

COMPARATIVE POLITICS

Comparative Politics is a series for researchers, teachers, and students of political science that deals with contemporary government and politics. Global in scope, books in the series are characterized by a stress on comparative analysis and strong methodological rigor. The series is published in association with the European Consortium for Political Research. For more information visit

www.ecprnet.eu

The series is edited by Susan Scarrow, John and Rebecca Moores Professor of Political Science, University of Houston, and Jonathan Slapin, Professor of Political Institutions and European Politics, University of Zurich.

OTHER TITLES IN THIS SERIES

The New Kremlinology

Understanding Regime Personalization in Russia
Alexander Baturo and Johan A. Elkind

Party System Closure

Party Alliances, Government Alternatives, and Democracy in Europe
Fernando Casal Bértoa and Zsolt Enyedi

The New Party Challenge

Changing Cycles of Party Birth and Death in Central Europe and Beyond
Tim Haughton and Kevin Deegan-Krause

Multi-Level Democracy

*Integration and Independence Among Party Systems, Parties,
and Voters in Seven Federal Systems*
Lori Thorlakson

Citizen Support for Democratic and Autocratic Regimes

Marlene Mauk

Democratic Stability in an Age of Crisis

Agnes Cornell, Jørgen Møller, Svend-Erik Skaaning

Coalition Governance in Central Eastern Europe

Edited by Torbjörn Bergman, Gabriella Ilonszki, and Wolfgang C. Müller

The Reshaping of West European Party Politics

Agenda-Setting and Party Competition in Comparative Perspective
Christoffer Green-Pedersen

Parliaments in Time

The Evolution of Legislative Democracy in Western Europe, 1866–2015
Michael Koß

Inequality After the Transition

Political Parties, Party Systems, and Social Policy in Southern and Postcommunist Europe
Ekrem Karakoç

Democracy and the Cartelization of Political Parties

Richard S. Katz and Peter Mair

Reimagining the Judiciary

Women's Representation on High Courts Worldwide

MARIA C. ESCOBAR-LEMMON,
VALERIE J. HOEKSTRA, ALICE J. KANG,
AND MIKI CAUL KITTILSON

ecpr

OXFORD

Women's Representation on High Courts

Figure 4.1 The Typical Pipeline	78
Figure 4.2 United States: Women's Representation in the Pipeline, %	80
Figure 4.3 Canada: Women's Representation in the Pipeline, %	84
Figure 4.4 Ireland: Women's Representation in the Pipeline, %	86
Figure 4.5 South Africa: Women's Representation in the Pipeline, %	89
Figure 4.6 Colombia: Women's Representation in the Pipeline, %	91
Table 5.1 Formal Institutions for Selection across Five Countries	104
Table A1.1 Year First Woman was Appointed, by Country and Court Type	166
Figure A1.1 Data Coverage on the Number of Women on High Courts, 1970–2013	170
Table A2.1 Descriptive Statistics for Chapter 2	173
Table A2.2 Descriptive Statistics for Chapter 3	173

Concomitant with the rise in the number of democracies after World War II is the increasing recognition that women's rights are human rights. Women's rights have important consequences for all of society—not just for women. A wealth of research finds that women's rights and gender equity improve economic growth, health outcomes, and global peace and security (Hudson, Bowen, and Nielsen 2020; McKinsey Global Institute 2015). Despite advances toward equality and in the fair treatment of women, UN Women (2019) reports that more than 2.5 billion women are affected by laws that discriminate based on gender, “whether it's for applying for a passport or in the choice of employment, receiving inheritance and deciding when and whom to marry.” At the same time, leaders ratify international accords to respect women's rights, and legislatures pass laws addressing gender discrimination. In many places, it is domestic high courts that adjudicate on and determine how laws and treaties are enforced.

Supporters of women's rights and gender equality wage fierce battles to combat discrimination through new legislation. Yet, the long and painstaking process of building legislative support for anti-discrimination laws can unravel if those laws are struck down as unconstitutional. Pressuring presidents or prime ministers to sign international women's rights accords may not impact the lives of women if courts do not hold those provisions enforceable. Consequently, peak courts, which in this book encompass supreme courts in countries with a single peak court and separate constitutional and final appellate courts in countries with multiple peak benches, play an indispensable role in safeguarding women's rights and protecting rights gained in other venues (Escobar-Lemmon and Taylor-Robinson 2014). As high courts have grown increasingly powerful and visible in democracies and non-democracies (Tate and Vallinder 1995; Ginsburg 2003; Moustafa 2007; Ginsburg and Moustafa 2008), the importance of having women on these courts is vital for equality.

