Interrupted paper trails.

Analyzing decision making on the Norwegian Supreme Court

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Abstract:

Social science analyses of judicial decision making on the Norwegian Supreme Court started with a small exploratory analysis in 2007-2008. In that study, researchers compiled a data file consisting of fifteen justices casting a total of 163 votes in eleven non-unanimous plenary decisions on constitutional issues between 2000 and 2007. Today, the judicial behavior research project maintains a relational database that includes more than 17,000 decisions and more than 70,000 justices' votes, as well as a text database covering the full range of Supreme Court decisions since 1945.

1.   Creating databases

1.1   The void

The research project on judicial behavior on the Norwegian Supreme Court, including the project's database, had its genesis in a comment made during a panel on judicial decision making at the International Political Science Association's 2003 meetings in Durban, South Africa. Eric Waltenburg and Sam Lopeman presented a paper and served as panel discussants at the IPSA convention. While discussing a paper on the decisional outputs of the Norwegian Supreme Court, Lopeman suggested that the author consider the justices' preferences and values as a possible, systematic explanation for the behavior the author uncovered. The notion that a justice's attitudes might bear upon his or her decisions was hardly novel to Lopeman and Waltenburg. The role of attitudes in judicial behavior has been an accepted paradigm in American political science for a very long time, so when Lopeman's suggestion was met with some skepticism, they were somewhat taken aback.[1] Both Lopeman and Waltenburg being a bit bullheaded, however, they were convinced that the effect of attitudes on the decisional outputs of Norwegian Supreme Court justices was an empirical puzzle worthy of analysis. And although the panel's participants told them in no uncertain terms that Norway's justices decided cases according to the law and that politics (ideology) had no place in their rulings, Lopeman and Waltenburg decided to explore the role of attitudes on the votes of Norway's justices.

That empirical exploration, however, would be daunting. The problem was that neither Lopeman nor Waltenburg knew much about Norwegian law and politics. Luckily, William Shaffer, Waltenburg's colleague at Purdue University, had long nurtured a deep and abiding interest in all things Norwegian. Upon returning to the United States, Waltenburg related to Shaffer the reaction that Lopeman's comment had engendered. And after listening to Waltenburg's recounting of how the Norwegian Supreme Court allegedly did not venture into the 'political thicket,' Shaffer agreed that he should follow up while on sabbatical leave at the University of Bergen in 2006-2007. Specifically, he would investigate the proposition that politics, not simply legal reasoning, plays a key role in Norwegian judicial behavior. He discovered immediately that the Supreme Court received little coverage in the Norwegian press,

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[1] This and the next paragraphs draw on (Grendstad et al. 2015:xv).

that few people could name the Chief Justice of the Norwegian Supreme Court, and that some legal but no political science research on judicial behavior on the Court had been published. From there, Shaffer asked Gunnar Grendstad from the University of Bergen if he would join the Purdue research team.

1.2   Building data files

While the Norwegian Supreme Court publishes its decisions from the Appeals Selection Committee and its merits panels online as pdf-files, the single systematic source for decisions on the Supreme Court is *Lovdata*.[2] *Lovdata* is a foundation established by the Ministry of Justice and the Faculty of Law at the University of Oslo. It is a large text database which contains all Supreme Court decisions since 1945 and the most important decisions before that. It is organized toward and primarily serves the needs of lawyers, litigants, and the legal community. *Lovdata* contains all national legal sources (acts, laws, statutory instruments (*forskrifter*) and preparatory works, parliamentary papers), relevant international legal sources, as well as legal litterature, articles and relevant research publications. The most recent information is public and freely available at *Lovdata*, but a subscription is required to access to the full database.

The Purdue-Bergen research team decided first to limit the analyses to the non-unanimous decisions and to start with the most consequential decisions. The first attempt included eleven non-unanimous Supreme Court *en banc* decisions and the votes of the total of fifteen justices who participated in at least half of the cases heard by the full court. The eleven decisions cover the 2000-2007 period. The first round of collecting data from *Lovdata* was organized in Word and Excel files, depending on the type of information, and then analyzed in SPSS or STATA. Applying the attitudinal model (Segal and Spaeth 2002), the results of the analysis were presented at the 2008 MPSA Conference (Grendstad et al. 2008) and later published (Grendstad et al. 2010b).

