**The Impact of Court Diversification on Judicial Behavior:**

**The Case of Norway**

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**Abstract**

One of the stated interests of many Norwegian government officials, including members of the nation’s high court, is to increase the diversity of the pool of Supreme Court justices, which, in turn, should sensitize the Court to a broader array of socioeconomic and political interests in society at large. We have constructed a measure of Norwegian Supreme Court socio-political fractionalization for each year since the end of WWII, and in this paper we shall undertake some initial analyses designed to explore the effect of Court fractionalization on decisional behavior.

Hypothesizing that diversification would affect average dissent rates, the incidence of non-unanimous decisions and the complexity of the Court’s opinions, we find that fractionalization has a limited, and at best, an unanticipated effect upon these three indicators of decisional behavior. Indeed, fractionalization has a negative effect upon the complexity of Supreme Court decisions, contrary to our expectations about the hypothesized role of diversity.

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**Introduction: The Push for Diversity**

This study is an effort to begin to assess the impact of diversity on the decisional behavior of the Norwegian Supreme Court. Since so much attention has been paid to diversifying the workplace and the political arena generally, it is no surprise that desire for inclusion would find its way into the judges’ chambers. Indeed, Chief Justice Tore Schei and former Chief Justice Carsten Smith (Smith, 1998: 101) have been strong advocates of diversity, and in fact, the principle has been formerly adopted for recruiting Supreme Court justices (Innstillingsrådet, 2012).

Presumably, greater diversity could promote the representation of broad social interests through a process of *descriptive* representation (Mansbridge, 1999: 629), whereby women can best represent women, rural folks can best represent other rural people, and so on. Descriptive representation, when it achieves some sort of critical mass, should result in s*ubstantive* representation – i.e., the policy interests of discrete groups are articulated and pursued by agents in government. At a minimum, representation would be at least *symbolic* in nature, in that group members feel that they are “fairly and effectively represented” (Schwindt-Bayer and Mishler, 2005:407; Banducci et al., 2004). Quite apart from the manner in which representativeness is promoted, our major assumption is that greater diversity will promote higher levels of the representation of broad socio-political interests, resulting in different outcomes from those produced by a more homogeneous collection of justices. Thus, an all-male, Oslo-centric judiciary is hypothesized to behave differently than one possessing greater gender equality and comprising justices recruited from around the country with a variety of professional and political experiences.

More specifically, we hypothesize that greater socio-political diversity will be reflected in a greater variety of perspectives expressed in Court decisions. For example, with a heterogeneous set of justices serving on the bench, we might expect more disagreement with whatever majority decision is handed down, resulting in high rates of dissensual decision making. Likewise, if justices bring a multiplicity of social and political interests into play, the cases decided and the decisions rendered may be more complex, that is, they may identify more salient issues in the case at hand.

In an earlier manuscript, we identify five sources of diversity that we have found to have some relevance to the decisional behavior of Supreme Court justices. (1) Perhaps most obviously, is the presence of women serving as Supreme Court justices (Songer et al., 1994; Østlid, 1988). While a substantial increase in the proportion of female MPs outpaced early recruitment of women to the high court, over time the percentage of women Supreme Court Justices has become roughly equivalent to the presence of female Storting MPs (Grendstad et al., 2013). We subscribe to the view that women bring something unique to the judicial process (Boyd et al., 2010:391).

(2) Upon the reconstitution of the Court at the end of World War II, no professor was appointed to the High Bench until 1991 (Grendstad et al., 2011b). Of course, prior to 1991 law school professors certainly had an indirect effect by training future justices (Andenæs, 1987). Including more and more academics on the bench might have an impact on dissent rates, non-unanimous decisions, and added complexity in the legal reasoning underpinning Court rulings. After all, academics are prone to extended debate and the discovery of putatively nuanced insights into virtually any matter at hand. Recruiting justices from the ivory tower most likely would yield a form of diversity with consequences for the decision-making process.

(3) The regional origins of the justices affects the diversity of the Supreme Court’s members since the “center” and “periphery” are thought to have differing effects on one’s socialization experiences (Rokkan, 1967). Indeed, since so many justices have hailed from Oslo, the location of the nation’s “central administrative machinery” (Rokkan and Urwin, 1983), recruiting justices from the West and the North has been a path to increased diversification of the Supreme Court, and this source of diversity is correlated with decisional behavior (Grendstad et al., 2011a).

