

## THE ROLE OF PARTISANSHIP IN THE REFORM OF THE OKLAHOMA JUDICIARY

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Oklahoma judicial reform in the 1960s represented a clash between populist values of partisan democracy, reformist non-partisan ballots, and the Missouri plan of the legal reformers centering on commission selected judges. Reform became inevitable when the Supreme Court bribery scandals hit. The race between the legislature's 'mixed' reform package and the more radical Missouri plan reform advocated by sponsors of an initiative referendum was won by the legislature.

**As judicial reform movements** swept through the states, the method of selecting judges became the center of political debate. One issue was whether or not to let parties nominate judicial candidates and to let these candidates run on a partisan ballot. The method of selecting judges remains an argued point of state government. The debate is among those favoring partisan election, non-partisan election, and some adaptation of the Missouri plan of appointment. A few states have legislatures and executives formally appointing judges (Baum 1994).

This paper concerns Oklahoma's judicial reform in the 1960s. The focus is on how party and partisanship impacted that process, and how the issues of judicial selection were resolved.

## THE NATIONAL COURT REFORM MOVEMENT

The court reform movement in the United States has essentially spanned the twentieth century. A good starting point for examining the movement is the series of articles and speeches produced by jurist Roscoe Pound in 1906. In a now-famous speech before the American Bar Association, Pound concluded: "Putting courts into politics and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the Bench" (Pound 1906, 395). Pound called for court unification and modernization. From Pound on, the court reform movement had two pillars: court consolidation and unification and "merit" selection of judges. The American Judicature Society and the American Bar Association developed model plans for court reform and as early as 1909 the American Bar Association adopted Pound's reform agenda. By the 1960s, just as judicial reform developed as a political cause in Oklahoma, Pound's ideas had been universally accepted by the judicial reform movement (Berkson and Carbon 1978).

Merit selection usually meant an end to both partisan and non-partisan direct election of judges. Although reform proposals have varied over the years, most recent plans resemble the system adopted by Missouri in 1941. In the "Missouri plan," merit selection begins with the creation of a judicial nominating commission, usually composed of lawyers and lay people picked by the bar and the governor. When a judicial vacancy occurs, the commission produces a short list of nominees (usually three). The governor chooses one of the three to fill the position. After a short period on the bench (one or two years), the judge faces the voters in a retention election in which the vote is "yes" or "no" and the judge faces no opponent. Advocates maintain that this plan gets politics out of the judicial selection process, just as Pound had suggested in 1906. The Missouri plan became synonymous with merit selection in the jargon of court reform, as these ideas approached becoming an ideology nationwide. In many states, including Oklahoma, the central issue in court reform was whether or how much to institute the Missouri plan.

## THE CLASH OF TWO CULTURES

The court reform movement has faced serious and persistent opposition over the years because it flies in the face of a deep-seated populist ideology embedded in Oklahoma government and politics. This is at once Jacksonian, populist, and progressive in tone, and all three influences have been felt in the way state governments structure their judicial systems.

The populist theory of government embraces a number of ideas, including a lack of concern over immersing public administration in politics, a long ballot which features many elective offices including judges and a willingness to allow the political party to serve as the mechanism for carrying out the people's will.

Populism was the dominant way of thinking in Western states at the turn of the twentieth century. It produced judicial systems that were decentralized, popularly elected on a partisan ballot, often operated by laymen, and immersed in the political milieu of citizen and democratic politics. Judicial decision-making was seen as part of the political process. Courts respond to public demands rather than to the pressures of an objectified system of legal principles.

Oklahoma's justice of the peace court embodied these populist principles in the judicial system. This bottom-level community court featured lay judges, popular and usually partisan election, little supervision by other superior courts, and immersion in the life and politics of the local community. Elimination of this court was a prime goal of Oklahoma judicial reformers.

Political reformers associated the political party with corruption-ridden boss politics. To the political reformers, democracy could be made pure only with the exclusion of party from politics. This style of thinking gave rise to the non-partisan movement, especially in municipal affairs; however, the non-partisan movement had an impact on the judicial reform movement as well. Many Oklahoma reformers wanted to directly elect judges on a non-partisan ballot and thereby take the courts "out of politics" while at the same time preserving their democratic and electoral nature.

