

Appendix: Constitutional Reform and the Gender Diversification of Peak Courts

February 2, 2021

Sample Balance

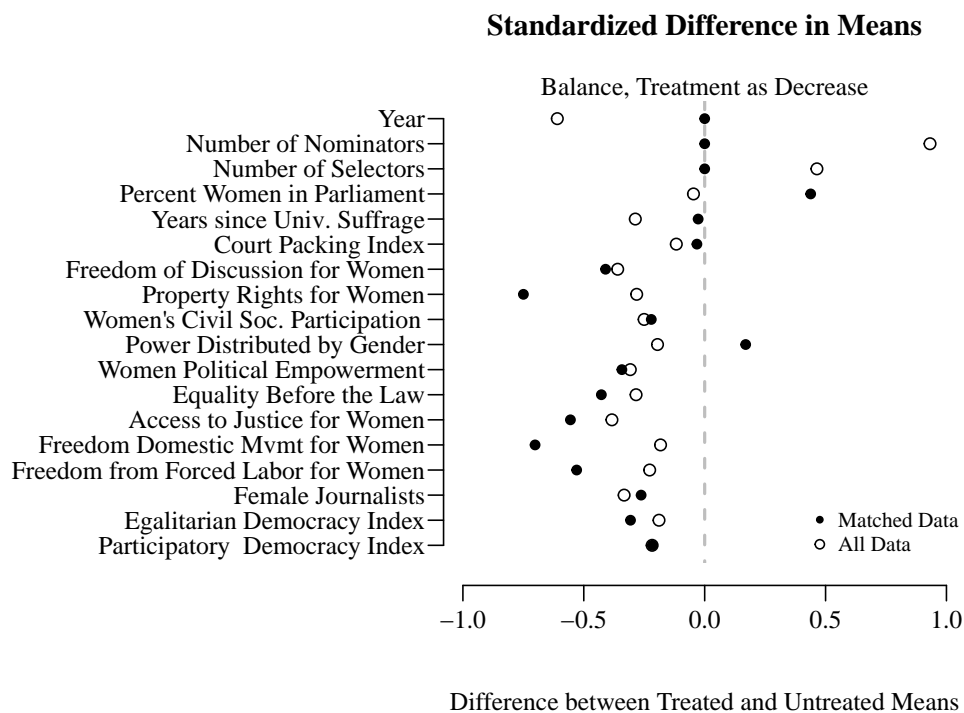


Figure A1: This figure displays the standardized difference of means between treated and control units for both the full data set and the matched data set. Here, treatment is defined as a decrease in the number of actors tasked with selecting justices. Units were exact matched on pre-change institutions and year, and then propensity score matched on the other variables listed here. Note: since we match treated units to control units on their pre-treatment institutions, the Number of Nominators and Number of Selectors for treated units refer to their pre-treatment institutions.

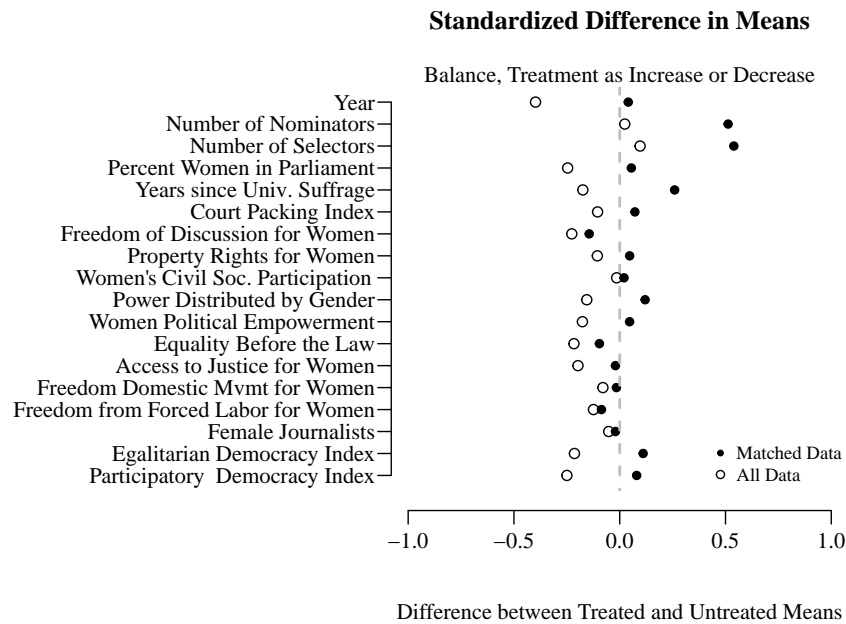


Figure A2: *This figure displays the standardized difference of means between treated and control units for both the full data set and the matched data set. Here, treatment is defined as either an increase or decrease in the number of actors involved in selecting justices. Treated units were exacted matched to control units by year and type of constitutional event (a new constitution, an amendment, or an interim constitution) and then propensity score matched on the other matching variables listed here.*