(4) Diversity, of course, is more than gender, career, or geography; it should also mean variability of thought and values. In this regard, we consider ideological variation to be a source of politically relevant diversity. Since the outset of our larger research project, we have used the political color of the appointing government as an indicator of ideology. We simply differentiate between those justices appointed by socialist and non-socialist governments, the latter being more conservative than the former. We have found that this proxy for ideology is linked to decisional behavior, and the effect is quite robust (Grendstad et al., 2011a).

(5) Finally, if justices have worked in the government’s Legislation Department, there is a significant likelihood that they will be “government-friendly” in their deliberations (Grendstad et al., 2011c; Kjønstad, 1999). Variation in the proportion of justices with experience in the Legislation Department is a meaningful component of judicially relevant diversity.

These five socio-political background variables are organized into 32 specific justice combinations1 which become the basis for computing an “index of fractionalization” (Annett, 2001; Esteban and Ray, 2008; Fearon, 2003) for each year by the computing 1 – the Herfindahl index2 (Alesina et al., 2003):

**FRACTj = 1 - ∑ sij2,**

FRACTj = Fractionalization Index for year i, and

sij = Proportion of justices in group j for year i

The fractionalization index ranges between 0.0 and approaches 1.0, with higher scores indicating greater diversity among the Supreme Court justices (Shaffer et al., 2013).

A fractionalization score has been computed for each year from 1945 through 2011; the historical pattern is depicted in Figure 1. Our measure of diversity follows a pronounced nonlinear trend, with considerable heterogeneity in the period immediately following the end of World War II. Following ever increasing homogeneity until the late 1960s, when consensual politics began to crumble. Since then the levels of fractionalization increased steadily, reaching levels at about .900 at the outset of the 21st century and remained there through the end of the time period under study.

[Figure 1 Goes Here]

The broad question we seek to address is does diversity really matter? For example, is there a difference in the decisional behavior of a Court composed only of conservative men from Oslo, none of whom were law professors, but instead served in the Legislation Department in the Ministry of Justice, on the one hand, versus a Court composed of a diverse mix of men and women, center and periphery origins, socialists and non-socialists, professors and non-academics, and having served in the Legislation Department and those who did not? Presumably, it matters from the democratic perspective of representing a range of views, and at the very least it should be “fair” in that a range of people have an opportunity to serve as Supreme Court justices.

**Hypotheses**

In this exploratory analysis, we test three hypotheses regarding the potential impact of heterogeneity on the behavior of the Supreme Court. Each hypothesis is grounded in the assumption that greater diversity brings with it a greater variety of social and political opinions than a Court that is relatively homogeneous. Our first hypothesis, then, anticipates that the more diversified a court is, the greater is the likelihood that more dissenting opinions will be written. After all, if there is greater variability of socio-political values, there might be the potential for increased disagreement, leading, in turn, to an increased number of dissenting opinions. Therefore,

**Hypothesis #1: The higher the level of fractionalization, the higher the mean dissent rate.**

Our second hypothesis rests upon the same assumption that socio-political diversity promotes divisions, but in this case we anticipate that increased heterogeneity of opinions present on the Bench will diminish the proportion of decisions which are unanimous. Consequently,

**Hypothesis #2: The higher the level of fractionalization, the greater the proportion of non-unanimous opinions**.

The third hypothesis also assumes that diversity in socio-political experiences should be reflected in the nature of opinion writing, above and beyond the degree of disagreement among the justices. Specifically, the number of political or legal issues (complexity) with greater heterogeneity of the Court’s membership should be greater.

**Hypothesis #3: The higher the level of fractionalization, the greater the complexity of the decisions handed down.**

**Data and Methodology**

Since 2009, we have constructed a data base that includes all non-unanimous Supreme Court decisions handed down since the end of World War II. For the present analysis we have drawn upon that data set to create and record selected aggregate measures for the Supreme Court for the period of 1945 to 2011.3 Clearly, the above stated hypotheses require that the Court be treated as the unit of analysis. Before testing these hypotheses, we shall provide a brief description of each of the dependent variables.

Hypothesis #1 treats the mean number of dissents as the dependent variable. Figure 2 tracks the fluctuations in dissent rates in the post-World War II era. Over the last several decades there has been a very slight increase in the number of dissents offered, but for the most part, the mean varies within a fairly narrow band between a minimum average of 1.321 and a maximum of 1.750. A standard deviation of 0.091, accompanied by a coefficient of variation equal to 0.060, suggests a minimal degree of variability within the narrow range of values (See Table 1).

