What influences State Friendly voting in the Norwegian Supreme Court?

An Analysis of Dissenting Supreme Court Decisions from 1991 to 2012

by

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Abstract

The aim of this thesis is investigate if the Norwegian Supreme Court exhibits a state friendly nature when they vote in dissenting civilian cases where one of the litigants is the state in the time period 1991-2012. The state friendly hypothesis holds that the state tends to win more cases than private litigants, and that this tendency can't be explained by only the legal aspects of a case. Therefore this thesis will explore the *non-legal factors* that are apt to influence how a justice votes. Some of these factors are the ideology of the justice, measured by appointing government, the personal traits of the justice, factors connected to the case and the influence of the collegial nature of the court. This can be summed up in the research question: *What factors influences the Supreme Court Justices in dissenting cases where the state is one of the litigants.*

There are several theoretical models for analysing the voting behaviour of the Supreme Court. The most central of these models in this thesis is the *Attitudinal Model*. The thesis features an in-depth discussion on why the Attitudinal Model is applicable for research on the Norwegian Supreme Court

To test the hypothesis, the thesis utilises a *logistical regression* model consisting of 509 justice-observations. The optimal model for analysing hierarchical data, a multilevel model could not be used in this analysis because this model is not applicable when only analysing dissenting cases. The lack of multilevel analysis made panel effects mostly impossible to determine.

The results of the analysis show that justices appointed by social-democratic governments are statistically more likely to vote in favour of the state than justices appointed by non-social democratic governments. The results also showed that former occupation in the Legislation Department was had an especially strong positive effect for voting for the state, while being a former law professor had a negative effect. In addition the results showed that the degree of state friendliness varied between different areas of the law.

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"The question is not so much whether law plays a role, as what role it plays"
Friedman (2006:264)

Chapter 1 – Introduction

The debate on whether the Norwegian Supreme Court[1] is state friendly is not new. The historian Jens Arup Seip wrote in 1965 that the Supreme Court was not only a political, but that the institution's political involvement had been unusually strong. This claim was disputed by jurist and Law Professor Johs. Andenæs who claimed Seip's statement was "*historically misleading*" (1965:92). In recent the debate on the relationship between the Supreme Court and politics has remerged with the statistical studies of the justices voting preferences conducted by Gunnar Grendstad, William R. Shaffer and Eric N. Waltenburg (2010, 2011a, 2011b, 2012c). The studies showed a controversial connection between the justices' ideology operationalized as the appointing government of the justice and the votes in cases where the case is between the central state and private actors (Grendstad et al. 2011b) and in economic cases where public interests stand against private interests (Grendstad et al. 2010, Grendstad et al. 2011a, Grendstad et al. 2012c).

As in 1965 the law community is sceptical of the existence and meaning of such a link between votes and politics, Chief Justice Tore Schei characterized the link as "*meaningless*" (2011: 335) and Associate Justice Jens Edvin Andreassen Skoghøy described the connection as "*obviously untenable*"((2010: 723-724). More constructive comments and arguments have come from Professor of Law at the University of Bergen Jørn Sunde who stated that the results challenge "*the constitutional divide between the first and third branch of government*". A connection between how a justice vote and politics will challenge the traditional view where the Supreme Court is independent from the rest of the state apparatus. This is especially important since according to Andenæs (1998:164) a central part of what the Supreme Court does is to determine if individuals have been abused or incorrectly treated by the state.

[1] Herby referred to as the Supreme Court

1.1 Research Question

The Norwegian Supreme Court is state friendly in as far as they win more cases than private actors in the Supreme Court. This is one of the foundational claims of the state friendly hypothesis. The second claim is that this state friendly effect occurs as a result of the individual justices ideology and personal traits. A third claim is that the effect of ideology and personal traits is stronger in important cases. The fourth claim is that the collegial nature and structure and nature of the court have an impact on the justices' decision-making.

The goal of this thesis is to show to what extent ideology, personal traits, traits connected to the case and the composure of a judicial panel in the court influence state friendly voting. This leads to following research question:

What factors influences the Supreme Court Justices in dissenting cases where the state is one of the litigants.

To answer this question this thesis will analyse dissenting cases in five-justice panels from 1991 to 2012. The thesis will also focus on how the effects of ideology and personal traits play out over different areas of the law.

There are several different theoretical models for analysing supreme court voting behaviour. This thesis will mostly focus on the applicability and premise of the Attitudinal Model, though the other theoretical models will also be discussed and to some extent utilized.

The method for analysis will be logistical analysis. The hierarchical structure of the court suggests that a multilevel model would be optimal, but as results later will show, a multilevel level is not appropriate to use when all the selected cases include at least one dissenting opinion.

1.2 Overview of the Thesis

The remainder of the thesis is structured as follows: Chapter 2 will present the theoretical framework. The Supreme Court as an institution will described in detail, including the organization and role of the court and the appointment process. Chapter 2 will also conclude with an in-depth discussion of the applicability of the Attitudinal Model, since the use of this approach has been criticised by the legal community.

Chapter 3 will discuss the different theoretical approaches for analysing supreme court behaviour. These different models include the Attitudinal Model, the Legal Model and strategic-interaction models.

Chapter 4 will deal with the state friendly hypothesis in more detail and hypotheses that will be tested in this thesis will be stated in this chapter. Chapter 5 will outline the statistical method that will be used in this thesis. Chapter 6 will provide information on the data that will be analysed and how the variables are operationalized. Chapter 7 will be the analysis chapter where the statistical models and results will be provided. The chapter will conclude with hypothesis testing. The conclusions and implications of this thesis will be discussed in chapter 8.

Most Norwegian terms will be translated into English, but the Norwegian term will be put in parenthesis the first time a word or term is used.

Chapter 2 - The Framework of the Norwegian Supreme Court

2.1 General

The Norwegian Supreme Court was established in 1815. Its mandate is founded on article 88 of the Norwegian Constitution of 1814. The article states that *"the Supreme Court pronounces judgment in the final instance"*, thereby making it the highest court in Norway and with full jurisdiction over the entire country. The main function of the Supreme Court is according to itself to *"ensure uniformity of legal process and to contribute to the resolution of matters on which the law is unclear".* The Supreme Court also has a responsibility *"for the evolution of the law - within the framework of existing legislation - as and when required by new societal problems"* (The Supreme Court of Norway)[2]. As the highest court in the country, and the last court of appeals in nearly all cases[3], the justices only select cases where the result will have legal, practical or political consequences beyond the specific case in question or if the case is complex or controversial.

The following paragraphs will deal with the formal characteristics of the Supreme Court, such as its organization, appointment process, voting process and which sources of law the justices take into consideration when the Court rule on a case. This chapter will conclude with an in-depth discussion on why the Attitudinal Model is applicable for research on the Norwegian Supreme Court based on the institutional structure of the Supreme Court.

2.2 Organization of the Norwegian Supreme Court

The current Supreme Court is led by Chief Justice Tore Schei[4] and in addition the court consists of 19 associate justices. The number of justices has been gradually increased since its foundation in 1815. When selected, the nominee must be at least 30 years of age according the article 91 of the Constitution and the forced retirement

[2] http://www.domstol.no/en/Enkelt-domstol/-Norges-Hoyesterett/The-Supreme-Court-of-Norway-/

[3] A rare exception is the possibility to appeal to the European Court of Human Rights in Strasbourg

[4] Due to retire in 2015

age is set at 70 (Sunde 2011a:5). Until that time the justices are employed on good behaviour, and can only be forced to resign by being convicted of impeachment or other serious crime.[5]

The court itself has unilateral power to select or dismiss potential cases. A revolving panel of three Supreme Court justices called the Appeals Selection Committee (Ankeutvalget)[6] determine if eligible appeals is to be heard by the Court (Domstoloven of 1915 § 5). Although the Dispute Act (Lov om mekling og rettergang i sivile tvister) allows for oral proceedings when necessary in the Appeals Selection Committee, the vast majority of appeals are only handled in writing. In the original form of the Dispute Act, the Appeals Selection Committee needed a valid reason for dismissing an appeal. In the current form of the act is required that the Committee have a valid reason for granting the appeal. (Schei 2008,Skoghøy 2008:488). This has a filtering effect ensuring that important cases are granted appeal and other cases are dismissed.

The vast majority of the cases[7] selected to be heard by the court are decided by one of the two parallel and equal divisions (Avdelinger) each consisting of 5 justices. These panels are also revolving, unlike for instance the panels in the Federal Constitutional Court of Germany (Bundesverfassungsgericht), which has fixed divisions. This leads to a system of randomization, where no attorney or their client can know which justices who will precede in their case at the time they submit their appeal.

In cases of great importance i.e. cases relating to the Constitution, international cooperation, conflict between laws, judicial review or if the court might change prior precedent, it has been the case since 1926 that the case can be decided in a plenary session (Plenum) consisting of all eligible justices. (Sunde 2011a:8). If the number of justices is not an odd number the justice with the shortest tenure shall withdraw from the case (Domstoloven of 1915 § 5). Cases of somewhat less importance dealing with the same issues can since 2008 be decided in Grand Chamber (Storkammer) consisting eleven justices (Sunde 2011a:8).

[5] Neither of these scenarios has yet occurred Sunde 2011a:5)

[6] Prior to 2008 this part of the court was named Høyesterett Kjæremålsutvalg, and in principle it was classed as a separate court, though consisting of justices of the Supreme Court

[7] If one doesn't count cases dismissed in the Appeals Selection Committee

The cases chosen too be heard by the court are presented orally by the attorneys of the parties involved. Unlike the procedure in the lower courts there is no presentation of evidence or testimony[8]. All cases are in the end decided by a simple majority vote. The cases are open to the public if nothing else is requested by one of the parties[9] and the request is granted by the court. Both the prevailing opinion(s) and dissenting opinion(s) are made available on the Court's website, published in Norsk Rettstiende and published on the website Lovdata.

2.3 The Appointment Process

All Norwegian Supreme Court justices[10] are formally appointed by the King in Council (Kongen i Statsråd). This prerogative is founded upon § 21 of the Constitution. The King (in practise the Government Cabinet) makes the appointment based on a recommendation from the politically independent Judicial Appointments Board (Innstillingsrådet for Dommere), which is a subgroup of the Norwegian Courts Administration (Domstoladministrasjonen, Skoghøy 2011b:1). This system is relatively new modification. Prior to 2002 the selection process was under the jurisdiction of the Court Division of the Ministry of Justice, (Skoghøy 2011b, 19). The only advice on prospective justices given outside the Court Division was by the Chief Justice after consultation with the associate justices.

This system was however changed after an official evaluation titled NOU 1999: 19 "The Courts in Society" (Domstolene i samfunnet) published in 1999. Based on report's recommendations, a proposition for reform of the court administration in Norway was proposed in Ot. prp. nr. 44 (2000–2001). This led to major changes in the Court of Justice Act (Domstolloven) of 1915, where court appointments are covered in articles 54, 55 and 55a-i.

[8] Only expert testimony is rarely accepted at the request of the justices preceding over the case

[9] Which is very rare since the case documents of the proceedings in lower courts normally are publicly available and the parties in the case very seldom are present in the Supreme Court.

[10] With the exception of the Chief Justice, who is recruited from within the Supreme Court but also confirmed by the King in Council.

The Judicial Appointments Board consists of seven members; three are judges from the lower courts, one member is an attorney not working for state, one member is a jurist working for the state and the last two members do not have a law degree. The reason for this process and the composition of the board is based on "*democratic, constitutional, professional and public concerns"* according to the Judicial Appointments Board. The Appointments Board does not however select candidates, and theoretically everyone with a law education (within the age boundaries) can apply for the position, though for obvious reasons only the top candidates are given serious consideration.

The Judicial Appointments Board ranks the most qualified and eligible justices from one to three, and the King has so far always chosen the number one recommendation. In addition to legal qualification the Board considers age, sex, prior work experience and place of birth to create a diverse court (Sunde 2011:5).

One part of the process is fairly similar to how it was before the reform. The Chief Justice still gives his advice and recommendation after consultation with the associate justices. This process has however been more formalized, and the written advice is given directly to the Ministry of Justice after the Judicial Appointments Board have made its recommendation (Courts of Justice law of 1915 article 55b, section 4.) This written advice is also made available to the public. The process of the each recommendation from the Judicial Appointments Board is also subject to a very limited review from the Justice Department.[11]

2.4 The Voting Process

The first step after a case is heard by the court is called "Rådslaging", which is a formal discussion among the justices regarding the case. The justice with the most seniority is selected to be the court foreman[12], and he or she presents the case, the arguments presented by each side's attorneys, the legal and factual questions in the case and his or her view on these matters. After that, each of the other justices

[11] Mostly deals with formal aspects such as background check

[12] The Chief Justice always serves as court foreman when involved in a case

presents their views according to seniority. (Schei 2010:15). They then decide which of the justices that are going to write the opinion (and dissenting opinion if the justices do not agree on the result or major parts of the arguments). The justices take turns writing, according to when they last wrote an opinion. The Rådslaging is ended with the justices setting a date for the final vote, and in between these dates the preliminary opinion(s) is written (Schei 2010:15). The other justices in the case then comment on the preliminary opinion. The opinion-writer then chooses to edit the opinion according to the comments (edits based on the comments are normally included) in the revised opinion (Schei 2010:15). The revised opinion(s) are then reviewed on the Domskonferanse, the meeting where the justices give their final vote.

2.5 Sources of Law

All Norwegian judges and justices in the lower and higher courts are constrained by the sources of law that are applicable in the specific case. There is not a full agreement among legal scholars on which sources these are, or how they are hierarchy structured compared to each other, and the validity and relevance of the sources of law differ from case to case. Nevertheless a system first theorized by Torstein Eckhoff in 1971[13] in the hallmark book "Rettskildelære" is both taught at all of the Norwegian law schools and is clearly the most widely accepted approach among legal scholars. In this book Eckhoff mentions seven different acceptable sources of law: the law itself, preoperational notes to the law[14], court precedent[15] (sometimes refereed to as the formal sources of law), public practise, private practice, legal theory and equity considerations (reele hensyn). In addition to these there is agreement that also international law, which both consists of practise in foreign countries and precedent set by international courts[16] can be taken into consideration.

[13] Later revisons after Eckhoffs death in 1993 are written by Jan E. Helgesen.

[14] The most significant of these are Norske Offentlige Utredninger (NOUs) and Stortingspreposisjoner, formely known as Odelstingspreposisjoner (St. props and Ot. props).

[15] If relevant to the case, these first three sources have the most legal influence

[16] Most important are precedent set by the European Court of Human Right, the EFTA-court and the EU-court in policy-areas where Norway is bound these courts.

When it comes to contradictive law (two laws or more pointing to different outcomes) there are three main guiding principles for resolution: *Lex superior*; international human rights and the Norwegian Constitution precedes "normal" law, which again precedes written regulations. *Lex specialis*; special law precedes general law and lastly *Lex posterior*; newer laws precedes older laws.
There is disagreement among legal scholars to what degree the sources of law constrain the justices sphere to operate freely in (see Bergo 2002, Bergo 2003, Grendstad et al. 2011a, Kinander 2002, Sunde 2012). The source of law that gives the justices the most freedom in their argumentation is clearly equity considerations.

Equitable considerations can be loosely defined as non-legal considerations that might influence how the justices vote. Eckhoff viewed public policy considerations as taking into account concerns about what is just, balanced and serves the overall purpose of the legal principle or the law in question (2001:24). The aspect that most clearly separates equitable considerations from the other sources of law is that *equity is a product of the justices own considerations"* (Eckhoff 2001:24 own translation). This leads to that justices is given a legally accepted way to consider interests and views that are political in nature (Eckhoff 2001:375). For these reasons a number of legal scholars are critical to the use of public policy considerations. Kinander (2002) and Bergo (2002, 2003) argue that justices should return to a more formal use of the sources of law, which could lead to more predictable verdicts (in a legal context).

On the other hand Eckhoff argues that formal use of equitable considerations is beneficial because it correctly and publicly displays the considerations that justices make, regardless of the sources of law. There is little doubt that justices to some extent can take their personal considerations into account when they interpret for instance the letter of the law and legal precedent.

Equitable considerations can then serve a purpose since justices does not need to "bury" their own views in the other sources of view. (Eckhoff 1997:360). The reality according to former associate justice Ketil Lund[17] is that the court can provide a convincing judicial arguments that points to different outcomes based on legal

[17] His tenure on the Suprme Court started in 1990 and ended in 2009

reasoning,, without the need to include equitable considerations (Lund 1987, 216-217) Current Associate Justice Skoghøy also points out that the use of public policy considerations is in line with how the Norwegian society perceives the legal system. (2011b:13)

The central argument in a verdict is called *ratio decidendi*, which can be understood as the rational for a decision. The courts has in later years been more open to comment on the legality of aspects of the case that are not directly relevant to their opinion of the outcome of the case. Such statements are known as *obiter dicta*, which have some, though considerably less legal weight (as precedent) compared to the main arguments in the opinion. Other newer developments regarding the sources of law is that the court is less adherent to prior precedent and the justices are more open to citing legal theory (Skoghøy 1996). Schei predicts that more questions will deal with the constitution and judicial review because of the increase of cases regarding the relationship between international treaties and international law Norwegian law (Schei 2004_133).

