

specific agreement was a violation of the law, the Department declined to answer, asserting that that was a question, first, for private counsel and secondly, for the courts. So the advice of counsel was sought and their conjecture as to the meaning of the law followed, in the hope that the law had not been violated. Then came a few test cases, with expensive litigation and an unscrambling of a number of mature combinations, a process representing an economic waste beyond calculation. Why should private business have been left for years in such grave uncertainty? Why should it not have been possible for two or more concerns contemplating a certain form of cooperative reorganization, yet threatened by the Sherman law, to assert their privilege to enter into and execute the proposed agreements, citing the Attorney-General as a defendant, and request from the courts a declaration of their privilege to act under the agreements? With the expansion of governmental control and regulation of private business, to prevent unfair competition as well as undue private advantage to the public detriment, the need for some such instrument for obtaining authoritative guidance in the conduct of business will become increasingly evident.

The court has a wide discretion in judging of the utility of a declaration in a given case, in requiring that all interested parties shall be cited and heard and in demanding arguments. The issue must be real and the question practical and not merely academic. A long continued practice in England, not to speak of other countries, will serve our courts as a valuable guide in developing the new form of relief and in fixing its proper limitations. Its usefulness is attested by the fact that in the recent volumes of reports of the Chancery Division of the Supreme Court in England, the percentage of cases involving requests for mere declarations, instead of for damages or injunctions, has been between fifty and seventy. European practice has demonstrated that the courts have not exhausted their usefulness by the employment of their curative functions, but that there remains a large field for the application of their preventive functions which in this country has barely been touched. Under the new procedure, with its simplicity, its capacity to serve important ends of corrective justice without legal hostilities, its utility in deciding many questions which cannot now be brought to judicial cognizance and its efficacy in removing uncertainty from legal relations before it has ripened into a cause of action, the American public may look forward to a more amicable and simple method of adjusting conflicting interests and to an enlarged social service from its courts.

EDWIN M. BORCHARD •

## Barriers

**W**HY is it some races, some eras, are more artistic than others? After all, human nature, of which even artists are made, is very much the same, in the mass: artists spring from it everywhere. Art, considered as an atmosphere or current or divine visitation, is also the same; in fact ageless. These are the ingredients. Yet in one age or people, great works appear. In others they don't.

One approach to the problem would be to examine the handicaps that each different national spirit imposes on artists. Clive Bell has described the barrier the French spirit, for instance, erects, to stand between art and every man of genius who is born in France. An excessive regard for good taste, a respect for the rules, a dread of artistic improprieties—that's what holds back French art. It is of immense help to artists on all the lower rungs of the ladder, it gives them a thousand fine qualities, but it makes the finest of all hard to reach. They arrive at the upper rungs a little too stiff for more climbing.

The American barrier? A belief in the broad human appeal. The English, a respect for what is gentlemanly. Both good half-way goals. But both barriers. It is easy to dodge them, as the rebels do, but not to pass through and on.

The Teutonic barrier? Emotionalism, loose bulging emotions. The Japanese, a tightness of execution that diminishes grandeur.

The old Roman barrier was their instinct for massive solidity—it was excellent for aqueducts and roads but it made heavy statues. The Moorish barrier was exactly the opposite: they objected to weight. Arabesques lift their buildings, make them seem so light they could float off in air; then twist on into the beauties of—embroidery. They exhilarate, but lack depth.

The Greeks—?

Any amateur, however uncertain his skill as a shot, is allowed to throw stones at all other arts, but he halts at the Greeks. I feel myself warily tiptoeing around the Greek genius, looking for a weak spot to sling my pebble at, but not quite discerning it. Their instinct for perfection? Some critics have thought them the less human for that. But since after all perfection is what we're after—?

Perhaps the Greeks had no barriers.

Every barrier that makes an artist concentrate on some one kind of excellence, stimulates his achievement of that, but walls him off from the whole. Even the Greeks in their love of beauty strayed from the sternness of realism, and the men of our day who love realism have lost sight of beauty.

