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APPOINTMENT AS A MEANS OF INITIAL ACCESSION TO ELECTIVE STATE COURTS OF LAST RESORT

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INTRODUCTION

For some years legal scholars, judges, and members of the bar, as well as an assorted company of those who consider themselves friends of the legal profession have debated the merits of various means of judicial selection.[1] Parties to the debate have generally centered their arguments on the propriety of subjecting judges, prospective or incumbent, to popular election. Proponents of such a technique for staffing the bench, it must be noted, are either inarticulate or extremely few in number—if one may judge such matters from the infrequent presentation of their point of view in professional journals. When and where offered, however, arguments for popular election most often seem to employ a common premise having to do with the "proper" means for the conduct of democracy, perceiving in attempts at reform of judicial selection methods some threat to our particular institutions and the techniques of self-government they represent.[2]

If those who favor popular election appear to plant themselves firmly in a defensive stance, the proponents of change have equally well taken a crusading offensive. One reads that elective systems do not produce judges best able to administer justice fairly or efficiently because of the necessary connection of such systems with some particularly evil aspect of human behavior ominously referred to as "politics." For its part, "politics" seems to include everything objectionable from the rigors of campaigning and the uncertainty necessarily associated with elective office to the submission (or the suspicion of having submitted) to extra-judicial influences such as partisan or factional machines. Good men, it is argued, are repelled by the former; the latter has its obvious defects and

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1. A review of this debate as well as an extensive annotated bibliography of relevant sources may be found in HAYNES, SELECTION AND TENURE OF JUDGES (1944).

2. See, e. g., Moran, **Counter-"Missouri Plan" Method of Selecting Judges,** 32 Fla. B.J. 471 (1958).

can operate, at best, only to harass and confound the man of integrity.[3]

If the disability of "politics" is not sufficient in itself, however, a further argument can be, and has been, presented: the voters do not really care about electing judges. This point is supported by reference to a host of voting statistics indicating the considerably lesser percentage of voters who mark their ballots for judicial candidates than for nominees for other offices.[4]

The opposition to popular election does not confine itself, of course, to a catalogue of charges. In a very constructive way it generally settles on an alternative means of selecting judges most often represented by an outright embrace of the "Missouri Plan" or some variant thereof designed to appeal to a particular locality.[5] This plan involves, briefly, three essential steps: (1) the compilation of a list of suitable candidates for the bench by a commission representing the bench, the bar and the public; (2) the appointment by the governor of some one candidate selected from this list to a vacancy and (3) the placing of the candidate's name before the electorate at the first general election following twelve months' service with the only question being whether the incumbent should be retained in office.[6] This system, it seems, combines the best features of a number of systems while eliminating most, if not all, of their disadvantages. There may occur, thus, the involvement of the electorate in the choice (or more accurately, agreement in someone else's choice) of its governors, the removal of judicial selection from the sullying influences of "politics"—since judges run unopposed and are by law forbidden to participate in partisan affairs, and the exertion of the influence of expert and knowing opinion—enter the commission—in the process of chosing judges.[7]

It is not the purpose of this article to suggest a solution to

3. For a sampling of such opinion, see, Garwood, **Breakfast Observations on Selection of Judges,** 44 J. Am. Jud. Soc'y 134 (1960); Gershenson, **A Reply Concerning Missouri Court Plan,** 33 Fla. B.J. 22 (1959); Schrader, **Judicial Selection: Taking the Courts Out of Politics,** 46 A.B.A.J. 1115 (1960).

4. See, **e. g.,** Martinez, **A Layman's View of Wyoming Judicial Selection,** 15 Wyo. L.J. 53 (1960).

5. In Pennsylvania, for example, this method is known as the "Pennsylvania Plan"; see Keefe, **Judges and Politics: the Pennsylvania Plan of Judge Selection,** 20 U. Pitt. L.R. 621 (1959).

6. For further description, see, ADRIAN, STATE AND LOCAL GOVERNMENTS (1960) 359; and GRAVES, AMERICAN STATE GOVERNMENT (4th ed., 1953), 612-13.

