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# Women's Representation in the Highest Court: A Comparative Analysis of the Appointment of Female Justices

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## **Abstract:**

The presence of women justices in the highest court varies significantly from country to country. Using an original data set of women's representation in the highest constitutional courts in 50 democracies, we assess the causes of this variation. We find, contrary to the prevailing view, that the strength of the institution is not significantly related to the number of women on the court. Instead, we find that the existence of a "sheltered" versus "exposed" selection mechanism is the critical determinant of women's presence. That is, when the selectors are sheltered from electoral accountability, they are less likely to select women as judges because they do not benefit from credit claiming. When the selectors are exposed and can claim credit, however, the unique traits and visibility of the highest court generate an incentive to appoint women.

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## Introduction

In Latvia and Slovenia, women have broken the judicial glass ceiling; more than 50% of the justices on their constitutional courts of last resort are women. The high courts of Ghana and Portugal are quite close to reaching parity as well, both hovering at 46% women. However, these breakthroughs are far from worldwide, as there are just as many countries with dismally low levels of women's representation in their highest courts. In the United Kingdom, for example, 11% of the seats on the bench are entrusted to women. Further, only 7% of the seats on Hungary's highest court are held by women, and several states – El Salvador, Namibia, Uruguay, Peru, and Panama – have no women at all in their constitutional courts of last resort. What drives these stark differences in the presence of women on the high court in democracies?

While others have considered the representation of women on courts in general, we are the first to offer an analysis of only the highest constitutional courts in each country. We argue that, due to the unique traits and visibility of the highest court, the appointment of women operates differently in this institutional context than in other courts, and thus one must disaggregate the general category of courts in order to best capture the causal relationship. Using a data set of women's representation on the highest courts in 50 democracies, we examine the impact of the court's power, the selection process, the culture of the state, and the supply of qualified women. We find evidence that the strongest predictor of women's presence on the high court is whether the selection process is "exposed" versus "sheltered." If the selection process is "exposed," then the selectors are visible and accountable to the public, and therefore able to claim

credit for their actions in diversifying the bench. If, however, the selection is “sheltered” – either due to a merit selection process or selection by a justice who will not face election – then the selectors who make the appointment are “sheltered” from the voters and thus unable to claim credit for their actions. This will, in turn, remove the incentive to diversify, and the high court will therefore have fewer women justices. This relationship is significant, while the commonly held assumption that the power of the court is a determinant of women’s representation surprisingly finds no support in our data.

### *Expected Causal Relationships*

One of the most tested relationships in the study of women’s representation in the judicial realm concerns the effect of the selection mechanism. There is little scholarly consensus here though as most, but not all, of the literature finds evidence that the election of judges by the public is no more likely to increase women’s representation than the appointment of judges by an elected official (Alozie 1990; Hurowitz and Lanier 2001; Martin and Pyle 2002; Reddick, Caufield, and Nelson 2009, though see also Williams 2007; Holmes and Emrey 2006). Scholarly findings on the effect of merit selection – i.e., the use of a nonpartisan nominating commission that lacks electoral accountability to select judges – are equally mixed. Some have found evidence of a clear and consistent negative effect of merit selection on women’s representation (Tokarz 1986; Githens 1995; Kenney 2012; Kenney 2013), while others have found that the presence of merit selection has no effect, or even a positive effect, on the likelihood of a woman’s

appointment (Alozie 1996; Hurwitz and Lanier 2001, 2008; Reddick, Nelson, and Caufield 2009).

We assert, however, that the reason why there is little scholarly consensus concerning the effect of selection method is due to the striking variety of courts in existence. That is, courts are exceptionally dissimilar from one another; the composition and responsibility of a court has the capacity to vary dramatically, even within the same country. Legislatures, on the other hand, typically have similar structures, similar selectorates, and strive to complete similar tasks. It is not that there is a complete lack of difference among legislatures within or across states, but rather that these institutions have limited differences in form and function; they are always a large group of people making decisions via majority rule, selected to serve through elections, and typically focusing on policy-making that engages economic issues. Thus in the field of legislative studies, one can argue that factors such as the electoral system will impact the composition of the legislature in consistent ways, no matter the particular traits of the legislature. Courts, on the other hand, do not allow us to make such broad claims due to their significant variation. This issue has been raised in previous work, as scholars have had difficulty finding support for their theories across all types of courts. For example, in her study of differences in women's judicial representation across American states, Cook (1980) found that a "moralist" culture of the state impacts the percentages of women on appellate courts, but has no relationship with the number of women serving in general trial courts. The work of Williams (2007) also focused on American states, and found support that those states with more left-leaning residents have more women judges on

their trial courts, but that this variable has no effect on women's presence in appellate courts.

