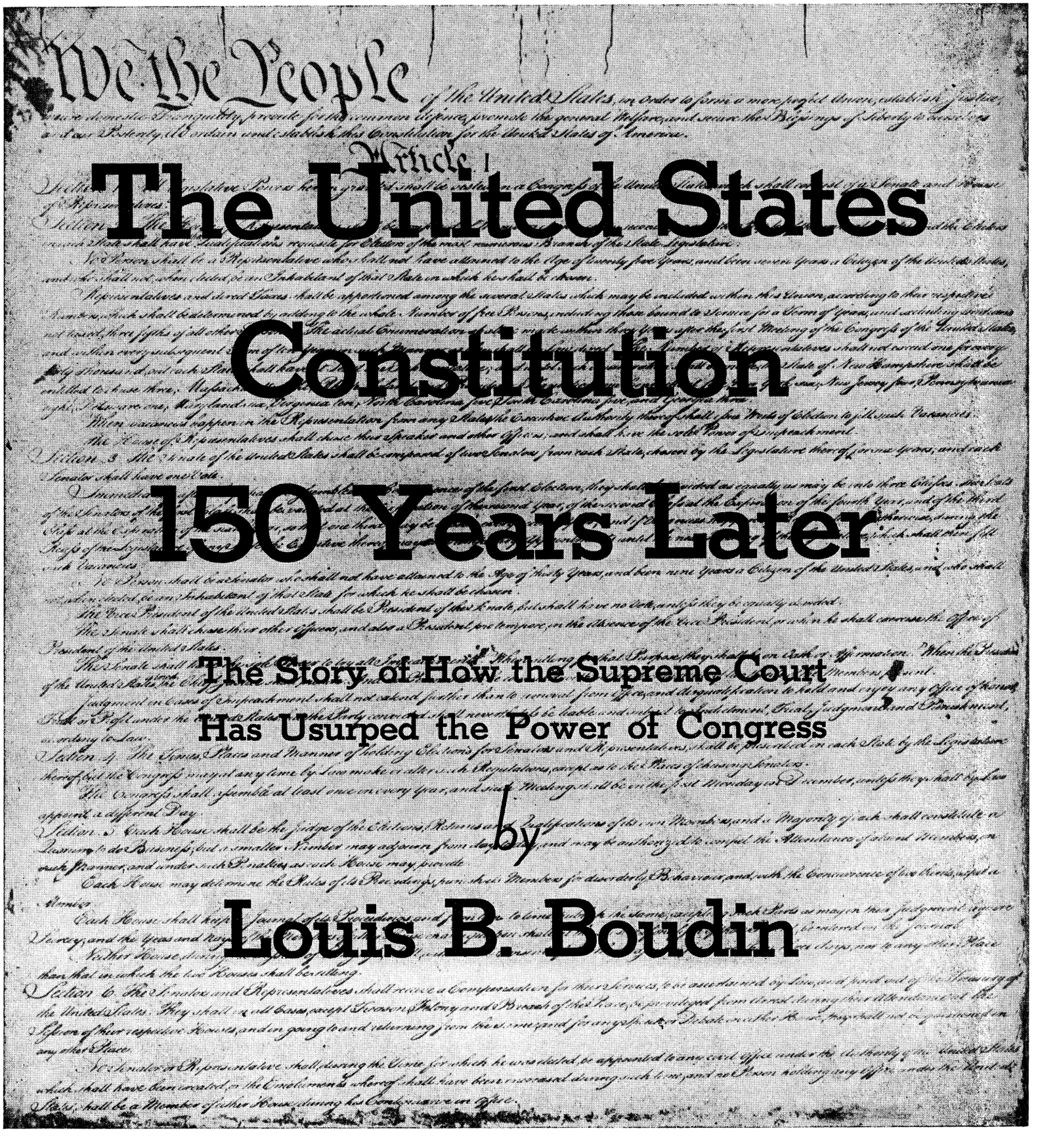
Rumblings in the Legion by Paul Crosbie

NEW MASSES

SEPTEMBER 21 1937 FIFTEEN CENTS A COPY



The United States Constitution 150 Years Later

The Story of How the Supreme Court Has Usurped the Power of Congress

by

Louis B. Boudin

BETWEEN OURSELVES

ROCKWELL KENT'S forthrightness made news again last week when it was learned that his mural for the federal post-office building in Washington, D. C., carried, in the Eskimo language, an expression of sympathy with the independence movement in Puerto Rico. Vilhjalmur Stefansson, that other Arctic commuter, translated the words on the mural (which was in celebration of the fact that air mail linked the Eskimos and the Puerto Ricans), and Mr. Kent agreed that his translation was right—that it had the Eskimos greeting the Puerto Ricans in the name of Puerto Rican independence.

Which reminds us of another story. It seems that contributor Ned Hilton was commissioned to do a gag cartoon for the *Saturday Evening Post* apropos the opening of the trans-Pacific *China Clipper* air service. The drawing showed radio men in a control station, with one saying to the other, "All I can get out of the *China Clipper* is"—and then a stream of Chinese words to the general effect of "Having a wonderful time." Hilton went to a Chinese acquaintance to get his Chinese characters for the caption line. They looked fine and funny when they came out in print. It wasn't till some time later that it was drawn to Hilton's attention that what the Chinese said, right out in black and white in the staid pages of the *Satevepost,* was not "Having a wonderful time," but "Workers of the world, unite!"

Some time ago we remarked that the St. Louis *Post-Dispatch* was a lively newspaper. Chalk up another bit of evidence. That paper recently reprinted, with credit, a considerable part of Malcolm Haskell's NEW MASSES article "Lawyer, Defend Yourself!"

Who's Who

LOUIS B. BOUDIN, LL.B., LL.M., has long been recognized as an outstanding authority on U. S. constitutional law and history. He is a contributor to the *Political Science Quarterly* and to the Harvard, Columbia, Georgetown, Yale, and other law reviews, and will have an article in the forthcoming issue of the last-named. He is the author of the two-volume work *Government by Judiciary,* which treats of the United States Supreme Court, and also wrote *Socialism and War* and *The Theoretical System of Karl Marx.* The latter received the personal commendation of Lenin and since publication in 1905 has been translated into thirty languages. Mr. Boudin has testified many times by invitation before senatorial investigating committees and is at present chairman of the labor-law committee of the National Lawyers' Guild. . . . Paul Crosbie is best known as the storm center of expulsion proceedings in the Queens County (N. Y.) American Legion, of which he is a member. Efforts were made by reactionaries in the Legion to expel him on the ground that he was a Communist, and the campaign around this issue, both for and against expulsion, received widespread publicity. Retention of his membership was finally confirmed by the judge-advocate of the Legion in Queens County, who ruled that under the constitution of the Legion members had the right to independent political belief. Crosbie was an officer in the 313th Field Artillery during the World War, and saw service in the Meuse-Argonne drive. He is descended from soldier ancestors who fought in the American Revolution, and is at present chairman of the Queens County Committee of the Communist Party. He is running for the post of New York City councilman from that county in the coming elections. . . . S. Funaroff edited *We Gather Strength,* a collection of contemporary social verse. His poetry has appeared from time to time in our columns ("The Spider and the Clock," early this year, excited considerable favorable comment), and last year he introduced through the NEW MASSES a group of eight hitherto unpublished poets.

What's What

NEW YORKERS will be interested to know that the current issue of *State of Affairs,* published by the Civic Research Bureau, 799 Broadway, is a special election issue, and carries thoroughgoing analyses of the Tammany machine, of housing as an election issue, of the records of Senator Copeland (which will be useful if he has been successful in the primary), George U. Harvey, George Palma, Samuel Levy, James J. Lyons, and others. There is also a table showing how assemblymen voted on important issues. This number of *State of Affairs* should prove invaluable to speakers, writers, and organizers interested in the New York campaign. The Civic Research Bureau has also published a valuable penny pamphlet explaining the proportional representation system of voting.

A correspondent writes in to inform us of the August 27th flogging of Matthew A. McLoughlin, secretary-treasurer of the Cleaning and Dye House Workers' Union, Local 20, A. F. of L., by the St. Louis police. Ted Graham, business agent, and Allen Flory, president, were arrested at the same time, but not beaten. By means of rubber hose, rubber paddles, fists, and boots, the "bombing squad" attempted to extort a confession from McLoughlin that he had paid members of his organization to smash windows of cleaning establishments on the union's unfair list. Recent cases of vandalism occurring during strikes (the responsibility for which is in question) were evidently the pretext for the arrest of McLoughlin.

McLoughlin protested that his union had nothing to do with window-smashing, nor did it approve of such practices; but this did not save him from receiving the beating of his life. After spending an hour "working over" him, one of the two—as yet unidentified—policemen remarked: "Well, we did our damnedest to knock you out, but you're a tough Mick; you sure can take it."

Upon his release, eighteen hours after his arrest, McLoughlin was rushed by friends to the Jewish Hospital. A medical examination revealed deafness in one ear due to a punctured ear drum, internal injuries, and serious external abrasions and bruises.

Morris J. Levin, attorney for the union, and the St. Louis Civil Liberties Committee immediately demanded a complete public investigation, and warned against any "routine" investigation, or attempt to whitewash the police department. The union has called for an end to third degree methods and the practice of harassing union officials. It claims police are cooperating with open-shop employers to defeat honest organization. C.I.O. speakers at the St. Louis C.I.O. labor demonstration also denounced the beating.

Cognizant of broad public condemnation of police brutality, the police board has ordered an investigation, and states it will coöperate in picking out the detectives who flogged the union official. The board claims it is opposed to such practices and promises that it will root them out.

From Commonwealth College, strategically situated between the deep South and the Southwest, comes the following. The college feels a special responsibility to serve the southern labor movement. It recognizes that in the nation-wide struggle for industrial democracy special study must be given to the problems of organizing workers and farmers in the South.

Costs at Commonwealth are kept at a minimum. Tuition is fifty dollars for a twelve weeks' session, and students work for room, board, and laundry. Still, the southern workers whom Commonwealth wants most to train are unable to pay even this fee. These are the young men and women who experience daily the brutal life of company towns, the sweatshop conditions of southern mills, the back-breaking toil of the cotton plantations.

NEW MASSES readers who wish to help provide scholarships for these workers, so that they may have an opportunity to equip themselves for organizing their fellow-workers in the struggle to win a decent life, may send contributions to Donald G. Kobler, secretary-treasurer, Commonwealth College, Mena, Ark.

Flashbacks

WHILE the nation celebrates the 150th anniversary of the adoption of the Constitution (September 17, 1787), a sister date of even greater significance goes unnoticed. On September 25, 1789, Congress (in its first session) reflected the people's pressure by adopting and submitting to the states the first ten amendments: "Congress shall make no law abridging the freedom of speech. . . . The right of trial by jury shall be preserved." . . . The fugitive slave law, denying escaped slaves the right of a jury trial, was signed by President Fillmore, September 18, 1820. . . . Another presidential pen on September 22, 1862 made escape from slavery not a crime but a reality. Lincoln that day signed the Emancipation Proclamation. . . . Ardently insisting on their rights under the Constitution as amended, New Yorkers at a special election September 16, 1920 returned five Socialists to the state legislature from which they had recently been expelled because of their beliefs. And five days later (September 21, 1920) the Socialists were again expelled.

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Two weeks' notice is required for change of address. Notification direct to us rather than to the post office will give the best results.

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SEPTEMBER 21, 1937

Fred Ellis

THE CONSTITUTION: 150 YEARS LATER

By Louis B. Boudin

IN the chorus of celebration which will mark the sesquicentennial of the adoption of the Constitution, the discordant notes will probably be very few. Probably, also, the few discordant notes will sound false. As likely as not, the one will be the reason for the other: the Constitution has for so long been the symbol for reaction in this country that it is small wonder that radical reformers view it with suspicion, if not with enmity. But the fact that such an attitude on the part of radicals is natural is no reason why it should be permitted to go uncorrected. It is rather important that we appraise the Constitution at its true historical value, as that will help us toward an understanding of the true relation of the Constitution to our present problems.

I—THE CONSTITUTION OF 1787 AND THAT OF 1937

Perhaps the only thing upon which the chorus of celebrants and those sounding the discordant note will agree is the assumption that the Constitution under which we live today is the same as that which was adopted by the Constitutional Convention which sat at Philadelphia during the summer of 1787. And perhaps no other statement or assumption about the Constitution will be further from the truth. The fact is that the Constitution under which we live is as unlike the Constitution which was signed on September 17, 1787, as two constitutions could possibly be. And that not only because of the rather long list of amendments which have been adopted in the meantime. Viewed from the point of view of the framers, few of these amendments are of real moment, in the sense of changing any part of the structure which the framers had erected, and most of them were unnecessary, being in the nature of formal statements of matters which had been assumed to be part of our governmental theory and practice.

This was not, of course, the actual historical meaning of some of these amendments. It is strictly true of the first ten amendments —usually referred to as the Bill of Rights— which were adopted almost simultaneously with the original Constitution as part of the arrangements for its ratification. Whatever may be thought of the real purposes the framers had in leaving out the Bill of Rights from the instrument of government drawn up by them, there can be no doubt that none of them would have admitted that any of the rights and "liberties" supposed to be protected by these amendments was not to be part of our system of government.

On the contrary, they probably would have said that the reason for not incorporating a bill of rights in the Constitution as originally drafted was twofold: first, because it was unnecessary, these amendments embodying general principles of government which were assumed under any "free constitution"; and, second, because enumeration involves limitation by omission. The very fact that certain rights or liberties are specifically mentioned as within the protection of the Constitution excludes those not mentioned from such protection. And no matter how carefully language may be chosen, it is hard to find a word-formula which would insure all those liberties which might become important in the course of the growth and development of a nation. The Eleventh and Twelfth Amendments, adopted by the generation which adopted the original Constitution, although not at the same time, were not intended to bring about any radical changes. The first of them was designed to overrule a decision of the United States Supreme Court, thereby *restoring* the original meaning of the Constitution as understood by its framers. The second was made necessary by the discovery of a technical flaw in the method provided by the Constitution for the election of the President.[1]

The next group of amendments—the three so-called war amendments—are separated from the original Constitution by three-quarters of a century and the Civil War, and certainly wrought or confirmed revolutionary changes. But their import was revolutionary only in relation to their own times. They would hardly have been considered revolutionary if adopted during either Washington's or Jefferson's presidency, and certainly not as

1 The original Constitution provided that the presidential electors, instead of voting for a President and Vice-President separately, as such, shall vote for two persons, and that the person who receives the highest number of votes shall be President and

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revolutionary as when they were actually adopted.

Slavery was a rather delicate subject at the time of the adoption of the Constitution, as the debates in the Constitutional Convention and the text of the Constitution itself show. But the "peculiar institution" was not, at the time the Constitutional Convention met at Philadelphia, of the paramount importance in the life of the South, which it subsequently became. The southerners at the Constitutional Convention—or at least some of them—certainly showed a tenderness toward the "peculiar institution"; and some of them, or probably most southerners, would have voted against its adoption or ratification if the Constitution had included a provision for the abolition of slavery. But most, if not all, who would have thus voted, were far from either desirous of perpetuating slavery or expecting its continuance forever afterwards. Indeed, most intelligent southerners of that generation considered slavery an evil, and expected its disappearance in the not far distant future. The differences of opinion in 1787 were not on the desirability or necessity of the institution, but as to the manner of its abolition and the degree and kind of "gradualness" best suited for the purpose.

The Fourteenth Amendment, although brought about by the necessity of protecting the civil rights of Negroes against their recent masters, is couched in general language, so that it is applicable to all minorities. The change in the frame of government effected thereby was, therefore, larger in scope than that effected by the Thirteenth and Fifteenth Amendments. But the change effected even by this amendment, when viewed through the eyes of the original framers, was not fundamental.

Two things must be remembered in this connection. One is that the extent of the change effected by the Fourteenth Amendment, historically speaking, is due largely to the interpretation previously given by the United States Supreme Court to the meaning of the amendments constituting the Bill of Rights. A reading of the first eight amendments will show that while some were clearly intended to be restraints upon the federal government only, the language of the others permits, not to say requires, an interpretation which would make them applicable alike to the federal as well as the state governments. Had their provisions been so interpreted, the Fourteenth Amendment would have shrunk to the proportions of the Fifteenth, that is to say, to a protection to Negroes or other racial minorities. It so happened, however, that the United States Supreme Court had previously decided that *all* of the provisions of the first eight amendments applied to the federal government only, thus giving the Fourteenth Amendment, when actually enacted, its larger scope and extent.

The other thing to be remembered in this connection is that the *quality* or *intensity* of the change, so to speak, depends on the intensity or depth of feeling with which the problem of state versus nation is approached. And that depth or intensity was quite different at the time of the adoption of the original Constitution from that prevailing at the time of the adoption of the Fourteenth Amendment. It is true that in 1787 the thirteen original states were more *local,* in the sense of being separate communities, than were the states when the Fourteenth Amendment was adopted. In the intervening eighty years, the several states had grown into one nation economically, notwithstanding the nation's greatly enlarged extent geographically. But, on the other hand, these intervening years had also seen the growth of *particularism* in the form of the "states-rights" theory, due largely to the historical vicissitudes attendant upon the struggle over slavery.[2] No such intensity of feeling as had subsequently developed accompanied the intellectual division which existed at the time of the adoption of the original Constitution. If there was any feeling at all against a strong central government, the emphasis of opposition was on the "strong," due to the fact that "strong" and "central" were considered interchangeable, and "strong" was synonymous with "undemocratic"—independent of and not responsible to the people, and therefore inimical to the rights and liberties of the people. In 1787 it would, therefore, have seemed odd that anyone should object to the people's rights and liberties receiving the protection of the national government in addition to that of the separate states. And it was not the right of free speech or free assemblage, but rather the interference with the "peculiar institution" or other economic "privileges"—all developed in the course of subsequent history—which became the foundation of the subsequent opposition to a strong national government and still keeps it alive.

Of the remaining amendments, only two would have been considered very serious from the point of view of the frame of government—the Sixteenth and the Seventeenth; and of these only the Seventeenth as a change. The Sixteenth, like the Eleventh, would have been considered merely the rectification of the perversion of the Constitution effected by a Supreme Court decision.[3]

Two other changes in our form of government have taken place, both without formal amendment. One of these, the direct election of the President by the people,[4] is very much akin to the Seventeenth Amendment, in that it democratized our form of government by making the elected officials more directly responsible to the people, thus effecting a substantial if not very fundamental change. The other, the effectual substitution of government by irresponsible judges for government by the elected representatives of the people, was undoubtedly a most revolutionary change, and the one that would be most incomprehensible to the original framers. Before, however, considering this most fundamental change in our Constitution, which has occurred between 1787 and 1937, we must pause in our analysis of changes in order to pay some attention to the men who framed the original Constitution as well as those who framed the Fourteenth Amendment, which has been made to play a large role in that revolutionary change in our system of government, which has actually taken place.

II—THE CONSTITUTION AND ITS MAKERS

What kind of document was the Constitution when originally framed, and what kind of men framed it? Fifty years ago when the centenary of the adoption of the Constitution was being celebrated, the universal opinion in this country was one of unqualified admiration for both, and this admiration was largely shared by foreigners of a liberal cast of mind. Mr. Gladstone's famous dictum[5] was the prevailing verdict, and gave the tone not only to the celebration orators but also to whatever serious historical discussion there was. This is still the official American attitude, and will probably set the tone of the official oratory at the various sesquicentennial celebrations. But serious history has traveled very far from this once universally accepted verdict. Some of it entirely too far in the opposite direction. Our

the next highest Vice-President. At the time the Constitution was drafted there were no parties and it was contemplated that people would vote for the persons they preferred and that this would result in no two persons receiving an equal number of votes. During Washington's presidency, however, two definite parties formed, so-called Federalists and Anti-Federalists or Republicans, with the result that in the election of 1800, all the electors belonging to the Republican Party voted for Thomas Jefferson and Aaron Burr, so that both received an equal number of votes. This caused a deadlock, and at one time there was serious danger that Burr would be the President instead of Jefferson. As a result the Eleventh Amendment was adopted, providing that the electors should vote for a President and Vice-President separately.

2 The history of the so-called states-rights theory furnishes one of the best illustrations of the fact that political theories represent nothing but economic interests, and that groups or sections will adopt a certain theory or its opposite with little regard for consistency but always in accordance with their economic interest. It is generally assumed that the Federalists, whose main stronghold was in New England, were nationalists, and that the South believed in states rights. As a matter of fact, the New Englanders were the original states-righters and also the original secessionists, having threatened to secede from the Union because the War of 1812 ruined the shipping business in which the ruling class of New England was mainly interested. And it was only with the further development of capitalism in this country, when eastern capital became interested in the development of the West, that New England became nationalist, while the South, which was nationalist at the time of the War of 1812, became states-rightist and secessionist.

3 The Sixteenth Amendment became necessary because of the decision of the United States Supreme Court declaring the Income Tax Law of 1894 unconstitutional. But up to the rendering of that decision income tax laws had been assumed to be constitutional all along.

4 The Constitution contemplated that the electors would do the real electing, and that the people would elect electors without knowing for whom the electors would vote. Under our present system, which grew up by custom, the people still elect electors, but the electors do not elect the President, and their so-called "election," which is still retained, is of course a pure formality.

5 According to Mr. Gladstone, the United States Constitution is "the most wonderful work ever struck off at a given time by the brain and the purpose of man."

true Constitutional history is still to be written, for the science of history has not kept abreast of other sciences, and in this country it is just now in a particularly deplorable condition. This is true of our history generally, and especially so of our Constitutional history—a subject which involves not only "patriotic" emotions but, in addition, very substantial material interests.

Curiously enough, those interests are not always ranged on the side of the "patriotic" version of our Constitutional history. Not that any of these interests will sound any discordant note at the sesquicentennial celebrations. On the contrary, at these celebrations, as on all other official occasions, the representatives of the interests are all united in one chorus of praise of the Constitution as the "greatest work," etc. But aside from official occasions, and whenever it can be done without affecting the "patriotic" attitude of the masses toward the Constitution, the shrewder representatives of the interests subtly insinuate what at first glance seems to be a "radical" version of our Constitutional history, or at least a "radical" estimate of the United States Constitution and the men who framed it. This curious historical development requires a more detailed consideration of certain aspects of our recent history.

