Greg Goelzhauser. *Judicial Merit Selection: Institutional Design and Performance for State Courts*. Philadelphia, PA: Temple University Press, 2019. xi, 201pp. ($89.50 hardcover, $32.95 paperback, $32.95 ebook).

In this fascinating and well-executed new project, Greg Goelzhauser provides an insider's look into the workings of what has been labeled by some judicial reform advocates as "the merit plan." In this popular but rarely observed method for selecting state court judges for their initial terms of office, a nominating commission reviews all applicants for each vacancy and creates a shortlist of qualified candidates. The governor then makes an appointment from the commission's shortlist. In other words, merit selection is a gubernatorial appointment plan in which the choices of the governor are constrained by a commission. The label "merit" rests on the assertion that commission-based nominations are less political and result in better-qualified judges than contestable elections or unfettered gubernatorial discretion. Another claim is that a commission system better diversifies the bench than other methods of initial accession.

Commission-based appointment systems include but are not restricted to the Missouri Plan, which requires retention elections subsequent to appointment. In *Judicial Merit Selection,* Goelzhauser evaluates all commission-based nomination systems regardless of the method of reselection. The exception is South Carolina and their unusual plan dominated by the state legislature. This strategy expands the inquiry to such states as New York, where high court judges are appointed by the governor from a commission shortlist but where subsequent terms are granted by the commission rather than voters. Another example is New Mexico, which utilizes contestable partisan elections for reselection.

The principal question Goelzhauser poses is whether commission-based appointment systems actually work, defined as qualifications-based, depoliticized, and producing a diverse bench. Of course, these plans vary considerably across the states. Some significant differences include commission size and qualifications, applicant screening procedures, and whether partisan balance of some sort is required on the commission and the shortlist. For the first time, these differences in structural details become a significant part of the empirical analysis of the effectiveness of merit selection. Indeed, this study is the first to combine theoretically driven empirical models with detailed information about all aspects of the process, including the choices of commissions and governors, decisions by attorneys to enter the candidate pool, and the characteristics of the judges chosen.

To describe and evaluate the merit plan, Goelzhauser has assembled what seems at first glance to be a curious collection of data drawn from different states. However, these choices were dictated by the virtual absence of detailed, accessible information about the work of the commissions and other important dimensions of the process, reflecting the common criticism of the merit plan as lacking transparency. In this study, Goelzhauser transcends these limitations by cleverly piecing together the best (and on some topics, the only) information available. In doing so, he provides an unprecedented evaluation of commission-based appointment plans for staffing state court benches.

With any case studies, there always is the possibility of the lack of generalizability, as the author acknowledges. However, there are fewer reasons for that concern here because of the theoretical framing provided for each analysis. Moreover, the findings are largely consistent across states and dependent variables with respect to judicial qualifications, the political nature of the process, and diversity. In this regard, this book is an outstanding example of how to use case studies in a theoretically powerful way.

Judicial Merit Selection is organized into six chapters and an appendix containing extensive robustness checks on the findings in Chapter 3. Chapter 1 is the introduction and Chapter 6 is the conclusion, and both chapters achieve the usual goals. The heart of the inquiry begins in Chapter 2, which offers a richly detailed description of the process of filling a 2016 vacancy on the Arizona Court of Appeals. This step-by-step account includes the author's own observations during the two public commission meetings to discuss the applicants. Chapter 2 describes all aspects of the commission's work, the participants, and the institutional features of the selection process, including rules about commission composition, characteristics of the commissioners and the twelve applicants for the judgeship, rules governing the partisan composition of the short list, and the questions each of the eight interviewees were asked. In the end, Goelzhauser describes the commissioners not as sophisticated partisans or nobly apolitical but as political appointees muddling through to find the required mix of nominees.

Chapter 3 takes us to Nebraska and the question of why commissioners and governors choose some applicants over others. Nebraska takes center stage in this inquiry as the only state providing sufficient data for rigorously assessing the choices of commissions and governors. Do commissioners and governors emphasize judicial qualifications, an apolitical approach, and diversity on the bench? The specific data evaluated are all 980 applicants for 112 judgeships on a variety of trial courts, the Court of Appeals, and the Supreme Court from 2000 through 2016. Goelzhauser estimates two sets of models: 1) commission choices (yes or no on each applicant) and 2) gubernatorial choices (yes or no on each shortlist candidate). Key independent variables include a wide range of legal qualifications and experience, gender, and partisan politics. The results are intriguing. With commission choices, some aspects of judicial experience matter, but women are disadvantaged as are Democrats (in some specifications). With governors, the applicants' experience and gender matter not at all but candidates from local elite law schools are preferred while Democrats are disfavored. Overall, based on these and other findings, Goelzhauser generally rejects the hypothesis that merit selection removes partisan politics and favors diversity, at least in decisions about the applicants.

Chapter 4 evaluates the factors determining the applicant pool for judgeships, framed using ambition theory and barriers to seeking office. In these models, Goelzhauser compares the 822 applicants for judicial vacancies in Alaska in 2016 to all 2,132 attorneys in the state. Using the decisions of attorneys to seek, or decline to seek, appointment as the dependent variable, the models again include specific measures of qualifications, politics, and diversity. Through a series of alternative specifications, Goelzhauser concludes that applicant pools are influenced by congruence with partisanship of the governor (a highly political factor) but not by gender. The findings about

qualifications are mixed.

As the second part of this inquiry, Goelzhauser discusses progressive ambition and whether each sitting judge sought elevation to a higher court. An interesting variable is the percentage of the vote received in each judge's previous retention election. The models do not reflect any effects of gender, race, or politics, but those who have performed better with voters and received better bar evaluations are more likely to seek promotion. Chapter 5 asks whether variations in the specific features of commission-based appointment systems affect performance, defined as increasing the likelihood of seating more qualified and diverse judges. These features include the extent to which the governors control the selection of commissioners, lawyer versus lay control, and the like. The dependent variables measure various aspects of the appointees' quality and diversity. As a theoretical frame, Goelzhauser forwards the notion of commission capture, linking some institutional design choices to an increased threat of capture. These data include all 447 merit appointments to state supreme courts across the nation from 1942 through 2016. Somewhat counterintuitively, there do not appear to be any specific design features consistently increasing or decreasing performance, although some features are significant in some specifications.

In the conclusion and throughout, Goelzhauser summarizes key findings, identifies issues to be addressed in future research, and describes significant policy implications of the empirical results. Collectively, the findings are complex and nuanced, and the conclusions are careful and balanced. Overall, this research raises serious questions about whether the promises of commission-based systems are being realized, particularly when combined with the obvious lack of transparency throughout the process. At the same time, Goelzhauser acknowledges that although merit selection does not diversify the bench or depoliticize the process, no other selection system does that either or consistently performs better than the others. In the end, he finds it "difficult to recommend" merit selection "against less opaque alternatives that perform similarly on important dimensions such as quality and diversity" (p. 143).

This terrific new book does an excellent job of illuminating merit selection in ways heretofore unachieved, thereby interjecting balance and facts into a debate often characterized by speculation, hyperbole, and false claims. Goelzhauser also offers new theoretical insights into the scientific study of judicial politics. In these and many other ways, *Judicial Merit Selection* is an outstanding achievement and thus is highly recommended.

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