

Compare Mr. Davis's career at the New York bar, after his retirement from London, with Mr. Hughes's career, after his return to New York after serving as an outstanding member of the Supreme Court. Before he entered Harding's cabinet Mr. Hughes was probably the most trusted and valued advocate in the United States. But Mr. Hughes was even-handed in his practise. He represented big and little people, he appeared for "labor" as well as for "capital." It is characteristic of the two careers that Hughes was counsel for the United Mine Workers and Davis counsel against them. Let us not be misunderstood. It is a mistake, as a general rule, to identify lawyers with their clients. But it is not a mistake when the lawyer does so himself. Mr. Davis, in his attitude and aspirations, has made this identification. He glories in his specialized practise for Big Business and identifies America with his clients. As he himself said some months ago: "I have a fine list of clients. What lawyer wouldn't want them? I have J. P. Morgan and Company, the Erie Railroad, the Guaranty Trust Company, the Standard Oil Company, and other foremost American concerns on my list. I am proud of them. They are big institutions, and so long as they ask for my services for honest work I am pleased to work for them. Big Business has made this country what it is. We want Big Business. But it must be honest."

This emphasis reflects itself in Mr. Davis's views on such fundamentals as the power to make the necessary social adjustments within the framework of the Constitution. Shallow inferences are drawn from the fact that Mr. Davis, as counsel for the government, had to argue the first child labor case, without considering how deep was his belief in his own cause. The answer is to be found in Mr. Davis's address as President of the American Bar Association. In this address he sets forth all the conventional conservatism in regard to criticism of the courts, and all the conservative sophistication in defense of the invalidation by courts of social legislation. Apparently some of the Supreme Court decisions are even too liberal for him. "Constitutional limitations" he tells us "have yielded to the police power under the pressure of real or supposed emergencies." This, if it means anything, is a squint against the rent laws decisions, and indicates disapproval of them.

It all gets back to the essential issue of Mr. Davis's support of things as they are. Mr. Davis will use his influence to keep alive and respectable a concentration of economic power which is dangerous and intolerable. Because he is skillful, honest and attractive, he would make no breaks in technique. He would be narrow in ideas, and gracious in their execution. The more charming, courageous and honest Mr. Davis is than is Mr. Coolidge, by so much more would he be a faithful and efficient obstacle to necessary changes for the promotion of a better social life.

Progressives and Monopoly

THE importance of the La Follette candidacy lies not in the platform but in the main economic drift of the groups which will control the party to which it is a prelude. It would have been a miracle if such a party had appeared on the scene with full-blown economic policies. There will be plenty of time to develop such measures before the party gains power to put into effect any detailed proposal. Nevertheless, it is necessary for the adherents of the progressive group to criticize closely the economic planks of the platform in preparation for the time when they must act effectively.

Perhaps the most heartfelt and popular plank is that directed against monopoly control of industry. With the general intent of this plank all progressives must sympathize. But if it means in practice turning back to strict enforcement of the anti-trust laws, a legal attempt to resuscitate small business enterprise and unlimited competition throughout industry, the remedy, even if it could succeed, would not remove the ills from which farmers, workers, and the main body of consumers are suffering.

There are two conventional schools of thought on this question. One, based on classical economics, is that free and open competition furnishes an automatic check to profiteering, inefficiency, inequitable distribution of wealth and power. It assumes that such competition would exist everywhere if it were not for the interference of unfair practices which can be prevented by law. This is the assumption on which the anti-trust laws are based. The other extreme is the doctrine that centralization is an inevitable tendency in industry, that it is predestined to go on indefinitely in all fields of endeavor because of its superior efficiency to the profit maker, and that after the capitalists have trustified everything, the misery of the people will force them to take over industry through the medium of the state. This is the view of the extreme Marxists—and is embodied in the criticism leveled at the La Follette platform by William Z. Foster.