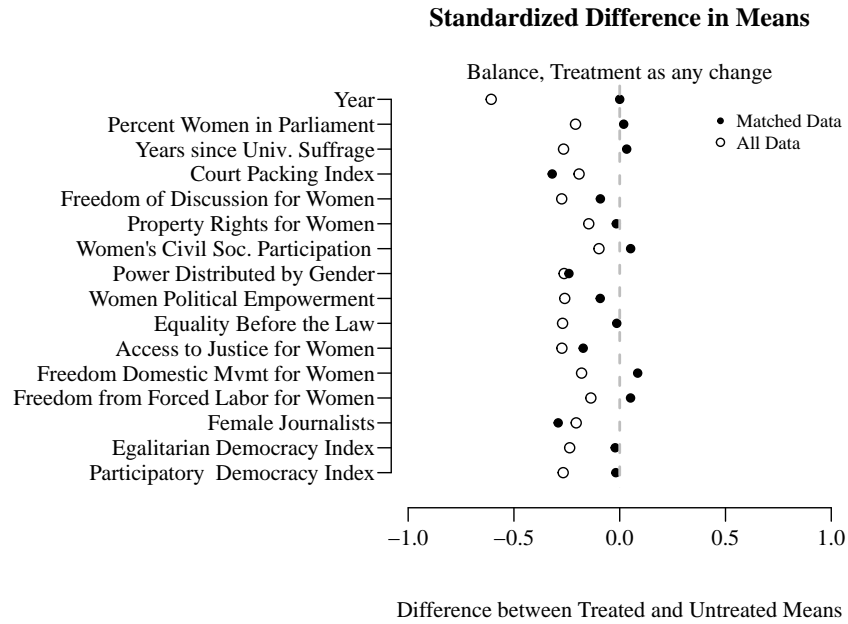


Figure A3: *This figure displays the standardized difference of means between treated and control units for both the full data set and the matched data set. Here, treatment is defined as any change in the selection process. Treated units were exacted matched to control units by year and type of constitutional event (a new constitution, an amendment, or an interim constitution) and then propensity score matched on the other variables listed here.*

Examples of Constitutional Changes

Country Year	Type of change	Summary of Change
Albania 1976	Increase in Actors	From Assembly elects to President appoints and Assembly approves
Central African Republic 1994	Increase in Actors	From the Assembly and President each choose justices to the President of the Assembly chooses three, the President of the Republic chooses three justices and three justices are elected by peers.
Chile 1980	Increase in Actors	From the Supreme Court nominates and President selects to four pathways: The president appoints one, the National Security Council elects two, the Senate elects one, and the Supreme court elects three
Ecuador 1983	Increase in Actors	From House appoints to a more elaborate process in which Congress appoints three members and then five different institutional actors send short lists to Congress and Congress selects one or two justices from each list.
Benin 1970	Decrease in Actors	From President of the Supreme Courts proposes and the President appoints to the Presidential Council Appoints
Burundi 1992	Decrease in Actors	From the Minister proposes and King appoints to the President appoints
Ecuador 1978	Any Change	From congress appoints to House of Representatives appoints
Estonia 1992	Any Change	from the State Court proposes and President appoints to the Chairman of the National Court proposes and the Riigikogu (Parliament) appoints
Fiji 1990	Any Change	From Governor General selects justices to President selects
Ireland 1979	Any Change	From the Executive Council advises and the Representative of the Crown appoints to the President appoints justices

Table A1: Example Institutional Changes. *This table lists a few examples of institutional changes to peak court selection method.*

Robustness

For robustness, we now report the results of analyses in which treatment is conceptualized slightly differently. Figure A4 shows results where the treatment is an increase in the number of nominators, for both the full sample and the sample with moderate pressure for diversification. Figure A5 shows the results for an increase in the number of selectors, again for the full sample and for moderate pressure. Notably, the nominator result is statistically significant, but barely. Yet again, we see the same pattern of results in this section. We see some evidence for both of the central hypotheses of existing models, but observing both effects is simply inconsistent with either model.

