

THE IMPACT OF FORMAL SELECTION PROCESSES ON THE CHARACTERISTICS OF JUDGES – RECONSIDERED

BRADLEY C. CANON *University of Kentucky*

Students of the judicial process have focused considerable attention on the relationship between judges' background characteristics and their voting behavior on collegial courts. The argument for such a focus is that background characteristics are usually indicative of particular socialization processes and that these processes produce certain attitudes which are often responsible, directly or indirectly, for the judges' votes. Thus these characteristics can be viewed, in the aggregate, as predictive of judges' behavior — at least in certain types of cases.

Research into the connection between background characteristics and judicial voting behavior has produced some positive results. Most frequently noted is the relationship between partisan affiliation and direction of vote in a wide variety of cases by judges on state supreme courts and federal courts of appeals (Ulmer, 1963; Goldman, 1966; Nagel, 1970: Chapter 14). Religious differences have also been found to be related to judges' voting behavior in some types of cases (Vines, 1964; Goldman, 1966; Nagel, 1970: Chapter 18). Two scholars have found that judges' career patterns have been related to their voting behavior (Danelski, 1964; Vines, 1965) and there is some evidence linking judges' educational experience with their behavior (Nagel, 1970: Chapter 18). Some scholars, investigating the relationship between dissensus on collegial courts and variation in judges' background characteristics, have offered evidence supporting (in part at least) the proposition that the latter is productive of the former (Schmidhauser, 1962; Ulmer, 1970; Jaros and Canon, 1971).¹ Such linkages, however, are by no means solidly established. The investigators noted above, particularly Goldman (1966) and Nagel (1970: Chapter 18), as well as others (Bowen, 1965; Grossman, 1967; Adamany, 1969) have noted the tenuous nature of these findings and have in some cases offered contrary evidence.

To the extent the background characteristics are indicative of, if not causally related to, judges' voting behavior, the study of the impact of alternative recruitment patterns on these characteristics becomes important. That is, if different patterns produce judges with different characteristics, then judges' votes or the substantive output of various courts can be better ex-

plained. Recruitment patterns can be divided into two main elements, formal rule-structured processes and informal processes shaped by less rigid norms or traditions. This note focuses on the first element, the formal institutional structures by which judges are recruited to the bench. Rule-structured processes often have an impact on the composition of political leadership (e.g., Key, 1956: Chapter 7; Rae, 1967) and there is no reason to think that this is not true with regard to the judiciary.

In fact there is a long and viable line of thought in America which more or less explicitly holds that formal recruitment processes do affect the characteristics of men who become judges (and presumably their behavior). This can be seen as early as the 1840s when, in the wake of Jacksonian Democracy, many states abandoned the traditional process of having judges appointed by the governor in favor of partisan election of judges. The new method, it was thought, would reduce the aristocracy's representation on the bench and bring to it more "men of the people." By the end of the 19th century, however, dissatisfaction with the results of the partisan election system caused many states to substitute a non-partisan election process instead. The former system, it was alleged, put too many "party hacks" on state courts; the new process would elevate men without partisan debts and parochialism to the bench. And recently, particularly in the last decade, a good number of states have adopted the so-called Missouri Plan for selecting judges. This method, proponents argue, will remove the selection process from the vagaries of politics altogether and insure that judges are selected solely for their legal acumen and experience.²

While proponents of various judicial selection systems have been quite vocal about why their favorite will produce more meritorious judges, few of them (or more neutral researchers, for that matter) have come up with hard data about just what kinds of differences do in fact result from the adoption of alternative systems. Jacob (1964) is one of the few investigators to have made such a comparison. Using trial judges in several states having differing systems, he found some dramatic differences in a few background characteristics. He concluded that differing selection procedures "recruit judges with some different background characteristics." Moreover, he argued, it "seems unlikely" that these differences resulted from the "peculiarities of states examined." (Jacob, 1964: 113.) His find-

ings have been a frequent reference point ever since. Although this note deals with state supreme court justices rather than trial judges, we will contrast our findings with Jacob's where appropriate.

