

Socio-Political Fractionalization in the Norwegian Supreme Court

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Abstract

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

From that perspective, one of the stated interests of many Norwegian government officials, including members of the high court, is to increase the diversity of the pool of justices, which should sensitize the Court to a broader array of socioeconomic interests in society at large. In this paper we propose to construct a measure of Norwegian Supreme Court socio-political fractionalization for each year since the end of WWII, and offer some tentative explanations for the trends in the socio-political diversification of the Norwegian Supreme Court.

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Once the essential professional qualifications are met, it would be to the advantage of the Court if its composition reflected a wide breadth of experience from different areas of the country, professional backgrounds from different areas of legal practice, and, furthermore, if it had a more balanced proportion of women to men. (Smith, 1998: 101).

Introduction

Former Chief Justice Carsten Smith was committed to the principal of diversifying the Supreme Court's composition. That a relatively homogeneous group of Oslo-centric males populates Norway's highest court would appear to be out of step in a society generally characterized as highly democratic and egalitarian. By contrast, for example, the practice of electing women to the Storting was well under way by the time the first female Supreme Court justice, Lilly Helene Bølviken, was appointed to the Supreme Court in 1968. Smith's pioneering effort to make the Court a more heterogeneous lot is reflected in the official statement of recruiting principles promulgated by the Judicial Appointments Board:

It adds up to a pursuit of the principle of a broad recruitment of justices, such that justices who are appointed have prior knowledge from various areas of community and legal life (Judicial Appointments Board, 2012).

Recruiting justices broadly from a variety of social and legal backgrounds might well "be to the advantage of the Court," but there may be a number of justifications for such a recruitment process. Should one expect the Court to hand down different decisions once there is a diverse set of justices? Would justices be more representative of the country's population as a whole? Or is diversification just for show? Former Chief Justice Smith suggests that such breadth

... may be justified by, among other things, considerations of fairness and to ensure representation of different segments of the population, a wider and more varied breadth of knowledge about the different aspects of people's lives, and the reflection of values in Supreme Court decisions (Smith, 1998:101).

What might "representation" and "fairness" mean in the context of naming justices to the bench? In the political science literature, representation has been defined as descriptive, substantive or symbolic. Presumably, socio-political diversity shapes the opinions, which in turn, influence the behavior of political actors, including Supreme Court justices. We might expect that belonging to a specific socioeconomic grouping predisposes politicians to engage in "descriptive representation," such that "Black legislators represent Black constituents, women legislators represent women and so on" (Mansbridge, 1999: 629).

However, a number of scholars argue that "substantive representation" makes a stronger connection with the larger public because leaders are accountable to group members, and the "group's voice is articulated and heard in the policy process" (Weldon, 2011:32). This form of representation appears to imply a measure of popular control not typically associated with the judicial process.

Finally, representation can be "symbolic" in nature, "referring to the represented's feelings of being fairly and effectively represented" (Schwindt-Bayer and Mishler, 2005:407). Each of these theoretical perspectives could provide insight into the impact of group interest on judicial behavior.

Anticipating that judicial behavior may be understood, at least in part, by descriptive or symbolic representation of socio-political groupings, substantive representation may not be reflected in a judge's policy behavior. One can hardly expect justices in an independent judiciary to be routinely held accountable to social group members, even though their "voice[s] ... may be articulated and heard in the policy process." So, what are the mechanisms that might

make Supreme Court justices more representative of the diversity of values found in the broader public? We suggest that primary, secondary and reference groups instill a diversity of views among citizens in general, and Supreme Court justices in particular.

The extant literature identifies *primary group* influences in childhood as building the foundation for an individual's basic values and political socialization (Jennings and Niemi 1968, 1974, 1981; Tedin 1974; Dawson, Prewitt, and Dawson, 1977). In the case of young children, much is learned from parents within the structure of family life. Among other things, internalizing party identification and understanding gender roles, more often than not can be traced back to early childhood. Such fundamental perspectives, as opposed to ephemeral ones, reinforced over time certainly can shape adult attitudes and behavior. Future Supreme Court justices are not exempt from the influence of primary groups.

Primary group effects do not grind to a halt during one's post-adolescent years. Indeed, Norwegian lawyers are in direct personal interaction within specific segments of the legal community in which they may "... encourage one another in their viewpoints, promote recognition of common problems, and spur one another on to collective action." (Mutz 2002:852). One such social network is the "Oslo West" crowd, an allegedly tight-knit elite cluster with shared values that engages in ... "discussions [that] go on over wine glass in Oslo west" (Kristjánsson, 2010a). Certainly the Norwegian legal community is extremely homogeneous (Hjellbrekke, et.al. 2007), and it appears that, as is the case elsewhere, such a network is to be found in the environs of a national capital (McGuire, 1993)

In addition to personal interactions in relatively small groups, secondary groups also can play a role in shaping an individual's views. Generally speaking, *secondary groups* are larger, more formal, and are not characterized by face-to-face interaction among all or most of their

members. Examples might include a professional association, a labor organization, a governmental agency, or a university. Notwithstanding their dialed back intensity, secondary groups can exert influence on individual dispositions in a manner that is consistent with those of the group in question. For example, membership in a labor organization might encourage greater levels of support for such things as economic equality or greater employee rights and protection on the job. Thus, while a secondary group may directly impact one's opinions, it also does so by virtue of its members identifying with the organization in question (Greene, 1999).

To identify fully role or group membership, we must include the concept of a *reference group*, defined as "... a social organization or an individual which social actors employ as a basis for self-knowledge and self-evaluation" (Simon, 1995:20). One might belong to a secondary group, but importantly it must serve as *reference group* (Miller, et.al., 1991), as well. In addition, individuals might be placed in demographic categories based on such characteristics as sex or place of residence, which would not be considered secondary groups, but could inform political views. In any case, for a group to serve as a reference point, it must have a known, relevant position, and the individual must identify with the group in which he or she is at least a nominal member (Campbell et al 1960). In this regard, reference groups may serve as valued audiences for Supreme Court justices (Baum, 2008).

Whether we conceptualize socio-political influences as grounded in primary, secondary or reference groups, Supreme Court justices could reflect group values in their decisional behavior. To whatever extent this is the case, Smith's appeal for greater diversity on the bench is a clarion call for greater representation of societal interests, as well as promoting "fairness," which in turn, should lend greater political legitimacy to the Supreme Court.

Fractionalization

In this exploratory study we shall map the level of socio-political diversity of the Norwegian Supreme Court in the post-World War II era and offer a tentative explanation of the trend of the degree of heterogeneity. We see the level of fractionalization of Court membership as a reflection of the larger national political context in a fashion depicted in Figure 1.

Obviously, the appointing government should play role in as much as it chooses who makes it to the Court, and the government in turn responds to voting constituents. Likewise, the social and political experiences of applicants should have a bearing on the diversity of the bench, and these nominees share some values with the citizenry. Otherwise, altering Court diversity may not be quite such an important goal. Naturally, the government decides what the characteristics of the appointee will be, and indeed the propensity of the government to promote diversity may stimulate a particular applicant pool. We shall return to this simple model in our discussion of the findings.

[Figure 1 Goes Here]

One way to operationalize diversity is to express it in terms of “fractionalization,” a concept widely applied to assess the effect of religious and ethnolinguistic diversity with the consumption of public goods and the incidence of political instability (Annett, 2001; Esteban and Ray, 2008). If a society is comprised of only one ethnic group, it is ethnically perfectly homogeneous, and as the number of relevant groups expands, so does the level of heterogeneity, or fractionalization.

