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Book Review. The Lawmakers: Recruitment and Adaptation to Legislative Life by J. D. Barber

A. Dan Tarlock

Indiana University School of Law

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BOOKS

Reviewed

THE LAWMAKERS: RECRUITMENT AND ADAPTATION TO LEGISLATIVE LIFE. By James David Barber. New Haven and London: Yale University Press. 1965. xii + 314 pages. \$7.50.

This book will interest everyone who is concerned with the quality and effectiveness of our state legislatures. It will specially interest lawyers because its empirical data and conclusions can be applied to an evaluation of the judiciary's competency, through court-ordered or court-inspired reapportionment, to remedy the problems alleged to result from malapportionment. Much of the debate surrounding the reapportionment decisions¹ has centered on the appropriateness of judicial intervention in this traditionally legislative area because of the impact such intervention has had on the balance of judicial-legislative and federal-state power. Critics of the decisions claim that the Supreme Court should not have declared the problem justiciable, because the one man-one vote rule is of doubtful validity as a constitutional standard for achieving fair representation, because the court-ordered shift of power from rural to urban voters upsets the desired judicial-legislative balance,² and because the decisions mark the end of our federal system.³ The purpose of this Review is not to continue the constitutional debate, but to use the information collected in *The Lawmakers* to determine the probable effects the reapportionment decisions will have on the quality and effectiveness of state legislatures and to suggest the impact any improvement may have on the present federal-state balance of power.

The reapportionment decisions proceed from the unarticulated premise that state legislatures, as they are presently constituted, are unable to deal effectively with the problems produced by an urban society. A corollary premise appears to be that a legislator is responsive primarily to his local constituency, and then only in proportion to the amount of pressure it exerts upon him. The Court rejected the theory that a constituency is made up of so many diverse interests that the legislator cannot perceive a clear mandate and must therefore formulate his own notion of his constituency's interest. The Court apparently assumes that if representation is given to urban areas, representatives will become more

1. E.g., *Lucas v. Colorado Gen. Assembly*, 377 U.S. 713 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963); *Baker v. Carr*, 369 U.S. 186 (1962).

2. See McCloskey, *The Supreme Court 1961 Term—Foreword: The Reapportionment Cases*, 76 HARV. L. REV. 54 (1962); Neal, *Baker v. Carr: Politics in Search of Law*, 1962 SUPREME COURT REV. 252. But see Auerbach, *The Reapportionment Cases: One Person, One Vote—One Vote, One Value*, 1964 SUPREME COURT REV. 1.

3. For a discussion of the assertion that the reapportionment decisions "may well prove to be the death-knell of federalism" see Caruso, *The Lucas Case and Reapportionment of State Legislatures*, 37 U. COLO. L. REV. 433, 456 (1965).

inclined to solve pressing urban problems such as the need for rapid transit, urban renewal, or new mass recreational areas. Barber demonstrates that obtaining legislative effectiveness is not such a simple matter. He suggests that more accurate criteria for measuring legislative effectiveness can be developed by examining the characteristic types of roles assumed by legislators in relation to the substantive results they produce.

The Lawmakers is not a study of reapportionment's impact on state legislatures and unfortunately, because of the limited scope of Barber's investigation, it is not totally adapted to the inquiry this Review undertakes. *The Lawmakers* is a study of the channels of recruitment to legislative office and their relationship to the legislator's ability to adapt to the lawmaking process. It was undertaken to determine whether "a political system designed to bar tyrants, check power with power, and eliminate the corrupt and incompetent also produces excellence in government."⁴ To answer this question, Barber studied only the Connecticut House of Representatives. This Reviewer recognizes the limited scope of such an empirical investigation, but because Connecticut had one of the most notoriously malapportioned state legislatures at the time of this study,⁵ it may be wrong to assume that the roles ascribed by Barber to the Connecticut legislators will be repeated with the same consistency in less malapportioned states. For there is a correlation between the legislator's adaptation to the lawmaking process and his population base.

