

no mode of appointment could be devised which would entirely exclude political considerations, and the choice of a particular plan becomes, after all, a mere choice of evils. To this we must reconcile ourselves as well as we can. Yet, there seems to me a wide difference in the amount of evil involved in different plans, and I am particularly anxious that all gentlemen here, who have studied this subject, should suggest, for our consideration, such propositions as have occurred to their minds. That, which I have offered, is not put forward with any presumption that it is the best which could be devised, but merely as having, in my opinion, fewer disadvantages than either the old system or the one reported by the committee, and also as an inducement for to offer plans, which, I hope, may more effectually accomplish the purposes at which I aim. For this reason, I shall move to take the question first upon striking out the provision of the report for electing judges by the people, so that all other plans may be open to us as substitutes. It is scarcely proper that the principles upon which our judiciary system is to be based, should be decided without argument, for, in the adjustment of this most important of all subjects, the people are entitled to the benefit of the ability and experience which many members of this Convention possess; and those principles cannot be considered thoroughly discussed when but a single point has been argued by one gentleman on each side.

We have to make a choice of evils, but there is a wide difference in the amount of evils involved in the different plans. For myself, I have no hesitation in saying, that I consider the election of the judges by the people, as proposed with the provision for re-eligibility, the worst conceivable mode of appointment. I believe this would be the opinion of a large majority here, were they not running with such haste to escape from the evils of the present system, as to be blinded to the precipice that lies before them. It is not any special want of confidence in the people which makes me say this. I am not one of those who pretend to believe that a number of frail, imperfect human beings can, by aggregation into a mass called the people, become divinely pure and infallible.

I have seen in chemical experiments two differently colored liquids, when poured together, produce a mixture, whose tint was entirely unlike that of either of its component parts. But men do not change their nature by combining with others; and, as part of the people, each man is governed still by his private interests, appetites and passions, although these may be to a certain extent modified, sometimes for the better, and sometimes for the worse, by the excitement of a common impulse, acting sympathetically on a great number of individuals. Every candid man must admit, that there are great imperfections in the system of popular elections even for merely political offices, and that its results are often very unsatisfactory; yet it is better to suffer these disadvantages, than to lodge the political power in the hands of a few irresponsible persons, who not only would be fallible in judgment like other men, but who would

be tempted to use their power, not for the good of society, but to accomplish their own personal ends. This is all that our faith in republican government obliges us to maintain, and one is not less a republican, because he asserts that men are fallible in the aggregate as well as individually. If the relative merits of two opposing candidates were alone to be decided by popular choice, in a district where both were equally known, I should have great confidence in the correctness of the decision; but such an issue can rarely be made, for party passions, and interests, and party discipline, give an entirely different aspect to our political contests. Still, it is on the whole, safest to resort to popular elections to fill the political offices in the State, and responsibility to the governed is in human institutions the best check on the abuse of political power. But the case is far otherwise when we come to the administration of justice, which acts not so much upon the community as a whole, as upon individual men in their mutual relations, and decides on personal rights and injuries between man and man. Elect a Governor, and not one man in a thousand has any direct personal interest in the course he may pursue. Now, however, you propose to elect by popular vote the man who must decide thousands of questions of right and wrong, involving property, character, and liberty, among the very persons who have voted, and who will be called upon again to vote, for or against him at the polls.

It is true, the objection so often made against electing the judges by the people, that party considerations would govern the selection, applies to the present mode of appointment. But there is an important difference in the result. The Governor may be swayed by improper personal considerations, and may appoint a violent partizan, in order to reward him for active party services; but the appointment once made, the judge is perfectly independent of the appointing power, and can only be removed by a different power for incompetency or misbehavior; the Governor himself has no personal interest in the matter, that are to be decided before the judge; and in no case could the same Governor reappoint the judge, for no one has proposed to make the term of judge as short as that of Governor, who under our system is ineligible to a second term. Elect the judge by the people, and the controversies to be decided by him are all between those very men who have exerted themselves to effect or prevent his elevation to the bench, and on whom he must depend for retaining his place.

Let us imagine what may be the position of a judge under the system proposed. In the first place, he will be nominated by a caucus of one or the other of the great political parties which divide our people. There can be no question of this. It is so in every State where the system has been adopted, and such has become the established rule of political action in regard to all offices which are filled by popular vote. Next, the two parties will be arrayed against each other in the canvass; and if the candidates for