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Where are the Women? Legal Traditions and Descriptive Representation on the European Court of Justice

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Where are the women? Legal traditions and descriptive representation on the European Court of Justice

Rebecca Gill and Christian Jensen

January 2019

Key Implications

- Gender
- Representation
- Bias
- European Court of Justice
- Judicial Selection

Background

Why are there so few women on the European Union's highest court, the European Court of Justice (ECJ)? Answering this question is fundamental to understanding how justices to the ECJ are appointed, how they represent Europeans in general and women in particular. In our article, recently published in the journal *Politics, Groups and Identities*, we find that pre-nomination career experience is associated with gender imbalances in the ECJ. In particular, we find that ECJ judges from member states where there is a tradition of judicial engagement with policy making judicial nominees with past experiences working in government ministries are less likely to be women. In contrast, ECJ judges from those member states where judicial review occurs outside the usual judicial structure, ECJ judges with experience working in government ministries are more likely to be women.

Focus of Study

We show that the combination of either decentralized judicial review and the absence of policymaking experience or centralized judicial review and the presence of policymaking experience are necessary conditions for women to be nominated to the ECJ.

Furthermore, women who do not have those combinations of career experiences and institutional environments are almost certainly not going to be nominated to the ECJ. This interaction of career path characteristics and institutional structures predicts more of the variation in female representation on the ECJ than do other national characteristics such as party gender quotas or nominating governments having ideological positions on the left. Our findings underscore the importance of understanding implicit gender biases in the context of the institutional environments in which women are operating.

Research Design

We compiled a dataset of all ECJ appointments from 1953 to 2015. This constitutes the universe of all ECJ nominees because no member state's nominee has ever been blocked by the other member states. The fact that no member state nominee has ever been blocked by the other member states means that the effective constraints are all at the national level. To test our arguments about the interaction between implicit bias and institutional context,

we added data about the ECJ appointees' career paths and the legal traditions of their home member states. The data on career paths was taken from the ECJ judges' biographical profiles on the EU's Curia website. The data on legal/judicial traditions relied heavily on research published in Comella (2004). We supplemented that with an examination of the historical role and process of constitutional review in the various member states from several other sources (de Poorter 2013; Garlicki 2007; Ginsburg 2003; Laffranque 2005). We applied logistic regression analysis to our data with robust standard errors clustered by country to account for systematic non-independence of these observations.

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Results and Summary

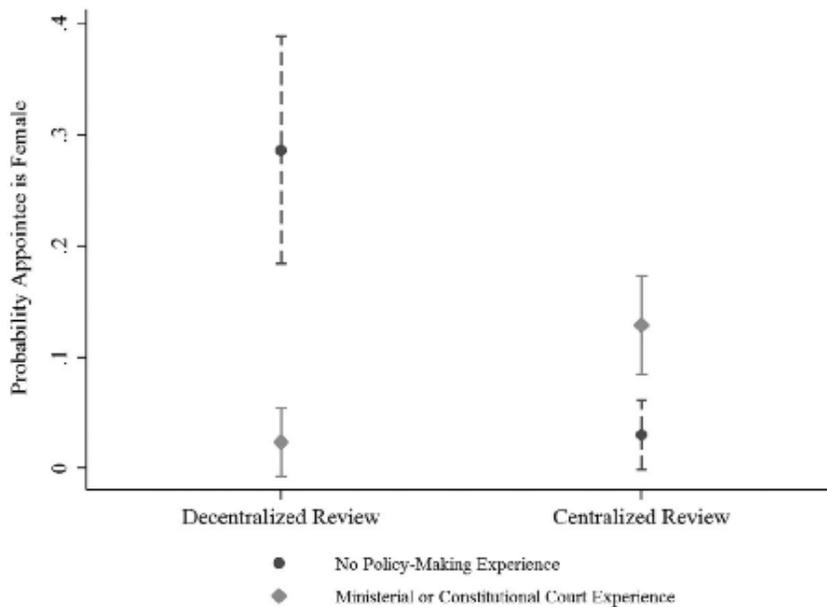


FIGURE 1: Predicted probability of female ECJ appointee experience and review system (taken from Gill and Jensen (2018)).

The results of our analysis are displayed graphically in the figure 1 below (taken from Gill and Jensen 2018). The figure shows that the role of policy making experience has opposite effects depending on whether judicial review is centralized or decentralized. Under decentralized review, a lack of policy making experience is all but required for a women to be nominated to the ECJ. Under centralized review, the opposite is the case. In the centralized review member states policy making experience seems to be a significant advantage, if not requirement, for women to be nominated to the ECJ. Our findings suggest, without definitively proving, that one reason there are so few women on the ECJ is that while career path requirements vary from one member state to another, the effect seems to generally disfavor women. This is a similar finding to research that has shown that when hiring search committees that impose cross cutting qualification requirements tend to produce candidate pools with less gender balance.

Learn More About This Brief

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The Study:

R. D., & Jensen C. (2018) Where are the women? Legal Traditions and descriptive representation on the European Court of Justice. *Politics, Groups, and Identities*, 1-21. R. D., & Jensen C. (2018) Where are the women? Legal Traditions and descriptive representation on the European Court of Justice.

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