Diffusion of Innovation or State Political Culture? Explaining the

First Women State Supreme Court Justices

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Abstract

Do state political cultures or other state or regional variables determine how early a state

selected its first woman on the state supreme court, whether it ever had a majority of

women justices, whether it had a woman chief justice or multiple chief justices, and the

number of women in judicial office? Women and politics scholars have declared state

political culture to be salient and that women cannot win in the South (or succeed at

lower rates), based on their studies of state legislatures and governorships. Yet if a state

political culture is hostile to women serving in elective office, why are 8 out of 13 current

chief justices in Southern states women, given that most state court judges are elected?

This paper examines diffusion of innovation and state political culture explanations for

variations in women's state judicial success to rigorous statistical inquiry. Using an

original dataset of women on state courts and serving as chief justice, we explore

multiple theoretical explanations on the representation of women on state supreme courts.

Introduction

In 1923, Florence Allen became the first woman in the United States to serve as a judge on a state supreme court, joining the Ohio Supreme Court. It would be 38 years later before Ann Alpern joined the Pennsylvania Supreme Court in 1961. Not until 2002, would the first woman join the South Dakota Supreme Court, the last all-male state supreme court. Four women joined their state supreme courts in the 1960s, twelve in the 1970s, 18 in the 1980s, 12 more in the 1990s. Some appointments, such as Rosalie Wahl's in Minnesota were high drama. Others, such as Linda Kinney Neuman, who joined the Iowa Supreme Court in 1986, appointed by a Republican Governor, generated almost no notice. California voters turned the first woman appointed chief justice out of office in a retention election.

Why did it take 79 years for this innovative idea—that a woman should serve on the state supreme court, or conversely, that courts should no longer be all-male—to diffuse from Ohio to South Dakota? Is that norm established? Idaho, Indiana, and Iowa have all had a woman on their state supreme courts, but now have none. How did that idea travel? Or did it? Or did each state have to think it up all by itself? Does the appointment or election of a woman in one state make it easier for women in others? Or is each case fought on its own as if the other state never existed? Do activists in one state learn or gain inspiration from others? As in the case of all diffusion, we must ask to what extent each case is idiosyncratic or patterned. To what extent do national and international forces cause changes and to what extend do local demographic factors or demands from activists produce the results? Eyeballing the yearly variation in the percentages of women judges overall over three decades shows wild variation among

which state has the most women judges and which state the fewest and shows little support for regional differences. Similar examination of the year of the first woman state Supreme Court justices shows no pattern—certainly no regional pattern that suggests women cannot win in the South. This paper subjects these observations to rigorous statistical analysis.

Two factors make treating the appointment of the first woman on a state supreme court a policy for diffusion analysis somewhat strained. First, states choose judges using different methods of selection. Some states elect judges in partisan election, others elect judges in non-partisan elections,[1] others appoint judges and have them stand for retention election with no opponent, still others use the federal system with lifetime appointment with no retention election.[2] Moreover, one can ask whether the selection or election of a particular woman at a particular time a policy of placing a woman on a court constitutes a policy or whether the choice of a governor or electorate simply happened to be a woman. If we choose to call it a policy, the policy of having a woman on the state supreme court in some cases was put in place by an electorate, in other cases by a governor, and in other cases by a nominating commission. This variation in and of itself is not a problem. Other policies whose diffusion has been studied have been formulated by different means—a referendum can create a state lottery as can legislation or an executive order. Each may require very different kinds of political resources. But second, we might ask to what extent breaking the gender barrier was a conscious policy choice at all and that is not something we can ascertain merely by noting the presence of the first woman.

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[1] Minnesota's system is somewhat unusual in that judges have no partisan designation but the ballots do designate whether they are incumbents or not.
[2] http://www.ajs.org/selection/sel_state-select-map.asp

Both in appointments and elections the importance of gender will vary from case to case. In the case of Florence Allen, the presence of a woman on the bench may have been a visible accomplishment of a social movement, the suffrage movement, even if it was waning. Appointments can be symbols but they are not always such. Governors and presidents may try to signal their support for key constituencies by making visible appointments. Ronald Reagan, for example, facing a widening gender gap in the electorate, promised to appoint a woman to the U.S. Supreme Court in 1979. Moreover, maverick executives seeking attention might take particular pleasure in bucking a party machine or being an iconoclast in general, and women may serve those instrumental goals. Governors Rudy Perpich (Rosalie Wahl), Jerry Brown (Rose Bird), and President Carter were such men. But in other cases, gender may not have been a significant factor.

Only by examining the events state by state could one ascertain whether the appointer promised first to appoint a woman before designating who the woman would be, whether the woman argued in her campaign materials that voters should vote for her because the court currently had no women members (for example in Texas, Rose Spector, the first woman elected to the Texas Supreme Court, circulated materials with photos of the all-male court saying, "what's wrong with this picture?"), and whether challengers made gender-based appeals in campaigns. This paper does not assess to what extent gender was salient in a campaign but instead uses sex as a variable and merely notes the selection of the first woman supreme court justice and examines to what extent diffusion or state political culture explains variation.