In the present analysis, we are not attempting to measure ethnic, ethnolinguistic or religious diversity, but salient socio-political fractionalization of the High Court. Of course, the decision regarding which groups to include when attempting to reflect the degree of a nation’s

diversity is not always straightforward (Fearon, 2003), and certainly the same can be said for Supreme Courts. For purposes of this study, we base our measure of fractionalization on the presence of group memberships we have found to be relevant for the decisional behavior of the justices.

If there is one demographic characteristic linked most unequivocally to the diversification of the Supreme Court, it is gender, as explicitly mentioned in the quote by Carsten Smith at the beginning of this paper. While the number of women in the public at large is approximately equal to that of men, it was not until 1968 that the first female justice, Lilly Helena Bølviken, was appointed to the Supreme Court. Female representation on the High Court lagged well into the twentieth century, but the push by women's groups to elect more women to the Storting (Bystydzienski, 1988:77) could have "heightened attention to judicial diversity" (Goelzhauser, 2011:776). And over time, the presence of female justices has increased so that the proportion of women on the Supreme Court is comparable to that of the Storting (Grendstad, et.al., 2013)

We assume that women have experienced a gendered socialization experience growing up, faced different challenges in a variety of secondary group settings, and may consider "women" as a politically relevant reference group. Consequently, women may bring different "world views" than their male colleagues, stand for "class interests," and bring "unique information" to the deliberative process (Boyd, et.al., 2010:391). Some evidence indicates that women justices can be more liberal on discrimination in employment issues brought before U.S. Courts of Appeals (Songer, et.al., 1994). With specific reference to Norwegian female judges, at least one study has found that women are more lenient in sentencing convicted criminals (Østlid, 1988).

In the post-World War II era, not a single professor served on the Supreme Court until 1991 (Grendstad, et.al., 2011). This is not to say that the professoriate was without any impact on the Court prior to its 1991 term. Certainly, academics exerted an indirect influence by dint of the legal training they provided their law school students who ascended to the High Court. Carsten Smith, a University of Oslo Law School professor, was the first professor to be appointed, even though he was quite content to continue his academic career. Perhaps being appointed Chief Justice was added inducement to be considered in the first place. After Smith's appointment, the percentage of the justices with experience as law school professors rose steadily until the late 1990s, declined from 2000 to 2009, but rebounded to nearly 20 percent by the end of the decade (Grendstad, et.al., 2013).

It is possible that adding academics to the bench introduces patterns of behavior and procedure that might otherwise be missing from the Court's deliberations. For example, professorial types often engage in extended discussion of minute and arcane features of questions under consideration, which might introduce heightened disagreement among the justices deciding a case. Indeed, Chief Justice Carsten Smith encouraged debate among his Supreme Court colleagues, and quite possibly such disagreement might have contributed to higher levels of dissent in the decisional behavior of Supreme Court justices.

Since regional tensions between "center" and "periphery" are well documented (Rokkan, 1967), we contend that diversification of the Court would justify appointment of justices from areas beyond the nation's capital. Surely, Oslo, home of the nation's "central administrative machinery," (Rokkan and Urwin, 1983) serves as the center of Norway's political life. We have argued elsewhere (Grendstad, et.al., 2011a) that being born and raised in Oslo may not only form a regionally unique socialization experience in and of itself, but also increase the odds that Oslo-

centric justices may have internalized values shared by an elite social network populated by legal families. Increasing the proportion of justices recruited from the periphery could introduce added diversity, one that is linked to decisional behavior (Grendstad, et.al., 2011a).

From the earliest phase of a larger research project of which the present analysis is a part, the proxy measure employed in an effort to measure ideology, that is the political color of the appointing government, has generated some controversy (see Pinello 1999 on the link between partisan identification and judicial ideology). Specifically, we differentiate between justices appointed by socialist governments and those chosen during non-socialist ones. After the end of World War II, the presence of socialist government appointed Supreme Court justices steadily increased until it reached its apex of 95 percent in the mid-1960s. Thereafter, the presence of justices appointed during non-socialist government rule steadily increased, with fluctuations tracking the alternations of government control (Grendstad, et.al., 2011b).

An early exploratory work revealed that positions taken on Supreme Court cases reflected some ideological propensities, such as public versus private economic interests, which was strongly correlated with whether a justice was appointed by a socialist or a non-socialist government (Grendstad, et.al., 2010, 2011a). And, the statistical relationship has shown itself to be resilient, withstanding the inclusion of any number of control variables, thus lending support to the notion that governments in place at the time of appointment are an important source of politically relevant diversity.

Finally, experience as a lawyer in the Legislation Department, a unit within the Ministry of Justice, is a particularly relevant professional experience that has been found to encourage a “government friendly” posture among justices ruling on cases in which the government is a party (Grendstad, et. al., 2011d). That the Department crafts legislation, and interprets and clarifies

legal questions, thereby officially declaring “what the law is” (Skarpnes, 1986:195), gives rise to the assumption that siding with the government is a direct consequence of service in the Legislation Department (Kjønstad, 1999). We consider that some background in the Legislation Department is a crucial sociopolitical influence on future justices, and therefore, we shall include it in our measurement of diversity during the post-World War II era.

Data and Methodology

The primary task in this paper is to map the degree of diversity on the Supreme Court for each year since the end of World War II. Accordingly, we compute an “index of fractionalization” for combinations of the sociopolitical groups discussed above. Such an approach appears theoretically appropriate, since it is not enough to make broad distinctions only between male and female justices, but to differentiate group background within each sex. For example, women appointed by nonsocialist governments might behave quite differently than those selected under socialist regimes. Likewise, men from Oslo might decide cases quite differently than their counterparts from the periphery. Consequently, 32 unique combinations of the groups discussed above are identified in Table 1. Presumably each of these nearly three dozen group types may represent a distinctive personal, professional and political socialization experience.

[Table 1 Goes Here]

The data processing begins with the calculation of the proportion of Supreme Court justices in each of the 32 categories, which in turn, becomes the input into the fractionalization formula. Of course, many of the separate combinations are not present for each of the 67 years in the data set. Once proportions are established for a given year, the level of fractionalization is computed by the simple formula of $1 - \text{the Herfindahl index}^1$ (Alesina, et.al., 2003):

$$\text{FRACT}_j = 1 - \sum s_{ij}^2,$$

FRACT_j = Fractionalization Index for year i, and

s_{ij} = Proportion of justices in group j for year i

Measured this way, the fractionalization index has a range of 0.000 to 1.000, with 0 indicating that all justices share exactly the same group memberships, and 1 denoting that the justices have perfectly unique sociopolitical backgrounds. Of course, the Court is not perfectly homogeneous or heterogeneous, although the .9242 fractionalization score in 2010 approaches near perfect diversity. The lowest fractionalization value of .6561 in 1966 suggests moderate heterogeneity.

Once the fractionalization index is computed for each year of the post-WW II era, we shall present these scores in a graph in an effort to determine whether or not the desire for increased diversity has manifested itself in the composition of the Supreme Court. At the same time, we shall attempt to ascertain the way in which broad sociopolitical groupings drive levels of fractionalization over the 67 year period under scrutiny, and offer a plausible interpretation for any observed patterns of fractionalization

Findings

Fractionalization scores are plotted for the 1945-2011 time frame and displayed in Figure 2. The trend has not been one in which there is a consistent linear increase in the diversification of the Supreme Court. Although the highest levels of fractionalization occur in the most recent year, diversity on the Court was substantial right after the end of WW II. Subsequently, a persistent decline is observed over the remainder of the two decades after the immediate post-war period. Then in the late 1960s an unmistakable and, arguably, fairly abrupt change occurred, pushing the fractionalization scores steadily upward, so that by the turn of the century, the index remained just above .900. Before we look more closely for an explanation of this apparently

curvilinear trend in Court fractionalization, we first shall identify sociopolitical group drivers of our measure of diversity.

