lost. If it did no more, its tendency, so far as it may succeed in organizing the common people against the plutocracy must be to weaken the strength within the Democratic party, both in numbers and influence, of the democratic Democrats who are now in the thick of a fight for the maintenance of their supremacy in that organization.

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But the success of this new national party is not likely to be great enough to do much damage of that kind. The greatest damage from such premature and artificial procedure would arise if the occasion for a political revolt should naturally occur. To illustrate let us suppose a case. Let us suppose that the Republican convention should be so transparently plutocratic next year as to make the democratic Republicans of the country ripe for revolt. Let us suppose, further, that plutocratic influence should succeed in swinging the Democratic party back into the control of the remorganizers, thus exciting the masses of democratic Democrats also to revolt. Then let us suppose that spontaneously and naturally out of this situation a third party should spring into existence. It is only under similar circumstances that successful third parties ever do appear. Those were the circumstances that gave birth to the Republican party in the national politics of the fifties, and to the Populist party in the Western and Southern politics of the nineties. Suppose, then, that these things should happen, what part would the paper organization prematurely projected at Denver play? It is not difficult to predict with an almost absolute certainty of verification.

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The paper organization would welcome the revolters, saying, "Come along with us," "We are the original Jacobs," "We date back to the Omaha platform," etc., etc., "Don't set up for yourselves, but join us." But the revolters would not join them—not unless they happened to be very different from all the political revolters of the past under similar circumstances. They would not take the paper organization seriously, and instead of joining it they would rush into the formation of an entirely new party. This might be very inconsiderate on their part, but it is what they would do; and it would be the natural thing to do, if the wave of revolt were really produced by an upheaval of sentiment among the common people. Then what? Would the paper organization dissolve and go into the new and spontaneous movement? Most of the rank and file would, perhaps, and so would such of its leaders as were at once intelligent and disinterested. But the paper organization would be kept up, on plutocratic money, by grafters and their dupes; its remnant of managers and managees would raise a hue and cry for loyalty to the brave organization that had stood up for righteousness in the discouraging days of small things; and, mere skeleton though it would be, it would be utilized by the old parties as a club with which to demoralize and beat back their really dangerous enemy. This prophecy of future possibilities is based upon the evidence of past experience.

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Under no circumstances can the Denver organization rise above the grade of a side party; and a real fight between democracy and plutocracy furnishes opportunity for the designing and more astute among the leaders of side parties to put them into the service of plutocracy as guerrillas to make confusion among the commons. It would have been the part of wisdom had the Denver conference adopted a different policy. It would have served its cause better by recommending a suspension of organized action, and fostering among those it represented that virtue of patience, in which reformers are extraordinarily deficient, but which is as necessary in political warfare as the virtue of perseverance with which they are abundantly supplied.

A decision in a case of constructive contempt of court, made on the 22d of July by the Supreme Court of Missouri against a newspaper editor, brings once more to public attention the growing danger to free institutions of this instrument of autocratic power. The danger is not minimized by the fact that there are at least superficial indications that the arrogant action of the Missouri court in the case in question was inspired by corrupt railroad interests.

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These contempt proceedings were based upon a newspaper editorial published in the Warrensburg (Mo.) Standard-Herald on the 19th of last June. It referred to a law suit brought by Reuben H. Oglesby against the Missouri Pacific railway for personal injuries, regarding which it made substantially the following statements of fact: That Oglesby had won a verdict against the railroad at the first trial; that the case was appealed to the Supreme Court, and able lawyers pronounced it the best damage suit against a corporation ever taken to that tribunal; that the Supreme Court sustained the judgment of the lower court by 6 judges out of the 7; that subsequently the railroad's motions for a rehearing were three times granted and the decision of the lower court three times reaffirmed; that meantime, at each election, the railroad company had been busy with nominating conventions, with a view to thrusting railroad lawyers upon the Supreme Court bench; that when it had thus succeeded in packing the court to its satisfaction, it obtained another rehearing of the Oglesby case, and this time secured a reversal of the judgment and an order for a new trial; that at the new trial Oglesby again won a verdict; that the case went again to the Supreme Court, to the bench of which an additional railroad attorney had meanwhile ascended; and that upon this appeal, the Supreme Court reversed the judgment and refused a new trial.