Agenda Setting and Diffusion

What makes an idea's time come, as John Kingdon would say (1995)? Is it competition among candidates, as Ronald Reagan tried to counter the gender gap enjoyed by President Carter? Parties? Governors? Even states and countries compete with one another. Alternatively, Malcolm Gladwell offers a contagion model to suggest a tipping point. Ideas, like diseases, have a taking off point. At some point everyone has to have a fax machine or wear hush puppies. The term tipping point came from real estate. A neighborhood could absorb a certain number of non-white families but at a particular point, whites fled and the neighborhood tipped to all or nearly all non-black. In public health, once a disease reaches a certain threshold, it is almost impossible to contain. Whether one calls it tipping or diffusion, the pattern seems to follow a bell curve with innovators, followers, and laggards. Whether you are studying a disease, fashion, or innovation, it makes sense that the characteristics of those who come first are different from those who follow the innovators from those who are the very last. So telling the story of Florence Allen in Ohio might be very different from telling the story of Justice Judith Meierhenry in South Dakota. The explanatory factors we identify as important in Ohio might be very different from those we identify as important for the middle clump of states and again very different from what finally compels the holdouts or late adopters.

Internal determinants

Different theories of diffusion of innovation posit different causes of the order of innovation. Virginia Gray synthesizes the state literature and offers the trenchant observation that most accounts explore one causal mechanism without ruling out alternative explanations (1994). She identifies a series of internal determinants relevant

in the literature. Elazar's categories of states identifies some political cultures (moralistic rather than traditional) as supportive of innovation (1984). They have professionalized bureaucracies, paid legislators with capable staff, well-educated populations, and economic resources. (Although in some cases, such as state lotteries, economic downturns may make states more likely to adopt policies [Berry and Berry 1990].) Electoral competition may foster policy diffusion. Structural factors, such as easy thresholds for referenda, facilitate experimentation. Religion can be a factor—high levels of fundamentalists may oppose gambling, high numbers of Catholics make divorce reform (Jacob 1988) or abortion liberalization more difficult (Ferree et al. 2002).

We know from the women and politics literature that women are more likely to be elected from urban constituencies and from blue states rather than red states, although strange exceptions exist. Massachusetts has not elected a woman to Congress and, until very recently, Minnesota had elected only one in the 1950s. Does the same pattern hold for the judiciary as well? Cook found that to be somewhat true. Utilizing Elazar's typology of subcultures to divide states into three groups: traditional, individualist, and moralist (as modified by Monroe and Johnson), Cook finds some explanatory power for these differences, finding "the distribution of the women judges among the states fits the prediction based on political culture" (1980b, 53). She finds, however, that the differences appear less important in explaining variation among the general jurisdiction trial courts. She concludes that the barriers of party organization in the individualistic culture states and sex-role stereotyping in the traditional culture produce similar dampening effects. Applying the model to the number of women judges in cities, she

finds more judges in cities scoring high on the moralistic measure but that the typology cannot explain the variation. Is that true for the pattern of state supreme courts?

Second, we need to see whether the timing of women on the state supreme court is a reflection of the percentage of women in the legal profession overall. Cook did a pool analysis inquiring how many women we should expect serving on the bench given the pool of eligibles assuming no discrimination. She found little change between 1920 and 1970: "For women lawyers with ambition for the bench, the suffrage victory in 1920 achieved a plateau of symbolic and token sex integration in public roles, a plateau on which women remained into the 1970s" (1978, 90). Cook found that states varied as to whether 1 or 5% of lawyers were women and 1 to 10% of trial court judges were women. She finds that as a solitary token woman moved up the hierarchy she would not necessarily be replaced by another woman. She hypothesized that as the number of eligible women increased, we would expect the number of women judges to increase. Cook used the number of women law graduates, the number serving in the state attorney general's office, and the size of state courts as variables to predict the number of women serving on state courts. The first two variables explained 81% of the variation in 1977. By 1984, Cook found a disparity between the numbers of expected women judges based on the number of women lawyers of 50% and found the transition from non-attorney to attorney judges to have reduced the proportion of women serving (1984b, 199). As soon as women start entering the legal profession in more than token numbers, their low numbers in the legal profession could no longer explain their exclusion from judicial office. Economists call the number unexplained by all variables—the residual variable— discrimination. Cook also found that the higher women's incomes in a state, the greater

number of women judges, and the lower the birthrate the greater the number of women judges. She also found a significant but weak relationship between the population of a state's answer to the Gallup Poll question whether you would vote for a woman for president (1978, 98).[3] We need to look closely to see if the small differences in the variation of women's participation in the legal profession post-1977 can help explain variation in the timing of the first women on state supreme courts as well as if the other demographic variables Cook explored explain the timing of the women supreme court justices. At the moment, we are having difficulty extracting that yearly data from the American Bar Association.

Third, given that South Dakota was last, is it true that women face greater barriers to office in the South? Simply eyeballing the data reveals that the last six states to place a woman on their state supreme courts were not in the South (South Dakota, New Hampshire, Wyoming, Nebraska, Alaska, Indiana). We know women have more difficulty being elected to legislative positions in the South and in rural areas more generally. Fourth, is the ordering reflective of the overall rating of the Institute for Women's Policy Research state report card rating of feminism, or is it more idiosyncratic, not a reflection of women's standing overall? Fifth, Cook identifies an important structural variable. She finds that the larger the size of the court, whether it be superior and municipal courts as a whole, federal appellate courts, or state supreme courts, the greater the likelihood of a woman member, and she identifies the exact cutting point for the creation of woman's seat (1984a, 580). (Size may thus explain in part why so many women serve on the Ninth Circuit Court of Appeals.) Cook's finding is

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[3] Interestingly, it was only recently that the wording of this question was changed to delete the phrase "if she were *otherwise* qualified."

consistent with the women and politics literature which suggests that women do better in multimember rather than single member constituencies. Sorting by size of court shows that, although South Dakota was a smaller court, many of the smaller courts were earlier policy diffusers rather than later. While this may be true of courts over all, it is unlikely to take us very far by way of explanation of state supreme courts which vary only from 5 to 9 members. Lastly, Cook documented the interval between a state's admission of women to the bar and appointment of women to the state supreme court (104 years for Iowa who admitted the first woman to the bar, longest: Missouri 110 years; average, 50) (1984a) and now that the process is complete, we should we should reexamine those intervals.