Although minor variations in procedures occur, there are basically five methods of selecting supreme court justices in the American states: gubernatorial appointment, legislative selection, partisan election, non-partisan election and the Missouri Plan.³ In this note we will compare the background characteristics of justices chosen by each of the above-named formal processes. The study is based upon the background characteristics of the 479 state supreme court justices who sat for any period of time between 1961 and 1968 inclusively. We were able to gather considerable data on 441 of them, or 91.8%, although this total varies slightly depending on the characteristic under consideration.⁴

In one sense the analysis is easy. We simply separate the judges according to selection system, run frequency tables on each system and compare results. Considerable differences do appear—most notably in partisan affiliation, religion, educational attainments, and previous offices held. The results are shown in Table 1. Clearly there is some kind of link between selection system and justices' characteristics.

But this is somewhat deceptive. For the fact is that the selection systems—particularly the more frequently used ones—are regionally oriented. Of the eight gubernatorial appointment states, seven are located in the Northeast. Of the 20 states using partisan election 12 are in the South and another 4 are in the Midwest. Of the 14 states using non-partisan elections, 8 are in the West and the remaining 6 in the Midwest; moreover, all but 1 of the 14 are contiguous.

It has been plausibly argued that the nature of politics in the states is more a result of regional or cultural patterns than of structural devices (Elazar, 1966: Chapter 4; Patterson, 1968). Applying this argument to recruitment patterns then, it would be held that background characteristics and career paths are determined more by environmental factors than by formal institutional structures. Schlesinger (1966: 82-86) in particular has noted a relationship here. We find this to be the case too. As Table 2 demonstrates, there are considerable differences in the justices' backgrounds according to geographical region.⁵

What we have, then, is a considerable overlap between selection system and region. This is reinforced when we note that most of the differences between selection systems pit partisan and non-partisan election systems on the one hand against gubernatorial appointment and legislative election on the other, while most of the regional differences have the Northeast on one side and the South and Midwest on the other (with the West being somewhere in between). In consequence, we can certainly consider the possibility that either region or selection system is the key variable accounting for any given difference.

In some dimensions, of course, the answer is obvious. Few would be so naive as to argue that the partisan election system *per se* produces four times as many Democrats as Republicans on state supreme courts. (See Table 1.) It is clear that the Democrats are successful here because 60% of the states in this group are in the South.

But in other dimensions we cannot resort to such common knowledge. It is not at all clear, for example, where gubernatorial appointment justices and Northeastern justices have a markedly higher proportion of baccalaureate degrees, which is the meaningful variable. And because the overlap between region and system is so great, it will be difficult to make very definite determinations. However, there are some deviant states in each region and they can be used as control devices. They are few in number, however, and inferences drawn from this technique must be tenuous.

Religion. There is considerable variation in the religious preferences of the justices by both region and selection system. Although the case is not as obvious as it is with partisan affiliation, it seems more plausible to explain the variation in terms of the religious composition of regional or state populations than to argue that different recruitment systems somehow focus on particular religions. Evidence for this explanation is shown in Table 3 where the partisan election system, the only one which straddles all four geographical regions, is broken down by region. In each region the justices' affiliations tend to approximate the regional average; in the Northeast and the West they are at considerable variance with the selection system average. To some extent, the same phenomenon occurs when the Midwestern states are compared with the Western states in the non-partisan election system. However the point is less clear because (1) the averages of the two sections are not too different, and (2) the Catholic population in the West is largest

in states such as California and New Mexico which do not use the non-partisan election system and these two states contribute 60% of the Catholic supreme court justices in the West.⁶

