

ing. Upon its analysis, that decision sustains injunctions by federal courts against such obstructions of highways as tend to impair rights of interstate commerce or interfere with the transmission of the mails; and it justifies punishment for contempt without jury trial in cases of violations of injunctions, even when the act enjoined constitutes a crime with its constitutional guarantees of trial by jury. But the decision does not warrant the punishment of persons not made parties to the action in which the injunction issues, nor the granting of injunctions against the exercise of any lawful act, such as lawful gatherings upon the highways or the exercise of the right of free speech. And the committee is of opinion that the supreme court would countenance no such "gross usurpations of judicial power." In support of this view it quotes from Judge Brewer's opinion in the Debs case, where he says that the complaint or "bill" in that case—

was only to restrain forcible obstructions to the highways along which interstate commerce travels and the mails are carried.

Stress is laid upon the word "only" in this quotation. Yet the committee finds that just such "gross usurpations" have been indulged in by lower courts upon the assumed authority of the Debs case. In the wire trust case in Cleveland a federal court enjoined strikers "from in any manner interfering with" the trust's business. In the Wheeling railway case, another federal court sent two men to jail for contempt of an injunction to which they were not parties nor the agents of parties, for "reviling" and "cursing" employes of the railway company. "If," says the committee, "these men had not actually served out an imprisonment in jail for 30 days as a punishment for contempt of corporation, it might be thought that your committee had taken this example from opera bouffe." Another instance of usurpation cited is that of a New York judge, Freedman, who not only enjoined

striking cigar makers from "picketing," an act which the highest court of the state has shrunk from holding to be unlawful, but prohibited the payment of relief money to strikers, and in describing the act of "picketing" made the injunction so comprehensive as virtually to forbid peaceable and conciliatory communications. All this is condemned by the committee, and made the basis of a charge, couched in the most temperate language, that many of our judges of late years, especially those of the United States courts, have by their usurping injunctions placed themselves in the category of those worst of offenders in a republic—men who so act as to "break down reverence for law and respect for the courts."

To remedy the manifest mischief of allowing these usurping judges to act under cover of contempt proceedings as juries in their own cases, the committee recommends certain restrictions which commend themselves to the serious consideration of a vigilant public. It proposes, in the first place, that the judges of the lower federal courts be elected by the people of their respective districts, as is done with reference to state judges in at least 32 of the most important states of the union; and that appointments of supreme court judges be made exclusively from among judges of the lower federal and of the state courts who have served upon the bench at least ten years immediately prior to appointment. That would certainly end the flagrant evil of presidential appointments from the corps of corporation lawyers. The other recommendations of the committee are that injunctions shall issue against no one but the parties to a suit and their agents; that any prohibition by injunction of a lawful use of highways, of the right of free speech, or of lawful combinations, shall nullify the entire injunction; that any act of disobedience which constitutes an indictable crime shall be tried by jury, if the person charged demands it; that upon application for

preliminary injunctions in labor cases, when there are disputed questions of fact, either party shall be entitled to demand a jury trial; and that general labor organizations be requested to carry all labor questions arising under existing law to the highest courts, to the end that "any usurpation of judicial power in any court of the land, however distant or obscure, may be effectually restrained and brought to naught." The last recommendation is a wise one, and labor organizations may wisely act upon it; but we have less confidence than the committee so conservatively professes, that judicial usurpation would thereby be brought to naught. It is the experience of history that usurpation is one of the characteristics of the judicial establishment. Though it often obstructs usurpations by other departments of the government, it most frequently double rivets its own. Some of the other recommendations are new, and all of them seem to be wise. They at any rate testify to a growing disposition, even in conservative quarters, to resist the tide of usurpation by the federal judiciary.

A very different state of affairs in the Philippines from that inferred by Bishop Potter has been discovered by George Ade, the brilliant and thoughtful journalist who was sent there by the Chicago Record to make a special investigation. While four days in the military atmosphere of Manila enabled the bishop to say that the question of subjugating the Filipinos is now merely academic, Mr. Ade finds, after three weeks' intercourse with all sorts of well-informed people, not only at Manila but in several other places on the island of Luzon, that "our 'peace' in the Philippines is of very unstable quality." The pacification is a sham, and the attempts to conceal the real state of things by characterizing the Filipino troops as "ladrones" or robber bands has become a grim joke. Every reasonably well-informed person in Manila knows that these bands, in

stead of being "ladrones," as the local newspapers are forced by the American military censor to call them, are detachments of the Filipino army, fighting for independence. When defeated in warfare, according to the rules of the game, Aguinaldo reorganized his army into small companies and ordered a guerrilla warfare. Everywhere on the best of terms with the people, these companies make it dangerous for foreigners to go beyond the outposts of a garrison, and so hold the country against American subjugation, except in the immediate presence of American soldiers with loaded guns.