[Figure 2 Goes Here]

At first blush, one might consider running a multiple regression with fractionalization regressed on the proportions of each of the five sociopolitical groupings employed to create the 32 combinations. Not surprisingly there is considerable multicollinearity among the components of the fractionalization index, but they do not approach the overall multiple correlation. The regression coefficients and beta weights are significant for all five groups upon which the fractionalization is based. The proportions of women and professors contributed to increased diversity, while the proportion socialist government appointees depressed the extent of fractionalization (See Table 2). Neither the proportions of Oslo born justices nor those with Legislation Department experience had meaningful impact on variations in the fractionalization, at least not for the entire post-World War II era.

[Table 2 Goes Here]

If we conceive of the five group proportions as single measures of one unifying, underlying dimension, rather than conceptually distinct variables, one could subject the major sociopolitical group proportions to a principal components analysis, as displayed in Table 3. We have also included the overall fractionalization index as the general marker.² Again, we infer that Courts with a greater presence of Oslo-centric, socialist government appointees are among the least diverse, while appointments resulting in higher proportions of women, professors, and those with prior Legislation Department experience served to diversify the Court's membership.

[Table 3 Goes Here]

Certainly diversifying the Supreme Court's composition could be achieved by decreasing the numbers appointed by socialist governments and expanding the pool of applicants from the nation's periphery, while at the same time including more women and academics. However, if the Legislation Department is understood as the sinecure of an Oslo-centric elite, then why has recruitment out of that Ministry of Justice division contributed to greater fractionalization? The outcome, in part, may be a function of ecological inference. While fractionalization is an indicator reflecting the Court as a whole, we must be careful when using *aggregate* data to account for *individual* behavior (Robinson, 1950; Shively, 1969; Schuessler, 1999). Of course, up to this point, we have addressed the aggregate measure of fractionalization, but one cannot easily draw valid inferences about individual justices. For example, the negative relationship between fractionalization and the proportion of socialist appointees, coupled with the positive correlation between fractionalization and women does not necessarily demonstrate that non-socialist governments populated the Supreme Court with female justices.

Let us consider the associations between the proportion of female justices and the other four groupings in Table 4 as an illustrative case in point.³ The elevation of women to the High Court is moderately correlated with the proportion of appointments made by non-socialist governments. More importantly the correlations exceeding .800 suggest that recruitment from the periphery and the professoriate, and yes, the Legislation Department appears to have been especially important in transforming the Court from a strictly male-dominated political institution to one more inclusive of women. Perhaps academe and the Legislation Department offered a pool of qualified female applicants who could be tapped in an effort to diversify the Supreme Court in a very significant way.

[Table 4 Goes Here]

In cases where only aggregate data are available, inferences about individuals remains a worthy pursuit and some astute methodologists have offered appropriate techniques for analyzing individual attitudes and behavior with aggregate data (King, 1997). However, we have individual level data to explore recruitment in *individual* rather than *group* terms. So, we continue with an examination of the background of justices with specific pairwise sociopolitical characteristics, which are reported in Table 5. The table should be read across the rows to offer some insight into recruitment patterns. So, for instance, socialist government appointees were just as likely to be Oslo born as non-socialist government ones. On the other hand, female appointees were highly likely to have served in the Legislation Department.

[Table 5 Goes Here]

Reading across the first row of the table, it is clear that professorial status of a justice is unrelated to the color of the government, service in the Legislation Department, center-periphery status, or gender. Similarly, the ideological stance of the appointing government is not particularly associated with the other sociopolitical groups, including gender. Even though fractionalization was linked to the increased presence of women and non-socialist government appointees, socialist governments appointed a few more female justices. The distributions for the center-periphery divide indicate that a greater proportion of Oslo-born justices served in the Legislation Department, suggesting that Oslo-born law school graduates wish to remain in or return to the capital, and this department is a significant employer of such legal professionals, who may also be part of an important social network. A close examination of the last two sets of figures reveals that a large majority of justices with Legislation Department experience were Oslo born, and far greater percentages of women than men were Oslo-born lawyers with previous service in the Legislation Department. Perhaps female justices, even more so than their

male counterparts, emerge from a socially elite milieu. Having taken this slight detour into the world of ecological fallacy, we return to the aggregate data set in an effort to explain the long-term trend in the fractionalization of the Supreme Court depicted in Figure 1.

Applying the curve-fitting function of the graphic software (PSI-PLOT) produces a curvilinear representation of the post-World War II trend in Supreme Court fractionalization (See Figure 3). Such a non-linear fit of the data over the entire 67 year period under scrutiny assumes, of course, underlying causal factors have remained essentially the same. We consider this to be an unwarranted assumption, and alternatively we propose a different perspective on the long-term pattern, prompted at least in part by the departures from the trend line in the early years, especially in the early and mid-1960s. We offer instead a theoretical framework that initially posits not one, but two distinct periods characterized by quite different underlying dynamics.

[Figure 3 Goes Here]

In Figure 4 the single curvilinear trend is contrasted with two separate linear solutions, one for the 1945-1966 years the other for all sessions after 1966. Even a cursory inspection suggests that two very distinct political periods are captured in our 67 year data set. A much cleaner picture is displayed in Figure 5, with a sharp and steady decline in fractionalization from 1945 through 1966, a decline that is reversed to a persistent increase through the first 11 years of the 21st century. The first equation has been fitted for what we label the period of “consensual politics,” while the second equation best describes the “post-consensual politics” years. The relatively little variation from the trend line is reflected in the strong correlations of $-.906$ in the earlier period and $.885$ for the post-1966 years.

[Figures 4 and 5 Go Here]

Our preferred interpretation of this outcome is that the underlying forces generating trends in fractionalization of Supreme Court membership changed sharply with a significant transformation in Norwegian politics that began in the mid-1960s. Conventional wisdom identifies Norway as an example of a “consensus” style democracy, which is characterized, in part, by a “sharing of power” (Lijphart, 1984:30). The “consensual” nature of Norwegian politics began to erode with the “... increasing tendency towards political polarization [that] became evident in the mid-1960s” (Elder, et.al., 1988:25). The “frozen” party system (Lipset and Rokkan, 1967) began to thaw as the Labour Party’s domination slipped dramatically by 1965 when a non-socialist coalition government was formed with a Center Party prime minister, Per Borten.

A number of scholars point to the 1972 referendum on European Community membership as a “political earthquake,” resulting in “more party system change ... than at any time since the 1920s” (Strøm and Leipart, 1989:266). The Liberal Party unraveled as a result of its deep internal division over EC participation, and never recovered. The Conservative Party was strengthened and parties on the left and right grew (Strøm and Leipart, 1989). No one questions the pervasive impact of an EC (1972) or EU (1994) referendum, episodes that energized virtually all of Norwegian society. We do contend, however, that while these events may produce striking consequences, for our purposes they have been short-lived.⁴

Rather than focus upon exciting political clashes, such as an intense skirmish over EU membership, we maintain that a fundamentally larger and longer-term transformation occurred. One careful observer of the Storting notes that “... the rise of the Norwegian Parliament should be related to an ongoing process of *pluralization*” (Rommetvedt, 2003). We suggest that perhaps this deeply embedded long-term sociopolitical change is at the heart of the diversification of the

Norwegian Supreme Court, as well as the “rise of the Norwegian parliament,” the multiplication of political parties, the growing strength of non-socialist parties, and for that matter the divisive issue of European Union membership.