This populist and political reformer drive to democracy ran counter to the ideas of the legal reformers. The legal reformers believed that the courts must first be devoted to legal principles and objective standards of law discovered by experts in the professionally trained legal community. The discovery of these objective principles should be conducted in an atmosphere untainted by popular passions. For these legal reformers, the

administration of justice should be separated from politics and be conducted according to the objective principles of public administration. One of these principles was that administration should be hierarchical. They felt judicial personnel should be highly trained in law. Their selection should be non-political. As a consequence, legal reformers favored eliminating popular election, partisan or non-partisan, of judges. They favored establishing merit selection.

For the legal reformers, merit selection involved legal professionals in selecting judges to the fullest extent possible. Legal professionals, chosen on the basis of their training and devotion to the legal profession, were to work in unified court systems as applying objective principles of law. While being ultimately responsible to the people in a constitutionally democratic order, legal reformers felt the judicial process should be as immune from politics and political pressure as possible.

### **JUDICIAL REFORM COMES TO OKLAHOMA**

When Oklahoma became a state in 1907, the populist ideology dominated the thinking of its founders. This thinking produced judicial decentralization, partisan election of judges, legislative domination of judicial administration and law, and the domination by lay people at the bottom rung of the judicial ladder. From 1907 to 1967, Oklahoma's court system was complex, unrationalized, and open to a variety of political forces. Judges were just another layer of politicians. They too, organized partisan campaigns for election. The legislature continued to elaborate this system producing a maze of courts that only a few understood (Simpson 1991).

Reform ideology of the legal profession began to take serious root in Oklahoma after World War Two. The locus of reform efforts was the Oklahoma Bar Association and the University of Oklahoma School of Law. There were earlier reform attempts, however. In 1906, the territorial bar discussed a non-partisan supreme court, and in 1921 the bar considered a comprehensive judicial reform package which included the method of selecting judges. In 1925, the bar tried to generate interest in a unified court system and the non-partisan selection of judges. By the late 1930s, legal reformers' attention was focused on the Missouri plan of selection. A special committee of the Oklahoma Bar Association studied and promoted the plan. But the Oklahoma Bar Association house of delegates

failed to endorse the Missouri plan in 1946 (Casey 1989). The state bar again began to embrace reform in the late 1950s. Between 1957 and 1959, the bar persuaded the Oklahoma Supreme Court to adopt the American Bar Association (ABA) canons of judicial ethics. In 1959 the state bar executive council endorsed the idea of a court on the judiciary for Oklahoma (*Oklahoma Bar Association Journal* 1959). The plan was later adopted by the house of delegates, and the state legislature voted to submit the system to the voters in a 1964 referendum. With both trial and appellate divisions, the court on the judiciary would be basically a system of judges and lawyers judging judges. This was a move away from the existing populist system as the power of removal would be switched from the voters and the elected legislature to non-elected councils of judges. The plan did not pass in the election of 1964. Although a majority voting on the issue favored the reform, Oklahoma's constitution then required a majority of all votes cast. As there was considerable roll-off on bottom-of-the ballot referendum issues, the measure failed.

The Oklahoma bar developed additional court reform proposals between 1959 and 1964. These included the Missouri plan for selecting appellate court judges and the Missouri plan as an option for selecting trial court judges; the creation of the office of court administrator, the development of a unified general sessions or trial courts; and the abolition of the justice of the peace system (*Oklahoma Bar Association Journal* 1962; 1964; 1966). Section 7 of the reform package adopted in 1962 stated: "No judicial officer appointed or retained in office under the provisions hereof shall make directly or indirectly any contribution to, or hold office in, a political party or organization or take part in any political campaign" (*Oklahoma Bar Association Journal* 1962, 1451). The Oklahoma Bar Association was ready to plan an assault on Oklahoma's populist court system.

A particular target was the partisan (or even non-partisan) election of judges at any level — including the bottom tier Justice of the Peace Court. As early as 1951 the staff of the *University of Oklahoma Law Review* did an extensive study of the judicial system in the state. The staff was highly critical of the partisan and political nature of state judicial selection. Given first and second primary requirements, a judge might face several elections. The ability to raise the necessary campaign funds could be expected to have no relationship to a candidate's judicial competency. "The weight of purely political factors entering into the selection of judges

ideally should be diminished while that of merit and competence should be increased” (*Oklahoma Law Review* 1951, 252). If not the Missouri plan, which staff saw as the best blend of legal professionalism and democratic values, then the law review staff thought Oklahoma should at least adopt non-partisan election.

