THE ROLE OF THE FINNISH SUPREME COURT IN THE LEGISLATIVE PROCESS

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I

The principal task of the courts in a political system is to resolve, by means of authoritative decisions, conflicts arising out of the application and observation of general rules and regulations passed by other decision-makers. Seen from the broadest perspective, the administration of law is a part of the complex and involved governmental network, and decisions made by judges form a part of the political decision-making process. However, as Jacob and Vines point out:

> Political scientists have usually slighted the political relevance of the courts in favor of legalistic and institutional analysis, conceiving of the courts in terms of jurisprudential theory and formal organization. The proposition that the courts are an integral part of the political system has rarely been suggested. In consequence, the legal and institutional traits of the courts have been examined carefully but their political functions, the role of court participants, and the relationship of the courts to the political and social structure have received little attention.[1]

The marginal position that the administration of the law has occupied in political science goes back to Montesquieu's theory of the separation of powers. According to this, the courts passively reflect the will of the legislator and are consequently regarded as a part of the public power structure that is of little interest. This, it would seem, gave rise to the view, based on a mechanical conception of the neutral and independent role of judges, that the administration of the law formed a closed system separate from other political processes and that this system had its own rules and dynamics. The judges functioned as trained technicians, using their skills and in most cases finding the "correct" solutions by logical inference. If there were certain social values that determined their actions, the judges were none the less neutral as far as the ordinary political life and rival interests of society were concerned.[2]

Such a formalistic conception has not, of course, been accepted every-

[1] Herbert Jacob & Kenneth Vines, "The role of the judiciary in American state politics", in *Judicial Decision-Making*, ed. Glendon Schubert, New York 1963, p. 245.

[2] E.g. J. W. Peltason, "Judicial process: Introduction", in *International Encyclopedia of the Social Sciences*, ed. David L. Sills, vol. 8, New York 1968, pp. 283 f.

where. With the passing of time it has given way more and more to the view that the courts do not form a closed system, but rather an open one which is linked to the rest of the community and its political structure by means of visible ties. When a person assumes a judicial role, he takes with him his whole individual personality as well as his social and political background. Moreover, he is constantly subjected to a stream of information from society that affects his attitudes and assessments. Individual ethics and subjective perceptions of social goals are always important intervening variables in judicial decision-making. Such factors as these have played a central part in studies—mostly American—aimed at explaining the individual behaviour of judges. At the institutional level, on the other hand, the courts have a multiplicity of different relationships with other political institutions. Consequently, in the course of carrying out their primary task, the courts become parts of systems fulfilling legislative, recruitment and communication functions. They also become part of the social interest structure in the narrower sense of that term.

The term political decision, used in its more precise meaning, can include an expression of will which is dependent on given values and by means of which authoritative selections are made from alternative social plans of action. In such forms of decision-making the judges undoubtedly take part,[3] even if—as Torstein Eckhoff has pointed out—the possibilities the courts have of exerting influence on the country's politics are obviously smaller than those of the legislature and the government, for example. Eckhoff warns, however, against underestimating the opportunities the courts have of making their influence felt. The actual extent of such opportunities depends on the structure of the political system, on the situation, on the general support enjoyed by the courts, etc.[4]

The political content of decision-making also varies, above all perhaps according to the area in which the court operates, the nature of the norms to be interpreted and applied, and the prevailing situation. The political role of the United States Supreme Court, for example, is regarded as being closely linked to its basic function, the interpretation of the federal Constitution. Finnish experience clearly indicates that the part played by politics in the exercise of law has a tendency to become extremely large in times of national crises involving questions of legitimacy, when so-called political crimes are under discussion and when fundamental values concerning life crop up in court, on either side of the bench.

[3] See, e.g., Robert A. Dahl, "Decision-making in democracy: The Supreme Court as a national policy-maker", *The Journal of Public Law* 1957, pp. 279–95.

[4] Torstein Eckhoff, "Impartiality, separation of powers and judicial independence", 9 *Sc.St.L.*, p. 23 (1965).

