BOOK REVIEW

A Political Scientist Examines the Washington Supreme Court:

A CENTURY OF JUDGING: A POLITICAL HISTORY OF THE WASHINGTON SUPREME COURT Charles H. Sheldon†

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Charles H. Sheldon asks two major questions in his recent book, A CENTURY OF JUDGING.[1] Sheldon asks, first, about the multiple forces that shape the judicial recruitment process in the State of Washington. Sheldon asks, second, about how these and other forces influence judicial decision making.[2] In answering these questions, Sheldon focuses on the Washington Supreme Court. Unfortunately, the information gathered and analyzed is of more interest to political scientists or historians than to practicing lawyers. Lawyers should be knowledgeable about the judges before whom they may argue a case.[3] Yet, the

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1. SHELDON, A CENTURY OF JUDGING: A POLITICAL HISTORY OF THE WASHINGTON SUPREME COURT (1988) [hereinafter A CENTURY OF JUDGING]. Professor Sheldon presents his research through extensive tables, charts, graphs, and surveys of participants in the process, such as law clerks and justices.

2. The power of judicial review is identified as another source of tension in the process. However, this factor is not examined in depth. A CENTURY OF JUDGING, *supra* note 1, at 19-20, 214.

3. An advocate should be interested in gathering as much information as possible about the judges who will decide the case.

> The advocate will find out all he can about the individual judges who will decide his case: what they may have written in opinions or public statements; what has been their education, their prior professional experience, their

methodology and data utilized in A CENTURY OF JUDGING do not create a cohesive picture of the supreme court justices, either collectively or individually. The book compiles useful information; however, the answers to the two questions posed and the relationship between the underlying facts and the theories are inconclusive.

To identify the multiple forces that mold the judicial recruitment process, Sheldon first establishes a general framework. This framework accounts for the two types of recruitment in Washington. The first avenue to the bench is through the electoral process. The second is by gubernatorial appointment to fill a new position or temporary vacancy. These two methods of recruitment are divided into three stages: initiation, screening, and affirmation.[4] Sheldon then examines elections and appointments from the territorial period through 1986, organizing the discussion around five distinct historical periods: 1889-1912; 1912-32; 1933-49; 1949-69; and 1969-86. He traces the ebb and flow of power exerted by political parties, governors, voters, lawyers' organizations, and other interested participants, such as labor groups.[5]

Sheldon suggests a theoretical explanation for the multiple forces operating on the judicial recruitment process. Because our form of government is democratic, society

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> religious and political affiliations, their hobbies and interests; what other lawyers who know them have to say about them. . . . It may not affect the logical progression of his argument, but it may influence what he chooses to highlight or emphasize.

G. PECK, WRITING PERSUASIVE BRIEFS 76 (1984). Although A CENTURY OF JUDGING provides a great deal of factual material about the supreme court, it fails to draw this information together into a coherent picture that would be useful for a practitioner.

4. WASH. CONST. art. IV, § 3 states in pertinent part as follows:

> The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected. . . . If a vacancy occurs in the office of a judge of the supreme court the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term.

Thus, throughout A CENTURY OF JUDGING, three separate sets of participants and two separate recruitment methods are discussed. The actors include the electorate, the governor, and all groups trying to influence these two primary decision makers. The recruitment methods are either election to a full term or gubernatorial appointment to fill a new or temporarily vacant supreme court position. A CENTURY OF JUDGING, *supra* note 1, at 31-32 (Tables 2.1 & 2.2).

5. Ultimately, Sheldon concludes that judicial decision making is affected by a shifting balance among pluralistic forces. *Id.* at 11.

requires that judges be accountable to the public.[6] The public should be able to examine the actions of those who make public policy, as judges do when they resolve disputes between litigants.[7] This idea of public accountability conflicts with what Sheldon denominates judicial independence. Judges, in reaching decisions, are expected to remain aloof from the litigants and the interests they represent. Judicial independence is preserved by the passivity and obscurity of the judicial role. For example, while lawyers initiate cases and advocate their client's positions, judges are neutral decision makers, who wait for cases to be brought to them for decision. The supreme court's internal decisional process is obscure and private; the public has access only to oral arguments and written opinions.