To map the changing political landscape from the end of World War II to the present we begin by identifying three broad political periods: (1) Consensual Politics, (2) Pluralization Politics, and (3) Realignment Politics. The first stage was essentially characterized by Labour domination in an era of social and political consensus, while the post-consensual politics years have been marked by increasing “pluralization” leading to a thawing of the “frozen” frozen party system. Realignment politics is the stabilization of the party system that grew out of the post-consensual era, such that a realignment of parties has occurred. After the mid-1980s, the previously non-socialist Center Party had moved to its newly acquired socialist posture and remains there today. At the same time, the Christian People’s Party assumed a bit more centrist stance, and the Progress Party established itself as a major player during the period of realignment. While the party system may not be “frozen,” it is no longer in a period of flux; it has experienced a stable realignment.

While trends in fractionalization differed dramatically in the consensual and post-consensual politics eras, no such departure is apparent for a post-realignment period. Nevertheless, when a frozen system thaws and becomes more fluid, eventually it will firm up a new set of inter-party relationships, and we propose that is what can be observed about 20 years into the post-consensual politics period. Even after the advent of the post-consensual era, party behavior in the Norwegian Parliament reflected the long-standing left-right split both in committee deliberations and on the floor. However, the non-socialist Center Party drifted leftward in the mid-1980s, and quite often the Christian People’s Party assumed a left-of-center

policy stance (Shaffer, 1998). The dramatic increase in the presence of Progress Party MPs is especially noteworthy, jumping from 2 seats in 1985 to 22 in 1989, and reached its high water mark of 41 in 2009.

To provide a sense of this trichotomous specification of political periods, we draw the reader's attention to Figure 6. Here we have charted the effective number of parliamentary parties⁵ and the proportion of what we shall call "anti-tax" parties, consisting of the Conservative and Progress Parties. Recall that there was an increase in the number of parties, presumably generated to a considerable degree by battles over Norway's EU referenda, as well as a change in the ideological character of the parties. On the latter point, while Norway remains a robust welfare state, the vitality of parties more committed to free enterprise have grown considerably and opposition to high levels of taxation are symptomatic of that somewhat rightward drift. The parliamentary presence of anti-tax political parties is observed in the combined proportion of Conservative and Progress Party MPs.⁶

{Figure 6 Goes Here}

Note that during consensus politics, the number of effective parliamentary parties (ENPP) and the proportion of anti-tax parties in Parliament were rising very, very slightly. With the collapse of consensual politics, the proportion of anti-tax parties rose sharply, while the effective number of parties declined ever so slightly. Although the ENPP jumped sharply in the wake of the 1972 EC referendum, any effect of that "political earthquake" vanished by the next election. The post-realignment period ended with the highest ENPP values and the greatest presence of anti-Tax parties. While the 1994 EU struggle significantly cut into Conservative-Progressive representation to the benefit of the anti-EU Center Party, the effect appears to have vanished by 2000. We hypothesize that the gradual increase in both anti-tax parties and the effective number

of parties overall has been the result primarily of a process of “pluralization” rather than the product of any short-term force.

The increasing pluralization of Norwegian society across the three periods could help explain the increasing diversification of the Supreme Court, as well. We offer a crude test of this hypothesis by regressing Court fractionalization on a trichotomous measure of political periods: consensual politics = 0, consensual politics = 1, realignment politics = 2. The results reported in Table 6 indicate that after removing the effects of serial correlation, the simple period index is substantially correlated with fractionalization. Broadly speaking, mean fractionalization moved from .764 in the consensus years to .810 in the post-consensual period to .895 in the post-realignment era. As Norway moved out of consensus politics and through the pluralization and realignment years, membership on the Court became increasingly diverse. We hasten to add that the EC/EU referenda consequences examined above, namely the increase in the number of political parties and growth of the anti-tax parties, are not significantly correlated with fractionalization, once serial correlation is removed.

[Table 6 Goes Here]

While period effects account for variation in fractionalization across the entire post-World War II period (Table 2), the sociopolitical groupings driving levels of fractionalization also vary by the three political periods identified above. Since the data set represents the complete universe of justices, we pay little attention to significance levels, and instead somewhat arbitrarily focus upon beta weights at about .300. To begin, during the era of consensual politics, diversification of Supreme Court membership was primarily a function of appointing government (beta weight = -.666) and to a lesser extent Legislation Department experience (beta weight = -.342).⁷ Simply put, socialist-led appointing governments and service in the

Legislation Department served to depress fractionalization (See Table 7). Of course, consensual politics suggests political homogeneity, and perhaps there was little impetus either in government or in the larger Norwegian culture for enhancing diversity.

[Table 7 Goes Here]

As the political system thawed during the pluralization years, the nature of the appointing government and Legislation Department experience continued to lower diversity, but the appointment of women began to reverse the trend of declining fractionalization, as indicated by a beta weight of .474 (See Table 8).⁸ Finally, during the realignment era, Oslo-born, never a factor, appointing government and a justice's previous work in the Legislation Department did not exhibit an impact on diversification. On the other hand, elevation of professors (beta weight = .587) and women (beta weight = .648) to the High Court contributed substantially to increased levels of diversity among justices (See Table 9).

[Tables 8 and 9 Go Here]

Summary and Discussion

This paper represents an exploratory effort to map the level of diversification of the Norwegian Supreme Court membership, an explicit goal in the recruitment of justices. The presumption is that diversity is a matter of simple fairness, whether achieved by descriptive, substantive or symbolic representation. To facilitate analysis, a measure of fractionalization was computed for a 32-fold combination of putatively politically relevant group characteristics. At first blush, the overall trend of fractionalization in the post-World War II era appears to be curvilinear, but we argue that different underlying forces mark two distinct time periods, consensual politics and post-consensual politics. Moreover, we add a subcategory of a post-

realignment period marked by a stabilization of political alignments. The tripartite designation is clearly linked to the diversification of the Norwegian Supreme Court.

The tripartite nomenclature constructed to assess period effects in fractionalization might be grounded in a simple diagram connecting the public, government and the qualities of the pool of applicants from which justices have been selected (See Figure 1). The Supreme Court does not operate in a vacuum, but instead is subject to sociopolitical forces, either directly or indirectly. The diversity of justices has been, at least in part, a function of the appointing government (path b), and in the early consensual politics period, socialist dominance led to diminished fractionalization. Obviously, the voting public (path a) directly determines the nature of the government, implying that public sentiment indirectly affects the Court's heterogeneity of membership. The general political culture center of gravity might also encourage applicants with more varied backgrounds to seek appointment to the High Court (path c), and their social, political and career experiences will affect the degree of Court fractionalization (path d). Finally, path e suggests that not only is the government obliged to choose from among a list of applicants, but governments also might signal a preference for nominees with specific backgrounds.

The public supported socialist dominance during the consensual politics period provided a Court membership displaying ever decreasing heterogeneity. Add to this the recruitment of justices from the Legislation Department, and the picture becomes one of harvesting justices from a narrow, insular legal elite. As consensual politics crumbled, socialist appointing governments and justices with some background in the Legislation Department diminished fractionalization in the post-consensual era, but at a slightly declining rate. For the first time women were elevated to the Supreme Court and their presence had the meaningful effect of

increasing diversity. After entering the realignment period, appointing government, being Oslo born or having served in the Legislation Department had virtually no impact upon Supreme Court fractionalization. In very broad terms then, sociopolitical heterogeneity has been a product of theoretically significant period effects.