Since virtually all merits decisions on the Norwegian Supreme Court are *not* decided *en banc* or in the eleven-justice Grand Chamber, the research team decided to expand the next round

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[2] https://www.domstol.no/hoyesterett/
https://www.domstol.no/no/Enkelt-domstol/-norges-hoyesterett/avgjorelser/avgjorelser-20181/
https://lovdata.no/ , https://lovdata.no/info/information_in_english

of analysis to include non-unanimous decisions handed down in the regular five-justice panels. The research question addressed judicial behavior in decisions that pitted a private party against a public party on a legal issue that involved economic interests and economic issues. The data included the 31 justices who had cast votes in 63 non-unanimous decisions on economic issues handed down by the Norwegian Supreme Court in the 2000-2007 period. This round of research included a total of 351 observations. The results were presented at the 2009 MPSA Conference (Grendstad et al. 2009) and later published (Grendstad et al. 2011).[3]

1.3   Taking stock

In August 2009, Grendstad travelled to Purdue University to spend his sabbatical working together with Shaffer and Waltenburg. Taking stock of the research efforts and realizing that a great amount of empirical analysis remained to be done, the team decided to include more non-unanimous decions in the five-justice merits panels. However, given the somewhat disorganized fashion in which data had been compiled across different types of files in the two first rounds of papers, a key question was how to best record, store and retrieve different types of data on decisions, justices and votes.

Up until 2009, the organization of different types of data had been done in a somewhat ad hoc manner. For the first two papers the data files were built step by step by manually matching information on the decisions with information on the justices through the individual votes of the justices. But this practice was not a viable strategy moving forward. It did not make much sense to more or less manually quintuplicate case information to the five justices who participated in the decision. And it did not make much sense to manually duplicate background information on each justice and match it to all the decisions in which they participated.

1.4   A relational database

The answer to the question of how to organize and handle data was to build a relational database which promises both rigor and flexibility. The guiding principle in a relational database is to store a piece of information only once and to store it where it logically belongs. It was decided to use

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[3] An early but still unpublished political science analysis of the justices on the Norwegian Supreme Court, using item-response modelling, can be found in Høyland et al. (2011).

Microsoft Access to build the database. This software is flexible, rigorous and user-friendly. The first step was to identify the different types of information in judicial research. The answer was three types:

- information on decisions,
- information on justices, and
- information on votes.

The next step was to initiate three separate tables and to allocate relevant types of information to each. And the third step was to establish the two direct relationships between the tables (see Figure 1).[4]
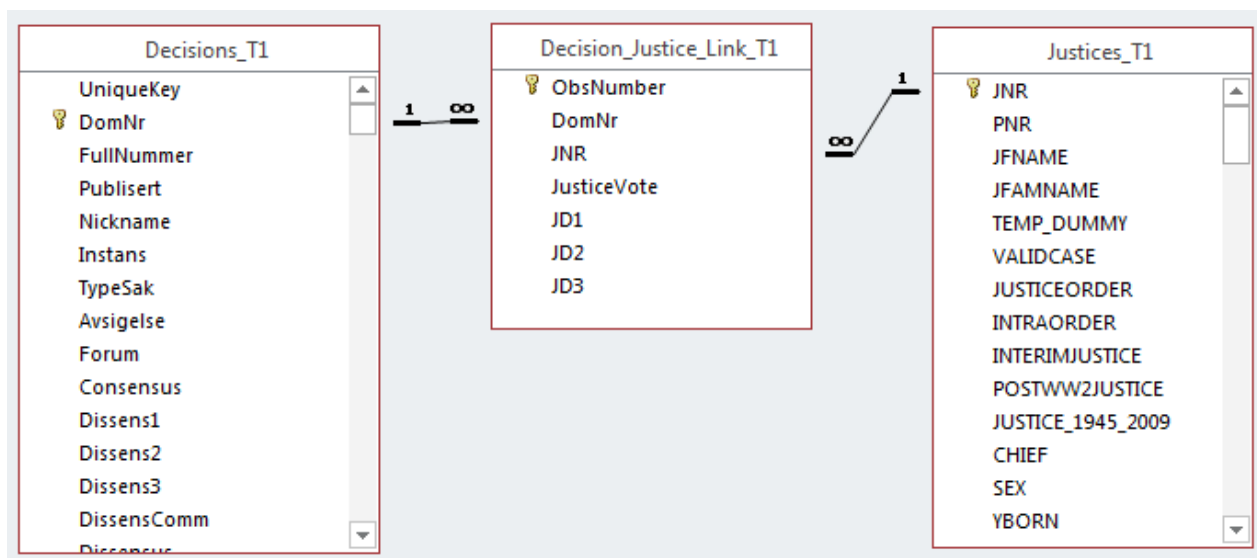

Figure 1 The three main tables of the *Doranoh* relational database and the relationships between them: Decisions, Votes (link), and Justices.

