“Socio-Political Experiences of Norwegian Supreme Court Justices”

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Abstract

The authors are engaged in a major research project on the Norwegian Supreme Court, in part using a data base which includes all non-unanimous decisions handed down since the end of World War II. One key piece of this larger research project involves the mapping of the social, political and governmental experiences of sitting justices which may shape their approach to legal and constitutional issues. The theoretical approach relies heavily upon the concepts of primary, secondary and reference groups.

We have clustered justices on the basis of a variety of group-based indicators we have collected, including such factors as gender, service in the national government, party of the appointing government, academic experience, region of the country, etc. Through an application of multidimensional scaling we have identified groups of justices with shared backgrounds. Based upon this analysis, we have constructed a typology of justices’ background experiences. The resulting group membership dimensions are linked empirically with judicial decision making in non-unanimous cases.
“No man is an island, entire of itself; every man is a piece of the continent, a part of the main…” John Donne (1839).

1. Introduction

The purpose of this paper is to explore the impact of social groupings on the decisional behavior of current Norwegian Supreme justices in non-unanimous cases ruled upon by the Court. We shall discuss the theoretical bases for our hypothesis (1) that socio-political groups affect the values that justices bring to the Court, and (2) that continuing involvement in group contexts helps to explain the justices’ non-unanimous decisions. We then proceed to identify socio-political dimensions around which justices cluster through an application of multidimensional scaling (MDS). Finally, we test the relationship between the inferred sociological axis coordinates and the justices’ votes.

In our estimation judges act as individuals, casting votes and writing opinions that reflect their own best estimation of relevant legal principles and political values. But there is more. Although law school education produces lawyers (and eventually judges) with an agreed upon understanding of the law, and thus has a homogenizing effect, their legal education does not insulate them from their experiences in socially and politically relevant group contexts. Notwithstanding the philosopher king role assumed by (or ascribed to) Supreme Court justices, they too are creatures of human habit, and thus are shaped by a variety of group influences during the course of their lives. Before proceeding to our empirical analyses, we need to set the stage by specifying the conceptual framework we hope to bring to bear on the matter of judicial socio-political experiences.
Contrary to some scholars of the Norwegian Supreme Court (e.g., Magnussen 2003; Doublet and Bernt 1992), we do not abide by the notion that the Norwegian Supreme Court renders decisions primarily on the legal merits in any dispute. Instead, we adopt the “attitudinal model.” Thus, our basic assumption is that ideological and/or policy preferences are the primary forces affecting a justice’s decisional behavior (see Segal and Spaeth, 1996; 2002; Segal and Cover, 1989; Bailey, Kamoie, and Maltzman, 2005; Wahlbeck, Spriggs, and Maltzman, 1998). Legal reasoning is certainly relevant (George and Epstein, 1992; Richards and Kritzer 2002; Hansford and Spriggs 2006), but Norwegian Supreme Court justices, bona fide members of the nation’s jurisprudential elite, do not stumble into the Høyesterett as political blank slates; they are individuals possessing constrained ideological and political values. Our purpose here is to consider a major source of those attitudinal predispositions, namely groups and social networks.

2. Group Influence – Primary, Secondary and Reference

Groups impact our lives in a multitude of ways, and one of the most critically important group contexts involves our ongoing face-to-face interactions among our closest contacts in daily life.\textsuperscript{1} Such associations are forged within what social scientists refer to as “primary groups.” As citizens we begin to learn political values very early in life, in what is the genesis of our political socialization, or simply the transfer of fundamental orientations to politics. For example, even during childhood, researchers have documented the emergence of party identification, a trait that by and large tends to be carried into the voting booth in adult life (Converse, 1969). Similarly, children begin to learn that voting is a “citizen duty,” (Campbell et al., 1960) a sense of responsibility that can lead them as adults to the ballot box on election day. Not surprisingly, political values are transmitted to children by the family, acting as the central agent of
socialization (Jennings and Niemi 1968, 1974, 1981; Tedin 1974; Dawson, Prewitt, and Dawson, 1977). We note that fundamental political values transmitted early in life shape our behavior when we achieve voting age.

As individuals age, primary groups involving regular face-to-face interaction are added, and are comprised of friendships outside the home, friends and teachers at their schools, and associates in their work environments. Our expanding universe of such close personal relationships explains, at least in part, why the political socialization process continues, albeit at a declining rate of change. Important for present purposes is that not only are fundamental political orientations transmitted within primary groups, but there is a strong tendency for the group to reinforce and/or influence conformity to those values, which can lead to high levels of homogeneity of attitude within such settings (Lazarsfeld et. al, 1944). Likewise, one is reluctant to stake out positions which would displease a personally relevant primary group.

