can canned lobster, without a Samuel Hopkins Adams to warn him against it; but that he persistently had such a fear the lover of the transcendently noble essay on Milton cannot easily believe. And as for demagoguery, that man is a demagogue who appeals to the passions of men for base ends—his own or theirs. No man is a demagogue who in sincerity appeals to men to right wrongs. Wendell Phillips was no demagogue, though very likely the men he denounced as being "drunk on cotton and the New York Observer," thought him so. Nor is the editor of Collier's Weekly a demagogue, though the makers of patent medicines and aphrodisiac whiskey may call him so. Nor was Tiberius Gracchus a demagogue, nor is Raymond Robins. Read the speech that Collier's so bitterly denounced. It is published entire elsewhere in this Public. Collier's has fought a good fight—the best that has been put up—in the smaller battles for national righteousness. We cannot believe that it will weakly withdraw from the ranks, in the face of the great fight now on against special privilege.

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MR. TAFT ON THE INJUNCTION QUESTION.

In some respects Mr. Taft's views on the subject of injunctions in labor disputes are liberal and far in advance of his party platform. In handling the subject in his acceptance speech in Cincinnati he begins with the statement that laborers have the right to organize, to strike, and to boycott their employers—"to withdraw themselves and their associates from dealings with and giving custom to those with whom they are in controversy;" and to extend that boycott among their sympathizers—"all those who sympathize with them may unite to aid them in their struggle." But they may not do violent injury to property, nor assault strike breakers, nor boycott those who deal with their employers. So far he has repudiated his own platform and put himself squarely on Mr. Bryan's (except that Mr. Bryan would not endorse any kind of boycott), and his argument furnishes good reason for voting for Mr. Bryan. But he goes on to say that to prevent such "threatened unlawful injuries"—smashing property, assaults and "secondary boycotts"—the injunction furnishes the only adequate remedy, because—he gives only one reason—the injury is not done by one act, but by a "constantly recurring series of acts" which would require a "multiplicity of suits" unless an injunction is resorted to, and the remedy by suits for damages is therefore inadequate.

But the law does not say that an injunction will issue wherever the remedy by suits for damages is inadequate, but wherever there is no adequate remedy at law, which is a very different thing, although Mr. Taft does not seem to know it. He advocates injunctions in two classes of cases: first, violent injuries to property and assaults on strikebreakers; second, the "secondary boycott"—the boycotting of all who deal with the employers.

In his advocacy of the first, Mr. Taft confuses an adequate remedy by a suit for damages with an adequate remedy at law. He appears to think that a suit for damages is the only remedy the common law gives! Of course a suit for damages would not furnish an adequate remedy for smashing property and assaulting workmen. But the common law does furnish an adequate remedy through the police department and the criminal courts. An injunction cannot prevent; it can only punish if it is disobeyed. But the criminal courts can do that, and the police can prevent. There is, therefore, an adequate remedy at law. What advantage has the injunction over the orderly procedure in the criminal courts? None whatever. It deprives one charged with crime of his constitutional right to trial by jury, of his constitutional right to be confronted by the witnesses against him, and to cross-examine them, and thus makes it easier to convict an innocent person, and to convict on false testimony; it frequently punishes people for doing what they have a right to do. But these are evils, not advantages. When it comes to punishing the guilty, the criminal law is equally effective. Therefore it has been the settled law, in England for centuries, in this country since its foundation, that an injunction will not issue to prevent a threatened crime. There is no principle of law more firmly established than this, because for centuries our lawyers and judges have known that the chief foundation of our liberty is the right of an accused to be confronted by the witnesses against him and to trial by jury. Mr. Taft is wrong in his law. Under our system of jurisprudence, injunctions should not issue in such cases, because the criminal law furnishes an adequate remedy without the evil, introduced by the injunction, of depriving the accused of his constitutional rights. This principle has never been departed from except in the labor strike cases. Hence, injunctions in those cases introduces into our law a new and dangerous thing—one law for the laboring man and another for other classes. This should not be tolerated.

