An Opportunity for President Taft

TO THE PRESIDENT: You are about to select a successor to the late Associate Justice John M. Harlan. This will be the fifth associate justice chosen by you, not to mention the privilege you had of naming the chief justice. The Commoner has repeatedly urged you to make public the recommendations, written and verbal, upon which you appointed Justices Lurton, Hughes, Van Devanter, Lamar and Chief Justice White. While you are making up your mind as to the advisability of complying with this suggestion you will have opportunity of giving complete publicity with respect to the selection of Justice Harlan's successor. The Commoner suggests that you make public all the recommendations, written and verbal, given you with respect to the appointment of an associate justice to take Justice Harlan's place.

You can not fail to observe the high estimation the people place upon the public services of Justice Harlan. You can not be unmindful of their anxiety that his successor be a man upon whom the special interests may not count in the rendering of judicial decrees.

The people are watching this appointment, Mr. President. Will you take them into your confidence?

Challenge and Counter Challenge---Mr. Taft and Mr. Bryan

Louis F. Post, in The Public (Chicago): Early in his campaign tour for a second nomination Mr. Taft fell into the temptation to challenge William J. Bryan personally to name an example of restraint of trade which ought to be condemned and would not be condemned under the supreme court's interpretation of the anti-trust law. Mr. Bryan answered him promptly and conclusively as long ago as the 25th of September in a press interview from Knoxville, and on the 29th in The Commoner; but with the supreme indifference to the amenities of fair discussion, Mr. Taft professed in a later campaign speech (at Pocatello, Idaho, on the 6th of October) that Mr. Bryan had made no response to his challenge. It will be surprising if he ventures a repetition of those tactics after The Commoner's second reply, which has in part been published broadcast. Not only does Mr. Bryan again respond courteously and candidly to Mr. Taft's challenge, but he makes a counter challenge which Mr. Taft may find it safer to ignore than to experiment with.

In his first answer to Mr. Taft's challenge, Mr. Bryan replied that "any and all trusts, contracts or restraints of trade, according to the whim and pleasure of the trust sympathizer occupying at the time a seat on the federal bench" would "be absolved under the supreme court decision;" and he followed this generalization with citations which make it prudent, even if unfair, for Mr. Taft to profess to have had no reply at all. Mr. Bryan also asked questions—impudent no doubt in Mr. Taft's estimation, but certainly not impertinent. Why did Chief Justice White reiterate and emphasize in the recent trust case his dissenting opinion in a case that went against him years ago? Why did President Taft appoint supreme court justices who could be depended upon to reverse that earlier view of the court and turn Justice White's dissenting opinion of that time into Chief Justice White's controlling opinion now? Why did Chief Justice White write in the later case an opinion so exhaustive on a point not necessary for deciding the particular issues before the court? Why did Justice Harlan think it necessary to write a strong protest against the opinion of the chief justice, although he joined in the decision? These are among the questions Mr. Bryan asked in his first reply to Mr. Taft's challenge. His citations included one from Mr. Taft himself which must have made that candidate for renomination squirm a bit. It is quoted from his message to congress of January 7, 1910, and exhibits Mr. Taft as in terms opposing the injection by congress of the word "reasonable" into the anti-trust law. Mr. Taft said that this would "put into the hands of the courts a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment." Yet Mr. Taft now approves the injection by the supreme court into that law of that very word and with identically that effect.

Bryan's second answer, Taft having ignored his first, cuts deeper still. It appears in The Commoner of October 6th, in response to a repetition by Mr. Taft of his original challenge, which he coupled with some of his choicest denunciations of criticisms of the supreme court, evidently alluding to Bryan, as "glib." Mr. Bryan here reminds Mr. Taft that the latter "knows that Mr. Bryan has only reiterated the criticisms contained in the dissenting opinion of Justice Harlan and in the report of the senate judiciary committee filed by Senator Nelson three years ago," wherein Justice Harlan and Senator Nelson pointed out that the amendment now written into the anti-trust law practically nullifies the criminal clause. Upon the heels of his reminder, Mr. Bryan asks: "Does the president believe a criminal conviction possible" under the statute as the supreme court now interprets it? "If so, why does he hesitate to prosecute the officials of the Standard Oil and Tobacco companies?" These are questions which Mr. Taft must answer if he wishes his altered views of the anti-trust law to be regarded as a genuine conversion. But thereupon comes a crucial question from Mr. Bryan, provoked by Mr. Taft's renewed challenge of a challenge already amply met, a question which it were doubtless well for Mr. Taft to ignore—with much dignity to be sure, but with adamantine stubbornness. "Speaking of challenges," says Mr. Bryan, "here's one for the president;" and thereupon Mr. Taft's merciless inquisitor "challenges him to make public the written and verbal recommendations upon which he appointed Justice White to the position of chief justice over Justice Harlan, and the recommendations, written and verbal, on which he appointed the justices whom he has placed on the supreme bench. Did he know how they stood on the trust question, or was it purely accidental that all of his appointees took the trust side of the question?" Significant and interesting as this question is, Mr. Taft could doubtless intensify public interest in it by a frank answer.