CLARENCE DAY, JR.

# Election by Terror in Florida

"I WANT to register."

"All right, Jim, you can, but I want to tell you something. Some God damn black . . . is going to get killed yet about this voting business."

The questioner is a colored man in Orange county, Florida. The answer is from a registrar, white, of course. The Negro, cognizant of the sinister truthfulness of the reply he had received, would probably decide that it was not particularly healthy for him to press his request. Thus, and in many other ways equally as flagrant, did the election of 1920 proceed in Florida and other southern states.

The Ku Klux Klan, of infamous post-Civil War memory, has been actively revived in the South. Its avowed purpose is to "keep the nigger in his place," and to maintain, at all costs, "white supremacy." In spite of vigorous denials on the part of its leaders, the branches of this organization have entered upon a campaign of terror that can mean nothing but serious clashes involving the loss of many lives and the destruction of much property. The recent elections brought into full play all of the fear that "white supremacy" would crumble if Negroes were allowed to vote, augmented by the belief that the recent war experiences of the Negro soldier had made him less tractable than before. In many southern cities and towns, parades of the Klans were extensively advertised in advance and held on the night of October 30th, the Saturday before election. The effect of these outturnings of robed figures, clad in the white hoods and gowns adorned with flaming red crosses, was probably astounding to those who believed in the efficacy of such methods. The principal danger to America of anarchistic organizations like the Klan lies in their distorted perspective of conditions. The Negro emerged from slavery ignorant, uneducated, superstitious. It was a simple task to terrify him by the sight of a band of men, clothed in white coming down a lonely road on a moonlight night. Today, the Negro is neither so poor nor so ignorant nor so easily terrified, a fact known apparently to everybody but the revivers of the Ku Klux Klan. Instead of running to cover, frightened, his mood now is to protect himself and his family by fighting to the death. It is as though one attempted to frighten a man of forty by threatening him with some of the tales used to quiet him when he was an infant. The method just doesn't work.

This can best be shown by the attitude of the Negroes of Jacksonville. An old colored woman,

standing on Bay Street as she watched the parade of the Klansmen on the Saturday night before election, called out derisively to the marchers:

"Buckra (Poor white people), you ain't done nothing. Those German guns didn't scare us and we know white robes won't do it now."

Among the educated Negroes there is a seriousness and a determination not to start trouble, but equally are they resolved not to run from trouble if it comes. But, whatever were the intentions of the sponsors of the parade, it acted as an incentive to bring to the polls on Election Day many colored men and women voters who had before been indifferent.

The population of Jacksonville at present is estimated at 90,000—Negroes numbering between 45,000 and 50,000. The enfranchisement of women caused this majority held by Negro voters to be of grave significance to the Democratic party of Florida. Coupled with this was the fear which is general throughout the South that the colored woman voter is more difficult "to handle" than colored men have been. The Jacksonville Metropolis of September 16th carried a scare head, "DEMOCRACY IN DUVAL COUNTY ENDANGERED BY VERY LARGE REGISTRATION OF NEGRO WOMEN," and the article beneath it carried an appeal to race prejudice based upon the fact that more Negro women than white had shown enough interest in politics to register. The first line, which read: "Are the white men and white women of Duval County going to permit 'negro washerwomen and cooks' to wield the balance of political power?" is indicative of the nature of the appeal thus made by John E. Mathews, Secretary of the Citizens' Registration Committee, Mayor John W. Martin and Frank M. Ironmonger, Supervisor of Registration. Similar appeals were made throughout the preelection period. A few days before election, the local press told of the issuing of 4,000 blank warrants "for the arrest of Negro men and women who had improperly registered, when they presented themselves for voting." Yet, all of this failed to stop the colored people who went quietly and intelligently about their task of registering.

On Election Day each polling booth was provided by the election officials with four entrances—one each for white women, white men, colored women and colored men. Two each were to be taken simultaneously from the head of each line, according to the published instructions. This was not done. No white voter was delayed or hindered