



## ACADEMIC ARTICLE

# From Backlogs to Quality Assurance. The Development of Law Clerk Units at Norwegian Courts

Gunnar Grendstad\*, William R. Shaffer†, Jørn Øyrengagen Sunde‡ and Eric N. Waltenburg§

The *Consultative Council of European Judges* (CCJE) approves of the role of law clerks assisting judges in their decision making but cautions against clerks replacing judges. In this article we put CCJE's caution to a test and study law clerks at the Norwegian Supreme Court and the Borgarting and the Gulatings courts of appeal, the country's two largest courts of appeal. The general pattern for all three courts is that the pretext for hiring clerks changes from backlog problems to quality assurance, that clerks become organized in separate units, that the number of tasks performed by clerks increases, and that women constitute an outsized presence in the clerk units. The growth in clerks contributes to institutionalizing courts. We conclude that clerks perform tasks of the judges, that to some degree they replace judges, that clerks influence decision making, but that clerks have not become judges or make final decisions.

**Keywords:** clerks; judges; decision making; institutionalization

## 1. Introduction

Many European courts have gained a more prominent position in society, partly due to the judicialization of politics in which the legal domain broadens. This prominence is also a consequence of the institutionalization of courts, whereby they achieve greater autonomy through docket control and resolve more important cases by the assistance of a larger support staff. We are specifically interested in the growth and the expanding role of law clerks. Two key and related questions in the study of courts are whether clerks influence judicial decision making and whether clerks in fact decide cases.

\* Gunnar Grendstad (dr.polit) is a Professor of Political Science at the University of Bergen. He has published books and articles on judicial and political behavior, environmental behaviour, American presidents, and Scandinavian politics ([gunnar.grendstad@uib.no](mailto:gunnar.grendstad@uib.no)) (Corresponding author)

† William R. Shaffer (PhD) is Professor Emeritus of Political Science at Purdue University. He has published books and articles on judicial, legislative and electoral behaviour, and on Scandinavian politics ([wshaffer@purdue.edu](mailto:wshaffer@purdue.edu))

‡ Jørn Øyrengagen Sunde (PhD) is Professor of legal history with the Faculty of Law at the University of Oslo. He is the author of *The Supreme Court's History, 1965–2015* (2015, in Norwegian) ([j.o.sunde@jus.uio.no](mailto:j.o.sunde@jus.uio.no))

§ Eric N. Waltenburg (PhD) is Professor of Political Science at Purdue University. His research interests concern judicial politics and state politics. He is the author or co-author of six books on judicial politics ([ewaltenb@purdue.edu](mailto:ewaltenb@purdue.edu))

Law clerks are wedged between a court's administrative staff and its judges. Unlike the staff, the *Consultative Council of European Judges* (CCJE) states in its 2019 opinion on the role of judicial assistants, law clerks are hired by courts to "support judges or panels of judges in their adjudicating work." Whereas "decision-making is at the heart of the judge's duties," caution is required the "closer [clerks] come to the decision-making process" since clerks shall "support judges in their role, not replace them." At the end of the day, judges shall "remain responsible for the decision-making in all aspects. However, by supporting the judges in their adjudicative process, [clerks] are involved in the exercise of judicial tasks" (CCJE 2019: [2, 21, 22, 19, 19]). The Council moves on to identify four areas where clerks participate directly in the decision-making process and where caution is required due to the risk of clerks transgressing the boundaries of judicial support. *Sifting*: clerks who sift through large documents may overlap with the judge's sole responsibility of establishing and evaluating the facts. *Drafting*: clerks who write memos or draft decisions may influence the judge's thinking through the anchoring effect. *Procedures*: clerks who decide on procedural issues of smaller tasks may only do so under supervision of the judge. *Selecting*: clerks who summarize appeals and suggest grant or denial on supreme courts may "gain influence on the selection of cases" (CCJE 2019: [24–28], 28).

The 2019 CCJE opinion on judicial assistants reflects a growing interest and concern in the role, function, and influence of law clerks. The longest tradition of courts having clerks is in the United States, and there is a growing scholarship that examines the role and effect of clerks on its judicial process (Peppers and Cushman 2015; Peppers 2006; Perry 2009; Ward and Weiden 2006). In a review of this field Ward (2017: 117) concludes that "while law clerk influence is considerable it has yet to show that clerks are inappropriately wielding influence [in a system where] it is plain that clerks are an important part of the judicial decision-making process." Similar analyses of clerks in European domestic courts is slowly gaining momentum. For example, Holvast (2017) studied clerks ("judicial assistants") in Dutch district courts and found that clerks' *de facto* involvement in judicial decision making exceeded their formal role and affected the decision making. Bieri (2016) studied the Swiss judicial systems and warned that too many clerks may undermine the independence of the judge. Nesterchuck's (2013: 100, 105) study of the UK Supreme Court found that clerks were "encouraged (...) and trained (...) to think like a judge" and that their "well-written petition memo should save the Justices time and be used as a route map through the often voluminous appeal of papers." Clerks produce "memoranda" in the Irish Judiciary (Coonan 2006), while in the German Federal Constitutional Court clerks doing "decision preparing" for the judges are not only essentially "relieving the judges' workload," they are also "effecting an increase in the judges' standing" (Massing 2016: 186, 183). In contrast to domestic apex courts where judges have life tenure and clerks have short-term contracts, at the Court of Justices of the European Union (CJEU) and the European Court of Human Rights (ECtHR) the situation is reverse: the key legal support teams are permanently employed while judges have short-term contracts. This configuration shifts the legal expertise and the institutional memory and bestows greater decision-making influence on bureaucrats at the expense of judges (Cohen 2017; Butler 2015).

In this article we put CCJE's caution to a domestic test and study law clerks at the Norwegian Supreme Court and the Borgarting and the Gulating courts of appeal, the country's two largest courts of appeal located in the largest (Oslo) and second largest (Bergen) cities, respectively. We closely track the courts' pretext for hiring clerks, the establishment of their clerk units, the increasing number of tasks that clerks perform, and the recruitment and demographic profile of clerks. We also study the development of clerks and how they have become increasingly integrated into the courts' decision-making processes. Whereas the Norwegian Supreme Court hired its first law clerk in 1957 and established a clerk unit in 1989, Norway's courts

of appeal were latecomers. Of the nation's six courts of appeal, only two – Borgarting and Gulating – have hired clerks. And they did not do so until the twenty-first century. Moreover, only within the past five years have these courts established clerk units.

As Borgarting and Gulating established the clerks' roles and developed their clerk units, a vertical transfer of best practices from the Supreme Court was not necessarily a straight-forward process. Yet, the practices established by the Borgarting and Gulating courts of appeal will certainly provide directions as to how the country's remaining four courts of appeal will organize their clerk units. Simply put, as envy and diffusion go, why should the practice and benefits of law clerks not be enjoyed by all courts of appeal when the pressures of caseload and case complexity and the concomitant demand for court efficiency apply to all?

