

these countries will present to German genius when peace has come? If the present alignment of allies continues on the side of the Central Powers, every bit of German resource and statesmanship may be called into play by the economic and political problems of Middle Europe. Even Charles Francis starts his career with no assurance that he will be a puppet in the hands of the diplomatists from Wilhelmstrasse. The announcement on his coronation that he intends to spend six months of the year in Budapest and six months in Vienna is not comforting to those small nationalists who hoped for the speedy disintegration of the "patch-quilt" empire on the death of the old king.

**P**RESIDENT JOHN GRIER HIBBEN of Princeton has talked again to an interviewer. We quote the key phrases: "most momentous year—fraught with danger—spiritually bankrupt—behooves each of us—peril of prosperity—manifest obligations—enervating influences—a brief time at best to play our part—my idea of patriotism is one of sacrifice—Revolution—Civil war—Americans . . . were simpler, hardier—arraying of class against class—utter selfishness brazenly voiced—callous to outrages and barbarities—capacity for righteous indignation—long list of atrocities—Lusitania is forgotten—emasculated sentimentality—fighting for fundamental principles—giving up their very life-blood—unreflecting emotionalism—every right-thinking man—sacrifice our national honor—full restoration and reparation—deeds—prize honor above comfort—false to God and man." Phrases like these, if left to themselves, will automatically breed to any desired length. Why should not our college presidents renounce this elaboration to Mr. Perkins and the freshmen, and devote their minds to bringing the emotion under such words into some relation with reality?

**N**OT in Dostoevsky's "House of the Dead" is this description of prison conditions, but in the report of an Illinois state official: "Nineteen of Chicago's forty-six jails are underground, and through eleven run open sewers. In one jail, the men, the women, the insane, and the prisoners' food are held in one row and the sewer runs the length of the row. When the sewers overflow, the floors are flooded. Rats and vermin are numerous. The men sleep on planks. If there are more than two men in a cell they must lie on the floor beside the open sewer. Sometimes eight or ten are put in the same small cell." According to the same report, the county jails throughout Illinois are equally well adapted for making great criminals out of little ones. They are dark, damp, ill smelling caves, too small for any separation

of the different classes of prisoners. As an inevitable result, the jail becomes the feeder for the penitentiary. But not only Illinois is guilty. The state of county jails throughout the nation has warranted Amos Butler, former president of the American Prison Association, in saying: "We seem to have dedicated one institution in every county to the propagation of idleness, viciousness, and crime." When will the legislatures realize that it is better public economy to use jails as means of arresting the growth of crime than as schools for the fostering of it?

**"I**N art there can be nothing new but what is ugly." Mrs. Florence Earle Coates, who said this to an interviewer, said a little later, "In art there can be nothing new." Many who will dislike the first sentence will not dislike the second. It suggests that perhaps Mrs. Coates does not really believe the Parthenon was ugly when it was built, or that Shakespeare, Cézanne and the Woolworth Tower were present bodily in the Garden of Eden. Perhaps one could show Mrs. Coates that what she thinks is new and therefore ugly, is in essence not new at all and is therefore beautiful. But why did not Mrs. Coates try once more, and shorten her sentence to read, "There can be nothing new"? That would have meant at once everything and nothing. It would have shown a commendable intention not to appraise art according to its oldness or newness. It would have given more credibility to Mrs. Coates's verdict of "ugly," pronounced against modern art.

## The Opposition Gathers

**A**DVOCATES of American participation in a League to Enforce Peace have been disquieted recently by certain reports published in the daily newspapers respecting Mr. Wilson's attitude towards the program of the League. The President, it is declared, is not committed to the idea of placing physical force behind the authority of the rule which is intended to make international aggression disreputable. He is in favor of a league to "underwrite" or "insure" peace by visiting some kind of official reprobation on its unauthorized disturber, but he is said to be opposed to any treaty or arrangement which would oblige this country to back up its official protest by military or commercial coercion. His assertion "that no nation can hereafter be neutral in respect to a disturber of the world's peace for an object which the world's opinion cannot sanction" is to be interpreted merely as the repudiation of moral neutrality. Both the government of the United States

and its unofficial "organs of opinion" could indignantly and relentlessly condemn the aggressor among nations and then sit back complacently and allow the aggressor to reap the fruits of the aggression.