Perhaps the most obvious structural issue for investigation is method of selection. Do women do better under merit systems or elections? Partisan or non-partisan elections? Martin's surveys of Carter's women appointees found that 43% of the women felt that they would not have been considered under the previous system rather than merit selection because they lacked the political influence and credentials (Martin 1982, 308). The adage "a judge is a lawyer who knew a senator" describes many systems of selection that place a premium on being known, arguably a requirement that constitutes disparate treatment sex discrimination. Closer comparison of different systems by social scientists, however, did not show that so-called merit selection systems produced more women judges—not because the requirement of being known to a senator or governor was not indirectly discriminatory but because nominating commissions can discriminate, too, unless they have women members, are trained to avoid discrimination and stereotyping, and make securing a gender diverse bench a priority. Githens found, for example, that

the Maryland nominating commission employed a gender double standard on its men and woman applicants. Commissioners saw women as uppity, seeking judicial positions above their station whereas they saw men as lacking in ambition by seeking judicial appointments when they should have aspired to more lucrative partnerships in large firms (Githens 1995). Electoral systems, too, can discriminate against women if gatekeepers keep women from partisan endorsements, if voters discriminate, or if women have difficulty raising money.

Alozie analyzed the effect of judicial selection system on the proportion of women, Hispanics, and blacks on state courts and found out that the most important predictive variable was percentage of lawyers (1990), citing evidence that nominating commissions tended to be composed exclusively of white men (Dunn 1981) and that women's recent entry into the legal profession could not explain their under representation (Tokarz 1986). Throughout the 1980s, Cook went back and forth about whether method of selection affected the number of women judges, initially finding appointment the more supportive method. By 1988, Cook argued that no one judicial selection system produces more women; instead, what matters is a commitment on the part of gatekeepers to considering women and jettisoning discriminatory criteria, such as large firm experience, and instead prioritizing, as President Carter and his judicial nominating commissions did, a commitment to equal justice under law.

Diffusion models that focus on agents of diffusion

Gray separates internal determinants from other diffusion models, but Theda Skocpol's research spans both of Gray's categories. Skocpolo's research on mother's pensions was a welcome addition to the diffusion of innovation literature because she not

only investigated a women and public policy issue—mother's pensions—but she investigated the political agency of women and, most interestingly, explored women's political efficacy at a time when political scientists often dismissed women as lacking political agency because they could not vote. Skocpol's work was innovative not merely in recognizing women's agency but in recognizing agency at all. Rather than seeing policy outcomes as the result of world polity, or demographic or economic variables, or even cultural byproducts of states (moralistic, or innovative), Skocpol documented the power of a social movement organization, the Mother's Union, and the effect of its publication, the *Delineator,* which urged readers to lobby for mother's pensions. Unlike much of the diffusion literature that Gray criticizes, Skocpol actually compares whether her variable—subscriptions to the *Delineator,* explains outcomes better than demographic variables.

Under her diffusion models, Gray focuses most heavily on regional models that look at contiguous states to understand policy diffusion. Lutz (1987) and Walker (1969) are just two examples of where states look to their closest neighbors for solutions to policy problems. Gray notes, however, that regional effects seem to be diminishing over time (235). More recent studies focus more on policy diffusion through national networks, not, as Skocpol did, by tracing a dispersed group of social movement activists, but by tracing the flow of policy proposals in professional networks. Three long studies use this approach.

In *Silent Revolution*, Herb Jacob seeks to explain the trajectory of policy diffusion in divorce reform. He argues that too often, policy stories focus on landmark cases rather than routine policy change that are "under the radar" (1988). Perhaps most important

was how activists framed the issue of divorce reform as a technical fix to a narrowly legal problem, rather than a sweeping social change. Prior to divorce reform, couples amicably seeking a dissolution of their marriages had to claim that one of the other spouse had inflicted cruelty upon them or committed adultery. Lawyers had to counsel such couples to lie in court, and judges pretended to believe them. Arguing such policies created contempt for the legal system and collusion of court officers in a lie, proponents of reform advocated for "no-fault" divorce. They worked behind the scenes to minimize objections of Catholic leaders, to attract little attention, and to work with legal insiders to present the issue as fixing a small problem. In Wisconsin, for example, when the issue became more framed as about women and feminism, passage of reform became more rocky and conflictual. Similarly, in New York, unlike California, the Catholic Church became more of an obstacle. In addition to the important framing point, Jacob reminds us that legislators are always looking for policies to enact. And the professional networks of lawyers that developed around the model legal code worked offstage to enact policy change that had enormous consequences. Yet most states reformed their law with very little conflict or debate. His case study compares the different state stories and reveals the national networks of policy activists behind the change. He provides a strong model for what I want to do in understanding women on state supreme courts. In addition to analyzing demographic variables and finding the best predictor, as Skocpol does, I still need to, as Jacob does, tell the story in each state.