We place our analysis of law clerks within the larger framework of institutionalization (see, Kenney 2000), which when applied to courts, refers to three integrated processes (Bumim et al. 2009; Keohane 1969; McGuire 2004). *Differentiation* is the degree to which a court becomes a well-defined entity in the political and legal system. *Durability* captures a court's capacity to persist and pursue its institutional goals even in the face of appreciable environmental change (McGuire 2004: 131). And finally, *autonomy* ensures that a court has "some degree of independence in making its own decisions without dictation from outside actors" (Keohane 1969: 862). We claim that when courts establish a clerk unit, they become more resilient and robust, more professionalized, better defined entities, increase their capacity and impact, and are more independent from other political actors and agencies.<sup>1</sup>

The article is organized as follows. In the next section we study and narrate the role of clerks and the institutionalization of the Norwegian Supreme Court. We then turn to the Borgarting and Gulating courts of appeal and analyze the degree to which these two lower courts display the same dimensional pattern of pretext for hiring clerks, the establishment of the clerk unit, the increasing number of tasks that clerks do, and the recruitment and demographic profile of clerks that we identified at the Supreme Court. In the final section we summarize our findings and discuss the practice of clerks at the Norwegian courts in light of CCJE's demarcation between clerks and judges.

## 2. Law Clerks at the Supreme Court

In 1957 the Norwegian Supreme Court hired its first "legal secretary" whose primary task was to assist the Appeals Selection Committee (ASC) in screening criminal appeals. The Court did not hire a second legal secretary until 1977. Seven years later the number increased to three, and then in 1989 to six. That same year the clerk unit was formally organized and included two leadership positions (Grendstad et al. 2020; Sunde 2015). After the unit's formal organization, three things happened: In 1991 the government appointed Carsten Smith as chief justice; the title of legal secretary was changed to clerk ('utreder'); and the number of clerks more than doubled. Carsten Smith, a former University of Oslo law school professor, had a vision for the Supreme Court. He sought to transform it from a reactive court of appeal to a proactive court of precedent. To accomplish this transformation, Smith recognized that the number of clerks would need to be increased in order to effectively assist the justices as the Court took on its new role (1975). Evidently, the government had bought into Smith's agenda since they selected him as the new chief justice over the Court's internal and preferred candidate (Grendstad et al. 2015). Appointments matter.

---

<sup>1</sup> On professionalization of legislative bodies relevant for study of courts, see (King 2000; Squire 2007, 2008).

## **2.1. Clerks – From Backlogs to Docket Control**

Smith's vision of a more active and consequential Supreme Court called for increasing substantially the number of law clerks, but simply proposing a significant transformation in the role of the Court was not sufficient to achieve the marked growth of the clerk unit that began to occur with and continued after his appointment (see Grendstad et al. 2020: Figure 1.1). Indeed, several of Smith's fellow justices did not share his vision of establishing a court of precedent; thus, predicated a call for providing greater precedent-making support for the justices with more clerks had little persuasive purchase for them. Instead, a more prosaic argument did the trick: The Court's case processing capacity was being stretched to the breaking point, and as a result, the Court was overwhelmed with backlogs. All the justices seemed to agree that backlogs anywhere hurt the Court everywhere. Now, one way to get a handle on the backlogs was to increase the Court's processing capacity by hiring more clerks. And during Smith's tenure as chief (1991–2002), 10 new clerks were hired. This trend continued pretty much apace during the chief justiceships of Smith's successors – Tore Schei (2002–2016) and Toril Marie Øie (2017 – present). As a result, backlogs subsided. That the 17 additional clerks since Smith came to the helm also would augment the Court's ability to clarify and develop the law was a collateral if not unintended consequence (at least in some quarters).

Adding clerks to increase the Court's processing capacity was one way to rein in the mounting backlogs. Another way would be to reduce the Court's workload at the merits stage by limiting the number of appeals it would have to hear and review. Granting the Court greater docket control would accomplish this. It would also place a premium on the assistance of the clerks at the gatekeeping stage, and it would facilitate the Court's objectives of clarifying and developing the law. Docket control would permit the Court to cherry-pick those appeals that promised to have the greatest consequence rather than exhaust its limited resources on mundane cases. The clerks would assist the Court's gatekeeping body, the Appeals Selection Committee, in identifying those cases.

The key to the Court gaining near total discretionary jurisdiction was to have the legislature amend both criminal and civil procedural law so that the Court itself could do the gatekeeping and independently decide which appeals were to be denied or granted review. Docket control of civil merit cases was achieved incrementally. A foot-in-the-door change in civil procedural law was introduced in 1981 and used increasingly by the justices to deny review of inconsequential civil cases.<sup>2</sup> This process culminated in 2008 with the implementation of the new Civil Procedure Act of 2005. Docket control of criminal merits cases was accomplished in one fell swoop with legislation implemented in 1995. It produced two fundamental changes. First, all criminal cases, now even the most serious, had to originate in the trial courts. This resulted in Norway's six intermediate courts of appeal being the entities that guaranteed the right to appeal. Second, the Supreme Court was given discretionary jurisdiction to decide which criminal cases to grant or deny review.

Thus, by 2008, the table effectively was turned for all civil and criminal appeals. A litigant's right to appeal was replaced by the Supreme Court's authority to deny review. All that the Court now needed to do to deny an appeal was simply to sit on its hands. Specifically, the burden of proof as to why an appeal should land on the justices' bench was changed from the Court having to argue why an appeal should *not* be denied review to the litigants' having to argue why an appeal *should* be granted review. The justices were now in a position to cherry-pick appeals worthy of their erudite rumination. In so doing they fulfilled the Court's new

---

<sup>2</sup> In 1981 the Civil Dispute Act of 1915 was amended to permit denial of appeals if the case did not have significance beyond the case itself (Grendstad et al. 2020: 133).

self-imposed goals of clarification and development of the law, befitting a proactive court of precedent and echoing Smith's vision that the justices should not waste their precious time on petty and insignificant legal cases.

## **2.2. Clerks Assist in Gatekeeping and Cherry-Picking**

The crucial agent in the Court's cherry-picking cases for full merits review is the Appeals Selection Committee (ASC). Decisions of the ASC are made by three justices who are arbitrarily drawn from a group of five justices all of whom serve on the ASC for a period of five weeks before they return to decision making on merits panels and are replaced by another group of five justices.

Basically, the ASC decides interlocutory appeals, rules on denials of merits appeals, and forwards granted merits appeals to the Court's two five-member decisional panels for oral arguments. Interlocutory appeals are decided by the ASC after a written procedure, and it decides about 1000 these appeals every year. The question of whether to grant or deny an appeal on the merits is also decided after a written procedure. Only about 10% of these appeals are granted leave to be decided by a chamber of five justices after an oral procedure that lasts from three hours to several days, even to a week or two in rare cases.