The bar and Oklahoma law schools held a “Modern Courts Conference” in December, 1962. Sponsors were the Oklahoma Bar Association, the Joint Committee for the Effective Administration of Justice, a national committee led by former Supreme Court Justice Tom Clark, the American Judicature Society, and the Oklahoma law schools. The tone of the conference was reform and the promotion of a modern, unified system of courts. The conference consensus was adopted without dissent and included both the reforms and a political strategy to enact them. The conference proposals included the Missouri plan for judicial selection and tenure; retirement of judges at 70; a less cumbersome removal and discipline procedure; minor court organization and administration which increased elimination of fee-based justices of the peace; and a political strategy to enact the plan. This strategy included education, citizens’ organization, a program to put to the legislature for passage, an initiative petition drive if the legislature failed to act, a campaign for success at the polls, and the development of continued interest after reform. The Oklahoma Institute for Justice was founded to promote these objectives (*Oklahoma Bar Association Journal* 1962).

The conference consensus was clear in its intention to discredit the partisan election of judges:

“Oklahoma has been fortunate in securing many excellent judges under its present system of selection by partisan election. These judges, however, have been excellent in spite of the method of selection, not because of it. Among the many shortcomings of partisan election are: (1) judges are not free to devote all their talents and energies to the only task they should have, the proper administration of justice; (2) voters, particularly in statewide campaigns and those conducted in populous areas, have inadequate information on the qualifications of judicial candidates; (3) many of the persons best qualified to serve as judges are unwilling to undergo the pressures, expense, and uncertainties of frequent election campaigns and thus the public is deprived of the opportunity to have the best possible judiciary.

It is indispensable to the proper functioning of the judicial system that men who are to be judges be selected solely on the basis of their qualifications for judicial office rather than on their ability to campaign and to obtain partisan support.

The objective of any method of selection should be to obtain judges free of political bias and collateral influence and possessed of qualities that will lead to the highest performance of their judicial duties" (*Oklahoma Bar Association Journal* 1962, 2522).

With the Modern Courts Conference, we see the professional and academic elites of Oklahoma law embrace court reform as it was then being modeled by the American Bar Association and the American Judicature Society. Election of judges in competitive elections was seen as an evil, in either its partisan or non-partisan forms. The legislature remained the next big hurdle for court reform in Oklahoma and populist ideas of popular control over public officials remained a powerful force in that body. However, these populist ideas were about to get an unexpected jolt.

### SCANDAL ON THE SUPREME COURT

As 1964 began, Oklahoma legal reformers had every reason to be proud of their efforts to bring about judicial reform. Court reform was alive and well in Oklahoma. As 1964 ended, dark clouds had descended on the bench, bar, and the general Oklahoma political scene, as the state supreme court became embroiled in bribery scandals. Much of what the reformers were saying about the dangers of electing judges seemed to be coming true: corruption and partisan election were somehow connected, and voters seemed ill-equipped to select a qualified judiciary.

Just what was the scandal? Apparently from the mid-1930s to the mid-1950s, one or more justices took bribes to deliver votes on the high bench. The culmination was one huge bribe of \$150,000 in the 1956 Selected Investments case. Justice Corn swore in an 84 page statement that he had received \$150,000 in \$100 bills from Hugh Carroll of the Selected Investments Company at a 1956 downtown Oklahoma City meeting. The fate of the company hung on a Supreme Court decision. Corn stated that he had shared the bribe money with two other justices (Hall 1967).

It is quite clear that the scandal had a great impact on Oklahoma's

court reform. Between 1965 and 1968 the state had a rousing debate on court reform, and the method of selection was at the center of this debate. The role of the political party and partisanship generally came up time and time again, and it became obvious that the old method of partisan selection had been discredited by the scandal. Most close observers concluded that the distance between a campaign contribution and a bribe was indeed a short one, and that the entire judiciary had become tainted by partisan politics. Between 1965 and 1967 struggle over court reform was marked by an extensive debate in the state legislature and a drive by a private citizens' group, Judicial Reform, Inc., to change the court system by initiative petition. These two groups essentially raced each other in the fight to establish their respective versions of a new court system. The citizens' group collected signatures for an initiative referendum while the legislature considered a legislative referendum. Judicial Reform, Inc. pushed for the Missouri model plan of judicial appointment proposed by the American Bar Association. The court scandal came at a time when many other states were considering court reform, Iowa and Illinois, for example. Therefore, a national movement to reform mixed with the internal politics of Oklahoma, producing a powerful force for change. Academic and legal professionals spread reform theories across the state, forcing the legislature to confront the partisan election of judges and court organization. The mostly rural populists fought to save what they could of the old system from the more urbanized legal professionals and advocates of the Missouri plan. In the end the legislature won the race with the initiative organized by Judicial Reform, Inc. The legislature's plan included populist and reform elements.