A heavy emphasis was placed on public accountability during the early period when political parties dominated the judicial recruitment process. But, as judicial recruitment evolved so that more groups participated in the process, the emphasis shifted. Sheldon concludes that Washington's present nonpartisan electoral process represents an effort to balance the conflicting demands of public accountability and judicial independence.[8]

The bulk of A CENTURY OF JUDGING narrates the developments that led to the present system of nonpartisan elections. During the early historical period, partisan politics dominated all three stages of the recruitment process. Thus, political parties initiated and screened candidates, and the

6. The importance of the democratic form of government is illustrated by the decision, made in 1889, to elect Washington's Supreme Court justices rather than, for example, appointing them for life. WASH. CONST. art. IV, § 3. Sheldon identifies three influences leading to this method of selection. First, Jacksonian democracy emphasized the people's ability to run government and to select representatives. Second, the lawyers, who dominated the judiciary committees at the Washington Constitutional Convention, thought that an election procedure would give the judges a constituency, which would make the judiciary as powerful as the executive and legislative branches. Third, the election method was a reaction to the territorial system under which judges from other areas of the country were appointed to serve in the territory. These judges were often absent from the state. A CENTURY OF JUDGING, *supra* note 1, at 22-23.

7. Justices are also made accountable because decisions of the supreme court must be in writing with the grounds for the decision stated, WASH. CONST. art. IV, § 2; because the chief judgeship rotates on a biannual basis, WASH. CONST. art. IV, § 3; and because judges can be removed from office by impeachment, by a joint resolution of the legislature, or by reaching the mandatory retirement age of 75, WASH. CONST. art. V, § 2; *Id.* art. IV, §§ 3(a), 9.

8. A CENTURY OF JUDGING, *supra* note 1, at 8.

electorate cast its votes based on the candidate's political affiliations. Partisan involvement benefited judicial candidates by providing them with campaign funds and with a means of reaching the voters through political rallies.[9] Other groups, such as the organized bar, were unsuccessful participants in the recruitment process.[10]

After 1910, when the nominating convention and the party ballot were replaced by the direct primary and the nonpartisan judicial ballot, political parties were less important in the judicial recruitment process.[11] Although judicial candidates lost a ready source of funding and an easy means of voter identification, they were freed from accountability to political parties. As the influence of political parties waned and the candidates had to manage and fund their own campaigns, lawyers and their organizations gradually became more active.[12] Lawyers organized and conducted campaigns, publicly announced which candidates they supported, and directly contacted clients to urge a particular candidate's qualifications. Lawyers also allowed their names to be used as endorsements in political advertisements.

As early as 1908, the Seattle Bar began a primitive form of bar poll to rate the candidates. The results were publicized on the radio and in the newspapers. In fact, these judicial preference polls became so important that candidates sought to influence the results by contacting lawyers before the polling.[13]

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9. *Id.* at 51-52.

10. The organized bar adopted three approaches in its efforts to influence judicial recruitment during the inaugural years [1889-1912]. Initially, the profession worked toward removing the selection of judicial candidates from nominating conventions and elections dominated by the political parties. Nonpartisanship was the attorneys' goal. Once achieved in 1907, the profession turned to the elimination of the direct primary as the means of nominating judges. Finally, after a reluctant acceptance of the direct primary, the organized profession devised means to influence both the governor when he filled vacancies and the electorate as it retained or replaced judges on the bench.

Id. at 61.

11. *Id.* at 51, 67.

12. *Id.* at 69.

13. *Id.* at 139. Lawyers' endorsements in candidates' advertisements must have influenced the voters. In 1950, Hugh Rosellini, who lacked the support of the established bar, told voters in his advertisements that he had avoided soliciting endorsements because he did not want any lawyers to feel obligated to him, nor he to them. *Id.* at 143. In 1958, the state bar association prohibited lawyers from lending their endorsements to judicial candidates, seeing this practice as a possible violation of Canon 30 of the Canons of Judicial Ethics. That Canon stated that a request for an endorsement subjected practitioners to undue pressure because it may put them in the

By 1924, some bar associations also had standing committees on the selection of judges.

