contributing their ideas to one of the major parties, or by superseding one of them.

If these conditions are to remain, the dilemma of the Socialist party seems almost hopeless. In a choice between a return to its traditional revolutionary theory based on the interests of the industrial proletariat, and a development into a liberal, opportunist party, there is little to recommend either policy. The industrial proletariat, even if it were in a majority, could not be politically solidified so long as the issue of democratic power is not sharp and the workers have even a little to gain from the victory of one of the two great parties. On the other hand, a liberalized Socialist party could not hope for ascendancy unless it could suddenly spring into the place of one of the great parties; and this is not likely to happen so long as the leader of one of these parties, as in the recent election, can make a strong plea for liberal support. The Socialists might, to be sure, adopt an educational policy similar to that of the Prohibitionists for the past twenty years. They might be content to sacrifice any real political force as an organization for the sake of their propaganda, hoping that eventually their program would be adopted by others. But such a policy must obviously be a last resort.

There are likely to be changes in the fundamental situation, however, which the Socialists should watch carefully for a possible advantage. In the first place, our state is now at last rapidly becoming more centralized, and its power over industry must greatly increase in the near future. If the central government is to take active measures in regulating industrial disputes, if it is to fix wages and hours as well as rates, if its military power is to be extended, the workers of the country will certainly be greatly solidified, and they will feel a far more urgent need for real representation at Washington. It is a question whether either of the two great parties can undertake that representation without so sharpening the divisions within itself as to cause a split. At the same time the other economic groups of the country—the farmers, the manufacturers, the middle-class liberals, are becoming more acutely conscious of their differing interests and are organizing more compactly to further their political demands. It is quite possible that we shall in the next few years see a break-up of our traditional two-party system. In that case will come the Socialists' opportunity. It may be that the Socialist program will be approximated by a labor party. It may just possibly happen that the Socialist party itself will capture the labor vote. If, on the other hand, the two-party organizations hold together, the Socialists may look at least for a greatly increased labor solidarity.

Whatever happens, the Socialists will be ill prepared for anything except failure unless they clean house thoroughly, establish a far-seeing and courageous leadership, open their press to broader discussion and more of the facts, and learn to look at the situation less from the angle of European tradition and more from the angle of American opportunity.

"Labor is Not a Commodity"

THE threat of the American Federation of Labor, at its annual meeting last week, to disregard any injunction based upon the conception that labor is property indicates a frame of mind that may well become alarming if it is not met with sympathy and understanding. The emotion behind the ringing report adopted by the convention is a noble one, one that appeals to the laboring man's finest impulses. It is a yearning for independence and self-respect, for economic emancipation and a revolt against the whole proprietary attitude which capital so often takes toward labor, which looks upon a workingman as a thing of value, to be appraised according to output, skill, endurance and docility. "That the labor of a human being is not a commodity or article of commerce," is full of intense meaning to the union men who insisted on its enactment. The workingman who has found his strike for higher wages and better conditions blocked by the cold decree of a class-biased judge knows how it feels to be looked upon as the property of his employer.

What makes this impulse threatening is that it has been blocked and misled into blind alleys not only by labor's enemies, but by its guides and advisers. The technical task of translating labor's yearning into a legal enactment has been wofully botched by its leaders. The rallying cry that labor is not a commodity or a property right has been attached, whether by design or by accident we do not know, to a legislative program which does not give labor what it wants, or what it thinks it is getting. A layman as a rule has no stomach for technical legal argument. That is one of the reasons why the lawyers in Congress find it so easy to pass laws which seem to do one thing, but really do quite another. The result has been that Congress has passed a law which organized labor firmly believes has exempted it from the Sherman law, but which in reality is skilfully drafted so as to do nothing of the kind.

There is no doubt that labor thinks it has been exempted from the Sherman law. In so far as this belief is based on more than a blind faith in

what the Federation leaders have told them it seems to rest on the argument that the Sherman law makes it illegal to restrain trade in "articles of commerce," and that by declaring labor to be not an article of commerce, you take it out of the Sherman law. But you do nothing of the kind. When the Danbury Hatters were compelled to pay triple damages for violating the Sherman law, it was not because the Supreme Court thought labor was a commodity. It was because hats are a commodity. The boycott of the Danbury Hatters restrained trade in hats, not in labor. When Debs was sent to jail for violating an injunction against interfering with interstate railroads by calling a strike, it was not because the labor of the men whom he called out was an article of commerce but because the things the railroad was carrying, and the railroad cars themselves were articles of commerce. Had the Clayton act been then in force it would not have changed either decision.

The rest of the section does not get us any further. "Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor" and other "organizations, . . . or to forbid or restrain the individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." This is the work of a skilful draftsman. It is made to sound like an exemption. But closely examined, it exempts nothing. In so far as it merely sanctions the "existence" of labor unions, it is meaningless, for their existence has never been supposed to violate the Sherman law. The word "operation" adds nothing, for by canons of construction familiar to lawyers, this means "lawful operation." The word makes nothing lawful that violated the law before the Clayton act was adopted. Aside from this, the unions are simply allowed to "lawfully carry out the legitimate objects" of a union. If the courts think a boycott like the Danbury Hatters', or a strike like that of Debs, to be unlawful and illegitimate (and they are by precedent bound to do so) the Clayton act does not apply to them at all. The clause that labor unions and their members shall not be held to be illegal combinations adds nothing. Being is not a crime. It is what he does, not what he is, that lands a man in jail. The Danbury Hatters were mulcted because they conducted a boycott, not because they were a union. At most the phrase means that the mere existence of labor unions is not in violation of the Sherman law; but this has always been the law.