In one case, however, statistics indicate that perhaps selection system is a meaningful factor. It is in the South, where the religious affiliations of justices in legislative election states (South Carolina and Virginia) are as follows: Catholic = 0%; high-status Protestant = 72%; and low-status Protestant = 28% (N = 18). This is in marked contrast with the religious affiliations of the remainder of Southern justices (shown in Table 3). While Episcopalians and Presbyterians are perhaps more numerous in South Carolina and Virginia than they are in the non-coastal South, it may also be that the legislative election system is more conducive to the elevation of high-status Protestants to the state supreme court.⁷

Career Patterns. There are relatively few alternative career ladders by which any large number of men attained a state supreme court justiceship in the 1960s. Approximately 85% of the justices occupied at least one of the following positions before ascension to the state's highest bench: prosecutor (51%), state legislator (19%), and trial judge (58%).⁸ It is plausible to assume that differing selection systems may make conditions for accession to the state supreme court more favorable for the occupants of one office than for those of another. Jacob (1964: 109-11) found that "law enforcement" officials (mostly prosecutors) were much more likely to ascend to the bench in popular election (partisan or non-partisan) and Missouri Plan states than they were in gubernatorial appointment or legislative election states. The converse was true when membership in the state legislature was considered. While our range is considerably smaller than Jacob's, the direction of our results is similar to his. (See Table 4.)

But again we must consider regional differences as a counter-hypothesis. Schlesinger (1966: 82-86), as noted earlier, presents some evidence that variations in the use of what he terms the "base office" in career patterns are attendant upon regional or cultural peculiarities.

It seems reasonable to argue that the legislative election system is in itself inimical to the chances of prosecutors becoming state supreme court justices. The percentage of former prosecutors elevated by this system is considerably below that of any other system and all regional averages. Moreover, when

the legislative election system is subdivided by regions, no differences appear (Northeast = 23%, South = 22%). Unlike the general public, legislators apparently are not of the belief that high conviction rates or flamboyant prosecutorial behavior necessarily produce good justices.

Both gubernatorial appointment states and the Northeastern states have virtually the same proportion of former prosecutors on their supreme courts, so any insight here must come from using the deviant states, New York and Pennsylvania on one hand and Hawaii on the other, as control devices. In the former set of states ($N = 21$), 55% of the justices had prosecutorial experience, while in the latter state ($N = 8$), 38% were in this category. Both percentages are quite close to their respective system averages and rather different from their respective regional average. This is an indication that the gubernatorial appointment system has more impact on the frequency of prosecutorial base office than does the regional culture.

On the other hand, within the partisan election system, region does seem to have an impact (excepting New York and Pennsylvania). Of Southern justices so chosen ($N = 117$), 51% were former prosecutors, while the figures for Western and Midwestern justices (N s are 15 and 44) were 60% and 61% respectively. While these differences are not great, each figure is quite close to the regional average, thus indicating a likelihood of regional influence within this system.

State legislative service as a prior office is most rewarding in states where the legislature elects the judiciary. Here the proportion of justices who are former legislators is twice as high as in any other system. This is hardly illogical; legislators could naturally be expected to choose from among their own ranks. Actually this practice is frequent in only two legislative election states, South Carolina and Vermont; in Rhode Island and Virginia the proportion of ex-legislators serving on the supreme court is not markedly above the national average. Still we must conclude that the legislative selection system *per se* is highly conducive to obtaining justices with legislative service as a base office.

No great disparity occurs among the other selection systems in the frequency of legislative service as a base office. There is, in fact, more of a disparity across regions. Where controls can be exercised, they indicate that regional variations seem

to have a slight effect on the use of the state legislature as a starting point in a justice's career.

The most frequent prior office held was that of trial judge. As Table 1 indicates there is considerable variation in the selection systems, running from 76% former judges in the gubernatorial appointment states to 45% in the non-partisan election states. Table 2, however, indicates exactly the same range across regions. Again we are faced with the question of causal responsibility: selection system or region.

