

# The New REPUBLIC

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## The Week

ONLY one thing can be said with assurance about the President's nomination of Mr. Pierce Butler as an Associate Justice: Quite enough is known, or at least, has been made known, to forbid hasty confirmation. His paper record tells little. That he styles himself a "Democrat" means nothing. That label—no less than "Republican"—is a veritable Joseph's coat. Mr. Justice McReynolds is a "Democrat"—and also the most hard-boiled member of the Supreme Court. That Mr. Butler was counsel for the government in a packers' prosecution is, in itself, as irrelevant ground for confirmation as the fact that latterly he has heavily represented railroads is a basis for rejection. Mr. Justice McReynolds earned a place in Wilson's Cabinet as a "trustbuster," while ex-Justice Clark was not blinded by his railroad connections. It is essential to go beneath these surface layers to the core of Mr. Butler's outlook on the kind of issues that come before the Supreme Court. The vital significance of that Court is as the interpreter of the Constitution—the arbiter of national and states' power. But "constitutional

law" is not a quantity of determinate knowledge. It rests, fundamentally, upon the attitude of mind of the Justices. Lincoln saw this clearly when he came to select a Chief Justice; and it behooves the Senate to search the qualifications of Mr. Butler for shaping the destinies of this country as thoroughly and as publicly as it examines any other executive proposal. The complexion of the personnel of the Supreme Court may affect the future of this country much more deeply than a ship subsidy or a bonus or a tariff.

ONE of the elementary qualifications of a Justice of the Supreme Court is a judicial temper. No one would have thought of Judge Landis for such a position, even if he had been a monument of legal learning, because of his failure in this essential attribute. Does the record of Pierce Butler give any reason to suppose that he possesses it? For many years Mr. Butler has been the most prominent member of the Board of Regents of the University of Minnesota. He more than any other man is responsible for the reactionary tactics of that body. But the matter now of moment is that in his dealing with members of the staff of the University who were brought before the Board for trial and sentence he exhibited the judicial attitude of Judge Jeffries. The case of Professor Schaper, for many years head of the Department of Political Science, is one in point. He was called to appear before the Board without notice, charged with disloyalty, put through a verbal third degree largely conducted by Butler, denied written charges and opportunity for reply, and summarily dismissed on the same day. The teachers and alumni of the University of Minnesota should be heard on Pierce Butler's record and personality.

WHAT is President Harding going to do about it? Is he going to stick to the old ship until she sinks, or transfer himself with what baggage he can carry to a more seaworthy bottom? At present it appears that he prefers the former course. His

effort to put the subsidy through and his nomination of Butler for the Supreme Court are the acts of a gallant gentleman making his will. They are calculated to widen the breach between the progressives and the conservatives in the party and, moreover, are bound to increase the progressive strength. But too much may be inferred from these two instances of die-hard policy. President Harding is distinguished among men for the tardiness of his reactions. He is the kind of man who does not turn until he is well past the turning of the road. It is still possible that he may come to see that his only chance of holding the party together is to transship. The sacrifice he would have to make would be appalling. Fall would have to be abandoned with the derelict; so also Daugherty, Weeks, Davis and Mellon. The President would have to accept the election results as binding upon his present policy, postponing every measure that has any political bearing to a special session of the new Congress convened after March 4th. It is not impossible that he may do this. But we can conceive of few things more improbable.

**SENATOR LADD** has done valuable work for the progressive cause, and may be expected to do still more valuable work, if only he can restrain himself from running off after the false gods of fiat money. He attacks the various plans now being put forward for the improvement of rural credit conditions on the ground that they are more pleasing to the bankers than to the farmers. What the farmers need, he says, is not credit, which will plunge them deeper into debt, but real money. If he means by that better prices for their products, we have no quarrel with him. We have one if he means non-interest bearing paper based on imperishable farm products and circulating as money. Such paper would no doubt hoist the prices of farm products, but it would hoist other prices still higher. The farmers may enjoy a semblance of prosperity in a period of inflation, as they did in 1920. But the persons who win real prosperity in such a period are not the farmers, who have to devote their time to their fields and live stock, but the speculators who have nothing else to do than to apply their wits to extracting the maximum advantage from price changes.

**SENATOR-ELECT HOWELL** is another progressive leader who owes it to the cause to reconsider certain of his hasty prescriptions for economic ills. He wants the government to take over, not all the railways, but a single system, to regulate the rest through its competition. But our railway problem is not today one of monopoly

charges and excessive earnings. The real problem is waste—waste due primarily to past competition. The biggest factor in waste is the excessive duplication of terminal facilities. Accordingly the government ought to take over all the roads in some great region if it is going to proceed experimentally with nationalization. In that way it could institute terminal reforms that would make lower rates practicable. No important economies could be effected through the operation of one competing road among many. Of course, the government might cut rates on such a road, making up its deficits out of general revenues, and thus drive other roads into bankruptcy. That, however, would be confiscation in fact, if not in law. We suspect that before it had gone very far the Supreme Court would proclaim the true character of this device.