In *Speak No Evil*, Jon Gould seeks to explain the diffusion on campus policies against hate speech (2005). Contrary to the talk-radio stereotype of liberal professors bent on political correctness to repress freedom, Gould reveals a national network of

policy administrators pushing for policies, despite their constitutional difficulties. Between two groups of activists, liberal professors who preferred more substantive action on campus racism and had ambivalence about the repressive potential of hate speech codes, and lower level administrators whose national organizations championed them as the latest thing every campus must have, were college presidents and boards of trustees who often found them useful. Gould explains how, even after it appeared that many codes were legally unenforceable, campus presidents refused to repeal them because they provided an important symbol of their commitment to action against racism. Of course the codes, rarely invoked and arguably unenforceable, were largely useless in practice. Gould uses the hate speech diffusion case to further different arguments about law, but for my purposes, we can draw a couple of lessons.

First, policies, whether they be campus hate speech codes, national laws prohibiting genital cutting, or placing women on state supreme courts can be symbols. Those who focus on symbolic politics invite us to look beyond the instrumental goals of interest groups for answers to the question why activists care deeply about certain issues that seem to offer little material redistribution (Bandes forthcoming 2007). Gussfield (1986) and Edelman (1964), for example, urge us to examine status politics and the role of symbols (Burnier 1994). Like most scholars of symbolic politics (Klatch [1988] and Stolz [2007] being a notable exceptions), Gussfield and Edelmen fail to analyze gender, yet we can still apply their conceptual frameworks to this case. In *The Symbolic Use of Politics*, Edelman observes that politicians may generate a sense of feeling of threat and offer legislation and policies as reassurance that the government has dealt with the threat as a way of generating quiescence without actually changing material conditions. In

later works (1971, 1988), Edelman makes clearer that symbolic politics is more than the process by which politicians trick the masses into thinking the government has solved their problems. In fact, much as they may try, politicians cannot effectively control the symbolic meanings of political events which are fluid and multiple. Sapiro and Soss document that the meaning of a singular critical event such as the Hill-Thomas hearings may be very different for different groups. And Klatch argues that symbols are essential to political mobilization, as badges of identity, and as tools to maintain feelings of community (Klatch 1988, 140).

The symbolic meaning of judicial appointments is evident in the rare glimpse into the deliberative process (Dean 2001) and show the mixture of policy and symbolic goals. As Nixon considered appointing Mildred Lille to the U.S. Supreme Court, his concern with appealing to women voters was paramount, coupled with his desire to "stick it to the Senate," who had rejected two of his nominees, and torment Chief Justice Burger, who opposed having a woman on the Court. Nixon was determined to appoint what he called strict constructionists to the court who would further his policy goal of reversing the Warren Court's rulings on civil rights and criminal justice (Scherer 2005), but his discussion of a woman on the Court is not influenced either by such broad constitutional goals or even by gender specific policy goals—narrowing the interpretation of the equal protection clause or narrowing the right to privacy—but rather what it would signal to voters, women voters in particular, about his respect for women. Ronald Reagan, too, sought electoral advantage when faced with an emerging gender gap among voters and wanted to counter the record of President Carter in appointing women to public office, including the judiciary. He outmaneuvered Carter by promising to appoint a woman to

the Supreme Court if elected, something Carter would not do (Carter 2002, Martin 2004).

The first President Bush appointed nearly all of his women appointees to the bench after

he had nominated Clarence Thomas, seemingly to show women he was not indifferent to

their concerns. Laura Flanders's analysis of the second President Bush's women

appointments, *BushWomen,* employs an even more cynical gender analysis consistent

with the narrow, negative sense of symbolic politics as obfuscation. She argues Bush

strategically appointed pro-choice and moderate women to paralyze liberals insulating the

appointees from media criticism on their other more conservative policies on other issues,

such as environmental policy in the case of Christine Todd Whitman.

Flanders makes the important point that the appointment of women may be a

cynical attempt to conceal the absence of feminist policies. Yet it would be a mistake to

conclude that such applications exhaust the importance of symbolic politics. Gusfield

looks beyond the disjuncture between rhetoric and reality and examines the meaning

social movement actors themselves attach to events. Unless they were stupid, we would

expect social movement actors to be the harshest critics of symbolic politics in the

negative sense, decrying the appointment of women as mere tokenism and urging

supporters not to be fooled. Gusfield argues, however, that the advocates of temperance

valued the symbolic statement of a societal norm against drinking even if they recognized

the policy would not only be imperfectly implemented, but, in some cases, the

government would not even try. Gusfield argues that a series of threats to the status of

their social group: rural, Protestant, abstemious and hard working posed by both

immigrants and elites motivated temperance advocates. Gusfield recognizes that

prohibition was more than pretending to offer reassurance; the threat has a material

dimension—status is symbolic as well as material (Lang 1964, 768; Levine 2000; Zald 1964). To supporters, prohibition meant a reaffirmation of their groups' superior social status even if it did not stop drinking. Gusfield's approach offers important insights into the current debate over gay marriage, for example. GLBT activists want domestic partnership benefits, access to loved ones in hospitals, and the ability to bring non-citizen partners into the country to be sure, but they also want status: they want societal affirmation of their belongingness and the sanctity of their relationships, still regarded by some as immoral if not criminal.

The second important point coming out of Gould's work is that those who push for a policy, in his case lower-level administrators, may lose control over the policy. A governor or president may promise feminists he will appoint a woman, but that does not necessarily mean women's groups will have a strong say in which woman. Tracing the symbolic meaning of a woman on a state supreme court is not something that can be done with a regression analysis of demographic variables. It is an open question whether any particular appointment was concealing inactivity, as Flanders fears, or a sign of the strength of a social movement, as in the case of Justice Roberts, more in Gusfield's sense (Toobin 2007).

