in Asia do not result in pouring a stream of impoverished and degraded people into Roumania. For it must be observed that while Mr. Hay does not overlook the advantages of posing as an angel of mercy and a friend of the Jews, he rests his right of protest against Roumanian persecution and degradation of the Jews upon the fact that the people so degraded immigrate to this country and contaminate its citizenship. One might wonder why it is necessary to intervene in European politics for that reason, when we either have already or could easily enact immigration laws excluding degraded people; but that is the reason Mr. Hay has given.

What the President designs doing to aid the anthracite strike is not a legitimate subject for public consideration, since nothing is yet really known of his designs, plans purposes or suggestions. All that has so far far been published under these heads is mere newspaper gossip. But there is no doubt that he has appealed to his cabinet to find some way of forcing the strike to a speedy end. And this does legitimately raise an important question: Why has Mr. Roosevelt waited so long? If there is the slightest possibility of his having the power to force the anthracite and railroad trust to settle, why has he been indifferent to the possibility all these months? We venture no answer. But a plausible one has been made by the Washington correspondent of the leading Western paper of Mr. Roosevelt's own party, the Chicago Tribune, whose dispatch appeared in the issue of that paper of the 1st. He telegraphed regarding the cabinet meeting or conference of the 30th as follows:

Although the political significance of the conference was minimized, the political side of the situation not being discussed, there is no doubt that the President is anxious to end the strike if possible before the November elections. The members of his cabinet who are especially in touch with the political phase, as well as the managers of the Congressional campaign, are aware that a continuance of the strike may bring about Republican defeat at the polls. . . . In the East the political danger is great, for reports from eastern States show that the inconvenience and extortionate prices occasioned by the continuance of the strike are being used with great effect by the opponents of the administration.

THE ABUSE OF INJUNCTIONS.*

Recent occurrences have given greater emphasis than ever to the subject of "government by injunction." If trade unionism is to survive, "government by injunction" must be prohibited. More than that. Unless it is prohibited, public meetings and public speech, which in any wise threaten vested interests, will cease to be rights ofAmerican citizenship and become mere privileges by the grace of American courts. It may sound pessimistic to predict a revival of the old struggle for free speech, a free press, and jury trial; but history repeats itself, and all those rights, so confidently believed to be secure, are at hazard in the rapidly unfolding policy of "government by injunction."

Free speech is threatened when judges presume to specify by arbitrary decree the circumstances under which public meetings may be held and public speeches made. Freedom of the press is always insecure when and where freedom of speech is regulated by arbitrary decree. The right to jury trial begins to totter when alleged abuses of free speech and a free press may be punished without the intervention of juries. All three, therefore, are at hazard when judges can prohibit any kind of public speech and summarily punish whoever disobeys. The question of granting injunctions against labor strikers is more than a labor question.

No doubt it seems, to the easy-going on-looker, that injunctions are excellent for quickly checking the disorder and lawlessness of strikers —excellent and simple. "Let strikers behave themselves and injunctions won't bother them," is an easy retort to the objector to "government by injunction." It is plausible, too. But the same retort could have been made to every objection to arbitrary government since tyranny began. It begs the question, which is not whether strikers should be orderly and law-abiding and be punished when they are not, but whether in any given case they have in fact been disorderly and lawless; and this question cannot be safely left to the determination of judges. Orderly liberty demands that the nature of lawlessness shall be defined, not by judges but by legislatures; and that the facts in particular cases shall be determined, not by judges but by juries. The spirit of liberty cannot exist in the same country and at the same time with star chamber courts.

To appreciate the dangers to liberty that lurk in the abuse of injunctions for the punishment of public offenses and even the prevention of public meetings and the suppression of public speech, it is necessary to understand somewhat of the origin and nature of injunction proceedings.

Historically, the injunction is an exercise of the arbitrary power of monarchy. The common law was administered under fixed principles and rules, by which the common law courts were governed. Judges could decide no case arbitrarily, so unyielding were the conditions that defined their judicial functions. One case had to be decided precisely like another, of the same kind. But this universality of the law seemed sometimes to stand in the way of administering justice in particular and peculiar cases. So, when the common law was impotent because of its universality of application, it became customary to petition the king. The king turned these petitions over to his chancellor, who was said to be "the keeper of the king's conscience." Then the chancellor, in the name and with the might of the king, granted such relief as equity and good conscience seemed to him to demand for the particular case.

Thus the chancellor's court, or court of chancery, grew up. It was long a distinct court with distinct judges

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called chancellors. But the functions of chancellors and of law judges are now quite generally exercised by the same persons, the two kinds of courts having been actually or virtually merged into one.

