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THE SELECTION AND TENURE OF
JUDGES, by Evan Haynes, *The National
Conference of Judicial Councils*, Lord Baltimore
Press, Baltimore, 1944. Pp. xix, 308. \$5.00.

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Book Reviews

THE SELECTION AND TENURE OF JUDGES, by Evan Haynes, The National Conference of Judicial Councils, Lord Baltimore Press, Baltimore, 1944. Pp. xix, 308. \$5.00.

As Dean Pound points out in his introduction of this book: "Our American way of life has developed under a legal constitutional polity. . . . To maintain this polity the judges must be independent, must be well trained in the tradition of such polity, must be strong men and strong lawyers, and must be men of experience and reason."¹ It follows that any program for improving the administration of justice must rest basically upon the improvement of the tenure and mode of selection of judges. Justice under the law must inevitably be measured in terms of its administration by the courts and by the learning, experience and integrity of the judges who preside over them. The content of the law is not as important as the quality of the men who administer it.

"The primary purpose of this book," states the author in the preface, "is to provide a reasonably full collection, in one place, of the essential data bearing on the technique of judicial selection." And since, with reference to the technique of judicial selection and tenure, there is a wide divergence of opinion in this country over the question as to how far, how immediately, and in what way, judges should be subject to popular control, the author dedicates a major portion of the book to the attempt to find the basis for an answer to this question.

After a general survey of the problem, he presents a summary of the present state of affairs in the United States concerning the selection and tenure of judges.² He indicates that in twenty-one states all judges are elected by the people; that in fourteen others all judges, except those of the inferior courts, are so elected. In the remaining thirteen states the judges generally are either appointed by the governors or are elected by the legislatures. Outside of the federal judiciary, very few judges in this country hold their offices during good behavior. That federal judges, by and large, are better as a group than those of any state

1. Introduction, page xii.

2. At the conclusion of Chapter II is found a table of constitutional and statutory provisions governing the selection and tenure of judges in each state and under the federal system.

is generally conceded. Under the federal system the judges are appointed by the President subject to confirmation or rejection by the Senate; they have reasonably adequate salaries; their tenure is for life predicated upon good behavior; and they are, upon retirement, reasonably well provided for. As pointed out by the author, this system produces better judges and operates more successfully than the system of popular election for terms of years despite the fact that, contrary to the Constitution, the power of judicial appointment to the district courts "has been taken from the President and made the patronage of the individual members of the Senate"³ for political purposes.

Why did the American states in the middle of the last century, within twenty short years, amend their constitutions to provide for the popular election of judges for fixed periods and thus abandon the view prevailing in the rest of the civilized world that the most effectively functioning judges are those who serve under the appointive system with security of tenure and freedom from political pressure? Professor Haynes, in two brilliantly written chapters entitled "The Judges Under the Stuarts" and "The Democratic Revolution in America, 1830-1850," seeks to find the answer to this question. In the former he traces the constitutional struggles in England during the seventeenth century—the attempts of the Tudor kings, in their fights with Parliament, to control the judges and influence their decisions for the political purposes of the Crown. The judges were the King's judges, and were subject to appointment and dismissal at his pleasure. Even Lord Coke, who favored the parliamentary cause, was dismissed by James I for political reasons. When our colonial ancestors came to consider the problem of the selection and tenure of judges they undoubtedly were influenced by the conditions that had obtained in the mother country.

Did America change from the appointive to the elective system because of some inherent vice in the former system, or was the change due to other factors? In the chapter⁴ on "The Democratic Revolution in America" the author discloses that "the fundamental causes of that change had very little to do with the relative merits of this or that system of judicial selection and tenure, but were rather the ideas and impulses of a violent swing toward the democratization of government generally."⁵ He sur-

3. Page 21.

4. A table which sets forth the constitutional and statutory history of the selection and tenure of judges in all the states from 1776 to the present is placed at the end of this chapter.

5. Page 100.

veys briefly the struggle in Europe for popular control of government that reached its climax in the second quarter of the nineteenth century, and shows the influence of that struggle on the budding American republic. The democratic fervor that was sweeping Europe permeated America and left its imprint upon our governmental processes. The courts were engulfed in this tidal wave. The author then analyzes the many factors both political and economic which contributed to the change in the method of selecting judges in this country. If one reads no other part of the book, he will find this chapter most intriguing and rewarding.

Mindful of the fact that any discussion of proposals for change in the method of selecting judges in America inevitably turns to the practice prevailing in England which has produced the finest body of judges in the world, Professor Haynes devotes a chapter to a description of the English system. The high standards of the English Bench are consistently maintained despite the fact that the majority of the judges are political appointees of the Lord Chancellor.

The picture of foreign judicial systems is made complete by a discussion of those obtaining in Germany, France, Italy, Canada, Latin America and Scandinavia. It is pointed out that in Norway, Denmark and Sweden—countries which have the most thoroughly democratic institutions and practices in the modern world—the judges are not popularly elected nor is their tenure limited.

In one of the most fascinating chapters in the book, entitled: "Are Elected Judges with Short Terms More Liberal Than Appointed Judges with Secure Tenures," the author presents evidence, by way of decided cases, to show that the appointed judges of the federal system have a far better record in the matter of liberal decisions than do the elected judges of the state courts. This is particularly true where the decisions deal with labor problems, workmen's compensation laws, and the liens of mechanics and materialmen.

In a short chapter the advantages of compensated judicial retirement are discussed. A summary at the end of the chapter sets forth the statutes, state and federal, which govern the retirement of judges.

The book closes with a presentation of the various proposals made by individuals and organizations with reference to the selection of judges. These proposals, classified and listed in bib-

liographical form, offer important source material for those interested in the problem of the selection and tenure of judges.

This scholarly, carefully documented work is not propagandist, nor is it deadly statistical. It is good reading, and, for those concerned with the improvement of the administration of justice through the selection and tenure of judges, it furnishes all of the materials for an intelligent consideration of the problem.

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