

QUEER.

The populist leaders and journals of Nebraska are universally denunciatory of the venality of the American voter and with unanimity they have time and again avowed that their peerless presidential candidate in 1896 and in 1900 was defeated with C. O. D. ballots paid for by the republican party. And it is exceedingly queer and paradoxical that the same shepherds of the flocks of the common people now howl for an election of United States senators by a direct popular vote so as to secure uncorrupted ballots and incorruptible men.

Even the peerless himself at Salem, in Illinois, last summer proclaimed that the election if held then—while he was speaking in his native town—would result in the triumph of populism. But that the republicans were getting together a mammoth money pile with which to buy voters and therefore—as his followers were a salable and selling set—he could not feel quite certain of even his own election. Thus it is held that voters for presidential electors are purchasable and that voters for senators would be pure as the snow and incorruptible as the angels. They do not know enough, according to Bryanarchy, to elect honest men to the state legislature, but they would be experts in selecting honest men for the United States senate.

AUSTRIA AND AMERICAN MEAT.

A year ago the German Reichstag passed the meat bill which restricted the importation of American meat and materially affected our export trade, greatly to the injury of American farmers. The action of the Reichstag was in retaliation of American legislation. Shortly before this congress passed an act placing a higher duty upon the importation of sugar than the rate stipulated in a commercial treaty between Germany and the United States, without first having had the senate formally abrogate the treaty. This Germany resented. The feeling engendered on account of our discourtesy, together with our general policy of erecting barriers against foreign trade and maintaining a policy of commercial isolation, were responsible for the practical exclusion of our meat from Germany. Austria is now agitating similar legislation. The Austrian butchers association is making an effort to get the chambers of commerce throughout the empire to petition the ministers of agriculture to prohibit the importation of American meat.

The association has been successful in securing the co-operation of the chambers of commerce. It is quite probable that the Austrian government will accede to these de-

mands and the American hog will soon be decreed a "persona non grata" in another European market. The American farmer is gradually being educated and perhaps, after a few more European countries follow the German precedent, he will become thoroughly convinced that a protective tariff does not promote his welfare. Exclusion at home means restriction or exclusion abroad. American products cannot enter foreign ports under favorable regulations unless we accord like privileges to those to whom we wish to sell. To shut foreign goods out of our ports is to keep American goods out of a large and growing foreign market.

JOHN MARSHALL.

[Address of Charles S. Lobingier of the Omaha bar at the State University Marshall memorial exercises, February 4, 1901.]

"To me the most significant fact in Marshall's career is the illustration it affords of the power and influence of the lawyer and judge in American public life. We often hear it said that the lawyer, to be a factor in public affairs, must enter politics, that the mere lawyer and the mere judge must be content to live in comparative retirement, and to exert little influence on society; Marshall's career is a contradiction of all this. He never was a politician in the popular sense. His life was devoted to the law and not to politics; and yet, his appointment to the bench probably changed the entire course of American history.

"When Marshall entered upon his judgeship, the old Federal party to which he belonged, was about to pass from power forever. Its leaders had been defeated at the polls; its policy and principles had been repudiated; and one, who like Marshall, was identified with it, seemed wedded to a hopeless cause. But while the politicians and party leaders of the opposition were exulting in their apparent victory—while they were devoting themselves to the petty strifes of partisan politics, John Marshall was slowly engrafting the rejected principles of Federalism upon the jurisprudence of our country. Marshall came to the bench with profound convictions concerning the nature and powers of the Federal government. He believed that these powers ought to be strengthened and extended and that the constitution ought to be construed liberally to that end. And whenever occasion offered, as in the case of *Gibbons vs. Ogden*, 9 Wheat., he caused these convictions to become the law of the land. In that case, you remember, he refused to take the strict view that the power of congress to regulate commerce was confined to mere traffic. He gave 'commerce' the broader meaning of communication and thus brought within

the pale of Federal jurisdiction even an humble ferry line across the Hudson River. And so all through the more than a third of a century, during which Marshall presided over the court, he was re-writing the constitution. While politicians were concerned with the affairs of a day; while statesmen even, were legislating for a few years at most, this man, who never aspired to be more than a lawyer and a judge, was framing rules which would control the lives and liberties of his countrymen for generations to come.

Created American Constitutional Law.

"Marshall's decisions have not altogether escaped criticism. They were sometimes denounced by contemporaries; even posterity has not been unanimous in their approval. The editor of the *American Law Review*, for example, Seymour D. Thompson, is an incessant critic of the decision in the *Dartmouth College* case. But the fact remains that the difference between the constitution at the beginning of the last century and the constitution today is largely due to the labors of John Marshall. And this fact demonstrates as nothing else can, the dignity, importance and power of the judicial office.

"Sir Frederick Pollock in his *Oxford Essays*, a book which may be read with interest and profit by all law students, as well as lawyers, has a fine passage in which he pictures a world in which dwell the great jurists of all time, among whom he ranks Marshall. 'In that world,' he says, 'Moses and Manu sit enthroned side by side, guiding the dawning sense of justice and righteousness of the two master races of the earth. Solon, Scævola and Ulpian walk as familiar friends with Blackstone and Kent, with Story and Marshall. While the crimes of a Bonaparte and the bigotry of a Justinian are alike forgotten because at their bidding the rough places in the ways of justice were made plain.'

"Of the long line of judges who have built up the mighty fabric of Anglo-American law, perhaps only one can be compared to Marshall in the extent and importance of his contributions. Mansfield, who for twenty-eight years presided over the King's Bench, created the commercial law of England. Marshall created the constitutional law of America. Of the sixty-one constitutional decisions rendered by the supreme court, from the time of its organization until Marshall's death, he himself wrote thirty-six. The next highest number written by Story was only eleven.

"Students of the law, working daily among the books containing these decisions drawing perennial inspiration from the opinions of Marshall, may well apply to him the epitaph used with less truth of others,

"If you seek his monument, look around."