exploits like this was an abhorrent thing. Yet it is more than an even wager that those who did it come not from the circles that despise royalty, but from those that are noted for the fervor with which they have been accustomed to sing "God Save the Queen."

Straw voting by postal card during presidential campaigns received a staggering blow from the results of the Brooklyn Eagle's experiment in that line last fall. Out of 10,360 cards sent out in Kings county, N. Y., to test the popularity of Bryan and McKinley, respectively, the Eagle received back 4,765. Of the senders of these, 2,754 declared themselves for McKinley, 1,839 for Bryan, 76 for Debs, and 96 for Woolley; and estimating upon this basis and the known registration for the county, the Eagle predicted as follows:

McKinley	124,442	Bryan	83,097
Debs	3,434	Woolley	4,338

But the actual vote was:

McKinley	108,985	Bryan	106,221
Debs	2,331	Woolley	5,960

So McKinley, instead of polling a plurality of 41,345, or (as the Eagle predicted, after allowing 10 per cent. for error) of 37,211, had a plurality of only 2,764. And instead of his receiving nearly 58 per cent. of the total vote and Bryan less than 39, as the postal card canvass indicated, his percentage was less than 50, and Bryan's was more than 48. The ridiculous failure of the Eagle's experiment in forecasting will be useful to remember next time.

One of the circulars to Wells, Fargo & Co.'s employes, issued at Christmas time by John J. Valentine, the president, has fallen into our hands, and it differs in spirit so radically from the widely-advertised and ingeniously-beguiling philanthropy of some other large corporations, that we take pleasure in briefly commenting upon it. This circular, instead of transmitting a gift, by tossing it down from the master above to the servant below, is a simple expression of gratitude and good will. The accompanying gift, if it may be called a gift rather than rational provision for the general comfort and welfare, is a small reference library of the first class, intended to enable employes, in the language of the circular, "to keep in touch with the current events of the day" and to "fit themselves for promotion in the company's service." There is no pretense of generosity. On the contrary, it is in "consideration of the mutual advantages to be expected, as well as from a general desire to profit by and benefit" the employes that these libraries are established. So long as unfair industrial institutions make equitable distribution of earnings impossible, the attitude of Mr. Valentine toward his employes is ever so much more admirable than the sliding scale of gifts, of which some companies boast, or the cheap systems of pensions which seldom pension that others brag about. He suggests the spirit of equality even though the substance be lacking; they imply mastership on the one hand and dependence on the other.

JOHN MARSHALL DAY.

We shall celebrate next week the centenary of John Marshall's elevation to the chief justiceship of the United States, congress having designated the 4th of February, being the one-hundredth anniversary of the event, for that purpose. Unstinted praise will on this occasion be poured out upon the great jurist's work, and the people of the United States will be adjured to venerate his memory as that of one of the patriotic architects of our complex federal government.

Nothing that may be said in praise of Marshall's personality will be misplaced. He was a man of unyielding integrity and wonderful intellectual power. More than a judge, he was a statesman of the first magnitude—one of those rare statesmen of original abilities who conceive and create.

As a famous sculptor once professed to have seen in the crude marble block the image he afterwards released with his chisel, so John Marshall saw imbedded in the federal constitution an imperial nation, and, with an art surpassing that of the sculptor, he chiseled it out. Imbued as fully as Hamilton with the Hamiltonian spirit, he was better qualified and had a far better opportunity than Hamilton to make that spirit incarnate in our national life. What Hamilton could not do in constructing the federal constitution, Marshall could and did do in interpreting and applying it.

The power which the federalist party had lost in politics under Hamilton, was regained in constitutional jurisprudence under Marshall. The victory for American democracy that Jefferson won with the people at the beginning of the century, Marshall nullified from the bench before the first half of the century had gone. The principle of strict construction of the constitution, with a federal government held in wholesome check by the reserved power of the states, though triumphant at the polls, was supplanted judicially by the principle of loose construction and a strong central government. This was the fruit of Marshall's genius. He was in very truth what a friendly pen has called him, "a second maker of the constitution." He found a republic consisting of a federation of republics. He laid the foundations of empire.

It was no accident that enabled the federalists, though dying and soon dead as a party, thus to perpetuate their policy of a strong centralized government. Marshall was made chief justice manifestly for that purpose. Not that he was expected or could have been expected to twist the law. Marshall was not that kind of lawyer. But because his well known centralization views, and his extraordinary ability as an advocate, singled him out as the one man to turn back the democratic tide from the only point of vantage at which it could be intercepted—the bench of the supreme court.

