strong; and, therefore, when the British government withhold any assurance about the destiny of Thrace, falsely attribute to the Turks a sinister design upon the Straits and then announce that they propose to checkmate this design by gathering troops from the Antipodes, they are simply suggesting to the Turkish High Command, in the most impressive way possible, that, if the Turks do not wish to risk losing Thrace for good, they must strike immediately. Will the Turks take this risk? Will they keep their heads? That depends partly on how soon they learn of the opposition which the British government's policy has aroused in Britain, and partly on the ability of the French to give them satisfactory assurances pending the discomfiture of the British government at home. The present writer hopes that French and Turkish statesmanship may avert the worst consequences of British lack of statesmanship. Few avowals could be more humiliating for an Englishman.

Finally, there will be the effect of the "winged words" in India. Of this we are so far without news, but knowing, as we do already, the previous effect in India of the Turkish victory over the Greeks, we can forecast how India will react to Mr. Lloyd George's method of intervention. I can best convey the feelings aroused in India and in Egypt by the victory of Turkey over Greece in 1922, by asking readers of the New Republic to cast their minds back to the Balkan War of 1912-3, and to remember the enthusiasm with which the Serb victories were at that time greeted by the Christian Slavs of Bosnia-Herzegovina and by the Slavonic citizens of Austria and Hungary. Do they remember reading in their newspapers of the illuminations, the beflaggings, and the sheaves of congratulatory telegrams which the Austrian police did not know whether to ignore or forbid? Did they realize afterwards that the repercussion of this military success of "Little Serbia" over Turkey shook the foundations of the mighty Hapsburg monarchy and largely contributed to its subsequent dismemberment? Well, if they can recall these things to mind, they can begin to understand the seriousness of "Little Angora's" victory over Greece, and of its effect in India, for the British Empire. The English officials in India have, of course, understood this for years. The indiscreet publication of an urgent memorandum from the Indian government, begging for a moderate peace with Turkey, was the occasion of Mr. Edwin Montagu's recent resignation of the Secretaryship of State for India. Possibly there were Austrian and Hungarian officials in Bosnia, Croatia, Bohemia and elsewhere, betwen 1908 and 1918, who made similarly eloquent representations, with similar absence of effect, at Budapest and Vienna. Certainly, Nationalist Turkey is on the road to becoming as formidable a focus of Pan-Islamism against the British Empire as Serbia had become of Pan-Slavism against Austria before the outbreak of the European war; and if this happens, it will be as much the fault of Great Britain as the career upon which Serbia then entered was the fault of Austria-Hungary. Will the parallel work itself out? Will the name of Angora prove of such ill omen to the British Empire in the East as the name of Belgrade has proved to Austria? That will depend on how much license the British people are prepared to give to the present British government's folly. The catastrophes that can be produced by folly can generally be averted by common sense, if the situation is taken in hand in time. In this case, there is not much time to lose.

ARNOLD J. TOYNBEE.

The Ages of Justices

THE retirement of Mr. Justice Clarke from the Supreme Court at the youthful age of sixty-five is little short of an affront to our most venerable institution. Younger men, it is true, have willfully stepped down from the high bench, as Mr. Justice Moody did at fifty-seven and Mr. Justice Hughes as fifty-four. But they resigned, the one overcome by ill-health, the other by political ambition. The few genuine retirements, like that of Mr. Justice Shiras at seventy-one and Mr. Justice Field at eighty-one provoke not the glimmer of a generalization about youth as essential to judicial service. The present retirement is the more noteworthy because only last year a man of sixty-four was appointed Chief Justice, there remain on the bench five men who are older than Mr. Justice Clarke, and the average age of the present bench is more than three years in advance of his.

The question of age and office is as venerable as the popular notion of the Court. Plato was probably giving a new answer to an aged question when he made "the guardians" in his republic at least thirty-five. If we were living in a static universe of natural laws and absolute values, the problem of the proper ages for justices would be a simple affair of a balance between the experience of age and the vigor and enthusiasm of youth. But in a developing world, filled with man-made institutions, and relative values as standards, age bears an important relation to the ability of the Court to perform its function.