Imposing controls produces mixed results. In New York and Pennsylvania, 83% of the justices were former trial judges, a figure approximately the regional average and much above that for the partisan election system. And in Hawaii, 62% were trial judges, a figure much closer to the regional average than the system average. But the legislative election states fell about half way between the regional and system averages (South Carolina and Virginia = 61%; Rhode Island and Vermont = 69%; $N = 18$ and 13 respectively). And in the non-partisan election states, there were regional differences (Midwest = 41%; West = 53%; $N = 53$ and 56 respectively), but in both regions the averages were below the overall regional average indicating that the system has some effect here. Finally, in the four partisan election states in the Midwest (Illinois, Iowa, Indiana, Michigan, $N = 45$), 59% of the justices were once trial judges; this figure is quite similar to the system average and well above the regional average, thus pointing to the impact of the system here.

In sum, neither system nor region seems to be the dominant influence here insofar as the use of our control states can indicate. While regional factors seem more pervasive in the Northeast, system differences are dominant in the Midwest. But neither seems very important in the South and West. In other words, the utility of the trial judgeship as a stepping stone to the state's highest bench is affected by both region and system, sometimes relatively independently and sometimes seemingly inextricably intertwined.

Educational Background. Table 1 shows that while partisan, non-partisan, and Missouri Plan states have virtually similar percentages of justices with a B.A. degree, gubernatorial appointment and legislative election states have a much higher percentage. And Table 2 shows that the Northeast has a significantly higher proportion of B.A. degree holders on its courts

than any other region. In the two deviant states in the Northeast, New York and Pennsylvania, 76% of the justices have a college degree. This figure is right on that of the Northeast region and is considerably above that of all the partisan election states. Thus it seems that New York and Pennsylvania are affected on this dimension by their region, not their selection system.

But three other deviant states show a contrary trend. In South Carolina and Virginia, the only Southern states to use the legislative election system, 72% of the justices have B.A. degrees, a figure not very different from the legislative selection average and quite a bit above their regional average. Another deviant state, Hawaii, also lends support to the influence of the selection system. There the governor appoints the justices and 87% of them possess a B.A. degree. While somewhat higher than the gubernatorial appointment average, this figure is grossly above the regional average of 56%.

In short, our control states indicate that both region and selection system have a bearing on the educational background of the justices. Regional patterns are perhaps more important in the Northeast, but selection systems seem to have an influence in the rest of the country.

Localism. There is little evidence supporting (or even research into) the proposition that judges' boyhood and training geographical environment is related to his judicial behavior.⁹ One might argue, however, that judges who grew up or were educated in a different state or region would be less governed by local traditions or parochialism in making their decisions. At any rate, in his investigation of the impact of selection systems on background characteristics, Jacob (1964: 106-08) noted their relationship to a phenomenon he termed "localism" and we will briefly discuss this as it applies to state supreme court justices.

Jacob found that some selection systems were clearly more conducive to the elevation of "local boys" than were others. We find this to be true also, although our data are at some variance with Jacob's as to just which systems are the most conducive. He found the partisan election and Missouri Plan systems highly locally oriented while the other three systems were definitely not in this mold; we find the partisan election and legislative election systems emphasize localism to a greater degree than the others, but the gap is not huge. (See Table 5.)

But a glance at Table 2 (regional variations) causes us to

wonder whether it is the selection system which is in fact the important causal consideration here. An analysis shows that regional peculiarities far outweigh selection systems in this regard. Let us look first at in-state birth. Here our point might be best illustrated by looking at the non-partisan states. In the Midwestern non-partisan states, 83% of the justices (N = 53) were born in-state, while in the Western non-partisan states only 48% of the justices (N = 56) were natives of their state. In the Midwestern Missouri Plan states, 74% of the justices (N = 23) were natives, while in the Western Missouri Plan states, only 50% of the justices (N = 14) were locally born. In both cases, when controlled for region, the selection system averages approximated the regional averages, clearly indicating that region and not system is the key variable here. Moreover, when the West's two partisan election states, Colorado and New Mexico, are considered, we find that only 38% of the justices (N = 13) are locally born — a figure grossly below the partisan election average, but not too far away from the regional average. It seems clear that in the West—America's last frontier and still on the receiving end of our migratory patterns—judicial politics is less structured than elsewhere around old families and deep-rooted community ties, regardless of which selection system is used.