II

The view that supreme courts, in particular, constitute influential and "autonomous" power factors in the political field derives, of course, not only from their position in the judicial hierarchy, but also from the prominence given to them in national constitutions and the fact they are often entrusted with special tasks that fall outside the bounds of the application of laws.

The tradition that grew up during Finland's period as an autonomous grand duchy within the Russian Empire, a period which lasted from 1808 to 1917, determined the conditions under which the Finnish Supreme Court functions in a way that is interesting, but at the same time seems to be somewhat paradoxical.[5] The experiences of this period, called the period of autonomy, strengthened the forms under which the Court operated. These forms gave the highest judges a part in the political decision-making processes of the country. But, on the other hand, they also gave rise to attitudes which resulted in attempts, both during the period immediately after independence and later on, to separate and insulate the Finnish Supreme Court from those same processes.

As a result of its defeat in the war of 1808–09, Sweden was forced to cede Finland to Russia. As a grand duchy within the Russian Empire, Finland for the first time received its own internal governmental structure. The Senate formed the most important institution of the new Finland, and it was divided into two sections, an economic one and a judicial one. The former corresponded to today's Cabinet of Ministers and the Ministries, the latter to the Supreme Court. All decisions made by the judicial section and most of those made by the economic section were taken collectively, at "sessions of senators".[6] This 19th-century central administrative institution, a number of persons constituting a board, only partly differentiated, thus contained both the highest judges and those in government positions. It was not a unique political structure: the structure of the Senate was evidently based on impulses originating from both Sweden and Russia. However, since in those countries that particular phase of organizational development had already been passed by the beginning of the 19th century, the Senate had the character of an interesting historical relic even at the time of its formation.

Joint sessions of the economic and the judicial section were not specifically mentioned in the rules first drawn up for the Senate, but it was taken

[5] Paavo Kastari, *Valtiojärjestyksemme oikeudelliset perusteet,* Porvoo 1969, pp. 261–6.

[6] The legislative assembly, which met for the first time in 1809, did not gain a position of any importance until the latter half of that century.

for granted that such sessions would be held and they were in fact held from the very beginning.[7] The forms and the extent of cooperation between the two sections varied—in addition to joint sessions there were also plenary sessions of the economic section which were attended by only a few members of the judicial section—but at any rate the most important and extensive legislative questions were discussed jointly. In a statute of 1896 it was laid down that, among other questions, matters concerning the adoption, alteration and clarification of the Constitution, general civil and criminal law, ecclesiastical law, the law of conscription and the military criminal law and naval law should be dealt with at joint sessions.[8] The highest ranks of the judiciary were thus intimately involved in bringing about the regulations on which, when exercising their judicial functions, they were later to base their decisions. Attempts to reduce this influence on the legislative process could be discerned in the discussion which took place in the 1870s, for example, on the setting up of a separate supreme court.[9] There was, however, little opposition of note between the views of the economic and the judicial section or in their ways of handling different matters. During the 19th century the Senate in its entirety functioned more in the fashion of a court of justice than of a present-day political organ. Participation in the political decision-making process brought about a certain degree of self-adjustment to the mechanisms of early parliamentarianism: in the early years of the present century there occurred several mass resignations among members of the judicial section over political matters. This uniting of roles which nowadays are considered irreconcilable meant, moreover, that the Senators also took part in the work of the Diet, usually as representatives of the nobility.

A separate Supreme Court was founded in 1918, immediately after the country had achieved independence. The position of this institution in the normative power structure was determined as a result of conflicting attempts by political forces to achieve their own goals. Questions over which the views of the left and the right clashed concerned the recruitment of the judges and the position of the Court in the legislative process. The parties of the right strove quite openly to turn the Court into a conservative institution with power to obstruct the political process. The last members of the judicial section of the Senate, who with few exceptions had openly declared their political affiliation with the right, were to be moved straight to new posts. Also, the continuing renewal of the membership was to be on

[7] K. W. Rauhala, *Keisarillinen Suomen senaatti 1809–1909 I*, Helsinki 1915, p. 52.
[8] *Statutes of Finland* 1896, no. 21 § 6.
[9] Aimo Halila, "Katsaus ylimmän tuomiovallan käytön kehitykseen ennen korkeimman oikeuden perustamista", in *Korkein oikeus 1809–1955*, ed. Matti Mali, Helsinki 1959, p. 31.

the principle of self-perpetuation, as the Court itself would make proposals to the Government of persons to be appointed to permanent positions. The Court was to be accorded an extremely strong position as the guardian of the legal system and, in particular, of the Constitution. The left, on the other hand, aimed to make the Court into an institution whose special tasks, apart from those concerning the application of laws, would be principally restricted to traditional administrative duties. The judiciary was not to be a political force along with other institutions but was, on the basis of its given tasks, to be subjected to the effective control of Parliament.