Given that the focus of this paper has been the construction of an index of fractionalization of Supreme Court membership, no effort was undertaken to link sociopolitical diversification to the decisional behavior of justices. Of course, greater inclusion of diverse groups on the Court is a desirable outcome, if for no other reason than to mirror the social and political groupings in larger society. In that sense, the Norwegian Supreme Court has become more diverse, thereby achieving a degree of representative fairness. But, has diversification mattered to the Court's business? Future research will attempt to establish whether or not the degree of heterogeneity has judicial policy consequences.

For example, while beyond the scope of this paper, increased diversity is hypothesized to impinge upon the actions of individual justices, as well as the Court as a whole. Accordingly, we expect that greater fractionalization leads to a wider array of legal and ideological perspectives that inform the justices' response to major cases brought before the Court. Consequently, there might be a greater incidence of dissenting votes as the sociopolitical backgrounds of the justices became more diverse.

Regardless of whether or not dissension is linked to the degree of fractionalization, greater diversity on the Court could be reflected in the sheer number of opinions written. Rather than outright dissents, the variety of perspectives might lead to an increase in the frequency of nuanced opinions, rather than, or in addition to, dissenting ones. Such an outcome might be exacerbated by the number of academics appointed to the bench.

Probably most importantly, further analysis should evaluate the impact of fractionalization on the votes cast by justices, especially those tied to crucial matters of constitutional and public policy. If, as we contend, pluralization of Norwegian politics underpins post-consensual politics, then the diversification of the Supreme Court may alter the direction of judicial policy making. Will the inclusion of women have policy consequences? Has the elevation of non-socialist appointees to the High Court led to decisions more favorable to free market economics? Or, has the appointment of justices from the nation's periphery infused decision making with a less Oslo-centric bias? Answers to these questions await future research.

Table 1
Heterogeneity Combinations

Socialist	Male	Oslo	Legislation	Professor
Socialist	Male	Oslo	Legislation	Not Professor
Socialist	Male	Oslo	Not Legislation	Professor
Socialist	Male	Oslo	Not Legislation	Not Professor
Socialist	Male	Not Oslo	Legislation	Professor
Socialist	Male	Not Oslo	Legislation	Not Professor
Socialist	Male	Not Oslo	Not Legislation	Professor
Socialist	Male	Not Oslo	Not Legislation	Not Professor
Socialist	Female	Oslo	Legislation	Professor
Socialist	Female	Oslo	Legislation	Not Professor
Socialist	Female	Oslo	Not Legislation	Professor
Socialist	Female	Oslo	Not Legislation	Not Professor
Socialist	Female	Not Oslo	Legislation	Professor
Socialist	Female	Not Oslo	Legislation	Not Professor
Socialist	Female	Not Oslo	Not Legislation	Professor
Socialist	Female	Not Oslo	Not Legislation	Not Professor
Non-Socialist	Male	Oslo	Legislation	Professor
Non-Socialist	Male	Oslo	Legislation	Not Professor
Non-Socialist	Male	Oslo	Not Legislation	Professor
Non-Socialist	Male	Oslo	Not Legislation	Not Professor
Non-Socialist	Male	Not Oslo	Legislation	Professor
Non-Socialist	Male	Not Oslo	Legislation	Not Professor
Non-Socialist	Male	Not Oslo	Not Legislation	Professor
Non-Socialist	Male	Not Oslo	Not Legislation	Not Professor
Non-Socialist	Female	Oslo	Legislation	Professor
Non-Socialist	Female	Oslo	Legislation	Not Professor
Non-Socialist	Female	Oslo	Not Legislation	Professor
Non-Socialist	Female	Oslo	Not Legislation	Not Professor
Non-Socialist	Female	Not Oslo	Legislation	Professor
Non-Socialist	Female	Not Oslo	Legislation	Not Professor
Non-Socialist	Female	Not Oslo	Not Legislation	Professor
Non-Socialist	Female	Not Oslo	Not Legislation	Not Professor

Table 2
 Fractionalization Regressed on Broad Sociopolitical Groups*
 1945-2011

<u>Parameter</u>	<u>b</u>	<u>Standard Error</u>	<u>Beta</u>	<u>t</u>	<u>Significance</u>
Professor	.396	.105	.370	3.771	.000
Socialist Appointee	-.278	.038	-.495	-7.225	.000
Legislation Department	-.094	.065	-.126	-1.438	.156
Oslo Born	.164	.071	.201	2.309	.025
Women	.323	.088	.526	3.683	.001
(Constant)	.922	.047		19.595	.000

R = .905; R² = .820
 dw = 2.060

* Corrected for serial correlation.

Table 3
 Principal Components Analysis of
 Fractionalization and its Components
 1945-2011

<u>Variable</u>	<u>Loading</u>
Fractionalization	.903
Professor	.801
Proportion Socialist Government Appointments	-.659
Legislation Department Experience	.811
Proportion from Oslo	-.846
Proportion Women	.963

Eigenvalue = 4.191
 Percent Variance Explained = 69.8

Table 4
Correlations Among Proportions in Sociopolitical Groups
1945-2011

	<u>Professor</u>	<u>Socialist</u>	<u>Legislation</u>	<u>Oslo</u>	<u>Women</u>
Professor	1.000				
Socialist	-.202	1.000			
Legislation	.528	-.521	1.000		
Oslo	-.690	.429	-.609	1.000	
Women	.800	-.523	.785	-.826	1.000

Table 5
Pairwise Combinations of Justices' Sociopolitical Groups
1945-2011

	<u>Professor</u>	<u>Socialist</u>	<u>Oslo</u>	<u>Legislation</u>	<u>Women</u>	<u>Men</u>
Professor	-----	72.3	45.7	12.8	12.8	87.2
Non-Prof	-----	67.6	44.6	28.2	8.0	92.0
Socialist	21.1	-----	43.9	24.2	10.5	89.5
Non-Soc	17.6	-----	46.0	27.0	6.8	93.2
Oslo	24.1	66.7	-----	39.1	18.4	81.6
Periphery	23.4	68.5	-----	18.7	5.6	94.4
Legislation	10.2	66.1	63.0	-----	23.7	76.3
Not Legis.	23.3	69.3	37.9	-----	4.0	96.0
Men	19.2	67.8	41.0	21.0	-----	-----
Women	28.6	77.3	72.7	66.7	-----	-----

Table 6
 Fractionalization Regressed on Political Change Index
 1945-2011

<u>Parameter</u>	<u>b</u>	<u>Standard Error</u>	<u>Beta</u>	<u>t</u>	<u>Significance</u>
Change	.053	.013	.458	4.0125	.000
(Constant)	.775	.019		40.599	.000

R = .458
 R² = .210
 dw = 2.125

<u>Period</u>	<u>Mean</u>
Consensual Politics	.764
Post-Consensual Politics	.810
Post-Realignment Politics	.895

Table 7
 Fractionalization Regressed on Broad Sociopolitical Groups
 Consensus Period of Norwegian Politics*
 1945-1966

<u>Parameter</u>	<u>b</u>	<u>Standard Error</u>	<u>Beta</u>	<u>t</u>	<u>Significance</u>
Socialist Appointee	-.316	.062	-.666	-5.121	.000
Legislation Department	-.471	.189	-.342	-2.490	.024
Oslo Born	.147	.104	.155	1.408	.178
(Constant)	1.067	.070		15.280	.000

R = .932; R² = .868
 dw = 1.903

* No women or professors served on the Supreme Court. Corrected for serial correlation.

