

² U. S. Constitution, amend. 1.

understanding the past and the nature of the government. In the existing literature, there has been little effort to examine the specific nature of criminal anarchy and syndicalism statutes. In Arkansas particularly, the literature on these statutes is practically nonexistent. This study is designed to bring these forgotten violations into the open by examining four instances of criminal anarchy charges in Arkansas. In light of this goal, the following questions are presented to define and guide the research: *What is the history and import of criminal anarchy in Arkansas? How do rhetorical agitation and control strategies manifest themselves in the messages presented in these case studies? What are the consequences of the establishment's (and by establishment I am referring to local and state governments) silencing of protected speech for citizens of the United States? How do these laws shape our understanding of dissidents?*

Review of Literature

To offer a more comprehensive context for criminal anarchy laws, this chapter will also discuss criminal syndicalism since the two laws were closely related. The existing scholarship on criminal anarchy and syndicalism is scarce, to say the least, and lacking in analytical content. While some offer brief commentary, the majority of what has been written does not discuss the nature, interpretations, or specific examples of criminal anarchy and syndicalism. Rather, the current literature is concerned mainly with offering legal definitions and brief historical contexts of anarchy and syndicalism laws. While this contribution is extremely important in its own right, it does leave a gap in the literature, one concerning an in-depth analysis of these statutes.

Defining what exactly criminal anarchy and syndicalism are is a repeated aspect in the existing literature. Statutes are divided into prohibitory (or penal) legislation, making conduct

illegal; and discriminatory (or non-penal) statutes, withholding privileges from person who engage in certain activities.³ Criminal anarchy and syndicalism are defined below:

Criminal anarchy is defined as seeking to overthrow organized government by force, violence, or other unlawful means. Criminal syndicalism is generally defined as advocating or aiding and abetting the commission of sabotage or unlawful acts of force, violence, or terrorism for the sake of accomplishing a change in industrial ownership or control. More specifically, criminal syndicalism is understood to encompass such actions when those involved tend to effect political upheaval.⁴

For the majority of states, this definition includes advocating this doctrine by speech or writing or joining any society or meeting that that advocates this overthrow.⁵ Also, it is important to note that criminal anarchy laws were directed at communist parties, while criminal syndicalism statutes targeted labor unions.⁶ In addition to the standard definition of syndicalism, a number of states, including Arkansas, adopted “red flag” laws, which made it unlawful to display a red flag.⁷

In *The American Political Science Review*, F. G. Franklin repeats the standard definitions but also discusses differences among the different state statutes. State syndicalism laws appeared in two general forms: anti-red flag laws and laws defining the crime.⁸ Red flag laws prohibit displaying flags that represented another political system. Some states simply prohibited the

³ “Conduct Proscribed as Promoting Violent Overthrow of the Government,” *Harvard Law Review* 61 (1948): 1215.

⁴ *Encyclopedia of American Civil Liberties*, ed. Paul Finkelman (New York: Routledge, 2006), s.v. “Anti-Anarchy and Anti-Syndicalism Statutes.”

⁵ Zechariah Chafee, *Freedom of Speech*, (New York: Harcourt, Brace and Howe, 1920), 180-194.

⁶ Keith Werhan, *Freedom of Speech: A Reference Guide to the United States Constitution*, (Westport, Connecticut: Praeger Publishers, 2004), 51.

⁷ Werhan, *Freedom of Speech*, 51-52.

⁸ F. G. Franklin, “Anti-Syndicalist Legislation,” *The American Political Science Review* 14 (1920): 291.

display of the flag; others forbade the display of any emblem symbolizing opposition to organized government.⁹ In contrast, laws defining the crime simply expressed what anarchy or syndicalism was and that engaging in any of these behaviors was illegal.

Another aspect repeated throughout the existing literature is an emphasis on certain key historical aspects in the life of criminal anarchy and syndicalism. Don Mitchell discusses the function of geography in silencing in his analysis of the 1964 William Epton conviction under New York anarchy's law.¹⁰ Basically, he is arguing that because different regions have different laws and different norms where a person lives has an effect on his or her ability to participate in dissent. His main argument discusses geography of protests, but since he is using an anarchy case, he makes brief mentions of the famous historical cases resulting from criminal anarchy laws.¹¹

The majority of these federal and state criminal codes that expressly prohibited anarchy and syndicalism were enacted in the early twentieth century. The first statute was the New York Anarchy Act of 1902, which was enacted after the assassination of President McKinley.¹² However, this tradition can be traced even farther back to the federal sedition acts that prohibited criticism of the government. States began to counter anti-capitalist thought with criminal anarchy and syndicalism statutes. It was not just states that wanted this type of legislation; in the 1920s and 1930s there was a push before Congress to enact this type of bill. Criminal anarchy

⁹ Franklin, "Anti-Syndicalist Legislation, 292.

¹⁰ Don Mitchell, "The Liberalization of Free Speech: Or, How Protest in Public Space is Silenced," *Stanford Agora* 4 (2003): 4-45.

¹¹ Mitchell, "The Liberalization of Free Speech," 4-45.

¹² Werhan, *Freedom of Speech*, 51.

legislation was successful on the federal level, while criminal syndicalism legislation was not. The Smith Act, which still exists, is an example of this success.¹³

The bulk of the literature addresses the handful of Supreme Court cases concerning criminal anarchy. *Gitlow vs. New York*, 1925, and *Whitney vs. California*, 1927, are discussed in regard to their importance in the development of the First Amendment.¹⁴ For example, the New York statute, the prototype for other state's statutes, was held constitutional in the Gitlow case. Another aspect of the existing anarchy literature is in regard to the tests the Gitlow and Whitney cases established of the first amendment's protection of free speech. While this is important, it fails to contribute to the conversation about criminal anarchy.¹⁵

While the greater part of the current scholarship is lacking in interpretation there are a few brief discussions of the nature of criminal anarchy and syndicalism statutes. These discussions are short but offer ideas that this research intends to elaborate on and discuss in more detail.

In an essay titled *How the United States Curtails Freedom of Thought*, Ernest Crosby argues that the United States sets an example of anarchy in its actions, that political crimes grow out of individual lunacy, and — relevant to this research — that “popular” and “proper” use of the word anarchy do not coincide.¹⁶ For example, the United States set an example of anarchy during the American Revolution. Crosby offers a similar definition of how “anarchist” is defined in most state statutes: a person who believes in the violent overthrow of the government. This

¹³ Finkman, *Encyclopedia of American Civil Liberties*, 341.

¹⁴ Werhan, *Freedom of Speech*, 51-54.

¹⁵ Paul Harris, “Black Power Advocacy: Criminal Anarchy or Free Speech,” *California Law Review* 56 (1968): 715-720.

¹⁶ Ernest Crosby, “How the United States Curtails Freedom of Thought,” *The North American Review* 18 (1904): 605-608.

definition contradicts the actual definition of “anarchist.”¹⁷ The full definition of the word, according to *Century Dictionary*:

Anarchist, (1) properly, one who advocates anarchy or the absence of government as a political ideal; a believer in an anarchic theory of society, especially an adherent of the social theory of Proudhon.¹⁸

After comparing the “proper” and “popular” definition of the word “anarchist,” it can be determined that it is a very vague word and should not be used in a statute without any specific definition.¹⁹ While Crosby offers an interesting and thoughtful comment about how laws shape popular meanings, he does not offer any details or analysis of how or why this happens.

The *Columbia Law Review* offers a brief discussion of the nature of these statutes. “The danger lies in the potentiality of suppression of socially beneficial analysis and discussion.”²⁰ It also notes that these convictions were often times a response to union activity across the country.²¹ These observations are brief but important and will be elaborated on during this research.

The scholarly literature on the legal action against labor and union agitators in Arkansas is quite sparse. William H. Cobb, in his work, *Radical Education in the Rural South: Commonwealth College*, mentions the school being charged under Arkansas’s criminal anarchy laws, but his discussion of these charges is limited primarily to the case of the school and not of

¹⁷ Crosby, “Curtails Freedom,” 606.

¹⁸ Crosby, “Curtails Freedom,” 606.

¹⁹ Crosby, “Curtails Freedom,” 606-608.

²⁰ “Federal Sedition Bills: Speech Restriction in Theory and Practice,” *Columbia Law Review* 35 (1935): 922.

²¹ “Federal Sedition Bills,” *Columbia Law Review*, 922.

the nature of the statutes.²² *The American Political Science Review* mentions Arkansas in a list of states that passed syndicalist legislation in the form of flag laws in 1919.²³ The *Columbia Law Review* devotes a paragraph to discussing Arkansas's criminal anarchy convictions as a response to union activity among sharecroppers.²⁴ Neither of these makes any mention of specific people being arrested on charges of criminal anarchy or syndicalism. No one appears to have examined the controversy in Arkansas over these statutes.

This thesis is an exploration of historical rhetoric within four distinct cases of criminal anarchy charges in Arkansas. Specifically, the purpose of this research is to develop a better understanding of the ways in which dissenters have been effectively silenced by the controlling power — and the consequences of that silence. This analysis will use these case studies as artifacts for understanding their contribution to Arkansas's history and the larger implication of limiting protected speech and agitation and control.

The project will begin by examining the history and import of criminal anarchy and syndicalism. First, I give a general history of criminal anarchy and syndicalism statutes in the United States by looking at the key criminal anarchy and syndicalism cases that reached the Supreme Court. These cases include: *Schenck v. United States*, 249 U.S. 47; *Abrams Et al. v. United States*; *Gitlow v. New York*, 268 U.S. 652; *Stromberg v. California*, 274 U.S. 357; *De Jonge v. Oregon*; and *Brandenburg v. Ohio*, 395 U.S. 444. This establishes the federal view on the statutes, which will allow for a better understanding of the Arkansas laws. Through primary sources, I reconstruct four separate cases of people being charged under these statutes. The four cases that will be looked at are: George Cruz, arrested in Mississippi County in 1934; Ward

²² William H. Cobb, *Radical Education in the Rural South: Commonwealth College, 1922-1940* (Detroit: Wayne State University Press, 2000): 187-214.

²³ Franklin, "Anti-Syndicalist Legislation," 292.

²⁴ "Federal Sedition Bills," *Columbia Law Review*, 922-924.

Rodgers, arrested in Poinsett County in 1935; Horace Bryan, arrested in Sebastian County in 1935; and Nathan Oser and Commonwealth College, arrested and charged in Polk County in 1940. Primary sources will include, but are not limited to, the Federal Bureau of Investigation (FBI) files, American Civil Liberties Union (ACLU) files, newspaper articles from local newspapers covering the arrests, and case records from the county clerks. These cases demonstrate the actions and methods used by the government to limit the First Amendment. They also serve to re-create an ignored aspect of our history so that students of Arkansas, regardless of their field of study, can gain a greater insight into another facet of the past.

With the historical and cultural context of the artifacts established, this research focuses on a rhetorical analysis of agitation and control strategies. Each case will be investigated using the framework established by Bowers, Ochs, and Jensen in their work *The Rhetoric of Agitation and Control*.²⁵ The authors offer a working definition of agitation and control. That definition is:

Agitation exists when (1) people outside the normal decision-making establishment (2) advocate significant social change and (3) encounter a degree of resistance within the establishment such as to require more than the normal discursive means of persuasion. Control refers to the response of the decision-making establishment to agitation.²⁶

The principal strategies employed by agitators are *petition and promulgation*, *solidification*, and *escalation/confrontation*. The strategy of petition includes all the normal means of persuasion. Essentially, the agitators approach the establishment with evidence and arguments in support of their position. The next stage includes promulgation, which is gathering support for the agitator's position. Solidification occurs when the group reinforces the viewpoint of its members or fellow

²⁵ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993).

²⁶ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 4.

believers. The escalation/confrontation stage involves a series of tactics meant to escalate the tension until the establishment responds.²⁷

When an establishment is confronted, it may adopt one of four rhetorical strategies: *avoidance, suppression, adjustment, or capitulation*. Avoidance is when the establishment chooses to evade the agitators by never directly responding to their proposal. Suppression occurs when the demands of the agitators are understood as opposing, and the establishment attempts to hinder these goals. A third possible strategy the establishment can adopt is actually adjusting their policies to compromise with the agitators. The final strategy, which is more of a state of being, is when the establishment is destroyed.²⁸ Each of the case studies for this research will apply these theories in order to better understand and discuss the events that occurred.

Once the strategies of both agitators and control have been established, this research discusses the consequences of silencing protected speech. This will be discussed for each individual case study. In order to understand that limiting free speech has consequences, it must first be established that there has been an unreasonable violation. This research uses Supreme Court Opinions and First Amendment theorists to determine if criminal anarchy charges violate free speech.

Once it has been determined that rights were violated, consequences will be discussed. First, the research will discuss the economic and political consequences of these arrests. Second, the research will argue that the law not only decides what is legal in society but shapes citizens' views of people who break these laws. Even those who break unjust laws will be "othered" and viewed as outsiders and criminals. This argument and its consequences will be supported by

²⁷ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 19-45.

²⁸ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 45-64.

James Jasinski's explanation of the "other" and by legal scholar James Boyd White's and philosopher Michel Foucault's view of the law.

The other has become a common term in rhetorical studies in reference to anyone who is different from the norm. "The discourse of a dominant group fashions the other, endows them with certain characteristics and habits, and thereby allows them to function as a contrast to the dominant group."²⁹ Power and position are justified by creating the other group as an "other."

White contends that the law "is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, and in which our methods of reasoning are elaborated and enacted."³⁰ Although legal systems change and are reevaluated through time, most people do not view the law as subjectively constructed but rather as an objective truth.³¹ Essentially, the law maintains and communicates a national ideal for its citizens. Those who break this law are viewed as outsiders. This has a negative consequence not only for those citizens but also for their message.

Foucault argues that the law is not just something that is imposed. It is used as a tactic to achieve something.³² In the case of criminal anarchy and syndicalism, the law serves as a series of tactics to define, silence, and control dissenters. According to Foucault, the law is vital to regulating unpredictable and dissenting individuals.³³ Thus, the concept of "illegal" serves as a

²⁹ James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 412.

³⁰ James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Art of Cultural and Communal Life," *University of Chicago Law Review* 52 (1985): 692.

³¹ White, "Law as Rhetoric," 686.

³² Michel Foucault, *Society Must Be Defended*. Edited by Mauro Bertani and Alessandro Fontana. Translated by David Macey. (New York: Picador, 1997), 219-277.

³³ Foucault, *Society*, 219.

way to “sum up symbolically all the others” who fall outside the conventional boundaries of the law.³⁴

This summation of White and Foucault is especially useful in determining the way that the law is used and how it results in the alienation of those charged. Essentially, the law serves as a way to not only control agitators but to define them in relation to society.

By investigating the relationship between agitators and the controlling establishment, this study seeks to make a valuable contribution to the conversation surrounding the First Amendment. By critiquing past restraints and the outcomes resulting from those restraints, one can identify problems and identify an alternative view of agitators. In doing so, the current research may contribute to the First Amendment literacy among citizens of the United States. In addition, this study hopes to provide new insight into the rhetorical construction of dissenters — and how the powers that be respond — through case studies of specific dissenters in history. This study will provide a fresh perspective from which to evaluate the current and future debates about the boundaries of the First Amendment.

This opening chapter has provided an overview of the research questions for this study, the existing literature on criminal anarchy, and the purposes and methods of this thesis. Chapter Two concentrates on providing a general history of the United States Supreme Court’s rulings on criminal anarchy in order to establish the dominant ideology of the nation. In Chapter Three, Chapter Four, Chapter Five, and Chapter Six, I discuss the specific cases of anarchy mentioned earlier in this chapter. The Conclusion discusses the connections between the cases and offers final insights into why free speech should be absolute.

³⁴ Foucault, *Society*, 277.

CHAPTER 2

HISTORY OF FREEDOM OF SPEECH IN THE UNITED STATES

“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

— *Supreme Court Justice Louis D. Brandeis*³⁵

Throughout United States history, the federal government has felt its internal security threatened by political forces that opposed capitalism. In response to this perceived threat, both the federal government and many states tried to minimize these so-called threats by restricting First Amendment freedoms. These restrictions were often seen in the form of criminal syndicalism and criminal anarchy laws as well as the federal sedition and espionage acts. In the first part of the twentieth century, the model for many of the state sedition and anarchy laws was a 1902 New York law that prohibited advocacy of criminal anarchy by speech, printing, and distribution of any materials advocating or teaching the violent overthrow of the government.³⁶ Tensions ran high following the 1917 Russian Revolution and World War I, and numerous states passed some form of criminal syndicalism or criminal anarchy laws.³⁷ For a time following World War I, the United States Supreme Court upheld these state laws in a few notable cases. Five federal cases over four decades warrant note here in order to determine the climate that existed in the country at the time Arkansas passed its own criminal anarchy statute as well as the discriminatory nature of such laws.

³⁵ *Whitney v. California*, 274 U. S. 357 (1927).

³⁶ N. Y. PENAL LAW §§ 160, 161 (Consol. 1909).

³⁷ “Conduct Proscribed as Promoting Violent Overthrow of the Government,” *Harvard Law Review* 61 (1948): 1215.

The first of several related cases is that of *Schenck v. United States*. This case involved Charles T. Schenck, a well-known socialist who was arrested and convicted under the Espionage Act and state anarchy and sedition laws in 1919 for circulating about 15,000 leaflets to military recruits and draftees.³⁸ The flyers criticized the draft as an unconstitutional form of servitude and urged these members of the military to “Assert Your Rights” and “Do Not Submit to Intimidation.”³⁹

When the Supreme Court reviewed his conviction, Schenck argued that the First Amendment protected the leaflets. However, the court disagreed and upheld the previous conviction.⁴⁰ In an opinion written by Justice Oliver Wendell Holmes Jr., the court rejected Schenck’s argument:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The question in every case is whether the words used are used in such circumstances and are of such a nature *as to create a clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent.⁴¹

It was during the *Schenck* case that Holmes made his now well-known analogy: “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”⁴² Thus, Holmes wrote that free speech could never be absolute. This decision resulted in sending two important messages to those exercising their right to freedom of speech. First, by putting Schenck in jail for sixth months, this decision was an assault

³⁸ Wayne Overbeck, *Major Principals of Media Law 2009 Edition*, (Boston: Wadsworth, 2009), 49.

³⁹ *Schenck v. United States*, 249 U. S. 47 (1919).

⁴⁰ *Schenck v. United States*, 249 U.S. 47 (1919).

⁴¹ *Schenck v. United States*, 249 U.S. 47 (1919).

⁴² *Schenck v. United States*, 249 U.S. 47 (1919).

on all those who believed in a different form of government. Second, it created a test through which free speech challenges could be assessed on a case-by-case basis.

The next anarchy case to reach the Supreme Court was *Abrams v. United States*. In New York City in August 1918, a group of Russian immigrants — which included anarchist Jacob Abrams — was arrested for violating the Sedition Act of 1918. Under this act it was illegal to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of the Government of the United States" or to "willfully urge, incite, or advocate any curtailment of the production" of the things "necessary or essential to the prosecution of the war."⁴³ The immigrants were arrested for distributing brochures that criticized the United States' deployment of troops to Russia, advocating a general strike in factories producing military goods, and conspiring while the United States was at war.⁴⁴ A few months later, the group was tried, convicted, and sentenced to prison. It was in March 1919, while Abrams was appealing his case, that the Supreme Court heard *Schenck v. United States*. The Supreme Court issued the Abrams decision in November 1919. They voted to uphold the convictions of Abrams and the four other defendants.⁴⁵ Writing for the majority, Justice John H. Clarke held that "the language of these circulars was obviously intended to provoke and encourage resistance to the United States in the war."⁴⁶ Therefore, the defendants' actions had presented a "clear and present danger" as set forth by the earlier *Schenck v. United States* case.

However, Justice Holmes disagreed this time around as did Justice Louis Brandeis. Holmes's dissent remains famous for defending free speech. Although he insisted that he had been correct in the Schenck opinion, Holmes changed his standard, saying that speech "of such a

⁴³ United States, *Statutes at Large*, Washington, D.C., 1918, Vol. XL, 553.

⁴⁴ *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

⁴⁵ *Abrams Et al. v. United States*, 250 U.S. 1616 (1919)

⁴⁶ *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

nature as to create a clear and present danger that (it) will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."⁴⁷ With this new wording, Holmes was advocating a more rigorous standard of judicial analysis. He argued that only when a direct and immediate connection existed between an act of speech and a crime could the speech itself be considered a criminal act. Holmes gave no credence to the possibility that "the surreptitious publishing of a silly leaflet by an unknown man ... would present any immediate danger," and he argued that unrestrained free speech would present a number of benefits to society.⁴⁸ While the Court never adopted Holmes's new standard, his dissent was a crucial moment in the movement toward a more absolute right to free expression.

The next, and arguably most influential, anarchy case to reach the Supreme Court was *Gitlow v. United States*. In November 1919, Benjamin Gitlow — a member of the Socialist party in New York — was arrested and charged with violating the New York State Criminal Anarchy Act.⁴⁹ New York had enacted its anarchy statute in 1902 in response to the assassination of President William McKinley, who was shot by Leon Czolgosz, a self-proclaimed anarchist.⁵⁰

The Criminal Anarchy Statute provided:

§ 160. Criminal Anarchy Defined. Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony.

§ 161. Advocacy of Criminal Anarchy. Any person who:

1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

⁴⁷ *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

⁴⁸ *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

⁴⁹ N.Y Penal Law 160, 161 (consol. 1902).

⁵⁰ Charles P. Lewarne, "The Anarchist Colony at Home, Washington, 1901-1902," *Journal of the Southwest* 14 (1972): 155-168.