[Figure 2 Goes Here]

[Table 1 Goes here]

Hypothesis #2 identifies the proportion of non-unanimous votes as the dependent variable, and the trend in that variable is displayed in Figure 3. Non-unanimous votes fluctuated considerably from the close of World War II through the 1960s, followed by a noticeable decline during the 1970s through 1990, after which there was a sharp uptick through the 1990s. From 2000 on there was a drop and leveling off to rates exhibited for the period from 1945 through the 1960s. While the average proportion of non-unanimous votes was nearly .15, there was a wide range from a minimum of .065 and a maximum slightly above .28. The 0.316 coefficient of variation indicates that the percentage of non-unanimous votes varies more than the other two dependent variables, once accounting for different units of measure.

[Figure 3 Goes Here]

Finally, Hypothesis #3 treats case complexity as a dependent variable. Essentially we count the number of legal issues informing the justices’ decisions, and for all non-unanimous cases we calculate the average “complexity” for each session of the Supreme Court.4 The time series for our complexity indicator is charted in Figure 4. With the exception of the decisions handed down in the 1950s, there was no dramatic upward or downward trend. On average slightly more than 1.7 issues figured in the Court’s decisions. A bit more variable than the mean number of dissents, complexity exhibits far fewer dramatic swings than the percentage of non-unanimous cases when the coefficient of variation (.142) is the standard of comparison.

[Figure 4 Goes Here]

We estimate bivariate regression equations correcting for serial correlation and heteroskedasticity where necessary to test our three hypotheses. After reviewing the results, we shall attempt to place the impact of fractionalization in a larger theoretical context with the aid of multiple regression solutions.

**Findings**

Initial bivariate regression tests of our hypotheses are reported in Table 2. With respect to the first hypothesis, we find that there is a non-significant regression coefficient for mean dissent rates, thus failing to support the hypothesized relationship between fractionalization and the number of dissenting opinions.

[Table 2 Goes Here]

To test our second hypothesis, we regressed the percentage of votes that are non-unanimous on fractionalization. Here, we estimated a GLS solution, since the Durbin Watson statistic revealed marked serial correlation.5 While this action corrected for serial correlation, the re-estimated GLS regression coefficient was statistically non-significant, and once again we find that diversity of the Court justices has no meaningful impact on this measure of decisional behavior.

A test of our third hypothesis bears similar non-results. Regressing case complexity on fractionalization, and once again employing a GLS solution in light of serial correlation, we find there is no significant measurable impact of Court diversity on nature of written opinions.

At first blush, it appears we have fallen prey to the pitfalls of the dreaded non-finding, which results in sending any study to some sort of social science purgatory. Before accepting such a fate, however, we should consider two distinct alternative strategies: (1) proposing a multivariate theoretical model to explore the potential impact of diversifying the Supreme Court’s membership, and (2) framing the non-finding as *theoretically* significant.

To seek a more nuanced explication of the potential impact of fractionalization on decisional behavior, we shall test a multivariate model that hypothesizes direct effects of diversifying the Court’s justices when other variables are included. A direct effect is plausible if there are factors that suppress the real impact of an independent variable, and adding a suppressor variable to the regression equation could “unsuppress” the effects, in this case, of fractionalization (Thompson and Levine, 1997.) While we have few measures in the 1945-2011 time series data set that we could deploy as suppressor variables, there are two that are worth incorporating in a very preliminary multivariate analysis.

First, a few indicators appear to reflect a rather dramatic shift in what we label “institutional development.” In the early to mid-1990s, a number structural reforms were undertaken, in part, as a response to the sharp increase in the number of criminal appeals cases the Supreme Court was obliged to accept. The dramatic uptick in these cases is illustrated in Figure 5. In response to the burdensome caseload,6 an appeals court was created to siphon off a large proportion of these cases before they could reach the Supreme Court. This reform took effect in the mid-1990s (See Figure 6).