Table 8
 Fractionalization Regressed on Broad Sociopolitical Groups
 Post-Consensus Period of Norwegian Politics*
 1967-1986

<u>Parameter</u>	<u>b</u>	<u>Standard Error</u>	<u>Beta</u>	<u>t</u>	<u>Significance</u>
Socialist Appointee	-.219	.076	-.592	-2.880	.012
Legislation Department	-.170	.114	-.298	-1.499	.156
Oslo Born	-.070	.154	-.094	-0.453	.658
Women	.339	.171	.474	1.983	.067
(Constant)	1.002	.109		9.203	.000

R = .835; R² = .697
 dw = 1.933

* No professors served on the Supreme Court. Corrected for serial correlation.

Table 9
 Fractionalization Regressed on Broad Sociopolitical Groups
 Post-Realignment Period of Norwegian Politics*
 1987-2011

<u>Parameter</u>	<u>b</u>	<u>Standard Error</u>	<u>Beta</u>	<u>t</u>	<u>Significance</u>
Professor	.224	.121	.587	1.855	.082
Socialist Appointee	-.070	.078	-.206	-0.892	.386
Legislation Department	-.001	.091	-.002	-0.010	.992
Oslo Born	.050	.070	.128	0.708	.489
Women	.225	.061	.648	3.699	.002
(Constant)	.839	.045		18.675	.000

R = .892; R² = .796
 dw = 1.827

Figure 1
Heterogeneity Model

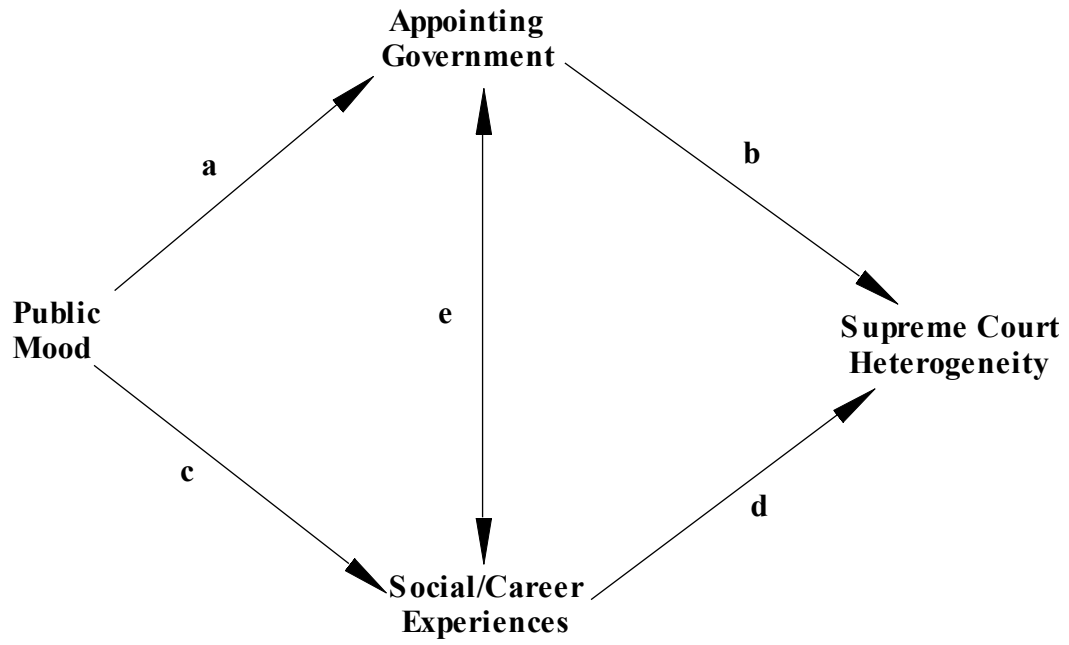


Figure 2
Norwegian Supreme Court
Fractionalization Index
1945-2011

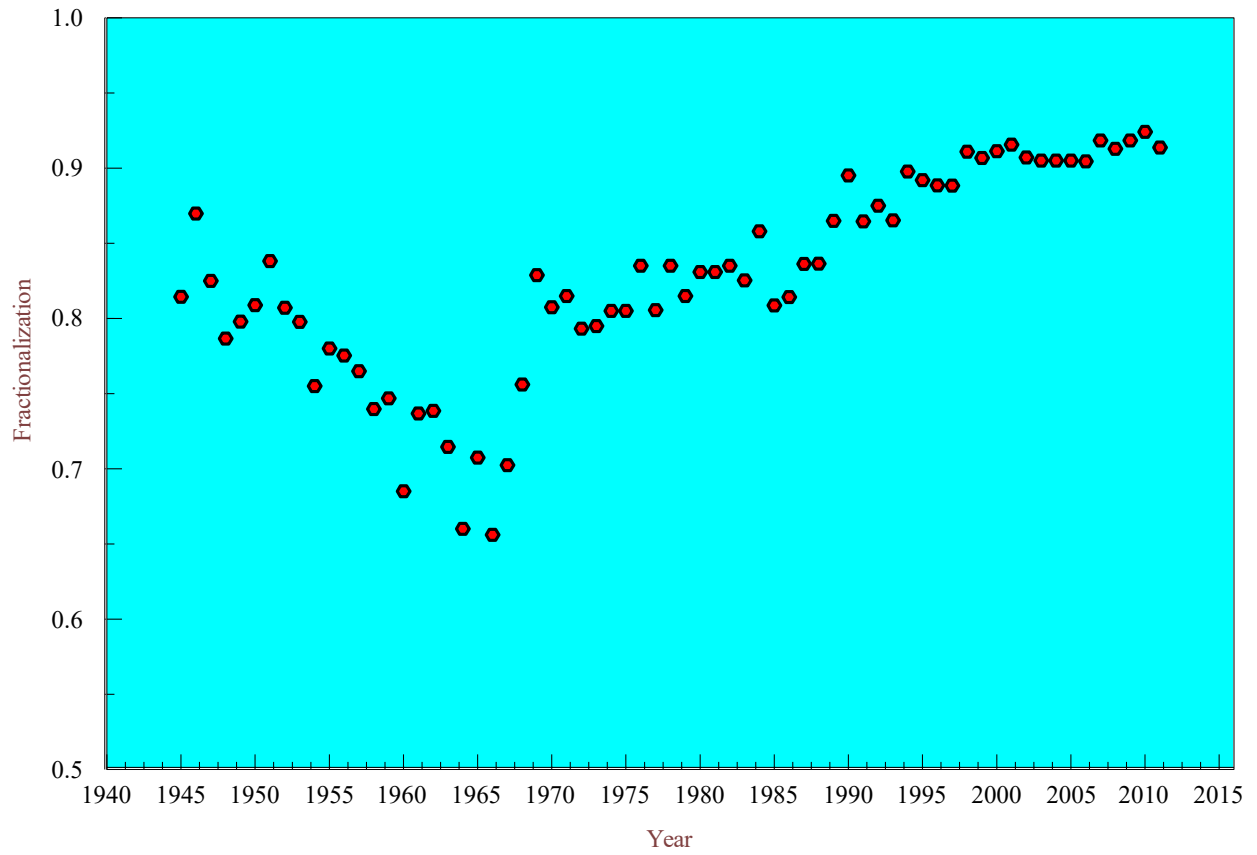
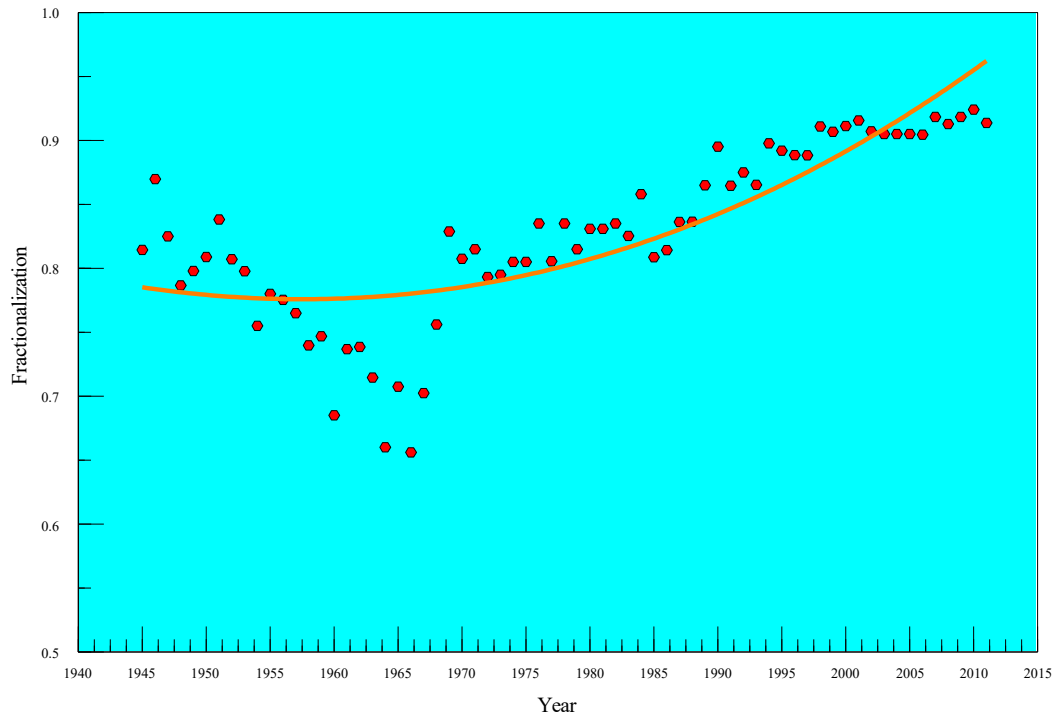