While the differences found among the general institutional category of "courts" are vast, there seem to be three particular differences, beyond the selection mechanism itself, that could most likely impact the selection of women judges: the purview of the court, the number of justices, and the court's place within the judicial hierarchy. The purview of the court refers to the types of cases that the court decides. It could be a criminal, civil, and/or constitutional court, or even a combination of all three. To the best of our knowledge, there is no existing research that examines the effect of purview on women's representation on the bench, but we suggest that this variable could have a significant effect due to persistent gender stereotypes regarding women's behavioral traits. Criminal cases are often violent and thus because women are stereotypically assumed as deeply disturbed by violence (Sjoberg and Gentry 2008), they might not be chosen as frequently to serve on a court that primarily handles criminal cases. Crime is also seen as a stereotypically male policy area, which can hurt the selection of women for these courts (Sanbonmatsu 2003). A constitutional court, therefore, should be the institutional context most likely to facilitate the selection of women judges.

Further, another substantial difference among courts is the number of judges on the bench. If there are multiple judges that decide cases together, then this may positively impact the likelihood of women's selection. Women, after all, are stereotyped as being good cooperators; the typical assumption is that women are naturally more thoughtful and careful than men, and thus their presence will help to prevent deadlock and instead facilitate a fair compromise (Alexander and Anderson 1993; Sanbonmatsu 2002; Lawless

2004). Further, when a court has many seats, gender inequity is more obvious and thus it risks generating a negative response from citizens. Few seats, on the other hand, do not give such an obvious appearance of inequity, and thus a small court is less likely to trigger a citizen response. Selectors in this scenario, therefore, have little incentive to be attentive to parity. There is a substantial body of literature on this, and indeed many scholars have found evidence of a positive relationship between women's presence and the size of the court (Cook 1980; Bratton and Spill 2002; Hurwitz and Lanier 2003; Williams and Thames 2008).

Other than the effect of the selection mechanism itself, arguably the most tested relationship in the field of women's representation on the court is the effect of the level or power of the court. There is wide consensus that high courts should have fewer women than lower courts due to their prestige. There is debate regarding whether this relationship is driven by supply or demand factors, but nonetheless relative agreement on its existence; as a court increases in power, women are less likely to be a part of it (Anasagatsi and Wuiame 1999; Williams 2007; Williams and Thames 2008; Schultz and Shaw 2013, though see also Hurwitz and Lanier 2001). Further, the relationship between power and women's presence is not limited to the judicial realm. Legislative and political party scholars have also found that the powerful positions in institutions are much less likely to be held by women (Putnam 1976; Bashevkin 1993; Black and Erickson 2000; O'Neil and Stewart 2009). This trend even appears to be present outside of democracies, for as Luciak (2005) found in her study of Cuba, "there is an inverse relationship between the actual decision-making power of a political institution and the presence of women" (241).

It is clear, therefore, that there tends to be a negative relationship between prestige of an institution and the presence of women. However, we suggest that this relationship is not as concrete as previously thought. Among the existing literature on institutional prestige and women's representation, the common thread among the analyses is that they either include or focus entirely on *elected* institutions. This is even the case for scholarship on the prestige of courts, as all of it includes lower courts with justices that are placed on the bench via elections. Thus, while prestige clearly plays a powerful role in women's representation for those institutions whose members are chosen through elections, we suggest that when there is no election –only selection of justices- institutional prestige may not have a negative effect. Removing the direct involvement of the voters, in other words, also removes the negative effect of institutional prestige in courts.

To be clear, we are not suggesting that the voters are unique in their response to women candidates. In other words, we are *not* arguing that the citizens are in any way more biased than the elites; it is *not* the case that removing the voice of the citizens removes the effect of prestige because elite selection is in some way less biased against women or otherwise superior. Rather, the absence of citizens as selectors changes the effect of prestige because of who takes their place, and because of the unique incentive structure of these non-citizen selectors. When the citizens do not choose, the composition of the high court is determined by actors within the state. This, in turn, has the potential to mute the effect of prestige in the high court due to the benefits to be gained by the individual or group doing the selecting. In other words, when elites decide the



composition of the high court, other concerns may overpower the effect of prestige on women's likelihood of selection.

*Hypothesis One:* The strength of the highest court has no effect on the number of women serving as justices.

