

and that it could not add to the words of the act. But those who condemn the action of Congress are now, in effect, informed that the courts will allow such restraints of interstate commerce as are shown not to be unreasonable or undue.

+

Of greater importance still are Justice Harlan's comments upon the proposal of the Supreme Court as now constituted to embark upon the open sea of judicial legislation. "This court, let me repeat," he proceeds, "solemnly adjudged many years ago that it could not, except by 'judicial legislation,' read words into the anti-trust act not put there by Congress, and which, being inserted, gives it a meaning which the words of the act, as passed, if properly interpreted, would not justify. The Court has decided that it could not thus change a public policy formulated and declared by Congress; that Congress has paramount authority to regulate interstate commerce, and that it alone can change a policy once inaugurated by legislation. The courts have nothing to do with the wisdom or policy of an act of Congress. Their duty is to ascertain the will of Congress, and if the statute embodying the expression of that will is Constitutional, the courts must respect it. They have no function to declare a public policy nor to amend legislative enactments. . . . To overreach the action of Congress merely by judicial construction, that is, by indirection, is a blow at the integrity of our governmental system, and in the end will prove most dangerous to all." Truly there are worse things in a republic than denouncing judges for judicial legislation. One of them is legislation by judges; another is appointments of judges to legislate.

+ +

#### Elizabeth Smith Miller.

How many were there who, upon reading of the death of Elizabeth Smith Miller last week, associated her with one of the great figures of one of the great epochs of American history? She was the daughter of Gerrit Smith, a man whose name was on everybody's tongue somewhat more than half a century ago—with undeserved execration by most, with honor by some. The reason why may be read in volume viii, of *The Public*, at pages 540 and 546.\* Gerrit Smith was an abolitionist who believed in his cause, which he served faithfully and courageously during one term in Congress and for many years besides. He was a pioneer, too, in the doctrine of "the land for the people." Slavery through man-ownership was

\*Published in pamphlet form by The Public Publishing Co., price, ten cents.

hardly more offensive to his conscience than servitude through land-monopoly. Although he had not worked out the economic relationship of man to the land as Henry George did a quarter of a century after him, he stands out in our history quite distinctly in a way as the Henry George of his earlier time. Born in 1822, his daughter was old enough to share with him the feelings and thoughts and sacrifices of his public experience, and during all the years of her surviving him his faith and spirit were also hers. In the woman suffrage movement she won a reputation of her own. She died May 24, near Geneva, New York, at the age of 89.

+ +

#### Proving Its Worth by its Enemies.

When Congressman Thomas M. Bell asked the editor of *The National Democrat*, published at Washington, D. C., to cancel his endorsement of the *Democrat* because it favors the Initiative, Referendum and Recall, the editor proved by his reply the worthiness of *The Democrat* as a truly democratic newspaper. "It is only through the Initiative, Referendum and Recall," he reminded Congressman Bell, "that the people of this country can hope to regain control of the government," and informed him that he is not in harmony with his own party when he opposes those principles, and that his doing so makes his disapproval of the paper preferable to his approval.

+ +

#### Industrial Efficiency.

It is to be regretted that there is a tendency in labor organizations to discredit unreservedly the movement for securing industrial efficiency. This movement seems to us to raise precisely the same question that labor saving machinery raises.

+

Labor saving machinery does not proportionately improve the economic condition of the hired class, as a class, nor very much even absolutely. This is a fairly obvious fact already; and at the last the hired class will probably not be benefited at all by labor-saving machinery, and may be positively harmed. But none of this is the fault of labor-saving machinery. It is the fault of those social regulations, both institutional and statutory, under which much of the higher earnings of labor from its use of labor-saving machinery is automatically diverted from earners to parasites. What is true in this respect of labor-saving machinery is true also of labor-saving methods.

Now the industrial efficiency of which much is being said and written at the present time, is a labor-saving method. "Pacemaking" by employers, which has contributed largely if not wholly to systematic "soldiering" among their workmen, may be called "efficiency"; and in so far as "efficiency" and "pacemaking" are identical, labor organizations are in the right, morally and economically, in denouncing it, in discouraging it, and in putting it under the ban of labor unionism. But the particular industrial "efficiency" to which Louis D. Brandeis has recently directed general attention is not "pacemaking"; and, as we understand its explanations, it cannot be profitably used for "pacemaking." On the contrary, its general use would tend to do away with "pacemaking" completely until its benefits had brought in other economic factors. For "pacemaking" consists in tempting the stronger and more enduring workers in an establishment to raise the standards of strength and endurance. But a high expenditure of strength and endurance is not necessarily high efficiency.

+

Contrary to that brutal method, the "efficiency" method we are considering seems to realize the highest efficiency in production not at higher but at lower points of strength and endurance. It is somewhat, for instance, as if a standard unit for daily running were to be set. Some persons would be unfit for running; these would be weeded out. Others might be fit for running, but more fit for something else; these too, would probably be weeded out later on. Of those who were adapted for running, tests would be made to ascertain the standard unit, which would be not at the longest distance under a strain for a short time, but at the longest distance under only such strain as would permit continuous exertion without loss of power.

+

But why isn't that "pacemaking" so far as the under-fit are concerned? If they have to resort to that employment from scarcity of opportunities for employment, it is "pacemaking." But in behalf of the efficiency idea it is argued that there are other and fit working opportunities for workmen weeded out anywhere as unfit. Were this true, continuously and without limitation, the argument would be good. In that case all kinds of work would increasingly rise in efficiency, producing larger results with the same or diminishing effort; and with every advance in efficiency in one kind of work, the demand for more labor

in most or all other kinds would prevent an excess of work relatively to working opportunities.

+

But we have no more reason to suppose that under existing industrial circumstances, labor-saving efficiency in method would have any different result from labor-saving machinery. Instead of more jobs than men, there might come more men than jobs; and the later effect of that upon efficiency would be to turn it into "pacemaking," and thereby to make it contribute to the exploitation of labor, just as improved machinery has done. In this view of the matter, is it not natural that labor unionists should instinctively discredit the "efficiency" movement? Natural, yes; but not reasonable. The reasonable thing to do is to demand of those who are exploiting the "efficiency" idea, that they use their influence concurrently in ridding modern industry of the ancient shackles which force poor laborers to yield to rich idlers the greater product that results from greater efficiency. An increase of 50 per cent in wages for several hundred per cent increase in productiveness, cannot be very attractive to workmen conscious of the certain decline in wages after "efficiency" has established higher levels of productiveness with lower levels of labor force. Nevertheless, if the efficiency movement is what it seems to be, there is no recourse for organized workmen but to swallow their objections, as they have had to do regarding improved machinery, and concentrate their energies upon securing for labor the benefits of both.

+ + +

### A SUGGESTION FOR THE STUDY OF TIPS.

"Tips are bad, but you can never get rid of the custom." The second part of this common remark need not come true. The custom is so undemocratic that in time it is sure to be abolished, and we may hope that each discussion of the subject will help to bring the end a little nearer. Hardly a year passes without some attempt somewhere to undo it, and each attempt will suggest another.

An attempt was once reported from Yale University. The reports did not give details, but enough was said to indicate that the attempt was to be serious. This academic movement has brought a suggestion. The professors of sociology in that university might set the subject as a theme for post-graduate investigation. Nearly every subject of a social nature has been set for investigation in our graduate schools except the tipping sys-