The Lawmakers compares the channels of the legislator's political recruitment with his ability "to move beyond his problems of personal adjustment, to transcend himself, and focus clearly on the real external world."⁶ Barber finds that of the four types of legislators identified—Spectator, Reluctant, Advertiser, and Lawmaker—three have little ability to do this because they "appear in the interviews as people with rather severe deficiencies in self-esteem. Furthermore, their low self-estimates seem to be linked in significant ways with their political participation."⁷ Barber demonstrates that only the legislator who does not use participation in the legislature to compensate for feelings of personal inadequacy—the Lawmaker—has the inclination to grapple with the pressing substantive issues faced by the legislature; this legislator has become a professional. Barber's thesis is that state legislatures fail to achieve their potential quality and effectiveness because most of their members remain nonprofessionals and thus do not adapt to the lawmaking process.

The Spectator is least able to adapt to the lawmaking process. He is a direct

4. P. 1.

5. Prior to a suit asking that the state legislature be reapportioned, 12% of Connecticut's voters could elect a majority of the lower house. Only one other state, Vermont, had a lower percentage of voters necessary to control the lower house. Goldberg, *The Statistics of Malapportionment*, 72 YALE L.J. 90, 100-01 (1962). For a historical discussion of the evolution of state legislative districts in Connecticut see *Butterworth v. Dempsey*, 229 F. Supp. 754, 758-61 (D. Conn.), *aff'd sub nom. Pinney v. Butterworth*, 378 U.S. 564 (1964) (remanded for proceedings consistent with *Reynolds v. Sims*).

6. P. 253. Psychological studies indicate that although most political opinions are a reflection of one's personality, intelligence plus self-confidence best equip a person to form abstract opinions which are not primarily a reflection of preconceived attitudes. See generally SMITH, BRUNER & WHITE, *OPINIONS AND PERSONALITY* (1956).

7. P. 217.

product of Connecticut's historic township constituencies where as few as 191 people were entitled to one and sometimes two representatives.⁸ Town leaders induce the Spectator to run because they consider him a respectable nominee who, because he personifies community values, can be counted on to represent their interests at the capital.⁹ Often the more important criterion, however, is willingness to serve the two-year term. This leads to the selection of older representatives of "modest achievement, limited skills, and restricted ambitions."¹⁰ Once in the legislature, the Spectator is concerned with avoiding rejection by other members of the legislature, for he has "nagging doubts about his worth as a person."¹¹ His adjustment to legislative life is limited to superficial friendships with other legislators; he avoids contact with party leaders. He is satisfied to sit back and be entertained by the social life of the legislature, and has little personal desire to contribute to the resolution of substantive issues except to ratify or reject the solutions of others.¹²

It is probable that the Spectator will not survive in a legislature whose districts have been apportioned on the basis of population. His presence in the malapportioned legislature is facilitated because little activity is demanded of him since he represents a numerically small constituency. A more populous constituency will generate many more problems requiring legislative solution and consequently will demand more aggressive representatives who can produce results.

The Reluctant, a variant of the Spectator, can adapt to the decision-making process to the extent of gaining a familiarity with the rules of procedure, but he cannot feel at home in the hustle which accompanies the resolution of important issues.¹³ The Reluctant, like the Spectator, is a product of noncompetitive recruiting, but he is more likely to have had experience in local government.¹⁴ He derives personal pleasure from participation in the legislature because he views the activity as fulfilling his civic obligations.¹⁵ Because he is usually elderly, participation helps to convince him that he is still a useful person. He has no desire to become a professional as "he finds it difficult to establish an intermediate type of relation with the younger and more aggressive urban members."¹⁶ Thus, content to learn the rules and occasionally study an issue in depth, he feels satisfied even if his contribution to the work of the legislature is limited to having infused into it a sense of the traditional moral virtues.

The Reluctant is also likely to be swept away in the wake of reapportionment. Recruiters in more populous areas will not be content with elderly candidates who merely project an image of old-fashioned civic virtue. They will look for

8. See Goldberg, *supra* note 5, at 100.

9. Only 17% of the Spectators originated action to secure their nomination, compared with 52% of all other legislators. P. 25.