The bar became an increasingly powerful force with the public and the legislature when, in 1933, Washington was one of the first states to institute a unified bar, making membership in the state bar organization compulsory.[14] The bar association previously had adopted the American Bar Association's Canons of Professional Ethics. Canon II, which outlined a lawyer's duty to assist qualified judicial candidates to be appointed or elected, was interpreted to require active participation in the selection of judges.[15] City and county bars, working independently of the state organization, also actively participated in the election process, primarily by attempting to influence the voters.[16]

Despite their increasing influence, lawyers made several efforts to change Washington's system of judicial recruitment. In 1934, the American Judicature Society had espoused a commission plan for selecting judges.[17] The plan had several versions. Under one version, a nominating commission made up of lawyers, judges, and lay persons would have compiled a list of three candidates. The governor would have appointed judges from this list. The voters would then have been asked to approve the choice and, if they did not, the process would have begun again. The commission plan was appealing to lawyer organizations because it would have removed the public from the recruitment process, and the governor would no longer have been solely responsible for appointments. The organized bar tried several times to propose a constitutional

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position of offending the judge before whom they are practicing. In 1959, the state bar lifted the prohibition on endorsements, but the candidate could not personally solicit funds or endorsements. *Id.* at 148-49.

14. *Id.* at 103.

15. *Id.* at 73 n.17.

16. *Id.* at 106. The ability of lawyers and lawyers' organizations to influence voters is illustrated by Justice Millard's unsuccessful bid for reelection in 1948. During 1946 and 1947, the court heard a highly controversial case regarding the purchase of a large, private power company by the Skagit County Public Utility District. The justices voted four-to-four, and Millard's vote was needed to break the deadlock. Millard delayed over three months despite public criticism from his colleagues and the affected groups. Subsequently, it was learned that Millard was in debt and had borrowed from persons who were indirectly involved in litigation before the court; rumors of bribes in the utility case also circulated. Millard was defeated in the next election partly because of the Seattle Bar's judicial preference poll. *Id.* at 117-22.

17. *Id.* at 103-05.

amendment to establish the commission plan.[18] But, as the governor began regularly to ask the bar organizations to screen and recommend candidates, enthusiasm for the amendment waned.

Sheldon also narrates the historical development of the gubernatorial appointment process, the second type of judicial recruitment. He notes that the governor was inactive[19] during the period when partisan political forces were dominant. The governor merely filled new or temporary vacancies, usually responding to the number and prestige of a candidate's endorsements and his or her geographical connections and party affiliation. As political parties became less important, lawyers and lawyer organizations sought to influence the gubernatorial recruitment process. However, the success of the arrangement depended on each governor's willingness to consult with the bar organizations.

Under the present system for gubernatorial appointments, the bar association works informally with the governor to choose and screen potential candidates for appointment. The bar association and its committee also evaluate candidates suggested by the governor. Information about potential candidates comes from committee members' personal knowledge, from questionnaires sent to the candidates, and from candidate interviews.[20] The book does not describe the criteria that the bar committee uses in its selection and screening process. However, the committee does accommodate the governor's criteria for selecting appointees. These criteria are political party affiliation, political experience, geographical connections, and electability.[21] Sheldon concludes that the relationship between the governor and the organized bar, although informal, has reciprocal advantages. The bar needs the governor's willingness to use the committee, while the

18. Some form of the commission plan was introduced in the legislature as late as 1975. *Id.* at 151, 189-90.

19. *Id.* at 52, 59-60. "Although the appointment process was initially intended to complement elections by providing a quick means of filling interim vacancies, it has taken on a significance not intended by the founders." *Id.* at 36.

20. A CENTURY OF JUDGING, *supra* note 1, at 156 n.9.

21. For example, in the September 1988 primaries, all four of the justices who were running for reelection were unopposed. Justices Brachtenbach, Pearson, Utter, and Dolliver had all initially become justices through gubernatorial appointment. Thus, they had the name familiarity so important to voters. *See* A CENTURY OF JUDGING, *supra* note 1, at 162 (Table 7.2).

governor needs the bar's expert advice and legitimation of the process.