COURTS NOT ABOVE REPROOF

Theodore Roosevelt delivered an interesting address in New York City. The Associated Press makes the following report of his address:

New York, Oct. 20.—The judiciary of the United States must be brought under the control and made answerable to the well thought-out judgment of the people in the opinion of Theodore Roosevelt, who spoke tonight on "The Conservation of Womanhood and Childhood," before the civic forum. This control in Mr. Roosevelt's judgment "should be exercised more cautiously and in different fashion than the control by people over the legislator and the executive, but the control must be there."

Control of judges, Mr. Roosevelt said, was half—although by far the important part—of a program which should be carried out for proper conservation of manhood, womanhood and childhood. The first half of the program, he said, consisted in placing upon the statute books of nation and states legislation to remedy existing defects.

The former president spoke at length of what he termed "crying abuses connected with child labor."

Mr. Roosevelt advocated enactment by congress of the bill providing for a bureau to be known as the children's bureau and to gather, classify and distribute accurate information on all subjects relating to the welfare of children. He urged working women to organize as working men are now organized and declared that New York should put a stop to manufacturing in tenement houses.

Experience in the last twenty-five years, the speaker declared, has shown that while the people may be aroused to sound and high thinking and their legislative and executive officers try to carry out their purpose, yet their whole movement for good may come to naught, "because certain judges, certain courts are steeped in some outworn political theory and totally misapprehend their relations to the people and public needs." He continued:

"I am entirely aware that no matter how carefully I guard what I have to say, no matter how cautiously and exactly I state the bald facts and truths that we shall all recognize, what I say assuredly will be misrepresented by certain persons with a deliberate view of misleading honest and conservative citizens into the belief that I am advocating something radical and revolutionary and destructive of our governmental system, and that I am making an attack on the judges. But I feel that it is my highest duty to speak plainly on this matter so vital to our welfare.

"I have the very highest regard, the highest respect and admiration for the judiciary. I believe the courts have rendered our people incalculable service. I most emphatically believe that we have been wise in giving great power to our judges. But I also most firmly believe that like any other power this power can be abused, and that it is a power from which the people have merely temporarily parted and not which they have permanently alienated."

In the last twenty-five years, Mr. Roosevelt said, the courts of New York once or twice have shown what proved well nigh unsurmountable obstacles to needed social reform. He cited, for instance, decisions in the workmen's compensation law cases, the so-called bake-shop case and another ruling, a decision which he said made the 9 p. m. closing law non-enforceable, and "in effect forced women workers to toil until late hours." These decisions proved the devotion of upright and well-meaning judges to a system of economic philosophy, not merely outworn, but in the last degree mischevious.

"I for one hold that if a majority of the people, after due deliberation, come to champion such social and economic reform as these we champion tonight," he continued, "they have the right to see them enacted into law and become a part of our settled governmental policy, and I shall never abandon the effort to see this view triumph.

"I am asking you to declare unequivocally that it is for the people themselves to say whether this policy shall be adopted, and no body of officials, no matter how well meaning or personally honest, no matter whether they be legislators, judges or executives, have any right to say that we, the people, shall not make laws to protect women and children, to protect men in hazardous industry, to protect men, women and children from working under unhealthy conditions, or for manifestly excessive hours, and to prevent the conditions of life in tenement houses from becoming intolerable."

MR. BRYAN IN NEBRASKA

One other date has been added to Mr. Bryan's speaking engagements in the Third congressional district, namely, Wisner, Neb., at 3 p. m., on Saturday, October 28. His complete itinerary in that district for this week is as follows: Lyons, 11 a. m., Wednesday, October 25; Walt Hill, 3 p. m., Wednesday, October 25; South Sioux City, 8 p. m., Oct. 25; Pender, 10:30 a. m., Friday, October 27; Wayne, 3 p. m., Friday, October 27; Norfolk, 8 p. m., Friday, October 27; Stanton, 11 a. m., Saturday, October 28; Wisner, 3 p. m., Saturday, October 28.

These speaking engagements have been arranged by the Nebraska democratic state committee in conjunction with the democratic congressional committee of the Third congressional district.