The Conditional Effect of Prior Institutions

The models we develop reveal that the effect of increasing group size depends on the size of the group prior to the change. Figure A6 reveals a second important result. The figure shows changes in the probability of appointing a woman associated with a one-appointer

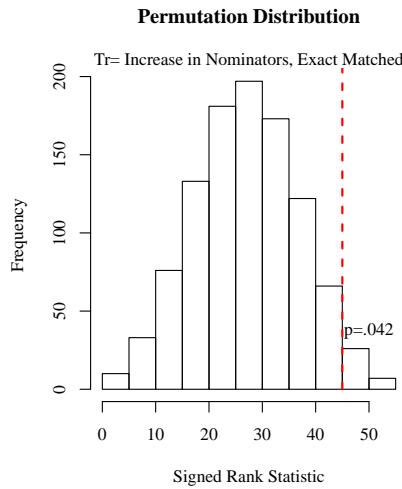


Figure A4: Increase in the Number of Nominators. *The treatment here is defined as an increase in the number of nominators (10 matched pairs). Treated units are exact matched on year and pre-change institutions and then propensity score matched on the same variables as previous analyses. The plot shows the permutation distribution for the signed-rank statistic.*

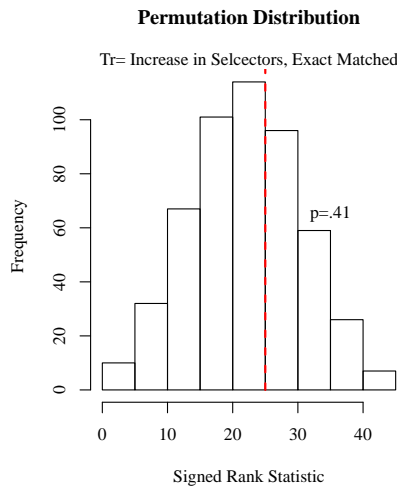


Figure A5: Increase in the Number of Selectors. *The treatment here is defined as an increase in the number of selectors. Shows permutation distributions for the signed-rank statistic associated with the full sample (9 pairs).*

increase in the process, given the number of appointers prior to the change. The left panel shows these effects for the independent choice model; the right panel shows the same effects for the inter-dependent choices panel. The key point is that while changes in the effects of an increase in each model are monotonic, they are decreasing. The biggest effects are for changes in very small appointment groups. Considering the left panel, the figure suggests that the change in the probability of success is nearly 0.25 when a one appointer process is changed to a two appointer process. This effect drops all the way to 0.10 when we consider the effect of changing from a two appointer process to a three appointer process. This heterogeneity will guide our empirical approach.

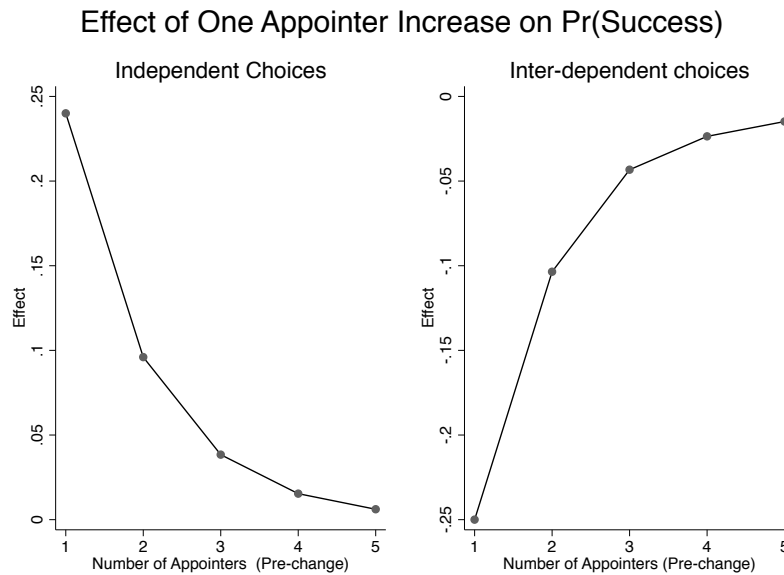


Figure A6: Shows the change in the probability of at least one female judge being appointed associated with a single appointer increase, for different numbers of appointers prior to the change. Specifically, then we consider effects associated with one appointer increases using 1, . . . , 5 as the baseline number of appointers. The left panel shows results for the independent appointments model. The right panel shows results for the interdependent appointments model.

An Alternative Institutional Disruption Mechanism

We also considered an alternative institutional disruption mechanism. It is possible that either coordination failures or overly narrow searches for candidates – the two institutional problems described previously – prevent diversification in different states.¹ Constitutional

¹The problems might also manifest simultaneously but where one problem is perceived to be more serious than the other.