In our changing society that function is rapidly

coming to be an economic one. The great question of public policy which confronts us is to control "the forces" which are shaping our social development. In attempting to master the conditions of our national development the people of the United States are using the government as an agency for the guidance of business and of industry. This control finds expression in legislation passed by the federal and the state governments. Since this legislation is restrictive, it invades the rights of property and abridges the right of contract which is legally a property right. Such invasion may or may not be "without due process of law" and hence contrary to the Fifth or the Fourteenth Amendment. That question depends upon whether it is for "the general welfare" and that turns upon whether in the minds of the justices it is for "the general welfare." Since all social and economic legislation must eventually run the gauntlet of the "due process" clause, the Court must forever be drawing the line between property rights which must be left intact and those which the government may invade in the interests of "the general welfare." In short, one of the most important functions of the Court is to fix "the limits of the province of government" in the regulation of business and industry.

If the Court is to perform well a function which it cannot escape, it must have a personnel who appreciate its task and know the developing community which it is to serve. They must have a realistic acquaintance with the institutions which make up the social order and bring to their judicial problems a conception of "general welfare" which is alike current and growing. Age is, of course, not the most important test of judicial competence. It may even chance, as at present it does, that the oldest of the justices knows most and the youngest least of the real world about him. There will always be men, like Mr. Justice Holmes and Mr. Justice Brandeis, who will keep a contact with changing fact and changing thought. But, in general, the universe which moves under one's hat gets its cast by the time one is thirty. The ordinary justice is from that time usually a slave to fixed notions about the nature of the universe and the function of law. The extent to which his preconceptions unfit him for dealing realistically with his problems can roughly be measured by the excess of his age over thirty and by the rate of social change. In earlier days, before industrialism came upon us and the Court held no high place in the economic order, age was far less a detriment to service than it is now. The change in the character of the office seems to have required constantly younger justices. Whether the history of the Court reveals a tendency towards ever more youthful appointees it is interesting to inquire.

The prevailing notion that only men full of years and precedents are to be appointed to the Court has no basis in law and little in fact. The Constitution, usually so solicitous about experience, imposes no requirement of a minimum age. Washington, whose esteem for age would meet all save modern standards, appointed to the Court men whose ages averaged fifty. Adams, with rashness, and Jefferson, with reckless abandon, elevated men whose ages averaged forty-two and forty-one respectively. Quite as late as the Civil War the appointees of Lincoln averaged only fifty-one. But, really to appreciate the concessions to youth, cases must be dug out of these general averages. Washington appointed a justice of thirty-seven; Adams, one of thirty-six; Jefferson, one of thirty-three; and Madison, "the father of the Constitution," one who had attained the biblical age of one score and twelve. The facts which follow will indicate how gradually the myth of late appointments was built up. Of the four men who reached the Court while still in their thirties the last was Mr. Justice Story in 1811. Of the eight men who came to the bench while between forty and forty-five, seven were appointed before 1853. Of the eleven who took their seats while between forty-five and fifty, only two lie this side of the Civil War. On the contrary, of the eleven justices who were beyond sixty when appointed the earliest was Mr. Justice Strong in 1870. During the last forty years not a single justice has been appointed when as young as forty-seven, the average age of all the appointees during the first forty years of the republic. The average age of these later appointees is well over fifty-six.

The history of the upper age limit tells a similar story. There are three ways in which justices may leave the high bench: by removal, by voluntary retirement, and by divine recall. The Constitution specifies only that justices shall hold their offices "during good behavior," that is during life. The justice who hears the call of politics, of a cause to be served, or of books to be read, may take his leave whenever he will. Moreover, Congress has attempted to make retirement alluring by offering pensions as a bait. If seventy be taken as a rough line between resignation and retirement, twelve justices have resigned and eight have retired. Forty-two have been removed by "act of God." Two of these died when in the forties, four in the fifties, thirteen in the sixties, twenty-one in the seventies, and two in the eighties. This remarkable showing is in part due to late appointment, for even justices cannot die at ages which they have