Since the first clerk was hired in 1957, the primary task of law clerks is to summarize appeals and write memos for the justices on the ASC. In the 1990s, during the chief justiceship of Carsten Smith, the increase in the number of clerks and the changes in the gate-keeping instruments at the ASC's disposal resulted in the tasks of the law clerks shifting gradually from preparing interlocutory appeals only for the Committee to also include, first, civil appeals and later, criminal appeals. At the turn of the century *all* interlocutory and merits appeals to the Supreme Court first passed through the clerk unit where a clerk would write a case memo (Sunde 2015; Aamodt 2017).<sup>3</sup>

As the case processing responsibilities of the clerks grew, the "buddy system" that the Court initiated in the mid-1990s as a way to welcome new clerks morphed into a more structured (although still informal) mentor system.<sup>4</sup> In this system, a new clerk is assigned both a clerk mentor and a justice mentor. On the first day of their clerkship, rookie clerks are given a couple of civil appeals and the 100-page guidelines for structuring and writing memos. The rookie clerk is guided both by the mentor clerk, the clerk unit leadership, and occasionally a justice mentor for a period of four to ten weeks before the training wheels are removed.

Although the justices had long expected clerks to use their clerkship as a stepping stone in their career, the concern that some clerks were overstaying their welcome led the Court in 2001 to replace permanent contracts with fixed five-year contracts.<sup>5</sup> In 2011 the clerk's countdown clock was set to seven years in an attempt to strike a better balance between stability and transition in the clerk unit. (Clerk leadership positions are permanent.) The reality that clerks must leave the Court does not prevent their possible return as justices. Indeed, two former clerks have been appointed to the Court.

When an appeal lands at the Supreme Court, it is first registered in the court processing system, *Lovisa*, then passed on to the three-person leadership of the clerk unit who in turn assigns the appeal to a clerk. The clerk prepares a memo of up to four pages that addresses

<sup>3</sup> Interlocutory appeals include orders or rulings ('kjennelse') and resolutions ('beslutning'). On a Nordic comparative study on granting or denying appeals, see Sunde (2017).

<sup>4</sup> The buddy system entailed the assignment of a more experienced clerk to read some of the novice clerk's first memos. Fairly quickly, however, new clerks would be on their own. (Grendstad et al. 2020: 55–57).

<sup>5</sup> The clause that enables the Court to hire clerks on short-term contracts is found in the Court Act, Section 61. On its face the clause is inconsistent with the Working Environment Act, Section 14–9(1) requiring that when the type of work that employees are doing is permanent, they must be appointed permanently as well.

the formalities of the appeal, the litigants' arguments, and lists all relevant legal sources. For interlocutory appeals, the memo ends with a suggestion about how the appeal should be resolved. For merits appeals, the memo ends with a suggestion whether the Court should deny or grant review. The memo is then sent to the three justices on the ASC for their decision. If a single justice believes an appeal is worthy of full review on its merits, the appeal is granted merits review. The Court then forwards the granted merits appeal to the Court's two five-justice decisional panel for oral arguments.

### **2.3. A Crack in the Wall – The Decisional Merits Panels**

By well-established convention, a wall separated the clerks' service to the justices on the ASC from the decisional territory of the Court's two merits panels, which was exclusively reserved for justices and their interaction with the litigants in oral arguments, their private conference deliberations, and their opinion writing. The first visible crack in this wall came in 2010 when the justice who was tapped to write the decision in the 2010 landmark *Ship Owner Taxation Case* (Rt-2010-143) asked for the assistance of a clerk due to the complexities of the case. Such assistance meant that a clerk would sit ringside during oral arguments, be present during the justices' deliberations, and be at hand during opinion writing.

With the hiring of three additional clerks in 2015 the Court institutionalized this expanded role of the clerks. For good measure it also expanded the clerk unit to include three leadership positions. The clerk who prepares the appeal for the ASC may also assist the ASC justice when he or she briefs the litigants' lawyers on the legal question prior to oral arguments. Since 2015 a clerk may now follow the appeal through oral arguments, the justices' deliberations, and their opinion writing. The Court estimates that this assignment occurs in about 25 percent of the civil cases in decisional panels. It bears emphasis that whereas the increase in the number of clerks in the 1990s was explained by the backlog problem, the increase in the number of clerks in the 2010s was explained by the necessity of a court of precedent to be able to deliver quality decisions.

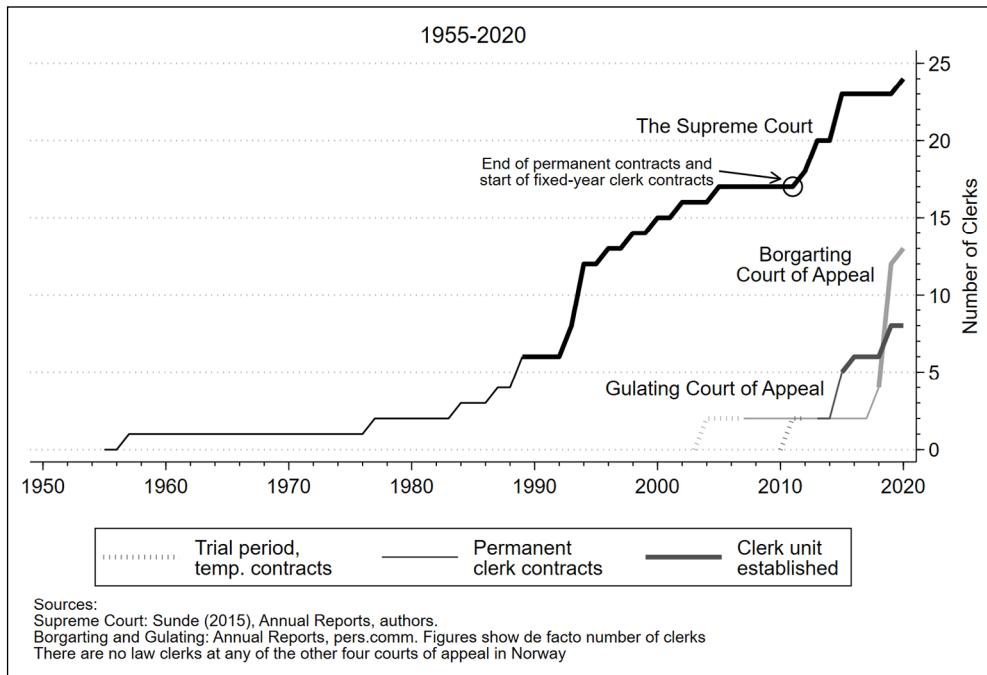
What is the demographic profile of the clerk unit? Its composition can be described more reliably starting in the 1990s when the number of clerks hits double digits. The instability of percentages computed on a small number of observations plagues earlier assessments (Grendstad et al. 2020: Ch 6). The gender balance has tilted in favor of more female clerks. This trend can in part be explained by more women graduating from law schools, female applicants having better grades, and the Supreme Court being a family-friendly employer for those pursuing law as an occupation and find private law-firm elbows a bit too sharp. The average age of rookie clerks has stabilized at around 33 years indicating roughly six years of job experience after graduating from law school. As the mean tenure for clerks is around six years, a clerk would move on before turning 40.<sup>6</sup> Around three-fourths of the clerks have graduated from the University of Oslo, the largest of the country's three law schools. The close proximity of the University of Oslo's College of Law and the Supreme Court results in lower transaction costs for lawyers already based in the Oslo metropolitan area to work at the Court.