7. The "advantages" of the Missouri Plan are defended in Garwood, **supra** note 3, 139; and Gershenson, **Experience in Missouri with Judicial Selection under the Non-Partisan Plan,** 46 A.B.A.J. 287 (1960).

the very vexing question of the "best" means of judicial selection. By default, or perhaps by an uncommonly wise choice, our society has seemingly abandoned this field to professional students, scholars and practitioners of the law. Intrusion, in form of suggested solutions, into this preserve would at best be indiscrete. A contribution to understanding, however, might do much to aid in the development of solutions. It has been the goal of the research presented here to do just that, to illumine one area of the debate on the merits of popular election which seemed to the writer heretofore to have been neglected.

Throughout the literature on judicial selection, discourse appears to have taken place primarily on a hypothetical and projective— a "what is likely to happen if . . ."—basis. Those who favor electoral devices argue that our institutions may be in danger if particular changes are made; those opposed to such techniques predict improvement in the administration of justice if alternate techniques can be devised and made operational. There has, however, been little attention, grounded in specifically empirical referents, paid to what occurs now, to the actual differences in operation of our present and variant means of selecting judges.[8] A very worthy inquiry might take the form, assuming suitable and agreed upon criteria were available, of assessing in a rigorously empirical manner the differences in the quality of justice and the fitness of the men who dispense it as meted out by elective and appointive courts. Less ambitiously, perhaps, one might also ask to what extent and under what sorts of conditions do elective and appointive courts differ in terms of the actual means by which judges reach the bench; to what extent are ostensibly elective judges in fact appointed and in what ways, if any, are differing degrees of isolation of judicial selection from partisan machinery and shifts in state-wide partisan supremacy related to variations in that extent.

The remainder of this article is devoted to suggesting answers to these questions. It is hoped thereby that the debates

8. Several writers have averred that with regard to the courts whose members are ostensibly selected through electoral means, most judges are in fact appointed; no data supporting these statements have been presented however, nor has there been any recognition of variations in the extents to which appointment might occur, let alone any attempt to account for such variations. See, **e. g.,** ADRIAN, **op. cit. supra,** note 6 at p. **359;** GRAVES, **op. cit. supra,** at pp. 610-11; National Conference on Judicial Selection and Court Administration, **Judicial Selection, Discipline, Retirement; "How Should Judges be Selected?"** 27 J.B.A.D.C. 26; and Turley, **Judicial Selection and Tenure,** 25 Tenn. L. Rev. 352 (1958).

on judicial selection may be directed more easily toward an agreeable solution.

Before proceeding, however, it might be well to present at this point something of an overview of selection processes for judges of state courts of last resort.[9] During the period covered by this research (1948-1957), of the forty-eight states, thirty-six provided for the selection of judges of such courts by popular election; of the thirty-six, twenty required that at both the nominational and electoral stages candidates for judicial office bear partisan labels;[10] eleven forbade partisan designation during both nominational and electoral processes[11] while an additional four permitted partisan designation during nominations but not at the general election.[12] The remaining state[13] shifted during the period studied from a practice of partisan nomination and election to one of denial of partisan designation at both stages.

Though concern is not had here with the appointive courts as such, it may be of interest, for comparative purposes, to suggest relevant differences in appointive modes. Of the twelve appointive courts, two followed the so-called "Missouri Plan," or a variant thereof.[14] Another three states provided for gubernatorial appointment subject to consent by another branch of the executive department,[15] while in still another three states gubernatorial appointment was subject to legislative review.[16] The remaining four states limited the right of appointment to the legislature.[17]

PROGRAM OF RESEARCH

The research reported here is based on an attempt (1) to ascertain how members of all state courts of last resort serving at any time on other than an expressly temporary basis during the ten year period from 1948-1957 achieved

9. The following summaries of judicial selection procedures are drawn from COUNCIL OF STATE GOVERNMENTS, THE COURTS OF LAST RESORT OF THE FORTY-EIGHT STATES (1950), 8-14; and INSTITUTE OF JUDICIAL ADMINISTRATION, SELECTION, TENURE AND REMOVAL OF JUDGES IN THE 48 STATES, ALASKA, HAWAII AND PUERTO RICO (1956), 2-3.

10. Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas and West Virginia.

11. Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Washington, Wisconsin and Wyoming.

12. Arizona, Maryland, Michigan and Ohio.

13. Utah.

14. California and Missouri.

15. Maine, Massachusetts and New Hampshire.

16. Connecticut, Delaware and New Jersey.

17. Rhode Island, South Carolina, Vermont and Virginia.

their positions; and (2) to relate differences in accessional means to specific degrees of isolation of judicial selection from partisan machinery and shifts in state-wide partisan supremacy as noted above. Table I sets out in aggregate form a number of basic data pertinent to the first of these questions.[18] Indicated here under the broad headings of appointive and elective courts are the number of judges involved and their respective means of initial accession to the bench. Prime interest centers, of course, on the means of accession of judges on the elective courts; data relevant to appointive courts are presented only for purposes of comparison.