The same phenomena occur in regard to in-state undergraduate and legal education. The West is clearly low on these dimensions. That this is a function of region and not system is illustrated by comparing Western non-partisan and Missouri Plan justices with their Midwestern counterparts. The results are 48% and 55% versus 77% and 88% in-state undergraduate educations respectively. And on the in-state legal education dimension, the results are 50% and 54% versus 75% and 76% respectively.

Northeastern justices were most often born in-state, but less often received an in-state undergraduate education than did Southerners and Midwesterners and were no more likely than Western justices to have attended a law school in their home state. In large part, it can be argued, this reflects the peculiar nature of that region—the closeness of schools in neighboring states and the considerable differential in the quality of institutions of higher education in the various Northeastern states. When we use New York and Pennsylvania as a control device, we get an 82% in-state education result on both dimensions, but because both states have many outstanding colleges and

law schools, such a control cannot be considered strong evidence of the effect of selection system. Using Rhode Island and Vermont as a control, we find 78% attended an in-state undergraduate school but only 11% went to an in-state law school; the first result is inconclusive, the second clearly argues for the regional peculiarity hypothesis.

In sum, it seems that variations in localism are not so much a product of "the requirements each system imposes on the candidates for judicial office," as Jacob (1964: 108) maintains, as they are the result of regional migration patterns and higher educational structures.

Conclusion. It seems clear that institutional mechanisms surrounding recruitment to state supreme courts do not have the impact on personal characteristics which advocates of competing selection systems often imply that they have—or even the impact which investigators such as Jacob seemed to find. Certainly some importance can be attached to formal recruitment processes *per se*. The legislative election method seems to have a particularly differential impact in determining the religious, educational, and career backgrounds of justices. More tenuously, gubernatorial appointment and partisan election seem to affect the career patterns of the justices. But in an equal if not greater measure, the explanation of variations in judicial characteristics rests with regional factors. Clearly it is the dominant variable behind religious and localism differences—to say nothing of partisan differences. And it seems to be at least as important in affecting career patterns and educational backgrounds as selection system.

Further refinement of the relative weight of the two factors is rendered difficult because of the great overlap between region and selection system. In fact, as noted earlier, our results based upon the use of deviant states for control purposes must be viewed as tenuous, especially where the control involved only one or two states. Nonetheless, the generally mixed trend of the results is a considerable testimonial to the assertion that neither selection system differences nor regional differences is the predominant factor associated with differences in justices' background characteristics.

Additional research is clearly appropriate here. Perhaps the concept of region (or political culture) can be further refined and explored to the point where the linkage with variations in justices' characteristics are both more obvious and plausible. More importantly, data on behavioral differences in

states having similar selection systems must be accumulated. In this note we have assumed more or less uniform processes within a given system. As noted earlier, formal, rule-structured processes are often modified by informal norms or traditions. To some extent, this undoubtedly occurs in the recruitment of state supreme court justices. For example, it is possible and perhaps likely that in some partisan election states (especially Southern ones) the recruitment process is similar to that in non-partisan states (e.g., Bashful, 1958). There is also evidence to suggest that in several selection systems, the process is sometimes not very dissimilar to that in gubernatorial appointment states (Herndon, 1962; Watson and Downing, 1969: 187-94). And in some non-partisan election states, partisan overtones may be injected into judicial campaigns (e.g., Ladinsky and Silver, 1967). If these alterations of the formal processes occur in any large number, then another look at the relationship between selection systems (as informally modified) and justices' background characteristics will be worthwhile.