In *Making Hate a Crime*, Valerie Jenness and Ryken Grattet look at hate speech codes at the state and federal level (2001). Like Boyle and Preeves, an important characteristic they look for is the similarity of the actual wording of the laws as well as the timing sequence. Like Gould, Jenness and Grattet recognize the important symbolic effect of the law and its existence in a domain governed by the Supreme Court's interpretation of what the constitution will allow. Jenness and Grattet also draw heavily

on framing to understand their policy domain and to see it as a construction, reminding us how much the diffusion and agenda setting literatures should (but often do not) overlap. They are sociologists who come out of a social problems subfield, but draw heavily on social movement and new institutionalist scholarship. Jenness and Grattet remind us that state policies are heavily influenced by national policy making and vice versa—a reminder to not neglect what is happening in the federal judiciary when focusing on any particular state's story. Jenness and Grattet trace a social movement trajectory of convergence of the civil rights movement, the women's movement, the gay and lesbian movement, and the crime victim movement to become the anti-hate-crime movement. As Jenness and Grattet, unlike Jacob, and even Gould, see the legislation as a clear product of a social movement, much as Gusfield credits the temperance movement with prohibition. Once again, only by a state-by-state qualitative analysis could one ascertain however, whether each state's addition of a woman on the state supreme court is more akin to Jacob's case—an under-the-radar accomplishment—or an Edelman/Flanders trick of obfuscation, or an accomplishment of a mobilized social movement. In any case, we see no obvious contenders akin to the Mother's Union. Most groups seeking to increase women's political participation ignore judicial office. Nor have organizations of women judges or lawyers or gender bias taskforces targeted increasing the number of women in the judiciary a priority. Without clear agents of diffusion, we are back to some feminist version of world polity, modernization, or an idea whose time has come or state demographic or culture factors. Agents may exist within a state, but little evidence exists for national vehicles of diffusion.

Political Process Model

Gray distinguishes between what she (drawing on Mohr) calls variance studies, where a set of independent variables is used to explain the rate of adoption, and process studies where a time-ordered sequence of events is analyzed to determine the final cause of the adoption. She puts Kingdon, Polsby, and Heclo into this category. As she says, "all of these works are process studies in Mohr's sense: they look at discrete events in a time-ordered sequence and search for a final cause. Because the events are unique, they cannot be measured quantitatively and explained variance cannot be computed" (232).

Banaszak, in *Why Movements Succeed or Fail*, compares passage of women's suffrage in the United States and asks why it took so much longer for women to get the vote in Switzerland (1996). She identifies some important structural variables, such as extreme local autonomy, in the case of Switzerland, but also identifies differences between the two social movements—in the Swiss case, divided by language and politics moreso than in the U.S.

Data and Methods

We identified the first woman on each state supreme courts using court websites, newspaper article, and *the American Bench*. Kathleen Bratton generously shared her data set with us on state court judges. We draw on data from the National Center for State Courts and collected for the National Association of Women Judges. In our table, we identify the source of our information.

In testing our theory of the diffusion of women on Supreme Courts across the states, we have four primary goals. First, we predict the first occurrence of a female Justice on all State Supreme Courts. Second, we examine the gender composition of

courts over time. Third, we predict when states will have their first female Chief Justice. Finally, we examine influences on subsequent female Chief Justices. We examine a period from 1970 to 2011 for each of our analyses[4]. The dependent variables in these models, as well as the strategy for estimating the outcomes, vary for each of our four analyses. Outlined below is the construction of each dependent variable, as well as the modeling technique to appropriately capture these effects, followed by the independent variables used as predictors in each model.

To construct the dependent variable in the model predicting the first female Justice, we code each state as having a "0" in years prior to the first woman appearing on the court and a "1" for the year in which a woman first sits on the bench. As we are only predicting the first female justice in each state, once a state has a female on the highest court, the state is removed from the analysis. The structure of our data and the dependent variable allow us to utilize a Cox Proportional Hazard Model (Cox 1972) that estimates the "risk" each state is at for their first female justice.

We are also interested in modeling the gender composition of State Supreme Courts. In this type of situation, the composition of the court may not be independent events. More specifically, the previous and current make up of a court could potentially determine the future make up of a court and influence the gender of an appointment or election result. For example, if there are no women on a State Supreme Court, an individual or commission with appointment power may be inclined to place a woman on the court due to the lack of gender diversity. Likewise, in states where women have

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[4] States with female judges before 1970, they are not included in these analyses. This excludes Ohio, Hawaii, Arizona, Pennsylvania and North Carolina from the model predicting the first female justice and Arizona from the model predicting the first female Chief Justice as these states had occurrences of women on the bench preceding 1970.

reached a majority status, there may be motivation to appoint a male Justice. With the interdependence in the membership of the judiciary, we need a model that can account for this type of violation of the I.I.D assumption (independent and identically distributed). Moreover, the number of seats on each state's highest court varies between 5 and 9 justices. With the unequal number of seats across states, we would violate the assumption of uniform variance. If we did not consider this in the model, heteroskedasticitiy will be present and cause inefficient estimates of our standard errors.

  With the violation of the I.I.D. assumption, as well as systematic variation in the data, a traditional count model would not be appropriate to estimate the composition of the court. We therefore utilize weighted least-squares estimates in grouped logistic regression. The dependent variable is the proportion of female judges in each state-year from 1970-2008 (female judges divided by the total judges on the Court). This estimation technique is superior to that of a weighted least-squares OLS model as the proportion of female judges is bounded between 0 and 1.