The centenary of the adoption of the United States Constitution came at a definite turning point in our economic history. With the disappearance of the frontier, what may be called "the development of our resources" period of our history was at an end, and the United States was about to enter upon a new period of economic growth. The new period was to be not much different quantitatively, and the whole, therefore, appeared as one continuous process of growth. But the growth was to be entirely different in character: instead of growing in extent, that is to say spreading over the continent, our economic life was to grow in *intensity,* and therefore *qualitatively*. From a *developing* country using all the men and all the capital within reach, it was to become within the next half-century an *overdeveloped* country unable to use the natural growth of its population and seriously embarrassed by the rapid growth of its capital. The emphasis of exploitation was to be transferred from *nature to man.*

As in England under similar circumstances, the uglier phases of capitalism put in their appearance, and produced a light wave of protest both from the victims of the new exploitation as well as from intellectuals whose sensitive souls were lacerated by the excrescences of capitalism, even though they had little understanding of the inner workings of the system. The new capitalistic phase, upon which this country had entered with the close of the first century of our existence as a nation under the Constitution, had certain specifically American aspects, due to the history of our growth and development as a nation spreading from a fringe of settlements on the Atlantic Coast to a whole continent in the course of a brief hundred years. This served to confuse capitalism with urbanism. It also gave us, instead of poets bewailing "the deserted village," "muckrakers" uncovering "the shame of the cities."

In due course, the muckraking wave reached our Constitutional history in the guise of a new "Marxian" history of the subject. Its outstanding works were Charles A. Beard's *An Economic Interpretation of the Constitution* and Gustavus Myer's *History of the Supreme Court.* The spade-work done by these authors was very valuable and forms a real contribution to our historeography. Unfortunately, because of an insufficient theoretical understanding, they failed to give a correct explanation of the facts uncovered or exposed by them, and put these facts in a false setting. They put the whole business out of focus and created a new legendary history of our Constitution, one which, while much nearer to the truth in point of fact, was not very superior as science to the official version which had hitherto prevailed.

The legend created by the writers of the Beard-Myers school of history is that the United States Constitution was a plot put over on an unsuspecting and unwilling people by a scheming group of financiers and merchants, who deliberately designed an undemocratic frame of government as an instrument for the exploitation of the "common people," principally the agriculturists, for the benefit of the upper stratum of city dwellers, the financiers and the merchants. And what was true of the original Constitution was also true of the Fourteenth Amendment. Because—so the legend ran—of the growth of the country during the eighty years which had elapsed between the adoption of the United States Constitution and the close of the Civil War, and the change from a predominantly agricultural economy to an industrial, capitalist one, the old instrument of oppression forged in 1787 was no longer as efficient as Hamilton and the other reactionaries who had fashioned it had intended it to be. A new and improved instrument of oppression was therefore necessary, if the exploitation of the common people by high financiers and great industrialists was to continue. Such an instrument was finally devised by a cabal of corporation lawyers who had inherited Alexander Hamilton's cunning along with his reactionary cast of mind. This new instrument of oppression was the Fourteenth Amendment.

This looks very much like truth—if one only disregards the text of the Constitution and the Fourteenth Amendment and forgets the actual course of our history. It is, of course, much nearer the truth than the official version of the adoption of the Constitution. And it is substantially *the* truth so far as the actual *operation* of the Constitution and the Fourteenth Amendment is concerned.

But we must not confuse the uses to which instruments of government are put by those in power with the intentions or designs of those who framed these instruments, just as we must not confuse the uses to which governmental power is put with the organization or existence of government itself. The fact, therefore, that the United States Constitution and the Fourteenth Amendment were subsequently used for certain purposes is no true indication of the intentions of their framers. Certain instruments lend themselves more easily to oppression than others, and what was just said was not intended to convey the idea that forms of government or the texts of instruments of government are of no importance. Quite the contrary. Certain *forms* of government are particularly appropriate for certain forms of oppression and exploitation in a system in which exploitation and oppression exist; and, since the texts of the fundamental instruments of government are usually an index to the form of government, these texts are apt to be of decisive importance.

But this does not happen to be true with respect to the United States Constitution and the Fourteenth Amendment. The first, particularly as it came from the hands of the framers, is largely a neutral instrument—a compromise between contending interests resulting in an instrument neither particularly democratic nor yet anti-democratic, which could easily be made use of by democratic or anti-democratic forces as these might develop in the future course of the nation's history.

It could certainly have been made more democratic to start with, and undoubtedly would have been made so had it been adopted in 1776 instead of 1787. Had it been adopted in 1776, the sonorous phrases of the Declaration of Independence would probably have taken form in concrete provisions embodied in the instrument of government which might have made anti-democratic uses more difficult. But even the most democratic instrument of government could not have prevented the development of capitalism in this country and its attendant evils. *Democracy* was no guarantee against capitalism and its evils during the period between 1787 and 1887. The most that can be said with some degree of certainty is that the presidency would in all likelihood have been originally made as democratic an instrument of government as it ultimately became with the casting aside of the Electoral College, and that the Senate would never have become the "rich man's club" which it became during the generation preceding the adoption of the Seventeenth Amendment. Possibly also, the "impairment of contract" clause, upon which Marshall and the judges who succeeded him hung their reactionary decisions, might have been omitted. But in view of the subsequent history of the judicial power, it is not quite certain that the omission would have made much of a difference.

As it happened, the Constitution was framed not in 1776, in the early morning of revolutionary sunshine, but in the gray dawn of the morning after, which was 1787. The financial and mercantile interests, who were the real backers of the movement for the Constitution, were then much more "business-like" than revolutionary—if they ever had been really revolutionary—and the other classes were not particularly revolutionary

even though they were not very much under the influence of "business." The revolutionary spirit had been deflated, but it was not extinct. Nor were the anti-democratic forces in control of the Convention. Also, we must not make the mistake of identifying the agricultural interests with democracy and the urban interests with anti-democracy in this line-up of forces, as is frequently done by the muckraking school of history.

"Agricultural," frequently, and in the South nearly always, meant "landed interests"; and these were very far from democratic, or at least had a peculiar form of democracy of their own, as the future history of the country was to show. The actual instrument framed by the Constitutional Convention was, therefore, a *series* of compromises: a compromise between the revolutionary spirit of '76 and the decidedly unrevolutionary spirit of the financial and commercial interests of the "critical years" which culminated in 1787; another between the large states and the small ones; and a third between the aristocratic proclivities of the *landed interests* and the anti-aristocratic tendencies of the cities.

III—NATION, STATE, AND COMMERCE IN THE CONSTITUTION OF 1787

It is universally agreed that commerce was the potent force behind the movement for the call of the Constitutional Convention and the adoption of the Constitution. Commerce was in a deplorable state under the Articles of Confederation, because under the Articles the United States was not much more united than if it had been a league instead of a union of states. But modern commerce, that is, internal commerce based on *industry,* as distinguished from that foreign commerce which is merely *trade,* requires those great economic entities known as nations. Modern commerce is, therefore, the builder of nations—just as ancient and medieval commerce was the builder of cities. American *commerce,* as distinguished from *shipping,* required the building of an American nation—a nation to consist not only of the fringe of Atlantic states then composing the United States, but of those states well-knit together in a single economic entity, *plus* the great hinterland stretching as far as the Mississippi River, and possibly as far as the Pacific Ocean.

That is why the Constitutional Convention of 1787, which had met for the purpose of amending the Articles of Confederation in a few particulars—principally with relation to the power of the central government over commerce—was compelled by the logic of the situation to propose a new constitution which would fundamentally change the character of the United States, by turning it from little better than a league of states to something which would at least contain the foundations upon which history could build a true nation. And it was recognized on all sides that the core of the new nation must be its power over commerce, that is to say, *over the economic system whereby it lives.* One of the things over which there was no division of opinion in the Constitutional Convention of 1787 was the fact that the commerce of the nation—using the term in its broadest sense—was to be put within the domain of the federal government. Nor was there any question of the fact that power over commerce meant *the power to regulate it in any manner the nation saw fit,* using the word regulation in its broadest sense, including that of prohibition. The founding fathers, contrary to general belief fostered by a half-century of official propaganda, were firm believers in the regulation of commerce. Having been brought up in a system, in which all economic activity which was not production for use by the producer himself was subject to regulation in some form, regulation was natural to them and was taken for granted, just as the absence of regulation was natural and taken for granted one hundred years later.

The Commerce Clause, which has been the subject of so much discussion of late, does not, indeed, say that all commerce should be subject to the power of the federal government. But *neither does it*—again contrary to the general impression—divide commerce into two compartments, putting *inter*state commerce into one and *intra*state into the other, placing the former under the control of the federal government and the latter under the control of the state governments. The Constitution does, indeed, put interstate and foreign commerce under the control of the federal government. *But it says nothing of intrastate commerce.* The omission is significant.

All the commerce that is important from the national point of view is of necessity interstate or foreign commerce. Until an economic activity becomes so important that its effects are felt beyond the borders of the state in which it takes place or originates, it is of no consequence to the nation at large and may be safely left to state regulation. How much of a nation's economic activities actually falls within that category depends on the degree of the development of the economic system—which in our modern world means the degree of the growth of a given country from a collection of provinces (states in the United States) into a true nation. *The growth of the nation means, and is, therefore, synonymous with the unification of the economic system.* The portion of the commerce of the country which is national, or "interstate" as we call it, therefore increases with the growth of the nation—that is, *its unity as a nation*—of which it is the principal expression.

In 1787 most of the commerce of the nation was, as it is now, interstate or foreign. The proportion which commerce bore to the general activity of the nation was, however, comparatively small, since the country was largely agricultural, and commerce still meant shipping for the most part, or at least trade in things that either came or were destined to go by ship. And very few things in agriculture belonged in that category.

But the founding fathers did not think meanly of the nation which they were founding. The bolder spirits among them envisaged the nation as we know it today, one which spreads over the entire continent from coast to coast. Indeed, the boldest among them included Canada within the nation for which they were laying the constitutional foundations. And the omission of the term "intrastate commerce" from the Constitution shows that they were as far-sighted in their anticipations of the economic growth of the nation as they were in their expectations of its geographic expansion. They looked boldly forward to a time when interstate and foreign commerce would include *all* commerce. As in many other things, the framers of the Constitution left the future to take care of itself. All that they could do in order not to hamper the future growth of the nation was to omit from the clause, which was to give to the nation the power over commerce, any term which might embarrass or shackle it by constitutional fetters. *And that is just what they did, or at least intended to do.*

Thus both the Hamiltonians and Jeffersonians were satisfied. The former knew that the growth of national industry and commerce, which they expected, was free from the meddling interference of state regulations—leaving all the regulation which they believed to be necessary to the nation. And the Jeffersonians rested content in the knowledge that so long as economic activity remained local—and they hoped that most of it would remain so forever—it would remain free to develop in its own local way, subject only to state regulation wherever necessary.

As already stated, the question of commerce, the core of the problem which confronted the delegates to the Constitutional Convention, involved the creation of a nation or at least of an embryo which could grow into a nation, as part of the process of placing commerce beyond the interference of the individual states. And while there was no dispute on the primary problem of placing commerce within the sphere of the national domain, there was considerable disagreement as to the degree of *nationalization* of the federal government, which was required for the purpose. Not because of the effect of such nationalization on commerce, but rather because of its effect on other matters. The real problem was how to create a central government which would be strong enough to take care of commerce without its being too strong in other matters in which the delegates were interested.

One of these matters, the subject of a specific compromise in the Constitutional Convention, was the matter of slavery. The form in which this problem presented itself was: how give the central government power over the commerce of the nation without it thereby acquiring the power of interfering with the importation of slaves? The text of the Constitution records the compromise solution of this problem.

But there were others which were not brought forward formally but were in the minds of the delegates in formulating the text

of the Constitution. A good deal, as already stated, was deliberately left to future development. A good deal which the delegates thought was settled by them afterwards turned out not to have been settled at all—giving rise to disputes over the meaning of the words of the Constitution and to divergent schools of *interpretation.*

One of the matters which the delegates thought had been settled, but which turned out otherwise, was the question of the *suability* of the states. The matter was a rather serious one at the time, and turned out to be even more serious later on, due to a course of development which the framers could hardly have foreseen and which will be touched upon later on. The importance of the question of the suability of the states at the time arose from the fact that, between the Declaration of Independence and the adoption of the Constitution, some of the states had incurred obligations which they were not at all anxious to pay, because of the circumstances attending the issuance and the holding of these obligations.

An even more important situation arose from the confiscation laws passed during the Revolution against the Tories. This, it was feared by many, would lead to suits by the Tories or their assigns against the states, if they were subject to be sued in the federal courts. The delegates assumed that such would not be the case, since the states were still states and, therefore, could not be sued without their consent. But during the debates incident to the process of ratification, the point was raised by the opponents of the Constitution, who pointed to federal jurisdiction as a danger point. Thereupon, the *Federalist,* published by Alexander Hamilton, James Madison, and John Jay, assured the country that those who pretended to see such danger were really seeing ghosts—that the Constitution did not in fact subject the states to the jurisdiction of the federal courts except by their own consent. The event proved, however, that the prophets of evil were right. No sooner did the United States Supreme Court open its doors for business than a host of suits were brought by various individuals against states. The states, certain of their rights and dignity, and relying upon the assurance of the *Federalist,* which was the principal publicity organ of the advocates of the Constitution, refused to recognize the summons of the United States Supreme Court to appear at its Bar. The Supreme Court at first hesitated, not sure what to do, in view of the defiance of the states. But eventually, some three years after the organization of the government under the Constitution, the Supreme Court, presided over by John Jay, who as editor of the *Federalist* had assured the country that no such thing could happen, gave judgment in favor of the individual litigants against the states. The case in which the judgment was rendered, known in constitutional history as *Chisholm v. Georgia,* was the first case decided by the Supreme Court, and it is significant of the future history of that Court that the very first serious constitutional clash should have been brought about by an act of aggression on the part of the United States Supreme Court against the states, and that, in doing so, it should have given to the Constitution an interpretation contrary to that which the framers had intended to give it, and contrary to that which the leading exponents of the Constitution, including the Chief Justice of the Supreme Court himself, had given it while the Constitution was before the country for ratification.

IV—THE FIGHT OF THE PEOPLE AGAINST THE COURTS

The case of *Chisholm v. Georgia,* standing as it does at the very threshold of our history under the Constitution, is symbolic of that entire history, which may be characterized as one long struggle between the people and the courts, with the courts coming out on top at the end. But this end was still very far off when *Chisholm v. Georgia* was decided. At the time, the people—some of whom had made the Revolution, many of whom had fought in it, and all of whom were present at the adoption of the Constitution—were not in a mood to permit the perversions of the Constitution, which have since become common. So, while the decision itself was prophetic of our future history, what happened immediately after the decision shows the difference between the early stages of our history and the later ones.

We have already referred to the fact that the decision in this case resulted in the adoption of the Eleventh Amendment which overruled the decision and gave back to the Constitution its original meaning. But that is not the most important phase of this incident. On another occasion, almost a century later, the Court made another decision interpreting the Constitution in a manner which perverted it from its original meaning, and the matter was again righted by the adoption of a constitutional amendment. This subsequent decision was rendered in 1895, and invalidated the income tax law of 1894, resulting in the adoption of the Sixteenth Amendment. So far these two historical events seem quite alike. There is, however, this vast difference between them. When the income tax law was declared unconstitutional in 1895, there was, as in the first case, a great outcry against the perversion of the Constitution by the Supreme Court. *But everybody obeyed the decision.* The President as well as Congress considered the decision binding upon them. As a result, no income taxes were ever collected under the law of 1894 after the decision was rendered, and the country had no income tax until the Sixteenth Amendment was adopted and a *new* income tax law was passed in 1913. But the *post*-decision history of *Chisholm v. Georgia,* way back in the 1790's, was quite different. It is but a minor matter that the resolution for the constitutional amendment to correct the decision was offered promptly in the House of Representatives — in fact the very next day after the decision was rendered—and the amendment was actually adopted within five years, while it took some eighteen years before the Sixteenth Amendment correcting the income tax decision was finally adopted. The really important difference between the two situations is that in the 1790's the people *refused to submit to the decision, so that it was in fact inoperative while the Constitution was being amended.* The resolution proposing a constitutional amendment offered in the national House of Representatives on the morrow after the decision, was only one, and perhaps the least important, of the measures taken to upset that decision. More important was the fact that the House of Representatives of Georgia, against whom the decision in this case ran, passed a bill providing that any federal marshal or any other person, who executed any process issued by the United States Supreme Court in this case, was to be declared *"guilty of felony and should suffer death, without benefit of clergy, by being hanged." There is no record of any federal marshal ever having tried to execute that judgment.*

This refusal by a state to obey or honor a decision of the United States Supreme Court was to be repeated subsequently throughout our history up to the Civil War.[6] And this was due not to a spirit of lawlessness on the part of the states, but to a different conception of the role of the three branches of our government, and particularly of the role of the judiciary within our system of government. We have become so accustomed to being ruled by judges, that disobedience of a court decision, no matter how absurd or in fact lawless, looks to us like "lawlessness." But such was not the feeling of the founding fathers and the generations which immediately succeeded them. To the founding fathers a judge was an ordinary civil functionary like any other civil functionary, and no particular sanctity attached to his person or his acts. Nor did any particular sanctity attach to the judicial institutions as such, and it was, therefore, considered no more "lawless" to disobey an improper decision of the courts than to disobey an improper order of the President, a governor, or a sheriff. Nor did the President, or a governor, or a sheriff deem himself obliged to execute any order or judgment of a court which he considered improper. Careful students of our history will remember President Jackson's famous words: "Marshall has made his decision, now let him execute it."

This attitude toward the Court is the neces-

6 And the refusal was not limited to legislatures and executives. On more than one occasion the highest state courts refused to honor decisions of the United States Supreme Court. The first instance of this character occurred in the year 1816 when the highest state court of the state of Virginia, under the leadership of Judge Roane, who would have been chief justice of the United States rather than John Marshall if the appointment had fallen to Jefferson instead of to John Adams, refused to recognize the decision of the United States Supreme Court in the famous case of *Martin v. Hunter's Lessees.* The Kentucky courts never recognized the decision of the United States Supreme Court in the case of *Green v. Biddle* rendered in 1823. In the 1850's the courts of Ohio, Wisconsin, and California refused to follow decisions of the United States Supreme Court.

sary consequence of the theory of the division of the powers of government into three coördinate departments. Clearly, if the departments are to be really coördinate—that is to say, equal in power to each other—each must have the power to decide for itself the true meaning of the Constitution, and cannot be bound by the interpretation of either of the other departments. If any one of the three departments should have the ultimate power to decide the meaning of the Constitution, that department would in fact be *supreme over the others.* That has actually happened. The reason we had no income tax between the decision in the income tax case and the adoption of the new income tax law in 1913 is that, in the meantime, there had occurred a most fundamental change in our system of government—*that from a government of three coördinate departments to a government in which the judiciary is the supreme government, and the other two departments are subordinate to it.*

This is the government under which we live. But it is not the government provided for by the Constitution which was framed in 1787.

How that change took place is a long story which makes up our constitutional history, and cannot be told here except in the briefest resumé. That it was not intended to be that way is clear from an examination of the Constitution itself, and even clearer from a reading of contemporary literature. These show that although, theoretically, our government was to be divided into three coördinate departments, in the sense that none of these departments would dictate directly to either of the others, it was the intention of the framers of the Constitution that the national legislature should be the *most important* of the three departments and the judiciary the *least* important. In our contemporary literature, the judiciary is always referred to as the weakest branch of the government, while the legislature, as the law-making branch of the government, is always assumed to be its strongest branch. The framers of the Constitution, of course, wanted the judges to be *independent* in their decisions or judgments. But then, their decisions were not intended to be *political* decisions,—that is to say, *deciding the course of government*—which was assumed to be the function of the people speaking through their representatives in the legislature.

Our actual form of government in which the courts decide not what the law *is,* which is the function of the courts in other civilized countries, but what the law *should be,* is certainly not provided for in the Constitution of 1787 and was not even dreamed of by its framers. We take our actual form of government for granted. We therefore assume that it is the form of government provided for in the United States Constitution, and the official propaganda which attends us from cradle to the grave constantly confirms us in that belief. But nothing is further from the truth. The assertion that this is the form of government provided in the Constitution is a gross libel upon that venerable and worthy instrument of government.

Not only does the Constitution not provide for a system of government in which the courts are supreme, and have the power to decide political or economic policy, but there was not, at the time of the adoption of the Constitution, any respectable statesman who would have advocated such a system. The two outstanding political thinkers of that time were Hamilton and Jefferson, and Hamilton is supposed to be the one whose political ideas were embodied in the Constitution. But Hamilton, certainly, did not favor a governmental system in which the judges could lay down the law to the legislature instead of the legislature making the laws for the judges—a system in which the power of the national legislature to legislate would be subject to the revisory power of the judges, and which would, therefore, make the judges the ultimate legislators, as in fact they are today. In the draft of a constitution submitted by Hamilton to the Constitutional Convention, the power of the national legislature to legislate was given in this sweeping language: "The legislature of the United States shall have power to pass *all laws which they shall judge necessary* to the common defense and *general welfare of the Union.*"

Nothing could be more absurd than the supposition that the man who wanted Congress to have the power to pass "all laws which they shall judge necessary" wanted the laws passed by Congress to be submitted to the judges of the United States Supreme Court for their judgment. Jefferson's opposition to the power of the judges to sit in judgment on acts of the legislature is too well-known to require any extended discussion here. His caustic comments upon the role of the judges and their work of *undermining* the Constitution will hardly bear quotation at the official sesquicentennial celebrations.[7] One of Jefferson's first acts as President of the United States was to defy the Supreme Court when it attempted to exercise jurisdiction over one of his executive departments. This occurred in the celebrated case of *Marbury v. Madison,* when the Supreme Court, then presided over by John Marshall, attempted to tell the President of the United States what the law of the Constitution was with respect to certain appointments of judges. Jefferson's answer was that, under the Constitution, he had as much right to interpret the Constitution as the United States Supreme Court, and since this was a matter upon which *he had to act, it was his decision that was final under the Constitution.* Needless to say he was utterly opposed to the Court's passing upon the acts of the legislature to which the Constitution specifically assigned the law-making power.

But Jefferson went further than that. His conception of the coördinate position of the three departments of government recognized the ultimately superior power of the legislature over the other two branches by reason of its law-making power. Both the executive and the judiciary were bound by the law, and the Constitution had given Congress the power to lay down the law. Furthermore, the Constitution had given to Congress the power to impeach the President as well as members of the judiciary—*and that meant, according to Jefferson, that their political conduct was subject to Congressional supervision.* No similar supervisory or disciplinary power was given to either the President or the judiciary over members of Congress—each house of Congress being made, by the Constitution, the final judge of the qualification of its own members, notwithstanding the fact that the Constitution itself provides certain qualifications for such membership. This was clearly intended to show that Congress itself is the ultimate judge of the meaning of the Constitution, and that the framers would brook no interference with the legislature by either of the other branches of the government.

