nopolists? But not so the Times-Star. It thinks, along with monopolists generally, that that would be immoral. Its own conception of the morality of the case is that taxes should fall on houses, so that landlords may shift them in varying degrees to tenants, thereby making tenants pay taxes which landlords themselves boast of paying, and making taxes collectable out of the value of earnings instead of the value of privilege. What explanation is there of this moral upside-downedness on the part of the Cincinnati paper? Isn't its inverted ethics due to the fact that the really immoral tax upon house values is the "going thing," whereas the tax on lot values is the "single tax" of which Tom L. Johnson is an advocate and which every plutocratic paper in Ohio is therefore sworn to attack whenever it rises above the economic or political horizon?

THE MARRIAGE PROBLEM—DIVORCE

Granting that society may properly exact binding contracts of marriage, and may inhibit the making of a second marriage contract while a previous one subsists between either party and a third person (p. 468), questions regarding divorce arise. The first relates to divorce simply as a decree of nullification, regardless of its bearings upon successive marriages. In considering this question, we are confronted with the third and fourth of the five queries heretofore (p. 454) reserved for examination, namely:

> (3) If society has the right to exact binding and exclusive contracts of marriage, has it also the complementary right to annul marriage contracts?
>
> (4) Assuming society to have this right of nullification, may the parties to the contract or declaration of a marriage which has come to an end through the dissolution of the unifying love that made it—may they themselves, or either of them, properly call upon society to annul the contract?

In harmony with what has preceded, conventional divorce must be correlative to conventional marriage. To think otherwise is difficult, if not impossible, without ignoring the essential difference between ceremonial marriage and natural marriage, between the symbol and the thing symbolized.

If there were no such thing as natural marriage back of the conventional, if it were the ceremony and that alone that constitutes marriage, then, indeed, divorce might not be regarded as a correlative of marriage. For in that case, marriage would be an arbitrary custom, not a natural principle; and arbitrary custom alone would consequently determine the legitimacy of divorce. It might even abolish marriage altogether. But the ceremonial theory is too paganistic, not to say materialistic, to demand attention in any discussion in which marriage is regarded as a vital ideality. The materialist may consider divorce as raising only questions of expediency. The pagan may regard it with superstitious horror. But he who is neither pagan nor materialist must bring it to the test of ideal principle.

Doing this, he sees that marriage does not consist in conventionality or contract or ceremonial, but that it consists in an ideal relationship, of which ceremonials are only the symbols or outward expressions. As to divorce, then, the primary consideration with him is not whether the ceremonial of marriage is an indissoluble contract, but whether the ideal relationship is indissoluble in its nature.

If he finds that marriage is in reality constituted not by ceremonials but only by marriage love, and that marriage love, although abiding in its nature, may nevertheless die, he realizes that the ideal relationship itself is not indissoluble. Thereupon he concludes that when the natural force of marriage love, which alone makes a marriage, is dissipated by natural law, the marriage itself is dissolved by natural law. With that principle to guide him, divorce ceremonials take their place in his mind by the side of marriage ceremonials. Reasoning that there ought to be some ceremonial of conventional marriage wherever there is a real marriage, he reasons in like manner that there ought to be some ceremonial of conventional divorce wherever there is a real divorce.

The correctness of that view cannot reasonably be disputed, on the basis of what has preceded in this discussion. Grant that natural marriage is ideal and not merely conventional, being created by marriage love and not by a ceremonial; grant that the ceremony of marriage is a useful conventionality publicly declaratory of natural marriage; grant that natural marriage may end in natural divorce because the marriage love that sustains it has died,—grant these propositions which we have already advanced with reference to marriage, and you must concede the propriety of conventional divorce. The ceremony of conventional divorce is to natural divorce what the ceremony of conventional marriage is to natural marriage—the declaration or symbol whereby society may be advised of the true relation of the parties as they themselves regard it.

By what means, then, if conventional marriage may be dissolved, shall the ceremony of conventional divorce be performed?

To remit it to church control would be grossly improper. Churches have no coercive function in the matter. They cannot prevent that natural divorce which results from death of marriage love, and they must not be permitted either to grant or deny conventional divorce. Their only function is that of spiritual influence. In so far as the parties may voluntarily submit to be ecclesiastically governed and the rights of society as a whole are not infringed, churches may either regulate or prohibit divorce. That is, they may freely appeal to the individual conscience. But here their function ends.

Nor should conventional divorce be left to the control of the parties themselves. While they alone can decide whether there is a real divorce or not, just as they alone could decide whether there was originally a real marriage or not, all this being in the nature of things, yet the ceremonial of conventional divorce affects civil rights in such manner as to entitle all concerned to their "day in court." These rights might be jeopardized if married persons were allowed to proclaim natural divorce at will, and without adju-

dication to assert conventional divorce.