Among the remedies which the king's chancellors invented for doing justice irregularly by the king's grace, was the writ of injunction. Whereas the common law courts were powerless to prevent injury, being able only to award damages to the sufferer after mischief had been done, the chancellor, acting for the king, whose right was limited only by his might, and who could do no wrong, was able to forbid unconscionable conduct and to impose arbitrary penalties to enforce obedience. Inasmuch as the question of obedience in such cases had to be determined by the king—that is, by the king's chancellor, who was "the keeper of the king's conscience"—no jury was either needed or allowed. Sometimes, when the chancellor was in doubt, he might formulate questions to be sent into a law court for a jury to answer, and then adopt its answers or not as he saw fit. But the time-honored institution of trial by jury did not get so much as its nose into the court of chancery. If the chancellor had granted an injunction, and its terms were disregarded, the disobedient culprit was haled up for contempt of court, and the chancellor tried him himself, convicted him himself, and punished him himself.

This king-like practice resulted in preventing the chancellor from meddling in criminal cases. It compelled him to limit his gracious intervention to questions of conscience in disputes over property rights. He could not issue injunctions prohibiting crimes without virtually abrogating the justly cherished right of jury trial in criminal cases. For if he prohibited a crime and then convicted any person of violating the injunction, he would thereby have virtually convicted that person of committing the crime itself, and this deprived the accused of his right to trial by jury. So the chancelors refrained from issuing injunctions in restraint of public crime.

Not until very recently was this limitation disregarded. It would probably never have been disregarded had the chancery courts and the law courts been kept apart. The jealousy of the law judges would have supplied the necessary force to hold ambitious chancellors within bounds. But this force was neutralized when law courts and chancery courts were merged. With both chancery and law functions lodged in the same person there was no jealousy to be excited. No man is ever jealous of himself.

Nevertheless it was still a long time before injunctions were issued in restraint of crime—not until 1868 in England, and later still in this country.

Until then the courts were punctilious on this point. Futile, indeed, would have been the plea which serves so well with some judges now—the plea that conviction without a jury by an injunction-judge for violation of an injunction against crime, does not prevent conviction by a jury for the crime itself, and is, therefore, no infringement upon the right of trial by jury. The reply of the old judges would have come quick and to the point. In effect it would have been that such a plea, so far from justifying injunctions against crime, suggests an additional reason for not allowing them; that it contemplates not only conviction for crime by a judge without a jury, but two convictions for the same crime.

Pursuant to their well settled rule against granting injunctions prohibiting crime, the courts steadfastly refused to issue injunctions restraining the publication of libels. And for this there was an additional reason. Not only would such injunctions be in restraint of crime, thereby infringing upon the right of trial by jury; it would also be in restraint of freedom of the press.

But this most exemplary restraint upon the injunction-issuing power was broken into in 1868. An English judge then granted an injunction to prevent the publication of libelous posters. Of course the injunction was against workingmen. Legal innovations, if repressive, naturally take that course. Liberal innovations run just as naturally in the opposite direction. This English precedent was eagerly seized upon by the American courts, especially the Federal courts—which have their judges appointed for life, from the center of Federal power, and are therefore not amenable to, and often not conscious of, any other public sentiment than that of the clubs the judges frequent,—and in a little while "government by injunction" was in full feather. Meanwhile the higher English courts had overruled the English precedent, so that this judicial policy of the American courts rests upon a decision which the courts of the country in which it originated have repudiated.

Far as our courts had gone in issuing injunctions against crime it was not until the Summer just past that they went so far as to infringe not only upon the right of trial by jury but also upon the equally sacred right of free meetings and free speech. But if the startling West Virginia precedents are followed, the right to hold public meetings and freely address the people who attend, will depend upon the opinion of a judge as to the wisdom of allowing the meeting to be held.

Now, it is true that the right to hold public meetings and make public speeches is not absolute. It is a right that may be abused and its abuse may be punished. But even its abuse cannot be made the subject matter of injunctions without destroying the right. Between allowing freedom of speech and press, subject to punishment upon conviction for its abuse, and restraining speech and press in advance by injunction or other decree, there is all the difference that distinguishes liberty from tyranny.

Consider what the power of issuing injunctions against public meetings and public speaking means.

A judge is advised by affidavits that lawless meetings have been and others are about to be held at places and under circumstances which threaten to injure property rights.