On the latter point the left-wing-dominated Parliament, with the support of the centre, succeeded in effect in getting its way in the summer and autumn of 1917. This was done by altering certain governmental proposals concerning the Supreme Court and the Supreme Administrative Court in such a way that members would be appointed for only five years at a time, and only after Parliament had pronounced upon the suitability of the candidates. In the debate and the committee report on the matter it was claimed that justices who could not be dismissed from their posts would turn the two Supreme Courts into "closed circles" and, if the worst came to the worst, they would favour a given class or group.[1] Only after the civil war of 1918 was Parliament, now numerically reduced and bourgeois-dominated, ready to approve the procedure which still prevails today: permanent appointment of justices by the President of the Republic on the proposal of the Court concerned. Even then there were certain members of the Agrarian Party who defended the idea of a limited term of office, their attitude being prompted not so much by general principles as by the experiences of the last years of the period of autonomy. Parliament did not agree to the proposal that the members of the judicial section of the Senate should be transferred directly to the Supreme Court, but finally, in August 1918, the Paasikivi Government appointed all the remaining senators in the judicial section to the new Supreme Court.

Thus, the left-wing parties did not succeed in forcing through their wishes in the matter of appointment of members of the Supreme Court. On the other hand, the hopes of the right came to nothing when the time arrived to decide the position of the Supreme Courts in the legislative process. On the basis of the old system it was natural to seek a procedure whereby the Courts would participate in the legislative process in its new form by giving advisory opinions to the Government. For example, in 1917, in a proposal concerning the Supreme Court, this arrangement was defended on the grounds of the role of the judicial section as a legislative

[1] *Toiset valtiopäivät* 1917, lakivaliokunnan mietintö no. 6 (asiak. I).

instance.[2] The discussion concerned only the extent of such an arrangement. In proposals laid before Parliament for an Instrument of Government Act (the future Constitution) the right went so far as to demand that one of the two Supreme Courts should be asked for its opinion of all government bills and of laws approved by Parliament. After a parliamentary debate on the question it was finally decided that the requesting of such opinions should be left to the discretion of the President of the Republic or to the Council of State.

A second strong weapon in the Supreme Court's arsenal, and one which is rather to be regarded as an alternative to the role of a legislative instance, would have been the Court's right to decide retroactively whether laws accorded with the Constitution (judicial review). As early as 1917 the Constitutional Committee had drawn attention to this matter, but it was only in the proposals for the setting up of a monarchy in Finland that the suggestion that the Supreme Court should act as a watchdog in this way was brought to the fore. The matter was raised once again in Parliament in 1919, but the proposition that the Supreme Court should be the arbiter of the Constitution was finally removed without any statement of reasons. As Professor Sven Lindman has pointed out, the move meant a defeat for the right, though the significance of the question was probably not very well understood in Parliament at the time.[3] When, in 1931, the Svinhufvud Government took up the matter anew, it received support only from a few right-wing members of Parliament and from the Supreme Court itself, which in its report on the proposal expressed the view that a reform was called for. When rejecting the proposal Parliament pointed out that it would be mainly the Supreme Court itself that would suffer from the conflicts arising out of the Court's position as a legislator.[4]

The Finnish Supreme Court therefore belongs to that group of supreme courts which have no prominent position in the political decision-making process apart from their duty to decide in litigations. At the same time Finland has no special constitutional court. Of decisive importance, of course, was the fact that the Finnish Supreme Court did not become immediately and permanently linked to the legislative system producing basic policy decisions. Its possibilities of influencing such decisions were dependent to a great degree on the President and on the Council of State.