The foregoing interpretation of the President's meaning is certainly false. He has repeatedly counselled the use by the United States of physical force against an unauthorized disturber of the world's peace. When he condemned a neutral attitude towards a national reprobate as intolerable, he was using neutrality in its legal sense as the opposite of belligerency. He was advising his fellow-countrymen to express their disapprobation by means of war. "This is the last war of the kind that involves the world that the United States can keep out of," he said on October 26th in Cincinnati. In the same speech he asked his audience to be ready for the exertion of their whole "force, moral and physical" for the vindication "of the fundamental rights of man," and in his recent note to the European belligerents he declares the American people "stand ready and even eager to cooperate" in the protection of weaker nations against violence "with every influence and resource at their command." The President's record on this point is consequently quite without ambiguity. He is certainly to be classed among the militant pacifists who seek to place organized international force behind the institutes of the international community.

However much the adherence of the President to the program of militant pacifism is assured, the fight to commit American public opinion to its support is far from being won. Hitherto the agitation in its favor has not been confronted by formidable opposition. Its advocates have sought to arouse the interest and understanding of people in a novel and complicated idea rather than to controvert the arguments of active and convinced opponents. But recently the very success of the agitation in its favor has created the inevitable opposition. From all points of the compass the enemies are gathering. Before long as many people will be engaged in an effort to discredit the idea of a peace league as there are engaged in its dissemination. The recent newspaper articles, impeaching the sincerity of the President's advocacy of the use of force in the interest of international order, were doubtless intended to reconnoiter the ground and to test out the measure of conviction which has already been aroused by the idea of militant pacifism.

As we have indicated, the opposition springs from many diverse sources. It derives from pacifists who repudiate the use of force even in the interest of international order, from militarists

who refuse to seek peace even by means of possible coercion, and lawyers who resent any attempt to find a basis for international law except abstract right, recognized precedent and the voluntary consent of a society of free and absolute sovereigns. Of these three classes of opponents the second will prove in all probability to be the least formidable. Certain men always have and always will oppose any form of international organization for the discouragement of war, because peace seems to them inseparable from moral and political stagnation. But in the future their opposition will not count for much, because the tragic costs of the present war have convinced American public opinion that the future of civilization depends absolutely on the organization of peace. Far more dangerous will be the opposition of the two other groups. Together they will deprive the program of the League of the support of thousands of people who are sincerely desirous of contributing to the abolition of war. Both of these groups expect to institute peace without calling force to the aid of the institution, the first because it regards the use of force, even for the achievement of excellent purposes, as a compromise with the devil, and the second because it regards certain general principles of international right as so intrinsically reasonable and of such general and victorious application that their exposition by a court will impose itself on the consciences of the sovereign nations. They are the same two classes of opponents which have hampered American experimental liberalism in its laborious work of domestic reconstruction—on the one hand the sentimental idealists like Mr. Bryan, whose aspirations are admirable, but who spend them in agitation and declamation rather than in the organization of results; on the other hand, the legalists who expect peace like other ultimate social goods to be deduced by judges from abstract principles rather than gradually wrought by purposive national action out of the living forces prevailing in international politics.