### JUDICIAL REFORM, INC. AND THE "SNEED PLAN"

In his 1965 parting speech as dean of the University of Oklahoma School of Law, Earl Sneed tore into the Oklahoma judiciary, now marked by scandal. He stated his dissatisfaction with the system of justice in the state: "Why in the world is Oklahoma continuing with such an ancient, creaky, inefficient, outmoded, complex, costly and antiquated judicial system — a system that was not good in 1907, and has grown progressively worse in the fifty-eight years since statehood?" (Sneed 1966, 7).

First, Sneed pointed to the justice of the peace system. He argued



that because the system was dependent on the fees it imposed, there was a real risk of denial of due process on the criminal side. For Sneed, paying for justice with tax dollars would yield better qualified judges and better justice. Eliminating the fee-based justice of the peace system would be well worth it: "Justice is worth more than a few dollars" (Sneed 1966, 8).

Sneed also had harsh criticism for the "jumble" of trial courts that constituted the middle layer of the "crazy-quilt" Oklahoma system: "I do not believe that anyone really knows how many and what kind of trial courts we have in Oklahoma." (Sneed 1966, 9-10). Citing numerous examples of confusion, Sneed suggested that Oklahoma was running out of names for its courts. People were running for judicial positions they were not even allowed to hold and others were running for positions many did not know existed.

At the appellate level, Sneed focused on the method of selection; judicial salaries; the lack of a court administrator; and the need to centralize administrative power in the supreme court. In defending the Missouri plan, Sneed criticized the whole process of electing judges. With a ballot containing so many contests few Oklahoma voters cast an informed judicial vote. When a judge drew an opponent, voters could not evaluate their qualifications. Without an opponent at the polls, the voter had no voice at all because Oklahoma does not permit write-in votes. Many judges ran unopposed after a partisan gubernatorial appointment to fill a vacancy. Sneed felt that the people neither know nor care who they are voting for in statewide judicial races. When judges had to campaign it diverted time away from judicial business. They also had to take campaign money which might influence votes on the bench. That system, Sneed asserted, makes the judge a political rather than a judicial animal (Sneed 1966).

Sneed proposed a new judicial article based on the 1962 ABA model for the Oklahoma constitution. This model, with revisions, became the "radical" "Sneed Plan" for court revision. The plan, finally laid to rest in September, 1968, became politically significant in motivating a recalcitrant legislature in the area of court reform.

Earl Sneed, Leroy Blackstock, Oklahoma Bar Association president for 1966, and Clark Thomas, a newspaper editor, formed Judicial Reform, Inc. in June, 1966, in order to organize a public effort for reform. The plan was to organize an initiative petition behind the Sneed plan first laid out in April, 1965. The impetus behind the drive was the failure of the legislature to act on a comprehensive package in 1965. The Sneed plan, with the help

of the metro press and the League of Women Voters, was ultimately placed on the ballot for the September, 1968 primary. But, unfortunately for the plan, the people had already adopted the legislative package in July, 1967. It is to the development of this package we now turn.

### LEGISLATIVE ACTION ON COURT REFORM

The politics of developing the legislative plan was much more complicated than Judicial Reform, Inc.'s petition process. The scandal was instrumental in moving the legislature as far as it did. The Sneed plan was forever in the mind of the legislature, and most wanted to blunt at least some of its objectives. The House won the battle in terms of court organization, but the more liberal Senate, with the strong backing of Governor Bartlett, forced the issue on a modified Missouri plan for the appellate courts.

In terms of court reform, the Court on the Judiciary was the major accomplishment of the 1965 session of the legislature. The legislature failed to act on general court reform in 1965 for two basic reasons: first many simply did not support reform, especially the Missouri plan, and, second, there was a conscious decision by John McCune, House Judiciary Committee chairman, to do a lengthy study of the issue of court reform.

