THE PRESIDENT ON THE ANTI-TRUST LAW.

The thing to do with the anti-Trust act, according to the President's message to Congress, is to let it alone. He frankly states that he had thought of recommending certain changes in the law, but has come to the conclusion that none is necessary. Two complaints have been made of the anti-Trust act. One is that it is too sweeping; that in the broad cast of its net it catches harmless and even useful combinations of capital as well as those that are monopolistic and oppressive. The other is that the meshes of the net are so large that scoundrelly corporations escape. Thus there has been a demand, on the one hand that the rigors of the law be relaxed, on the other that they be intensified. But the President shows that the long but sure process of judicial interpretation has relieved us from the need of doing either. Under the decisions of the Federal courts, increasingly clear principles have been and are being established which make it possible to strike down monopolies and hurtful combinations, while holding that innocent agreements, made in the orderly development of business for the purpose of obtaining economies of production and management, are not obnoxious to the law. A close examination of the cases which, under the anti-Trust act, have been brought before the Supreme Court convinces the President that there is "strong reason for leaving the act as it is, to accomplish its useful purpose, even though if it were being newly enacted useful suggestions as to change of phrase might be made."

We regard this as an entirely sound position. Some people are terribly afraid of "judge-made law," but almost all important laws are, in the end, judge-made. That is to say, we cannot be sure of the scope and force of any given statute until it has been passed upon by the courts. And law-makers sometimes see their creations undergo surprising changes in the course of judicial interpretation. The Fourteenth Amendment of the Constitution is the classic example. Its main intent has been partly nullified by the courts, while some of its incidental phrases have been erected into great bulwarks of property. This is not, perhaps, a happy instance of judge-made law, but still it shows what the process necessarily is. The Sherman Anti-Trust act is now nineteen years old, and only to-day are we working out, through decisions of the courts, into a precise understanding of what are its limitations and what its essential vigor. If the statute were to be hastily changed, the changes themselves would then have to be submitted to this same process of judicial determination, and it might be years before business men could know where they really stood. It is much better to stop with the clarifying and enforcement of the original act to which we have now nearly attained, and which we may confidently hope fully to reach when the Supreme Court decides the Tobacco case and the Standard Oil case, now before it.

If any one would know how strong is the evidence for the President's view that the courts are making the anti-Trust act a powerful weapon against monopolistic oppression, while preventing it from interfering with the legitimate march of great business, he should read the brief of the Attorney-General in the case of the American Tobacco Company, in which the argument closed. We are passing no judgment on the charges made against that corporation, though if one-half the averments made are true, it has been guilty of practices which are as shocking morally as they are criminal legally. The value of Attorney-General Wickersham's brief goes beyond his arraignment of the defendant, for it gives a complete review of all the cases decided under the anti-Trust act, and traces the way in which the courts have beaten out its meaning and effect.

It has been said, for example, that the decision of the Circuit Court in the Tobacco case would logically shut every large corporation out of business. This has been used as an argument against the law from absurd consequences. But the Attorney-General puts all this at rest. He declares that the Government "will not attempt to support the extreme construction" of the anti-Trust act; and he goes on to show how the courts have been careful to discriminate between combinations which are merely "an incident to orderly growth" and those which directly obstruct the free flow of commerce, stifle competition, make secret covenants in restraint of trade, and practise "unfair, wicked, or oppressive methods." We cannot, of course, go into the details of Mr. Wickersham's review of the judicial decisions; we merely say that it fully justifies the President's conclusion that all this matter may safely and most wisely be left to the courts. Mr. Taft, with a seeming glance towards Africa, declares that it is impossible to write into a statute a legal distinction between a "good" and a "bad" Trust. All that the law can do is to provide the penalties for monopoly and oppression; the courts must decide whether a given corporation has made itself liable to them.

When President Taft passes on from the generally satisfactory nature of the anti-Trust act as construed by the courts, to a recommendation of a Federal incorporation law, it is hard to follow him. This part of his message seems very like a *non sequitur*. Some will be swift to say that the President, after showing how the courts are successfully restraining and breaking up illegal combinations, is proposing a refuge for them under a Federal charter. Nothing of the sort is in his mind, we may be sure; and we admit that some of the arguments for a voluntary Federal incorporation have force. First, however, the people will insist upon seeing the exact terms of the national incorporation law; and, secondly, the States will certainly be jealous of anything which would seem to impair their right to regulate and tax their own corporate creations. Indeed, so formidable are the political obstacles to the enactment of any such law as the President proposes, as to make it virtually certain that the project will not even be brought to a vote in this session of Congress.

GOV. HUGHES'S MESSAGE

The special message which Gov. Hughes sent to the Legislature will attract more widespread notice than his regular annual message of the same day. In the former, he takes up a matter which is of deep interest to other States, as well as to New York, and discusses it in a way which is certain to command attention throughout the nation. There has been much curiosity as to what Gov. Hughes would do or say respecting the proposed amendment to the Federal Constitution authorizing the levying of an income tax. Would he approve it? Would he oppose it? Would he dodge it? Well, what he has

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really done is to study it, and to present the fruits of his study in a form which has given a leading to the discussion in other States, and which will result, as Washington already confesses, in the failure of the amendment.