[Figures 5 and 6 Go Here]

If creating another layer of courts to manage increased demands, then two other striking changes might fall into the same category of “institutional development.” First, the justices’ salaries increased very gradually in the post-World War II era until the mid-1990s, after which they more than doubled by the end of the time period under study (See Figure 7). The same general pattern was exhibited by the size of the Supreme Court staff (See Figure 8). Legislative scholars identify these two factors as indicators of “legislative professionalism” (King, 2000; Squire, 2007), and they should tap the degree of “judicial professionalism,” as well. For present purposes we have created a dichotomous variable to identify pre- and post-reform periods of institutional development.7 Finally we added the proportion of all cases that were criminal, since they helped trigger part of the above-mentioned reforms.

Figures 7 and 8 Go Here]

A second variable included in the post-World War II time series data file, namely the proportion of criminal cases heard by the High Court, appears to be linked to case complexity and the proportion of non-unanimous cases. We proceed by estimating multiple regression equations treating mean dissent levels, the proportion of non-unanimous cases, and case complexity as dependent variables, and fractionalization, institutional development, and the proportion of criminal cases as independent variables. The results are reported in the first half of Tables 3-5.

[Tables 3-5 Go Here]

The second strategy of framing our initial non-findings as theoretically significant, although not usually an attractive alternative, may be especially important in the present case. After all, we “celebrate” diversity, and embrace the idea that including individuals from a variety of backgrounds will have a salutary impact on political behavior. But what if this is not so? Is this cause for alarm? Or if political outcomes do not vary by levels of fractionalization, should we breathe a sigh of relief? We shall return to this matter below.

The first multiple regression equation for mean dissent rates regressed on fractionalization, proportion of criminal cases and institutional reform, offers no additional explanatory power over and above what was reported above for the bivariate regression between mean dissent rates and fractionalization (See Table 3).

The comparable multiple regression analysis for the proportion of non-unanimous cases appears to intimate a possible, if meager, effect of fractionalization (See Table 4). Since the initial OLS equation suffered from serial correlation, the results reported are for the subsequent GLS estimation. To claim that fractionalization has a substantively meaningful impact on the incidence of non-unanimous decisions being handed down by the Supreme Court is a bit of a reach, since the regression coefficient was significant at p = .099, thus not meeting the customary p ≤ .05 level. By way of contrast, as the proportion of criminal cases increases, so does the instance of non-unanimous rulings (p = .003), suggesting that such cases may stimulate higher levels of discord among justices. Finally, institutional development has no effect upon unanimity.8

Turning to issue complexity, only the proportion of criminal cases displayed a significant impact (p = .000) after a GLS regression was computed to correct for serial correlation (See Table 5). We might tentatively conclude that in the aggregate criminal cases bring greater complexity in the eyes of the Supreme Court justices. However, issue complexity does not track the degree of fractionalization of Supreme Court membership.

Given that the three multiple regression results revealed a significant effect of the proportion of criminal cases on both the proportion of non-unanimous decisions and issue complexity, we sought to add another important case type to the mix. Since cases involving economic conflict are influenced by a number of the socio-political factors incorporated in our fractionalization measure (Grendstad et al., 2011a; Skiple et al., 2014), we recomputed the multiple regression equations with the proportion of economic issues adjudicated as an additional independent variable. We add the caveat that at present we have identified the number of economic cases only from 1963 forward, and therefore, the post-World War II period is significantly truncated.9 The results are also reported in Tables 3-5.

Adding the proportion of economic cases to the list of independent variables and rerunning the regression analysis produces potentially interesting results. In the bottom half of Tables 3-5 we report regression coefficients for fractionalization, the proportion of criminal cases, and the proportion of economic cases adjudicated in each year. In addition to the shorter time frame, the initial OLS regression was plagued by multicollinearity, which was attributable to the institutional reform variable, as indicated by a variable inflation factor (VIF) of 6.61. The regressions were rerun after deleting the institutional reform indicator.

While there is little overall explanatory power of the estimated equation for mean dissent rates (adjusted R2 = .077), both case types exhibit borderline significant effects, albeit above the customary expected level of p ≤ .05. The proportion of criminal cases reduces dissents (p=.085), and the proportion of economic cases also tends to lower the frequency of dissenting opinions (p = .076). We could surmise that both criminal and economic issues may not provoke more dissents, at least in part, because they have fewer sides to the kinds of issues being addressed. In any event, our main independent variable of interest, fractionalization, has no discernible impact on mean dissent rates.