This leaves but one class of cases in labor disputes, where, according to Mr. Taft's argument,

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injunctions should issue, namely, "the secondary boycott." This he justifies solely on the ground that it is necessary to prevent a multiplicity of suits. But how there can be more than one suit, he does not say. If the injunction issues, as he says it should, only to prevent a boycott, it forbids only one thing—the boycott; there is only one wrong—the boycott. Whether the proceeding be a civil suit at law, a criminal prosecution at law, or an injunction suit in equity, there can be but one suit to redress the one wrong. The "constantly recurring series of acts" to which Mr. Taft refers, are not a large number of different boycotts, but a series of acts, *each perfectly lawful,* which, however, when taken together, may tend to show a boycott. Thus Mr. Taft has confused the wrong itself, the boycott, with the evidence which tends to establish it—a curious mistake for a lawyer.

The effect of this confusion of thought is far reaching. He seeks thereby to justify forbidding a person from doing what he has an absolute right to do—forbidding it under threat of prison sentence. It would justify the imprisonment of a person, for instance, for ceasing to buy from one grocer, and instead patronizing another. If it is unlawful to try to persuade a person to take his custom from one trader and give it to another, then the business of a commercial traveler or "drummer" is unlawful. It is not unlawful. It is done every day in all sorts of businesses and in all walks of life. And, except in strike cases, no one has ever thought of its being unlawful. It is only when a conspiracy is organized to ruin or damage a business by organized acts of that kind, that an unlawful element enters; and that unlawful element is the organized conspiracy—the boycott. Mr. Taft confuses the boycott, which is unlawful, with the acts, perfectly lawful in themselves, which taken together may furnish evidence of a boycott, and thereby seeks to justify the issue of injunctions to prevent the doing of lawful acts, by an appeal to the well justified public disapproval of boycotts.

But, as we have seen, his reasoning does not justify his conclusion. It justifies nothing but an injunction to prevent a boycott, if indeed it justifies even that. The boycott is in its very nature criminal. It is unlawful because it is a criminal conspiracy. It is one act of which, however, various other acts are evidence. The proper way to deal with it is by trial in a criminal court, where the jury can weigh the evidence, consisting of various acts, innocent in themselves, and determine whether, taken together, they show the crime of boycotting. But if it is urged that boycotting is not a crime, then let an injunction issue forbidding boycotting, and forbidding nothing else. For why punish the innocent with the guilty? Then the spirit and genius of our legal system, and our constitutional rights, can be preserved by trying before a jury the person who is charged with boycotting—the very remedy proposed by the Democratic platform.

But Mr. Taft exhibits still greater confusion of thought when he discusses the Democratic platform. He condemns the demand that injunctions should not issue in industrial disputes where they would not issue if no industrial dispute were involved. He condemns it as "disingenuous," "loosely drawn," "vague and ambiguous," and because it "does not aver that injunctions should not issue in industrial disputes." But how could language be more clear and concise? And it meets the situation fully and correctly. The case against injunctions in labor disputes is two-fold: first, they subvert the Constitution by usurping the jurisdiction of the criminal courts, and thereby depriving the accused of his right to be confronted by the witnesses against him and to a trial by jury; second, they forbid people doing that which is lawful. Injunctions never issue to prevent crimes, except in labor disputes, and never issue to prevent that which is lawful, except in labor disputes. Therefore, the provision that injunctions should never issue, except where they would issue were no industrial dispute involved, meets the whole situation squarely. Nor would it do to provide that they should never issue in industrial disputes. We have seen that, in the present state of the law, perhaps injunctions should issue to prevent one thing—the boycott. Certainly they should issue to prevent actual physical trespass on the employer's property; for they would issue if there were no industrial dispute. This is all taken care of, tersely and concisely, by the Democratic platform. But Mr. Taft, ignorant of the law, and confused in his thought, is unable to see the clear application of this very clear provision, and gropes, like one blindfold, for some hidden meaning which does not exist, and the result is an absurd misstatement of the provision, its meaning, objects and effect. For Mr. Taft seems unable to understand that what the laboring man wants, and what the Democratic party offers him, is his just rights, and nothing more—his equal rights with the rest of the community. Apparently his mind is full of the idea of privileges. Thus he suggests, as a concession, as a privilege, that no injunction issue without notice. This would be a special privilege as it is not the law in any juris-

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diction to-day. But the laboring man asks no privileges, he asks his equal rights with the rest of the community and nothing more, and that is exactly what the Democratic platform offers.

