

seat mainly by the support of the Southern Pacific political machine. Finally, last year, his "stand-pattism" had become so "raw" and Insurgency in California had become so strong, that he was defeated by William Kent (vol. xiii, p. 1192) for the Republican nomination, and Kent was elected in November. That was a distinct victory for the progressive element in the Republican party, and an equally distinct defeat for the Cannon element. As a rebuke to the progressive element in California, and as a consolation to the Cannon element, President Taft gave to the repudiated McKinlay a political position, lucrative and generally supposed to be honorable. Thus the President rewards a man who has spent most of his official "representative" career in misrepresenting his constituents. "Put none but misrepresentatives on guard" seems to be one of the great commandments in the White House. Every one who knows anything of politics knows that as surveyor of the port of California Mr. McKinlay will throw most of his official work upon his subordinates, and will devote his time and energies towards saving the Southern Pacific political machine from destruction by the progressive element now in control in California. Yet we are told by President Taft that he is much concerned about the preservation of the "representative" system of government. Of course the way to preserve the "representative" system is to keep on putting the government into the hands of misrepresentatives.

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The Courts in Politics.

"Take the courts out of politics," was Judge Mack's advice upon leaving the Chicago bench for his place in the new Court of Commerce; and the Chicago Bar Association has instituted measures with the object of doing this—in a way. Neither Judge Mack nor the Bar Association had in view the most dangerous meddling of courts with politics or relations of judges to politics. The Bar Association aims at making the election of judges non-partisan. This is highly desirable, of course, with political machines and their products as we have them now; but the worst in this kind of association of courts with politics is better than the best of the kind that has arisen through the usurpation by the courts of censorship of legislation. The bench has had quite as high an average of good judges under political nomination and election as under appointment. The political caucus, bad as it is, has turned out as high an average of good judges as bar association conferences have. And the bad decisions of

political judges are usually quite limited and ephemeral in effect. The influence of politics in this superficial way is of course to be got rid of if possible; but let not the really dangerous kind of politico-judicial affiliation be overlooked. So long as the courts may make and unmake law, may hold legislatures and Congress and even the people as a whole at bay in respect of law-making, they hold a kind and degree of political power of the most menacing character. With this power vested in the courts, the judiciary is polluted with politics at its source, regardless of how judges are chosen or who they are.

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Another Gibe at the Scot.

The Scot will tell you that the English, though they have many gibing jokes about Scotland folk, have built them all upon two, one of which is the "chestnut" of the Scottish traveler returned from his first journey, who said it was so expensive in London that he hadn't been there half a day before "bang went saxpence." To this parentage, then, goes the joke on Carnegie which "Success" reports. He asked at a public dinner, "Why do the British continue their coinage of farthings?" and an auditor answered: "To enable the Scotch to practice benevolence, Mr. Carnegie."

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EDWARD M. SHEPARD.

In the withdrawal from his candidacy for United States Senator before the legislature of New York (page 206), Edward M. Shepard denounces the Democratic caucus which nominated Wm. F. Sheehan, as having been controlled by Tammany Hall, which in turn is controlled by Charles F. Murphy. The situation is indeed as Mr. Shepard describes it, a pooling of their votes by "representatives" in a trust, to be cast by one voting trustee.

It is also true, as Mr. Shepard adds, that the Democrats can never succeed in New York State while it is generally believed that Tammany is in control. To this it should be added further that the Democrats will not succeed and ought not to succeed, in New York or anywhere else, not only so long as their leaders tolerate the unholy power of Tammany Hall, but also as long as they complain of it without vigorously identifying their leadership with people's power reforms to stamp it out.

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Our confidence in the democratic purposes and integrity of Edward M. Shepard has been fre-

quently expressed (vol. iii, p. 306; iv, 433, 450, 469, 578; v, 594, 746, 785, 802; vi, 571, 803; x, 866, 1043; xi, 627, 628; xiii, 938, 1182; xiv, 51, 58), and we have nothing in that respect to take back. He is a democrat by instinct, by cultivation, by reflection; and he is capable of leadership, of great democratic leadership.

There is no abler man in American public, professional or business life than he. Were he once to occupy conspicuously responsible public office, to be an official adviser of the people and their representative in their common affairs, so that he might prove himself to all as he already appears to the genuine democrats who know him, the highest office in the gift of American citizenship would probably be, not offered him, but thrust upon him.

So known to the people of his State two months ago, Mr. Shepard would today be United States Senator-elect, instead of a candidate driven out of the field by a corporation henchman and political spoilsman like Sheehan.

So known to the people of his State last fall, he instead of Dix would now be Governor.

And either as Governor or as Senator, he would have made a record of administrative and legislative efficiency, coupled with progressive democracy, that would in all likelihood have swept him into the White House at the elections of 1912.

With the people for his client, a lawyer of Mr. Shepard's abilities and his qualities of manhood and citizenship, would climb to higher levels of democratic statesmanship than any yet recorded in American history.

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But all that great possibility has passed away, and nothing short of a miracle can restore it.

Mr. Shepard flourishes as a lawyer at a period when the prizes of the bar are won in the service of special privilege corporations, of public utility corporations, with powerful incentives to dominate politics as well as business. We do not allude to money prizes. There is no reason to suppose that these are more attractive to Mr. Shepard than pelts to hunters of ferocious beasts or scalps to savage warriors. The professional prizes we allude to are the intellectual ones of combat—the joy of the struggle with equals in battles of giants.