[2] *Valtiopäivät* 1917, hall. es. no. 6 (asiak. II).

[3] Sven Lindman, "Eduskunnan aseman muuttuminen 1917–1919", in *Suomen kansanedustuslaitoksen historia IV*, Helsinki 1968, p. 412. See also Paavo Kastari, "Perustuslainsäätämisjärjestyksen varhaisvaiheista ja sen käyttämistarkoitusten kehittymisestä", *Lakimies* 1960, pp. 105–8.

[4] *Valtiopäivät* 1931, hall. es. no. 8 (asiak. I).

As we have seen, these authorities could, after considering the matter, ask the Court—in the same way that they could ask the Supreme Administrative Court—to give an advisory opinion on a proposal. In the case of the President, he could also ask the Court in question for its opinion of laws passed by Parliament before finally assenting to them. These two authorities, i.e. the President and the Council of State, also determine in the final analysis the significance to be attributed to such reports, as well as that of initiatives taken by the Courts. A further group of tasks, which concern matters not involving legal proceedings, but which form part of what is generally called the political decision-making process, have been inherited by the Supreme Court directly from the judicial section of the Senate. These consist of the administration of the judiciary: in other words it is the Court's duty to appoint, propose and report on several matters concerning appointments to posts within the judiciary. This task is not without importance, for it involves the question of recruitment of an important section of the country's elite. However, the Court has not been looked upon openly as a power group in the political field in this connection. A special type of procedure, which goes back to earlier practice, is that questions of this nature are first prepared by the Ministry of Justice, the head of which (i.e. the Minister of Justice) takes part in the Supreme Court sittings when such matters are discussed.[5]

The lack of success in the attempts to give the Supreme Court a central role in the governmental balance of power can be explained by studying the attitudes arising out of the ideological viewpoints of the political parties of each period and also by examining general factors deriving from the experiences dating from the period of autonomy. As Professor Paavo Kastari has pointed out, the prestige of the Supreme Courts' predecessor, the judicial section of the Senate, had declined during the years of oppression, i.e. the period from about 1900 to 1917, compared with that of both Parliament and the lower ranks of judges, because of the submissive role it played in the national struggle for justice. This lack of prestige made it impossible for the Supreme Court to rise and act as a counterweight to Parliament in the legislative process.[6] Matters were not improved by the fact that, while Parliament was in the process of strong renewal during the period of political and social change, the Supreme Court maintained its earlier composition and, at least in the view of the left, constituted an obvious relic of the time of the Estates, and was completely foreign to those

[5] See Antti Hannikainen, "Puhe Korkeimman oikeuden 50-vuotispäivänä 1.10.1968", *Lakimies* 1968, pp. 948 f.

[6] Paavo Kastari, "Korkeimpien oikeuksiemme aseman muodostuminen ja kysymys lakien perustuslainmukaisuuden tutkimisesta", *Lakimies* 1964, pp. 915–17.

forces that represented the common people. These views may well have carried considerable weight at a later stage, when Parliament maintained its right to function as the supreme guardian of the Constitution. They may even have influenced the Supreme Court, when it was forming its own political role.

III

There has been hardly any noteworthy discussion, either in the Council of State or in the Supreme Court, of the aims and forms of cooperation during the period since the Court began functioning. In 1918 the Court was requested to produce four reports. The following year the number rose to as many as 25, a record still unbroken today. Up to 1965 the numbers of opinions and proposals submitted in successive ten-year periods were as follows:

Table 1. *Numbers of opinions and proposals submitted by the Supreme Court 1918–64*[7]

	Advisory opinions		
	On national legislation	On the laws of Åland	Proposals
1918–27	99	35	4
1928–37	61	31	8
1938–47	35	76	4
1948–57	73	180	10
1958–64	19	149	2
Total	287	471	28

The number of opinions on general legislative matters fluctuates considerably from year to year and there was no fundamental change until the beginning of the 1960s, when a separate committee (*laintarkastuskunta, laggranskningsråd*) was set up to perform the advisory function in question. To this body the Supreme Court appoints two of its own members and the Supreme Administrative Court one member, for two years at a time. The advisory function of the Supreme Court seems to have been transferred to a large extent to this three-man committee: 1963 and 1964 were the first

[7] This information is based on lists drawn up by the office of the Supreme Court and may contain certain inaccuracies. During the same period the Supreme Administrative Court submitted 76 reports and 38 proposals.

two years in which the Supreme Court gave no opinions at all. In fact, however, Court decisions have been the result of the work of only a few of the members since, in 1926, it was made possible to decide legislative questions in five-member divisions of the Court. Even these divisions normally entrust the preparation of reports to a small working group.