Decisions are linked to the justices' votes in a *one-to-many* relationship since more than one justice participates in every decision. Justices are linked to votes in a *one-to-many* relationship since a justice casts many votes during her time on the court. These relationships ensure that any information on any justice who participates in a decision can be linked to any information on the

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[4] The database consists of other interrelated tables, too, but they are less central here.

decison through the justice's vote, and vice versa. Thus became the structure of the database on judicial behavior on the Norwegian Supreme Court.[5]

       Lovdata adds meta data to the Court's decisions. It also inserts hyperlinks to statutes and earlier decisions. From the *Lovdata* database we retrieved and stored basic meta data in the decision table: court, date of decision, case identifier, key words, abstract, case history, parties, justices, and references to legal sources (See Figure 2). The textual data was later coded into numerical categories as needed. From a number of different sources – books, library biographies and online resources – we retrieved and stored information on the justices in the justice table. We coded the justices' votes in the link file according to whether a justice voted with the majority or the minority. Later, during more specific parts of research projects, when we needed to identify the type of judicial vote – majority or minority on the outcome of the case, concurrences, and direction of sentencing/compensation – we added more variables on the justices' votes.

       By December 2009, the research team had recorded the approximately 2,500 non-unanimous five-justice decisions on the Court for the 1945-2009 period. The team also had basic information on the justices participating in these decisions and whether the justices cast their votes with the majority or minority in each decision. The *Doranoh* database was at this point a skeleton structure to which more information on decisions, justices and votes could be added when needed or required. The new data was utilized in a research paper on voting coalitions on the Supreme Court (Grendstad et al. 2010a).

       Meanwhile, the research team submitted a research proposal to the Meltzer Foundation at the University of Bergen. The project aimed to hire law students who could read Court decisions and provide substantive and systematic coding, such as legal issues, case properties and decisional outcomes, to the decisions in the database. In March 2010, the Meltzer Foundation decided to fund the proposal. The research team drew on the *High Courts Judicial Database Codebook* (Haynie et al. 2007) and initiated a range of new case variables. In April Grendstad travelled from Indiana and back to the University of Bergen, hired two law students and introduced them to the coding protocol.

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[5] The database was named *Doranoh* [<u>do</u>mme<u>ra</u>tferd <u>no</u>rges <u>h</u>øyesterett] ['Judicial Behavior on the Norwegian Supreme Court'].

➡ Engelsk versjon

HR-2010-258-P – Rt-2010-143 – UTV-2010-511

Instans	Noregs Høgsterett – Dom.
Dato	2010-02-12
Publisert	HR-2010-258-P – Rt-2010-143 – UTV-2010-511
Stikkord	Skatterett. Rederiskatt. Tilbakevirkning. Prøvingsrett. EMK.
Sammendrag	Saken gjaldt omlegging av rederiskatteordningen som ble innført i 1996. Etter ordningen var skipsfartsinntekter «fritatt for skatteplikt», men uskattede inntekter ble skattlagt på det tidspunktet de ble utnyttet til utdelingen eller rederiet gikk ut av ordningen. Høyesteretts flertall kom til at likningen for rederiene måtte oppheves fordi overgangsreglene i lov av 14. desember 2007 nr. 107 avsnitt X var i strid med forbudet mot tilbakevirkende lover i Grunnloven § 97. Flertallet la vekt på at det ikke var sterke samfunnsmessige behov for å godta tilbakevirkning og det var dermed ikke nødvendig å gå inn på vernet av eiendom i EMK tilleggsprotokoll 1 artikkel 1. Dissens 6-5. **Henvisninger:** Grunnlova (1814) §97 | Menneskerettsloven (1999) EMKN P1 A1 | Endringslov til skatteloven (2007)
Saksgang	Aust-Agder tingrett TAUAG-2009-104 (09-000104TVI-AUAG) og Oslo tingrett TOSLO-2008-175618 (08-175618TVI-OTIR/08) – Høgsterett HR-2010-258-P, (sak nr. 2009/1575 og sak nr. 2009/1663), sivil sak, anke over dom.
Parter	**Sak nr. 2009/1575:** Bergshav Tankers AS (advokat Ingvald Falch), (advokat Thomas Horn – til prøve), rettsleg medhjelpar: (advokat Dagfinn Clemetsen) mot Staten v/Finansdepartementet (Ass. regjeringsadvokat Tolle Stabell), rettsleg medhjelpar [+] Vis alle
Forfatter	Utgård, Tjomsland, Skoghøy, Øie, Tønder, Justitiarius Schei. Dissens: Matningsdal, Flock, Stabel, Endresen, Indreberg.
Henvisninger i teksten	Grunnlova (1814) §75, §105 | Skatteloven 1911 (1911) §51, §51-a, §58 | Domstolloven (1915) §5, §38 | Fartøymålingsloven. (1964) §7a | Merverdiavgiftsloven (1969) §74 | Endringslov til skatteloven (1996) | Endringslov til skatteloven (1996) | Skatteloven (1999) §2-38, §8- [+] Vis alle