By the time the case of *Marbury v. Madison* was ready for decision, the doctrine was put forward that the judiciary was the proper branch of the government to interpret the Constitution. But that was specifically a Federalist doctrine, and the Federalists were dead or dying, having been swept from office in the "revolution of 1800," which put Jefferson and the Jeffersonians in office—largely because of the Federalists' violation of the Constitution in the passage of the notorious Alien and Sedition Laws of 1798, and the approval of this violation by the judges. And Jefferson's attitude toward the courts and their right to interpret the Constitution is best shown in his action toward those who had been imprisoned by the courts for alleged violations of these laws. *The courts had pronounced the Alien and Sedition Laws constitutional. But Jefferson freed those prisoners under the pardoning power given him by the Constitution, placing the pardon on the specific ground that these laws were unconstitutional.*

A word of explanation is perhaps necessary

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[7] Among the things which Thomas Jefferson said, culled at random from one volume of his works, were the following:

"In denying the right they usurp of exclusively explaining the Constitution, I go further than this too. . . . If this opinion be sound, then indeed is our Constitution a complete *felo de se.* For intending to establish three departments, coördinate and individual, that they might check and balance one another, it has given, according to this opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation."—*The Writings of Thomas Jefferson,* Vol. X, pp. 140-1.

"Our judges are as honest as other men, and not more so. They have, with others, the same passions by which they be bound, and the privilege of their corps. And the maxim is *boni judicis est ampliare jurisdictionem,* and their power is the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confined, with the corruptions of time and party, it is impossible not to become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves." (*Ibid,* p. 160.)

"The judiciary of the United States is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederated fabric." (*Ibid,* p. 170.)

here in order to clarify Jefferson's action, which seems so inexplicable today and utterly impossible under our present form of government. We are so used to having the courts, and the courts *alone,* declare laws unconstitutional that we cannot understand how a President could declare a law unconstitutional. The answer is very simple. The term "declare unconstitutional" is itself of modern origin, and was utterly unknown at the time Jefferson held the Alien and Sedition Laws to be unconstitutional and for a long time afterwards. *John Marshall never claimed that the Supreme Court had the power to declare a law of Congress unconstitutional.* All that he claimed was that when a court is called upon to act, in the ordinary course of litigation between parties, it *may disregard* a law which in its opinion the legislature had no power to enact.

And this was far from mere verbal trickery. What it meant was that the decision—considered by Marshall and his immediate successors of an *extraordinary* character and, therefore, of *rare* occurrence—*was not really binding upon others who might think differently.* It was a logical consequence of the entire theory of *constitutionality* as it was then understood by those who claimed the power to exist—namely, that any public functionary called upon to act had the right to and was bound to decide for himself the constitutionality of the law under which he was acting. There was, therefore, nothing startling in the President's disregarding a decision which held a certain law invalid in deciding a particular case; nor in himself holding a law invalid when he was called upon to act upon it, even though it had been held valid by the courts.

And this doctrine continued to prevail long after Jefferson had acted in the case of those imprisoned under the Alien and Sedition Laws and long after John Marshall had rendered his famous dictum in *Marbury v. Madison.* In fact, that was the theory which prevailed up to and during the Civil War. It was the theory upon which Jackson acted when he refused to execute Marshall's judgment, and which he expounded in his famous veto message of 1832, in which he held the act of Congress creating the Bank of the United States unconstitutional, although that act had been expressly held constitutional by the United States Supreme Court in the case of *McCullum v. Maryland* decided in 1819. It was also the theory which Lincoln expounded in discussing the Dred Scott Case in his famous debates with Stephen A. Douglas, and upon which he acted when he disregarded the decision of Chief Justice Taney in the case of *ex-parte Merryman.*[8]

And this theory was by no means devoid of practical effect. On the contrary, it had the remarkable practical consequence—*remarkable* when compared with our present-day practice—that no law of Congress had actually been declared unconstitutional by the United States Supreme Court during the entire existence of the nation up to the decision in the Dred Scott Case in March 1857—*that is, for nearly one half of the entire existence* of the nation under the Constitution from the time of the organization of the government up to the sesquicentennial celebration.

V—SLAVOCRACY AND PLUTOCRACY

The Dred Scott decision was the first case in which an act of Congress was actually declared unconstitutional. It came more than half a century after the power to declare acts of Congress unconstitutional had first been claimed for the judiciary by John Marshall, and seventy years after the meeting of the Constitutional Convention in Philadelphia. We have seen that neither slavocracy nor the judicial power had been in particular favor at the Constitutional Convention. But the country had in the meantime traveled far in the direction of capitalist development as well as in other directions. The most characteristic feature of this development was that capitalism in the United States had become bifurcated, developing two mutually antagonistic types. Northern capitalism was of the ordinary historical or free type, such as had developed in England since the industrial revolution and was now spreading over other parts of Europe. Its basis was "free" labor and the unlimited and unhampered exploitation of the natural resources of the nation.

The economic system which prevailed in the South was a hybrid compound of slavery and capitalism, embodying the worst features of each. Its basis was slave exploitation of the worst type on large plantations resembling feudal estates, supplying the raw material for the factories of Manchester, the most modern and typically capitalistic center of industrial activity. Slavery was a left-over from pre-constitutional days. But King Cotton, who now controlled the slave power, which in turn ruled the United States, was something new, developed since the adoption of the Constitution. In the course of this economic development, the attitude of "southern gentlemen" and their intellectual retainers toward slavery had changed radically. Instead of the hope and expectation which animated the southern delegates to the Constitutional Convention of 1787 that slavery would soon disappear, slavery had become the foundation stone of southern life, or at least of its ruling class. The institution had turned from a "peculiar" one into a sacred one. Instead of hoping for its extinction, the southern ruling class and its retainers were now ready to fight for its perpetuation. And it was this perpetuation of slavery in the South and its extension into new territory, and the rule of the slavocracy over the nation on which it had to be based, that it was the purpose of the decision in the Dred Scott Case to accomplish. By this decision the Supreme Court had definitely ranged itself on the side of the worst and most inefficient form of capitalism.

This was nothing new, nor was it to end there. In fact, the most characteristic feature of the development of the judicial power in this country consists in the fact that each rung in the ladder upon which the judiciary climbed to supreme power was a battleground between different forms of capitalist property in which the courts ranged themselves on the side of the most backward form of property in its struggle against newer and more efficient forms.[9] John Marshall had pointed the way in the famous Dartmouth College Case decided in 1819.

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8 At the outbreak of the Civil War, one of the crucial elements was the attitude of the border states. On what happened during the first few months in the border states depended, perhaps, the outcome of the entire war. One of these crucial border states was Maryland, and Mr. Merryman was accused of holding a rebel commission and recruiting a rebel military force in that state. He was thereupon arrested by a military officer and brought to Fort McHenry. Merryman thereupon applied to Chief Justice Taney, who was holding court at the Circuit Court of Maryland, in which circuit Fort McHenry is situated, for a writ of *habeas corpus;* and the chief justice issued the writ. But President Lincoln had, in anticipation of just such a situation, suspended the writ of *habeas corpus* shortly after Fort Sumter was fired upon—Congress then not being in session. General Cadwalader, the commander of the fort, therefore declined to respond to the writ. The chief justice thereupon issued a writ of attachment for the body of General Cadwalader. But the United States marshal who undertook to serve it was stopped by the sentinel at the entrance to the fort and turned back with no answer. The chief justice then wrote his "famous decision"—holding that the President had no right to authorize any of the generals to do what they were doing. In his opinion he maintained with great emphasis, Congress was the only body that could suspend the writ of *habeas corpus,* and President Lincoln was therefore usurping congressional power when he undertook to do so. Lincoln, following his theory that each department had a right to construe the Constitution for itself, called for the opinion of his attorney-general, who rendered an opinion contrary to that of Chief Justice Taney, and Lincoln followed the opinion of his own attorney-general rather than that of the chief justice. The Congress of the United States, as well as the people of the country, agreed with Lincoln.

9 It may be noted that in addition to backing the most inefficient form of capitalism the United States Supreme Court has usually stationed itself on the side of its most fraudulent practices. The first notable occasion was a decision by John Marshall himself in the notorious case of *Fletcher v. Peck,* decided in 1810. One of the latest instances is the recent decision of the United States Supreme Court in the case of *Jones v. Securities and Exchange Commission,* in which Justice Cardozo in a dissenting opinion excoriating the decision of the majority said:

"But the opinion of the court teaches us that however flagrant the offense and however laudable the purpose to uncover and repress it, investigations under Sec. 19(b) will be thwarted on the instant when once the statement of the registrant has been effectively withdrawn. . . .

"When wrongs such as these have been committed or attempted, they must be dragged to light and pilloried. To permit an offending registrant to stifle an inquiry by precipitate retreat on the eve of his exposure *is to give immunity to guilt; to encourage falsehood and evasion; to invite the cunning and unscrupulous to gamble with detection.* If withdrawal without leave may check investigation before securities have been issued, it may do as much thereafter, unless indeed consistency be thrown to the winds, for *by the teaching of the decision* withdrawal without leave is equivalent to a stop order, with the result that forthwith there is nothing to investigate. The statute and its sanctions become the sport of clever knaves. . . .

"If the immunity rests upon some express provision of the Constitution, the opinion of *the Court does not point us to the article or section.* If its source is to be found in some impalpable essence, the spirit of the Constitution or the philosophy of government favored by the Fathers, one may take leave to deny that there is anything in that philosophy or spirit whereby the signer of a statement filed with a regulatory body to induce official action is protected against inquiry into his own purpose *to deceive.*"

That decision was a serious threat to the future development of this country by attempting to literally perpetuate the "horse-and-buggy" era, which would have made impossible the development of our great railroad system, the backbone of the economic development of the country. Fortunately, Marshall's decision was overruled by the Jacksonian revolution, which placed a lot of "revolutionaries" on the Bench as successors to John Marshall and some of his associates. The chief of these "revolutionaries" was Roger Brooke Taney, who succeeded John Marshall as chief justice of the United States Supreme Court. He lost no time in upsetting the Dartmouth College Case in a case known as the Charles River Bridge Case, decided in 1837.

At that time King Cotton was just beginning his reign, and the antagonism between the two economic systems had not yet come to a head. Seventeen years earlier a compromise had in fact been reached, known as the Missouri Compromise, which was to divide the country into two domains, one made free for the development of the incoming northern capitalism, and the other handed over to the slavocracy to develop its "peculiar" form of capitalism. But in the twenty years which elapsed between the decision in the Charles River Bridge Case and the Dred Scott decision, the country had been making extraordinarily rapid strides in its economic development, owing largely to the fact that the obstacles to this development placed by the Dartmouth College decision had been removed by the Charles River Bridge decision. The development had been going on rapidly on both sides of Mason and Dixon's Line, but most of it took place north of that line. This brought about a reaction on the part of the southern ruling class, distinctly hostile to the development of northern capitalism. This manifested itself, first, in an attempt to increase the extent of the territory lying south of Mason and Dixon's Line, which led to the Mexican War of 1844. But the mere enlargement of the territory south of Mason and Dixon's Line was apparently deemed by the southern ruling class insufficient protection against the danger threatening the slave power from the rapid development of the western territory north of that line. The only effective way of warding off that danger seemed to lie in destroying the compromise line and for the slavocracy to invade the western territory which had previously been set aside for the development of northern capitalism. In this emergency the southern ruling class and their northern allies, the "neutrals" and "stabilizers," determined to make use of the power once claimed for the Supreme Court by John Marshall, which had lain dormant in the judicial arsenal for over half a cenutry. The political problems involved in the Jacksonian revolution were now past, partly accomplished and partly abandoned. The new problems brought a new line-up. And so the erstwhile "revolutionary" resorted to a *coup d'état* which was to impose upon the country the rule of the slave-holding minority of the South forever afterwards, and incidentally stop the future economic development of the country much more effectively than the Dartmouth College decision could possibly have done.

The threat to the economic development of the country was averted by the Civil War, *which was made unavoidable by the Dred Scott decision.* But the threat to American democracy remained, even though again dormant for a time. The historians tell us that the decision in the Dred Scott Case was "reversed on the battlefields." But the United States Supreme Court has never admitted it—and the United States Supreme Court is always right, in matters of history as well as of law under our form of government. For it can make history by making the supreme law. According to the Supreme Court there is only one power that can overrule one of its decisions—and that power is itself. The Supreme Court has, therefore, maintained officially that the "principles" of the Dred Scott decision are still the law today. And there can be no doubt of the fact that the most important principle of the Dred Scott decision, namely, that the Supreme Court can nullify an act of Congress, is not only the supreme law today, but is our principle instrument of government and of late our constant practice. This is particularly true of the forty years commencing with the income tax decision and ending with the 1935 term of court. Furthermore, this practice has been going on at an accelerated rate as the appended table shows.[10]

Along with this revolutionary change in the governmental practice has also come a revolutionary change in our theory of government. There is no doubt that during the official sesquicentennial celebrations the orators will still orate about the "three *coördinate* departments" of government provided by the United States Constitution. The textbooks designed for our children still say so, and so do the orations, sermons, and popular literature of all sorts. But when lawyers and judges are among themselves such nonsense is never indulged in, unless the conversation is intended for wider circulation or there is danger that some outsiders might be listening in. Among themselves, lawyers and judges and students of the subject generally speak of the *supremacy of the judiciary* as a matter of course, and it is always assumed or taken for granted. Occasionally—usually in times of calm when there is no attack upon the judicial power from the outside—even the larger public is taken into confidence by the professional experts. So, for instance, in 1905, when McKinley was President and all was well with the world, Mr. Simeon E. Baldwin, a leading statesman and jurist of his day, governor of the state of Connecticut, chief justice of that state, and professor of constitutional law at Yale, said, in a book designed for the élite of our citizenship:

> No government can live and flourish without having as part of its system of administration of civil affairs some permanent human force, *invested with acknowledged and supreme authority,* and always in a position to exercise it promptly and efficiently, in case of need, on any proper call. It must be permanent in its character. Only what is permanent will have the confidence of the people. It must always be ready to act on the instant. The unexpected is continually happening, and it is emergencies that put governments to the test. *The judiciary holds this position in the United States.*

The supporters of the judicial power no longer make a secret of the fact that the judiciary is the supreme ruler of this nation, and that it has effectively subordinated both the presidency and Congress—even though they are not always as frank as Judge Baldwin and do not usually invite the public to share their knowledge as to the true character of our system of government. As we have seen, this has been the professionally accepted theory of government for a generation past. But there is another change of attitude on the part of the defenders of *things as they are,* which is of more recent growth and which should be noted here. Reference has already been made to the muckraking school of history, which applied the rake to the Constitution, covering it considerably with muck. This school arose as a "liberal" or "radical" protest and reaction against the then prevailing school of history which made super-men, or at least superwise men, of the framers, and raised the Con-

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10 It is rather difficult to give figures which would adequately convey the rate of acceleration referred to in the text. The Library of Congress has recently published a pamphlet entitled *Provisions of Federal Law Held Unconstitutional by the Supreme Court of the United States,* edited by G. J. Schulz, acting director, Legislative Reference Service, which gives the following statistics for the 147 years from the organization of the government in 1789 to the conclusion of the October 1935 term:

First fifty years, one case; second fifty years, nineteen cases; last forty-seven years, fifty-six cases.

Mr. Schulz is, however, careful to state that his list as well as statistics are tentative, and that correct figures are hard to arrive at, for various reasons. "Not infrequently," says he, "language is used in the cases, which, taken by itself, would lead one to infer that a law is being held constitutional—contrary to the actual decision." I may add that, as I have stated in the text, there was, in fact, no law declared unconstitutional during the first fifty years. The case Mr. Schulz considers to have declared a law unconstitutional is that of *Marbury v. Madison,* referred to in the text, decided in 1803. As a matter of fact, however, the law in that case *is still the law today. Nor was the decision in that case dependent on declaring any law unconstitutional.* However, the figures themselves, as given by Mr. Schulz, are not significant. Perhaps a more significant way would be by pointing out the period of time which has elapsed between one important decision and the next one. Thus put, the following may be of interest: the first *official* announcement of the right to declare laws unconstitutional, 1803. First time power actually used, 1857, after a lapse of fifty-four years. The next use, declaring a general law unconstitutional, 1870 (Legal Tender Acts), after another lapse of twenty-three years. The next significant use of that power, 1895 (Income Tax Act), after a lapse of another twenty-five years. In between, however, the Supreme Court declared unconstitutional a series of acts passed by Congress for the protection of Negroes, but these cases were in the peculiar position of not affecting the country at large, and the decisions were the result of an attempt at "reunion" of North and South. Between the income tax decision in 1895 and the minimum wage decision of 1923, Supreme Court decisions declaring important acts of Congress unconstitutional may be said to have averaged one a decade. From then on, the stream became a torrent and finally the Niagara of 1935.

stitution itself to the position of a divine utterance. But things have changed of late. The "radical" Charles A. Beard has become the most quoted and most relied-on author of our reactionaries. While our reactionaries still publicly prate of constitutional government, and still profess to be the knights-errant of the Constitution, ready to do battle in its behalf, they are, in fact, quite ready to ditch it, and would do it openly but for the fact that to do so would of necessity hurt the Supreme Court, which they have enthroned in the place of the Constitution. As a result, we see the exceedingly strange phenomenon of the most avowed reactionaries borrowing secretly, and sometimes openly, from the writing of the Beard-Myers school. It would not do, of course, openly to proclaim the Constitution to have been a plot of scheming financiers, so the plot and the financiers are dropped, and emphasis is placed on the fact that the Constitutional Convention consisted of "men of property" who were principally interested in putting "property" beyond the reach of the "populace," the majority of the people. This change of attitude first appeared in the "sacred books" of our theocracy, which are read only by initiated priests—the official court reports. In an opinion written in 1922 by Justice Van Orsdel for the Court of Appeals of the District of Columbia in the Adkins Case, since famous in song and story, this learned jurist said:

The tendency of the times to socialize property rights under the subterfuge of police regulation is dangerous, and if continued will prove destructive of our free institutions. It should be remembered that of the three fundamental principles which underlie government, and for which government exists, the protection of life, liberty, and property, *the chief of these is property.*

This idea of government, and the contention that it is this idea of government that the framers had intended to embody in the United States Constitution, has since been elaborated in a book published for the profession by the late James M. Beck, the famous constitutional, or rather *anti-constitutional,* lawyer. And Mr. Beck's following among the accepted "authorities" on constitutional law is growing apace. Cautiously but steadily, "progress" is being made in this direction. More freely and more frequently do we find our avowed reactionaries using language with respect to the United States Constitution and its framers borrowed from the arsenal of the "radicals," so that it is frequently impossible to determine until one gets through reading the entire article or book, as the case may be, whether the purpose of the publication is to attack the Constitution or to support the Supreme Court. The reason is obvious: the official position of the judges is that in deciding a certain way they are merely declaring what is plainly written in the Constitution. The character of some of their decisions, seen from a social viewpoint, is such that they would not dare defend them otherwise. They frequently must concede that the consequences of their decisions are bad for the nation. The blame must be put somewhere, by themselves as well as by their defenders. If the Constitution is absolved from blame, the Court must bear the brunt of the criticism. But if the Constitution can be made to bear the blame, the Court remains blameless. Obviously it is in the interest of the Court and of its defenders to blame the Constitution. *So they do.*

The necessity for, as well as the strategy of, this new "line" of our reactionaries has become obvious since the recent decisions nullifying the New Deal legislation and the introduction of President Roosevelt's Judiciary Reorganization Bill, intended to counteract these decisions. But for the propaganda carried on, particularly by the legal profession under the leadership of the various bar associations, which made a large portion of our citizenry believe that the blame for these decisions rests upon the Constitution, no one would have dared to come forward to defend the Supreme Court in the "crisis" created by the introduction of the Judiciary Reorganization Bill. It is due entirely to the success of that propaganda that the reactionaries can now hold their heads high and that pseudo-liberals can be found who dare abet them openly. The secret password of the reactionaries and their retainers today, therefore, is: *"Save the Supreme Court by ditching the Constitution."*

VI—SLAVERY, CHILD LABOR, SWEATED INDUSTRIES

The Associated Press, in reporting the defeat of President Roosevelt's Judiciary Reorganization Bill, opened the account of that momentous event with the following statement: "The shelving of President Roosevelt's proposal to reorganize the Supreme Court brought to a climax one of the greatest political struggles since the fight over slavery." (New York *Times,* July 23, 1937.)

The struggle over the Supreme Court bill was, in fact, a continuation of the struggle over slavery inaugurated by the decision in the Dred Scott Case—with the Supreme Court on the side of slavery, where it has always stood, interrupted only by very few and sporadic "flashes" of "liberalism." And like the struggle over southern slavery, the cause espoused by the Supreme Court and its supporters is marked by three chief characteristics; *the lowest forms of human exploitation; an attempt to perpetuate an inefficient form of capitalism; and the denial of the democratic processes of government.*

The Dred Scott decision divided the country into two camps: on the one side, the slavocracy and its supporters, who attempted to identify the Supreme Court with the Constitution, pretending to support "constitutional government" when they meant the continuation of slavery; on the other, those who sought to differentiate between the Supreme Court and the Constitution, claiming that the Supreme Court was *perverting* constitutional government instead of upholding it. The basic question then, as now, was twofold: the theoretical question as to whether or not the United States Constitution provided for a democratic form of government; and the practical one, whether the country can extricate itself from the impasse, in which the decision of the Supreme Court had placed it, without resort to civil war. The upholders of slavery insisted that the Constitution sanctified slavery and put it beyond the reach of the democratic process—that "constitutional government" in the United States meant government by a minority of slaveholders. The opponents of the Supreme Court, led by Lincoln, Seward, and the other founders of the Republican Party, maintained that the United States Constitution embodied the democratic processes of government, and that, therefore, nothing is beyond the reach of the will of the people—that whenever an institution is found to be against the "general welfare," that institution may be confined, arrested, modified, or abolished without in any way transgressing the provisions of the Constitution. "Constitutional government" meant, to them—as Lincoln put it—"government of the people, by the people, and for the people."