TABLE 1: SELECTED CHARACTERISTICS OF JUSTICES BY SELECTION SYSTEM

	Partisan Election (N = 197)	Non-Partisan Election (N = 109)	Missouri Plan (N = 37)	Gubernatorial Appointments (N = 67)	Legislative Election (N = 31)
In-state birth ^a	77%	66%	65%	85%	90%
In-state undergraduate education	81	64	70	65	86
In-state legal education	74	63	68	39	64
Possesses B.A. degree	53	53	54	76	68
Possesses law degree	86	88	89	97	82
Prosecutorial experience	56	59	53	39	23
Legislative experience	17	17	11	21	45
Previous judicial experience	58	45	57	76	65
Experience in atty. general's office	19	21	22	22	8
Democratic party affiliation	80	35	42	43	67
Religion					
Jewish	3	3	4	6	0
Catholic	13	10	26	28	11
High status Protestant ^b	35	39	26	52	56
Low status Protestant ^b	49	48	44	14	33

^a The percentages listed for this and all subsequent characteristics except religion are based on dichotomous responses, i.e., 23% of the partisan elected justices were born out of state, 19% of them received their undergraduate education out of state, etc. All justices for whom there is no information or for whom a particular response is inappropriate have been eliminated from the percentage calculations.

^b Schmidhauser's (1960: 38-39) categorizations are used here. The high-status category is composed predominantly of Episcopalians, Presbyterians, Congregationalists, and Unitarians.

TABLE 2: SELECTED CHARACTERISTICS OF JUSTICES BY REGION

	Northeast (N = 92)	South (N = 135)	Midwest (N = 122)	West (N = 92)
In-state birth ^a	87%	81%	77%	50%
In-state undergraduate education	72	84	78	57
In-state legal education	47	80	76	45
Possesses B.A. degree	73	54	52	57
Possesses law degree	90	83	92	88
Prosecutorial experience	39	48	60	58
Legislative experience	21	27	16	11
Previous judicial experience	76	57	45	58
Experience in atty. general's office	19	19	19	22
Democratic party affiliation	39	97	29	55
Religion				
Jewish	6	1	2	8
Catholic	31	3	15	22
High-status Protestant ^b	46	40	35	35
Low-status Protestant	17	56	48	35

^a See note a in Table 1.

^b See note b in Table 1.

TABLE 3: RELIGIOUS DISTRIBUTION OF PARTISAN AND NON-PARTISAN ELECTION SYSTEMS JUSTICES CONTROLLED FOR REGION (REGIONAL AVERAGES IN PARENTHESES).^a

Region	Catholic	High-Status Protestant	Low-Status Protestant
PARTISAN ELECTION STATES			
Northeast (N = 12)	42% (33)	50% (49)	8% (18)
South (N = 93)	3% (3)	35% (40)	62% (57)
Midwest (N = 28)	18% (15)	32% (36)	50% (49)
West (N = 10)	40% (24)	40% (38)	20% (38)
All Partisan Election Justices	13%	36%	51%
NON-PARTISAN ELECTION STATES			
Midwest (N = 41)	12% (15)	39% (36)	49% (49)
West (N = 32)	9% (24)	43% (38)	46% (38)
All Non-Partisan Election Justices	11%	41%	48%

^a Jews have been eliminated because of small Ns and the percentages recalculated.

TABLE 4: FREQUENCY OF PRIOR OFFICE ACCORDING TO SELECTION SYSTEM

Prior Office	Gubernatorial Appointment	Legislative Election	Missouri Plan	Partisan Election	Non-Partisan Election
Elected Law Enforcement (Jacob, 1955 data) ^a	39%	19%	100%	79%	72%
Prosecutor (State Supreme Court Justices, 1961-68)	41	24	51	56	61
Legislature (Jacob, 1955 data) ^a	66	81	0	25	22
Legislature (State Supreme Court Justices, 1961-68)	22	45	11	17	16