In summarizing the present institutionalized system, Sheldon concludes that, except in gubernatorial appointments, partisan influences have lessened while the unified bar association and other lawyer groups have become more powerful. Additionally, the electorate participates more in judicial selection and is more knowledgeable about the candidates.[22] In elections, the governor's support has become increasingly important because incumbents who have been appointed are more often reaffirmed than replaced when they stand for election.[23] The electorate is also guided by endorsements, the candidate's name familiarity, and the results of bar preference polls.

The suggestion that the public is now more knowledgeable about judicial candidates is contradicted by the historical narrative and by the evidence gathered in the first portion of A CENTURY OF JUDGING. These suggest that the electorate is no better informed about judicial candidates than it was during the period of partisan politics when most voters selected a candidate based on political party affiliation. Instead, voters still look to identifiable interest groups for guidance; but, the composition of the groups has changed. For example, voters respond to the results of bar association preference polls. They are also guided by endorsements or by gubernatorial appointments. Polls, endorsements, and appointments have merely replaced political party affiliation.

The public's lack of knowledge is illustrated by the process for selecting and screening candidates for gubernatorial appointment, much of which is secret.[24] For example, the

22. *Id.* at 196.

23. *Id.*

24. Members of the bar association's Judicial Selection Committee were concerned about maintaining anonymity so that persons contacted for information about possible candidates would be frank and so that the public would not be influenced by knowing which candidates had been rejected or chosen. *Id.* at 155 n.7. This emphasis on secrecy is unfortunate because, frequently, judges appointed by the governor have the necessary support and name familiarity to win an election. In the September 1988 primaries, all four justices who were running for reelection were unopposed. All four of them, Justices Brachtenbach, Dolliver, Utter, and Pearson, had originally been appointed by a governor. *Id.* at 166-68, 171, 179, 182. Thus, the electorate, which is given the constitutional power to select judges, is forced to make uninformed decisions.

The problem is exacerbated by the Judicial Qualifications Commission's decisions to refuse to investigate or consider conduct before a judge assumed his or her position and to keep its deliberations private. *See, e.g.*, Seattle Times, Sept. 20, 1988, at B1; *Id.*,

committees that Sheldon contacted for information about how the recommendations for gubernatorial appointments were made were reluctant to describe the process. Those committees were afraid of improperly influencing the public by disclosing which candidates had been considered or rejected. They were also concerned about the difficulty of obtaining accurate information about a candidate if an informant's identity might be revealed.

In the same way, investigations of a judge's conduct while he or she is on the bench are usually closed to the public. Thus, the public may not know that a candidate for reelection has been investigated for misconduct or, perhaps, privately reprimanded for improper actions.

This lack of public participation and information undermines the theory that public accountability is a motivating factor in judicial recruitment. Sheldon had posited that, as the process evolves, a balance is reached between the conflicting demands of public accountability and judicial independence. After he concludes the historical narrative, he reassesses this theory with a survey.[25] The survey measured responses to four possible functions for judicial elections. At one end of the spectrum, judges act as the public's delegates and remain accountable to the voters. At the other end of the spectrum, judges are trustees, who are to be relied upon to do their best without interference from the public. The third view, a middle position, perceives judges as stewards. Elections keep these stewards in touch with the public and make the judges sensitive to its interests. The fourth viewpoint, also a halfway position, sees elections as a means of recalling judges who are not performing according to the public's expectations.

Summarizing the results, Sheldon concludes that elections are seen as primarily serving a stewardship function. Secondarily, elections are seen as a device for removing judges

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Oct. 3, 1988, at B1. The practical effect of the screening process, then, is to force the electorate to make uneducated guesses about judicial candidates. In addition, elections do not serve the removal function, which Professor Sheldon's survey suggested was the second purpose of elections, because the electorate has no information about the misconduct of judges while they are in office.

25. A CENTURY OF JUDGING, *supra* note 1, at 194. Data was gathered from a 1982 survey of registered voters in jurisdictions having at least one contested judicial election, a survey of lawyers in Seattle, Bellevue, and Stevens County, and all candidates for judicial office throughout the state. *Id.* at 193-94 nn. 57 & 61 (Table 7.6 at 196).

whose performance is unacceptable.[26] The results of the survey are presented to support the theory that the process by which judges are selected in Washington reflects a middle ground between public accountability and judicial independence.[27] However, the survey merely tests the perceived role of the electorate. It does not measure the forces that manipulate the electorate into making particular choices. Nor does A CENTURY OF JUDGING present an example of a situation in which public accountability and judicial independence conflict. Thus, the information that has been gathered and analyzed does not prove the theory.

