

Questions related to Robert H. Jackson on Free Speech and Public Order

1. Does Jackson agree with the Court (the majority opinion) that the jury instruction violated freedom of speech? Explain.
2. How does Jackson characterize the Court's position when it comes to the tension between free speech and public order? Quote from his dissent in your response.
3. If the Court had not reversed the conviction based on the jury instruction, do you think it would have concluded that Terminiello's speech was "composed of derisive, fighting words, which carried it outside the scope" of First Amendment protections? Explain.
4. Does Terminiello connect Roosevelt's New Deal with international communism?
5. What is ironic about someone from Terminiello's audience shouting that "Jews, niggers and Catholics would have to be gotten rid of"?
6. Does Jackson associate Terminiello with fascism and the street mob with communism? Have clashes between reactionaries and revolutionaries been a growing problem for American cities? Whose job is it to prevent mobs from taking over the streets?
7. According to Jackson, "speech-making to some mass of people" often plays a big role in "mob violence," and the U.S. Constitution gives state and local authorities the "power to solve that problem." What example from the preamble to the Constitution does Jackson give to support such a power?

8. What does Jackson believe is the danger “if the Court does not temper its doctrinaire logic with a little practical wisdom”?
9. In the lead-up to the American Revolution, the most influential argument for free speech was contained in a series of letters published in the *London Journal* between 1720 and 1723. Written by the Radical Whigs John Trenchard and Thomas Gordon, *Cato's Letters* ranked with the treatises of John Locke as the most authoritative statement on political liberty in the American colonies.

The first paragraph of Letter No. 15 encapsulates Trenchard and Gordon's view of free speech: “Without freedom of thought, there can be no such thing as wisdom; and no such thing as public 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.”

Does Jackson's view of free speech align with Trenchard and Gordon's? Discuss at length in the space below.