  Moving on to the examination of female Chief Justices, we also use a Cox Proportional Hazard Model to predict the spread of female Chief Justices in the states. In this analysis, 35 states have had a female Chief Justice. These states are coded as "1" when they experienced their first Chief Justice and removed from further iterations of the model. States that have not had a female Chief Justice are coded as "0". Forty-nine states are included in this analysis between 1970 and 20011. Arizona is not included in the estimation because Lorna Lockwood served as Chief Justice in 1965.

  In our fourth model, we extend the analysis predicting the first female Chief Justice to include repeated occurrences of female Chief Justices. Unlike the Cox

Proportional Hazard Model, we estimate duration models for repeated events when a state may be at "risk" for the same event at multiple points in time (Box-Steffensmeier and Zorn 2002). Fifteen states in our analysis had multiple female Chief Justices, ranging from two to five. As the process of moving from the first female Chief Justice to the second (or any future iteration) may be different, we estimate an Inter-event (or "gap-time") Conditional Risk Model (Prentice et. al. 1981). In this model, each subsequent event has a varying baseline hazard ratio. Since no more than one person can be Chief Justice at a time, these events are sequential rather than simultaneous. This allows for an analysis of the time between iterations of a female Chief Justice. In this model, the dependent variable is coded "1" when a state has a female Chief Justice and "0" when they do not. Unlike the Cox Model, states are not excluded from the analysis once they have had a female Chief Justice. In this model, the baseline hazard ratio is calculated for each individual strata or count of occurrences of a female Chief Justice.

The explanatory variables used in these analyses capture both internal and external influences on the court's gender composition. We begin with internal state influences. We include Windett's (2011, 2012) proxy for gender equality in states as a measure of cultural learning and influence on the court's makeup and probability of having a female Chief Justice. This variable is constructed through principal component factor analysis giving it a range of -2.5 to 2.5 with a mean value of zero. Higher values of this variable indicate a state with a better history of gender equality in economic, social and political arenas.[5] In the grouped logit model predicting the gender composition of

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[5] For a full description of this variable and its' properties see Windett 2011. The variables included in the factor analysis are the % Female Statewide officials (not including the judiciary), % Upper and Lower Chamber of the Legislature, % Congressional delegation, Dummy variables for Elazar's traditionalistic and

the court, we interact this variable with an indicator of decade, with the 1970s being the baseline category and interaction effects estimated for the 1980s, 1990s, and 2000s. This interaction will test the differing effects of the gender equality measure across the four decades of this analysis.

We further control for factors that are specific to the individual courts and the selection mechanism for both Justice and Chief Justice. In the model predicting the first female Justice and the court's composition, we include a categorical variable for the selection process within the state. This variable sets the baseline level of estimation as states with partisan election to the court. Non-partisan elections, merit system selection, and appointment (either gubernatorial or legislative) are included in the models with coefficients estimated for all three categories.

For the event history models predicting female Chief Justices, we also include a categorical variable for how the Chief Justice is chosen. The baseline for this variable is popular election. This categorical variable measures states with an appointment mechanism (commission or gubernatorial), peer selection (sitting Judges vote for the Chief Justice amongst themselves), and a category for "other." Generally, the other category indicates states that use a seniority system for their Chief Justice selection or have a peer selection process that merely chooses the most senior judge who has not yet been Chief Justice to serve.

In all four models, we also control for the length of term for the court or Chief Justice, as well as the number of seats on the court with ordinal variables. The length of term varies for regular Justices from 6 years to 14 years generally in two-year increments.

moralistic political culture, the % of female employed in the state, % of female college graduates, and a dummy variable if the state ratified the ERA without rescinding the vote.

New Jersey is the sole state with an odd number of years, as their court's term is 7 years. The median term length is 8 years. We also include an indicator for states with lifetime appointments. The length of term for the Chief Justice varies, ranging from 1 year to 14 years in single year increments. In addition, we also include a category for those states with lifetime appointments. The median term length for Chief Justice is 5 years. The number of seats on State Supreme Courts is overwhelmingly 5 or 7, with Oklahoma and Texas being outliers with 9 seats. In the models predicting a female Chief Justice, include a variable of the total count of female Justices on the court.

We also include a dummy variable to capture the influence of a sitting female governor. These women may have control through the selection process in states that have merit plan appointments, gubernatorial appointments, as well as vacancy appointments to fill terms. This variables is coded "1" while a women serves as governor and "O" when a man is the governor.

We are also interested in the state-to-state diffusion process to see if states learn from their neighbors in terms of the gender makeup of their highest court. Many states have a selection process that is essentially similar to adopting a type of policy. Scholars in the social learning and diffusion literature often seek connections between the number of contiguous states that adopt a specific policy and the probability of adopting that policy in that specific state. We do the same here creating an ordinal variable ranging from 0 to 8 for the number of contiguous states that have female Supreme Court Justices in models 1 and 2 and a female Chief Justice in models 3 and 4. If states do learn from their neighbors, we expect positive effects for this variable.

Finally, we include a dummy variable for the 13 southern states in the analysis. In the grouped logit model, we also interact the southern dummy variable with decade. This interaction will show any time related differences in the composition of courts based on their region.

Results and Analysis

As previously outlined, we utilize multiple techniques of Event History Analysis. Table 1 reports the results of the Cox Proportional Hazard models estimating the first female Justice in each state. Unlike traditional regression analysis, the results of the Cox Model are reported in terms of Hazard Ratios. This ratio is the impact of the explanatory variable in terms of a percentage increase in the odds of the event occurring. Hazard Ratios greater than 1 indicate an increase in the probability of the event, while those less than 1 indicate a decrease. Statistical significance is indicated at the 90% and 95% confidence level.