Now, if that is true, if these meetings are in fact lawless, the promoters and participants are properly subject to indictment. If indicted

they are entitled to a jury trial. If convicted by the jury they are liable to punishment. But what for? Not for holding meetings and making speeches. They have a right to do that. They are liable to punishment because a jury has convicted them of abusing the right. But when a judge issues an injunction, the right itself is restrained. Observe that he does not issue the injunction to prevent the defendants from holding meetings upon the complainants' property. That would not be an injunction against meetings and speeches; it would be an injunction against trespass. He issues it to prevent their holding meetings on their own property. It is, therefore, an injunction against meetings and speeches. If, now, the meetings are held, those who participate are not tried by a jury for holding lawless meetings. They are tried by the judge for disobeying his order. The act is identical, but it has acquired a new name; and because it has a new name, the judge decides that under that name he can try it himself, though under the other name he could not.

So the judge decides what kind of meetings are lawful and what are not, what kind of public speaking will be allowed and what shall be prohibited, which persons are guilty and which are not, and what the punishment of the guilty shall be. All this lies within his breast as chancellor. When he comes forward with the king's conscience in his keeping, he legislates and adjudicates, and the constitutional rights of free speech and jury trial sink out of sight.

Though these injunction abuses have so far been connected with labor strikes and used in restraint of labor unions, the question they raise is not alone a labor question. If strikers' meetings upon their own premises can be prohibited and labor speeches forbidden, if this can be done by a judge's order and the same judge can punish as for contempt any person who attends the prohibited labor meeting or makes the prohibited labor speech, then every other kind of meetings and speech is subject to the same arbitrary interference. It will in that case be only a question of occasion and sufficient hostile interest when political meetings and speeches, religious gatherings and exhortations, and race conferences and addresses, may be brought under the judicial ban if they happen to be offensive to a bold judge whose injunction is sought. Free assemblage and free speech would cease to be rights which judges are bound to respect. They would become favors that judges might regulate as they pleased. Given a great propertied interest which demands it, with an irresponsible judge (and Federal judges are practically irresponsible) who personally favors it, and any public meeting could be forbidden, any public speaker could be silenced unless he courageously defied the lawless judge.

NEWS

The anthracite coal strike (p. 391) has now entangled the Federal administration in its affairs. The President held a special cabinet meeting of half an hour's duration on the 30th to consider the strike situation, and this was immediately followed by an informal conference, lasting an hour and a half, of the cabinet officers who had attended the cabinet meeting. What decisions were reached, if any, is not yet known. But on the 1st the President telegraphed the presidents of all the anthracite carrying roads, together with Mr. Markle, an independent coal producer, and Mr. Mitchell, president of the national coal miners' union, inviting them to meet him at Washington at 11 o'clock on the 3d. The invitations were in the form of a brief request to see the persons invited "in regard to the failure of the coal supply, which has become a matter of vital concern to the whole nation."

Before the cabinet meeting had been called a legal proceeding against the coal trust was instituted in Boston by private parties under the management of Heman W. Chaplin, a lawyer who is described by the dispatches as an expert in the jurisprudence of the trust question. Mr. Chaplin brings the suit in the Supreme Judicial Court of Massachusetts by filing a bill in equity against the anthracite carrying roads. The plaintiffs are a citizens' relief committee of coal consumers, voluntarily organized, and the petition of the bill in equity is for a receiver, to be appointed for the benefit of all persons affected, for the purpose of operating the idle mines.

Mr. Chaplin submitted to the public, prior to his commencement of this lawsuit, a pamphlet (Millet Co., Boston and New York, publishers, price 15 cents) in which he discussed in popular style the legal aspects of the question. This pamphlet discloses fully not only the character of the law suit subsequently begun, but also the possibilities of other legal proceedings both by private interests and by public officials. It is his fundamental proposition that all real estate is subject in its ownership to legal restriction and regulation, and that the character of the restriction or regulation is not limited to the specific forms of early law but may extend, up to the fullest requirements of their spirit, to new conditions arising in modern society. In support of this contention Mr. Chaplin cites the famous Munn *case* (94th volume of the United States Supreme Court reports, page 113), as applicable as well to coal mines as to warehouses, the latter being the kind of property involved in that case.

Another movement of possibly far-reaching consequence in connection with the coal strike, is the official call by the mayor and council of Detroit, of a delegate conference, to be held in that city on the 9th. The call was issued on the 29th, telegraphically, one form of message being sent to the governors of *all* great coal-consuming States, and the other to the mayors of the principal cities. The message to governors is as follows:

Will you appoint a delegation of 20 citizens selected at large from the State to attend conference at Detroit October 9 to devise ways and means for obtaining a reasonable supply of coal from the anthracite districts of Pennsylvania and West Virginia? The governors of all states affected have had like requests for representation. Such a conference must be potent in solving the present difficulties. Answer by telegram at our expense—William C. Maybury, mayor: Fred W. Smith, president common council.

The message to mayors is the same except that it provides for ten instead of 20 delegates, and requests also a representation from the press of the respective cities.