Rerunning the regression analysis for the proportion of cases that are non-unanimous produces stronger results, although once again fractionalization has no explanatory value whatsoever (See Table 4). Nevertheless, the overall explanatory value is greatly increased from an adjusted R2 of .0146 to an R2 of .506. Moreover, the two case types offer more by way of explaining the level of unanimity in the justices’ votes. The regression coefficient for criminal cases is significant at p = .000, while the proportion of economic cases almost attains the customary acceptance level (p = .076). While the proportion of criminal cases lowers non-unanimous voting, the proportion of economic cases tends to promote more divided votes. So, on the one hand, criminal cases diminish both the number of dissents and are marked by greater consensus over the decisions handed down. Economic cases, on the other hand, stimulate a greater incidence of non-unanimous votes, but then these cases often tap into the government’s role in the economy, over which there has been a great deal of ideological division that probably reduces unanimity among Supreme Court justices.

The re-estimation of the case complexity regression produces interesting results, with a surprise to boot. The three explanatory variables are substantially correlated with the case complexity measure, as reflected by the adjusted R2 of .475. While conflict over economic issues has no significant effect, both the proportion of criminal cases and the fractionalization measure do attain acceptable levels of significance, the former at the p = 000 level and the latter at the p = .05 level. Unlike the two previous equations, the proportion of criminal cases exhibits a positive impact on complexity. While these cases might engender more dissents and fewer non-unanimous decisions, they may not be seen as especially complicated matters. Paradoxically, while fractionalization has a clearly significant impact, it is in the opposite of the hypothesized direction. Greater diversity appears to have produced less complexity! A possible explanation is that a heterogeneous Court narrows the issues articulated in an opinion to only those upon which all can agree.

**Summary and Discussion**

This initial effort to explore the effects of Supreme Court diversity on three measures of judicial behavior has not produced results pointing to a major effect of the fractionalization of the Court’s justices. The bivariate regressions assessing the impact of diversity on mean dissent rates, non-unanimous decisions and case complexity do not reveal even weak, but statistically significant relationships. Similarly, multiple regression equations including fractionalization, the proportion of criminal cases, and institutional reform do little to establish an impact produced by levels of diversification. However, the proportion of cases involving criminal charges was important in explaining non-unanimous decisions and case complexity.

The significant relationships for the proportion of criminal cases suggest that perhaps case type sows the seeds of non-unanimity and complexity. Consequently, we added a measure of the proportion of the cases dealing with public-private economic disputes. In estimating the multiple regression equations, we found that institutional reform was the culprit in producing multicollinearity. So, we reran the equations after deleting institutional reform. For mean dissent rates, we found that criminal and economic issues both tended to lower the number of dissents in a Court session, albeit neither quite achieved the customary level of significance (p ≤ .05). With respect to the proportion of non-unanimous cases, criminal cases significantly lowered the incidence of non-unanimity, while economic issues, nearly producing a significant regression coefficient, would have stimulated more non-unanimous outcomes. For neither behavioral indicator is fractionalization statistically significant.

Finally, although criminal cases appear to lower dissent and non-unanimity, they are strongly linked to greater case complexity. Fractionalization, on the other hand, significantly reduced complexity, a seemingly counterintuitive outcome. So, Court diversity has very little statistically significant effects on the three decisional behavior indicators, where it does matter, it does so in a manner not anticipated theoretically. A number of plausible explanations for these surprising results might be offered.

First, data and methodology may not adequately measure relevant variables and test the hypothesized relationships. For instance, our case complexity variable is crude at best. Also, the fractionalization index may leave out relevant background variables, or maybe we have invoked the wrong types of dependent variables. For example, perhaps the cases accepted or the issues emphasized in the decisions are more likely to be sensitive to variations in diversity. Likewise more refined measures of those variables included in the present analysis may lead to accepting our hypotheses. Of course, as we identify other decisional behaviors, we can add them to the analysis. Notwithstanding the importance of methodological considerations, at present we must address the theoretical implications of our current findings.

Certainly, the types of cases give rise to variations in decisional behavior, especially those involving criminal allegations, where unanimity is increased as is complexity. These two results taken together indicate that in these cases justices may be more likely to decide unanimously, even though average complexity is heightened. Of course, criminal cases might simply be more complicated and once they explain a good deal of case complexity, *there is little diversity can add, except that it is linked to fewer legal issues in a case*. Why might Court diversity operate in unanticipated ways? After all, diverse membership brings more views to the table.