Gov. Hughes starts out by agreeing that the national government ought to be clothed with the power to lay an income tax in times of emergency. To the principle and chief aim of the pending amendment, he gives his entire assent. But he urges the Legislature not to ratify it, on the ground that the actual text of the amendment is so loosely drawn as to admit of a serious Federal encroachment upon the borrowing powers of States and cities, and ought, therefore, to be resisted by them. This point has been made before, but by no one else with the clearness and cogency of Gov. Hughes. By citation of Supreme Court decisions and by reasoning from the nature of the case, he makes it evident that to confer upon Congress the power to tax incomes "from whatever source derived," would break down the Constitutional implication that the general government should not tax the securities of States and municipalities. Their bonds are offered and sold tax-exempt; but if the income from them could be taxed by the Federal authorities, the borrowing capacity of States and cities would be obviously cut into, with an increase of the interest rate and of the burdens of the taxpayers.

It will doubtless be said, and indeed Gov. Harmon has already said, that this is only an indirect way of attacking the amendment; that we ought to "chance" it, and trust Congress to exempt from tax the securities of States and municipalities, or to the courts to avert the danger by "construction." But Gov. Hughes does not take that view either of the law or of his duty. In stepping forward as a jealous guardian of the privileges of the States, he is but doing what he has many times before done—namely, exalting the powers and responsibilities of local government. His attitude in this matter of the amendment is in line with his general disposition to call upon citizens everywhere to work out their own salvation where they stand. The line he has taken is almost sure to be followed in many States. If the amendment is defeated, in consequence, it will not be his fault, but the fault of those who drew it carelessly and hurried it through Congress without duly considering what would follow.

It would be a pity if the Governor's special message on the income tax should overshadow his other recommendations to the Legislature, for many of these are of great importance. In his account of the finances and the needs of the State, Gov. Hughes shows again that patient attention to detail and that grasp of broad policy which his other state papers have led us to expect from him. While the Governor sees the big things, he does not allow the smaller ones which are significant to escape him. In his recommendations concerning the regulation of the use of automobiles, he accepts the view which has been urged in the *Nation*, that a severe penalty should be imposed upon the very act of running away after an accident. We note, too, that Gov. Hughes has had his eye upon the judicial decisions affecting race-track gambling, and asks the Legislature to carry out the intent of the law by making the public laying of odds a crime, even if no paraphernalia for recording the bets are used. He also recommends again that the telephone and telegraph companies be brought under the jurisdiction of the Public Service Commission.

The part of the Governor's message which will be read with the deepest interest, however, is that relating to election and primary reform. This is the matter still nearest his heart. Upon it he reaffirms the position in which he has been so strikingly sustained by the people of the State, and renews his former recommendations. Gov. Hughes is of the mind of many reformers who think that elective offices are needlessly multiplied, and would favor "the short ballot." He points out, however, that in order to obtain it many changes would have to be made in the laws and Constitution. More pressing and more feasible is the adoption of a form of ballot which would do away with the absurdities and abuses of the existing "party-column" ballot, and put the party man and the independent upon an exactly equal footing. This improved ballot the Governor strongly recommends, and the Legislature ought certainly to establish it. The only new point in what Gov. Hughes says about primary reform is that the law should compel money spent in primary contests to be publicly accounted for, and that the amount should be limited which any candidate for a nomination may lay out. Throughout the discussion of this whole subject the Governor's tone is dispassionate while dead in earnest; and it is safe to say, considering the light which the Legislature has seen, that the session will not pass without some kind of constructive action.

THE SCHOOL QUESTION IN FRANCE

The din of battle between Church and State in France will undoubtedly sound for many years to come. Just now the conflict rages about the person of the humble schoolmaster; except that "humble" does not apply to the French schoolmaster as it does to every other schoolmaster on earth. Some one has said that a Frenchman with an idea is one of the most terrific forces in Nature. And inevitably the school-teacher in France is as much exposed to the ravages of the idea as any class of citizens. The dominant ideas in France at the present day are clericalism and anti-clericalism, militarism and anti-militarism, trade-unionism among government employees and the denial of the right to strike. All of them have found concrete expression in the schoolroom. A somewhat parallel situation would be in New York if our public-school teachers, instead of filling the newspaper columns with demands for equal or higher pay, were to be accused of spreading the doctrines of tariff-revision or woman-suffrage among their pupils.

The situation in France is complicated. First stands the question of the public schools versus the clerical schools. Since Jules Ferry began the campaign for the *école laïque* in the early eighties of the last century, the movement has been steadily towards the public school and away from the church schools. The movement was hastened by the campaign against the congregational schools waged after 1902 by Premier Combes. It has been forwarded by the events that have followed the separation of Church and State. At the present day the public elementary schools have about five and a half million pupils, the congregational schools have a little less than a million and a quarter, and the public schools are the faster growing. This is the ideal of the

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