Table I. State Courts of Last Resort—Initial Means of Accession to the Bench.[1]

	Appointive Courts	Elective Courts
Number of Justices	130	434
Number Elected Initially	3[2]	192
Number Appointed Initially	127	242
Percentage Appointed Initially	97.2	55.8
Percentage Elected Initially	2.8	44.2

1. Unless otherwise noted computations presented in this and following tables are based on accessional means for all judges who were other than expressly temporary members of the thirty-six elective State courts of last resort during the years 1948-1957.

2. Judges elected to the Supreme Court of Missouri before the present, appointive, plan came into effect.

As Table I points out, slightly under 56% of judges serving on elective courts during the time period studied reached the bench initially through appointment. The use of aggregate numbers of judges may, however, conceal the extent to which individual elective courts are staffed by appointment. Table II sets out the numbers and percentages of courts having more elected than appointed members, more appointed than elected members and those in which the numbers of appointed and elected judges reach parity. An even one-half (18) of the elective courts, it can be seen, were composed of judges a majority of whom were appointed, very slightly under 39% of the elective courts predominated in elected members, while just over 11% of the elective courts had as many appointed as elected judges.

To view essentially the same data from a different viewpoint, reference may be had to Table III in which are detailed

18. Names of all judges as well as their tenure and respective means of accession were derived primarily from the listings contained in the relevant regional (West) REPORTER; where necessary (because of lack of all relevant information) these data were supplemented through communication with the Clerk of the court concerned.

Table II. Elective State Courts of Last Resort—Predominate Means of Initial Accession.

Predominant Means of Initial Accession	Number	Percentage
Appointment	18	50.0
Election	14	38.9
Parity	4	11.1
Totals	36	100.0

mean (average) percentages of judges appointed to courts in each of the three classifications employed in Table II. Thus, with regard to the predominately appointive "elective" courts, it may be seen that roughly 77% of the accessions covered were by appointive means; for the predominately elective courts, approximately two-thirds of the accessions involved were by elective means. Given the data presented in Tables I through III, it does not seem untoward to conclude that the electoral process plays a role of at best moderate dimensions in staffing state courts of last resort. The somewhat impressionistic observations of those who have made evaluations of the efficacy of judicial elections are, it would seem, confirmed by these data.[19]

Table III. Elective State Courts of Last Resort—Means of Initial Accession—by Percentages.

Predominant Means of Initial Accession	Mean Percentage of Appointed Judges	Mean Percentage of Elected Judges
Appointment	77.2	22.8
Election	33.8	66.2
Parity	50.0	50.0

There is, however, another aspect of the efficacy of electoral procedures to be considered. As may be noted from Table IV the relative proportions of appointed judges serving on ostensibly elective courts is not a constant; there are, in fact, rather wide disparities in this regard, the percentage of appointed judges ranging from a low of 12.5 for Alabama to a high of 100.0 for Maryland, South Dakota and Wyoming.

An immediate question arises, of course, in accounting for these variances. One might inquire at the outset whether the extents of observable variations are a function of variant means of filling vacancies. Thus, if particular states were to require special elections for replacement of deceased or retired judges, the extent of appointment would be correspondingly reduced. There is, however, considerable uniformity

19. **Supra,** note 8.

Table IV. Elective State Courts of Last Resort—Variances in Percentages of Initially Appointed Judges.

Percentage Appointed	Number of Courts
100.0	3
80.0—99.9	4
60.0—79.9	10
40.0—59.9	9
20.0—39.9,	8
1.0—19.9	2
0.0	0

among relevant constitutional and statutory provisions in this regard. Virtually every state has specified that vacancies are to be filled by gubernatorial appointment with the election of a successor to serve the remainder of the unexpired term taking place at the next succeeding general election.[20] The very few exeception to this general practice cannot, on the basis of their relative numerical insignificance, account for the variations evidenced in Table IV. One must look elsewhere for an explanation.