2.6 Is the Attitudinal Model applicable to the Norwegian Supreme Court?

The Attitudinal Model as a theory is clearly based on the institutional framework of the United States Supreme Court. An important question therefore rises since the institutional framework of the U.S. and Norwegian Supreme Court undeniably differ to a large extent: Is the Attitudinal Model applicable to analyse the behaviour of the Norwegian Supreme Court and its justices?

One who thinks that the Attitudinal Model is not applicable to study Norway is law professor Jørn Sunde, Sunde has criticised the research by Grendstad et. al. based on the use of the Attitudinal Model for their premise. Grendstad et al. answered Sunde's concerns in the article "Mellom nøytralitet og aktivisme: Lovene tolker ikke seg selv" (2012b).

One critique by Sunde is that the premise is faulty since the U.S. Supreme Court deals with more (relative to caseload) constitutional cases, which he writes *"has a clearer*

political dimension than other areas of law" (2012:176). This is of course true if one defines constitutional questions as inherently more political than other areas of law. With regards to descriptive statistics, Sunde is right. Roughly 34 percent of the cases the U.S. Supreme dealt with in 2004 to 2010 was of a constitutional nature, which is considerably higher than the number of constitutional cases handled by the Norwegian Supreme Court in the same timeframe. But as Grendstad et al replies, there is no reason to believe the relevance of the traits and attitudes of the justices are limited to constitutional cases (2012b:529).

Sunde also states that the room justices have for political activism is far smaller for than political scientists claim in the sense that justices have their "judicial zone" that they keep to, which can not be described as politics.. Grendstad et. al. states that one does not equate supreme court politics and legislative politics and that conflict between different parties is central. Grendstad et. al. also quote Chief Justice Smith who stated *"any collegial court is […] a form of legislature in miniature"* and that it does not make sense to claim that the creation of laws in the Storting is political, but that the creation of law in the Supreme Court is apolitical (1975:298).

Sunde also stated that the institutional difference between America and Norway is too large transfer the Attitudinal model to the Norwegian context. Grendstad et. al. answer this by pointing to similarities between the U.S. Supreme Court and the Norwegian Supreme Court. Central similarities are: the Supreme Courts are on top of their country's hierarchy and have full jurisdiction of cases, the cases that are heard by the court are uncertain in outcome and that the justices are not accountable for their decisions. Though these similarities are crucial, there are more elements that must be compared to determine the applicability of the Attitudinal Model based on the institutional character of the Supreme Court.

What follows is therefore an in-depth discussion on the applicability of the Attitudinal Model on the Norwegian legal system and more specifically the Supreme Court. This analysis will be based on a comparative analysis of several major components that together make up a national legal system. The countries that will be compared are obviously Norway, the United States since the Attitudinal Model was developed with this legal system in mind and France. The main reasoning for including France is that

France in many regards the most typical civil law country in the world, which marks a stark contrast to the United States as a common law country[18]. Therefore France represents a legal system where the Attitudinal Model is impossible to apply for several reasons, which will be mentioned below.

2.7 A Comparison of Norwegian, American and French Legal Tradition[19]

This discussion will be based on the Legal Culture Model as stated by Jørn Sunde in Champagne at the Funeral - An Introduction to Legal Culture. Legal Culture is defined broadly as "*is ideas and expectations of law made operational by institutional (-like) practices"* (2010:1).

Table 1: Legal Culture Model by Jørn Sunde

Legal historical period	***Legal culturally structures and structural elements***					
	Institutional structure		**Intellectual structure**			
	Conflict resolution	*Norm production*	*Idea of justice*	*Legal method*	*Degree of professional-ization*	*Character of international-ization*
Legal System	Court hierarchy	Lawmaking	Predictability	Deduction	High	Systems of law
Legal Order	Courts	Lawmaking and court rulings	Equity	Differen-tiation	Some	Chunks of law
Pre Legal Order	Mediating organs and violence	Through conflict resolution	Equivalence	Analogy	None	Bits and pieces of law

The legal culture model outlines the different elements of legal culture. Simply put, civil law countries can be said to belong in the Legal System category, whereas common law countries are in the Legal Order category

[18] A notable exception in the U.S. is the state of Louisiana that followed the civil law tradition from French colonial rule even after the Louisiana Purchase in 1803 and is therefore to this today unique.

[19] As someone who has attended and taken an exam in the relevant subject "Legal History and Comparative Law" taught by Sunde, I am in decent position perform this comparative analysis.

The Legal Culture Model is firstly divided into an Institutional structure and an Intellectual structure. The Institutional structure consists of two components; Conflict resolution is basically how and who have been given the competence to solve legal question and norm production which mainly deals with who has jurisdiction to make new law or change existing law.

The Intellectual structure consists of four components. One component is idea of justice, which in this context means what is the guiding principle for deciding what is just and lawful. Another component is legal method, which is closely linked to the idea of justice and how such ideals are achieved in practise. Thirdly is degree of professionalization for those who practise law either as a jurist, lawyer or judge. Lastly is the character of internationalization which points to how independent the legal culture is with regards to implementation of foreign law and the effect of supranational courts and institutions. Relevant examples of such institution in the Norwegian context are for instance the European Union and European Court of Human Rights.

With regards to conflict resolution it is especially the court hierarchy that makes the Attitudinal Model impractical in a French setting. France relies upon a number of specialized courts and on top of the hierarchical pyramid there are four courts of which the most important is the Court of Cassation, which is the highest appeals court for civil and criminal matters. The Court of Cassation consists of over 120 judges in six divisions handling different areas of law. This is very different from the U.S. State Supreme Courts, the Federal District Courts, and the U.S. Supreme Court, which are not divided into divisions. The lack of fixed divisions can also be seen the Norwegian Tingerettene, Lagmannsrettene and the Norwegian Supreme Court. France also have a Constitutional Council consisting of among others former Presidents. This council reviews proposed laws before they go into effect, which is different from Norway and the U.S. where the highest courts only can review claims about unlawfulness after the specific law has come into effect. In this respect Norway is quite similar to the United States.

The U.S. Supreme Court has a major role in norm production since what it decides immediately becomes the law of the land. This very active role that in practice

produces new law or changes existing law is a consequence of that the main idea of justice within common law is equity, wherein the justices have discretion to find a fair result in the specific case. Predictability is then achieved through the existence and the binding effect of prior court arguments known as precedent. The legal method used by justices is differentiating[20] the new case with prior court precedent. The reason for the focus on precedent is that common law countries historically and still to a large extent rely upon law formed through court decisions or single acts or statutes that are limited in scope and its content are shaped by the courts through their decisions.

Judicial predictability in the U.S. is also ensured in a more indirect way. Since it is the President who nominates justices to the Supreme Court and the Senate who confirms them, one can expect that the nominated justice has the same view as the President on most major legal questions. And if the President doesn't have the needed support in the Senate one can usually expect a compromise justice who though mostly supports the Presidents views can be considered a judicial moderate not leaning too far the either the right or the left.

The French approach to the influence of prior decisions can be regarded as nearly the opposite of that in common law countries. French law is exclusively produced by the legislature, mainly expanding or rewriting the existing law books. The civil code of France for instance was first produced in 1804 and it and the other French law books are designed to leave little room for interpretation up to the judge. The central idea of justice in civil law countries as demonstrated by French law is predictability through the letter of the law, and the legal method for achieving this is deduction. But France, as compared to for instance Germany (also a civil law country) takes one step further when it in practise prohibits any judicial activism.

The published court rulings in France consist only of the formal facts of the case and the final outcome. The part of the verdict that is public is written in one sentence, usually stretched to about one page of writing. The arguments and judicial reasoning of the judge are not published, neither is information if there were a dissenting

[20] Finding common or different aspects with existing precedent to see if the same principles apply or not

opinion. These restrictions are put in place to ensure that nothing but predictability through the law can be found, and obviously these measures would make the Attitudinal Model very difficult to use for analysing judicial preferences within the French court system.

Compared to these two "extremes", Norway finds itself in a strange position since it encompasses traits from *both* the civil law and the common law tradition. The large majority of Norwegian law is produced in the legislature, but the courts can through their interpretation of laws in reality modify the written laws. Compared to common law countries these modifications are smaller in scope both in terms of how often it occurs and the extent of the changes, which most often limits itself to how a specific word should be understood in the context of the legal paragraph or the specific law.

The vast majority of Norwegian laws are larger (in terms number of paragraphs and scope) than laws produced in common law countries, but on the other hand Norway has no tradition of legislating through law books as in France or Germany. This was however not the intent when the constitution was written. Article 94 of the Norwegian Constitution states that *"The first, or if this is not possible, the second ordinary Storting, shall make provision for the publication of a new general civil and criminal code"* which demonstrates that if this had happened within the stated timeframe (the first criminal code was enacted in 1842 and after several attempts the idea a comprehensive civil code was finally abandoned around the year 1900) Norway would have looked more like a typical civil law country and the Attitudinal Model would be a lot less applicable.

The fact that Norway didn't enact a comprehensive civil code leads to a comparatively less focus on strict system oriented solutions than in civil law countries, though this aspect is also a relevant factor when interpreting Norwegian law. The majority of the written Norwegian laws are not designed to leave much room for interpretation up to the judge (as in for instance France), but several relatively

important[21] articles incorporates legal standards where the article specifically mentions words as "(un)fair" or "standing business ethics" which leads much interpretation up to the judge and a focus on prior decisions that can be construed to be relevant to the case.

Unlike Norway and the United States, France also a specialized system for educating justices. After the standard 3-year Bachelor in Law education and a 2-year Master in Law all prospective judges must complete 3-years of post-graduate studies at the École nationale de la magistrature (French National School for the Judiciary). Because of this special schooling all French justices are homogeneous when it comes to education. This is different from prospective justices in Norway and the U.S. where there's no requirement for specialized education for justices, and the only formal requirement is a law degree.

A uniform education is likely to influence the applicability of the Attitudinal Model. When all the justices have gone through identical studies at the same school there's reason to believe that the justices are indoctrinated (for lack of a better word) to one specific judicial approach in terms of both behaviour and values. Such a view strengthened by the fact that most justices in France doesn't have any experience outside their work as a justice since most prospective justices start at the French National School for the Judiciary after completing their standard law education and few abandon their career path as a judge after completing the education.

Compared to justices in Norway and the United States where the vast majority justices have spent part of their legal career not working as a justice it's reasonable to believe that they take with them values, a more independent approach to the law etc. into their career as justices. And since the justices prior work experience varies to a large extent such values will not be homogenous as in France

[21] i.e. Avtaleloven (Law of Contracts) § 36 which is an article that often results in legal disagreements and is a clause which leaves much room to the judge to find a fair result based on nearly every factor that it relevant to the case.

The degree of internationalization is not the most relevant factor with regards to the applicability of the Attitudinal Model, but it is logical that justices in the American Supreme Court are "freer" because they very seldom have to take into consideration any international treaties or how such treaties should be understood. The justices on the Norwegian Supreme Court are normally somewhat "freer" than French justices because of Norway's more indirect relationship with the E.U and its laws.

How applicable is the Attitudinal Model on the Norwegian legal system and more specifically the Supreme Court? Based on the components of the legal culture model developed by Jørn Sunde it's clear that the Attitudinal Model isn't perfectly applicable to use on the Norwegian legal system, at least compared to the United States legal system The main factor that challenges the applicability of the Attitudinal Model on the Norwegian legal system is the amount and the extent of norm production that is shaped Norwegian Supreme Court, which is considerably less than in the U.S., because of Norway's greater reliance and focus on the written laws. Another factor that challenges applicability of the Attitudinal Model is the fact that judicial appointees in the U.S. are clearly in part political appointees by design.

On the other hand it's clear that Norway *is not a typical civil law country*, and it's doubtful that Norway one the whole even can be said to be a civil law country in my opinion. Norway shares none to the numerous characteristics in the French legal culture that makes the Attitudinal Model inapplicable. Norwegian justices can be said to be constrained by the law, but not bound by the law as the justices in France are. Justices are also recruited from all walks of judicial life, and not from one specific post-graduate study. The design of Norwegian law and the guidelines for interpretation also open for much interpretation compared to French law, and a significant part of Norwegian law is unwritten and based on basic legal principles that has evolved through numerous court decisions, which is quite similar to the United States. Norway is also very liberal when it comes to the publishing of verdicts, where all the arguments of the justice(s) including dissenting opinions are published, which is a basic requirement for the applicability of the Attitudinal Model.

All in all, Norway finds itself in a *mixed* position between civil law and common law. The Norwegian judicial method for instance encompasses traits from both civil law

(deduction) and common law (differentiation), the idea of justice in Norway consists of equity (common law) both through what is known as reelle hensyn and fairness criteria which is not unusual in Norwegian legal articles and predictability through the letter of the law itself and how the terms are understood in prior decisions.

In conclusion; though the Attitudinal Model was designed for the U.S. legal system, and is clearly most applicable in common law countries, there are not any single traits in the Norwegian legal tradition that makes the Attitudinal Model inapplicable, nor does it seem as the Norwegian legal system as whole is incompatible with the Attitudinal Model. Therefore the attitudinal model is applicable for research on the Norwegian Supreme Court.

Chapter 3 - Theoretical Models of Supreme Court decision-making

Though supreme court decisions and to some degree judicial behaviour always have been analysed by jurists and politicians, it's a much newer field of study for political scientists. Herman Pritchett's *"The Roosevelt Court: A Study in Judicial Politics and Values 1937-1944"* published in 1948 marks the start of supreme court analysis based on statistical models The most central question in this tradition of court behaviour within political science is how different factors influences the justice's decisions and thereby the decisions of the courts as a whole. In this field of study there are four main theoretical frameworks: the Attitudinal model, the Legal model, the Strategic-interaction model (which can be separated into the Internal-strategic model and the External-strategic model) and the Personal Traits model. These models differs both in about their assumptions of justices' goals and how they try to achieve these goals.

In basic terms the Attitudinal model assumes that cases are decided *"in light of the facts of the case vis-à-vis the ideological attitudes and values of the justices"* (Segal and Spaeth 2002: 86). The legal model assumes that the *"decisions of the court are substantially influenced by the facts of the case"* in light of the formal sources of law (Segal and Spaeth 2002:48). Both the internal-strategic model and the external-strategic model are founded on *rational choice theory*. The internal-strategic model tries to explain how a justice acts towards other justices to achieve his or her goals, most often relating to specific cases or specific areas of the law. The external-strategic on the other hand deals with how either the justice or court as a whole interacts with other government institutions, most importantly the national legislature and the executive, and how these relationships might influence court decisions. The personal traits model assumes that factors such as gender, age, prior professional carer etc. could influence how the justice vote in specific cases or in cases involving a common element. These models are not clearly defined, and some of the models have much in common. It is for instance difficult to clearly separate the attitudinal model and the personal traits model since it is obvious that traits such as former work experience can influence both the ideological and judicial viewpoints of a justice.

Most approaches agree that the available legal sources and the facts of the case are central to how the justices reach their conclusions. To what degree justices are constrained by the legal sources is however disputed. The following paragraphs aims to focus deeper on the legal model and the attitudinal model, including both where they significantly differ and where there is common ground between the theories.

3.1 The Legal Model

The Legal model supports a legalists interpretation of judicial behaviour where the most important aspect of any case if the law itself. It's by understanding the law one can understand court decisions and the justices use objective and apolitical methods when applying the law[22] (Epstein and Jacobi 2010:342-343). A rather simplistic view of the legal model is that *"a judge makes policy by resolving legal disputes, [...], by deciding cases that present themselves as bundles of facts* (Lax 2007:591). By this somewhat naïve interpretation of the legal model one can expect that there is a correct (legal) answer to the question at hand, which can be found by a mechanical use of the law. (Segal and Spaeth 2002:48).

This view has been criticised by many (i.e. Friedman (2006) who argue that such a presentation of the school of thought is antiquated especially because it gives a false impression that the justices are more strictly bound by precedent than they really are. Kritzer and Richards (2005:33) among others think that this simplistic view of the legal model, often put forward by those who support the attitudinal model, gives a false impression of the legal model, and they claim that the model is more sophisticated and nuanced. Segal and Spaeth's interpretation of the legal model is a "straw person" according to Rosenberg (1994:7), and he claims their many results based on the attitudinal model could also been found by analysis based on a correct understanding on the legal model.