Alford et al. (2011) provide a tripartite framework for explaining political homogeneity in adult life, the three components being: (1) Selection, choosing politically compatible associates, (2) Social Homogamy, shared experiences affecting viewpoints, and (3) Assimilation, which basically involves influencing one another in a primary group setting. In their specific application to spousal mates, they conclude that political homogeneity is produced “… in substantial part from assertive mating rather than from spousal assimilation or social homogamy” (Alford et al. 2011:376). Of course, we are not observing mates, family members, or ancestry,² but the three categories of influences are helpful in understanding why those in the legal community who become justices may be influenced within primary group settings.

Social scientists agree on the central importance of primary groups for individual opinion and behavior. However, “secondary groups” also exert influence over citizens’ political views.
While primary groups are characterized by steady, continuous communication among spouses, parents and children, some fellow workers and neighbors, secondary groups tend not to involve intense and ongoing interactions, and are likely to be a bit more formal than primary groups. A doctor may follow stated positions of a professional medical association, workers may embrace the objectives of their labor organization (LO), and members of the state church may share the religious views of the Lutheran Church. Typically, however, members of these secondary groups have far fewer conversations about politics, or anything else for that matter. Nevertheless, it seems likely that belonging to some professional legal organization can shape and reinforce the legal and political values maintained by its members.

Members of a secondary group may interact with some other members of the group, but in all likelihood this would represent a fraction of the total membership. For example, an individual may belong to a national labor union and directly interact with a few other trade union members, but personally “know” merely a tiny proportion of fellow workers. So, unlike primary groups, influence is not exerted to any significant extent by ongoing interaction and pressure to conform. The operative mechanism would not be direct social influence, but more likely a sense of identification with a group (Green et al. 2002; Greene 1999). Belonging to a more formal group does not imply necessarily that such membership will inform political values. Instead, what matters is whether it serves as a reference group (Miller et al. 1991).

Of one’s various and sundry group memberships, perhaps only one or two may operate as reference groups, specifically those whose political positions serve as a guide to the individual’s thoughts and actions. The dynamic, as we understand it, is nicely developed in The American Voter (Campbell et al., 1964). Quite simply, does an individual belong to a given group, identify with it, and is that group perceived to be relevant to the political question at hand? If the answer
to all three questions is a resounding “yes,” then we would expect that group identification would be strongly linked to an opinion adopted or an action undertaken. Moreover, not only can identification with a reference group provide important cues affecting attitudes and behavior, but can even insulate one’s opinions and beliefs from negative propaganda (Patterson and McClure 1976).

Groups remain important after one assumes the role of judge, as suggested by Baum’s (2008) thesis regarding the “audiences” of justices. Generally, people wish to be “liked and respected,” especially by members of those groups most salient to them. Judges are no exception to this rule. A mix of primary, secondary and reference groups may serve as audiences for any given Supreme Court justice. Perhaps a friendship network in which fellow lawyers interact is the relevant audience. Or, a judge might seek approval of a larger secondary interest group. Some might wish to perform for those with similar ideological orientations. We hypothesize that this is one more way in which group identity might maintain and reinforce judicial attitudes on a continuing basis.

3. Social Groups and Supreme Court Justices

Assuming Supreme Court justices had rather typical childhood and adolescent experiences, they were subject to a variety of early primary group influences, notably within their families, among their schoolmates, and among other face-to-face groups. In all probability, such encounters laid the foundation for politically relevant values that helped to shape the political ideology justices bring to the bench.

However, primary group influence is not confined to childhood and adolescence, as we have suggested above. Quite to the contrary, as professional lawyers, justices-to-be are
intimately involved in a variety of associations involving ongoing face-to-face interactions. Those serving in a private law firm certainly engage in interactions that have the potential to inform their positions on a variety of legal policies. Likewise, those who serve in government agencies do not escape the impact of attitudes reinforced within the cadre of colleagues with whom they have consistent, regular interactions. Similarly, their primary group involvement might include clusters of personal friends in a social circle. For example, a legal community may constitute an informal social network, as is the case in and around the nation’s capital. As Langeland (Kristjánsson, 2010a) has alleged, “it is difficult to document, but these discussions go on over wine glass in Oslo west.” Norms developed in such a group context can sway its members to share somewhat different orientations from those embraced in other legal clusters.