Women's full participation on the highest courts helps fulfill the integrity of the process of adjudication on matters of human rights, and to maintaining the rule of law. As Kaufman and Lindquist (1995) write, “legal rights do not stand alone; they are embedded in the dominant social and cultural milieu” and interpreting rights is conditioned by a “socially constructed world, where women's experience is seldom recognized” (115–116). Excluding women in their full diversity deprives the judicial process of integral perspectives, backgrounds, and experiences. In 2019, the UN Commission on the Status of Women launched a new initiative,

“Equality in Law for Women and Girls by 2030: A Multistakeholder Strategy for Accelerated Action” as part of the 2030 Agenda for Sustainable Development. At the launch event, Vanessa Ruiz, then president of the International Association of Women Judges (IAWJ) commented, “Women judges with their lived experience as women...bring their perspectives to bear so that court decisions are fully informed and avoid discriminatory impact or interpretations” (UN Women 2019).

Although women have entered the legal profession and judiciary in increasingly larger numbers since the 1970s, women's gains in education, legal education, and as lawyers and judges have not automatically translated into seats on high courts. In a worldwide study of the legal profession, Abel, Hammerslev, Sommerlad, and Schultz (2020) find that women and other marginalized groups are disproportionately limited to “lower level professional strata” (26). It has only been in recent decades that gains in women's representation on high courts have been made. In the 1970s, women's representation on high courts was extremely low, and all-men courts were the norm. By 2013, it became commonplace for high courts to have at least one woman justice, and women on a number of peak benches made up at least a third of the justices.

This book examines the factors that facilitate the inclusion of women on peak courts, while recognizing that many courts have a long way to go before reaching gender parity. Why has women's representation advanced on high courts worldwide? As a first step toward addressing this, we ask: When and why did women break the judicial glass ceiling for the first time? We then go on to ask: Where and why have women made the most significant strides? Our book addresses these questions with a cross-national and over-time data set. We then turn to a set of case studies to examine how gains in women's representation are made, and what disrupts entrenched patterns that had long sustained men-only courts.

Monocausal explanations are insufficient. The appointment of judges are complex processes with multiple sources of influence. This book provides an analytic framework to explain the gains women have made on high courts. We focus on three sets of explanations: pipelines to high courts, domestic institutions including selection mechanisms, and international influences. All play an important role in leading toward gender equality on the bench, and none alone is sufficient to explain women's inclusion. Our combination of cross-national quantitative time-serial analyses and detailed country studies allow us to examine these influences across a variety of structures, institutions, and regional contexts.

Pipelines of eligible nominees prove important, but not sufficient. Entrenched institutions and practices act as filters in the pipeline. Established practices that perpetuate women's exclusion must be altered to promote women's appointments. Where there are institutional incentives for selecting women, these can be leveraged by political actors to select women. Women's representation on high courts has advanced when traditional ideas about who can and should be a judge

are transformed, and this transformation is often facilitated by regional and international influences. Underlying this transformation are domestic women's advocacy organizations that create, link, and disseminate new ideas and norms about the composition of the judiciary and women's equality in national-level decision-making.

1.1 Why the Inclusion of Women in the Judiciary Matters

One important indicator of diversity in the judiciary is women's participation as judges at all levels, including at the very top in apex courts. A wealth of research demonstrates how the presence of women matters in decision-making bodies such as legislatures and cabinets (e.g., Atchison and Down 2009; Atchison 2015; Carroll 2001; Childs 2008; Clayton and Zetterberg 2018; Clayton, O'Brien, and Piscopo 2019; Reingold 2003; Swers 2002; Thomas 1991). The courts are no exception. Kenney (2012: 163) has cogently argued that “a jury or judiciary drawn from the full range of citizen identities and experiences is more conducive to the production of justice, will yield better deliberations, and will command more support than a judiciary drawn from a narrow cross-section of the public.”

A diverse and inclusive judiciary has both intrinsic and extrinsic value. Women's participation on the highest bench, as one dimension of diversity, is an intrinsic good. Fundamentally, it is a human right to participate in decisions that affect oneself. The interpretation of the constitution affects everyone in a country. Excluding half the population denies them a chance to participate in the decisions that will ultimately affect their lives. Women's inclusion as judges on courts is a question of equal opportunity. All citizens should have the same chances to be included in the political process, in governance, and in the adjudication of law. It would strike many as inconceivable to purposefully exclude men from serving as judges: the same must be held for women.

Diverse and inclusive judiciaries also have extrinsic or instrumental value, benefitting both the judicial system and society through (1) enhanced collective decision-making, (2) strengthened public confidence in the judiciary and judicial decisions, (3) representation, and (4) broader access to the judicial process.

First, having women on the bench can enhance deliberations, providing better outcomes. As Justice Thurgood Marshall observed regarding whether a White man could challenge the exclusion of Black jurors in the United States, “When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and unknowable” (Peters v. Kiff 1972). Judicial decision-making processes are enriched when they include a variety of perspectives and lived experiences, especially of those who experience multiple and intersecting forms of marginalization (Means, Eslich, and Prado

2019). Greater diversity of views brings more perspectives to bear in deliberations. Diverse views rooted in different backgrounds and experiences strengthen group decision making (Mansbridge 1999; Bonilla-Silva 2017). While some research suggests that decision making in diverse groups may heighten conflict (Mannix and Neale 2005), diversity in the composition of a group increases the preparedness of members and encourages more accurate decisions and innovative approaches (see Phillips 2014).