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Commenting upon the case after this final disposition of it, the War-

rensburg Standard-Herald referred to the well-known corruption in high places in Missouri which District Attorney Folk of St. Louis has uncovered, and then discussed the action of the Supreme Court in the Oglesby case, saying (we omit repetition of the facts except where they are coupled with comment):

And now, as the cap sheaf of all this corruption in high places, the Supreme Court has, at the whip-crack of the Missouri Pacific railroad, sold its soul to the corporations and allowed Rube Oglesby to drag his wrecked frame through this life without even the pitiful remuneration of a few paltry dollars. . . . The legal department of this great corporation was not the only department which was busy in accomplishing the defeat of the Oglesby case. The political department was very, very busy. Each election has seen the hoisting of a railroad attorney to the Supreme bench, and when that body was to the satisfaction of the Missouri Pacific the onslaught to kill the Oglesby case began. A motion for a rehearing was granted, and at the hearing of the case it was reversed on an error in the record of the trial court, which sent it back for retrial. . . . Again the jury rendered judgment in favor of Oglesby for $15,000 and again the case was appealed to the Supreme Court. An election was coming, and the railroad needed yet another man to beat the Oglesby case. The Democratic nominating convention was kind and furnished him in the person of Fox. The railroad, backed by four judges on the bench, allowed the case to come up for final hearing, and Monday the decision was handed down, reversed and not remanded for retrial. The victory of the railroad has been complete, and the corruption of the Supreme Court has been thorough. It has reversed and stultified itself in this case until no sane man can have any other opinion but that the judges who concurred in the opinion dismissing the Oglesby case have been bought in the interest of the railroad. What hope have the ordinary citizens of Missouri for justice and equitable laws in bodies where such open venality is practiced? And how long will they stand it? The corporations have long owned the legislature; now they own the Supreme Court, and the citizen who applies to either for justice against the corporation gets nothing. Rube Oglesby and his attorney, Mr. O. L. Houts, have made a strong fight for justice. They have not got it. The quivering limb that Rube left beneath the rotten freight car on Independence Hill, and his blood that stained the right of way of the soulless corporation, have been buried beneath the wise legal verbiage of a venal court, and the wheels of the juggernaut will continue to grind out men's lives, and a crooked court will continue to refuse them and their relatives damages, until the time comes when the Missourians, irrespective of politics, rise up in their might and slay at the ballot box the corporation-bought lawmakers of the State.

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That is strong language. But if the accusation of judicial venality is just, the language errs on the side of moderation. No collocation of words can make verbal denunciation of venal judges too strong. The article was either a deserved castigation of dangerous rascals, a necessary first step toward driving them in disgrace from the judicial bench, or else it was a criminal assault upon their character as men and their usefulness as public officials, an assault for which the author and publisher should be severely punished. There is no other alternative. One or the other of these conclusions is true; and it is to be regretted, if the true one is the latter, that the judges themselves have adopted a course which strongly tends to confirm the former.

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Upon the assumption that it is the editor who ought to be punished, and not the judges who ought to be exposed, this editorial attack should have been made the subject of indictment and a criminal trial. Through that procedure the facts could have been investigated and the innocence of the judges established, while the criminal editor could have been adequately punished. Under these circumstances public opinion would have been held in suspense pending the inquiry, and at its conclusion public respect for the court would have been assured. But the incriminated judges appear to have shrunk from a hearing before an impartial tribunal. They preferred to pass upon the question of their own turpitude themselves. They have done so, and have decided it in their own favor. But public respect for them does not appear to have been thereby in any wise exalted.

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Instead of instituting regular judicial proceedings against J. M. Shepherd, the editor of the offending paper, the accused judges arbitrarily haled him before themselves upon proceedings for contempt, and, fining him $500 and costs, committed him to jail until payment should be made. In imposing this fine, the judges explained that it was their duty to punish for contempt "any person who does anything to beat down the respect of the people for the court." Its effect in reviving popular respect for this tribunal may be inferred from the fact that the people of all parties in Mr. Shepherd's own community promptly met in mass meeting and raised the money necessary to pay his fine. Two hours after it had been imposed, they telegraphed him to draw for the amount needed. It is not likely that this mass meeting was inspired by any profound respect for the court. On the contrary it is probable, from all the circumstances, that the contempt for it that Mr. Shepherd's denunciatory editorial might have excited among them had been strengthened by its suspicious mode of dealing with his accusations.

