in the new House may be large enough to prevent reactionary Democrats and the Republicans from blocking Administration proposals without regard to their merit or urgency. The new Congress has a peculiarly difficult task. It must not only assume responsibility for the crucial domestic and international problems of the peace but discharge, as best it can, the responsibilities which the Seventy-eighth Congress refused to assume. We trust the lessons of the 1944 election will have been carefully studied and assimilated by its members before they assemble on January 3.

**The Supreme Court and Racialism**

We find the weak handling of racial issues by the United States Supreme Court deeply disturbing. The majority of opinions in the cases involving anti-Negro discrimination by the Brotherhood of Locomotive Firemen and Engineers are unworthy of the court. So basic an issue called for the clear affirmation of fundamental constitutional guarantees. The opinions, while upholding Negro rights, were turgid, legalistic, and evasive. The cases called into question contracts between the Brotherhood and certain Southern railroads depriving Negroes of jobs and giving those jobs to white men. The right of the Brotherhood to act as an exclusive collective-bargaining agent derives from a federal statute, the Railway Labor Act. And the Fifth Amendment gives the Supreme Court ample leeway to end a situation in which this exclusive bargaining agent at one and the same time excludes Negroes from membership and bargains away their rights. Something more was called for than the court's two meek little sentences on the Negro issue: "Here the discriminations based on race alone are obviously irrelevant and invidious. Congress plainly did not undertake to authorize the bargaining representative to make such discriminations." The round-robin-hood's-barn reasoning of the majority merely serves to widen the area of judicial interference in labor contracts without strongly and squarely outlawing racial discrimination in such contracts.

_The Nation_ is glad that one member of the court, Justice Murphy, spoke manfully against the quiescent attitude of the majority. "To decide the case and to analyze the opinion solely upon the basis of legal niceties," he said in his concurring opinion, "while remaining mute and placid as to the obvious and oppressive deprivation of constitutional guarantees, is to make the judicial function something less than it should be." Justice Murphy declared that "no statutory interpretation can erase this ugly example of economic cruelty against colored citizens of the United States" and warned that racism is "far too virulent today to permit the slightest refusal, in the light of a constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation." We note that Justice Black concurred only in the result. We hope he shared Justice Murphy's feelings.

We find ourselves equally disturbed by the Korematsu case in which a badly split court handed down no less than five separate opinions, one by Justice Black for the majority, a concurring opinion by Justice Frankfurter, and separate dissents by Justice Roberts, Justice Murphy, and Justice Jackson. The case involved an American citizen of Japanese descent found guilty of violating a military exclusion order in California. The case had difficulties obvious enough to discourage dogmatic lay judgment, but certain points made in the individual opinions merit closer public attention.

Justice Roberts made the point that Korematsu was actually subject to arrest under two conflicting military orders, one requiring him to stay where he was, the other requiring him to leave, and termed this "a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp." Justice Roberts thought the court should have addressed itself to "the actualities of the case," instead of setting up "a figmentary and artificial situation." Justice Murphy did not see why Japanese, like German and Italian Americans, could not have been given separate loyalty hearings. He pointed out that while the military argued the need for speed, "nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued; and the last of these 'subversive' persons was not actually removed until almost eleven months had passed." Justice Murphy says "there was no adequate proof" that the F. B. I. and military intelligence did not have the situation well in hand and points to the excellent record made by Japanese Americans. "I dissent, therefore," he said, "from this legalization of racialism."

Justice Frankfurter, concurring, took a middle position. He felt the military had ample power in time of war to do what they did but did not feel impelled to approve what they did; "that is their business, not mine." This judicial abnegation at least has the virtue of meeting the basic point raised by Justice Jackson's dissent. "Much is said," he declared, "of the danger to liberty from the army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due-process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency ... but once a judicial opinion rationalizes such an order to show that it conforms to the Constitution ... the court for all time has validated the principle of racial discrimination in criminal procedure ... The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

In the light of that sound observation, we shudder when we read in Justice Black's opinion, "It should be noted to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that the courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can." The italics, and the forebodings, are ours. We do not feel that these forebodings are made groundless by the unanimous ruling of the court in the
Hard or Durable Peace?

ELSEWHERE in this issue, Oscar Lange takes exception to certain aspects of the "Plan for Germany" which The Nation outlined on October 7. Professor Lange is no extremist but an informed student of international affairs, a friend of the Soviet Union and an acknowledged liberal. We think his views deserve careful consideration. We do not feel, however, that they call for a modification of our position.