According to Cross, the legal *"model suggests that the path of law can be identified through reasoned analysis of factors internal to the law"* Cross (1997:255).

[22] An example of this is the three aforementioned "guidelines" used within Norwegian law when encountering contradictive law

According to Brisbin (1996:1004) the legal model implies *"that judicial votes result from the application of use of professional interpretative techniques, or modes of reasoning from legal principles as taught in law schools, to the interpretation of various sorts of legal texts"*. Most central in this approach is a rather strict adherence to the relevant law, the intent of the framers of law and prior precedent in light of the case[23] (Richards and Kritzer 2002:305).

The legal theory has undergone some changes to increase its practical applicability, most noteworthy is a divergence from a more strict mechanical view, and acceptance that judicial ideology does influence judicial outcomes (Tiller and Cross 2006:520). Newer school of thought within the legal model tradition, examples of which are the school of Legal Realism and Critical Legal Studies recognize the judicial ideology factor as significant to the opinion of the justice[24] (Tiller and Cross 1999:217).

Askeland argues that the Norwegian Supreme Court follows a legal realism model, evolved from a more formalistic approach (Askeland 2003). Chief Justice Schei states that there is general consensus within the Norwegian Legal system that the justices are influenced by social environment they themselves are a part of. (Schei 2011:17-18). That is not the same as saying that they accept a model more related to the Attitudinal model, Skoghøy points to that it is fully possible to reach different conclusions in the same case while adhering to the law if the legal sources does not provide a clear legal answer in the specific case. (Skoghøy 2011a,:713). This is also logical, if a case has a clear judicial outcome based on law or precedent there is little reason why the case should be heard by the Supreme Court. But as Segal and Speath point out, "*by being able to explain 'everything', in the end it explains nothing".* If strict use legal model can lead to different results that are equally judicially justifiable, then the model (at least on its own) can't serve as an explanation for supreme court decisions (Segal and Spaeth 2002:86).

[23] Which coincides with what many refer to as the formal sources of law (as in Norway)

[24] The most clear case of a consistent use of judicial ideology in the American Supreme Court can probably be seen in the writings by Justices Scalia and Thomas who are proponents of constitutional originalism

Another criticism of the legal model is based on the premise of the institution of the Supreme Court as the highest appellate court; *"clear cases do not represent a significant share of the disputes actually adjudicated by judicial bodies, legal rules cannot be a major determinant of judicial behaviour"* (Dyevre 2010, 312). All in all the Legal Model serves as part of the explanation of how justices vote, but the model seems too restricted when it does not take into account non-legal factors that to a smaller or larger extent influence how justices vote.

3.2 The Attitudinal Model

The attitudinal model traces its roots to the legal realist movement of the 1920s, led by among others Karl Llewellyn and Jermoe Frank. It was seen as a reaction against the traditional orthodox view that held that the judge's personal views were irrelevant. Llewellyn wrote that the first principle of legal realism is the *"conception of law in flux, of moving law, and of judicial creation of law"* (1931:1227). Within this framework the justice's decisions can be viewed as a *"a function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do"* (Gibson 1983:9). A strict interpretation of the model suggests that the political attitude of the judge is the most important factor in how the justice will vote when such attitudes are relevant. (Songer and Siripurapu 2009:66). This suggestion stands in contrast to the legal model where it is suggested that the law has a constraining influence on the justice and it is not legally justifiable to reach decisions not based formal law (Friedman 2006, 264).

Segal and Spaeth point to four institutional freedoms U.S. Supreme Courts Justices enjoy which increases their sphere of freedom to such a degree that one can expect the justices to engage in *"rational sincere behaviour"*, which is a prerequisite of the Attitudinal Model. The justices *"can further their policy goals because they lack electoral or political accountability, have no ambitions for higher office, and comprise a court of last resort and that controls its own caseload"* (2002:92). From a principal-agent the justice (agent) becomes independent of the principal (in the case of Norway the sitting government cabinet) after they are selected to serve as justice.

Therefore, according to Rehder (2007: 12) the most important variable for explaining judicial behaviour is the justices' personal preferences.

Since Supreme Court justices normally are very well educated, with an abundance of prior experience it reasonable to assume that the *"justices come to the Supreme Court with their ideological preferences fully formed and, in light of contextual case facts these preferences cast overwhelming influence on their decision making"* (Unah and Hancock 2006:296). This is too say that one should not expect a justice to change his or attitudes about judicial policy when becoming a Supreme Court justice[25] This leads to an important implication; if one were to change the justices, one should expect different outcomes in similar cases, and thereby changes in judicial policy.
The attitudinal model also implies that the people who appoint justices have a vested interest in choosing the justices that are more likely to support their agenda. (Dyevre 2010:301).

In addition to concepts based on legal realism, the attitudinal model encompasses concepts from political science, psychology and economics (Segal and Spath 2002:86.) Pritchett's aforementioned work marked the start of court analysis based political science, and with that data collection and model structuring based on observable data (i.e.. solely the outcome of the case) and not (to some degree necessarily) vague interpretations of the written verdict.

The influence of psychology can clearly be seen in the attitudinal model. Spaeth and defined an attitude as an *"intercorrelated set of beliefs about an object or situation"* (2002:91). According to Spaeth, two interacting attitudes are needed for a social action to occur. One is the attitude object; the direct and indirect parties to the case and an attitude situation, the central legal issue of the case (2002:91). Another related view of how a justice acts was formulated by Maltzman et al. and states that "*the attitudinal model continues to view the votes of the justices as shaped by forces (in particular, preferences) exogenous to the strategic context of the Court. Second, the attitudinal approach continues to view individuals as the analytical building blocks and outcomes as the aggregated preferences of the Court majority."* (2000:12),

[25] This is separated from other aspects of being a justice, such as tactical voting or bowing to clear and overwhelmingly supported precedent.

The economic influence on the attitudinal model can mostly be seen in how rationality is used by the justices. A central concept here is the goal of the justice when casting their vote. Justices are as every actor in a political situation outcome-orientated, and when having to choose one of several alternatives "*they pick the alternative that perceive will yield them the greatest net benefit in terms of their goals"* (Segal and Spaeth 2002:92) For the justices these goals are policy goals determined by the policy questions that are brought before the court. How a justice can act to achieve their policy goals is to a large extent restricted by the "rules of the game" described by Rhode and Spaeth as "*the various formal and informal rules and norms within the framework of which decisions are made"* (Segal and Spaeth 2002:92).

A central criticism against the attitudinal model from the perspective of the legal model is the attitudinal model doesn't take into consideration the judicial limitations on their freedom. (Benesh et al. 2007:756). Though also elected legislators endure institutional limitations, the limitations for justices are stricter and can be further expected to influence the behaviour of the justices. (Benesh et al.2007). Research conducted by Wahlbeck et al. suggest that though ideology influences the willingness of a justice to dissent, this most be seen in connection with other factors such as the complexity of the case and not as a action to promote policy goals (Wahlbeck et al 1999)

As mentioned before, it can be hard to clearly distinguish between the attitudinal model and the personal traits model. Traditionally the attitudinal model was reluctant to include personal traits, which was viewed as a more indirect link to voting behaviour (Gibson 1983,Tate 1981). This stance has since evolved, and Brace and Hall (1995:11) identify personal traits to having a direct influence on voting behaviour. Though there are many who still view these models as separate, there seems to be little or no theoretical or practical reason too do so. The thesis will not separate the two models, and both personal traits and individual preferences will be included under a general attitudinal model.

3.3 The Strategic Interaction Model

Separate, but clearly related to other models of judicial behaviour is the strategic interaction model. This model is mostly based on rational choice theory, which views justices as rational goal-oriented actors. This model can be traced back to the works of Schubert, Pritchett and Murphy from the early 1960s. This field of approach has first become more relevant during later years, and from the early 2000s strategic explanation of judicial behaviour has become dominant in Supreme Court decisional analysis[26], and that there is evidence for strategic behaviour in several different contexts (Epstein and Jacobi 2010; Hettinger et al. 2004:124). There is suggestion in empirical evidence that strategic aspects of judicial decision-making can explain behaviour not otherwise being explained by neither by the legal model or the attitudinal model (Hettinger, Lindquist, and Martinek 2004:124).

Central to the strategic model is the concept of interdependency. Bartels (2009: 474) points to the role of institutions when he wrote *"legislators, judges, bureaucrats, voters and other actors make decisions within an institutional context defined by formal and informal rules that constrain individual discretion and ultimately shape actors' choices".* Supreme Court justices don't cast their vote in a vacuum, the influence and are influenced by other justices. And justices need support from other justices to further their policy goals. Those who support the strategic model place greater emphasis on institutional constraints than attitudinalists. This distinction is however unclear as the justices themselves can put restraints on the action of the court, thereby not technically contradicting the idea of a large sphere of freedom attitudinalists claim that justices enjoy. Supporters of the strategic model and supporters of the attitudinal model would probably agree that "*despite the importance of ideology, the collegial context in which judges decide cases has a significant effect on how their preferences are expressed"* (Meinke and Scott 2007:909).

[26] According to Epstein and Knight (2000: 652) the field of judicial politics was undergoing a "sea change"

The strategic model can as before mentioned be divided into two main categories the internal-strategic model and the external-strategic model[27] (Dyevre 2010). The internal-strategic model can be seen as a rational choice game where the goal of the justice is to gather enough support for their policy goal. Therefore the institutional aspect of the supreme court becomes essential and the justices become constrained by the institutional environment that they are in (Gillman and Clayton 1999 cited in Dyevre 2010, 302). This is especially true for courts with a high degree of deliberation, which is *"fundamentally about deciding what the court should do: is it aimed at persuading fellow Justices or being persuaded by them to agree on a common action"* (Ferejohn and Pasquino (2004, 1697)

The first, and very often the only relevant of such constraints is based on whom of the other justices precedes in the case.[28] The aggregate of the panel of justices in the specific case determine the outcome of the case, which is true for any court where the judicial outcome is based on majority voting. This sub-group of the institutional internalist model is known as *panel effect theory*. Substantial research on the U.S. Courts of Appeals and the U.S. Supreme Court suggest that such panel effects are of great relevance for analysing judicial decisions (Kastellec 2011, Meinke and Scott 2007). On inherent weakness with such research, is that "*any account of judicial decision-making in terms of collegial interactions and internal strategies is bound to remain speculative"* Dyevre (2010:303) because none of the deliberations are public and justices very rarely discuss these deliberations outside of the Court. This focus on privacy within the court can also be clearly seen in the Norwegian Supreme Court.

[27] Also known as the Institutional Internalist Model and the Institutional Externalist Model, the latter will not be further utilized in this thesis.

[28] There can also be several other internal institutional constraints, and even unwritten and internal norms can have great effect on judicial outcomes, but such traits are not general and they specific to each court.

Chapter 4 - The State Friendly Hypothesis

The state friendly hypothesis in short holds that the state wins more than what can be reasonably expected. This notion is supported by the over all win rate for the state, which wins 60 to 80 percent of the cases, depending on the area of the law (Kjønstad 1999:9 and Grendstad et al. 2011b). Most legal scholars see a state friendly nature exhibited if the court and its justices place greater emphasis one the interest of the state and thereby give less consideration to private interests than what follows from the legal doctrine (Kjønstad 1999:103; Tellesbø 2006:67). One important distinction is that state friendly nature refers to the state system as a whole, not whether a judge favours the incumbent government.

4.1 Empirical research on the State Friendliness of Norwegian Supreme Court

The vast majority of empirical research on the Norwegian Supreme Court years where mostly carried out by legal scholars up until recent years. Most of the empirical analysis' can be said to be lacking in terms of statistical ambition and complexity.

The first major analytical work to deal with voting patterns in the Supreme Court was "Dommeratferd i dissenssaker" by former Court of Appeals (Lagmannsrett) judge and Cand. Jur. Henry Østlid in 1988. The book mapped and analysed justices' dissent behaviour in cases from 1930 to 1979. His study was founded upon a questionnaire dealing with the justices' social and professional background and their attitudes towards some important questions in society. He found that the voting pattern often matched the assumed party-political or ideological attitudes of the justice (based on the questionnaire) in specific cases and groups of cases.

After Østlid's publication, the debate over voting behaviour in the Norwegian Supreme Court was virtually non-existent for over a decade. A limited debate among some legal scholars started in 1999, and a few relevant articles were published in law publications during the following years. These contributions lacked thorough statistical analysis and are more theoretically interesting because of the assumptions the writers made as opposed to the their actual findings.

With regards to analysis, former Supreme Court Associate Justice Jan Skåre published an analysis of the connection between former workplace and vote in dissenting cases from 1978 to 1998. The analysis was only descriptive, and Skåre found no such significant connection. Another descriptive study was conducted by Law Professor Asbjørn Kjønstad in 1999. He found a link between voting for the state and previous employment at the Legislation Department.

One of the interesting assumptions that were made is that the state is more likely to win because of the strength of the state's legal resources compared to more limited private legal resources (Fagernæs 2007:54; Tellesbø 2006:77). In general this assumption is probably true, but the picture is more nuanced. While for instance the various government departments enjoy near unlimited resources in their court cases, the same cannot be said for the various municipalities. The resources of the private parties are also unevenly divided, it is for instance likely that "big business" (the most relevant example in Norway are oil companies) can match the professional expertise of the state and will have few economic problems pursuing cases. Such "big business" cases are often tax related, and within this area of the law, the win rate for the state is lower based in part because of more evenly divided resources (Tellesbø 2006:77). Other private parties are more restrained by the high costs of pursuing a case, and it is likely that a cost-benefit analysis can lead private parties to not pursue relatively strong cases to the Supreme Court[29], because of the risk of having to pay the opposition's legal fees.

In recent years there's been more research on the voting behaviour of the Norwegian Supreme Court with a greater emphasis on statistics that has been carried out by Gunnar Grendstad, William R. Shaffer and Eric N. Waltenburg.

In the article *Revealed Preferences of Norwegian Supreme Court Justices (2010),* Grendstad et al. empirically tested the connection between the justices' ideology and their voting behaviour. Using a bivariate correlation analysis they found that 37.9% of the variation with regards to public vs. private interests could be explained by whether or not a justice was appointed by a social-democratic government or a non-social-

[29] Which might lead to an artificially high win rate for the state due to that the state will pursue every where the court might find in their favor.

democratic government (2010: 96). The article concluded that the results confirms the traditional view that social-democratic governments place greater emphasis on the interests of the society or community, whereas non-social-democratic governments is more open to protect the interest of the individual. It should however be mentioned that the results was based on analysing just 11 cases.

In the article *When Justices Disagree. The Influence of Ideology and Geography on Economic Voting on the Norwegian Supreme Court (2011a),* Grendstad et al. analysed 63 cases with dissenting opinions related to economic issues from the year 2000 to 2007. The method that was utilized here was a multivariate regression analysis. The results showed that justices appointed by social-democratic governments was 23,5% more likely to vote in favour of the government than justices appointed by non-social-democratic governments (2011a: 15,16). In the article Public Economic Interests vs. Private Economic Rights: Preferential Voting on the Norwegian Supreme Court, 1948-2011 from 2012 Grendstad et al. analysed the effect between appointing government and justices voting pattern in economic cases in the period between 1948 to 2011 using a multivariate regression analysis. Here they found that a justice appointed by a social-democratic government was 30% more likely to vote in favour of the party representing the public.

The master thesis' of Jon-Kåre Skiple and Terje Jacobsen included multilevel models and they both found significant results regarding the composition of the court. Skiple (2012) found that justices that voted in homogenous social democratic panels where more likely to vote for the State compared to when they voted in panels with other compositions of appointing government. Jacobsen (2012) found a positive effect on state friendly voting in panels composed of a majority of justices with a background in the Legislation Department. These results suggest that a multilevel model should be considered.

The next table gives an overview of the numerous hypotheses this thesis will test. It is structured into three level, justice, case and panel and the hypotheses will be discussed in that order.