Adult socializing experiences among Norwegian lawyers can be generated through the interrelated processes of selection, social homogamy and assimilation, proposed by Alford and his coauthors. To begin, the social context within which shared values are more homogeneous than those held by the general public could be constructed through choice. Deciding to seek a legal education may be the initial step in channeling future judges into increasingly homogeneous groupings, but not necessarily a decisive one. When focusing on selection processes that bear upon a legal career, “selection” in a sense, is a two-way street. One may seek an employment opportunity, implying selection, but the employer also exercises choice in the matter. This “combined choice” may bring together likeminded people, relatively homogeneous in their values. Whether “selection” alone produces homogeneity of attitudes is an empirical question, but in the context of the broader Norwegian jurisprudential community we accept the proposition that a lawyer drawn into a specific social milieu will experience the processes of “social homogamy” and “assimilation,” specifically that attitudinal homogeneity flows from the
“… volume of shared experiences and interactions with each other” (Stoker and Jennings 2005:53). Quite possibly, this essentially primary group phenomenon might account for the extraordinarily high levels of homogeneity within the Norwegian jurisprudential network (Hjellbrekke et al. 2007). It would come as no surprise to find a tight knit legal social network located in and around the nation’s capital (McGuire 1993).

Once in a position, whether as a member of a private law firm or a government ministry, there are sufficiently shared experiences that promote substantial levels of political homogeneity. This is by no means to suggest that all individuals in a social setting are virtual intellectual clones. Certainly, there is some heterogeneity of mindset in any group of humans, but we do assert that there is relative homogeneity of political-legal orientations. The resulting “social homogamy” is hypothesized to set the stage for the process of “assimilation,” in which interpersonal interaction among these more or less similar individuals can shape and reinforce shared values. Simply put, “Like-minded people can encourage one another in their viewpoints, promote recognition of common problems, and spur one another on to collective action.” (Mutz 2002:852). In addition, there is the plain and simple social incentive to please those with whom one is in close personal interaction (Lazarsfeld et al. 1944; Berelson et al. 1954).

Regardless of which crowd a justice runs with, secondary and reference groups have their influence on a judge. Professional associations, labor unions, regional loyalties, and gender (to name but a few) often share politically relevant values that might shape a justice's worldview. Involvement with such groups could introduce and reinforce perspectives embraced by the overall membership. In many such instances, the influence of group membership is not automatic, but may hold sway when certain conditions are met, as indicated above. Simply put, (1) the group must have a known position on an issue, (2) its preference must be relevant to the
policy question at hand, and (3) the individual must identify with that group (Campbell et al 1960). For example, if (1) the Legislation Department has a general position on a legal matter, (2) that question is relevant for a case on the docket, and (3) a justice identifies with the Department, perhaps by virtue of a stint in that department, that justice’s decisional behavior may be more government-friendly than a colleague without prior experience in the Legislation Department.

Borrowing from Baum (2008), judges also might seek acceptance, validation, or even adulation from groups they value. From this perspective judges have favored audiences from whom they seek approval. Regarding the Norwegian Supreme Court, justices may treat a feminist group, or a government agency, or a professional legal association, or a labor union as a relevant audience. Similarly, close knit social networks, such as “Oslo West,” might be a justice’s favored audience.

From a theoretical perspective, then, internalizing political values can be understood in terms of group context, whether we treat these entities as primary, secondary, or reference groups, any number of which may serve as audiences for judges. We now turn to the task of operationalizing group membership with the overall objectives of identifying types of group experiences among justices and testing hypotheses regarding the impact of a number of group dimensions. Broadly speaking, our major analytical hypothesis is that group experiences are linked to the decisional behavior of Norwegian Supreme Court justices.

3. Data and Methodology

In an effort to map the various group memberships among Norwegian Supreme Court justices, we shall focus on the current composition of the Court as of this writing. An
alphabetical listing of the justices, their date of appointment, and the appointing government are summarized in Table 1. On the current Court there are 20 justices, 16 of whom were appointed by socialist single party or coalition governments. At 80 per cent of the justices, this is the highest level of socialist appointees since the late 1960s.

[Table 1 Goes Here]

In earlier analyses, we have treated appointing government as a proxy indicator of the individual justice’s ideology. With respect to group context, shared ideology (or shared partisanship) might serve as a group reference point that could affect the justices’ decisional behavior. We have found some support this notion, particularly with respect to public versus private economic interests. Specifically, justices appointed by socialist governments are more likely to find for the litigant claiming a public economic interest (see Grendstad et al 2010; 2011a). To measure this reference groups we use a nominal variable indicating the identity of the appointing government for each justice.