## **3. Law Clerks at Courts of Appeal**

The Borgarting and Gulating Courts of Appeal are the only other courts in Norway in 2019 which have clerks and established clerk units. To what degree are the pattern and practices we have observed at the Supreme Court present in these courts of appeal? **Figure 1** provides a starting point. For each of the courts we discuss here, the three lines in **Figure 1** show the

---

<sup>6</sup> Tenure estimates (leaves of absence included) does not include the last couple years since recently hired clerks are still on the Court.



**Figure 1:** The Development of Law Clerk Units at Norwegian Courts.

number of clerks on the y-axis and year along the x-axis. Dotted lines indicate that clerks were hired on temporary contracts for a trial period. Solid lines indicate that clerks were hired on permanent contracts. And the thicker solid lines indicate that clerks were organized in clerk units. While the development of clerks at the Supreme Court is easy to follow, the development of clerks at the two courts of appeals are overlapping and more compressed. While clerks at the Borgarting were hired before clerks at the Gulatings, the clerk unit at the Gulatings was organized before the clerk unit at the Borgarting. In 2020 the Borgarting clerk unit has more clerks than the Gulatings. Compared to the development at the Supreme Court, the development of clerks at the two courts of appeal start relatively small and then experience a short period of rapid growth before institutionalizing into clerk units. In the following discussion we take cues from the Supreme Court and compare the two courts of appeal along the four dimensions – pretext for hiring clerks, the establishment of the clerk unit, the increasing number of tasks that clerks do, and the recruitment and demographic profile of clerks – and also with a view to the institutionalization of the two courts that concurred.

### **3.1. Pretext for Hiring Clerks – Backlogs, Complexity and Efficiency**

Similar to the Supreme Court, coming to grips with an increasing backlog of cases was the main motivation for hiring the first clerks at the Borgarting and Gulatings courts of appeal. The hiring of clerks deviated from the established practice in which courts of appeal had hired interim deputy judges to assist in reducing backlogs (Domstoladministrasjonen 2015). Different from the Supreme Court, which hired its first clerks several decades earlier, an additional motivation was the complexity of the cases these courts heard and the need to most efficiently use their case handling resources.

Both courts of appeal hired their first two clerks on short-term contracts as part of a trial project. The Borgarting's trial project started in 2004, while the Gulatings' project started in

2011. Satisfied with the results achieved during the trial period, the Borgarting court moved forward and made the clerk positions permanent in 2007; the Gulatings court followed suit in 2013 (AFF 2018). Meanwhile, the Supreme Court had handed down two decisions (Rt-2008-1364, Rt-2009-118) in which it required courts of appeal to provide reasons for the denial of merits appeals. The two courts sought to include clerks in completing this new task (Domstoladminstrasjonen 2015).

### ***3.2. The Courts Organize Their Clerk Units***

During the trial projects, both courts gained some experience concerning what tasks law clerks could do and how they would fit into the established routines and long-held understandings of the division of labor on the courts. The clerks would be located between the administrative staff and the judges. In addition, they would start to take over some tasks that had long been the province of judging. While neither of the Borgarting's first clerks had prior experience as a clerk, one of the Gulatings' two clerks had already been a law clerk for the Supreme Court for four years. Her experience was invaluable when the Gulatings in 2011 started to hire and organize clerks. In 2015 the Gulatings Court converted a judgeship to two clerk positions, added another clerk and expanded the total number of clerks to five. At this time, it also formalized its clerk unit and retained the former Supreme Court law clerk as its head.

The Norwegian Court Administration, upon a request from the Gulatings Court of Appeal, commissioned an evaluation of the Gulatings clerk unit with a view as to whether and how to establish clerk units at other courts of appeal and at the Borgarting in particular. Two of Gulatings' goals in establishing its clerk unit were to use its resources more efficiently and reduce the amount of time required of each judge to decide a case. The 2018 report documented that converting judgeships to clerkships made sense because offloading the preparation of appeals from judges to clerks saved judges' time. It also saved the court's resources as quick calculation showed that in budgetary terms the Court could get two clerks for one judge (AFF 2018: 12). Importantly, the judges reported that the decisional outcomes remained the same, but due to the clerks, the final decisions had now been dealt with more thoroughly. A notable contribution of this new process was that the style and format of decisions became more uniform and standardized. Yet, the report also warned that reliance on the clerk unit should not take place in a slapdash manner. It noted that too small a clerk unit with insufficient on-the-job training, frequent turnover, and lax case-handling routines between clerks and judges would undercut any gains in efficiency, both for budgets and judging (AFF 2018).

The board of the Court Administration welcomed the report's conclusions and moved quickly to establish a clerk unit at the Borgarting, and the Court responded with an immediate request for a total of 15 clerks (with the medium-term target being 20 clerks) for the new unit. Some of the 15 clerks would be covered by an internal reallocation of resources at the Borgarting; the rest would require an extraordinary appropriation by the parliament (Kolsrud 2018). The clerk unit would provide a long-term solution for handling the backlog of cases in addition to the temporary efforts that were already in place to handle backlogs (Domstoladminstrasjonen 2018).

As it organized its new unit, the Borgarting hired one of its former clerks as unit head and placed calls for the new clerks. (When the total number of new clerks came onboard, the office capacity at the Court would be strained.) Meanwhile, the head of the Gulatings clerk unit was appointed judge at the same Court and all but one of the remaining clerks at the unit moved on to other jobs. With an almost entirely new pool of clerks, the new head had to "restart" the clerk unit in 2019.

### **3.3. Increasing the Number of Tasks – Serving the Appeals Selection Committees**

Procedurally, there are no major differences between the appeals selection committees of the courts of appeal and the Supreme Court. The interlocutory appeals are decided by a committee after a written procedure and so is the question of leave to appeal on the merits. The question that is the basis of the appeal, however, is first addressed in oral procedure and then decided by the court in a process that normally lasts for a couple of days to a couple of weeks, on rare occasions for months, even more rare for up to a year.