Table 2: Overview Hypotheses

Variable	Justice
Appointing government	H1: *Justices appointed by social-democratic government are more likely to vote in favour of the state than justices appointed by non-social-democratic governments.*
Government Advocate	H2: *Former employment at the Office of the Government Advocate increases the likelihood of voting in favour of the state*
Office of Public Prosecution	H3: *Former employment at the Office of the Director General of Public Prosecutions increases the likelihood of voting in favour of the state*
Legislation Department	H4: *Former employment at the Legislation Department increases the likelihood of voting in favour of the state.*
Born in Oslo	H5: *Justices born in Oslo are more state friendly than justices not born in Oslo.*
Law Professor	H6: *Former Law Professors are less likely to vote in favour of the state*
	Case
Government Advocate	H7: *The presence of the Government Advocate or someone from his office increases the likelihood of voting in favour of the state*
Case type	H8: *The effect of the ideology of the justice varies between cases with different characteristics.*
	Panel
Homogeneous Soc. Dem	H9: *The likelihood for voting for the state increases if the case is heard by a panel of justices consisting only of social democratic appointees*
Majority non-Soc. Dem.	H10: *The likelihood of voting for the state decreases of the panel* consists a majority of justices not appointed by social democratic governments
Majority Legislation Department	H11: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked*

	in the Legislation Department.
Majority Government Advocate	H12: *The likelihood of voting for the state increases if the panel* consists of a majority of justices who have previously worked in the Office of the Government Advocate
Majority born in Oslo	*H13: The likelihood of voting for the state increases if the panel consists of a majority of justices were born in Oslo*

4.2 Hypotheses on the Individual Level

Based on the findings of Grendstad et al. in the mentioned articles and on the most basic claim in the additional model one can expect that that the likelihood for a justices to vote for or against the state is statistically connected to whether a justice was appointed by a social-democratic- or non-social-democratic government.

Such an expectation is founded on the prerequisite that the government has the final say in the appointment process, as it has in Norway. Former Prime Minister Kåre Willoch has stated that governments have used this power to intentionally appoint ideologically likeminded justices. Willoch (2002:124) exemplifies this claim with the outcome of *Kløftadommen* (Rt. 1976-1), which was a major case dealing with expropriation. The case, dealt with in plenary session was decided 10-7 against the state, and Willoch argues that this was because of the strategic appointments made by the Borten government in the six years leading up to the decision. This leads to the following hypothesis:

H1: *Justices appointed by social-democratic governments are more likely to vote in favour of public interests represented by the state than justices appointed by non-social-democratic governments.*

The fundamental claim of the attitudinal model is that the preferences of the justices, which are shaped by personal characteristics, prior legal experience etc. influences their votes as Supreme Court justices. Previous legal career has been suggested by

among others Kjønstad (1999) and tested by Grendstad et al. (2011b) as a possible reason for why a justice may be more or less state friendly in his or her voting.

Especially three prior occupations are here appropriate to test; experience from the Legislation Department (Lovavdelingen) which is the expert judicial division under the Department of Justice, experience as working for the Office of the Government Advocate (Regjeringsadvokaten) which handles civilian cases for the central government and the Office of the Director General of Public Prosecutions (Statsadvokat) or having been the Director General of Public Prosecutions (Riksadvokat) which handles the state's more serious criminal cases.

These occupations are interesting for two reasons. *Firstly*, these occupations are perhaps the most sought after and prestigious governmental judicial positions[30] within the state, and therefore serves one of clearest paths to the highest court for aspiring Supreme Court justices. *Secondly*, due to their nature (taking the position of the state in all cases) these occupations are apt to create a pro state view both with regards to how to view judicial questions and how they should be answered.

H2: *Former employment as the Director General Office of the Government Advocate increases the likelihood of voting in favour of the state*

H3: *Former employment at the Office of the Director General of Public Prosecutions increases the likelihood of voting in favour of the state.*

One reason for why working in the Legislation Department is especially apt to create conditions for future state friendly bias is according to former justice Skåre (1997) in the nature of the work. Work in the Legislation Department is mostly of a technical nature where as a jurist you have little room view to the real world implications of the work. There is also little or no connection to the person(s) that are affected by a decision as one would get in most other law occupations. The technical nature of the work combined with viewing judicial questions from the point of view of the state is likely to create a strong pro state bias.

[30] The Legislation Department can be considered to be a very important position early in the career of a jurist aiming to be a future judge.

H4: *Former employment at the Legislation Department increases the likelihood of voting in favour of the state.*

Where a justice was born and presumably grew up is also expected to influence how state friendly a justice is. Grendstad et al. (2011c:10) tested the effect of the centre-periphery dimension, and found such a factor to be a potential extra-legal factor that can influence decisions. The potential effect of the centre-periphery dimension is caused by the fact that the vast majority of Norway's governmental legal elite is concentrated in Oslo (Shaffer, Grendstad, and Waltenburg 2011:18). The expected effect is that justices born in Oslo are more likely to vote for state interests.

H5: *Justices born in Oslo are more state friendly than justices not born in Oslo.*

Law professors are in a special position when it comes to how they view and evaluate the law. A large part of this occupation is analysing and teaching how and why the Supreme Court the Supreme Court reach their conclusions and how this corresponds to former decisions and how one should view a law or principle. This often leads to a focus on criticism of verdicts and judicial arguments, which is not common to the same extent within other law occupations Such critique can of course be directed at decisions in favour of or against the state. But there are some "faults" from the point of view of law professors that the party representing the state are more likely to commit. Procedural faults and other minor infractions are more often committed by the state than private parties. Law professors are also concerned with if central principles are upheld, i.e. Grunnloven §§ 96 and 97, the right of an individual to be heard in due time before a decision that can affect them is taken etc. This focus on analysing and criticising the Supreme Court and a more rigid view on technical correctness is a factor that can lead former law professors to be less inclined to vote in favour of the state. This leads to:

H6: *Former Law Professors are less likely to vote in favour of the state*

4.3 Hypotheses on the Case Level

It is assumed that the state is more likely to win cases of greater importance. A measurement of how important a case is to the state is who is chosen to represent the state before the Supreme Court. Since the Government Advocate is the highest legal representative for the state in civilian cases, his presence or the presence from his representatives would indicate that the case is of great importance. Research on U.S. Supreme Court found that the presence of the Solicitor General had an influence on the Court. The results of Bailey, Kamoie, and Maltzman (2005) and McAtee and McGuire (2007) suggest that the presence of the Solicitor General has an impact not only as the presumably one of the top legal experts of the country, but also through the political signals that are sent with his presence. The role of the Norwegian Government Advocate is quite similar to that of the U.S. Solicitor General, and therefore one can expect the same results.

H7: *The presence of the Government Advocates or someone from his office increases the likelihood of voting for the state*

Since Supreme Court cases are far from homogeneous, it is natural that the win-ratio for the state varies depending on what area of the law that's the issue (Tellesbø 2006:77). One can then also expect that some areas of the law are more likely to be decided by the justices' ideology based on appointing government than others.

This claim is based on the assumption that some areas of the law are more ideological in nature, for instance some areas of the law are more likely to involve substantial state interests, which according to Lund (1987:215) makes it unlikely that the majority ruling is in disfavour of the state. This claim is supported by research on the American Supreme Court, Bartels (2005) found that the effect of the ideology of the justice varied between cases with different characteristics. The cases are grouped into the following: Tax cases, other economic cases, expropriation cases, immigration and asylum law, family law, health-care cases administrative law and cases related to nature.

The expected impact of each of the different areas of law will here be described in more detail.

Tax law encompasses many different forms of taxes including the value added tax, corporate tax, personal income tax, estate tax and inheritance tax. The main question in such cases is if private citizens or corporations owe the state taxes or not. The main disagreements is often over what tax rate is appropriate, if Norway or a municipality has the jurisdiction to collect the tax in question, if a service is subject to tax or for instance if a period of time is subject to be taxed or not. This is the area of law when one could expect the clearest ideological split among the justices. This is because it is clearly an important subject for the state since it has a monopoly on tax collection, and the outcome of cases influences the states revenue. In tax cases the private party often technically avoids the tax through loopholes that exist because of the vagueness of the law or situations that are not explicitly covered by the law. A question that often faces the justices is how much freedom a person or company has when it comes interpreting the letter of the law to their own advantage versus the overall intent of the law and tax system.

The category *other economic cases* covers a wide array of different cases. One of the main subgroups is when the state either through wrongful actions or inaction has made the state guilty of something that requires reimbursement to a private party. In theory the same rules apply as if two private parties had a legal dispute, but a major difference is that the state is much more likely to be found responsible on objective grounds connected to areas of society where the state has monopoly[31]. Though more rare, the state suing a private party does at times occur for instance when private companies are responsible for community tasks i.e. building schools and the private party exceeds the timeframe or cost of the project. In these kinds of cases it is difficult to determine a theoretical expectation based on appointing government.

Another category is *expropriation cases*, which simply put is cases where the state infringes on the private property of the individual with the goal of taking over the land or regulate the use of land. Many of these cases can be traced to Article 105 of the

[31] This applies for instance to damages following poor roads, too high noise levels around airports etc.

Constitution that states: *"If the welfare of the State requires that any person shall surrender his movable or immovable property for the public use, he shall receive full compensation from the Treasury."* In such cases there are three main sources of disagreement that the justices face; whether the procedures for such actions are followed correctly, if the faults were significant enough to invalidate the government decision and what constitutes "full compensation" in the specific case. An area regulated for housing is for instance more valuable than areas regulated for farming and there is often disagreement on how to determine the value of minerals or other natural resources on the land A more rare issue that at times invalidate government action is that the action is so unjust to the individual that expropriation is illegitimate because of his or her needs and affiliation to the land. In such cases it is also often unclear if the needs of society is considerable enough justify such encroachment on private property rights. Since this area of the law often can be boiled down to a question of the needs of society versus private property rights it is clear that one can expect a clear difference between justices appointed by social democratic governments and justices appointed by non- social-democratic governments.

When it comes to cases that deals primarily with *immigration and asylum* the main questions is whether the decisions of the Norwegian Directorate of Immigration (Utlendingsdirektoratet)[32] was made according to both material and procedural rules. Cases are often related if to deportation of immigrants with established family life in Norway or if persons might face jail in countries where conditions are subpar[33], is if a legal decision by Directorate of Immigration should be overturned because of the exceptional circumstances of the case. This clearly opens for value judgements where main considerations are the letter of the law and the needs and perception of society versus the rights and needs of the person(s) affected by the decision. If the appointing government is a determining factor from a statistical point of view (which is not very likely), the results should suggest that social democratic appointees are less inclined to overrule the directorate decision.

[32] The directorate is a part of the Ministry of Justice and Public Security (Justis- og beredskapsdepartementet)

[33] This relates to both the general sanitary conditions and the risk of inhuman treatment

Based on theoretical assessments, one should expect justices appointed by social democratic governments to be less inclined to overrule (most often) local municipalities in *administrative cases*. These cases are generally of less importance than the other fields of law mentioned. Unlike the other areas of law, procedural faults are mostly overlooked if it cannot be proved that the faults had a determining effect on final decision of the authority making the decision.[34] Because of this, the state's win-rate in such cases is particularly high, but one should expect non-social democratic appointed justices to put more emphasis on correct procedure to secure to the rights of the individual while justices appointed by social democratic governments focus more on the effectiveness of local democracy.

In cases related to *family law*, most often child custody cases, one can expect that justices from different appointing government have different views on how far private family life can be infringed upon and where the threshold for government interference via child services (Barnevernet) is. Justices appointed by social democratic governments are expected to be more approving of government interference on family life.

Another area of law that will be analysed are cases that deals with *health care*. The assumption here is that justices appointed by non-social democratic governments would focus on that procedures and treatment must be in accordance with the guidelines. Justices appointed by social-democratic governments can be assumed to put more emphasis on the effectiveness of treatment centres, hospitals etc. as whole, and thereby be less strict with specific guidelines.

The last area of law that will be tested are cases related to *nature.* The assumption is again that justices appointed by non-social democratic governments are more inclined to respect and protect private property rights compared to justices appointed by social-democrats governments. This discussion of different areas of the law leads to:

[34] The only clear procedural fault that almost always is deemed sufficient to nullify administrative decision is if the person(s) affected be the decision did not have the opportunity to give their views on the matter before the final decision was made.

H8: *The effect of the ideology of the justice varies between cases with different characteristics.*

4.4 Hypotheses based on the Panel Effect Theory

Explanatory variables connected specifically to the *composition* of the five-justice panels are included to test the collegial effects. Thought the cases in the Supreme Court are decided by the votes of the individual justice, the outcome of the cases are a result of coordination and collaboration according to Schei (2010:14). Kjønstad (1999:97) and Schei (2004:138) have eluded to that the legal context of the Court can impact the behaviour of the Norwegian justices and influence their votes.
The recruitment base to the Supreme Court in terms of former workplace has broadened during recent years[35], and a possible consequence of this is the increased ratio of judicial review performed by the court (Skoghøy 2011b:15).

Empirical research done on American courts suggests that the environment the justices decide cases in influences their decisions (Meinke and Scott 2007). This research was conducted on rotating three justice panels in the Court of Appeals. This composition is not very different from the rotating five justice panels most widely used in the Norwegian Supreme Court. (Brown in Sunstein et al. 2006: 71).

Based on appointing government the following hypothesis are established:

H9: *The likelihood for voting for the state increases if the case is heard by a panel of justices consisting only of social democratic appointees*.

H10: *The likelihood of voting for the state decreases of the panel consists a majority of justices not appointed by social democratic governments*

The following hypotheses that are related to the composition of justices can been seen as a continuation of some of the hypotheses connected to the individual justice.

[35] More of the justice has experience from private law firms and limited or no experience from governmental agencies.

H11: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Legislation Department.*

H12: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Office of the Government Advocate*

H13: The likelihood of voting for the state increases if the panel consists of a majority of justices were born in Oslo.

Chapter 5 - Method

To study the effects of ideology and other variables on the vote of the justices in the Supreme Court, a quantitative approach will be utilized. This approach follows a widely used tradition in studies on the American Supreme Court (i.e. Tate 1983, Segal et al. 1993, 2002, Kastellec 2011, Parker 2012) and on the Norwegian Supreme Court (i.e. Østlid 1988, Grendstad et al. 2010, 2011a, 2011b). A prerequisite for this kind of methodical testing is the availability of the data regarding information about the justices, their votes, and information about the cases. This prerequisite is satisfied as a result of the establishment and expansion of the DORONAH database by Grendstad, Shaffer and Waltenburg. Therefore one can follow the recommendation Lijphart (1971:685) of applying statistical method instead of other alternatives.

The main alternative[36] to a quantitative analysis is to analyse the contents of the written verdicts. This is difficult since the justices can camouflage their real assessments and views in the sources of law (see Eckhoff 2001:375, Skoghøy 2010).

5.1 Logistical Regression

The dependant variable is *dichotomous*. The justices either vote in favour of the party representing the state or the party representing private interests. Because the dependent variable is dichotomous, logistical regression will be utilized. The dependant variable and the vast majority of the other variables are dichotomous where each observation either has a value of 0 or 1. A linear model could take the fitted value beyond this restricted range, which could lead to a model that gives little meaning.

In the model that will be utilized[37] the coefficients will be shown as log odds. The direction of the coefficients can be interpreted straight forward, where a positive effect indicates an increase in likelihood for voting for the state whereas a negative

[36] Another possibility though only possible in theory would be to somehow analyse the deliberative voting process before the final vote.

[37] The Stata command that will used is the logit function

effect signals a decrease in the likelihood of voting for the state. A conventional method for a more intuitive interpretation of the log-odds is to estimate odds by exposing the coefficient and calculating the corresponding likelihood for that the dependant variable is 1 (Rabe-Hesketh et al. 2008: 235). The Stata command *margins* will be utilized in the analysis to estimate the predicted likelihood for voting in favour of the party representing the state. The odds ratio of a variable will also be given

AIC estimates will be used to determine how well the model fits compared to the other models. The AIC[38] (Akaike information criterion) test is not an absolute test since it does not indicate how good a model is in the absolute sense, but the AIC indicates how well the model fits the data and the estimated parameters (Hox 2010: 50-51). A lower AIC score indicates a better model, but a factor that must be considered is that the AIC can increase because of added variables. Wald tests will be utilized to determine if a singe variable or a group of variables should be kept for further analysis or if the variable(s) should be tossed out.

5.2 Theoretical Challenges

Each vote of a justice in the will be treated as a *unique* observation, which is the conventional way of treating observation when studying judicial behaviour. But this approach neglects the possibility of that the vote a justice can correlate with other votes given by the same justice in other cases.

The statistical approach will not take into consideration the time dimension as a relevant factor. This could be problematic according to Grendstad et al. (2011b:29). A potential problem stems from the fact that the Supreme Court hears different cases with different characteristics from year to year (Sunde 2012). The Supreme Court also often hears several cases related to the same law, paragraph or principle during a short period of time[39], after which the particular area a law is "settled" for a longer or shorter time period. Some of these particular questions are more political in nature and more often than other judicial question leads to dissent, which a condition for

[38] BIC scores will also be included.

[39] This is especially true for new laws or changed laws

being included in this study. An example of this is that 11 cases are included from 1998 and 2008, while only 2 cases are included from 1994.