The central reason why the level of the court within the judicial hierarchy matters, we argue, is therefore not prestige. Rather, the level of the court impacts its visibility – i.e., the general awareness of its existence and composition – and this, in turn, has the capacity to affect women's representation. Most lower courts, after all, are nearly invisible – unless one has made an unfortunate life choice or hit a run of bad luck, it is likely that most citizens will have only a passing awareness that these courts are operating. This lack of visibility is especially true when it comes to the selection of these judges (Shortell 2013). The high court, however, has a high level of visibility; these 'courts of last resort' are watched and reported on by the media, and citizen awareness of their composition is higher than at any other level.

Thus, the appointment of a justice to the highest court is a moment of high visibility for those in the selectorate. Both media and citizen attention will focus, however briefly, on the new appointment as an achievement of sorts; it is an action of the state that has the capacity to generate an electoral payoff in the future. The selectorate therefore has an incentive to take advantage of this opportunity and offer a nominee for whom they can "claim credit." Their calculus, in other words, goes beyond the partisan association and qualifications of the potential justice, and also includes a significant consideration of the popular response and potential for electoral gain. We argue that

potential women nominees will therefore have an advantage in a highly visible process, as voters will reward the selectorate that diversifies the court.

It is important to point out the nuances of this argument, the first being that we are *not* asserting that voters give credit for diverse appointments at every level of the state. Rather, we argue that the particular institutional characteristics of the high court facilitate credit-claiming via the appointment of women. That is, because the highest court typically handles constitutional issues *and* because all of the highest courts have multiple justices, these are the ideal institutional conditions under which citizens will view a woman's appointment as a positive outcome. If, in other words, we were examining the appointment of women to criminal courts with single judges, we would not expect the credit-claiming incentive to function as well; citizens will be less likely to see women as a good fit for those types of courts, thereby offering little reward (and perhaps even penalty) for their appointment. The ability to claim credit from diverse appointments should therefore not be seen as a universal truth; it is highly context dependent.

In addition, should our credit-claiming argument be correct, then this would entail that both merit-based systems of selection as well as selection by any other unelected political actor will have a negative effect on the presence of women. In other words, when an unelected person or group makes the appointment decision, the credit-claiming incentive is lost, thereby negatively affecting the likelihood that a woman is chosen to serve. In this scenario, the sheltered selectorate is most likely to pick "one of their own" – not necessarily due to prejudice or misogyny, but rather because people tend to pick what is familiar and comfortable. The selectorate, which we can assert with near certainty is composed of a majority of men, has no incentive to break out of this comfort zone, and

thus they are more likely to choose men than women. Volkcansek (2009), in her analysis of selection and accountability in judicial appointment commissions, refers to this sort of selection mechanism as “providing political cover” for appointment decisions. No one can be blamed, in short, for a bad appointment because of the low level of accountability (799). In our argument, however, the effects of sheltered selection are not limited to the avoidance of blame; this ‘political cover’ also prevents political actors from being able to claim credit for an appointment decision. And, because it undermines credit-claiming behavior, sheltered selection has a negative impact on the appointment of women justices.

The adoption of gender quotas in political parties demonstrates a similar logic on the strategic use of diversifying as a mechanism for claiming credit. Voluntary gender quotas in political parties are thought of as contagious – as soon as one party adopts them, others will as well so as not to be seen by voters as actively prejudiced against women (Matland and Studlar 1996; Caul 2001; Davidson-Schmich 2006). It is the electoral competition, therefore, that creates an incentive for diversity. And note that this is not a private policy of diversity, but rather a very public pronouncement by the parties to tie their own hands; they institute gender quotas in a very public, formal way because that will provide the biggest electoral benefit from the diversification.

*Hypothesis Two:* Sheltered selection has a negative effect on the appointment of women to the high court.

The idea that voters reward diversity under certain institutional contexts but do not individually seek to remedy inequality may initially appear contradictory. If, for

example, the voters cared so much about diversity that the selectors can claim credit for placing women on the bench, then why don't voters overwhelmingly vote for women when they have the chance? It is, after all, a well-established fact that most voters will not seek to single-handedly rectify the lack of parity in representation by disproportionately supporting female candidates. And, in what may be perceived as contradictory behavior, there is also substantial evidence that most voters will support the actions of elites that attempt to rectify the lack of parity, particularly when the elite effort does not significantly impinge upon the choices of the voters. For example, in studies of women's representation in legislatures, one of the most powerful and consistent findings is that proportional representation systems are more likely to facilitate the election of women than single-member plurality systems. There are a variety of causal explanations, but one of the most accepted is that voters want diversity in the lists of candidates associated with proportional representation, but do not want diversity in the institutional scenario of a single candidate from each party running for office (i.e., the single member plurality system). Gallagher and Marsh (1988) noted this trend in their seminal book on candidate selection, finding that "qualities which selectors might feel, accurately or otherwise, could be electoral liabilities in a party's sole candidate, like being a woman or a member of an ethnic minority, are needed for purposes of balance when several are being picked" (260). Thus, it is indeed the case that voter behavior surrounding diversity in leadership is complex, and even at times contradictory.