Another reference group is the gender of each member of the Court. Over the years there has been a concerted effort, supported by recent chief justices and the Ministry of Justice, to diversify the Court’s composition with respect to gender, and this has resulted in a notable presence of women on Norway’s High Court. Indeed, Andrews and Hoekstra (2010) report that Norway ranks near the top of national courts of last resort in terms of the number of women justices. Presently, 7 of the 20 justices are women, amounting to 35% of the total membership, a level of representation that has been stable over the last three decades (Grendstad et al 2011b). Although little empirical evidence of a systematic gender effect on behavior has been unearthed, two studies demonstrate that female justices are a bit more lenient in sentencing defendants in criminal cases (Hansen 2011, Østbye 2011, Østlid 1988). We include a measure of the justice’s
gender (1=female) in this analysis, since we consider it potentially relevant in the political socialization process.

In our discussions with legal scholars almost invariably they asserted that there is an Oslo-centric legal network that holds enormous sway over the country’s judicial process. “Oslo West,” as it is sometimes referred to, represents a tight knit community engaged in direct, personal interaction, which does not include those in the periphery beyond the nation’s capital. Within this primary group network, regular interaction occurs in the workplace and educational settings. Membership in the Oslo-centric group has even resulted in a justice sitting out a case due to the fact that a domestic partner is a lawyer arguing a case before the Supreme Court (Kristjánsson 2010b). To measure a possible “Oslo West,” effect we use a dummy variable differentiating between those justices born in Oslo (1) and those born elsewhere (0).

Presumably, this rough measure reflects the environment within which the justices are socialized and developed lasting relationships, both personal and professional. There is some empirical evidence that being born in Oslo is linked to decisional behavior in certain kinds of cases heard by the Court (Grendstad et al. 2011a). The current Court comprises 11 justices born in Oslo, or 55% of the total, the highest proportion since the 1950s (Grendstad et al. 2011b).

Another likely reference group is the product of experience in the national government. A good number of Supreme Court justices are drawn from those having served in the Legislation Department of the Ministry of Justice. This department is responsible for construing the meaning of the law (Skarpnes 1986) and, in fact, helping to draft legislation in the first place (Andenæs 1986). There is some evidence that this experience in the government is linked to support for the state (Kjonstad 1999; Grendstad et al. 2011c). The current Supreme Court includes 7 justices who worked from less than one to as many as 19 years in the Legislation
Department, representing 35% of the total; this is a lower proportion than has been the average of 41.5% over the last 25 years (Grendstad et al. 2011b).

Given the suspicion that the Legislation Department is a major recruiting ground of justices, we attempted to examine more closely the potential for networking within that division. Thus, we include a Legislation Department dummy variable for each year included in the analysis. If a current justice served in a given year, a 1 was assigned, otherwise a 0. These dummy variables will be used in a dimensional analysis to determine whether or not specific cohorts can be linked to an inferred dimension. At a minimum we are able to place justices in the Legislation Department milieu, thus including possible cohort effects. During the post-World War II year period, we find that on average 35.7% of the justices had served in the Legislation Department, ranging from 21.1% in 1950 to 52.4% in 1996. In fact, from 1984 on the percentage with Legislation Department experience was 40% or higher in all but three years (1999, 2000 and 2002), but even then the proportion was about average or slightly higher.

Recent sessions of the Court have witnessed the inclusion of justices harvested from the professoriate. From 1945 to 1990 no professors were appointed as permanent justices to the Supreme Court (Grendstad et al. 2011b). Since then, a sizable increase has taken place, reaching the high water mark of 4 (25%) by 2011. We measure professorial experience in two ways. First, one indicator is simply the number of years in which a justice was a law professor. This variable ranges from 0 to 10 years, and it is designed to tap the extent to which a presumably homogeneous profession, that is law, might shape the decisional behavior of the justices. Second, we use an indicator that measures whether that experience was at the University of Oslo, part of the Oslo West legal network, or at another law school in the periphery, i.e. in Bergen and Tromsø. Specifically, justices on the faculty at the University of Oslo were coded by the number
of years spent there, while those “periphery” law school professors were assigned the negative value of the number of years spent as members of this periphery faculty. Justices who were not members of the professoriate were assigned a 0. This indicator might reflect longevity in the Oslo West “in-group” (positive values) versus the number of years in the peripheral “out-group.”

