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Book Review of Steven Harmon Wilson's The Rise of Judicial Management in the U.S. District Court, Southern District of Texas

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arises out of what he sees as the failure of the Democratic party to understand that bureaucratic discretion was a necessary feature of “effective regulation . . . in view of the complex and shifting nature of the issues” in a modern industrial society. In order to construct a modern state, “discretionary powers” had to be vested “in the hands of an administrative agency. Regulation by statute was not in most cases a viable option” (262). Thus, a “statutory state” was not a “realistic alternative to administrative regulation” (263). But a statutory state was exactly what congressional Democrats wanted to construct. So, while in terms of substantive policy, they were far more “progressive” than the relatively small band of Republican insurgents, they failed this statutory litmus test. Thus, what is at first presented as an inductive exploration of the legislative principles of progressivism, ultimately turns into a deductive assertion of the vanguard role of Republican insurgency in creating the modern state.

This book is clearly organized in a way that permits the author to vindicate “older views of progressivism at a national level, ascribing to it a greater coherence than has commonly been allowed . . . rooted in a tradition of classical republicanism, expressing a clearly definable sense of sectional grievance and speaking to deeply-felt popular concerns about privilege and power” (260). Readers sympathetic to the author’s perspective will find much in this volume to support those sympathies. Those somewhat skeptical will also find much of use here. The chapters on Congress as an institution and on legislative deliberations attending railroad regulation and social policy in the District of Columbia are thoroughly executed and contain much new information. His exploration of the papers of Republican insurgents has also been fruitful, particularly with respect to their relations with President Theodore Roosevelt. In these and other ways, the volume complements recent work by Elizabeth Sanders (*Roots of Reform: Farmers, Workers, and the American State, 1877–1917*) who provides a broader and more comprehensive perspective on the period.

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Steven Harmon Wilson, *The Rise of Judicial Management in the U.S. District Court, Southern District of Texas, 1955–2000*, Athens, Georgia: University of Georgia Press, 2002. \$64.95 (ISBN 0-8203-2363-2).

In *The Rise of Judicial Management*, a thoughtful and illuminating study of the United States District Court for the Southern District of Texas, Steven Harmon Wilson takes on the daunting challenge not only of examining one of the nation’s most important and distinctive federal trial courts but of analyzing its massively expanded workload over the last half of the twentieth century. The Southern District covers an extensive and varied geographical area. From a 250 mile base along the Rio Grande River at the southwestern border of Texas and the United States it extends toward the northeast for almost four hundred miles, varying from one to two hundred miles in width and stretching along most of the state’s coastline

on the Gulf of Mexico. It encompasses hill country, extensive farms and ranches, busy deep-water commercial ports, and such major cities as Houston, Galveston, Laredo, Corpus Christi, and Brownsville. The court itself, moreover, has grown at an astonishing rate. Until 1938 it had only one judge, and as late as 1960 only four. By 2000, however, it boasted nineteen judges, twelve magistrate judges, six bankruptcy judges, dozens of judicial law clerks, and—instead of the single administrator who handled the court's business early in the century—a clerk of court who directed more than two hundred deputy clerks and an extensive support staff as well. *The Rise of Judicial Management* succeeds admirably in presenting a broad and sophisticated, if necessarily highly selective, history of this large and complex district.

There is surely no one best way to write the history of a trial court. Wilson chooses to avoid both elaborate statistical analyses and sweeping generalizations and to concentrate on the particulars of judicial biography and case analysis, focusing on a few major categories and, within each, examining in detail a small number of cases that were either particularly important or generally representative. His book discusses criminal prosecutions at length and considers several specific types of civil suits, including those involving bankruptcy, corporate law, work-related injuries, and civil and prisoner rights. Appropriately, he devotes much of his study to the kinds of actions that were relatively distinctive to the Southern District: admiralty suits, border-related cases stemming from immigration and narcotics prosecutions, and civil rights litigations involving both of the state's substantial minority groups, blacks and Hispanics. In two thoughtful chapters, for example, he examines school desegregation litigations in Houston and Corpus Christi and explores the legal and social tangles that resulted from the Southern District's need to compel and then manage "triethnic integration."

Wilson's fine book begins where Charles L. Zelden ended his equally fine study, *Justice Lies in the District* (1993), which covered the years from the Southern District's founding in 1902 to 1960. Zelden found that in the earlier period the district's judges enforced federal law narrowly, showed relatively little concern for "public" interests, and sought to foster the region's economic growth by protecting private developers. Zelden also noted that by mid century the court's orientation showed signs of changing, and Wilson confirms that significant changes did, in fact, alter the Southern District and its work. *The Rise of Judicial Management* highlights the emergence of litigation directed toward issues of public law, civil rights, and "structural reform," and it explores the extent to which the court's new judges—including the district's first African-American, Mexican-American, and female members—attempted to reshape its values and redefine its character. Although Wilson emphasizes that the changes were uneven and partial, he also shows that they made the district relatively more liberal, nationally oriented, and enforcement-minded.

While the book's greatest strengths lie in its careful examination of individual litigations and in its overall picture of the district's institutional evolution, its general conclusions are relatively spare and for the most part unsurprising. It highlights the broad discretion that district judges possess in running their courts and

managing their cases, points to the critical role that the United States Attorney's office plays in shaping the court's caseload, suggests that the "judicial federalism" doctrine of *Younger v. Harris* had little practical impact on the judges' behavior, and offers a skeptical view of the power of courts to achieve the goals of structural reform, especially in the area of desegregation. Most explicitly, the book emphasizes the deleterious impact of rapidly expanding caseloads and congressionally enacted criminal sentencing guidelines. The former made the Southern District's judges feel like "much-put-upon pack mules" (356), while the latter transferred discretionary power to federal prosecutors and thereby reduced both the judges' practical authority and their sense of proper judicial role. *The Rise of Judicial Management* is a thoughtful and instructive work that adds to our understanding of both the general role that the federal trial courts have played and the extent to which individual districts have their own distinctive characteristics and values as well as their own distinctive judges and dockets.

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Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution*, Lawrence: University Press of Kansas, 2003. \$25 cloth (ISBN 0-7006-1288-2); \$15.95 paper (ISBN 0-7006-1289-0).

As the three authors of *Brown v. Board of Education* note, no case has more iconic stature than *Brown*. No one can be taken seriously if that person believes the case was wrongly decided. The opinion itself can be and has been criticized, but not the result. The authors see no reason to criticize either, and their contribution to the University Press of Kansas series on Landmark Law Cases and American Society places *Brown* in context and salutes all concerned.

The authors start with segregated schooling in 1848 Boston and end in the present. While much of the story evolves around the actual litigation in *Brown*, there are excellent chapters on early twentieth-century segregation, changing social science theories, and litigation over race from the end of one world war through the next. Additionally the authors are fully aware of the changing cultural and intellectual climate as the country progressed to mid-century. Finally, there is a brief nonchronological survey of the aftermath of *Brown* into the era of busing.

The authors are at their best in describing segregation and the caste system it created and illuminating the changes in American culture that impacted on race. No one reading the book would come to the erroneous conclusion that law is self-contained and unaffected by the external forces impacting the rest of society. Like all books in this series, the authors spend a lot of time on the briefs, oral argument, and the internal debates of the justices. Unlike most of the other books, this time is well spent. The briefs, arguments, and debates are vastly better than the intentionally short opinion of the Court where Earl Warren fused the dual goals of holding nine votes and saying nothing that might rile the white South.