reformers in particular places surely might recognize this and seek to solve the salient problem they perceive via institutional reform. That is, reformers in states where coordination problems plague judicial selection should choose reforms that increase accountability, and reformers in states in which judicial candidates are recruited through narrow and homogeneous networks should increase the number of actors tasked with nominating and selecting justices. Describing the under-representation of women in the judiciary of the United Kingdom, Kenney (2008) writes “Perhaps the simplest answer to the question of why do so few women hold high judicial office is the restrictive pool from which the Lord Chancellor has chosen judges.” Relatedly, Hoekstra (2010) writes “This lack of diversity among high courts in England prompted the creation of the Advisory Panel on Judicial Diversity, charged with investigating the barriers to women and minorities in the judiciary and proposing remedies and recommendations.” If strategic institutional reform designed to address shortcomings is the mechanism through which institutional disruption promotes diversity on the bench, then we should observe an increase in diversity associated with either an increase or a decrease in the number of actors involved in the appointments process. Importantly, this mechanism would not imply that we should observe an increase in diversity when any part of the appointments process is changed. Numbers matter; it is just that a change in either direction is likely to result in diversification.

Table A2: Comparing the Sample to the Population

	Global			In-Sample			Out-Sample			OECD		
	Mean	Min	Max	Mean	Min	Max	Mean	Min	Max	Mean	Min	Max
% Women, Parliament	10.564	0	56.3	8.394	0	33.2	10.6	0	56.3	15.425	0	47.3
Years since Universal Suffrage	42.105	0	117	36.67	7	76	42.194	0	117	58.623	0	117
Court Packing Index	-0.010	-4.208	2.264	-0.294	-2.883	1.187	-0.006	-4.208	2.264	0.859	-2.331	2.102
Freedom of Discussion for Women	0.609	-3.548	3.868	0.232	-2.504	3.868	0.615	-3.548	3.868	2.414	-2.063	3.868
Property Rights for Women	0.901	-3.736	3	0.807	-3.539	2.389	0.903	-3.736	3	2.235	-0.830	3
Participatory Democracy Index	0.304	0.015	0.834	0.221	0.032	0.705	0.306	0.015	0.834	0.619	0.041	0.834
Women Political Empowerment	0.603	0.091	0.969	0.551	0.189	0.875	0.604	0.091	0.969	0.83	0.238	0.969
Power distributed by Gender	0.103	-2.982	4.197	-0.273	-2.654	1.558	0.11	-2.982	4.197	1.285	-2.220	4.197
Access to Justice for Women	0.586	-3.835	3.549	0.214	-1.921	2.621	0.592	-3.835	3.549	2.612	-1.103	3.549
Freedom from Forced Labor for Wmn	0.892	-3.936	2.823	0.741	-1.978	2.415	0.894	-3.936	2.823	1.943	-0.821	2.823
Freedom of Domestic Mvmt for Wmn	1.052	-4.524	3.53	0.937	-3.598	3.53	1.054	-4.524	3.53	2.239	-0.449	3.53
Percent Female Journalists	29.756	2.4	66.714	26.866	3.25	57.5	29.804	2.4	66.714	33.6	9.833	53.875
Women's Civil Society Participation	0.803	-3.061	3.242	0.745	-2.100	3.215	0.804	-3.061	3.242	1.787	-1.072	3.242
Egalitarian Democracy Index	0.377	0.022	0.922	0.288	0.037	0.838	0.378	0.022	0.922	0.778	0.115	0.922
Equality of Law	0.608	0.0005	0.992	0.536	0.006	0.976	0.609	0.0005	0.992	0.939	0.198	0.992
Pop % with Media Access	52.877	0.5	99	46.687	8.5	97	52.969	0.5	99	87.247	11.4	99
Gov.Censorship effort, Media	0.231	-3.036	3.738	-0.191	-2.425	3.316	0.237	-3.036	3.738	2.369	-2.391	3.738
Print/Broadcast Media Critical	0.287	-3.256	3.341	-0.020	-3.256	3.024	0.291	-3.256	3.341	2.234	-3.118	3.341
GDP Per Capita	7,080	227	140,641	4,361	502	31,033	7,128	227	140,641	18,337	2,729	37,431
n	6,434			97			6,341			1,032		

To compare the units included in our study (n=97, years 1970-2000) to the full data set (all countries for which we have some data for the years 1970-2010, n=6434) this table reports the mean, minimum, and maximum values for the matching variables (and other variables) for the full data set, the units included in our study, and the units not included in our study, and OECD countries. The 97 units in the in-sample mean are treated and control units for the three analyses: treatment as an increase in actors; treatment as a decrease in actors; treatment as an increase or decrease in actors. The Percent Women in Parliament variable comes from Paxton, Green and Hughes (2008) and WorldBank (N.d.). The Timing of Universal Suffrage variable is from Paxton, Green and Hughes (2008). The variables from Court Packing Index through Equality Before the Law and Individual Liberty come from the Varieties of Democracy Project (Coppedge and Ziblatt 2016). For the V-Dem variables and the Percent Women in Parliament variable some missing values were interpolated, using the ipolate function in Stata.

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