

ROBERT M. LA FOLLETTE, SR., "FREE SPEECH AND THE RIGHT OF CONGRESS TO DECLARE THE OBJECTS OF THE WAR" (6 OCTOBER 1917)

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Abstract: In his landmark address to Congress, Senator La Follette successfully framed the threat to free speech in wartime as a crisis even more pressing than war itself. La Follette supported his position by interpreting the constitutional right to free speech using historical, textual, doctrinal, and ethical modalities. Ultimately, the senator staked out a position that was both pragmatic—as he acknowledged the necessities of war—and idealistic, as he argued for the preservation of free speech in times of national crisis.

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Robert La Follette was a progressive senator from Wisconsin from 1906 to 1925. During that time, he earned the nickname "Fighting Bob" because of his "support for progressive reforms, rousing oratory, and frequent clashes with party leaders."¹ Perhaps he is best remembered for his vocal and passionate opposition to our nation's involvement in World War I.² On October 6, 1917, only six months after the United States entered World War I, La Follette delivered a three hour address to the Senate titled "Free Speech and the Right of Congress to Declare the Objects of the War." In this speech, he defended his constitutional right, and the right of all Americans, to voice their opinions regarding war.³ Upon delivering the address, La Follette received "resounding applause from the Senate galleries"⁴ and the speech itself has been "widely regarded as one of the most powerful arguments for free speech rights during wartime."⁵

In his address, La Follette successfully framed the threat to free speech in wartime as a crisis even more pressing than war itself. Indeed, he demanded that protecting free speech in time of war was "the most important question in this country to-day" (17). The senator made his position plain, arguing for the preservation of first amendment rights, because "more than all, the citizen and his representative in Congress in time of war must maintain his right of free speech.... More than in times of peace it is necessary that the channels for free public discussion of governmental policies shall be open and unclogged" (17). In this essay, I argue that La Follette supported his position by interpreting the constitutional right to free speech using historical, textual, doctrinal, and ethical modalities. Ultimately, I contend that La Follette staked out a position that was both pragmatic—as he acknowledged the necessities of war—and idealistic, as he argued for the preservation of free speech in times of national crisis.

This essay is divided into four major sections. In the first section, I provide an overview of the Progressive Era and progressive insurgency, as well as highlight a few key features of World War I politics. The second section is devoted to a brief biography of La Follette that focuses on his most noteworthy and relevant political and oratorical achievements. In the third

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section, I analyze "Free Speech and the Right of Congress to Declare the Objects of the War" utilizing Philip Bobbitt's six modalities of constitutional interpretation. The essay concludes with a discussion of implications regarding La Follette's address and free speech in times of national crisis.

Historical Context

La Follette delivered his famous speech as the Progressive Era overlapped into World War I. A distinguishing characteristic of the Progressive Era, which roughly spanned the years 1890 to 1920, was reform.⁶ Individuals who identified themselves as progressives—namely, "farmers, trade unionists, small businessmen, college and university faculty, and even an occasional millionaire"⁷—sought to reform the social, political, and economic problems borne from the country's rapid industrial growth and development. Such problems included poor working conditions, poverty, outpaced social infrastructure, disease, crime, immigration, prohibition, and suffrage.⁸ In government, progressive wings of the Democratic and Republican parties took shape which eventually led to the formation of the Progressive Party in 1912. The Progressive Party, according to some historians, was "the most important third party to appear on the American political landscape in the 20th century."⁹ As a Republican who associated himself with the progressive wing of the Republican Party and was long recognized as its leader, La Follette came to "epitomize the Progressive" and even embody "the personification of the Progressive Era."¹⁰

The wave of progressivism led to a political revolt in Congress from 1909 to 1916 known as "insurgency."¹¹ Even though this relatively small revolt was led by roughly ten Republican progressives, historian James Holt characterized insurgent republicanism as "one of the most celebrated political movements of the whole 'progressive era.'"¹² The term "insurgent," Holt explained, referred to "political rebels of various kinds, but especially dissident Republicans in Congress," including La Follette, whose main activity was "meeting constantly to plan strategy in private, openly defying the party's established leaders in public."¹³ The men who constituted the insurgent faction were reform-minded progressive Republicans, and "for the most part, the insurgents represented a rural, traditional brand of progressivism. The centers of insurgent strength were overwhelmingly rural in character, and the insurgents were great exponents of the values of rural life."¹⁴ Given his progressive politics and rural ethic (he worked as a farm laborer in Wisconsin), it is not surprising that La Follette embraced insurgent progressivism¹⁵ and considered it "the wave of the future."¹⁶

By the time World War I broke out in Europe in 1914, like most Americans, including President Woodrow Wilson, La Follette supported a policy of neutrality and even isolationism.¹⁷ However, public opinion began to shift when news broke in May of 1915 that a German submarine sank a British passenger liner, the *Lusitania*, killing nearly 1200 people including 124 U.S. citizens.¹⁸ Almost two years later, when Germany resumed unrestricted submarine warfare and the Zimmerman telegram revealed a German plot against the United States,¹⁹ President Wilson asked Congress for a declaration of war against Germany and its allies on April 2, 1917.²⁰ Congress delivered their war declaration four days later but without the support of six senators who voted against joining the war, including La Follette.

On the very same night that President Wilson asked Congress for a declaration of war, two U.S. congressmen—Representative Edwin Webb, of North Carolina and Senator Charles Culberson, of Texas—proposed bills "to deal with espionage and treason."²¹ Two months later, these bills were enacted into a law known as the Espionage Act (and later amended in 1918 with the Sedition Act). As Strassfeld explained, the Espionage Act was "mostly uncontroversial" at the time because it "dealt with a wide range of issues, from criminalizing various acts of espionage to protecting shipping;" however, "the act is remembered...for those provisions that affected civil liberties,"²² particularly free speech, and for how it was used to prosecute individuals of the American political Left.²³ Because of the deleterious effects of the Espionage Act on American civil liberties, "it resulted in several important U.S. Supreme Court decisions regarding freedom of speech that continue to be studied."²⁴ Stone observed more pointedly that in spring and fall of 1919, the Court, "established dismal precedents that took the nation half a century to overcome."²⁵ Thus, as historians, legal experts, and First Amendment scholars have observed, the era beginning with World War I marked "a formative time for our current ideals of freedom of expression."²⁶

While always vocal about his opposition to the Espionage Act and U.S. involvement in the war, La Follette's expression of dissent in September of 1917 launched him into public controversy. On September 20, 1917, La Follette delivered a speech to the Nonpartisan League convention in St. Paul, Minnesota that included topics such as the League itself, the Granger movement, and war taxation. But within his remarks, La Follette also made a statement regarding the causes of war. He asserted, "For my own part I was not in favor of beginning the war. I don't mean to say that we hadn't suffered grievances; we had—at the hands of Germany. Serious grievances." However, in La Follette's estimation, those grievances were "insufficient" for Wilson and Congress to declare war.²⁷ The next morning, scandal erupted as the Associated Press news service misquoted the senator as instead saying, "I was not in favor of beginning this war. We had no grievance."²⁸ Newspapers also reported that the tone of the meeting was "disloyal" and that La Follette argued that the *Lusitania's* sinking was justified.²⁹ The backlash against the senator for reportedly uttering such treasonous sentiments was swift and certain. A segment of the news media vilified La Follette by comparing him to Judas and Benedict Arnold,³⁰ while clubs and associations expelled him from their organizations.³¹ He endured "being spat upon and even burned in effigy."³² In Congress, the Committee on Privileges and Elections launched an investigation and hearing to consider a resolution to expel the senator from his seat. La Follette was finally vindicated in November 1918 as the Committee voted to dismiss the expulsion charges and the Associated Press issued a public apology and retraction of the misquoted speech.³³ The Senate even voted in 1923 to reimburse La Follette for his legal expenses when they "acknowledged the frivolous nature of the disloyalty charges."³⁴

Robert M. La Follette, Sr.

