

THE PRESIDENT'S MESSAGE TO CONGRESS

The president's message to congress was delivered December 4.

The president congratulates the country upon "a literally unprecedented prosperity" and adds "it is probable that only reckless speculation and the lack of legitimate business methods on the part of the business world can materially mar this prosperity." The president compliments this congress upon the "good work" it has accomplished and invites attention to "several matters left unfinished at the last session."

Concerning corporation campaign contributions the president says: "I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. Such a bill has already passed one house of congress. Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly."

Attention is called to the bill which passed the house at the last session conferring upon the government the right of appeal in criminal cases on questions of law. The president urges congress to pass this measure and says: "A failure to pass it will result in seriously hampering the government in its efforts to obtain justice, especially against wealthy individuals or corporations who do wrong; and may also prevent the government from obtaining justice for wageworkers who are not themselves able effectively to contest a case where the judgment of an inferior court has been against them. I have specifically in view a recent decision by a district judge leaving railway employes without remedy for violation of a certain so called labor statute. It seems an absurdity to permit a single district judge, against what may be the judgment of the immense majority of his colleagues on the bench, to declare a law solemnly enacted by the congress to be 'unconstitutional,' and then to deny the government the right to have the supreme court definitely decide the question. It is well to recollect that the real efficiency of the law often depends not upon the passage of acts as to which there is great public excitement, but upon the passage of acts of this nature as to which there is not much public excitement, because there is little public understanding of their importance, while the interested parties are keenly alive to the desirability of defeating them."

Concerning the importance of enforcing the criminal law the president says: "The importance of enacting into law the particular bill in question is further increased by the fact that the government has now definitely begun a policy of resorting to the criminal law in those trust and interstate commerce cases where such a course offers a reasonable chance of success. At first, as was proper, every effort was made to enforce these laws by civil proceedings; but it has become increasingly evident that the action of the government in finally deciding, in certain cases, to undertake criminal proceedings was justifiable; and though there have been some conspicuous failures in these cases, we have had many successes, which have undoubtedly had a deterrent effect upon evil-doers, whether the penalty inflicted was in the shape of fine or imprisonment—and penalties of both kinds have already been inflicted by the courts. Of course, where the judge can see his way to inflict the penalty of the imprisonment the deterrent effect of the punishment on other offenders is increased; but sufficiently heavy fines accomplish much."

The president directs attention to "the law's delays" growing out of "the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case." He suggests that a law be enacted which shall prohibit the setting aside of a judgment or the granting of a new trial in any cause, civil or criminal, on the ground of any technicality except where "it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

Referring to injunctions the president urges the recommendation made in a former message to the effect that before granting a writ the judge must give due notice to the adverse parties. He lays great stress upon the importance of reforming the abuses of the injunction writ and says: "If the American people ever become convinced that this process is habitually abused, whether

in matters affecting labor or in matters affecting corporations, it will be well-nigh impossible to prevent its abolition."

Referring to the criticism of judges, and as though by way of defending his own course in the beef trust cases, the president says: "It may be the highest duty of the judge at any given moment to disregard, not merely the wishes of individuals of great political or financial power, but the overwhelming tide of public sentiment; and the judge who does thus disregard public sentiment when it is wrong, who brushes aside the plea of any special interest when the pleading is not founded on righteousness, performs the highest service to the country. Such a judge is deserving of all honor; and all honor can not be paid to this wise and fearless judge if we permit the growth of an absurd convention which would forbid any criticism of the judge of another type, who shows himself timid in the presence of arrogant disorder, or who, on insufficient grounds, grants an injunction that does grave injustice, or who, in his capacity as a construer, and therefore in part a maker, of the law, in flagrant fashion thwarts the cause of decent government. The judge has the power over which no review can be exercised; he himself sits in review upon the acts of both the executive and legislative branches of the government, save in the most extraordinary cases he is amenable only at the bar of public opinion; and it is unwise to maintain that public opinion in reference to a man with such power shall neither be expressed nor led."