A tradition of scholarship (e.g., Songer and Crews-Meyer 2000; Palmer 2001a; Palmer 2001b; Boyd, Epstein, and Martin 2010; Boyd 2016) has examined the decisions in legal cases asking whether women decide differently from men. While acknowledging the impact of that work, we focus on the transformative effect upon judicial systems as a whole rather than on individual case outcomes. More recently, scholars examine judicial decision-making by the panel as a whole, rather than at the level of individual judges (e.g. Harris and Sen 2019). That literature reaches important conclusions including showing that panels that included at least one woman judge were more likely to support the plaintiffs' claims regarding sex discrimination (Boyd, Epstein, and Martin 2010; Farhang and Wawro 2004; see Gryski, Main, and Dixon 1986 for state high courts and Peresie 2005 for federal panels) and to adopt a hostile work environment standard (Moyer and Tankersley 2012).

Second, diverse and inclusive high courts contribute to public confidence in the judiciary and the legitimacy of judicial decisions. Institutions of governance, including courts, benefit when citizens perceive them to be legitimate. Courts in particular rely on their legitimacy to maintain the rule of law and encourage citizen acceptance of their decisions (Gibson et al. 1998). Courts can gain or lose legitimacy for many reasons, and one critical factor can be the degree to which judges on a court reflect the populations they serve. Empirical studies point to the importance of diverse perspectives in the judiciary for perceptions of legitimacy. Scherer and Curry (2010) find the presence of Black judges bolsters support for the courts among African-American citizens in the United States. Walker (2008) concludes that women in Costa Rica, Nicaragua, and El Salvador saw the judicial system as more unequal than did men, attributing that difference to beliefs in unequal access to justice for the poor. Arrington's (2020: 2) survey experiments reveal that "respondents were more likely to indicate that the selection process was fair when the outcome included both male and female judges." Perceptions of an unfair selection process or unequal access to justice can undermine confidence in the judiciary.

Processes of representation in governing bodies are not limited to the legislature. Other institutions such as the judiciary are integral as well (Dovi and Luna 2020; Kenney 2012). Of course, representation can have different meanings in different contexts. In most countries around the world, with the exception of some states in the United States and Bolivia, judges are appointed and therefore are not

representatives in the same way as elected officials. Yet, one can still speak of a judiciary as being unrepresentative. Drawing on Pitkin's (1967) theory of symbolic representation, Kenney (2012) argues that judges "stand for" a group and points out that in many countries, appointers already select justices to represent people on the basis of geography and language. In Canada, it is commonplace for leaders and citizens to think about justices as representing linguistic minorities and regions. Importantly, valuing judges as representatives of groups need not depend on essentialist thinking. It is not correct to assume that all French-speaking judges decide the same, and that they are necessarily different from all English-speaking ones. When decisions are being made—particularly in democracies where political equality is a fundamental ideal—who sits at the table matters in terms of who gets to see themselves represented.

Finally, a diverse and inclusive bench can transform the judiciary by broadening access to justice. In some cases, women have used their position as judges to influence the ways in which women interact with and are treated by the judicial system as a whole. This work can help transform the distribution of justice in more equitable ways and contribute to the legitimacy of the judicial system. Chief Justice Georgina Wood of Ghana created a Family Justice Center to address issues of gender violence in the judicial process and provide support to survivors. Similarly, in Argentina, Vice President of the Supreme Court, Justice Elena Inés Highton de Nolasco, helped create an office within the court that specializes in providing support to survivors of domestic violence. Initiatives addressing issues of domestic violence can play an important role in reinforcing the legitimacy of the system and help ensure that women who have been victimized are not subsequently taken advantage of by the judicial system.

The appointment of women to high courts can empower women in the legal profession building a pipeline of future women judges. Ginsburg and Brill (1995: 281) write that the first women "way pavers" in the United States federal judiciary made it "realistic for legions of women in the future to aspire to—and achieve—a full life in the law." When Dawuni (2016: 426) asked a woman judge of the High Court of Ghana why she wanted to join the bench, the judge replied, "I joined the bench because of Justice Mrs. Sawyer-Williams who gave a talk and the confidence she portrayed made me have personal ambition to become a judge based on her as a role model." In Colombia, when the Constitutional Court became one-third women it was noted that this was sign for the future. Carolina Vogel, professor of law at the Universidad Externado, argued, "That there are three women on the Constitutional Court has an important symbolic effect. Boys have as referents symbolic figures: the helmeted astronaut, the uniformed policeman, and the lawyer with a tie. They grow up thinking of these figures and dream of being like them. Girls now have a referent. They will grow up seeing them as judges. And maybe they will become students of law inspired by these three women, convinced that it is possible to sit on the Constitutional Court" (Medellín Cano 2017).