5.3 Arguments for a Hierarchical Model

There are several arguments for why the use of *multilevel* analysis is worth exploring. A multilevel analysis is according to Hox and Roberts (2011:4) a statistical model for data that consists of two or more distinct hierarchical levels. Most social processes involve interaction between the individual and groups of people. The Norwegian Supreme Court involves this kind of social process, and the voting process is by its nature hierarchical. Because of this hierarchy it can be useful to use a multilevel data model that captures the effects of hierarchy in one model.

The theoretical framework, and the panel effect theory in particular opens for that variation in the votes of the justices can be explained by variables on both the individual- and case-level. A multilevel model allows the variables to be analysed on their "correct" level in the data structure, which helps avoid ecological fallacy (Steenbergen et al. 2002:219). Another methodical argument for the use of a multilevel analysis is that multilevel models allows for units within the same nested group to correlate with each other. Multilevel models have as mentioned be used sucuessfully by other students at the University of Bergen who have analysed the Norwegian Supreme Court.

An efficient test on whether or not a multilevel model is appropriate is to view the interclass correlation (ICC) in the empty model. The ICC that varies between 0 and 1 tells how much of the variation in the dependant variable that can be explained by unobserved characteristics in the group structure. Theall, Scribner, Lynch, Simonsen, Schonlau, Carlin and Cohen (2008: 5) argue that an ICC of two percent or more indicates a group structure that is worth testing in a multilevel analysis.

The empty model test[40] of the selected dissenting cases showed that there is no ICC, and that all of the variation in the dependant variable can be explained in the observed data in the selected explanatory and control variables. Because of the lack of ICC,

[40] Using the Stata function xtlogit

there is no point of applying a multilevel model in the analysis. The variables that will hurt the most from the lack of a multilevel model are the variables connected to the panel, since the nesting of groups is irrelevant in standard logistical regression.

Even thought a multilevel level will not be used, the terms level one and two will be used to separate between predicators that are directly connected to a justice, whereas the level two applies to the predicators that are connected to the case or panel

5.4 The Structure of the Model

The following section will explain the structure of the model in the analysis chapter.

Step 1: The effect of ideology on the individual level

The first step is to test the effect of appointing government on the vote of the justices in dissenting cases in a bivariate model. The reason for this first step where only appointing government the only included variable is to illuminate H1: *Justices appointed by social-democratic government are more likely to vote in favour of the state than justices appointed by non-social-democratic governments.*

Step: 2 Inclusion of the other justice predicators

The next step is to include all *explanatory and control variables* on level one in a multivariate model There will be two multivariate models, one which only includes the explanatory variables and one where the control variables are also included. This will test both the effect and significance of the explanatory variables or any of the control variables. The inclusion of the other variables will also show if and how the appointing government variable changes. This step will cover 2 to 6.
Wald tests will be then be used to create a *condensed model* of variables on level one.

Step 3: Inclusion of level two variables.

The third step is expanding the condensed model with case and panel predicators. Firstly the explanatory variables on level two will be tested before the control variables are included. This expansion will test if any of the new variables are statistically significant and how the newly included variables influence the effect and

significance of the existing variables. This step will cover hypotheses 7 to 13. A new and *final condensed model* will then be created, based on the Wald scores of the variables from the multivariate model.

Step 4: Testing the effect of different areas of law

The multivariate models are not very likely to illuminate the effect of different areas of the law to any large extent. Therefore it is necessary to include a predicted likelihood test to give a more in-depth view of how justices from different appointing governments. This will hopefully give relevant information to H8: *The effect of the ideology of the justice varies between cases with different characteristics.*

Chapter 6 - Data Chapter

This chapter will present the source of the selected data, the framework of the analysis and the operationalization of the variables. The framework of analysis deals with what kind of cases that will be included and the reasoning for setting these limitations. Explanatory variables will be outlined in order of their placement and inclusion in the data structure. The *explanatory variables* will be discussed in detail regarding expected direction The *control variables* will be discussed in less detail, but expected direction and some theoretical justification will be mentioned for some these variables. The name given to the variables in the model will be mentioned in in an overview table at the end of this chapter.

6.1 Source of Data

The data that will be utilized in this thesis will be based on information stored in the Doranoh database created by Gunnar Grendstad, William Shaffer and Eric Waltenburg (2012a). The Doranoh database consists of information about the Supreme Court cases, the votes of justices and information about the justices in the time period 1945 to 2012.

The data regarding cases and votes in the Doranoh database is based on information found on *Lovdata*. Lovdata is a website and database which publishes judicial information. The free version of the website includes among other things the vast majority of Norwegian law, preoperational notes to the laws and the newest Supreme Court cases. The subscription service offers in addition the most complete online library of Supreme Court cases found in Norway and advanced search tools. The subscription version is widely used by practitioners of law and law students in Norway

Overall the data is reliable since it based on objective quantifications of published judicial decisions. The Lovdata database is however not designed to be used for statistical empirical research. Examples of this are for instance inconsistent

terminology[41] and different layouts of the written verdicts from different time periods when it comes to court decisions. Though Lovdata is the most complete database for Supreme Court cases, there are some gaps. These gaps are mostly connected to criminal cases dated 1990 and prior. The database is nearly complete when it comes to civil cases, though several transcripts of verdicts from before 1950 are missing or incomplete.

The next section of the data chapter will present the framework of the analysis.

6.2 Civil Cases

This thesis will only analyse *civil cases*. There are several reasons for this choice. Most criminal cases reaching the Supreme Court deal with technical questions about procedure, discussions about the applicability of a certain article of the criminal code or the severity of the punishment etc. It's unlikely that ideology based appointing government is a relevant factor in such cases.

As stated by the current Chief Justice Tore Schei, most civil cases that reaches the Supreme Court are questionable in the sense that one more factors makes the outcome of the case uncertain (Schei 2011, 2012). This point has to be seen in connection with the role of the Supreme Court and the case selection process. The Appeals Section of the Supreme Court has complete discretion when it comes approving a case for further deliberations or outright dismissing the appeal. The role of the Supreme Court is to serve as the highest appellate court and it's therefore natural to believe that only the appeals from questionable cases are granted. If the Appeals Section doesn't have any reason to question the validity of the verdict from lower courts there's no reason to grant an appeal and granting such appeals will unnecessary increase the caseload of the Supreme Court.

[41] An example of inconsistency is that the terms "dissens" (dissent) and "mindretall" (minority) are both used, though these terms describe the same thing.

Simply put, there's a reason why the Supreme Court chooses a case. The main reasons are that a case is complex, of great importance, of controversial nature or a decision will have great ramifications beyond the specific case in question.
The only requirement to be included in the analysis regarding the litigants in the case is that one of the parties represents state interests. The term state interests includes in addition to cases where the central government or various governmental departments and directorates are litigants, county councils (fylkeskommune) and municipalities (kommuner) since they also represents societal interests. Cases where both litigants represent state interests are excluded.

6.3 Dissenting Cases

The analysis in this thesis will be based on cases where there is disagreement among the justices regarding the outcome of the cases. According to Skoghøy (2010:720) dissenting cases are *"cases where within the framework of the accepted sources of law it is possible to argue for different outcomes, and it is reasonable to expect that the votes in such cases will contribute to undercover the justices inclination to prioritize different interests."* This statement by Skoghøy might be a little too simplistic since it basically states that dissents occur since it possible to argue for different outcomes, which is the case in all cases, or else there would be little reason for the Supreme Court to take on a case. But since the justices disagree in dissenting cases it reasonable to assume that there isn't a clear answer to the question(s) in the case based on the sources of law. Another possibility is that the sources of law are clear, but contradictory and can be interpreted differently. When justices face such situations it is reasonable to assume that the personal attitudes[42] of a justice influences his or her vote.

There are several different forms or degrees of dissent. The most clear-cut is when there are two or more opinions that differ in regards to the *winner of the case*. Another form of dissent is when two or more opinions differ with regards to legal arguments,

[42] One cannot however automatically assume that it is the ideology of the justice the influences the vote. Other attitudes such as what the justice believes is most coherent with other laws can determine the vote.

but the winner of the case is identical despite the different legal approaches to the case. The last main form of dissent is when the opinions are identical with regards to the winner of the case and arguments, but the opinions argue for different consequences i.e. lesser or more severe punishment in criminal cases or how much or what percentage a business needs to pay in taxes. The analysis will only consist of cases that include one or more opinion(s) that dissent on the main question (winner of the case).

6.4 Five-justice Panel and Time Period

Only cases decided in five-justice panels (avdeling) are included in the analysis. Since the amount of cases deliberated in Grand Chamber or in plenary session is very low, their absence should not have an impact on the variables. A consequence of the exclusion is that any conclusion is only applicable to a five-justice panel.

The time period of the analysis is from 1991 to 2012. The reason for why 1991 is set as the starting point is that Carsten Smith[43] took over as Chief Justice that year. Smith was one of t the earliest supporters of a more limited caseload for the Supreme Court so that the Court could focus on more complicated issues. He also acknowledged the political function of the Court, and he believed that this fact should not be hidden (1975). The selection of Smith as Chief Justice can therefore be said to mark the start of a transformational period which makes 1991 an apt starting point for the timeframe of the analysis.

The next section of the data chapter will deal with the variables that will be included in the analysis. The table featured below gives an overview of the variables that will be tested, including their names, operationalization and the expected direction of the effect of the variable.

[43] Chief Justice from 1991 to 2002

Table 3: Overview of the Variables

Variables	Operationalization	Hyp. Relationship
forstate	1 = Vote for State 0 = Vote against state	Depdenant variable
Justice Exp. Variables		
socdemgov	1 = Social Democratic 0 = Non-Social Democratic	+
lovavd2	1 = Prev. employ. Legislation Dep 0 = No	+
regjeringsadv	1 = Prev. employ. Government Advocate 0 = No	+
riksadvokatembet	1 = Prev. employ Public Prosecutor 0 = No	+
lawprofess	1 = Prev. employ Law Professor 0 = No	-
osloborn	1 = Born in Oslo 0 = No	+
Justice Control Variables		
after2002	1 = Selected by Judicial App. Board 0 = No	-
earljudge	1 = Prev. emply. Judge 0 = No	+
priv_prac	1 = Prev. employ. Private practice 0 = No	-
sex	1 =Female 0 = Male	no expected direction
yborn	Age measured in years	no expected direction
yappoint	Seniority measured in years	no expected direction
chief	1 = Chief Justice 0 = No	no expected direction
interimjustice	1 = Interim Justice 0 = No	no expected direction
Case Exp. Variables		
regjeringsadv	1 = Gov. Adv. Present 0 = No	+
emregjeringsadv	1 = Office of Gov. Adv. Present 0 = No	+
stateanke	1 = State is plaintiff 0 = State is respondent	+
Case Control Variables		

taxlaw	1 = Tax Case 0 = No	no expected direction
othereco	1 = Economic Case 0 = No	no expected direction
explaw	1 = Expropriation Case 0 = No	no expected direction
immilaw	1 = Immifartion Law 0 = No	no expected direction
adminlaw	1 = Administation Law 0 = No	no expected direction
familiylaw	1 = Familiy Law 0 = No	no expected direction
healthlaw	1 = Health-Care Law 0 = No	no expected direction
Nature	1 = Nature Case 0 = No	no expected direction
Complex2	Complexity measuured in words	no expected direction
Panel Exp. Variables		
lovadvpan	1 = Majority former. Leg. Dep 0 = No	+
HomogenSosdem	1 = Homogenus Soc. Dem. App. 0 = No	+
regjeradvovertal	1 = Majority former.Office. Gov. Adv. 0 = No	+
iSosdemovertal	1 = Majority Non-Soc.Dem. App 0 = No	-
osloovertal	1 = Majority Born in Oslo 0 = No	+
Panel Con. Variables		
justitiariusipanel	1 = Chief Justice in Panel 0 = No	no expected direction
flerpriv	1 = Majority Private Practise 0 = No	-
flerarljugde	1 = Majority former Judge 0 = No	no expected direction
aggageatvote	Avg. Age meassured in years	no expected direction
aggseniority	Avg. Seniority meassured in years	no expected direction

6.5 Dependant Variable

The *dependant variable* in the analysis will be if the vote of a single justice was in favour of the public or the private party in a specific case. The variable is dichotomous, and a vote in favour of the public litigant has the value of 1 whereas a vote in favour of the private party has the value of 0. This dependant variable is functional because it goes to the heart of government friendliness and effective because it enables collection of the justices' votes in all cases. It is important though to remember that the dependant variable only captures the end result of the judicial process within the Supreme Court, and no effective dependant variable could capture the true views of the justices not tasked with writing an opinion.

6.6 Justice Level Explanatory Variables

The following *explanatory variables* are based on the expanded attitudinal model, which includes personal traits and the variables are directly connected to the individual justice.

The theoretical framework used in this thesis suggests that the vote of a justice can be best explained by their ideological preferences either on the individual level (Segal et al. 2002:86) or on a case-level (Kastellec 2011, Sunstein et al. 2006). The variables connected to the individual justice will consist of personal traits and the perceived attitudes of the justice. While most personal traits can be directly measured, the same does not apply for preferences and attitudes. Therefore one must use *proxy* measurements and values that establish a plausible link to the preferences of a justice.

An indicator that is commonly used as a basic measurement for political preferences in most studies of judicial behaviour is simply *who appointed the justice*[44] (Sunstein et al. 2006: 8, Boyd et al. 2010, Grendstad et al. 2010, Grendstad et al. 2011a, Grendstad et al. 2011b, Magalhães 2003, Voeten 2007). The advantages of using the ideology of the appointers of a Supreme Court justice as a proxy measurement, is that the information is guaranteed to be correct and available for all justices. Applying

[44] Which in regard to Norway in practice is the current Government Council.

appointing government as a measurement has also been used extensively used in the Norwegian context, in particularly by Grendstad et al., who has found significant effects of ideology on the vote of the justices. The same measurement is also the foundation for ideology on the panel level.

The use of appointing government as a measure on the ideology of a justice is not however uncontroversial. Skoghøy (2011a) and Schei (2011) argues that more precise knowledge of the appointment procedures would make it clear that applying appointing government as a measure on a justice's ideology is basically pointless. An alternative way to measure ideology suggested by Grendstad (2012b) is expert surveys of lawyers with the right to appear before the Supreme Court[45] and their perceived ideology of the justices The new measure will not however be used in this thesis, since the survey would only cover the current Supreme Court and therefore in inapplicable to all the justices in the chosen timeframe. Another potential problem using appointing government as a measure is that Norway has a history of coalition governments, which makes it more difficult to identify a clear ideology based on political parties[46]. This could lead to conceptual stretching (Sartori 1970).

A question that therefore arises is if a dichotomous classification is sufficient to cover the nuances in the Norwegian parliamentary system. One reason why a dichotomous classification is sensible is that the Labour Party has been the lone governing party or the largest party in a coalition in every centre-left government, whereas every other government haver been centre-right within the timeframe of analysis. Therefore it can be said that all Norwegian governments within the timeframe of analysis followed one of two distinct ideological main approaches. On the other hand it is difficult to measure the influence of centrist parties or parties further to the left[47] and to group the different governments that did not include the Labour Party as one ideological group. A dichotomous classification can also be seen as an advantage since it moves away

[45] "Advokat med møterett for Høyesterett" officially replaced the title Høyesterettsadvokat in 1979

[46] It is for instance difficult to classify appointing governments when Senterpartiet has been in both Social Democratic and non-Social Democratic coalition governments

[47] The same problem will occur on the right with appearance of the Progress Party (Fremskrittspartiet) in government.

from a party-political understanding of ideology and widen ideology to a more general term.

Following the classification by Grendstad, appointing government is a dichotomous variable with two possibilities. Social Democratic governments have the value of 1 and the term understood as governments consisting of the Labour Party (Arbeiderpartiet) alone or as the largest party in a coalition government. Non-Social Democratic governments are classified as any government where the Labour Party is not involved, and has the value of 0. This variable forms the basis for hypothesis 1.

The next explanatory variables on the individual level are connected to former workplace. The former workplaces that are expected to have an effect are former employment in *the Legislation Department*, working as *the Director General of the Office of the Government Advocate or for his office*, having *been the Director General of Public Prosecutions* or having previously been a *law professor*. The first three of these former occupations are expected to have a positive effect on state friendly voting, The law professor variable on the other hand is expected to have a negative influence on state friendly voting. The former workplace variables are dichotomous, where the value of 1 represents former employment in the aforementioned positions and 0 indicates no such former employment. These variables are the foundation for hypotheses 2, 3,4 and 6.

The last explanatory variable on the justice level is if the justice was born in Oslo, which is the basis for hypothesis 5. This variable is also dichotomous, where value of 1 represents that a justice war born in Oslo and 0 that a justice was born elsewhere.