The last part of A CENTURY OF JUDGING explores Sheldon's second question: what forces influence the supreme court's decision making? Sheldon suggests that there are a multitude of factors that affect judicial decision making. These include the recruitment process described in the first part of the book, the backgrounds and personal beliefs of individual justices, the historical changes in the kinds of legal questions presented for decision, and the interplay of institutional factors.[28] Sheldon theorizes that all of these forces must be balanced if the court is to achieve the goals of effectiveness, cohesiveness, and equilibrium, which will enable it to function as a viable entity.[29]

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26. *Id.* at 196.

27. *Id.* at 9-11, 242-43.

28. *Id.* at 241. Professor Sheldon states one of his main theses as follows: "To understand why persons with certain attitudes have survived a particular version of the recruitment process is to understand to a significant degree why the person, after becoming a judge, chose one of several viable decisional alternatives in resolving a legal dispute." *Id.* at 28, 337.

29. Two elements comprise the measure of a court's effectiveness: expeditiousness and thoroughness. Expeditiousness includes the time taken to render a decision and the number of decisions rendered. Thoroughness assesses the reasons and explanations given in support of a decision. Professor Sheldon measured the expeditiousness of the representative courts by examining the average amount of time between the trial court's decision, or if the case was directly appealed, the court of appeals' decision, and the date on which the supreme court rendered its decision. Thoroughness was measured by examining the number of pages in a written decision, the number of majority opinions, and the number of *en banc*, as opposed to departmental, decisions reached. Professor Sheldon assumed that longer opinions suggested that the writer and the justices who joined in the opinion had been more thorough. *Id.* at 245-46 (Table 10.2).

Cohesiveness measures the degree of reconciliation between the individual and collective phases of judicial decision making. Professor Sheldon reviews the purposes served by dissenting opinions. He also notes that a concurrence may suggest a higher level of dissonance because the concurring justice disagrees with the majority's reasoning, the heart of judicial decision making. The level of cohesion for each

Sheldon begins by outlining the biographies of different members of the supreme court. He then discusses the behavior of several representative courts in order to measure the influence of the various factors he has identified. Specifically, he analyzes the supreme court in 1903-04, the 1920s, 1939-40, the 1950s, and 1979-80.[30]

First, judicial decision making is affected by an individual justice's roles and values. Sheldon identifies two broad roles: judicial restraint and judicial activism. A justice who practices restraint attempts to preserve accountability by deferring to policies established by the executive and the legislature, the two branches of government perceived as most accountable to the public. A justice who practices activism believes that the court is ultimately responsible to a more abstract concept of the rule of law. Such justices, on the basis of their authority and training, would change established policy if they believed that it was best for the community.

Individual justices are also influenced by their adherence to one of two competing value systems. Justices who espouse conservative values believe that the state should keep opportunities open and the rules of competition fair. Conversely, justices who are liberal believe that the state must actively intervene to protect individuals from governmental abuse and to enable individuals to compete fairly in the economic and social spheres. However, the individual jurist must adapt to a system of collective action. Because a majority of the court is required to reach a decision, individual justices must adjust their roles and values to allow a consensus.[31]

Second, judicial decision making has been affected by the

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representative court is measured by the number of dissenting and concurring opinions filed. *Id.* at 246-51 (Table 10.3).

Equilibrium is defined as legitimated power, the recognition or acceptance of the court's right to exercise its authority. Professor Sheldon measures the equilibrium of each representative court in several ways. First, he compares the number of subsequent, favorable citations. Second, he examines the number of citations in *American Law Reports*. Third, he considers the results of cases appealed to the United States Supreme Court. Fourth, he compiles the number of law review references to particular cases. *Id.* at 251-53 (Table 10.4).