Robert "Bob" Marion La Follette was born on June 14, 1855, in Primrose township in Dane County, Wisconsin.³⁵ He worked as a farm laborer until moving to Madison in 1873 and entering the University of Wisconsin in 1875.³⁶ While in college, La Follette joined the Athenaeum Literary Society, a literary and debating society, which gave him "a forum for acting and speaking," and by the time he graduated in 1879, "he had won a reputation as one of the

best orators in the Madison area."³⁷ La Follette passed the bar examination in 1880 and moved back to Dane County with his classmate and soon to be wife, Belle Case. The following year, Bob was elected District Attorney of Dane County and easily won reelection in 1882. By all accounts, La Follette "was a popular district attorney because he zealously prosecuted tramps, vagrants, drunkards, and other public nuisances."³⁸ Next was a run for the U.S. House of Representatives as a Republican. Winning his congressional seat in 1884, La Follette became "the youngest member of the Forty-ninth Congress" in 1885 and remained in that position until 1890 when he lost his seat to Democrat Allen Bushnell.³⁹ After his congressional defeat, La Follette returned home to Madison to practice law, and over the course of the next decade, established himself as a Progressive.⁴⁰

While history could point to any number of events that shaped La Follette's progressive politics and public character, a defining moment was certainly his "public battle"⁴¹ with Philetus Sawyer. La Follette himself reported that: "Nothing else ever came into my life that exerted such a powerful influence upon me as that affair. It was the turning point, in a way, of my career."⁴² Sawyer was a U.S. Senator from Wisconsin as well as a powerful lumber and railroad magnate who allegedly offered La Follette a bribe in 1891 "in a court case presided over by La Follette's brother-in-law, Judge Robert G. Siebecker."⁴³ The intensely honest La Follette refused the bribe, and for the next ten years, "traveled around the state speaking out against the influence of crooked politicians and the powerful lumber barons and railroad interests that dominated his own party."⁴⁴ La Follette's progressivism earned him many friends, but also many enemies who worked tirelessly and successfully to stop his bid for Wisconsin governor in 1896 and 1898.

La Follette finally won the governorship in 1900 and promised to institute his own brand of progressive reform; specifically, "measures that doubled the taxes on the railroads, broke up monopolies, preserved the state's forests, protected workers' rights, defended small farmers, and regulated lobbying to end patronage politics."⁴⁵ He easily won reelection in 1902 and 1904. It was in 1906 that La Follette won his seat in the U.S. Senate. During his tenure as senator, La Follette maintained a loyal following and stayed true to his progressive agenda, including campaigns for woman suffrage, social security, child labor laws, and other progressive reforms. In January of 1909, he published *La Follette's Weekly Magazine* (renamed *Vie Progressive* in 1928), which became "the mouthpiece of progressivism," especially among progressive farmers and working people.⁴⁶

By 1911, La Follette cemented his position as "the undisputed leader of the progressives in the Senate," and by the time of the United States' involvement in World War I from 1917-1918, he became "the leader of the outspoken anti-war faction in the Senate."⁴⁷ He ran for president in 1924 as the Progressive Party candidate, and while his campaign showed promise by garnering support from farm and labor organizations,⁴⁸ and by polling at "almost five million votes," he was ultimately defeated by the Republican incumbent, Calvin Coolidge.⁴⁹ The following year, at age 70, Fighting Bob died of a heart attack, leaving friends around the nation to eulogize the firebrand "for his philosophies, achievements, and most of all, his impeccable integrity."⁵⁰

Over the course of his career and especially during his time in Senate, La Follette fortified his reputation as a principled, passionate, and verbose orator. In fact, Fighting Bob may be considered an archetype of the Progressive Era's "oratorical revival"⁵¹ also known as the

"second oratorical renaissance."⁵² As with the first oratorical revival in the first half of the nineteenth century—which included such celebrated speakers as Daniel Webster, Henry Clay, and Abraham Lincoln—the distinguished oratorical statesmen of the second revival spoke with "an exalted standard of eloquence and intellectual mastery;" however, orators of the second revival delivered "emotionally charged harangues"⁵³ to inspire "carnavalesque spectacle"⁵⁴ and "stir excitement"⁵⁵ in their audiences. Of course, this brand of oratory certainly had its detractors. Robert Stuart MacArthur, a writer for *The World To-Day* monthly magazine, reported of a La Follette speech that "the ardency of his zeal leads him occasionally, in the opinion of many hearers, to unfairness and even to fanaticism."⁵⁶ Similarly, a writer at the *Milwaukee Journal* reported of La Follette's acceptance speech at the Republican convention in 1902: "This is not oratory, it is passion. It is fanaticism. It is demagoguery. It is not force, it is frenzy."⁵⁷ Regardless of their critics, the great speakers of the second oratorical renaissance enjoyed immense political influence and power. As La Follette himself once commented, the orator "holds the balance of power. It is the orator, more than ever before, who influences the course of legislation and directs the destinies of states."⁵⁸ La Follette's "Free Speech and the Right of Congress to Declare the Objects of the War" was certainly representative of the second oratorical revival and typical of the senator's rhetorical style.

"Free Speech and the Right of Congress to Declare the Objects of the War"⁵⁹

Lincoln Steffens once reported to *McClure's Magazine* that, "some of [La Follette's speeches] are so loaded with facts and such closely knit arguments, that they demand careful reading."⁶⁰ Indeed, scholars who have engaged in "careful readings" of Fighting Bob's most well-known public speeches have detailed and celebrated the texture of the senator's rhetorical acumen. An early analysis of Fighting Bob's rhetoric was published in William N. Brigance's 1943 collection of essays, *A History and Criticism of American Public Address*. In that essay, Lahman detailed La Follette's personal biography along with his "speech training and leadership"⁶¹ to conclude that, "measured by the tests of immediate response, practical results, and long-term influence, La Follette was an effective public speaker."⁶² In another analysis, Lawler argued that La Follette's oratory "is a fine example of the nobility of the American idea of freedom."⁶³ Rhetorical critic Carl R. Burghardt specifically analyzed "Free Speech and the Right of Congress to Declare the Objects of the War" as an "apologia" or speech of self-defense, arguing that La Follette "skillfully combined policy advocacy, counterattack, and apology in the same, seamless address."⁶⁴ More recently, communication scholars Grant C. Cos and Brian J. Snee agreed that La Follette's speech was an apologia and offered that the "synthesis of form and content" of the speech functioned to "shift...attention from the minute details of the day to more significant and timeless ideals."⁶⁵ Even analyses of La Follette's other public addresses offer insight into Fighting Bob's rhetorical style and "imprint,"⁶⁶ as well as a richer understanding of and greater appreciation for La Follette's landmark address on free speech in wartime.⁶⁷

Based upon my own "careful reading," I focus on the senator's constitutional interpretations as he argued in favor of free speech and protected dissent in times of national crisis. His thesis was quite simple—"I maintain that Congress has the right and the duty to declare the objects of the war and the people have the right and the obligation to discuss it" (145)—but the arguments he advanced to support that claim were typical of the "second

oratorical revival" and thus rather "intellectual" and sophisticated. It is important throughout this analysis to remember that La Follette delivered his speech six months after the U.S. declared war on Germany; four months after Congress passed the Espionage Act; less than three weeks after his St. Paul speech debacle; and mere days after the Committee on Privileges and Elections received the expulsion petition against him. But rather than taking the opportunity to defend himself personally, as many expected⁶⁸ and as the "jammed" galleries of the Senate suggested,⁶⁹ Fighting Bob chose instead to speak to the larger issue of free speech in wartime. Thus, finding an opportunity to analyze the constitutional arguments featured in La Follette's most noteworthy address, I proceed with an appropriate analytical framework.

