

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 disintegration. 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 member-

ship, 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.

Four American Impressions

GERTRUDE STEIN, PAUL ROSENFELD,
RING LARDNER, SINCLAIR LEWIS.

I

ONE who thinks a great deal about people and what they are up to in the world comes inevitably in time to relate them to experiences connected with one's own life. The round, hard apples in this old orchard are the breasts of my beloved. The curved, round hill in the distance is the body of my beloved, lying asleep. One cannot avoid practising this trick of lifting people out of the spots on which in actual life they stand and transferring them to what seems at the moment some more fitting spot in one's fanciful world.

And one gets also a kind of aroma from people. They are green, healthy, growing things or they have begun to decay. There is something in this man, to whom I have just talked, that has sent me away from him smiling and in an odd way pleased with myself. Why has this other man, although his words were kindly and his deeds apparently good, spread a cloud over my sky?

In my own boyhood in an Ohio town I went about delivering newspapers at kitchen doors, and there were certain houses to which I went—old brick houses with immense old-fashioned kitchens—in which I loved to linger. On Saturday mornings I sometimes managed to collect a fragrant cooky at such a place, but there was something else that held me. Something got into my mind connected with the great, light kitchens and the women working in them that came sharply back when, last year, I went to visit an American woman, Miss Gertrude Stein, in her own large room in the house at 27 rue de Fleurus in Paris. In the great kitchen of my fanciful world in which I have, ever since that morning, seen Miss Stein standing, there is a most sweet and gracious aroma. Along the walls are many shining pots and pans, and there are innumerable jars of fruits, jellies and preserves. Something is going on in the great room, for Miss Stein is a worker in words with the same loving touch in her strong fingers that was characteristic of the women of the kitchens of the brick houses in the town of my boyhood. She is an American woman of the old sort, one who cares for the handmade goodies and who scorns the factory-made foods, and in her own great kitchen she is making something with her materials, something sweet to the tongue and fragrant to the nostrils.

That her materials are the words of our English speech and that we do not, most of us, know or care too much what she is up to does not greatly matter to me. The impression I wish now to give you of her is of one very intent and earnest in a matter most of us have forgotten. She is laying word against word, relating sound to sound, feeling for the taste, the smell, the rhythm of the individual word. She is attempting to do something for the writers of our English speech that may be better understood after a time, and she is not in a hurry. And one has always that picture of the woman in the great kitchen of words, standing there by a table, clean, strong, with red cheeks and sturdy legs, always quietly and smilingly at work. If her smile has in it something of the mystery, to the male at least, of the Mona Lisa, I remember that the women in the kitchens on the wintry mornings wore often that same smile.

She is making new, strange and to my ears sweet combinations of words. As an American writer I admire her because she, in her person, represents something sweet and healthy in our American life, and because I have a kind of undying faith that what she is up to in her word kitchen in Paris is of more importance to writers of English than the work of many of our more easily understood and more widely accepted word artists.

II

When it comes to our Ring Lardner, here is something else again. Here is another word fellow, one who cares about the words of our American speech and who is perhaps doing more than any other American to give new life to the words of our everyday life.

There is something I think I understand about Ring. The truth is that I believe there is something the matter with him and I have a fancy I know what it is. He is afraid of the highbrows. They scare him to death. I wonder why, for it is true that there is often, in a paragraph of his, more understanding of life, more human sympathy, more salty wisdom than in hundreds of pages of, say, Mr. Sinclair Lewis's dreary prose—and I am sure Mr. Lewis would not hesitate to outface any highbrow in his lair.

I said that I thought I knew what was the matter with Mr. Ring Lardner. He comes from out in my country, from just such another town as the one in which I spent my own boyhood, and I remember certain shy lads of my own town who always made it a point to consort only with the