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

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Melody E. Valdini[1] and Christopher Shortell[1]

Abstract

The presence of women justices in the highest constitutional courts varies significantly across countries, yet there is little existing research that engages this substantial cross-national variation. Using an original data set of women's representation in the constitutional courts in fifty democracies combined with qualitative case studies, we assess the effect of the selection mechanism on this variation and find that the existence of a "sheltered" versus "exposed" selection mechanism is a 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.

Keywords

judicial selection, diversity, women, courts

Introduction

In Latvia and Slovenia, women have broken the judicial glass ceiling; more than 50 percent 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 percent women. However, these breakthroughs are far from worldwide; 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 percent of the seats on the bench are entrusted to women. Furthermore, only 7 percent 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?

We argue that in the distinctive institutional context of the highest constitutional court, one of the strongest predictors of women's presence 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. A clear example of this would be a presidential appointment system, such as in South Korea, where the president alone selects the judge. Since the president is electorally accountable, he or she is "exposed" as a result of the selection. 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 selection method, we argue, removes an incentive to diversify, and the high court will in turn have fewer women justices. Our testing methodology uses two processes of analysis: first, based on an original data set of women's representation on the highest courts in fifty democracies, we offer results from a model that includes measures of the court's power, the selection process, the culture of the state, and the supply of qualified women. Next, we offer the results of content analysis of news coverage of the appointment process in four states—India, Israel, the United States, and Australia—in which we examined government statements for credit-claiming behavior. We find evidence that appointers in exposed selection systems are much more likely to claim credit for their choices than those in sheltered systems.

[1]Portland State University, OR, USA

Corresponding Author:
Melody E. Valdini, Department of Political Science, Hatfield School of Government, Portland State University, P.O. Box 751, Portland, OR 97207, USA.
Email: mev@pdx.edu

The Effect of the Selection Mechanism

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; Hurwitz and Lanier 2001; Martin and Pyle 2002; Reddick, Nelson, and Caufield 2009, though see also, Holmes and Emrey 2006; Williams 2007). Scholarly findings on the effect of merit selection—that is, 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 (Githens 1995; Kenney 2012, 2013b; Tokarz 1986; see also, Gill, Lazos, and Waters 2011 on judicial performance evaluations), 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 studied. 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. 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) finds that a "moralist" culture of the state affects 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 focuses 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 one could suggest many reasons why the disaggregation of courts is critical for the advancement of the study of judicial diversity, our focus is on one critical difference between the highest court in the land and the lower courts: visibility. That is, the level of the court affects its visibility—that is, 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—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 (see, for example, 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. Gibson, Caldeira, and Baird (1998), for example, show high levels of public awareness of high courts across eighteen countries. Furthermore, recent appointments to the high courts in Poland, Argentina, and particularly Ghana, where the appointment was completely uncontroversial, demonstrate substantial media coverage and citizen awareness. This dynamic of high visibility and awareness creates an important distinction from much of the previous work on judicial selection and gender, which has focused predominantly on courts in the United States below the U.S. Supreme Court.

The appointment of a justice to the highest court is thus 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 some voters will reward the selectorate that diversifies the high court. An exposed selection system, in other words, should increase the gender diversity of the highest court due to the opportunity it creates for the selector to claim credit.

Although the literature on credit claiming is primarily focused on spending decisions of legislatures (see, for example, Bickers and Stein 1996; Mayhew 1974), the concept of credit claiming applies to any circumstance when there is electoral benefit from making the public aware of an action taken by a politician. Grimmer, Messing, and Westwood (2012) find that credit claiming does effectively increase public support for elected officials who use it. Outside the United States, credit claiming emerges as an important, though indirect, element of the elective strategy of politicians in certain electoral environments (Crisp et al. 2010; Samuels 2002). And this is true not only for individual politicians but also for political parties (Giger and Nelson 2010). More specifically related to our interests, Cameron, Cover, and Segal (1990) find that U.S. senators only vote to confirm Supreme Court nominees when it is electorally attractive to do so.