On the opposition side, one had no further to look than the Speaker of the House, J. D. McCarty, a fiery populist. The debate on judicial bills in the 1965 session outlined this opposition, and the focus was almost always the method of selection. Saying that McCarty must bear the blame for the death of judicial reforms, especially the Missouri plan and the justice of the peace bill, *The Daily Oklahoman*, Oklahoma's largest newspaper, called for McCarty to put the reforms to a vote of the people. McCarty, had stated that he would rather trust one million voters to select judges than a commission to appoint them. The paper retorted: if the voters are so smart, why not let them choose their system in a referendum (*Daily Oklahoman*, June 20, 1965, 10). After the Senate passed the Missouri plan, McCarty promised a full House debate. The debate came and the proposal was defeated. In the legislature there was a visible hostility toward the organized bar and the proposals that had been put forward by the legal community. Rural populists blamed the bar for the scandal, not partisan elections. The issues between the populists and legal professionals were

clearly drawn.

Before House action killing the Missouri plan, the Senate passed the plan for appellate courts and left open the option for trial courts as well. Advocates felt that judges would have to run on their own record and not have to raise money to campaign from lawyers who practice in their courts. They also felt that the people did not know enough about appellate judges to cast a vote. It was also pointed out that under partisan election judges often drew no opponent at all and were automatically reelected; at least the Missouri plan required that a judge run on his own record with a “yes” or “no” vote. The plan was vigorously attacked by the populists in the Senate. State Senator Gene Stipe, joined by other state senators, asserted that the bar needed reforming, not the courts. However, the plan passed the Senate by 33-11 before it went down to defeat in the House under McCarty’s leadership.

After the 1965 defeat of court reform John McCune, Chairman, House Judiciary Committee, organized an intense study of court reform in 1966. New proposals for court reform were placed before the legislature in 1967. McCune’s committee held hearings and traveled to Illinois to explore the new court system of that state. The selection issue was still the most controversial, with choice ranging all the way from partisan election to the Missouri plan. Illinois had a system which combined both —initial selection on a partisan ballot with a retention vote at the end of the term. Oklahoma never really considered this system. McCune and his committee favored non-partisan, election of all judges save the appointed special judges. Special judges were to be chosen by the other district judges. Non-partisan election was at the center of the house committee plan, and was passed and presented to the Senate in January, 1967. As McCarty had been defeated in the 1966 elections, he was no longer an obstacle to reform in the House.

The 1965 debate was repeated once again in the Senate, except this time the Missouri plan for appellate judges failed on the floor under the leadership of Senator John Young. However, intense pressure developed to re-insert the Missouri plan for appellate courts in the final conference session between the House and Senate. This pressure came from Governor Bartlett who had endorsed the Missouri plan in his campaign as contrast to his Democratic opponent. It also came from Senate leadership, and the new chief justice, who called partisan election for appellate judges a failure. Chief Justice Halley felt strongly that campaign contributions for appellate

judges had been the source of the corruption that had caused the scandal. The legislative leadership and the governor felt that the public might vote for the Sneed plan (with a full Missouri plan) if the Missouri plan was not put in the legislative package for the appellate courts. A compromise was reached. Let the voters vote on organization with a built-in non-partisan election system on one ballot (a white ballot), but then let the voters vote on a yellow ballot which contained appointment for the appellate courts. The yellow ballot would amend the white ballot if passed, but the yellow ballot would not go into effect if the white ballot failed.

The election on the legislative plan was set for July 11, 1967. McCune led the campaign to sell the legislative package. The alternative was the enactment of the Sneed plan in a referendum schedule for 1968. The Missouri plan for the district courts, as proposed in the Sneed plan, was the central concern of McCune. The legislative plan drew support from a wide range of sources, including organized labor and Governor Bartlett. Even the Sneed group endorsed the plan as a first step in judicial reform. Sensing they had probably lost the fight, Sneed and Blackstock also recognized that the white and yellow ballot votes represented a significant improvement in Oklahoma. Predictions were for a light voter turnout as heavy opposition and solid organization failed to materialize. The justices of the peace did oppose the plan, but they had lost most of the battles up to this point. Shortly before the vote, the bar endorsed the plan. Most felt that the vote would turn on the voters' perception of the source of the scandal. If they saw the scandal as being rooted in how judges run for office, the measures would pass. If they saw the scandal as rooted in the legal profession, it would fail. Both votes passed, but only because of lopsided margins in Tulsa and Oklahoma City. Rural areas voted the other way.

