

**JUDICIAL TENURE IN THE
UNITED STATES, WITH
ESPECIAL REFERENCE TO THE
TENURE OF FEDERAL JUDGES**

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Judicial tenure in the United States, with especial reference to the tenure of federal judges by
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THE TENURE OF FEDERAL JUDGES

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PREFACE

The following study is designed to present the historical development of two phases of the American judicial system: the influence of the exercise of the doctrine of judicial review upon the position of the courts, and the political reactions affecting the tenure of the judges.

The growth of the doctrine of judicial review in the formative period of American institutions had a profound influence upon subsequent constitutional development. When the judges, with popular approval, became the custodians of the Constitution a really independent judiciary became necessary to enable the courts fearlessly to mark out the provinces of the other departments of government. Attempts to check the exercise of judicial power have invariably taken the form of assaults upon the security of tenure of the judicial office. But even in the heat of partisan conflict the courts have usually withstood the attacks of persons who

would destroy their independence. And in the end popular sentiment has generally supported the courts.

The relative merits of appointive and elective courts have been a topic of much discussion. But conclusions based on a comparative study of the results of these two modes of selection are almost valueless. The method of selecting judges is best determined by local conditions. It is by keeping the courts free from executive or legislative control and removing them from the influence of temporary popular majorities that the independence of the judiciary is maintained.

The study has dealt chiefly with the tenure of the federal judges, although popular movements which have resulted in important changes in the State courts have been considered. At the close of the narrative a chapter of conclusions summarizes the problems involved in securing the tenure of the judicial office at the present time.

I wish to acknowledge my indebtedness to Professor Henry Jones Ford of Princeton University for helpful suggestions. My associates in the Department of Political Science in the University of Wisconsin have

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read portions of the manuscript and have made important corrections. To Professor Edward S. Corwin of Princeton University I am especially indebted not only for the reading of the entire manuscript but for valuable suggestions and stimulating criticism throughout the preparation of the work.

WILLIAM S. CARPENTER.

Madison, Wisconsin,
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