**EUROPEAN** diplomats make very wry faces over the American communication denouncing secret treaties and arrangements "such for example as the tri-partite agreement of 1920," as conflicting with the principle of the open door. America, our diplomatic critics declare, is fertile in advice but barren in performance. We have views as to what should be done in the Near East, but refuse to assume any responsibilities. The criticism is not very well taken, in this instance. The United States assumed a great deal of responsibility for the open door policy when it enabled the Allies to win the war. It was no part of the American program to substitute Allied imperialism for German. But that is exactly what the Allies proceeded to do. They undertook to carve up Turkey with not the slightest concern for the interests of civilization, but each with a jealous eye to its own material interests. That policy wrought endless mischief. It divided the Allies and gave the Turk license to do as he pleased. It has always worked that way and always will. America is irrevocably opposed to such a policy, which endangers her security as well as that of the rest of the world.

**M. CLEMENCEAU'S** attempt to bring about political and military cooperation between France and the United States will not be assisted by two recent revelations of the tendency of French official opinion. One is the attitude of hostility which the Foreign Affairs Committee of the Chamber of Deputies has assumed with respect to the naval treaty of the Washington Conference. The treaty may be ratified in spite of this hostility, but it will certainly make Americans as well as Englishmen uncomfortable to learn that the Committee on Foreign Affairs of the Chamber of Deputies object to the proscription of the submarine as a commerce destroyer. That is a question about which, if we

remember right, the United States once went to war. Equally disturbing is the advice which M. Dariac, a commissioner whom M. Poincaré recently sent into the Rhineland, submitted to his chief as the result of his investigation. He advises the permanent occupation of the Ruhr Basin in order to insure the complete future domination in the interest of France of the German metallurgical industry. The report was published in the *New York World* of November 27th. In the same issue there appeared an article by M. Clemenceau in which he condemned the base economic materialism of such critics of France as John Maynard Keynes. What can you do with such people?

Present prohibition enforcement methods are debauching and debasing the entire country, President Harding and his Cabinet agreed today. *New York Tribune*.

The President and his Cabinet were deeply concerned over a belief that the moral fibre of the American people was deteriorating through the open disrespect shown for the effort to enforce prohibition. *New York Times*.

THE President need not have looked beyond his own Cabinet table for reason to justify his anxiety. He might have asked Andrew J. Mellon, Secretary of the Treasury, why he ignored a communication from the New York Grand Jury, and permitted Ralph C. Day, Prohibition Director of New York, to resign, instead of indicting him. He might have asked the same official if he proposed to call to account Roy A. Haynes, Prohibition Enforcement Inspector, for issuing a statement in regard to the New York office which convicts him of falsehood or incompetence. He might have asked Attorney General Harry M. Daugherty in regard to officials of his department whose theft of seized liquor was called to his attention by the Washington Grand Jury. The *New Republic* has stated its conviction that the Volstead Act cannot be given such measure of enforcement as to justify it, without a wholly impracticable diversion of the powers of the federal government. But it believes that the evil of corruption of the government through connivance with law-breaking can be abated, and that the efforts of good citizens should be directed to this end. The place to begin is at the top. Once more we direct the attention of the sponsors for the Volstead Act to their unprofitable servants, Mellon and Daugherty.

WE are glad to give credit to Mr. Daugherty whenever it is due. We congratulate him upon the Bill of Complaint filed by the United States of America against the Chemical Foundation in the District Court of Delaware. It establishes a record of malfeasance in office of Francis P. Garvan, former Alien Property Custodian, under his own

hand. We note with satisfaction the institution of suit to recover \$21,500,000 alleged to have been fraudulently obtained from the government in the construction of army cantonments by such well known companies as the Thompson-Starrett Company, the George A. Fuller Company, and others. But Mr. Daugherty should look nearer home. Across the Cabinet table sits a hard-faced man who did well in the war, from whom he might inquire concerning his participation in the profits of the Bosch-Magneto transfer, and his interest in withdrawing the case against the Wright-Martin Aircraft Corporation. It is John W. Weeks, Secretary of War.

THE Ku Klux Klan may well prove to be the most sinister and dangerous social development which has taken place in this country since the war. It combines violence with secrecy, compulsion with moral cowardice, racial hatreds and prejudice with religious bigotry, and the consciousness of social respectability on the part of its individual members with the methods and irresponsibility of outcasts. If it continues to grow in strength, it will become the kind of menace which only a widespread moral and social revival among the American people can neutralize. Yet dangerous as it is, the danger will only be emphasized if the government fights it by means of the strong-arm methods which Mayor Hylan of New York proposes with so much righteous bravado. There is a passage in the letter which he wrote to Commissioner Enright which deserves to become classic in the literature of official violence. He orders his subordinate to "drive them out of our city as rapidly as you discover them"; as if it was the business of the Police Department to "drive out" citizens whom the mayor considers to be a menace. No wonder that the Civil Liberties Union felt called upon to protest.