⚖ Avgjørelser   🪧 Andre henvisninger   📚 Litteratur   🔗 Del lenke   ⚙ Skriv merknad

(1)   Dommar **Utgård:** Saka gjeld omlegginga i 2007 av den reieriskatteordninga som vart innført i 1996. Etter 1996-ordninga var skipsfartsinntekter «fritatt for skatteplikt», likevel slik at uskatta inntekter vart skattlagde på det tidspunktet dei

Figure 2: An example of meta-text provided by *Lovdata* after a decision has been handed down by the Supreme Court. The meta data categories are (from top to bottom): court and type of decision; date of decision; case identifiers; key words; abstract; case history with the links and case identifiers to the lower court decisions; parties; justices; and legal references In this example, Justice Utgård starts to write the majority's position in paragraph 1 at the bottom of the screenshot. Source: Lovdata.no, Rt-2010-143. (Retrieved: November 12, 2018.)

The Icelandic ash cloud that descended over Europe on Thursday morning, April 15, 2010, had a silver lining. Grendstad had a return ticket to Indiana this morning but was "ash stranded" as all commercial air traffic in Europe was grounded. Exiled in his own land, the next week suddenly offered time and opportunity to start a research proposal on judicial behavior for the Norwegian Research Council.

1.5   Windfalls

In the spring of 2011 Grendstad offered a graduate course on judicial behavior at the Department of comparative politics. From this course, and from another course a year later, the study of judicial behavior attracted a handful of very motivated and competent students. The teaching and research efforts that were picking up speed coincided with and were boosted by three other developments.

First, in the spring of 2011 the department also offered an advanced course in regression analysis covering both theory and method in multi-level analysis. The students who took both the judicial behavior course and the multi-level regression course quickly connected the dots. If, these students asked, justices' decisions were driven by attitudes, why should this mechanism only take place in non-unanimous decisions? Why not expand the database to include unanimous five-justice decisions and have the statistical analyses of judicial behavior include the collegial level of decision making? Overall, the students added, there is a crucial institutional component that is missed by the limited attention to justices' individual votes in non-unanimous decisions only: justices on the Supreme Court also give *individual* votes in a *specific* case in a *collegial* and institutional setting where voting is a result of coordination and collaboration in *rotating five-justice panels* (Bentsen and Skiple 2012).

One bottleneck of the database was its configuration for a single user only. Another limitation was that access to read data automatically provided the right to write data. Selections of observations and variables from the database could be copied and exported for external coding later to be returned and integrated into the overall database (as was done with the coding by the two law students). But continuing such a practice was not only cumbersome, it was also somewhat of an affront to computer and data-savvy students. In May 2011 the solution was to split the database in two separate parts: a 'back end' and a 'front end'. The back end, containing all the data tables and the documentation of the variables, was placed on a restricted university

server for which logon and pass word were necessary for access. The front end, consisting of queries, forms, and reports to access the data, could be copied and shared across computers. A select group of students received training and were given access to the database. Several persons could now read and write on the database at the same time (though not on the same record).

Although the research proposal on judicial behavior to the Norwegian Research Council was not successful, the University of Bergen incentivized the researchers to improve and resubmit their proposal the following year by providing some life-support funding in the interim.[6] Two students were hired to update the database with information on unanimous decisions from *Lovdata* and link the decisions to the justices' votes. Starting with registration data for 2010, the students worked backwards until the money ran out in 1963, so to speak. In addition, new variables were added to the database as students and researchers suggested new research questions. From the updated and expanded database students extracted data that were exported to STATA and used for their master's theses (Bentsen 2012; Jacobsen 2012; Skiple 2012; Bergset 2013; Svendsen 2013).