Believing that the Supreme Court had perverted the Constitution in the Dred Scott decision, and believing also that the Constitution provided for a method of reversing the decision without resort to civil war, the leaders of the Republican Party decided to apply the constitutional method as soon as they came into power. On March 3, 1858, one year after the Supreme Court handed down its Dred Scott decision, William H. Seward, then the foremost leader of the Republican Party, rose in his place in the United States Senate and said that he hoped that the Supreme Court would recede from its decision. "But," he said, "whether or not the Court recedes from its decision, we shall reorganize the Court." The occasion, however, for carrying out this program never arose, because the slaveholding minority chose civil war.

The Civil War, in its economic aspect, was a struggle for "free" and efficient capitalism against inefficient slave capitalism. In its political aspect it was a fight for democracy against that conception of the United States Constitution which would identify "constitutional government" with minority rule. The Supreme Court, having ranged itself on the side of slave capitalism and minority rule, of necessity went into an eclipse at the outbreak of the Civil War. Lincoln and the country treated it with contempt, and it was long before it dared assert itself again. In fact, for more than a generation after the decision in the Dred Scott Case, it did not dare to do anything to seriously interfere with the orderly processes of democratic government and the ascertained will of the people.

Only when the issues of the Civil War had been forgotten and "free" capitalism was about to turn into reactionary capitalism, did the Supreme Court again dare to thwart the will of the people by its Income Tax decision of 1895. In the meantime it had twice ranged itself on the side of reaction in an important way, once successfully and once unsuccessfully. It ranged itself on the side of reaction

successfully when it nullified the Fourteenth Amendment and emasculated the Thirteenth and Fifteenth Amendments, in a series of decisions which nullified acts of Congress intended to carry out the intent and purpose of these amendments in protecting the Negro race. This was done, however, at a time when the reaction against the purposes of the Civil War had set in, and the country was in a mood to "forget and forgive" the offenses of the former slaveholders, in the hope of mollifying them into becoming good and efficient capitalists. On the other occasion, it ranged itself on the side of the "financial" interests against the industrial interests in declaring unconstitutional the Legal Tender Acts enacted during the Civil War. But the country did not stand for that, and so this decision was reversed by President Grant and the Republican Party, who did on a minor scale what Seward had threatened to do on a large scale, in what is known in history as "Grant's packing the Court."[11] For more than twenty years after this incident the Supreme Court let the country govern itself.

After the Civil War the growth of the country, its development along capitalist lines, proceeded at an even faster tempo than before its development had been threatened and partially arrested by slavery. During the thirty years which elapsed between the close of the Civil War and the decision in the Income Tax Case, capitalism in this country had almost fully matured, and was about ready to enter its final or definitely reactionary stage. The reactionaries were again in the saddle, or at least seemed so. The issue involved was purely between two conceptions of capitalism, one static, the other progressive—with no admixture of antiquated slavery and only a foretaste of the oncoming proletarian movement. Chattel slavery was definitely behind. Wage slavery was not, as yet, seriously threatened. But the challenge was in the offing. And the most reactionary-minded of capitalist spokesmen had come to the conclusion that the challenge could be met only by resort to a static form or system, by "freezing" the stage of capitalist development which the country had then reached. So while the struggle was really between a minority group within the capitalist class and the majority of the people of the country, the reactionary-minded invoked the specter of communism. The Supreme Court decided in favor of reaction and against communism. As already stated, it took the country some eighteen years before capitalism in this country could accomplish the puny reform of an income tax, which had been introduced in other capitalist countries practically without any struggle.

But while a large part of the capitalist class in this country was still in favor of a progressive capitalism, so as not to lag behind other capitalist countries, it was no longer ready to fight for democratic processes of government, to attack the Supreme Court which was the symbol of reaction and reactionary government. And so, when William Jennings Bryan, nominally the leader of the Democratic Party, in reality the leader of a combination of Populists and Silverites, made his famous attack on the Supreme Court in the campaign of 1896, he found a practically united capitalist class opposing him.[12]

The income tax decision was the last great constitutional decision in which the working class was not directly involved, and the last in which the text of the United States Constitution was in any way involved. Henceforth the decisions were to revolve primarily around the condition of the working class within the capitalist system, and the decisions were not even formally to have any relation to any text of the Constitution. The next great constitutional decision of the United States Supreme Court, the decision which launched it definitely on its anti-labor career, was the decision in the case of *Lochner v. New York,* decided in 1905, in which the New York Eight-Hour Bake-Shop Law was declared unconstitutional. There was no text of the Constitution upon which the Supreme Court could hang its decision. So the Supreme Court decided that the Constitution sanctified "freedom of contract," although there isn't a word about it in the Constitution.[13]

It would be tedious to recite here all of the reactionary decisions of the various courts of this country which followed in the wake of the Lochner Case. By its decision in the Lochner Case, the Supreme Court had placed itself squarely in the path of all important labor legislation, attempting to stem the tide of the rising labor movement, and incidentally obstruct the normal course of capitalist development. It has maintained that position during the thirty years which have elapsed between the decision in the Lochner Case and the decision in the Tipaldi Case in June, 1936.

Because of the storm of protest which followed the decision in the Lochner Case and the struggle against the Supreme Court conducted by Theodore Roosevelt and his Progressives, the Supreme Court for a while relaxed its death-grip on labor legislation somewhat and permitted a few labor laws to escape the death sentence. But as soon as it felt itself safe in the atmosphere of normalcy which followed our entry into the World War, the Supreme Court fell back into its normal position as the spokesman for the most reactionary part of our capitalist class and the sworn foe of the labor movement.

The most outstanding decisions of this period were the nullification of the District of Columbia Child Labor Act, from the effects of which we have not recovered to this day, and the minimum wage decision of 1923, which declared minimum wage laws forever unconstitutional in this country. This decision was reaffirmed but yesterday in the Tipaldi Case. Today minimum wage laws are constitutional in this country because of Mr. Justice Roberts's famous "flop," which brought about one of the Supreme Court's rare "liberal flashes." We must not deceive ourselves, however, by the "liberalism" the Supreme Court thus suddenly acquired overnight. Its cause is obvious, and it casts an ominous shadow over the future of the country. The change of heart on the part of the Supreme Court came as a result of the introduction of President Roosevelt's Judiciary Reorganization Bill; and it is safe to say, on the basis of the previous history of the Court, that it will last only as long as the fight for that bill, or some other attempt to curb the judicial power, lasts. *Permanent struggle against the Court is the condition of its liberalism*—such is the lesson of the study of our constitutional history.

But the Supreme Court's liberalism, as history shows, even while it lasts, isn't worth very much from the point of view of the working class. An examination of the few so-called "liberal" decisions of the United States Supreme Court, rendered when it was under the threat of the progressive movement, shows that even while loosening the net spread out by it against labor laws, so as to permit some of them to slip through its meshes, the Supreme Court tightened its strangle-hold on the democratic processes of government, so as to completely take away the power of legislation from the national and state legislatures and give the Supreme Court the final touches as the supreme legislature. The net effect of the occasional "flashes of liberalism" in the Supreme Court is to destroy the theoretical foundations of democratic government in this country, which the reactionaries on the Supreme Court hypocritically claim to be preserving while destroying them in practice, so as to permit such social reforms in which the capitalist class may be particularly interested, while not permitting those in which the working class is interested.[14] This result may not be the one intended by the "liberals" on the Supreme Court. But this only illustrates the hopeless condition of liberalism in this country as elsewhere in the present phase of capitalist development. *The liberals by their equivocal attitude cannot help but tighten the grip of the reactionaries.*

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11 In 1870 the United States Supreme Court by a four-to-three decision (the Supreme Court then consisting of seven members) declared unconstitutional the paper currency issued during the Civil War. On the same day that the Supreme Court rendered this decision President Grant appointed two new justices (the number having been increased to nine shortly before), taking good care to appoint men of the opinion that the Legal Tender Laws, so-called, were constitutional. The new majority, consisting of the old minority of three and the two new justices, thereupon promptly overruled the earlier decision, and paper money has been "constitutionally" legal tender ever since.

12 The conservative wing of the Democratic Party, known as the Gold Bugs, promptly bolted from their party and nominated a ticket of their own in order to split the Democratic vote and ensure the election of McKinley, the Republican candidate.

13 In the last Minimum Wage Case, the one in which minimum wage laws were held constitutional, Chief Justice Hughes said:

"The constitutional provision invoked is the due process clause . . . the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is freedom of contract? *The Constitution does not speak of freedom of contract.*"

14 A striking example of this attitude is contained in the opinion of Chief Justice Hughes in the Guffey Coal Act Case, in which he took the position that the labor portions of the law were unconstitutional, while the "business" portions were constitutional.

VII—THE WORKERS MUST SAVE DEMOCRACY

It was the historic mission of the bourgeoisie in its revolutionary stage to introduce the democratic process of government as a means of developing efficient capitalism, and it is the historic mission of the working class to save democracy from destruction when the bourgeoisie, turned reactionary, will attempt to destroy it in order to perpetuate reactionary and inefficient capitalism. This basic doctrine of Marxism which was laughed at when capitalism still was, or was thought to be by Marxist revisionists, in its liberal mood, has now become so clear that no one can possibly mistake it. This is the meaning of the fight of the working class against fascism the world over. Particularly that form of the struggle against fascism commonly called the united front—which means a united working class plus such other groups within the capitalist system outside the working class proper, who still retain the democratic traditions and the democratic habits developed during earlier phases of capitalism. But the fight against fascism, or at least the fight to save democracy, assumes different forms in different countries. In this country it must, by reason of our historic development, assume the form of a struggle against the Supreme Court. Not, however, a struggle for a "liberal" Supreme Court, but for the abolition of the judicial power, the power of the courts to nullify legislation, which makes them supreme over the legislative organs of the people, thereby depriving the people of self-government. This means that the working class of this country must fight for the Constitution and against its perversions by the Supreme Court.

In rallying to the support of the Constitution we need not necessarily approve of the Constitution *as is* in all of its details. We certainly need not accept the interpretations of the Constitution even as laid down by "liberal" judges. Particularly must we not accept the assertion of the judges, whether conservative or liberal, that the Constitution enshrines private property forever or in any way sanctifies it. After thirty years or more of judicial prating about "freedom of contract," Mr. Chief Justice Hughes suddenly recalled the fact that "freedom of contract" is not in the Constitution. *It is about time that people realized the fact that private property is not in the Constitution either.*

The founding fathers, of course, believed in private property, and the Constitution was drawn with a view to its existence. But it was not meant to perpetuate a particular social or economic system, but rather to establish a frame of government—a piece of governmental machinery whereby the people would govern themselves. They were concerned with the *machinery and powers* of government, not with the purposes for which this machinery or these powers would be used by future generations. There is, therefore, absolutely nothing in the body of the Constitution itself about sanctity of private property. Nor is there anything about it in the amendments to the Constitution, either in the original Bill of Rights or the *new* one supposed to be embodied in the Fourteenth Amendment. Even the famous "due process" clause has nothing to do with it. This clause had been in the Fifth Amendment for some sixty years before it was used for the first time, and that incidentally, by Chief Justice Taney in the Dred Scott Case as a bolstering prop for property in human beings. It was never used again as a means of nullifying legislation until a generation after the adoption of the Fourteenth Amendment, when the Supreme Court, after experimenting with various other clauses of the Fourteenth Amendment as a means of nullifying state legislation, finally settled upon this clause—*much to the dismay of traditionalists in the legal profession, who bitterly resented this revolutionary use of a phrase which for centuries had had an entirely different meaning in English and American constitutional law.*[15]

The use of the "due process" clause for the sanctification of private property and its enshrinement in the Constitution is one of the great perversions by the Supreme Court of the true meaning of the Constitution—second only in its importance to the assumption of *power over the legislature.* So much so, that the liberal judges themselves still feel rather uncomfortable about it to the extent of giving the discomfort occasional public expression, something that they never do about the power itself.

In this struggle against the judicial power the working class must present a united front to the enemy. So important is this struggle at this juncture in the history of the people of the United States that the attitude toward this problem is a certain touchstone of one's adherence to the people or its enemies. The same is true as to the particular interest of the working class in this struggle—*no one who does not wholeheartedly support the fight against the Supreme Court can possibly be a true friend of the working class, no matter what his motives may be for his lukewarmness in this momentous struggle.*

As the struggle develops, the lines of cleavage between the different groups engaged in the fight will become clear. The "liberals," the intellectuals reared in the traditions of the liberal bourgeosie along with some far-sighted representatives of progressive capitalism, will fight for a "liberal" Supreme Court—a Supreme Court which, while keeping the power of government to itself, will use that power "wisely" and "cautiously" so as to permit such "reforms" as may become necessary from time to time for maintaining the efficiency of capitalism and avoiding civil war. The working class, on the other hand, must and will fight against the judicial power as such—that is to say, *for its complete abolition.* Not because the working class is not interested in reforms which would make its lot under capitalism more bearable, or prevent capitalism from becoming more inefficient than its present natural tendencies compel it to be, but in the double conviction that the preservation of democracy is more important than any particular reform measure, and that the achievement of real reform is only possible through the preservation of democracy. So long as the *power* of the courts to declare laws unconstitutional remains judicial, their liberalism will of necessity be but of a precarious character, as the history of the Supreme Court amply demonstrates. That a "liberal" Supreme Court will prove as dangerous in a real emergency—at a crucial point when two systems of economics or two systems of social thought clash—is also demonstrated by that history. Roger B. Taney was a great radical, almost a "revolutionary," when he was appointed chief justice of the United States by President Jackson.[16] His appointment was supposed to sound the death knell of the "old court"—that is, the court of John Marshall, whom he succeeded as chief justice. In the end Roger B. Taney wrote the decision in the Dred Scott Case, making actual use for the first time of the power claimed for the Court by John Marshall but never actually used by him. *So long as that power exists, civil war is practically inevitable whenever a powerful minority is determined to put its special interests athwart the path of the progress of the nation.*

The fact that the bourbons of all shades are determined to maintain the power of the Supreme Court is proof of the fact that our ruling minority, like all minorities entrenched in power, will rather risk civil war than relinquish that power. The working class may not in the end—probably will not—be in a position to avoid civil war, for it is the ruling class that forces the fight. But it is in the interest of the working class to stave off civil war as long as possible, and it must do all in its power to accomplish that end. *The abolition of the power of the Supreme Court is the first and foremost step in that direction.*

The working class must, therefore, line up in support of the Constitution as against the power of the Supreme Court. Its slogan must be: *"Save the Constitution by depriving the Supreme Court of the power to pervert or destroy it!"*

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15 The "due process clause" in both the Fifth and Fourteenth Amendments declares that no person shall be deprived "of life, liberty, or property without due process of law." This declaration traces its ancestry to the Magna Charta, and has been used in its present form in English constitutional law for several centuries, but it has always been understood to mean exactly what it says, that a person cannot be deprived of his life, liberty, or property except in accordance with a law.

16 Perhaps even more important than the change from liberalism to conservatism is the carry-over of the content of what is liberalism at the time of appointment of the judge into a later period. This is best exemplified by Mr. Justice Brandeis, who is still as liberal as he was on the day he was appointed. When Mr. Justice Brandeis was appointed, our economic world was such that an attempt to stem the tide of bigness may have denoted a true liberal, but now, whatever we think of the curse of bigness, an attempt to stem the tide which has brought to us that curse may have the most undesirable effects from the point of view of real progress. In this connection the fact that Mr. Justice Brandeis did not join Justices Cardozo and Stone in the concurring opinion in the N.R.A. Case gives one food for thought.

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The Nyon Conference

IT IS too early to judge what the Nyon conference has actually achieved in its effort to stamp out piracy in the Mediterranean; but several aspects about the conference have emerged clearly enough to be evaluated.

The conference was unique among recent international gatherings in one respect: this time the accused did not sit among his accusers, safely anonymous, armed with veto-power. Fascist Italy refused to take part, because of Soviet Russia's direct accusation that Italy was the pirate of the Mediterranean. Nazi Germany followed suit, and together with Italy summoned up the effrontery to suggest that the entire question be referred to the London Non-Intervention Committee—which Germany and Italy themselves had previously wrecked.

When Italy and Germany refused to attend, the prediction was freely made, first, that the conference would not be held, and second, that, if held, it would end in complete futility. Nevertheless, the conference was held, and a decision was speedily reached, which at least commits Great Britain and France to a program of curbing piracy by international police powers. According to this agreement, the Mediterranean will henceforth be patrolled by the combined fleets of France and Great Britain with orders to sink submarines which do not respond to warnings within the trade routes.

This is the aspect of the Nyon conference that is important. At a most critical stage of affairs, when the menace of unrestricted fascist piracy in the Mediterranean was threatening not only to cut off all neutral commerce on the high seas but to bring on a general war, it was at long last possible to hold a conference at which the situation could be discussed free from obstructive tactics of the fascist aggressors themselves.

Why was this possible? To us it seems clear that it was possible because, and only because, of the position of the Soviet Union. The Soviet's forthright action in confronting fascist Italy with the blunt accusation of piracy immediately lifted the whole question out of the fog of polite pretense in which the tories of Britain would have liked to have kept it. Having named the criminal before the whole world, the Soviet Union thereupon, at the conference itself, gave another magnificent example of its unwavering allegiance to the principle of collective action for collective security. Although the conference did not go as far as the Soviet Union wanted, and as far as it thought essential for the quickest results in ending piracy, its representative, Maxim Litvinov, joined in the discussions as to what should be done on the most realistic basis. Even capitalist press dispatches admitted, albeit unwillingly, that the Soviet Union made concrete and helpful suggestions at all points.

As to the conference's program, the reluctance of the British tories really to isolate the pirate power, Italy, and its ally, Germany, complicates matters. The final plan still makes it possible for Italy to take part in the patrol in its own territorial waters. Something was gained when Italy did not have a hand in making the decision; that gain is not yet, however, a crushing victory over Italian fascism, but must be consolidated and completed before real safety in the Mediterranean becomes a reality.

The combined fleets of Great Britain and France are wholly capable of dealing with any aggressor in the Mediterranean. Had the fleets of the other powers at the conference been added to the patrol, genuine collective action would then have been secured. Here again, the pirate powers, though absent from the conference, were not entirely absent from the considerations of some of the participants, especially Great Britain.

Those who advocate isolation of the United States from the European crisis are blind to the impact of that crisis upon us. That President Roosevelt recognizes our stake in the emergency is clear from his statement that he had only two or three hours to himself at his Hyde Park home "largely because of international conditions." Before that, the Navy Department called attention to the precarious status of merchant ships in the Mediterranean. Our trade with the Far East is already in great jeopardy owing to the Sino-Japanese war. Should our Mediterranean trade suffer the same fate, American involvement in the rapidly forming world crisis is but a matter of a brief time. Run away as we will, the war crisis catches up with us.

China's Unity

OUTSTANDING among the developments in China this week was the emergence of the Chinese Red Army, at least a hundred thousand strong, as an integral part of the national forces opposing Japan. Apparently authentic United Press reports state that the Red Army has been renamed the Eighth Route Army and the Soviet regions the Special Administrative Districts. The chief commander of the Eighth Route Army is Chu Teh, who was also commander of the former Red Army. Chou En-lai, another Communist leader, is said to have become a member of the Chinese general staff at Nanking. These developments followed a two-week conference in Nanking at the beginning of August between the Nationalist leaders and two leading Communists, Mao Tse-tung and Chu Teh. Thus has a ten-year split been healed by the present invasion.

Significantly enough, the former Red Army is headed for the northern provinces, Suiyuan, Hopei, and Chahar. The present Japanese drive got under way in the North, which, especially along the Peiping-Suiyuan railway, is the real center of the war, although the fighting at Shanghai may be more spectacular. The Chinese forces are still resisting strongly at Shanghai though a retreat has been made to prepared positions outside the city proper. Shanghai itself is of little value to the Japanese for the trade and commerce which made it a flourishing city are now completely dead. It will be necessary for the invaders to push on into the interior, always lengthening their line of communication. The Japanese appear to have made more progress in the North, especially with the capture of Machang, an important railway center. But there, too, progress has been relatively slow and positions once taken have had to be surrendered. The real significance of the present fighting is that it is extending and exhausting the Japanese much more than was expected.

The Constitution

CONSTITUTION WEEK, celebrating the 150th anniversary of the signing of the document, is being utilized by all reactionary forces in the country for their own purposes. One of the chief ideas they are striving to implant is that the present situation in which nine men on the Supreme Court Bench can nullify an act of Congress, is a sacred and inalienable part of the Constitution. Another is that the fight to curb the Supreme Court is over.

The Supreme Court fight has only begun; it is one of the central issues in America today, and will continue to be until it is settled. To understand the basis on which the battle can be fought most effectively, it is necessary to understand clearly what the Constitution actually is, and how, under pretense of "interpreting" it, the Supreme Court has usurped powers never granted by

the people. We believe Louis B. Boudin's scholarly and stimulating article on the Constitution in this issue will contribute greatly to such an understanding.

The Trial in Puerto Rico

TEN gallant fighters against imperialism, lawyers, students, university graduates, leaders of the Nationalist Party of Puerto Rico, are being tried for murder in the town of Ponce. For six months they have been imprisoned in the medieval fortress of La Princesa under bail totaling $250,000. Now they are facing a hand-picked jury and a battery of "experts" hired by Governor Winship for the purpose of convicting them. They are being tried in connection with the police massacre of March 21 in Ponce, when police killed eighteen and wounded nearly two hundred. The details of this episode were published for the first time in the NEW MASSES of June 8, 1937. The complete report has since been issued by the Civil Liberties Union.

For months the hired press agents and professional Red-baiters of the Winship machine have been working up a lynch spirit against the ten. Innocent though they are, their chances for acquittal are probably small. Justice has been a mockery in Puerto Rico for the last three years, washed overboard in the frenzy of the American sugar interests to protect their rich field of exploitation against the rising demand of the Puerto Rican masses for independence. The Chase National and the National City Banks have no intention of allowing Washington to accede to that demand. Winship is their Führer. It is his job to smash the Nationalist Party, leader of the militant struggle for independence. The conviction of the defendants, Julio Pinto Gandia, Plinio Graciani, Tomas Lopez de Victoria, Casimiro Berenguer, Martin Gonzales Ruiz, Elifaz Escobar, Luis Angel Correa, Santiago Gonzales, Luis Castro Quesada, and Lorenzo Pineiro is only a part of his program. Puerto Rico lives under a reign of American-made terror.

