A DEFENCE THAT PROVES TOO MUCH.

When Mr. Taft last week gave out his explanation of the Ballinger-Lawler-Wickersham affair, we made the obvious remark that if a frank statement of the facts had been promptly made when the question was first raised, "nine-tenths of the pain and humiliation attending this disagreeable episode would have been avoided." But we felt it our duty to point out that, great as had been the aggravation of the trouble caused by this delay, the original facts connected with Mr. Taft's letter of exoneration were such as to justify severe criticism. We have observed that a large number of perfectly well-meaning and usually intelligent newspapers have taken the view that the President and his advisers committed an extraordinary and deplorable blunder in their policy of silence, but that in the facts themselves there was nothing whatever to regret or to censure. The antedating of Mr. Wickersham's summary and opinion, the delegation to Ballinger's subordinate of the task of preparing the case for the President, the failure to mention this detailed digest of the case as among the documents before the President when he took action, the arrival at his practical decision after only a few hours' work on an enormous mass of complex and confusing documentary material—all this was perfectly blameless and a mere matter of course; the only thing censurable was that the President, or somebody for him, did not immediately let the public know all these facts, the entire propriety of which the public would at once have recognized.

It does not seem to have occurred to any of our esteemed contemporaries who take this view of the case that it carries with it a conclusion of a most startling character. It is one thing to blunder or to use bad judgment, it is another thing to act like an imbecile. Mr. Taft, Mr. Wickersham, Mr. Ballinger, Mr. Lawler, are all of them gentlemen who have managed through long professional careers to perform duties of considerable difficulty, to attend to business of considerable importance. Now men in full possession of normal intellectual faculties do not adopt a policy of denial and evasion and obstruction to avoid producing matter which could carry with it no blame. No one man does this; four men consulting together, or having the opportunity of consulting together, certainly do not persist in such a course, week after week, month after month, without a motive. Confronted, therefore, with the alternative of adjudging these gentlemen to be utter incompetents or of inferring that there was something censurable in the matters that they were concealing, we for our part should feel strictly compelled to adopt the latter alternative, even if we had no other light upon the facts.

But the conclusion thus inevitably drawn from the first principles of human nature is amply evident on the face of the facts themselves. As we have said before, we are fully persuaded that the President believed he was doing justice in the case; but that consideration cannot justify us in suppressing the truth as to what he actually did. He received from Mr. Ballinger and Mr. Lawler, calling on him in person at Beverly, a mass of typewritten documents containing several hundred thousand words and relating to matters of great intricacy. They arrived with these documents on a Monday evening. That same night, according to his own statement, after staying up until three o'clock, he arrived at the conclusion that the charges against Ballinger were wholly unfounded. On the following day, Tuesday, he was busy in other ways, and in the evening he had a second talk with Ballinger and Lawler, and commissioned Lawler to draw up a letter as from himself, the President. This letter has now appeared in full in the report of the proceedings of the committee. It comprises, besides the expression of opinion, a detailed digest of all the evidence, made entirely from Mr. Ballinger's standpoint. Attorney-General Wickersham brought this document to Beverly, and had not seen either the full records or the President until the morning of Sunday, the 12th. On the next day, the 13th, Mr. Taft wrote the letter completely exonerating Ballinger and authorizing the dismissal of Glavis. Three months later the Senate requested the President to transmit to it "any reports, statements, papers, or documents upon which he acted in reaching his conclusions." Among the documents transmitted by the President in response to this request was an elaborate summary and opinion by the Attorney-General, filling seventy-four large pages of printed matter and dated September 11—a document which the President did not have before him and which it was manifestly impossible for the Attorney-General to have produced or even to have roughly indicated, in the time at his disposal. And among the documents was *not* included the minute and laboriously constructed digest of Ballinger's subordinate, Lawler, prepared at the President's own request, which must inevitably have formed an important element in his disposition of the case.

There is no mystery, therefore, why all parties concerned should have desired the facts to remain secret. These facts were damaging. They were calculated, on the one hand, to deprive Mr. Ballinger of the benefit that had come to him from the President's favorable verdict, by vastly lessening the weight of that verdict with the country. And they were calculated also to do an injury to the President's own standing. Ill-judged as was the policy of delay and obstruction, it was not idiotic; it was not without a motive. The bad judgment consisted not in thinking that it would be well for all parties concerned if the facts were suppressed, but in imagining that it would be possible permanently to suppress them. That there was no bad intention on the President's part we sincerely believe. But neither regard for his good intentions nor concern for the dignity of his great office would justify us in helping to pass off upon the American people, in place of the truth, a view of the affair the inherent absurdity of which is no less patent than its disagreement with the facts.

RAILWAYS AND THEIR PATRONS.

Throughout the prolonged discussion of the pending Railway bill in Congress there has been manifest a determination, by a large and apparently controlling element of the Congressmen of both political parties, not to relax, directly or indirectly, such barriers as already exist against arbitrary rate-making. The comment of the railways on this attitude has been generally to the effect that an unreasoning hostility has been created against one of our greatest industries. And more particularly, it has been asked why the railways should not possess unchallenged the right, which smaller industries assert and ex-

ercise, of adjusting their business arrangements to changing financial conditions. Why, for instance, if the price of grain and cotton and iron and meat and rents has been rising rapidly and continuously, should not the price of railway transportation rise proportionately, and why should not the railway managers, like the farmers and manufacturers and graziers and landlords, be the judges as to what increase the circumstances of their business require? These have at all times been fair questions, and certain recent events may help in giving a fair answer.