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There is such a thing, to be sure, as legitimate proceedings by courts for summarily punishing conduct calculated to influence or obstruct their functions. In such proceedings the court itself must of necessity protect itself, and out of this necessity we have the proceeding known as contempt of court. But that proceeding is for the protection of the tribunal from interference with the performance of its functions, and not for personal use. For judges to use it for the redress of their own personal grievances is to abuse it. Now in the case in question, the editor of the Warrensburg Standard-Herald had done nothing to interfere with the functions of the court. What he had done was to accuse its judges of corruption. In doing that he either rendered a valuable public service, or he grossly libeled the individual judges whose decision he denounced and whose illicit connection with the Mis-

souri Railroad company he alleged and proclaimed. So far from being an interference with the functions of the tribunal, this was an offense against them personally—if it was any offense at all; and when they instituted contempt proceedings, so as to enable them to sit in judgment against him in their own case, they were guilty of an unpardonable abuse of those proceedings.

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But the full scope of the autocratic power those judges assumed is yet to be stated. Not only did they wrest the contempt remedy from its legitimate uses for the purpose of enabling themselves to redress their own individual grievances, but in doing so they defied an explicit law of the State. Their excuse for that is that the Supreme Court is established by the Constitution of the State, that the power to punish for contempt is inherent in judicial tribunals, and that therefore their power to punish for constructive contempt cannot be modified by the legislature. It would seem, if the people of Missouri can get out of the hands of their spoils politicians and the corporations, sufficiently to seat a representative legislature, that there ought to be good material in this contempt case for an impeachment investigation. Those Missouri judges appear to be open to the double charge of having (1) defied a constitutional law defining and regulating contempt proceedings, and (2) of havbeen publicly and plausibly accused of being judicial tools of the Missouri Pacific railway.

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The kind of procedure resorted to by the Missouri court, as a shield from newspaper charges of corruption against its judges, is adopted by other officials for their protection in China. Several Chinese editors have been arrested at Shanghai for advocating reforms in government. Evidently the authorities there are as firmly determined to punish "any person who does anything to beat down the respect of the people," not only for judges, but for other sacrosanct officials as well. The Chinese punishment is likely to be more severe and exemplary than that of the Missouri court, to be sure, and the proceeding is more comprehensive; but neither punishment nor proceeding is more arbitrary. In both respects the principle in Missouri and in China is identical.

An instance of judicial autocracy of another kind is reported from New York City. It seems that a judge there had sentenced a convicted burglar to four years' imprisonment. The prisoner thereupon made an impudent remark, in an undertone which the judge did not hear. But an officer heard it and reported it to the judge, who resented it by adding two years to the sentence, making it six years. Being now removed from the court, the prisoner attempted to break away and incidentally expressed more emphatically his low opinion of the judge. For that he was taken back into court, where the judge added three years more to his sentence for burglary, making it nine. As the New York Times well says:

Presumably the first sentence represented the judge's view of the gravity of the offense of which the prisoner had been convicted. By the successive outbreaks of temper of the prisoner that sentence was more than doubled. That is to say, he got four years for burglary and five years for impudence. Impudence is not a legal offense.

Of course burglars are entitled to no sympathy. Whether they are imprisoned four years or nine is not of the slightest consequence under a system in which the criminal law is revengeful rather than protective or even corrective. But we are making no plea for the burglar. Let his criminality and his impudence be atoned for in prison at the ratio of 4 to 5. But what is to be done about the growing criminality of judges? That is a serious question, and it concerns everybody.

Congressman Baker of Brooklyn has done a public service in openly rejecting the petty free pass bribe with which the Baltimore and Ohio Railroad company is getting the new Congress into a good humor. On the point of whether this was intended as a bribe or not, it is to be observed that it came from the law department of the railroad company. Why from the law department? What has the law department to do with legitimate transportation? Where is the passenger department? Is there any conceivable reason for acting through the law department in handing out passenger passes to Congressmen, other than that it is the law department which asks favors of Congressmen and therefore it is the law department that should give favors in return—or in advance.

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According to this lawyer of the Baltimore and Ohio Railroad Co., passes are dealt out to members of Congress by a regular system. Are votes given as systematically in return? If not, how does the railroad recoup itself? Furthermore, if the Baltimore and Ohio Railroad company systematically supplies free transportation to all members of Congress who accept the wretched bribe, is it not a fair inference that other railroads do the same, and that in return Congressmen are as generous to them with their votes as they may reasonably be presumed to be toward the Baltimore and Ohio? Again, if Congressmen are supplied with passes in this wholesale way, what about members of the legislatures of States within the companies' territory, of city councils where terminal favors are important, of taxing boards where valuations are to be made, of party conventions where candidates are to be nominated, and of the judiciary which decides controversies? Is it even necessary to guess? Wherever the cover has been lifted, as Mayor Johnson has lifted it in Ohio, and Congressman Baker has lifted it in the congressional territory of the Baltimore and Ohio company, this system of petty bribery prevails to an alarming extent.