6.7 Case Level Explanatory Variables

The following explanatory variables are located on the second-level of the hierarchical model. These case-related variables are chosen to shed light on how the legal constraints that are out of control of the justices influence their inclination to vote for or against the state.

The importance and effect of what calibre of representation the state sends to handle the case on its behalf is connected to the importance of the case. The variables that indicates that the case is handled by *the Office of the Government Advocate* can shed light on this claim are therefore included to test hypothesis 7. Both variable[48] are dichotomous, the first indicating the *personal presence of the Government Advocate* and the second a person from *his office*. Aforementioned presence has the value of 1, while non-presence has value 0.

This thesis will test if cases from different areas of the law have any influence on whether or not the justice vote according to their perceived ideology based on appointing government. The 8 different areas of law that are identified in this thesis are: *Tax cases, other economic cases, expropriation cases, immigration and asylum law, family law, health-care cases, administrative law and cases related to nature*. All of the case type variables connected to hypothesis 8 are dichotomous, in where the variables connected to the area of law are coded with 1 if the case deals with one of the mentioned areas of law and 0 if they are not.

6.8 Panel Level Explanatory Variables

There are five explanatory variables connected to the composition of the panel. Two of these variables are based on appointing government; one variable indicates homogenous social democratic appointed panel and the other variable indicates a majority of justices appointed by non-social democratic governments. These two variables will test hypotheses 9 and 10.

There are two variables based on former workplace; if the panel consists of a majority of justices that have worked in the *Legislation Department* or not and if a majority of the panel have worked for the *Office of the Government Advocate* or not. These two panel variables tests hypotheses 11 and 12.

[48] The Government Advocates personal appearance and the appearance of someone representing his Office.

The final explanatory variable is connected to hypothesis 13 and tells if a majority of the justices were born in *Oslo.*

All of these five panel variables are dichotomous, where the value of 1 indicates one of the aforementioned panel compositions.

6.9 Justice Level Control Variables

Two of the selected control variables are connected to the former legal employment of the justice. The former occupations serving as control variables are if a justice has formerly worked as a *former judge* in the lower courts or as lawyer working in a *private law* firm. Having worked in the aforementioned occupations is not expected to a have a statistical effect on the likelihood for a judge to vote for or against state interests. These variables are dichotomous, the value of 1 represents former employment and 0 represents no such former employment.

The *gender* of a justice has been found in numerous studies (i.e. Boyd, Epstein, and Martin 2010; Collins, Manning, and Carp 2010; Farhang and Wawro 2004; McCall 2008; Songer et al. 2010) to have a statistically significant effect on judicial decisions. There's however not reason to believe that gender impacts the likelihood of a justice voting for or against the state. Being a woman is coded as 1, while men are given the value of 0.

Another variable that deals with the social background of the justices is their *age.* One of the hypothesis presented by Grenstad et al. (2011b:18) connects older age with a disposition to maintain the status quo. This hypothesis is based on the notion that people become more conservative as they get older. Voting to maintain the status quo in the context of the state friendly hypothesis, will in the vast majority of cases coincide with siding with the state. The Age variable is a metric variable.

Another variable that is based on the assumption that the likelihood for voting to maintain the status quo increases over time is *seniority*. The longer a justice has served on the bench will increase the justice's exposure to the collegial interactions

and socialization processes that occurs at the court. Such interaction is expected to make a justice more state friendly over time. The seniority of a justice is measured in years.

The appointment procedure was changed in 2002 as mentioned in the theory chapter, and a control variable is therefore included to control for the effects of the appointment process. This variable is dichotomous, where the value of 0 indicates that a justice was appointed prior to 2002 and the value 1 after 2002.

The Supreme Court of Norway often utilizes *interim justices* for shorter amounts of time. The appointment of these justices does not follow the normal appointment procedure. In theory they can be chosen because of their views on policy issues (Smith 2012:159-161). Such policy views are in theory often identifiable since interim justices most often are senior justices from lower courts. The expectation is that interim justices are more likely to vote in favour of state than associate justices. Interim justices are given the value of 1, whereas non-interim justices are coded with the value of 0.

Whether or not a justice is the Chief Justice is also included as a control variable, where the value of 1 indicating that the justice is the Chief Justice.

6.10 Case Level Control Variables

The analysis includes a control variable that aims to measure the complexity of a case. The *complexity* of the case has been applied to analysis on the American courts (Collins 2008). One can in theory assume that the more important a case is, the more complex it will be. And the state is less likely to loose cases that are of substantial value as mentioned before. It is however difficult to find a clear measure on case complexity. As far as this writer can see, an optimal variable dealing with case complexity would have to include a qualitative factor based on the judicial reasoning in the specific case, which clearly isn't an easy factor to take into account when dealing with statistical analysis and a large amount of cases. Therefore this analysis will utilize the number of words of the legal arguments as a substitute measurement.

The outcome of a case in Lagmannsretten is also likely to influence the likelihood of justices to vote for or against the state in the Supreme Court. Common to all levels of courts in Norway is that the winner in the lower court is more likely to also be the winner in the higher court[49]. According to this assumption the state is likely to lose in the Supreme Court if the state lost in the lower courts.

When the state appears in the Supreme Court it is usually as the respondent[50].
One reason for why the state appears as the respondent in the majority of Supreme Court cases is according to Government Advocate Fagernæs that the state is restrictive in appealing to the Supreme Court. This reservation in pursuing cases to the Supreme Court[51] if the case is not winnable or of great importance might lead to a higher than usual win ratio for the state as the plaintiff compared to other judicial actors. Therefore a clear prediction is difficult. The value of 0 is applied when the state is the respondent and the value 1 applied when the state appears as the plaintiff.

6.11 Panel Level Control Variables

Whether or not the Chief Justice serves on a case is also expected to influence decisions. There are several reasons why this is likely to occur. The Chief Justice is always the most senior justice, which gives him more opportunities to shape how the case is discussed among the justices. The Chief Justice is normally more focused on internal unity among the justices and creating an external image of agreement than the other justices (Brenner and Hagle 1996; Wahlbeck et al. 1999, 498). The value of 1 indicates that the Chief Justice is present, and the value 0 indicates no such presence.

Two former workplaces are also included as control variables. These two are former work as a judge and former experience from private practise. These variables are

[49] A basic reason for this is that the arguments that convinced a justice on one level is likely to also convince a justice on the next level if no other circumstances regarding the case have changed.

[50] Meaning that the state won in Lagmannsretten

[51] At least for the cases that are under the control of the Government Advocate

dichotomous where the value of 1 indicates a majority of justices with the specified experience and 0 indicating no such majority.

As a continuation of the inclusion of age and seniority of the individual justice, the average age and seniority of a panel are also included as control variables. These variables are measured in years.

The numerous selected variables should be able to illuminate the research question: *What factors influences the Supreme Court Justices in dissenting cases where the state is one of the litigants.*

Chapter 7 – Analysis

This chapter will feature the analysis of dissenting Supreme Court decisions from 1991-2012. The different analysis will be structured as mentioned in the Method Chapter. The chapter will conclude with a discussion of the results and the impact on the hypotheses outlined in table 2.

7.1 Descriptive Statistics

Table 4: Descriptive Statistics Dependant and Explanatory Variables

Variable Name	Variable	N	Mean	S.D.	Min	Max
Dep. Variable						
forstate	Vote for State	590	0,503	0,500	0	1
Justice level						
SocDemGov	Appointing Gov.	590	0,659	0,474	0	1
lovavd2	Legislation Dep.	590	0,471	0,500	0	1
riksadvokat	Dir. Gen. of Pub. Pros.	590	0,076	0,266	0	1
osloborn	Born in Oslo	590	0,380	0,486	0	1
regjadv	Former Emply. Gov. Adv.	590	0,369	0,483	0	1
lawprofess	Former Law Professor	590	0,161	0,368	0	1
Case level						
regjeringsadv	Gov. Adv. Present	590	0,017	0,129	0	1
emregjeringsadv	Office of Gov. Adv.	590	0,492	0,500	0	1
statanke	State is Appellee	590	0,314	0,464	0	1
Panel level						
regjadvovertall	Majority Gov. Adv.	590	0,271	0,445	0	1
HomogenSosDem	Homo Soc. Dem.	590	0,068	0,252	0	1
lovadvpan	Majority Leg. Dep.	590	0,466	0,499	0	1
osloovertal	Majority Born in Oslo	590	0,297	0,457	0	1
iSosdemovertall	Majority Non-Soc. Dem.	590	0,186	0,390	0	1

The table shows that the votes for and against the state is fairly even distributed with 50.4 percent of the votes going in favour of the party representing state interests.

The descriptive statistics of individual justice data shows that roughly 66 percent of the votes were cast by justices appointed by social-democratic governments and 34 percent of the votes are given by justices appointed by non-social democratic governments. This discrepancy is natural since social-democratic governments have ruled for the majority of the time before and during the time period of the analysis, and thereby have appointed the majority of the justices included in the analysis. The

table also shows that a large percentage of the justices have previously worked in the Legislation Department (47 percent) and/or in the Office of the Government Advocate (37 percent). Nearly 38 percent of the justices where born in Oslo.

The descriptive statistics of the explanatory variables on the case level shows that the Government Advocate or one of his employees represented the state in about half the cases (about 51 percent), but the Government Advocate very rarely was personally in charge. The data also shows that the state was only the appellant in 31 percent of the cases, which confirms the statements by Fagernæs that the state is restrictive in appealing to the Supreme Court. Tax cases represents 43 percent of the selected cases.

The panel data of composition of the justices shows that justices solely selected by social-democratic governments presided in 6.8 percent of the cases, which shows that the vast majority of cases (93.2 percent) were decided in heterogeneous panels in terms of appointing government. Justices appointed by non-social-democratic governments were in majority in 18.6 percent of the cases.

Justices that had previously worked in the Legislation Department were in majority in about 47 percent in the cases, and justices with experience from the Office of the Government Advocate were in majority in 27 percent of the cases. Justices born in Oslo were in majority in nearly 30 percent of the selected cases.

7.2 The Effect of perceived Ideology

One of the basic claims of the Attitudinal model is that the ideology of the justice can influence how state friendly a justice is. Ideology has as mentioned in the data chapter been given appointing government as a proxy measurement. The model below shows the relationship between the vote of the justices and the government that appointed them in dissenting cases from 1991 to 2012.

Table 5: Bivariate model ideological voting

Variable Name	Coefficient	S. E.	O.R.	S. E.
SocDemGov	0.522***	0.175	1.686***	0.176
_cons	-0.331	0.143	0.718	0.103
AIC	812.947			
BIC	822.707			
Log likelihood	-408.943			
N	590.000			

*** p<0.01, ** p<0.05, * p<0.1

The coefficient of appointing government (SocDemGov) expresses the effect of having been appointed by a social-democratic government, given the value of 1. The coefficient is significant on the one percent level, and it has a positive direction which indicates the justices appointed by social democratic governments are more likely to vote in favour of the state, as predicted by the attitudinal model. The odds ratio shows that justices appointed by social-democratic governments are about 1.7 times as likely to vote in favour of the state compared to justices appointed by other government constellations. Beneath follows a predicted likelihood model that further explores the effect of appointing government on state friendly voting.

Table 6: Predicated likelihood model ideology

Appointing Government	**Margin**	**S.E**
Social-Democratic	0.548***	0.025
Non-Social-Democratic	0.418***	0.035
Difference	0.131 ***	0.044

*** p<0.01, ** p<0.05, * p<0.1

Table 6 shows that justices appointed by social-democratic governments are about. 55 percent likely to vote in favour of the state, whereas justices appointed by non-social-democratic governments are only likely to vote in favour of the state in roughly 42 percent of the cases. Justices appointed by social-democratic governments are

roughly 13 percent more likely to vote in favour of the state than the justices that were appointed by other governments.

The results from the bivariate model and the statically significant predicted difference in likelihood for voting for or against the state based on appointing government gives support to H1: *Justices appointed by social-democratic governments are more likely to vote in favour of public interests represented by the state than justices appointed by non-social-democratic governments.*

The AIC and BIC drops from the empty model to the bivariate model. This means that the variable appointing government has explanatory power on the vote of the justices in dissenting cases.

7.3 The Effects of Justice Level Variables

Table 7 shows the explanatory and control variables indicating perceived ideology and personal traits that are connected to the Attitudinal model. The first part of the table only analyses the explanatory variables while control variables are included in the second part of the table.

The first result to take notice of in table 7 featured below is the change in effect and significant of appointing government. From being statistically significant in the bivariate model with a log odds of 0.522, the log odds is reduced to a non-significant 0.265 and 0.346 in the multivariate model. It should however be noted that in the test with both explanatory and control variables, the appointing government (*SocDemGov*) variable was nearly statically significant[52]. The former law professor variable is significant on the 10 percent level and inclusion of the control variables increase the negative effect of variable

[52] The variable was significant on the 0.113 level

Table: 7 Multivariate model justice level variables

	Level-one explanatory predictors				Level-one control predictors			
Variable Name	Coefficient	S. E.	O.R.	S. E.	Coefficient	S. E.	O.R.	S. E.
SocDemGov	0.272	0.202	1.313	0.265	0.346	0.218	1.413	0.308
osloborn	0.133	0.185	1.142	0.211	0.164	0.213	1.179	0.252
regjadv	-0.194	0.191	0.823	0.157	-0.039	0.235	0.962	0.226
lovavd2	0.759***	0.198	2.136***	0.423	0.686***	0.251	1.985***	0.498
riksadvokatembet	0.281	0.358	1.324	0.474	0.121	0.438	1.129	0.494
lawprofess	-0.469*	0.273	0.625*	0.171	-0.619*	0.350	0.539*	0.188
chief					-0.790	0.712	0.454	0.323
interimjustice					0.877	0.570	2.403	1.370
sex					-0.019	0.242	0.982	0.237
priv_pract					-0.133	0.288	0.875	0.252
earljudge					0.271	0.244	1.311	0.320
after2002					-0.390	0.283	0.677	0.191
seniority					-0.025	0.023	0.976	0.022
ageatvote					0.018	0.022	1.019	0.022
_cons	-0.447	0.200	0.640	0.128	-1.368	1.118	0.255	0.285
AIC		790.679				796.129		
BIC		821.340				861.831		
Log likelihood		--388.340				-383.065		
N		590.000				590.000		

*** p<0.01, ** p<0.05, * p<0.1

So what is the likely reason for the decrease in effect and significance? The model shows that the Legislation Department variable (*lovavd2*) is statistically significant on the 1 percent level and has a high log odds (0.759 and 0.686) of voting for the state if a justice had previously worked in the Legislation Department. Based on the theoretical assumption that work experience in the Legislation Department is expected to be vote in favour of the state this development is not a surprising. It is also unlikely that the variable of previously being a law professor should influence the appointing government variable to any significant extent.

Tables 8 featured below gives a more detailed view of how relationship between having worked in the Legislation Department and appointing government influence tvoting for or against the state.[53]

Table 8: Predicated likelihood voting for state given appointing government *and* legislation department

		Predicted Likelihood	
Appointing Government	**Work Experience**	**Margin**	**S.E.**
Social-Democratic	Legislation Department	0.632***	0.064
Non-Social-Democratic	Legislation Department	0.549***	0.082

*** p<0.01, ** p<0.05, * p<0.1

The table shows that the predicted likelihood of a justice with experience from the Legislation Department voting for the state given appointing government. Compared to table 6[54] the estimates indicate that prior experience from the Legislation Department has a stronger effect on state friendly voting than appointing government. The difference between appointing government is also reduced from 0.131 to 0.083 when the justice has experience from the Legislation Department. These numbers indicates that the likelihood for voting in favour of the state between justices from different appointing governments is reduced if the justice has work experience from the Legislation Department.

These findings indicate that the statistically significant effect of appointing government follows from the fact that many of the social-democratic appointees have previously worked in the Legislation Department. Descriptive statistics regarding the relationship between prior work in the Legislation Department and appointing government tells that 58.6 percent of the justices appointed by social-democratic

[53] The remaining variables are held constant with the following values: interimjustice=0 sex=0 lawprofess=0 priv_pract=0 earljudge=0 after2002=0 chief=0 osloborn=0 regjadv=0 lovavd2=1 riksadvokatembet=0 age=mean seniority=mean

[54] For Social-Democratic Appointees 0.548 versus 0.642 with experience from the Leg. Dep. and for appointees from other governments 0.418 versus 0.549 for justices with experience from the Leg. Dep.

governments had previous experience from the Legislation Department, whereas this percentage is only 24.9 percent for justices appointed by non-social-democratic governments.

The only other variable in the analysis of individual justice predicators that was statistically significant was the law professor (l*awprofess*) variable. The effect of this variable was that justices who had previously worked as a law professor was more likely to vote against the state.