2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means...⁵¹

Gitlow and three others were charged for publishing a paper called *The Revolutionary Age* and a document called the *Left Wing Manifesto* because the government claimed that these documents called for the violent overthrow of the United States government and therefore violated that state's criminal anarchy law.⁵²

It was the Lusk Committee investigations that led to the arrest of Gitlow. According to the report:

On November 8, 1919, search warrants were issued by Chief Magistrate William McAdoo at the request of the Committee, and directed against the seventy-one headquarters of the Communist Party of America in the various boroughs of the city... Many tons of seditious and anarchist literature were seized in the execution of those search warrants and a large number of prisoners taken. Those concerning whom there was not absolutely positive proof of membership in the Communist Party of America were released, and those concerning whom indubitable proof was possessed were held for the action of the grand jury, and later indicted. Among those interested on that date were Benjamin Gitlow, a former Socialist Assemblyman of the State of New York, and one of the editors of the "Revolutionary Age," and James J. Larkin, also one of the editors of the "Revolutionary Age."⁵³

On November 14, 1919, Gitlow was charged with violating sections 160 through 164 of New York's penal code, which prohibited "criminal anarchy." On November 26, 1919, a grand jury indicted Gitlow and others on three counts:

The first count charges that on July 5, 1919, the defendants feloniously

⁵¹ N. Y. PENAL LAW §§ 160, 161 (consol. 1909).

⁵² Wayne Overbeck, *Major Principals of Media Law 2009 Edition*, (Boston: Wadsworth, 2009), 49.

⁵³ Revolutionary Radicalism: Its History, Purpose and Tactics with an Exposition and Discussion of the Steps Being Taken and Required to Curb it: Being the Report of the Joint Legislative Committee Investigating Seditious Activities, Filed April 24, 1920, in the Senate of the State of New York 22-23 (1920).

advocated, advised, and taught the duty, necessity, and propriety of overthrowing and overturning organized government by force, violence, and unlawful means by certain writings then and there procured, prepared, composed, circulated, and distributed by the defendants, and caused to be circulated and distributed by them among divers people in the city of New York, which writings are set forth in the indictment and consist of 'the Left Wing Manifesto.'⁵⁴

The second count charges the defendant with having committed the crime by feloniously printing, publishing, editing, issuing, and knowingly circulating, selling, distributing, and publicly displaying and causing and procuring to be printed, published, edited, issued, and knowingly circulated, sold, distributed, and displayed the said issue of the Revolutionary Age.⁵⁵

The third count charges that the defendants were evil-disposed and pernicious persons, and of most wicked and turbulent dispositions, and unlawfully, wickedly, and maliciously intending and contriving to disturb the peace and to excite discontent and disaffection and to excite the good citizens of the state to hatred and contempt of the government and the Constitution of this state.⁵⁶

The third count was later withdrawn.

Gitlow was tried in a jury trial that began on January 30, 1920. Clarence Darrow, Charles Recht, and Walter Nelles defended Gitlow. Assistant District Attorney Alexander I. Rorke prosecuted Gitlow. Rorke argued that the *Left Wing Manifesto* was extremely radical and that its purpose was the violent overthrow of government. He encouraged the jury to see the publication in this light and convict Gitlow.⁵⁷

The defense team did not even attempt to contest that Gitlow was involved in the publication. Rather, the defense contested the notion that the publication called for the violent overthrow of the government. They also argued that the criminal anarchy laws were unconstitutional because they violated the First Amendment. Finally, the defense argued that the

⁵⁴ *The People vs. Benjamin Gitlow*, N. Y. City Magis. Ct. 1 (1919).

⁵⁵ *The People vs. Benjamin Gitlow*, N. Y. City Magis. Ct. 2 (1919).

⁵⁶ *The People vs. Benjamin Gitlow*, N. Y. City Magis. Ct. 3 (1919).

⁵⁷ John W. Johnson, *Historic US Court Cases* (New York: Routledge: 2001), 846.

statutes violated the Fourteenth Amendment's protection.⁵⁸ The Fourteenth Amendment guarantees United States citizens that no state can abridge the freedoms promised to them in the Constitution. The jury returned a guilty verdict, and Gitlow was sentenced to five to ten years of hard labor.⁵⁹

Walter H. Pollak and Walter Nelles took Gitlow's appeal to the United States Supreme Court. In its decision, handed down on June 8, 1925, the Court affirmed the lower court's decision on Gitlow but accepted his argument in regard to the Fourteenth Amendment as being applicable to all states.⁶⁰

The Court disagreed with Gitlow's defense that the published material was simply a statement of abstract doctrine, because "[i]t advocates and urges in fervent language mass action which shall progressively foment industrial disturbances and through political mass strikes and revolutionary mass action overthrow and destroy organized parliamentary government."⁶¹ However, what makes this court opinion so significant is these few sentences: "For present purposes we may and do assume that freedom of speech and of the press — which are protected by the First Amendment from abridgment by Congress — are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."⁶² While the court affirmed the original decision, Justice Holmes and Brandeis dissented.

While *Gitlow* is significant because of its victory for the Fourteenth Amendment, it was also another loss for free speech. Again, the *Gitlow* decision sent the message that the Supreme

⁵⁸ Benjamin Gitlow, The "Red Ruby" Address to the Jury by Benjamin Gitlow (1920).

⁵⁹ *Gitlow Sent to Sing Sing Coal Pile*, New York Times, Feb. 15, 1920, 9.

⁶⁰ *Gitlow v. New York*, 268 U. S. 652 (1925).

⁶¹ *Gitlow v. New York*, 268 U. S. 652 (1925).

⁶² *Gitlow v. New York*, 268 U. S. 652 (1925).

Court would uphold state anarchy statutes, and that socialists and communists were not guaranteed the same freedom of speech as those who supported capitalism.

While *Schenck*, *Abrams*, and *Gitlow* remain some of the most well known anarchy cases to reach the United States Supreme Court, they were not the only ones. Lesser-known cases such as *Stromberg v. California* and *De Jonge v. Oregon* also made their mark by showing that the Supreme Court would side with state anarchy laws — but only when they believed a threat of violence to be imminent.

In *Stromberg v. California*, the United States Supreme Court ruled that a 1919 statute that banned red flags was unconstitutional because it violated the Fourteenth Amendment.⁶³ The Fourteenth Amendment promises United States citizens that state governments cannot abridge the freedoms promised to them in the Constitution. This decision is considered important because it was one of the first cases in which the Court expanded the Fourteenth Amendment to include symbolic speech. Yetta Stromberg was a member of the Young Communist League. She was one of the supervisors of a youth camp for working-class children. The charges against her regarded a daily camp ceremony during which Stromberg supervise and lead the youth in raising a red flag and in pledging allegiance to “the workers’ red flag, and to the cause for which it stands, one aim throughout our lives, freedom for the working class.”⁶⁴ Stromberg also admitted to owning a number of books and other printed materials relating to communism, though she testified that none of such materials were employed in her teaching of the children.⁶⁵ Stromberg was tried and convicted in a California state court. She appealed her case to the Supreme Court

⁶³ *Stromberg v. California*, 283, U. S. 359 (1931).

⁶⁴ *Stromberg v. California*, 283, U. S. 359 (1931).

⁶⁵ *Stromberg v. California*, 283, U. S. 359 (1931).

stating that the statute made it illegal to show the symbol of a party that was legally recognized.⁶⁶

In his majority opinion, Chief Justice Charles Evans Hughes contemplated whether any of the clauses in the statute were, as the appellant alleged, a violation of her constitutionally protected rights. The opinion noted that the protection of the Fourteenth Amendment did not extend to forms of expression that may incite violence, crime, or the overthrow of organized government by unlawful means. The Court ignored the second and third clauses of the statute since they pertained to prohibited forms of expression, and focused on the first clause, which prohibited individuals to display “a red flag, banner or badge or any flag, badge, banner, or device of any color or form whatever in any public place or in any meeting place or public assembly.”⁶⁷

Upon examining the vagueness of the statute, the Court concluded:

A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside.⁶⁸

Justice McReynolds and Justice Butler dissented believing that the judgment should be affirmed on the basis that since Stromberg was convicted on all of the clauses that the judgment should not be reversed simply because one of the clauses was found to be invalid.⁶⁹

Another case in which the Supreme Court reversed the original state decision was that of *De Jonge v. Oregon*. On July 27, 1934 the local Communist Party held a meeting in Portland. During the meeting a member, Dirk De Jonge, addressed the audience regarding jail conditions

⁶⁶ *Stromberg v. California*, 283, U. S. 359 (1931).

⁶⁷ *Stromberg v. California*, 283, U. S. 359 (1931).

⁶⁸ *Stromberg v. California*, 283, U. S. 359 (1931).

⁶⁹ *Stromberg v. California*, 283, U. S. 359 (1931).

and a strike currently taking place in Portland. While the meeting was in progress, police raided it. De Jonge was arrested and charged with violating the State's criminal syndicalism statute.⁷⁰

The law defined criminal syndicalism thusly:

§ 14-3110. Criminal syndicalism hereby is defined to be the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution.

§ 14-3111. Sabotage hereby is defined to be intentional and unlawful damage, injury or destruction of real or personal property.

§ 14-3112. Any person who, by word of mouth or writing, advocates or teaches the doctrine of criminal syndicalism, or sabotage, or who prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any books, pamphlets, paper, hand-bill, poster, document or written or printed matter in any form whatsoever, containing matter advocating criminal syndicalism, or sabotage, or who shall organize or help to organize, or solicit or accept any person to become a member of any society or assemblage of persons which teaches or advocates the doctrine of criminal syndicalism, or sabotage.⁷¹

De Jonge was convicted but immediately asked for an acquittal on the grounds that there was insufficient evidence to justify his conviction. The state Supreme Court disagreed because the indictment did not actually charge De Jonge with criminal syndicalism, but rather charged that he was affiliated with an organization that was unlawfully teaching and advocating criminal syndicalism and sabotage.⁷²

Chief Justice Charles E. Hughes delivered the opinion of the Supreme Court. The Court held that the application of the Oregon statute did, in fact, violate the due process clause of the Fourteenth Amendment. The Court reasoned that the rights of free speech and peaceable assembly were principles embodied in the Fourteenth Amendment. Therefore, the purpose of the meeting and not the name under which it occurred should be considered. This had not happened

⁷⁰ *De Jonge v. Oregon*, 299, U.S. 353 (1937).

⁷¹ Oregon Code, 1930, §§ 14-3110-3112 (1933).

⁷² *De Jonge v. Oregon*, 299, U. S. 353 (1937).

in *De Jonge's* case.⁷³

The *Brandenburg v. Ohio* case had a large impact on the court's view of protected speech. Occurring much later than the original anarchy cases, *Brandenburg* took place in 1969. In this case, Brandenburg was convicted of violating an Ohio criminal syndicalism law when he spoke at a Klan rally that was filmed and later televised in part.

Brandenburg contended that his conduct was protected under the First Amendment. The court stated that the First Amendment extends to protect speech that is a call for action as long as it is not likely to actually produce said action. The court said:

The constitutional guarantees of free speech do not permit (state regulation) ... except where the speech is directed to inciting or producing imminent lawless action, and is likely to incite or produce such action.⁷⁴

By reversing Brandenburg's conviction, the Supreme Court invalidated Ohio's criminal syndicalism law.⁷⁵

The evolution of the Supreme Court's opinions on criminal anarchy and syndicalism has much to do with the country's current situation. While *Brandenburg* remains a victory for free speech to this day, it is important to still study those persons who were convicted and tried under laws that suppressed free speech and dissent in order to understand the pattern that occurs and the way that the First Amendment can be interpreted for the agenda of the government. In this regard, the Arkansas anarchy statute and later convictions under that statute act as an effective case study for understanding the process of enacting such oppressive legislature and the discriminatory nature of such laws lurking under the guise of protecting democracy.

Arkansas History

⁷³ *De Jonge v. Oregon*, 299, U. S. 353 (1937).

⁷⁴ *Brandenburg v. Ohio*, 395, U.S. 444 (1969).

⁷⁵ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

While many have studied the Red Scare and anarchy cases on the national level, few have delved into it on a state level. Since it has been noted that a number of anarchy laws were in response to labor union disputes,⁷⁶ Arkansas makes for an interesting case study because of its relative lack of labor disputes; yet it still passed anti-Bolshevik laws.

Joey McCarty offers one of the few looks at the Red Scare in Arkansas. McCarty states that during the Red Scare, Arkansas contributed only twenty-two of the 7,041 strikes that occurred from 1919-1920.⁷⁷ This was not because Arkansas had a weak labor movement. In fact, it was home to the Little Rock Typographical Union, railroad union, and sharecropper unions, among others. The lack of strikes was actually due in part to the relatively small number of punitive laws for unions.⁷⁸ Another reason for the relatively small number of labor strikes was the fact that Arkansas was a rural state, and the primary industry was agriculture. Farms were generally small and not classified as big business. McCarty also notes that the only real violence that occurred in Arkansas around 1919 was racial rather than ideological.⁷⁹

Still, on March 28, 1919, Arkansas joined the majority of states in the union by passing Act 512, which read:

An act to define and punish anarchy and to prevent the introduction and spread of Bolshevism and kindred doctrines, in the State of Arkansas.
 §1. Unlawful to attempt to overthrow present form of government of the State of Arkansas or the United States of America.
 §2. Unlawful to exhibit any flag, etc., which is calculated to overthrow present form of government.
 §3. Laws in conflict repealed; emergency declared; effective after passage.⁸⁰

Such a crime was a misdemeanor, punishable by a fine of between ten dollars and a thousand

⁷⁶ Joey McCarty, "The Red Scare in Arkansas: A Southern State and National Hysteria," *The Arkansas Historical Quarterly* 37 (1978): 264-277.

⁷⁷ McCarty, "The Red Scare in Arkansas," 265.

⁷⁸ McCarty, "The Red Scare in Arkansas," 266.

⁷⁹ McCarty, "The Red Scare in Arkansas," 268.

⁸⁰ Ark. Acts, 1919, pp. 388-389.

dollars, and the perpetrator could have been imprisoned in the country jail for up to six months.⁸¹

Representatives Light and Kennedy originally introduced this anarchy bill as House Bill Number 473. Allan Kennedy was born on December 11, 1867 in Memphis, Tennessee. Kennedy's family later moved to Fort Smith where he was educated and joined the insurance business. In 1918, he was elected a member of the state legislature.⁸² There is no information of Representative Light, who co-introduced the bill. According to the House Journal, no man with this last named served on the state legislature at that time, and his identity remains a mystery.

The bill was introduced to the House of Representatives on February 26, 1919 and was placed on second reading and referred to the Committee of Judiciary by Thompson of Independence County.⁸³ On March 6, 1919, House Bill 473 was read in the Hall of the House of Representatives. The House moved that the bill be placed back upon second reading for the purpose of amendment. The motion was passed and the following amendment was sent up:

Amend House Bill No. 473 by striking out the words "association of individuals, corporations, organization or lodges by any name or without a name," as found in lines 2 and 2 of section 2, of the bill.⁸⁴

This amendment was suggested for the protection of labor unions. The bill was then placed on final passage. Eighty-two legislators voted in the affirmative, and only one — Campbell of Faulkner — voted in the negative. Bagley, Campbell of Clay County, Choate, Dalton, Duvall, Elliott, Goldman, Hudson, Jackson, Jameson, Parnell, Talbott, Talkington, Thane, Thomas, Wade, and Yates were absent. Only 42 votes were necessary to pass the bill, and with 82

⁸¹ Ark. Acts, 1919, pp. 388-389.

⁸² Centennial History of Arkansas 169-170.

⁸³ Arkansas General Assembly, *House of Representatives Journal*, 42nd Congress, February 26, 1919, 941.

⁸⁴ Arkansas General Assembly, *House of Representatives Journal*, 42nd Congress, March 6, 1919, 1051.

affirmative votes the bill was passed.⁸⁵

On March 11, 1919, House Bill 473 was read for the first time in the Senate Chamber. The following day, the rules were suspended by a special order, and the bill was read for a second time.⁸⁶ On March 12, 1919, House Bill 473 was read the third time and placed on final passage. Alexander, Bone, Brown, Caldwell, Cazort, Evans, Greathouse, Hartje, Hester, Johnson, Johnston, King, Latimer, Lefler, McFarlin, McFerrin, McGough, Montgomery, Owens, Rhodes, Roddy, Utley, Vaughan, Wilson, and Mr. President voted in the affirmative. None voted in the negative, although ten — Collins, Emory, Godwin, Moncrief, Stewart, Townsend, Walls, Ward, Whitaker, and Woods — were absent. There were twenty-five votes in the affirmative, with only thirteen necessary for the passage of the bill, and thus it passed.⁸⁷ Often, the legislature was weight toward the interest of rural areas because each county gets one representative. Therefore, cities had much less power.

On March 28, 1919, Governor Brough signed the, bill making it Act 512. Brough was born in Mississippi and graduated from Johns Hopkins University and the University of Mississippi Law School. He eventually became governor, enabling him to sign Act 512 into law. According to McCarty, “Brough was also the top Red-hater in Arkansas.”⁸⁸ Brough was a popular speaker at the time and spoke often of his dislike for Germans and radicals. His anti-Red views may be the reason he was interested in keeping labor strikes at bay.⁸⁹

According to Eldridge Foster Dowell, criminal syndicalism laws were commonplace

⁸⁵ Arkansas General Assembly, *House of Representatives Journal*, 42nd Congress, March 6, 1919, 1051.

⁸⁶ Arkansas General Assembly, *Senate Journal*, 42nd Congress, March 11, 1919, 997.

⁸⁷ Arkansas General Assembly, *Senate Journal*, 42nd Congress, March 12, 1919, 1018.

⁸⁸ Joey McCarty, “The Red Scare in Arkansas: A Southern State and National Hysteria,” *The Arkansas Historical Quarterly* 37 (1978): 274.

⁸⁹ Joey McCarty, “The Red Scare in Arkansas: A Southern State and National Hysteria,” *The Arkansas Historical Quarterly* 37 (1978): 275.

during the Red Scare. Many of these laws were in response to the Industrial Workers of the World (Wobblies) and their attempts to organize “negroes” working in the fields.⁹⁰ However, Arkansas was not one of the states that passed anti-syndicalism legislation. It seems likely that the anti-Bolshevik laws were thought to adequately cover any potential threat. As McCarty stated though, it is interesting that Arkansas felt the need to pass any law of this type, considering its threat was relatively limited in comparison to the rest of the country. Perhaps we can assume that Arkansas was merely following the national trend, which — as seen in the Supreme Court decisions — supported criminal anarchy laws.

Although The Red Scare in Arkansas was tame compared to that of the nation at large (this is not to say that it was nonexistent, the horrific 1919 Elaine Massacre was aimed at a sharecroppers’ union), its passage of criminal anarchy laws is particularly interesting. If even a state with such a tame resistance could fall victim to the passage and enforcement of such laws, then it becomes a reason for worry in regard to First Amendment rights. It is disconcerting enough that states pass laws that suppress freedoms in response to “radical” events, but it becomes even more worrisome that states will pass such laws based purely on a national trend. These case studies become of the utmost importance to understand the discriminatory nature of laws that limit free speech; to analyze the way in which the government consistently responds to any perceived agitation by controlling and limiting freedom; and to comprehend the ways in which the very laws can be used as a vilification strategy.

Though United States anarchy laws are outdated, this country has not seen the last of limited freedoms in response to a perceived threat. In 2001, The Patriot Act became a perfect example of such a pattern. Although this research does not discuss current freedom-limiting

⁹⁰ Eldridge Foster Dowell, *History of Criminal Syndicalism Legislation in the United States*, (Baltimore: Johns Hopkins Press, 1939): 17.

laws, it shows the relevance of studying these cases in order to recognize potential patterns in the future.

CHAPTER 3

THE ARREST OF GEORGE CRUZ IN MISSISSIPPI COUNTY

“ We were brought to trial without any question at all, without being put on the stand, without being given a proper trial... not even one of my witnesses was put on the stand.”

— George Cruz ⁹¹

Since the founding of the United States, the First Amendment has sparked a seemingly endless conversation about how these words should be interpreted. Limitations on “freedom of speech” have fluctuated throughout the history of our nation, and there is a pattern of limiting this freedom whenever the government is threatened — whether it is by war or by an ideological movement. Many are unaware of the history and consequences of governmental attempts to silence dissenters. This chapter examines an incident that occurred in Mississippi County, Arkansas during the early 1930s, when a couple was arrested because of a group with which they were affiliated. This event serves as an effective case study because it illustrates both the motives and actions of those involved in similar incidents across Arkansas and the nation. The examination of this case will aim to determine the pattern and extent of the damage brought forth by limiting free speech, asking: *What is the history and import of George Cruz’s arrest for anarchy? How do rhetorical agitation and control strategies manifest themselves in the messages presented in these case studies? What are the consequences of the establishment’s (and by establishment I mean any person acting on behalf of state or local government) silencing of protected speech for citizens of the United States? How do these laws shape our understanding of dissidents?*

⁹¹ George Cruz to Lucille B. Milner, Secretary American Civil Liberties Union, January 5, 1935, American Civil Liberties Union Papers, Princeton University.

To create an understanding of the way in which the state arrests dissenters and the after effects of those arrests, the research will present an analysis of George Cruz's arrest. In answering the previously posted research questions, the historical research will examine the events surrounding the Cruz arrest, before discussing the implications of that arrest. First, the research will examine the background and rhetorical behavior of the agitators (in this case, George Cruz and the Pacific Movement of the Eastern World) and of the establishment, represented by the local authorities in Mississippi County, Arkansas. I will use the *Blytheville Courier's* coverage of the arrest and trial to re-create the events surrounding Cruz's arrest. Second, this chapter will argue Cruz's arrest under criminal anarchy is a violation of free speech and that limiting free speech serves to discourage dissenters. Third, using examples from the Cruz case, the research argues that criminal anarchy charges serve as an effective economic punishment for dissidents. Finally, the research will argue that criminalizing dissent shapes the way society views the dissenters themselves.