The provision prohibiting injunctions in the federal courts in labor cases "unless necessary to prevent irreparable injury to property or to property right" is worse than useless, from the point of view of labor. The phrase harks back to an old doctrine of equity, that injunctions may be issued only to protect property, and not to protect personal rights, a doctrine against which modern jurists have strongly and justly protested, and which modern courts have shown a wholesale tendency to disregard. The Clayton act intrenches it in our federal jurisprudence, in just the field of litigation in which personal rights are most in need of adequate protection. The theory on which the provision was justified to the labor leaders seems again to have been that, since labor is not a commodity, to call a strike is not to affect a property right, so that no injunction will be given. But, as the lawyers who framed the section well knew, when a strike is called it hurts the employer in his whole business—his profits fall off, his plant lies idle, and he is deprived of its use. And the courts have held so often that it is now settled law, that a man's business is property. The provision, therefore, will not prevent a single injunction to protect an employer against a strike. If it has any effect, it will be to prevent courts issuing injunctions against blacklists circulated by employers against workmen. If a workingman asks for an injunction against a blacklist, the court will tell him that since it can issue injunctions in labor cases only to protect property, and since his labor is not property, it cannot help him. Such is the doctrine into which labor's noble revolt against the conception that it is the employer's property has been perverted. It has led to a law which denies that a man's labor is his own property. Could the National Association of Manufacturers have framed a section more favorable to capital and more hostile to labor?

The only section of the Clayton act which is of any value to labor is that which gives, in a limited class of cases, trial by jury for violation of an injunction. It applies only where the thing which the workingman has done is not only a violation of the injunction, but also a crime. As far as this goes, it is a distinct gain, for one of the worst features of labor injunctions has been the fact that a violation of the injunction was tried by the judge who had issued it, and who naturally felt that anything that savored of a violation of it was a personal affront to him. But the section does not go far, and it is doubtful whether a laboring man will be very anxious to brand himself a criminal by claiming its protection. And it is not for this section that labor has been taught to treasure the Clayton act.

The men who are now complacently enjoying

the success with which they have misled the officials of the American Federation of Labor may well spend a few minutes in sober thought. The counsel of lawlessness at the convention last week was not mere bravado. It was made by responsible men who had carefully weighed what they were saying. What will organized labor do when it discovers that it has been defrauded? If the courts decide that despite the Clayton act unions are still subject to the anti-trust laws, and still liable to injunction, as they inevitably must, will they not take this to be a challenge daring them to carry out their threat? To those who are concerned over the lack of popular confidence in the courts the prospect is most ominous. Labor leaders have staked so much on this legislation, this Magna Charta of American labor, that it will be hard indeed to persuade them that it will not be the courts that are to blame, but a pusillanimous Congressional committee of lawyers who were willing to draft a deceitful statute and shield themselves against the wrath of labor behind the Supreme Court of the United States.

The Predicament of Organized Labor

THE Adamson law has involved the American Federation of Labor in a predicament unparalleled in the long presidency of Mr. Samuel Gompers. Year after year the Federation under the leadership of Mr. Gompers has gone on record as vehemently opposed to the eight-hour day by legislative enactment and in favor of direct action as the exclusive means of securing the shorter work day. There has, however, been a growing minority in the conventions of the Federation favorable to legislative enactment. When Mr. Gompers publicly supported the railroad Brotherhoods in their acceptance of the Adamson law as a substitute for direct action, this minority, led by the Socialist delegates and supported by such liberals as Mr. John Mitchell, saw their opportunity to reverse the traditional policy of the Federation. No other question was so generally discussed by the delegates when they assembled in Baltimore on the thirteenth of November. The minority was prepared to force the issue, and they were fully convinced that Mr. Gompers's known attitude toward the Adamson law would enable them to carry the convention. But something happened. The question was not even debated. The Federation adjourned apparently facing both ways on a fundamental question of trade-union policy.

What happened is not now, and probably never will become, a matter of record. But one does not need the gift of divination to penetrate the mystery. No subject has been more extensively debated in previous conventions of the Federation than this issue between the advocates of the eight-hour day by legislative enactment and the advocates of direct action. The debates are fully recorded in the annual reports of the Federation, and the leading arguments on the two sides of the controversy supply an illuminating guide to the mystery of the Baltimore convention.

Mr. Gompers has always been the foremost antagonist of legislative intervention in the field over which organized labor claims jurisdiction. He summarized his position in the convention held in San Francisco in 1915 when he said:

> I am unwilling as one to place within the power of a political agent, call him what you please, the right to govern my industrial liberty, or the industrial freedom of my fellow workers. There never was a government in the history of the world and there is not one to-day that, when a critical moment came, did not exercise tyranny over the people.

He has elaborated this argument in his repeated denunciation of the arbitration laws of New Zealand and Australia, the compulsory investigation laws of Canada, and more particularly in his plea to organized labor to defy injunctions issued by courts that persist in treating human labor as a commodity. Legislative enactment, he has always contended, means the subjection of organized labor to the courts. And subjection to the courts, he has consistently held, means subjection to tyranny. Upon this contention he has repeatedly staked his leadership in the American Federation of Labor and until this year his ability to carry the Federation with him has never been seriously in doubt.

But Mr. Gompers's support of the Brotherhoods in their acceptance of the Adamson law had given the advocates of legislative enactment a weapon which seriously threatened his ability to determine the policy of the Federation upon this crucial question. In the early days of the Federation, the Socialists were almost alone in their advocacy of legislative enactment. For many years they remained in a hopeless minority. But as the country became permeated with the social spirit which received political expression at the hands of the Progressive party in 1912, various state federations of labor, especially in the West, openly championed the enactment of eight-hour laws by their respective state legislatures, in defiance of the official action of the American Federation. In the San Francisco convention of 1915, delegates from such states as California, Washington, and Illinois bitterly complained that Mr. Gompers's