### *Methods and Testing*

To assemble our cases, we began with all democracies<sup>1</sup> with high courts that exercise the power of judicial review.<sup>2</sup> It is important to emphasize that we focused solely on the highest court in each of these countries, whether that is a Supreme Court with authority over both constitutional and legal review or solely a Constitutional Court focused on judicial review. We then carefully and thoroughly examined the selection mechanism for judges on the highest court in each of these countries, given our interest in whether different selection mechanisms influence the selection of women judges. There are, unsurprisingly, a variety of selection methods used across these countries, but there were sufficient institutional and political similarities that we could identify commonalities. In most cases, judges are either selected by the legislature, by the executive, by the executive with the approval of the legislature, or by dividing up the appointment of the judges across multiple institutions.<sup>3</sup> However, a number of these countries also include an element of “sheltered selection,” while others have what we have designated “exposed selection.” We will return to this point shortly to explain further.

**\*\*Table 1 about here\*\***

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<sup>1</sup> To identify democracies, we employed Freedom House scores less than 2 and/or Polity IV scores above 8 in the year 2012. We then limited our data set further to include only those countries with more than 1 million inhabitants.

<sup>2</sup> This includes countries like Switzerland where the judicial review is only of subnational laws as well as countries such as the Netherlands that exercise judicial review despite constitutional language otherwise.

<sup>3</sup> For example, Chile has three judges chosen by the President, four by the legislature, and three by the judiciary.

Table 1 offers an overview of the 50 countries that comprise our data set.<sup>4</sup> For each country, we collected the total number of judges and the total number of women on the highest court with the authority for judicial review in 2012. We also coded each country based on whether the selection process is characterized as autonomous, semi-autonomous, driven by multiple selectors, or divided appointment. This coding was based on a careful review of both the formal selection process and the specific political balance of each country. Where an executive, and we include prime ministers in this term, acts alone to select judges, we coded that as an autonomous selector. When an executive appointment requires legislative approval, we generally coded those cases as semi-autonomous. The executive takes the critical step of identifying the specific candidate, but needs to take legislative preferences into account. Where the legislature selects alone, we typically coded this as multiple selectors given the need for compromise and dispersed political responsibility. Where the constitution assigns specific seats to particular selectors, such as Romania's division of three seats for the President, three for the Senate, and three for the Chamber of Deputies, we coded those countries as divided appointments.<sup>5</sup>

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<sup>4</sup> It became necessary to drop some of the cases due to their exceptional nature. Greece, for example, assembles their constitutional court ad hoc from the heads of other judicial bodies. For our purposes, this system would not allow us to isolate the influence of selection mechanisms and court authority on women judges. The other excluded countries were Trinidad and Tobago and Mauritius. In both of these cases appeals regarding the constitutionality of governmental actions may be filed with the Judicial Privy Council in the United Kingdom, so there is no apex court as there is in our other cases.

<sup>5</sup> These breakdowns do not necessarily hold for each country, though. There might be a situation, such as Ghana, which is formally semi-autonomous, as the executive needs legislative approval, but where the legislature is highly deferential to the executive. In those situations, the country would more appropriately be classified as autonomous since the executive can act without meaningful consideration of the legislature. In legislature-only countries, the legislature may be largely under the control of the executive. For example, Belgium has a strong prime minister directing the actions of at least one legislative house, but also operates in a political environment with many parties requiring coalition politics. In these circumstances, the country would be

The other important distinction to be made between these systems of selection is the inclusion of a form of sheltered selection. That is, we looked for systems that included decision-making by a body of individuals that are either not electorally accountable or may act in a less visible context, thus reducing electoral accountability. These circumstances can range from near complete decision-making power to a substantial constraint on the decision-making authority of an executive or the legislature. Some examples will help make these distinctions clearer. The United Kingdom, following the Constitutional Reform Act of 2005, created a committee made up of judges and lay people who would review applications for all judicial positions and then recommend one name to the Minister of Justice to appoint. In this case, the true decision-making authority is more akin to a merit selection system such as that found in a number of U.S. states. That is, the emphasis is on finding the best-qualified applicants and there is an effort to remove the process from politics. In practice, politics is merely displaced, not eliminated, and these systems often empower the legal community and weaken the power of elected officials. Of significant importance to our project, the members of this committee are not electorally accountable at all. This opens the possibility of different behavior than what we might find in systems where the decision-making is handled exclusively by electorally accountable individuals. Countries like Denmark and South Africa impose clear and specific constraints on the decisions that elected officials can make, empowering these sheltered selectors.