Plenty o' Nothin'

EVIDENCE is accumulating that congressmen and senators who helped kill the President's Court plan and hamstring wage and hour legislation are on the anxious seat. Arrived back home, they find it more than a little troublesome to explain why they knifed the New Deal. Data now being compiled by the Bureau of Home Economics of the U.S. Department of Agriculture, show pretty clearly one basis for mass resentment against the legislators who coolly ignored the public mandate only to heed big business.

That mandate was based on the actual needs of the people. Through a nation-wide study of family incomes for the year 1935-36 in nineteen small cities, one hundred and forty villages, and sixty-six farm counties, the Home Economics Bureau has provided a unique cross-section of the American standard of living. From current releases, made as the work of tabulation goes on, it seems safe to predict that very few communities will show average incomes above the $1800 which is generally accepted as an essential minimum. Thus 2079 white families in thirteen Pennsylvania and Ohio villages had only $1227 apiece to spend. The families averaged 3.7 persons. Nearly one quarter of them had more than one wage earner.

While the investigation centered upon native white families, the Bureau studied nearly one thousand Negro families in two small southern cities, Griffin, Ga., and Sumter, S. C. As Dr. Louise Stanley, who is directing the study pointed out, "No nation-wide survey of typical American family expenditures of all income levels would be complete without figures for the Negro families that form so large a proportion of the population of the South."

In Griffin it was found colored families averaging 3.9 persons earned only $497 a year. Moreover 72 percent of them had more than one wage-earner—the chief bread-winner earning $367 during the twelve months. Conditions were somewhat better in Sumter where Negro families amassed $564 a year with only sixty percent having more than one wage-earner. Just by way of contrast, native white families in Sumter enjoyed $1730 yearly. The Bureau did not state whether it felt there was any correlation between the figures for Negroes and whites in the Carolina city. Perhaps Senator George could tell us.

John Mackey

Winship of Puerto Rico

The U. S. at Nuremberg

TO Propaganda Minister Joseph Goebbels, who was assigned the job of reviling democracy at the recent Nazi Congress, is attributed the statement that the "alliance" between Bolshevism and western democracies is a result of "perverseness." It is, of course, deliberate fascist policy to invent such an alliance for the purpose of covering the traces of the more genuine coöperation with the Nazis by certain democratic governments, like Great Britain. But we have been trying to figure out what possible reason could have motivated our Department of State to accept the Nazi invitation to the congress. Perhaps here "perverseness" is the right answer.

This was a party congress, with no official standing. It is traditionally the scene of the most reckless war-mongering. Denunciation of democratic methods is one of the chief themes of its orators. Nobody expected this year's congress to be any different. And Ambassador Dodd urged Washington to decline the invitation.

Nevertheless, Secretary Hull designated Chargé d'Affaires Prentiss Gilbert to represent us. As the diplomats of the democratic countries read their morning papers on the day they attended the congress, the feature articles dealt with Goebbels's offensive speech against democracy delivered the day before. To Hitler himself was reserved the war talk. He is quoted as having told foreign correspondents, "We will not be able to settle down until the colonial question has been settled." Nobody seriously considers the colonial question amenable to "settlement" except through arms. Intimations were also given that Air Minister Goering might be the next Führer.

If it was not perverseness which induced Secretary Hull to accept the Nazi invitation, then it was downright inability to recognize an insult even when plainly labeled.

Nazis in Uniform

SUCH stories of Nazi preparations for armed action in the United States as the Chicago *Daily Times* printed last week will continue to demand serious attention as long as the Hitler regime lasts. As Senator Borah commented, they cannot be ignored. The Federal Bureau of Investigation is preparing a full report on the whole question of armed and uniformed organizations of Nazi storm troopers.

John Mackey

Winship of Puerto Rico

Goering—next Fuehrer?

That there exists a widespread network of Nazi agents in this country is now taken for granted by most people. John L. Spivak's exposés in the NEW MASSES three years ago have been amplified and documented in countless ways, in day-by-day reports of organized pro-Nazi activity, as well as in extensive discussions in Congress. But the chief corroboration has come from Nazi Germany itself. Scarcely a week goes by without some expression from the Hitlerite propaganda centers pointing out that the first and last loyalty of Germans everywhere is to Hitler and his plans of world conquest. And Hitler's job of crushing the workers is not confined to Germany. According to the Chicago *Times* story, officers of the Amerikadeutscher Volksbund and Deutscher Volksbund were frank enough about their purpose in forming a Nazi army: "We are not plotting a revolution, but we are going to be prepared to wrest control from the Communist Jews when they start their revolution. We will save America for white Americans."

There is no difficulty in getting people to believe that the Nazis are actively plotting and organizing here, but thus far there has been no effective action to meet the menace. The record of Nazi plotting has been pretty well filled in; perhaps the Federal Bureau of Investigation will provide further facts. When Congress meets again, it will be high time to demand that energetic steps be taken to call these fascist plotters to account.

Dixie's Little Labor Pills

THE National Association of Retail Ice-Cream Manufacturers, Inc., in its September bulletin (for members) offers an up-to-date scheme for avoiding labor troubles. Not to gild the lily, we simply quote:

> Fred Yoars of the Best Ice-Cream Co. of New Orleans tells us the following interesting bit of information.
>
> "To make sure that we get good material in new men we employ, we require that the four following questions be answered correctly when an application is made for employment:
>
> "Do you think the W.P.A. is a good thing and is it conducted in as business-like a way as you would expect private capital to conduct its business?
>
> "Do you think the N.R.A. is a good thing for business?
>
> "Give us your opinion of the sit-down strike situation?
>
> "Give us your opinion of Roosevelt's Supreme Court proposals?
>
> "The answers to these questions give us a line on the applicant's ability to think straight.
>
> "I think if all employers demand that their employees answer these questions correctly, it would put an end to most of our labor troubles. He who doesn't think straight can't work straight."
>
> Quite right, Fred. Undoubtedly you set a fine example for an intelligent personnel to follow. Too bad we don't have more intelligence and good thinking in business.

Workable Criminology

THE trouble with Soviet leaders is that they don't believe what they read in the capitalist press. Otherwise they would act differently. They don't seem to have gotten the idea that the U.S.S.R. is like a setting for a Boris Karloff movie: lurid night over the whole land, witches behind curtains and skeletons in closets, oppressed masses fearfully packed into underground cellars.

Only ignorance of what the press in this country has been selling as news can account for the freeing of 55,000 prisoners by the Central Executive Committee of the U.S.S.R. These convicts had finished the new Moscow-Volga Canal ahead of schedule.

So what do the Stalinists do? *To make sure that the men get to widespread points of discontent,* they are given railway fare. *To supply former law-breakers for the counter-revolution,* they are sent back to their homes. *To increase industrial sabotage,* they are given jobs. *To help them along until they find their way to a counter-revolutionary center,* they are given bonuses of one hundred to five hundred rubles.

Or are the papers wrong? Can it be that socialism as a regenerating force can bring 55,000 persons back to a sane, productive existence? Maybe a people and a government which can exercise such a liberating influence on such large masses can't be so bad after all. In fact, it might be a lot more wholesome than the people who revile it at so much per word.

Labor's Decisive Victory

GIVEN the somewhat complicated political situation that prevails in New York City politics this year, the primary campaign turned out to be much less exciting than was expected. Perhaps the most significant long-range development concerned Mayor LaGuardia's attitude toward the Republican nomination. In his only speech before a Republican audience in the whole campaign, LaGuardia declared, somewhat bluntly, that he already had two nominations but would welcome the third if it came. It would have to come, however, because "we are not going to go down on our knees and beg for votes." This speech would seem to reveal the Mayor's awareness that his election rests primarily on the labor and lower middle-class vote, rather than on Republican dowagers and office-seekers. If we are not mistaken, it was a plain advance notice to the Republicans that the American Labor Party is the center of gravity of the LaGuardia campaign. And that is as it should be.

The Democratic primary squabble between Mahoney and Copeland was on the whole a listless affair. Both candidates were pulling their punches in the knowledge that one of them might have to eat humble pie and support the other very shortly. There is that much difference between the two.

The last days of the Copeland drive were spent almost wholly on the alleged membership of Justice Black in the Ku Klux Klan. So cramped was Copeland for municipal issues that he finally forgot LaGuardia and acted as though Justice Black were running for mayor of New York. Incidentally, this campaign against Justice Black will do more to bring the Supreme Court into disrepute than anything said or done by the critics of the Supreme Court. There is little that can be done about Black's membership in the Court even if the charges are sustained. Nobody seriously expects a resignation. Led by the North American Newspaper Alliance (a creature of the pro-Court New York *Times*), the anti-administration press has picked up the story as a good way to snipe at the President. The whole episode provides a final demonstration that the so-called friends of the Supreme Court care less for the Court's prestige than they do for shattering the prestige of the man who nominated Black.

Rumblings in the Legion

Demands for peace and jobs for unemployed veterans may upset some of the convention plans carefully made behind closed doors

By Paul Crosbie

THERE are two main trends in the American Legion today, just as there are two in American life. The first, which has given its tone to the Legion throughout the nineteen years of its existence, is toward the defense of property, the maintenance of the status quo; the other is toward defending and extending the rights of man. The one is toward fascism and the other toward an extension of the struggle of our revolutionary ancestors against injustice and oppression.

American Legion members are already in New York City for the national convention. What resolutions will be adopted it is impossible to predict. That the forces of reaction hold a dominant position is certain. With Major General Harbord, mouthpiece of Morgan in the Radio Corp. of America as convention chairman, and Robert Condon, known as a stooge for Hearst, and his lieutenant, Major Gill, as convention executive vice-chairmen, the stage is well set for anti-labor, Red-baiting resolutions.

The convention opens officially Monday, September 20, and the business of the convention supposedly will be transacted on Wednesday and Thursday. Actually the business will have been pretty well completed behind the closed doors of committee rooms on the last days of the preceding week. At conferences in hotel rooms the "king-makers" of the Legion will have decided on policy and program. In the absence of an organized progressive bloc, Condon and his crowd should have no difficulty in railroading their program through.

These Legion conventions are very like the conventions of our big political parties. All but a few of the delegates will go on a grand binge. The more they drink and horseplay the less likely they are to ask embarrassing questions or raise issues that might be embarrassing to the boys who put up the money. Of course, the Legion officials express regret for too great damage to property, but I have yet to see any strong protest against the hooliganism that has disgraced some of the conventions, notably at Miami and Detroit. While the boys are on the loose, the sober men who represent big business can do their work. But this year things may not be so easy. The slogan of the recent Veterans of Foreign Wars convention, "Jobs or pensions for the unemployed vets," echoes from the ranks of the Legion. Some of the delegates are from C.I.O. unions. Perhaps this slogan will find its way through the Legion's resolutions committee.

The rumor on the street is that the Department of Illinois, which in 1936 organized a successful state-wide terrorist campaign to keep the Communist Party off the ballot, is preparing a coup, a real challenge to American democracy, but of this nothing is certain. Since the election campaign of 1936 a new voice has been heard in Illinois. At the recent state convention there, a trade unionist so effectively exposed the fascist character of the Sheppard-Hill Bill, to "take the profits out of war"—that darling of the munitions makers and the Legion bureaucracy—that the Department of Illinois refused to sponsor it.

I FIND within the Legion a growing consciousness of the menace of the economic royalists in their threat of reaction and fascism, and a realization of the fact that in the struggle to maintain democracy, it is necessary for the American people to unite as did their colonial forebears. Not only from every part of the United States but also from foreign lands do I hear from Legionnaires who are ready to battle against reaction, to fight for democracy. These veterans are not Communists, but they have discovered that in the struggle for human rights, the Communists are dependable allies. We Communists welcome them, confident that as they learn to know us better they will also discover that Communism is, in fact, twentieth-century Americanism.

During the 1936 election, the Legion Post at Kingston, N. Y., was accused of having taken the lead in smashing a Communist Party meeting. Another meeting was arranged at which I was to speak. I wrote to the Commander of the Kingston Post and in the name of democracy and true Americanism asked the coöperation of the post. I had no reply to my letter, but I was told by local people that many Legionnaires were present at my meeting. Grace Hutchins and I both spoke. The meeting was quiet and orderly. For this I thank my fellow Legionnaires.

In evaluating the trends within the Legion it is important to bear in mind the tremendous desire for peace that exists in the membership. It is this desire for peace combined with the resentment that the veterans felt toward the profiteers, that has been utilized by Legion officials in building up sentiment for the Sheppard-Hill Bill. The rank-and-file veteran believes that war should be the common enterprise of a whole people. He also believes that in war there should be no profits. Therefore, when his leaders tell him that under the direction of the Legion legislative representatives, a bill has been prepared to "take the profits out of war" and to require "universal service," he is ready to whoop, to adopt resolutions, and to write to his congressman demanding its passage. In this he is completely fooled. If it were actually a bill to take the profits out of war, would it be likely to have the support of the munitions makers, Barnard Baruch, and others, that it does? No opposition to the bill is voiced by big business. The opposition comes only from those who, like the veteran, truly desire peace, but who, unlike the veteran, have not been fooled by the title of the bill, but have examined its antecedents as well as its contents.

George Zaetz

The Legionnaire who loves his country too much to leave its fate in the hands of the Morgans, Mellons, du Ponts, and Fords, those economic royalists who plunged us into the last war, should study the peace program of the American League Against War and Fascism, as growing numbers have already done. There they will find, as their comrades have, not only a peace program that is practical but also the highest form of patriotism. Already there are many Legionnaires who, as individuals, have joined the League. This movement should grow.

I WOULD CITE one example of the messages from members of the Legion that come to me in increasing numbers. From a small New England town comes a letter dated September 6, asking for ideas on how one might "lessen the solid mass of ignorance, indifference, and genuine active Red-baiting." Then the veteran goes on to say that the members of his post are "fine fellows every whit as good as the average—but the Legion offers no atmosphere in which mental stirring can be cultivated." This letter is typical of others that come to me from all over the country, showing that there is within the Legion material from which to build a progressive movement. The problem is to stimulate it and to coördinate it. A step in this direction is being taken by the Council of U. S. Veterans, of 2 West 45th Street, New York City. This council is composed of liberal-minded veterans who are members of the Legion or other veterans' organizations, and who are determined that the veterans' organization shall not, without a struggle, become the tool of fascism.

Political "Suppression" in Spain

The actual facts are considerably at variance with reports published in the American press

By James Hawthorne

DESPITE some thoroughly malicious propaganda abroad against the People's Front, it may be definitely stated that nobody in Spain seems to know about any official "repression" of the Left Socialists or Anarchists belonging to the C.N.T.-F.A.I. combination. One would have expected the Anarchists to be shouting protests to high heaven, but even *their* press didn't reveal this situation. In fact, their papers reflected the general attitude of Anarcho-Syndicalist speakers: no one and no force was strong enough to attempt to bear down on the C.N.T.-F.A.I. There were perfunctory remonstrances wherever an arrest of a provocateur showed him to be a follower of the red and black flag; a F.A.I. delegation even formally protested a number of arrests to the government. Such items were buried in out-of-the-way corners of the Anarcho-Syndicalist press. Private conversations with Anarchists confirmed my impression that these were simply routine precautions to discourage possible *future* firmness on the part of the government. There was no repression of either the C.N.T., the F.A.I., or the Caballeristas, but the three groups were engaged in activities *inviting* government intervention.

The linking of the C.N.T.-F.A.I. and the Left Socialists is not hard to understand, if you substitute "Caballero group" for "Left Socialists." Some outstanding leaders of the group (formerly known as the left wing of the Socialist Party), like Alvarez del Vayo, are now leading the Socialist Party toward unification with the Communists. At a recent session of the Socialist National Committee, the Caballeristas, on the other hand, were criticized for their campaign of "unity against the Communist Party." They were represented at the meeting through the Valencia province section which they controlled. This body has been engaged, ever since the fall of the Caballero government, in organizing a split in the Socialist Party. It has sent delegates to other provinces to campaign against the party leadership, and in its newspaper, *Adelante,* has attacked the Communist Party, the Socialist Party, and the government alike. The National Committee, therefore, voted to hand over the Valencia province organization to the city of Valencia leadership, and appointed Cruz Salido the new editor of *Adelante.* With that act, Caballero's influence in the Socialist Party vanished, and as if in acknowledgement, the Valencia representation withdrew from the meeting.

In practice, the Caballero group has for some time past been active in politics on the strength of its position in the U.G.T. rather than in the Socialist Party. It holds the majority of posts in the executive committee of the U.G.T., *an elective body which has not been renewed in five years.* It will be recalled that the membership of the great trade union federation recently rebuked the executive committee and denied it confidence.

Under these circumstances the recent signing of the twelve-point C.N.T.-U.G.T. pact on July 9 by the executive committees of both unions is clearly nothing more than a political alliance between the Caballero group and the Anarchists. In essence it is the formation of a Syndicalist bloc.

A glance at the signed agreement reveals the nature of the alliance. Nominally a "unity pact" between the two trade union federations, the agreement does not even mention the purposes of unity. There is no mention of improving material and cultural conditions for the workers, nor of ways and means of increasing production to help win the war. The "pact" includes just three things: (1) some clauses which amount to a non-aggression pact between the contracting parties (Caballero and the Anarchists); (2) an outlawing of outside unions, meaning the Communist-built peasant unions; this furnishes the key to the purpose of the agreement: a war pact directed primarily against the Communist Party; (3) clauses creating a national joint committee and providing for the formation of local ones.

If there was any doubt about the anti-Communist nature of the pact, subsequent events cleared that up. The Communists criticized the pact for its deficiencies, but judged that anti-fascist workers could remedy these faults by entering the local joint committees and there propose methods of improving production and workers' conditions. Then the new National Joint Committee became frightened and called a halt to the formation of local committees! They could be formed, it ruled, only subject to the control of the National Committee. If democracy meant the inclusion of Communists, then there could be no democracy.

Deyo Jacobs

The alliance may have been intended primarily as an anti-Communist one. Certainly the Anarcho-Syndicalist press built up a violent campaign against the Communist Party. But it did not stop there, and the alliance could not halt there. The Communist Party, with its strong sense of realities, has been the firmest defender of central authority and sane war policy to be found in Spain. It is impossible to attack the Communist Party without passing beyond that stage to other points of coincidence with the fascists. And so an anti-Soviet angle appeared. Federica Montseny, a well-known Anarchist, let slip that, "Spain is still a free country and will not accept the dictation of Rome, Berlin, or Moscow." *Castilla Libre,* a Madrid daily, attempting to defend her statement, declared it had "moral authority to speak against *all* invaders." (Montseny and the whole Anarcho-Syndicalist press were soon sweating profusely and declaring that, "In Spain no one but a declared fascist would dare to attack the Soviet Union.") Nevertheless, the alliance slipped logically from attacks against the Communist Party, to attacks against the Soviet Union, and then against the government. The confederal (C.N.T.) press spent days arguing that the People's Front had died in July 1936, to be replaced by the anti-fascist front. The corollary of this was that the People's Front government was not representative of the people.

Frequent meetings between leading Caballeristas and top Anarchists took place. Araquistáin, formerly ambassador to France under Caballero, and Pascual Tomás, one of the officers of the U.G.T., at first, and then Caballero himself, held surreptitious meetings with Juan López, Mariano Vásquez, secretary of the C.N.T., and Federica Montseny. It was decided that Caballero should go on a speaking tour. [This tour has not materialized.—ED.] The Syndicalist press now attacked as "communist" all those who befriended unity with the Communist Party (how reminiscent

of the Red scare elsewhere!). But the anti-government nature of the Syndicalist bloc became apparent more through omission than through what was said. During the first phase of the recent offensive they did not publish a word about the victories achieved under the Negrin government. Men who called themselves anti-fascist were waiting, evidently, for a military disaster in order that they might attack the government leaders.

The tragedy of Largo Caballero, who had by now quite clearly abandoned Marxism and was offering his prestige in return for an ally against the parties that had displaced him, deserves more space than I have here. A still greater tragedy threatened. Just such press campaigns, just such attitudes, had prepared the atmosphere for the criminal rising in Catalonia in May. And already minor disturbances began to occur in the Valencia and Barcelona provinces.

Indeed, a warning had to be sounded against the danger. Although they had not been named, the Anarchists and the Caballero group fumed at the "insinuations" and declared the warning a baseless political maneuver. The original call was repeated by the government itself, which announced that it had taken "with the utmost energy all necessary measures to prevent and cut short any attempt by so-called extremists and tools of fascism to disturb the public order." Despite the government position, the newly formed Syndicalist bloc stubbornly addressed itself to the Communist Party which had first reported the danger signals, in the following terms:

> Public opinion can as readily suppose that the extremists who are in contact with the "fifth column" for the purpose of provoking disturbances in our rear guard belong to the C.N.T.-F.A.I. as to the P.O.U.M., Syndicalist Party, or Socialist Party. The only thing that will be clear at first sight is that the Communist Party has no part in these maneuvers. No one has a right to set himself up before public opinion as the only "good little boy" in order to cast doubt on all others collaborating in the struggle against fascism. . . . One and only one thing interests the C.N.T., namely, that you reply to the following question: "Is it the C.N.T. that covers and is ready to create disorders in the rear guard?"

There is the core of the matter. No one had named the C.N.T. or, for that matter, any anti-fascist organization, yet the bloc manifested extraordinary resentment, nervous irritation, uneasiness. Obviously, if the Anarchists and Caballeristas considered anti-government activities in the rear guard a disgrace, they had but to separate themselves publicly from provokers of disturbances. If a warning of fascist provocation seemed to them to infer complicity on their part, they had but to place themselves unreservedly at the side of the government to aid in suppressing disturbances. A clear, unequivocal position on the part of the Syndicalist bloc denouncing all anti-government maneuvers as fascist, would make plain to provocateurs that they could not count on membership in any anti-fascist organization as protection from justice. That was the position immediately taken by the Socialist and Communist Parties. The Syndicalist bloc has not committed itself, but maintains an equivocal position just as it did in May.

Fence-straddling as a political norm is not an accidental feature of Anarcho-Syndicalist policy. It is rooted in the sectarianism of the Anarchists. In their opinion, the C.N.T. and F.A.I. are the only "guarantee of the revolution." When you reflect that they leave "revolution" absolutely undefined, you will see that they have deliberately substituted ambiguity for a political program.

At bottom, the Anarcho-Syndicalists have not achieved a positive political program because they would not surrender the goal of dictatorship. Much as they fulminate against dictatorial aspirations, they can envisage no solution of the Spanish political-social problem but trade-union control, with the F.A.I. politically orientating the trade unions. Consequently, they remain eternally in the "opposition," even when they participate in a government; they offer no solutions, but oppose those put forward by the "politicians," they trust no politico, but blindly defend any member of the organization.