Arrest of George Cruz for Criminal Anarchy

Satokata Takahashi founded the agitating group, the Pacific Movement of the Eastern World (PMEW), in the spring of 1932. The PMEW was an organization that "preached the worldwide unity of the colored races under the leadership of Japan."⁹² The president of the organization, Ashima Takis, registered the group in December of 1932 as a "non-profit religious, civil and education organization with the purpose of promoting the welfare of citizens."⁹³ While founded in Chicago, the movement experienced the most success in St. Louis. The majority of the members would be African Americans who were discontent with the lack of social equality

⁹² Ernest Allen, Jr., "Waiting for Tojo: The Pro-Japan Vigil of Black Missourians, 1932-1934," *Gateway Heritage* 15 (1995):1.

⁹³ Allen, "Waiting for Tojo," 41.

and the depressed economy during the 1930s. The PMEWS spread a message of unity between the Japanese and African Americans. Since Japan was an enemy of the white man, it was a friend of the black man.⁹⁴

The PMEWS grew and spread its message across the country. The organization received a particularly strong reception in Missouri. The depression had devastated the Mississippi delta, but again, it seemed as though the local black men were suffering more than the white men. George Arevelo Cruz, a Filipino organizer for PMEWS, became associated with an offshoot called the Original Independent Benevolent Afro-Pacific Movement of the World (OIBAPMW). This new organization with the same mission set out to organize and recruit in the rural black communities of the Delta. It was during an attempt to organize at a church in Blytheville, Arkansas that George Cruz and his wife Carmen Rios Cruz were arrested.⁹⁵

On the evening of August 21, 1934, Cruz and other organizers were enrolling new members into the OIBAPMW at the Clear Lake Church in Blytheville, Arkansas.⁹⁶ The deputy sheriff, Arch Lindsay, arrived at the meeting with a local white plantation manager. The article described the event by saying that the crowd was “addressed by Cruz in a fiery fashion and ‘guarded’ ... with a big flashlight and gun.”⁹⁷ The article also states that Cruz was overheard telling his audience that “the world belongs to the colored races. Join us and hell will soon pop around the corner for the white man.”⁹⁸ Cruz, Carmen, and local men named Ruben Crawford and J. A. Brown were arrested and taken to the municipal jail. Lindsay later returned to the church to collect evidence where he found Cruz’s written material, including records, in his car.

⁹⁴ Allen, “Waiting for Tojo,” 41-45.

⁹⁵ Allen, “Waiting for Tojo,” 46.

⁹⁶ “Filipino’s ‘Movement’ Going Strong Until Officers Arrive,” *Blytheville Courier News*, August 22, 1934, 1.

⁹⁷ “Filipino’s Movement,” *Blytheville Courier*, 1.

⁹⁸ “Filipino’s Movement,” *Blytheville Courier*, 1.

According to those records, Cruz had enrolled 110 black men in his organization, and 25 of them had joined while he was at Clear Lake Church.⁹⁹

Later that evening, deputy prosecutor Leon Smith questioned the four suspects. Cruz insisted that he had not been promoting agitation among plantation workers. Instead, he explained that they had been operating a burial association. At this time, Smith said he would charge the Cruzes with a “Blue Sky” violation for operating a burial association outside of state supervision. Blue Sky Laws, which regulate the sale of securities, were misdemeanors and had gone on the books to protect citizens from fraud.¹⁰⁰ However, after two days Smith added a criminal anarchy charge and accused the Cruzes of plotting to overthrow the state and federal government. The couple pled “not guilty”.¹⁰¹

While in a Blytheville jail, Carmen Cruz contacted her father, Juan Rios, a Mexican citizen and resident of Alton, Illinois. Rios traveled to Blytheville on August 25 and headed immediately to the local police station. When he arrived at the jail he saw Cruz, his son-in-law, and went near the building to speak with him. While Rios and Cruz were talking, an officer ordered Rios to leave the premises. Rios left and walked across the street in an attempt to begin looking for the office of the Cruzes' lawyer. Two officers followed him and began to question him about his residence and nationality. The officers “called him a liar and a this and that of a Mexican.”¹⁰² They imprisoned him and left him nude in a cell. A few hours later he was given his clothes back and driven to the Arkansas border, where he was told to never come back to

⁹⁹ “Filipino’s Movement,” *Blytheville Courier*, 1.

¹⁰⁰ “Filipino’s Movement,” *Blytheville Courier*, 1.

¹⁰¹ “Filipino’s Movement,” *Blytheville Courier*, 1.

¹⁰² Letter, Ricardo C. Hill, October 9, 1934, Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

Blytheville or “he might be lynched.”¹⁰³ On October 9 of that year, Smith received a letter from Ricardo G. Hill, a consul of Mexico. The letter recounted the Rios incident. Hill stated, “As an officer in charge of justice in that County, you understand the graveness of this case, as not only involves a violation to all human and constitutional rights of a legal resident of this country.”¹⁰⁴ Hill continued on and requests that this incident be investigated and he be informed of the causes of both this incident and the arrests of George and Carmen Cruz. Smith responded with his own letter to Hill. He recounted his version of the Cruz events and defended the police actions by stating that it was the police’s efficiency that prevented the situation from escalating. He also contended that Rios was arrested because he was seen on the premise after he had been told to leave and that his clothes were taken in order for the police to search them. He also alleged that the officers merely suggested that Rios leave the state.

The local government was not the only one investigating the Cruzes. Years after the event that lead to the Cruzes’ arrest, Donald A. Surine of the Federal Bureau of Investigation filed a report in 1942. The report reflects that the Cruzes had been investigated because of their activities in St. Louis, Missouri. On August 25, 1934 the Cruzes were found guilty of criminal anarchy and carrying concealed weapons.¹⁰⁵ The trial occurred under Judge C. A. Cunningham and in front of a packed courtroom. The *Blytheville Courier* noted that criminal anarchy charges are rarely used in the state of Arkansas.¹⁰⁶ There was no concrete evidence against the accused, and the bylaws of the OIBAPMW did not dispute Cruz’s statement that he was organizing a burial society. However, the prosecutor felt that since an armed man had been guarding the

¹⁰³ Letter, Ricardo C. Hill, October 9, 1934, Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹⁰⁴ Letter, Ricardo C. Hill, October 9, 1934, Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹⁰⁵ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹⁰⁶ “Pack Courtroom for Cruz Trial,” *Blytheville Courier News*, August 24, 1934, 1.

meeting, and Cruz was quoted as saying that black men should overthrow white men, there was sufficient evidence to convict. The official FBI reports that after being arrested, the Cruzes were searched and more evidence of their alleged guilt was found. The police claimed to have found “several pistols and considerable ammunition”.¹⁰⁷ The police also claimed to find pamphlets, an invoice purporting to represent shipment of firearms to the Philippines, and a letter to George Cruz in the Philippines stating “they were expecting as many members of his organization as could possibly attend the annual horse-shoe show in Tokyo, Japan.”¹⁰⁸ However, it is interesting to note that at the time of this FBI investigation — years after these arrests — that these alleged files had been “destroyed.”

According to the Deputy Prosecuting Attorney, the Cruzes had stated that they were engaged in “racket for personal gain.”¹⁰⁹ There is very little information available reflecting the counter-narrative of the Cruzes, but the FBI files reflects that the Cruzes did state that they did not have any associations with foreign governments.¹¹⁰ The defense attorney, a local lawyer named Claude F. Cooper, rested his case after entering a plea of not guilty for the accused. The Cruzes were convicted and given the maximum punishment: a \$1,000 fine and six months in jail.¹¹¹ Crawford and Brown were also charged with criminal anarchy and carrying concealed weapons and sentenced to the same fine and jail time.¹¹²

¹⁰⁷ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹⁰⁸ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹⁰⁹ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹¹⁰ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹¹¹ “Pack Courtroom for Cruz Trial,” *Blytheville Courier News*, August 24, 1934, 1.

¹¹² Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

The Cruzes were kept in Blytheville until August 27, when a U.S. Department of Justice official arrived to examine the evidence against them.¹¹³ The Justice agent decided that the Cruzes would serve their time at the Mississippi County farm instead of in federal prison. He also decided not to pursue any federal prosecutions. After Carmen was found to be pregnant, the couple was released and ordered to leave Arkansas.¹¹⁴ After their release, their whereabouts became unknown to those investigating them.¹¹⁵

On September 13, Ward Rodgers, the executive counsel of the Southern Tenant Farmers Union, wrote a letter on the Cruz's behalf to Roger Baldwin, the Executive Secretary of the American Civil Liberties Union. The letter states:

These parties were recently arrested...at a meeting where they spoke in their effort to organize and forward the African Pacific Movement of the World... The deputy sheriff who made the arrest said that in his speech, Cruz said that he wanted the "Negro race" to join hands with the Japanese in order to make the "Negro race" supreme in the South. He may or may not have made this statement, but he and his wife and a negro were arrested on a charge of anarchy, were tried in the Municipal Court at Blytheville, were each given \$1,000.00 fine to be worked out on the County Farm, which will take them about four years each. They were given an additional sentence of six months. In the ordinary course, this sentence will keep them on the County Farm for five years, and, in all probability, until both are dead.¹¹⁶

While Rodgers makes the severity of their punishment clear in the letter, his main purpose is to discuss the Cruzes' defense lawyer.

They have a lawyer at Blytheville by the name of Claude Cooper. He thinks that he is capable of handling the case but I do not think that he is. He has never had a case in

¹¹³ Kenneth C. Barnes, "Inspiration from the East: Black Arkansans Look to Japan," *The Arkansas Historical Quarterly* (2010).

¹¹⁴ Barnes, "Inspiration from the East."

¹¹⁵ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹¹⁶ Ward H. Rodgers, Executive Counsel of Southern Tenants Farmers, to Roger Bladwin, Executive Secretary American Civil Liberties Union, September 13, 1934, American Civil Liberties Union Papers, Princeton University.

which the principal of the freedom of speech is involved and he is regarded by the lawyers as being a man of inferior ability and training.¹¹⁷

Rogers concludes the letter by discussing his interest in this case.

The severe persecution of these parties is hampering our movement among the tenants of both colors in this country and I wish and earnestly advise that you would associate with Mr. Cooper an attorney in whom we could have confidence and who is able to protect the rights of these poor people.¹¹⁸

Rodgers wrote a follow up letter to the ACLU on October 17, 1934. He stated that he had delayed in writing any further about the Cruz case until he had met Claude Cooper. Of Cooper, Rodgers states, "I find from further investigation that Claude Cooper is better qualified than my first information would imply."¹¹⁹

On January 4, 1935, Lucille Milner from the American Civil Liberties Union (ACLU) contacted Cruz in regard to his arrest. His response to her is one of the few available opportunities to hear his own account of the events. Cruz offers a very different narrative than that of the Arkansas papers. Cruz stresses that it is not only his case that the ACLU should be concerned with but also his wife's case. He states, "My wife who had been convicted of anarchy without any evidence whatsoever [was] kept in jail forcefully while pregnant."¹²⁰ He also referred to his arrest as "unlawful" and "malicious." He further wrote that they were brought to trial "without any question at all, without being put on the stand, without being given a proper

¹¹⁷ Ward H. Rodgers, Executive Counsel of Southern Tenants Farmers, to Roger Bladwin, Executive Secretary American Civil Liberties Union, September 13, 1934, American Civil Liberties Union Papers, Princeton University.

¹¹⁸ Ward H. Rodgers, Executive Counsel of Southern Tenants Farmers, to Roger Bladwin, Executive Secretary American Civil Liberties Union, September 13, 1934, American Civil Liberties Union Papers, Princeton University.

¹¹⁹ Ward H. Rodgers, Executive Counsel of Southern Tenants Farmers, to Lucille B. Milner, Secretary American Civil Liberties Union, October 17, 1934, American Civil Liberties Union Papers, Princeton University.

¹²⁰ George Cruz to Lucille B. Milner, Secretary American Civil Liberties Union, January 5, 1935, American Civil Liberties Union Papers, Princeton University.

trial... not even one of my witnesses was put on the stand.”¹²¹ The only witnesses that were put on the stand were white men who had been against his cause. He also stated that newspapers all over town published false accounts of his trial and caused ill feelings toward him. After Rodger’s arrest, Milner contacted Cruz stating that because of the arrest the ACLU did not want to bother Rodgers and his union, so she would be keeping his letter until things were not so difficult.¹²²

In 1942 during the FBI investigation, Special agent H. F. Small contacted Leon Smith, the Deputy Prosecuting Attorney at the time of the Cruz case, for information. Interestingly, the report notes that Smith stated that he would send them the newspaper clippings to reflect the complete story of the arrests. Smith is quoted as saying, “at the time of this case he was working closely with the newspapers and that the newspaper accounts gave a complete and accurate statement of events.”¹²³ The plight that was faced by many agitators was a lack of advocacy. While the media in general is usually thought of or credited as being a “government watchdog” in this case it becomes clear that they were government lackeys. This alleged “complete and accurate statement of events” offers no interviews with those arrested, those associated with the Cruzes, or even the defense attorney. In Cruz’s case, both the establishment and the media became champions of the status quo.

Ideologies of the Establishment and Agitators

To begin a discussion on agitators and the establishment, we must first define the terms.¹²⁴ The establishment is any person who works for the local city or state government. This

¹²¹ George Cruz to Lucille B. Milner, Secretary American Civil Liberties Union, January 5, 1935, American Civil Liberties Union Papers, Princeton University.

¹²² Lucille B. Milner, Secretary American Civil Liberties Union, to George Cruz, January 18, 1935, American Civil Liberties Union Papers, Princeton University.

¹²³ Pacific Movement of the Eastern World Incorporated; ET AL FBI File 65-309.

¹²⁴ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993), 4.

person could be a police officer, judge, prosecutor, etc. This is not to say that wealthy people in an area did not have influence over the actions of the local government. They had influence but for the purposes of this research, the establishment refers purely to those with legal and political control over citizens. In regard to agitation and control, “control refers to the response of the decision-making establishment to the dissenters.”¹²⁵ Understanding ideology as an expression of the group’s goals and values helps create a deeper comprehension of the conflict. The ideology of both the establishment and the agitators must be identified in order to create a clear picture of what motivated each group. In the case of Cruz, the authorities in Mississippi County, Arkansas represent the establishment. The establishment accepted the dominant ideology of the nation — or at least what it perceived to be the dominant ideology. Dissenters were dangerous. Anarchy, communism, and socialism were threats. This ideology was based on a belief that the status quo, at least as far as the allocation of political power was concerned, had only minor deficiencies. According to this view, the United States government and capitalism had the legitimate political and economic power, and those who questioned or threatened this way of life were dangerous to the system. This view is showcased by the Supreme Court rulings *Schenck*, *Gitlow*, and *Abrams*.¹²⁶ This ideology can also be seen through certain laws that legislators established, such as criminal anarchy laws. Freedom of speech was only a right in so far as it did not threaten the current system.

More specifically, the first Red Scare justified this dominant ideology by marking all dissenters and traitors to the America way. Even if inequities did exist, they were not sufficient

¹²⁵ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 4.

¹²⁶ *Schenck v. United States*, 249 U. S. 47 (1919); *Gitlow v. New York*, 268 U. S. 652 (1925); *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

to justify disruption. The United States government must be preserved and dissenters only sought to disturb this system. Dissenters or agitators disagreed with this dominant ideology.

Ideology of the Agitators

Agitation occurs if “people outside the normal decision-making establishment advocate significant social change and encounter a degree of resistance within the establishment such as to require more than the normal discursive means of persuasion.”¹²⁷ The agitators, in this case Cruz and members of the OIBAPMW, believed that the American economic and political system in its current state was defective. Specifically, these agitators considered the fact that minorities in America were suffering more economic hardships than their white counterparts. They also maintained that the government did not adequately represent all citizens and discriminated against blacks. There are number of strategies that can be employed by agitators and a number of strategies that the establishment might use to respond.¹²⁸ Defining these strategies is important in order to fully understand the complex relationship that exists between agitators and the establishment.

Promulgation as the Central Strategy of the Agitators

The central strategy used by the OIBAPMW was promulgation, which “includes all those tactics designed to win social support for the agitator’s position. No movement can be successful unless it attracts a sufficient number of members to help gain the establishment’s attention.”¹²⁹ This was the strategy being employed by the OIBAPMW during the time of Cruz’s arrest. One of the main purposes of this strategy is to gain the public’s acceptance of the agitators’ beliefs, which in this case included the idea that a pro-Japan movement was necessary among blacks in

¹²⁷ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993), 4.

¹²⁸ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 4.

¹²⁹ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 20.

the United States. They held meetings, such as the one that occurred in Blytheville, in order to share their ideology and encourage membership in their organization. These meetings also served as a means to solidify the group as one.

Suppression as the Central Strategy of the Establishment

The major rhetorical strategy enacted by the establishment was one of suppression, which “demands not only an understanding of the opposing ideology but a firm resolve and commitment on the part of the decision makers to stop the spread of that ideology by hindering the goals and personnel of the agitative movement.”¹³⁰

In Cruz’s case it is obvious that the establishment used suppression. However, in order for suppression to exist, the establishment must understand the agitator’s ideology. It seems clear that this does not require the establishment to have any real understanding of the movement but rather only understand it as far as it threatens the status quo’s power. The first tactic of suppression is harassment of the leaders. By arresting Cruz the establishment was able to weaken his cause by discouraging others from joining the movement for fear that they, too, might be arrested. In this case, the media also acted on the side of the establishment by suppressing the agitator’s views. None of the articles written about the Cruz case discussed the movement in any real detail. Rather, the press painted a picture of guilt by emphasizing Cruz’s alleged statement about overthrowing the government.

Rhetorical Assessment

The central purposes of this thesis are to historically reconstruct criminal anarchy arrests and to highlight three major consequences of arresting dissenters: first, the ways in which limitations on the First Amendment discourage dissenters; second, how even if dissenters are

¹³⁰ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 54.

eventually released, the arrest itself serves as an unfair economic punishment; and third, that criminal charges against dissenters have served as a way of shaping the connotation around these movements, resulting in a lasting negative connotation (i.e. public perception) that hinders any further movements.

I will discuss both of these consequences in more detail by using Supreme Court opinions and First Amendment theories to discuss the violations to the First Amendment and the ramifications from these violations.

Cruz's arrest took place in the 1930s, which meant that it was still subject to the precedents set by cases such as *Schenck* and *Gitlow*. Therefore, at this time, the courts could argue that the criminal anarchy statute and the arrest of Cruz were constitutional based on previous case law. Regardless of whether the local authorities would have correctly applied any Supreme Court decision to Arkansas laws, it is important to know and understand how the Supreme Court would have ruled on this case to understand the statute's nature and the ways in which it is unconstitutional. After time the Supreme Court began to recognize that the First Amendment did protect dissenters, but only to a certain extent. Although it was years later, the decision in *Brandenburg* illustrates why these earlier statutes and arrests were unconstitutional and violated Cruz's First Amendment rights.

Before *Brandenburg*, the question that needed to be asked in these cases was whether or not speech was a "call for action," and whether that action be illegal activity or the overthrow of the government.¹³¹ In *Brandenburg*, the Court addressed the issues of whether or not criminal syndicalism laws were unconstitutional — this reasoning also applies to criminal anarchy statutes — and whether or not the First Amendment allows people to speak in favor of

¹³¹ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

violence.¹³² The opinion of the court, delivered per curiam, stated “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”¹³³ Thus, they argued that the point at which the First Amendment ceases to protect seditious speech is not when it is a call for action as previously stated, but instead only when that call for action is actually persuasive and effective enough that it is likely to produce “imminent” results. This became an important distinction and somewhat of a victory for free speech. Basically, the new precedent became that there is a distinction between abstract teaching of violence and actually preparing a group to commit a violent action. The Court ruled that any statute that failed to make that distinction was unconstitutional.

Perhaps even more important was the concurring opinion written by Justice Douglas. Previously the “call for action” was measured by what had been established in *Schenck* as a “clear and present danger.” Douglas argued that this test was used and manipulated by the government, particularly in times of war. He stated that this test was negative because it did not allow “men to strive for better conditions.”¹³⁴ Douglas clearly understood that the actual purpose of the First Amendment is to protect dissenters. Dissenters exist because they want to fight for a better society, and limiting them is a dangerous game. He also stated in his opinion that action is a mode of expression as well and should not be punished.¹³⁵

The *Brandenburg* opinions are essential in analyzing the Cruz case in order to display how Cruz’s First Amendment rights to free speech were violated. It also follows a long line of

¹³² *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

¹³³ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

¹³⁴ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

¹³⁵ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

First Amendment theorists who argue that limiting the right to free speech has negative effects on democracy and liberty.

The *Brandenburg* decision follows a line of reason that can be traced back to Machiavelli. The Machiavelli line of reasoning states that freedom of speech is important for liberty and should not be limited except in rare instances.¹³⁶ The *Brandenburg* opinion follows the major theme that has reoccurred throughout the writings of many First Amendment theorists: Free speech should be completely protected in all instances except when said instances can result in harm to another. In *Cato's Letter No. 15*, Trenchard and Gordon state, "Without freedom of thought, there can be no such thing as wisdom; and no such thing as publick liberty, without freedom of speech: Which is the right of every man, as far as by it he does not hurt and control the right of another: and this is the only check which it ought to suffer, the only bounds which it ought to know."¹³⁷ James Wilson and John Stuart Mill also address the fact that speech should be limited only to prevent harm.¹³⁸

Cruz was also arrested under a vague criminal anarchy statute that essentially charged him simply for believing an alternative doctrine to the status quo. Using the Cruz case and the *Brandenburg* decision, it becomes clear that limitations on free speech are often used not to protect others, but rather to protect the interest of the establishment.

Continuing to limit freedom of speech presents a number of problems for dissenters. The first problem is that limiting free speech goes against the very idea of the First Amendment. The

¹³⁶ Machiavelli, *The Discourses*, c. 1519 (New York, Penguin Books, reprinted 1983).

¹³⁷ The Online Library of Liberty, "Cato's Letters: No. 15," <http://oll.libertyfund.org>.

¹³⁸ James Wilson, Speech in the Statehouse Yard, October 6, 1787; John Stuart Mill, *On Liberty*, (London: Longman, Roberts, and Green, 1859).