More than four fifths of the reports made by the Supreme Court have concerned proposals put forward in ministries or in the Council of State. In seven cases the President has asked the Court to pronounce on laws already approved by Parliament. The remaining opinions given by the Court concern suggestions on the form of decrees, other edicts, and commission reports. A certain proportion of the reports seem to have dealt with the interpretation of existing law rather than with new proposals. It has been considered quite acceptable to ask the Court for, and for the Court to give reports, not only on legislation requiring the approval of Parliament, but also on proposals for decrees. The practice that grew up during Finland's years of autonomy may have prevented difficulties of interpretation in this respect. Attempts have been made to make it a condition for the fulfilment of a request for a report that the matter shall concern proposals for an edict which have been discussed in the Council of State. In 1919 the Supreme Court refused on two occasions to give its opinion to a ministry on precisely these grounds.[8] However, this practice has not always been firmly adhered to: reports have also been made on matters under discussion and in preparation in ministries, for example commission reports. The Supreme Court has also given its opinion on four occasions to a committee of Parliament. A separate obligation is to make reports to the President on laws adopted by the provincial legislature of the Åland Islands; the status of autonomy granted to this area in 1920 includes the power to regulate its internal affairs extensively by means of provincial legislation.[9] The head of state has, however, a right to veto such legislation, if he considers it to belong to the field of national legislation, in other words to fall outside the area of competence of the provincial legislature. Before exercising such a veto, the President is obliged to ask the Court for its opinion, and the large number of reports given indicates that national authorities put great emphasis on investigating the question of legislative competence.

Almost half of the official reports given by the Court concern proposals in criminal and procedural legislation and about 20 per cent proposals for new civil legislation. It was, of course, primarily matters of exactly this kind

[8] Letter from the Supreme Court to the Ministry of Justice Feb. 2, 1919, no. 267 and Letter to the Ministry of Social Affairs Apr. 11, 1919, no. 870.

[9] On the legal status of the Åland Islands, see Tore Modeen, "The international protection of the national identity of the Åland Islands", 17 *Sc.St.L.*, pp. 175–210 (1973).

that the law of 1918 envisaged the Court as dealing with. Matters concerning possible administration are mainly the responsibility of the Supreme Administrative Court, even though some dozens of cases of an administrative nature have been considered by the Supreme Court. This general division has remained unchanged over time, except for the fact that in the first decade of its existence the Court's opinion was asked for predominantly on matters of constitutional law.

In the absence of any detailed study, it is not possible to determine what has been the aim of the Supreme Court as reflected in the attitudes contained in its official reports, and how successful it has been in achieving its goals, i.e. what influence it has exerted on legislation. It has undoubtedly interpreted its duties and powers as an adviser to the government extremely widely. The Court has not only expressed its view on technical matters of law; it has also not shrunk from giving its opinion on the practicality and suitability of proposals laid before it. Nor has it shown any reluctance to express the social and political attitudes of its members. Complaints have even been made in public discussion that, for example, legal problems concerning the relationship between the Constitution and the new proposal have been neglected in this way.[1] Questions of interpretation and other legal matters should take pride of place when the Court's opinion is sought on a law already approved by Parliament. But, as has been pointed out, such cases as these form a small minority of all the reports made by the Court.