Membership in other networks might well have a shaping effect on a justice’s decisional behavior as well. There is of course the potential for government service other than work in the Legislation Department, and two areas of service seem especially relevant to a justice’s behavior on the bench – employment as a government attorney or prior service as a lower appeals court judge. We incorporate membership in these networks by including a measure of the number of years a justice served as a government lawyer or as an appeals court judge. Interaction within these group contexts could shape a justice’s view of the law. Finally, we include the number of years a justice worked in private law practice, which might well shape the legal perspective of a future judge, with respect to such policy questions as public versus private economic interests or “government friendliness.” Specifically, those justices who had significant private practice experience before ascending to the High Bench may be less likely to support the government generally, and in economic policy in particular. We expect those with legal careers pursued in public service would behave quite differently.

A caveat is in order before we turn to our findings. We know full well that people have multiple group memberships, and some of those may be at political odds with one another, resulting in cross-cutting cleavages (Lazarsfeld et al. 1944; Berelson et al. 1954). Under such a condition, the observable effects of one or more group identities may be attenuated (Dunning and Harrison 2010). For example, if we assume that years of private legal practice would lessen a commitment to the government position in a case, and that working in the Legislation
Department would foster a bit more loyalty to the government, then having served in both sectors may diminish full-throated support for either the public or private sphere. Consequently, any particular group membership may not emerge as one that divides Supreme Court justices.

The first phase of the analysis involves an effort to capture in reduced space the common socio-political clusters exhibited by the current Norwegian Supreme Court. To do so, we employ multidimensional scaling analysis (MDS) on the complete set of group measures outlined above. From those data we shall compute all pair-wise Euclidean distances for the 20 justices and subject those distances to MDS solutions. We shall compute Stress 1 indices to aid us inferring the optimal dimensionality. Once completed, we shall identify and interpret the social group dimensions which characterize the current Norwegian Supreme Court.

The second stage of the analysis is designed to infer the extent to which these socio-political clusters influence the justices’ positions on non-unanimous decisions. Broadly stated, we hypothesize that group membership should explain, in part, the decisional behavior of Supreme Court justices. We test this hypothesis by estimating several preliminary multivariate models of the justices’ votes in cases raising questions of public versus private economic interests. The principal independent variables are the interval-like scores on the recovered multidimensional scaling axes, as well as select control variables.

3. Findings

Subjecting the array of group membership indicators discussed in the previous section to multidimensional scaling, the best solution recovers three major group dimensions, which had a stress 1 index of 0.075. The plot of the three-dimensional solution is displayed in Figure 1. We label the first, horizontal, axis “Public-Private” work experience, reflecting first and foremost
time spent in the Legislation Department, but also to some degree serving as an appellate court judge.\textsuperscript{10}

[Figure 1 Goes Here]

In Figure 1 Oslo born Justices Indreberg, Stabel, Bull, and Møse spent about twice as many years (approximately 14) in the Legislation Department as the average (about 7) for all those who claim Oslo as their birthplace. Interim Justice Akerlie also scores high on this dimension, with significant Legislation Department and appellate court judge service. Thus, these justices appear to be the consummate public employees. By way of contrast, Justices Endresen and Utgård spent a great deal of time practicing law in the private sector. It also bears noting that many of the current justices had overlapping years of service in the Legislation Department, suggesting that they could have interacted personally, a possibility we cannot verify at this time.\textsuperscript{11} Something about which we can be more certain is that each of these justices could have been influenced significantly by the norms and values of their Legislation Department colleagues at the time. When we rotate the three-dimensional plot so that we are peering down from the top of the graph, we can see more clearly that a sizable majority of the current justices were recruited from those with significant experience in public service (See Figure 2). Of course, this is not surprising, given the central importance of the public sector in Norwegian society.

[Figure 2 Goes Here]

The second axis, “Governmental Outsider,” primarily reflects no service in the Legislation Department. It is also linked to toiling within the walls of academia, but not as a faculty member of the University of Oslo Law School. Thus, these are academics emerging from the periphery. Justice Matningsdal is a virtual archetype of this dimension, but Justices Falkanger
and Skoghøy are also excellent examples of “governmental outsiders.” Born in the small southern municipality of Hå in Rogaland County, Justice Matningsdal was a faculty member of the University of Bergen Law School, with no work experience in the capital before ascending to the Court, and in fact, he still maintains a residence in Rogaland. Similarly, Justice Skoghøy has a conspicuous peripheral personal history. He was born in Tromsø, and except for his days as a law student at the University of Oslo, remained north of the Arctic Circle, principally as a private lawyer and as a University of Tromsø Law School professor before his appointment to the Supreme Court. Finally, born in Oslo, Justice Falkanger, himself the son of an Oslo law professor, took his law degree at the University of Oslo and his Ph.D. at the University of Tromsø. He served on the Hålogaland court of appeal (lagmannsrett), the jurisdiction of which covers Norway’s three northern-most and peripheral counties, Nordland, Troms and Finnmark.