The remainder of 1967 and most of 1968 was spent debating the Sneed plan and passing enabling legislation under the new constitutional provisions. McCune railed that the public would lose its right to elect local judges to an "army" of the governor's commissioners under the Sneed plan. In reply, Blackstock called voting for judges a myth; most, he said, either get appointed or never draw an opponent. At least under the Sneed plan the voter would always get to vote on the judge's record. With the Tulsa and Oklahoma City press divided, the Sneed plan went down to defeat in the September, 1968 referendum. However, it is clear that the fear of the plan motivated the legislature to go further with reform,

especially the proposal to use the Missouri plan for the appellate courts, than it would have otherwise.

### REFORM AND THE PARTISAN CLIMATE IN OKLAHOMA

Whether or not to get rid of the partisan selection of judges in Oklahoma was only one dimension of the role of partisanship in the court reform debate in Oklahoma. Another was the ongoing debate between Republicans and Democrats, a debate that was often reflected in the metropolitan press. The Republican base of strength during the 1960s was Oklahoma City and Tulsa. Both the Republican leadership and the press in those two cities were very much in favor of court reform, especially the Missouri plan of appointment. In fact, *The Daily Oklahoman* endorsed and pushed the Sneed plan throughout the court reform debate. The court reform struggle came at a time of Republican resurgence as the state elected Henry Bellmon and Dewey Bartlett Governors for the 1962-1970 period. As the scandal struck, Governor Bellmon acted to secure public confidence in state government by appointing special investigative and study commissions. Dewey Bartlett was elected during the court reform debate in 1966, with Bartlett endorsing the Missouri plan and his Democratic opponent, Preston Moore, opposing the plan. As governor, Bartlett instituted an informal Missouri plan procedure to aid in filling judicial vacancies, and, as previously noted, he was instrumental in getting the Missouri plan for appellate courts inserted in the legislative plan during 1967 (Simpson 1994).

The Republicans, of course, had a lot to gain from the institution of the Missouri plan, while the Democrats had a lot to lose. The Democrats had controlled the state's judicial system since statehood through the partisan election of judges. The Missouri plan would mean a massive transfer of power to the office of the governor, and in the 1960s that meant a Republican governor. Philosophically, the Republicans also had an easier time of endorsing the Missouri plan and court reform. They were more urban based and thereby tied more closely to the legal subculture. The strident press in the metropolitan areas helped to cement this relationship as the rural interests and the Democratic legislature were pounded time and time again. The Democrats were clearly more tied to the rural areas and the populist ideology and the voices opposed to reform almost always

came from the rural Democrats. The scandal, of course, had occurred on the Democratic watch and the mix of forces and cultures was just right in the 1960s to produce court reform.

## CONCLUSIONS

The court reform debate in Oklahoma makes clear that the role of political parties and partisanship has been a major concern in the judicial modernization movement. In the drive to get “politics” out of judicial decision making, the ideology of the legal professionals is hostile to the notion that political parties and partisanship have a place in the judicial system. The supreme court scandal in Oklahoma served to accentuate this hostility, as the state searched for the root causes of judicial corruption — the worst sort of political invasion into the judicial world. As the proponents of the populist ideology fought to retain the popular election of judges, they turned to the progressive notion of non-partisan election as the magic cure for political corruption. Oklahoma is a case of classic compromise, as lower courts were left open to popular election with appointment put in place for the appellate courts.

Of course, the entire court reform debate in Oklahoma was based on the notion that reform in the method of selection would produce predictable and desirable results. It is a deep-seated American optimism that governmental structure can be designed to produce certain results. Is this optimism valid? Research indicates that method of selection produces mixed results at best. We now know, for example, that the Missouri plan does not “get politics” out of judicial decision making — it only injects another kind of politics into the process. The public is still largely ignorant of judges’ records but yet must vote whether to retain them as Missouri plan judges run on the retention ballot. On the other hand, popular election often turns into an appointive system, as judges, as often as not, fail to complete their terms and the governor fills vacancies. The non-partisan system adopted for trial courts in Oklahoma may be a bad compromise in that judicial candidates still have to raise money and run a political campaign without the system benefiting from the organizing effect of party competition. Perhaps the Oklahoma scandal was fed by the dominance of the Democratic party, where primaries were no substitute for general election competition.

No system of selection can completely stem the tide of corruption or guarantee “better justice,” in part because we can never seem to agree on what “better justice” is. Perhaps the best that we can do is to live with the tug of war between the populists and legal professionals and hope this tension produces “better justice.”

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