Second, approaching over the horizon was the Norwegian Supreme Court's 200-year anniversary in 2015. As the legal community quietly started to launch seminars and conferences to celebrate the event, the Norwegian Court Administration stumbled in its effort to find an author who could complement the 1815-1905 and 1905-1965 volumes of the Supreme Court history (Sandmo 2005; Langeland 2005) with a new 1965-2015 volume. The Court Administration had recruited former appeals court judge and University of Tromsø law professor Aage Thor Falkanger as author. But Falkanger withdrew from the assignment shortly afterwards when the government appointed him as justice to the Supreme Court. The Court Administration then turned to law professor and legal historian Jørn Øyrehagen Sunde at the University of Bergen. Selecting Sunde was the perfect move. His dedication to impart and disseminate law and his willingness to engage with disciplines outside law began a constructive and fruitful collaboration with members of the judicial behavior project at the Department of comparative politics. Lawyers rarely boast about their statistical competence. Neither do political scientists brag about their legal insights. But the interaction between lawyers and political scientists paved

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[6] The resubmitted research proposal was not funded either.

the way for constructive interdisciplinary research.[7] By the time Sunde published his volume on the Supreme Court history (2015), cross-disciplinary collaborations were well underway.

Third, while gearing up for the 200-year anniversary in 2015, the Supreme Court had emerged emboldened from a major institutional reform. Traditionally, the basic goal of the Court had been to maintain its role as a passive court of appeals to resolve indeterminate cases. In 1995, the court implemented the criminal procedure reform that the parliament had passed. The reform gave the trial courts original jurisdiction in all criminal cases so that the appeals courts, which before the reform had original jurisdiction in large criminal cases, could deliver the rule-of-law guarantee of the right to appeal. The Supreme Court's workload at the gatekeeping stage fell dramatically and the Court was relieved from handling inconsequential criminal cases. In addition, a minor and inconspicuous clause added to the civil law procedure in 1990 was used increasingly by the justices to deny appeals. The slow change of the civil law procedure was fully codified and institutionally secured with the civil case reform in 2005, which was implemented three years later. From 2008 and onwards, the Supreme Court had the full opportunity to deny appeals where the legal question had no interest or consequence beyond the case itself. More than ever before, the Court's goal from that point on was to 'develop the law'. An appeal is now granted review by the Supreme Court if it the justices decide that it can be used as a vehicle for a more significant and interesting question.

So, in 2008, in the same year as a team of political scientists took advantage of the theoretical framework of the attitudinal model and presented their first empirical analysis of judicial behavior and policy making on the Norwegian Supreme Court (Grendstad et al. 2008), the justices on the same court slipped the surly bonds of mandatory appeals and embraced their new-found power of discretionary jurisdiction and complete docket control. The Court commenced on selecting appeals strategically in accordance with the Court's goal of developing

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[7] One example of the interdisciplinary work by a student of law is Nadim's dissertation on legal precedents which is obviously informed by his interactions with political scientists (Nadim 2017). The dissertations (in progress) by students of political science Bentsen (2018b) and Skiple (2018) are obviously informed by interactions with lawyers.

the law, aka policy making. Ascending the summit of policy making from opposite sides, political scientists and supreme court justices were suddenly standing face to face.[8]

1.6   Domstolr

In 2016 the research project on judicial behavior initiated a textual database on Supreme Court decisions. The motivation for the database was basically driven by students who saw the limitations as to how much case variation could be extracted from the decisional data organized in the *Doranoh* database. In addition, direct access to the judgements from the Supreme Courts and to the writings of the justices, including majority and minority opinions as well as concurrences, would offer great opportunities and expand research beyond the limited structure in *Doranoh*.

Under the agreement between the University of Bergen and *Lovdata* on use of data for research purposes, all Supreme Court's merits decisions were downloaded to a university server. *Domstolr*, developed and written by Olav Laug Bjørnebekk and Mikael Poul Johannesson (in cooperation with Henrik Bentsen, Jon Kåre Skiple and Gunnar Grendstad) is an R package that organizes text and metadata from all Norwegian Supreme Court Decisions since 1945 in seven different data matrixes:

- decisions,
- justices,
- parties,

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[8] In a 2017/2018 evaluation of the Social Sciences in Norway, the impact case 'HIGHCOURT,' which was based on the analysis of judicial behavior on the Norwegian Supreme Court with data from the *Doranoh* database, was identified as 'good practice:'

> "The impact case provides strong evidence that the research on the appointment of judges to the Norwegian Supreme Court spurred great public awareness and debate and that it had a significant influence on practical procedures through the decision to make recommendations for appointments public. The research also formed the background to legislative proposals for amendments of Norway's Constitution" (Forskningsrådet 2018:181).

- keywords,
- case history,
- text paragraphs (in the decision), and
- legal references.