The dimensional analysis locates Justice Indreberg as the polar opposite of Justice Matningsdal on the “Governmental Outsider” axis, and this makes good sense, given her long service in the Legislation Department and, to a lesser degree, her birth in Oslo. Finally, the dimensional analysis also identified Justices Bull, Møse, Stabel, and Tjomsland as governmental insiders.

“Ivory Tower” is the last and least consequential dimension the MDS analysis revealed. Length of tenure effectively determined this dimension, and three current justices (Matningsdal, Normann, and Skogøy) seem to typify it, as reflected in the three-dimensional plot displayed in Figure 1. (In Figure 3 we rotated the three-dimensional plot to better highlight the location of those three justices.) Each justice who is firmly located on the “Ivory Tower” axis was a member of a law school faculty for a significant number of years before ascending to the High Bench, although Justice Skoghøy did work in a private law firm. Justice Normann runs up the highest score on this axis, not only for her years on the University of Oslo Law School, but also because
of her gender. Indeed, being female is strongly correlated with this dimension. Note that, Matningsdal and Skoghøy notwithstanding, women tend to have higher scores on this axis, and that the eight justices scoring the lowest on this dimension are all males.\(^{12}\) This might illustrate an unintended consequence of the effort to diversify the gender composition of the Norwegian Supreme Court. Namely, the pool of potential female judicial nominees is much more homogenous than is the pool for male nominees. The decision to favor females in the selection process, then, results in staffing the Court more frequently with justices from a particular type of social group. To be sure, there may be more women on the Court, but at the cost of fewer representatives from other types of reference groups.

[Figure 3 Goes Here]

We fully expect that social and governmental background contribute to the formation and perpetuation of a judge’s policy relevant attitudes. Everything we know about group processes suggests that life experiences shape an individual’s world view, and indeed, the fairly recent emphasis upon increasing the diversity of the Supreme Court through appointment suggests that many on and off the Court embrace the notion that demography shapes destiny, at least in part. Of course, we recognize that legal training is something of a leveling experience, which may moderate the influence of value preferences developed beyond the ivory tower. That said, the influence of attitudes learned outside of the cloistered University setting is not beaten out of lawyers, certainly not those who are elevated to the highest court in the land. As a result, we hypothesize that the inferred three socio-political cluster scores should have influenced the decisional behavior of the Supreme Court justices.

While there are a limited number of cases to assess the impact of the socio-political dimensions, there are enough to undertake a preliminary test for those heard in 2010 and 2011.
First, we combine the votes cast by justices in five member panels handing down non-unanimous rulings on cases which address public versus private sector conflict over economic policy. For the nine such cases, we calculate the proportion of pro-public positions taken on such cases by each justice, which in turn, serves as an interval dependent variable. This measure exhibits considerable variability around a mean of .402, with a standard deviation of .373 and values ranging from 0 to 1. We find a moderate simple correlation of -.291 between this indicator and the first MDS dimension labeled “Public-Private” background, and slightly stronger association of -.348 with the “Ivory Tower” axis scores.

We then estimated a multiple regression equation which included “Public-Private” experience, “Ivory Tower” background, and the appointing government (0 = non-socialist, 1 = socialist), the results of which are reported in Table 2. Overall, the combined impact of these factors yields a multiple correlation of .567, and each independent variable appears to influence the justices’ votes. Not surprisingly, socialist government appointees were likely to stake out a position in support of the public economic interests, as reflected in a beta weight of .377. At first blush the -.325 beta weight associated with Public-Private background may appear counterintuitive. After all, one would expect public service to promote sympathy for broad public economic considerations, but that does not appear to be the case. Of course, there is no guarantee that a justice who labored in the Legislation Department or on an appellate court will vote for the public economic interest. If anything, this experience may in a limited way instill some nuance to the future justice’s decisional behavior. Likewise, immersion in an Ivory Tower social environment tended to encourage a justice in a direction more favorable to the private interest, as indicated by a beta weight of -.274.
Three cases were heard *en banc*, including (1) a 6-5 vote declaring a government tax on ship owners unconstitutional as in violation of the ex post facto prohibition, (2) a 9-4 vote overruling the government’s selling of church property at sub-market values, and (3) 11-6 vote ruling that that 1992 Bosnia-Herzegovina war crimes could not be prosecuted under a 2005 Norwegian statute. Each case was coded as a dichotomous variable, with 0 for a justice deciding against the government and 1 for a justice who did vote for the government’s position.