Constitutional Arguments: An Interpretive Framework

To unpack and understand La Follette's sometimes dense legal arguments, I apply Philip Bobbitt's theory of constitutional interpretation. Bobbitt, a constitutional theorist, identified six "modalities" or "ways in which legal propositions are characterized as true from a constitutional point of view."⁷⁰ Bobbitt's modalities also offer rhetorical critics a useful framework for analyzing legal arguments such as those found in La Follette's speech.⁷¹ I briefly introduce each of the six modalities here, but I explain the four most applicable arguments in more detail throughout the analysis.

The first type of constitutional modality Bobbitt identified is *historical* argument, which he explained, "marshals the intent of the draftsmen of the Constitution and the people who adopted the Constitution."⁷² The second mode of constitutional interpretation, *textual* argument, offers a close reading of the words and meanings of the Constitution in current context. The third type of argument Bobbitt found is *doctrinal*, an argument based almost entirely on legal precedent and doctrines. Fourth, *ethical* arguments, Bobbitt explained, "[rely] on a characterization of American institutions and the role within them of the American people. It is the character, or ethos, of the American policy that is advanced in ethical argument as the source from which particular decisions derive."⁷³ The fifth argument Bobbitt identified is *structural*, grounded in the claim that "a particular principle or practical result is implicit in the structures of government and the relationships that are created by the Constitution among citizens and governments."⁷⁴ Finally, *prudential* arguments weigh the costs and benefits of legal propositions. Even though some or all of these arguments may appear in a rhetor's constitutional discourse, it is often the case that rhetors will favor certain arguments over others. My analysis reveals La Follette's preference for historical, textual, doctrinal, and ethical arguments in his "Free Speech and the Right of Congress to Declare the Objects of the War" address, suggesting an equal balance of idealistic and pragmatic perspectives on his part. I now consider each of these four arguments in turn.

La Follette's Historical Arguments

La Follette relied heavily on historical appeals to argue that the framers and ratifiers of the Constitution intended war powers for Congress and protected free speech for all American citizens. Reid and Klumpp similarly noted La Follette's preference for historical arguments: "his explicit argument was that Americans have traditionally respected free speech, but he implicitly identified himself with historical heroes."⁷⁵ With the historical modality, the rhetor focuses on the context surrounding the creation and adoption of the Constitution, or as Bobbitt explained, "on the intentions of the framers and ratifiers of the Constitution."⁷⁶ Bobbitt problematized this type of argument, pointing out that the "original understanding" and "intentions"⁷⁷ of the

framers and ratifiers may never be completely known. Furthermore, he mused how "odd it is that the original understanding in any field of study should govern present behavior."⁷⁸ Thus, while historical arguments may be considered "odd" in current political contexts, and while they may never quite capture the "original understanding" of the Constitution, rhetors employ these arguments in constitutional discourse to bolster their arguments and their own ethos.

Early in the address, La Follette announced explicitly that he would be evoking historical events and figures to make his case. "What I am saying," the senator announced, "has been exemplified in the lives and public discussion of the ablest statesmen of this country, whose memories we most revere and whose deeds, we most justly commemorate. I shall presently ask the attention of the Senate to the views of some of these men upon the subject we are now considering" (21). The "ablest statesmen" La Follette evoked included Henry Clay, Abraham Lincoln, Charles Sumner, and Daniel Webster. He lauded these men as "a galaxy of names in American history" who "believed and asserted and advocated in the midst of war that it was the right—the constitutional right—and the patriotic duty of American citizens, after the declaration of war and while the war was in progress, to discuss the issues of the war and to criticize the policies employed in its prosecution and to work for the election of representatives opposed to prolonging war" (58). Even though these men were not framers or ratifiers of the Constitution, they were defenders and advocates of the Constitution, and their ethos as "great men" lent itself to La Follette's persona as a constitutional devotee. Additionally, reference to these revered oratorical statesmen is evidence of the "second oratorical renaissance" discussed earlier in this essay; that orators of the Progressive Era were "still reverent of the golden age of oratory that opened with Webster and Hayne, Calhoun and Clay."⁷⁹

La Follette did make historical arguments featuring the Founders who first conceived of and drafted the Constitution. At one point in the address, when citing the constitutional rights of Congress to declare and decide the conditions of war (84), La Follette discussed at length the intentions of the framers at the constitutional convention of 1787-1789:

We all know from the debates which took place in the constitutional convention why it was that the constitution was so framed as to vest in the Congress the entire war-making power. The framers of the Constitution knew that to give to one man that power meant danger to the rights and liberties of the people. They knew that it mattered not whether you call the man king or emperor, czar or president, to put into his hands the power of making war or peace meant despotism. It meant that the people would be called upon to wage wars in which they had no interest or to which they might even be opposed. It meant secret diplomacy and secret treaties. It meant that in those things, most vital to the lives and welfare of the people, they would have nothing to say. The framers of the Constitution believed that they had guarded against this in the language I have quoted. They placed the entire control of this subject in the hands of the Congress. (85)

Throughout this passage, La Follette seemed certain about the intent of the framers, about what "they knew" and what they "believed" about the war-making powers of Congress (85). Quick to tie those powers to free speech, the senator followed his remarks with a clear statement for first amendment rights: "And it was assumed that debate would be free and open, that many men representing all the sections of the country would freely, frankly, and calmly exchange their views, unafraid of the power of the Executive, uninfluenced by anything except their own convictions, and a desire to obey the will of the people expressed in a

constitutional manner" (85). Thus, the framers supported war powers for Congress and free speech in times of war, just as La Follette did. Such a rhetorical maneuver worked to intensify the senator's ethos by aligning him with the "greats" and their original intent.

At other times during the speech, rather than directly citing framers like George Washington, James Madison, or Alexander Hamilton, La Follette cited historical figures who *themselves* cited such Founders. For example, La Follette cited a speech delivered by Henry Clay regarding the rights of American citizens "to freely discuss every question relating to the [Mexican] war" (23) and the rights of Congress to determine the conditions of that war. In citing that speech, Clay essentially spoke for La Follette when the senator announced, "A declaration of war is the highest and most awful exercise of sovereignty. The convention which framed our federal constitution had learned from the pages of history that it had been often and greatly abused.... The convention therefore resolved to guard the war-making power against those great abuses, of which, in the hands of a monarch, it was so susceptible" (25). Thus, by citing Clay's speech, La Follette allowed Henry Clay and the men at the constitutional convention to speak on his behalf and support his claim that the original intent of the Constitution was for congressional war powers.