Of course, while a diverse set of justices may bring a variety of perspectives to the judicial process, the full spectrum of background experiences may not come into play, depending in part on the sorts of issues brought before the Court. Although a justice might well be a member of multiple social groups, not all are uniformly politically relevant at all times. To understand why, we turn to a possible application of reference group theory.

First of all, the political stances of an individual’s group memberships may not always be consistent, prompting electoral behavior scholars in the middle of the twentieth century to rely upon the concept of group-based “cross pressures” (Lazarsfeld et al., 1968). A simple example might involve a justice who is female and a political conservative. One can imagine that gender might push the justice in one direction, while her ideology nudges her in the other direction. The consequence might be that she becomes ambivalent (Mutz, 2002), feels a bit cross pressured, and must resolve the inconsistency one way or the other.

However, this seemingly cross-pressured individual may experience no discomfort because one of the two group memberships may not be relevant. This notion is hardly new, and in fact, the requisite logic goes way back to *The American Voter* (Campbell et al., 1960). In this seminal work, the authors plainly assert that more is required than simply belonging to a socio-political group. Indeed, the individual must identify with that group, which in turn needs to be relevant to the issue at hand.

With specific reference to the Norwegian Supreme Court, we could compare former Associate Justice Karenanne Gussgard, retired in 2010, and Associate Justice Ingse Stabel, who remains on the Court. Both were not law professors, worked in the public sector, and are women. So the following indicators included in our fractionalization index might divide them: (1) Stabel is from Oslo, Gussgard is not, (2) Stabel served in the Legislation Department, Gussgard did not, and (3) Stabel is a leftist and Gussgard is more conservative.

A specific comparison of Gussgard and Stabel in which they are sharply divided on public vs. private economic cases, being female does not divide them. To the contrary, what in all probability divides the two justices are their ideological proclivities, especially since in one study we found that only ideology explains the justices’ voting on these public vs. private cases (Shaffer et al., 2014). The bottom line is that while a court may become more diverse, perhaps only one social background factor is relevant, leading to less rather than more case complexity.

Of course, reference group theory does not postulate a strong enforcement mechanism. Not subject to re-election or recall, justices may or may not be *strongly* motivated by past sociopolitical experiences. Consequently, it is quite difficult to hold them accountable for their political decisions on the High Court. As a result, *descriptive* representation would not necessarily translate into *substantive* representation whereby a leader is held accountable to a group (Weldon, 2011). If there are no palpable incentives to follow group preferences, then diversity in this judicial context may not hold sway as is more likely to occur, say in a legislative arena.

However, even in a parliamentary setting, where MPs are more likely held accountable by group policy preferences, descriptive representation may not translate into substantive representation. Simply stated, sizable numbers of previously underrepresented groups may be a *necessary* condition, but not a *sufficient* condition to foster substantive representation. In fact, a recent study argues that coordination by a group’s members, such as the use of informal caucuses, can translate descriptive representation into substantive representation in a legislative body (Kanthak and Krause, 2012). What are the implications of this observation for a nation’s Supreme Court?

We would suggest that any impact of diversification would be attenuated substantially, unless we have evidence that there is coordination by group typologies present on the High Bench. Simply adding more women or lawyers from the periphery might not alter decisional behavior without some explicit coordination within the various socio-political subgroups of justices. While some group memberships, most notably ideology and service in the Legislation Department, are linked to voting on cases, increasing diversity among Norwegian Supreme Court justices appears to have a marginal impact at best.

With some trepidation we would entertain the possibility that diversity simply does not matter. We firmly believe that it does indeed matter, but hypothetically it is possible that variations in the fractionalization among justices may not influence decisional behavior, even after we generate and test the effects on other dependent variables. It may just be that legal training and experience, and political socialization as reflected by ideology and policy preference counts more than sheer demography. Given our current set of non-findings, more empirical analysis must be undertaken to identify the actual impact of diversity on the behavior of Norwegian Supreme Court justices.

In any event, descriptive representation still can promote *symbolic* representation, not an inconsequential matter in itself. After all, the mere presence of justices with a broad range of group identities may bolster the legitimacy of the Supreme Court in the eyes of Norwegian citizens. And perhaps that is enough.

**Table 1**

**Descriptive Statistics for Three Dependent Variables**

**1945-2011**

Standard Coeff.

Variable Average Deviation of Var. Min. Max.

