CANADIAN SUPREME COURT DECISION-MAKING: THE PERSONAL ATTRIBUTE MODEL IN EXPLAINING JUSTICES' PATTERNS OF DECISION-MAKING, 1949-1980

THESIS

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This study has two purposes: first, to test the validity of the personal attribute model in explaining judicial voting behavior outside its original cultural context; second, to explain the variation in justice's voting behavior in the Canadian Supreme Court. For the most part, the result arrived in this study supports the validity of the model in cross-cultural analysis.

The result of multiple regression analysis shows that four variables, region, judicial experience prior to appointment, political party of appointing Prime Minister, and tenure account for 60 percent of the variations in justice's voting behavior. This result, hence, provides an empirical finding to the development of the personal attribute model in explaining justices' voting behavior.

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CHAPTER I

INTRODUCTION TO JUDICIAL POLITICS

Introduction

An effort to deal with "Judicial Institutions in Cross-National perspective" asks the question, "Why should the study of courts be integrated with the study of comparative politics?"[1] This question implies that in the past comparative political scientists have ignored courts or judicial institutions as an important institute in the political system. This neglect seems apparent as C. N. Tate pointed out in his survey of the introductory textbooks in comparative politics. Only a few, he argued, "provide continuous systematic discussion of the courts. Among these are introductory texts by Barnes, Carter and Skidmore(1980), Fried(1966), Blondel(1969), and Ehrmann(1976)."[2]

The main reason for this failing is that most scholars view a court as the institution which interprets law and discovers law rather than makes law, i.e., it is not an institution which authoritatively allocates social values.

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[1] C. N. Tate, "Judicial Institutions in Cross-National Perspective: Toward Integrating Courts into the Comparative Study of Politics," paper presented at 1981 Meeting of the Research Committee for Comparative Judicial Studies of the International Political Science Association, Mansfield College, Oxford University, England, April 6-8, 1981, p. 1.

[2] Ibid., pp. 2-3.

But this view has come under serious reassessment. The long held natural law doctrine which viewed justices of the court as persons who interpret and discover law was challenged by the scholars who are interested in judicial politics. They argued that courts, especially the Supreme Court, actually "make" laws, or at least heavily influence the establishment and enforcement of laws routinely in its decisions. "This kind of policy-making, on an ongoing basis, is accomplished as the policy or value preferences of individual justices are translated into the courts collective behavior."[3] The judicial institution, then, like other political institutions does perform the function of authoritative allocation of values for the society. Thus, it is worth inclusion in the study of politics, especially in comparative politics.

Suggesting that the judicial system also performs political functions as some other political institutions, does not mean that courts in every country will do the same thing. It is clear that in some systems the judicial institution plays a very significant role while in some other systems it does not. For example, the judicial system in the democratic society functions differently from that in the authoritarian or totalitarian system. Because the judicial institutions can be similar or different from each other, in term of their political significance, Tate

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[3] John P. Ryan and C. N. Tate, The Supreme Court in American Politics: Policy Through Law, (Washington, D. C., The American Political Science Association, 1974), p. 1.

suggests that

> Integrating the study of judicial institutions into comparative politics will force the attention of comparative politics scholars to the fact that in a fairly large number of nations, courts are indeed politically powerful institutions whose operation can be understood in the same terms as that of other political institutions, and whose public policy role can be quite significant. It might even direct their attention to determining why this is so in those societies and not in others.[4]

With this new perspective, several scholars have conducted research and presented several theoretical frameworks to the field. Most studies in judicial politics have been based on the United States judicial system, both at the national and state level. The first major collection of cross-cultural studies was edited by Schubert and Danelski.[5] In this volume all of the studies were outside the context of the United States judicial system, although many employed the framework and models which were developed for the study of the former.

Judicial System and Political System

The judicial system is defined as an entity composed of judges and courts, who make determinations primarily with reference to perceived norms.[6] In a similar way, Theodore

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[4] Ibid., p. 1.

[5] Glendon A. Schubert and David J. Danelski, editors, Comparative Judicial Behavior: Cross-Cultural Studies of Political Decision-Making in the East and West, (New York, Oxford University Press, 1969).

[6] Fred L. Morrison, Courts and the Political Process in England, (Beverly Hill, Ca., Sage Publications, 1976), p. 18.

Becker defines a court as

> a person or body of persons with power to decide a dispute before whom the parties to the dispute or their advocates or their surrogates present the facts of the dispute and cite existent, expressed, primary normative principles that are applied by that person or body of persons who believe that they should listen to the presentation of facts and apply such cited normative principles impartially, and as an independent body.[7]

Becker's definition has been criticized for its attempt to direct research attention toward a court "prototype" which allegedly hardly exists in the real world.[8] It is, however, useful as a criterion to distinguish the judicial system from other systems in the political realm. From this perspective, the judicial system is one which deals with the authoritative allocation of values through decisions in the disputes. Figure 1 illustates such a system.

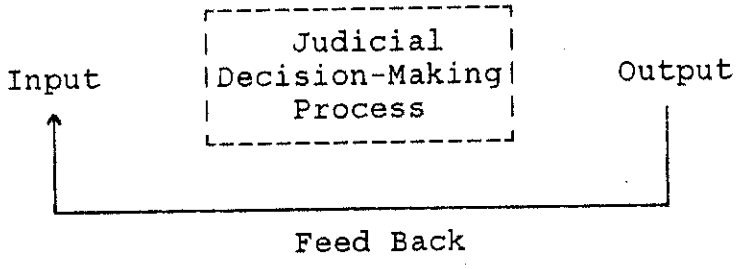

Fig. 1--Judicial system

Source: Fred L. Morrison, Courts and the Political Process in England, (Beverly Hills, Ca., Sage Publication, 1976), p. 16

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[7] Theodore L. Becker, Comparative Judicial Politics: The Political Functioning of Courts, Chicago, Rand McNally and Company, 1970), p. 13.

[8] Martin Shapiro, "Courts", Handbook of Political Science, Vol. V, edited by F. Greenstein and N. Polsby, (Reading, Ma., Addison-Wesley Publishing Company, 1975), p. 321.

Seen from David Easton's system approach,[9] a judicial system has its own inputs. These inputs come directly from the environment in the form of disputes, norms, laws, etc. In addition, they come directly from within the system through feedback such as the decisions of the lower courts, precedents, etc. These inputs can be both general and specific: general when concerned with the environment as a whole--executive actions and constitutional amendments for example; specific when concerned with particular cases. Those inputs will go through the decision-making process of the system and be converted into outputs. Those outputs, in turn, will be directed to the environment and fed back to the judicial system via the feedback loop. In the same manner as inputs, outputs can be both specific, a decision on a particular case, and general, a decision which effects the whole society.[10]

As the judicial system authoritatively allocates values for the society, it does not operate in a vacuum. It has relationships with both society as a whole and the political system. Figure 2 illustrates these relationships.

By using the terms political system and judicial system, this study does not imply that they are two distinct systems. Rather, the latter is a sub-system within the former. Examples of other sub-systems include the executive

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[9] David Easton, A Framework For Political Analysis, (Englewood Cliffs, N.J., Prentice-Hall, Inc., 1965).

[10] Morrison, Courts And the Political Process in England, pp. 18-20.

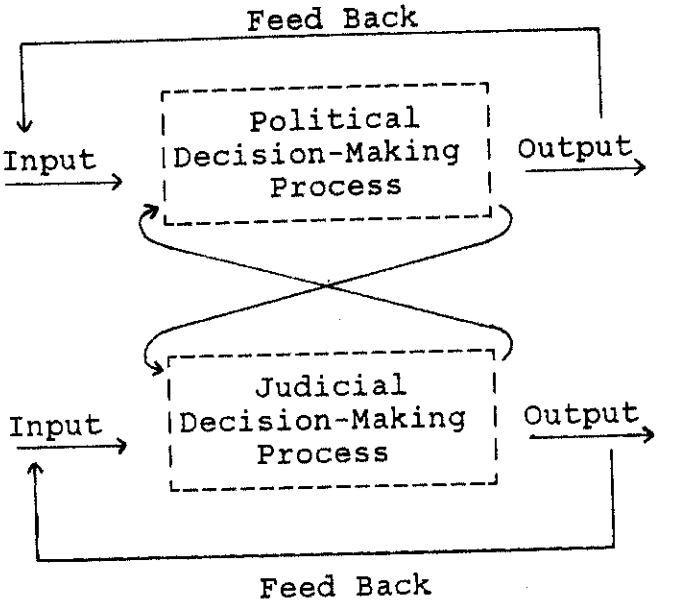

Fig. 2--The judicial system, political system, and society

Source: Fred L. Morrison, Courts and the Political Process in England. (Beverly Hills, Ca., Sage Publication, 1976), p. 18.

and the legislative. The boundaries which separate one sub-system from the other are their functional differentiations. Even though they all deal with the authoritative allocation of values, their principles and procedures are different. Shapiro suggests that the principle of "courtness" is inherent in the "logic of the triad" in conflict resolution,[11] i.e., parties in conflict will have a natural tendency to refer to a third party for assistance in resolving their conflict. In other words, unlike the other political sub-systems, the court will not directly participate in the authoritative allocation process unless a dispute is brought up for adjudication.

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[11] Shapiro, "Courts," p. 132.

As illustrated in Figure 2 the judicial sub-system is symbiotically related to the political system. This interaction can be seen in that

> the political system contributes inputs to the judicial system. It may provide financial support, personnel, information, and demands in terms of specific cases. The judicial sub-system, likewise, may influence the political system through its decision of cases and enunciation of principles which will become inputs for the political system.[12]

In the similar way, Theodore Becker pointed out that the reciprocities among the judicial system, political system, and society can be concieved as two distinct relationships

> 1. direct impact and feedback relationship between the judicial structure...and other components of the political system...as well as the society at large,...
> 2. the political and societal influences felt within the judicial structure as it progress towards its decision.[13]

The Canadian Supreme Court and Canadian Politics

The first two sections have demonstrated the relationships between the judicial sub-system and the political system. The purpose in this section is to give an overview of the relationships between the Canadian Supreme Court and Canadian politics. In general, there are two opposing views on the political role of the court and its justices. On one hand, the Supreme Court justices are

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[12] Morrison, Courts and the Political Process in England, p. 20.

[13] Becker, Comparative Judicial Politics, pp. 18-19.

viewed as positivists, i.e., they only discover and interpret law and do not have a significant role in politics.[14] The main argument is that the Supreme Court justices were so long subordinate to the Privy Council, they adopted the Privy Council's positivist philosophy. This subordination has led to two major consequences. First, the justices conceive of themselves as the discoverers of law, a fixed body of principles. The most dramatic example of this view is found in a 1936 opinion by Justice Cannon opposing Dominion social legislation

> When an act of Parliament is challenged before this court as unconstitutional, our duty is to lay the article of the constitution which is invoked beside the statute which is challenged and decide whether the latter squares with the former. Our only power is to announce our considered judgement upon the question. This court neither approves nor condemns any legislative policy. Our delicate and difficult office is to ascertain and declare whether the legislation is in accordance with or contravention of the provisions of the constitution. Having done so, our duty ends.[15]

The second consequence is their rigorous adherence to the doctrine of "Stare Decisis." Chief Justice Bora Laskin, then Professor Laskin, pointed out that

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[14] For examples of the argument in this line see E. McWhinney, "The Political Impact of the Canadian Supreme Court," Notre Dame Lawyer 49, (1974), pp. 1000-11; H. McD. Clokie, "Judicial Review, Federalism, and the Canadian Constitution," Canadian Journal of Economics and Political Science 8, (1942), pp. 537-56; J. A. Corry, "Precedent and Policy In the Supreme Court," Canadian Bar Review 45, (1967), pp. 627-666.

[15] Cited in Donald E. Fouts, "Policy-Making in the Supreme Court of Canada, 1950-1960," Comparative Judicial Behavior, edited by G. A. Schubert and D. J. Danelski, (New York, Oxford University Press, 1969), p. 260.

> At a minimum, "Stare Decicis" meant that the Supreme Court... considered itself bound by the decisions of the highest court of appeal, the Privy Council...[who] considered itself bound by the decision of the House of Lords, the United Kingdom's ultimate appeal court. This fact compelled the Canadian courts, either by force of logic or tradition, to consider themselves bound to follow the decisions of the House of Lords and of English courts of higher or co-ordinate jurisdiction.[16]

The result of these two consequences, in this view, is an insignificant role for the Supreme Court in shaping public policies. It is an unimportant political institution.

In contrast to the positivist view, many Canadian scholars contend that the Supreme Court inevitably exercises a considerable discretionary power. Ronald Cheffin argues that

> cases come to courts because the constitution or statute is ambigious, or because the situation is not covered by existing law. Important constitutional provisions such as peace, order, and good government and matters of a merely local or private nature, which allocate legislative power between Dominion and provincial government, provide good examples of this ambiguity. Thus judges are often forced to choose among reasonable interpretation of what the law means, a process inevitably involving personal judicial attitudes.[17]

Reflecting the activist approach--the Supreme Court justices have a significant political role, Donald Fouts finds that during the 1950's the court was involved in making decisions concerning the civil liberties and economic interests of

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[16] Bora Laskin, "The Supreme Court of Canada: A Final Court of Appeal of and for Canadians," Canadian Bar Review, 30 (1951), pp. 1074-75.

[17] Cited in Fouts, "The Supreme Court of Canada, 1950-1960," p. 264.

various groups.[18] Thus, he argued in his conclusion that

> Clearly the Supreme Court functions as an important policy-makers in the Canadian political system....Unlike the other political decision-makers, the Supreme Court cannot initiate policy discussions but must wait until such issues arrive at the Court...[19]

Looking at some of the previous decisions of the Court in disputes may reveal its political role. For example, in the "Prince and Myron vs. The Queen" (1964)--a civil liberties case between individuals and a federal government agency--the Court held that Indians hunting for their livelihood on unoccupied Crown land or land which they had a right to access were not subject to the restrictions imposed on sportmen by Manitoba's Game and Fisheries Act.[20] In this case the Supreme Court justices used their power to interfere with the government's "police powers"-- a clear allocation of values.