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classified as semi-autonomous to account for the prime minister's influence instead of purely multiple selectors. Our decision rule for coding these cases, then, was to determine whether the selection process is controlled by one political actor (autonomous), dominated by one political actor with some formal role for other political actors (semi-autonomous), handled by many different political actors (multiple selectors), or explicitly divided up across institutions (divided selection).

Other selection methods also include sheltered selection, but under a slightly different form. In Israel and the Dominican Republic, judicial selection is handled by an independent body and do not involve the executive or legislature directly at all. However, the independent body in these cases is composed of representatives from the executive, legislative, and judicial branches. A number of the members are electorally accountable, yet we still classify these circumstances as sheltered selection. Though there are elected members that are a part of these commissions, the final decision comes out of the independent body and it is unlikely that blame would fall directly on either the executive or the legislature, since neither controls or even dominates the selection process. Members of the committee are free, then, to act without the same electoral concerns they would experience if acting under the seal of their own office.

Finally, there are some countries such as Estonia and Finland which establish a constitutional or statutory role for the supreme court justices themselves to select their own members. In Estonia, for example, the Chief Justice is nominated by the President and confirmed by the Riigikogu (the legislature). The remainder of the judges for the Supreme Court, though, are selected by the Chief Justice. Given that the Chief Justice is not electorally accountable, we classify this as a form of sheltered selection. In all, 11 of the countries in our data set use some form of sheltered selection.

Central to our study is the distinction between more and less powerful courts. To capture this, we identified several critical characteristics for each court. First, we used Linzer and Staton's (n.d.) judicial independence measures for each court, which combines 8 different indicators of judicial independence in a latent variable measurement



model.<sup>6</sup> The underlying indicators measure judicial autonomy and influence both directly and indirectly through variables such as governmental compliance with judicial decisions, removal procedures, and popular observance of the law. In addition, we coded whether the courts can exercise judicial review by the vote of a majority of judges (more powerful) or only with a supermajority (less powerful),<sup>7</sup> whether a simple majority or supermajority is required to amend the constitution to overturn acts of the court, and whether they have the power to directly overturn laws or just to recommend changes to the legislature. We also included the length of term served, with terms of six years or longer being associated with more autonomy than terms of less than six years. From this data, we crafted a strong court variable. Specifically, if a court had term lengths of greater than five years, a judicial independence score of greater than .7, a supermajority required to amend the constitution, only a majority required to rule, and are able to invalidate laws directly, then we coded that court as a strong court. Courts failing to meet any of these criteria were not coded as strong courts.

Once this initial coding was done, we reviewed each of the results for the countries. We endeavored to identify any borderline cases, particularly those that missed making the strong court cut by only one variable or those that were classified as a strong court despite extant literature describing them as weak. For these cases, we conducted a more in-depth review of the specific nature of those courts and countries in order to validate our conclusions. For the vast majority of the courts, we confirmed our initial

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<sup>6</sup> Website of Linzer and Staton data:

<http://polisci.emory.edu/faculty/jkstatato/resources/WorkingPapers/LS-scaling-140430.pdf>

<sup>7</sup> El Salvador is coded as requiring only a majority to rule, although the law was changed in 2011 to require unanimity. Since no new judges were appointed to the court between the passage of the law and 2012, we concluded that the previous majority rule would have been the dominant consideration at the time of appointment for the sitting judges.

coding. Switzerland, for example, was coded as a weak court initially only because a majority could amend the constitution. Further research validated this coding, since the Federal Supreme Court can only exercise judicial review against cantonal laws rather than federal laws, indicating a weaker institution. Others, such as Australia, presented a more challenging case. Australia was initially coded as a weak court for the same reason that Switzerland was. Further research, however, indicated that the High Court of Australia is regarded as an active and powerful court (see, for example, Patapan 2000). This is, in no small way, a function of the rarity by which the constitution is amended by referendum, limiting the value of that variable for our classification. Australia was subsequently recoded as a strong court.

New Zealand offers an example of a review that led to a different conclusion. Initially, the New Zealand Supreme Court was coded as a strong court. Further research into the specifics of the court, however, resulted in a switch to weak court. Specifically, the New Zealand Supreme Court is a new institution that rarely, if ever, exercises its power of judicial review.<sup>8</sup> We concluded that the court, as a result of these dynamics, is in fact a weak court and it was subsequently coded as such. We applied similar in-depth reviews of our other cases in order to validate our strong court coding.