To aid in discovering such an explanation, the elective courts were classified according to the extent to which their respective selection mechanisms were linked with or isolated from partisan machinery. Three such classifications were developed: "Partisan" systems, in which at both nominational and electoral stages, judicial candidates are identified with partisan labels; "Semi-Partisan" systems, in which nominees are chosen by partisan conventions or primary elections but in which at general elections partisan identification is lacking; and "Non-Partisan" systems in which party labels appear in neither the nominational nor electoral processes. The respective numbers and percentages of judges appointed and elected initially within each of these classifications are set out in Table V.

Table V. "Partisan," "Semi-Partisan," and "Non-Partisan" Elective State Courts of Last Resort and Respective Means of Initial Selection.

	Partisan (Number of Courts=20)	Semi-Partisan (Number of Courts=4)	Non-Partisan (Number of Courts=11)[1]
Number Appointed Initially	138	27	86
Number Elected Initially	133	20	41
Percentage Appointed Initially ..	51.0	54.7	70.5
Percentage Elected Initially	49.0	45.3	29.5

1. Data relevant to the Utah Supreme Court have not been included in this Table or in Tables VI and VIII owing to a shift in judicial selection methods in that State from "Partisan" to "Non-Partisan," during the period studied.

20. COUNCIL OF STATE GOVERNMENTS, **op. cit. supra** note 9, Table 4, following p. 16.

As attention to Table V will indicate, the percentage of appointed judges increases as one moves in the direction of increasing isolation of the electoral process from paristan machinery, i. e., away from the "Partisan" system and in the direction of the "Non-Partisan" system. Table VI, in which data for "Semi-Partisan" and "Non-Partisan" systems are combined suggests perhaps more strongly the differences in percentages of appointed judges as these are related to differences in the involvement of partisan machinery.

Table VI. "Partisan" and "Semi-Partisan" and "Non-Partisan" (combined) Elective State Courts of Last Resort and Respective Means of Initial Selection.

	Partisan (Number of Courts=20)	Semi-Partisan and Non-Partisan (Number of Courts=15)[1]
Number Appointed Initially	138	113
Number Elected Initially	133	61
Percentage Appointed Initially	51.0	66.3
Percentage Elected Initially	49.0	33.7

1. For exclusion of one state (Utah), see note to Table V.

The data do not, of course, in themselves, present any explanation by which one might account for the apparent tendency of frequency of appointment to increase as selection processes are isolated from normal partisan activities. One might, however, entertain the following speculations: (a) the "normal" pattern of judicial selection and tenure with respect to the elective courts appears to be one of initial appointment, followed by successive re-elections to office until death or resignation terminates a career in mid-term; a new judge is appointed and the cycle continues with appointment maintaining a clear predominance over election as a means of initial accession; (b) the process may be disrupted, however, and the number of initial accessions by election increased if (1) the expiration of one's term and the necessity to stand for reelection happen to coincide with what Campbell, *et al,* have called a "realigning election,"[21] i. e., an election in which wholesale shifts of electoral sentiment take place and substitutions of one party's candidates for the incumbents of the opposition occur as a result; and (2) if the judicial candidate

21. CAMPBELL, et al, THE AMERICAN VOTER (1960), pp. 531 ff.

concerned happens to bear the label of the party now rejected by the voters; (c) such occurences would seem to have less impact on the stability and length of judicial tenure (and its accompanying predominance of appointment as a means of initial accession) the less well-known was the candidate's partisan attachments as in the case of "semi-" and "non-partisan" systems; where partisan loyalties are most obvious, i. e., in the case of "partisan" electoral systems, one would anticipate the greatest impact of the events described and the corresponding rise in the number and percentage of initial accessions by election.

The proposition may be stated more concisely: appointment as a means of initial accession occurs more frequently than election in the case of "Semi-" and "Non-Partisan" elective courts owing to the greater isolation of the electoral fates of judges on these courts (relative to that of judges on the "Partisan" courts) from the vicissitudes of inter-partisan competition and the resultant opportunities for such judges to serve until death or resignation—which events simply occasion another appointment and continuance of the "normal" cycle. This hypothesis could, of course, be tested by a determination of the extent to which electoral defeat constitutes a means of judicial retirement within each of the classifications employed in Tables V and VI as well as by careful examination of the fate of judicial candidates and incumbents standing for election during periods of partisan turn-over. These questions are, however, beyond the scope of the present investigation.