passed. But if the life expectation at the average age of appointment be compared with the average term of service it will offer eloquent testimony to the tough human stuff of which justices are made. If the figures for the earlier and the later periods be sifted out, it appears that the Court is now a far safer place for those who aspire to green old age than it was in days of long ago. There is far less temptation to substitute one's own will for divine recall; for, of twelve resignations, six came before the end of the Jefferson administration and only two lie this side of the Civil War. It is remarkable, too, that Providence is far more generous with years than of yore; for the average age at which the first ten deaths occurred was sixty while the last ten came at an average of nearly seventy-one. When we remember that it was the later Court he had in mind, we must raise to the plane of a perfect generalization Mr. Roosevelt's dictum, "They never resign and seldom die."

To get the whole truth, however, we must trace the course of the average age of the Court. When it was first constituted by Washington, it was just under fifty. It hovered between fifty and fifty-five until Jefferson left the presidency. Through Madison's appointments it dropped to forty-nine; and, since for the only decade in its history its personnel remained unchanged, it advanced regularly to fifty-nine in 1823. Perhaps it is only a coincidence that at its lowest age it was, under Chief Justice Marshall, on the eve of the constructive decisions which won for it its exalted constitutional position. In 1825 the average age for the first time touched sixty, but it was 1858 before it reached sixty-five. Since then it has occasionally gone below sixty; but for the most part it has varied between sixty-one and sixty-six. In 1921, just before its adjournment, the average age of its nine members was sixty-nine. Only once before had it gone so high, at the beginning of the Civil War, when the Court of Dred Scott fame was on the verge of disintigration. President Harding is committed to the policy of appointing younger men. Thus far, by heroic effort and two appointments, he has hammered the average down to sixty-eight. It will be six months before it is as high as it was on the day of his inauguration.

These facts about ages make much of the criticism of the Court irrelevant. That many men off the bench are stronger than most of those upon it is a matter of "common knowledge." It is not true that the present Court is to an exceptional extent lacking in legal knowledge, unable to think logically, obsessed with notions of the sanctity of property, or moved by the pecuniary interests of its members. The truth is rather that its membership, with very conspicuous exceptions, lacks an acquaintance with the world of reality, a knowledge of economic fact, and a technique for getting relevant information. It is called upon to deal with problems of income, taxation, rate-making, valuation, open price agreements, child labor, public health, trade unionism, and the strategy and weapons of industrial conflict. The members of the Court came by their notions of the nature of the economic order and the rôle of law in human affairs in the seventies and eighties of the last century. The curricula of the colleges they attended were still untainted by either modern fact or modern thought. Their legal education derived no contamination from the case method. They lived in a static universe and absorbed eternal verity from Cooley on Blackstone. It is to be expected that in their decisions which have affected every institution of our developing society, there is hardly a trace of a constructive social policy. It is inevitable that they regard their function rather as "the preservation of rights" than as a guidance of developing institutions.

In all likelihood several appointments to the Supreme Court will be made in the immediate future. Wisdom and experience upon the bench are invaluable; but it must be a wisdom and an experience grounded in reality. A court, twenty years younger than the present one, even if selected by the same standards, would be far more competent to attack its problems. It's too much to ask for more appointments of justices of about forty-four, the average age of those who signed the Declaration of Independence; for that document bears evidence of the recklessness of youth. It is even too much to ask for the appointment of men of forty-three, the average age of "the fathers" who signed the Constitution; for interpreters must be far older than the creators whom they interpret. But may we not at least hope that these new appointees will not be more than thirty years older than the problems of control of a developing industrial society which come before them for judgment?

WALTON H. HAMILTON.

Sleepy Bird-Talk

A pale light is pinned to the hill;
There is blur of sleepy bird-talk:
Little complaints stifled, little queries twittering still—
Then the night like a hawk.

Your mind was elsewhere. I said:
"They are snuggling down—the birds
"Are snuggling down. . . ." You are not listening; your head
Hums with lovelier words.

JOSEPH AUSLANDER.