Book Review/Compte rendu

Donald R. Songer, **Susan W. Johnson**, **C.L. Ostberg**, and **Matthew E. Wetstein**, *Law, Ideology, and Collegiality: Judicial Behaviour in the Supreme Court of Canada*. McGill-Queen's University Press, 2012, 223 pp. $29.95 paperback (978-0-7735-3929-7)

The Supreme Court of Canada has come to play a key role in the resolution of significant public policy matters since the creations of Canadian Charter of Rights and Freedoms in 1982. The increased political involvement of the Court appears to be part of a broader trend in democratic nations where national courts increasingly involve themselves in politics. For example, the European Convention and the European Court of Human Rights have helped with the increasing judicialization of politics in Europe.[1] Concomitant with this increased involvement has been a consciousness of "rights." In Canada, this consciousness was reflected in the establishment of the Charter of Rights and Freedom and its use by various groups to enhance their social status. For several years now Canadian scholars have been wondering if the new mandate of the Supreme Court to protect Charter rights and freedoms has initiated a greater attitudinal (i.e., ideological) disagreement among the Court's justices.[2] Given the politically charged nature of many cases that the court hears, such disagreements seem inevitable. It seems that even the justices themselves have noticed increasing conflict within the Supreme court. It was suggested by one of them in 2002, Justice Frank Iacobucci who was a member of the Court between 1991–2004, that academics needed to devote some time to understand the nature of these disagreements.[3] *Law, Ideology, and Collegiality* does exactly that.

In chapter 1 the authors state the key argument of the book: "justice's personal ideologies affect their approach to policy issues and help explain divisions among them" (p. 4). Ideology is understood as justices' adopted political philosophies. Ideologies are said to shape justices' approach to constitutional interpretation of legal texts, balancing various

1. C.N. Tate and T. Vallinder. 1995. *The Global Expansion of Judicial Power*. New York: New York University Press, p. 3.
2. C.L. Ostberg and M.E. Wetstein. 2007. *Attitudinal Decision Making in the Supreme Court of Canada*. Vancouver: UBC Press, p. 2.
3. C.L. Ostberg and M.E. Wetstein. 2006. The Canadian Supreme Court: Attitudinal conflict in right to council cases. *Political Science Quarterly* 121(4):677.

interests, advocating preferred freedoms, and delimiting the appropriate scope and purpose of government's intervention in society. Two additional factors shaping justices' decisions are their legal grounding and their compatibility with the Supreme Court's norms of collegiality, i.e., considerations regarding unanimity of decisions and other institutional considerations that may even outweigh personal ideologies. The main problem of this chapter is the somewhat confusing and repetitious way in which the authors state the key arguments of the book.

Chapter 2 concisely narrates the history the Supreme Court of Canada as a policymaking institution. It traces the evolution of the court from its inception in 1875 to its current status as a key institution in Canadian politics. The main pieces of information in this chapter are that for its first 75 years the Canadian Supreme Court's power was severely limited by the principle of parliamentary supremacy, and that it did not always have the ultimate say on legal and constitutional matters, and that its decisions could be sent for appeal to the Judicial Committee of Britain's Privy Council in London.

Chapter 3 reviews the extant literature regarding the increasing judicialization of politics around the world. It discusses the three models that social scientists have developed to understand judicial decision making (legal, attitudinal, and strategic) and Canada's Supreme Court justices' views of these models. It also assesses the Canadian Charter of Rights and Freedoms impact on the role of the Supreme Court of Canada in the political process, and describes the existing debate over its power of judicial review. It also discusses the methodological problems associated with measuring ideology.

Stating all these somewhat unrelated themes in one chapter is a bit confusing and could have been avoided had the authors divided these themes between at least two chapters. Based on interviews with the Supreme Court of Canada justices, chapter 4 discusses various processes related to the Supreme Court: appointment of justices to the Court, procedures and criteria for selecting cases for oral argument, justices' preparation for cases and their degree of reliance on clerks for assistance, and their assignment of opinions and reaching the final decisions.

Chapters 5, 6, and 7 analyze the extent of attitudinal voting in the Supreme Court of Canada. Chapter 5 focuses specifically on the Supreme Court of Canada between 1992–1997 headed by Chief Justice Lamar as the test case for determining the degree of attitudinal voting in relation to three key categories of cases: economic, criminal, and civil rights and liberties. It is found that the most pronounced influence on justices decisions were the two prevailing Canadian political philosophies: liberalism and conservatism. They did not, however, consistently vote along these

ideological lines. They were more likely to vote along liberal lines when it came to economic and civil rights and freedoms matters and along conservative lines when it came to criminal cases. Chapter 6 builds on these results with an assessment of attitudinal decision-making in career-long voting patterns of 23 justices between 1984–2002. Reinforcing the results presented in chapter 5, it is found that justices' political preferences relate to their overall support for liberal or conservative outcomes. Building on chapter 6, chapter 7 looks at other influences on justices' decision-making. Gender is of key importance in this regard. Female justices are more likely than their male counterparts to side with the underdog claimants in economic and civil rights and liberties cases. However, when it comes to criminal cases, they are less likely than male justices to favour the defendants.

Chapter 8 looks at factors that affect the unanimity of justices' decisions. Important factors in this regard are the panel size; legal constraints such as precedent, constitutional issues, statutory interpretations; and the scope of legal issues. Chapter 9 is the concluding chapter and recapitulates the major themes and findings of the book, discussing their relevance for judicialization of politics around the world. It also discusses attitudinal distinctions between American justices and their Canadian counterparts. Canadian justices are said to approach cases in a more nuanced and complex fashion than the American justices. Furthermore, it points to an emerging gender distinction in voting behaviour in Canada's Supreme Court that is lacking in the American court. It is also noted that unlike the US, the executive branch has little influence on the voting behaviour of the court.

This is a methodologically sound, substantively interesting, and yet accessible volume. The book expands on earlier assessments of attitudinal decision making in Canada by applying a macro-level perspective of judicial decision-making rather than taking a micro-level look at specific subfields of law such as that of Ostberg and Wetstein.[4] It also expands on the methods of the earlier studies of the Court by the concurrent application of several methods to achieve a broader and yet more exact assessment of ideology's role in judicial decisions making, offering a unique contribution to attitudinal literature. Reading it does not require a detailed knowledge of the subject matter. It is well-suited to the needs of a variety of readers who are interested not only in the inner workings of Supreme court of Canada, but courts and the attitudinal literature in general. It could have benefited from a better editing and clearer organization of material though (especially chapters 1, 3, and 9). Overall, this

4. C.L. Ostberg and M.E. Wetstein. 2007. *Attitudinal Decision Making in the Supreme Court of Canada*. Vancouver: UBC Press.

is a very interesting and important book for readers of a variety of academic interests and backgrounds. Particularly, however, undergraduate and graduate students of sociology of law, law and society, and political sociology can immensely benefit from it.

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