The more scientific modern economists, however, have put into our hands data which call both extremes in question. A study of this sort has just been issued by the U. S. Bureau of the Census—The Integration of Industrial Operation, by Willard L. Thorp. The inferences which may be drawn from the facts here presented are many, but their upshot is that there is no one universal economic law governing combination in industrial operation. In a good many important industries such as sugar refining and steel production, the size of the establishment has recently tended to grow on account of the higher efficiency of large-scale operation and the improved machinery and processes which require heavy capital investment. This tendency has eliminated the opportunity of the small competitor in a

way which no legislation can alter. It is not without limits, however. Beyond a certain point—different in each industry—little further technical advantage is gained by increase in size of the operating unit. There are, therefore, no technical obstacles to the continuance of a certain amount of competition. In some industries the size limit of efficiency seems to be very low. In certain other industries, demanding small capital investment, the tendency has been for the size of the establishment to decrease and competition to be intensified.

Similar differences and qualifications are found in a study of the control by one central office of more than one plant. The tendency toward central control is more marked in some cases than in others, and takes varying forms. We have horizontal control of plants performing the same process, vertical control of plants performing successive processes, oblique control of bi-product plants, heterogeneous control of plants apparently having little connection in production, but perhaps obtaining advantage through common market outlets or capital concentration.

It is certain that no simple formula, either of enforcing universal competition, or of communizing universal combination, will be of much use in this complex situation. There are in the United States few absolute monopolies. There are a number of industries where large combinations control the bulk of the production because they are the more efficient or own the better resources. These concerns are ordinarily enabled to charge higher prices than they otherwise could and to accumulate huge profits, because the market price is set (competitively) by the smaller, less efficient concerns. There are some industries, such as railroads, where large combinations already dominate, but where still larger combinations are desirable in the interest of efficiency and lower prices. There are other industries highly competitive on account of their technical and market situation, where a greater degree of coöperation among the competitors is essential to eliminate waste, stabilize production, and improve labor conditions. The Sherman law and the Clayton law, no matter how rigidly enforced, could not prevent the growth in some industries of large combinations of capital which, though not absolute monopolies, are enabled by the comparative inefficiency of their small competitors to make great profits. If such growth were prevented, the profits would be eliminated without lowering the prices. These laws, on the other hand, have hampered much useful coöperation among smaller enterprises in other industries and restrict trade associations and unions in their efforts to bring about an approach to constructive social control of industry by its participants. Doubtless some restrictive laws are necessary to prevent unfair competition and price-fixing conspiracies, but the present laws are in urgent need of revision to permit necessary activities on the part of coöperating groups of producers. In addition, we

need more far-reaching measures to deal with large combinations of privately owned capital. Instead of vainly trying to prevent them from arising, we shall have to devise measures of turning them to social uses.

In certain cases, such as railroads and electric power, the industries may be ripe for public ownership. In other cases we may have to extend the less desirable method of commission regulation. One remedy which ought to furnish a keystone to the progressive structure is a social use of taxation. This implies not merely taking surplus gains away from private hands by excess profits taxes—a measure already explicit in the platform—but using this surplus for calculated social benefit. Presumably, if surplus profits are not removed from private control, the bulk of them will be re-invested in industry. It is the dogma of the conservatives that no public use of the money can be as productive as such private re-investment. This dogma assumes that investment seeking profit always turns to production for general needs, whereas taxes spent by the government encourage waste and unproductive expenditure. It is the business of those who want to socialize the surplus to seek channels of using it productively that do not render maximum profit to private owners and hence are not developed by them. Such channels might easily be found by a qualified commission of socially minded engineers and economists. Conservation, transportation, giant power, inexpensive housing, these and many other urgently needed enterprises do not normally attract sufficient capital unless carried on in ways that do not best serve the common man. If we recognize and permit monopoly gains—as economic realism must force us to do—the logical complement to such a policy is to sequester a large part of such gains for the general good. When the government has revised its accounts so as to distinguish between its current expenditures and its capital investments, and when it has established a technique for discovering and managing socially productive enterprises, it will indeed be a powerful instrument in progressive hands. It can then do much to redress the balance between the magnate and the common man.