Figure 3
Norwegian Supreme Court
Fractionalization Index
1945-2011



Fitting Model:
 $y=a+b*x+c*\exp(-d*x)$
 $a=50.29144792$
 $b=-0.0287990158$
 $c=0.00185078109$
 $d=-0.0041980242$

Fitting Model:
 $y=a+b*x+c*\exp(-d*x)$
 $a=50.29144792$
 $b=-0.0287990158$
 $c=0.00185078109$
 $d=-0.0041980242$

Figure 4
Norwegian Supreme Court
Fractionalization Index
1945-2011

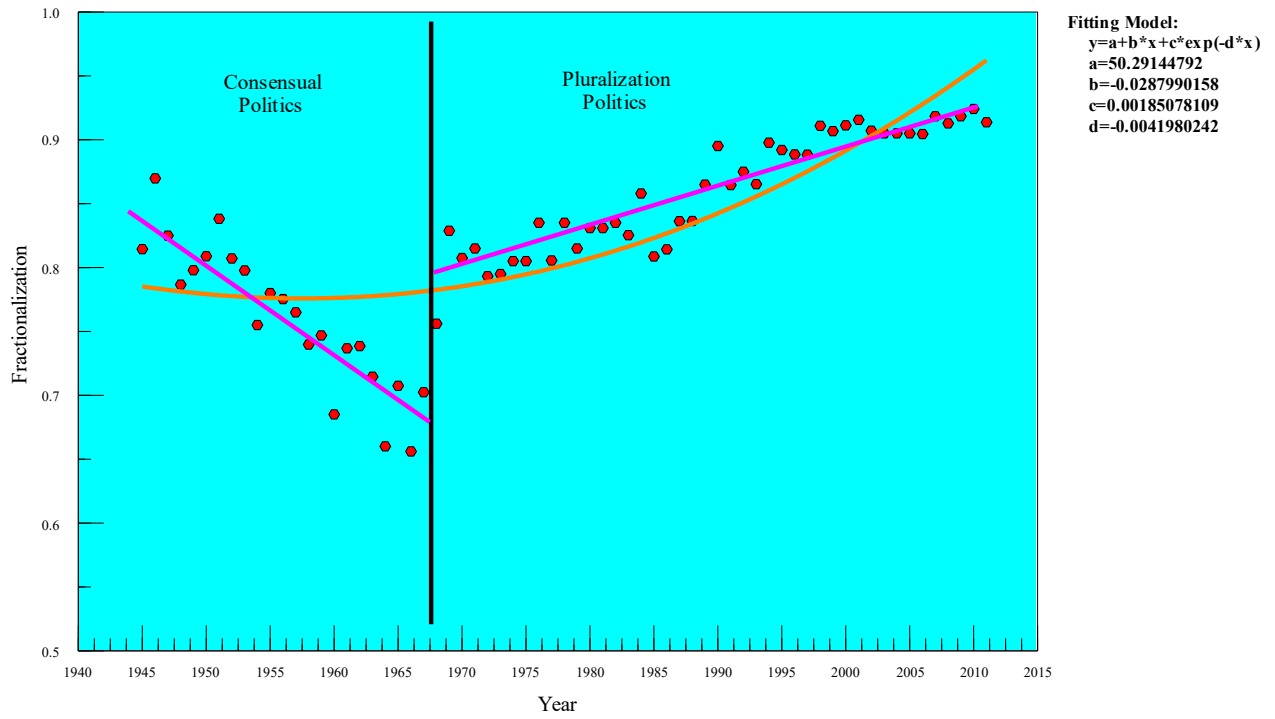
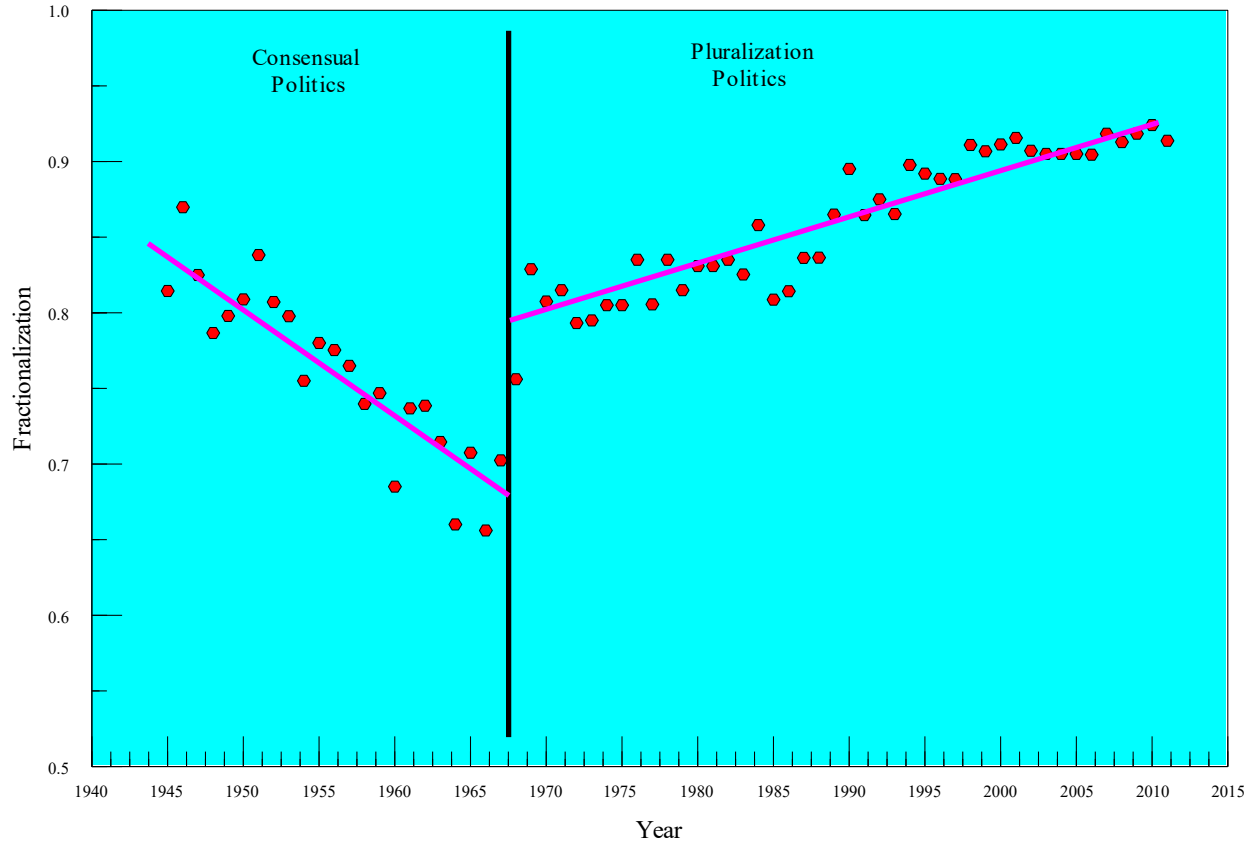