A few weeks ago, there was filed with the Interstate Commerce Commission notice of what appeared to be a concerted advance of 10 to 20 per cent. in freight rates on the Western railways, and it was intimated that the Eastern railways would follow suit. In public statements several railway managers averred that, having granted substantial increase in wages to their employees, they were forced to recoup themselves by higher transportation charges. One railway president, Mr. Brown of the New York Central, went so far as to assert that "if the railways are to remain solvent, the only recourse now is an advance in freight rates." To these arguments the association of Western shippers rejoined, first, that the railways had very lately assured them that no general advance in rates was contemplated; secondly, that the progressive increase in railway earnings has been much more than enough to cover the higher wage payments. It was elsewhere pointed out that the proposed advance in rates was on the average much greater than the advance in wages, and that, in the face of their gloomy statement of the situation, the railways, including that over which Mr. Brown presides, were increasing dividends, even where the rate was already high.

In the past week or two, there has also been announced in behalf of the railways which conduct the suburban passenger traffic of this city, a seemingly concerted increase of commutation rates, averaging something like 10 per cent. A commuters' committee of the New York, New Haven, and Hartford called on the president of that road, last Friday, to remonstrate. Mr. Mellen, according to the newspaper reports, responded thus in regard to suburban passenger traffic:

> We pay out 5 cents more than we receive. I haven't asked you for anything. We lose on you. We carry you into New York for nothing and our blessing. We are not trying to rob you.

And in regard to the protest of one town upon his line, he added:

> The more you do at New Rochelle, the more you prosper, the worse off we are.

Now it is not our purpose here to dispute the facts or figures produced in their own behalf by the railway managers. But what the two incidents seem to us to prove is the entire reasonableness, under existing circumstances, of the public's insistence on a tribunal, higher than either the railway managers or the shipping and travelling public, with full and complete authority to pass on the justice or injustice of such increased charges. Mr. Mellen's attitude shows clearly the necessity for such supervision. It is not a novel attitude. Commuters on an important New Jersey railway will recall a similar incident, as much as twenty-five years ago, when a committee of passengers were informed by the president of the road that he "would rather carry dead hogs than live ones." The result was the extension to that district of a rival railway which apparently held other views regarding the profitableness of suburban traffic. Thereupon, instead of cheerfully bidding its rival godspeed, and urging commuters to patronize it, the railway with a leaning towards dead freight proceeded instantly to improve its own facilities, reduce its commutation rates, and invite fresh patronage. It was perfectly well aware that it could not afford to lose this patronage, with the profitable freight traffic which came to it from the building-up of a prosperous suburban community.

It is conceivable that it may then have cost as much to haul a fast suburban express to this city as was collected from the fares of commuters on the train. But no railway man was quite so simple as to argue seriously that his road got no compensation elsewhere. But this was not then, and is not now, the end of the matter. A railway is not in the same position as a merchant, for example, in fixing arbitrarily its charge for what it produces. If the merchant names an unjust price, his customers will go elsewhere to buy. The case with the railway is that the customer has nowhere else to go. Thanks to the franchise, the right of way, and the facility for concerted action, the railway enjoys a power not far from monopoly. Two or three decades ago, it was commonly answered to this argument that if the commuter, in the case supposed, felt seriously aggrieved, he could move to another town—if, indeed, his own town did not happen to enjoy the facilities of an energetic competing railway.

But the essential fact about the present advance in rates, to Western shippers as to Eastern commuters, is that all the railways appear to act in concert. For better or for worse, competition in rates has virtually become a thing of the past. This situation is recognized by the public, and is the real cause both of the organization of the shippers and of the vigilant, if not hostile, attitude of Congress. For it is quite impossible to ignore that such an argument as Mr. Mellen's has far wider scope than a 10 per cent. increase in rates. If 10 per cent. is claimed, simply because one branch of traffic is not profitable enough, then why not 20 per cent., or 30? So long as all competing railways acted together, the shipping and travelling public would be equally at their mercy, subject always to governmental intervention.

We say nothing of what many people describe as the astonishing lack of wisdom in projecting these higher railway charges on the public at the very moment when the fate of a railway restriction bill hung in the Congressional balance. What impresses us far more forcibly is the blindness of many railway managers in their obstinate struggle against the committing of broad supervisory powers in these matters to Federal commerce commissions and public service commissions in the States. That the Government will intervene to safeguard its citizens against injustice which is indisputably possible, may be taken for granted. But one cannot help wondering whether sweeping and drastic rate provisions, in a single set of statutes, would be deemed more satisfactory by the railway managers than the entrusting of the whole question to a body of conservative officers, with instructions to consider, in the light of all the circumstances, each general change in rates and the case of each individual railway.

AN IMPORTANT BILL HASTILY PASSED.