The whole situation was partially improved when the National Committee of the C.N.T., in the middle of August, proposed a joint session with the Central Committee of the Communist Party for the exchange of views on the problems before the people. At the meeting, the Syndicalist representatives, under the leadership of Mariano Vásquez, complained that they were being treated with hostility. On their part, the Communists emphasized that coöperation with the People's Front was the *sine qua non* of their evaluation of other groups and that the Syndicalists did not measure up in this respect. The discussion served to mend matters somewhat, for both delegations decided that conditions existed for joint action by the C.N.T., Communists, and all anti-fascist organizations.

Soon after, the Coördination Committees of the Socialist and Communist Parties finished their program of joint action, looking toward eventual fusion. The thirteenth point of the program called for "the establishment of trade-union unity, whereby the two parties will work to secure unity between the U.G.T. and the C.N.T. on the basis of a common program and close coöperation with the government of the People's Front."

But then, suddenly, the Anarchists seem to have decided against better relations with the Communists, for they again broke off relations. On August 24, the Central Committee of the Communist Party sent an open letter to the C.N.T. National Council explaining its attitude toward the whole problem.

Charles Martin

The ostensible reason for the new breach was the publication of reports in the Communist *Frente Rojo* concerning the situation in Aragon where the government had been forced to dissolve the Anarchist-controlled "Council of Aragon" in order to put a stop to characteristic Anarchist lack of discipline and chaotic handling of the rear guard. The open letter contended that the paper's reports were true in substance and constituted no sufficient reason for estrangement. It was pointed out that when the C.N.T. first proposed the meeting of the two organizations ten days previously, the Communist Party had not permitted the innumerable attacks and insults to which it had been subjected in the Anarchist press to stand in the way of acceptance. The letter also sharply criticized the contention of the C.N.T. that the Brunete offensive had been a failure. In conclusion, it declared that the attitude of the Communists toward the Anarchists had been one of fraternal coöperation.

That is where the problem stands at this writing, still unsettled but moving toward a satisfactory conclusion. For the Anarchists are holding a wholly untenable position for which they cannot and do not rally the support of the masses. Every move by the C.N.T. leaders against the People's Front and the other working-class parties further estranges them from the bulk of their own membership. The Caballeristas, of course, try to make capital out of the situation, and that is sufficient commentary on their policy. These "revolutionists" who praise themselves as more communist than the Communists have reached the point where they are trying to play the trade union federations against the political parties, with the latter subordinate and secondary to the former. Any student of elementary Communist theory, as expressed by Lenin, will repudiate any such conception. For the unions, no matter how important they are, cannot supply political leadership to the country and cannot supersede the political parties in that task. The followers of Caballero, in order to woo the Syndicalists, have in fact swallowed a good deal of the worst Syndicalist doctrine in this respect.

Obviously, no government that wants to maintain its own self-respect and the respect of the honest workers and peasants, including Anarchists, can tolerate and justify sabotage and counter-revolution in the name of liberty of opinion. The Negrin government was formed, in great part, because Caballero's minister of the interior, Angel Galarza, did tolerate and justify such a situation. When the government carries out its mandate of imposing war-time public order, far from attacking the C.N.T.-F.A.I., it is simply refusing to accept a pretense of principles as a justification for fascist activities. Leaders of the Anarcho-Syndicalist organizations should be, and the honest Anarchist masses are, grateful to the government for its firmness.

The Guild Front Is Solid

The hopes of the reactionaries are shattered as the news union's referendum shows a progressive majority

By William B. Smith

MORE than five thousand members of the American Newspaper Guild voted recently in a nation-wide referendum to determine whether or not the program adopted at the Guild's St. Louis convention fairly reflects the aims and views of its membership. Although two questions were of overshadowing immediate importance, namely, affiliation with the Committee for Industrial Organization and jurisdictional expansion to include so-called commercial departments, the program served to put the Guild on record regarding several other vital issues.

At the St. Louis convention delegates strongly supported every point laid before them by the convention program committee. In the matter of C.I.O. affiliation and wider jurisdiction, the vote was 118½ to 18½. Several Guild units, however, notably those of Washington, D. C., and Columbus, O., urged that so far-reaching a program should be submitted to the entire membership, particularly since the convention had considered joining the C.I.O. and the inclusion of business departments as a single question. Some weeks later the International Executive Board voted unanimously to submit the points at issue to a membership referendum.

While the referendum was under discussion, William Green took occasion to attack the convention program and especially Heywood Broun, international president of the Guild. Among other things Green raised the Red scare, saying, "It might be a good idea for Mr. Broun, who is a stooge for the avowed Communists in the C.I.O., to resign his presidency of the Guild, at least until the referendum is completed." The A. F. of L. leader was bitter, too, over the idea that men like Walter Lippmann, Mark Sullivan, and others, "could hold common aims with telephone operators, ad takers, carrier boys, and what have you." Characteristically, Mr. Green was joined by the publishers, nearly all of whom were anxious to hamstring the Guild.

Because newspaper people often see events at first hand and are usually competent observers, it is of special interest when they voice opinions that are not subject to editorial policy or shaped by pressure from the business office. The Guild referendum furnishes just such an off-the-record cross-section of views held by men and women who write the news. But before examining the results, let us look briefly at the past history of the American Newspaper Guild and its developing relationship to the rest of the labor movement.

At St. Paul in 1934, the Guild's first convention deferred consideration of whether or not to join the American Federation of Labor. At that time there arose grave doubts about the advisability of such a step—professional men questioned their place in a labor union. In 1935, the Cleveland convention voted to hold a referendum, a two-thirds majority being required for affiliation with the A. F. of L. Again there was hesitancy, and the membership decided against affiliation by a narrow margin. Preparing for the next convention, the Executive Board urged the local Guilds to instruct their delegates on this question, and the 1936 convention voted almost seventeen to one in favor of joining the Federation.

Soriano

Heywood Broun

This maturing determination to take an active part in the labor movement coincided with the rapid growth of a new spirit among millions of American workers—the resolve to organize in industrial unions. From the outset, the Newspaper Guild looked favorably on the Committee for Industrial Organization and recognized the fundamental need for unity within labor's ranks. Thus the Guild's affiliation did not by any means range its membership on the side of William Green and those A. F. of L. leaders who repudiated John L. Lewis and the C.I.O. And as the struggle grew more intense, Guild sympathies swung strongly toward the new industrial organization.

By the spring of 1937 this feeling had so far developed that the Executive Board of the A.N.G. declined to send a representative to the Cincinnati meeting of the A. F. of L. Executive Council. Basing their refusal chiefly on two counts, the Guild Executive Board wrote Mr. Green in this vein:

> Again and again we called for unity on the basis of democracy and we do not now believe it is going to be achieved on the basis of further departure therefrom. We find it difficult to regard this conference as bona fide inasmuch as it makes no provision for the representatives of two million American workers. . . .
>
> Nor is this ever more open departure from democracy our only consideration in refusing to condone the proceedings by participating in them. With amazement, we note evidence that the Executive Council now permits connivance with employers for the purpose of defeating workers in their efforts to bargain collectively. . . . If the American Federation of Labor is to be an agency for preventing the free and independent association of wage earners, we will not be a party to such a betrayal. . . .

With this progressive background and a clear view of the labor scene, it is not surprising that its program committee should offer the 1937 Guild convention a forward-looking and comprehensive agenda. And it was equally to be expected that reactionaries within the labor movement as well as the vast majority of employers and publishers would fight any and all such commitments by the newspaper profession.

The full program accepted by the St. Louis convention, and later submitted to the entire Guild membership, included the following points in addition to C.I.O. affiliation and wider jurisdiction:

1. A collective bargaining policy, mandatory upon all Guild locals, which centered around the five-day, forty-hour week and the Guild shop. Since the latter has been challenged as destroying the freedom of the press, it is important to understand exactly what the term means. A Guild shop requires all employees to join the union but permits the publisher to choose new employees at will. Thus it is neither an open shop, which invites yellow-dog contracts and other anti-union tactics, nor does it specify, as in a closed shop, that new employees must be obtained through the union.

2. The Guild condemned the policy of the administration and Congress in failing to provide adequately for reëmployment and called for an immediate appropriation of at least three billion dollars for the W.P.A.

3. The Guild supported President Roosevelt's Court plan, reaffirmed the A.N.G.'s demand for a clarifying amendment to the Constitution, and backed the Black-Connery wages and hours bill.

4. Terminated the requirement that one vice-president be elected from a wire service (such as the Associated Press or the United Press). This change was intended to eliminate any conception of differentiation between wire-service members and others by making the executive board representative of the membership as a whole and not of any particular field of newspaper work.

5. Adopted a resolution reaffirming the A.N.G.'s conviction that independent political action must be taken along with economic action and recommended

participation in genuine local expressions of such a political movement.

6-7. Made changes in the methods of suspension for non-payment of dues, and for charter revocation.

8. Adopted a resolution attacking fascism as a force which destroyed trade-unions and supporting the Spanish people in their fight against it.

Most of these propositions touch upon public issues around which there has been established a growing cleavage between progressive and reactionary forces in America. And while the Guild may have found its own work of organization impeded by the delay and uncertainty involved in holding a referendum, the vote of its membership has furnished a clear and definite answer to tories and convention critics alike. At St. Louis the program was adopted by delegates representing 90 percent of the A.N.G. membership. The referendum not only serves to gauge the membership's collective opinion, but also to demonstrate whether or not the elected delegates were truly representative.

Replying to charges that the convention program was engineered by "a little group in New York," and did not reflect the present aims of Guild members, the Committee for the Convention Program stated:

St. Louis marked no change in the course of our organization. It merely continued the logical development of the A.N.G. along the course of enlightened militant trade-union democracy, conscious of its place in the sun, which has meant economic gains for newspapermen and a growing newspapermen's union instead of the innumerable abortive attempts of the past. Consider the convention issues, as presented in the referendum, in the light of the development of the American Newspaper Guild and their present application.

During the discussion that followed the St. Louis convention, the American Newspaper Publishers' Association took an active part, masking its bitter opposition to the Guild behind pleas for freedom of the press. Just as hypocritical slogans about the right to work have been used to cover strike-breaking vigilanteism, so, too, freedom of the press has become the pet device of union-hating publishers. And once again, some timid liberals have fallen in line. Since this "issue" will probably come more and more into the foreground, it may be well to get a clear perspective on it.

To begin with, the publication of newspapers and periodicals is a business enterprise, and the mere fact that a publisher sells news of more or less general interest does not destroy or even weaken his primary motive, which is to make money. Neglecting the unquestioned influence that advertising schedules exert on editorial policy, it is obvious that the search for profits sets up an employer-employee relationship in the newspaper business that is essentially like that prevailing in other industries. This being the case, it is manifestly ridiculous to expect that newspaper people should live in an ivory tower remote from the labor movement when their jobs are subject to all the vicissitudes and murderous competition of any business employment.

Ned Hilton

"I suppose you're going to tell me Stalin knows more than the United Press."

The Guild program committee recognized this clearly when it stated:

To cite only one of innumerable instances, Harry Chandler's Los Angeles *Times,* which will not tolerate any union man in its employ, in an editorial hailed the referendum as "the revolt of the American Newspaper Guild against the radical leadership of Heywood Broun." It continued, "The courageous stand of the American Newspaper Publishers' Association against an editorial closed shop and for a free press has its influence in this revolt." What the editorial fails to state is that under cover of opposition to the "editorial closed shop," the A.N.P.A. really is fighting the large gains in salaries and hours which have been spread wide during the past year by the consistent policies of the A.N.G.

Moreover, as capitalist entrepreneurs, publishers have a very direct anti-labor bias and a monetary interest in questions of wages, hours, etc. For them to demand that only non-Guild or anti-Guild reporters should cover labor news is tantamount to insisting that the public shall read labor stories handled exclusively by men and women who share the viewpoint of their bosses. This claim is seriously advanced as a way to ensure freedom of the press!

Evidently Guild members are fully aware of the principle which is at stake here, for their vote was emphatically in favor of the Guild shop 2917 to 1924. And, indeed, with the single exception of the anti-fascist resolution, where the vote was 2409 for and 2592 against, every feature of the convention program was strongly upheld in the referendum. The question of C.I.O. affiliation found 3392 members favoring it, with 1691 opposed.

Thus this widely publicized poll, from which mistaken reactionaries had hoped so much, has actually shown the basic labor-conscious militancy of the American Newspaper Guild. It is not too much to expect that this verdict will breathe new meaning into our constitutional right of a free press.

READERS' FORUM

Further evidence of army influence in the C.C.C.—A Hague conference and a correction

TO THE NEW MASSES:

Permit me to compliment you for publishing the article "The Army Educates the C.C.C." Since I have had a varied experience in the administrative end of the C.C.C. educational set-up, I doubly appreciate the service that Albert Dahlquist has rendered in writing this article.

I can testify personally to the all-pervading repressive influence of the army administration upon the educational advisers in the camps and their educational superiors and upon the entire educational program. When I was chosen for my work, I was told that it was done only on condition that I show complete subservience (euphemistically called "cooperation") to the army. (It was known that I was at least "liberal.")

I can testify personally to the widespread existence of espionage practiced by the army against individual educational advisers. In this as in other matters, the average camp army personnel (made up of reserve officers drawn largely from commercial life) is inferior to the educational advisers in educational achievements and experience. As a group, they are wholly unsuited by training and experience to handle a non-military group of youth—at salaries considerably above those paid educational advisers who *are* trained in youth leadership.

Periodically the camp commanders are required by their army superiors to make complete reports on any "subversive activities" that have come to their attention—not merely within the boundaries of their camps but anywhere in the surrounding territory.

Reading matter is closely censored by the army. On the few occasions when mildly progressive or advanced ideas have appeared in book or pamphlet form in War Department purchases for the camp libraries, the ax has fallen immediately upon such discovery. This emasculation of citizenship teaching in the camps is nowhere better illustrated than in the case of a bulletin on the 1936 election, prepared by the C.C.C. educational division for distribution to the camps. Since the army was always urging "citizenship" training, the educational division took the generals at their own word; prepared the bulletin urging C.C.C. enrollees to inform themselves on the platforms of *all* political parties, and the speeches and radio talks of *all* presidential candidates; and sent the bulletin, as was customary, to the army for approval. In double-quick time it was returned as "propaganda" and refused publication.

Other examples of censorship are found in the list of magazines sent to all C.C.C. camp libraries. About the only semi-worth-while magazines received are *Time, Life,* the *Digest, News-Week, Current History,* and two or three popular scientific journals. The rest of the forty-five magazines received are either reactionary sheets like *Liberty* or lurid pulps. The only "labor" journal received is the U. S. Labor Department's monthly "Labor Information Bulletin," whose presence, one corps area educational director gladly told the Labor Department, effectively "answered" many socially conscious questions of enrollees and thereby did valiant service in keeping down radical sentiment.

Camp papers, issued by the enrollees of most of the C.C.C. camps, are highly regarded by the military as "morale" builders. These are supervised by the educational advisers, but they are right under the thumbs of the camp commanders. This is shown by a survey made of camp papers in one corps area. Hardly a single progressive sentiment could be found in the hundreds of issues examined, but there were many feature articles, editorials, and news items of an anti-labor and Red-baiting nature. Frequent editorials plump for military training in the camps. Much the same is true of *Happy Days,* the national C.C.C. newspaper, which was roundly condemned by the U. S. Commissioner of Education for an editorial in its pages inciting enrollees to violence against other enrollees caught reading the magazine *Champion of Youth.* But this reproof came only after considerable mass pressure. Incidentally, the great majority of the enrollees are strongly against military control of the camps and the installation of military training as urged by the army.

But the fault doesn't all lie with the army; much of it lies with the pro-army servile tools in the upper reaches of the educational division. Many, but not all, of these officials stand covertly or openly with the army and against the small measure of progressive influence with which U. S. Commissioner of Education Studebaker tries to leaven the solid lump of military-dominated education. Many corps and district educational advisers with a military background frankly tell their camp educational advisers that there is danger of the army regime losing control of education and they must openly fight it when the time comes.

At the head of all C.C.C. work—czar over the coöperating agencies—army, Office of Education, and Forest Service—stands Robert Fechner, former Washington lobbyist for the machinists' union. He was placed in charge as an olive branch to the aristocracy of labor after widespread resentment had arisen against army control and the low wages paid C.C.C. enrollees. Fechner kotows to no one—but the army. He has always stifled progressive outcroppings in the C.C.C. and forced the resignation of the corps' first educational director, an outstanding progressive educator. Fechner's oft-repeated friendship for the educational program can be judged by his testimony before the recent congressional committee which considered C.C.C. continuance: that if much more financial support were given to the educational work it would cost the country too much.

C.C.C. high officials ceaselessly prate on the tune that the C.C.C. is a great educational experiment—except when they are asked to provide a little money for educational work. Then they maintain that it is almost exclusively a work project. (Educational expenditures have been practically nil thus far; even when salaries of all educational officials and overhead are counted, the cost is about ten dollars a year per enrollee—about one-tenth the figure for the public schools.

There is little hope for true progress in the C.C.C. educational work until the army is ousted from control.

Seattle, Wash. JAMES R. STEELE.

An Industrial Relations Conference

TO THE NEW MASSES:

Your readers surely will be interested in the conference now being held at The Hague, under the auspices of the International Industrial Relations Conference, to which I am a delegate.

Woodcut by Helen West Heller

The subject selected for this summer's intimate conference, the world's natural resources and standards of living, grows directly out of the World Social Economic Congress held at Amsterdam, Holland, in 1931. In its studies of the causes of international unemployment and of the possibilities of social economic planning directed toward raising standards of living, the fundamental problem of the rational utilization of the world's natural resources and raw materials clearly emerged.

There are splendid economic revolutionary scientists ready with a cure for all the ills due to unemployment and low standards of living. But, we are now in need of men and women who are actual social economic students to prove to right-minded people, that our earth stands ready to feed and clothe all her children without resorting to political theft, war, destruction, and all the hullabaloo of inter-nation enmities.

The Hague, Holland. EVA ROBIN.

We Are Corrected

TO THE NEW MASSES:

Your September 14 issue carried an editorial headed "Green and Company Unions," which voiced your belief that A. F. of L. unions have entered into a partnership with employers to take over the part formerly played by outlawed company unions.

The writer of the editorial, to illustrate his point, holds up the contract of the Commercial Artists' & Designers' Union, Local 20329, A. F. of L., with the New York *Journal-American,* as an example. He accuses the union of being one of the "pliant A. F. of L. unions" with whom employers are anxious to deal and believes it significant that "William Randolph Hearst . . . should make an agreement after steadfastly refusing to deal with the Newspaper Guild."

It is unfortunate that your editorial writer felt that facts were less important than adjectives. A glance at the nearest newspaper, plus a short talk with a representative of the C.A.D.U., would have stayed him from holding up to scorn a militant, progressive, and democratic trade union.

Hearst did not rush to sign a contract with the C.A.D.U. Negotiations were begun in April and the contract signed in September. That doesn't look like anxiety on Hearst's part. Moreover, Hearst never refused to deal with the Newspaper Guild. The issue between them was the preferential shop. After negotiations with the Guild, Hearst posted a bulletin board agreement which provided for improved working conditions and pay increases. Hearst again negotiated with the Guild at the time the *American* folded up and agreed to certain important concessions.

As for the "pliant union" accusation leveled at the C.A.D.U., did your editorial writer happen to notice that for more than four months the union had been conducting a strike at the Fleischer Studio—the producers of the animated cartoons, Popeye and Betty Boop? Did he read of the innumerable arrests, the daily mass picket lines, the nation-wide boycott against Fleischer pictures released by Paramount, the many other strike activities which the union is carrying out, that is making this, the first strike of organized artists, a mark for other "white-collar" unions to aim at? You won't call that pliant, would you?

In all fairness, we ask that you make known to your readers that you retract your characterization of the Commercial Artists' & Designers' Union and point out the true facts in the matter.

JAMES HULLEY, President,
Commercial Artists' & Designers' Union,
New York. Local 20329, A. F. of L.

Woodcut by Helen West Heller

REVIEW AND COMMENT

Today's labor leaders—The art of warfare—A worker's life and Marxism in science

THE most important news in the book world this fall is the appearance of good books at twenty-five and thirty-five cents apiece. At last a publisher has had nerve enough to break through the hidebound traditions of the business. Books at two and a half, three, and four dollars have long been an anomaly. Prices have stayed high, in spite of constantly improving methods of production, simply because publishers have preferred the safe method of selling to fewer people and getting a larger profit on each book. Now Modern Age has dared to try to break through the really ridiculously small circle of book-buyers. This company is pricing books for the millions, with faith that the millions will buy.

And it is highly encouraging to find on Modern Age's first list such a book as *Men Who Lead Labor.** Readers of the NEW MASSES know its authors: Bruce Minton, for some time an editor, has written many articles on labor struggles, and John Stuart, formerly editor of *Health and Hygiene,* has also contributed to this magazine. Both of them are now in Spain, and soon will be reporting to us on their observations.

Men Who Lead Labor is the story behind the stories you read every day in your newspapers, and it tells you what you need to know to understand the day-to-day accounts. It is about leaders, but leaders as Marxists understand them, that is, as men who represent groups and forces. The book does not underestimate the reactionary influence of William Green as an individual or the progressive influence of John L. Lewis, but it does not reduce their actions to idiosyncracies and whims. It shows what these men and others stand for, and why they are succeeding or failing.

It is, therefore, a history and an interpretation of the American labor movement. We all know what kind of man William Green is, and the question is why a man of that particular caliber happens to be president of the A. F. of L. We know that Lewis was once a reactionary, and we want to know why he is now a progressive. We are all acquainted with the Heywood Broun of the Algonquin Club; how was he transformed into the fighting president of the Newspaper Guild? Before Edward McGrady was called to higher things, he was always appearing in the headlines as the administration's trouble-shooter; what were his qualifications for the job, and why were his traits useful to Madame Perkins?

These are the questions that *Men Who Lead Labor* answers. It tells you how the craft unions developed, how racketeering came into the picture, what the C.I.O. is trying to do. It tells you what the government has and has not done for labor. It tells you about the predicament of the middle classes, the position of the Negro, the history of the sit-down strike, the use of labor spies, and the rise of vigilanteism. It describes the San Francisco general strike and gives you the background of the present situation in the maritime unions.