<<<<<<<<INSERT TABLE 1 HERE>>>>>>

As Table 1 indicates, a sitting female governor, southern states, as well as the number of seats offer a statistically significant increase in the hazard ratio of having the first female Supreme Court Justice. As these Hazard ratios may not be intuitively understood, Figures 1, 2 and, 3 plot the hazard function for separating the hazard ratio by gender of the governor and the number of seats in the state.

<<<<<<Insert Figures 1, 2, and 3 here>>>>>>

Figure 1 notes the clear difference in the hazard ratio for states with a female governor over time. As the number of female governors increased, so did the hazard

ratio of having the first female Justice. In 1994, for example, there was a nearly 30 percent probability in states that had not previously had a female Justice getting their first if they had a female governor. This is nearly 10 percentage points greater than states with a male governor at this time. Although these results are driven by a small number of female governors, there is a clear and statistically significant pattern of an increasing hazard function as more female governors are elected to office.

Figure 2 illustrates the impact of the number of seats on a court and the increased likelihood of having a female Justice. States with five seats offer fewer opportunities to have a female Justice. Over the course of time in this analysis, states with seven or nine seats have between a 10-percentage point and 20-percentage point higher likelihood of having their first female Justice. As states with more seats begin to see an increase in the hazard ratio in the late 1970s, with a continuing sharp increase in the 1980s, those with fewer seats did not begin to increase their likelihood of having their first female Justice until much later, with their substantial increase not beginning until the mid-1980s.

Figure 3 plots the differences in the hazard rate based on region. In this figure, the impact of southern states is shown compared to non-southern states. Much like the earlier figures, southern states have a nearly 10-percentage point higher probability than non-southern states to have their first female justice during the mid-90s. Throughout the entire time period of this anaylsis, southern states have a higher hazard rate for female justices, although this pattern becomes even more evident in the 90s.

In Table 2, we report the results of the weighted-least squares grouped logit estimates. Unlike the Hazard Model reported in Table 1, the estimates reported in Table 2 are coefficient estimates from the logistic regression. As these coefficients are not

easily interpreted, it is necessary to graphically show the results of this model. Table 2, however, does show the level of statistical significance in a number of our explanatory variables. The interaction effects for the Gender Equality Score by decade are all positive and statistically significantly different from the baseline level in the 1970s, as is the interaction of decade and south during the 2000s. Table 2 provides evidence of a diffusion process across the states as the proportion of neighboring states with female justices is a positive and statistically significant predictor of increases in court composition. Finally, There are positive and statistical significant results for two of the methods of judicial selection.

To further investigate these results, we graphically plot the results of the significant variables from Table 2 in Figures 4-6. With the dependent variable being the proportion of seats held by women, we plot the expected number of female judges on a court, controlling for other covariates. In a process very similar to generating predicted probabilities, we estimate these expected figures by holding continuous covariates at their mean and dummy variables at their mode.

<<<<<<Insert Figure 4 and 5 here>>>>>

Figure 4 plots the marginal effects of the Gender Equality Score from its minimum value to maximum value with 95% confidence intervals at each point estimate. The most interesting aspect of this figure is the different direction of the slope for the 1970s and 1980s compared to the 1990s and 2000s. In the first two decades, there is a negative relationship between the Gender Equality Scores and the expected number of women on the bench. In the 1970s, the states with the lowest values of the Gender Equality Score had the highest expected number of female judges. In the 1980s, this line

flattens out, but still shows a negative relationship. The 1990s is the first decade in which a positive relationship between the Gender Equality Score and the expected number of female judges is evident. By the 2000s, the states with a higher Gender Equality Score are expected to have over two female Supreme Court Justice compared to one for those states with the lowest Gender Equality Score.

Similarly, Figure 5 notes the marginal effects on the expected number of female justices for the interaction of region and decade. The most interesting result evident in this figure is the indistinguishable expected number of female judges between the South and non-South. Both regions show increasing expected values in the 1980s, 1990s, and 2000s, but both regions move at extremely similar rates. The extremely large confidence intervals around the 1970s expected value is a result of the low level of gender representation on the courts during this decade.

<<<<<<Insert Figure 6 here>>>>>

Figure 6 shows the expected number of female Justices based on the proportion of contiguous states that have female Justices. This graph offers evidence of a diffusion process across states in the number of women on State Courts. As evident in this figure, there is a substantial increase in the expected number of women on the court from slightly above one, to nearly two when going from zero neighboring states to all neighboring states that have female justices.

<<<<<<Insert Figure 7 here>>>>>

Figure 7 reports the estimated impact of the selection type for Justices on the expected number of women on the bench by decade. Two trends are noteworthy in this figure. First, in each decade the expected number of female judges increases from the

previously decades' average level regardless of selection type. More importantly, however, is the evidence that the selection mechanism offers differing expected number of female Justices. States with non-partisan elections and appointments, either gubernatorial or legislative, have an expected value of female judges close to a .25 percentage points higher in all three decades compared to states with partisan elections and merit selection processes.

Moving on from the prediction of the court's makeup, Table 3 reports the results of the Cox Proportional Hazard Model predicting the first female Chief Justice. As evident in the hazard ratios, a one-unit change in the Gender Equality Score increases the odds of having a female Chief Justice by 90.5%. Increasing the total number of seats on from five to seven also causes a 48.8% increase in the probability of a state having its first female Chief Justice. The selection mechanism for Chief Justice remains the largest influence on the hazard rate. Peer selection and the "other" category that captures mostly states with a seniority system yield far greater hazard ratios than the baseline of popular election and gubernatorial appointment. Figure 8 plots the cumulative hazard ratio for length of the analysis. This hazard plot is estimated with the covariates at the mean of the variables in the model. Much of the movement in the hazard function occurs after 1994. Before this time, states had about a 8 percent occurrence of a female Chief Justice. As we move closer to the present day, the probability of a female Chief Justice has dramatically improved with a cumulative hazard ratio of over 40%.

