

is fast becoming intolerable. The Adamson law was sustained by a five to four decision; the Minimum Wage law by four to four; the vote in the Workmen's Insurance law case was five to four, and in the Ten Hour law case, five to three. These laws were barely saved, but until last week it seemed still possible that the liberal element in the Supreme Court, led by Justices Holmes and Brandeis, might prevail. The present decision dashes those hopes to the ground. If the Employment Agencies law is contrary to due process, no new social legislation can be considered safe in the hands of the Supreme Court.

## A Clearing-House for Orders

**I**N the report which the Director of the Council of National Defense, Mr. W. S. Gifford, submitted on Monday to his chairman, the Secretary of War, there appears an exceedingly optimistic summary of "a few of the concrete accomplishments" for which the Council and its Advisory Commission are already responsible. "The mobilization of the 262,000 miles of railroads of the country for the government's defense" has an assuring ring; but only a more than usually credulous reader will be convinced that the 262,000 miles of railroad of the country have been mobilized for the defense of government, in seven weeks, and without recourse to the legal assistance for which the railroads are still impatiently waiting. If anything, there is more harm than good in the statement, made in the same report, that there is already assured as a definite accomplishment "the very general acceptance by labor and capital of the suggestion of the Council that existing labor standards should not be changed until the need for such action has been determined by the Council." State legislatures and patriotic manufacturers in various parts of the country are, unfortunately, demonstrating that the acceptance of any such suggestion is far from being general. The report of the Director of the Council carries no note of warning, and may indeed produce some relaxation of vigilance on the part of those who are alert. And somewhat the same too confident assurance is implied in what is said with regard to priority. "The method adopted," states the report, "is simply to furnish a clearing-house for the orders that involve material in which a national shortage exists or is anticipated. Where manufacturing facilities are insufficient, the Board directs its efforts to developing new facilities."

There are certain definite steps which must be taken before what is here set forth in theory can be made good in action, and for these steps a

wiser report would have prepared the way. In the charted system of blocks and circles that constitute the war organization the Priority Committee appears as a subcommittee under the General Munitions Board, which, in turn, attaches itself directly to the Council of National Defense, through Mr. Gifford, rather than to the Advisory Commission, as is the case with most subordinate war agencies. It is a committee of representatives from various existing offices, with a chairman—General Aleshire—from the War Department, an Assistant Secretary from the Department of Agriculture, no one from the Shipping Board, one member—Mr. Joseph E. Davies—from the Federal Trade Commission, two admirals from the Navy—but no organization below, for the purpose of inquiry and investigation. As in the case of the Priority Department in England, the Committee is designed to act as an adjudicating and harmonizing body in every form of production to which shortage in raw materials brings distress. It is to deal with the munitions of industry as well as munitions of the army. With an organization of four hundred people, the English committee determines the order in which contracts or parts of contracts are to be filled, distinguishing between "war work," work immediately required to maintain continuity of output without extension, and work of any other sort. In this country the theory is to be much the same, but a good part of the equipment is lacking.

The typical problem, now, which comes to the Priority Committee is of this sort: Brown Brothers, in Chicago, write in with an inquiry about tubes for marine engines. "The plant upon which we were counting," they state, "has notified us that it will not be able to fill our orders because of the government contracts which it has had to take on. What can you do for us?" In its present development, the Committee cannot do a great deal. Are the engines to be fitted in merchant vessels that will constitute an integral part of the war machine, or are they for pleasure craft? How important are the contracts which the government has given to the second concern? Where is a factory which is turning out marine engine tubes, and not disposing of them for purposes which are indispensable? The Priority Committee has not the data for wise action when it attacks the individual problem. Though in theory it covers as wide a field as does the Priority Department in England, it has nothing of the field organization upon which the English agency depends. Obviously, before it can handle problems in adjudication, it must be given a network of information and inspectors who can tell it how necessary engine tubes are to Brown Brothers, and how necessary Brown Brothers' engines are to the war. In no

other way will it be able to advise the government whether to withdraw from one contract in the greater interest it will derive, less directly, from another. Preferably the appropriation needed to set up this organization will come from the lump-sum which was placed in the hands of the President on April 9th. For the recent experiences of the Department of Labor, in being refused small sums for valuable work, have demonstrated again that it is easier to get a battleship from Congress than a few needed additions to an administrative staff. The party in power is always on guard against the cry of job-making which the opposition will raise, no matter what the merits of increases asked.

An effective organization, however, is not the only requisite for want of which the Priority Committee has not been able to progress as satisfactorily as the Director's report implies it is progressing. In England priority power has retained confidence everywhere by working not through dictation but through persuasion and negotiation. But when a decision has been made by the Committee it applies rigorously. An order from the Priority Department bears the legal force which Parliament has given to the Ministry of Munitions. What corresponding power has the Priority Committee which has been set up in Washington?