10. *Ibid.*

11. P. 53.

12. Pp. 49-54.

13. Pp. 139, 159.

14. 67% of the Reluctants had previously held elective office in local government, as compared with 41% of all other legislators. P. 121.

15. Pp. 140-44.

16. P. 139.

younger and more aggressive candidates who "can impress new people with their intelligence and energy."¹⁷

The two participative roles are the Advertiser and the Lawmaker. The Advertiser, generally a young professional person, uses the legislature to get into the limelight. It is a poor reflection on the legal profession that he is typically a young lawyer experiencing occupational difficulties.¹⁸ He has the ability to contribute much to the substantive work of the legislature, but he does not have the "patience necessary to master the legislative arts,"¹⁹ and thus does not fulfill his potential for contribution. He does not see the legislature as a means for advancing long-range solutions to abstract problems, for "it is especially clear that Advertisers do not link their personal interests or emotions with specific legislative accomplishments."²⁰ The Advertiser's personal desire to get on to bigger and better things makes him feel cramped by the limits of the state legislature and frustrated in his station. The Advertiser's frustration is that of a person who desires to be a highly regarded professional either in his trained profession or in politics but who cannot gratify this desire in the state legislature because most legislatures offer few of the outward signs of prestige, such as a decent salary, ample staff assistance, office space, and the public exposure and respect associated with public office.

If it is assumed that the legislature will become effective only as more of its members concentrate on the substantive aspects of the lawmaking process, reapportionment may do little to change the status quo, since Advertisers are likely to be elected from newly created constituencies. However, the problem is not in the Advertiser's intellectual deficiencies, but in abating his frustration toward legislative service. It is unlikely that the Advertiser will take a more constructive role in the lawmaking process until service in the legislature offers public acclaim and financial rewards commensurate with the skills required. Nevertheless, if legislatures are apportioned on the basis of population, it is possible that a momentum for internal reform will be generated and in the end a more professional legislature will result. More legislators will represent constituencies that will increasingly look to the legislature for solution of their problems. These voters may be more tolerant of measures designed to upgrade the office of state legislator—measures which have been opposed by members who represent constituencies which adhere to the concept of a citizen legislature and thus place few demands on the legislature. Given this upgrading, the Advertiser's sense of frustration should abate and he should be able to concentrate his energies on substantive problems instead of merely seeking the limelight.

Having described the preceding three legislative roles, Barber turns to the natural question, "How does the legislature get anything done?" The answer is, through those who assume the Lawmaker role. The Lawmaker is the product of a populous constituency, but population alone does not account for his legislative

17. P. 239.

18. P. 215. See also my Book Note, *Lawyers in Politics: A Study in Professional Convergence*, 17 STAN. L. REV. 187 (1964).

19. P. 112.

20. P. 98.

effectiveness. The difference between the Advertiser and the Lawmaker must be found in their different personalities, for "the individual's political behavior represents a collection of adjustive techniques or strategies by which he attempts to maximize the satisfaction of his needs. The particular strategies an individual employs depend on the special needs he brings to his political experience and the availability in that environment of satisfactions for these needs."²¹ The chief characteristic of the Lawmaker is his self-confidence, which allows him to pitch his level of achievement to goals that are capable of realization within the limits of the state legislature. He has a sense of perspective, which allows him to find satisfaction in his personal achievements without feeling they are unimportant compared with his capabilities and desires. Thus, while service in the state legislature reinforces the Lawmaker's ego, it only frustrates the Advertiser's. Of the four characteristic types of roles assumed by legislators, the Lawmaker is best able to move beyond problems of personal adjustment and concentrate on the resolution of substantive issues.²²

The personality traits which determine whether an entering legislator is more likely to assume the Advertiser or the Lawmaker role are often determined long before he is recruited for political office. Social scientists agree that an interest in politics is often a product of family environment. Barber refines this theory with his finding that family influences may also determine whether the legislator later views politics as a chance to act on public issues or as a chance to advance his career. Barber finds, "generally then, the Lawmakers appear to have a more deeply rooted interest in elective politics—stemming from family participation—than the Advertisers do, while the Advertisers tend to have come up through the appointive ranks and stress more recent, occupational ties to politics."²³