Such is the hopeless situation as Mr. Ade reports it, and he gives excellent reasons for its being so. The Filipinos have no confidence in the Americans; do not believe that they tell the truth; regard every fair promise as some new trick to deceive them—suspicions that have been excited and confirmed by the vindictive spirit and merciless conduct of the American troops. Our only friends in the Philippines, according to Mr. Ade's observations, are the European business element, and one savage tribe, the Macabebes, who are hereditary enemies of the civilized Filipinos.

Mr. Ade sums up the Philippine question in three principal aspects, as follows: In the United States: "What is our duty toward the Filipinos?" With the army: "How can we stamp out the insurrection?" And with the advance guard of American business men in Manila: "What shall we do to make money?" To the Filipinos there is still another aspect. It is how to drive out the foresworn nation of mankillers and money hunters, which has displaced Spain as the cruel autocrat of their long suffering country.

When Senator Spooner, speaking on the floor of the senate, was asked what he proposed to do with the Filipinos after enforcing upon their peo-

ple the authority of this government, he hotly replied:

To give the people honest, even-handed justice and good government; to protect life and property; to fill the land with schoolhouses; to give the people such part in the government as they may show themselves fitted for; to maintain the laws so honestly and firmly that no man, however rich, shall be beyond their reach and no man so humble that he may not have their protection.

Mr. Spooner was altogether too hot to be judicial or even senatorial. The Filipinos themselves protected life and property, until the Americans devastated their land and slaughtered their people as even the brutal Spaniards never did. That they did protect life and property is proved by the official report of Leonard R. Sargent, American naval cadet, and W. B. Wilcox, American naval paymaster, who spent two months in the very heart of the Filipino republic in Luzon a few weeks before the American tornado of death and destruction set in. Sargent wrote to the *Outlook* (September 2, 1899, page 17) that he and his companion had returned to Manila after their extended tour in the interior, "with only the most pleasing recollections of the quiet and orderly life which" they "found the natives to be leading under the new regime." As to schoolhouses, Luzon was always well supplied with them before the American holocaust. And if Mr. Spooner succeeds in giving the Filipinos just laws so maintained "that no man, however rich, shall be beyond their reach, and no man so humble that he may not have their protection," he will perform the political miracle of extending to the Filipinos a government such as no civilized nation enjoys. If Mr. Spooner is possessed of this miraculous power, he should give his own countrymen the benefit of it to begin with. But it is to be feared that Mr. Spooner, in his heat, outspoke himself.

This seems to be one of Senator Spooner's defects. A few days before, he grew very warm because Senator Hale, one of the republican senators from Maine, referred to the

American defalcations in Cuba as a lesson to the Cubans of "fraud, speculation, cheating, misappropriation of revenues, stealing, a carnival in every direction of corruption and fraud." So badly rattled at that indictment of our Cuban occupation was Senator Spooner, that he made the tactical blunder of saying it was tiresome for him to be called upon from the republican side of the senate "to reply to a democratic speech"! His angry remark, as it appears in cold type, must look to Senator Spooner like one of those things "one would rather have put differently." To the unsophisticated republican reader, at any rate, it must certainly have a bitter flavor. It reads too much like a defiant confession that it is regarded as a party obligation among administration republicans to characterize administration frauds tenderly. It might even suggest to the irreverent that Mr. Spooner regards it as the function of democrats to denounce rascality in high places and of republicans to palliate it.

Well was it for the public, however, that Mr. Spooner grew thus warm with Senator Hale, for it brought from the latter a declaration that needed to be spoken from his side of the chamber. Said Mr. Hale:

I think there are very powerful influences in this country—largely located in New York city, largely speculative and connected with money-making enterprises—that are determined that we shall never give up Cuba. I think that the time will never come unless something earnest and drastic is done by congress that the last soldier of the United States will be withdrawn from Cuban soil. I do not think the president favors holding Cuba. I discovered very powerful influences—commercial, mercantile, money and political—that are opposed to our ever withdrawing from Cuba. I take up the newspapers that are foremost in the large cities and I find every day intimations and hints that we are never to withdraw from Cuba.

What Senator Hale said, the people, including hosts of sorely disappointed republicans, have long been thinking.