Another example is referred to as "the Nova Scotia Delegation Reference" (1951). This involved purely political question--the distribution of political power among political institutions. It is a decision involving a question of the constitutional validity of the Bill Number 136 entitled "An Act respecting the delegation of jurisdiction from the Parliament of Canada to the Legislature of Nova Scotia and vice versa." The issue of

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[18] Ibid., p.266.

[19] Ibid., pp. 284-85.

[20] Canadian Law Reports: Supreme Court, (Ottawa, 1964), pp. 81-85.

the case was that, by virtue of this bill, the Parliament of Canada and the Legislature of Nova Scotia agree to deligate their power to one another. Thus the Parliament was given authority to pass laws to regulate any matter relating to employment in any industry exclusively within the jurisdiction of the Legislature of Nova Scotia. In the same manner, the latter was given authority to make laws in relation to any matter relating to employment in any industry which is exclusively within the legislative jurisdiction of the former. Through this Bill both parties anticipated that they would interchange their authorities between themselves. Through this interchange, the provincial Legislature could regulate activities relating to commerce, banking, bankruptcy, patents, etc. In return, the Parliament could pass laws in relation to property and civil rights, municipal institutions, education, etc.

The Supreme Court justices unanimously held that the Bill, if enacted, would not be constitutionally valid since it would lead to an overlapping of power between the provincial Legislature and the Dominion Parliament. They pointed out that the Parliament and each Legislature is a sovereign body possessed of exclusive jurisdiction to legislate with regard to the subject matters assigned to it and, therefore, neither is capable of deligating its power to the other or receiving the other's power.[21]

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[21] Canada Law Reports: Supreme Court, (Ottawa, 1951), pp. 31-59.

In a more recent ruling, "Resolution to amend the Constitution" (1981), the Supreme Court justices were directly involved in Canadian Politics. This time the Court was asked to decide, among the other things, whether or not the Parliament of Canada has power to set up a constitutional convention without receiving consent from all provinces. The Supreme Court ruled, in favor of the Parliament, that it is not necessary that all provinces give their consent to the constitutional convention. In addition, the Court made it clear that a province which failed to concur with the convention has no veto power over the arrangement.[22]

This ruling led to an important milestone in Canadian history in 1982 when Queen Elizabeth ceremonially relinguished technical British authority over Canada's Constitution.[23]

The above three examples are representative of how the Canadian Supreme Court routinely performs the function of allocating social values. They represent the varieties of issues which the Supreme Court decides, from issues involving conflicts of interests between individuals and/or groups to the roles, functions, authorities, and power of various political institutions. In summary, the Supreme

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[22] James Lorimer, editor, Supreme Court Decisions on the Constitution 1981, (Toronto, James Lorimer and Company, 1981), pp. 1-81.

[23] Department of State, Background Notes: Canada, (Washington D. C., Government publication, 1983), p. 4.

Court of Canada not only provide justice, whatever that means, to the society; it also shape public policies through its decision-making.

The importance of the Supreme Court as a policy maker should have justified the extensive study by political scientists. Yet, there are few political analyses of the Court. Most existing studies are in the area of public law and legal study. There are few systematic efforts to examine the Court's voting behavior or to suggest theories to explain the kinds of personal factors which operate in the decision-making process.[24]

Scope, Method and Outline of the Stydy

The purposes of this study are to analyze patterns of decision making in the Canadian Supreme Court and to analyze the factors which influence individual judges in their decision making. It will apply the decision making approach as the framework of analysis. The approach which will be used is a micro level approach. The analysis will be statistical analysis; the multiple regression technique will be used. The period of the study will be from 1949, when

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[24] Some examples of the previous research in this line are Fouts, "The Supreme Court of Canada, 1950-1960". S. R. Peck, "A Scalogram Analysis of the Supreme Court of Canada, 1958-1967," Comparative Judicial Behavior, edited by Schubert and Danelski, pp. 293-334. P. H. Russell, Supreme Court of Canada as a Bilingual and Bicultural Institution, (Ottawa, Information Canada, 1970), especially Chapters IV and V. For complete citations on the studies of Canadian Supreme Court see Nairn Waterman, "Bibliography of the Supreme Court of Canada," Osgoode Hall Law Journal 14, (1976), pp. 425-43.

the Supreme Court was established as the final court outside the Privy Council, to 1980.

The study is divided into four chapters. Following this introductory chapter is an elaboration of the decision making approach. Following a review of the literature, chapter two presents the hypothesis which will be tested by this study and ends with a discussion of the research design. Chapter three presents the historical development of the Canadian Supreme Court. It will also present the structure and processes of the Supreme Court. Lastly, this chapter will focus on a biographical study of all justices who are included in the study. Chapter four will analyze the decision making of the Canadian Supreme Court justices. Finally, a discussion and conclusions will follow.

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CHAPTER II

DECISION MAKING APPROACH AND RESEARCH DESIGN

The Decision Making Approach

Decision making in judicial politics can be studied from two major approaches. The first approach, the macro level approach, uses the court as a unit of analysis. The focal point of study in this approach is to analyze the patterns of decision making of courts in different countries or different periods of time in various aspects. Blondel, for example, suggests three basic dimensions of courts decision making:

1. the independence of courts;
2. the scope of rule adjudication; and
3. the depth of rule adjudication.[1]

The independence dimension refers to the extent to which courts are independent from social and political pressures in carrying out their decisions. Furthermore, it refers to the degree of impartiality in their decisions.[2]

The scope of rule adjudication refers to the range of subject matters over which the judicial system is able to pass judgment.[3] Finally, the depth dimension refers to the

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[1] Jean Blondel, An Introduction to Comparative Government, (New York, Praeger, 1969), pp. 436-40.

[2] Ibid., p. 436.

extent to which the judges are allowed to question and pass judgment on the rules, regulations, and activities of other branches and agencies of the political system.[4]

The second approach, the micro level approach, uses the individual judge as the unit of analysis. Its aims are to explain the behaviors and the factors which influence the behaviors of particular judges. In the past this approach has followed two major models, linear cumulative scaling or scalogram analysis, and the personal attibute or social backgrounds model. According to Glendon Schubert, scalogram analysis is a method for measuring differences in and the consistency of the attitudes of a group of persons toward a single shared value.[5] This model is based on the assumption that "whatever their degrees of complexity, it is possible to represent symbolically the ideological positions of justices comprising the Supreme Court at any particular time as a configuration of ideal points in a psychological space of specifiable dimensionality."[6] This model then argues that judges who share or have a common ideology toward a particular issue will vote in the same way. Differences in

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[3] Ibid., pp. 438-39.

[4] Ibid., p. 440.

[5] Quoted in Fouts, "Policy-Making in the Supreme Court of Canada," Comparative Judicial Behavior, Cross-Cultural Studies of Political Decision-Making in the East and West, edited by G. A. Schubert and D. J. Danelski, (New York, Oxford University Press, 1969), p. 265.

[6] Glendon A. Schubert, The Judicial Mind Revisited: Psychometric Analysis of Supreme Court Ideology, (New York: Oxford University Press, 1974), pp. 17-18.

ideology and attitude will make them vote differently.[7]

The second model, the personal attribute or social background model, is an extension of the first one. This model agrees that the differences in justices' ideologies and attitudes will have impacts on the outcome of the cases. These differences are assumed, among other things, to be a result from their life experiences. In the others words, it trys to identify the variables which have a causal relationship to justices' voting behavior. Among these, one set of variables is the social and personal background of those judges.

The assumption that judicial background affects judicial decisions has long been conceived by scholars in judicial politics. In the 1920's Charles G. Haines stated that

> There is ...a marked opportunity for individual influences in the collective judgement such as is rendered by the Supreme Court. As an individual's views in political and legal matters are likely to be in part...determined by his interest, training, environment and long-continued associations, it is suggestive [that] personal factors [are] likely to influence judicial decisions...[8]

He then outlined the personal factors which likely influence decision making. They consist of

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[7] Ibid., p. 18.

[8] Charles G. Haines, "General Observations on the Effects of Personal, Political, and Economic Influences in the Decisions of Judges," Judicial Behavior: A Reader in Theory and Research, edited by G. A. Schubert, (Chicago, Rand McNally and Co., 1969), p. 49.

1. Remote and Indirect factors such as education in general, legal education, family and personal associations;

2. Direct factors such as legal and political experience, political affiliations and opinions, and intellectual and temperamental traits.[9]

Despite his theoretical suggestion, there were no systematic efforts to measure its validity until the 1960's.

> Most of the research conducted was primalily descriptive and involved the collection and organization of a variety of background data such as age, ethnic and religious affiliations, parental occupation, career patterns, prior judicial office, party affiliation, education, and so forth. The number of factors being included in the study was limited only by the availability of data or the imagination of the researchers.[10]

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[9] Ibid.

[10] C. N. Tate, "Social Background and Voting Behavior in the Philippine Supreme Court," LawAsia 3 (1972), p. 317. For an example of research in this line see J. R. Schmidhauser, The Justices of the Supreme Court: A Collective Portrait," Midwest Journal of Political Science 3 (1959): pp. 1-50. This work is the classic and influential one in the study of social background. In this study Schmidhauser tried to collect data on every aspect of the life experiences of the justices by considering such variables as their father's occupations and political activity, place of birth, ethnic origins, religious affiliation, education, and political experiences. His study is influencial in that it turned scholars in the field toward work along this line. Following his study there were several works which concentrated on some other national courts or some other American courts. For example see D. J. Danelski, "The Supreme Court of Japan: An Exploratory Study," Comparative Judicial Behavior, Cross-Cultural Studies of Political Decision-Making in the East and West, edited by G. A. Schubert and D. J. Danelski, (New York, Oxford University Press, 1969), pp. 121-156; G. Adams and P. L. Cavalluzzo, "The Supreme Court of Canada: A Biographical

Further development was made during the 1960's. The new line of inquiry involved attempts to relate background characteristics to actual decision patterns. One of the first systematic efforts was published by John R. Schmidhauser. In his study of U. S. Supreme Court voting records between 1837 and 1860, he examined the relationship of regional background to the decisions in 52 major cases involving "sectional rivalry." He found that party affiliation and regional background were significant factors in explaining justices's positions on a scalogram of "regional divisive" cases.[11]

In a second study, Schmidhauser sought to find the relationship between a series of background factors and the propensity of justices of the Supreme Court to adhere to precedent, to dissent from majority opinions, and to abandon stare decisis.[12] He concluded that a number of judicial background characteristics, e.g. family background, regional origins, political party affiliation, and prior judicial experience appeared to be related to the tendency of Supreme Court justices to dissent and to abandon stare decisis.[13]

Study," Osgoode Hall Law Journal 7 (1969): pp 61-85.

11 John R. Schmidhauser, "Judicial Behavior and the Sectional Crisis of 1837-1860," Constitutional Law in the Political Process, edited by J. R. Schmidhauser, (Chicago, Rand Mcnally and Co., 1963), pp. 486-505.

12 John R. Schmidhauser, "Stare Decisis, Dissent and the Background of Justices of the Supreme Court of the United States," Constitutional Law in the Political Process, edited by J. R. Schmidhauser, (Chicago, Rand McNally and Co., 1963), pp. 505-519.

Following Schmidhauser's patn breaking efforts, several other similar studies subsequently appeared.[14] In particular, Don Bowen sought further to develop the judicial decision making approach.[15] In his study he not only asked if there were statistically significant relationships between judges' background characteristics and voting behavior, he also sought to test "the value of these associations by asking how much of the variation in decisions they exlain."[16] Bowen applied partial and multiple regression in his study. Its results showed that "the amount of variance explained by any single characteristic is generally quite low...[However], when all six characteristics are considered together, the amount of variance explained is much better."[17]

Tate added further methodological sophistication by using the social background model to explain the propensity of justices of the U. S. Supreme Court to vote liberally or conservatively in Civil Liberties and Economics cases. He found that about 80 percent of the variance of judicial voting behavior in Liberalism on Civil Rights and Liberties

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[13] Ibid.

[14] For a summary of those studies see Tate, "Philippine Supreme Court," pp. 316-318.

[15] Don R. Bowen, The Explanation of Judicial Voting Behavior From Sociological Characteristics of Judges, unpublished Ph.D. Dissertation, Yale University, 1965.

[16] Ibid., Abstract page.

[17] Ibid.

cases model can be explained by background characteristics. Similarly, about 70 percent of variance in the Liberalism on Economics cases can be explained by those independent variables[18]

All of the research discussed above is parochial in nature because it focuses solely on the U.S. judicial system. Virtually no attempt has been made to expand the model beyond its original cultural context, i.e., to countries other than the U.S. To my knowledge, only one such study has been published: Tate applied Bowen's model and method to the study of the Philippine Supreme Court.[19] His findings, however, were not quite as impressive as those he reported for the U.S. Supreme Court. Thus there is room for the personal attribute or social background model to be subjected to further tests in non-U.S. cultural contexts. This study will apply this model to the Canadian Supreme Court.

Personal Attribute or Social Background Model

In general the social background model starts with the simple assumption that social background characteristics are the direct causes of votes. This simple model is presented in figure 3(a). It has been criticized for oversimplifying the real world. To improve its utility, Murphy

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[18] C. N. Tate, "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978," American Political Science Review 75 (1981), p. 361.

[19] Tate, "Philippine Supreme Court", pp. 317-338.