Significantly, it is the matrix with text paragraphs from all Supreme Court decisions since 1945 that boosts the content of the *Domstolr* database. A first version of the database was presented to legal academics, political scientists, and compuational linguists in 2016 (Bjørnebekk et al. 2016). Although academic work based on data from *domstolr* is still in early stages, the data source offers great potential for future studies.

2.   Maintenance, developments and synergies

2.1   Doranoh

The *Doranoh* relational database basically consists of three types of information: decisions, justices, votes (see Figure 1). As of November 2018, the <u>decision table</u> consists of 184 variables and 17,247 observations, the <u>justice table</u> consists of 98 variables and 524 judicial appointments,[9] and the <u>vote table</u> consists of seven variables and 82,929 observations.

Basically, the *Doranoh* relational database consists as a skeleton with some flesh on its bones. Most of the decisions have the metadata (eg, date of decision, type of decision, and parties). There is also a handful of variables that most of the justices share, eg, year of birth/death, gender, birthplace, year of graduation, school of graduation, prior occupational experience, start/end year of appointment.[10] The decision and justice tables are richer closer to

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[9] The unit of observation for justices is the *appointment* of a justice. This type of unit provides the advantage of keeping track of individual appointments from the point of view of the government that makes the appointment (interim justices are frequently reappointed – the record is five reappointments).

[10] The compilation and organization of the part of the database that includes the justices requires approval by the NSD *Data Protection Services* pursuant of the *Personal Data Act*. http://pvo.nsd.no/prosjekt/23648.

the present. Information becomes more complete as one passes 1945 (all non-unanimous decisions), 1963 (all decisions) and 1988/1996 (information on more variables).

Variables are initiated, coded or updated in a 'need for research' basis, eg, economic decision making (Skiple et al. 2016) or why justices dissent (Bentsen 2018a). The 'silent revolution' of international law in domestic jurisprudence that gained momentum in the 1990s prompted a range of new variables in the database. Interest in the effect of gender and the experience of the parties' lawyers required additional coding of related variables (Misje 2018).

2.1.1   Student projects

When students approach the research team and ask for data from the *Doranoh* database to write a term paper, an early point of discussion is what kind of new or updated data the students themselves can bring to the table(s). The purpose of this discussion is for the students to understand that the data in *Doranoh* was contributed by somebody. In the same way as students today stand on shoulders of former students. Students today will be the former students of tomorrow.

If the students have the chance and opportunity to code new data, they will be given a limited datafile from *Doranoh* consisting of case identifiers and other relevant variables that will make their work easier (for instance, the links that take them directly to the full text of the decisions in *Lovdata*). Other types of coding may be to provide intercoder reliability or validate earlier coding in order to improve the overall quality of the database (Bjørnebekk 2015; Kalheim 2015). Both efforts will not only help students learn to do empirical research and make them understand that there sometimes is a lot of work behind a quickly downloadable data file; the intention is also to invite students into the research process and give them ownership to the data.

When the students have coded the data, it is examined and then imported into the database. Afterwards, they will receive a complete data set with the variables they need to answer their research question, including the data or variables that they already have contributed. When they have completed their term/research paper, they are required to return a final copy of the paper, data and syntax files for documentation.

A case in point is the political science and law student who wanted to study judicial behavior in environmental decisions. She gave the project the list of the 38 environmental decisions handed down by the court. Then she received a datafile with the relevant variables for

analysis (Liljeros 2018). Other student term papers address, for instance, the lawyers or case complexity (Misje 2018; Bringedal 2017; Arnesen 2017). Usually students are also given two or three auxiliary numerical and string variables where they can provide temporary codes and comments in order to provide additional case documentation. These variables communicate special information on cases and are integrated into the database, too.

2.2   Synergies

Domstolr offers a dynamic and flexible organization of text, allowing researchers to combine and organize text from the seven data matrixes. The *Domstolr* database provides efficient identification, coding and export of variables that can be integrated with ongoing analyses from the *Doranoh* database. For instance, the *Doranoh* database has exact information on which justices sit on any five-justice panel as well as detailed information on justices' pre-appointment careers. The *Domstolr* database offers researchers the possibility to pool all of a justice's written opinions. Combining elements from the two databases, researchers can analyze interesting and important questions on judicial recruitment and judicial opinion writing. For example: do justices recruited from legal academia speak differently or to a different audience than do justices recruited from government administration? Data from *Domstolr* can create new variables that improve analysis with data from *Doranoh*. For example, researchers can create issue-area variables using topic models which can be integrated into analysis of justices' votes on the merits.