That the hypothesis offered is not altogether without support is suggested by Table VII in which are set out respective numbers and percentages of appointed judges serving on elective courts in states which underwent changes in partisan control at the uppermost state level. There is, unfortunately, no generally agreed-upon method to indicate such shifts; some might consider changes in the relative legislative strength of the two parties as indicative of change, while others would rely, for the same purpose, on the degree to which the entire executive slate of a given party is successful in retaining or achieving office; an additional approach would involve, as employed here, fluctuations in the state-wide two-party vote for governor. The first measure, that of relative legislative strength, may be misleading owing essentially to the various

methods in use of structuring legislative districts as to reduce or mask the potential strength of a particular party and thus prevent its representation from becoming commensurate with the degree of support obtained for its individual candidates. Reliance on the success of executive slates may prove faulty owing to the fact that not all states permit such extensive use of the franchise (and the resultant "long ballot") as do others, thus reducing the degree of comparability essential to present purposes.

Table VII. Change in Partisan Gubernatorial Control and Relation to Percentages of Initially Appointed Judges on Elective State Courts of Last Resort.

Magnitude of Change[1]	Mean Percentage of Initially Appointed Judges[2]	Mean Percentage of Initially Elected Judges[2]
Stable (Number of States=15)	67.5	32.5
Proximate Shifts Number of States=10)	63.5	36.5
Gross Shifts (Number of States=8) (Total Number of States=33)[3]	57.3	42.7

1. Electoral data were derived from 3 SCAMMON, AMERICA VOTES (1959).
2. Percentages were derived from accessions occurring during the years 1948-1957 only.
3. Data relevant to three states, Nebraska, Nevada and Tennessee, were not included in this or the following Table owing to the occurrence of only one initial accession to the court of last resort in each of these states during the period studied.

Given the above considerations use was made here as noted of the state-wide two-party vote for governor. Objectionable on some counts, this measure may nevertheless be assumed to serve well enough for detection of major shifts in partisan control. Maintenance of the relative majority-minority positions of the two parties is considered in Table VII as an absence of shift in control and is designated as "Stability." The displacement of one party by the other in terms of gubernatorial control with the displacing party receiving from 50.1% to 54.9% of the state-wide two-party vote is considered as a "Proximate" shift, while displacements involving 55.0% and above are characterized as "Gross" shifts. These divisions are admittedly somewhat arbitrary, but they will, it would seem, provide sufficient evidence for the kinds of shifts contemplated here.

Finally, with reference to Table VII, it must be noted that the basic data differ somewhat from those employed previously in this report. As the data relevant to general partisan

shifts are those represented by the gubernatorial elections occurring during the time period studied, it was necessary for purposes of comparison to limit the concern with variations in accessional means to the same period. The percentages of appointed judges, as presented in Table VII, are only for those judges taking their places during the years 1948-1957 and do not include those judges serving at any time during that period but whose accession may have occurred before 1948.

With these considerations in mind, an examination of Table VII will indicate that the "Stable" states have the largest percentage of appointed judges (just over two thirds), while those experiencing "Gross" shifts of partisan control have the least percentage of appointments, with states undergoing "Proximate" shifts occupying (with respect to the percentage of appointed judges) a point near midway between. It would thus appear that the greater the shift in partisan control, the greater is the percentage of elected judges and the smaller the percentage of appointed judges. Such a conclusion would seem to support further the hypothesis advanced above in consideration of the relationship between percentages of appointed judges and the relative insulation of the selection process from partisan political machinery. Such a hypothesis is advanced only tentatively, its confirmation depending ultimately on the type of further investigation discussed above.

As a final operation, the two variables, i. e., those of electoral selection processes and shifts in partisan control, were combined. Again, because of the use of statistics of elections occuring with the ten year period studied, data relevant to the accessional means of only those judges who first reached the bench during this period were employed. Table VIII sets out the results of this combination, using only the respective percentages of appointed judges.

As Table VIII indicates the percentage of appointed judges is greatest for courts in states undergoing the least amount of change in partisan control of the governorship and whose judicial selection methods are most isolated from partisan political processes. Conversely, the percentage of appointed judges is smallest for courts in states experiencing large scale shifts in gubernatorial control and whose means for selecting judges are associated with partisan machinery. Appointment as a means of initial acccession to the bench would

Table VIII. Elective State Courts of Last Resort, Change in Partisan Gubernatorial Control and Respective Percentages of Judges Initially Appointed.[1]