The results can be interpreted as if former workplace is central in making the justices predisposed to voting for (Legislation Department) or against (former law professor) the state. But such a statement is moderated by the fact that only two of the former workplace variables were statistically significant.

None of the other variables connected to the individual justice were statistically significant. The direction of the effect of the non-significant variables is very close to what one should expect. Being the chief justice (*chief*) and having worked in private law (*priv_pract)* firms leads to voting against the state. Oslo-born justices (*osloborn*), having previously worked in the office of the Office of the Director General of Public Prosecutions (*riksadvokat),* being an interim justice (*interimjustice*) and being a former judge in the lower courts (*earljudige*) increases the likelihood for voting for the state. The other variables such as sex, age and seniority showed little effect in either direction. The only surprising result in terms of the direction of the effect was that being appointed after 2002 under the new selection method showed a negative effect in terms of voting for the state. This result is somewhat counterintuitive since most of these justices were appointed by social-democratic governments.

An interesting finding is that the AIC and BIC increases when the control variables are included. This suggests that the control variables do not on the whole contribute to increasing the models explanatory power. Wald tests show that several of the non-significant variables do not alone or collectively contribute to the models explanatory

power, and they are therefore tossed out.[55] The statistically significant variables and variables with a relatively high Wald-score connected to the individual justice forms the reduced model below.

Table 9: Condensed model justice level variables

Variable Name	Coefficient	S. E.	O.R.	S.E.
SocDemGov	0.346*	0.196	1.415*	0.277
lovavd2	0.781***	0.197	2.183***	0.430
chief	-0.557	0.594	0.573	0.340
interimjustice	0.950**	0.483	2.587**	1.248
lawprofess	-0.588**	0.293	0.555**	0.163
earljudge	0.285	0.179	1.330	0.238
_cons	-0.647	0.206	0.524	0.108
AIC	786.202			
BIC	816.863			
Log likelihood	-386.101			
N	590			

*** p<0.01, ** p<0.05, * p<0.1

The condensed model with the non-contributory variables *improves* the statistical significance of some of the remaining variables. Appointing government *(SocDemGov)* emerges as significant on the 10 percent level in the expected positive direction. Interim justices are statistically more likely to vote in favour of the state. The variable former judge was nearly statistically significant[56]. The AIC and BIC drops signalling that the models overall explanatory force was increased compared to model 7.

[55] The following variables are dropped sex priv_pract seniority ageatvote osloborn regjadv riksadvokatembet after 2002 with a Wald score of chi2(8) = 3.33 Prob > chi2 = 0.8526

[56] p<0.11

7.4 The effects of Case and Panel variables

The next step of the analysis is expanding the model to include case and panel variables. The variables from the condensed model (table 9) are included from the justice level.

Table 10: Multivariate model including all variables

	Explanatory predictors				Control predictors			
Variable Name	Coefficient	S. E.	O.R.	S. E.	Coefficient	S. E.	O.R.	S. E.
SocDemGov	0.338	0.208	1.402	0.291	0.420**	0.214	1.521**	0.325
lovavd2	0.852**	0.211	2.345***	0.493	0.883***	0.217	2.412***	0.525
chief	-0.603	0.606	0.532	0.322	-0.560	0.624	0.571	0.356
interimjustice	0.989**	0.485	2.750	1.331	1.018**	0.491	2.767**	1.357
lawprofess	-0.607**	0.300	0.553**	0.165	-0.624**	0.310**	0.536**	0.166
earljudge	0.312*	0.183	1.366*	0.249	0.504**	0.199	1.656**	0.329
regjeringsadv	1.206	0.757	3.341	2.529	0.671	0.804	1.955	1.572
emregjeringsadv	0.043	0.175	1.045	0.185	-0.105	0.205	0.900	0.185
HomogenSosdem	-0.078	0.358	0.923	0.331	0.083	0.434	1.087	0.471
osloovertal	0.171	0.195	1.187	0.232	0.178	0.216	1.194	0.258
lovadvpan	-0.239	0.200	0.788	0.156	-0.248	0.212	0.780	0.165
regjeradvovertal	-0.027	0.250	0.973	0.195	-0.054	0.219	0.948	0.208
iSosdemovertal	-0.178	0.251	0.836	0.210	-0.070	0.270	0.932	0.252
flerarljugde					-0.651***	0.223	0.521***	0.117
flerpriv					0.075	0.245	1.078	0.264
aggageatvote					0.026	0.042	1.026	0.043
aggseniority					-0.038	0.056	0.963	0.054
statanke					-0.387*	0.206	0.680*	0.140
Complex2					0.000	0.000	1.000	0.000
justitiariusipanel					0.289	0.341	1.341	0.465
tax					0.174	0.748	1.191	0.891
expro					-0.012	0.819	0.988	0.809
othereco					0.211	0.754	1.235	0.932
immi					0.822	0.806	2.276	1.835
admin					0.703	0.812	2.020	1.639
familiy					-0.363	0.794	0.696	0.552
health					0.505	0.885	1.657	1.466
_cons	-0.535	0.287	0.613	0.176	-1.996	2.478	0.136	0.337
AIC		794.678				797.397		
BIC		856.000				915.661		

Log likelihood	-383.339	-371.69863
N	590	590

*** p<0.01, ** p<0.05, * p<0.1

The full model (table 10) shows some interesting developments with regards to the individual justice predicators. The inclusion of the case and panel variables *increases* both the effect and significance level of the variable representing *appointing government.* The same is true for the variable representing former experience as *judge*. From not being statistically significant in the condensed model, it becomes significant on the 10.4 percent level when the explanatory variables one the second level are included, and the variable becomes significant on the 5 percent level[57] when the level two control variables are included. The effect of the effect of the Legislation Department, interim justice and the law professor variable slightly increases with the inclusion of the control variables.

None of the newly included explanatory variables related to the case and panel are statistically significant without the inclusion of the control variables. The variable that represent if the state is the appealle (*stataanke*) is among the few control variables that is statistically significant, indicating an effect against voting for the state. The only other control variable that is statistically significant is the variable representing a majority of former judges (*flerarljugde*). The direction of this effect is not surprisingly positive, the same as the former judge variable on the individual level. The variable is statistically significant on the 1 percent level.

The AIC score of the model with the level two explanatory variables increases slightly when the control variables are introduced. The AIC score for the tests excluding and including the control variables is however higher than in the condensed model, suggesting that most of the newly included variables does not contribute to the explanatory force of the model.

Wald tests suggest that beside the statistically significant variables, only the variables representing if the Government Advocate (*regjeringsadv*) handles the cases on behalf

[57] p<0.011

of the state and the case variables that indicates an immigration or family case should be included in the final model. The chief justice variable (*chief*), included in the first condensed model (though not statistically significant) is also dropped before the final analysis due to a low Wald score.

The variables that are included in the final condensed model (table 11)are: appointing government (*SocDemGov*), former employment at the Legislation Department (*lovavd2*), if a justice is an interim justice (*interimjustice*), if a justice is a former law professor (*lawprofess*), whether an individual justice or a majority of justices deciding a case has served as a judge (*earlijudge, fleearlijduge*), if the state is the appealle (*statanke*), if a case is a family or immigration (*immi*) case and whether or not the government advocate is handling the case on behalf of the state (*regjeringsadv*)

Table 11Final condensed model

Variable Name	Coefficient	S. E.	O.R.	S. E.	Level
SocDemGov	0.440**	0.201	1.553**	0.311	Justice
lovavd2	0.837***	0.201	2.309***	0.464	Justice
interimjustice	1.028**	0.481	2.800**	1.345	Justice
lawprofess	-0.646***	0.297	0.524***	0.156	Justice
earljudge	0.509***	0.196	1.663***	0.326	Justice
flerarljugde	0.686***	0.195	0.504***	0.098	Panel
statanke	-0.405**	0.191	0.667**	0.127	Case
immi	0.446	0.357	1.561	0.557	Case
familiy	-0.678**	0.319	0.508**	0.162	Case
regjeringsadv	0.781*	0.744	2.184*	1.625	Case
_cons	-0.410	0.226	0.663	0.150	
AIC		772.941			
BIC		821.122			
Log likelihood	-	375.471			
N		590			

*** p<0.01, ** p<0.05, *p<0.1

There are some minor and some larger developments in the final condensed compared to the model that included the level two control variables.

The effect of the appointing government, Legislation Department and interim justice variables increases very slightly from the full model. The effect of the former law professor variable is also somewhat increased, and it is significant on the one percent level in table 11 compared to its five percent significance level in model 10. The effect of former a justice having been a former judge and the effect of a panel consisting of a majority of former judges are bit higher than in the full model. The variable indicating if the state is the appealle becomes significant on the 5 percent level, a change from the 10 percent level in model 10. The variable indicating an immigration case remains statistically insignificant.

A large change is seen in both the variable indicating a family case and the variable representing if the Government Advocate personally handles the case on behalf of the state (r*egjeringsadv*). The family case variable goes from being statistically insignificant in model 10 to being significant on the 5 percent level while its effect nearly doubled in the negative direction. The variable that represents the *personal appearance of the Government Advocate* also becomes statistically significant (on the 10 percent level) for the first time and its effect is moderately increased compared to the full model.

Compared to model 10 the AIC drops by a fairly large amount from 797.397 to 772.941, which is also lower than the AIC score of 686.202 in the first condensed model. This suggests that the final model has the most explanatory force of any of the models in this chapter.

7.5 Different Areas of the Law

With the exception of the immigration and family variable, the full model does not give a clear picture on how voting patterns are influenced by which type of judicial question that are most central in the cases. The influence of case type is explored in more detail in the two models below that predicts the likelihood of a justice voting for or against the state based on case type. The predicted likelihood tests are based on the final condensed model with added case variables. The model also takes into account if a justice has experience from the Legislation Department since such experience has

been shown to have a larger (ideological) effect than appointing government in previous models.

The average value of appointing government is based on the fact that 24.9 percent of the justices appointed by non-social democratic governments have experience from the Legislation Department, while 58.6 of the social democratic appointees have such experience.

Table 12: Predicated likelihood[58] of voting for the state in different case types

	Non-Social Democratic			Social Democratic		
Case type	Avg.	Non. Leg. Dep.	Leg. Dep.	Avg.	Non. Leg. Dep.	Leg. Dep.
Tax	0.442	0.391	0.598	0.618	0.498	0.696
Expropriation	0.415	0.366	0.571	0.592	0.471	0.673
Other Economic	0.454	0.403	0.610	0.629	0.510	0.710
Immigration	0.560	0.511	0.707	0.725	0.617	0.788
Administration	0.531	0.479	0.680	0.689	0.586	0.766
Family	0.295	0.253	0.439	0.460	0.343	0.547
Health	0.529	0.477	0.678	0.696	0.584	0.764
Nature	0.364	0.317	0.518	0.540	0.416	0.624

The table shows some interesting results. Firstly there is a significant difference in the predicted likelihood of voting for or against state between justices appointed by different governments. The average value indicates that justices appointed by social democratic governments is more likely to vote in favour of the state *in all types* of selected case types. The *difference* between the predicted likelihood for voting for the state varies from around 15 percent to 19 percent depending on the case type.

Previous experience working in the Legislation Department has been shown to have a larger ideological effect than appointing government in previous models, and this view is strengthened by the results of this model. A justice appointed by a non social democratic government with experience from the Legislation Department is predicted to be nearly as state friendly as the average justice appointed by a social democratic

[58] All values are statistically significant on the 1 percent level, except the values of the nature variable which are only significant on the 5 percent level. A table of the S.E. of the model is found in Apendix Table 15.

government. The results show that justices with experience from the Legislation Department are about 20 percent more likely to vote in favour compared to their counterparts with no such experience appointed by the same government constellation.

The results also show that the predicted likelihood for voting for or against the state varies between the case types. The average justice appointed by non-social democratic government is predicted to vote in favour of the state in more than 50 percent of cases in immigration, administrative and health case. In family cases on the other hand the average justice appointed by social democratic governments is predicted to vote in favour of the state only about 46 percent of the time. This result corresponds well with the negative effect of the family variable in final condensed model. The high predicted likelihood to vote in favour of the state in immigration cases compared to the other case types also correspond well to the final condensed model, though this variable was not statistically significant.

The results of the predicated likelihood table therefore suggest that *some areas of the law are more prone to state friendly voting*, while other areas of the law are less prone to state friendly voting, independent of appointing government. The areas of law that can be considered to be state friendly are immigration, administrative and health cases. Cases most closely related to family issues on the other hand is clearly not a state friendly area of the law, while the remaining case types can be said to be neutral.

7.6 Discussion of the Results

The discussion of the results will be mainly based on table 11, also described as the final condensed model. The case variables will not be commented on here since they have been discussed in more detail under the predicted likelihood test regarding different areas of the law. The variables that are connected to any of the hypotheses will mostly be discussed under the section that tests the hypotheses and only their effect and direction will be commented on here.

The direction of the effect of appointing government (*SocDemGov*) is as expected positive, and the variable is significant on the 10 percent level. The odds ratio tells us that justices appointed by social democratic governments are about 1.5 more likely to vote in favour compared to justices appointed by non-social democratic governments.

The Legislation Department (*lovadv2*) has been shown to have a strong positive effect on the 1 percent significance level through all the tests the variable was included on. The odds ratio suggests that experience from the Legislation Department is apt to make a justice 2.3 times more likely to vote in favour of the state. Being an interim justice also has a strong positive effect of voting for the state and the variable is significant on the 5 percent level. Having previously been a law professor is shown to have a negative effect when t comes to voting for the state. Former law professor are about 0.5 times more likely to vote against the state interest according to its odds ratio.

The personal appearance by the Government Advocate (r*egjeringsadv*) is also shown to have a positive effect on state friendly voting. The variable is significant on the ten percent level, and the odds ratio shows that the justices are about 2.2 times more likely to vote in favour of the state if the Government Advocate handles to case on behalf of the state.

Being a former judge (*earlijudge)* or sitting on a panel consisting of a majority of former judges *(fleearlijduge)* are both shown to have a positive effect on state friendly voting. Both these variables are significant on the one percent level, though having been a former judge increases state friendly voting with 1.6 times as opposed to the 0.5 time increase by being on a panel consisting of a majority of former judges. That these variables show a statistically significant effect in favour of voting for the state is a surprise. There is not really a good theoretical explanation for why former judges are state friendly to this extent.

The results also show a significant effect against voting for the state if the state is the appeallee (*stataanke*). The variable is significant on the 5 percent level, and justices are two thirds less likely to vote for the state if the state is the appealle. The direction of the effect of this variable could as mentioned in the data chapter gone either way

based on theoretical assumptions. One assumption was that the variable would be positive, based on the statements of Fagernæs[59] since the state mostly only appeal to the Supreme Court on cases of greater importance that they have a reasonable expectation to win. The negative effect of the variable suggests that if the state looses its case in the lower courts, it will also lose in the Supreme Court.

Of the four distinct claims connected to the state friendly hypothesis the analysis proved useful to asses claim 1; the state has a positive win rate against private litigants which was proved through descriptive statistics. The second claim; the state friendly effect occurs as a result of the individual justices ideology and personal traits was proved by the results of the predicted likelihood models and the multivariate models[60]. The third claim; the effect of ideology and personal traits is stronger in important cases was partly confirmed by the effect of the presence of the Government Advocate. The fourth claim of the state friendly hypothesis; the effect of the collegial nature and structure of the court was however not tested to a sufficient degree because since a multilevel model was not used.

7.7 The Model Estimates in light of the Hypotheses

The table below provides an overview of whether a hypothesis established in chapter 4 is confirmed or disproved. What follows is a discussion of the hypotheses based on the results from the numerous analysis on the effect on state friendly voting in dissenting cases in the time period 1992-2012.The hypotheses connected to the attitudinal model will discussed firstly, followed by a discussion of the hypotheses connected to the case. The hypotheses connected to panel composition will be discussed lastly.

[59] Though his prediction was based solely on the cases handled by the central government.

[60] The most relevant results to this claim was the effect of appointing government and former employment in the Legislation Department.