Furthermore, though there is little existing research on credit claiming specifically with regard to diversity on

the judiciary, evidence from other branches offers support for an electoral benefit of appointing women. For example, Krook and O'Brien (2012) find that political factors, particularly the intensity of partisan competition, can drive presidents to increase the number of women appointed to their cabinets. In addition, 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 (Caul 2001; Davidson-Schmich 2006; Matland and Studlar 1996). It is the electoral competition, therefore, that creates an incentive for diversity. With regard to the judiciary, there is evidence that under the right conditions, appointments by elected officials are more likely to result in gender diversification than other selection methods (Bratton and Spill 2002; Diascro and Solberg 2009; Holmes and Emrey 2006; Solberg 2005), which is consistent with a role for credit claiming.

It is important to point out the nuances of this argument, the first being that we are *not* asserting that citizens give credit for diverse appointments at every level of the state, nor are we suggesting that voters have a strong preference for *women* on the bench. Rather, our argument is that, because of the nature of this institution as a deliberative and consensus-oriented body, many citizens will respond positively to diversity (of any kind) on the highest court even if they are not typically concerned with issues of parity, thereby making credit claiming a viable consideration. It is, in other words, the symbolism of diversity that matters here, not the actual presence of women on the court. Existing research suggests that diversity does indeed have this impact; Davis (1992) and Kenney (2013a) find that the presence of justices with diverse characteristics on a court cultivates the impression among the public that multiple perspectives are being incorporated in their decisions, an impression which is particularly valuable in this consensus-oriented institution. Thus, although the vast majority of citizens may not care if there are women justices on the highest court, some of these citizens nonetheless reward the appointment of a woman because of what her presence on the court symbolizes.[1]

Should our credit-claiming argument be correct, this would suggest that 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 is likely 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.[2] Volkcansek (2009, 799), 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. 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.

Method and Testing: Regression Analysis

For our first phase of testing, we collected data on all democracies[3] with high courts that exercise the power of judicial review.[4] It is important to emphasize that we focused solely on the highest court that exercises judicial review, whether that is a Supreme Court with authority over both constitutional and legal review or a Constitutional Court focused only on judicial review.[5] We then carefully examined the selection mechanism for judges on the highest court in each of these countries. 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. A number of these countries include an element of "sheltered selection," while others have what we have designated "exposed selection."

Table 1 offers an overview of the fifty countries that comprise our data set.[6] 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.[7] In addition, we coded each country as having either an "exposed" or "sheltered" system of judicial selection.

Those systems that require selection to occur via a body of individuals that are either not electorally accountable or in which the selector is strongly constrained by the suggestions of an unaccountable committee were designated as having sheltered selection. Those systems, however, in which the selection decision is made by an executive, legislators, or mix of elected individuals, were designated as utilizing exposed selection.

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

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

To better understand the basis of our coding decisions, we offer an example of each type of selection system. The first, the United Kingdom, is arguably the epitome of sheltered selection. Following the Constitutional Reform Act of 2005, the United Kingdom 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. The members of this committee are not electorally accountable at all, making them a sheltered selection system. Other examples, such as Denmark and South Africa, create a similar incentive due to the clear and specific constraints on the decisions that elected officials can make, thereby empowering these sheltered selectors.[8]

The U.S. federal judiciary, however, offers a clear example of an exposed selection process. All the actors involved in the selection are directly electorally accountable; that is, the president who makes the initial nomination is an elected position, and the senators who confirm the nomination are also directly elected. Other countries, such as Costa Rica and Switzerland, use an exposed selection process where the legislature alone is responsible for selecting the high court judges. South Korea allows the president to appoint judges without a legislative check while Sweden places the authority in the cabinet. All are considered exposed selection because the selectors are electorally accountable.