At the outset, the clerks at the Gulatings and Borgartings courts of appeal worked on different types of appeals and on different areas of law. While the clerks at the Borgarting essentially assisted its Appeals Selection Committee on criminal merits appeals, the clerks at the Gulatings assisted its Appeals Selection Committee on civil interlocutory appeals. The clerks at the Borgarting wrote memos summarizing the appeal and made a draft of the grounds of the decision; the clerks at Gulatings drafted the full decision. As the number of clerks at the two units increased, so too did the number of tasks they performed. All work is done in writing. Issues are handled collectively, and both clerk units meet once a week for updates and coordination.<sup>7</sup>

Today, clerks at the Borgarting Court of Appeal basically have four tasks. (1) Write a screening memo to the committee on criminal appeals.<sup>8</sup> The memo includes whether the formal requirements of an appeal have been met; if there are any unique circumstances; a recommendation to grant or deny the appeal, and if the latter, a first draft explaining the denial; and any relevant cases of precedent. (2) Write memos or write a full draft of the court's decision on interlocutory civil appeals. Typically, a clerk will have a queue of 10 appeals and works on them sequentially.<sup>9</sup> (3) Assist the efforts of private litigants to appeal their case to the Supreme Court. Although such an appeal from a court's point of view may have run its course, an option to appeal exists, and the law mandates that courts of appeal offer the litigant administrative guidance. (4) Occasionally, a clerk may be called on to perform additional duties that were not specifically mentioned in the call for applicants.

The primary task for clerks at the Gulatings has always been to handle civil interlocutory appeals. Today, when the appeal is received by the court and registered in the national case processing system, *Lovisa*, it is forwarded directly and simultaneously to both an arbitrarily chosen clerk and an arbitrarily chosen judge on the Committee. The clerk writes a full draft of the court's decision and then sends it to the judge for consideration, who in turn includes the other two judges on the Committee. Handling civil interlocutory appeals takes up approximately half of the clerk unit's time.

Two other tasks come to the Gulatings clerk unit as orders from the judges on the Committee. First, once the three judges have reached a decision on denial of a civil merits appeal, someone must compose the written decision. Accordingly, the appeal is sent to the head of the clerk unit who then assigns it to a clerk. The default assignment is based on arbitrariness, but with a view also to the clerk's workload and speciality. In most cases, denial of civil merits

---

<sup>7</sup> Following an amendment to the Land Consolidation Act, since 2016 both the Gulatings and Borgartings courts of appeal have included a clerk mandated to handle land consolidation cases. Most of these clerks' tasks fall outside those described here, but they fill any remains of their time with duties for the clerk units.

<sup>8</sup> Specific criteria for screening are found in the Criminal Procedure Act, section 321. Prior to 2020, criminal defendants could exercise an automatic appeal if the crime involved a sentence longer than six years. Hence, the clerks wrote a short memo on the nature of the appeal. As of 2020, the right to appeal was abolished for all criminal cases. All criminal appeals are now subject to screening.

<sup>9</sup> As the national case processing system *Lovisa* does not recognize clerks on the courts of appeal, contrary to that recognition being in place for clerks at the Supreme Court, the work of clerks both at the Borgarting and the Gulatings are tracked in spreadsheets.

appeals occur when the Committee has decided it is evident that an appeal will not win on the merits and where the goal is to assist the Committee in disposing of the hopeless appeals.<sup>10</sup> Second, clerks are also assigned to compose the draft of the denial of appeals of child protection cases.<sup>11</sup> Two additional tasks are expected to become the responsibilities of the clerks as well. They will become involved in the ASC's orders on denials of civil cases concerning the amount in controversy for an appeal<sup>12</sup> and the screening of criminal appeals. These additional duties are to take effect pending the expanded capacity of the clerk unit.

Along with the increases in the number of the clerks on the two courts of appeal and their reorganization into clerk units, both courts of appeal themselves have been reorganized. Previously, both courts' appeals selection committees were organized in a criminal and a civil subdivision. Today, the criminal and civil subdivisions remain in place at the Borgarting court, while the subdivisions have been merged in the Gulating court. In both courts the appeals selection committees are permanently headed by a single judge. In both courts the pool of committee judges is leaner. Clerks have taken over many functions of the committees, which has permitted judges to go back to judging on the merits panels. In effect, the courts of appeal have accepted the principle of replacing one judge with two clerks.<sup>13</sup>

### ***3.4. Recruitment and Demographic Profiles of Clerks***

At both courts, the first and foremost hiring criterion is the quality of their legal competence measured by their grades on their law degree. The secondary criteria are relevant legal experience, personal qualities, and contributions to the units' diversity and collegiality. Successful applicants come with two to nine years of experience in both public and private employment.

Either type of prior experience brings with it a set of skills useful to the court and the clerk unit. Clerks recruited from private law firms, for example, are attractive as they seem to bring a keener sense of efficiency to the courts. Their recruitment also reflects that clerkship at the courts of appeal provides experience and is valuable for litigating law firms who hire ex-clerks. Clerks with experience as deputy judges often have a better understanding of the overall function of the court and can more easily hit the ground running once hired. Clerks recruited from prosecuting authorities are better attuned to handling criminal cases. Although all clerks are hired as generalists and no clerks are hired with a view to their specialty (even if they may bring one or more when hired), a moderate degree of specialization may take place while at the clerk unit in order for the court to handle rare appeals, such as child abduction cases, more efficiently.

Although the stated goal of both units is to recruit the best applicants, who is ultimately hired is constrained by the nature of the applicant pool. And as was the case for the Supreme Court, women constitute an outsized presence in the pool's composition. For example, for three openings in 2019 and the larger round of "restart" hiring at the Gulating, there were 25 applicants, most of whom were women. In the January 2020 call, all applicants were women. Women may find the regular hours of work at the Court more attractive for the job-life balance and sufficiently different from the unpredictable hours as police lawyer or deputy judge.

Finally, there may be some geographic dynamic with respect to recruiting clerks from the nation's law schools. On the one hand, the Borgarting (located in Oslo) had applicants from all three law schools. The Gulating (located in Bergen), on the other hand, had applicants primarily from the University of Bergen. That Borgarting recently had a large call for clerks

---

<sup>10</sup> See the Dispute Act § 29–13, second subsection.

<sup>11</sup> See the Dispute Act § 36–10, third subsection.

<sup>12</sup> See the Dispute Act § 29–13, first subsection.

<sup>13</sup> In the more competitive job market for lawyers in Oslo, you may get less than two clerks for the price of one judge.

and that Oslo provides a much larger job market for young lawyers may account for this difference.

Both courts have provided resources so that new clerks go through a training program. Senior judges are either involved in the training program as mentors or identified as a judge of resource. At the Borgarting court in particular, during the training program, estimated to last between two to four months, new clerks are assessed both by a judge and the head of the clerk unit.

The two clerk units have jointly developed job descriptions and guidelines for clerks. The Supreme Court has not shared its own court-internal guidelines with the two courts of appeal as procedural differences often separate a court of precedent from courts of appeal. However, the Supreme Court has provided other types of information for the two clerk units.

Clerks on the courts of appeal are hired on permanent contracts. But the tacit understanding is that they are not expected to stay forever. The courts anticipate turnovers of about three or four to five or seven years so that clerks accumulate and hone the necessary skills for the job as well as transfer these skills to incoming clerks.<sup>14</sup> If the turnover is too fast, there is too little return on the courts' investment in the clerks and too little transfer of skills to rookie clerks. If the turnover is too slow, the clerk units risk losing their vitality.