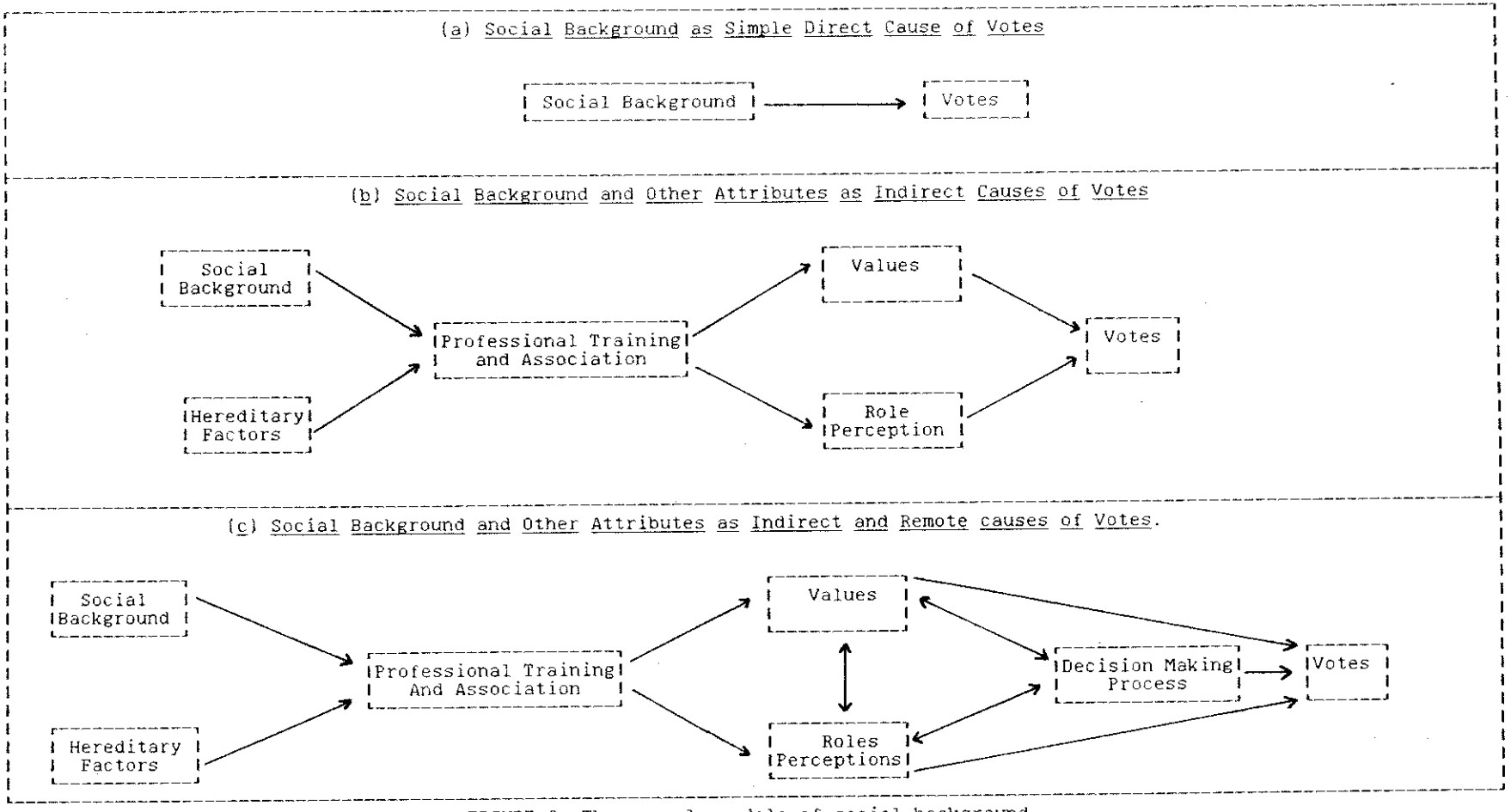

FIGURE 3--The causals models of social background

Source: C. N. Tate, "Personal Attribute Models of Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decision, 1946-1978," American Political Science Review 75 (1981), p. 364.

and Tanenhaus modified the model by adding more intervening variables into the model as shown in figure 3(b) and 3(c).[20]

Despite its simplicity, Tate has argued that the basic model can be fruitfully used as a framework of analysis if the independent variables, i.e., the social background characteristics, are carefully selected.[21] A carefully selected model will not only represent the social background variables but also the intervening factors as well. Thus, he argues that proper social attribute variables allow one to approximate model 3(b).

Models 3(b) and 3(c) are clearly more appealing in the theoretical sense. However, they also impose some difficulty on the researcher, especially when one works with historical data and when the social background information is collected mainly from the secondary sources. The social backgrounds data for this study are all collected from publicly available sources rather than from direct interviews with judges. This limitation, to a great extent, dictates the possibility/impossibility of model selection. In addition, though it was suggested that the more sophisticated models may sound more theoretically appealing, there is no empirical investigation to prove this proposition. Thus, to take the benifit of the doubt, this study will utilize the model 3(a) as a framework of

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[20] Walter F. Murphy and Joseph Tanenhaus, The Study of Public Law (New York, Random House, 1972), as cited by Tate, "Personal Attribute Model," p. 364.

[21] Ibid.

analysis. By using this model, this study may contribute, at a minimum, to empirical investigation and further model-building in judicial politics.

Research Design

Following the personal attribute or social backgrounds model as a framework of analysis, the central thesis of this study is that

> Social backgrounds have impacts on the judicial voting behavior of Canadian Supreme Court Justices.

Dependent and Independent Variables

From the above assumption it is clear that the dependent variable is judicial voting behavior and the independent variable is justices' backgrounds. The dependent variable will be operationalized by measuring the voting of each judge in non-unanimous decisions in public policy issue areas. The independent variable will be operationalized by measuring aspects of the personal backgrounds of judges who are included in the study.

Operationalization of Dependent Variables. In order to measure the justice's voting behavior, non-unanimous decisions in public policy issues areas will be used. For the U.S. Supreme Court, Glendon Schubert defined three major public policy issues areas: civil liberties cases, economics cases, and fiscal claims cases.[22] Civil liberties

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[22] Glendon A. Schubert, "The 1960-61 Term of the Supreme

cases are those in which the primary issue "involves a conflict between personal rights and claims to liberty and governmental authority." Economic cases are those involving a conflict between "underprivileged economic interests as against those of affluence and monopoly power." Finally, fiscal claims cases are those involve "monetary conflicts of interest between private individuals and government."[23]

For these three types of cases there are six possible outcomes of the cases; first, pro government in civil liberty cases; second, pro individuals in civil liberty cases; third, pro monopoly in economic cases; fourth, pro economic underdog in economic cases; fifth, pro government in fiscal claims cases; finally, pro business in fiscal claims cases. From these possible outcomes there will be two directon of votes by judges, conservative and liberal vote. The liberal-conservative classification is by now routine in the studies of judicial decision making. Ryan and Tate point out that

> in a civil liberties case, justices who were in favor of granting the claimed civil right were classified as supporting the liberal position; justice who were opposed to granting the claimed right were classified as supporting the conservative position.... Liberals in economic cases support unions over management, government regulation of business activities, workers claim against employers, and small businessmen over large corporations. Conservatives, then do the opposite.[24]

Court: A Psychological Analysis," American Political Science Review 56 (1962), p. 90.

[23] Ibid., pp. 97-102.

Thus, the liberal votes in this study are assent vote in outcomes two, four and six and dissent votes in outcomes one, three, and five. Conservative votes, on the other hand, are assent votes in outcomes one, three, and five, and dissent vote in outcomes two, four and six (see Table I).

TABLE I

JUDICIAL VOTING MODES

Outcome	Voting Modes	
	Liberal	Conservative
1. Pro government in civil liberties cases	dissent	assent
2. Pro individuals in civil liberties cases	assent	dissent
3. Pro monopoly in economic cases	dissent	assent
4. Pro underdog in economic cases	assent	dissent
5. Pro government in fiscal claims cases	dissent	assent
6. Pro business in fiscal claims cases	assent	dissent

[24] John P. Ryan and C. N. Tate, The Supreme Court in American Politics: Policy Through Law, (Washington D. C., American Political Science Association, 1975), p. 15.

In order to measure the degree of liberal or conservative voting, a simple percentage calculation will be used. Thus, the liberal score for each judge will be equal to:

PLIB = ((Total of liberal vote) * 100)/ number of times participating in split decisions

These PLIB scores will be used as the values of the dependent variable in the statistical analysis to follow.

A note has to be made concerning the method used in computing the PLIB scores. In previous studies, the voting scores were computed seperately for each type of cases. This study, however, combines all types of cases together in the computation. The reason is that, except for the Civil Liberty cases, the other two types of cases have a small number of split decision. This might lead to an unreliable of measurement if separated calculations were attempted. Table II presents the total number of cases reported in each catagory.

TABLE II

CLASSIFICATION OF NON-UNANIMOUS CASES BY TYPES

Type	Number	Percent
Civil Liberty Cases	417	56.58
Economic Cases	172	23.33
Fiscal Claim Cases	80	10.85
Others	60	9.24
Total	737	100.00

Operationalization of Independent Variables. The literature on the Canadian Supreme Court contains many studies suggesting that the factors likely to influence justice decision making are region, religious affiliation, professional experience prior to appointment, experience in judicial office prior to appointment, political party affiliation, legal education, and political office experience.[25]

In selecting the independent variables which are included in the study, several factors have to be considered. First, there are the characteristics of the population of the study. The population of this study includes all the judges who serve on the Canadian Supreme Court from 1949 to 1980.

This group of persons can be considered as members of the elite group in the country who have some characteristics different from ordinary people. They are the high income group and all of them attained a much higher level of education than the average.

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[25] For a discussion of this subject see D. E. Fouts, "Policy Making in the Supreme Court of Canada, 1950-1960," pp. 257-298. Fouts emphasis that region is one major important factor. He found that justices from French and English regions have different patterns of decision making. J. D. Clark, "Appointments to the Bench," Canada Bar Review 30 (1952), p. 28 emphasizes that political expediency and party loyalty are important factors in appointing judges. G. Adams and P. L. Cavalluzzo, "The Supreme Court of Canada: A Biographical Study." Osgoode Hall Law Journal 7 (1969), pp. 61-85, note the importance of region, ethnicity, religion, politcal party affiliation, prior office, and father's occupation in general.

Concerning their legal education, the preliminary survey shows very little variation in this variable. The Quebec judges graduated mainly from the prestigous civil law school of the University of Montreal or McGill University. In addition, most of them studied Common Law at the University of Ottawa. Justices from Ontario also show a common pattern. All of them, except justice W. Z. Estey, received a law degree from Tornto's Osgoode Hall Law School. (Justice Estey graduated from the University of Saskatchewan and Harvard University.) There are differences among judges from the Western and Maritime Provinces. However, these can be explained simply because they resided in different provinces. Therefore, this variable is excluded from the study.

Second, sex is excluded because during the period of study, no woman judge served in the Courts. In addition, race is also excluded because all the judges are whites of either English or French ancestry. Ancestry, however, can be approximated through another variable: region. The Quebec judges will tend to be French, while judges from other regions will tend to be English. Finally, by virtue of their elite characteristics, it is necessary that the study should include a variable which measures the differences arising from the process of "judicial socialization."[26] Bowen suggested that tenure can be used.[27]

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[26] Bowen, Judicial Voting Behavior, p. 15.

[27] Ibid.

With those considerations in mind, this study chooses to include eight social background variables as potential explanatory variables. They are region, religious affiliation, profession prior to appointment, age at appointment, judicial experience prior to appointment, previous political office experience, political party of the appointing Prime Minister, and tenure. Of these eight variables, five variables are operationalized as dichonomies (see Table III).

TABLE III

OPERATIONALIZATION OF BACKGROUND VARIABLES

VARIABLE	OPERATIONALIZATION
1. Region	1 = those from Quebec. 0 = those from other provinces.
2. Religion	1 = Roman Catholic. 0 = Others.
3. Previous profession prior to appointment.	1 = Practice law or lawyer. 0 = Other occupations (such as law professor, judge, etc.)
4. Age at appointment	In years.
5. Judicial experience prior to appointment.	Number of years.
6. Political office experience.	1 = Yes. 0 = No.
7. Political Party of the appointing Prime Minister.	0 = Conservative Party. 1 = Liberal Party.
8. Tenure.	Number of years served on the Supreme Court through 1980.

The use of the Political party of the appointing Prime Minister as an explanatory variable needs some clarification and explanation. As mentioned, a major problem of this study is the lack of data for all relevant background variables. Information on political party affiliation for judges proved impossible to acquire. Thus some indirect method had to be used.

Adam and Cavalluzzo's study during 1875 to 1968 showed that each Prime Minister, who had a chance to appoint justices to the Supreme Court, was likely to appoint judges who shared his party affiliation.[28] Table IV is a reproduction of their finding.

TABLE IV

SUPREME COURT JUSTICES' PARTY AFFILIATION, 1875-1968

Peroid	Government	Party of Appointees		
		L*	C*	N/A*
1875-1896	L/C	2	5	5
1896-1911	L	8	1	1
1911-1930	L	5	1	2
1930-1935	C	0	1	3
1935-1957	L	6	2	2
1957-1963	C	0	3	1
1963-1968	L	2	0	0

*L, Liberals Party; C, Conservative Party; N/A, Not Ascertainable.

Source: Adams and Cavalluzzo, "The Supreme Court of Canada," pp. 77-8.

[28] Adams and Cavalluzzo, "The Supreme Court of Canada," pp. 77-8.

Multiple Regression Procedure.