Our model consists of the dependent variable—the percentage of women on the highest court in 2012—as well as controls for several other factors that could affect the presence of women on the high court. The control variables included are those factors that previous literature has deemed to have a significant impact on women's presence on the court: first, to account for the "spillover effect" noted by Escobar-Lemmon and Taylor-Robinson (2005), Williams and Thames (2008), Thames and Williams (2013), and Hoekstra, Kittilson, and Bond (2014), we include the percentage of seats in the lower house of the legislature held by women in 2012. While the mechanism underlying this effect is debated, there is some consensus that the presence of women in the legislature and/or the use of gender quotas raises awareness of women's political participation, thereby increasing the likelihood that a female justice is selected. In addition, we include a variable, referred to as "autonomous selector," to capture the effect suggested by Williams and Thames (2008) of a president or similar unitary actor as more likely to select a

woman justice than other types of selectors.[9] Also, to account for the possibility of a limited supply of qualified nominees, we include the percentage of female lawyers in each country.[10] Furthermore, we include controls for two structural variables that are frequently found to influence the presence of women in politics: the literacy rate of women as well as the GDP per capita (Matland 1998, 2005; Norris 1985, 1997; Norris and Lovenduski 1995). In addition, due to the well-documented effect of religion on the reinforcement of traditional gender roles, we include controls for the percentage of people identifying as Catholic (Inglehart and Norris 2003; Norris 1985; Norris and Inglehart 2001; Paxton and Kunovich 2003).[11]

Our final set of controls concerns arguably the most likely predictor of women's representation on the court: its power and prestige. Other than the effect of the selection mechanism itself, 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; Schultz and Shaw 2013; Williams 2007; Williams and Thames 2008, though, see also, Hurwitz and Lanier 2001).

We include two variables to capture the effect of court strength. The first, the size of the court, is generally recognized as a solid but imperfect proxy for power (Epstein, Knight, and Shvetsova 2001; Williams and Thames 2008). Existing literature suggests that, as the court decreases in size, its prestige increases; a high-prestige court, as discussed above, should have a negative impact on the likelihood that women are on the court. The second variable, however, is one that we constructed in the hopes of better capturing the effect of a court's power. To construct this new variable, we identified several critical characteristics for each court. First, we used Linzer and Staton's (2015) judicial independence measures for each court, which combines eight different indicators of judicial independence in a latent variable measurement model. 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 to their measure of independence, our composite variable also includes whether the courts can exercise judicial review by the vote of a majority of judges (more powerful) or only with a supermajority (less powerful), 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.

Table 2. Ordinary Least Squares Regression Model: Women Justices on Highest Constitutional Court.

Independent variables	Coefficients
Sheltered selection	−17.18*** (5.12)
Strength of court	2.17 (4.00)
Size of court	−0.22 (0.34)
% of women in legislature	0.49** (0.20)
% of women lawyers	0.02 (0.21)
Literacy ratio	−0.10 (0.16)
GDP per capita	−0.001 (0.00)
Autonomous selector	−0.52 (4.13)
% of Catholics	−0.16** (0.07)
Constant	35.22
N	50
R^2	.286
Root Mean Square Error	13.96

Robust standard errors in parentheses.
**$p \leq 0.05$. ***$p \leq 0.01$.

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. Based on this information, we crafted a dichotomous variable that captures court strength: specifically, if a court had term lengths of greater than five years, a judicial independence score of greater than 0.7, a supermajority required to amend the constitution, only a majority required to rule, and are able to invalidate laws directly (concrete judicial review), then we coded that court as a strong court. Courts failing to meet any of these criteria were coded as weak courts.[12]

Table 2 offers the results from our ordinary least squares (OLS) regression with robust standard errors, and these results suggest several important findings on women's representation on the highest court. First, the existence of a sheltered selection process has a significant, negative effect on the presence of women justices, thereby offering evidence that the exposed versus sheltered selection distinction has important consequences for gender diversity. 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. In addition, these results suggest that the percentage of women legislators has a positive effect on the number of women high court justices, thus offering support for the spillover effect. Furthermore, as expected by existing literature that emphasizes the relationship between traditional gender roles and Catholicism, the percentage of citizens who identify as Catholic has a negative effect on the level of gender diversity on the high court.

Several variables do not appear to have a significant effect on the percentage of women on the court. First, the strength of the court is not significant; neither the proxy

for strength (court size) nor our original measurement of court strength demonstrate a significant effect.[13] 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. It is possible that courts in general are perceived as weaker institutions than legislative or executive positions that would make this result consistent with the existing literature, but understanding the connection requires further study. Our evidence also suggests that beyond the sheltered versus exposed selector distinction, the presence of an autonomous selector has no significant effect on women's representation on the bench. In addition, GDP per capita and literacy rates of women do not have a significant effect, and neither does the percentage of women lawyers in each country.