Finally, our model also includes a number of controls to account for other possible influences on the selection of women judges. In order to capture and control for the effects of the general cultural response to women in leadership, we include both the percentage of seats in the lower house of the legislature held by women in 2012 as well as the years since women's suffrage was achieved. Finally, in order to account for the

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<sup>8</sup> A study of the docket of the court for the past two years turned up no instances of judicial review being used and a Lexis-Nexis search of news outlets was likewise unsuccessful.

possibility of a limited supply of qualified nominees, we also include the percentage of female lawyers in each country.<sup>9</sup>

**\*\*Table 2 about here\*\***

Table 2 offers evidence for several important findings on women's representation on the highest court. First, the strength of the court is not significant, thereby offering support for hypothesis 1. This finding may be surprising due to existing research on the effect of power on women's presence, but the results are clear: whether a high court is strong or weak has no effect on the representation of women on that court.<sup>10</sup> Next, the existence of a sheltered selection process has a significant, negative effect on the presence of women justices, thereby offering evidence in support of hypothesis 2. This result suggests that any selection process that empowers unelected individuals – be it merit selection or a sitting justice on the court – may have the unintended consequence of subverting diversity. Additionally, this model offers evidence that, while the effect of court size is not statistically significant at conventional levels, there is some evidence of

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<sup>9</sup> Existing literature on the supply of qualified women to serve as judges is limited and contradictory. Some, such as Driscoll & Nelson (n.d.), find that the lack of women judges on courts is due to a limited pool of female candidates. However, based on the data presented by Michelson (2013) on the proportion of female lawyers in each country, it seems clear that, even in countries with incredibly high levels of both cultural and structural bias against women, there are still substantial numbers of women that break through the barriers and become well-educated professionals with extensive qualifications. In Saudi Arabia, for example, which was notorious for their laws that prevented women from driving a car, 31% of the lawyers are women. In Ghana, where female literacy rates are significantly lower than men's, 34% of the lawyers are women. Therefore, while it was reasonable to assume that there was a lack of qualified women perhaps thirty or even twenty years ago, we can no longer assume this to be the case. Further, recent research demonstrates that, unlike the legislative arena, women are just as (if not more so) judicially ambitious as men (Williams 2008; Jensen and Martinek 2009). Thus, we do not expect the supply of women candidates to affect women's representation on the highest court.

<sup>10</sup> No significant relationship was present in any version of our models.

an interaction effect between court size and the years since women's suffrage. This makes intuitive sense, as one would expect court size to matter more in countries that demonstrate less cultural acceptance of women leaders. Finally, we also find evidence that, beyond the sheltered versus exposed selector distinction, the type of selection method has no significant effect on women's representation on the bench. While we only include the autonomous selector variable in our final model, additional models provided in the appendix demonstrate the consistent absence of any effect of an appointment decision made by an autonomous, semi-autonomous, or legislative selectorate, or a system of divided selection.

### Conclusion

There are many reasons to believe that high court justices should not be selected by political elites involved in the day-to-day governing of the state. As we watch, for example, the United States government cannibalize itself due to partisan loathing among its elites, there seems ample reason to remove the selection of justices from their power. However, our findings offer evidence that this change would have dramatic consequences for the presence of women on the Supreme Court. The exposed selection system on the American high court is key to women's presence there; with this mechanism, we argue, electorally accountable selectors are able to claim credit for diversifying the court, thereby achieving an electoral benefit at a very low cost. The most important element of selection, therefore, is not whether a justice is selected by few or many, but rather the accountability of the selectorate.

These results, especially when considered in tandem with existing literature, offer important evidence that the differences among courts are more vast than any other institutional category. Future research on women's presence on the bench, therefore, should take the characteristics of the court seriously; unlike studies of women's representation in legislatures, we cannot assume that courts are similar enough such that women's presence will be impacted by consistent causal factors across all courts. The unique structure, purview, and visibility of the highest court, for example, has the capacity to create a credit claiming incentive for exposed appointers. If the court had a different purview, less visibility, and/or a single justice, there is reason to expect that appointing a woman would not generate as much credit for the selectorate. Exposed selection in another institutional context, therefore, may not be beneficial to the diversity of the court. Future analyses of women's representation on the court should, therefore, include a consideration of the court's characteristics on the causal relationships in question.