First Amendment was created to protect dissenters and the case law should reflect that.¹³⁹

Another problem is by limiting free speech the Supreme Court is sending a very powerful message to the citizens of the United States. The First Amendment is more than just its legal applications; it is also a cultural symbol. As a cultural symbol, free speech “has done more than promote tolerance: as a cultural symbol, the First Amendment has enlivened, encouraged, and sponsored the rebellious instincts within us all.”¹⁴⁰ However, its meaning becomes watered down when it is limited. It sends a message to citizens that they should not always embrace their rebellious nature for fear of punishment. The biggest unresolved issue is whether or not “violent” speech should be limited in any regard. For starters, *Brandenburg* is not an impenetrable fortress. It is still possible to reverse it, and as we have seen in the past, when the government feels threatened they may begin to slowly — or quickly — limit our speech again. Also, to limit violent speech seems almost unnecessary. Violent acts will be punished; it seems gratuitous to also punish the speech that allegedly caused it.

The problem is that any type of limitation does not fully protect the dissenter. As long as limitations exist the dissenter will always have to be concerned about whether or not their speech is “likely to incite violence.” As long as this limitation exists citizens will be shackled by their fear, and some will never fully feel comfortable dissenting.

The First Amendment plays an important role as a cultural symbol, that knowing it exists encourages the “rebellious side within us all.”¹⁴¹ However, this rebellious side is stifled by the existing limitations. Absolute freedom for all dissenters is key to liberty because it is the only way that progress can exist. Speech and dissent are social events and progressive in nature and

¹³⁹ Steven H. Shiffrin, *The First Amendment, Democracy, and Romance* (Harvard University Press, 1990), 89.

¹⁴⁰ Shiffrin, *The First Amendment*, 89.

¹⁴¹ Shiffrin, *The First Amendment*, 89.

speech has progressive implications.¹⁴² Thus the first thing the Cruz case illustrates is the ways in which limiting free speech in any way is unconstitutional and serves only to discourage dissenters.

More importantly, this case illustrates the fact that limiting free speech always punishes dissenters. Despite the fact that Cruz and his wife were later released, they faced economic punishments. The importance of understanding these punishments translates into contemporary times. As long as free speech is subject to limitations, dissenters like Cruz will be arrested and charged in an attempt at maintaining the law. Even if dissenters are acquitted or later released, they still face time off work, lawyer fees, and a number of other consequences. These financial consequences send the most powerful message of all to dissenters: that free speech belongs only to those who are willing to pay the price — both literally and figuratively — for their dissent. These financial punishments serve as a part of the contradictory education about the First Amendment. Conceptually, we are taught to value free speech but concretely we are taught to fear dissent.¹⁴³ The economic punishment is one of the reasons people are afraid to dissent. This serves as a powerful tool to discourage all those who chose to dissent.

Another major consequence of punishing dissenters is the negative way in which these dissenters are rhetorically constructed. To this day, the words “socialist,” “communist,” and “anarchist” are often viewed as negative descriptors. This stigma can be traced back to the way in which Americans treated members of these groups. The law is one of the rhetorical texts by which communities are created, sustained and transformed. Legal scholar James Boyd White contends that the law “is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, and in which our methods

¹⁴² Shiffrin, *The First Amendment*, 89.

¹⁴³ Shiffrin, *The First Amendment*, 89.

of reasoning are elaborated and enacted.”¹⁴⁴ Legal systems and the laws within those systems are culturally situated and represent the prevailing beliefs of the time. Unfortunately, most people do not view the legal system as rhetorically constructed, nor do they understand the way in which the law rhetorically constructs its citizens. The United States laws have constructed a narrative in which people are either law-abiding citizens or they are disobedient, un-American, and criminal. By placing people into these two groups, the popular narrative creates an “other.” The “other” has become an important concept in critical studies and from that has emerged the idea of the “rhetorical construction of the other.”¹⁴⁵ Basically, humans gain their individual identities or sense of self through their interactions with people in society. One of the most important types of human interaction is determining from whom we are different. It is important to note that in regard to human interactions, being different is viewed as negative. “Like its closely related strategic ‘cousins,’ the enemy and the scapegoat, the other is increasingly recognized by critical scholars as a central vehicle in forms of constitutive rhetoric or those discourses that create individual and group identity.”¹⁴⁶ In the case of dissenters, the law serves as a series of rhetorical and political tactics used to define and control said dissenter. By using the law to define dissenters as criminals, it serves to also define them as outsiders or “others.” The law serves to define and maintain the ideal citizen and those who dissent are considered outsiders. In regard to outsiders, James Jasinski states “the discourse of a dominant group fashions the other, endows them with certain characteristics and habits, and thereby allows them to function as a contrast to

¹⁴⁴ James Boyd White, “Law as Rhetoric, Rhetoric as Law: The Art of Cultural and Communal Life,” *University of Chicago Law Review* 52 (1985): 692.

¹⁴⁵ This line of argument is supported by James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 411-412.

¹⁴⁶ Jasinski, *Sourcebook on Rhetoric*, 411-412.

the dominant group.”¹⁴⁷ Once the stereotype of the “other” has been constructed, they remain for long periods of time. This is evidenced by the way “communist,” “socialist,” and “anarchist” are still discussed in a negative light by contemporary society. Power and position are justified by creating the other group as an “other.”¹⁴⁸

Foucault argues that the law is not just something that is imposed. It is used as a tactic to achieve something.¹⁴⁹ In the case of Cruz’s criminal anarchy charge, the law served as a tactic to define, silence, and control his group. The law is vital to regulating unpredictable and dissenting individuals.¹⁵⁰ Thus, the concept of “illegal” serves as a way to “sum up symbolically all the others” who fall outside the conventional boundaries of the law.¹⁵¹ The law sends a powerful message to the citizens: dissenters are “bad citizens.” The government is able to mark dissenters as bad citizens because it has been given the power to define what is “good” and what is “bad.” The government has decided that Americans live an ideal life and should therefore not complain.¹⁵² Once they’ve defined this good life, they punish those who disagree. This is a powerful punishment for dissenters because it affects not only how they are viewed personally, but also how the rest of the society views them. This affects their message, cause, and any attempt at revolution.

This chapter has examined the arrest of George Cruz on criminally anarchy charges, how limiting free speech in any regard violates the First Amendment, the way that limitations allow

¹⁴⁷ Jasinski, *Sourcebook on Rhetoric*, 412.

¹⁴⁸ Jasinski, *Sourcebook on Rhetoric*, 412.

¹⁴⁹ Michel Foucault, *Society Must Be Defended*. Edited by Mauro Bertani and Alessandro Fontana. Translated by David Macey. (New York: Picador, 1997).

¹⁵⁰ Foucault, *Society Must Be Defended*, 219.

¹⁵¹ Foucault, *Society Must Be Defended*, 277.

¹⁵² Shiffrin, *The First Amendment*, 89.

arrests and therefore economic punishments, and how these laws serve to shape and rhetorically construct the understanding of dissenters. Discussion will now turn to the case of Ward Rodgers.

CHAPTER 4

THE ARREST OF WARD RODGERS IN POINSETT COUNTY

“I believe in the organization of tenant farmers in behalf of justice for themselves is one of the finest examples of Americanism, one of the finest proofs that the old American spirit of liberty and justice is not dead, that I have seen.”

— Norman Thomas¹⁵³

In American history, the 1930s are synonymous with the Depression. Throughout the nation, the closing of factories and the failing of farms marked this decade. Though the whole nation struggled, the situation in the South was desperate. President Franklin Delano Roosevelt believed the South’s condition to be so dire that he commissioned *The Report on Economic Conditions of the South* to discover not only why the South was suffering so much more than the rest of the nation but also how these problems might be resolved. In this report, the President’s letter states, “It is my conviction that the South presents right now the Nation’s No. 1 economic problem—the Nation’s problem, not merely the South’s. For we have an economic unbalance in the Nation as a whole, due to this very condition of the South.”¹⁵⁴ This hopeless situation led to the creation of the Southern Tenant Farmers Union (STFU) in Arkansas. While this union was created to help the local sharecroppers and tenant farmers, its close association with socialism resulted in its members being persecuted based on their “radical” speech.

This chapter examines an incident that occurred in Poinsett County, Arkansas during the mid 1930s, when Ward Rodgers was arrested based on a speech he gave on behalf of the STFU. This event serves as an effective case study because it illustrates the motives and actions of both

¹⁵³ Letter to Commercial Appeal from Norman Thomas. Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁵⁴ National Emergency Council, *Report on the Economic Conditions of the South*, The President’s Letter, (1938): 1.

the dissenters and the establishment. The examination of this case will aim to determine the pattern and extent of the damage brought forth by limiting free speech, asking: *What is the history and import of Ward Rodger's arrest for anarchy? How do rhetorical agitation and control strategies manifest themselves in the messages presented in these case studies? What are the consequences of the establishment's silencing of protected speech for citizens of the United States? How do these laws shape our understanding of dissidents?*

To create an understanding of the way in which the state arrests dissenters especially those dissenters who are affiliated with an anti-capitalist organization, the research will present an analysis of Ward Rodgers' arrest. In answering the previously posted research questions, the historical research will examine the events surrounding the Rodgers' arrest as well as the creation of the STFU. Then, research will examine the background and rhetorical behaviors of the agitators and of the establishment. Next, this chapter will argue Rodgers' arrest under criminal anarchy is a violation of free speech and that limiting free speech serves to discourage dissenters. Then, using examples from the Rodgers' case, the research argues that criminal anarchy charges serve as an effective economic punishment for dissidents. Finally, the research will argue that criminalizing dissent shapes the way society views the dissenters themselves.

Arrest of Ward Rodgers for Criminal Anarchy

Harry L. Mitchell and Henry Clay East founded the agitating group, the Southern Tenant Farmers Union, in mid-February of 1934. The two men had met in 1932 and discovered that they both shared a common interest in the Socialist Party. They began to organize local socialists. In 1933, Mitchell and East's attention turned toward the plight of sharecroppers.¹⁵⁵ The Agricultural Adjustment Act (AAA) of 1933—the New Deal's response to the South's depression—ended up

¹⁵⁵ Jarold S. Auerbach, "Southern Tenant Farmers: Socialist Critics of the New Deal," *The Arkansas Historical Quarterly* 27 (1968): 112-115.

only worsening the sharecropper's suffering. The act's most detrimental feature was the "disproportionate allocation of benefit payments to landlords, because of their greater equity in the crops produced."¹⁵⁶ Out of this heightened tension between landlords and tenants in Arkansas a need for organization arose. In February 1934, Norman Thomas, the Socialist Party's 1932 nominee, visited Tyronza, Arkansas and addressed both socialists and sharecroppers. Thomas met with East and Mitchell after his address and East and Mitchell recounted their futile attempts to run for office on the local Socialist Party ticket.¹⁵⁷ It was during this meeting that Thomas suggested to East and Mitchell that they should organize a sharecropper's union.¹⁵⁸ This union was one of the first union to become both integrated and allow women.

Ward Rodgers, a young Methodist preacher from Texas, arrived in Arkansas in 1933 to take a preaching position near Paris. Rodgers was a well-known, well-connected, and active member of the Socialist Party. He was a native of Oklahoma and was a graduate of Vanderbilt University. When he heard about the union being organized he abandoned his church in Paris and came to help.¹⁵⁹ Rodgers founded a local branch of the Socialist Party.¹⁶⁰ Rodgers, along with other members of the local Socialist Party, was also responsible for founding the eastern Arkansas branch of the Southern Tenant Farmers Union. The STFU was a federation of tenant farmers with the goal of reforming the sharecropping and tenant farming systems.¹⁶¹

East and Mitchell took the first delegation of sharecroppers to Washington in January of 1935. They had wired Rodgers to notify the members of the STFU that members of the

¹⁵⁶ Auerbach, "Southern Tenant Farmers," 115.

¹⁵⁷ Auerbach, "Southern Tenant Farmers," 116.

¹⁵⁸ Auerbach, "Southern Tenant Farmers," 116.

¹⁵⁹ H. L. Mitchell, "The Founding of the Early History of the Southern Tenant Farmers Union," *The Arkansas Historical Quarterly* 32 (1973): 354.

¹⁶⁰ Erik S. Gellman and Jarod Roll, *The Gospel of the Working Class Labor's Southern Prophets in New Deal America* (Urbana: University of Illinois, 2011): 53.

¹⁶¹ Gellman and Roll, *The Gospel of the Working Class*, 55.

delegation would report at a meeting in Marked Tree, Arkansas.¹⁶² East and Mitchell had anticipated only fifty or sixty people would attend the meeting, but when they arrived, there were so many people that they moved the meeting to the town square. The gathering ended up hosting about 500 white and black members of the Southern Tenant Farmers Union.¹⁶³ Rodgers was acting as chairman of the meeting.¹⁶⁴ At the time, Rodgers had been working for the Federal Emergency Relief Administration (FERA) adult education program teaching adults to read, write, and do arithmetic. A number of the plantation owners objected to sharecroppers learning these skills. Lynch, the superintendent of schools in the area, advised Rodgers that he should stop teaching these classes and leave the county. Rodgers protested, and Lynch told him that he might “find himself strung up on a telephone pole, if he did not leave.”¹⁶⁵ Rodgers recounts this encounter by stating

I had been teaching in the FERA Workers Education program members of the STFU. I had two Negro classes and three white classes. I was teaching economics, current events, and English. On January 14 my Negro class near Tyronza was “investigated” by the school board, who had no authority to do so. They complained because I was a Socialist and because I was a white man teaching Negroes. The latter was more unpardonable in their minds.¹⁶⁶

It was this event that would lead to Rodgers troublesome statements during the STFU meeting.

During the meeting, Rodgers referred to a black man as “Mister.” The vice president of the union was a black man named E. B. McKinney, and during the meeting Rodgers had asked, “Is Mr. McKinney in the crowd? Will Mr. McKinney come to the platform?”¹⁶⁷ He repeated this a number of times. Fred Stafford, the prosecuting attorney, was standing at the edge of the crowd

¹⁶² Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 354.

¹⁶³ “FERA Worker Held After Speech Here,” *Marked Tree Tribune*, January 17, 1935, 4.

¹⁶⁴ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 354.

¹⁶⁵ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 355.

¹⁶⁶ Ward H. Rodgers, “Sharecroppers Drop Color Line,” *The Crisis* 42, (1935): 168, 179.

¹⁶⁷ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 355.

with a notebook having his stenographer write down everything Rodgers was saying. He even asked, “Did you hear that agitator call that nigger Mister?” To which an older sharecropper replied, “I’d rather call McKinney Mister than you.”¹⁶⁸ The next “mistake” Rodgers made was failing to explain what Lynch had told him about his adult education class before saying, “You know if I wanted to do so, I could lead a lynch mob to lynch any plantation owner in Poinsett County.”¹⁶⁹ The crowd cheered to this statement, and Mitchell knew that Rodgers had said the wrong thing. He recalls, “ I got up on the platform and explained what had happened the night before. I got a little excited too by the crowd and said, ‘Ward Rodgers is staying at my house, if anybody gets his head in a pillow case and comes around my place, he’s gonna get the hell shot out of him.’ Of course, I didn’t have a shotgun.”¹⁷⁰ After meeting adjourned, everybody left, but Rodgers stayed around and was arrested by Sheriff J. D. Dubard based on the information Stafford had filed, and Rodgers was put in jail.¹⁷¹

The STFU’s lawyer, C.T. Carpenter of Marked Tree was a native of Virginia and a graduate of Washington and Lee College. He was not familiar with unions but he did believe in the teachings of Thomas Jefferson. Mitchell remembers Carpenter as a “a lawyer of ability and a man of great personal courage.”¹⁷² In a letter to the Socialist Party Headquarters, members of the STFU expressed their deepest confidence in Carpenter stating, “We are perfectly satisfied with methods and tactics employed by our attorney Mr. C. T. Carpenter and feel that he is wholly competent and worthy of our whole-hearted support. We authorize Mr. Carpenter and who ever

¹⁶⁸ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 355.

¹⁶⁹ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 355.

¹⁷⁰ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 355.

¹⁷¹ “FERA Worker Held After Speech Here,” *Marked Tree Tribune*, January 17, 1935, 4; Harold Preece, “Anarchy in Arkansas,” *The New Masses* (1935): 14.

¹⁷² Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 356.

he sees fit to use—to handle all cases involving the Southern Tenant Farmers Union.”¹⁷³ The STFU believed that using only local defense for fighting these cases was ideal.

After his arrest, Rodgers was unable to make bail, which had been set at \$3,000, so he was placed in Jonesboro to await trial.¹⁷⁴ On the day of the trial, Rodgers was brought back to Marked Tree by Sheriff Dubard and before the court proceeding; the court ordered the sheriff and his deputies to search the crowd—which was about two-thirds sharecroppers—for firearms.¹⁷⁵ Based on things he said in his speech, Rodgers was charged with anarchy, blasphemy, and barratry, among other things. The prosecuting attorney charged Rodgers with being “a foreign agitator from that Yankee school, Vanderbilt University.”¹⁷⁶ The state contended that his speech to the sharecroppers was an attempt to incite a mob.¹⁷⁷ The state had six witnesses, W.P. Frazier, Fred Bradsnor, Andy Smith, J.E. Hudgins, J. W. Hurley, and Sherrill Reeder. Reeder was the stenographer who made the report of Rodgers’ speech. Each had testified that they were present at the meeting at that they had heard Rodgers make the alleged remarks.¹⁷⁸ Stafford, assisted by local attorney J. O. Waskom, asked the jury for the maximum penalty for anarchy which consisted of \$1,000 fine and six months imprisonment.¹⁷⁹ Rodgers was convicted on the charge of anarchy—which was a misdemeanor—in Justice J. C. McCroy’s court.¹⁸⁰ The jury was packed with planters—seven of whom had been plantation owners—who were prejudiced against Rodgers. It is likely that the jury would have convicted him regardless of what

¹⁷³ Letter to Socialist Party Headquarters, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁷⁴ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

¹⁷⁵ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

¹⁷⁶ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 356.

¹⁷⁷ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

¹⁷⁸ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

¹⁷⁹ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

¹⁸⁰ “Rodgers Given \$500 Fine, 6 MO. Jail Sentence,” *Marked Tree Tribune*, January 24, 1935, 1.

the evidence against him was.¹⁸¹ The jury deliberated for less than ten minutes before returning a guilty verdict. Rodgers was fined and given a prison sentence. After sentencing, Carpenter announced to the court that the case would be appealed to the circuit court.¹⁸²

After Rodgers' arrest, the Farmers National Committee For Action (FNCA) and the STFU began a campaign to raise money for Rodgers' defense. The FNCA was a Communist Party front group. Lem Harris, the executive secretary of the FNCA and a Communist Party member, drafted a letter to "All Farm Groups and Organizations which Believe in Building the Unity of All Farmers."¹⁸³ In the letter, Harris described the situation as a "fierce attack" on the "courageous South Tenant Farmers Union."¹⁸⁴ He explained Rodgers' arrest and sentencing and asked the readers to "go out and take a collection from your friends and sympathizers and send it to H. L. Mitchell, secretary of Southern Tenant Farmers Union. Show your solidarity with our brothers in the South."¹⁸⁵ Harris also asked the farmers to write to the District Judge in protest and demand the release of Rodgers because "that is one thing the bosses are afraid of, — the mass-power of the farmers and workers."¹⁸⁶ The STFU also sent a letter to the Socialist Party Headquarters explaining the situation and asking for support.¹⁸⁷ The National Headquarters of the Socialist Party responded to this plea by drafting a letter to all the branches of the Socialist

¹⁸¹ J. Davis Story Publishers, New York Post, February 8, 1935, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸² "Rodgers Given \$500 Fine, 6 MO. Jail Sentence," *Marked Tree Tribune*, January 24, 1935, 1.

¹⁸³ FNCA Letter to Members, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸⁴ FNCA Letter to Members, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸⁵ FNCA Letter to Members, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸⁶ FNCA Letter to Members, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸⁷ STFU Letter to Socialist Party Headquarters, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

Party. They asked for two things to be done: First, protests from all farm organizations telling Arkansas that human rights must be guaranteed, and second, that funds should be collected for the defense.¹⁸⁸

Thomas also took up the cause of helping Rodgers. He wrote a letter to the editor of the *Commercial Appeal* on February 1, 1935. He wrote the letter in response to an article that portrayed Rodgers in a less than favorable light. In regard to the article, Thomas stated, ‘a story which definitely tries to cloud the issue of justice to share croppers and to Ward Rodgers by raising up a Red scare and by including the ancient bogey man of racial feeling.’¹⁸⁹ It was not just Rodgers that Thomas was defending but the STFU. In a country founded on revolution, Thomas found it shocking that this organization would be considered un-American. He stated, ‘I believe in the organization of tenant farmers on behalf of justice for themselves is one of the finest examples of Americanism, on of the finest proofs that the old American spirit of liberty and justice is not dead, that I have seen.’¹⁹⁰ He also addressed the fact that Rodgers’ papers were confiscated and used to demonize the STFU and Rodgers. Thomas also believed that what the newspapers were attempting to do would not work. He believed that Americans were smarter than the papers had given them credit for. To this end, Thomas stated:

In this article which is before me the attempt is made to take the word “revolution” and possibly some other statements out of Mr. Rodgers’ correspondence and use them to scare the public. I do not believe that an intelligent public will be so easily scared. It is to the credit of young men that their hearts revolt against injustice.¹⁹¹

¹⁸⁸ Letter to *Commercial Appeal* from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁸⁹ Letter to *Commercial Appeal* from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁹⁰ Letter to *Commercial Appeal* from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁹¹ Letter to *Commercial Appeal* from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

Thomas' argument falls in line with the central charge of this research, that the establishment and all those who work for the establishment have a vested interest in demonizing socialism.