The Independent variables will be related to the dependent variable through multiple regression. Multiple regression is the extension of simple linear regression. In general, simple linear regression is a technique used to predict the value of one variable by knowing the value of another variable. The basic assumption is the functional relationship of the variables. For instance, in macro-economics, consumption (C) is said to be a function of income (Y). This can be written as C=f(Y), where f denotes a "function of." This functional form can be written in the linear form as C = a + bY, where "a" refers to autonomous consumption, i.e, consumption independent of income.

In a similar way, if we say Y, the dependent variable, is a function of X, the independent variable, the linear form for this relationship will be Y = a + bX, where "a" is the intercept or constant. It is the value of Y when X is equal to zero; "b" is the slope or the average change in Y associated with the unit change in X, which can be written as b = $\Delta Y/\Delta X$. The value of "b" can be either positive or negative. When it is positive, Y is positively associated with X, i.e, high scores of Y associate with high scores of X. When "b" is negative, Y is negatively associated with X, i.e, low scores of Y associate with high scores of X.

From the above principles, when we know the value of X and its relationship to Y we will be able to predict the value of Y associated with a particular value of X.

The two equations discussed above are examples of the deterministic equation or model, i.e., C is a function of only Y,[29] and Y is the function only of X. Social science theories, however, are not deterministic. Y is not a function of only X but of some other things as well. It is usually impossible to include all those things in a study. Thus, social scientists used stochastic models. This model can be written as:

$$Y = a + bX + e$$

where "e" is the "error" term. It consists of measurement error plus the effects of those "other things" not included in the equation.

Since Y now is a function of two things, X and the error term, it is necessary that we have a statistic which will determine the ability of X to explain the variance in Y. The statistic which is used to determine how well X can be used to explain or to predict Y is called "R-square" or the coefficient of determination. It is interpreted as the proportion of the total dependent variable variance explained by the independent variables. The value of R-square will range from 0 to 1, where 0 is no predictive power and 1 is perfect prediction.

As noted, the multiple regression is a straightforward extention of simple linear regression. The only difference is that Y is a function of more than one X, i.e.:

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[29] Actually economists agree that C is not only fully determined by Y. But with the "Ceteris Paribus." assumption, they then develop a deterministic equation.

$$Y = a + b_1X_1 + b_2X_2 + b_3X_3 \ldots b_n X_n + e$$

Each term in the multiple regression equation has a clear analogue in the simple linear regression. The only difference that needs to be emphasized is that each "b" represents the magnitude and direction of the association of a particular X to Y when all other X scores are held constant.

In using multiple regression analysis one needs to have data measured at least at the interval level. For this study, the PLIB scores for each judge are interval scale. The background characteristics, on the other hand, will be at a measurement level lower than interval level if they are not recoded to dichotomies. However, if they are operationalized as dichotomous variables, they are appropriate for use in multiple regression equations.[30]

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[30] Michael S. Lewis-Beck, Applied Regression: An Introduction, (Beverly Hills, Sage Publications, 1982), pp. 66-67.

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CHAPTER III

THE CANADIAN SUPREME COURT AND JUSTICES

Chapter I attempted to demonstate the significance of the judicial system in politics, particularly the Canadian Supreme Court in Canadian politics. Chapter II, then, presented the judicial behavior literature relevant to this inquiry. The purpose of this chapter is to acquaint the reader with the Court. It is divided into three main sections. The first section treats the historical development of the court. The second part is a discussion of the formal structure and procedure of the Supreme Court. The final part is a biographical study of the justices who have served in the Supreme Court during 1949 to 1980. This biographical study will be a stepping-stone to the analysis in chapter IV.

Historical Development of the Supreme Court

The Canadian Supreme Court is a relatively young institution. It was established in 1875, under the grant of power given to the Parliament by the British North American Act of 1867. During its early period the Supreme Court was not the final court for Canada. The final body was the Judicial Committee of the Privy Council in England. The final appeal to the Privy council was abolished in 1949 and the Supreme Court became the final court of appeal.

The establishment of the Supreme Court was not without difficulty. It took eight years after the introduction of the British North America Act, and it took another six years after the first Supreme Court Act was introduced to the House of Commons. The first bill was introduced on May 21, 1869 by Sir John Macdonald. According to his proposal

> the Supreme Court was to be composed of one Chief Justice and six Judges who were to hold office on good behavior and be removable only upon the address of the Senate and Hourse of Commons.... [Its intention was to establish] the Dominion's highest Court, but was not to be considered as doing away with the right of appeal to the Judicial Committee of the Privy Council in England.[1]

The Parliament did not take any action concerning the bill, instead copies of it were sent to the judges throughout the country for their opinions.[2]

On March 18, 1870 the new bill was introduced. This bill, however, was withdrawn on May 11. The main reasons for this abandonment were the question of representation on the court of each province and the jurisdiction of the new court. This bill did not contain a provision for the representation of each province. It was understood that the Chief Justice and six judges were to be chosen as far as possible in a representative manner from the benches and bars of the various provinces, with two judges from Quebec.[3]

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[1] Frank MacKinnon, "The Establishment of the Supreme Court of Canada," The Canadian Historical Review 27 (1946), p. 259.

[2] Ibid., p. 259.

[3] Ibid., pp. 259-260.

Concerning its jurisdiction, the proposed bill gave a vast power to the Supreme Court, including power over provincial law matters. This touched off the strongest reaction against the new court. The critics' basic contention was that decisions dealing with Quebec's Civil Code rendered by provincial judges who had been trained and had practiced in that legal system ought not to be reviewed by a court of appeal which has a minority who know such law. They pointed out that, "[it] would be that those same laws would be explained by men who would not understand them, and who would, involuntarily perhaps, graft English jurisprudence upon a French Code of Laws."[4] Their classical example was that

> The Quebec suitor who won his case before the Superior Court, the Court of Review and the Court of Queen's Bench in Quebec only to lose, three to two, before the Supreme Court of Canada might, in such a situation, lose his case when 11 judges had been in his favour and only three against him.[5]

After his withdrawal of the 1870 bill, Macdonald planned to introduce a third bill in 1873, but was prevented by his political defeat in that year. It took another five years for the third bill to be introduced. In 1875 the Honourable Telesphore Fournier, Minister of Justice in the Mackenzie Government introduced a bill for the establishment of a Supreme Court and a Court of Exchequer for the Dominion

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[4] Cited in Peter H. Russell, The Supreme Court of Canada as a Bilingual and Bicultural Institution, (Ottawa, Information Canada, 1970), p. 7.

[5] MacKinnon, "The Establishment of the Supreme Court," p. 262.

of Canada. This bill was passed on April 8, 1875 by a vote of 112 to 40. This marked the beginning of the Canadian Supreme Court.

According to this bill, the Court's principal function was to be a final appellate tribunal with broad powers of review over the provincial courts decisions. The Court was composed of six judges, including a Chief Justice. Among them two judges would be appointed from the benches and bar of Quebec.

Even though the 1875 Supreme Court Act established the Courts as a final court of appeal, it did not abolish the right to appeal to the Privy Council. The interpretation of section 47 of the Act is that

> no appeals would lie from the Canadian Supream Court, to any Court of appellate jurisdiction in the United Kingdom.... [However,] Privy Council... was not a court but an advisory board to the monarch and therefore did not fall within section 47 of the act.... [Thus, retain a right to hear an appeals].[6]

Concerning the Court's status when it was first established, MacKinnon pointed out that

> From the beginning the "supremacy" of the Supreme Court was overshadowed by the right of appeal to the Privy Council.... Although the right of appeal directly from the Court to the Privy Council was to be limited, it remained in the case of judgements of the courts of last resort in the provinces...[There were two] options of preceeding either to the Supreme Court or directly to the Privy Council. The Supreme Court was therefore "supreme" only in cases which were taken to it, and even then its "supremacy" was subject to the royal prerogative.... Hence the

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[6] "Historical Sketch of the Supreme Court of Canada," no author, Osgoode Hall Law Journal 3, (1964), p. 171.

authority of the Supreme Court would be final only in relative unimportant cases.[7]

On October 8, 1875 the first Chief Justice, Sir William Buell Richards, was sworn in and the other five judges, Sir William Johnstone Ritchie, Sir Samuel Henry Strong, the Honourable Telephore Fournier, the Honourable Jean Thomas Tashereau, and the Honourable William Alexander Henry, were sworn in on November 8, 1875. The Supreme Court convened for its first session on January 17, 1876. However, they did not hear an appeal until June 5, 1876 in Taylor vs. The Queen.[8]

In the first decade of existence, the Supreme Court was attacked by several groups. The lines of criticism were around the unresolved questions prior to the establishment. The members of the first group argued that the establishment of the Supreme Court under the subordination to the Privy Council did not serve the purpose of section 101 of the B.N.A. Acts, that is, to establish any additional courts for the better administration of the laws of Canada. They felt that the Supreme Court was simply an additional step through which the parties to the disputes have to go before appeal to the Privy Council.[9]

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[7] MacKinnon, "The Establishment of the Supreme Court," p. 262.

[8] Bora Laskin, "The Supreme Court of Canada: The First One Hundred Years, A Capsule Institutional History," The Canadian Bar Review 53 (1975), pp. 462-3.

[9] Russell, The Supreme Court of Canada, p. 16.

The second line of criticism was launched primarily by the Ontarians and Quebeckers. The Maritimes and Western provinces did not join in the attack because neither of them had established specialized courts of appeal. Thus they were "inclined to welcome the court as a better accessible and less expensive alternative to the Privy Council."[10] The Ontarians and Quebeckers, on the other hand, had recently established their appellate courts. These two groups, however, based their critiques on different factors. The Quebeckers emphasized the distinction between common law and civil law. The complained that their civil law ought not to be interpreted by a court whose members were predominantly trained in and had practiced common law.

The Ontario critics, on the other hand, were concerned mainly that, on the whole, the Supreme Court members would be far less qualified when compared to the judges of the Ontario Court of Appeals.[11] They lacked confidence in the Supreme Court justices who were appointed from provinces other than Ontario.

A serious attack on the Supreme Court came in 1879 when Mr. Joseph Keeler, the member of Parliament from Northumberland East, Ontario, introduced a bill to the Parliament of Canada to abolish the Court.[12] Fortunately,

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[10] Ibid., p. 18.

[11] Ibid., p. 18.

[12] MacKinnon, "The Establishment of the Supreme Court of Canada," p. 269

most of the members of the Parliament did not seriously consider the matter. They "treated the introduction of this bill as a practical joke and the first reading ended in a debate on procedure."[13] However, this did not prevent Mr. Keeler's second effort. On Febuary 19, 1880 a second bill with the same purpose was introduced. MacKinnon described the Parliament action as

> This time a lively debate took place on the merits and weaknesses of the Court. The critics decried the expense to the taxpayers of maintaining the Court; some declared that the cost to the litigants in appearing before it barred the poor from justice.... The possibility of the invasion of provincial rights was continually brought up. Political influence was also charged, for some branded the Court as a refuge for the political supporters of the late administration.[14]

With support from both Government and opposition, the Supreme Court survived the serious attack. "The government took note of the criticism and announced its intention of meeting the objections which were raised. The bill then received six months hoist by the vote of 148 to 29."[15] This marked the end of the efforts to abolish the Supreme Court.

Toward the turn of the century, the Canadian public, both French-speakers and English-speakers started to realize and understand the necessity for the bi-legal-culture co-existence side by side. This has helped the Supreme Court gain more confidence from the Canadian public.

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[13] Ibid.

[14] Ibid., pp. 269-70.

[15] Ibid., p. 271.

However, one major problem was still left unsolved, the subordination to the Privy Council.

The effort to abolish the right to appeal to the Privy Council was not something new in Canadian legal development. It had been current among Canadian leaders since the Supreme Court had been first established. However, this effort did not succeed until seventy four years later in 1949. Canadian scholars, both historians and political scientists, agreed that the major event which paved the way for the abolition of the right to appeal to Privy Council was the Statute of Westminster (1931). By virtue of this Statute

> certain fetters that affected the legislative competence of Canada [were removed]. With these fetters removed, the provisions of the B.N.A. Act of 1867 had full effect to invest in the Parliament of Canada a complete legislative authority throughout the Dominion.[16]

In 1933 Parliament passed an amendment to section 1024(4) of the Criminal Code. According to this amendment "no appeal shall be brought in any criminal case from a judgement or order of any court in Canada to his Majesty in Council."[17] The Privy Council confirmed these two laws in the case of "British Coal Corporation vs. The King (1935)."[18] They held that "since the passing of the Statute of Westminster, the limitations of the Colonial Laws Validity Act were abrogated and the Dominion was competent

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[16] "Historical Sketch of the Supreme Court," no author, pp. 171-72.

[17] Ibid.

[18] Ibid.

to limit appeals on criminal matters to the Supreme Court of Canada."[19]

Fourteen years later, the Supreme Court Act was amended to make the Supreme Court the final appellate court for all Canada. On October 9, 1950, the Court held a special session "to inaugurate the new status of the Supreme Court of Canada."[20] Together with the Court's new status, the members of the Supreme Court were increased to nine judges with three judges to come from Quebec.

In 1975 there was a change in the Court's jurisdiction. Parliament passed a bill to abolish the right to appeal in civil cases involving]10,000 or more. This action was an effort to establish the dual legal system in Canada.[21] As a consequence, Russell argued that

> it will likely shift the Supreme Court's role to one which is principally concerned with the interpretation of federal statutes and the adjudication of citizen claims against federal administrative organs.[22]

The 1975 change is the most recent development of the Supreme Court. However, it was anticipated that when the new Canadian Constitution would be amended, the status of

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[19] Ibid.

[20] Laskin, "The Supreme Court of Canada," p. 463.

[21] Peter H. Russell, "Introduction: History and Development of the Court in National Society, The Canadian Supreme Court," Canada-United States Law Journal 3 (1980), Conference on "Comparision of the Role of the Supreme Court in Canada and the United States," Case Western Reserve University, Cleveland, Ohio, October 20, 1979, p. 9.

