



Economic Growth Only One Factor in Choosing Judicial Selection System

By Eric D. Dixon

Earlier this year, the Show-Me Institute released a study of the “Missouri Plan,” the state’s merit system for judicial selection. This study received a tremendous amount of media attention, a level of interest that is once again growing as the November election approaches. While the study took a valuable approach to the subject, some of the people who currently cite it to support their political goals represent its conclusions as being more comprehensive than the study actually claims.

The study, “Is the Missouri Plan Good for Missouri? The Economics of Judicial Selection,” by economics professors Joshua Hall and Russell Sobel, compares seven different types of judicial selection systems found within the United States, four of them variants of the Missouri Plan. Hall and Sobel gauge the effectiveness, or “quality” of each of these systems by ranking how well they promote economic growth, according to the impressions gauged by an annual survey of attorneys. They conclude, after analyzing this information, that implementations of the Missouri Plan produce far better growth outcomes than do partisan or nonpartisan elections.

The study certainly provides useful data for understanding the relationship between judicial selection methods and the degree of respect held for a state's judiciary. As the authors pointed out, they based their research on "the only empirically based index that exists across states and through time." The study also cites previous research that shows a correlation between high scores on the index and a state's economic growth. But, as the authors explained, the index may have a built-in bias that readers should consider, due to its reliance on the opinions of attorneys for large public corporations. It is possible that those responding to the survey are more likely to favor judicial systems in which members of the legal community have significant control over the appointment of judges.

The ways in which government institutions are structured have a tremendous effect on society at large. The mechanisms of the public sphere set benchmarks that radiate outward, influencing how people live, work, trade, and resolve their differences. For those of us who favor limited government and free markets, strong economic growth is

Summary

The Show-Me Institute’s study of judicial selection systems provides a valuable set of data for looking at the issue in one particular way. However, it doesn’t provide a comprehensive treatment of the subject. People seriously considering various judicial selection systems might place any number of factors higher than economic growth.

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one desirable side effect of public policy, but it's not the only way to measure policy success — and not necessarily the best metric to use.

Other studies might consider the extent to which a particular selection process promotes variables such as strong property rights, sensible limits on tort damages, or simple judicial accountability. People seriously considering the question of which judicial selection system would work best might place any number of factors higher than economic growth. Choosing outcome priorities for an entire legal system is an area in which people of good will can differ.

Determining the ideal structure for government institutions isn't as simple as reading, say, the Declaration of Independence and extrapolating the principles of liberty it contains. No particular framework is implied by standard natural rights theories. If we want government to have a limited purview over the lives of the citizenry, we need to ensure that we have a robust system of checks and balances — but the exact ways in which we separate the powers of government can't be derived from general principles. It takes hard work, observation, dialogue, and persuasion over time, and any one step in that process is not likely to provide a definitive answer.

It's important to carefully consider the role that we want the government to perform in society, and at times review whether a change in the way public institutions operate will bring us closer to the type of government we seek. In the case of judicial selection, while the Show-Me Institute study by Hall and Sobel provides valuable data from one particular perspective, it is not a comprehensive, all-encompassing treatment of the issue — and the study itself never claimed as much.

The Show-Me Institute remains committed to examining public policy from a variety of angles, building over time a body of work that might provide a more comprehensive glimpse of Missouri government than any single study can provide. As voters consider changes to their judicial selection system in the coming election, they should keep in mind that advocates on either side of the issue have a range of motives for their positions, and taking their arguments into account is a more complex process than they might be led to believe.

Eric D. Dixon is the editor for the Show-Me Institute, a Missouri-based think tank.

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The author of this commentary is available for interviews. To speak with the author or other Show-Me Institute scholars, please contact:

The Show-Me Institute
7777 Bonhomme Ave. Suite 2150
Clayton, MO 63105

Phone: 314-726-5655
Fax: 314-726-5656

www.showmeinstitute.org
info@showmeinstitute.org