The author concludes that the best hope for an effective legislature, a place where primary attention is focused on the substantive work to be done, is one in which the Lawmaker is recruited and retained, because "the key to rehabilitation of the legislature branch is in the nature of the legislator's job and his attitude toward it."²⁴ As we have seen, this can only be done through internal legislative reform, such as giving adequate salaries, office space, and staff assistance. Perhaps the reapportionment decisions, by inspiring wholesale reapportionment in the United States, can contribute little to legislative effectiveness as defined by Barber, for there is no guarantee that constituencies apportioned on a population basis will approve the upgrading of the legislature necessary to eliminate the frustrations that plague the otherwise capable Advertiser. However, this writer believes that the reapportionment decisions will have a positive effect on the quality and effectiveness of our state legislatures. They may contribute to the recruitment and retention of more Lawmakers; in addition, given the likelihood of a greater reliance on the legislature by urban-centered constituencies, there is likely to be an approval of legislative reform leading to the conversion of Adver-

21. P. 213.

22. Pp. 181-96.

23. Pp. 167-68.

24. P. 257, quoting Hyneman, *Tenure and Turnover of Legislative Personnel*, 195 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 21, 31 (1938).

tisers into effective and professional legislators. Should either or both of these occur, the decisions will have made an important contribution to our state legislatures which may counterbalance any present disruption of the balance of power between the legislative and judicial branches of our government. The reapportionment decisions may also help to strengthen our federal system by effecting a shift of power back to the states. It has long been recognized that the present limited effectiveness of state legislatures has been in part the result of "the tainted character of their representational base, [thus] State legislatures have contributed to their decline in standing and to the encouragement of attempts to bypass their authority."²⁵ A state legislature focused on the pressing problems presented by urban society should be able to halt this trend.

A. DAN TARLOCK*

ELEMENTS OF JUDICIAL STRATEGY. By Walter F. Murphy. Chicago: University of Chicago Press. 1964. 249 pages. \$7.50.

This book, written by a political scientist, is likely to annoy a good many lawyers. Indeed, judging from certain of the early reviews, it already has annoyed a few. Conflict between lawyers and political scientists often arises over the subject of courts and judges. To a political scientist the judge is just another governmental official whose behavior must be studied and described. Whether that description contributes to the prestige of judicial office and the public reputation of courts is a matter of indifference to the political scientist qua political scientist, just as the impact of his descriptions on the status of the Bureau of the Budget, the city council of Omaha, or the House Education and Labor Committee would be. The position of the lawyer, even the academic lawyer, is quite different. It is a self-conceived moral duty of the legal profession, backed by a considerable dollop of economic and social self-interest, to foster public respect for our legal institutions and most particularly to conduct itself in such a way as to contribute to the dignity and reputation of the courts for impartial justice.

The conflict arises when the political scientist wishes to say something about courts that is true but which is likely to detract from their public image.¹ The lawyer, after all, can hardly say: yes it is true, but the truth should not be told. The lawyer, too, shares the general ethic of seeking and revealing truth that is so central to Western intellectual traditions. Nor can he say: yes it is true, but it is a truth that must be kept within the priesthood of the law. If the political scientist has gotten hold of it, it is already in the hands of the gentiles, and it is too late to

25. Sindler, *Baker v. Carr: How To "Sear the Conscience" of Legislators*, 72 YALE L.J. 23, 26 (1962). In 1955 the Commission on Intergovernmental Relations concluded that "if states do not give cities their rightful allocation of seats in the legislature, the tendency will be toward federal-municipal dealings." 1955 COMMISSION ON INTERGOVERNMENTAL RELATIONS, REPORT TO THE PRESIDENT 39-40.

* A.B. 1963, LL.B. 1965, Stanford University. Instructor, University of California, Los Angeles, School of Law.

1. I am not claiming that political scientists are the sole source of inconvenient truths about judges. Judges have obviously been the principal source of inconvenient truths about judges.