Case Studies: Claiming Credit

Although the model presented above is indicative of a strong negative relationship between sheltered selection and the selection of women justices, we sought to validate these findings by conducting four case studies with content analysis of relevant news coverage. Our purpose in doing so was to confirm that exposed selectors engage in credit-claiming behavior, while selectors in sheltered systems do not. We are not suggesting that selectors in the exposed selection system can only claim credit for women appointees—they may claim credit for a male appointee as well. Our approach here is instead to show that credit claiming occurs in one type of system and not the other. Such a distinction would provide support for our theoretical expectation that the opportunity to claim credit creates an additional incentive to appoint a woman (or any other member of a diverse group).

To test this, we selected two countries, India and Israel, with systems of sheltered selection and two systems, the United States and Australia, with systems of exposed selection.[14] Because our theory posits that an exposed selection system offers an opportunity for credit claiming that is not available in sheltered selection systems, we expect to see more credit-claiming behavior in the United States and Australia. Elected officials in Israel and India, however, should not engage in credit claiming. We characterize credit claiming in this context as messages from elected officials or their agents appearing in the news media indicating responsibility for the selection of the appointed justice. We purposely used a broad conceptualization of credit claiming to ensure that we capture any possible behavior that might be relevant and to decrease the likelihood that we overlook cultural nuances unique to each country.

For each country, we examined the appointments of the female justices who sat on the highest constitutional courts in 2012. Using two high-circulation newspapers from each country, we began by collecting all articles from the date of appointment and the following six days that made any mention of the justice.[15] The selected newspapers were either nonpartisan in nature or represent opposed ideological perspectives.[16] We then conducted a content analysis of these articles and coded each article based on the presence of any credit claiming by the government. To measure the presence of credit claiming, we examined every quote that mentioned the justice from anyone associated with the government. Whenever there was a positive mention of the justice by a government official, we coded it as an event of credit claiming. That is, credit claiming occurs when government officials emphasize their role in the selection of the justice. Our findings, displayed in Table 3, strongly support our theoretical expectations.

Table 3. Overview of Content Analysis Results.

Female justices serving on high court in 2012	Number of articles that reference judicial appointment	% positive mentions by government official
Exposed selection		
United States		
Ruth Bader Ginsburg	21	52
Sonia Sotomayor	46	57
Elena Kagan	30	47
(33.3% women justices)		
Australia		
Susan Crennan	5	100
Susan Kiefel	3	100
Virginia Bell	3	66
(42.9% women justices)		
Sheltered selection		
Israel		
Miriam Na'or	4	0
Edna Arbel	6	0
Esther Hayut	3	0
Daphne Barak Erez	5	0
(26.7% women justices)		
India		
Gyan Sudha Misra	3	0
Ranjana Prakash Desai	3	0
(8% women justices)		

United States. There were three women on the nine-member U.S. Supreme Court in 2012: Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan. All three not only received coverage in the *New York Times* and *Los Angeles Times* during the week immediately following their nomination, but the two relevant administrations who appointed the women took extensive and explicit credit

for their appointment. When Ginsburg was nominated by President William Clinton in June of 1993, there were seventeen articles in the two newspapers about her selection. In eight of the articles, President Clinton or others from his administration discussed and defended the nomination. For example, President Clinton was quoted as saying "I really believe that she was the best candidate at this time" (Labaton 1993, A20) and that Ginsburg "has compiled an historic record of achievement in the finest traditions of American law and citizenship" (Richter 1993, A1). On another occasion, he referred to Ginsburg as a "healer and conciliator on a divided Court" (Berke 1993, sec. 4, 2). Her confirmation in August of 1993 prompted another four articles, three of which contained quotes from the administration and senators praising the new justice.