It has, under the organic act which created the Council of National Defense, authority "to supervise and direct investigations and make recommendations to the President and the heads of the executive departments" as to railroads, waterways, and a wide field of industrial enterprise. Implied here is an extension of whatever power of actual decision rests with the Departments. The Priority Committee has also, as perhaps its chief instrument, the authority granted by the terms of the Naval Appropriations act of March 4th, 1917. Under these terms the President, in this case the Priority Committee, may place an order for ships or war material "of the nature, kind, and quantity usually produced or capable of being produced" by any manufacturer—and insist that this order shall be obligatory, "at such reasonable price as shall be determined by the President." Should that authority fall short, the President is empowered "to requisition and take over for use or operation by the government any factory or any part thereof without taking possession of the entire factory, whether the United States has or has not any contract or agreement with the owner or occupier of such factory." But "war material" in the terms of the act is defined as "arms, armament, ammunition, stores, supplies and equipment for ships [of the Navy] and airplanes, and everything required for or in connection with the production

thereof." A very similar definition of materials is carried in the Urgent Deficiencies act of June 20th, which provides powers of requisition and control in the production of the new fleet of merchant ships. But tubes for marine engines wanted by Brown Brothers of Chicago come under neither of these acts, if the engines are to be used in purely private enterprise. Nor do steel for freight car trucks, copper for a telephone company's wires, or coal for a factory which has no direct contribution to the government's war program. Priority powers in railway matters are soon to be given to the Coöperative Committee on Transportation, in a bill which has passed the Senate and is pending in the House; priority powers in food production, and in the manufacture of agricultural implements, will be conferred upon Mr. Hoover by the passage of the food-control bill. But there remains uncovered by legislation a vast field of private industry, whose units are beginning to turn to the Priority Committee for an assistance which it can give them only through the pressure of its prestige.

Whether or not priority in this field is to be provided by law, the immediate needs of the Priority Committee seem clear. It must first of all reorganize itself on a compact and more adjustable plan. It must be given a field organization which, through constantly accumulated data, will supply standards by which it may apply the policies which it has worked out for itself. There must, moreover, be a close organization between the Priority Committee, the Food Administration, and the Coöperative Committee on Transportation. Unless the three agencies pool their problems in priority, the legislation which has been enacted, or will be forced in the future by a serious shortage in raw materials, cannot be put into effect with a maximum of accomplishment.

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## What Priority Means

**P**Riority must be accorded to the services of war. When an army is to be moved all means of transport in sight are commandeered. When an army is to be fed, civilians protest in vain against the seizure of stores. So matters have stood since time immemorial. This is why it now seems merely common sense to enact a law giving the President authority to claim priority in the transportation of goods essential to the prosecution of the war. Whether the output of steel mills shall be assigned to the building of war ships, merchant ships, railways, office buildings or summer hotels, should, we all feel, be determined by a like principle of priority. If we have as yet no law guaranteeing priority for military requirements in the field of production, we feel that this is merely a gap in our war arrangements, to be stopped for the present by patriotic action on the part of the producers themselves.

What is novel in the present day conception of priority is its breadth of scope. When the whole industry of a nation is mobilized behind the fighting line, it is not merely finished munitions that must be given priority in transportation, but also the materials and fuel for further munitions production. The food supply of the industrial population, as well as that of the army, has a claim to priority. So also have clothing supplies, lumber for housing, and whatever else is essential to working efficiency. In production it would be impossible to fix definite limits upon the application of the priority principle. We can not much longer permit the free flotation of the securities of foreign enterprises, nor even of the less essential domestic enterprises, so long as national loans or issues designed to finance railways or industrial enterprises of prime necessity are to be floated. Modern warfare, in involving the whole national life, has made inevitable a control of business practically coextensive with the economic system.

The application of the priority principle to transportation and production is quite in accord with plain common sense. It is none the less revolutionary in its social economic implications. What it means is that necessities shall have right of way. If we have excess productive capacity, the unessentials and luxuries may be provided, but not otherwise. And necessities are definable in terms that take account only of physical requirements. There is no room in the definition for class distinctions. A new country house may seem a matter of necessity to the man of fortune, but he will persuade no priority board to permit shipment of building

materials while cars are needed for coal or wheat. Nor will he persuade them to let him have lumber that could be used for ships or working men's camps, or labor that could be employed to advantage in production for more clearly national and democratic needs.

In time of peace there was a principle of priority operating, but its nature was wholly different. It was a priority of the purse. The fastest transcontinental freight trains were those that conveyed Japanese silk from Puget Sound to the Atlantic seaboard. Silk had right of way under the rule of the purse. If there was a shortage of building material or of carpenter's labor, it did not operate to postpone the erection of the rich man's country mansion. Its natural effect was to leave unsolved the problem of congestion in the working men's quarters of our industrial cities. Often there was shortage of labor in the tomato canneries, but there never was shortage of labor in the establishments devoted to the preparation of caviare. Society was unable to produce sufficient clothing to preserve the children of the poor from death by exposure, but it could find a score of men to labor for weeks in Arctic icefields to provide a prima donna with superfluous furs. Our productive organization in peace is designed to satisfy needs, but needs counting in the scale not according to intensity of feeling, but according to the magnitude of the associated purchasing power. In peace our production is directed by money prices. In war it tends to be directed by human values. In peace the inequalities in the distribution of income are reflected in the things we produce and the things we do without. In war we cannot afford to let men starve because they are poor or waste because they are rich. We are not greatly concerning ourselves about the distribution of income, but we intend to have, for the time, a socially rational distribution of our productive power. And this is economic revolution.

It is a revolution, however, that almost escapes notice because it preserves the institution of profit which appears to most of us as the essential element in our traditional economic system. We order our railways to transport motor trucks instead of touring cars, but we pay them for the service. We order our steel industry to furnish materials for ship-building instead of scenic railways, but the steel industry is to have its fair profit out of its patriotic service. We order our farmers to produce food enough for us all, and for our Allies as well, but we do not ask them to take gratitude for the chief part of their reward. Production