The job descriptions of judges and clerks are different, but their tasks are tied together under the courts' general mandates and the country's egalitarian culture relaxes formal hierarchies. The senior status of judges and the junior status of clerks do not preclude professional and social interactions. There is nothing preventing them from approaching one another when a legal issue arises. They lunch together in the cafeteria. The Gulatings evaluation noted that clerks contribute constructively to the workplace environment (AFF 2018).

## 4. Discussion

### 4.1. Four dimensions

In this article we have studied the growth of clerks and establishment of clerk units at the Norwegian Supreme Court and the Borgarting and Gulatings courts of appeal, the country's two largest courts of appeal. Based upon a discussion of the earlier presence and development of a clerk unit in the Supreme Court, we closely tracked clerks in the two courts of appeal along four dimensions: the pretext for hiring clerks; the establishment of the clerk unit; the increasing number of tasks that clerks perform; and the recruitment and demographic profile of clerks. We placed our study in the larger framework of institutionalism and found that the development of clerk units has become increasingly integrated in all three of the courts' decision-making processes. The more principled stage for these analyses was the important 2019 opinion of *Consultative Council of European Judges* on judicial assistants and their relationship to independent and impartial judges.

We can summarize the four dimensions of the role of clerks as follows. First, while the pretext for hiring clerks at the Supreme Court in the first phase was the backlog problem, the pretext of hiring clerks over the last ten to fifteen years has been quality assurance. As stated by Norwegian Supreme Court Justice Arnfinn Bårdesen (2018: 7), "the legal clerk's work is decisive for both the quality and the speed in the filtering procedure." From our study of the clerks at the Borgarting and Gulatings courts of appeal, we observe that backlogs, case complexity, and court efficiency are issues that drive the need for clerks. Later, quality was also acknowledged and valued as judges reported that the decisional outcomes remained the same, but that the contributions from the clerks infused the final decisions with higher

<sup>14</sup> Two years of clerking is equivalent to two years of lawyer practice when applying for license as a lawyer (AFF 2018: 9).

quality (AFF 2018) and perhaps also a standardization of the decisional process (Cohen 2017). Second, at the Supreme Court the monotonic increase in the number of clerks reached a point where the clerks had to be *organized* as a separate unit.<sup>15</sup> Third, whereas the clerks first handled a limited number of criminal appeals and later prepared all appeals for the ASC, today clerks are also at hand for the justices on the decisional panels. At the Borgarting and the Gulating courts, clerks replace some of judges when performing tasks on the appeals selection committees. This brings about gains in efficiency that have resulted in the screening committees being reorganized with fewer judges. Fourth, all three courts uncompromisingly aim to attract high quality clerks, and in doing so women constitute an outsized presence in the clerk units due to the larger share of women in the applicant pool.

#### **4.2. Institutionalization**

The establishment and development of clerk units have also contributed to the institutionalization of the three courts – most distinctly observed for the Supreme Court (Grendstad et al. 2020). At the Supreme Court, *differentiation* – the degree to which a court becomes a well-defined entity in the political and legal system – was brought about by taking sole possession of the “Palace of Justice” in 1996. Prior to that year, the Court shared its residence, a rather dilapidated “palace,” with Oslo’s trial court and the Eidsivating Court of Appeal. In the first few years of Carsten Smith’s tenure as chief justice, the building was completely refurbished, and the other courts located elsewhere. The glorious new accommodations, not to mention the new address of “Supreme Court Square,” were tangible signals that the Court occupied a position of prestige and consequence among the various governmental institutions. For both the Borgarting and the Gulating courts of appeal, the first hiring of clerks coincided with moving into new buildings, the Borgarting in 2005 and the Gulating 2011.<sup>16</sup> The Gulating Court of Appeal was bestowed “Gulating Square” as the address for its new accommodation. At the Supreme Court, *durability* – a court’s capacity to persist and pursue its institutional goals even in the face of appreciable environmental change – was achieved by establishing and expanding the clerk unit. In the case of both the Borgarting and the Gulating courts, we also observe that clerks were hired to the point where it became necessary to establish a clerk unit. At the Supreme Court we observed that *autonomy* – that a court has “some degree of independence in making its own decisions without dictation from outside actors” (Keohane 1969: 862) – was gained by acquiring docket control. Evidently, less equivalent autonomy is found lower in the judicial hierarchy, as courts of appeal have functions different from a court of precedent that sits at the apex of the nation’s judiciary.

#### **4.3. Four Dynamics**

Four dynamics of diffusion can be identified looking beyond the comparison between the Supreme Court and the two courts of appeal and toward Norway’s other four courts of appeal.

First, in the same way as the clerks at the Supreme Court gradually moved from preparing appeals in a limited area of the law to ending up preparing all appeals before its Appeals Selection Committee, we observe the same dynamic at the two courts of appeal. The limited tasks that clerks initially perform expand monotonically. What is more, as the clerks become

---

<sup>15</sup> By monotonic we mean that the best predictor of the number of clerks in any given year is the number of clerks the year before (Grendstad et al. 2020). Never has there been a year in which the number of clerks has been reduced.

<sup>16</sup> The Supreme Court of the United Kingdom moved into a larger building in 2009 and took the opportunity to increase the number of clerks (“Judicial Assistants”) and expand their roles (Holvast 2016: 19; Nesterchuk 2013; Paterson 2013).

more fully integrated into a court's procedures, their presence becomes increasingly routine. Take the developments in the Gulating court, for example. When clerks were first brought into the court's processes, a judge on the ASC could decide not to have a clerk look at the appeal. Today, all judges accept the appeal being sent directly to the clerk. This pattern speaks to the utility of a gradual introduction of new routines, which allows the clerks to demonstrate that they deliver quality work (AFF 2018: 16). It will surprise no one if the clerks in the courts of appeal eventually assist their screening committees in the handling and preparing of all appeals before they land on the desk of the judges.

Second, the prospects of immediate administrative payoffs indicate that it is only a matter of time before the four remaining courts of appeal also find themselves hiring clerks and establishing clerk units, exactly as the Court Administration has envisioned (Domstoladminstrasjonen 2018). Stronger demands for court efficiency and the attractive budgetary logic of two clerks replacing one judge lower the threshold for this diffusion. Practices documented in the two largest courts of appeal signal that even smaller courts of appeal may copy the Gulating's goal that "the contribution from clerks shall provide added value and reduce the unnecessary use of resources" (AFF 2018: 5).

Third, replacing permanent contracts with short-term clerks' contracts, as the Court Administration has requested (Domstoladminstrasjonen 2019b), has not been documented to resolve any real-world problems. No evidence exists that clerks have shown a tendency to overstay their long-term contractual welcome at the courts of appeal. The Supreme Court's arguments of having short-term clerk contracts are easy to adopt at the courts of appeal level as well. Interestingly, this pattern is exactly the reverse of what we find at the Court of Justices of the European Union (CJEU) and the European Court of Human Rights (ECtHR) where members of the key legal support team are permanently employed while judges have short-term contracts (Cohen 2017).