Jefferson and Burr had been elected president and vice-president. Which was to be one, however, and which the other, was not known until two weeks before the inauguration; for in those days the candi-

date receiving the highest electoral vote became president and the one receiving the next highest became vice president, and Jefferson and Burr had received an equal vote. This threw the election into the house of representatives, which it was known would name one or the other for the first office, and it was believed that Jefferson would be the choice. He it was whom the people had expected to make president when they voted. The possible choice of Burr for the first office had no more entered the minds of the voters of 1800 than the possibility of Arthur's being president entered the minds of voters 80 years later. As Garfield was the popular choice in 1880 so was Jefferson in 1800. During the winter of 1801, while the decision of congress remained in abeyance—the federalist delegations casting their vote for Burr and being prevented from electing him only by the fact that they did not control a majority of the delegations; Jefferson's election being prevented on the other hand by the fact that his party also lacked a majority of the delegations, those from two states being equally divided—the chief justiceship, made vacant by the death of Chief Justice Ellsworth, offered the federalists their opportunity to save the federal policy of centralization.

It would have been gracious on the part of President John Adams, seeing that a complete popular change had taken place which threw his party wholly out of power, to leave the long deferred selection of the new chief justice to the incoming administration. Nor would this have been difficult for a president to do in those days preceding the establishment of the spoils system, a time when Jefferson was expected to retain in office the appointees of his predecessor. But the prejudice with which the "better classes" of that day regarded Jefferson was phenomenal. People of our time cannot understand those fears. So intense and irrational were they as to be comparable only with the fears the "better classes" now harbor for Bryan. We may well imagine that if Bryan had been elected last fall, and Chief Justice Fuller had died before the 4th of March, President McKinley would have hastened to fill the vacancy with a "safe man," even though possibly disposed, apart from the influences of the spoils system, to have left the vacancy open had Cleveland instead of Bryan been his successor. It was so in 1801. Having been utterly routed at the polls by the Jeffersonians, the federalists were anxious to avail themselves of their opportunity to hold Jefferson in check by placing a "safe man" at the head of the judicial department. Such a man was John Marshall.

Of Marshall's judicial qualifications nothing was then known. He had never been a judge. He was, however, a great lawyer, in the sense of being a powerful advocate at the bar—powerful in argument rather than in oratory. Great success at the bar is not usually a strong recommendation for the bench, since it implies a development of the partisan faculties at the expense of the judicial; but Marshall's professional success was the best possible recommendation to federalists for the American chief justiceship at that particular juncture. The federalists needed in that commanding judicial office a man who not only cherished their views of constitutional interpretation, as Marshall did, but who had also Marshall's ability to convince his associates and to mold the professional sentiments of the bar.

So complete was Marshall's success in satisfying this need of the federalists, that in only one or two instances during his long career upon the bench did he find himself in the minority upon a constitutional question. He was appointed chief justice January 31, 1801; he took his seat February 4, 1801, at the opening of the term, being then 45 years of age; and he continued in the office until his death, July 6, 1835, in his eightieth year. Upon his coming to the bench, the supreme court had rendered but two decisions of constitutional questions. Between that time and his death it rendered 51, and these were strongly tinctured with his federalist preconceptions.

One of his biographers (Allan B. Magruder, in American Statesmen series, pages 177-78), a very friendly biographer, while claiming for Chief Justice Marshall the judicial virtue of distinguished impartiality, observes that—

> it is one thing to be impartial, and another to be colorless in mind. Judge Marshall was impartial and strongly possessed of the judicial instinct or faculty. But he was by no means colorless. . . . Believing that the constitution intended to create and did create a national government, and having decided notions as to what such a government must be able to do, he was subject to a powerful though insensible influence to find the existence of the required abilities in the government.

It was because Marshall was known to be subject to that powerful but insensible influence that President Adams, as the same friendly biographer says at page 163, "departed from the natural order of precedence which at that time favored the promotion of those already on the bench, whose judicial experience might be supposed to give them superior qualification," and appointed the judicially inexperienced Marshall over their heads. This was necessary for federalism in order that its power, lost at the polls, might be recovered through the judiciary. Marshall was appointed to make federalist law, and by the same biographer (pages 179-80) we are assured that that is what he did:

> He had no rocks in the shape of authorities, no confusing undulations in collections of adjudications tending in one or another direction. He was making law; he had only to be judicial and consistent in the manufacture. He made federalist law in nine cases out of ten, and made it in strong, shapely fashion.

For an insight into his methods of making federalist law we are indebted to one of his great contemporaries, William Wirt, who is quoted at pages 35-6 by the biographer already named. Mr. Wirt was describing Marshall not as a judge, but as an advocate:

> In a bad cause his art consisted in laying his premises so remotely from the point directly in debate, or else in terms so general and so specious, that the hearer, seeing no consequences which could be drawn from them, was just as willing to admit them as not; but, his premises once admitted, the demonstration, however distant, followed as certainly, as cogently, as inevitably, as any demonstration in Euclid."