The chapters of the book are devoted to Green, Hutcheson, McGrady, Lewis, Broun, A. Philip Randolph, Harry Bridges, and a group of leaders in such C.I.O. unions as the United Rubber Workers, the United Automobile Workers, the I.L.G.W.U., the Amalgamated, and the United Textile Workers. The book gives you a sense of the personality of each of these men, tells you a lot you never knew about their past, and fits them into the pattern of today's struggles. This is no psychoanalytic rigmarole, but a straight story that makes sense. You will not find out much about their complexes, their love life, their taste in dress, or their views on Wally Windsor, but you will see them as real persons and understand where their power comes from.

If there is a fault in the book, it is at least a fault on the right side. Minton and Stuart have loaded some of their pages pretty heavily with information about the labor movement. I wish, for example, that there were not that solid block of facts about white-collar workers in the chapter on Broun. I wish A. Philip Randolph had not been forced to carry a burden of data about the Negroes, other racial minorities, working women, and child labor. I know the facts are important, but I believe that, if Minton and Stuart had looked a little more steadily at Broun and Randolph, and told their stories a little more carefully, they would have made the information they convey even more significant. I wish, in other words, that the exposition of economic conditions were always as firmly integrated with biographical material as it is in the article on Bridges. That is a fine job that does not sacrifice either the man or the movement but makes each help to interpret the other.

I hesitate to complain about the Broun and Randolph chapters, not only because the others are so good, but also because I may be wrong. Certainly there are thousands of people in this country who want just the information that is in *Men Who Lead Labor,* and they are very foolish if they don't spend thirty-five cents to get it. But if I am right, it is worth saying. We need first-rate labor reporters, and Minton and Stuart are so well on the way that even minor faults are worth paying attention to.

GRANVILLE HICKS.

Charles Martin

* MEN WHO LEAD LABOR, *by Bruce Minton and John Stuart. Modern Age Books, 35c. Book Union selection.*

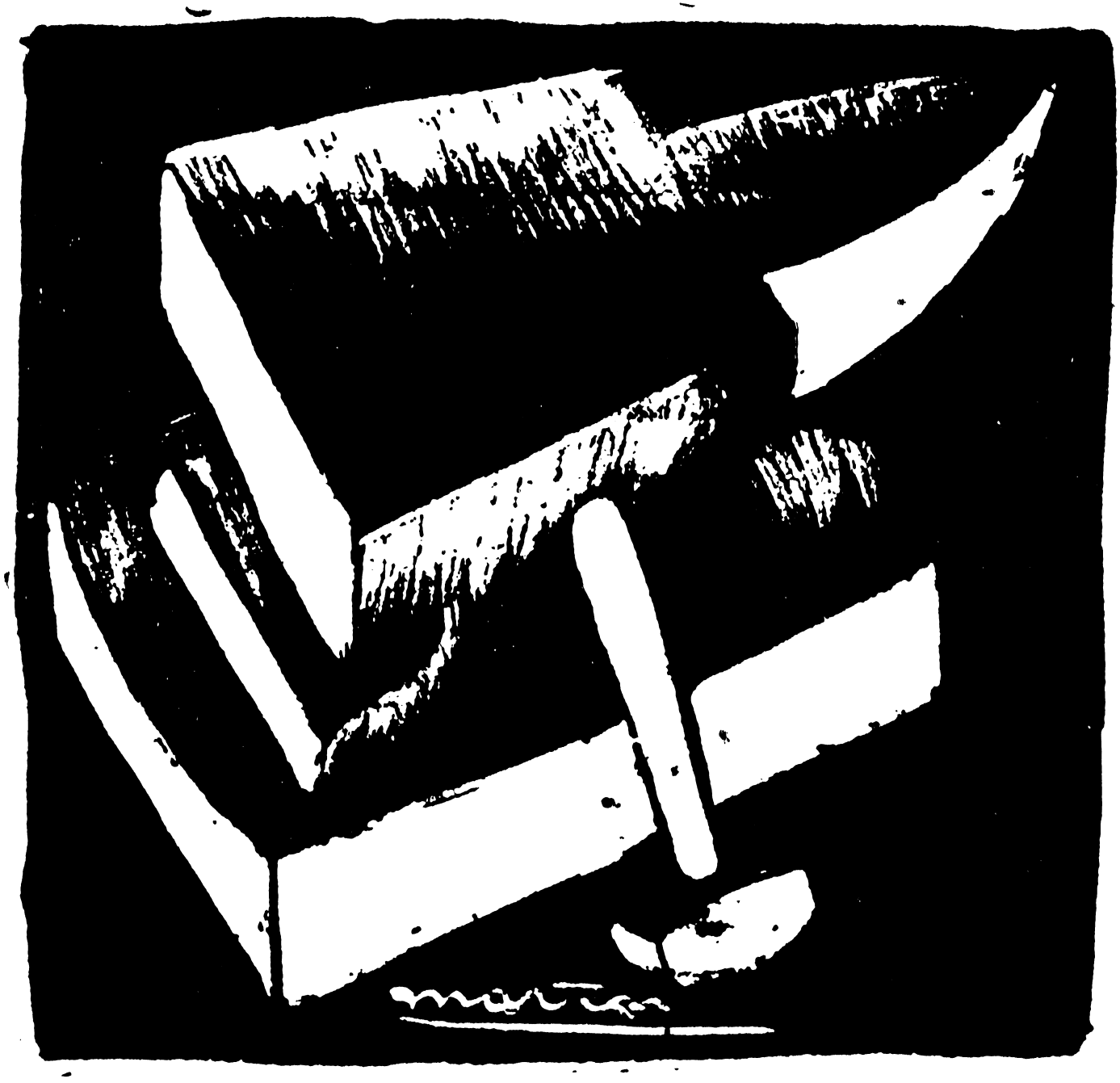
Military Strategy of Future Wars

EUROPE IN ARMS, *by Liddell Hart. Random House.* $2.50.

THE study of war, like all human affairs, has its conflicting schools of thought, its changing conditions, and its flux of fashions. In some periods, especially those following a notable conqueror, like Napoleon, the strategy of conquest is apt to become static. The professional practitioners of mass slaughter are then occupied with assimilating the lessons forced upon them by their successful competitors. It takes time to master the new strategies, and army commands are notoriously pigheaded. Meanwhile, new machines of destruction are invented. The old patterns become inadequate to cope with the new material conditions. Another period of transition begins. Younger men, less fettered by tradition, begin to balk at the procedures sacred to their more highly-placed elders. And critics like Captain Hart, irreverent, impatient, and equipped with the latest technical knowledge, write books like *Europe in Arms.*

For *Europe in Arms* is far more than a study of men and machines in the armies of the major powers. It is rather an effort to present an integrated picture of the high strategy of the future war as that strategy is brought into line with the material conditions of the present. It is based on the proposition that the conduct of war, as generalized by Clausewitz and pursued by general staffs until and including the war of 1914-18, is now hopelessly dated, that new conceptions of the problems of offense and defense are necessary. Bitterly caustic of the present state of affairs in the leading military circles of Europe, the author advances a new pattern for more effective future slaughters.

As Captain Hart sees it, the reigning conception behind military strategy of the past was summarized by Napoleon: "Providence marches with the big battalions." This school of thought maintained that victory in battle depended mainly on superiority in numbers. With the French Revolution, mass popular armies displaced private mercenary formations. During the World War, enormous stretches of front were defended for months on end by huge armies, while the losses of a single campaign, even a single day, were frequently frightful. Advances were made slowly and



Charles Martin

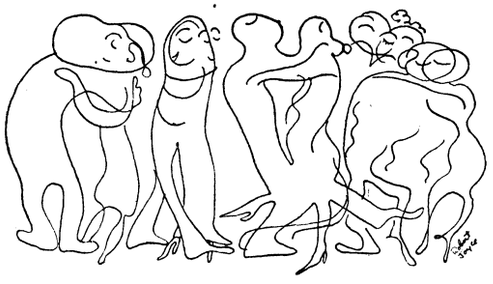
painfully, at least until the crack-up of the German army. The basis of the army was still the infantry, and positions had to be taken by men on foot, though the way might have been prepared by artillery fire or aerial bombardment. Those men on foot were transported to the front by mechanical means, railroads or trucks, but once at the front they dug into trenches and fought battles for inches.

Captain Hart believes that this type of warfare is outmoded. After a lengthy review of the Italo-Ethiopian war, he comes to the conclusion that "mass has become a dangerous encumbrance when the attempt is made to concentrate it on the fighting front. Under modern conditions, and especially the growing menace of air attack, the larger the army the weaker a country may prove in war. Technical quality counts, not drilled quantity." Now, Captain Hart's army would be based on machines rather than men. The time factor becomes decisive. The armies of the major powers are evenly matched. Victory cannot come to any one side except by way of exhaustion of the other. But the method of exhaustion is long, agonizing, and dangerous for both sides.

The greatest lesson of the last war, Hart maintains, was "that no attack on an enemy in action was likely to succeed unless his resistance was already paralyzed by surprise in some form." This element of surprise may be achieved through the use of "obscurity," meaning attack under cover of darkness or fog; "tempo," meaning attack so speedy that the opponent is taken at an initial disadvantage owing to lack of preparation or mobilization; or "mobility," meaning attack over an extensive front to find holes in the defense by fast, hard-hitting weapons such as planes.

It remains to be said that Hart's general theory emphasizes the alleged superiority of the defense over the offense in modern war. The machine gun, in this respect, played a decisive role; one man so armed was the equal of tens, and, under certain conditions, hundreds, in the last war. A common illusion that follows every military invention is the notion that the attack will be so much the stronger. It is forgotten that the same weapon, used by the defense, will be much more effective. This was the experience in the use of the machine gun, gas, tanks, and capital ships. Captain Hart suggests that the most effective offense is one based on defensive tactics. He uses the term "baited offensive" to mean an attack which is prepared by striking at and seizing a point which the enemy will be forced to regain by attack. What was offense now becomes defense, with a consequent increase in chances for success. The loyalist offensive at Brunete some time ago was just such a "luring defensive."

This whole theory of warfare is cast in the form of a critique of Great Britain's military preparations, though the book discusses the armed forces of all of the major powers of Europe. In applying his theories to the British Empire, he comes to the conclusion that no preparations should be made for landing an expeditionary force on the Continent.



Robert Joyce

British allies should be aided only by air and sea, while the armed forces should be used exclusively as an "imperial reserve," prepared to defend the empire at its many points of strain.

It will be seen that Captain Hart argues strictly from the viewpoint of the imperialist determined to keep all the booty he has succeeded in grabbing. Nevertheless he distrusts fascist ideology and devotes a chapter to ridiculing General Ludendorff's recent book on the "totalitarian war." In one place, he suggests that Britain's armed forces could be scaled down on the basis of collective security, should such a basis be realized. He speaks unkindly of the Laval ministry for having aided Italy's conquest of Ethiopia and her defiance of the League. His contribution to military thought is strictly bounded by his class allegiances. The military problem is set by political considerations: "the only essential requirement [for Great Britain] is to maintain forces sufficient to defend, and maintain order in, her overseas territories." Captain Hart is no different from any other military man in the capitalist world, for all his contempt of most of them, in that he, too, spends no time on what the overseas territories might think of the matter.

It is in this light that some questions, naturally posed by the book, are not answered. Consider the problem of the mass army. Captain Hart is so certain that numbers contribute nothing more than additional confusion that he would tend to narrow down his army to a corps of specialists. He generalizes on this score without realizing that the whole conception rests on a class, as much as a technical, basis.

In a supplementary chapter on Spain, he writes that "fighting spirit itself is a factor of diminishing importance," despite the fact that only the fighting spirit of the mass saved Spain from complete subjugation by the insurgents at the very outset. He does not even deal with this aspect of the war. Nevertheless, is it not a partial test of his theory? Were not the rebels overwhelmingly better armed, and was not the additional element of surprise in their favor? It is now a matter of history that unarmed and wretchedly armed workers saved Madrid and Barcelona. True, many more lives were lost than would have been necessary had both sides been equally armed. But the fact remains that a heroic people, fighting for an inspiring cause, has a weapon which, under certain conditions, is unconquerable. The same is true of the struggle of the Chinese masses today. This does not mean that unarmed masses can for a protracted period successfully defend themselves and their cause against armed mercenaries. But it is important to read the lessons of the struggle for freedom somewhat differently from those of wars of enslavement. Without the active support of the broad masses, the Bolshevik revolution would have been strangled by the interventionists. Captain Hart never refers to this type of war.

No wonder then that imperialist military theoreticians, like Hart, ponder the lessons of the last imperialist war and come to the sad conclusion that imperialism needs short wars for its own preservation. By far the least satisfying portion of his book is a concluding chapter entitled "Would Another War End Civilization?" He is vaguely optimistic about the whole matter, for he simply finds it impossible to face the prospect of a protracted war. Such a war raises most sharply the whole problem of the social and economic bases of every participant. It tests a social order as does no other crisis. Captain Hart admits that the defeat of Germany was due to social and economic, rather than military, forces. But never once does he explore the implications of this statement. Here lies the chief blind spot of one of the most talented and informed contemporary military minds. His interpretation of "arms" coincides too closely with that of "armament" and its uses.

But *Europe in Arms* raises questions which can be settled only by social, economic, and political, as well as military, considerations. Japan's present war upon China offers abundant proof of this. Without this insight, every imperialist-minded student of war, no matter how well-informed and keen-minded, is bound to end up in confessions such as this: "Reflection on these conditions suggests that there is only one safe prophecy about the next war —or that the safest prophecy is—that it will prove a greater muddle than the last. That it will begin in confusion and end in chaos."

THEODORE DRAPER.

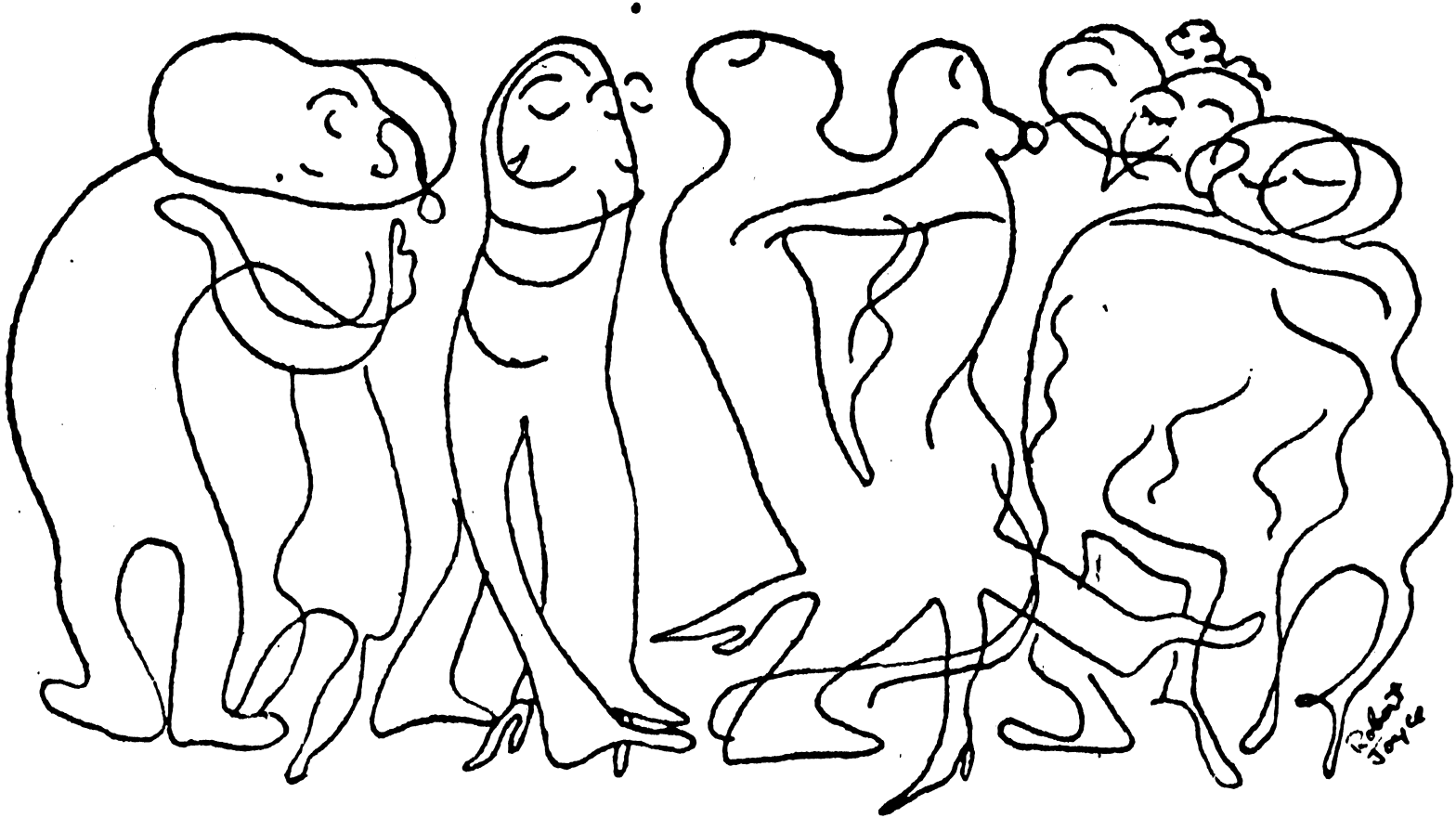
Everyday America

WHITE MULE, *by William Carlos Williams. New Directions.* $2.50.

"HOW," Dr. Williams once asked, "in a democracy such as the United States, can writing which has to compete with excellence elsewhere and in other times, remain in the fold and be at once objective (true to fact), intellectually searching, subtle and instinct with powerful additions to our lives?"

Dr. Williams has been identified with two schools of poetry, imagism and objectivism, which, in their time, attempted to answer this question. The aim of the objectivists, the extreme branch of the imagist school, is to isolate the object through the objective word. The objectivist attempts to present an empirical view of phenomena and to depict experience within this minimum frame. He generally succeeds in the writing of minute, descriptive observations of surfaces and movements.

That Dr. Williams, in his poetry, has ac-



Robert Joyce

The HEART of SPAIN is bleeding

HUNDREDS OF THOUSANDS of little innocent children are today the victims of cruel fascism. Italian and German invaders drop death from the skies into playgrounds, schools and homes. Over 200,000 children in Madrid alone live in the shadow of destruction. Every fascist air raid takes its toll of innocent lives.

The North American Committee to Aid Spanish Democracy has undertaken the task of establishing homes in the hills of Catalonia and the suburbs of Valencia where these helpless children can be cared for and where they will be safe from the fascist invaders. Already five homes have been established by American generosity—but many, many more are needed.

PROFESSOR ALBERT EINSTEIN in a letter to Bishop Francis J. McConnell, "I wish to lend encouragement to the wonderful work you are doing for the maintenance of Spanish freedom. In my eyes it is an absolute duty for all true democrats. Let me assure you that the cause for which you are working lies deeply embedded in my heart."

PLEASE GIVE A HELPING HAND TO THE CHILDREN OF LOYALIST SPAIN

The democratic people of Spain turn to America for aid. They can now move these children from war-torn areas to shelter, safety and happiness.

The government has taken over fine buildings such as castles and beautiful homes filled with sunshine. The homes are fully equipped to house, feed, clothe and educate children in groups ranging from twenty to eighty. All that is required to open the doors to the little refugees is YOUR CONTRIBUTION.

If you can spare $1.00 or more you can help tremendously. Send your contribution NOW. Tonight you can say "This Day I Have Done My Part. This Day I have Saved a Baby's Life."

$550.00 will equip a home for 20 war orphans.
250.00 will equip bedrooms for 20 war orphans.
180.00 will maintain a home for 20 war orphans for 1 month.
100.00 will equip a kitchen and office for 20 war orphans.
50.00 will equip a classroom for 20 war orphans.
30.00 will provide equipment for 1 war orphan.
12.00 will equip an infirmary for 20 war orphans.
9.00 will maintain 1 war orphan for 1 month.
4.00 will maintain 1 war orphan for 2 weeks.
2.00 will maintain 1 war orphan for 1 week.
1.00 will maintain 1 war orphan for half a week.

NORTH AMERICAN
COMMITTEE TO AID
SPANISH DEMOCRACY
381 Fourth Avenue, New York, N. Y.

Gentlemen: Here is my contribution to aid the many innocent child victims in Spain.

Name.....

Address.....

$.....

DR. NORMAN BETHUNE, world-famous child specialist of Canada, who just returned from Spain says: "There were thousands of children along the road. We counted at least 5,000 under ten years of age, at least 1,000 of them barefoot and clad only in single garments. They staggered and stumbled with cut and bruised feet along the white flint road, while German fascists machine-gunned them from the air and from the sea."

complished this and much more, and proven himself one of America's few outstanding poets, is due less to his advocacy of objectivist theory than to his native poetic strength and realistic insight.

In his crusade for the true fact in poetry, Williams discarded sentimentality, which was unreal, for the "anti-poetic." He gained thereby a clear, precise image and a firm poetic line, but, in extreme reaction, he minimized the conceptual, imaginative role of the poet. In his search for truth about America, he sought a language that did not lie. But truth is not merely a linguistic problem but also an ontological one. Essential to an understanding of Williams's achievements, however, is that he looked for poetry in the "factual" word, and in this respect his words became alive and real.

Blending the haphazard notations typical of his former prose work with the precise, polished qualities of his poetry, he has in *White Mule* crystallized and developed a fluent diction which captures the bare movements of reality; he has fashioned a verbal tool, which dissects the object like a surgeon's scalpel, and created an original style of his own, and he has unhooked the grammatical apostrophes of literary dialogue and established more flexible conversational patterns, capturing individual forms of speech, contrasts in dialect, and the simultaneity of speech and movement.

White Mule describes the life of an ordinary man, his domestic and work-day affairs, and pictures it with understanding and almost clinical observation. The novel tests a common man in common crises. Williams makes no attempt to underscore situations. In keeping with his literary theories, Williams is content with limiting an ordinary event in precise and essential outlines. The novel grows out of a series of sketches of the domestic and industrial life of poor people; a baby's birth and illness, a visit to the doctor, infants at play, kitchen drudgery, work in a printing plant, a strike, the desultory conversation of visiting relatives, etc. Williams gives literary significance and stature to the simple, apparently trite and unimportant occurrence by properly selecting and presenting details which bring into vivid relief objects and movements in the drab, anti-poetic routine of daily life.