The report made in the spring of 1919 on the proposals concerning the principal constitutional enactment, the Instrument of Government, which was one of the Court's first reports, is probably not a typical one, but nevertheless it serves as an extreme example of the extent to which the Court can go. In this case the remarks made by the Supreme Court extended from minor linguistic questions to legislative procedure and a defence on grounds of principle of the monarchy—which was claimed to be "better suited to strengthen the power and security of the state both externally and internally" than was the republican form of government. Some of the score or so of the Court's comments—proposals concerning the strengthening of the President's right of veto, an extension of the procedure whereby reports are called for on legislative matters, the abolition of the fundamental rules of parliamentarism, and the right of the civil servants to disregard legislation that conflicts with the Constitution—were connected with matters that have been the subject of fundamental political differences of opinion.[2] The fact that, when the first members of the

[1] Kastari (1964), pp. 918f.
[2] Letter from the Supreme Court to the Council of State May 5, 1919, no. 1024.

Supreme Court were appointed by direct transfer from the judicial section of the Senate, there was no break in the formation of aims and methods, may well have been significant in moulding the role adopted by the Court.

The influence of the Supreme Court has obviously been greatest in the case of questions which are normally regarded as being of a judicial nature. The President, for example, has not given his official approval to laws passed by Parliament, when the Supreme Court has pronounced them to be in conflict with the Constitution. Even in such cases it need hardly to be a question of objective solutions in accordance with a mechanical view. The fact that the head of the state and his authority have been involved in the decision-making process has obviously prevented conflicts arising between political powers. On the other hand, in clear questions of practicality it has been easy for the Council of State to disregard the Supreme Court's view; here the consideration of the form of government following independence may once again serve as an example.[3] In cases like these the system has functioned without any major inconvenience, and at no level—whether in the Court itself, in the government or in party groups in Parliament—have differences of opinion led to disputes over the question of authority. Since the Supreme Court's task is considered to be purely an advisory one, it has of course had to adapt itself to the wills of the political decision-makers in the final decision. In the summer of 1919, for example, in a truly wilful frame of mind, it approved Parliament's decision on the Instrument of Government Act, and pointed out the desirability that the Act should rapidly be brought into force. The Court further asserted that "the Instrument of Government Act passed by Parliament undoubtedly corresponds to the opinions and hopes of the great majority of the people".[4]

The judges' activities as advisers on legislative matters are a mechanism which naturally has—or at least may be thought to have—consequences for the power structure of the system and on the outputs affecting the life of the society at large. The principal interested parties are the Government, the courts themselves, and the citizens. The arrangement has been considered to be favourable mainly for the first of these groups, which receives interpretations of the law in advance before judicial conflicts arise and also possibly some extra support when the matter is presented to Parliament. The method of asking for advisory opinions has been criticized mainly on the grounds that the courts are in danger of losing their independent position and of becoming merged in the governmental power. This in turn might well endanger the rights of the country's

[3] See Lindman, *op. cit.*, pp. 381–3.
[4] Letter from the Supreme Court to the Council of State July 9, 1919, no. 1595.

citizens. Such a channel of communication and influence has not therefore become the rule, even though it is not unique as far as Finland is concerned.[5] Hitherto the practice in Finland has hardly had any substantial influence from the point of view of this discussion: as has been shown, the extent of the activity has been relatively limited. This is not, of course, meant to exclude the possibility that in certain areas the judges have exerted considerable influence on the development of legislation.

As far as the right to present legislative motions to the Council of State is concerned, brief mention should be made of the fact that the Supreme Court, in availing itself of this right, has tried not only to develop its own working methods, but also to bring about minor changes and clarification, especially in criminal law and the law concerning legal procedure. In doing so, it has clearly based these attempts on experiences derived from the exercising of its judicial functions.

IV

As soon as the subjective element in the decision-making process is acknowledged, interest is immediately awakened in the social and political background of the person who makes decisions, as a means of explaining his behaviour in given situations. Such information is used, on the one hand, when analysing the individual behaviour of judges and, on the other, when examining the position of the courts in the political system at the institutional level. The attitude, already referred to, of the Supreme Court during the early years of its existence should be examined against the background of the fact that most of the 13 original members of the Court were openly right-wing in their political views: five were supporters of the Finnish Party or the Conservative Party and five were supporters of the Swedish People's Party (of these four were former members of the Estate of the Nobility in the Diet). Of the remainder two were liberals and one was independent.