Whether or not the great chief justice resorted to this art in judicially

shaping the federal constitution, is a question for constitutional experts. It is certain, at any rate, that in a period when democracy was triumphant in the United States, when federalism as a political force had been overthrown and the principle of strict construction held undisputed popular sway, he revived federalism as a judicial force and established through the courts the unpopular principle of centralization.

His first act in that direction was taken early in his term of office. During the last days of President John Adams's administration, a Mr. Marbury was appointed and confirmed as a justice of the peace for the District of Columbia, and, although his commission was signed before Jefferson came into the presidency, it had not yet been delivered. Taking the ground that an official commission, like a deed of land, requires delivery to give it validity, Mr. Jefferson's secretary of state, James Madison refused to deliver it. (Incidentally, and by way of explanation, it should be remarked that a scandalous attempt to pack the federal judiciary had been made by the outgoing federal party upon the eve of Mr. Jefferson's inauguration.) Mr. Madison having refused to deliver the commission, Marbury petitioned the supreme court for a mandamus to compel its delivery under an act of congress authorizing such proceedings. In that case—Marbury against Madison—reported in the first volume of Cranch's reports, Chief Justice Marshall's first constitutional opinion was handed down. He argued that although Marbury had a vested right to the office, and it was the duty of Madison to deliver the commission, the court was without constitutional authority to enforce the delivery, its only authority being the act of congress. This brought the court squarely up to a consideration of its constitutional power to disregard an act of congress for unconstitutionality; and in an argument which has served for the groundwork of all subsequent constitutional interpretation, Chief Justice Marshall reached the conclusion, adopted by the court, that such power is one of its prerogatives. He argued that "it is emphatically the province and duty of the judicial department to say what the law is;" that "if two laws conflict with each other the courts must decide on the operation of each;" and that if in a particular case both the constitution and a law in conflict with the constitution apply, "the court must determine which of these conflicting rules governs the case." The conclusion logically followed that the court must ignore the act of congress and obey the constitution.

That decision was all-important. When the legislative department of the government, independent of and co-equal with the judicial department, had thus been subjected to the supreme authority of the latter by means of a judicial argument no less remarkable for the perfection of its logic than for the art with which it ignores in its premises the vital point, namely, the co-equality under the constitution of the legislature, the executive and the judiciary,—when this had been done, the court stood in a position to foster the federalist policy of a strong central government.

It was easy, even without that decision subordinating congress to the courts, to put by construction a federal check upon important functions of state sovereignty. This was first done in Fletcher against Peck, also reported in the first volume of Cranch. Influenced by bribery, the legislature of Georgia had issued a patent for a tract of land, which a subsequent legislature revoked, and the constitutionality of the revocation was the issue. As an act of sovereignty, that is of general law-making, the patent granted by the former legislature was subject to revocation by the latter, for legislators cannot tie up the law-making power of their successors. But, under the federal constitution, no state may pass a law impairing the obligation of contracts, and, by construing the Georgia land patent to be contractual instead of legislative, the supreme court opened the way to nullifying the repealing act and validating the fraudulent land title. Of the same character was the decision in the famous Dartmouth college case, reported in the first volume of Wheaton's reports, in which the court decided that a charter of incorporation granted by a state is a contract and can be neither repealed nor amended.

A further step toward centralization was taken when Chief Justice Marshall gave characteristically massive and graceful outlines to the doctrine that congress may create private corporations and place them so far above state law that the states cannot even tax them. This was in the case of the old United States bank, the great centralized banking institution which Jackson finally destroyed. That bank, with branches all over the country, existed in virtue of a congressional charter. Though it served public uses in connection with federal revenues and expenditures, it was a private concern. Great popular hostility to it developed during the democratic regime, and in 1818 the legislature of Maryland levied a tax upon all banks and branches doing business in Maryland without a state charter. The Maryland branch of the United States bank refused to pay, and the state sued the cashier, Mr. McCulloch, for the amount of the tax. Being defeated in the Maryland courts, Mr. McCulloch carried the case to the supreme court of the United States, where it is famous as "McCulloch against Maryland." The decision, which is reported in the first volume of Wheaton's reports, reversed the Maryland decision, Chief Justice Marshall writing the opinion. Admitting that power to create corporations is not among the powers specifically granted by the constitution to the federal government, he rested his conclusion upon those specific powers which do authorize the federal government "to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct war, and to raise and support armies and navies." These powers being conferred, together with power to make all laws necessary for their execution, he argued that the choice of the means is reposed absolutely in the discretion of the central government and therefore that authority to grant charters of incorporation for the promotion of any specified powers is to be inferred. That being so, he then considered the possibilities of

the obstruction of central action in this respect by the states through the use of their taxing power; and, concluding that "the power to tax involves the power to destroy," decided against the constitutionality of the Maryland tax law in its application to the United States bank.