Average Number of Dissents 1.510 0.091 .060 1.321 1.750

Proportion of Non-Unanimous

Decisions 0.149 0.047 .315 0.065 0.281

Complexity of Opinions in

Decisions 1.708 0.200 .142 1.178 2.116

**Table 2**

**Mean Dissent, Percent Non-Unanimous and Complexity**

**Regressed on Fractionalization**

**1945-2011**

OLS GLS

Dependent Variable Reg. Coeff. dw Reg. Coeff. Adj. R2

Mean Dissent 0.134 1.824\* ------- 0.005

Non-Unanimous 0.066 0.666\*\* -0.027 0.011

Complexity 0 .367 1.150\*\* -0.077 0.222

\* No serial correlation detected

\*\* Serial Correlation detected

Note: Heteroskedasticity was not detected for initial OLS equations.

**Table 3**

**Mean Dissent Model**

**1945-2011**

Regression Std.

Dependent Variable Independent Variable Coefficient. Error Adj. R2

Mean Dissent Fractionalization 0.168 0.282

Proportion Criminal -0.127 0.105

Institutional Reform -0.009 0.050 0.007

Mean Dissent Fractionalization -0.149 0.178

Proportion Criminal \* -0.162 0.092

Proportion Economic \*\* -0.426 0.235 0.077

\* Significant at p = 0.085

\*\* Significant at p = 0.076

**Table 4**

**Proportion Non-Unanimous Model**

**1945-2011**

Regression Std.

Dependent Variable Independent Variable Coefficient. Error Adj. R2

Non-Unanimous \* Fractionalization \*\* -0.228 0.136

Proportion Criminal \*\*\* 0.127 0.043

Institutional Reform 0.077 0.025 0.146

Non-Unanimous Fractionalization 0.062 0.078

Proportion Criminal \*\*\*\* -0.269 0.040

Proportion Economic \*\*\*\*\* 0.188 0.103 0.506

\* GLS solution correcting for serial correlation

\*\* Significant at p = 0.099

\*\*\* Significant at p = 0.003

\*\*\*\* Significant at p = 0.000

\*\*\*\*\* Significant at p = 0.076

**Table 5**

**Complexity Model**

**1945-2011**

Regression Std. Root MSE/

Dependent Variable Independent Variable Coefficient Error Adj. R2

Complexity \* Fractionalization -0.837 0.816

Proportion Criminal \*\*\* 0.805 0.043

Institutional Reform 0.125 0.118 0.163

Complexity Fractionalization \*\* -0.430 0.213

Proportion Criminal \*\*\* 0.699 0.040

Proportion Economic 0.140 0.281 0.475

\* GLS solution correcting for serial correlation and heteroskedasticity

\*\* Significant at p = 0.050

\*\*\* Significant at p = 0.000



**Notes**

1 For example, one of the 32 groupings would be conservative, male, Legislation Department lawyer, non-professor from Oslo. Another would be a radical, female, Legislation Department lawyer, professor from the west coast. Not all 32 combinations are present in each year included in the analysis.

2 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. In the present case, the proportions are those calculated for each of the 32 sociopolitical combinations.

3 Other parts of the larger research agenda treat the individual justice as the unit of analysis, but our fractionalization measure is an aggregate level indicator.

4 This simple average is a crude indicator of case complexity, but at present the best we can invoke. We acknowledge the diligent efforts of Are Fuglehaug and Ola Randa, former University of Bergen Law School students who completed the arduous task of documenting the number of issues in each case by reading the Lovdata case summaries. We computed the average “complexity” by calculating a mean for each year.

5 While regressions for two of the three dependent variables reported in Table 2 are plagued by serial correlation, heteroskedasticity was not detected for any of the three equations.

6 Nonetheless, Matningsdal (2006) claims that even though there were fewer criminal cases after the reform, the justices spent just as much time on these cases.

7 While before and after adding appeals courts for criminal cases is certainly dichotomous, salary and staff size are interval in nature. We decided on a dichotomous pre and post-reform era largely because we could unearth staff numbers from 1980 onward.

8 Since the rapidly increasing incidence of criminal appeals depicted in Figure 5 triggered part of the institutional reform, namely creating a tier of courts to take initial appeals, one might anticipate multicollinearity in the initial OLS solution. However, the Variance Inflation Factors (VIF) were well under the customary rule of thumb of 4.

9 Since our time series data base is forever being expanded, we will add the proportion of economic cases for the years 1945 through 1962.

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