There are no longer such prizes at the bar, except with great corporations for clients. Nor are the prizes won any more in forensic encounters. The clash of mind with mind at the bar in these days is in legal administration, legal adaptation, and legal creation, rather than legal controversy

in the courts. To such work, then, must the lawyer turn, if he has the ambition to enjoy and the ability to engage in battles with the mighty of his profession. And to such work Mr. Shepard has turned.

That he has held aloof from the dark and devious ways of corporation lawyers, those who know him fully believe. That in his work for the Pennsylvania Railroad corporation in connection with its entrance into New York, their contention that he has guided it along policies no less beneficial to the public, under all the institutional circumstances, than to the corporation, and because he believes that what is for the public interest is also for the best interest of his client, may well be accepted as true.

But the facts remain that corporations are at war with public rights, that corporation lawyers are employed to conserve the interests of their corporation clients rather than those of the public, and that Mr. Shepard is a corporation lawyer.

Though his service to his corporation be free of all impurity, though his own conscience be clear, though he have the confidence of all genuine democrats who know him, the fact that he is a corporation lawyer disqualifies him for popular acceptance as a democratic leader at a time when plutocracy is militant in corporate form.

The people as a mass cannot draw fine distinctions between the lawyers of a plutocratic corporation who do, and those who do not, give their client aid and comfort in its efforts to gain corporate privileges and corporate power in politics, at the expense of public rights and people's power. Like armies in the field, the people distinguish an enemy by the uniform he wears.

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Another element of political weakness in Mr. Shepard is his reserve regarding people's rights and people's rule.

He is a free trader, and on this question he has spoken as bluntly as the most radical man of his temperament and training could. He has a leaning toward equality of economic rights, and on occasion declares himself as definitely as a political leader in this country at the present stage ought to, if he expects to be of any use as a political leader. He is understood to lean strongly toward public ownership of public utilities, but his position in this respect has not been made very emphatic. He is sympathetic with wage workers in their struggle; but so far as he has spoken it is only a vague sympathy that he offers, unfortified by the clear and strong intellectual support he

might so easily bring to their cause. He is understood to favor the establishment of powers of direct legislation as a check upon the disloyalty of representatives to their constituents; but he has not distinguished himself as an advocate of this reform, which has come to be a veritable touchstone of democracy.

So much reserve on the live issues of democracy, though easily accounted for as the temperamental qualities of a modest statesman of transcendent abilities and profound democratic sentiments, discourage every hope of Mr. Shepard's being accepted generally as a democratic leader.

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In conjunction with that reserve on the issues of democracy, Mr. Shepard's place on the legal staff of the Pennsylvania Railroad appears to have made him impossible as a leader on the democratic fighting line. We are not stating our wishes, but the fact.

So far as he is known outside the circle of his friends, Mr. Shepard is distrusted by the Interests because they know something of his democracy, and by the masses because they know something of his corporate connections. Consequently, as a candidate for office, he has been the easiest kind of target for crooked agents of the Interests, those who are what the uninformed suppose Mr. Shepard to be. Corporation tools themselves, shameless ones, they point in scorn at him as "a corporation lawyer," knowing that this cannot hurt them with the corporations, for the corporations can see them wink; but that it will hurt him with the people. And it does. He and his friends cannot deny; they can only explain.

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We have said that a miracle alone can restore the possibility of Mr. Shepard's leadership in democracy, and this we repeat while regretting the fact.

The miracle might take either of two forms. One form would be a public enlightenment so far reaching and intense that Mr. Shepard's democratic enthusiasms would be manifest in spite of his reserve and of his corporate connections; the other, Mr. Shepard's abandonment of his democratic reserve, and his substitution, without waiting for election to office, of the people in place of a public utility corporation as his principal client.

The miracle is not at all likely to take the first form. In the second, an example, not necessarily for imitation but by way of suggestion, may be found in the career of Louis D. Brandeis.

"CALGARY MUNICIPAL."*

San Francisco will soon have a street railway line owned by the people and operated by the people, which is, as you have read, a "dangerous innovation."

No other American city is rushing into that brand of what American street railway monopolists call "socialism." But Calgary, the largest city of Alberta, and Edmonton, the capital of Alberta, have already "rushed" into it—and the people like it.

Yet they are not Socialists. Even the most conservative business men of Calgary and Edmonton see nothing alarming in municipal ownership of street railways, water and electric light and power plants. It seems natural to them, for those cities have never known the thrilling joy of being taxed by private owners of public municipal functions.

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The American monopolists fire rockets, put torpedoes on the track, and swing red lanterns to warn us against the "dangers" of public ownership of public utilities. But in Calgary and Edmonton the street railways, water plants and electric light and power plants, unlike our public utility corporations, own no mayors, no members of city councils, employ no political bosses, play no tricks in politics, hire no lawyers to pollute the public service, have no secret ownership of newspapers. On the other hand the people of the two cities thrive and are happy. They get good service at reasonable rates, and the employes of those publicly owned utilities are not compelled to work more than nine hours a day—and are otherwise treated like real human beings.

But of course the Calgary cars are rickety and the track out of repair, aren't they? No, the cars are just as good as the best I have recently seen in New York, Philadelphia, Cleveland, Toledo, Detroit, St. Louis, Louisville, Chicago, Milwaukee, St. Paul or Minneapolis; and compared with the four-wheel agitators used in Cincinnati they are as a morris chair to a bucking mule. The track is in New York Central shape. There are plenty of cars, and the motormen and conductors are careful and courteous.

It is a maxim of street railway monopolists that "public ownership of street railways doesn't pay," which means, when the sentence is completed, that "public ownership of street railways doesn't pay private monopolists."

*The two words one sees on the publicly owned street cars in the Alberta city, Calgary.