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## Remedies for the Bench

North Dakota Law Review Associate Editors

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## REMEDIES FOR THE BENCH

Discussing what he terms the "conceded retrogression" of the Bench in an article in the California State Bar Journal for July, Roy V. Rhodes, of the Los Angeles Bar, declares that the election of the Judges by the people, who are the sovereigns, and thus making them competitively dependent upon transient popular majorities—sometimes of minorities—robs us of the "great and dearly bought safeguard to our security, a politically independent judiciary."

We join Mr. Rhodes, in quoting from the speech of Rufus Choate, in the Massachusetts Constitutional Convention of 1853. Mr. Choate then said:

"Gentlemen begin by asking if we are afraid to trust the people. Well, sir, that is a very cunning question; very cunning indeed. Answer it as you will, they think they have you. If you answer yes—that you are afraid to trust the people—then they cry out 'he blasphemeth'. If you answer no—that you are not afraid to trust them—then they reply, 'why not permit them to choose their judges?'"

"It is a question certainly of some nicety to determine what offices the public good prescribes should be filled by a direct election of the people; and what should be filled by the appointment of others, as the governor and council, chosen by the people. If the nature of the office be such, the qualifications which it demands, and the stage on which they are to be displayed be such, that the people can judge of those qualifications as well as their agencies; and if, still farther, the nature of the office be such that the tremendous ordeal of a severely contested popular election will not in any degree do it injury—then the people should choose by direct election. If, on the other hand, an agent of the people, chosen by them for that purpose, can judge of the qualifications better than they can; or if from its nature it demands learning, and the terrors of a party canvass drive learning from the field—then the indirect appointment by the people, that is, appointment by their agent, is wisest."

Mr. Rhodes, however, deprecates, as does every student of present-day politics, that most appointive systems have failed to provide the necessary checks and safeguards, points out that "unrestricted appointments" do not supply the needed remedy, that there must be "discriminating supervision" of appointments, and that the closer we come to what Benjamin Franklin declared to be the ideal—election by lawyers alone—the more likely are we to make the office attractive to the right type of lawyers, the more likely are we to obtain, what we have so long sought, a truly independent, qualified judiciary.

California is now considering a proposed Constitutional Amendment, that will place the appointive power in the governor, the selection to be made from those recommended by a board, consisting of two high court judges and one state senator, with "periodical submission of the incumbent to a limited form of popular election," which, we assume, is to be by the Bar alone, as suggested by Benjamin Franklin.

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LAKE REGION MEETING

The Lake Region Bar Association held its district meeting on the 16th of June. The Secretary of the State Association was the principal speaker.