The President of the Republic appoints as members of the Supreme Court, on the Court's own proposal, "right-minded and legally-trained persons, who have skill and experience of the courts". In the absence of any research into the matter, it is difficult to say exactly how large a part the Court has played in the recruitment of its own members. It is natural to assume, however, that in the majority of the cases the decision on the appointment of a new member has followed the proposal put forward by

[5] See L. Wildhaber, *Advisory Opinions: Rechtsgutachten höchster Gerichte*, Basle 1962.

Table 2. *Occupation of members of the Supreme Court at the time of their appointment*

	1918–44	1945–68	All
Justice of the Supreme Administrative Court, Court of Appeal or special court	20	20	40
Judge of lower court	11	8	19
Court official	11	9	20
Official of central administration	5	7	12
Professor of law	1	3	4
Private lawyer	3	–	3
Other private profession	5	–	5
Total	56	47	103

the Court and that the Supreme Court has consequently had a significant say in its own renewal. The method may be regarded as favouring continuity in the Court and emphasizing certain bureaucratic traits in the membership structure. The Court's opinion is sought unofficially when a new president of the Court is to be appointed, too; but it should be mentioned that in two cases out of three since the 1950s the Government has departed from the Court's unanimous view when appointing a new president of the Court.[6]

The information given in Table 2 for the period 1918–68 at least does not conflict with the assumption made above, even though it does not in itself confirm such an assumption, either. With a few exceptions from the Court's early period both the ordinary members of the Court and its presidents were recruited from among members of the Bench, civil servants and from the legal profession.[7] About three fifths of the members had acted as judges of some kind immediately prior to their nomination —usually in Courts of Appeal or rural district courts—and about one fifth had been court officials. The number of judges was about the same as, for example, in Norway, while the proportion of civil servants was larger and the number of practising lawyers notably smaller than in that country.[8] In the United States, where the judiciary does not form part of the bureaucracy in the same way as in the Scandinavian countries and where the

[6] Osvi Lahtinen, "Korkeimmasta oikeudesta valtiorakenteemme osana", *Lakimies* 1964, p. 512.

[7] The information has been taken from the register in *Korkein oikeus 1809–1955*, ed. Matti Mali, from the lawyers' register and from biographies. In the case of the first members of the Court appointed from the Senate, occupations before Apr. 3, 1917, have been taken into account.

[8] See Ulf Torgersen, "The role of the Norwegian Supreme Court in the Norwegian political system", in *Judicial Decision-Making*, ed. Glendon Schubert, New York 1963, pp. 226–7.

political stake in the nomination of members of the Supreme Court is of central importance, the distribution differs quite distinctly from that of Finland and Norway.[9] However, during the period 1918–68 rather more than a third of the members of the Finnish Supreme Court had had some experience as practising lawyers during their careers.

In Table 3 an attempt is made to examine more closely the previous professional experience of members of the Supreme Court by studying the field or fields in which they worked longest after taking their degree in law. The fields are summarized according to the type of career.

Table 3. *Previous careers of members of the Supreme Court of Finland*

Type of career	1918–44	1945–68	All
Judiciary	33	32	65
Central administration	3	4	7
Administrative-judicial office	7	2	9
University	2	–	2
Judge—practising lawyer	6	3	9
Other careers	5	6	11
Total	56	47	103

The picture obtained does not change to a great degree: much the same distribution is reflected here as has been seen in Table 2. The occupation of about two thirds has been directly linked with some kind of legal office; an almost equal number have been employed for quite a long time either as officials of a court or as judges. In general, it can be stated that the path to membership of the Supreme Court is a relatively narrow and homogeneous one, taking place as it does mainly through the judiciary or the central administration.