[22] Ibid.

the Supreme Court would be changed. The new status would make the Court a constitutionally established institution, not one established by an act of Parliament. This would give the Court full status as one branch of government in Canada. In fact, however, this was not achieved in the new constitution.

Canadian Court Structure

Although Canada is a federal state its court system is not a dual system. In general, the court system is divided into two types of courts: the federal courts which are established by Parliament (i.e., the Supreme Court and the Federal Court), and the provincial courts which are established by provincial legislatures (i.e., Superior Court, County Court, and many lesser provincial courts.) Despite this distinction, both courts are part of the integrated whole. Appeals may be made from the highest courts of the provinces to the Supreme Court. Generally speaking, then, the federal and provincial courts are not necessarily given separate mandates as to the laws that they are to administer. For example, the criminal codes are ligislated by the Parliament, but are administered mainly by the provincial courts as well as the federal courts. Figure 4 shows the structure of the Canadian courts system.

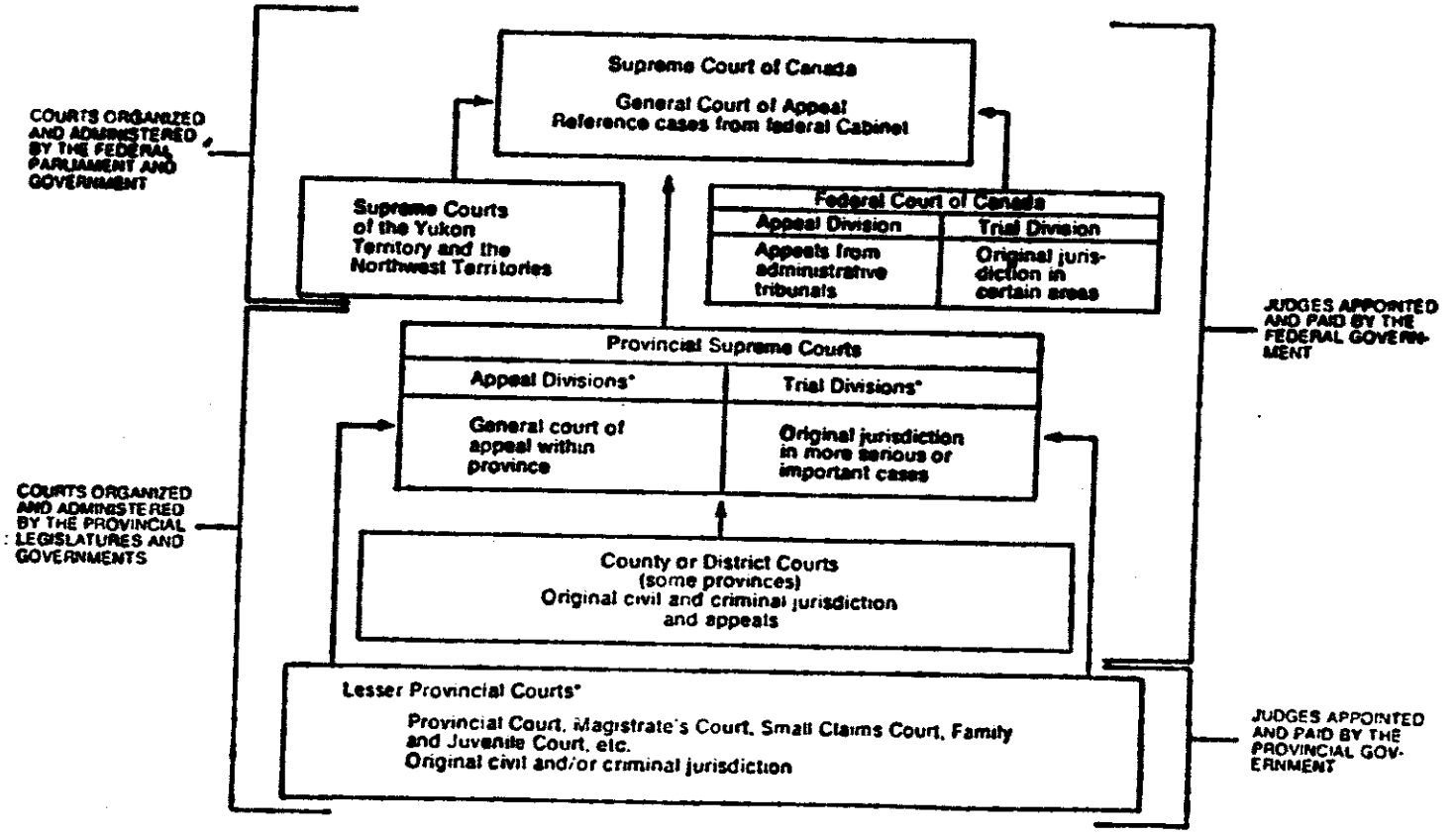

Fig. 4--The Canadian court structure

Source: Reproduced from Colin Campbell, Canadian Political Facts, 1945-1976 (Toronto: Methuen, 1977,] p. 111.

The Provincial Courts

The Provincial courts are the lowest level court in the Canadian's Judicial system. Since the provincial courts are established by provincial legislation, their names vary from province to province. Nonetheless, their structures are roughly the same. In general, they are divided into three levels, the lesser provincial courts, county or district courts, and provincial superior courts. The lesser provincial courts, such as Family and Juvenile Courts, Provincial Court, Magistrate's Court, and Small Claims Court, deal mainly with minor civil and criminal matters. The majority of disputes are originated and decided in them. At the next level, every province except Quebec has a system of county or district courts. These courts have an intermediate jurisdiction and decide cases involving claims beyond the jurisdiction of the lesser courts. They also have jurisdiction over the criminal cases, except those of the most serious types. The highest courts in the provinces are the superior courts. These courts hear civil cases involving a large sum of money and criminal cases involving serious offences. The superior courts are divided into two divisions, trial and appeal. The appeal court, with some exceptions, hears appeals from all the trial courts in the province and may be called upon to give opinions on matters put to them under the special reference procedure by their respective provincial governments.

The Federal Courts

With power granted to it by the B.N.A. Acts, Parliament has established two major federal courts, the Supreme Court of Canada and the Federal Court of Canada. Prior to 1971 the Federal Court was known as the Exchequer Court of Canada. In its present form, the Federal Court deals mainly with taxation cases; claims involving the federal government; cases involving trademarks, copyrights and patents; admiralty law cases; and aeronautics cases.[23] This court is divided into two divisions, a Trial and Appeal Division. The Appeal Division mainly hears cases appealed from various government board as well as appeals from decisions rendered by the Trial Division.

The Supreme Court of Canada.

Organization and Procedures. The Canadian Supreme Court, in its present structure, is composed of one Chief Justice and eight other puisne judges. As a requirement of the statute, three judges must come from the benches or bar of Quebec. All of the justices, including the Chief Justice, are appointed by the Governor-in-Council, i.e., the federal cabinet. In practice, the Prime Minister will make a choice with advice from the Minister of Justice. There is no ratification of the choices by any legislative or other body.[24] The judges hold office during good behavior and can

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[23] Government of Canada, Canada Handbook, 1980-81, (Ottawa: Canadian Government Publishing Centre, 1981,) p. 270.

be removed only by the Governor General on address of both Houses of Parliament. They retire at the age of seventy-five.

After the new Supreme Court Amendment of 1974, all judges are required to reside in the National Capital Region or within a twenty-five mile radius. In general, the Court will meet in three sessions. The first session begins in January and ends in April the second session begins on last tuesday of April and continues until the end of June. The Fall session commences on the first Tuesday of October and carries on until Christmas.[25] The Court is not required to sit in full bench; a quorum consists of five members. The Chief Justice has authority to assign judges to hear a particular case. Under the late Chief Justice, Bora Laskin, most of the cases were heard by the full court quorum. In their decision-making process, judges hear the cases on the basis of both written and oral argument. "The written material consists of a factum from each party containing a concise statement of the facts, the points in issue, and submissions thereon, and a list of the authorities relied on."[26] In general, the oral argument does not have a time

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[24] Russell, "History and Development of the Court in National Society," p. 12.

[25] Brian Dickson, "Operations and Practices, A Comparison," Canada - United States Law Journal 3 (1980), Conferences on "Comparison of the Role of the Supreme Court in Canada and the United States," Case Western Reserve University, Cleveland, Ohio, October 20, 1979, p. 88.

[26] Dickson, "Operation and Practices," p. 92.

limitation. After hearing the arguments, a decision may be rendered. Generally, however, the Court reserves decision for further deliberation and the writing of considered reasons.[27] In their discussion the Court allows justices to dissent from the majority opinion. Chief Justice Brian Dickson explains actions of the judges after recess as

> the most junior judge is called upon to state his views first, the others following in order of seniority. There is then general discussion....the only question is as to who will write the reasons for judgement. This is determined by informal process rather than assignment. One of the judges may volunteer....On other occasions, the Chief Justice may request one of the Justices to write. If points of divergence emerge and there is division within the Court, the same informal process is followed....When these are circulated, one of the judges in dissent may volunteer...[or they]...will decide among themselves who will write [the minority reasons] to reflect their point of view. Following circulation of the draft reasons, there is an interchange of ideas among the members of the Court on a one-to-one basis...or on a collegial basis....Judgments are delivered whenever ready and a Justice is free to change his mind, upon further consideration, up to the moment of the judgment. In brief, formal judgment is read by the Chief Justice in open court, and the supporting reasons are made available at that time to counsel and others, in both French and English.[28]

In terms of their decision, he points out that

> There is a full range of possibilities open to the Court in its judgment: it can squash the lower court's decision; send the case back; rule on the merits; or order that additional information be provided. In most cases, however, the Court simply affirms or sets aside the lower Court's decision.[29]

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[27] Ibid, p. 92.

[28] Ibid, p. 92-3.

Jurisdiction and Right to Appeal. The jurisdiction of the Supreme Court is provided for in Section 35 of the Supreme Court Act. The Act provides that "The Supreme Court shall have, hold, and exercise an appellate, civil and criminal jurisdiction within and throughout Canada."[30] By virtue of this Act the Court adjudicates upon both federal and provincial laws, and hears appeals from the ten provincial courts of appeal and from the federal court of appeal. In addition to those court-like functions, the Supreme Court is empowered to hear references by the government, or by the Senate or House of Commons, on such important questions as interpretation of the Constitution, or determining the validity of a federal or provincial Act. In short, the Court has a general jurisdiction in all areas of law in Canada, whether constitutional or administrative, public or private, criminal or civil, federal or provincial, common law or civil law. It is a conflict-resolver in the conflict between individuals, between individuals and corporations, between individuals or corporations and governments or government agencies, and between government agencies and government agencies.

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[29] Ibid., p. 93.

[30] Coded in Peter W. Hogg, "Jurisdiction of the Court: the Supreme Court of Canada," Canada-United States Law Journal 3 (1980), Conference on "Comparison of the Role of the Supreme Court in Canada and the United States," Case Westerm Reserve University, Cleveland, Ohio, October 20, 1979, p. 46.

The vast power of the Supreme Court is limited by the right of appeal. In general there are three processes by which the appeal will reach the supreme Court.

> First with leave of the highest court of final resort in a province from a final judgment of that court, that is to say, from the provincial appellate court whose judgment is sought to be questioned. Second, an appeal may come as of right in certain criminal cases....Third, [The Supreme Court] may grant leave...[31]

In practice the third procedure is the most common one for cases to reach the Supreme Court. Justice Dickson points out that the criteria for granting leave emphasize "the nature of the case, its significance for public and the degree of interest in the questions of law it involves."[32]

> I think, [it is] fair to say that the type of case standing the best chance of success when leave to appeal is sought is one which raises a constitutional issue, or a question of native rights or civil liberties, or an important question of criminal law or labour law and administrative law, or one which involves conflicting decisions of two provincial appellate courts.[33]

The discussion up to this point not only present the legal facts about the Canadian Supreme Court, it also provides the practical facts on the roles of the Supreme Court in Canadians life. In practice, though they do not state it directly, it is clear that the Supreme Court justices are involved in allocation of values especially when those issues involve the interests of the public.

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[31] Dickson, "Operation and Practices," p. 90.

[32] Ibid., p. 91.

[33] Ibid.

Canadian Supreme Court Justices: A Biographical Study

During the period from 1949 to 1980 26 justices served in the Canadian Supreme Court. The present Chief Justice, Chief Justice Dickson, is the seventh chief Justice since 1949. Appendix A shows the term which each justice served in the Court. Table V presents some of their social backgrounds.

Region.

Canada is often divided into four major regions, the Maritimes, Quebec, Ontario, and the West. In total, two judges represent the Maritime provinces; six judges come from western provinces and eight judges come from Ontario. Quebec has the largest representation with 10 judges. However, the compositions in each Natural Court show that in each period the number of judges from Quebec and Ontario are identical, except in the last two Natural Court where only two judges are from Ontario. Table VI shows the composition of each Natural Court.

One interesting point is the pattern of regional representation in the Supreme Court. The Supreme Court Acts only requires that three judges come from Quebec. In practice, however, the composition of each Natural Court will be one judges from Maritime provinces, two judges from the western provinces, and three each from Quebec and Ontario. This pattern may reflect the "iron law of Canadian

TABLE V

SOME SOCIAL BACKGROUNDS OF CANADIAN SUPREME COURT JUSTICES.