La Follette's Textual Arguments

La Follette relied heavily upon textual interpretation of the Constitution to make free speech arguments. Bobbitt noted that textual arguments are often confused with historical arguments as they both deal with the past and "both can have reference to the specific text of the Constitution."⁸⁰ However, the textual modality focuses specifically on the words of the Constitution and "to arguments that the text of the Constitution would, to the average person, appear to declare, or deny, or be too vague to say."⁸¹ In making the distinction between historical and textual appeals, Bobbitt explained how the words of the Constitution still hold relevance (and reverence) today, because textual arguments "rest on a sort of ongoing social contract, whose terms are given their contemporary meanings continually reaffirmed by the refusal of the People to amend the instrument."⁸² Thus, the document itself, not just the framers and ratifiers, are the focus of this argument and still hold salience to contemporary audiences. La Follette knew this as he made his textual arguments.

La Follette featured the textual modality in a section titled "Constitutional Provisions Involved." Here we find the senator citing exact language from the Constitution to support his claim that the right to declare war, decide the conditions of war, and end war—and, consequently, speak freely about war—lie with the elected officials of Congress, not the Executive. La Follette recited "Section 8, Article I, of the Constitution," that "the Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States" (80). The senator did not allow "the plain language of the Constitution" to speak for itself (94); rather, he offered an interpretation:

In this first sentence we find that no war can be prosecuted without the consent of the Congress. No war can be prosecuted without money. There is no power to raise the money for war except the power of Congress. From this provision alone it must follow absolutely and without qualification that the duty of determining whether a war shall be prosecuted or not, whether the people's money shall be expended for the purpose of war or not rests upon the Congress, and with that power goes necessarily the power to

determine the purposes of the war, for if the Congress does not approve the purposes of the war, it may refuse to lay the tax upon the people to prosecute it. (81)

La Follette's citation of the Constitution and his interpretation of its language functioned to drive home his point that the ultimate responsibility for the war rested with Congress and that President Wilson was overstepping his Executive authority.⁸³ Again citing section 8 of the Constitution—which specifically grants Congress the power "to declare war" and "to raise and support armies" (82)—La Follette drew the conclusion for his audience that "in the foregoing grants of power, *which are as complete as language can make them*, there is no mention of the President. Nothing is omitted from the powers conferred upon the Congress. Even the power to make the rules for the government and the regulation of all the national forces, both on land and on the sea, is vested in the Congress" (emphasis added, 83). Here the senator relied on a common understanding of the verbiage presented, "looking to the meaning of the words of the Constitution alone, as they would be interpreted by the average contemporary 'man on the street'."⁸⁴

Evident in parts of La Follette's address is what Bobbitt warned about, that the historical and textual can appear together and may become muddled. Bobbitt explained, "oftentimes [the historical] modality is confused with textual argument since both can have reference to the specific text of the Constitution. Historical, or 'originalist' approaches to constructing the text, however, are distinctive in their reference back to what a particular provision is thought to have meant to its ratifiers."⁸⁵ In a merging of the historical and textual, La Follette announced, "to make certain that no question could possibly arise, the framers of the Constitution declared that Congress shall have power—To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof" (84). Ultimately, it matters less which kind of argument this is and more what La Follette wanted to communicate. In this case, he relied upon the full weight of the Constitution and the framers to support his claim about congressional powers.

La Follette used the textual modality to not only articulate which powers belonged to Congress, but to detail the powers that did *not* belong to the president. Citing section 2 of Article II (88), La Follette reminded his colleagues that "the only power relating to war with which the Executive was entrusted was that of acting as commander in chief of the army and navy and of the militia when called into actual service" (88). In other words, according to La Follette's textual interpretation, the president "has no military authority over any of the persons that may compose it. He can not enlist a man, or provide a uniform, or a single gun, or pound of powder. The country may be invaded from all sides and except for the command of the regular army, the president, as commander in chief of the army, is as powerless as any citizen to stem the tide of the invasion" (89). Further building his case by citing the exact language of the Constitution—specifically, "Article II, section 2 which provides that the President shall have no power by and with the consent of the Senate to make treaties, providing two-thirds of the Senate present concur" (91)—La Follette focused not on the powers granted to the Executive but to the powers lacking. The senator announced that the president "gets no authority to declare the purposes and objects of any war in which the country may be engaged," and the "President can no more make a treaty of peace without the approval not only of the Senate but of two-thirds of the Senators present than he can appoint a judge of the

Supreme Court without the concurrence of the Senate" (93). Hammering home his point with an historical appeal, the senator concluded: "Thus completely did the fathers of the Constitution strip the Executive of military power" (89) and "if it should arise, under the Constitution, the final authority and the power to ultimately control is vested by the Constitution in the Congress" (93).

La Follette's Doctrinal Arguments

The third modality La Follette favored in his speech is doctrinal or precedential. This type of argument, Bobbitt explained, is "almost wholly based on precedent and is derived from the doctrines that have accreted around various constitutional provisions."⁸⁶ La Follette announced plainly his intention for citing previous resolutions and amendments concerning war powers: "I now invite your attention to some of the precedents established by Congress showing that it has exercised almost from the time of the first Congress substantially the powers I am urging it should assert now" (113). While doctrinal arguments appeared throughout the speech, most often connected to his historical arguments, La Follette concentrated his precedential arguments in a section appropriately titled, "Congressional Precedents." In fact, the senator plainly identified his primary sources: "Many of the precedents to which I shall now briefly refer will be found in *Hinds' Precedents*...[and] the records of Congress itself as contained in the *Congressional Globe* and *Congressional Record*" (113).

La Follette made appeals to congressional doctrines and precedents as exemplars and as cautionary tales. In one example, he turned to the Spanish-American War in 1898 as a congressional precedent. The joint resolution, which President McKinley signed, authorized military intervention in Cuba and plainly stated our commitment to "leave the government and control of the island to its people" when the war was over (126). The point of providing this example was to exhibit what "a clear declaration of foreign policy...as well as a declaration of war" should look like (125). Similarly, he referred to the doctrine established on April 28, 1904, by both the House and Senate regarding "maritime powers" of the president in war, observing that, "so far as I am aware, there is an unbroken line of precedents by Congress upon this subject down to the time of the present administration" (128). The assumptions undergirding these statements were that congressional precedents and doctrines are valuable and directive; that Congress must play a significant role in declaring, managing, and ending war; and that President Wilson was not sufficiently honoring long-held congressional precedents.

Along these lines, La Follette recounted how congressional doctrines have been crafted to prevent presidential overreach and thus established legal precedent for subsequent presidents. The example Fighting Bob chose to highlight involved an amendment passed by Congress at the close of the Mexican War:

It is true that in 1846 President Polk, without consulting Congress, assumed to send the army of the United States into territory the title of which was in dispute between the United States and Mexico, thereby precipitating bloodshed and the Mexican War. But it is also true that this act was condemned as unconstitutional by the great constitutional lawyers of the country, and Abraham Lincoln, when he became a Member of the next Congress, voted for and supported the resolution, called the Ashmun amendment, which passed the House of Representatives. (128)

The Ashmun amendment meant to censure Polk by declaring that the Mexican War had been "unnecessarily and unconstitutionally begun by the President of the United States"(128).

Ultimately, all of the examples in this section supported La Follette's overall claim that it was the "duty" of Congress, not the president, "to declare our specific purposes in the present war and to state the objects upon the attainment of which we will make peace" (144).