THE execution of Erskine Childers, like that of the four Republican soldiers which preceded his death and made it a logical necessity, is a terrible error. It is one of those irreparable acts which enter into the memory and blood of a people and survive for generations. The only future for Ireland is in unity and peace. That was the only hopeful future for the United States after the Civil War. Where would be that future now if the government had carried out the full penalty for treason in the case of Jefferson Davis, Alexander H. Stephens and Robert E. Lee? We do not press the analogy between these cases except in one particular—the opportunity for political wisdom. We have held that the chief responsibility



for the unhappy state of Ireland falls upon the Republicans, who after the acceptance of the method of negotiation with England, broke the united front which alone could render that method successful. We admit the perplexity and exasperation of the Free State government. Above all we regret the assassination of Michael Collins whose spirit and counsel were never more needed than at present. His death was in the deepest sense a fatality, of which the execution of Childers is one of the recurrent reminders.

**RICARDO FLORES MAGON**, a Mexican anarchist, was arrested in 1918 because of an editorial he had written in a Los Angeles Spanish newspaper predicting that the war would result in world wide revolution, which, he said, ought to be accomplished with as little violence as possible. He was convicted, and sentenced to twenty-one years and a \$5,000 fine—the severest sentence handed down under the Espionage Act. While in Fort Leavenworth he became almost totally blind, and was suffering from tuberculosis and diabetes. His friends, pointing to the release from prison of Charles W. Morse and Francis H. Noble because of ill-health, asked that he be let out. Attorney General Daugherty, whose connection with the release of Morse is too well known for his comfort, and who allowed Debs to go free without forcing him to “repent,” refused their pleas on the ground that Magon showed no sign of repentance, and that he wasn’t really sick at all. For months the federal government refused to allow any outside physician to examine Magon. Why should this be necessary? There was nothing the matter with him. This statement has now been refuted in the only possible way. Magon died in Leavenworth on November 20th.

## The Great Liberal Victory!

**W**E have had a bad quarter of a hour with a critic. He is a man of vision and judgment, and he has the merit, inestimable in our eyes, of viewing and valuing political issues much as we do. But he quarrels with our journalistic methods. That bothers us, as our readers would understand, if we were free to give his name. It is the name of an extremely accomplished and successful journalist, who knows the public well and understands what it needs.

For the text of his strictures, he takes our handling of the recent election. Do we not agree, he asks, that the case of liberalism in America stands better than it did before the election? We do. Do

we not rejoice in the fact? We do. Do we not recognize that in politics, even more than elsewhere, nothing succeeds like success, and that a feeling among liberals that they have won a preliminary victory would immensely fortify their souls for the next struggle? We do. Then, why in heaven’s name, did we not come out with a paean of jubilation, claiming the election as a great liberal victory, instead of laying emphasis upon the factors of vague discontent and off-year oscillation? Our critic recognizes these factors as well as we do. But what good liberal interest, he inquires, is subserved by dwelling on them?

A liberal journal must, he says, perform for the rank and file of liberals the same kind of service that the official communiqué performs for a nation at war. Above all, it must build up morale. Consider what a job fell to the lot of the communiqué writers after the terrible collapse of the Italian front. They knew that we all felt much like frightened babes alone in the dark. They knew that nothing would reassure us but milk—chalk milk if no other kind was to be had—and they were too loyal to disappoint us so long as the chalk supply held out. And so they wrote like this: “On the Isonzo our lines were withdrawn to stronger positions in the rear. The enemy suffered severe punishment in his precipitate occupation of the abandoned terrain.”

That is how we should have handled even a defeat, says our critic. But the last election was certainly not a defeat for the liberals. Pinchot, Brookhart, Howell, Shipstead, Frazier—are not these names alone sufficient to distinguish a victory? Add the defeat of the Industrial Court in Kansas, of Newberryism in Michigan, of Frel-inghuysen in New Jersey and of Millerism in New York; add the liberal gains in Montana and Colorado; add a host of other gains in the congressional and state elections. Does not the sum amount to what may justly be called an imposing victory for liberalism? Where now is the magnificent machine of the reaction created by the 1920 election? All knocked topsy-turvy on the inside. It won’t run at all, after March 4th. No major mischief can be done by it in the next two years. Nothing else can be done either, but there come times in life when we must be deeply grateful for nothing.

Results, says our critic, are what matter in journalism and in life, and the results of the late election were a victory for liberalism. But the New Republic failed to present cheerful results at their face value. Instead it drew attention to the less cheerful facts behind the results—as if