It is difficult to find a respectable excuse for the action of the House of Representatives on Monday of last week, in rushing through, under a suspension of the rules, a bill of extremely important character affecting the entire penal system of the United States. Mr. Parker of New Jersey, chairman of the Committee on the Judiciary, moved "to suspend the rules and pass the bill (§ 870) to parole United States prisoners, and for other purposes, as amended." Strong objection to the railroading of the bill was at once raised by Mr. Mann of Illinois. The report on the bill, he stated, had been made only on Saturday, and it had reached him and other members only on Monday. He had not had time to look at it. "Does not the gentleman from New Jersey," he asked, "think it is rushing business to try and pass an important matter like this without an opportunity to read the report and consider it?" Mr. Parker replied that the bill had been most carefully considered in committee, that there had been ample and thorough hearings, and that it had been unanimously reported by the committee. After a haphazard debate, in which a total of twenty minutes was allowed to each side, the bill was passed. The division, which was called for by Mr. Mann, showed 56 ayes and 18 noes, a total of 74 votes, the full membership of the House being 391. Thus after a random debate of forty minutes, and a vote in which less than one-fifth of its membership took part, this great change in the penal system of the United States was adopted by the House of Representatives.

The bill provides—

> That every prisoner who has been or may hereafter be convicted of any offence against the United States, and is confined, in execution of the judgment of such conviction, in any United States or State penitentiary or prison for a term of more than one year, other than for life, except when convicted of murder in the first degree, rape, or incest, and except those who have previously served a term of imprisonment of at least one year in any penal institution in the United States, may be released on parole as hereafter provided.

Application for parole can be made only after one-third of the term of the sentence has been served; the board of parole is to be composed of three persons—"the superintendent of prisons of the Department of Justice, the United States district judge for, and a citizen living in, the district in which the penitentiary is located, the latter to be appointed by the Attorney-General." The members of the board are to serve without compensation; a majority of the board (*i. e.*, two members) are to be a quorum sufficient for the transaction of business. The board is to meet at stated times to consider applications for parole. At such meetings, it "shall receive and consider recommendations, and if it shall appear to the board that there is reasonable probability that any prisoner who applies for his parole, if the same is granted, will not violate any law, and if in the opinion of the board such release is not incompatible with the welfare of society, then the board may authorize the release of said applicant upon parole." And the nature and effect of the paroling, when granted, are set forth in detail in the bill.

Now we are far from saying that the bill is without merit. The parole system is eminently desirable in the case of all minor offences, and in a large proportion of all first offences, even of a more serious character. But there is grave doubt whether it ought to be made to apply, as does this bill, to all crimes except the three specifically named as exceptions; and, apart from this fundamental question, the plan upon which the system should be administered in the case of the Federal Government, as distinguished from local jurisdictions, raises questions that demand careful consideration and discussion. Instead of such discussion, all that the House heard from the advocates of the bill were some vague generalities as to its mercy and humanity, some broad assertions of the benefit of the parole system in general, and—strangely incongruous with these—a plea for the bill on the score of the saving of government money that would result from the freeing of the prisoners. Mr. Mann put the case plainly when he said:

> Here is a very important proposition—two bills relating to the same subject, both reported back by the Judiciary Committee, striking out all after the enacting clause and inserting a new provision, and then they propose to pass the bill through the House without consideration under suspention of the rules, when certainly this bill is of a character that ought to be considered under the privilege of amendment.

Mr. Hughes of New Jersey, protesting against the railroading of the bill, asserted his entire approval of the New Jersey parole system, but declared that the bill under consideration was of a very different character from the New Jersey law. "There has been nothing in this discussion," he said, "and there is nothing that any man of ordinary intelligence can discover by a hasty examination, which would appeal to him to cause him to resolve his doubts in favor of passing this important legislation at this time. I propose to vote against the bill because I have not had sufficient time to examine it."

Among the crimes with which the penal laws of the United States deal, there is one class to which the usual arguments in favor of the indeterminate sentence and the parole system are singularly inapplicable. Such crimes as bank-wrecking, systematic defrauding of the government, or criminal financial operations generally, are committed by men not because they have never had an opportunity for self-development, nor because they have never acquired habits of order or of regular work. And when these men are put in prison, the object of the law is not at all—certainly not in any significant degree—to prevent a repetition of the same or a similar crime by the same person. Such a man finds no difficulty in being the most exemplary of prisoners; he needs no prison discipline to make him polite, neat in his person, punctual in his daily tasks, efficient in the dispatch of work. Whether his sentence should be a year or six years or twenty years is a question the true answer to which depends not on the facts developed during his prison life, but on the facts brought before judge and jury at his trial. He suffers in prison for one purpose, and one purpose only—that knowledge of the dire punishment which society thinks it necessary to impose for his crime may prevent others from committing it. To confuse his case with that of the shiftless or hopeless fellow who falls into the clutches of the law through the commission of some petty crime is to lose sight of the sole weighty purpose of the law in this most important domain. And before deciding upon so radical a change, it were well that the House of Representatives should devote to its consideration something more than can be got out of forty minutes of impromptu debate.