Electoral Selection System	Magnitudes of Change	Mean Percentage of Initially Appointed Judges	Number of Courts
Partisan	Gross	49.2	3
	Proximate	52.5	6
	Stable	53.9	10
			Total=19
Semi-Partisan and Non-Partisan	Gross	62.1	5
	Proximate	80.0	4
	Stable	78.3	4
			Total=13
			Total Number of Courts=32[2]

1. For derivation of mean percentage of initially appointed judges and electoral data, see notes 1 and 2 to Table VII.
2. For purposes in exclusion of four states, see note 1 to Table V and note 3 to Table VII.

seem to occur, thus, most often in states having relatively stable inter-partisan relationships and employing either a "Semi-Partisan" or "Non-Partisan" mode of judicial selection. Initial accession through election, on the other hand, occurs most frequently in states with flutuating partisan dominance and with wholly "Partisan" means of choosing judges.

SUMMARY AND CONCLUSIONS

The research reported in this article attempted to ascertain to what extent judges on the courts of last resort of the thirty-six states employing elective means of judicial selection were in fact initially appointed, and further, to determine if particular variables were in any way related to differences in such extents. The variables chosen for study were (1) the extent of involvement in or isolation from partisan political machinery of individual systems of election; and (2) changes in partisan dominance of state offices as measured by alterations in partisan control of the governorship and the electoral magnitudes by which such alterations may have been effected.

Findings based on these considerations were the following:

(1) Slightly under 56% (55.8%) of judges serving on the thirty-six elective courts during the time period studied (1948-1957) took their places on the bench initially through appointive means.

(2) Appointment was the predominant means of initial accession for one-half of the thirty-six elective courts, while

election was the predominant means of accession for fourteen courts (38.9%); an equal number of judges were appointed and elected on four courts (11.1%).

(3) The average percentage of initially appointed judges on courts for which appointment was the predominant mode of initial accession was 77.2%, while the average percentage of initially appointed judges on courts for which election was the predominant mode of initial accession was 33.8%.

(4) The percentage of initially appointed judges serving on the thirty-six elective courts was not a constant; to the contrary this percentage varied from a high of 100.0% for three states to a low of 12.5% for one state.

(5) Variations in the extent of initially appointed judges cannot, it appears, be accounted for by variations in constitutional or statutory provisions for filling vacancies. The few exceptions from a practice of gubernatorial appointment followed by selection of successor to fill the unexpired term, if any, at an election next following the occurence of a vacancy are not sufficient in number to explain the variations remarked in (4) above.

(6) Variations in the extent of appointment as a means of initial judicial accession do appear to be related to the extent of involvement of electoral selection methods in partisan political processes. Thus, the percentage of appointed judges is greatest for the "Semi-Partisan" and "Non-Partisan" systems (in both of which judges stand for election without partisan designations) and least for the "Partisan" systems (in which partisan labels are present at the general election).

(7) Variations as noted appear also to be related to the absence or presence of shifts in partisan control of the governorship as well as to the magnitude of electoral pluralities by which such shifts took place. Thus, in states undergoing no such shifts (those designated here as "Stable"), the percentage of appointed judges is greater than for those states which did experience such changes. The percentage of appointed judges is, further, lower for those states evidencing what were here labelled "Gross" shifts in partisan control than for those states in which the magnitude of change as measured by electoral pluralities was smaller (those noted here as "Proximate" shifts).

(8) When the two variables of extents of involvement of electoral processes in partisan machinery and shifts in parti-

san gubernatorial dominance were combined, it was found that the greatest percentage of appointed judges was to be found on courts in states with the greatest degree of isolation from paristan operations and which underwent little or no change in partisan control. The least percentage of appointed judges, conversely, was to be found on courts whose selection processes were partisan and which served states which underwent the greatest shifts in partisan dominance of the governorship.

(9) It was hypothesized that the relationships observed between variations in percentages of appointed judges and the two variables discussed in (6), (7), and (8), above, may be due to the greater isolation of the electoral fates of judges on "Semi-" and "Non-Partisan" courts (relative to that of judges on the "Partisan" courts) from the vicissitudes of inter-partisan competition and the greater opportunity resulting from such isolation for those judges so situated to retain office until death or resignation—at which time a new judge may be appointed and the cycle continued. It must be emphasized that neither the data nor the manipulations performed on them support such a hypothesis. The hypothesis has been advanced merely for purposes of guiding further research in this area.

"Judges must be chaste as Caesar's wife, neither be, nor so much as suspected in the least to be unjust."

SIR FRANCIS BACON—Letter, 1616

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