Fourth, in October 2019 the Norwegian Court Administration organized the first national seminar for court clerks in order to gain experience, promote mutual learning and exchange, and develop a general career track for clerks (Domstoladminstrasjonen 2019a). These efforts point to the professionalization of clerks and the establishment of networks.<sup>17</sup> It also bears noting that a national clerk seminar is a harbinger of standardization of clerk practices across courts.

#### **4.4. Final Thoughts: Clerks and Judging**

The report of the *Consultative Council of European Judges* cautioned against clerks coming too close to the judges' decision making, the process at the heart of their duties (CCJE 2019). But the way we have observed clerks supporting judges in their adjudicative process, clerks do get involved in judicial decision making. Based on our analysis in this article, we can answer five key questions.

Do clerks perform the tasks of a judge? Yes. Both at the Supreme Court and at the Borgarting and Gulating courts of appeal, the clerks are sifting through large documents and aspects of the appeal, which at the outset is the judges' work. Over time and increasingly in each court we have studied, the clerks' responsibility is to present the judge with all relevant information for the judges to make their decision. By working on appeals, then, clerks do judges' work. The fact that judges would like to see more specialization among clerks is also an indication that judges would like more assistance. This evolving and shifting division of labor overlaps with the judge's sole responsibility of establishing and evaluating the facts.

---

<sup>17</sup> Studying clerks ("legal assistants") at the German Federal Constitutional Court, Wieland states that "the ability to make professional beneficial contacts while at the Court must not be undervalued" (2002: 200).

Do clerks replace judges? Yes. The report that the Norwegian Court Administration commissioned to evaluate the clerk unit at the Gulatings Court of Appeal specifically calculated the ways in which tasks previously carried out by judges could more inexpensively and as efficiently be carried out by clerks (AFF 2018).

Are clerks also judges? No, but the gap is narrowing and the roles appear more fluid. Some clerks have been former deputy judges who bring to the clerk units a keener understanding of decision making on the court. Experience as a clerk is also helpful when later applying for judgeships. When in a pinch, on a case-by-case basis, the two courts of appeal have carried out this “identity switching” (Cohen 2017: 79) and have temporarily appointed clerks as judges. Our data also show that three former clerks – two at the Supreme Court and one in the Gulatings Court of Appeal – have been permanently appointed as justices and judge in courts where they previously clerked.

Do clerks decide? No. There is no indication that judges give away their ultimate responsibility of deciding cases. Unsurprisingly, judges state that the decisional outcome of the appeal would be the same without the clerks. But they also acknowledge that clerks contribute to greater decisional quality and that they contribute to minimize careless mistakes (AFF 2018).

Do clerks influence decision making? Most likely. The theory of the “anchoring effect” – the effect that different starting points yield different estimates – provided by clerks writing memos or drafting decisions provides an initial point of reference, or bias, which may be difficult for judges to overcome (Kahneman 2012). Research by Holvast and Mascini (2019: 22) indicates that although the judge and the clerk work as a team, the clerk’s advice has an “independent influence on judges’ decisions.” Clerks’ memos and drafts are not for show. We would be hard put arguing that that sequence does not matter in Norwegian courts.

### Acknowledgements

We thank Bente Kraugerud, Secretary General at the Norwegian Supreme Court; Birthe Aspehaug Buset, head of the clerk unit at the Norwegian Supreme Court; Gunhild Sletmoen, head of the clerk unit at the Borgarting Court of Appeal; Anders Hoff, former head of the clerk unit at the Gulatings Court of Appeal – all of whom sat down for interviews with us or provided information for our research for this article. We thank Sletmoen and Hoff for offering comments on an early draft of the sections on the Borgarting and Gulatings clerk units. We also thank Magni Elsheim, president at the Gulatings Court of Appeal, for providing additional documents and reports. We thank two anonymous referees who provided helpful comments on an earlier version of this article. This article also draws on interviews and research we did for our book on clerks at the Norwegian Supreme Court. We are also grateful to The Norwegian Bar Association and The Norwegian Association of Judges for organizing a seminar on law clerks on Norwegian courts in Oslo, January 23, 2020. Gunnar Grendstad thanks the Department of Political Science at Purdue University for hosting him as a visiting scholar in spring 2020. The authors are responsible for any errors in the article.

### Competing Interests

Gunnar Grendstad, William R. Shaffer, Jørn Øyrehaugen Sunde and Eric N. Waltenburg declare that they have no conflict of interest.

### Author Information

Grendstad, Shaffer and Waltenburg are authors of *Policy Making in an Independent Judiciary. The Norwegian Supreme Court* (2015). All four are authors of *Proactive and Powerful. Law Clerks and the Institutionalization of the Norwegian Supreme Court* (2020).

## References

- Aamodt, Øistein. 2017. "Juridisk utredningsenhet for og nå." *Tale ved 60-årsjubileum for Juridisk utredningsenhet, Norges Hoyesterett*, Oslo Mars 15, 2017.
- AFF. 2018. "Evaluering av utredersordningen i Gulatings lagmannsrett." Bergen.
- Bieri, Peter. 2016. "Law Clerks In Switzerland – A Solution To Cope With The Caseload?" *International Journal for Court Administration* 7 (2): 29–38. DOI: <https://doi.org/10.18352/ijca.201>
- Bårdsen, Arnfinn. 2018. "Deciding what to decide: The filtering mechanism in the Norwegian Supreme Court." *Presentation to the Icelandic Bar Association*, Reykjavik, 16 February 2018 <https://www.domstol.no/globalassets/upload/hret/artikler-og-foredrag/deciding-what-to-decide---bardsen-23.02.2018.pdf> (Last accessed January 20, 2019).
- Bumin, Kirill M., Kirk A. Randazzo, and Lee D. Walker. 2009. "Institutional Viability and High Courts: A Comparative Analysis of Post-Communist States." *Australian Journal of Political Science* 44 (1): 127–53. DOI: <https://doi.org/10.1080/10361140802657052>
- Butler, Graham. 2015. "A Political Decision Disguised as Legal Argument? Opinion 2/13 and European Union Accession to the European Convention on Human Rights." *Utrecht Journal of International and European Law*. 104–11. DOI: <https://doi.org/10.5334/ujiel.df>
- CCJE. 2019. "Consultative Council of European Judges (CCJE) Opinion No. 22 (2019) The Role of Judicial Assistants." Strasbourg, 7 November 2019.
- Cohen, Mathilde. 2017. "Judges or Hostages? The Bureaucratization of the Court of Justice of the European Union and the European Court of Human Rights." In *EU Law Stories. Contextual and Critical Histories of European Jurisprudence*, eds. B. Davies and F. Nicola. Cambridge University Press.
- Coonan, Genevieve. 2006. "The Role of Judicial Research Assistants in Supporting the Decisionmaking Role of the Irish Judiciary." *Judicial Studies Institute Journal* 6 (1): 171–96.
- Domstoladministrasjonen. 2015. "Reformer i andre instans. Rapport fra arbeidsgruppe."
- Domstoladministrasjonen. 2018. "Etablering av utredersenhet i Borgarting lagmannsrett." <https://www.domstol.no/globalassets/upload/da/domstol.no/domstoladministrasjonen/om-domstoladministrasjonen/styret/styremoter-2018/26.-februar/dasty18-sak-31-etablering-av-utredersenhet-i-borgarting-lagmannsrett.pdf> (last accessed January 25, 2020).
- Domstoladministrasjonen. 2019a. "Norges Domstoler. Program. Seminar for utredere. October 28–29, 2019."
- Domstoladministrasjonen. 2019b. "Utredere i lagmannsretten i åremålsstillinger – lovforslag. Styresak." <https://www.domstol.no/globalassets/upload/da/domstol.no/domstoladministrasjonen/om-domstoladministrasjonen/styret/styremoter-2019/25.-februar/dasty19-sak-12-utredere-i-lagmannsretten-i-aremalstillinger--lovforslag.pdf> [last accessed January 25, 2020].
- Grendstad, Gunnar, William R. Shaffer, and Eric N. Waltenburg. 2015. *Policy Making in an Independent Judiciary. The Norwegian Supreme Court*. Colchester, UK: ECPR Press.
- Grendstad, Gunnar, William R. Shaffer, Jørn Øyreng Sunde, and Eric N. Waltenburg. 2020. *Proactive and Powerful. Law Clerks and the Institutionalization of the Norwegian Supreme Court*. The Hague: Eleven International Publishing.
- Holvast, Nina L. 2016. "The Power Of The Judicial Assistant/Law Clerk: Looking Behind The Scenes At Courts In The United States, England And Wales, And The Netherlands." *International Journal for Court Administration* 7 (2): 10–28. DOI: <https://doi.org/10.18352/ijca.200>