1.2 Women's Representation on High Courts

One of the great transformations affecting the judicial branch in recent decades has been the appointment of women judges to high courts. Figure 1.1 displays the percentage of women on high courts based on available data at three points in time: 1970, 1990, and 2010. If a country has two high courts and we have

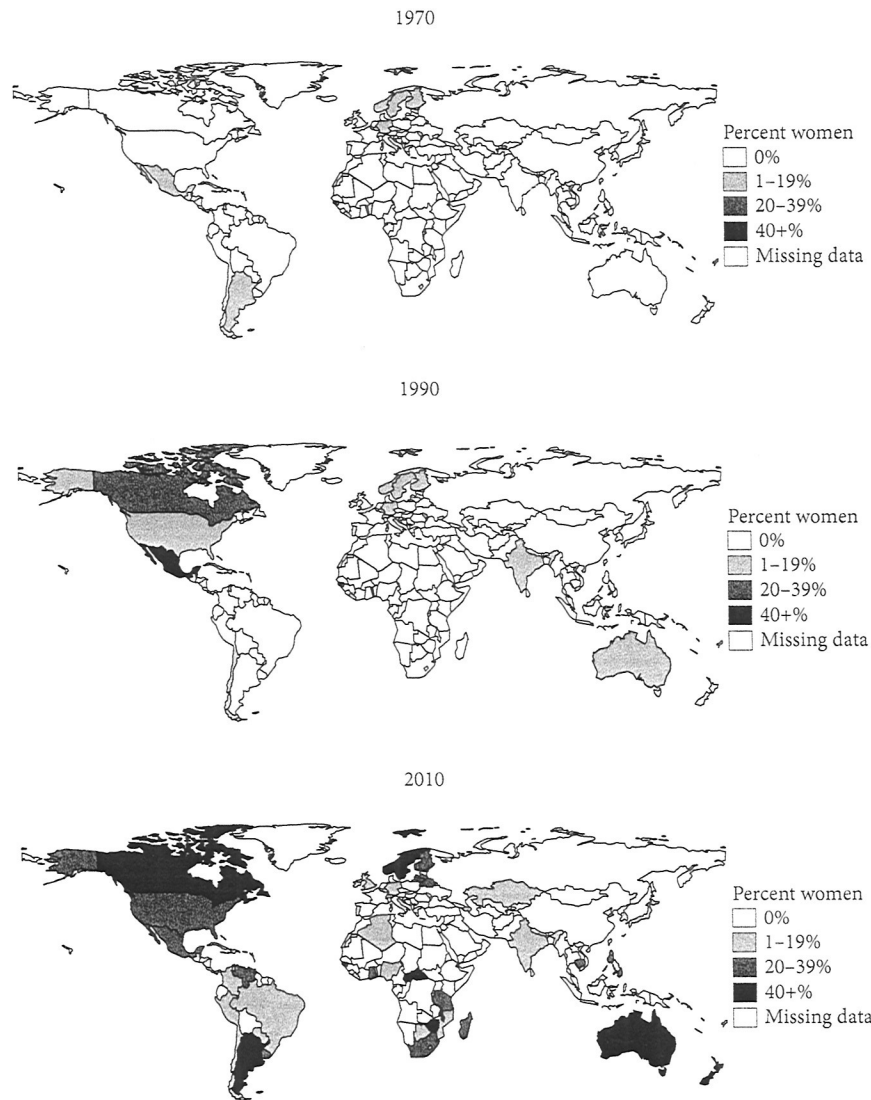


Figure 1.1 The Percentage of Women on High Courts

Source: The Women on High Courts Database.

information on each of them, we report the average percentage of women across both entities. For countries where there is one high court, they are in white if we have missing data on the peak court. For countries with multiple high courts, if we lack information on one or both high courts, they are recorded as having missing data and are in white. This gives us information on women's high court representation in eighty-four countries in 1970, ninety-one countries in 1990, and ninety-three countries in 2010.

In 1970, women comprised 0.6 percent of justices in 84 countries, and it was common for high courts in all the major world regions to have no women justices. By 1990, the presence of women was more than five times higher yet remained extremely low, constituting 3.1 percent of justices on 91 high courts. Twenty years later, in 2010, the average percentage of women in countries for which we have data was 19.3 percent. This reflects a dramatic increase, but it also indicates that women are still underrepresented at the apex of the judiciary.

Figure 1.1 demonstrates that gains toward gender equality have been made in places that would be unexpected for readers who assume that progress is made first in the Global North. The early inclusion of women to high courts is not limited to countries in Scandinavia or other wealthy democracies. For instance, in 1970, Argentina and Mexico had a larger percentage of women on high courts than did the United States and much of Western Europe outside of Scandinavia. By 2010, of the world regions Scandinavia had the highest levels of women's representation, but countries in Africa such as Rwanda had made major gains in diversifying their judiciaries. Yet, as Figure 1.1 also shows, gains are not automatic, nor irreversible, as some countries had lower levels of women's representation in 1990 than in 1970 (e.g., Argentina).

Figure 1.1 illustrates that the gender transformation of high courts has been uneven among countries in the same region that might otherwise seem comparable. In 2013, three of the nine judges on the Supreme Court of Canada were women (33.3 percent), whereas in the United Kingdom, only one of 12 judges on the highest court was a woman (8.3 percent). Sixty percent of the judges of the Constitutional Court of Guatemala were women compared to 20 percent in Chile's Constitutional Court and zero percent in Costa Rica's Constitutional Chamber. All four sitting judges on Burundi's Constitutional Court in 2002 were women, while no women were on Niger's Constitutional Court at that time.