Table 13 Overview and assessment of the Hypotheses

Justice	Result
H1: *Justices appointed by social-democratic government are more likely to vote in favour of the state than justices appointed by non-social-democratic governments.*	Confirmed
H2: *Former employment at the Office of the Government Advocate increases the likelihood of voting in favour of the state*	Disproved
H3: *Former employment at the Office of the Director General of Public Prosecutions increases the likelihood of voting in favour of the state*	Disproved
H4: *Former employment at the Legislation Department increases the likelihood of voting in favour of the state.*	Confirmed
H5: *Justices born in Oslo are more state friendly than justices not born in Oslo.*	Disproved
H6: *Former Law Professors are less likely to vote in favour of the state*	Confirmed
Case	
H7: *The presence of the Government Advocate or someone from his office increases the likelihood of voting in favour the state*	Partly Confirmed
H8: *The effect of the ideology of the justice varies between cases with different characteristics.*	Confirmed
Panel	
H9: *The likelihood for voting for the state increases if the case is heard by a panel of justices consisting only of social democratic appointees*	Disproved
H10: *The likelihood of voting for the state decreases of the panel consists a majority of justices not appointed by social democratic governments*	Disproved
H11: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Legislation Department.*	Disproved
H12: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Office of the Government Advocate*	Disproved

H13: The likelihood of voting for the state increases if the panel . consists of a majority of justices were born in Oslo	Disproved

The first hypothesis tests the statistical impact of appointing government on state friendly voting. The variable showed significant in the bivariate model (table 5), and the predicated likelihood tests (table 6) also showed a clear difference in the degree of state friendly voting based on different appointing governments in terms of ideology. The statistical effect of the variable varied between statistical insignificant to being relevant on the five percent level before the final condensed model (table 11), where the variable again become significant on the one percent level. It was expected that appointing government should have a clear effect on the justices vote, especially given that only dissenting cases were analysed, and the results overall showed this to be the case.

H1*: Justices appointed by social-democratic government are more likely to vote in favour of the state than justices appointed by non-social-democratic governments* is therefore confirmed.

The second hypothesis tested the effect on state friendly voting given if a justice had former experience at the Office of the Government Advocate. The variable had a small negative effect on state friendly voting, which was opposite of the expected direction in the first multivariate model (table 7), The variable was never close to being statistically significant and because of this in conjunction with low a Wald score the variable was dropped as a variable in the remaining estimations.

H2: *Former employment at the Office of the Government Advocate increases the likelihood of voting in favour of the state* is therefore disproved.

The third hypothesis stated that former employment at the office of Public Prosecutions would increase the likelihood for voting for the state. The variable had a relatively small positive effect in table 7, which was as expected, but it was not significant and was dropped from further analysis. A likely contributing factor to this

variable showing no clear effect or being significance is that very few of the justices (table 3) included in the analysis have worked in the Office of the Government Advocate

H3: *Former employment at the Office of the Director General of Public Prosecutions increases the likelihood of voting in favour of the state* is therefore disproved.

The fourth hypothesis tested if previous employment in the Legislation Department had a positive effect on state friendly voting. All the analysis has showed a strong pro state voting pattern for justices with such experience and the effects have all been significant on the one percent level. Though the effects of this variable was as expected, the extent and impact of former employment at the Legislation Department was larger than expected. The results that show that the effects of Legislation Department are more impactful regarding a pro state voting pattern than the effects of other former occupations are consistent with Grendstad et al. (2011b)[61], but conflicts with the results from Skåre (1999) and (Grendstad et al. 2012c). The results the Legislation Department has throughout the analysis been shown to be the clearest predicator leading to state friendly voting. and the results from table 8 and 12 for instance show that experience from the Legislation Department had a stronger influence on state friendly voting than appointing government.

H4: *Former employment at the Legislation Department increases the likelihood of voting in favour of the state* is confirmed.

The fifth hypothesis tested the impact of birthplace on state friendly voting. The effect of being born in Oslo was as expected positive as shown in the first multivariate model (table 7). The variable was not statistically significant however and was dropped from the rest of the analysis.

H5: *Justices born in Oslo are more state friendly than justices not born in Oslo* is disproved.

[61] Which analyzed cases where the central government as opposed to the state as a whole was a party in the case.

The sixth and last hypothesis connected to the individual justice was if former law professors were less inclined to vote for state compared to the justices with no such former occupational experience. The variable showed a strong negative effect on voting for the state from its inclusion in table 7 throughout the rest of the analysis, and in the final condensed model (table 9) the variable was significant on the one percent level. The law professor hypothesis had perhaps to weakest theoretical foundation of the hypothesis connected to former workplace, but the results strongly suggest that experience as a law professor would make a justice less likely to vote for the state.

H6: *Former Law Professors are less likely to vote in favour of the state* is therefore confirmed.

Next follows a discussion of the hypotheses connected to the case predicators and panel composition.

Hypothesis 7 was build on the assumption that the involvement of some judicial actors are more likely to lead to state friendly voting because of their position and expertise. Two variables where included to test this hypothesis; whether or not the Government Advocate handled the case in question personally in the Supreme Court or if someone from his office handled the case on behalf of the state. In table 10 the results showed a small negative and statistically insignificant effect for voting for the state if a case was handled by the Office of the Government Advocate. The negative direction of the variable was against the expectation of a positive, and due to Wald tests the variable was dropped from further analysis. This part of the hypothesis is therefore disproved.

The descriptive statistics tells that while the Office of the Government appeared in nearly 50 percent of the cases, while the Government Advocate personally was involved in only 1.7 percent of the cases. This fact suggest that the Government Advocate only takes on few and important cases. The variable that indicated the personal appearance of the Government Advocate was however clearly positive in table 10, thought it did not become (barely) statistically significant until the final condensed model (table 11). Due to the strong positive effect and significance of the

variable, the part of the hypothesis connected to the personal appearance of the Government Advocate seems to be correct.

H7: *The presence of the Government Advocates or someone from his office increases the likelihood of voting in favour of the state* is therefore *partly* confirmed.

The eight and final hypothesis dealt with if the degrees of state friendly voting varied between different areas of law. Multivariate model (table 10) showed mostly insignificant results connected to case type, and only health care cases had a significant effect with regards to state friendly voting in table 11.

The predicted likelihood test on the other hand gave more interesting results. Firstly that justices appointed by social democratic governments where more likely to vote for the state in every case type. Secondly the results showed that whether a justice had previously worked had a stronger effect on the likelihood for voting for or against the state in any type of case. Thirdly the results showed clear variation between different areas of the law. The likelihood for voting against the state in administrative and immigration cases was much lower compared to other case types, and on the other hand that justices was more likely to vote against the state in cases connected to questions regarding nature.

H8: *The effect of the ideology of the justice varies between cases with different characteristics* is therefore confirmed.

Two of hypotheses regarding panel composition were connected to appointing government while the two other hypotheses were related to former workplace. The fifth hypothesis tested if the birthplace of a justice had an effect on state friendly voting.

As mentioned, the lack of any clear results, which lead to all five variables being dropped from further tests, were probably due to the fact that the panel variables were the ones that most suffered from *not being* tested in a multilevel analysis

The variables homogenous socially democratic panel and majority of non-social democratic appointees where first included in table 10. The results showed little effect for or against state friendly voting and the variables was statistically insignificant and was dropped from further tests.

H9: *The likelihood for voting for the state increases if the case is heard by a panel of justices consisting only of social democratic appointees* is therefore disproved.

H10: *The likelihood of voting for the state decreases of the panel consists a majority of justices not appointed by social democratic governments* is also disproved

Since former employment in the Legislation Department showed such a clear and significant on the individual level, one would expect that this effect would also be shown in a panel consisting of a majority of justices with experience from the Legislation Department. This was not however the case, and the non-significant effect the variable was actually negative.

H11: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Legislation Department* is therefore disproved.

The variable connected to previous employment in the Office of the Government Advocate showed no result on the individual level, and it was therefore not surprising that the variable connected to the panel also showed no results.

H12: *The likelihood of voting for the state increases if the panel consists of a majority of justices who have previously worked in the Office of the Government Advocate* is disproved.

Whether or not a justice was born in Oslo also showed an insignificant positive effect on the individual level, and the same was true for the variable on the panel level in table 10. This leads to that

H13: The likelihood of voting for the state increases if the panel consists of a majority of justices were born in Oslo is disproved.

The result of the hypothesis testing was that four of the seven hypotheses based on the personal traits and attitudes of the individual justice were confirmed. One of the two hypothesis connected to case factors was confirmed, while none of the hypotheses regarding the composition of a judicial panel was confirmed.

Chapter 8 – Conclusion

The aim of the thesis was to show to what extent ideology, personal traits, traits connected to the case and the composure of a judicial panel in the court influence state friendly voting based on the research question: *What factors influences the Supreme Court Justices in dissenting cases where the state is one of the litigants.*

To test the state friendly hypothesis a model for testing this question was developed based on mostly research from the United States and Norway to view the effects of legal, attitudinal and strategic factors that might influence Supreme Court decision-making. This model included variables connected to the individual justice, the case and the composition of the panel of justices. The data was test in several multivariate models and predicted likelihood models.

The findings of the statistical analysis gave support to several of the hypotheses connected to different factors. Five predicators (*SocDemGov, lovavd2, lawprofess, earlijudge and interimjustice*) connected to the individual justice were identified to have a statistically significant effect on state friendly voting. A central finding was appointing government does matter, but that former employment at the Legislation Department *matters more* in influencing state friendly voting. As the analysis showed, former occupations (or at least some former occupations) does influence how a justice votes when the court considers cases here the state is a litigant. These results gives clear support to for the use of thee Attitudinal Model.

Two predicators (*statanke and regjeringsadv*) related to the case found to have a significant effect, which is in support of the state friendly hypothesis. The significance of the appearance of the Government Advocate suggests that the importance of the case is a relevant predicator.

As a result of the lack of applicability of multilevel model, the claim of the state friendly hypothesis that was connected to panel composition was not tested to an adequate degree, though one panel composition variable relating to former workplace was shown to have an effect. An obvious suggestion for *future research* is to include unanimous decisions so that a multilevel model can be utilized which will be much

more useful than a traditional logistical model for viewing collegial effects. Such an inclusion would make it possible to analyse the fourth claim of the state friendly hypothesis.

The analysis also showed that the degree of state friendly voting varied between different areas of the law and that some areas of the law was a more state friendly area than others. The results showed a tendency of state friendly voting in particular immigration and administrative cases, whereas nature proved to be an area of the law with a low frequency of state friendly voting.

8.1 Implications

An attitudinal approach has served as the dominant model for U.S. Supreme Court research by social scientists for decades, and in recent years Grendstad et. al. have advocated for a similar approach on the Norwegian Supreme Court. Though the results show clear support for this approach, the results also show that other factors connected to the case and panel should be an essential part of the analysis when possible. The votes of the justices and outcome of cases should be seen as a "complex interaction of rules, preferences and structures" as stated by Brace and Hall (1993:917).

The results of this study have limited implications because of the framework of analysis. The results are firstly limited to the Norwegian Supreme Court, and with the exception of common law countries, it's isn't likely that similar studies can be conducted on the higher courts of other countries. Based on the discussion on the applicability of the Attitudinal model there are some basic requirements that needs to be fulfilled to able to conduct a statistical analysis.

The results are also limited to dissenting cases, and though one can assume that the significant variables are also relevant in unanimous decisions, it is likely that the effect of the variables are more dominant in dissenting cases.

It isn’t very likely that any amount of social science research would lead the Norwegian legal community to acknowledge that non-legal aspects of a case are important factors leading to an outcome. Convincing the legal community of the importance of non-legal factors through empirical research would likely have to depend on analysis that either is based on qualitative data or through more complex operationalization of data that takes into account the actual content of the written ruling.

Appendix A: Cases

Cases in chronological order:

Rt-1991-668	Rt-1998-416	Rt-2003-293	Rt-2007-912
Rt-1992-108	Rt-1998-607	Rt-2003-301	Rt-2008-145
Rt-1992-242	Rt-1998-811	Rt-2003-593	Rt-2008-1510
Rt-1992-453	Rt-1998-929	Rt-2003-833	Rt-2008-1537
Rt-1993-396	Rt-1999-1087	Rt-2004-1074	Rt-2008-158
Rt-1993-53	Rt-1999-1273	Rt-2004-1343	Rt-2008-1665
Rt-1993-587	Rt-1999-1283	Rt-2004-1603	Rt-2008-240
Rt-1993-66	Rt-1999-1303	Rt-2004-1632	Rt-2008-803
Rt-1994-1244	Rt-1999-1312	Rt-2004-1737	Rt-2008-939
Rt-1994-260	Rt-1999-14	Rt-2004-1921	Rt-2008-982
Rt-1995-1	Rt-1999-1924	Rt-2004-2015	Rt-2009-1319
Rt-1995-1506	Rt-1999-369	Rt-2004-241	Rt-2009-1485
Rt-1995-1883	Rt-1999-425	Rt-2004-312	Rt-2009-534
Rt-1995-209	Rt-1999-547	Rt-2004-523	Rt-2009-578
Rt-1995-447	Rt-1999-946	Rt-2004-645	Rt-2010-1184
Rt-1995-455	Rt-2000-220	Rt-2005-129	Rt-2010-1381
Rt-1995-872	Rt-2000-253	Rt-2005-1550	Rt-2010-236
Rt-1995-980	Rt-2000-402	Rt-2005-238	Rt-2010-24
Rt-1996-1203	Rt-2000-591	Rt-2005-416	Rt-2010-366
Rt-1996-1384	Rt-2000-772	Rt-2005-607	Rt-2010-612
Rt-1996-1510	Rt-2001-1201	Rt-2005-65	Rt-2010-816
Rt-1996-1684	Rt-2001-14	Rt-2005-734	Rt-2011-1043
Rt-1996-958	Rt-2002-1247	Rt-2005-951	Rt-2011-1266
Rt-1997-1580	Rt-2002-1331	Rt-2006-1367	Rt-2011-1601
Rt-1997-1646	Rt-2002-1411	Rt-2006-1657	Rt-2011-1620
Rt-1997-170	Rt-2002-1469	Rt-2006-349	Rt-2011-213
Rt-1997-1784	Rt-2002-209	Rt-2006-593	Rt-2011-304
Rt-1997-383	Rt-2002-456	Rt-2006-602	Rt-2011-65
Rt-1997-534	Rt-2002-654	Rt-2007-1025	Rt-2011-910
Rt-1997-623	Rt-2002-747	Rt-2007-1511	Rt-2012-432
Rt-1997-70	Rt-2002-94	Rt-2007-1612	Rt-2012-585
Rt-1998-1357	Rt-2003-1233	Rt-2007-1851	Rt-2012-667
Rt-1998-1372	Rt-2003-1243	Rt-2007-290	Rt-2012-820
Rt-1998-1538	Rt-2003-1827	Rt-2007-651	

Appendix B: Tables

Table 14: Descriptive statistics control variables

Variable Name	Variable	N	Mean	Std. Dev.	Min	Max
Justice Level						
interimjus~e	Interim Justice	590	0,041	0,198	0	1
chief	Chief Justice	590	0,029	0,167	0	1
sex	Sex	590	0,275	0,447	0	1
priv_pract	Former Private Practise	590	0,412	0,493	0	1
earljudge	Former Judge	590	0,453	0,498	0	1
after2002	Judicial Appoint. Board	590	0,212	0,409	0	1
seniority	Seniority	590	8,386	6,658	0	28
ageatvote	Age at time of Vote	590	58,775	6,957	42	70
Case Level						
tax	Tax Case	590	0,432	0,496	0	1
expro	Expropriation Case	590	0,059	0,236	0	1
othereco	Other Economic Case	590	0,237	0,426	0	1
immi	Immigration Case	590	0,068	0,252	0	1
admin	Administration Case	590	0,068	0,252	0	1
familiy	Family Case	590	0,085	0,279	0	1
health	Health Case	590	0,034	0,181	0	1
nature	Nature Case	590	0,017	0,129	0	1
complexwords	Case Complexity	590	5139,915	2653,222	478	19806
statanke	State is Appellee	590	0,314	0,464	0	1
Panel Level						
justitiari~l	Chief Justice in Panel	590	0,144	0,351	0	1
flerpriv	Maj. Private Practise	590	0,331	0,471	0	1
flerarljugde	Majority former Judges	590	0,424	0,495	0	1
aggageatvote	Average age at Vote	590	58,776	2,881	51	66
aggseniority	Average Seniority	590	8,398	2,122	3	14

Table 15: S.D. of values in the case type model

	Non-Social Democratic			Social Democratic		
Case type	Avg.	Non. Leg. Dep.	Leg. Dep.	Avg.	Non. Leg. Dep.	Leg. Dep.
Tax	0,094	0,057	0,063	0,046	0,059	0,043
Expropiation	0,101	0,097	0,104	0,094	0,103	0,086
Other Economic	0,067	0,067	0,069	0,055	0,068	0,05
Immigration	0,099	0,095	0,088	0,076	0,095	0,065
Administation	0,099	0,101	0,09	0,080	0,098	0,068
Family	0,072	0,067	0,09	0,078	0,077	0,079
Health	0,113	0,132	0,119	0,105	0,124	0,091
Nature	0,164	0,155	0,178	0,172	0,172	0,162

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