Professor Lange is right in asserting that our first concern is a durable peace and the building of a stable international order; we believe that this is what most Americans are fighting for. A "hard peace," a "soft peace"—these are emotional and not definitive terms. They represent an attempt to transfer primitive punitive concepts from an individual to a collective application. Suppose we admit the collective guilt of the German people, does that mean that a "hard" retributive justice must be visited on all Germans alike—soldiers and civilians, men, women, children, and infants yet unborn, on rich and poor, on the Nazi functionaries and the anti-Nazi prisoner whom he tortured? Such a retribution, while satisfying an understandable desire for vengeance, can hardly provide the basis of a lasting peace.

Let us by all means be hard where punishment can be closely related to the crime and the criminal. Let us seek out and punish with the utmost severity the Nazi criminals responsible for destroying democracy, for torturing thousands of their countrymen, for plunging the world into war, and for glorifying in brutality the like of which the world has never before seen. And let the accusers and the judges be those who have felt most directly the scourge of Nazi ruthlessness.

But let us not abjure the very essence of democratic faith by indulging in racial myths such as Professor Lange suggests. In a sense fascism and Nazism represent a kind of "people's imperialism." (It should be noted that Professor Lange in his analysis names both Italy and Germany—two widely different nations. He might have gone on in his roll call of fascist-dominated lands.) For Nazism and fascism are phenomena of a revolutionary era, the toxic products of social disillusionment and economic decay. They are virulent in those countries where democracy is most immature and where primitive traditions of militarism are strongest. They have been most virulent in Germany, and therefore we admit that Germany deserves specially drastic treatment. But to lay the blame primarily on the German common people and minimize the role of the army, the feudal landowners, and the industrials who financed the rise of Hitler as a bulwark against socialism is to distort history. And even with this powerful backing it is doubtful whether Nazism would have triumphed over popular opposition but for the refined terrorism of the police methods of a modern dictatorship. And beyond that, as every student of modern history knows, Hitler would not have got his way in Europe, would not, in fact, have been able to pitch Europe into war, had not the great democratic powers outside proved first compliant, then timid rabbits in their acceptance of his demands, revealing in the showdown that they dreaded communism more than they feared Nazism.

It is well to remember that fascism has roots and that it has flourished in many soils. Its eradication is only begun with military defeat and with those precautionary disarmament steps aimed to prevent new aggressions. Professor Lange's solution has a deceptive simplicity: Germany could be utterly destroyed and the roots of fascism left undisturbed. In fact, if the proposed economic destruction of Germany should produce the chaos, mass unemployment, and industrial disruption which may envisage, we would not only have left the roots but tilled the soil for a new and more terrible fascist crop. And who then but our sons and daughters would be the victims of the "hard peace"?

What then is the alternative? We return to our original proposal. We believe that the last vestiges of the Nazi state should be destroyed, that all Nazi functionaries should be removed, and that there should be no temporizing with the pre-Nazi reactionaries who will doubtless come forward and offer their Darlan or Badoglio services in enforcing order. We believe that the power of the great German industrialists, cartels, and landowners must finally be broken. We believe that Germany must be disarmed and kept disarmed by the combined action of the United Nations. This will not require dismemberment of Germany or the removal of its industries. The apparent security advantages of such measures would be offset by the necessity of long-term occupation and Allied policing, by economic dislocation, and by the "rise of frantic agitation on the part of nationalist groups interested solely in preparing the ground for a new war of 'liberation.'" Ultimately, Germany will be rendered "safe" only by the rise of its own democratic elements and by the rebuilding of a European community designed, not to perpetuate anachronistic monarchies or predatory economic tyrannies, but to serve the needs of the people themselves regardless of race or nation. And this European community will develop only if the United Nations remain united, pledged not merely to guard against new aggression but to cultivate a true democracy.

Alas, that the most recent revelations of Allied plans and practice give us little hope for democratic and economic renaissance after military victory. When it comes to settlement for Germany, we fear that it will be neither our plan nor Professor Lange's which will be adopted. For if our present policies hold, it will be anti-Nazi German workers who will be shot and "good" German reactionaries who will be installed by Allied arms. If this happens the peace will fail not because it is soft but because it is conceived and enforced by torts who have learned nothing and forgotten nothing since 1918.