

Watson and Downing: The Politics of the Bench and the Bar (Judicial Selection Under the Missouri Nonpartisan Court Plan)

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The Politics of the Bench and the Bar (Judicial selection under the Missouri Nonpartisan Court Plan). BY RICHARD A. WATSON AND RONDAL G. DOWNING. Columbia, Missouri: John Wiley and Sons, Inc., 1969. Pp. 393. \$10.00.

"Nonpartisan" is an ideological word Missouri lawyers (and lawyers from eighteen other states) use when they point with pride to the "court plan" of their state. But, as authors Watson and Downing indicate in this ambitious work, "nonpartisan" is not synonymous with "no politics."

On the contrary, their in-depth study of the "Missouri Plan" leads them to the conclusion that the "Plan" has not eliminated politics, but has simply shifted the "politicking" from ward committeemen to partisan forces within the bar and the judiciary, with the governor becoming the chief decision-maker in the selection of members of the court.

The key component of the Missouri Plan is the nominating commission, which is composed of lawyers elected by attorneys, laymen appointed by the governor, and a judge who serves as chairman. The commission compiles a list of three candidates eligible for a vacant judicial position. The list is then delivered to the governor, who makes the appointment from among the persons on the list. After one year's service on the bench, each appointed judge runs against his record rather than an opponent; thus the electorate votes on the question, "Shall Judge _____ be retained in office?"

To search out the attractions and shortcomings of the nonpartisan court plan, the authors used the best tools the political and social sciences have available. In the process they personally interviewed two hundred lawyers, judges, and political figures, conducted a questionnaire survey of twelve hundred members of the Missouri Bar, and digested court decisions, bar polls, and judicial elections. This data is carefully recorded in the book and analyzed for the reader. The result is a technical writing of keen interest to political scientists and sociologists, as well as to members of the bar.

Probably the most interesting chapters of the book deal with the reasons why lawyers do, or do not, seek judgeships. In some judicial districts over three-fourths of the lawyers are eliminated by residency requirements; they simply do not live in the district where they work. Also, despite claims of nonpartisanship made for the "Plan," the authors found that all parties to the recruitment and selections process are highly sensitive to the party politics of the various aspirants for the bench.

The authors register their surprise at the general social and economic "cleavage" they found which directly affects the plan. However, rivalry between attorneys from different backgrounds, social strata, and law schools, and who consequently represent different clients and economic interests, should have been anticipated. Lawyers split into "conservative" and "liberal" camps as do other segments of our society. The authors simply found what Missouri lawyers already knew, *i.e.*, that this "cleavage" and consequent "politicking" by the two groups affects not only the prospective judicial candidates, but the nominating commissions and the judiciary as well. The lawyers' preference in the method of choosing

judges was found to be shaped, to a considerable degree, by their social status. Those in the elite segment of the profession were found more inclined to favor the "Plan" than their less prestigious colleagues.

By dividing the book into two parts, the authors aid the reader in understanding the technique used in compiling and interpreting their surveys. Part I deals with the recruitment and selection process. Part II evaluates the consequences of the "Plan." Chapter 10, the last chapter, setting forth the personal comments of the two authors, is must reading for committees on the judiciary in any of our legislatures that entertain bills for judicial reforms.

Dr. Richard A. Watson and Dr. Rondal G. Downing, members of the Political Science Department of the University of Missouri at Columbia, have done their homework well. They have set forth their findings with uncommon clarity. Missouri lawyers (as is this reviewer) have long thought there was a need for an objective appraisal of the highly touted "Missouri Plan." The work here is the most complete, unbiased undertaking for that purpose to date.

Probably the primary result of this work is to confirm what critical Missouri lawyers have observed about their nonpartisan court plan in the past—"it is not the best way to select judges, but as yet no one has come up with a better way." The authors imply by their conclusions that the fact that no better way of judicial selection has yet been found does not mean that we should stop looking for one.

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