"The best judges have ever been foremost to disclaim any immunity from criticism. This has been true since the days of the great English Lord Chancellor Parker, who said: 'Let all people be at liberty to know what I found my judgment upon; that, so when I have given it in any cause, others may be at liberty to judge me.' The proprieties of the case were set forth with singular clearness and good temper by Judge W. H. Taft, when a United States circuit judge, eleven years ago, in 1895: 'The opportunity freely and publicly to criticize judicial action is vastly more important to the body politic than the immunity of courts and judges from unjust aspersions and attack. Nothing tends more to render judges careful in their decisions and anxiously solicitous to do exact justice than the consciousness that every act of theirs is to be subjected to the intelligent scrutiny and candid criticism of their fellow-men. Such criticism is beneficial in proportion as it is fair, dispassionate, discriminating, and based on a knowledge of sound legal principles. The comments made by learned text writers and by the acute editors of the various law reviews upon judicial decisions are therefore highly useful. Such critics constitute more or less impartial tribunals of professional opinion before which each judgment is made to stand or fall on its merits, and thus exert a strong influence to uniformity of decision. But non-professional criticism also is by no means without its uses, even if accompanied, as it often is, by a direct attack upon the judicial fairness and motives of the occupants of the bench; for if the law is but the essence of common sense, the protest of many average men may evidence a defect in a judicial conclusion, though based on the nicest legal reasoning and profoundest learning. The two important elements of moral character in a judge are an earnest desire to reach a just conclusion and courage to enforce it. Insofar as fear of public comment does not affect the courage of a judge, but only spurs him on to search his conscience and to reach the result which approves itself to his inmost heart, such comment serves a useful purpose. There are few men, whether they are judges for life or for a shorter term, who do not prefer to earn and hold the respect of all, and who can not be reached and made to pause and deliberate by hostile public criticism. In the case of judges having a life tenure, indeed, their very independence makes the right freely to comment on their decisions of greater importance, because it is the only practical and available instrument in the hands of a free people to keep such judges alive to the reasonable demands of those they serve. On the other hand, the danger of destroying the proper influence of judicial decisions by creating unfounded prejudices against the courts

justifies and requires that unjust attacks shall be met and answered. Courts must ultimately rest their defense upon the inherent strength of the opinions they deliver as the ground for their conclusions and must trust to the calm and deliberate judgment of all the people as their best vindication.'

"There is one consideration which should be taken into account by the good people who carry a sound proposition to an excess in objecting to any criticism of a judge's decision. The instinct of the American people as a whole is sound in this matter. They will not subscribe to the doctrine that any public servant is to be above all criticism. If the best citizens, those most competent to express their judgment in such matters, and above all those belonging to the great and honorable profession of the bar, so profoundly influential in American life, take the position that there shall be no criticism of a judge under any circumstances, their view will not be accepted by the American people as a whole. In such event the people will turn to, and tend to accept as justifiable the intemperate and improper criticism uttered by unworthy agitators. Surely it is a misfortune to leave to such critics a function, right in itself, which they are certain to abuse. Just and temperate criticism, when necessary, is a safeguard against the acceptance by the people as a whole of that intemperate antagonism towards the judiciary which must be combated by every right-thinking man, and which, if it became widespread among the people at large, would constitute a dire menace to the republic."

The president devotes considerable space to the race question and in unmeasured terms denounces mob law. Referring to the race question he says: "There is but one safe rule in dealing with black men as with white men; it is the same rule that must be applied in dealing with rich men and poor men; that is, to treat each man, whatever his color, his creed, or his social position, with evenhanded justice on his relative worth as a man." On this point he reads an extended lecture to black men as well as to white men, and pleads for the education of negroes.

Referring to capital and labor the president says: "In dealing with both labor and capital, with the questions affecting both corporations and trades unions, there is one matter more important to remember than aught else, and that is the infinite harm done by preachers of mere discontent. These are the men who seek to excite a violent class hatred against all men of wealth. They seek to turn wise and proper movements for the better control of corporations and for doing away with the abuses connected with wealth, into a campaign of hysterical excitement and falsehood in which the aim is to inflame to madness the brutal passions of mankind. The sinister demagogues, and foolish visionaries who are always eager to undertake such a campaign of destruction sometimes seek to associate themselves with those working for a genuine reform in governmental and social methods, and sometimes masquerade as such reformers. In reality they are the worst enemies of the cause they profess to advocate, just as the purveyors of sensational slander in newspaper or magazine are the worst enemies of all men who are engaged in an honest effort to better what is bad in our social and governmental conditions. To preach hatred of the rich man as such, to carry on a campaign of slander and invective against him, to seek to mislead and inflame to madness honest men whose lives are hard and who have not the kind of mental training which will permit them to appreciate the danger in the doctrine preached—all this is to commit a crime against the body politic and to be false to every worthy principle and tradition of American national life. Moreover, while such preaching and such agitation may give a livelihood and a certain notoriety to some of those who take part in it, and may result in the temporary political success of others, in the long run every such movement will either fail or else will provoke a violent reaction, which will itself result not merely in provoking the mischief wrought by the demagogue and the agitator, but also in undoing the good that the honest reformer, the true upholder of popular rights, has painfully and labor