### Works Cited

- Alexander, Deborah and Kristi Andersen. 1993. "Gender as a Factor in the Attribution of Leadership Traits." *Political Research Quarterly* 46: 527-545.
- Alozie, Nicholas O. 1990. "Distribution of Women and Minority Judges: The Effects of Judicial Selection Methods." *Social Science Quarterly* 71.2: 315-25.
- Alozie, Nicholas O. 1996. "Selection Methods and the Recruitment of Women to State Courts of Last Resort." *Social Science Quarterly* 77.1: 110-126.
- Anasagatsi, Miriam and Nathalie Wuiame. 1999. *Women and Decision-Making in the Judiciary in the European Union*. Luxembourg: Office for Official Publications of the European Communities.
- Bashevkin, Sylvia. 1993. *Toeing the Lines: Women and Party Politics in English Canada*. Toronto: Oxford University Press.
- Black, Jerome and Lynda Erickson. 2000. "Similarity, Compensation, or Difference? A Comparison of Female and Male Office-Holders." *Women and Politics* 21: 1-38.
- Bratton, Kathleen A. and Rorie Spill. 2002. "Existing Diversity and Judicial Selection: The Role of the Appointment Method in Establishing Gender Diversity in State Supreme Courts." *Social Science Quarterly* 30:115-142.
- Caul, Miki. 2001. "Political Parties and the Adoption of Candidate Gender Quotas: A Cross-National Analysis." *The Journal of Politics*. 63.4: 1214-1229.
- Cook, Beverly Blair. 1980. "Political Culture and the Selection of Women Judges in Trial Courts" in *Women in Local Politics*, ed. D Stewart. Metuchen, NJ: Scarecrow Press.
- Davidson-Schmich, Leslie. 2006. "Implementation of Political Party Gender Quotas: Evidence from the German Lander 1990-2000." *Party Politics*. 12.2: 211-232.
- Gallagher, M., Marsh, M., 1988. *Candidate Selection in Comparative Perspective: The Secret Garden on Politics*. Newbury Park, CA: Sage Publications.
- Githens, Marianne. 1995. "Getting Appointed to the State Court: The Gender Dimension." *Women and Politics* 15:1-24.
- Holmes, Lisa M., and Jolly A. Emrey. 2006. "Court Diversification: Staffing the State Courts of Last Resort through Interim Appointments." *Justice System Journal* 27.1:1-13.
- Hurwitz, Mark S. and Drew Noble Lanier. 2001 "Women and Minorities on State and Federal Appellate Benches: A Cross-Time Comparison, 1985 to 1999." *Judicature* 85.2: 84-

- Hurwitz, Mark S. and Drew Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts." *State Politics & Policy Quarterly* 3:329–352.
- Hurwitz, Mark S., and Drew Noble Lanier. 2008. "Diversity in State and Federal Appellate Courts: Change and Continuity across 20 Years." *Justice System Journal* 29.1: 47-70.
- Jensen, Jennifer M. and Wendy L. Martinek. 2009. "The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges." *Political Research Quarterly* 62.2: 379-392.
- Kenney, Sally J. 2012. "Choosing Judges: A Bumpy Road to Women's Equality and a Long Way to Go." *Michigan State Law Review*: 1499-1528.
- Kenney, Sally J. 2013. "Which Judicial Selection Systems Generate the Most Women Judges? Lessons from the United States." in *Gender and Judging*, eds. Ulrike Schultz and Gisela Shaw. Portland, OR: Hart Publishing, 461-480.
- Lawless, Jennifer. 2004. "Women, War, and Winning Elections: Gender Stereotyping in the Post-September 11<sup>th</sup> Era." *Political Research Quarterly* 57.3: 479-490.
- Luciak, Ilja A. 2005. "Party and State in Cuba: Gender Equality in Political Decision Making." *Politics & Gender* 1.2: 241-263.
- Martin, Elaine, and Barry Pyle. 2002. "Gender and Racial Diversification of State Supreme Courts." *Women & Politics* 24.2: 35-52.
- Matland, Richard E., and Donley T. Studlar. 1996. "The Contagion of Female Candidates in Single-Member District and Proportional Representation Electoral Systems: Canada and Norway." *The Journal of Politics* 58 (3): 707–33.
- Michelson, Ethan. 2013. "Women in the Legal Profession, 1970-2010: A Study of the Global Supply of Lawyers." *Indiana Journal of Global Legal Studies*. 20.2: 1071-1137.
- O'Neill, Brenda and David K. Stewart. 2009. "Gender and Political Party Leadership in Canada." *Party Politics* 15.6: 737-757.
- Putnam, Robert. 1976. *The Comparative Study of Political Elites*. Englewood Cliffs, NJ: Prentice Hall.
- Reddick, Malia, Michael J. Nelson, and Rachel Paine Caufield. 2009. "Racial and Gender Diversity on State Courts: An AJS Study." *The Judges' Journal* 48: 28-32.
- Sanbonmatsu, Kira. 2002. "Gender Stereotypes and Vote Choice." *American Journal of Political Science* 46.1: 20-34.