Based upon simple correlations, we chose “Government Outsider” and “Ivory Tower” as independent variables for inclusion in a logistic regression analysis of voting in the Ship Owner case. We find that these two variables produce a Nagelkerke $R^2$ of .516, and predict justices’ votes with 70.0% accuracy. In this instance, the regression coefficients indicate that being a “Government Outsider” pushed a justice in a direction favoring the ship owners, while the “Ivory Tower” types were a little more likely to side with the government. (Parenthetically, when we include appointing government, the Nagelkerke $R^2$ rises to 1.0 and votes are predicted with 100.0% accuracy.)

On the government sale of church property we find that the Nagelkerke $R^2$ of .336 indicates moderate influence played by “Public-Private Experience” and “Ivory Tower” background on voting in this case, and the equation could predict correctly 75.0% of the votes. Again, the regression coefficients reveal that “Ivory Tower” once again tended to prompt a pro-government vote, while “Public-Private” work experience was some encouragement to side with churches.

Finally, we find the lowest level of explanation for the Bosnia-Herzegovina war crimes prosecution ($Nagelkerke R^2 = .223$), with “Government Outsider” and “Ivory Tower” group dimensions modestly linked to voting in favor of the Norwegian law in the war crimes cases.
The preceding results based upon a limited number of cases with a small number of justices are really just tentative and preliminary. Nevertheless, socio-political background groupings appear to influence, at least moderately, a justice’s decision-making behavior, even though these socioeconomic clusters probably are not the proximate cause of votes cast.

**Conclusion**

In this paper we have attempted to cluster Norwegian Supreme Court justices on the basis of social, political and career experiences of those sitting on the Court early in 2011. Group theories, specifically primary, secondary and reference group theory provide a foundation for understanding the values embraced by individuals elevated to the Supreme Court. These justices do not arrive as blank slates, and, for that matter, cannot function as a human analog for mechanistic digital legal processors devoid of policy preferences.

The mental dexterity required to imagine that Supreme Court justices remain untouched by the political socialization process far exceeds our combined intellectual capacity. The brightest law students who graduated at the top of their class and have mastered legal reasoning and principles cannot possibly be devoid of any other political, ideological or policy content. If indeed that were the case, what government in any way connected to reality would appoint such an individual to the highest court in the land?

In the present study, a multidimensional scaling analysis solution allowed us to identify three axes that differentiate Supreme Court justices on the basis of (1) “Public-Private” work experience, (2) “Government-Outsider” status, and (3) “Ivory Tower” involvement. Preliminary analysis also suggests that these socio-political dimensions exert a modest impact upon the decisional behavior of Norwegian Supreme justices.
Notes

1 We acknowledge the fact that influence can be exercised by through the media, thus avoiding a mediating influence of groups (Zaller, 1992). In addition, the importance group context may be overstated from time to time (King, 1996).

2 That said, there have been more than a few family connections in the Norwegian legal elite community. For example, three of the current justices, Schei, Stabel and Endresen, had fathers who served as Supreme Court justices. Also, there was a spousal connection of former Supreme Court justice Kirsti Coward and Sven Ole Fagernæs, presently the Government Advocate, and a spousal connection of former Supreme Court justice Karin Maria Bruzelius and Inge Lorange Backer, a previous head of the Legislation Department in the ministry of Justice. Family connections are not unique to the Supreme Court. Indeed, the pattern holds for the national government in general, where presently about 25 percent of the ministers and advisers had partners in in positions of power (“Rundt 25 prosent av statssekretærerne og rådgiverne i regjeringen har partnere i tilsvarende maktposisjoner i politikk og embetsverk.” Gillesvik and Nordahl, 2011: p.8.) It appears that social, especially family, networks are major recruiting grounds for key government positions (“rekrutterer regjeringsapparatet i større grad fra hovedstadsnettverket.” Gillesvik and Nordahl, 2011: p.8.) In any event, social influence exerted within primary groups is by no means confined to those experiencing marital bliss, but by citizens in general, who interact with one another. For example, see Huckfeldt and Sprague, 1991).

3 Nevertheless, negative media communication can influence attitudes, even though basic long-term values, such as partisanship, remain powerful (Fridkin and Kenney, 2004). However, some might demur (Lau. et.al., 1999).

4 In this study, working in the Legislation Department was a dummy variable, with a 1 indicating previous service in the Department, and 0 otherwise.

5 Another group, the government prosecutor’s office has been found to bear upon position taking, at least in the government-friendliness of a justice (Grendstad, et.al., 2011c). However, the current court has no members with experience in this office.

6 The type of law practice may socialize differentially future justices. For example, a defense attorney may think clients are innocent, and upon becoming a prosecutor may tend to view defendants as guilty!