Pressing his point further—that it was Congress's "duty" to discuss and make decisions about war—La Follette again cited congressional doctrines to argue that President Wilson had no legal basis upon which to label war dissenters in Congress as traitors. In one instance, La Follette referred to a resolution passed by the House of Representatives (by 119 to 8 votes) during the Civil War and "reported by Mr. Henry Winter Davis from the Committee on Foreign Affairs" (123). That resolution, he concluded, set a precedent regarding the "authoritative voice" afforded to Congress in foreign matters; specifically, "that Congress has a constitutional right to an authoritative voice in declaring and prescribing the foreign policy of the United States as well in the recognition of new powers as in other matters, and it is the constitutional duty of the president to respect that policy no less in diplomatic negotiations than *in the use of the national force when authorized by law*" (emphasis in original, 123). La Follette's focus here was on the "authoritative voice" in times of war as he reasoned that "it was the duty of the president to respect the authority of Congress in diplomatic negotiations even as he must respect it when the Congress determined the policy of the Government in the use of the national forces" (124). The senator's audience could fill in the unstated conclusion: that the president must respect the "voices" of Congress, even the dissenting ones, because it was congressmen's "constitutional right" to speak and the president's "constitutional duty" to listen (124).

La Follette's Ethical Arguments

While La Follette's use of ethical arguments was not featured prominently throughout the speech, he did make some notable appeals to the moral commitments of the American people. The ethical modality, Bobbitt clarified, "denotes an appeal to those elements of the American cultural ethos that are reflected in the Constitution."⁸⁷ Unlike the textual modality, ethical arguments reference the values of the American people that may not be written directly into the Constitution. At its core, ethical arguments assume a "living constitution" rather than a static document that reflects the context in which it finds itself.⁸⁸ Smith warned that the ethical modality can "sometimes smack of majoritarianism, imposing the values of the many on the few."⁸⁹ As La Follette delivered this address during the Progressive Era, it seems reasonable to assume that he would weave progressive ethics throughout; however, it appears that he largely appealed to timeless American values instead.

La Follette argued that the values inscribed in the Constitution, especially the right to free speech, were those held dear to the American people. Midway through the speech, in a section titled "Discussion by English Statesmen," La Follette quoted directly from British politicians who opposed various wars, such as David Lloyd-George who opposed the Boer War and Lord (William Pitt) Chatham who opposed the American Revolutionary War. He quoted from these notable British leaders "to show that the principle of free speech was no new doctrine born of the Constitution of the United States. Our Constitution merely declared the principle. It did not create it. It is a heritage of English-speaking peoples, which has been won by incalculable sacrifice, and which they must preserve so long as they hope to live as free men" (70). In this case, the "principle" and "heritage" of free speech was the moral commitment cherished by Americans; not because of the Constitution, but because of the American people's

values. He even went so far as to describe "free speech, free press, and right of assemblage" as "personal rights...so explicitly and emphatically guaranteed by the Constitution" (71). With this modality, rhetors argue that not just the Constitution must be honored, but perhaps more importantly, the sacred, time-honored "principles" and "personal rights" enshrined therein.

Near the end of the speech, La Follette referenced ethical commitments of the American people not explicitly expressed in the Constitution; namely, the moral commitment to lasting peace. "No conviction is stronger with the people today," the senator declared, "than that there should be no future wars except in case of actual invasion, unless supported by referendum, a plebiscite, a vote of ratification upon the declaration of war before it shall become effective" (136). La Follette's reference to the people of "today" pointed to the fluidity of American values in context, not necessarily long-held principles written into the Constitution. That is, La Follette may have been referring to his fellow Progressives with this statement, because most Progressives fashioned themselves as anti-war. But the senator did manage to tie the principles of peace back to the Constitution by explaining that the people could "voice their convictions through their chosen representatives in Congress;" specifically, by allowing Congress to "assert its constitutional power to define and declare the objects of this war which will afford the basis for a conference and for the establishment of permanent peace" (137). Of course, this may have been a veiled invitation for voters to elect more progressives into government positions.

La Follette's reliance on historical and textual arguments suggest an idealistic perspective, whereas his reliance on doctrinal and ethical arguments suggest a more pragmatic perspective. As Heyse argued, the historical, textual, and structural modalities are often employed by rhetors wishing "to uphold the exact letter of the law and honor the original intent of the Founders, perhaps reflecting an idealistic perspective."⁹⁰ Conversely, the precedential, ethical, and prudential modalities are evoked by rhetors who are "concerned with the pragmatics of law and how it impacts the day-to-day lives of contemporary Americans."⁹¹ The present analysis reveals an equal balance of idealistic and pragmatic perspectives on La Follette's part as he understood the necessities of war but also the ideals that must be protected in times of intense crisis. Ultimately, La Follette concluded with a pragmatic call to support and properly arm our troops (156), but above all, to honor the ideals of free speech, because "if the American people are to carry on this great war, if public opinion is to be enlightened and intelligent, there must be free discussion" (149).

Legacy of the Speech

The outpouring of support and admiration for Fighting Bob's address was abundant and immediate. When La Follette finished delivering his oration, "the galleries thundered loud applause; the vice-president had to gavel them into silence."⁹² Overwhelmingly, "La Follette's sympathizers loved his address.... In the heartland, many agreed with La Follette—perhaps a majority."⁹³ Eugene Debs wrote in a letter to La Follette that the speech "is one of the few really great speeches ever made in Congress and will take its place among the classic orations of the age and one of the most eloquent, fearless, forceful appeals ever made for human rights and human freedom."⁹⁴ La Follette's "Free Speech and the Right of Congress to Declare the Objects of the War" remains a fixture in the pantheon of great American speeches on First Amendment rights, particularly in times of national crisis. The speech embodies "a classic

argument for free speech in time of war,⁹⁵ and according to Cos and Snee, it is "among the most important rhetorical texts to have emerged from that dramatic period."⁹⁶

The speech was not without its detractors, however, and critics believed that La Follette "belonged either in jail or in Germany,"⁹⁷ and he received no invitations for anti-war speaking engagements outside of the Senate chambers.⁹⁸ By and large, "his plea went unheeded" as "government propaganda united most of the public in common cause and common hatred;"⁹⁹ the expulsion case against him continued; the Espionage Act remained in place; the war raged on; and La Follette retained his status as an excoriated figure to many. Burghardt observed that this speech and "his other rhetorical efforts were not immediately effective in restoring his reputation. But, over a longer period, he was exonerated."¹⁰⁰

La Follette's address is better judged in terms of its potential future impact. After the war ended in 1918 and Americans expressed "revulsion toward the war," the public began to view La Follette and his actions "in a new light."¹⁰¹ Burghardt argued that La Follette may have sensed the long-term and enduring legacy of his rhetoric: "La Follette addressed a future audience in his October 6 speech. Where persuasion was not immediately feasible, he opted for placing his arguments in the public record. He was content to submit his case to the judgment of the future. On the freedom of speech issue, history judged him kindly."¹⁰² Indeed, one century later, Cos and Snee argued that La Follette's speech serves as "a model for rhetorically satisfying the competing commitments to freedom and safety,"¹⁰³ as well as "a model for public rhetoric in times of war."¹⁰⁴

During times of war, the line between dissent and disloyalty becomes blurred and strained; arguments for patriotism and security are pitted against arguments for civil liberties and free expression.¹⁰⁵ From the perspective of civil libertarianism, free speech is vital in times of national crisis: "dissent in wartime can be the highest form of patriotism....dissent that questions the conduct and morality of war is, on this view, the very essence of responsible and courageous citizenship."¹⁰⁶ However, when passions run high, as they invariably do during times of war, such a perspective can be easily overlooked and dismissed.¹⁰⁷ Instead, "dissenters are marked with the sign of the domestic enemy and accused of weakening the nation from within, of making the homeland vulnerable to foreign enemies."¹⁰⁸ Besides the potential demonization of dissent during wartime, another danger comes when the government rushes to pass rash and draconian legislation against free speech, such as the Espionage Act, in response to the "public hysteria" of wartime.¹⁰⁹ To this point, Stone has argued that it may be prudent to install legislation during peace time, when cooler and calmer heads prevail, that prevents Congress "from enacting wartime legislation that limits dissent *without full and fair deliberation*," requires a "cooling off" period, and includes a "sunset provision" that sets an expiration date for wartime legislation.¹¹⁰ These and other potential safeguards are important lessons gleaned from historical and rhetorical reflection.