30. Professor Sheldon used three standards in selecting these representative courts and in compiling data from them. First, he chose years in which little or no change occurred in the membership of the court. Second, the judges were products of the recruitment process typical during those years. Third, data were collected for a two-year span, which was the middle period for these courts. *Id.* at 244.

31. *Id.* at 336.

types of legal questions that the supreme court has been asked to decide. There has been a progression from predominantly common law development to primarily statutory interpretation and an increase in the number of cases decided by the federal courts and by administrative agencies. Most of the court's early cases involved debt collection, corporations, contracts, and real property. The litigants were private individuals. Gradually, torts, public law, and criminal law questions became the more common areas of dispute. Accordingly, the public sector produced an increasing number of litigants. Sheldon concludes that because of these changes, the supreme court was increasingly involved in public policy issues.[32]

Third, judicial decision making has been influenced by institutional changes. For example, the original court was composed of five justices, but, in 1901, the number was temporarily increased to seven. This temporary increase became permanent in 1905, and by 1909, nine justices sat on the court. Gradually, the authority of the chief justice increased. In 1925, the Judicial Council was created to provide the court with advice and to allow it to experiment with changes to the decisional process through court rulemaking rather than through more permanent legislation. The bar association began to participate in lawyer admission and discipline procedures as well.

Other significant institutional changes included the employment of law clerks, the creation of an administrative office, and the use of *pro tempore* judges. The most critical change arising from among the Judicial Council's proposals occurred in 1968 when a new, intermediate appellate court was created.[33] By 1983, almost all appeals from the court of appeals to the supreme court were discretionary.

Sheldon's methodology is well-illustrated by his analysis of the 1979-80 court, which represents the modern period.[34] This court is also the most interesting because Sheldon was able to

32. *Id.* at 230-39 (Tables 9.2 & 9.5).

33. *Id.* at 229. The Council proposed a number of reforms including creating an intermediate court of appeals, using commissioners, limiting the right of appeal in certain cases, and reducing the number of cases in which opinions were written.

34. This period may be most interesting because Professor Sheldon has more detailed information about it. His results are based on extensive surveys, interviews, and correspondence with members of the court and on surveys of law clerks for this and other periods. *Id.* at 309 n.4, 313 n.12. In addition, Professor Sheldon uses statistics compiled by the administrator for the courts office. *Id.* at 310 n.6.

interview a number of the justices and their law clerks. As a result, the reader learns some of the justices' personal views about how the court functions. In keeping with his model of multiple factors, Sheldon discusses the recruitment method for each justice, offers short biographies for some of the justices, and describes the institutional changes in effect during their tenure.

Following the theory that all of these forces must be properly balanced, Sheldon measures this court's effectiveness, cohesiveness, and equilibrium. These factors are assessed by evaluating the number of dissenting and concurring opinions and by discussing several of the justices' views about the functions served by these opinions.[35] Sheldon also measures the interplay between the justices' requisite collective action and their individual roles and values. In looking at the effect of collective action, Sheldon traces the court's internal procedures from the time a case is accepted for review to the time a decision is rendered. In order to assess the influence of each individual justice's roles and values, Sheldon creates several graphs. These graphs locate each justice along active-restraint and conservative-liberal axes.[36] They then chart interagreement percentages, defined as the number of times individual justices agreed with other specific justices.[37] The interagreement percentages should be higher for justices who shared the same values and roles. Unfortunately, the graphs do not bear out the theory.

35. *Id.* at 316-17 (Tables 15.5 & 15.6).
36. *Id.* at 321 (Fig. 15.1).
37. *Id.* at 321 (Table 15.7).