Although women's ascendance to power has been well-studied in the legislative and executive branches (e.g., Escobar-Lemmon and Taylor-Robinson 2016; Annesely, Beckwith and Franceschet 2019; Jalalzai 2013; Krook and O'Brien 2012; Norris and Lovenduski 1995; Paxton, Hughes, and Green 2006; Tripp and Kang 2008), we know less about when, where, and why women are appointed to high courts. Of the comparative research conducted thus far on gender equality in the judiciary, nearly all focuses on a cross-section of countries at a single point in time or on one country or region of the world, and existing studies largely focus on

domestic structural influences (e.g., Arana Araya, Hughes, and Pérez-Liñán 2021; Bauer and Dawuni 2016; Dawuni and Kang 2015; Hoekstra, Kittilson, and Bond 2014; Schultz and Shaw 2003, 2013; Sonneveld and Lindbekk 2017; Thames and Williams 2013; Valdini and Shortell 2016). What is needed is a cross-regional and dynamic analysis.

1.3 Explaining Women's Representation on High Courts

The literature on representation in the judiciary to date has emphasized domestic institutions such as selection mechanisms and the supply of candidates to explain women's representation on high courts. Building on this scholarship, we articulate a theory that includes these important influences but also considers how international factors influence the composition of domestic judiciaries. We do not view the inclusion of women on high courts as the result of a single process, but rather as the result of multifaceted and complex domestic and international influences, which collectively explain representation. Multiple paths can lead to the appointment of women on high courts, and these formal and informal institutions incentivize both selectors and aspirants.

Thus, we combine the old and the new to articulate an original theory that we test cross-nationally and explore in depth through case studies in subsequent chapters. As illustrated in Figure 1.2, we posit that it is the confluence of judicial pipelines, domestic institutions including selection mechanisms, and international influences that explain the appointment of women.

First, the pipeline for appointments to high courts taps into supply-side factors. While the formal structures of the legal system and court shape career paths and opportunities for appointments at the apex of the judiciary, in nearly all countries, formal barriers for women to enter the judiciary have been dismantled, and this has facilitated the inclusion of women on high courts. Women have entered law school and the professions that feed into the eligible pool from which judges are selected. In some cases, women hold a significant proportion of the judgeships in lower level courts. In contexts where high court judges are drawn from these lower courts, there can be greater gender diversity.

Yet, the inclusion of women on the highest courts does not always correspond with the number or proportion of women in the pipeline. Some high courts are not as gender diverse as one would expect based on the composition of law school graduates. In some countries, such as Canada and South Africa, the highest courts have been *more* gender diverse than one would expect based on the proportion of women in pipeline. Thus, we consider the importance of pipelines, but also their limitations in explaining the inclusion of women by examining educational and occupational springboards to high courts across our five case studies in chapter 4.

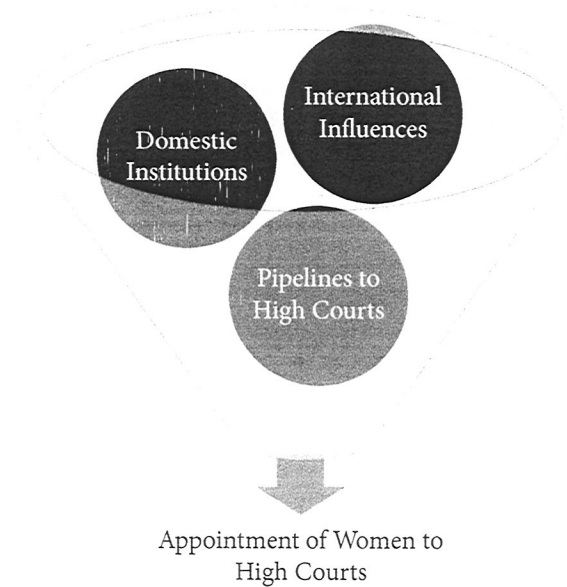


Figure 1.2 A Combination of Factors Produce the Appointment of Women on High Courts

Second, domestic institutions shape the context within which selectors make decisions about who to include (and exclude) on high courts. Past research on women's appointments to high courts has offered a number of important insights into the role of institutions, and we build on these contributions. Some explanations have emphasized the type of legal system and the role of institutional factors such as the size of the court, method of selection, and term length (Schultz and Shaw 2013; Williams and Thames 2008). Further, Valdini and Shortell's (2016) findings from industrialized democracies show that democratic institutions influence those who appoint high court justices, rendering some appointers more exposed to electoral accountability. In Latin America, changes in the political context can create multiple vacancies on high courts, at which time the ideology and motivation of selectors influences the selection of women (Arana Araya, Hughes, and Pérez-Liñán 2021).