Many sympathizers answered the call of the STFU to aid in Rodgers' defense. The Highlander Folk School in Tennessee was one of the organizations that sent Mitchell contributions for Rodgers' defense.¹⁹² Also, the Holiday Association of Nebraska sent a letter to the District Judge in Tyronza, Arkansas demanding the immediate release of Ward Rodgers and demanding that he be given a fair trial since the STFU is merely defending the rights of American citizens.¹⁹³

As mentioned by Thomas, the local police also had authorities raid the STFU's office in Tyronza. Lucien Koch, among others from Commonwealth, rushed to Marked Tree to help Rodgers. When they arrived they were abducted and pistol-whipped by a group.¹⁹⁴ When Rodgers had finally been released on bail, he and Koch were arrested in another community and thrown into jail on another charge of barratry.¹⁹⁵ They were held for two nights in a "filthy" jail cell with "inadequate heat, bedding, and food."¹⁹⁶ However, this time the charges were dismissed. According to an article in the *Daily Democrat* titled "Tenant Union Men Win Two Court Fights: Rodgers and Koch Freed of Barratry Charges at Lepanto Today," the charges against Rodgers and Koch were dismissed on February 6, 1935.¹⁹⁷ According to the article,

¹⁹² Letter to Commercial Appeal from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁹³ Letter to Commercial Appeal from Norman Thomas, Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁹⁴ Gellman and Roll, *The Gospel of the Working Class*, 58.

¹⁹⁵ M. S. Venkataramani, "Norman Thomas, Arkansas Sharecroppers, and the Roosevelt Agricultural Policies, 1933-1937," *The Mississippi Valley Historical Review* 47 (1960): 225-246.

¹⁹⁶ Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

¹⁹⁷ "Tenant Union Men Win Two Court Fights: Rodgers and Koch Freed of Barratry Charges at Lepanto Today," *Fayetteville (ARK.) Daily Democrat*, February 6, 1935, 4.

“Rodgers was on trial before a jury, and Koch was awaiting trial when city attorney J. S. Mosby recommended the dismissals on ‘technical grounds,’ and Mayor M. P. Smith who presided entered the dismissals.”¹⁹⁸ Rodgers and Koch had been taken into custody during a rally of the Southern Tenant Farmers Union and were accused of spreading “false rumors and calumnies whereby discord and disquiet may grow among neighbors.”¹⁹⁹ The mayor charged both Rodgers and Koch \$50 on the city charge of obstructing streets and allays. After the dismissal, Koch was free to go but Rodgers was taken back into custody on the earlier anarchy charge. Koch announced after his dismissal that the “union would continue its rallies to organize sharecroppers to help them obtain their rights from the planters under the government’s reduction contracts.”²⁰⁰ The American Civil Liberties Union issued a press release on February 8, 1935, which addressed the attack on the STFU in Arkansas and described both Rodgers’ and Koch’s arrests. They offered a list of a number of organizations that were already aiding in the defense of Rodgers. This list includes the League of Industrial Democracy, The Fellowship of Reconciliation, the Socialist Committee for the Promotion of Labor Defense, the Provisional Committee for Non-Partisan Labor Defense, the General Defense Committee of the I. W. W., and various labor unions.²⁰¹ The newly founded newspaper the *Sharecroppers Voice* also joined the fight by

¹⁹⁸ “Tenant Union Men Win Two Court Fights: Rodgers and Koch Freed of Barratry Charges at Lepanto Today,” *Fayetteville (ARK.) Daily Democrat*, February 6, 1935, 4.

¹⁹⁹ “Tenant Union Men Win Two Court Fights: Rodgers and Koch Freed of Barratry Charges at Lepanto Today,” *Fayetteville (ARK.) Daily Democrat*, February 6, 1935, 4.

²⁰⁰ “Tenant Union Men Win Two Court Fights: Rodgers and Koch Freed of Barratry Charges at Lepanto Today,” *Fayetteville (ARK.) Daily Democrat*, February 6, 1935, 4.

²⁰¹ Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

calling the case against Rodgers a “fight against the STFU because of his connection with this organization.”²⁰²

Rodgers’ appeal did not make it to the circuit courts until over a year later. On March 3, 1936, the charges against Rodgers were dismissed in a Circuit Court in Harrisburg, Arkansas. He had appealed the case for a few rounds in court before it was dismissed. “He wasn’t guilty of anything,” Mitchell recalls. “It just sounded bad.”²⁰³ The STFU described this arrest as an “attempt to crush the growing tenants’ union by which other methods have failed dismally.”²⁰⁴

His appeal had been pending in civil court for several months. The *Fayetteville Daily Democrat* contends, “Rodgers denied attempting to lead a mob, but he said he told the crowd it would be possible to lead a mob because of alleged abuses he said sharecroppers had suffered. Denver Dudley, prosecuting attorney, said his recommendation for the dismissal of the action was all that was necessary to remove the case from the docket.”²⁰⁵ The article continued on to quote Dudley as saying, “I regard Rodgers as a meddler and agitator. There is no reason to distinguish that case between any other misdemeanor cases. I do not see any reason for spending the county’s money to try that sort of case.”²⁰⁶ In regard to the Southern Tenant Farmers Union, Dudley said, “It is impolite to kick a corpse.”²⁰⁷

In 1935, Rodgers wrote a piece about his arrest for *The Crisis*. It had been all too common for the public to get only the mainstream media’s version of Rodgers’ arrest. This article allowed Rodgers the rare opportunity to publish his counter narrative. One of the most

²⁰² ACLU Press Release, September 1935, *Sharecroppers Voice*, Reel 1935-1937, Microfilm Collection, University of Arkansas.

²⁰³ Mitchell, “The Founding of the Early History of the Southern Tenant Farmers Union,” 356.

²⁰⁴ Southern Tenant Farmers Union Papers, Reel January, 1934 – March 1936, Microfilm Collection, University of Arkansas.

²⁰⁵ “State Drops Counts Against Ward Rodgers,” *Fayetteville Daily Democrat*, March 3, 1936, 1.

²⁰⁶ “State Drops Counts Against Ward Rodgers,” *Fayetteville Daily Democrat*, March 3, 1936, 1.

²⁰⁷ “State Drops Counts Against Ward Rodgers,” *Fayetteville Daily Democrat*, March 3, 1936, 1.

important things about the STFU was the fact that it was integrated. Rodgers recounts that there had been “practically no friction within the Union over the race question.” He even went on to praise some of the best leaders as being black, mentioning E. B. McKinney.²⁰⁸ Interestingly, Rodgers was arrested in part for referring to McKinney as “Mister,” and yet, in this article Rodgers again refers to him as “Mister.” Rodgers is making it clear that calling McKinney “Mister” was neither an accident nor a mistake. He recounts the event by saying:

I spoke of the violence being used against the Union and told of our policy of non-violence. But stated that violence is a weapon that two can use. And that if the planters continued their violent acts, eventually sharecroppers would stop turning their cheeks and start using lynch ropes. I, as chairman, had introduced two Negro organizers as “Mr.,” and unpardonable sin in my homeland in the South. I was arrested on the absurd charges of “anarchy,” “inciting a riot,” “using profane and abusive language,” and “conspiracy to usurp the government.”²⁰⁹

Rodgers contended that because the case had been given so much publicity all the additional charges were dropped and only the anarchy charge remained.

Ideologies of the Establishment and Agitators

Understanding the ideologies of the establishment and agitators at the time allows us to put these events into a larger context. As stated in the previous chapter, the establishment is whoever is in control while agitators are whoever question or threaten that control.²¹⁰ In the case of Rodgers, the authorities in Poinsett County, Arkansas represent the establishment. At this time, the establishment represented the interests of the white, male, plantation owners. These plantation owners viewed dissenters as dangerous to the “American” way of life. Whether they actually believed a threat toward capitalism existed is irrelevant, the more important issue is that they believed a threat existed to them personally and to the status quo they had sworn to protect.

²⁰⁸ Rodgers, “Sharecroppers Drop Color Line,” 168.

²⁰⁹ Rodgers, “Sharecroppers Drop Color Line,” 179.

²¹⁰ This framework is derived from John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993), 4.

This ideology can be seen both nationally and locally. On the national level, laws and Supreme Court rulings punished dissenters.²¹¹ Locally, this ideology was showcased through the vague use of criminal anarchy and barratry laws.²¹²

More specifically, the combination of the depression, the first Red Scare of the 1930s, and the civil unrest in the south created the perfect storm for dissenters to fight back and for the establishment to justify oppression. The national and local government sought to uphold the very system that the agitators opposed.

Agitation or dissent occurs when people outside the establishment advocate for any degree of social change.²¹³ The agitators, in the instance Rodgers and members of the STFU, believed that governmental programs such as the AAA had given plantation owners an unfair advantage over sharecroppers. They fought to right these gross inequalities. There were a number of strategies employed by agitators to fight the status quo and a number of strategies used by the establishment to respond.²¹⁴ Defining the strategies employed by both sides during the events surrounding the Rodgers' arrest is important so that we can better understand the complexities of the relationship between dissenters and the establishment.

Confrontation as the Central Strategy of the Agitators

The STFU, and Rodgers specifically, employed all the agitation strategies earlier defined. They petitioned, meaning the STFU approached the establishment with evidence and arguments in support of their position by taking meetings to Washington in regard to their plight. The next stage, promulgation, was used as they attempted to recruit sharecroppers to become

²¹¹ See *Schenck v. United States*, 249 U. S. 47 (1919); *Gitlow v. New York*, 268 U. S. 652 (1925); *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

²¹² Ark. Acts, 1919, pp. 388-389.

²¹³ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993).

²¹⁴ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 89.

members of the union. The STFU also used their gatherings as a way to solidify and reinforce the viewpoint and beliefs of its members and to unite them under a common goal. However, the central strategy—especially in regard to the Rodgers’ arrest—was that of escalation or confrontation. This strategy involves escalating the tension until the establishment responds.²¹⁵ During the STFU gathering, Rodgers’ was upset at being threatened. Though the STFU had always taken a non-violent stance, Rodgers decided to make the strong point that violence could indeed be fought with violence. While his statements were not threats, they were enough to garner the attention of the establishment.

Suppression as the Central Strategy of the Establishment

The major rhetorical strategy used by the establishment in the Rodgers’ case was that of suppression which “demands not only an understanding of the opposing ideology but a firm resolve and commitment on the part of the decision makers to stop the spread of that ideology by hindering the goals and personnel of the agitative movement.”²¹⁶ In Rodgers’ case, it seems fairly obvious that the establishment tried to silence or suppress the agitator’s ideology. Rodgers’ case showcases all the tactics of suppression that an establishment can use. One of those strategies is harassment of the leaders. By arresting Rodgers, the chairman of the meeting, the establishment was able to weaken his cause by portraying him and his movement as one of unnecessary violence. The media attention given to the case also served as an attempt to scare the public from joining the cause for fear that they might also be arrested or even killed.

Rhetorical Assessment

The aim of this thesis is to historically reconstruct criminal anarchy arrests in order to create a forgotten picture of an important artifact. This artifact serves to highlight the

²¹⁵ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 89.

²¹⁶ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 54.

consequences faced by dissenters. I will discuss these consequences in more detail by using Supreme Court opinions and First Amendment theories.

At the time of his arrest, Rodgers was using his First Amendment right to speak to on behalf of an organization he believed was correct. He was arrested merely for speaking words that the establishment disagreed with and this showcases the harm The *Brandenburg v. Ohio* decision addressed. While *Brandenburg* did not come until thirty years after Rodgers' arrest, it is important to call upon its opinions to support the argument that Rodgers' First Amendment right was violated. The opinion of the court, delivered per curiam, stated "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."²¹⁷ Basically, the court is arguing that speech is not protected when it crosses the line from speaking hypothetically to becoming likely to produce actual results. This decision was ground breaking and a great victory for free speech. It seems that had this mentality existed before the Rodgers case that Rodgers might not have been charged with such a vague criminal anarchy law.

However, the question is less *would* Rodgers have been arrested had the *Brandenburg* opinion been issued and more even if Rodgers' speech had been likely to produce such "imminent lawless action," *should* he have been arrested? The First Amendment does not say "The government shall make no law abridging the freedom of speech except in instances of violence." It seems quite clear that the First Amendment should protect any and all speech. The problem is that any type of restriction on free speech becomes an excuse to constrain all free speech. In the 1930s, the United States witnessed some of the grossest attempts to silence

²¹⁷ *Brandenburg v. Ohio*, 395, U. S. 444 (1969).

dissenters with excuses of “communist scares” and “threats” to the United States. In the present day United States, the threat being used to limit free speech has moved from communists to terrorists. The point being that the United States has always and will always have a seemingly endless amount of scapegoats to use in order to justify attacks on the First Amendment. The solution then should be to stop trying to interpret the First Amendment as one that has implied exceptions, but rather to interpret at its word. Free speech should have no restrictions. The restrictions on free speech seem superfluous considering the other laws in place. Why should speech be prosecuted for being “violent?” Do we not have laws against violence? Should we not just punish the actual acts of violence rather than the abstract speech said to have caused such violence? As the Rodgers’ case illustrates, dissenters will only truly be able to speak freely when we eliminate any law that limits the First Amendment.

Any type of limitation does not fully protect the dissenter and protecting the dissenter should be of the greatest importance to all United States citizens. While limitations continue to exist the dissenter will likely always be concerned—at least to a certain extent—about whether or not his or her speech is likely to break some arbitrary exception. These exceptions play one of the most powerful roles in shaping citizens’ view of the First Amendment.

The First Amendment plays an important role as a cultural symbol. Knowing the First Amendment exists creates in all of us some level of desire to protect our interests.²¹⁸ However, this desire has been and will continue to be stifled by the existing limitations. Progress can only exist if free speech is absolute.²¹⁹ Thus, the Rodgers’ case demonstrates the ways limiting free

²¹⁸ Steven H. Shiffrin, *The First Amendment, Democracy, and Romance* (Harvard University Press, 1990), 89.

²¹⁹ Shiffrin, *The First Amendment*, 89.

speech in any way is not only unconstitutional but serves the more powerful role of encouraging United States citizens to become passive about the society they live in.

Arguably, the most important thing this case illustrates is the fact that limiting free speech always punishes dissenters in a number of ways. Rodgers' later release is irrelevant; because he and his organization faced economic punishments he was sufficiently deterred. These economic punishments are of some of the greatest importance when studying free speech in contemporary times. Even if dissenters are acquitted or later released, they still face time off work, lawyer fees, and a number of other financial consequences. These financial consequences send a message that is consistent with the capitalist society: the wealthy are granted the privilege of using their First Amendment right because they can afford any financial deterrents. However, the poor and working class are beaten into submission with their inability to afford time off work or First Amendment lawyers. These financial punishments serve to contradict what we are taught about the meaning of the First Amendment. Conceptually, we are taught to value free speech but concretely we are taught to fear dissent.²²⁰ The financial punishment is just another way to privilege the voice of one group over that of another. The only real way to eliminate this inequality is to eliminate limitations, thereby freeing all Americans to voice their opinions without fear of retribution.

A final and extremely important consequence of punishing dissenters is the rhetorical shaping of dissenters into a negative connotation. Even in 2012, the words "socialist," "communist," and "anarchist" are often viewed as both negative descriptors and insults. The question becomes: why is an ideology that conflicts with capitalism spoken about as if it is a threat to democracy? This idea is especially ludicrous in regard to socialism. Socialism is an

²²⁰ Shiffrin, *The First Amendment*, 89.

economic system competing only with capitalism. It is in no way, shape, or form a threat to the current political system. It is likely that this can be traced back to the laws we used to arrest dissenters. The law is one of the most powerful rhetorical texts through which groups are defined. Legal scholar James Boyd White contends that the law “is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, and in which our methods of reasoning are elaborated and enacted.”²²¹ The law is created to maintain and privilege the status quo. Laws should change and evolve as members of a society change and evolve. The problem is that most people are unaware that the law is a way to rhetorically shape groups of people.

Even in present times, the United States’ laws have constructed a narrative using an “either/or” philosophy. We all remember the infamous words of President George W. Bush when he stated, “Either you are with us, or you are with the terrorists.”²²² This logical fallacy translates into the law and people become either law-abiding citizens, which means they are champions of the capitalist way of life and the American dream or they are disobedient, un-American, and criminal. Thus, those who voice their point of view, which may be ideologically opposed to what the law has defined, become what rhetoric as termed the “other.” The “other” has become an important concept in critical studies and from that has emerged the idea of the “rhetorical construction of the other.”²²³ Humans find their individual identities through their interactions with people in society and the groups of which they have membership. Being different is viewed

²²¹ James Boyd White, “Law as Rhetoric, Rhetoric as Law: The Art of Cultural and Communal Life,” *University of Chicago Law Review* 52 (1985): 692.

²²² George W. Bush, “Address to a Joint Session of Congress and the American People,” September 2001, The White House Archives, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>.

²²³ This line of argument is supported by James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 411-412.

as a negative, but we are taught to define those that are different from us. “Like its closely related strategic ‘cousins,’ the enemy and the scapegoat, the other is increasingly recognized by critical scholars as a central vehicle in forms of constitutive rhetoric or those discourses that create individual and group identity.”²²⁴

In the case of dissenters the law not only defines and “others” these people, it asks citizens to do the same. An example of this in contemporary times would be the Occupy Wall Street Movement. The country was quickly split into two either/or groups. You became either supportive of the movement or adamantly opposed to the movement. We watched as the law and all acting agents of the law became champions of the status quo. We watched as protestors were pepper sprayed and arrested. However, the laws support the status quo so this reaction to the protestors was almost unsurprising. What became surprising was the counter movement that developed. A movement by people who financially would be categorized as part of the 99 percent, but who claimed that being a part of the “99 percent” was a choice. This counter movement attempted to shame the members of the movement by calling them “lazy” or “complainers.” This example showcases how effectively the law can demonize one group and how quickly it can garner support from the public to champion its cause.

By using the law to define dissenters as criminals, it serves to also define them as outsiders or “others.” The law serves to define and maintain the ideal citizen. Since in Rodgers’ time and today, this ideal citizen was and continues to be someone who keeps quiet. A person who supports the system at hand is ideal. The dialogue of the majority creates and demonizes the “other.” The dominant group or establishment provides dissenters with certain characteristics and

²²⁴ James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 411-412.

habits, usually negative.²²⁵ Once the stereotype of the “other” has been constructed, it remains for long periods of time as is evidenced by the way dissenters are still discussed in a negative manner by contemporary society. It is the creation of a group as the other that grants power in society.²²⁶

Foucault argues that the law is used as a means to achieve power.²²⁷ In the case of Rodgers’ criminal anarchy charge, this was a way to silence and punish dissenters. Thus, the concept of “illegal” serves as a way to “sum up symbolically all the others” who fall outside the conventional boundaries of the law.²²⁸ These others are automatically defined as “criminals” which stirs the idea of a “bad citizen” in the mind of all other citizens. This is a powerful punishment for dissenters because it affects not only how they are viewed personally, but also how the rest of the society views them. This hurts their message, cause, and any attempt at revolution.

This chapter has examined the arrest of Ward Rodgers for criminal anarchy. This case illustrates how limiting free speech in any regard violates the First Amendment, how limitations allow arrests and therefore economic punishments, and how these laws serve to shape and rhetorically construct the understanding of dissenters. Discussion will now turn to the case of Horace Bryan.

²²⁵ James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 411-412.

²²⁶ James Jasinski, *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (London: Sage Publications, 2001), 412.

²²⁷ Michel Foucault, *Society Must Be Defended*. Edited by Mauro Bertani and Alessandro Fontana. Translated by David Macey. (New York: Picador, 1997).

²²⁸ Foucault, *Society Must Be Defended*, 277.

CHAPTER 5

THE ARREST OF HORACE BRYAN IN SEBASTIAN COUNTY

“I love America and the American People. This is my land and my people. My kind of people built this country. My forefathers were among the earliest settlers here. They fought in the Revolutionary War for freedom.”

— Horace Paul Bryan²²⁹

The Federal Emergency Relief Administration (FERA) was established in 1933 by the federal government. FERA was a response to the vast number left unemployed by the Great Depression.²³⁰ FERA had two responsibilities: first, to finance state grants and second, to care for the eighteen million unemployed.²³¹ FERA issued grants to the states so that they could organize and operate local relief programs. The primary purpose of FERA was to create low skill government jobs for the unemployed. Although the program was ultimately created to act as an aid for unemployed or “relief workers,” at times, it was necessary for local activists to step in as representatives on behalf of the relief workers. In Arkansas, many of these representatives would end up being arrested for their advocacy of workers’ rights.

This chapter examines an incident that occurred in Sebastian County, Arkansas during 1935, when Horace Bryan and others were arrested because of their part in a local strike. These arrests act as an effective case study because they illustrate the conflicting relationship that exists between dissenters and the establishment. The purpose of studying these arrests is to determine the effect limiting free speech has by asking: *What is the history and import of Horace Bryan’s arrest for anarchy? How do rhetorical agitation and control strategies manifest themselves in*

²²⁹ Horace Paul Bryan, “An Open Letter to the People of Arkansas from Horace Bryan,” *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

²³⁰ Harry L. Hopkins, *Spending to Save* (New York: W. W. Norton and Company Inc, 1936), 97.

²³¹ Hopkins, *Spending to Save*, 97-99.

the messages presented in this case? What are the consequences of the establishment's silencing of protected speech for citizens of the United States? How do these laws shape our understanding of dissidents?

To understand the ways in which Bryan's arrest exemplifies the silencing of dissenters, this research will present an analysis of said arrest. In answering the previously posted research questions, the historical research will first compile a narrative of the events surrounding Bryan's arrest as well as the FERA strike that occurred in Sebastian County, Arkansas. Next, the research will examine the rhetorical behaviors of the establishment and the agitators in this case. Then, this chapter will argue that Bryan's arrest under a criminal anarchy charge was a violation of his right to petition and the ways in which such violations harm dissenters. Finally, the research will argue that laws limiting the First Amendment shape the societal view of dissenters.

Arrest of Horace Bryan for Criminal Anarchy

After FERA was established in 1933, each state was permitted to open individual offices in order to manage the federal funds that were distributed to the state. In Arkansas, William R. Dyess ran the state FERA office. Floyd Sharp was the director of operations and Frank P. Kirk was the county relief administrator for Sebastian County, Arkansas. The trouble began in early 1935 when Dyess ordered that the hourly wages for relief workers in Sebastian County be cut from thirty cents an hour to twenty-five or sometimes twenty cents an hour. The pay was determined by the city's wage bracket classification.²³² The strike began when news of the pay cuts reached relief workers at the Greenwood, Jenny Lind, and Bonanza mines. Upon hearing the news, many relief workers left their jobs to protest the reduction of wages.²³³

²³² "Relief Strike Leaders Hold Local Session," *Southwest American*, February 12, 1935, 1.