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Now That It's Over

JOHAN W. DAVIS became the Democratic nominee for President because on Wednesday, June 9—after nine days and nights of actual balloting and sixteen days of actual convention fighting—the more than one thousand maddened mavericks of delegates had just sense enough left to see the widest gate through which to rush to shelter. Much will be said and written in the next few months of how George Brennan always had Davis lodged largely in his mind; much will be said of the really creditable if somewhat ostentatious activity of James M. Cox, and much of the doings of other bosses and leaders. In truth, Mr. Davis's nomination is mainly due to the fact that at the last his candidacy offered the delegates the largest exit with honor from an unendurable situation.

After it had been established that neither McAdoo nor Smith nor any of the candidates who lived in their shadows could be nominated, there were three men before the Convention who would have had the most careful consideration, had the leaders and the delegates coldly measured availability from the standpoint of possible Democratic victory. The three were Senator Ralston, Senator Walsh of Montana and Governor Ritchie. Ralston's claim turned upon the theory of victory by reduction of losses. Without positive political color, he is the kind of homespun, unassuming man that occasionally can be made very appealing to the people, and in addition it was reasonably certain that he could carry Indiana, traditionally a pivotal state. What would have happened had Mr. Ralston not instructed Taggart to withdraw his name is as much one man's guess as another's. Mine is that he would not have been nominated; for in his case freedom from entanglement in the McAdoo-Smith struggle had elements of danger.

Walsh and Ritchie did not get a running start, although their claims to consideration in any chess-board survey of the prospects were extremely high. Walsh had at the foundation his general record of sound and enlightened public service, and the universal respect which that has won. On top of that was his extraordinary and dramatic personal triumph in the Fall investigation. Plus all of that were these facts: He was a McAdoo man out of the West who would have made a tremendous call upon the people in that country, even upon many of those now believed to be swinging to La Follette; and he is a Roman Catholic, and an Irish one, who would have made a tremendous call upon the sentiment in the big cities that gave Smith's candidacy its vitality. Moreover, if the South would remain solid for any Catholic, it would for Walsh. No public man of today has less tendency toward religious prejudice or religious self-consciousness. Finally, there was the picture that Walsh made be-

fore the Convention as chairman, a picture that confirmed his fitness as one able to spread himself over all the discordant party elements. For Walsh was the superb chairman under conditions that would have destroyed an ordinary presiding officer; he was the born lawgiver, a model in impersonal competence as a ruler. Two weeks' observation of the man in action, with the knowledge of all that is in his record, sent the Convention to him heels over head for Vice-President, once the Presidential nominee was chosen, and only Walsh's abrupt adjournment of the Convention prevented his nomination by acclamation. But he had no show for President, because nobody coldly calculated; everybody dismissed him under the no-Catholic rule. Ritchie's assets lay in his probable ability to win in the North and East while holding the South. Next to Smith he was counted the great wet governor. A Maryland Democratic governor, born in Richmond, Virginia, and a Protestant, could say anything that came into his head about liquor and carry the South with ease. Further, in point of general ability, Ritchie is clearly above the average of the men who appeared as candidates. But he did not get his chance when McAdoo and Smith collapsed because the Smith following, evidently angry over his refusal to aid Smith in the balloting of the first week, turned away. Of course, there was no initiation of a Ritchie swing from the dry South or West.

With Ralston, Walsh and Ritchie off the boards, following the breakdown of McAdoo and Smith and the elimination of the echo candidates, who was left? Davis, Robinson, Glass, Underwood and Saulsbury. Cox, on whom the Convention had seen from its beginnings the Indian sign of that seven million defeat, had never struck a spark and had made a dignified exit from the candidates' field quite early. Of the others, Robinson was too lately emerged; besides, he was under the taboo of being from the solid South. Glass was another solid South product, and, apart from that, he long had borne the reputation of a hot-tempered, hard-headed, difficult little man—the type that politicians shun. Underwood was what he has been for years, a man universally honored but questioned as a candidate. He was still another solid South man, and his candidacy was too familiar as a futility. Not only that, he had faded away in the popular primaries, and he was deeply involved in the Klan fight. The feeling in the Convention about former Senator Saulsbury's candidacy was perfectly expressed by Samuel G. Blythe. He said that when Delaware had cast its six votes for Senator Saulsbury one hundred and twenty-two times, making in all seven hundred and thirty-two votes, or a two-thirds majority, it would claim the nomination for him on the theory of cumulative voting. And, with