<<<<<<Insert Table 3 here>>>>>

<<<<<<Insert Figure 8 Here>>>>>

Figure 9 plots these hazard ratios from 1970 to 2011 with separate hazard lines for each selection type. To begin, the overall hazard rate for the selection of a state's first female Chief Justice is below 5%. Breaking these down by selection type, it is clear that the way in which the Chief Justice is selected plays an important role in women attaining this office. States with a seniority mechanism or rotating Chief Justice have the highest hazard function of the selection types. This is due to women being on the court long enough to obtain the Chief Justice position. As more actors become involved in the selection process, the hazard rate drops. Peer selection has the second highest hazard ratio with an almost 3% rate of occurrence. Gubernatorial selection and popular election yield the lowest hazard rates with 2% and 1% respectively.

<<<<<<Insert Figure 9 Here>>>>>

As we previously argued, the selection of the first female Chief Justice may have a different process as selecting subsequent women for the position. Table 4 reports the results of the Conditional Risk Set Model which treats female Chief Justices as a recurring event. In this model, a baseline hazard ratio is predicted for each number of female Chief Justice. These strata vary from 0 to 4. Although there is a maximum of five observations in a single state, the overwhelming count of female Chief Justices are either 0 or 1. In the appendix, we include separate Cox Models for each of these iterations to show the effect of the covariates at the separate iterations. This approach is not as desirable for this type analysis as the Conditional Risk Set Model as the number of observations for each iteration continues to decline[6].

<<<<<<Insert Table 4 Here>>>>>

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[6] See Box-Steffensemeier and Zorn (2002) for a full comparison of these types of model specifications.

The Hazard Ratios indicate that as the number of states with female Chief Justices increase, the impact is an 5.9% change in the probability of that state having a female Chief Justice. The selection type continues to be a positive and statistically significant predictor for states having a female Chief Justice for two types of selection. In this estimation, states with gubernatorial appointment have a 3.7% increase in their probability of a female Chief Justice, although this result does not reach traditional levels of statistical significance. States in the "other" category increase their probability by 37.5 percentage points and states with peer selection increase their probability 31.5 percentage points. The length of the Chief Justice's term has a negative impact on states having a female Chief Justice. A one-year increase in the length of the term causes a 2 percent decline in the probability of a female Chief Justice.

As outlined above, the most important aspect of this model is the prediction of separate baseline hazards for each additional female Chief Justice. Figure 10 plots the survival rate of each state for the corresponding number of female Chief Justices. Each survival plot illustrates the probability that they will keep that the female Chief Justice count will remain constant at that level. Lower numbers indicate an increased probability of an additional woman becoming Chief Justice. The length of the lines represents how long it will be until the next female Chief Justice with the corresponding survival rate. As evident by the figure, states that have had a female Chief Justice have a relatively flat probability of moving from one to two when they have recently had their first female Chief Justices. This flat line represents a steady pattern for these states. As the length of time since their first female Chief Justice increases, there is a sharp decline in the probability of not having a second Chief Justice. As we move to the survival rate from

moving from 2 to 3 women, however, this line becomes much steeper in the early years as a number of states quickly moved on to their third female Chief Justice. Another interesting aspect of this survival chart is the notion that states that have had three female Chief Justices have a sharp decline in the survival rate over the first few years. This is evidence that it is a much quicker process than moving from one to two, or two to three. As states continue to select more female Chief Justices, these patterns will be interesting to observe. More states have had their first female Chief Justice, with a majority of these occurring after 2000. If these patterns continue in the future, we should see more states selecting their subsequent female Chief Justices at a much quicker rate than the states selected their first.

Implications and Conclusion

In this research, we have shown the varying influences on the levels of representation of women on state courts. We pose multiple theoretical scenarios that lead to states' first inclusion on state courts, their increase in representation, as well as selecting a woman Chief Justice. We explore the possibility of both internal and external influences within these processes and come away with mixed results.

At the outset, we theorize that the political culture argument that has been used to evaluate women's representation for office at the Congressional, State Legislative and Statewide is insufficient for Supreme Courts. We argue that a policy diffusion process is occurring where ideas are spreading across states, and this idea exhibited itself in southern states prior to other regions in the country. The results of our analysis however offer mixed results. We see evidence for both the diffusion argument and the political

culture argument. The most consistent influences on when states first have a woman justice and Chief Justice, as well as the courts make up are internal determinants of the court's structure itself, the number of seats and selection mechanism. State culture is significant in explaining the proportion of women on a court, as well as the state's first Chief Justice. The diffusion argument is supported most in the models predicting the proportion of women on a court, as well as the number of female chief justices a state has had.

With these mixed results, further evaluation is needed to truly understand the process of women's selection to state supreme courts. As we move forward with this paper, we will incorporate other avenues of diffusion-mainly the bottom-up and top-down processes. Perhaps the diffusion of innovation is not occurring across state lines, but women move from lower courts to higher courts, or the federal government's selection of women at the Supreme Court, district and court of appeals level sends signals to state leaders on the need for gender representation in the judiciary.

Appendix

<<<<<<<<<<Insert Table 5 here>>>>>>>>

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