When he comes to the question of jury trials in contempt cases, Mr. Taft seems equally unable to understand the Democratic platform, and makes misstatements, equally as groundless, as to its meaning. He affects to think that the Democratic platform favors a jury trial in cases to punish for contempt recalcitrant witnesses, jurors, etc. It is safe to say that this construction of the plank never entered the head of anybody but Mr. Taft. The provision is a part of the labor plank, and refers only to the contempts that arise in labor cases, which are: first, alleged disobedience of injunctions; and, second, criticisms of the decisions of the courts. In regard to the first, we have seen above that jury trials in boycott and contempt cases would be a long step forward toward the orderly administration of justice; and as boycotts are not confined to labor disputes—witness the recent Chinese boycott—the provision does not call for class legislation. The second is, perhaps, the greatest anomaly in our law—that when a court decision is criticized, the judge criticized calls the offender before him, and tries and punishes him. Thus the judge is at once complainant, prosecutor and judge. We pass laws forbidding a judge from presiding at a trial in the result of which some relative is interested; yet we permit him to preside at a trial to which he is a party, and in a case in which it is peculiarly hard for him to maintain judicial impartiality because of the natural feeling of resentment at criticism of oneself. It is unjust to the litigant to put him in such a position; it puts too heavy a burden upon the judge. And it is not only labor leaders who have felt the injustice of this truly extraordinary condition of our law. Unsuccessful litigants, reformers of various kinds, clergymen engaged in the work of suppressing vice, who have dropped chance remarks, or given newspaper interviews following decisions interfering with their work, and many others, have learned well how hard it is for even the most upright of judges to be truly judicial, to maintain strict impartiality under such conditions. Thus we see that instead of "an insidious attack upon our judicial system," this plank also calls for another step forward towards the orderly administration of justice.

WILLIAM G. WRIGHT.

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What ought not to be done, do not even think of doing.—Epictetus.

EDITORIAL CORRESPONDENCE

MR. BRYAN AND THE SPANISH TREATY.

Boston, August 10.—In view of the revival of attacks upon Mr. Bryan on account of his responsibility for the Philippine situation through urgency with Senators of his party to vote for the ratification of the Treaty of peace with Spain, it seems proper to offer the testimony of one who had a very close and intimate knowledge of the conditions and circumstances in and about the Senate previous to the ratification of the Treaty, February 6, 1899.

This knowledge was gained as a representative of the Anti-Imperialist League, present in Washington to do what was possible to prevent the ratification of the Treaty. There were many conferences daily with groups of Senators and with individual Senators of both parties; and the freest intercourse with Senator Jones, the leader of the Democratic side, and with Senator Hoar, who represented the Republican opposition to the Treaty. This was the time when Senator Hoar prophesied that if Mr. McKinley's policy was carried out, the downfall of the Republic would date from his administration, though afterwards that spirit of partisanship to which the Senator succumbed permitted him to become a supporter of Mr. McKinley and to become a vituperator of Mr. Bryan. Senator Hoar was probably the originator of the accusation against Mr. Bryan for the crime of which the Republican party was guilty.

It seemed best then, it is true, to most of the Anti-Imperialists to concentrate their forces to defeat, if possible, the ratification of the Treaty, trusting to the future for the negotiation of another which should not saddle the Philippines as a possession upon the United States; but there were other opinions, and it must be confessed that in retrospect it is apparent that the field of possible contingencies might have been contemplated with a larger view. The ratification of the Treaty would have left the absolute war power with the President, who might have plunged the country into inextricable complications, as, in fact, he had threatened to do when, on December 21, 1898, before the ratification of the Paris Treaty, he ordered, by a proclamation so violent that General Otis felt obliged to alter its terms before publication, the extension of the sovereignty of the United States over the whole archipelago—the United States having been pledged by the protocol strictly to observe the status quo until the ratifications of the Treaty were exchanged.

It is not then difficult to tolerate, perhaps it is possible to applaud, the point of view of a sincere Anti-Imperialist who felt that the whole question should be taken from the military power, and that it would be best settled and settled right by the American people under constitutional authority. It will be remembered that many of the Republican leaders in the Senate asserted that we did not propose to hold any subjects or to establish colonies, and that Senator Wellington's vote for ratification was secured by the President's direct assurance to him that such was the case. As a matter of fact, only the casting vote of the Vice-President prevented a declaration of the intention of the United States to give the

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