Further information serving to complete the picture indicates that since the Second World War the path has become even more narrow and homogeneous, and the range of professional and social experience has shrunk, even if the experience of those now sitting is perhaps of a more profound nature than before. Members of the Supreme Court have in general spent only a short period at the beginning of their careers as practising lawyers. Note should be made of a rather revealing fact about the hierarchical structure of the Finnish judiciary, namely that a judge's career need not necessarily end in the Supreme Court. A quarter of those members who, by the end of 1968, had resigned from the Supreme Court, had done so in order to move to some other appointment as a judge, mainly in

[9] John C. Schmidhauser, "The Justices of the Supreme Court: A collective portrait", *Midwest Journal of Political Science* 1959, pp. 1–57.

rural district courts. Only a very few, on the other hand, had moved to some other public position or into a private profession. Most, of course, had retired on pension.

The social background of the members of the Supreme Court covers a wide field, but in general they come from the upper strata of society. About 60 per cent of them come from the families of higher civil servants and other officials or from the families of private businessmen; the number of members with farming or working-class backgrounds is relatively low. With one exception, furthermore, the fathers of those belonging to the latter category were handicraft workers or "service personnel" rather than ordinary workers. Of particular note is the large proportion of civil servants among the fathers of Supreme Court members. Otherwise it is worth pointing out that the distributions of the occupations of both fathers and fathers-in-law are rather similar.

As far as the other qualities of the members of the Supreme Court are concerned, it should be mentioned that just over a quarter of them are Swedish-speaking (during the first decade of the Court's existence those with Swedish as their mother tongue formed more than half of the total membership), that 27 per cent of them are from Helsinki and 51 per cent from other parts of the south of Finland and that their average age on appointment to the Court was 51 years. All the ordinary members of the Court were men; not until 1969 was a woman appointed as a temporary member of the Court.

Table 4. *Occupations of fathers and fathers-in-law of the members of the Supreme Court, 1918–68*

	1918–44		1945–68		All	
Occupation	Father	Father-in-law	Father	Father-in-law	Father	Father-in-law
Judge	11	9	4	2	15	11
Senior civil servant or official	16	11	9	9	25	20
Other civil servant or official	9	4	7	6	16	10
Senior executive	5	1	5	8	10	9
Private businessman	6	12	6	7	12	19
Other private profession	1	1	2	2	3	3
Farmer	4	6	8	5	12	11
Labourer, servant	3	4	6	3	9	7
Occupation not known, unmarried	1	8	–	5	1	13
Total	56	56	47	47	103	103

There is comparatively little open participation in political life on the part of those appointed to the Court and this is understandable in view of the characteristic types of careers pursued prior to appointment. Moreover, political involvement has decreased over the years. Only 13 had been members of the Diet or of Parliament before their appointment to the Supreme Court—a member of the Supreme Court cannot be a member of Parliament—and only four had been at some time or other Senators in the economic section of the Senate or ministers. Many more, however, have taken part in local self-government, either in positions of trust or as expert advisers. The same trend in development can also be discerned if political-party identification of the Court's members is studied in cases where members have openly declared their political opinions. Up to the end of the 1920s those appointed to the Court were by no means shy in this respect. Of 25 appointed to the Court, 21 openly proclaimed their political affiliation in biographical works; in almost all cases this was a right-wing one. Of the 47 members appointed since the Second World War, however, only ten have acknowledged any party affiliation; but these, too, were of the right. Among those who have not publicly announced their political views there can hardly be very many with socialist views.

A conclusion from the points made here is that the members of the Supreme Court have formed a comparatively homogeneous group, whether it is a question of their education (received at the same faculty), their earlier career, their social or even geographical background or their political views. Of significance, too, is the continuity: the changes that have taken place in society's political structure and culture during the last five decades do not seem to have had any great effect on the composition of this institution, at least not as far as the qualities studied are concerned. On the basis of this one might venture to say that the Supreme Court is for the most part a reflection of the traditional professional subculture of the legal profession, and of the judiciary in particular. Characteristic features of this subculture are often its conservatism, its tendency to preserve and to hold fast to earlier experience.[1] Even if its external structural features and general behavioural tendencies do not suffice to draw firm conclusions about the actual role of the Court in individual cases, they none the less provide a picture of its special position in the country's political system alongside other decision-makers.

[1] E.g. Torgersen, *op. cit.*, pp. 228–9; Jacob & Vines, *op. cit.*, p. 248; Vilhelm Aubert, *Rettssociologi*, Oslo 1968, pp. 210–36.