The lessons we learn from the study of history and rhetoric—in this case, the Progressive Era and Senator La Follette—are certainly applicable in today's political landscape. The present study may guide our understanding of modern day political agitators, such as the Tea Partiers, when we consider the legacy of the progressive insurgents. The Tea Party formed in 2009 by conservative Republicans who opposed to the agenda of President Barack Obama. While the Tea Party lacks (and often resists) a cohesive agenda itself, Tea Partiers typically support reduced government spending and national debt, lowered taxes and government

oversight, a strengthened military, and conservative social reforms that promote traditional family values. Reminiscent of progressive insurgents such as Fighting Bob, members of the Tea Party "identify with the premises set forth by the U.S. Constitution" and consider their ideology as "a light illuminating the path to the original intentions of our Founding Fathers."¹¹¹ While the social reforms championed by the progressives were certainly far more liberal than those advocated by the Tea Party, Wolraich found that the Tea Party's "ferocious tactics"—such as "long-shot primary challenges, sensational filibusters, uncompromising ideology, and populist rhetoric"—were pioneered by La Follette for the progressive insurgents.¹¹²

More recently, the historical and rhetorical legacy of the Progressive Era and Fighting Bob may help shine light on the most recent national upheaval. As this essay is being written, Americans find themselves deeply "divided and uncertain"¹¹³ following the 2016 election of Donald Trump to the U.S. presidency. In some ways, President Trump's rhetoric reflects the forceful and emotional discourse that critics decried of the Progressive Era's oratorical revival. Recall the words of the *Milwaukee Journal* reporter in 1902 who criticized La Follette's acceptance speech at the Republican convention: "This is not oratory, it is passion. It is fanaticism. It is demagoguery. It is not force, it is frenzy."¹¹⁴ Now consider the criticisms of Donald Trump's campaign rhetoric which were also typically depicted as demagoguery: "red-faced, angry, and—by the end—visibly sweating...it was an address filled with extravagant emotion, hyperbole and plainly ridiculous promises. Trump has officially secured his place as one of the most capable demagogues the country has ever seen."¹¹⁵ Similarly, *Salon* writer Chauncey Devega characterized a Trump rally speech as "rage-filled and almost manic," and Trump himself as "a raging paranoid demagogue."¹¹⁶ This is not to suggest that Donald Trump's and Robert La Follette's rhetoric are equal because they are decidedly not (that is, La Follette's passionate rhetoric centered around tightly reasoned arguments whereas Donald Trump's does not). It is only to suggest that criticisms of both men focus on the "fanatical" and "frenzied" qualities of their rhetoric that some audiences find troubling yet others find refreshing and persuasive.

In sum, if we wish to guard ourselves against the potentially demonizing and divisive rhetoric of demagogues; if we wish to support or counter the maneuvers of political agitators; and if we wish to honor the free speech rights of war supporters and dissenters alike, we only need to recognize the value of hindsight and learn from our collective history. We can turn to the U.S. Constitution for direction, guidance, and clarity. We can look to our leaders and follow in the path those who reflect our ideals. For his part, if Fighting Bob were alive today, "he'd be howling in the Capitol."¹¹⁷

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Notes

¹ Wisconsin Historical Society, "The Career of Robert M. La Follette," <http://www.wisconsinhistory.org/turningpoints/tp-035/> (accessed June 10, 2014).

² For an analysis of La Follette's first anti-World War I speech to Congress, along with other notable antiwar addresses in American history, see Jesse Stellato, ed., *Not in Our Name: American Antiwar Speeches, 1846 to the Present* (University Park, PA: The Pennsylvania State University Press, 2012), 88-93.

³ A note to researchers: the title of this address is often abridged in scholarly and popular venues to "Free Speech in Wartime."

⁴ Robert C. Byrd, *The Senate, 1789-1989: Classic Speeches, 1830-1993*, vol. 3 (Washington, D.C.: Government Printing Office, 1994), 520.

⁵ Nolo Law for All, "Robert La Follette's 'Free Speech in Wartime,'" <http://www.nolo.com/legal-encyclopedia/content/lafollette-freespeech-speech.html> (accessed June 10, 2014).

⁶ Noralee S. Frankel, "Introduction," in *Gender, Class, Race, and Reform in the Progressive Era*, edited by Noralee Frankel and Nancy S. Dye (Lexington, KY: The University Press of Kentucky, 1991), 1.

⁷ Robert S. Maxwell, ed., *La Follette* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1969), 1.

⁸ Elizabeth V. Burt, *The Progressive Era: Primary Documents on Events from 1890 to 1914* (Westport, CT: Greenwood Press, 2004), 2-3.

⁹ Sidney M. Milkis, "Why the Election of 1912 Changed America," *Claremont Review of Books* 3 (2002/03). Also see Maxwell, *La Follette*, 1.

¹⁰ Maxwell, *La Follette*, 1.

¹¹ While 1909 to 1916 marks the most visible and organized activity of congressional insurgency, there is evidence of insurgent activities and ideology before and after those dates in local and state governments. For more on insurgent progressivism, see Karen A. J. Miller, *Populist Nationalism: Republican Insurgency and American Foreign Policy Making, 1918-1925* (Westport, CT: Greenwood Press, 1999), and Kenneth W. Hechler, *Insurgency: Personalities and Politics of the Taft Era* (New York: Russell and Russell, 1964).

¹² James Holt, *Congressional Insurgents and the Party System, 1909-1916* (London: Oxford University Press, 1967), 1.

¹³ Holt, *Congressional Insurgents*, 2-3.

¹⁴ Holt, *Congressional Insurgents*, 9.

¹⁵ Hechler argued that La Follette "was considered by his colleagues as *primus inter pares*," and "came to be recognized as the spearhead of the entire movement" (198-199).

¹⁶ David P. Thelen, *Robert M. La Follette and the Insurgent Spirit* (Boston: Little, Brown, 1976), 27.

¹⁷ Some outstanding historical surveys of World War I include, John Keegan, *The First World War* (New York: Alfred A. Knopf, 1998); David Stevenson, *1914-1918: The History of the First World War* (London: Allen Lane, 2004); and Gerard J. De Groot, *The First World War* (New York: Palgrave, 2001).

¹⁸ For more background on the *Lusitania*, read Thomas A. Bailey and Paul B. Ryan, *The Lusitania Disaster: An Episode in Modern Warfare and Diplomacy* (New York: The Free Press, 1975); and Diana Preston, *Lusitania: An Epic Tragedy* (New York: Berkley Books, 2003).