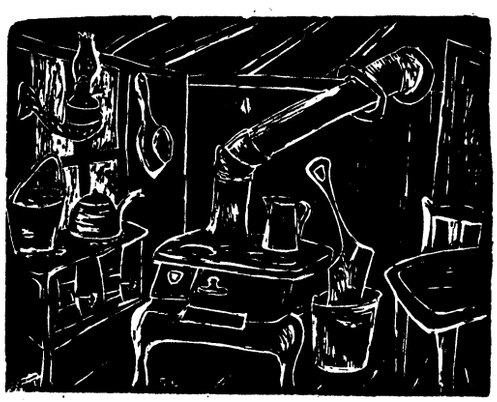
As one learns, in the daily orbit of living, through chance meetings, through snatches of gossip, and from rambling conversations among acquaintances, the story of a friend's life, so Williams, through sketches of Joe Stecher's humdrum existence, unfolds and reveals the story of *White Mule*. It is a familiar theme in American literature, the tale of a European with peasant antecedents, who attempts to adjust himself in a new world. Joe Stecher is an ambitious, skilled, hard worker, living in an America at the peak of economic expansion. He is imbued with love of his work for its own sake and the cardinal belief that men should work hard and honestly and be well paid for it. For Joe, seeking new roots for old, this must be America's meaning. Joe is a figure, already outmoded in American life, of the pure and simple trade unionist.

For Williams, as he has stated elsewhere, America is essentially a land of labor, of the thrifty, honest, and industrious Poor Richard, colonial progenitor of the modern Yankee; and Joe, Williams's analogy, an honest, conservative unionist with vaguely defined democratic ideas, sees this tradition become emptied of meaning for him.

Joe is essentially a moral man in an unmoral society, who is confronted with the problem of living up to the standards he has set for himself. Professional pride in his work, his simple peasant-bred morality of honesty and hard work, alienate him from his fellow printers. A former co-worker of Gompers, he becomes disgusted with the corruptness of the union officialdom and scabs in a strike. He vacillates between his sympathies for labor, his contempt for trade-union bureaucrats and politics, and his hatred for the brigands of big business. As a result he becomes confused and disillusioned with America. His shrewd, aggressive wife prods his ambitions. Everybody's dishonest, it's the way to make money, that's all that counts, she argues, and Joe is led to accept this philosophy of success. He becomes involved in the financial schemes of his employers and eventually plans to betray them and set up a business of his own.

It is too early to hazard a final judgment concerning Joe's tenets; they are as yet unresolved and his story incomplete, for *White Mule* is only the first book of a series. The direction in which Joe travels depends upon Williams's own understanding and resolution of his theme.

However, in presenting his character as a figure out of America's past, I think Williams offers a clue to his own viewpoint. Joe's position as a skilled workman is analogous to Williams's place as a professional in society. Williams's very theory of objectivism is an outgrowth of this relationship. Objectivism is less a philosophy than a poet's adaptation of pragmatism, the ideological fortress of the American professional and middle-class groups. The detached, empirical outlook of the pragmatist is the typical *Weltanschauung* of the middle-class individual, trained to embrace an objective, impartial viewpoint concomitant with the liberal-democratic tradition. It is an attitude that has revealed considerable weakness in the political and social conflicts of the past few years.



Sid Gotcliffe

It is clear that Williams is attempting to reëvaluate America and thereby determine his own viewpoint. The problems of Joe, the artisan, and Williams, the writer, are not problems of mechanics and literary craftsmanship, but problems of a particular way of life. Therefore, to define Williams's work as primarily that of a craftsman is to reduce his work to a technical exercise in wordsmanship and to minimize the nature and value of his contribution. Williams's very use of the word, his selection of the anti-poetic and commonplace as literary norms, is an attitude toward reality. In championing the objective word, Williams himself has consistently held the position of a writer devoted to his art as a means of grasping and conveying truths, as well as a source of æsthetic and creative pleasure. It appears then that, in seeking the truth of America in the commonplace, Williams hopes to find a new direction in the lower levels of American life. His original talent for vivifying these humbler experiences in *White Mule* marks the book as the most successful expression of his quest and as a contribution to our literature of a more valid portrait of everyday America.

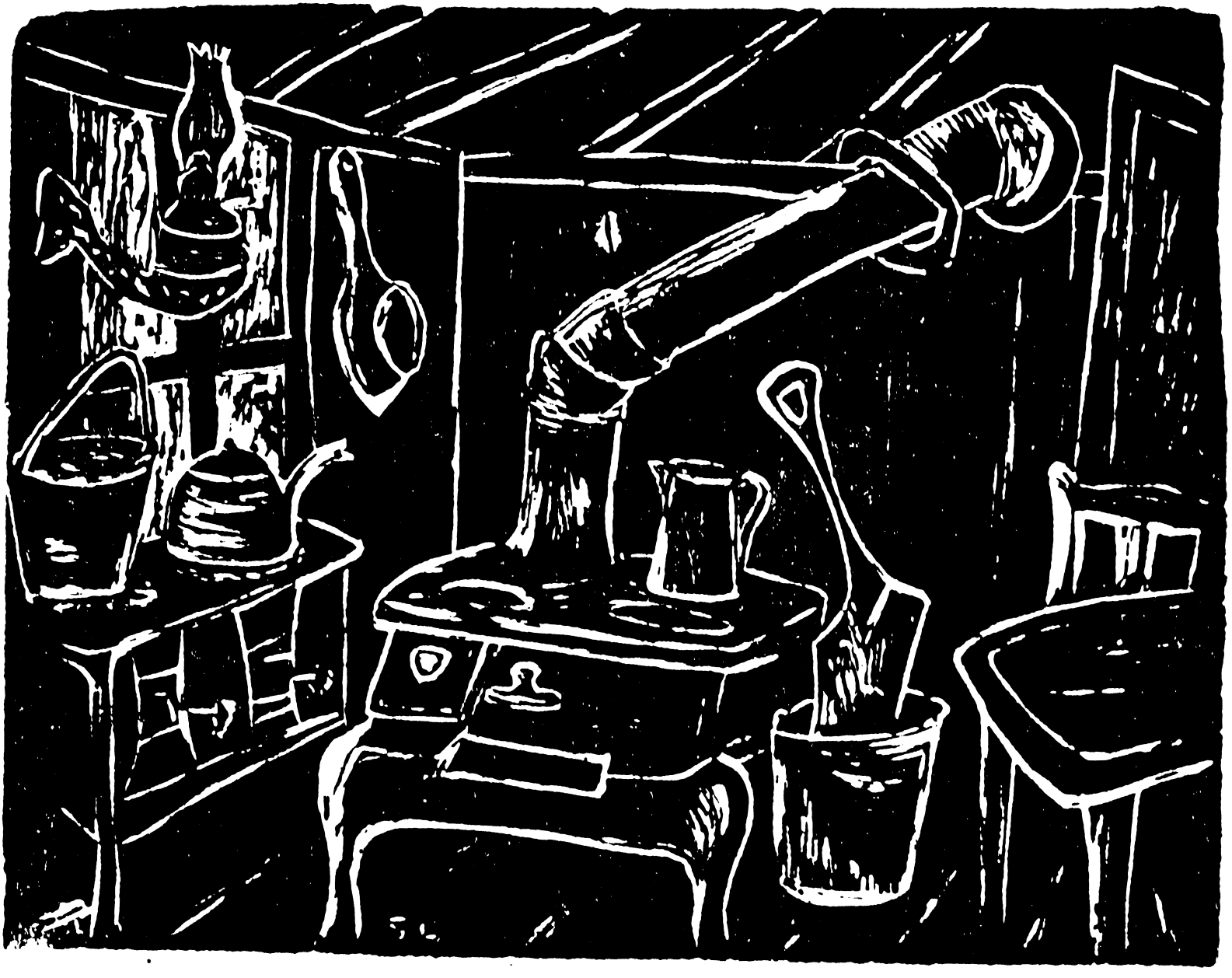
S. FUNAROFF.

Marxist Scientists

SCIENCE AND SOCIETY: A MARXIAN QUARTERLY. Vol. 1, No. 4. 35c.

IN less than one year, *Science and Society* has succeeded in creating and maintaining a standard of Marxian scholarship and critical discussion which has won the respect of qualified students in a wide number of fields. Each of the four issues which comprise the first volume has, with increasing force, lived up to the admirable purposes announced editorially in the first number. The magazine quickened and organized the growing interest of American intellectuals in the application of dialectical materialism to various branches of theoretical discourse. It brought to the fore a number of distinguished writers whose concern with Marxism had previously found no extended expression, and it introduced the work of younger people who had been denied access to the old-line type of academic journal. *Science and Society* has clearly earned for itself an important and permanent place in the cultural life of America.

The fourth issue, just off the press, includes six main articles, as well as three communications and a review section. Antonie Pannekoek, the noted Dutch astronomer whose prewar polemics against Kautsky won favorable comment from Lenin, contributes a general study on "Society and Mind in Marxian Philosophy." "A Dialectical Account of Evolution" was written by Professor J. B. S. Haldane in Madrid, where he supervised the defense against possible gas attacks. Joseph Needham and Corliss Lamont contribute toward a discussion of religion. Earl P. Hanson, formerly a member of the Puerto Rico Re-



Sid Gotcliffe

construction Administration, analyzes "The Dilemma of Puerto Rico." Granville Hicks discusses the literary opposition to the Benthamite tradition of nineteenth-century English thought. And Herbert Aptheker offers a firmly documented study of "American Negro Slave Revolts."

Each of the essays illustrates, in its own way, the kind of advance which Marxists can make over orthodox academicians. For example, the study of Negro rebellions before the Civil War has, for obvious reasons, either been almost entirely neglected by American historians, or else, when treated, has been fairly consistently distorted. Mr. Aptheker discusses the subject fully, for the first time, with candor and understanding. By examining the content and social repercussions of utilitarianism in the light of historical materialism, Mr. Hicks traces the organic relations of such key figures as Coleridge, Carlyle, Kingsley, Dickens, and Disraeli. Mr. Hanson's essay shows, by contrast, how feeble any evaluation of the Puerto Rican problem must be, which fails to take into account the nature of American imperialism.

The latest issue of *Science and Society* has one important advantage over its predecessors. Without sacrificing sharpness of analysis, it succeeds in making all its material available to the general reader. A certain stiffness of manner, which one sometimes noted in former essays, is happily absent here. One of the most significant achievements of *Science and Society* is the fact that it is helping to break down the barrier which removes the scientific specialist from the intelligent layman.

WALTER RALSTON.

★

Recently Recommended Books

American Stuff, An Anthology of Prose and Verse, by Members of the Federal Writers' Project, with Sixteen Prints by the Federal Arts Project. Viking. $2.

Spy Overhead: The Story of Industrial Espionage, by Clinch Calkins. Harcourt, Brace. $2.50.

One Life, One Kopeck, by Walter Duranty. Simon & Schuster. $2.50.

The Guggenheims, by Harvey O'Connor. Covici-Friede. $3.

The Life and Death of a Spanish Town, by Elliot Paul. Random. $2.50.

Shadow on the Land, by Thomas Parran. Reynal & Hitchcock. $2.50.

Ten Million Americans Have It, by S. William Becker, M.D. Lippincott. $1.35.

Moscow, 1937: My Visit Described for My Friends, by Lion Feuchtwanger. Viking. Book Union choice. $2.

The Profits of War, by Richard Lewinsohn. Dutton. $3.

After the Genteel Tradition, edited by Malcolm Cowley. Norton. $2.75.

Home Is Where You Hang Your Childhood, by Leane Zugsmith. Random. $1.50.

Integrity: The Life of George W. Norris, by Richard L. Neuberger and Stephen B. Kahn. Vanguard. $3.

A Maverick American, by Maury Maverick. Covici-Friede. $3.

The Making of a Hero, by Nicholas Ostrovski. Dutton. $2.50.

SIGHTS AND SOUNDS

A documentary on medical aid to Spain and two distinguished imported films—New trends in radio

AUDIENCES interested in better and more liberal cinema, both here and in France, seem to be realizing their demands. The number of such films on current display in New York is greater than ever before. And the 55th Street Playhouse, which played host to *Spanish Earth* (which, by the way, has moved into the larger Squire Theater, Eighth Avenue and 44th Street, for an indefinite run) is now showing two extremely important and beautiful (both in their own way, of course) films. The feature is from France and is Jean Renoir's realization of Gorki's *The Lower Depths* (Mayer & Burstyn). The accompanying attraction is the Frontier Film production, *Heart of Spain.*

Heart of Spain has been rightly advertised as "thirty minutes of pictorial dynamite from Spain." It is composed of documentary material taken by Herbert Kline and Geza Kapharti (a young Hungarian cameraman) in Spain for the Canadian Blood Transfusion Unit and the American Medical Bureau. It was edited into a dynamic motion picture by Paul Strand (of *Redes*) and Leo Hurwitz. Contributing greatly to the success of the film is the commentary written by poet David Wolff and Kline.

Basically *Heart of Spain* sets out to illustrate the remarkable work of Dr. Norman Bethune and his Canadian group in saving the lives of hundreds of wounded by means of transfusing blood that has been refrigerator-stored. But it is also a testimonial to the brave Spanish people who are giving their blood so that their defenders may live. In addition it makes the generalizations about the Spanish conflict that have been made by its distinguished contemporary, *Spanish Earth,* to which it should not be compared, because they are films of a different *genre. Heart of Spain* represents the work of a group of young film makers about whom America will hear a great deal in a short time. The excellence of this film clearly demonstrates that.

The Lower Depths is the work of a great director using a great play as the basis of a magnificent film. Naturally the emphasis of the play has been shifted to suit the needs of the scenario. The grouping of many of the characters has been shifted and the scope of the play, physical and literary, has been increased. Although the characters still bear their Russian names and (for instance) they still talk about "rubles," the spectator never gets the impression that he is seeing a Russian movie, or what is worse, the French version of a Russian movie. While Gorki's story no longer applies to contemporary Russia, the theme (in Renoir's own words), "a heart-rending, thrilling, lyrical poem on the loss of class, human wastage, and the loss of human dignity," represents a true situation in other countries, especially the fascist.

There are many extraordinary things in the film and there are occasionally some weak spots. These may be due to the transcription or they may be due to the limitations set by the commercial producer. The so-called "happy ending" is a case in point. But Renoir succeeds in doing it with his tongue in his cheek. Many of the characters have been softened. But on the whole it is a further indication of Jean Renoir's artistry although it may not be as satisfying to some as his earlier *Toni.* At any rate the play that Gorki wrote thirty-four years ago has been transformed into a powerful contemporary social film.

"I think I really would have enjoyed the picture if I hadn't known it was made in Russia."

Mayerling (Pax Film) at the New York Filmarte is another importation from France. It is the work of Anatol Litvak, who is now directing *Tovarich* in Hollywood, and serves to introduce the lovely Danielle Darrieux. Based on a historical incident, the supposed suicide pact between Archduke Rudolph of Austria (Charles Boyer) and Baroness Marie Vetsera (Danielle Darrieux), it is merely a well produced and acted romantic drama that sacrificed realism for no reason at all. A realistic treatment of the archduke's story would have made just as "interesting" a film and certainly a more important one.

The fact that *Mayerling* is tender and very moving doesn't increase its importance, especially when compared with the other films that are its contemporaries. On the same program you will find an interesting little short, produced by the Film and Photo League, called *Getting Your Money's Worth.* It was produced with the coöperation of Consumers' Union and does a great service to all consumers as well as increases the number of fine independent films.

For the rest we have a remake of the *Prisoner of Zenda* (United Artists) which hasn't improved with age in spite of the fact that it contains Ronald Coleman and Madeleine Carroll in the leading roles. *Double or Nothing* (Paramount), *Broadway Melody of 1938* (M.G.M.), *Thin Ice* (20th Century-Fox), are conventional musical films that do not even reach the standard of *You Can't Have Everything.*

PETER ELLIS.

RADIO

THERE are a couple of straws in the wind which may indicate some relief from the flood of guff from commercial sponsors, which has made radio well-nigh intolerable for listeners. It would be too much to hope that there will be anything like complete freedom from the bore of commercial plugs, but there are signs which may foretell some mitigation. That the revolt of the listener is at least latent has already been recognized by some stations and some sponsors, as witness the successful enterprise of WQXR in New York, which broadcasts hours of fine music unsullied by encomiums for Puppee Dee Lite dog food, and the tremendous success of the Shakespeare, O'Neill, and other unsponsored dramatic programs. In a few cases sponsors have had the wit to put over the name of their product by having comedians spoof it so that the plug itself is entertaining. And, of course, there was that pioneer safety-valve for listener revolt, the Cuckoo Hour.

But now from Detroit comes news that sponsor and station have agreed to cut down the ad plugs of Wheaties because the commercial blurbs for this product in connection with broadcasts of the Detroit Tigers' baseball games produced an actual listener revolt which broke into the local papers. This is reported

"I think I really would have enjoyed the picture if I hadn't known it was made in Russia."

to have thrown such a scare into sponsors that the program editors of stations and advertising agencies have been able, contrary to the situation hitherto, to talk turkey to sponsors about keeping their plugs at a minimum to maintain listener interest. Let's hope the revolt sweeps the country.

Something which may help it along is *Poisons, Potions, and Profits,* a book by Peter Morell which exposes misleading radio advertising and names names in so doing. The book quotes air advertising sales talks of various well-known products, and analyzes them for falsehoods, referring to laboratory reports on the products much in the manner of Consumers' Union reports. And although newspapers and radio have for a long time been at swords' points as competing advertising mediums, the press has come galloping to the rescue of radio in this connection by cracking down on publicity and advertising for the book. In New York the *World-Telegram, Times,* and *Herald Tribune* are reported to have rejected advertisements for Morrell's exposé. This is done, of course, not out of any love for radio, but because the book attacks concerns which are also newspaper advertisers. But if the book gets the sale it deserves, it will help a lot to intensify the listener revolt against false and excessive plugs.

With the replacement of Bishop Gallagher by Bishop Mooney as the head of Father Coughlin's diocese, there has been some talk that the fascist-minded cleric's wings will be clipped. This talk is to the effect that Bishop Mooney, who hails from Rochester, has always been something of a mouthpiece for the Holy See, and that the Holy Father wants to tone down Coughlin's ravings. That remains to be seen. Meanwhile Coughlin is getting ready to resume Sunday broadcasting over some fifty stations beginning October 31.

ROBERT WHITE.

Peter Verdi

Peter **Verdi**

CLASSIFIED ADS 40c a line

6 words in a line **3 lines minimum**

BUSINESS MANAGER WANTED

REPRESENTATIVE WANTED: one who can qualify in Business Promotion Publicity for Dramadance Project. Nominal salary guaranteed. Write stating qualifications to Bovingdon, Dramadance Workshop, 6 West 28th Street, N. Y. C.

DANCING

MERRY-MAKERS' DANCE SOCIALS, every Saturday and Sunday Nite, starting Sept. 25th. Hotel Imperial Ballroom, Broadway and 32nd St. Subscription: 40c.

PLAY TABLE TENNIS

PLAY TABLE TENNIS (Ping-Pong) at the Broadway Table Tennis Court, 1721 Broadway, bet. 54th-55th Sts., N. Y. C. One flight up. Expert instruction, open from noon until 1 A. M. Tel.: CO 5-9088.

PIANO TUNING

PIANO TUNING, regulating and repairing. Tone restoring and voicing. Excellent work. Ralph J. Appleton, 247 West 34th Street. Tel.: LOngacre 5-5843.

FREE MUSICAL CONCERT

THE BEST IN RECORDED MUSIC can now be heard at Workers Bookshop, 50 E. 13th St. Daily programs between 1—2 p. m. and 7—8 p. m. Records courtesy of N. Y. Band Instrument Co., 111 E. 14th St. This week: SELECTED WORKS OF BRAHMS.

RARE MAGAZINES

USSR IN CONSTRUCTION (Metro Subway Number-out-of-print). Special, $2.25 p.p. Send Money Order to M. Zobel, 866 Kelly Street, Bronx, New York.

CIRCULATING LIBRARY

WORKERS BOOKSHOP Circulating Library, 50 E. 13th St., now fully restocked with latest and best books. Join today. Nominal fees.

FREE LECTURE

"THE PRESENT SITUATION IN CHINA," an illustrated lecture by Harry Gannes; tickets free by purchase of 1c and up at Workers Book Shop, 50 East 13th Street. Irving Plaza Hall. Fri., Oct. 8th, 8 p. m.

MAILING SERVICE

COMPLETE MAILING SERVICE: We are prepared to handle your Printing, Multigraphing, Mimeographing and Mailing needs. Quick service, low prices, any quantities. **MAILERS ADVERTISING SERVICE, 121 West 42nd Street, N. Y. C. BRyant 9-5053.**

Ruth Gikow

Forthcoming Broadcasts

(Times given are Eastern Daylight, but all programs listed are on coast-to-coast hookups)

Constitution Day Program. Addresses in commemoration of the 150th anniversary of the signing of the Constitution by Senator Vandenberg, Fri., Sept. 17, 2 p.m., N.B.C. red; Secretary Henry A. Wallace, Fri., Sept 17, 9:30 p.m., N.B.C. blue; and President Roosevelt, Fri., Sept. 17, 10:30 p.m., N.B.C. blue and C.B.S.

William Green. The president of the A. F. of L. talks on the labor situation, Fri., Sept. 17, 11:30 p.m., C.B.S.

Symposium on World Economic Problems. Secretary of State Cordell Hull will speak from New York; Prime Minister Camille Chautemps from Paris; Premier Paul van Zeeland from Brussels; Prime Minister William L. Mackenzie King from Ottawa; Chancellor Kurt Schuschnigg from Vienna; and President Alfonso Lopez from Bogota, Colombia, during a symposium on world economic problems arranged in coöperation with the National Peace Conference, Sun., Sept. 19, 4 p.m., C.B.S.

"Riders to the Sea." J. M. Synge's famous play will be reënacted from Dublin by the Abbey Players under the direction of Irving Reis, director of the Columbia Workshop, now in Europe, Sun., Sept. 19, 7 p.m., C.B.S.

Cordell Hull. The Secretary of State speaks on international trade pacts at the ninth Boston conference on distribution, Mon., Sept. 20, 1 p.m., N.B.C. red.

"The Feast of Ortolans." A radio drama by Maxwell Anderson, Mon., Sept. 20, N.B.C. blue.

Infantile Paralysis. Dr. Phillip Wilson will speak on the symptoms and medical care of the disease, Wed., Sept. 22, 7:30 p.m., N.B.C. red.

★

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