- Holvast, Nina L. 2017. *In the shadow of the judge: The involvement of judicial assistants in Dutch district courts*. The Hague: Eleven International Publishing.
- Holvast, Nina, and Peter Mascini. 2019. "Explaining judicial assistants' influence on judicial decision-making." *Presentation at workshop on "The Role and Legitimacy of Judicial Assistants in European Legal Systems," Center for Interdisciplinary Research*, Bielefeld University, 27–28 August 2019.
- Kahneman, Daniel. 2012. *Thinking, Fast and Slow*. London: Penguin.
- Kenney, Sally J. 2000. "Beyond Principals and Agents. Seeing Courts As Organizations By Comparing Référendaires at the European Court of Justice and Law Clerks at the U.S. Supreme Court." *Comparative Political Studies* 33 (5): 593–625. DOI: <https://doi.org/10.1177/0010414000033005002>
- Keohane, Robert O. 1969. "Institutionalization in the United Nations General Assembly." *International Organization* 23 (4): 859–96. DOI: <https://doi.org/10.1017/S002081830025698>
- King, James D. 2000. "Changes in Professionalism in U.S. State Legislatures." *Legislative Studies Quarterly* 25 (2): 327–43. DOI: <https://doi.org/10.2307/440374>
- Kolsrud, Kjetil. 2018. "Borgarting vil ansette 15 utredere." *Rett24.no*, Feb 09.
- Massing, Otwin. 2016. "The Legal Assistants at the German Federal Constitutional Court: A "Black Box" of Research?" In *Constitutional Courts in Comparison: The US Supreme Court and the German Federal Constitutional Court*, eds. R. Rogowski and T. Gawron. New York: Berghahn Books.
- McGuire, Kevin T. 2004. "The Institutionalization of the U.S. Supreme Court." *Political Analysis* 12 (2): 128–42. DOI: <https://doi.org/10.1093/pan/mpb005>
- Nesterchuk, Tetyana. 2013. "The View from Behind the Bench: The Role of Judicial Assistants in the UK Supreme Court." In *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry*, eds. A. Burrows, D. Johnston and R. Zimmermann. Oxford: Oxford University Press. DOI: <https://doi.org/10.1093/acprof:oso/9780199677344.003.0011>
- Paterson, Alan. 2013. *Final Judgment: The Last Law Lords and the Supreme Court*. Oxford: Hart Publishing.
- Peppers, Todd C. 2006. *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk*. Stanford University Press.
- Peppers, Todd C., and Clare Cushman, eds. 2015. *Of Courtiers and Kings: More Stories of Supreme Court Law Clerks and Their Justices*. University of Virginia Press.
- Perry, Hersel W. 2009. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Harvard University Press.
- Smith, Carsten. 1975. "Domstolene og rettsutviklingen." *Lov og Rett* 11: 292–319.
- Squire, Peverill. 2007. "Measuring State Legislative Professionalism: The Squire Index Revisited." *State Politics & Policy Quarterly* 7 (2): 211–27. DOI: <https://doi.org/10.1177/153244000700700208>
- Squire, Peverill. 2008. "Measuring the Professionalization of U.S. State Courts of Last Resort." *State Politics & Policy Quarterly* 8 (3): 223–38. DOI: <https://doi.org/10.1177/153244000800800301>
- Sunde, Jørn Øyrehaugen. 2015. *Høgsteretts historie 1965–2015 – At dømme i sidste Instans*. Bergen: Fagbokforlaget.
- Sunde, Jørn Øyrehaugen. 2017. "From Courts of Appeal to Courts of Precedent—Access to the Highest Courts in the Nordic Countries." In *Supreme Courts in Transition in China and the West: Adjudication at the Service of Public Goals*, eds. C. H. van Rhee and Y. Fu. Cham, Switzerland: Springer. DOI: [https://doi.org/10.1007/978-3-319-52344-6\\_4](https://doi.org/10.1007/978-3-319-52344-6_4)

- Ward, Artemus. 2017. "Law Clerks." In *The Oxford Handbook of U.S. Judicial Behavior*, eds. L. Epstein and S. A. Lindquist. Oxford, United Kingdom: Oxford University Press. DOI: <https://doi.org/10.1093/oxfordhb/9780199579891.013.14>
- Ward, Artemus, and David L. Weiden. 2006. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court*. NYU Press.
- Wieland, Joachim. 2002. "The Role of the Legal Assistants at the German Federal Constitutional Court." In *Constitutional Courts in Comparison: The U.S. Supreme Court and the German Federal Constitutional Court*, eds. R. Rogowski and T. Gawron. New York: Berghahn Books.

**How to cite this article:** Gunnar Grendstad, William R. Shaffer, Jørn Øyreng Sunde and Eric N. Waltenburg, 'From Backlogs to Quality Assurance. The Development of Law Clerk Units at Norwegian Courts' (2020) 11(3) International Journal for Court Administration 3. DOI: <https://doi.org/10.36745/ijca.352>

**Published:** 15 October 2020

**Copyright:** © 2020 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.



*International Journal for Court Administration* is a peer-reviewed open access journal published by International Association for Court Administration.

**OPEN ACCESS** An open padlock icon indicating the article is freely available online.