It is, of course, easy to overestimate the importance of the part which force is entitled and is destined to play in the institution of peace. Every pacifist, be he militant or quietist, must recognize that a League to Enforce Peace runs a real danger of becoming a league to perpetuate war. A society of nations even more than a society of individuals cannot be held together by mere coercion. As John Dewey has said: "Force is efficient socially not when it is imposed upon a scene from without, but when it is an organization of the forces *in* a scene.... No League to Enforce Peace will fare prosperously save as it is the natural accomplishment of a constructive adjustment of the concrete interests which are already

at work." The proposed League has a chance of faring prosperously chiefly because as a result of the war the great nations will have a much stronger incentive than formerly to seek a mutually acceptable adjustment of their conflicting interests. Its organization would be the expression of a certain will to coöperate, or at least of a reluctant recognition of the necessity of coöperation. Its value would be proved by its ability to provide a medium in which these desirable adjustments are more likely to take place. This medium of mutual forbearance which is indispensable to the constructive adjustment of difficulties must be reflected chiefly in public opinion; and international lawyers, like James Brown Scott, are justified in considering a sustaining public opinion as the most indispensable of all sanctions for the institution of peace. But what Mr. Scott fails to understand is the relation between possible use of force and the formation of responsible and efficacious public opinion. If a peace league is organized a tentative criterion will be established between authorized and unauthorized wars; and what will give this criterion its reality in public opinion will not be its perfect justice, but the knowledge that its violation will convert a sufficient number of inoffensive neutrals into belligerents. If the violation of the criterion assumes the participation of inoffensive powers in penalizing the offender, the assurance of such a consequence would do more than anything else to secure "a decent respect for the opinions of mankind."

## Issues in the Adamson Law

**T**HE decision of the Supreme Court on the constitutionality of the Adamson law will in all probability have an importance in the constitutional history of America which only a few of the great decisions of the past have attained. While it is possible that the court will decide the case on narrower grounds, the railroads which are attacking the law have presented at least two issues of the very first magnitude, the one under the due process clause of the Fifth Amendment, the other under the commerce clause. In order to understand the decision of the court, when it comes, it is necessary to bear these two issues in mind.

The court is asked by the railroads to declare the law unconstitutional on the ground that it interferes with "liberty of contract," and hence deprives the railroads of property without due process. They rely on the much-criticized decision, in the famous *Lochner* case, that it was unconstitutional for New York to regulate the hours of labor of men employed in bakeshops. It is the

argument that the opponents of the Oregon minimum-wage law have made. If this objection is sustained, it will mean that wage legislation, either by Congress or by the states, is unconstitutional. It will mean that henceforth legislatures must turn a deaf ear to the modern conviction that there is a social responsibility for the standard of living of the individual. It will mean, unless the federal Constitution can be amended, that henceforth labor's demand for a larger share of the national income cannot be satisfied by the orderly processes of law, but must be vindicated in the battlefield of industrial strife.

The second ground on which the court is asked to declare the law unconstitutional, is that it is not a regulation of commerce, within the meaning of the Constitution. On the surface, this seems to be merely a controversy over the meaning of words. Yet the decision of the court on this contention will mark one of the few great turning points in the constitutional history of the commerce clause. It will determine whether that clause, with its sweeping grant of power, is to be limited by verbal and formal construction, or whether it will remain sufficiently inclusive and flexible to bring within its scope all the factors and instruments of commerce.

In the long history of the development of the commerce clause there have been several attempts to induce the Supreme Court thus to limit its scope. As yet they have always been unsuccessful; the national powers have always been vindicated. In the famous case of *McCullough v. Maryland*, lawyers of the highest ability and repute tried to limit its application to the bare acts of barter, of shipment and receipt; an abstract conception which Chief Justice Marshall repudiated in memorable words: "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches." By this decision, the vast interests engaged in navigation, both coastwise and foreign, the great commercial capitalists of the time, came within the protection of the national government, and were freed from hampering state restrictions based on local jealousies and subserving merely local needs.

Probably Marshall had in mind only transportation by water. Trade by land was conducted by stagecoach, along turnpikes, in a few cases in canals, and these were almost without exception controlled by exclusive state-granted monopolies. No one then supposed that Marshall's language, sweeping as it was, applied to them. But circumstances changed. Railroads began to knit the markets of the nation into a great commercial web. Important interests were engaged. Transporta-