This level of credit claiming by government officials continued with the selection of Sonia Sotomayor. In the week after her nomination, there were forty-one articles written about her in the two newspapers. Twenty-three of the forty-one include positive mentions from the executive, such as President Obama's description of Sotomayor as having "a common touch and a sense of compassion" (Lewis 2009). Other comments explicitly referred to her gender: "She had a compelling life story, Ivy League credentials and a track record on the bench. She was a Latina. She was a woman. She checked 'each of the grids,' as Mr. Obama's team later put it" (Baker and Nagourney 2009, A1). Similar mentions arose following her confirmation in three of the five articles. While President Obama spoke of her "breaking another barrier," Senator Patrick Leahy, the chair of the Senate Judiciary Committee, took a shot at Republicans while also claiming credit for Sotomayor's confirmation, saying "attempts at distorting [her] record by suggesting that her ethnicity or heritage will be the driving force in her decisions as a justice of the Supreme Court are demeaning to women and all communities of color" (Savage 2009, A1).

The third woman on the U.S. Supreme Court, Elena Kagan, followed a similar pattern. Ten of the twenty-five articles following her nomination included positive mentions from executive branch officials, ranging from President Obama's description of Kagan as "one of the nation's foremost legal minds" (Zeleny and Hulse 2010, A16) to Vice President Biden's description of Kagan as being "the right age" as the youngest justice appointed to the Supreme Court. Likewise, after her confirmation, four of the five articles included quotes from executive branch and legislative leaders. President Obama described her selection as making the Court "a little more inclusive, a little more representative" (Baker 2010, A13). Senator Harry Reid, senate majority leader, also made explicit reference to her gender, pointing out that "when it opens this fall, three women—a full third of the bench—will preside together for the first time . . . That's really progress" (Hulse 2010, A1).

Australia. Australia is also an exposed selection system, with the cabinet making the appointments to the seven-member High Court. Reviewing articles from the *Sydney Morning Herald* and the *Herald Sun*, we found frequent and repeated positive mentions of the three female justices from cabinet officials immediately after their appointment. The 2005 appointment of Susan Crennan prompted five articles, each of which included a positive mention from government officials of her as a new justice. These ranged from the generic statement from Attorney General Philip Ruddock that she was "the best person for the job" who would "make an outstanding member of the High Court regardless of gender" (Pelly 2005, 1) to word from party insiders that the Attorney General had been "keen to find a well-credentialed woman for the vacancy" (Ackland 2005, 2). This type of credit claiming—denying that her gender played a role in the selection while still clearly and emphatically pointing out her gender—appeared in all three Australian appointments.

The topic of gender came up again in three articles covering the 2007 appointment of Susan Kiefel to the court. In this situation, the government officials appeared almost defensive about selecting a second woman, with Attorney General Ruddock assuring the public that "any suggestion that this appointment was to secure two female appointments would be quite wrong" (Pearlman 2007, 1). Yet in the same conversation, the Attorney General also referred to her as "a woman of extraordinary attainment" ("Woman Wins Justice" 2007, 4). At first glance, it might appear that the government is avoiding taking credit for appointing a female judge. But in all three of the articles, the quotes from the ministers repeatedly mention that she is a woman. As with the earlier appointment of Susan Crennan, this is a way of claiming credit among those who will reward the selectors, while minimizing the backlash among those who might object to using gender as a criterion for appointment.

The appointment of the third female justice in 2008 followed a similar course, though the selection of Virginia Bell attracted less attention. The credit claiming occurred in two of the three articles about her selection. Attorney General Robert McClelland offered praise for her abilities, stating that "Justice Virginia Bell is clearly an outstanding lawyer and will serve law and the Australian community with distinction" (Narishima 2008, 1). McClelland went on to note that she was "chosen from a pool of 40 for her expertise in criminal law, and not for any gender imbalance in the courts" (Narishima 2008, 1). Here, again, the government claimed credit for her appointment while distancing themselves from the perception that her gender was a factor.

The Australian cases, like the American ones, demonstrate consistent credit claiming on the part of the selectors. While the specific ways in which credit claiming occurred differed, this is not surprising given the different systems and different political climate. These two cases stand in marked contrast to the situation in sheltered selection systems.