Another area of research on the Norwegian court is the influence of the justices' seniority and role on panels. Two such categories are the presiding justice on the panel and justice who writes the majority decision. The most senior justice on the panel, or the chief justice if she is present, chairs the panel. Panel leadership is important. During conference/deliberation, the chair always takes the floor first, summarizes the case and suggests a solution. As a consequence, the chief justice and the most senior justices have the potential to influence decisions on the court (See Figure 3). Some research suggests that the presiding justice is highly influential (Eisenberg et al. 2013). Combining data from *Doranoh* and *Domstolr,* researchers can study if and when the presiding justice exerts influence over the outcome of the case and in what ways, if any, the presiding justice influences the positions of the author of the majority and minority opinions.
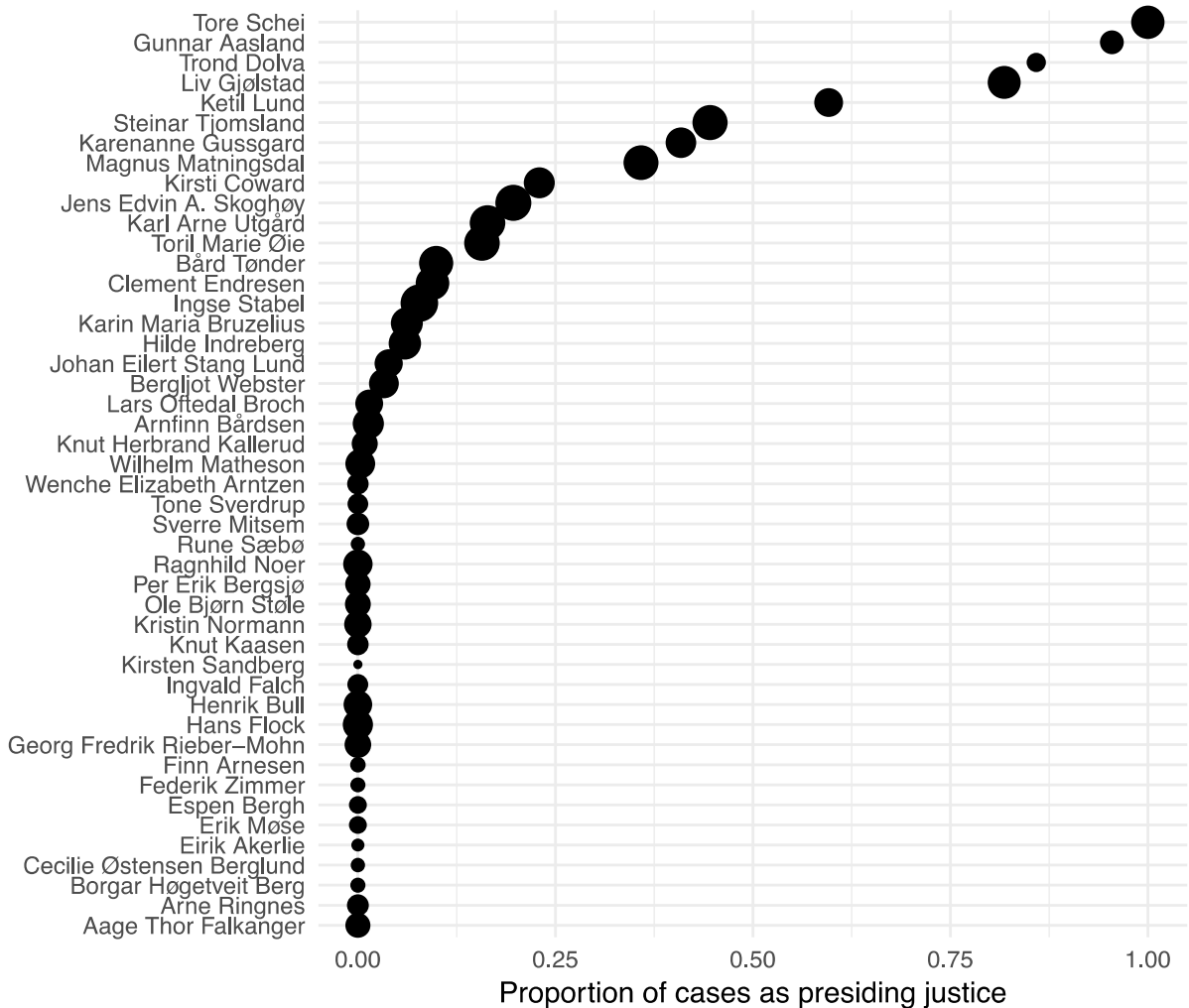
Figure 3: Supreme Court justices' participation in merits panels (size of marker) and proportion of times in the role of presiding justice (location of marker on y-axis). The Norwegian Supreme Court 2002-2017 (Tore Schei's court 2002-2016 and Toril Øie's court 2016-).

