

wish, we hope and we almost believe that the pardon by Governor Savage may bring to light the names of the co-parceners of Bartley and let the people know just how many men should share penalties with him as they certainly did share his peculations and speculations in the money of the state of Nebraska.

Governor Savage is the under-oath executive of the state of Nebraska. He pardoned Bartley and he had the right to pardon him. If—as some of the republican newspapers intimate — Governor Savage was influenced unlawfully and improperly to do this thing he is amenable to the law. And if, instead of cowardly innuendo against the governor, direct charges are proved he may be impeached and deposed from office, as was his predecessor, David Butler. Why assault Savage merely because it is supposed that this pardon may have harmed the republican party? Why not show how and where Savage erred, either morally or legally, instead of politically? Is there no criterion of right and wrong except the dominancy of the republican party?

**POLITICAL
COURTS AND
PARTISAN
JUDGES.**

The thanks of decent members of the bar and of the people of this commonwealth, are due to Mr. W. D.

McHugh, the outgoing president of the Nebraska State Bar Association, for his address at the recent meeting of that organization. The address deals clearly, courageously and forcibly with the evil of political judges and courts in Nebraska. Mr. McHugh also strongly condemns the condition of "uncertainty of the law" in this state, which is due to "the process of overruling still going on, every volume of Nebraska reports containing some decisions over-ruling prior decisions of the court." It is pointed out that the method or fad of undertaking to do "substantial justice" in each case, largely independently of fixed principles of law, "is at variance with the fundamental theory of our legal system" and that "the consequent shifting of our substantive law is deeper than appears at first glance." Under such a system the public cannot know the law, nor can the lawyer safely advise his clients. While he does not definitely say as much, we may well suspect that the speaker believes that the shiftiness of our supreme tribunal is due in part to the partisan methods of choosing, and the consequent partisan responsibility of its judges.

"First and foremost among these evils," says Mr. McHugh, "is the practice on the part of so many of our judges of taking a continuous, active and prominent part in the politics of our state, both general and local. At the last state convention of one of the great parties of this state, the temporary chairman was a judge then upon

the bench. At the last state conventions of two other great parties there were at least eleven judges then upon the bench attending those conventions, many of these judges leading their delegations, and all of them active and prominent in the partisan work of these conventions. And we all know that in local politics quite generally throughout this state, judges are active in party affairs, participating in the campaigns and constituting an efficient and potential force in the various factional and partisan contests.

"How deplorable all this is, then, lawyers of the state must fully realize. By allying himself, as he necessarily must, when he takes part in the manipulation of politics with the schemers to whom politics is a business and whose ambition is personal gain or advancement, he necessarily, to some extent, mingles with them on their plane and becomes under obligations to them and their methods. To the mere politician nothing is sacred. The highest office is to him merely an instrument of party. His mind and habits of thought are not such as to appreciate the time, true dignity or function of the judicial office; and he therefore demands that the judge shall hold his office as a reward of a party, and so conduct the office as to have in mind the necessities of the party and the opportunity of rewarding those most active in its behalf. The judge who mingles with these men, identifies himself with these politicians, who works in the atmosphere surrounding the party caucus, is in great danger of imbibing some of this spirit, and hence, of looking upon himself and his office as a part of the machinery of the party, to be administered in accordance with the policies of the party councils. The bar of this state, and they are the men who have the best opportunities of judging, do fear if they do not believe that we do have judges in this state whose active and continuous exertions in the manipulation of party affairs, affect, if they do not determine their action as judges. The office of judge is not only one of dignity, but it is one of power and of influence. Many men desire to cultivate the favor of a judge and all men fear his ill-will. The position, therefore affords to a designing politician very great opportunities. A man ambitious of political preferment securing his nomination and election as judge, and then actively engaging in the strife of party politics, bringing to his contentions and his wishes all the power, prestige and influence of his office, can so coerce men and work upon the fears of men that his will becomes potential—and the duties of his judicial office are perverted and prostituted to the necessities of his ambition as a politician. A greater evil than this, in the administration of justice, can hardly be conceived."

Mr. McHugh observes that "the only remedy, and the efficient remedy, is a healthy, sound sentiment on the part of the people and the bar, vigorous in expressing itself in denunciation of the practice under consideration." While a sound and vigorous public sentiment must precede and can alone bring about a complete cure of the disgraceful and disastrous evil in question, yet we think that Mr. McHugh is needlessly and discouragingly

exclusive in his suggestion of a remedy. It will take many years, if not eons, to evolve the public sentiment which he presents, and we think a partial remedy may be applied to meet at once "the annoyance of the meantime," as Mr. Dooley would call it. The besotted party habit into which the people have fallen is very largely responsible for the choosing of unfit elective officers. There is neither need nor defense for the selection of any such officers, except the president and members of congress, by the party criterion and method. There is no political principle involved in the duties of any other of our elective public offices. The Australian ballot has done a great deal toward making independent voters, but not enough. The direct primary nominating system, now undergoing development and adoption in many states, while it is an auxiliary of the Australian ballot system, promises to be far more potent in bringing about independent voting and in loosening, if not finally breaking, party bonds. Under the primary system in its advanced form, primary elections must be held for all parties, at the same time and place, and each voter is supplied with a ballot containing all party tickets, so that he votes either of them in secret, without disclosing his party affiliation past or prospective. Candidates for all municipal, county, judicial and state offices, and for member of congress are nominated under this secret system, though the law will not be so comprehensive. The Nebraska primary law is but feeble, innocuous imitation of the genuine article. This system can be quickly adopted, and it would afford at least partial relief from the evils considered by Mr. McHugh, during the slow process of his moral reformation, and it would also greatly accelerate the progress of that reform.

Furthermore, the influence of the Omaha bar ought to be strong enough to spread, by degrees at least, all over the state the non-partisan plan of making judicial nominations which Judge Savage has started by permitting the local bar to name the successor to Judge Baker in the Omaha district. In Wisconsin, non-partisan nominations for circuit judges have been common, and for supreme judges have been general, for more than thirty years, with a most wholesome effect upon the judicial service, and the tone of judicial character and public sentiment. The superior character of the Wisconsin supreme court decisions, known of all lawyers, is very largely the fruit of the non-partisan choice of the judges. The holding of judicial elections in the spring, apart from general and distinctively partisan elections, has encouraged and upheld the non-partisan plan.

It seems quite practicable to The Conservative for the State Bar Association immediately to turn Mr. McHugh's strong precepts into beneficent example along the lines here suggested.