Other institutional features might matter, and we discuss some of these further in chapter 5. For instance, in the literature on women's legislative representation, quotas have been shown to increase women's representation (Krook 2006; Franceschet, Krook, and Piscopo 2012; Tripp and Kang 2008). We are aware of relatively few instances of judicial quotas making it difficult to test their effect cross-nationally (Hoekstra 2010). We consider the influence of affirmative language in our case studies in chapter 5.

We consider both formal institutions and informal institutions such as norms, practices, and traditions. Formal institutions are more easily measured across a large number of countries, and we assess their influence in the global statistical models we estimate in chapters 2 and 3. We then more closely assess both formal institutions and informal practices and how they can contribute to women's advancement on high courts in our five case studies in chapter 5.

While pipelines and institutional structures play an important role, so too does the agency of the actors who select high court judges, and the ideas those selectors hold about who can and should serve on the high court. Selectors operate within contexts that differentially incentivize appointing women. Part of that context is shaped by their domestic support base, as well as international norms, which can exert influence as well.

The final set of factors are those that have been neglected by the literature to date: global and regional influences altering expectations of women's participation in governance. International attention to the inclusion of women in governance has flourished in recent decades. Policymakers and international organizations such as UN Women and the World Bank have raised the issue of gender inequality on governing institutions, including the judiciary, legislatures, and cabinets. International and regional treaties have spread norms of gender equality in governance and altered practices at the domestic levels.

Other work examines mechanisms of diffusion of norms of gender equality in governance, including the time since ratifying the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), regional diffusion, and memberships in international women's nongovernmental organizations (Jacob, Scherpereel, and Adams 2014; Paxton, Hughes, and Green 2006; Ramirez, Soysal, and Shanahan 1997; Berkovitch 1999). In addition to affecting the inclusion of women in cabinets and national legislatures, these norms of gender equality influence the judiciary as well.

As women's rights came to be seen as human rights, international human rights institutions have been conducive to the diffusion of norms of gender equality. CEDAW called for adding women to decision making bodies (Baldez 2014; Krook and True 2012). Over time, CEDAW has been key to improving gender equality in schools, national legislatures, and executive cabinets (Cole 2013; Jacob, Scherpereel, and Adams 2014; Simmons 2009).

Norms of women's roles in governance have not been static, but instead have shifted since the first UN World Conference on Women in 1975. As Paxton, Hughes, and Green (2006) note, the international discourse regarding "what counts as appropriate incorporation has changed over time" (902). At first, women's exclusion was highlighted, and movement organizations, treaties, and shared discourse referred to women's inclusion. After a few decades, discussion moved to gender balance and parity. In broad terms, we can think of this shift as one from equality, which emphasizes equal treatment for all, toward equity, which

highlights the needs of some may be different from others. Greater emphasis on equity underpins the use of gender quotas, which are intended to help an under-represented group gain traction. We take into account this shift, examining the appointment of the first woman and moves toward gender parity on high courts in chapters 2 and 3. We trace the rise of global and regional norms of women's inclusion in the judiciary in chapter 6.

We argue that three factors—pipelines, institutions, and international norms—promote the appointment of women to high courts. Importantly, rising norms of ending women's exclusion from decision-making bodies may have a strong impact on the appointment of the first woman as these norms shine a spotlight on all-men courts. Appointing the first woman to a high court (examined in chapter 2) breaks historic patterns. Institutional and selection methods may exert greater impact on the appointment of subsequent women as they structure opportunities for appointment. After the first woman is appointed, the appointment of subsequent women represents more incremental change, and depends on open seats and sustained pressure. We consider the determinants of subsequent moves toward gender equality in chapter 3.

1.4 Research Design

To explain when, where, and why women are appointed to high courts, we employ a multi-method approach. We have built a cross-national and longitudinal dataset on the appointment of women and men to high courts. Our dataset documents the appointment of the first woman as well as the gender diversity of high courts for over half the world. Where there is a single supreme court, it is our high court of interest. In countries where there are separate constitutional and high appellate courts, we include the two in our analysis. We include both courts because we believe that determining the constitutionality of laws and serving as the highest court of appeals both constitute important functions of a country's highest court. In these split court systems, we categorize and refer to the court of last resort as the highest appellate court even if the official name of the court is supreme court.

Information collected by international entities, such as the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) Studies and the UN Gender Equality Observatory for Latin America and the Caribbean, cover only wealthy, stable democracies or one world region. Other cross-national data collection efforts, including those of the World Bank's Women, Business, and the Law Division, provide statistics on women on constitutional courts for a single point in time. Our dataset uniquely covers high, medium, and low-income countries, democracies and non-democracies, and includes a longer time series.

Our cross-national analyses first examine what influences the appointment of the first woman to the highest court, and then what explains the subsequent

number of women on the bench. The appointment of the first woman to a peak court is a significant and symbolic event. The first woman high court justice receives unprecedented media coverage and scrutiny across world regions (Escobar-Lemmon, Hoekstra, Kang, and Kittilson 2016). Most courts are not large: the majority of high courts in our dataset have 15 or fewer members. Given that most high courts are relatively small, the most visible breakthrough in women's access is through the appointment of the first woman. Appointing the first woman to the apex of the judiciary system signals an end to the complete exclusion of women from the judiciary.