Justice	Social Backgrounds				
	Provinces	Religious Affiliation	Appointing Prime Minister	Age at Appointment	Tenure* (years)
Rinfret	Quebec	Roman Catholic	W. L. M. King (Lib.)	45	30
Kerwin	Ontario	Roman Catholic	W. L. M. King	46	28
Tashereau	Quebec	Roman Catholic	W. L. M. King	43	27
Rand	News Brunswick	United Church	W. L. M. King	59	16
Kellock	Ontario	N/A	W. L. M. King	51	14
Estey, J. W.	Saskatchewan	Baptist	W. L. M. King	55	12
Locke	Manitoba	Anglican	W. L. M. King	60	15
Cartwright	Ontario	Anglican	St. Laurent (Lib.)	54	21
Fauteux	Quebec	Roman Catholic	St. Laurent	49	24
Abbott	Quebec	Anglican	St. Laurent	55	20
Nolan	Alberta	N/A	St. Laurent	61	01
Martland	Alberta	Anglican	Diefenbaker (Con.)	51	23
Judson	Ontario	Anglican	Diefenbaker	56	20
Ritchie	Nova Scotia	Anglican	Diefenbaker	49	22
Hall	Saskatchewan	Roman Catholic	Diefenbaker	68	11
Spence	Ontario	Anglican	Pearson (Lib.)	59	15
Pigeon	Quebec	Roman Catholic	Pearson	62	13
Laskin	Ontario	Jewish	Trudeau (Lib.)	57	07
Dickson	Manitoba	Church of England	Trudeau	58	10
Beetz	Quebec	Roman Catholic	Trudeau	50	06
de Grandpre'	Quebec	Roman Catholic	trudeau	57	03
Estey, W. Z.	Ontario	N/A	trudeau	58	03
Pratte	Quebec	Roman Catholic	Trudeau	52	02
McIntyre	British Columbia	N/A	trudeau	61	02
Chouinard	Quebec	Roman Catholic	Joe Clark (Con.)	50	02
Lamer	Quebec	Roman Catholic	Trudeau	47	01
				mean age: 54.2	mean tenure: 19.9**

*See table III for the measurement of this variable.
**Computation bases on those judges who retired.
Sources: From Who's Who in Canada and Who's Who.

TABLE VI

PROVINCIAL COMPOSITION OF THE SUPREME COURT IN EACH NATURAL COURT, 1949-1980

Natural Court	Provinces			
	Maritime	Quebec	Ontario	Western
1949 - 1954	1	3	3	2
1954 - 1955	1	3	3	2
1956 - 1957	1	3	3	2
1958	1	3	3	2
1959 - 1962	1	3	3	2
1963 - 1966	1	3	3	2
1967 - 1969	1	3	3	2
1970 - 1973	1	3	3	2
1974 - 1977	1	3	3	2
1978	1	3	3	2
1979	1	3	3	2
1980	1	3	2	3
			2	3

Sources: Canada Law Reports: Supreme Court, vols. 21-52.

politics that Ontario must always have as much if not more than Quebec."[34] This pattern seemed to occur until 1979 when the Ontario representation was lowered to two, to make room for the western provinces. The increasing quota of the western provinces, from 2 to 3 judges may reflect the changes in Canadian politics where the western provinces recently have increased their importance in politics and economics of the country. This regional pattern of appointments of course can be interpreted as the reflection of the population, sectionalism and regionalism of Canadian politics.

[34] Russell, "History and Development of the Court ," p. 12.

Religious Affiliation.

The next variable that will be discussed is religious affiliation. This variable is not easy to consider alone. The complication is due to the fact that religion is hardly isolated from other social characteristics. For example, religion is associated with class, or in the case of Canada, it is associated with ethnicity and region. Most French Quebeckers are Catholic. Concerning the justices of the Supreme Court, this variable is incomplete; there is no available data for three justices (Nolan, W. Z. Estey and McIntyre). Out of the twenty-three judges, eleven judges are Roman Catholic. All of them except Justices Hall and Kerwin are French Quebeckers. Anglican judges make up the second largest group with six judges. Prior to the appointment of late Chief Justice Laskin, there were no non-Christian judges appointed to the Court. Laskin was a Jew. Even though it has been suggested by scholars that religious affiliation may be a factor in appointing judges to the Supreme Court it is hard to assess its impact on the recruitment process. Because there is a collinearity problem between religion and region for the judges who are included in the study, this variable is excluded from the final analysis.

Education.

Unlike some other political elites, judges are required to have specialized training in law and legal procedure.

Therefore, most of the justices of the Supreme Court share a similarity in their education. All of them had a pre-law education and continued on to legal education. Most of them graduated from more than one law school. One exception is justice Locke; his record does not show any pre-law or law school education. Table VII presents the distribution of law school which justices of the Supreme Court attended.

TABLE VII

LAW SCHOOL WHICH JUSTICES OF THE SUPREME COURT ATTENDED

LAW SCHOOL	NUMBER
Osgoode Hall University	6
University of Ottawa	5
Harvard University	5
Laval University	4
McGill University	4
University of Montreal	3
University of Saskatchewan	3
Oxford University	3
University of Toronto	2
University of Manitoba, University of Moncton, Bishop University, and Dijon University	1

Note: The total number of judges is greater than 26 since several judges attended more than one law school.

It is hard to say which university has supplied the most justice to the Supreme Court. This is because several judges attended more than one law school. However, some pattern can be established. The University of Montreal, McGill University, and Laval University dominated the Quebec judges. For the common-law school, Osgoode Hall Law School and University of Ottawa are their selections. Those judges

who had a chance to study aboard choose either Oxford University or Harvard University.

Age of appointment.

It is a statutory requirement that the justices of the Supreme Court must either have been a judge of a superior court of a province or have had ten years' professional experience in legal areas. This leads to the appointment of older judges. In general, the age of justices at appointment is around fifty, the mean age at appointment is 54.2 years old. During the period of this study, Chief Justice Tashereau was the youngest judge appointed to the Supreme Court. He was appointed at the age of 43.

Tenure.

As the result of their older ages at appointment and the statutory requirement that the Supreme Court justices must retire at the age of 75, most tenures on the Supreme Court are about twenty years. The mean value, as shown in Table V, is 19.9 years. This period is long enough for one to assess the impact of the re-socialization process of justices due to their experiences in the Supreme Court. Among all of the judges included in the study, Chief Justice Thibaudeau Rinfret had the longest tenure. He served in the Supreme Court for 30 years from 1924 to 1954.

Previous Professional and Political Experience.

Table VIII presents the career paths of Supreme Court Justices prior to their appointments to the Supreme Court. This table shows only their last three careers. Looking at their previous professions, four major professions stand out: judges of the high court of the provinces, lawyer, law scholar, and politician (see Table IX.)

There is a pattern of appointment due to their previous profession. In the early period, the appointees did not necessarily come directly from the provincials' superior courts. In the more recent period, there is a tendency to fill vacancies by promoting judges from the provincial's superior courts rather than appointing persons from other three major professions. Another recent important change in appointment is that fewer ex-politicians were appointed to the Court. In their study, Adam and Cavalluzzo found that 28 out of 50 judges, who served in the Supreme Court from 1875 to 1968, held some prior political offices. However, from 1949-1980 there were only 5 out of 26 judges who had some prior political experiences. In addition, for those who were appointed after 1970 only one person, Justice Chouinard, had some political experiences. This pattern may reveal an effort to establish the dignity and acceptance of the Supreme Court by appointing judges who are recognized and respected in the area of law in their provinces to the Supreme Court.

TABLE VIII

JUSTICES CARRIER PATHS, LAST THREE POSITIONS

Justice	Previous Professions		
	Last	Second to Last	Third to Last
Rinfret	Supreme Court of Montreal (1922-24)	Lawyer (1902-22)	None
Kerwin	Supreme Court of Ontario (1932-35)	Lawyer (1911-32)	None
Tashereau	Law Professor (1929-40)	Elected Member of Quebec Legislature (1930-35)	Lawyer (1924-40)
Rand	Law Professor (1925-43)	Elected Member of N. B. Legislature (1925)	Attorney-Gen. of N. S. (-25)
Kellock	Ontario Court of Appeal (1942-44)	Lawyer (1920-42)	None
Estey, J. W.	Attorney-General, Saskatchewan (1939-44)	Minister of Education, Saskatchewan (1934-41)	Law Professor (1915-34)
Locke	Lawyer (1910-47)	Military Personnel	None
Cartwright	Bencher of the Law Society of Upper Canada (1946-49)	Lawyer (1920-47)	Military Personnel (1914-20)
Fauteux	Superior Court of Quebec (1947-49)	Crown Prosecutor (1930-44)	Lawyer (1925-30)
Abbott	Minister of various Department (1945-54)	Elected Member of House of Commons (1940-45)	N/A
Nolan	Prosecutor (1946-56)	Military Judiciary (-1946)	Lawyer (1922-)
Martland	Lawyer (1932-48)	Military Personnel (- 1932)	None
Judson	Supreme Court of Ontario (1951-58)	Lawyer (1932-51)	None

TABLE VIII--Continued

Justice	Previous Professions		
	Last	Second to Last	Third to Last
Ritchie	Lawyer (1943-59)	Military Personnel (1940-43	Lawyer (1934-40)
Hall	Court of Queen's Bench and Court of Appeal, Saskat-Chewan (1957-62)	Barristor and Lawyer (1922-57)	None
Spence	Supreme Court of Ontario (1950-63)	Lawyer (1947-50)	Law Professor (1936-46)
Pigeon	Law Professor (1942-67)	Lawyer (1928-67)	None
Laskin	Supreme Court of Ontario (1965-70)	Law Professor (1940-65)	None
Dickson	Court of Appeals, Manitoba (1967-73)	Manitoba Court of Queen's Bench (1963-67)	Lawyer (-1964)
Beetz	Court of Appeals, Quebec (1973-74)	Law Professor (1953-73)	None
de Grandpre'	Lawyer (1938-73)	None	None
Estey, W. Z.	Supreme Court of Ontario (1975-77)	Court of Appeals, Ontario (1973-75)	Lawyer (1947-72)
Pratte	Businessman (1968-77)	Professor and Lawyer (1948-68)	None
McIntyre	Supreme Court of British Columbia (1967-78)	Lawyer (-1967)	N/A
Chouinard	Court of Appeals, Quebec (1975-79)	Politicians	N/A
Lamer	Court of Appeals, Quebec (1978-80)	Law Reform Commission of Canada (1971-78)	Lawyer (-1971)

TABLE IX

SUMMARY TABLE OF PREVIOUS PROFESSION

Professions	Previous Profession			
	Last	Next to Last	Second to Last	Total
Judges	14	3	0	17
Lawyers	4	9	7	20
Law scholars	4	2	2	8
Politicians	2	6	1	9
Prosecutors	1	2	0	3
Businessman	1	0	0	1
Military	0	3	1	4
N/A	0	1	15	16

Concerning prior political experiences, those five judges who had some experience are Justices Tashereau, Rand, J. W. Estey, Abbott, and Chouinard. Justice Tashereau was an elected member of the Quebec Legislature from 1930 to 1935. Justice Estey was Minister of Education in his province from 1934 to 1941, then Attorney-General of Sashatchewan during 1939 to 1944, before he was appointed to the Supreme Court. Justice Abbott is the judge who has the greatest prior political experience. He was a successful candidate for the House of Commons in the general elections of 1940, 1945, 1949, and 1953. In addition, he was Minister of National Defense in 1945 and became Minister of Finance in 1946. Justice Rand was an Attorney General for New Brunswick in 1924-1925 before he was elected a member of New Brunswick Legislature in 1925. Lastly, Justice Chouinard

had been Quebec's Deputy Minister of Justice and a candidate of the Conservative Party for Parliament in the 1968 general election.

Appointing Prime Minister.

As mentioned in Chapter Two, it was impossible for this study to acquire information about the justices' political party affiliations. However, it was shown by previous study that there is a relationship between political party of the Prime Minister who appointed a judge and that justice's party affiliation (see Table IV above). Thus, this variable is used as a proxy to their party affiliation. During the period of study, six Prime Ministers had a chance to appoint the justices of the Supreme Court. Chief Justices Rinfret, Kerwin, and Tashereau were appointed by Prime Minister W. L. M. King (Liberal Party). In addition, he appointed Justices Rand, Kellock, J. W. Estey, and Locke. Four judges were appointed by Prime Minister Louis St. Laurent of Liberal Party. They are Chief Justices Cartwright and Fauteux, and Justice Abbott and Nolan. Prime Minister John Diefenbaker (Conservative Party) appointed Justices Martland, Judson, Ritchie, and Hall. Pierre Trudeau (Liberal Party) appointed the most justices to the Court. His seven appointees included Chief Justices Laskin and Dickson,and justices Beetz, de Grandpre', W. Z. Estey, Pratte, McIntyre, and Lamer. In addition, he broke the Supreme Court tradition in appointing Chief Justice Laskin to the Chief Justice

position ahead of several senior judges.[35] Prime Minister Lester Pearson (Liberal Party) and Joe Clarke (Conservative Party) appointed one judge each: Justice Spence was appointed by Pearson; Justice Chouinard was appointed by Clarke. In terms of political party, the Liberals appointed 21 judges. Conservatives, on the other hand, had a chance to appoint only 5 judges.

Conclusion

This Chapter has discussed the historical background, structure and procedure of the Supreme Court, and the social backgrounds of the Supreme Court Justices. The first two sections are mainly descriptive without any analytical attempt. Their purpose is to aquaint the reader with the Court. The last section has attempted to categorize some of the factors which go to make up the Supreme Court Justices' background. In doing so, it does not desire to test any particular hypotheses or assumptions. It serves, however, as a stepping-stone to further analysi in the following chapter. In addition, it reflects the belief that laws are not fixed body of rules and regulations; they provide room for interpretation by those persons who are called judges. Judges, as human beings, have their own attitudes, beliefs, and values which may have impacts on the interpretation of the laws. Their life experiences may help to explain their decision-making behaviors.

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[35] Russell, "History and Development of the Court," p. 20.