7 For A fuller discussion of multidimensional scaling can be found in Borg and Groenen (2005), Giguère (2006), Groenen and van de Velden (2004), Kruskal and Wish (1978), MacRae (1970), Rabinowitz (1975) and Schiffman, Reynolds and Young 1981, Weisberg, 1974). In this study we use the SPSS ALSCAL routine.

8 It has become fashionable to employ Poole’s (2005) spatial theory of voting to recover ideological dimensions. We are more interested in mapping social groupings rather than issue
positions in relationship to a cutting point. Thus, we prefer MDS to infer social clusters of justices in a manner more typical of the work of psychologists (Borg and Groenen, 2005: 9).

9 Generally speaking, 0.10 is considered a good fit, which the two-dimensional solution didn’t quite meet. However, the three-dimensional solution nearly attained a level of “excellent” (Rabinowitz, 1975).

10 These inferences are based up simple correlations of the axis coordinates with the individual indicators, such as sex. In essence these are analogous to principal component scores.

11 Legislation Department service dummy variables correlate moderately with the Public-Private axis for individual years from the late 1980s to the mid-1990s.

12 Perhaps notable for his absence is Justice Falkanger. Although he was recruited from the University of Tromsø law faculty, his experience in the public sector was greater than it was in the academy.

13 We include appointing government because we continue to find that it has the strongest influence on economic matters pitting private interests against public ones. While we did include this variable in the MDS solutions, it contributed virtually nothing to the interpretation of the nature of the group dimensions. In any case, the statistical findings with regard to the impact of Public-Private background and Ivory Tower experiences remain in tact, with or without the inclusion of the appointing government variable.
References


References (Cont.)


References (Cont.)


Table 1
Current Supreme Court Justices

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<thead>
<tr>
<th>Justice</th>
<th>Appointment Date</th>
<th>Appointing Government*</th>
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<tbody>
<tr>
<td>Eirik Akerlie (Interim)</td>
<td>January 17, 2011</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<td>Henrik Bull</td>
<td>January 17, 2011</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<td>Arnfinn Bårdsen</td>
<td>July 1, 2008</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<tr>
<td>Clement Endresen</td>
<td>August 28, 2006</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<tr>
<td>Aage Falkanger</td>
<td>May 1, 2010</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<tr>
<td>Liv Gjølstad</td>
<td>September 1, 1988</td>
<td>Brundtland II (DNA)</td>
</tr>
<tr>
<td>Hildre Indreberg</td>
<td>April 1, 2007</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
</tr>
<tr>
<td>Knut Kallerud (new)</td>
<td>June 24, 2011</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
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<tr>
<td>Wilhelm Matheson</td>
<td>November 1, 2009</td>
<td>Stoltenberg II (DNA, SV, Sp)</td>
</tr>
<tr>
<td>Magnus Matningsdal</td>
<td>August 11, 1997</td>
<td>Jagland (DNA)</td>
</tr>
<tr>
<td>Erik Mose</td>
<td>August 15, 2009</td>
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<td>Ragnhild Noer</td>
<td>October 1, 2010</td>
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<td>Kristin Normann</td>
<td>August 9, 2010</td>
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<td>Tore Schei (Chief Justice)</td>
<td>March 1, 1986</td>
<td>Willoch II (H, KrF, Sp)</td>
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<td>Jens Skoghøy</td>
<td>August 15, 1998</td>
<td>Bondevik I (KrF, Sp, V)</td>
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<td>Ingse Stabel</td>
<td>May 1, 2001</td>
<td>Stoltenberg I (DNA)</td>
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<td>Steinar Tjomsland</td>
<td>April 1, 1991</td>
<td>Brundtland III (DNA)</td>
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<td>Bård Tønder</td>
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<td>Karl Utgård</td>
<td>November 15, 1999</td>
<td>Bondevik I (KrF, Sp, V)</td>
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<td>Berghot Webster</td>
<td>August 15, 2009</td>
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<td>Toril Øie</td>
<td>August 1, 2004</td>
<td>Bondevik (KrF, H, V)</td>
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* Appointing Government Party Key:

DNA   Labour
H     Conservative
KrF   Christian People
Sp    Center
V     Liberal
Table 2

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<th>Independent Variable</th>
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<td>Constant</td>
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Multiple R = .567
Figure 1
Three-Dimensional MDS Network Test

Stress = 0.075
Figure 2
Three-Dimensional MDS Network Test

Stress = 0.075
Figure 3
Three-Dimensional MDS Network Test
Rotated to Reveal Ivory Tower

Stress = 0.075