Sanbonmatsu, Kira. 2003. "Political Knowledge and Gender Stereotypes." *American Politics Research* 31: 575-594.

Schultz, Ulrike and Gisela Shaw. 2013. "Gender and Judging: Overview and Synthesis" in *Gender and Judging*, eds. Ulrike Schultz and Gisela Shaw. Portland, OR: Hart Publishing, 3-47.

Shortell, Christopher. 2013. "Voting in Trial Court Elections: Ballot Roll-Off in Partisan, Non-Partisan, and Retention Elections in High-Population Counties." *Justice System Journal* 34: 153-170.

Sjoberg, Laura and Caron Gentry. 2008. *Mothers, Monsters, Whores: Women's Violence in Global Politics*. Zed Books.

Volkcansek, Mary. 2009. "Exporting the Missouri Plan: Judicial Appointment Commissions." *Missouri Law Review* 74.3: 783-800.

Williams, Margaret. 2007. "Women's Representation on State Trial and Appellate Courts." *Social Science Quarterly* 88.5:1192-1204.

Williams, Margaret. 2008. "Ambition, Gender, and the Judiciary." *Political Research Quarterly* 61.1: 68-78.

Williams, Margaret and Frank C. Thames. 2008. "Women's Representation on High Courts in Advanced, Industrialized Countries." *Politics & Gender* 4: 451-471.



Table 1: Countries in Data Set, by Sheltered versus Exposed Selection

***Sheltered Selection***

Country	Women on High Court (%)	Strong vs. Weak Court
Finland	38.9%	Strong
Israel	26.7%	Strong
Dominican Republic	23.1%	Weak
Denmark	21.1%	Weak
South Africa	18.2%	Strong
Estonia	11.1%	Strong
United Kingdom	8.3%	Weak
India	8.0%	Weak
Botswana	0.0%	Strong
El Salvador	0.0%	Weak
Namibia	0.0%	Weak

***Exposed Selection***

Country	Women on High Court (%)	Strong vs. Weak Court	Country	Women on High Court (%)	Strong vs. Weak Court
Latvia	57.1%	Weak	Poland	26.7%	Strong
Slovenia	55.6%	Strong	Slovakia	23.1%	Weak
Ghana	46.2%	Weak	France	22.2%	Weak
Portugal	46.2%	Weak	Lithuania	22.2%	Strong
Australia	42.9%	Strong	Romania	22.2%	Weak
Jamaica	42.9%	Strong	Chile	20.0%	Strong
New Zealand	40.0%	Weak	Brazil	18.2%	Weak
Croatia	38.5%	Strong	Spain	16.7%	Strong
Austria	35.7%	Strong	Netherlands	14.6%	Strong
Bulgaria	33.3%	Weak	Costa Rica	14.3%	Strong
Canada	33.3%	Strong	Japan	13.3%	Strong
Mongolia	33.3%	Weak	Ireland	11.1%	Weak
United States	33.3%	Strong	Republic of Korea	11.1%	Weak
Germany	31.3%	Strong	Belgium	8.3%	Strong
Sweden	31.3%	Strong	Hungary	6.7%	Strong
Norway	30.0%	Strong	Italy	6.7%	Weak
Switzerland	28.9%	Weak	Panama	0.0%	Weak
Argentina	28.6%	Weak	Peru	0.0%	Weak
Benin	28.6%	Weak	Uruguay	0.0%	Weak
Czech Republic	26.7%	Weak			

Table 2: Regression Model of Women Justices on Highest Constitutional Court

Independent Variables	Coefficients
Sheltered Selection	-10.87** (4.94)
Strength of Court	1.75 (4.29)
% of Women in Legislature	.34† (.217)
Years Since Suffrage	.37** (.178)
% of Women Lawyers	-.08 (.187)
Autonomous Selector	1.45 (4.98)
Size of Court	1.14 (.912)
Interaction: Size of Court & Years Since Suffrage	-.02† (.011)
Constant	-5.76
N = 50	R <sup>2</sup> = 0.277 Adj. R <sup>2</sup> = 0.136

Standard errors in parentheses.

†p ≤ .20, \*p ≤ .10, \*\*p ≤ .05,