¹⁹ To read more on the Zimmerman Telegram, see Barbara W. Tuchman, *The Zimmerman Telegram* (New York: Macmillan, 1966).

²⁰ For more on Woodrow Wilson and World War I, read Richard Striner, *Woodrow Wilson and World War I: A Burden Too Great to Bear* (Lanham, MD: Rowman & Littlefield, 2014); and Robert H. Ferrell, *Woodrow Wilson and World War I, 1917-1921* (New York: Harper & Row, 1985).

²¹ Robert N. Strassfeld, "Espionage Act (1917) and Sedition Act (1918)," in *Major Acts of Congress*, edited by Brian K. Landsberg (New York: Macmillan Reference USA, 2004), 251.

²² Strassfeld, "Espionage Act," 251.

²³ See especially Daniel G. Donalson, *Law and Society: Espionage and Sedition Acts of World War I: Using Wartime Loyalty Laws for Revenge and Profit* (El Paso, TX: LFB Scholarly Publishing, 2012).

²⁴ "Espionage Act of 1917," in *Gale Encyclopedia of American Law*, 3rd ed., vol. 4, edited by Donna Batten (Detroit, MI: Gale, Cengage Learning, 2010), 234.

²⁵ Geoffrey Stone, *Perilous Times: Free Speech in Wartime* (New York: W.W. Norton & Co., 2004), 138.

²⁶ Grant C. Cos and Brian J. Snee, "Robert M. La Follette and the Rhetoric of Free Speech," *Free Speech Yearbook* 39 (2001): 26. Also see Zechariah Chafee, "Freedom of Speech in War Time," *Harvard Law Review* 32 (1919): 932-973, and James R. Hawkins, "Free Speech and World War I," in *Encyclopedia of the Supreme Court of the United States*, vol. 2, edited by David S. Tanenhaus (Detroit, MI: Macmillan Reference USA, 2008), 285-292.

²⁷ "Speech of Senator Robert M. La Follette," *Hearings Before a Subcommittee of the Committee on Privileges and Elections United States Senate Sixty-Fifth Congress First Session on the Resolutions from the Minnesota Commission of Public Safety Petitioning for Proceedings Looking to the Expulsion of Senator Robert M. La Follette on Account of a Speech Delivered Before the Nonpartisan League, at St. Paul, Minn., on September 20, 1917*, Part 1-2 (Washington, DC: Government Printing Office, 1917), 16.

²⁸ "Statement of Gilbert E. Roe—Resumed," *Hearings Before a Subcommittee of the Committee on Privileges and Elections United States Senate Sixty-Fifth Congress First Session on the Resolutions from the Minnesota Commission of Public Safety Petitioning for Proceedings Looking to the Expulsion of Senator Robert M. La Follette on Account of a Speech Delivered Before the Nonpartisan League, at St. Paul, Minn., on September 20, 1917*, Part 1-2 (Washington, DC: Government Printing Office, 1917), 102.

²⁹ Carl R. Burghardt, "Apology as Attack: La Follette vs. Robinson on Freedom of Speech," in *Oratorical Encounters: Selected Studies and Sources of Twentieth-Century Political Accusations and Apologies*, edited by Halford R. Ryan (Westport, CT: Greenwood Press, 1988), 2.

³⁰ Maxwell, *La Follette*, 6.

³¹ Nancy Unger, *Fighting Bob La Follette: Righteous Reformer* (Chapel Hill, NC: University of North Carolina Press, 2000), 257.

³² "La Follette, Robert M.," in *Encyclopedia of U.S. Political History*, vol. 7, edited by Richard M. Valelly (Washington, DC: CQ Press, 2010), 227.

³³ Fred Greenbaum, *Robert Marion La Follette* (Boston, MA: Twayne Publishers, 1975), 171.

³⁴ Carl R. Burghardt, "Apology as Attack," 9.

³⁵ La Follette, Belle C. and Fola La Follette, *Robert M. La Follette*, vol. 1 (New York: Macmillan, 1953), 1.

³⁶ Maxwell, *La Follette*, 10.

³⁷ Thelen, *Robert M. La Follette*, 5.

³⁸ Thelen, *Robert M. La Follette*, 7.

³⁹ La Follette and La Follette, *Robert M. La Follette*, vol.1, 65.

⁴⁰ Holt argued that La Follette was "perhaps the most radical of the insurgents," often allowing "labor leaders and social reformers to use *La Follette's Magazine* as a forum for the discussion of social reforms" (10).

⁴¹ Thelen, *Robert M. La Follette*, 19.

⁴² Robert M. La Follette, *La Follette's Autobiography: A Personal Narrative of Political Experiences* (Madison, WI: The Robert M. La Follette Co., 1913), 146.

⁴³ Richard Drake, *The Education of an Anti-Imperialist: Robert La Follette and U.S. Expansion* (Madison, WI: University of Wisconsin Press, 2013): 20-21.

⁴⁴ Wisconsin Historical Society, "The Career of Robert M. La Follette," http://www.wisconsinhistory.org/turningpoints/tp-035/?action=more_essay (accessed January 12, 2017).

⁴⁵ Wisconsin Historical Society, "The Career of Robert M. La Follette," available at http://www.wisconsinhistory.org/turningpoints/tp-035/?action=more_essay (accessed January 12, 2017).

⁴⁶ Alice Honeywell, *La Follette and His Legacy* (Madison, WI: Board of Regents of the University of Wisconsin System, 1995), 8.

⁴⁷ Honeywell, *La Follette and His Legacy*, 9. See also, Richard Drake, *The Education of an Anti-Imperialist: Robert La Follette and US Expansion* (Madison: University of Wisconsin Press, 2013).

⁴⁸ He also ran for president with support from the Socialist Party. See Jeff Taylor, "Fighting Bob vs. Silent Cal: The Conservative Tradition from La Follette to Taft and Beyond," *Modern Age* 50 (2008), 297.

⁴⁹ Maxwell, *La Follette*, 11.

⁵⁰ Honeywell, *La Follette and His Legacy*, 12.

⁵¹ Also consider Unger's reminder that "La Follette's first notoriety in the Senate came on 19 April 1906, when he broke the unwritten rule that freshman should be seen but not heard and began a major speech promoting his nine amendments to the proposed Hepburn Bill" (144). He reportedly worked on that address

for several weeks, "culminating in a speech that took almost eight hours, spread over three days, to deliver, filling 148 printed pages" (Unger, *Fighting Bob*, 144).

⁵² Robert A. Kraig, "The Second Oratorical Renaissance," in *Rhetoric and Reform in the Progressive Era*, edited by J. Michael Hogan (East Lansing: Michigan State University Press, 2003): 19.

⁵³ Kraig, "The Second," 20.

⁵⁴ Kraig, "The Second," 24.

⁵⁵ Kraig, "The Second," 20.

⁵⁶ Robert Stuart MacArthur, "Chautauqua Assemblies and Political Ambitions," *The World To-Day*, July 1905: 1076.

⁵⁷ Burgchardt, *Robert M. La Follette, Sr.*, 56.

⁵⁸ Kraig, "The Second," 18.

⁵⁹ All of the remaining passages from La Follette's "Free Speech and the Right of Congress to Declare the Objects of the War" address are cited with reference to paragraph numbers in the speech that accompanies this essay.

⁶⁰ Lincoln Steffens, "Enemies of the Republic: Wisconsin: A State Where the People Have Restored Representative Government—The Story of Governor La Follette," *McClure's Magazine* 23 (1904): 573.