²³³ "Relief Strike Leaders Hold Local Session," *Southwest American*, February 12, 1935, 1.

In an attempt to resolve the issue, representatives of the relief workers, Bryan being one of them, met with Kirk to request that relief workers' pay be increased.²³⁴ When Kirk was unresponsive to their demands, Bryan and other representatives began to urge relief workers to strike in protest of the reduced wages. Unsurprisingly, the establishment—represented by the Sebastian County authorities—was not sympathetic with the relief workers. In fact, their policy offered protection only for relief workers who wanted to continue working. It is a clear strategy and pattern for the establishment to create the illusion that the agitators are a minority group. However, in this case many of the relief workers felt passionately about this cause.

In early February of that year, over 200 strike sympathizers attended an organizer's meeting where they heard Bryan urge them to “take Fort Smith solid and the rest of the county has promised to come through 1,000 percent.”²³⁵ But as noted earlier, despite the fact that the relief workers were gaining momentum the establishment's goal focused on protecting those who fell in line with what they were told. In response to the strike, Mayor J. K. Jordan, Commissioners Frances Buck and W. H. Vaugh, Chief of Police Hugh J. Connor, and Sheriff Jack Pace met with Kirk to discuss plans for how to protect the unsympathetic worker. The *Southwest American* quoted Jordan as saying:

We believe that the vast majority of men on the relief rolls desire to continue their work. They understand from Mr. Kirk that no relief will be given without work. We believe too that some of these are being misled by a few misinformed agitators and are being intimidated to the extent that they are afraid to report for work. Jay Medlen, who is in charge of the city's work projects has been instructed to notify members of the crews that they will be given police protection and that any one making threats against them will be placed under arrest and prosecuted. The chief of police and the sheriff have made their plans to carry out this program. We have determined not to permit a few persons to cause the closing of the local relief office if the city can prevent it.²³⁶

²³⁴ “Relief Workers' Wage to be Cut in this County,” *Southwest American*, January 27, 1935, 1.

²³⁵ “Relief Strike Leaders Hold Local Session,” *Southwest American*, February 12, 1935, 1.

²³⁶ “Relief Strike Leaders Hold Local Session,” *Southwest American*, February 12, 1935, 1.

The relief workers were not deterred by this policy though. The workers in Sebastian County began to meet and sign petitions, which were sent to the leaders of FERA in Washington, D. C. Over 6,000 relief workers in Arkansas alone signed the petitions, which explained the grievances of the workers and requested that a federal investigator be sent into the county to verify the conditions.²³⁷

As the strike gained momentum, Bryan emerged as the early leader. Before discussing the strikes and arrests further, it is important to first note Bryan's background. In July of 1933, Bryan wrote a story for the *Fortnightly* in which he explained his experience as a young miner.²³⁸ Bryan grew up in Greenwood, Arkansas, where he worked on a farm while his father worked in the mines. Bryan saw his first "scab" when he was six years old. At that time the union miners and scabs were having a war at Prairie Creek, which was south of where Bryan lived in Greenwood. One night, the miners attacked the scab village and burned it down. It was the United Mine Workers that had organized the strike. After the trouble at Prairie Creek, things at the mines went smoothly for a few years, but nonetheless, Bryan's father would still come home and tell the family stories about workers being killed in the mines. Bryan was sixteen when he first entered the mines as a helper. He had only worked there a few days when the operators decided to close the mines without giving much reason, but two months later, the mine reopened as a non-union organization. The problem was that these non-union miners did not know much of anything about mining coal. The miners and their families fought the scabs and protested this

²³⁷ FERA Petition, United States Federal Emergency Relief Administration, University of Arkansas Special Collections.

²³⁸ Horace Paul Bryan, "I Got Bull-Headed," *The Commonwealth College Fortnightly*, July 1, 1933, 3-4.

change. Eventually, the union went broke and the miners slowly but surely began to return to the mines.²³⁹

Bryan worked in the mines for a while but eventually decided to go back to school to “make something” of himself.²⁴⁰ Because he was nearly twenty when he entered school, the coursework came easy for him, and he became chairman of the student body, president of classes, and editor of the school annual. The superintendent took an interest in Bryan and decided to help him obtain the money to go to college. Bryan did well in college and was praised by the superintendent at his former school. However, things soon changed for Bryan. While in college, he began to read “liberal literature.”²⁴¹ Bryan began to feel that there were serious problems in the social order. Bryan switched to a northern school during his second year. In a short period of time, he had gone from being a conservative to being a radical liberal. Bryan stated, “I did not realize at first that I was a radical. I had never met a Communist and had never talked to a Socialist. I read and read, and from this my social and business experience formulated my own conclusions.”²⁴²

When Bryan returned home, the school superintendent was disappointed in him or at least Bryan believed he was. He did not feel comfortable at home anymore. He didn’t want to attend church and the current laws in place upset him. When Bryan entered Commonwealth College, he finally felt that he found a movement he could join. There, he met two organizers and the three of them traveled around the countries trying to educate farmers and miners—though most were

²³⁹ Bryan, “Bull-Headed,” 3-4.

²⁴⁰ Bryan, “Bull-Headed,” 3-4.

²⁴¹ Bryan, “Bull-Headed,” 3-4.

²⁴² Bryan, “Bull-Headed,” 3-4.

hostile toward them. Bryan recounted, “The capitalist newspapers had said that there were radicals in the country trying to overthrow the government and rob the people of their homes.”²⁴³

Bryan dedicated his life to organizing these miners and farmers and working with the United Mine Workers, but he was disappointed to hear later that the school superintendent had said that Bryan had “gone to the bad” and had been “bull-headed.” However, Bryan had an interesting spin on this disappointment. He stated in regard to the superintendent’s words, “I hope he’s right. A miner who won’t scab when the strike is broken has got to be bull-headed. An organizer who stays on the job when he’s hungry all the time has got to be set in his ways.”²⁴⁴

As mentioned, Bryan was also a former student of Commonwealth College. Bryan’s application to Commonwealth College was accepted in April of 1933. At that time, Bryan was known as an Arkansas miner who attended Michigan State College. *The Fortnightly* noted that his chief interests are in writing and journalism.²⁴⁵ During his life, Bryan was very active in the Arkansas labor movement. He was once the vice president of the Local 374 of the United Mine Workers of America; he has been an Arkansas state organizer for the Workers Alliance; and he was the strike organizer for the general strike of unemployed workers in Sebastian County, Arkansas in 1935, which would lead to his arrest for anarchy. He had also been the director of workers’ education under the American Federation of Government Employees in Knoxville and spent the summer of 1937 teaching at the Southern Summer School for Women Workers in Industry at Arden, North Carolina.²⁴⁶

Though the anarchy charge is the focus of this research, Bryan was arrested or held by police a number of times during the course of these events. The first time was in early February

²⁴³ Bryan, “Bull-Headed,” 3-4.

²⁴⁴ Bryan, “Bull-Headed,” 3-4.

²⁴⁵ “Spring Quarter,” *The Commonwealth College Fortnightly*, April 1, 1933, 4.

²⁴⁶ “Spring Quarter,” *The Commonwealth College Fortnightly*, April 1, 1933, 4.

1935. After an organizers meeting, Bryan and a delegation of about fifteen people visited the jail in order to obtain information about a man who they believed to be imprisoned there. While there, officers removed from Bryan's person what they claimed to be pamphlets containing "communistic references." Bryan was detained while the officers investigated, but he was later released and no charges were filed.²⁴⁷

The next day, the local papers reported that Bryan, whom they repeatedly described as "youthful," was arrested with Raymond Koch and F. E. Haley for their role in a Sebastian County relief workers strike in which over 4,000 people participated.²⁴⁸ No official charges were placed on Koch or Haley, but Bryan was remanded to jail under a \$2000 bond to await trial. Municipal Judge James Gallaher presided over the arraignment. According to the *Southwest American*:

Bryan complained he had prepared no defense and had not been allowed to see his friends since his incarceration Monday night. While the court read the formal charge lodged against him he leaned on one arm and concentrated his attention on friends scattered among spectators in the small, crowded courtroom. He lost his lack of concern only when his bond was set at the comparatively huge figure for misdemeanor cases. Judge Gallaher explained the charge carried with it a fine from \$1 to \$1000 and a jail sentence up to six months or both. The bond was fixed in proportion he explained.²⁴⁹

The establishment defended these arrests, and Police Chief Connor stated, "Many of the strike advocates do not live here and have no business in Fort Smith." Mayor Jordan echoed this sentiment by explaining that "communists" and "outsiders" caused the unrest. While Bryan was awaiting trial, Claude Williams and George Edwards led the relief workers in a hunger march. Williams wrote to John Cans of the Labor Relations Board in Washington, D. C. to let him know

²⁴⁷ "Bryan Placed in Custody After Group Visits Jail," *Southwest American*, February 12, 1935, 1.

²⁴⁸ "Anarchy Charge is Filed Against Labor Organizer: Horace Bryan and two other alleged strike leaders in custody Tuesday," *Southwest American*, February 13, 1935, 9.

²⁴⁹ "Anarchy Charge is Filed Against Labor Organizer: Horace Bryan and two other alleged strike leaders in custody Tuesday," *Southwest American*, February 13, 1935, 9.

of the dire situation that existed in Fort Smith.²⁵⁰ On February 15, 1935, Sharp, the executive secretary of the local FERA office, wrote a memorandum to Nels Anderson, the Assistant to Chief Engineer of FERA in Washington, explaining the situation in Sebastian County. In the memorandum, Sharp stated:

Three of the agitators had been arrested prior to my visit to Fort Smith and in conference with the officials we strongly recommended that they release them immediately after the program had been closed. This was agreed to by officials and was carried out with one exception, that of Mr. Bryan. In a telephone conversation with Mr. Claude Ward, of Fort Smith, this morning, I again urged that this boy be released and he promised to go immediately and try to get it done.²⁵¹

Despite Sharp's request, Bryan was not immediately released. On February 13, the relief offices in Fort Smith were closed.

After Bryan's anarchy trial, Judge Gallaher deferred verdict saying he would return a decision in the next week. The deferment was a result of the presence of hundreds of relief workers in the courtroom, halls, and lawn.²⁵² The trial lasted only two days—Friday and Saturday. The testimony was completed in the case Saturday morning and arguments were heard later in the afternoon. Bryan acted as his own attorney and argued that he had exercised his “constitutional right of petition in taking a leading part in the strike of Sebastian County relief workers.”²⁵³ For his defense, Bryan produced a number of witnesses who were able to testify that his activities during the strike were wholly nonviolent. Witnesses included Williams who, after Bryan's arrest, had taken a leadership role in the strike. The pamphlets found on Bryan's when he was previously held were the State's only evidence against. Prosecuting attorney Harrell

²⁵⁰ U. S. Federal Emergency Relief Administration Manuscript Collection, University of Arkansas Special Collections MSUN 3 r, Acc No. 184 Loc. 285.

²⁵¹ U. S. Federal Emergency Relief Administration Manuscript Collection, University of Arkansas Special Collections MSUN 3 r, Acc No. 184 Loc. 285.

²⁵² Horace Paul Bryan Manuscript Collection, University of Arkansas Special Collections Box 1 Folder 12.

²⁵³ “Verdict in Anarchy Hearing is Deferred,” *Southwest American*, February 17, 1935, 3.

Harper and Deputy Prosecuting attorney Lem Bryan presented this evidence. Bryan was sentenced to six months in jail and fined \$500 by Judge Gallaher.²⁵⁴ His bond was eventually reduced to \$250 dollars, and according to Bryan he was told to stay out of the county. He stated, “I was informed that if I stayed out of the county I might be treated leniently. I stayed in the county, and was arrested Monday, February 18, on a second charge of barratry.”²⁵⁵

During that week, Williams led the strikers on a series of daily marches through Fort Smith. On February 18, 1935, the police attacked the rally.²⁵⁶ Edwards, a socialist activist for the League for Industrial Democracy (LID), gave a speech where he stated that the state of Arkansas “spent more money to feed the mules on its country farms —\$9 a month — than its relief workers.”²⁵⁷ This led to Bryan, Edwards, Williams and others being arrested on an unrelated charge of barratry. A barrator is defined in legal terms as “one who excites or maintains suits and quarrels, either in courts or elsewhere in the country; a disturber of the peace, who spreads false rumors and calumnies, whereby disquiet and discord may grow among neighbors.”²⁵⁸ After these arrests, the Arkansas Student Appeals group wrote to Willard Uphaus of the National Religion and Labor Foundation asking for help. The letter shows great insight into the situation. It stated:

This travesty on justice—an obscure charge of barratry—together with the strife in East Arkansas over the share-cropper situation, and the actions taken against Commonwealth College by the Legislature, and the Sediton Bill now up before the Arkansas Senate indicate that fascism and reactor will soon make it impossible to institute mild reforms in

²⁵⁴ “Bryan Given Sentence,” *Southwest American*, February 20, 1935, 1.

²⁵⁵ Horace Paul Bryan Manuscript Collection, University of Arkansas Special Collections Box 1 Folder 12.

²⁵⁶ “Judge Warns Eight Charged with Barratry,” *Fayetteville Daily Democrat*, February 23, 1935; “Ex-Minister Found Guilty of Barratry,” *Hope Star*, February 23, 1935; “Former Minister Sentenced to Jail,” *Joplin Globe*, February 24, 1935; “Jury Convicts in Barratry Case,” *Moberly Monitor*, February 23, 1935.

²⁵⁷ George Clifton Edwards Jr. Papers. Collection Number 10. Walter P. Reuther Library, Wayne State University, Box 9, Folders 9 and 10.

²⁵⁸ U. S. Federal Emergency Relief Administration Manuscript Collection, University of Arkansas Special Collections MSUN 3 r, Loc. 285.

the state of Arkansas. These situations need publicity, Heretofore, news has been suppressed and selected.”²⁵⁹

These observations reach to the heart of this research. It is clear that the establishment is so dedicated to maintaining the status quo that they are willing to violate the constitutional rights of free speech and free press.

Williams was tried, convicted, and sentenced to ninety days in jail and \$100 fine.

Williams wrote a memoir during his time in prison to express the dismal conditions in the Sebastian County jail.

I cannot describe adequately the experience in that dungeon. I was in a cell with some poor wretches who were suffering from venereal diseases. Eight of us, in a cell, which measured ten by twenty feet, were forced to use the same commode. In the entire twenty days there was not one drop of disinfectant used, nor hot water, nor cold water, nor even a dry rag. Tin Cups and spoons passed through generations of prisoners without so much as being washed with hot water. The floors were swept once a day without being sprinkled. During my twenty days in jail eight insane people were brought in, five of whom had been picked up from the street. Three of these people tore off their clothing, set fire to their bedding, and tore it to pieces.²⁶⁰

Within a month, Edwards secured Williams’ early release on bond. On June 23, 1935 the State dropped the barratry charges against Williams and Bryan. The Prosecuting Attorney Harper stated that it was “for the best interest of the people of Fort Smith and community that these cases should not be prosecuted further.”²⁶¹

Bryan found the opportunity to tell his side of the story in the *Fortnightly*. On November 1, 1935 the *Fortnightly* published an “Open Letter to the People of Arkansas from Horace

²⁵⁹ U. S. Federal Emergency Relief Administration Manuscript Collection, University of Arkansas Special Collections MSUN 3 r, Loc. 285, Letter from Arkansas Student Appeals Group to Willard Uphaus.

²⁶⁰ Claude C. Williams Papers. Collection Number 819. Walter P. Reuther Library, Wayne State University, Box 1, Folders 12 and 13.

²⁶¹ Claude C. Williams Papers. Collection Number 819. Walter P. Reuther Library, Wayne State University, Box 1, Folders 12 and 13.

Bryan.”²⁶² In the past few months alone, Bryan had been arrested and imprisoned four times for associating with working class organizations. In February 1935, Bryan recounted that he was arrested twice in Fort Smith during the strike against a wage cut on relief work. Of his second arrest, Bryan recounted, “The last time I was arrested in Fort Smith I was held for three days for ‘investigation’ and released when Chief Gordon found that ring of stoolpigeons (WPA foremen) had been chasing a wild hare and that I was not guilty of the awful ‘crime’ of organizing the WPA slaves of Fort Smith.”²⁶³

After Bryan was released the *Southwest Times Record* had stated that he had been released upon the promise that he would return to Greenwood. According to Bryan this was an outright lie. He stated:

This vicious mis-statement of the truth lies somewhere between the *Southwest Times Record* and Chief Gordon. Chief Gordon tried to extract promises from me limiting my rights of citizenship, but my reply was that I made no promises—I had committed no crime for which I should suffer any such punishment. My last statement to Chief Gordon was that I flatly defended my right to organize, hold meetings, and come and go in Fort Smith as any citizen.²⁶⁴

Bryan acknowledged that the anarchy charges against him and others were never intended to stick but rather were used a strike-breaking tactic by the police. During his anarchy trial, Judge Gallaher had asked Bryan, “If you don’t like America, why don’t you go to Russia?” Bryan responded by stating, “I love America and the American people. This is my land and my people. My kind of people built this country.”²⁶⁵ Bryan also noted that capitalism is the real

²⁶² Horace Paul Bryan, “An Open Letter to the People of Arkansas from Horace Bryan,” *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

²⁶³ Horace Paul Bryan, “An Open Letter to the People of Arkansas from Horace Bryan,” *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

²⁶⁴ Horace Paul Bryan, “An Open Letter to the People of Arkansas from Horace Bryan,” *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

²⁶⁵ Horace Paul Bryan, “An Open Letter to the People of Arkansas from Horace Bryan,” *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

enemy here. That the capitalist system has created a society of fear and greed that is willing to wrongly imprison its own citizens.²⁶⁶

Ideologies of the Establishment and Agitators

Before we can discuss the ideologies held by these groups, we must first define the groups in more concrete terms. The establishment is whoever holds the power.²⁶⁷ This power can refer to legal power, legislative power, or financial power. In Bryan's case, the establishment very clearly defined itself as the Sebastian County, Arkansas government. Including, but not limited to, the FERA office administrators, the police, the judges, and the mayor. All of these people held positions of power and authority over the relief workers in Sebastian County at the time of the strike. The establishment not only accepted, but also fought for, what this research has previously discussed as being the ideology of the status quo. Through their actions, it is clear that the establishment sought to hinder any persons or group that sought to make community changes. This ideology can also be seen through certain Arkansas laws that legislators both established and upheld, such as criminal anarchy and barratry laws. Freedom of speech, the right to assemble, and the right to petition the government for a redress of grievances were only rights in so far as citizens did not use them to threaten the current system. The alleged threat of "communism" and "socialism" was continuously used throughout the 1930s to justify abridging the First Amendment.

Agitation or dissent—which I have used interchangeable—occur when people who hold no power advocate for any degree of social or political change.²⁶⁸ In this case, there were a

²⁶⁶ Horace Paul Bryan, "An Open Letter to the People of Arkansas from Horace Bryan," *The Commonwealth College Fortnightly*, November 1, 1935, 2-3.

²⁶⁷ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993), 4.

²⁶⁸ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 4.

number of agitators including, but not limited to, Bryan, Williams, Edwards, and the relief workers. The relief workers and representatives of the relief workers made their ideologies very clear. They believed in changing the structure of society, which privileged the wealthy. Although the strikes and movement were brought about by wage cuts, the ideologies of the agitators were much deeper and bigger than that. They wanted social justice.

Promulgation and Petition as the Central Strategies of the Agitators

The relief workers, led by Bryan and later Williams and Edwards, often employed the strategy of petition. As discussed earlier, the movement had over 6,000 workers and sympathizers sign petitions to send to Washington. The agitators also used the strategy of promulgation, which “includes all those tactics designed to win social support for the agitator’s position. No movement can be successful unless it attracts a sufficient number of members to help gain the establishment’s attention.”²⁶⁹ This took the form of strikes and protests and ultimately it was this action that ended with Bryan, Williams, and Edwards being arrested.

Suppression as the Central Strategy of the Establishment

Throughout this research, a theme has emerged in the form of suppression. Suppression is not the only strategy available to the establishment; however, in each of the case studies thus far we have seen that this was the chosen strategy. The rhetorical strategy of suppression “demands not only an understanding of the opposing ideology but a firm resolve and commitment on the part of the decision makers to stop the spread of that ideology by hindering the goals and personnel of the agitative movement.”²⁷⁰ As Bryan himself notes, the charges of anarchy and barratry were fake charges used to strike-break. Even though this research has focused on anarchy arrests, it is important to note that it was a rarely used statute in the state. The fact that it

²⁶⁹ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 20.

²⁷⁰ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 54.

was so rarely used, and the fact that the establishment in all these cases was unable to provide concrete evidence of guilt, proves that the motive behind these arrests was to create fear in the workers and to silence the leaders. Another strategy not defined by Bowers and Ochs but is seen throughout the Bryan arrest is that of both infantilizing and creating the idea of the workers as a minority. If the newspapers are any reflection of the establishment, and Bryan himself seems to believe they are, then it is not accidently that in every article about Bryan they referred to him as the “youthful” leader of the movement. It is possible that this was used to create a sense of dismissal in the public. The local government also attempted to downplay the movement by making it appear that the strikers were a minority. In many of the statements mentioned earlier, they discuss protecting the workers who want to work and that only a small number of relief workers were participating in this movement.

Rhetorical Assessment

This research has sought to reconstruct the historical narrative of criminal anarchy cases to introduce an important artifact into the discussion surrounding free speech. Bryan’s arrest serves to highlight the consequences faced by society when the establishment limits dissent. I will now discuss these consequences in more detail. Unlike Cruz and Rodgers, Bryan was not arrested for something he said. Rather, he was arrested for petitioning and organizing. Bryan broke no laws, and to most, it would be clear that his actions were covered under the First Amendment. But his experience highlights that “patriotism” is always consistently valued over progress. Because he believed in different approaches to government—for him a form of government that treated its citizens more equal—he was arrested and convicted. It is important for history to record the experiences of dissenters as evidence of what happens to people when constitutional freedoms are limited.