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Mr Baker has done right in ex-

posing the Baltimore and Ohio company. He should follow it up on the floor of the House by exposing his fellow Congressmen who accept the railroad bribes. Progress in the fight against special privileges is impeded from all directions by this species of bribery alone. The time has come when the exposure should be merciless. No one should be allowed to escape. The weak excuse that inasmuch as the railroads give out passes anyhow, there is no harm in taking one, should receive no consideration. It should be understood and constantly emphasized that pass bribery is corrupt, even if it is petty and mean, and that railroad officials who give passes or public officials who take passes are contaminated with corruption. When a legislator votes, or a tax official assesses, or a delegate acts in a party convention, or a judge decides, the people have a right to know that he is wholly free from railroad influences and railroad obligations. They do not know it now. On the contrary, from presidents to judges, from congressmen to convention delegates, a public suspicion is naturally aroused as to the impartiality of all official action favorable to railroads by officials who take railroad favors.

If President Roosevelt is still bent upon "shackling cunning," when it accomplishes its nefarious objects by forming trusts, he will find that the constitutional objection to his plans which he feared, have been recently removed. This has been done by the Supreme Court of the United States in the case of Champion against Ames. The case is reported in full by the Lawyers' Cooperative Publishing Co., of Rochester, N. Y.

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Champion had been charged with sending lottery tickets by express from one State to another, contrary to an act of Congress forbidding inter-State commerce in lottery tickets. He brought the question of the constitutionalty of that act before the Supreme Court, and in February, 1903, that supreme tribunal decided (5 to 4) that the act is constitutional. The principle of the decision, as stated by Mr. Justice Harlan, is so broad (and that was necessary, if the constitutionality of the act was to be sustained) as to recognize in Congress full power to prohibit inter-State commerce in any kind of merchandise which is not expressly protected by the Constitution. The clause for securing freedom of the press would probably nullify any act of Congress aiming to prohibit inter-State commerce in newspapers, pamphlets, books, and the like. But there is no clause to prevent prohibition or other regulation of inter-State commerce in steel or coal.

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Justice Harlan's language on this point, in writing the prevailing opinion, is quite explicit, "The power of Congress to regulate commerce among the States," he says, "although plenary, cannot be deemed to be arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution." He then proceeds to argue that, therefore this power—

> **may not be exercised so as to infringe rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated, and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the several States. . . . But if what Congress does is within the limits of its power, and is simply unwise or injurious, the remedy is in the discretion of Congress.**

Thus the way is broadly opened for prohibiting by mere act of Congress any transmission from one State to another of any merchandise whatever, the commerce in which is not protected from hostile legislation by affirmative provisions of the Constitution. Not only may inter-State commerce in lottery tickets, fraudulent merchandise, and intoxicating beverages, be prohibited by Congress, but so may such commerce in the products of trusts. The question, therefore, of trust suppression by the national government, is now "up to" the legisative branch, of which President Roosevelt is adviser, and a "trust-shackling" message is in order.

STRENUOUS CIVILIZATION.

That splendid organ of militant Christianity, the Outlook, of New York, had the other week a convincing argument in defense of the armies and navies of civilization and the uses to which they have in recent years been put. These armaments, says the Outlook, are the house wreckers of civilization, its simile being suggested by a sign advertising the firm engaged in tearing down a building opposite the editorial sanctum. They tear down the old and useless and unsanitary structures of the world, clear the ground of rubbish, and make an open field for the house builders who follow them. The regrettable incidents that accompany their work are but the dust and dirt and temporary inconvenience caused by the process of demolition. These are not to be weighed against the advantages of the new and ornamental structures that will soon rise on the sites of what perhaps were eyesores or rookeries.

Such, in substance, is the argument, which is bolstered by the examples of France in Madagascar, England in the Transvaal, and America in Porto Rico and the Philippines, where, the wrecking process having been nearly or quite accomplished, the Outlook sees foundations laid for noble monuments to civilization and religion.

What a pity that all weak-brained sentimentalists and idealists and doctrinaires cannot read the Outlook and profit by its wisdom? Could they thus be cured of their mental obliquity they would cease to mouth their futile shibboleths of inherent rights and political freedom. For why should not a native government be destroyed to open the way for business enterprise and religious propaganda? Why scruple to decimate one generation to benefit the next? From evil will come forth good. On this field of carnage will rise a