⁶¹ Carroll P. Lahman, "Robert M. La Follette," in *A History and Criticism of American Public Address*, vol. 2, edited by William Norwood Brigance (New York: Russell and Russell, 1943): 948.

⁶² Lahman, "Robert M. La Follette," 965.

⁶³ Peter A. Lawler, "Robert Marion La Follette, Sr.," in *American Orators of the Twentieth Century: Critical Studies and Sources*, edited by Bernard K. Duffy and Halford R. Ryan (New York: Greenwood Press, 1987), 282.

⁶⁴ Carl R. Burgchardt, "Apology as Attack," 6. Burgchardt offered the same analysis in his book, *Robert M. La Follette, Sr.: The Voice of Conscience* (New York: Greenwood, 1992), 92-96.

⁶⁵ Cos and Snee, "Robert M. La Follette," 27.

⁶⁶ Carl R. Burgchardt, "Discovering Rhetorical Imprints: La Follette, 'Iago,' and the Melodramatic Scenario," *Quarterly Journal of Speech* 71 (1985): 441-456.

⁶⁷ Also see Jesse Stellato, ed., *Not in Our Name: American Antiwar Speeches, 1846 to the Present* (University Park, PA: The Pennsylvania State University Press, 2012), 88-93.

⁶⁸ Burgchardt, *Robert M. La Follette, Sr.*, 91

⁶⁹ Thelen, *Robert M. La Follette*, 141.

⁷⁰ Philip Bobbitt, *Constitutional Interpretation* (Oxford: Basil Blackwell, 1991), 12.

⁷¹ For a collection of essays that employ Bobbitt's framework to analyze arguments of the current Supreme Court, see Craig R. Smith, ed., *A First Amendment Profile of the Supreme Court* (Lanham, MD: John Cabot University Press, 2011).

⁷² Philip Bobbitt, *Constitutional Fate: Theory of the Constitution* (New York: Oxford University Press), 7.

⁷³ Bobbitt, *Constitutional Fate*, 94.

⁷⁴ Bobbitt, *Constitutional Fate*, 7.

⁷⁵ Ronald F. Reid, and James F. Klumpp, *American Rhetorical Discourse* (Prospect Heights, IL: Waveland Press, 2005), 815.

⁷⁶ Bobbitt, *Constitutional Interpretation*, 12.

⁷⁷ Bobbitt, *Constitutional Fate*, 10

⁷⁸ Bobbitt, *Constitutional Fate*, 9.

⁷⁹ Kraig, "The Second," 3.

⁸⁰ Bobbitt, *Constitutional Interpretation*, 13.

⁸¹ Bobbitt, *Constitutional Interpretation*, 14.

⁸² Bobbitt, *Constitutional Fate*, 26.

⁸³ In fact, he attacked Wilson for his "dictatorial tendencies" (Burgchardt, *Robert M. La Follette, Sr.*, 88).

⁸⁴ Bobbitt, *Constitutional Interpretation*, 12.

⁸⁵ Bobbitt, *Constitutional Interpretation*, 13.

⁸⁶ Bobbitt, *Constitutional Fate*, 41.

⁸⁷ Bobbitt, *Constitutional Interpretation*, 13.

⁸⁸ Smith, *A First Amendment Profile*, 7.

⁸⁹ Smith, *A First Amendment Profile*, 8.

- ⁹⁰ Amy Heyse, "Associate Justice Breyer," in *A First Amendment Profile of the Supreme Court*, edited by Craig R. Smith (Lanham, MD: John Cabot University Press, 2011), 126.
- ⁹¹ Heyse, "Associate Justice Breyer," 126.
- ⁹² Thelen, *Robert La Follette*, 142.
- ⁹³ Burgchardt, *Robert M. La Follette*, 94.
- ⁹⁴ Drake, *The Education*, 199.
- ⁹⁵ Burgchardt, "Apology as Attack," 1.
- ⁹⁶ Cos and Snee, "Robert M. La Follette," 32.
- ⁹⁷ Thelen, *Robert La Follette*, 142.
- ⁹⁸ Burgchardt, "Apology as Attack," 10.
- ⁹⁹ Stone, *Perilous Times*, 156.
- ¹⁰⁰ Burgchardt, "Apology as Attack," 10.
- ¹⁰¹ Burgchardt, "Apology as Attack," 10.
- ¹⁰² Burgchardt, "Apology as Attack," 10.
- ¹⁰³ Cos and Snee, "Robert M. La Follette," 27.
- ¹⁰⁴ Cos and Snee, "Robert M. La Follette," 28.
- ¹⁰⁵ For a collection of primary documents on free speech, particularly in the Progressive Era, see Theodore Schroeder, *Free Speech for Radicals* (New York: Burt Franklin, 1969).
- ¹⁰⁶ Stone, *Perilous Times*, 4.
- ¹⁰⁷ See also, Kenton R. Bird and Elizabeth B. Brandt, "Academic Freedom and 9/11: How the War on Terrorism Threatens Free Speech on Campus," *Communication Law & Policy* 7 (2002): 431-459, and Craig R. Smith, "The Red Scares," in *Silencing the Opposition: How the U.S. Government Suppressed Freedom of Expression During Major Crises*, 2nd ed., edited by Craig R. Smith (Albany, NY: State University of New York Press, 2011).
- ¹⁰⁸ Robert L. Ivie, "Democratic Dissent and the Trick of Rhetorical Critique," *Cultural Studies* ↔ *Critical Methodologies* 5 (2005): 279.
- ¹⁰⁹ Stone, *Perilous Times*, 539.
- ¹¹⁰ Stone, *Perilous Times*, 539-540. Italics in the original.
- ¹¹¹ "About Us," TeaParty.org, <https://www.teaparty.org/about-us/> (accessed on March 28, 2017).
- ¹¹² Michael Wolraich, "The Original Tea Partiers: How GOP Insurgents Invented Progressivism," *The Atlantic*, July 22, 2014, <https://www.theatlantic.com/politics/archive/2014/07/the-original-tea-partiers-how-gop-insurgents-invented-progressivism/374557/> (accessed on February 5, 2017).
- ¹¹³ Stone, *Perilous Times*, 4.
- ¹¹⁴ Burgchardt, *Robert M. La Follette, Sr.*, 56.
- ¹¹⁵ Stephen Stomberg, "In His Acceptance Speech, Trump Displays His Demagoguery," *Washington Post*, July 22, 2016, https://www.washingtonpost.com/blogs/post-partisan/wp/2016/07/22/in-his-acceptance-speech-trump-displays-his-demagoguery/?utm_term=.cbc466fb1057 (accessed February 5, 2017).
- ¹¹⁶ Chauncey Devega, "Frankenstein's Monster: Donald Trump was a Rampaging Paranoid Demagogue Yesterday—Just Ask the People Who Enabled Him," *Salon*, October 14, 2016, <http://www.salon.com/2016/10/14/frankensteins-monster-donald-trump-was-a-rampaging-paranoid-demagogue-yesterday-just-ask-the-people-who-enabled-him/> (accessed February 5, 2017).
- ¹¹⁷ Michael Wolraich, "The Original Tea Partiers: How GOP Insurgents Invented Progressivism," *The Atlantic*, July 22, 2014, <https://www.theatlantic.com/politics/archive/2014/07/the-original-tea-partiers-how-gop-insurgents-invented-progressivism/374557/> (accessed on February 5, 2017).