

## AN ELECTIVE JUDICIARY.

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AN ELECTIVE JUDICIARY.

An unstained and competent judiciary is a blessing which no country can be without and prosper; and though we hope that we may never be without this blessing, it may not be amiss to cast a glance at the progress of the decline of the judicial status in another country, which, from its near proximity, and the intimate relations we must have with it, may exert some slight influence, and the less the better in legal matters, upon our affairs. It would certainly be bad enough if the Ministry of the day, whatever it might be, sacrificing the good of the country and the honor of the profession to the mere exigency of party politics, were to lose sight of the responsibility thrown upon them by their position, to select competent men as judges (which has occasionally been done and doubtless will be again), but a thousand times worse would be the curse of a judiciary elected by popular vote.

A writer in the *American Law Review* brings prominently and boldly before the public a state of things, which must be bad indeed, before an American would so speak of it. In speaking of the Erie Railroad "Row," which he remarks is the only fitting term for the scenes that occurred in the New York Courts, arising out of the operations of those contending for the control of that road, he says, "such an extraordinary perversion of the process of law; such an utter absence of respect for the bench; such contempt for the forms and courts of justice as was there exhibited, ought not to pass unnoticed." The writer speaks of this "extraordinary legal episode" as possibly indicative of the morals of the place and the times, but more particularly seems to ascribe the scenes "which disgraced the New York Courts in the spring of 1868" to the gradual, but inevitable, result of an elective judiciary. The writer of the article, whom we can well believe to be one who deeply feels the disgrace attaching to his profession by the conduct of those who ought to sustain its honor,

after an able *exposè* of the case, thus concludes his indignant remarks—

"A little additional infamy, a little additional evidence of public contempt, is a small matter now to the judiciary of New York City. Other communities, where the judiciary have been more fortunate, may draw a useful lesson from their fate. The judiciary, like the executive and legislative branches of a government, can only in the long-run reflect, more or less nearly, the average moral and intellectual condition existing somewhere in a community. A community inherently corrupt will not in any event long preserve a pure judiciary. That branch of the public service however, more than either the legislative or the executive, can be made to represent the better, more intelligent, and more virtuous elements of the community: it can, by a proper machinery of selection, be kept on the highest possible level of intellectual and moral development. It can also, by other machinery, be reduced to the lowest level. The experience of this and other countries has thrown much light on this subject. Chancellor Kent once filled the chair now occupied by Mr. Justice Barnard. Since the days of the great chancellor, the ermine worn by him has been flung into the kennel, to be snatched at and trampled on by the rabble of the caucus and the bar-room. Behold the result! The machinery now in use in New York is wholly calculated to draw the material out of which to manufacture its judiciary from the worst instead of the best materials the community affords: it is calculated to degrade, not to elevate. That responsibility for appointment which should rest upon one man, is divided and lost among the many. Even if it were not, and even though a party caucus of professional politicians were as competent to select a judge as a responsible executive, yet who could aspire to great judicial eminence as the result of a popular election to a term of eight years on the New York bench? The system provides an inferior material, and then deprives it of its greatest incentive to improvement. Finally, who that respects himself, as a great judge should, and as all great judges ever have, could periodically tread the miry ways of city politics, to elevate himself to a bench which has become a recognized part of the spoils of political victory? The system has everywhere produced its fruits, as bitter as they are legitimate. A judiciary appointed by the executive, and holding its office during good behaviour, has given us such names as Marshall and Story and Kent and Gibson and Shaw and all that long, proud, legal record which those names recall of