As this case highlights, limiting freedom of speech in any way, shape, or form presents an array of problems for dissenters. The first problem is that limiting free speech contradicts the very purpose of the First Amendment. The First Amendment was created to protect dissenters and the case law should reflect that.²⁷¹ However, contradictions are not uncommon in the political realm. Other examples include punishing individuals for violence but encouraging war and promoting only peaceful revolutions stateside but using violent means to overthrow leaders in other countries. These contradictions create a very confusing ideology for American citizens.

Another problem is by limiting free speech the Supreme Court is sending a very powerful message to the citizens of the United States that dissent is unwelcome. And whether citizens are aware of it or not, the Supreme Court plays a very powerful role in defining society. Lewis Henry LaRue argues that the Supreme Court creates and maintains national narratives. Basically, LaRue states that the court cases that reach the Supreme Court are not being decided on fact or constitutionality in most instances, but rather on the Supreme Court's idea of national truth. While other national narratives may not be created intentionally, LaRue believes that when the Supreme Court defines society with its rulings, the members of the court do so with intent. Of course there are some exceptions and some justices that dissent, but the norm seems to be ruling in favor of capitalism.²⁷²

While I have been discussing the First Amendment in regard to its legal applications it is important to remember that it plays a much larger and more important role in society. The First Amendment acts as a cultural symbol, free speech “has done more than promote tolerance: as a cultural symbol, the First Amendment has enlivened, encouraged, and sponsored the rebellious

²⁷¹ Steven H. Shiffrin, *The First Amendment, Democracy, and Romance* (Harvard University Press, 1990).

²⁷² Lewis Henry LaRue, *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority*. (Lanham, MD: Rowman & Littlefield Publishers, 2000).

instincts within us all.”²⁷³ However, its cultural utility is weakened when it is limited. It sends a message to citizens that they should not seek even the most minor societal reforms for fear of punishment.

Limiting free speech does not hurt the establishment or citizens who promote and follow the establishment’s rules. Rather, limitations only hurt dissenters who wish to change society for the sake of progress. It is ironic to ask those dissenting to change society to continue to follow the rules of society. As long as this limitation exists, citizens will be constrained by their fear of punishment. The only way to resolve these contradictions is to remove any and all limitations on free speech.

This case also illustrates the fact that limiting free speech always punishes dissenters in some way. In Bryan’s case, he was in fact charged with anarchy and asked to pay a fine and spend time in jail. This is a serious punishment for a person only acting out his constitutional rights. Hiding behind these allegedly necessary limitations, the local government was able to successfully silence Bryan even if only for a short period of time.

Another major and lasting consequence of making certain forms of dissent illegal is the negative rhetorical construction of their ideologies. To this day, the words “socialist,” “communist,” and “anarchist” are mostly used as defamatory statements. Even years after the red scare has ended politicians still have to defend themselves against allegations of being socialist. It would be political suicide to embrace socialism openly. This stigma is likely a direct result of criminalizing dissent. The law is one of the most important rhetorical texts used to create a national narrative and identity. James Boyd White, LaRue’s mentor, contends that the law “is a language in which our perceptions of the natural universe are constructed and related, in which

²⁷³ LaRue, *Constitutional Law as Fiction*, 89.

our values and motives are defined, and in which our methods of reasoning are elaborated and enacted.”²⁷⁴ The law is created to reflect a society. As a society changes, the laws change with it. The problem is that most citizens do not see the law as something that is rhetorically constructed to create a national identity, nor do they understand the way in which the law rhetorically constructs its citizens. The law is constructed by legislatures at both the state and local levels. These legislatures have a vested interest in maintaining the status quo because they have power under the current system. The United States has constructed a narrative of binary opposites in which people are either patriotic, law-abiding citizens or they are disobedient and un-American. By not allowing for any gray or middle area, society, sometimes unconsciously, creates this idea of the “other” previously discussed. In the case of dissenters, the law and all its legal applications serve as a means to rhetorically define the dissenter. Once the dissenters have been defined as “others” it is much easier for the establishment to exert control over them.

This chapter has examined the arrest of Horace Bryan on criminally anarchy charges. This artifact serves as an effective case study highlighting and personalizing the experiences of dissenters. We must continue to write about the experiences of dissenters if we are to ever reach an absolutism perspective on the First Amendment. We must continue to highlight the ways that limitations on free speech serve the establishment and not the citizens if we are to ever live in a society where absolute free speech is guaranteed as the constitution so promises. Discussion will now turn to the case of Nathan Oser and Commonwealth College.

²⁷⁴ James Boyd White, “Law as Rhetoric, Rhetoric as Law: The Art of Cultural and Communal Life,” *University of Chicago Law Review* 52 (1985): 692.

CHAPTER 6

THE CHARGES AGAINST COMMONWEALTH COLLEGE AND THE ARREST OF
NATHAN OSER IN POLK COUNTY

“The workers are becoming restless under the knowledge that in all the history of education in the United States, they, the majority of all the people, have had so little part.”

— *Kate Richards O’Hare*²⁷⁵

Commonwealth College was founded in order to give the working class exactly what they had been longing for: an education. But Commonwealth College was not only an education for the working class; it was an education about the working class. For many members of the proletariat, this was the first time they were shown their history, their fight, and how to contribute to their ongoing labor movement. Despite its short life, Commonwealth College and Nathan Oser’s prosecutions under anarchy charges left a lasting legacy for First Amendment scholars.

This chapter examines an incident, which occurred in Polk County, Arkansas in 1940, when Commonwealth College was charged and Nathan Oser, and others were arrested because of their alleged affiliation with the Communist Party. This event serves as an effective case study because it illustrates the motives and actions of the ruling establishment when it is confronted with an organization that advocates an alternative form of government. The examination of this case will aim to determine the pattern and the extent of damage brought forth by limiting free speech and the right to associate by asking: *What is the history and import of Nathan Oser’s arrest for anarchy? How do rhetorical agitation and control strategies manifest themselves in the messages presented in these case studies? What are the consequences of the establishment’s*

²⁷⁵ Kate Richards O’Hare, Founder of Commonwealth College

silencing of protected speech for citizens of the United States? How do these laws shape our understanding of dissidents?

To illustrate the ways in which the state arrests dissenters and persecutes organizations they are affiliated with and the after effects of those arrests, the research will present an analysis of Commonwealth College and Nathan Oser's anarchy charges. To answer the previously posted research questions, the historical research will examine the events surrounding the closing of Commonwealth College and the arrests of Oser and Fried, before discussing the implications of those arrests. First, the research will examine the background and rhetorical behavior of the agitators—in this case, Oser and Commonwealth College—and the establishment, represented by the local authorities in Polk County, Arkansas. I will use local newspaper coverage, Commonwealth College FBI files, and Oser's FBI files to reconstruct the events surrounding Oser's arrest. Second, this chapter will argue that Oser's arrest and the closing of Commonwealth College are violations of free speech and that limiting free speech sends a negative message about dissent. Third, using examples from the arrest, the research will argue that criminal anarchy serves as an effective silencer for political organizations that dissent from the status quo. Finally, the research will argue that arresting dissenters and shutting down dissenting organizations shapes the way society views the utility of the First Amendment and the dissenters themselves.

Closing of Commonwealth College and Arrest of Nathan Oser

To understand the full context of the Oser and Fried arrests, we must first understand the background of Commonwealth College as well as that of its founders. At this time, a need for a workers' education existed. Richard Altenbaugh argues that workers' education became a

necessity for the workers because the capitalists controlled the formal education system.²⁷⁶

Arthur Gleason states, “Workers’ education can no more be outside the labor movement than a trade union.”²⁷⁷ It was this need that Altenbaugh and Gleason discuss that Commonwealth College filled.

Essential to this research is also an understanding of Commonwealth’s founders. A brief background of Kate Richards O’Hare and William Zeuch are important to provide the full context of Commonwealth’s history. During the First World War, Kate Richards O’Hare was a significant force in the Socialist Party. Kate Richards was born March 26, 1876 on a farm in Ottawa County, Kansas.²⁷⁸ The Richards family was poor but was able to survive mostly off of what they produced on their land.²⁷⁹

O’Hare’s family often participated in community events and church activities. Although her father did not belong to a particular denomination, he taught his child that serving the people is what God would want.²⁸⁰ Kate embraced her father’s interest in political matters, and she began to listen to the discussions among the farmers. Kansas had little in the way of a labor movement; but Topeka did have a workingmen’s movement, and Fort Scott had a chapter of the Knights of Labor. It was in Kansas that young O’Hare learned the importance of third party politics.²⁸¹

²⁷⁶ Richard J. Altenbaugh, “Forming the Structure of a New Society Within the Shell of the Old: A Study of Three Labor Colleges and their Contributions to the American Labor Movement” (PhD dissertation, University of Pittsburgh, 1980), 174.

²⁷⁷ Arthur Gleason, *Workers’ Education: American experiments (with a few foreign examples)* (New York: Bureau of Industrial Research, 1921), 2.

²⁷⁸ Sally M. Miller, *From Prairie to Prison* (Columbia: University of Missouri Press, 1993), 4.

²⁷⁹ Miller, *From Prairie to Prison*, 5.

²⁸⁰ Miller, *From Prairie to Prison*, 6.

²⁸¹ Miller, *From Prairie to Prison*, 9.

In 1887 a decade of drought began after the economic boom collapsed. The Richards family was greatly impacted by this change. During this time, the family lived in a poverty stricken part of town, and young O'Hare witnessed the struggles of many families who were worse off than her own, with hungry children and the homeless wandering the streets. These memories stayed with her for the rest of her life.²⁸²

Even after her family became more stable, O'Hare was still haunted by the poverty and suffering she had experienced. After finishing her schooling, she began writing for the protest press, became involved in the temperance movement, and began to participate in mission work. O'Hare began to strongly advocate against those who blamed poverty on vice. "I also learned that intemperance and vice did not cause poverty," O'Hare argued. "But that poverty was the mother of the whole hateful brood we had been trying to exterminate, and that the increase of her offspring was endless."²⁸³

O'Hare became increasingly active in politics. She joined in debates at union meetings, read popular critiques of the social and economic systems, and became interested in the labor movement for a new political party.²⁸⁴ At a union dance, O'Hare met Mary Harris "Mother" Jones, whose ideas on socialism captured her attention. Mother introduced O'Hare to a group of Socialists, and for the next few weeks, O'Hare learned everything she could about socialism.²⁸⁵ She was quickly persuaded to join the Socialist Labor party. O'Hare married a fellow student and had children but she continued to stay active in the political scene.²⁸⁶

²⁸² Kate Richards O'Hare, "How I Became a Socialist Agitator." *The Socialist Woman* II (1908): 4.

²⁸³ O'Hare, "Socialist Agitator, 4.

²⁸⁴ Miller, *From Prairie to Prison*, 17.

²⁸⁵ O'Hare, "Socialist Agitator," 4.

²⁸⁶ Miller, *From Prairie to Prison*, 20.

In 1901, O'Hare enrolled in a school for socialist organizers. After that, she and her husband Frank, who worked as a party organizer, moved to New York City, where she began her career as a free-lance writer for socialist newspapers. She would often survey local working conditions by going undercover in a different field each week.²⁸⁷

O'Hare felt that her main commitment should be to working class Americans; this was her duty as a socialist. On April 15, 1919, O'Hare began serving a five-year sentence at the Missouri State Penitentiary for violating the Espionage Act due to a speech she gave in Bowman, North Dakota. The Espionage Acts had been created shortly after World War I began and made it illegal for any person to interfere with the draft. She had served just over a year when President Wilson released her on May 29, 1920.²⁸⁸

During the war, O'Hare met William E. Zeuch during the war at Ruskin College, a Socialist school in Florida. The school was closed, but O'Hare and Zeuch believed that there was a need for a workers' college. Unlike O'Hare, Zeuch's background was not in activism but rather in academia. He was born in Iowa in 1891 and became a teacher shortly after receiving his college degree.²⁸⁹ He went on to attend Lenox College and then received his graduate degree from Clark University in Massachusetts. Zeuch served in the armed forces for a brief time before becoming a high school principal for a year. Then, he went on to complete his doctorate at Wisconsin in 1922.

In 1923 O'Hare and Zeuch established Commonwealth College, and in 1925 it moved to its permanent address in Mena, Arkansas. O'Hare believed that a workers' college was necessary because mainstream education promoted an anti-labor attitude. She also believed that the

²⁸⁷ Miller, *From Prairie to Prison*, 31.

²⁸⁸ Miller, *From Prairie to Prison*, 155-156.

²⁸⁹ Altenbaugh, "Labor Colleges, 247.

education of the working class was the only way to create social change.²⁹⁰ It is clear that the ideologies of the founders of Commonwealth shaped the school's mission. Commonwealth strongly opposed the prevailing ideologies found in the formal school systems because they served the interest of the establishment rather than the interests of the students or society as a whole. The *Commonwealth College Fortnightly*, the school run publication, expressed the school's purpose when it said:

Its (Commonwealth's) object is to serve all the organizations and promote all the activities that aim at the improvement of the life and conditions of the productive workers. It seeks to help young workers fit themselves for intelligent, constructive services to their class regardless of economic, religious or political factions.²⁹¹

Because the local and national authorities found this purpose so threatening, Commonwealth faced a number of attacks during its life.

The first attack came in August 1926. At the state convention of the Arkansas American Legion—an anti-labor group—Joseph Morrison charged Commonwealth with being a communist organization. He used phrases like “Bolshevism” and “Sovietism,” to describe the school.²⁹² It is interesting that Morrison referred to the school as “Bolsheviks.” Most history scholars date the Cold War to beginning in the 1940s because of Stalin and the death of Franklin Delano Roosevelt. However, as rhetorical scholars we can date the rhetoric of the Cold War to starting much earlier. The Bolshevik Revolution occurred in Russia in 1917, and as evidenced by much of the American rhetoric about the Bolsheviks, America's hatred of communism and Russia seemed to actually begin there. Even though Morrison's attack did not result in any punishment or charges against communism, it effectively served to label the school as “communist” because during those times associations with a communist organization could be

²⁹⁰ Altenbaugh, “Labor Colleges, 249.

²⁹¹ “The Commonwealth Idea,” *Fortnightly*, March 1, 1927, 2.

²⁹² “Legion Loses Sleep Over Commonwealth,” *Fortnightly*, September 15, 1926, 1.

seen as treason. On September 14, 1926, the Arkansas American Legion even went so far as to write a letter to the Federal Bureau of Investigation about Commonwealth College. This letter was only the beginning of the federal investigation of Commonwealth. On September 23, 1926, a letter to Senator Caraway stated, “They claim to be a labor college; but there is no doubt that they are a bunch of socialists, but of what degree of ‘pinkness’ or ‘redness’ we are unable to determine at this time, but this is one of the points the legion committee is seeking to ascertain.”²⁹³ On this particular letter, the sender has been redacted, but it seems likely that the American Legion of Arkansas is the sender as the message ends with, “They have been very defiant toward the legion.”²⁹⁴ The letter also stated that Commonwealth was receiving “endowments from the Russian Soviet government.”²⁹⁵ The FBI continued to receive information about Commonwealth and also continued to investigate them. On June 7, 1934 an FBI report made by Dwight Brantley stated that [REDACTED] stated that Commonwealth College’s purpose is to teach communism and Marxism, but not enough information was provided for the FBI to continue the investigation.²⁹⁶ In January 1935, a letter to John W. McCormack, chairman of Special Committee on Un-American Activities stated that the Arkansas Chamber of Commerce was now alleging that Commonwealth was participating in communist activities. The Chamber of Commerce claimed to know this because of a pamphlet the school had sent out promoting its curriculum.

²⁹³ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

²⁹⁴ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

²⁹⁵ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

²⁹⁶ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

The next serious attack levied on the school came after the school and its students began to support the Southern Tenant Farmers' Union. Because of its support for the STFU, in February 1935, the Arkansas House of Representatives adopted a resolution calling for an investigation of communist activities at Commonwealth.²⁹⁷ The investigation committee held hearings, visited the campus, and observed classes. In March 1935, the committee submitted its findings to the General Assembly of Arkansas. The findings stated that the students and teachers at Commonwealth, "although committed to the Communist theory, did not advocate the violent overthrow of the United States Government."²⁹⁸ But this report did not stop the attacks against Commonwealth, and although none succeeded in closing Commonwealth until years later, the effect was equally detrimental: Commonwealth lost a great deal of funding from the population that they needed to keep the school open.

In 1939, industrial manager Nathan Oser became the new director of Commonwealth. As soon as he was hired he quickly began fund-raising, but his campaign was met with little success.²⁹⁹ As the prospect of a second world war loomed ever closer, Commonwealth's desperation became more and more present. With the press associating Hitler and Mussolini as socialists and communists, any public sympathy left for these causes quickly diminished. Impervious to these pressing issues of public support, Oser attempted to get a similarly radical organization to take over the school. In 1940, he began negotiations with the New Theater League of New York.³⁰⁰ However, once word of the school being taken over by a "red" organization circulated, the American Legion again spoke out demanding the closing of

²⁹⁷ "Supplement: Commonwealth to be Investigated," *Fortnightly*, February 15, 1935.

²⁹⁸ Altenbaugh, "Labor Colleges", 343.

²⁹⁹ Cobb, *Radical Education in the Rural South*, 204.

³⁰⁰ Cobb, *Radical Education in the Rural South*, 205.

Commonwealth.³⁰¹ On September 20, 1940, Deputy Prosecutor of Mena J. F. Quillin filed a charge of anarchy against the school and impounded the college's records, correspondence, and college records. Quillin explained that the charge was filed against the college as a corporation and the warrant of arrest was served on Nathan Oser.³⁰² Allegedly, the charge was based on the "allegation that the school disseminated propaganda 'with the intent to encourage and advocate overthrowing the present government of the state of Arkansas and the United States of America by violence and other unlawful means.'"³⁰³

At that time, the charges were only against the school. Quillin said, "No individual has been charged or arrested. When we call the case for trial the college can either be represented by some individual or fail to answer. If the college fails to have a representative in court and we are able to prove the charges, a default judgment can be rendered against it."³⁰⁴ On September 23, 1940 Quillin filed the additional charges of failure to fly the American flag during school hours, and the crime of displaying the hammer and sickle emblem. On September 27, 1940 the Mena paper reported, "All friends of labor were called upon today to come to the assistance of Commonwealth College, now under attack by Southern bourbons and reactionaries, by Nathan Oser."³⁰⁵ Commonwealth college was charged \$2,500 on an anarchy charge, which was to be paid within ten days for a failure to display the American flag and for illegally displaying the hammer and sickle emblem. The fine was imposed after Oser, his assistant Kenneth Balbridge,

³⁰¹ Cobb, *Radical Education in the Rural South*, 206.

³⁰² "Charge of Anarchy is Brought Against Arkansas School," *Daily Capital News*, September 21, 1940, 7.

³⁰³ "Charge of Anarchy is Brought Against Arkansas School," *Daily Capital News*, September 21, 1940, 7.

³⁰⁴ "Charge of Anarchy is Brought Against Arkansas School," *Daily Capital News*, September 21, 1940, 7.

³⁰⁵ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

and their attorney C. A. Stanfield walked out of the court when the court refused a motion to the change venue of the school's trial.³⁰⁶ On Commonwealth's closing, Oser stated that this "removes the last of the long-term residential labor schools from the American scene."³⁰⁷

Oser was also personally charged with anarchy, but he was released on a \$1,000 bond two days later. Oser requested and was granted a change of venue in October 1949. Fred Fried, a Mena laborer and photographer was also charged with anarchy. Fried also received a change of venue. The charges against Oser were later dropped due to expense involved.³⁰⁸ According to the docket sheet available at the Polk County Circuit Clerk Office, Oser was booked on January 21, 1941 and the case was dismissed on a motion of the state on April 28, 1941.³⁰⁹ Unsurprisingly, Oser's alleged affiliation with the Communist party resulted in an FBI file being opened on him and his activities. Also unsurprisingly, the FBI file has been censored to remove the names of any "informant" who gave information on Oser. However, the file states:

Informant [REDACTED] informed that Oser was assistant director and director of Commonwealth College, Mena, Arkansas from 1938 to 1939. This school was believed to be Communist and the State of Arkansas placed an anarchy charge against both the school and Oser. [REDACTED] was the [REDACTED] at the time and he alleged that Oser stated, "Our present form of government should be overthrown by force if it could be overthrown by ballot." [REDACTED] stated that Oser was a great admirer of Earl Browder and Harry Bridges and that Oser had stated under oath that he was teaching the Marxist theory of government and advocated the overthrow of the U.S. government. [REDACTED] further charged that Oser was a member of the group organized at the above college to take over the U.S. Army by infiltration in case of a war.³¹⁰

³⁰⁶ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

³⁰⁷ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

³⁰⁸ Commonwealth College FBI Files, ca. 1920s-1930s University of Arkansas Special Collections, MC 1323.

³⁰⁹ Polk County Circuit Clerk, Docket Sheet, Case Number 38.

³¹⁰ Nathan Oser FBI File, 202516.

It seems fairly obvious that the “informant” in this instance was Quillin, since he was the one who brought charges against commonwealth and Oser. This passage also showcases the unfounded paranoia that ran rampant in the U.S. government during the Red Scare.