Figure 5
Norwegian Supreme Court
Fractionalization Index
1945-2011



Consensual Politics

$Y = .854 - .008X$
 $r = -.906, dw = 2.150$

Post-Consensual Politics

$Y = .693 + .004X$
 $r = .885, dw = 1.609$

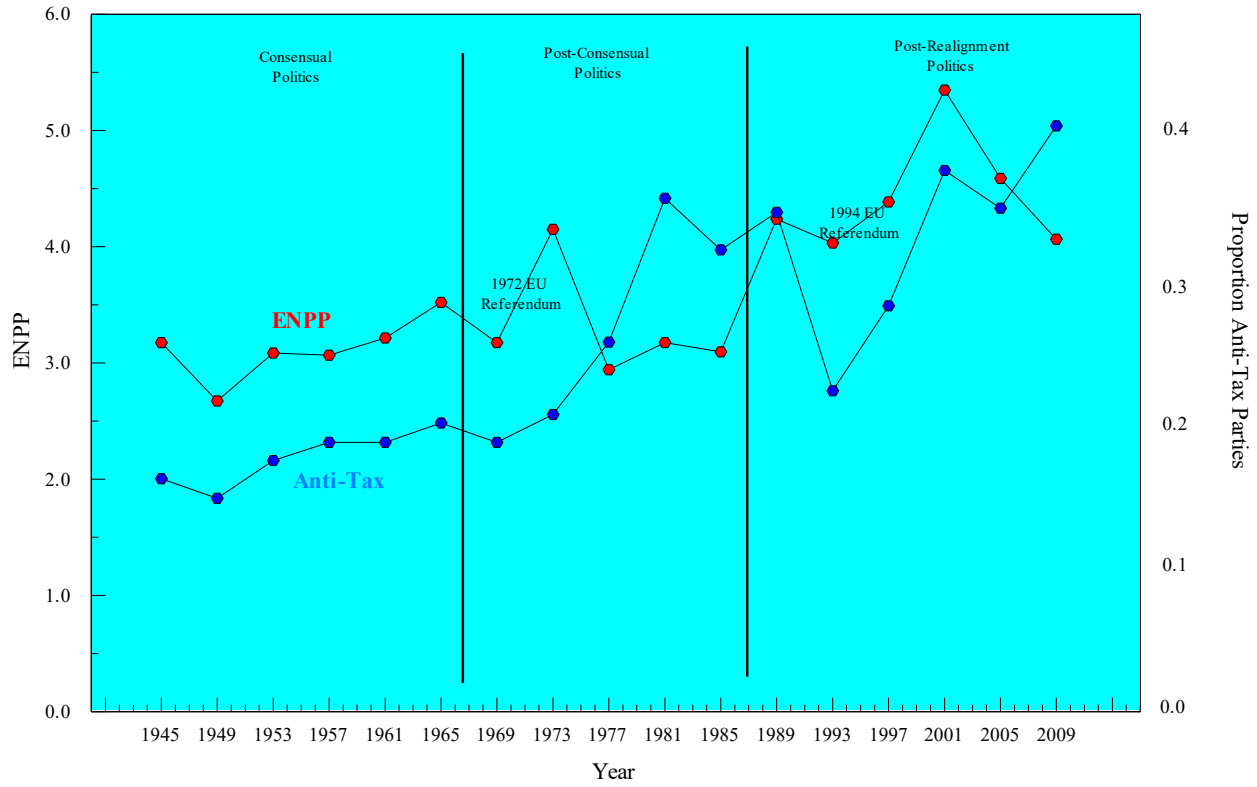
Consensual Politics

$Y = .854 - .008X$
 $R = -.906, dw = 2.150$

Pluralization Politics

$Y = .693 + .004X$
 $r = .885, dw = 1.609$

Figure 6
 Effective Number of Parliamentary Parties
 Proportion of Anti-Tax Parties
 Norwegian Storting
 1945-2009



Notes

¹ The Herfindahl Index, or the Herfindahl-Hirschman Index, has been used to determine if companies are competitive, or if there is something approaching a monopoly. It is computed by calculating the sums of squares of each firm's share of the market.

² Virtually the same results are produced by factor analyzing the five sociopolitical group proportions:

Principal Components Analysis of
Fractionalization and its Components
1945-2011

<u>Variable</u>	<u>Loading</u>
Professor	.802
Proportion Socialist Government Appointments	-.611
Legislation Department Experience	.839
Proportion from Oslo	-.877
Proportion Women	.967

Eigenvalue = 3.424

Percent Variance Explained = 68.5

³ Focusing upon the appointment of women may have special appeal to readers, since for many observers increasing diversity in a political body means the inclusion of women. We share this view, but opt for a broader notion of diversification.

⁴ For a comprehensive treatment of EU politics in Norway, see Sæter (1996), and more broadly for the Nordic countries, see Miles (1996), in which Sæter's piece is included.

⁵ The effective number of parliamentary parties (ENPP) is computed by the Laakso-Taagepera (1979) index:

$$N_s = 1/\sum s_i^2,$$

Where

N_s is the number of parties based on parliamentary seats, and
 s_i is the proportion of seats held by party i

Notes (Cont.)

⁶ Neither of these are single-interest political parties, but jockeying for position in ideological space between the Progress Party and Conservative MPs might best be framed as which is better on taxation. Certainly Conservatives are more committed to the social welfare state, and the Progress Party clearly is far more anti-immigrant than the Conservative Party, as well as all other parties represented in the Storting.

⁷ No women or professors had been appointed to the Court.

⁸ No professors had been appointed to the Court.

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