Israel. Israel had four female justices serving on the fifteen-member Supreme Court in 2012. Each justice was selected through the Judges Election Committee, comprised of representatives of all three branches of government. As noted above, this is classified as a sheltered selection system because neither blame nor credit is likely to fall on the elected branches directly, since neither plausibly controls the selection process. Consequently, we would not expect to find credit claiming following the selection of these justices. A review of articles in the *Jerusalem Post* and *Haaretz* validates this finding. Three of the four female justices garnered substantial media coverage, but at no point did any elected official claim credit for their selection.

The selection of Miriam Na'or in 2003 raised objections because she and one other candidate were the only nominees presented to the Committee for the two vacancies on the court. The four articles covering her selection focused on the objections to the nomination process, without any example of credit claiming. For example, one of the members of the Knesset on the committee, Shaul Yahalom, made it clear that "the refusal of the politicians to vote for Grunis [the other nominee] and Na'or was not aimed at them, but 'at the way the election was conducted'" (Izenberg 2003, 1).

Edna Arbel and Esther Hayut were both selected on the same day in 2004, though the attention given to the two nominations was quite different. Hayut's selection merited only three articles, with brief mentions that she was selected unanimously (Yoaz and Kra 2004) and that Supreme Court President Barak held her "in very high regard" (Yoaz 2004). The selection of Edna Arbel, however, prompted specific criticisms of her from some elected officials in six articles, including Education Minister Limor Livnat, alleging ethical violations (Izenberg 2004, 1). The closest any of the government officials took to claiming credit came from Justice Minister Lapid after the vote, who praised the balance between the two men and two women selected for the bench but said nothing specifically about Arbel (Yoaz and Kra 2004). With neither of these appointments, despite the attention paid to Arbel's in particular, did government officials attempt to claim credit for the selection of these justices.

The fourth female justice, Daphne Barak Erez, was appointed in 2012. Five articles mentioned her selection, but most focused on the fact that she was likely appointed to balance out another right-leaning appointment to the Court (Zarchin 2012a, 2012b). No defense of her record or claims of credit for her appointment were made by government officials.

India. India offers perhaps the starkest contrast to the exposed selection systems. Although justices on the Supreme Court are technically appointed by the President based on consultation with the Supreme Court, a series of rulings in the 1980s and 1990s established that the President must appoint the justices selected by the Supreme Court's collegium. This is a small group consisting of the Chief Justice and the four most senior associate justices. Since these justices are not subject to electoral accountability, this is a clear example of sheltered selection.

Consistent with our expectations, the percentage of women on India's Supreme Court is low—there were only two women on the court of 25 justices in 2012. Gyan Sudha Misra was appointed to the court in 2010 and Ranjana Prakash Desai followed her on to the court in 2011. More telling, there were no examples of any elected or unelected official discussing the selection of either woman in the *Times of India* or the *Hindustan Times*. The only articles were brief pieces stating their selection, with little to no context or reaction. Both of the justices garnered three such articles; only one went beyond the basic fact that they were appointed to the court. Thus, unlike the cases of exposed selection in the United States and Australia, there was no credit-claiming behavior by government officials. These findings support our expectation that credit claiming occurs in exposed selection systems, but not in sheltered selection ones.

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, partisan polarization in the United States interfere with effective governance, 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 appears to be 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; our findings make it clear that careful attention must be paid to the political incentives inherent in the judicial selection process.

These findings prompt several directions for future study. The first is to extend the research across time, which would allow us to consider variations in the effect of sheltered selection triggered by exogenous shocks (e.g., war or an economic depression). Also, extending the data set in this way would allow us to evaluate if the appointment of women to the high court is affected by the number of women already serving on the court. In addition, because the theoretical foundation of our argument concerns the value of diversity to the voters—not simply the value of appointing a woman—our findings should hold for members of other under-represented groups. Thus, an important direction for future study is to examine the effect of exposed versus sheltered selection on the ethnic and racial diversity of high court justices.