3.   Other data sets linked to the Norwegian Supreme Court

Alongside the major change in the Supreme Court from a court of appeals to a court of precedents is the growth and function of the clerk unit. The first clerk was hired in 1957. The number of clerks increased substantially in the 1990s. Today the 23 clerks in the clerk pool outnumber the 20 justices on the Court. Researchers have built a database with basic socio-demographic information on each of the 135 clerks who have served on the Court through 2017 (Grendstad et al. 2017). Information on clerks can not be linked to any way to the handling or processing of cases on the Court.

The author of the 1965-2015 volume of the history of the Supreme Court built a number of stand-alone data files that were used for various purposes during the writing of the volume (Sunde 2015). Some of the data from this effort have been imported to the *Doranoh* database, eg, information on the frequency of the justices' use of the term 'equitable considerations' that can be found in their opinions. 'Equitable considerations' is a doctrine of 'fairness' that enables justices to base rulings on changing political and social conditions (Grendstad et al. 2015:14).

Morten Nadim, in his study of Supreme Court precedents and the development of case law, draws on data on plenary and grand chamber decisions from *Doranoh* and expands the data to include detailed information on legal sources (Nadim 2017).

3.1 Internal Supreme Court databases

In January 2000, the Supreme Court introduced *Høyrett*, a new internal data system for organizing and managing the Court's case flow (NOU 2001:613). The data system includes various internal documents and information. The law clerks' notes to the Appeals Selection Committee and the Committee's own decisions to grant or deny are also part of the data system. The Supreme Court has on some occasions been willing to extract limited information from *Høyrett* but only if the requested information does not relate to or involve internal documents, internal procedures or decision making.

Høyrett also has limited functionality for accessing information *across* cases. Since information only can be extracted on a manual case-by-case procedure, information can only be provided if administrative manpower can be set aside for the request. At the end of the court term, which coincides with the calendar year, *Høyrett* generates the annual statistics of the different types and numbers of appealed cases, decided cases and backlogs.[11]

In March 2018, *Høyrett* was discontinued and replaced by *Lovisa*, which is the national, court-wide case processing system organized by the Norwegian Court Administration.

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[11] https://www.domstol.no/no/domstoladministrasjonen/publikasjoner/arsrapport/tema-13/mer-effektiv-saksbehandling/ [November 16, 2018]

4. Other Scandinavian databases

4.1 The Danish Supreme Court Database

The Danish Supreme court database is a relational database developed and maintained by Mark McKenzie, Henrik Bentsen and Jon Kåre Skiple (McKenzie et al. 2016; Skiple et al. 2018). The data is coded by McKenzie, Bentsen, and a Danish law student. The Danish database builds on the blueprint of *Doranoh* and links together three different tables: cases, votes, and justices. At the time of writing the database compromises complete data on all cases from 2013-2014, and on all cases involving tax issues from 2006 to 2016. The database contains information about all justices who have voted in the cases under study. The data on the court cases, including the information on which justices that vote in what direction in each case, are based on the judicial database UfR (Ugeskrift for Retsvæsen).[12] Information on the Danish justices is compiled from various contemporary, historical, and archival sources.

4.2 The Swedish Supreme Court Database

Sweden has one Supreme Court for criminal and civil law cases and one Supreme Administrative Court for administrative cases. To the best of this author's knowledge, Sweden does not have any databases on decisions and on justices for its Supreme Court or its Supreme Administrative Court. Research projects have been developed with the aim to establish such databases, eg, (Schaffer et al. 2018). Derlèn and Lindholm analyze data on the two highest courts in Sweden. It is unclear if data on justices exists. It is also unclear how data on decisions is organized (Derlén and Lindholm 2018, 2016; Lindholm and Derlén 2015; Lindholm and Derlén 2017).

5. Internetlinks

- Denmark (Supreme Court): http://www.hoejesteret.dk/hoejesteret/Pages/default.aspx
- Sweden (Supreme Court): http://www.hogstadomstolen.se/
- Sweden (The Supreme Administrative Court): http://www.domstol.se/templates/DV_InfoPage____2323.aspx
- Norway (Supreme Court): https://www.domstol.no/hoyesterett/

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[12] UfR is published by the Karnov Group (https://www.karnovgroup.dk).

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