^a Jacob, 1964: 110, Table II

TABLE 5: INDICES OF LOCALISM BY SELECTION SYSTEM

	Gubernatorial Appointment	Legislative Election	Missouri Plan	Partisan Election	Non-Partisan Election
JACOB DATA (1955)^a					
Born in district	37%	22%	33%	54%	9%
Law school in state	33	49	92	63	55
Index ^b	70	71	125	117	64
STATE SUPREME COURT JUSTICES (1961-68)					
Born in state	85%	90%	65%	77%	66%
College in state	65	86	70	81	64
Law School in state	38	64	68	74	63
Index ^b	188	240	203	232	193

^a Jacob, 1964: 107, Table 1

^b Index equals sum of percentages

FOOTNOTES

¹ Of course, even if we find that diversity of backgrounds is related to dissensual behavior, we would not be able to explain the substantive results of collegial court decisions. Such a finding would, however, be strongly indicative of a nexus between background characteristics and directional voting patterns.

² Historical changes in judicial selection processes are recounted in Haynes (1944); Hurst (1950): 122-40; Winters (1966); and Watson and Downing (1969): 4-8.

³ Two states, Connecticut and Michigan, though nominally in one system have been placed in another where it is clear that procedural considerations warrant the shift. In Connecticut, the legislature is formally empowered to elect judges from among gubernatorial nominees. In point of fact, however, the governor nominates only one candidate who is almost always chosen. Thus the governor is the real source of the appointment. In Michigan, the justices are elected on a non-partisan ballot. However, only upon receipt of a party convention's nomination can a candidate normally be listed on this ballot. Moreover, my Michigan acquaintances tell me, the "non-partisan" campaign carries strong partisan overtones. Thus Michigan approaches the partisan election category more than the non-partisan category.

We are using¹ 1960 as the determinative year for classifying states by selection system because we are interested in the system prevailing when the justices were selected. In the 1960s about half a dozen states abandoned other systems in favor of the Missouri Plan, but as of 1960 only four states used it. Following is a list of the states in each selection system. *Partisan Election*: Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania,

Tennessee, Texas, and West Virginia. *Non-Partisan Election*: Arizona, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming. *Missouri Plan*: Alaska, California, Kansas, Missouri. *Gubernatorial Appointment*: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey. *Legislative Election*: Rhode Island, South Carolina, Vermont, Virginia.

- ⁴ The terms "supreme court" and "justice" are used generically here, to designate a state's highest appellate court and members thereof.
- ⁵ The geographical regions used are basically conventional. The Northeast includes Delaware, Maryland, Pennsylvania, and all states north or east of them. The South includes the eleven states of the Confederacy plus Oklahoma, Kentucky, and West Virginia. The Midwest includes those states north of the Ohio River, as well as Missouri and Kansas, and those states to their north. The remaining states are in the West.

We also divided the states by dominant political culture (Traditional, Moralistic, and Individualistic), according to the design used by Elazar (1966: 108). However, the variances between cultures were considerably smaller than the variances between geographical regions on the dimensions shown in Tables 1 and 2. This indicates that similarities within conventional geographical regions offer a better possible alternative explanation (to the selection system hypothesis) than do similarities within political cultures (at least as defined by Elazar).

- ⁶ The number of justices about whom information on religious affiliation was available in Hawaii (the only gubernatorial appointment state not in the Northeast) and in Alaska and California (the Western Missouri Plan states) was so small that meaningful calculations were impossible.
- ⁷ Similarly, the Midwestern Missouri Plan states (Kansas, Missouri) have the following distribution: Catholic = 7%, high-status Protestant = 29%, low-status Protestant = 65%. These figures are at some variance with the Midwest regional averages. However, the difference may well reflect the distribution of religious affiliations within these two states rather than the influence of the Missouri Plan selection system.
- ⁸ About 40% of the justices had served in two—or in a few cases all three—of these capacities before coming to the state supreme court.
- ⁹ Jaros and Canon (1971) found differences in dissent rates for state supreme court justices from urban and rural areas.

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