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Constitutional History Independent Study

Cooper, Phillip J. Battles on the Bench: Conflict Inside the Supreme Court. (Lawrence: University of Kansas Press, 1995). 224 pages.

A casual observer to American politics would have no trouble finding conflict in the halls of Congress, or even finding disputes within the executive branch. However, this observer would have a tougher time finding conflict within the Supreme Court among the justices. According to Phillip Cooper in *Battles on the Bench*, the main reason for the lack of known conflict in the Court is the secrecy of the Court. In fact, the idea of conflict within the Court, according to the author, for many Americans is as absurd as a fist fight in the College of Cardinals. However, when nine people begin discussing the future interpretations of laws, a reasonable amount of disagreement is to be expected. However, Cooper points out that these disagreements are not always just professional. In his book, he discusses reasons for the fights that occur on the bench.

The strongest reason Cooper gives for Court fights is that sometimes these people have had bad disagreements in the past. The author admits this was more of a problem in the early Court when justices also served as Circuit Court judges. This would lead to problems when a justice's lower decision was overturned by the high court. However, it still does occur. Justice McReynolds was an anti-Semite who automatically disliked the Justice Brandeis. McReynolds refused to appear in public functions of the Court his Jewish colleague was also to be present. Justice Marshall saw Justice Powell, who had served on the school board a racially segregated school in Virginia, as a constant reminder of the legal fight that Marshall had spent all of his adult life fighting against.

Other reasons given by the author for tensions on the Court include: ideological tensions, conservative vs. liberal; ego; leadership contests, especially when trying to vie for an open Chief Justiceship; Court transitions, which can lead to someone in the majority to become part of the minority and bitter over it; and the role of the Court, which is problematic when justices use their position to gain other positions like Charles Evans Hughes when seeking the Presidency in 1916.

Cooper then spends substantial time on ways the justices fight. In this process, Cooper points out the Court has always been open for internal debate through the tradition of giving dissenting opinions to the Court's decisions. According to Cooper this is the most common way that the justices fight. Sometimes the opinions are only vague in their reference to a squabble, but at other times the justices have come right out and mentioned names, such as Anthony Kennedy has done in recent years to Sandra Day O'Connor.

The very nature of the Court can lead men and women who have been given enormous responsibility to disagree on issues. Cooper wonders why the fights do not occur more often. In his book he comes to the conclusion that the justices always remind themselves that they have to see their other eight colleagues every day, possibly for the rest of their lives. This reminder often keeps political squabbles from becoming too personal. Cooper points out that Justice Rehnquist and Justice Brennan have had some of the most bitter debates in the chambers of the Court. However, Brennan, who lost his wife to cancer, was one of the strongest personal supporters of Rehnquist as his wife suffered the same fate.

Conflict will always be a part of any group of people who wish to accomplish anything. Cooper's book does an excellent job of reminding the readers that the people who sit on the Supreme Court are people also. While the conflict can sometimes impose harm on the Court's process and/or reputation, these things will occur from time-to-time just as the College of Cardinals have some very heated debates when the position of the papacy becomes open.