We then ask what determines progress toward equality by considering the composition of courts *after* the first woman has already been appointed. In particular, we are interested in determining whether the three sets of factors explain the appointment of subsequent women. By tracking the ebb and flow in the number of women on high courts, we are able to identify factors within and across countries that contribute toward progress. The countries that have come the furthest (and those which have backslid) include those with a reputation for advancing gender equality and those without it.

To compile a cross-national and longitudinal dataset, we used a variety of sources. A team of undergraduate and graduate research assistants helped us gather secondary and primary sources on the presence of women on high courts (e.g., annual reports of the judiciary, commemorative studies celebrating the anniversary of a court, newspaper articles). Depending on the country's context, we wrote to chief justices, court presidents, registrars, or ministers of justice for information on the gender composition of the highest courts to attempt to fill in gaps. For a number of high courts, we tracked the appointment and departure of individual judges. For many other courts, we were only able to collect information on the number or percentage of women on the court in a given year. Appendix 1 provides information on the data we obtained and that which, despite our best efforts, remained missing.

While the cross-national dataset allows us to identify general patterns and test several categories of explanation, five country case studies allow us to investigate the pathways and processes that facilitate women's progress through the judicial ranks. We unpack the pipeline, institutional, and international factors in Canada, Colombia, Ireland, South Africa, and the United States. We interviewed current and former high court judges, ministers of justice, high court clerks, leaders of nongovernmental organizations, members of judicial selection commissions, informed observers, and elected officials as well as collected archival data and media reports in four of the countries and rely on the extensive published literature for data on the United States. With these sources, we delineate the varied pathways leading to the appointment of men and women on high courts. The case studies help us understand the decision calculus of those charged with appointing justices.

The five countries were chosen because of important similarities, but also important differences. One difference is in level of wealth. Canada, Ireland, and the United States are high-income countries in the Global North. Colombia and South Africa are middle-income in the Global South. This mix of cases allow us to speak to women's representation on high courts outside the Global North where most of the work on this topic has been done. While there is notable variation in the level of wealth of these five countries, we acknowledge that it does not fully cover the global spectrum. A snapshot of the differences across these countries is contained in Table 1.1.

The countries selected for study also have different experiences with women's participation in the executive and legislative branches. We observe fairly low levels of women's legislative representation in all five countries except South Africa. Since 2011, Colombia has had a 30 percent quota law for legislative seats, although most political parties use open-lists that preclude a placement mandate for women. Ireland adopted a quota law in 1997, revised in 2012, mandating that women were initially 30 percent of lists rising subsequently to 40 percent of lists but did not contain a placement mandate. In contrast, neither Canada nor the United States, both of which use single-member district elections, have gender quota laws. South Africa, which uses proportional representation, does not have a gender quota law although the major party has voluntarily used one.

Of our five countries, only Ireland and Canada have had a woman head of state. Two women—Mary Robinson (1990–1997) and Mary McAleese (1997–2011)—served as president of Ireland. Kim Campbell briefly served as Canadian prime minister from June 1993 to November 1993. In three of the five countries, women

Table 1.1 The Case Studies

	Canada	Colombia	Ireland	South Africa	United States
Year first woman high court justice	1982	App: 1983 Con: 2001	1992	Con: 1994	1981
Women/Filled seats, 2020	4/9	App: 2/23 Con: 3/9	3/9	Con: 4/9	3/9
GDP per capita, PPP, 2019	\$49,031	\$14,722	\$86,781	\$12,482	\$62,530
Population, 2019 (mil.)	37.6	50.3	4.9	58.6	328.2
Legal system	Common	Civil	Common	Common	Common
Women lawyers, 2010	37%	56%	40%	46%	32%
Women ministers, 2020	50%	57.9%	26.7%	48.3%	17.4%
Women legislators in lower-house, 2020	29%	18.3%	20.9%	46.3%	23.4%

Sources: Inter-Parliamentary Union (2020); Michelson (2013: Table A8); World Bank (2021).

have gained a significant share of executive branch posts as ministers, outstripping women's representation in other venues. In 2019, women held 53 percent of ministerial posts in Colombia; 50 percent of ministerial posts in Canada; 49 percent of ministerial posts in South Africa, but only 27 percent of ministerial posts in Ireland and 22 percent of ministerial posts in the United States. Women have served as Minister of Justice (or Attorney General), in almost all cases, sometimes with important consequences as we will see in chapter 5.

Strikingly, despite these differences in wealth, institutions, and women's political participation, women justices held one-third or more of the seats on high courts in all five countries by the end of 2020. Our case studies illuminate the different trajectories countries take toward reaching 33 percent women's representation on high courts.