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CHAPTER IV

DECISION MAKING IN THE CANADIAN SUPREME COURT

The purpose of this chapter is to examine the extent to which the variation in the voting behavior of Canadian Supreme Court Justices may be explained by the differences in their social backgrounds and career characteristics. One aspect of the justices' voting behavior -- degree of liberalism in public policies -- is established as a dependent variable. Eight background characteristics are defined to serve as the independent or "predictor" variables in a linear multiple regression analysis. Before proceeding to the statistical analysis, this chapter will present a longitudinal study of conflicts in the decision-making of the Courts. It purpose is to show the degree of absence or presence of conflict in the decision making of the Court. This notion is important to the study. In a multi-judge court where each judge is allowed to express his different view, it is possible that there will be conflicts in the decision of the cases. These differences in opinions or conflicts are assumed by scholars to represent differences in the attitudes, beliefs, and values of judges which lead them to interpret the law and facts of the cases in different ways. Their differences are assumed by the

personal attribute model to result from their social background characteristics and life experiences. In summary, it points to the fact that there are conflicts in the decision making of the Court due to differences in opinions of judges and the frequencies which with they were willing to fight for their beliefs by voting assent or dissent in a particular case.

The Longitudinal Study of Conflicts in Decision-Making

As mentioned earlier, this study covers the decision making of the Canadian Supreme Court from 1949 to 1980. Table X presents the total numbers of cases reported and the numbers of split decisions from 1949 to 1980.

Table X is divided into four columns: year; total cases reported; number of non-unanimous cases; and the percentage of non-unanimous cases to the total cases reported. Judged by the total number of cases reported, the Canadian Supreme Court has not had a heavy work load, especially in the early period. After the 1960s, however, its work loads started to increase. By the 1980s the number of cases heard by the Courts was more than double that of the earlier period (pre-1960). This fact may be interpreted in two ways. First, it may be a result of the greater complexity of Canadian society which leads to more conflict. Secondly, it may be a result of the Court's gaining more of the confidence of the Canadian public.

TABLE X

TOTAL CASES REPORTED AND TOTAL NON-UNANIMOUS DECISIONS, 1949-1980

Year	Total Cases Reported	Non-Unanimous	Percent
1949	46	12	26.09
1950	39	12	30.77
1951	45	15	33.33
1952	54	23	42.59
1953	68	24	35.29
1954	56	23	41.07
1955	72	20	27.78
1956	91	26	28.57
1957	65	24	36.92
1958	73	24	32.88
1959	74	17	22.97
1960	71	22	30.99
1961	75	15	20.00
1962	106	18	16.98
1963	90	15	16.66
1964	83	17	20.48
1965	82	32	39.02
1966	82	22	26.83
1967	90	17	18.89
1968	110	25	20.95
1969	105	22	20.95
1970	82	30	36.58
1971	82	24	29.27
1972	93	26	27.96
1973	87	19	21.84
1974	101	29	28.71
1975	110	36	32.72
1976	64	17	26.56
1977	155	38	24.52
1978	162	40	24.69
1979	164	32	19.51
1980	167	21	12.57
TOTAL	2751	737	26.79

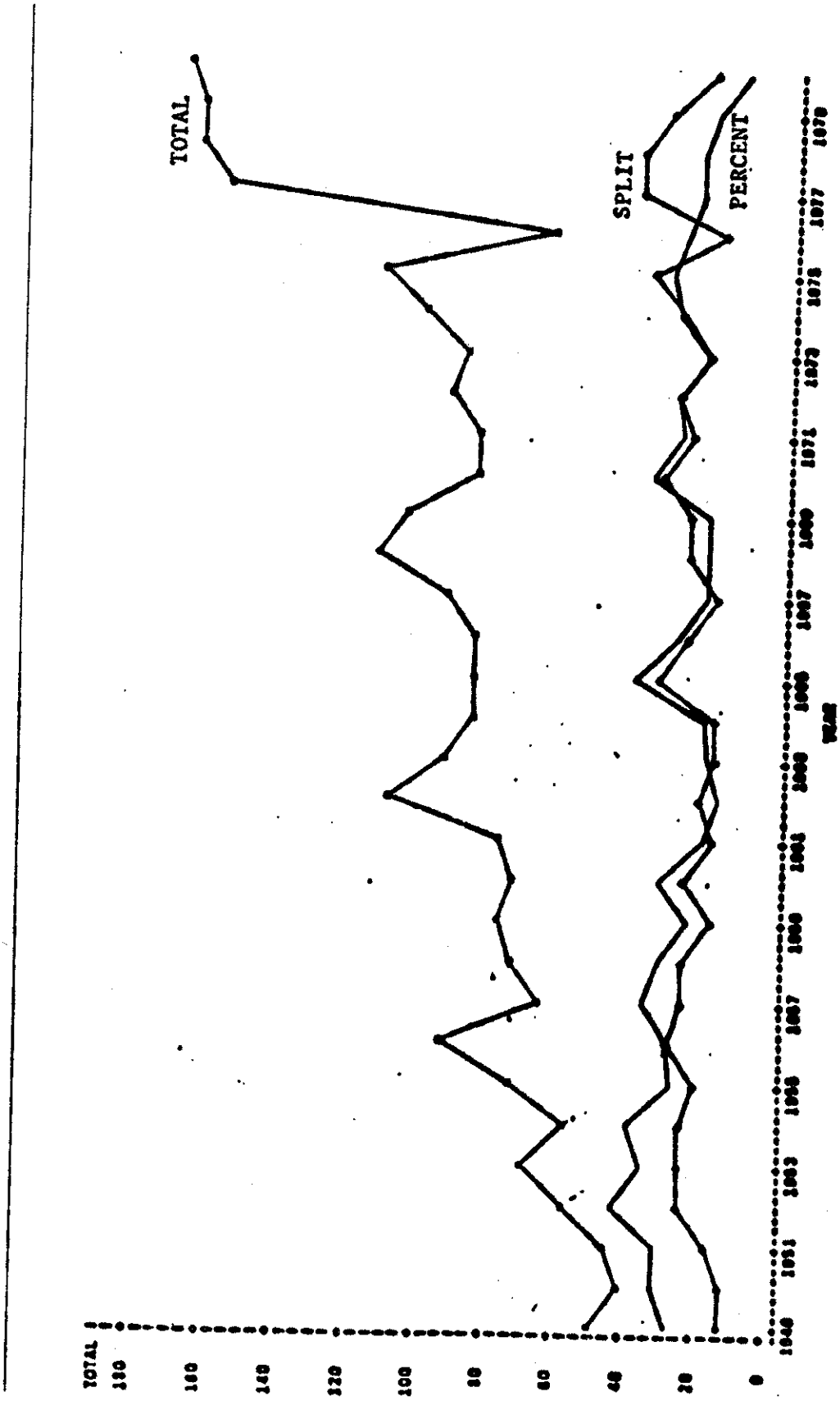

Fig. 5--Graphic presentation of cases reported and split decision

Judged by the percentage of non-unanimous decision, the Canadian Supreme Court has a low ratio of conflict. On the average, the mean percentage is 26.79% with the highest score of 42.59% in 1952 and the lowest score of 12.57% in 1980.

This data reveal some differences between the Canadian Supreme Court and the U. S. Supreme Court. In the first place, the Canadian Court heard fewer cases, averaging about 75 cases during the period from 1949 to 1970. The U. S. Supreme Court, on the other hand, heard on the average of 125 cases each year in the same period. Toward the 1980's, where the Canadian Court has started to have a heavier work load, its average cases heard per year still far lower than its U. S. counterpart. During the period from 1970 to 1980 the former heard an average of 115 cases per term while the latter heard on the average of 200 cases per term.[1]

Another difference is the number of the non-unanimous decision. Ryan and Tate reported, during the period 1946-1973, that there were a total of 1992 split decision cases in the U. S. Supreme Court with the mean of 74 cases annually.[2] The average cases reported by the U. S. Supreme Court in each year during 1946 to 1973 was 156 cases.

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[1] The average number of cases heard by the U. S. Supreme Court is approximated by Justice Potter Stewart of the U. S. Supreme Court in Potter Stewart, "Operation and Practice, A Comparison: the United States Supreme Court," Canada-United States Law Journal 3 (1980), p. 82.

[2] John P. Ryan and C. N. Tate, The Supreme Court in American Politics: Policy Through Law, (Washington D. C., The American Political Science Association, 1974), p. 74.

Roughly speaking, the propensity of occurence of the split decision in the U. S. Supreme Court is about 47.4 percent

Although the Canadian Supreme Court shows a smaller ratio than the U. S. (26.79 % compares to 47.44 %), it is possible to show that the two courts have similar patterns of individual justice's voting behavior. Computing the justices' liberal scores in the same way, Tate reported the range of %LIBCL, for the U. S. Court during 1946-1978, from 4.5 % to 94.3 % with a mean of 48.1 and standard deviation of 30.2.[3] In the similar way, his justice's %LIBECON scores are range from 13.9 % to 96.5 % with a mean of 50.9 and standard deviation of 26.3[4] For the Canadian Court, this study shows the range of justice's PLIB score is from 28.6 % to 80.3 % with the mean of 48.26 and standard deviation of 16.64 (see Table XI). The mean scores for both courts are in the same level. The Canadian Court, however, has a smaller distribution, as shown by the smaller value of standard deviation. Its distribution is cluster around the mean value.

The two courts show the differences among their justices' voting behavior. They both consist of "conservative, moderate and liberal" justices. And there is a big difference in conservative-liberal ideology among the

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[3] C. N. Tate, "Personal Attribute Models of the Voting Behavior of U. S. Supreme Court Justices: Liberalism in Civil Liberties and Economics Decisions, 1946-1978," American Political Science Review 75 (1981), p. 357.

[4] Ibid.

TABLE XI

THE JUSTICE'S PLIB SCORES (1949-1980)

Justices	Total Participation in Non-Unanimous Cases	Total Liberal Vote	PLIB
Rinfret	42	12	28.6
Kerwin	128	56	43.8
Taschereau	187	77	41.2
Rand	106	55	51.9
Kellock	55	25	45.5
Estey, J. W.	55	23	41.8
Locke	148	67	45.3
Cartwright	309	202	65.4
Fauteux	258	82	31.8
Abbot	249	79	31.7
Nolan*	8	6	75.0
Martland	374	124	33.2
Judson	365	116	31.8
Ritchie	380	141	37.1
Hall	164	111	67.7
Spence	321	229	71.3
Pigeon	236	87	36.9
Laskin	188	151	80.3
Dickson	128	75	58.6
Beetz	118	46	38.9
de Grandpre	67	20	29.9
Estey, W. Z.	50	39	78.0
Pratt	38	14	36.8
McIntyre	18	10	55.6
Chouinard*	4	3	75.0
Lamer*	0	0	0.0
count	737	392	53.3
mean (24 judges)		48.26	
standard deviation		16.64	

*Do not include in the analysis because they participated less than 10 cases in non-unanimous decisions.

justices of the Supreme Court. Table XII presents the classification of justice's voting by their PLIB scores.

TABLE XII

CLASSIFICATION OF JUSTICES BY PLIB SCORES

Classification		
Conservative (PLIB < 40.0%)	Moderate (40.0% < PLIB < 60.0%)	Liberal (PLIB > 60.0%)
Rinfret Fauteux Abbot Martland Judson Ritchie Pigeon Beetz de Grandpre' Pratt	Kerwin Taschereau Rand Kellock Estey, J. W. Locke Dickson McIntyre	Cartwright Nolan Hall Spence Laskin Estey, W. Z.

All justices are grouped into three categories based on their PLIB scores. The conservative group consists of those justices whose PLIB scores are less than 40 percent. The moderate group consists of those whose PLIB score range between 40.0 % and 60.0 %. The liberal groups are those whose PLIB scores are greater than 60.0 percent.

One will recognize that most of the Quebec judges fall in the conservative group and none is in the liberal group. Most of the liberal judges are from Ontario. This preliminary observation suggests a possible impact of their social backgrounds on their voting behavior. This is the subject of the following section.

Social Backgrounds and Voting Behavior

Despite the low ratio of conflict in decision making of the Canadian Supreme Court, it is possible to show the differences among the individual judge's voting patterns. The purpose of this section is to try to show the factors, in this case the social background characteristics, which account for those differences using multiple regression analysis.

Looking first at the simple correlation matrix in Table XIII, it is apparent that most of the predictors variables are relatively independent, statistically, from one another. Two pairs of predictors, region and religion, and age at appointment and tenure, show the moderate level of dependency. The coefficient for region and religion is -0.59. The bulk of its magnitude is probably accounted for by the fact that most of the Quebec judges are Roman Catholic. The correlation between age at appointment and tenure is -0.62. Their correlation has a straight forward explanation. The value of this correlation would be -1.0 if none of justices ever died or resigned before the compulsory retirement age of 75 years old. The younger judges will naturally have longers tenure than the older judges.

Three variables show some correlation with the dependent variable. Region and age at appointment are each capable of explaining on their own three-tenths of the variation in PLIB. Tenure can explain about two-tenths

TABLE XIII

CORRELATION MATRIX AMONG VARIABLES

Variables	1	2	3	4	5	6	7	8	9
Region	1.00	-0.59	-0.14	-0.38	-0.08	0.16	0.32	0.10	-0.60
Religious Affiliation		1.00	0.27	0.13	-0.14	0.19	-0.19	0.11	0.23
Previous Profession			1.00	-0.06	-0.37	-0.21	-0.32	0.14	-0.19
Age at Appointment				1.00	0.08	-0.14	-0.09	-0.62	0.53
Previous Judicial Experience					1.00	-0.32	-0.09	0.12	0.16
Political Office Experience						1.00	0.20	0.22	0.18
Political Party of Appointed Prime Minister							1.00	-0.24	0.15
Tenure in the Supreme Court								1.00	-0.44
PLIB Scores									1.00

of the variation. Other variables have predict less than a tenth of the variation in PLIB. Four variables, religion, age, judicial experience, and political party of the appointing Prime Minister, are positively related to PLIB score. The other four variables, region, previous profession, political office experience, and tenure, have negative correlations with PLIB scores.