To any reasonable person, the idea that a small labor school in Arkansas could ever feasibly take over the U.S. Army seems ludicrous. However, it was not necessary for the government to actually believe this was a possibility. They only needed to scare the masses into believing that any and all communist organizations were, in fact, capable of such a coup d'état. It was this fear and paranoia that allowed the federal and local governments to exercise such gross abuses of power over citizens. The Oser FBI file also offers testimony given during the *State of Arkansas vs. Commonwealth College Association*:

I asked him (Oser) whether the college was teaching any economics and he said it was. I asked him to state what series of courses of economics they taught and he named some articles. I asked him if these articles were not based on Marxism and he said they were. I asked him if he didn't know that the college was not aware that the Marxism theory of political economy called for the forcible overthrow of Capitalistic governments. Oser stated that the college was aware of that fact and that the college was aware of that fact that when Marxists attained the majority, if they didn't get what they wanted peacefully, they would take it.³¹¹

Although obvious, it seems necessary to note that despite the fact that the FBI would have access to Oser's actual testimony, it chose to include only the testimony of an anonymous informant explaining what Oser said rather than letting Oser speak for himself.

Ideologies of the Establishment and Agitators

Understanding the ideologies of the establishment and agitators at this time allows us to put these events into a larger context. As stated previously in this thesis, the establishment is

³¹¹ Nathan Oser FBI File, 202516.

whoever is in control while agitators are whoever question or threaten that control.³¹² In the case of Oser, the authorities in Polk County, Arkansas represent the establishment. At this time, the establishment represented the interests of the so-called patriotic American. This patriotism was measured in large part by one's hatred of communism. The establishment argued that dissenters were dangerous to the American way of life. It is important to note that this was merely a claim. Throughout these proceedings and arrests the establishment never offered any data or warrants to prove that communists were dangerous or a threat to freedom. But evidence was not necessary when fear was rampant among the American people. This anti-communist ideology can be seen at both the national and local level. On the national level, this ideology is present in Congressional Special Committees such as the House Of Un-American Activities and Supreme Court rulings that favored the establishment.³¹³ Locally, this ideology was showcased through the vague use of criminal anarchy and barratry laws.³¹⁴

Agitation or dissent occurs when people outside the establishment advocate for any degree of social change.³¹⁵ The agitators, in the instance of Oser and Commonwealth, believed that there was a need for a workers' education. They fought to right these gross inequalities. There are a number of strategies employed by agitators to fight the status quo and a number of strategies used by the establishment to respond.³¹⁶ Defining the strategies employed by both sides during the events surrounding the Oser's arrest is important so that we can better understand the complexities of the relationship between dissenters and the establishment.

³¹² This framework is derived from John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993).

³¹³ See *Schenck v. United States*, 249 U. S. 47 (1919); *Gitlow v. New York*, 268 U. S. 652 (1925); *Abrams Et al. v. United States*, 250 U. S. 1616 (1919).

³¹⁴ Ark. Acts, 1919, pp. 388-389.

³¹⁵ John W. Bowers, Donovan J. Ochs, and Richard J. Jensen, *The Rhetoric of Agitation and Control* (Prospect Heights, Illinois: Waveland Press, 1993).

³¹⁶ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 1-89.

Central Strategy of the Agitators

Interestingly, Commonwealth College does not appear to fit into a “central strategy” of agitation. While students and faculty of the school may have been involved in different organizations and strategies, the school itself existed as a place to teach workers of their history and existence in their society. Likewise, Oser’s central concern was to keep the school open. This example can easily showcase the fact that the agitators need not do more than exist to earn the wrath of the establishment.

Suppression as the Central Strategy of the Establishment

The major rhetorical strategy used by the establishment in the Oser and Commonwealth case was that of suppression, which “demands not only an understanding of the opposing ideology but a firm resolve and commitment on the part of the decision makers to stop the spread of that ideology by hindering the goals and personnel of the agitative movement.”³¹⁷ In Oser’s case the establishment tried and succeeded in silencing or suppressing the agitator’s ideology. Oser’s case showcases all the tactics of suppression that an establishment can use. One of those strategies is harassment of the leaders. By arresting Oser, the director of the school, the establishment was able to weaken his cause by portraying him and his cause as one of anarchy, communism, and violence. Even though Oser’s case was dismissed, the establishment was ultimately successful because it was able to close Commonwealth College permanently.

Rhetorical Assessment

The aim of this thesis is to historically reconstruct criminal anarchy arrests in order to create important picture of a forgotten artifact. Throughout this thesis, I have sought to not only reconstruct important historical events but also to explain why such gross injustices were

³¹⁷ Bowers, Ochs, and Jensen, *The Rhetoric of Agitation and Control*, 54.

allowed to occur. There is something to be said about the national identity that existed at this time. To be “American” meant to be capitalist and “communism” or “socialism” became synonymous with treason. It is a scary thing as an American to imagine dissent—the very thing this country was founded on—being considered treasonous.

Constitutive rhetoric can partially explain this phenomenon. Constitutive rhetoric is the process by which a rhetor is able to create an audience or even an identity for that audience.³¹⁸ A rhetor can do this in a number of ways: cultural norms, myths, etc. I have used the theories of James Boyd White to ground this idea in the legal field. He believes that when the establishment fashions the law they are making a concrete, tangible statement about what identity Americans have. A major theme in the rhetoric of the establishment is often conspiracy. This is clear during the Oser and Commonwealth case. The establishment was allowed to persecute dissenters because it was able to hide behind criminal anarchy laws—laws that defined the national identity as a “capitalist democracy.” This artifact then serves to highlight the consequences faced by dissenters.

At the time of his arrest, Oser was using his First Amendment right to affiliate with an organization and cause. He was arrested merely for being associated with an organization with which the establishment disagreed. This case stretches the bounds of First Amendment violations even further than the previous examples because Oser was not arrested for any actual speech. He was arrested for merely affiliating with an organization. Any type of limitation does not fully protect the dissenter, and protecting the dissenter should be of the greatest importance to all United States citizens. While limitations continue to exist, the dissenter will likely always be concerned — at least to a certain extent — about whether or not their speech is likely to break

³¹⁸ Maurice Charland, “Constitutive Rhetoric: The Case of the Peuple Quebecois,” *The Quarterly Journal of Speech* 73 (1987): 133-150.

some arbitrary exception. These exceptions play one of the most powerful roles in shaping citizen's view of the First Amendment.

The Supreme Court cases discussed in Chapter Two of this thesis offer an explanation of the national narrative that was being offered on dissenters at this time. The overwhelming impression that can be derived from these cases is that popular opinion was not on the side of dissenters. Lewis Henry LaRue discusses the idea that the Supreme Court creates and maintains narratives. Basically, these court cases are not being decided on fact but rather on the Supreme Court's idea of truth. LaRue believes that unlike other national narratives, the Supreme Court does this with intent. They want the national narrative to be one of capitalism, and so they rule accordingly.³¹⁹ This narrative is not so different from the contemporary Supreme Court decisions. While we look back at the red scare and scoff, it is not unlike what has been occurring today. Instead of communist versus capitalist it has become terrorist versus capitalist. It seems crucial to note that protecting the capitalist way of life has long since been an America's priority. This can be noted by the already infamous *Citizens United* case. This narrative is a powerful punishment for dissenters because it affects not only how they are viewed personally, but also how the rest of the society views them. By making dissenters outsiders the law and Supreme Court are able to deter their cause.

Also interestingly, part of defending "capitalism" and the "American way of life" means defending the First Amendment. The First Amendment plays an important role as a cultural symbol.³²⁰ The First Amendment is often cited as evidence of America's superiority over other countries. Allegedly, the First Amendment is supposed to call us all to speak out in favor of

³¹⁹ Lewis Henry LaRue, *Constitutional Law as Fiction: Narrative in the Rhetoric of Authority*. (Lanham, MD: Rowman & Littlefield Publishers, 200).

³²⁰ Steven H. Shiffrin, *The First Amendment, Democracy, and Romance* (Harvard University Press, 1990), 89.

those beliefs. However, this right has been and will continue to be stifled by the existing limitations. The establishment only wants free speech in theory — as a means to promote American exceptionalism — but in practice, the establishment has time after time limited free speech. As the saying goes, actions speak louder than words. Progress can only exist if free speech is absolute. Speech and dissent are social events and progressive in nature.³²¹ Thus, the Oser case demonstrates how limiting free speech in any way is not only unconstitutional but serves the more powerful role of encouraging United States citizens to become passive about the society they live in.

Arguably the most important thing this case illustrates is the fact that limiting free speech always punishes dissenters in any number of ways. In the earlier chapters I discussed how these arrests sufficiently deterred agitators with economic punishments. These economic punishments are of some of the greatest importance when studying free speech in contemporary times. Even if dissenters are acquitted or later released, they still face time off from work, lawyer fees, and a number of other consequences. However, in the case of Commonwealth and Oser the punishments became more political than economic. An entire school was forced to shut down because the establishment branded it as a threat. Not only were jobs lost but an entire ideology and way of thinking was shut down for those that attended Commonwealth. This is a powerful punishment for dissenters not only because it takes away their right to associate, but also how the rest of the society views them. This affects their message, cause, and any attempt at revolution.

This chapter has examined the arrest of Nathan Oser for criminally anarchy. This case illustrates how limiting free speech in any regard violates the First Amendment, how limitations allow arrests and therefore economic punishments, and how these laws serve to shape and

³²¹ Shiffrin, *The First Amendment*, 89.

rhetorically construct the understanding of dissenters. This thesis will now offer some conclusions.

CHAPTER 7

THE CONCLUSION

“Is anybody afraid of revolution? For a man to be afraid of revolution in America would be to be ashamed of your mother. Nothing else. Revolution? There is not a drop of honest blood in a single man that does not look back to some revolution for which he would thank his God that those who revolted won.

— Clarence Darrow³²²

Can United States citizens say whatever they like without fear of punishment? No. But that is not the question this research set out to answer; that is not the important question. *Should* United States citizens be allowed to say whatever they like without fear of punishment? Yes. This is the question that matters. Speech — political speech in particular — must be protected because ultimately it is the base for all the other freedoms enjoyed in this country. For Americans, political speech is our past and holds the key to our future. It is for this reason that violations of free speech must be recorded and studied as artifacts. This thesis has sought to do that by examining the arrests of George Cruz, Ward Rodgers, Horace Bryan, and Nathan Oser. Naturally, these cases varied in a number of ways. These four men were each affiliated with different organizations and each advocated for different causes. Despite these differences, though, the four case studies included in this research featured significant commonalities: all the dissidents advocated for an alternative to the status quo, all were using wholly nonviolent methods, and all faced economic punishments. This concluding chapter will first examine these commonalities and then finish by discussing the cultural consequences of abusing a statute to limit free speech.

³²² Benjamin Gitlow, The “Red Ruby” Address to the Jury by Benjamin Gitlow (1920).

To begin, I would like to offer a brief review of my research on people arrested for criminal anarchy for the purpose of showing the connections between their cases.

George Cruz was an activist involved in an organization called the Original Independent Benevolent Afro-Pacific Movement of the World (OIBAPMW). This organization's mission was to promote unity of the nonwhite races. It was during an attempt to recruit members for the OIBAPMW that Cruz and his wife Carmen were arrested. This is the first common thread among the dissenters. Cruz was working for an organization that advocated for an alternative to the status quo.

On the evening of August 21, 1934, Cruz and other organizers were enrolling new members at the Clear Lake Church in Blytheville, Arkansas. The deputy sheriff, Arch Lindsay, arrived at the meeting with a local white plantation manager. Lindsay claimed that Cruz was telling his audience that "the world belongs to the colored races. Join us and hell will soon pop around the corner for the white man." Cruz, and his wife Carmen were arrested and taken to the municipal jail.

Two days after the arrest, deputy prosecutor Leon Smith charged the Cruzes with criminal anarchy and accused them of plotting to overthrow the state and federal government. The couple pled "not guilty". The Cruzes were tried, convicted and given the maximum punishment: a \$1,000 fine and six months in jail. The Cruzes were kept in Blytheville until August 27, when a U.S. Department of Justice official arrived to examine the evidence against them. The Justice agent decided that the Cruzes would serve their time at the Mississippi County farm instead of in federal prison. He also decided not to pursue any federal prosecutions. After Carmen was found to be pregnant, the couple was released and ordered to leave Arkansas. After their release, their whereabouts became unknown. The Cruz's jail sentence highlights the second

commonality among the cases, which are economic punishments. The Cruzes were fined, in addition to being placed in jail where they were unable to work. Less than a year later, Ward Rodgers, a local labor organizer, found himself arrested under the same charge.

In the case of Ward Rodgers, the agitating group was the Southern Tenant Farmers Union (STFU). Again, this is the link between all the cases. While the people studied in this research all advocated for different organizations there is a common thread that they were all speaking in favor and defending oppressed groups. In January 1935, the STFU held a meeting in Marked Tree, Arkansas, where Rodgers was acting as chairman. At this time, Rodgers had been working on the Federal Emergency Relief Administration (FERA) adult education program teaching adults to read and write. A number of the plantation owners objected to sharecroppers learning these skills. Lynch, the superintendent of schools in the area, advised Rodgers that he should stop teaching these classes and leave the county. Rodgers protested, and Lynch told him that he might “find himself strung up on a telephone pole, if he did not leave.” It was this event that would lead to Rodgers’ troublesome statements during the STFU meeting and his subsequent arrest.

During the meeting, Rodgers made the mistake of failing to explain what Lynch had told him about his adult education class before saying, “You know if I wanted to do so, I could lead a lynch mob to lynch any plantation owner in Poinsett County.” Fred Stafford, the local prosecuting attorney, was standing at the edge of the crowd with a notebook having his stenographer write down everything Rodgers was saying. After the meeting adjourned, Rodgers stayed behind and was arrested by Sheriff J. D. Dubard based on the information Stafford had filed, and Rodgers was put in jail.

On the day of the trial, the state contended that his speech to the sharecroppers was an attempt to incite a mob. Stafford, assisted by local attorney J. O. Waskom, asked the jury for the

maximum penalty for anarchy, which consisted of \$1,000 fine and six months imprisonment.

Rodgers was convicted on the charge of anarchy and received the maximum penalty. Like Cruz, this arrest and conviction illustrates the economic punishment faced by dissenters. After sentencing, the defense announced to the court that the case would be appealed to the circuit court.

Rodger's appeal did not make it to the circuit courts until over a year later. On March 3, 1936, the charges against Rodgers were dismissed in a Circuit Court in Harrisburg, Arkansas. Denver Dudley, prosecuting attorney, said, "I regard Rodgers as a meddler and agitator... But, I do not see any reason for spending the county's money to try that sort of case."

Less than a month after Rodger's original arrest, Horace Bryan had also been arrested under the state's criminal anarchy statute. Horace Bryan was not affiliated with any particular organization but rather was working to organize laborers in response to the local Federal Emergency Relief Administration's newest wage cuts. The trouble began in early 1935 when William Dyess, head of the State FERA office, ordered that the hourly wages for relief workers in Sebastian County be cut from thirty cents an hour to twenty-five or sometimes twenty cents an hour. Upon hearing the news, many relief workers left their jobs to protest the reduction of wages.

In an attempt to resolve the issue, representatives of the relief workers, Bryan among them, met with FERA officers to request that relief workers' pay be increased. When FERA was unresponsive to their demands, Bryan and other representatives began to urge relief workers to strike in protest of the reduced wages.

In early February of that year, over 200 strike sympathizers attended an organizer's meeting where they heard Bryan urge them to "take Fort Smith solid and the rest of the county

has promised to come through 1,000 percent.” The workers in Sebastian County began to meet and sign petitions, which were sent to the leaders of FERA in Washington, D. C. Over 6,000 relief workers signed the petitions, which explained the grievances of the workers and requested that a federal investigator be sent into the county to verify the conditions.

As the strike gained momentum, Bryan emerged as the early leader. On February 13, local papers reported that Bryan was arrested for his role in a Sebastian County relief workers strike in which over 4,000 people participated. Unlike Cruz and Rodgers, Bryan was not speaking for a particular organization. However, he was speaking out against the status quo which made him a target for the establishment. Bryan was remanded to jail under a \$2,000 bond to await trial. Again, these types of economic punishments are a continuing theme in these cases. During the trial, Bryan acted as his own attorney and argued that he had exercised his “constitutional right of petition in taking a leading part in the strike of Sebastian County relief workers.” For his defense, Bryan produced a number of witnesses who were able to testify that his activities during the strike were wholly nonviolent. The State’s only evidence against Bryan was some pamphlets about the strike they had found on his person. Regardless of the lack of other evidence, Bryan was sentenced to six months in jail and fined \$500. His bond was eventually reduced to \$250 dollars, and according to Bryan he was told to stay out of the county. He stated, “I was informed that if I stayed out of the county I might be treated leniently. I stayed in the county, and was arrested Monday, February 18, on a second charge of ‘barratry.’”

The final arrest this research examines is that of Nathan Oser. In 1939, Nathan Oser became the director of Commonwealth College, a labor school in Mena, Arkansas. Again, Oser like the others was arrested for his affiliation with a school that did not agree with the status quo. By the time Oser received the position, Commonwealth was on the brink of closing due to lack

of funding. As the prospect of a second world war loomed ever closer, Commonwealth's desperation became more and more present. Rather than close, Oser attempted to get a similarly radical organization to take over the school. In 1940, he began negotiations with the New Theater League of New York. However, once word of the school being taken over by a "red" organization circulated, the American Legion again spoke out demanding the closing of Commonwealth. On September 20, 1940, Deputy Prosecutor of Mena J. F. Quillin filed a charge of anarchy against the school and impounded the college's records, correspondence, and college records. Oser was also personally charged with anarchy, but he was released on a \$1,000 bond two days later. Like the others, Oser faced economic punishments because of his dissent. Oser requested and was granted a changed of venue. The charges against Oser were later dropped due to the expense involved.

These four cases all showcase a pattern of punishing dissenters. While these people were each affiliated with different organizations and different causes, their commonality lies in the fact that they were all advocating for an alternative to the status quo. Their second commonality is the fact that all dissenters face economic punishments. These economic punishments are both a commonality and a consequence. The final commonality is the fact that, as evidenced by these narratives, that these four dissenters did in no way, shape, or form exhibit violent behaviors.

The central purpose of this research was to examine the events surrounding these arrests to highlight the negative consequences of limiting free speech. Limiting freedom of speech presents an array of consequences for dissenters and creates a toxic environment for all American citizens. It must be noted that the blame for limiting free speech should be placed on all those involved, from the legislators, to the prosecutors, to the courts. All of these people take an oath to uphold the constitution, but as these cases illustrate, they often do the exact opposite.

Consistently, the establishment, the legislators in particular, passes laws that curtail liberty. Likewise, the prosecutors are problematic because they know that the arrests will never hold up. They make these arrests under vague laws that allow them to temporarily silence dissenters without ever given the dissenters the chance to test or contest the actual laws. Thus, the establishment working together at all stages of limiting free speech results in a number of consequences for American citizens.

The first consequence is that limiting free speech contradicts the very purpose of the First Amendment. The First Amendment was created to protect dissenters. As these cases illustrate, that is not always put into practice. The First Amendment acts as a cultural symbol. According to First Amendment scholar Steve Shiffrin, free speech “has done more than promote tolerance: as a cultural symbol, the first amendment has enlivened, encouraged, and sponsored the rebellious instincts within us all.” However, its cultural utility is weakened when it is limited. It sends a message to citizens that they should not seek even the most minor societal reforms for fear of punishment. By limiting dissent, the ruling establishment creates a contradictory experience for all citizens. However, contradictions are not uncommon in the political realm. Other examples include punishing individuals for violence but encouraging war and promoting only peaceful revolutions stateside but using violent means to overthrow leaders in other countries. These contradictions create a very confusing ideology for American citizens and a toxic environment in which progressive dissent cannot prosper.

The second consequence that these cases also illustrate is the fact that limiting free speech always punishes dissenters in some way. Despite the fact that all of these dissenters were later released, they faced economic punishments. The importance of understanding these punishments translates into contemporary times. As long as free speech is subject to limitations,

dissenters will be arrested and charged in the name of the law. Even if dissenters are acquitted or later released, they still face time off work, lawyer fees, and a number of other consequences. These financial consequences send the most powerful message of all to dissenters: that free speech belongs only to those who are willing to pay the price — both literally and figuratively — for their dissent. This is a serious punishment for a person only acting out his constitutional rights.

The third major and lasting consequence of making certain forms of dissent illegal is the negative rhetorical construction of their ideologies. To this day, the words “socialist,” “communist,” and “anarchist” are mostly used as defamatory statements. Even years after the red scare has ended, politicians still have to defend themselves against allegations of being socialist. It would be political suicide to embrace socialism openly. The law is one of the most important rhetorical texts used to create a national narrative and identity. James Boyd White contends that the law “is a language in which our perceptions of the natural universe are constructed and related, in which our values and motives are defined, and in which our methods of reasoning are elaborated and enacted.” The law is created to reflect a society. As a society changes, the laws change with it. The problem is that most citizens do not see the law as something that is rhetorically constructed to create a national identity, nor do they understand the way in which the law rhetorically constructs its citizens. The United States has constructed a narrative of binary opposites in which people are either patriotic, law-abiding citizens or they are disobedient and un-American. By not allowing for any gray or middle area, society, sometimes unconsciously, creates this idea of the “other” previously discussed. In the case of dissenters, the law and all its legal applications serve as a means to rhetorically define the dissenter. Once the dissenters have been defined as “others” it is much easier for the establishment to exert control over them.

Progress can only exist if free speech is absolute. Speech and dissent are social events and progressive in nature.

While this research argues that free speech should be absolute on the basis of a cost-benefit analysis, it does not dare assume that free speech has no negatives or that free speech is only used for noble or civil cause. This is absolutely not true. However, my argument holds that allowing government restrictions on free speech is worse than any harms caused by the speech. If the controlling powers are allowed to define acceptable speech, then it is safe to assume that the controlling establishment will also use that power to restrict speech in inappropriate ways, as evidenced by these four case studies. The only way for the government to avoid favoring the status quo is for them to stay totally uninvolved in the matter entirely.

These four cases demonstrate on a limited scale how restricting free speech in any way is not only unconstitutional but serves the more insidious purpose of encouraging United States citizens to become passive about the society they live in. By examining these cases and discussing the consequences of such abuses of power, I hope I have contributed to a better understanding of free speech in the United States and its implications for the future of rhetoric.

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