Table 15.5
Dissonance Rate: Court 5 (yearly average)

Judge	*Dissenting Opinions*	*Dissenting Votes*	*Concurring Opinions-Votes*	*Total Disagreements*
Rosellini	10.0	8.0	8.0	26.0 (13.9%)
Dolliver	14.5	6.5	4.0	25.0 (13.4%)
Brachtenbach	4.0	14.0	7.0	25.0 (13.4%)
Utter	6.5	9.5	8.0	24.0 (13.4%)
Stafford	5.0	6.0	9.0	20.0 (10.7%)
Hicks	2.5	11.0	6.0	19.5 (10.4%)
Wright	2.5	11.5	4.5	18.5 (9.9%)
Horowitz	2.5	12.0	3.0	17.5 (9.4%)
Williams	2.0	3.0	5.5	10.5 (5.6%)
Total	49.5	81.5	55.0	186.0 (100.0%)
Average/Judge	5.5	9.0	6.1	20.6

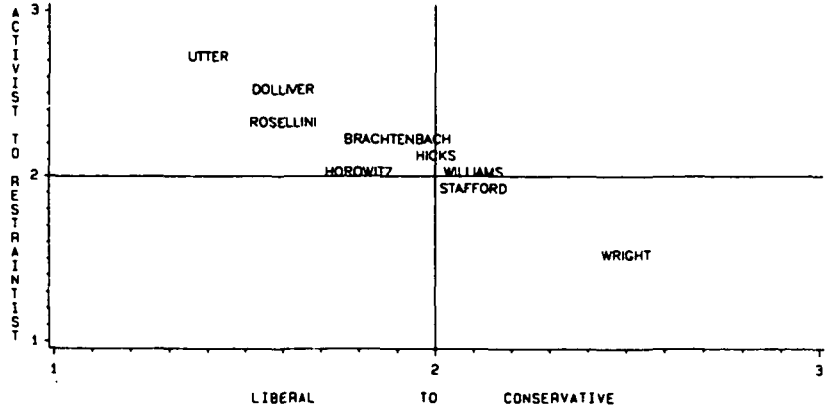

Fig. 15.1. Philosophical positions of judges on Court 5 (Source: Survey of former law clerks and appellate attorneys)

Table 15.7
Interagreement Percentages: Court 5

	Utter	Dolliver	Williams	Brachtenbach	Hicks	Wright	Stafford	Rosellini
Horowitz	81%	59	58	51	48	51	49	39
Utter		57	58	45	50	32	43	34
Dolliver			53	50	49	43	39	42
Williams				49	70	51	58	58
Brachtenbach					51	54	50	47
Hicks						51	50	50
Wright							51	64
Stafford								43

Court average: 50.7%
Sprague criterion: 74.6%

Sheldon concludes that, although the court's authority had increased, the dissonance level of the 1979-80 court was higher than for any other court that he studied.[38] One major reason for this difference may have been that the court was now hearing cases involving more contentious issues, issues that had already divided the court of appeals. The court was also involved in the civil rights and criminal procedure revolution begun by the United States Supreme Court. In addition, the court's role in shaping public policy was a more accepted idea, so there was a corresponding increase in cases raising such issues.[39]

Ultimately, the answer to the second question posed in A CENTURY OF JUDGING is as unsatisfying as the answer to the first question. The book does not really show how recruitment methods have influenced the decision making of individual jurists. The book also fails to demonstrate the tensions between public accountability and judicial independence. In the same way, the book does not show how any of these multiple factors, alone or in combination, have affected decision making. There is no clear correlation between a justice's personal background and beliefs and the way that the same justice will decide a particular legal question. There is no

38. *Id.* at 317 (Table 15.5).
39. *Id.* at 315-16, 333-34.

basis for predicting that justices who share the same roles and values will agree on the result in a particular case. Finally, there is no obvious relationship between institutional or historical changes and the resulting judicial decision making for that period.

A CENTURY OF JUDGING provides an exhaustive compilation of facts regarding the multiple forces that might affect judicial decision making. The book is also a valuable historical record. The analytical techniques result in interesting statistics and comparisons. However, the facts do not prove the theories. For example, the conflicting forces that influence the judicial recruitment process are carefully surveyed, but the tension between public accountability and judicial independence is never fully addressed. Similarly, although the correlations among individual factors, the needs of group dynamics, and the influence of changing structural factors are compiled, the court's decision-making process is no more predictable than before.

Perhaps it is merely a matter of expectation. Generally, a court's decision-making process is analyzed by studying its opinions. A CENTURY OF JUDGING does not analyze court opinions. Instead, it introduces the techniques of political science to describe the multiple tensions bearing on the justices who make decisions. These multiple forces have been thoroughly identified and examined; however, the theories need further development.