Multiple regression analysis.

Even though the simple correlation matrix shows that most of the predictor variables are statistically independent from each other, it does not guarantee that multicollinearity is not a problem. To test for this each predictor variable is regressed on all the others. Table XIV presents the R-squares for these regression equation.

TABLE XIV

R-SQUARE TEST FOR MULTICOLLINEARITY

Variables	R-Square
Region	0.14
Religion	0.45
Previous Profession	0.41
Age at Appointment	0.39
Previous Judidicial Experience	0.40
Political Office Experience	0.37
Political Party of Appointed Prime Minister	0.26

The above table shows that five independent variables, religion, previous profession, age at appointment, previous judicial experience, and political office experience, show a

moderate level of multicollinearity. Religion is correlated with region, and age at appointment is correlated with tenure. Therefore, these two variables, religion and age at appointment, are omitted from the multiple regression model. In addition, three variables, previous profession, previous judicial experience, and political office experience, show some multicollinearity among themselves. Only one variable is included in the final model. The final multiple regression equation for this study consists only of four predictor variables: region, political party of appointing prime minister, previous judicial experience, and tenure. The results of multiple regression analysis are presented in Table XV.

TABLE XV

THE RESULT OF MULTIPLE REGRESSION ANALYSIS

R-Square = 0.60 F Value = 7.22
Adjusted R-Square = 0.52 P > F = 0.001

Variable	Parameter Estimate	BETA	F Value	P > F	Change in R-Square
Region	-22.36	-0.65	-4.15	0.0005	35
Tenure	- 0.60	-0.32	-2.10	0.049	15
Party	13.23	0.34	1.91	0.072	7
Judicial experience	0.53	0.17	1.18	0.253	3
Intercept	51.26		6.39	0.0001	

The four predictors model is statistically and theoretically better than the full model. By including the other four predictor variables in the model, R-square increases to 0.67, but, the adjusted R-square falls to 0.43. Since the four variable model achieves a higher level of adjusted explanatory power, one may argue that this model includes the most potent and important variables in explaining the variation in the justices' voting behavior.

In general, the results of multiple regression analysis are quite impressive. The predictors variables account for more than half of the variation in justices' propensity to vote liberally; the R-square is 0.60 with an adjusted R-square of 0.52. This model is higly statistically significant since the probability of it F coefficients is less than one in 1,000.

This model depicts the Supreme Court Justices' voting behavior as a product of their career experiences and affiliation. Its beta-coefficients predict the most liberal score for the judges who are non-Quebecker; who have previous judicial experience; who have served on the court for a shorter period of time; who were appointed by the Liberal Party Prime Minister. It predicts the most conservative score for judges who come from Quebec; who have served on the Courts a longer period of time; who have little judicial experiences; and those who were appointed by the Conservative Party Prime Minister.

The standard coefficients (Betas), indicate that region is the most important variable in explaining the variation in voting behavior. Statistically, it accounts for about one-half of the explained variance. In addition, its F-coefficient is highly significant statistically, since its probability is less than five in 1,000.

Two predictor variables, tenure and political party of the appointing Prime Minister, achieve the same level of importance in explaining the variation in PLIB scores. The standard coefficient (Betas) for party is slightly higher than that of tenure. However, the latter is more significant statistically than the former. The least important predictor is judicial experience. In addition to its lowest standard coefficient (Betas) value, its probability is far greater than 5 in 100.

Discussion and Conclusion

This study began with the simple proposition that court as a system has inputs and outputs. Its inputs are cases or disputes and outputs are decisions. Within the conversion process there are numbers of possible intervening factors such as judges, presentation of cases, laws, precedent, etc. This study focus on the social background characteristics of judges. The purpose here is to assess the explanatory power of those background variables in accounting for the variation in the justices' Liberal vote.

The statistical analyses of judicial background and liberalism in public policy issues suggests the following conclusions:

1. Judges who were appointed from the bench and bar of Quebec tend to be less liberal than judges from other regions;
2. Judges who have served in the Supreme Court for a longer period of time tend to be less liberal in their votes than shorter-serving judges;
3. Judges who were appointed by the Liberal Prime Ministers are more liberal than those who were appointed by the Conservative Prime Minister;
4. Previous judicial experience is positively correlated with liberalism in public policy;
5. Of those four predictor variables, region has the highest association with the justice's liberalism, and it accounts for more than one-half of the explained variance;
6. Overall, the model succeeds moderately well in accounting for the variation in the justice's liberalism in public policies issues.

It is interesting to see how the conclusions reached here compare to some previous studies. Table XVI summarized the conclusions reached by four studies: two studies (Bowen and Tate(2)) were the studies on U.S. courts; one study (Tate(1)) was on the Philippine Supreme Court; and this study on the Canadian.

TABLE XVI

CROSS-NATIONAL COMPARISON STUDY

BACKGROUND VARIABLE	STUDY			
	Bowen	Tate(1)	Tate(2)	This study
Region	Yes*	Yes	Yes	Yes
Religion	No*	No	No	N/I*
Political Party	Yes	Not	Yes	N/I
Appointing Executive	N/I	N/I	Yes	Yes
Judicial Experience	N/I	Yes	Yes	No
Tenure	No	N/I	No	Yes

*Yes, Significant; No, Not Significant; N/I, Not Included

Notes: 1. The above studies are selected base on 2 criteria:

1.1 The comparability of Statistical method;

1.2 The types of predictor variables included.

2. The variables are selected by either they are included in this study or two or more studies had included.

Sources: Don R. Bowen, The Explanation of Judicial Voting Behavior From Sociological Characteristics of Judges, Unpublished Ph.D. dissertation, Department of Political Science, Yale University, 1965.

C. N. Tate, "Social Background and Voting Behavior in the Philippines Supreme Court," LawAsia 3 (1972), pp. 316-38.

C. N. Tate, "Personal Attribute Models of Voting Behavior of U. S. Supreme Court Justice: Liberalism in Civil Liberties and Economics Decisions, 1946-1978," American Political Science Review 75 (1981), pp. 355-67.

Statistically, there are some similarities across those studies. First, all studies found that region is a significant variable in predicting justices' voting behavior. Two studies, which included an appointing executive as independent variable, found that it is a

significant predicting variable. Third, political party affiliation was found to have an impact on judges' voting behavior. Finally, religion did not show any significance in explaining the model.

The remaining two variables, judicial experience and tenure, are inconclusive. This study found that previous judicial experience was not statistically significant in explaining justices' voting behavior. However, the studies on the U.S. and Philippines Supreme Court showed it was significant. Tenure showed no significance in both studies on the U. S. courts, but was found to be significant in this study.

In conclusion, this study began with two purposes: to test the validity of the personal attribute model in explaining judicial voting behavior outside its original cultural context; second, to explain the variation in justices' voting behavior in the Canadian Supreme Court. For the most part, the result arrived in this study supports the validity of the model in cross-cultural study. Its second purpose was the statistical analysis. This showed that about 60 percent of the variation in justices' voting behavior can be accounted for. For now, we do not know which intervening variables account for the remaining unexplained variance. However, we do know that it is not accounted by region, tenure, political party of appointing Prime Minister, and judicial experience. At a minimum, we

can isolate those variables out of the myriad of variables and built a model which enable us to explain more than half of the variations of Canadian Supreme Court justices' voting behavior. The development of the more powerful model for this line of inquiry is a subject for further studies.

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Appendix A

JUSTICES OF THE SUPREME COURT OF CANADA, 1875-1980.

Chief Justices	From	To
Hon. Sir William Buell Richards.	1875	- 1879
Hon. Sir William Johnston Ritchie.	1879	- 1892
The Right Hon. Sir Samuel H. Strong.	1892	- 1902
The Right Hon. Sir Henri E. Taschereau.	1902	- 1906
The Right Hon. Sir Charles FitzPatrick.	1906	- 1918
The Right Hon. Sir Louise H. Davies.	1918	- 1924
The Right Hon. Francis A. Anglin.	1924	- 1933
The Right Hon. Sir Lyman P. Duff.	1933	- 1944
The Right Hon. Thibaudeau Rinfret.	1944	- 1954
The Hon. Patrick Kerwin.	1954	- 1963
The Hon. Robert Taschereau.	1963	- 1967
The Hon. John Robert Cartwright.	1967	- 1970
The Hon. Gerald Fauteux.	1970	- 1973
The Right Hon. Bora Laskin.	1973	- 1983
The Right Hon. Brian Dickson	1984	-
Puisne Judges.		
Hon. William Johnston Ritchie.	1985	- 1879
Hon. Samual Henry Strong.	1879	- 1892
Hon. Jean Thomas Tashereau.	1875	- 1878
Hon. Telephone Fournier.	1875	- 1895
Hon. William Alexander Henry.	1875	- 1888

Hon. Sir Henri Elzear Taschereau.	1878 - 1902
Hon. John Wellington Gwynne.	1879 - 1902
Hon. Christopher Salmon Patterson.	1888 - 1893
Hon. Robert Sedgewick.	1893 - 1906
Hon. George Edwin King.	1893 - 1901
Hon. Desire Girouard.	1893 - 1901
Hon. Sir Louis Henry Davies.	1901 - 1918
Hon. David Mills.	1902 - 1903
Hon. John Douglas Armour.	1902 - 1903
Hon. Wallace Nesbitt.	1903 - 1905
Hon. Albert Clements Killam.	1903 - 1905
Hon. John Idington.	1905 - 1927
Hon. James Mcclennan.	1905 - 1909
Hon. Lyman Poore Duff.	1906 - 1933
Hon. Francis Alexander Anglin.	1909 - 1924
Hon. Louis Phillipe Brodeur.	1911 - 1923
Hon. Pierre Basile Mignault.	1918 - 1929
Hon. Arthur Cyrille Albert Malouin.	1924 - 1924
Hon. Edmund Leslie Newcombe.	1924 - 1931
Hon. Thibaudeau Rinfret.	1924 - 1944
Hon. John Henderson Lamont.	1927 - 1936
Hon. Robert Smith.	1927 - 1933
Hon. Lawrence Arthur Dumoulin Cannon.	1930 - 1939
Hon. Oswald Smith Crocket.	1932 - 1943
Hon. Frank Joseph Hughes.	1933 - 1935
Hon. Henry Hague Davis.	1935 - 1944
Hon. Patrick Kerwin.	1935 - 1954

Hon. Robert Tashereau.	1936 - 1947
Hon. Ivan Cleveland Rand.	1943 - 1959
Hon. Roy Lindsey Kellock.	1944 - 1958
Hon. Jame Wilfred Estey.	1944 - 1956
Hon. Charles Holland Locke.	1947 - 1962
Hon. John Robert Cartwright.	1949 - 1967
Hon. Gerald Fauteux.	1947 - 1970
Hon. Douglas Charles Abbott.	1954 - 1973
Hon. Henry Grattan Nolan.	1956 - 1957
Hon. Ronald Martland.	1958 - 1982
Hon. Wilfred Judson.	1958 - 1977
Hon. Roland A. Ritchie.	1959 -
Hon. Emmett Matthew Hall.	1962 - 1973
Hon. Wishart Flett Spence.	1963 - 1977
Hon. Louis-Philippe Pigeon.	1967 - 1980
Hon. Bora Laskin.	1970 - 1973
Hon. Robert George Brian Dickson.	1973 - 1984
Hon. Jean Beetz.	1974 -
Hon. Louis-Philippe de Grandpre.	1974 - 1977
Hon. Willard Zebedee Estey.	1977 -
Hon. Yves Pratte.	1977 - 1979
Hon. William Rogers McIntyre.	1979 -
Hon. Julian Chouinard.	1979 -
Hon. Antonio Lamer.	1980 -

Appendix B

CODE BOOK FOR DATA COLLECTION

VARIABLE NAME	LOCATION
1. Deck number	1
2. Last two digits of year	2 - 3
3. Volume number	4 - 5
4. Page begin number	6 - 9
5. Case ID number	2 - 9
6. Docket number (N/A)	10-13
7. Docket Type (N/A)	14
8. Decision Type	15
7 = Formal	
8 = Per Curiam	
9. Total numbers of Majority votes	16
10. Total numbers of Dissenting votes	17
11. Individual judge vote	18-39
1 = Assented	
2 = Dissented	
3 = Did not participate in decision	
4 = Non-assertainable vote	
Blank = Not a member of the Court during the decision time	
col. 18. Rinfret	
19. Kerwin	

VARIABLE NAME	LOCATION
20. Taschereau	
21. Rand	
22. Kellock	
23. Estey J. W.	
24. Locke	
25. Cartwright	
26. Fauteux	
27. Abbot	
28. Nolan	
29. Martland	
30. Judson	
31. Ritchie	
32. Hall	
33. Spence	
34. Pigeon	
35. Laskin	
36. Dickson	
37. Beetz	
38. de Grandpre'	
39. Estey W. Z.	
12. Types of cases	40
1 = Civil Liberty cases	
2 = Economic cases	
3 = Fiscal Claim cases	
4 = Unclassified	

VARIABLE NAME	LOCATION
13. Cases outcome	41

1 = Pro government in civil liberty cases

2 = Pro individual in civil liberty cases

3 = Pro underdog in economic cases

4 = Pro monopoly in economic cases

5 = Pro government in fiscal claim cases

6 = Pro business in fiscal claim cases

7 = Unknown

14. Individual judge vote 42-45

(coding the same as number 11)

col. 42. Pratt

43. McIntyre

44. Chouinard

45. Lamer

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