Society, therefore, as well as the parties, being affected by the contract of marriage, must be consulted about its abrogation. Though only a symbol or conventionality in comparison with marriage itself, the marriage contract is more than a conventionality with reference to society. In that relationship it is a compact, defining personal and social obligations and duties from which neither of the parties, nor both together, may with justice be allowed to release themselves. They must appeal to organized society as the general guardian of civil rights.

Since it is conventional marriage and not ideal marriage to which conventional divorce applies, and conventional marriage derives its civil force and vitality from organized society, organized society may with propriety regulate the terms of conventional divorce. If it may not, then it is difficult to conceive of organized society as having any function at all. Like the churches, society is powerless to dissolve natural marriages. Only the parties can do that. If a natural marriage truly exist, nothing conventional can dissolve it; if it does not truly exist, nothing is necessary to dissolve it. But whether a natural marriage truly exists or not, conventional divorce does dissolve, and nothing else can dissolve, the marriage contract; and civil society, upon the application of either party to a marriage, with evidence that the natural marriage of the parties has probably ceased to exist, acting withal in the interest of social and civil rights, ought to consider the propriety of decreeing a dissolution.

If dissolution may be decreed, it does not necessarily follow that either of the parties thus conventionally divorced may with propriety, during the lifetime of the other, contract a succeeding conventional marriage with a third person. The right to prohibit a second conventional marriage while the prior one subsists (p. 470), might not unreasonably be regarded as implying that there is likewise a right to prohibit such marriages even when the prior one has been nullified. But whether this prohibition would be defensible is not now to the point. The question immediately under consideration is not the propriety of second marriages after conventional divorce; it is the propriety of conventional divorce itself.

And what reasonable objection to conventional divorce can be advanced? Considered simply as a nullification, it does but cancel the civil obligations which conventional marriage imposes. And this only upon the best proof the nature of the case admits of, that the conventional marriage is no longer truly symbolic of a natural marriage and has consequently become a lifeless pact. Conventional divorce does not affect the problem with reference to ecclesiastical authority, nor to conscience in any other respect. Even though the law permits marriage after divorce, it only permits, it does not compel it. The domain of conscience is not invaded.

The whole problem of conventional divorce, considered simply as nullification, resolves itself into a question of civil regulation for the protection of rights. The rights of each party to the marriage contract must be conserved. So must the rights of children. So, also, must the rights of society as a whole. This done, however, there is no good reason why the conventional marriage should not be dissolved, if the parties or either of them avow that their natural marriage no longer exists.

So far, indeed, from there being no reason why, in such circumstances, it should not be dissolved, there are imperative moral reasons why it should be dissolved. To enjoin submission to conventional marriage bonds, where there is no natural marriage, what is that but to sanction and encourage an adulterous relationship? The persons so enjoined, though nominally married, are they not really unmarried? If their intercourse is to be regarded as chaste, then chastity is only a thing of conventional ceremonies and not a principle of natural purity.

It is a sad mistake to suppose that strict divorce laws are conservative of marriage sanctity. When organized society assumes to hold together what nature has put asunder, for any other purpose or to any greater extent than to protect the civil rights involved, as when by rigid divorce laws forcing an appearance of marriage where there is none it aims to make marriage sacred, it thereby thwarts its own purpose. Difficult divorce makes easy virtue. In so far as marriage comes to be commonly regarded as institutional bondage, just so far does respect for the sacredness of natural marriage give way on the one hand to idolatrous regard for its conventional symbols, on the other to contempt for those symbols, and on both to indifference or obtuseness toward the sacred thing itself.

It is not by urging rigid enforcement of the marriage tie upon organized society, that churches can hope to emphasize either the sacredness of marriage or the inviolability of its symbolism. There was much wisdom in this rebuke of a clergyman, reported by the Akron Times-Democrat of October 10 as having been offered recently by an Ohio Judge, A. R. Webber of Akron: "You take a great responsibility when you grant divorces to almost anyone who happens to ask for them," said the clergyman. "The courts in many cases do not investigate thoroughly and divorces are often granted where they are undeserved by the persons asking for them." He was a divine of considerable importance and prominence and had been a minister for many years. The judge mentioned this fact to him and asked: "How many marriages have you performed in the years that you have been a minister?" The minister was proud of his marrying record, and named a great number. "In how many of the cases," continued the judge, "have you carefully questioned the candidates for matrimony, and determined whether they were suited to each other?" "None," was the reply. "How many candidates for matrimony who have presented themselves to you have you refused to marry for some good reason?" asked the judge. "None," was the reply. "You see, then," said the judge, "that the courts are not really in fault, and that they are simply trying to patch up the blunders that have been made by the ministers."