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Notes

1. In addition, we are not claiming that diversity is the only, or even the dominant, consideration in appointment decisions in exposed selection systems; ideology and experience play the critical role in the decision calculus. But within the available pool of candidates that meet those minimum criteria, diversity can, and does, matter.
2. Although this trend has not yet been studied in the context of courts, substantial literature exists on the impact of the gender of party leaders on the gender of their selected candidates. There is relative consensus in this literature: male party leaders are more likely to select male candidates, while female party leaders are more likely to select women candidates (Caul 1999; Cheng and Tavits 2011; Kunovich and Paxton 2005).
3. To identify democracies, we used Freedom House scores less than two and/or Polity IV scores above eight in the year 2012. This ensures that our data set includes only those democracies that include substantial political freedom and avoids factors affecting judicial selection in authoritarian or hybrid regimes that we could not capture in our models. That is, because our argument rests in part on the voters reacting to a choice made by the selectorate, it would distort the model to include countries in which voter behavior is somehow restricted (as it is in authoritarian and hybrid regimes). In addition, due to constraints of data availability, we include only those countries with more than one million inhabitants. Record keeping is often less consistent or unavailable in very small countries, making measures such as date of appointment less reliable.
4. 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 in practice despite a constitutional prohibition.
5. We included all high courts with judicial review, regardless of the extent of reviewing power. However, we chose to exclude those courts with no judicial review because their lack of power may reduce their visibility to the public to a degree that our core theoretical assumptions would no longer hold.
6. 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, constitutional appeals are filed with the Judicial Privy Council in the United Kingdom, so there is no apex court as there is in our other cases.
7. The "weak" versus "strong" distinction in Table 1 refers to our measure of judicial strength, discussed in full shortly.
8. There are some additional forms of selection that we include as sheltered. 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. Although there are elected members that are 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 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 that 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 legislature. The remainder of the judges for the Supreme Court, though, is 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, eleven of the countries in our data set use some form of sheltered selection.
9. This coding was based on a review of both the formal selection process and the specific political balance of each country. Where an executive, and we include prime ministers or cabinet officials in this term, acts alone to select judges, we coded that as an autonomous selector.

10. Existing literature on the supply of qualified women to serve as judges is limited and contradictory. Based on the data presented by Michelson (2013) on the proportion of female lawyers in each country, which we use here, it seems clear that even in countries with high levels of cultural and structural bias against women, there are still substantial numbers of women that become well-educated professionals with extensive qualifications. 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. Furthermore, recent research demonstrates that unlike the legislative arena, women are just as (if not more so) judicially ambitious as men (Jensen and Martinek 2009; Williams 2008). Thus, we do not expect the supply of women candidates to affect women's representation on the highest court.
11. In the literature on judicial diversity in American courts, the party of the appointer has been found to have an effect on the likelihood that a woman is selected for the bench (Bratton and Spill 2002, but see Diascro and Solberg 2009; Holmes and Emrey 2006; Solberg 2005). Unfortunately, we cannot control for the ideology of the selector in this model because of the macro nature of our data set. However, in an effort to ensure that we are not missing an important piece of the puzzle, we did examine the partisan position of the selectors for each justice. We include this table in Online Appendix 1, which does not appear to show a relationship between ideology and likelihood of selection: 48 percent of women were selected by left-wing parties, while 52 percent were selected by right-wing parties. All appendices are available as Supplemental Materials here at http://prq.sagepub.com/supplemental/.
12. See Online Appendix 2 for a more detailed explanation of the Linzer and Staton (2015) measures as well as our own coding process for the cases. Also, see Table 1 for the list of countries in our data set and their respective strong versus weak designations.
13. We also built a judicial strength index, based on the five variables that we use to establish the dichotomous strength measurement, and ran the model using this alternative specification. The use of an index had no impact on the significance of the variable nor on the overall fit of the model, but the alternative specification of the model is available in Online Appendix 4.
14. The countries were selected both for their variation in selection method on our key variable and because of the availability of high-circulation English language newspapers. Despite the fact that three of the four countries are former colonies of the United Kingdom and all four feature English as a major language, we still found substantial differences in media coverage that aligned with our theoretical predictions.
15. Because the United States has a two-step selection process, with both the executive and the legislature involved, we collected articles from both the time of nomination by the president and confirmation by the Senate.
16. For more details on the selection criteria, see Online Appendix 3.

Supplemental Material

Data replication files for this article are available at http://web.pdx.edu/~mev/mev_research.html.

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