From these decisions, the theory of which has been confirmed and never questioned by the court, the extraordinary influence of Marshall in shaping the federal government is evident. It was indeed greater than that of Hamilton. Hamiltonism had gone down with the federalist party in American politics, but Marshall wove its leading principles so closely into the web of American jurisprudence as to establish them more firmly than ever. Of late years they are consequently regaining their old power even in politics.

It is a reasonable surmise of Marshall's biographer already mentioned (page 180), that if Jefferson had had the appointment of a chief justice, his appointee "would have brought about a very different result . . . of which the workmanship in a strictly professional and technical view might have been equally correct." This country would then have been what its founders intended, a closely knit federation of states instead of the centralized and centralizing nation it has become, and the world power empire its federalistic partisans now aspire to make it.

The fact must be conceded, and "John Marshall day" is an appropriate occasion for the concession, that the great democratic triumph of 1800 has proved an empty victory. Though the democracy then secured the presidency and congress and caused the federalist party to disintegrate, it did not secure the real source of federal power. That was secured by the federalists when their outgoing president appointed John Marshall to the supreme bench. The defederalized federal government as it exists today, with its record of centralization and its outlook of empire, is a Frankinstein of his making.

Not to go to some schools is a liberal education in itself.—Tom Masson, in Life.

NEWS

In our report of Queen Victoria's death last week, a typographical error fixed the event upon two different dates, the 22d and the 23d. The true date was the 22d. On the 23d the new king took the oath of office, as noted in that report; and on the 24th he was formally proclaimed, at St. James's palace, and later in the day at Temple Bar and the Royal exchange, as king of the United Kingdom of Great Britain and Ireland, defender of the faith, and emperor of India. The king absented himself from the proclamation ceremonies. These ceremonies have since been repeated in the cities and towns of the kingdom, though with much less display. In the Irish capital, Dublin, they were performed on the 24th, and in the Scottish, Edinburgh, on the 25th. Sir Alfred Milner, on the 28th, at Pretoria, proclaimed the new king king of Great Britain and Ireland, defender of the faith, emperor of India, and supreme lord of and over the Transvaal and the Orange River Colony.

In honor of Emperor William of Germany, on the occasion of his forty-second birthday, which occurred on the 27th, King Edward presented him with the insignia of the order of the garter, in fulfillment of the intentions of his grandmother, the late queen, and at the same time appointed him a field marshal of the British army. Demonstrations of grief over the queen's death are the order in England. On Sunday the churches were heavily draped in black, and bells tolled mournfully all day. The public are officially asked to wear deep mourning until March 6, and half-mourning until April 17. On the first of the present month, February, the funeral ceremonies begin with the removal of the queen's body from Osborne house, where she died.

From South Africa but little news has been allowed to reach London to disturb the solemnities incident to the queen's death and burial. But from such as has come, it is evident that the British situation there has not improved. A pilot engine preceding a train on which were Kitchener and a body of troops, was derailed on the 23d. A train with British military stores was captured near Fourteen streams on the 25th. Twenty of the Cape Town police surrendered to a company of Boers on the 21st near Vryburg. Other engagements are reported from different parts of the extensive field of the war, in some of which the British are credited with success, though with casualties approximating 100; and as these lines are written (Jan. 31), it is reported unofficially from Cape Town that DeWet has entered Cape Colony, and officially from Pretoria that he is fighting the British Gen. Knox 40 miles north of Thabanchu, which is hundreds of miles north of Cape Colony. No details accompany either report.

American government in the Philippines appears from official dispatches to be in better condition than that of the British in the Transvaal. This improvement was brought to the attention of the senate on the 28th, by Senator Frye, who read the following cable message to congress from the leaders at Manila of the new federal party, which accepts American sovereignty:

Accessions to federal party by thousands in all parts of archipelago. Attitude of hitherto irreconcilable press and the general public opinion show that labors of party to bring peace will soon be crowned with success. Until now political parties have attempted formation on plans more or less questioning American sovereignty. Our platform makes main plank sovereignty of United States with liberty to each citizen to pursue peacefully his political ideas. Hour of peace has sounded. On our platform are grouped many Filipinos of hitherto irreconcilable ideas, but some more obstinate decline to join, for though willing to accept sovereignty of United States the prospect of indefinite continuance of military government makes them distrust purposes of the United States and delays their submission. Adjournment of present congress without giving president authority to establish purely civil government with usual powers and postponement for at least a year of such government until new congress will certainly confirm this distrust. Directory of the federal party believes conferring such authority on president would inspire confidence, hasten acceptance of sovereignty of union and the coming of peace. Directory therefore prays both houses of congress to authorize President McKinley to establish civil government whenever he believes it opportune.

It is impossible to ignore the indications that the foregoing appeal