1.5 Plan of the Book

This book contributes to our understanding of governance from a global perspective. As an institution of governance, high courts render decisions vital to their citizens and can have impact beyond their national borders. Who sits on these courts influences the perspectives and experiences brought to bear on the deliberation on cases, which can, in turn affect the outcomes of the cases themselves.¹ This book sheds light on the domestic and international factors that influence who participates in governance. Our cross-national and longitudinal lens, coupled with our case studies, yields analysis with implications for understanding how women can access the domains from which they have been excluded.

The first part of the book highlights our cross-national comparisons. The questions of when and why women first joined high courts is the topic of chapter 2. Drawing on our cross-national data set, this chapter explains why women broke through the judicial glass ceiling sooner on some courts than others. To consider the influence of multiple factors on both the timing of the first woman and the fact that some courts have never had women justices, we use event history analysis. We find that in contrast to much of the previous literature, electoral accountability does not exert a significant effect. We also find that the judicial glass ceiling is not cracked in a domestic vacuum: after countries in the region appoint a woman judge, a country appoints the first woman faster, and the first woman high court judge is appointed sooner the more civil society organizations are connected to the international women's movement. We conclude the chapter with a brief consideration of those countries that have never appointed a woman.

In chapter 3 we ask and answer the question: Where have women made the most strides? Once the first woman has been appointed, what determines whether a country will move toward gender parity? This chapter draws on our dataset on the number of women on high courts. We identify which high courts have made the most progress in achieving the milestone of gender parity, and at the other end of the spectrum, where after appointing the first woman, a country has returned to having no women on the high bench. Noting differences across regions, we present over-time trends in the percentage of women on high courts across the major areas of the world. Similar to chapter 2, we explore domestic institutional explanations, comparing women's progress in the judiciaries of different legal systems and regime types. We find that global and regional influences play a significant role in explaining women's representation, more so than accountable selectors or development.

The second part of the book examines pathways and processes to investigate how and why women are appointed. Spanning four world regions (Africa, Europe, Latin America, and North America) encompassing wealthy and middle-income countries and newer and older democracies, the case studies of Canada, Colombia, Ireland, South Africa, and the United States provide nuanced information about appointment processes that can be lost in large scale analyses. In these chapters, we investigate the three main sets of explanations: the judicial pipeline (chapter 4), formal and informal institutions and mechanisms of selection (chapter 5), and international influences (chapter 6).

It is a common assertion that the more women who have the education and career backgrounds that traditionally serve as springboards to high court appointments, the more likely women are to be appointed. In chapter 4, we begin our in-depth analysis by appraising whether and how the supply of women judges and lawyers is connected to the appointment of the very first women to high courts. Understanding that the typical career path differs across our cases, we consider what the pipeline looks like in each country. We then examine the pipeline of women in the typical career path for each country (Canada, Colombia, Ireland, South Africa, and the United States). In all five cases, despite a full pipeline, women are still often blocked from gaining access.

In chapter 5, we compare formal and informal institutions that, collectively, comprise the selection process for the highest courts across five countries. Limiting the focus to formal rules of selection, as we are forced to do in the cross-national analyses, overlooks many informal institutions (norms and practices) that can affect men and women's chances differently. We examine the role formal institutions including judicial nominating commissions and affirmative language play, showing how institutions and context together shape women's representation. But, selection often rests on identifying a list of potential nominees based on informal networks, which have historically favored men. In addition, even though the formal rules do not specify the career path for promotion to the

¹ The decisions themselves are an important topic that is worthy of study but is beyond the scope of this book.

highest court, tradition and norms might favor some kinds of prior experience over others. Our case studies also reveal that gendered networks and gendered biases in selection as well as ideology work against women. Electoral accountability explains women's appointment only in cases where selectors are pressured to appoint women.

Chapter 6 examines the influence of international factors on the appointment of women to high courts in our case studies. We focus on the impact of regional trends, the ratification of CEDAW, and domestic advocacy organizations. We sketch the emergence of regional norms of gender equity in governance, including in the judiciary, in Africa, Europe, and Latin America. Drawing on UN and country-specific primary sources, we document the rise of reporting on gender diversity in the judiciary and on high courts. Our five case studies highlight the role of civil society organizations, namely, women's associations, in exerting pressure on appointers to consider women judges.

The final chapter weaves together the findings from our cross-national statistical analyses and the in-depth case studies to offer overarching arguments for when, where, and why women are appointed to high courts around the world. Our global lens allows for comparison of countries with high courts ranging in size, legal tradition, regime type, selection method, and socioeconomic context. Despite these differences, we find one common denominator: high courts are gendered. Taken together, our cross-national and cross-temporal evidence shows that women's appointment to the peak bench is not automatic, and that both domestic and international factors are influential. In general, despite relatively full pipelines, gendered selection mechanisms have limited women's advancement. In different ways, changing global norms have raised the profile of women's appointments, placing pressure on those with the power to transform the bench, although with varying degrees of success. For women to make significant and sustainable strides, it is necessary to go beyond equal treatment and access to the same opportunities. Instead, what is needed is an equity minded approach: a fundamental transformation of the processes that were built around the traditional all-men norm.

PART I

A GLOBAL AND LONGITUDINAL PERSPECTIVE