We should not advocate impertinence by clergymen asked to perform marriage ceremonies. The parties must be pre-

sumed to know better than anyone else, even a clergyman, whether their marriage is natural and genuine. But it is not impertinent to seek assurances that they are making the conventional declaration with a reasonable consciousness of the great natural relationship to which it certifies and which it symbolizes; certainly there is reasonable propriety in the attitude of clergymen who do place the importance of marriage love as a prerequisite to the marriage ceremonial above the sanctity of the ceremonial as a bar to divorce where the marriage love is dead. The Rev. Samuel H. Bishop, an Episcopal clergyman, has declared, for instance, that years ago he resolved, come what might, he would marry no couple who were unknown to him personally, and concerning whom he had not some assurance that the prospective union was founded on genuine love. "Not that I designed," he explains, "to put a couple through a detailed examination as to the nature and quality of their love, which would of course be absurd; but I have required some kind of assurance, valid to me personally, that the proposed marriage was not de convenance, de richesse, or de anything-else but love."

The tendency of this policy is truly to emphasize the importance of conventional marriage, thereby encouraging sexual propriety, and to exalt the sacredness of natural marriage, thereby conserving sexual purity. But rigid divorce laws rigidly enforced, can have only the opposite effect. Not alone do they foster between persons only nominally married a relationship essentially adulterous, thereby degrading marriage itself; they also discredit conventional marriage by encouraging illicit natural marriages and concubinal alliances.

Simply in the interest of a wise conventionality and marital morality, therefore, divorce laws should make no attempt to perpetuate matrimonial bonds. The solicitude of society, with reference both to the sanctity of marriage itself and the solemnity of the marriage ceremonial, should be confined to protecting the civil rights concerned.

Natural marriage being in any instance dead, the conventional tie should in that instance be severed. When the fundamental fact of a dead natural marriage reasonably appears, society can have no other rational duty in the matter, besides conserving all civil rights, than to nullify the conventional marriage by conventional divorce.

But, after all, this conclusion does not probe the core of the divorce controversy. For it is not so much to conventional divorce, considered merely as marital separation, that objection is really made. It is made because conventional divorce permits, and is usually followed by, conventional marriages between third persons and one or both of the persons divorced. The objection to divorce is only a form of statement. What in truth is hateful to the objectors is conventional marriages after conventional divorces. Yet, as the propriety of such marriages, though distinctly a problem itself, can be questioned only with reference to divorce, the propriety of conventional divorce considered simply as nullification, needed first to be understood.

Conceding that society may annul conventional marriages, may this nullification properly be of such a character as to permit the divorced parties to enter into other marriage contracts? This question, which is at the heart of the divorce problem, comes next in order and is the final one in our discussion.

NEWS

Week ending Thursday, Nov. 3.

As the Presidential campaign (pp. 39, 53, 58, 72, 89, 99, 105-19-36-70-82, 204-14-15-27-29-33-47-64-79-95, 310-29-41-56-75-93, 408-24-39-56-72) draws to a close, there is more activity by party managers and campaign speakers, but hardly any greater indication of popular interest than heretofore.

Judge Parker's speeches have been notably more frequent and in some respects more vigorous and pointed. He responded sharply on the 28th at Esopus to Gov. Wright's criticism (p. 474) of his Philippine revelations, and was replied to in turn on the same question by Secretary Taft at Buffalo on the 29th. On the 31st Judge Parker began an active speaking campaign in New York city and vicinity with a speech in Madison Square garden to an audience that filled the auditorium after large crowds had been turned away. Here he directly charged the Republican campaign management with extorting funds from the great trusts. He spoke in Jersey City and Newark on the 1st. The burden of these speeches as reported in the press dispatches may be stated as follows:

After calling attention to the rise of trusts and the demands of capital and labor, he declared the other chief issues which divide the Republican and Democratic parties are these: Administrative extravagance must be checked. There must be equal opportunity for all and special privileges for none. This shall remain "a government of laws, not of men." There must be a reform of the tariff. This nation will no more hold another people in perpetual bondage than it will tolerate the enslaving of individuals by its citizens. Overwhelming in importance as are these issues, above them tower the questions: Shall the partnership between the Republican leaders and the trusts continue with profit to both and hurt to the country? Shall the trust contributions of millions to the campaign fund secure the right to continue the wrongful taking of many millions a year from the people?

In two speeches in New York on the 2nd, Judge Parker pressed hard the charge against Mr. Cortelyou, the Republican campaign manager, of extorting contributions from the trusts. Following is the indictment in Judge Parker's own language:

A new department of the government was created—the Department of Commerce. To that department was intrusted inquisitorial power over the great corporations. Its head, the Secretary of Commerce, was made a cabinet officer. But lest honest business interests should suffer, lest unscrupulous competitors should take unfair advantage, it was provided that the results of the department's investigations into the affairs of any corporation should be confidential. They were and are to be placed in the first instance at the disposition of the President, and in his discretion only are they to be made public and become the common knowledge of the people. Extraordinary powers, these, and marking an extraordinary faith of a people in its elected chief executive. And how has this administration responded to this trust? It placed at the head of this new department as the first secretary of the Department of Commerce of the United States the pri-