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Diversity and the International Criminal Court: Does Geographic Background Impact Decision Making?

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DIVERSITY AND THE INTERNATIONAL CRIMINAL COURT: DOES GEOGRAPHIC BACKGROUND IMPACT DECISION MAKING?

*Abhinav Chandrachud**

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INTRODUCTION

Unelected judges in democracies are embodiments of counter-majoritarianism.¹ Unlike democratic legislators and accountable parliamentarians, judges do not represent constituency interests, nor are they directly accountable to the people.² Ironically, the counter-majoritarianism of unelected judges

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1. See generally ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 16–23 (1962).

2. The conventional argument is that judiciaries in liberal democracies are “democratic” for two reasons: (1) they are appointed by elected branches

is considered to be their greatest virtue in a democracy. Judges are meant to protect “discrete and insular minorities”³ from the obdurate will of the majority.⁴ They constitute pockets of libertarianism within democracy’s Benthamite obsession for the greatest good of the greatest number.⁵ International courts should be no different, and unlike deliberative international treaty-making organs, international judges do not represent the viewpoints of their constituencies. Unlike the Security Council and the General Assembly of the United Nations, for example, judges appointed to the International Court of Justice (“ICJ”) do not represent the values or interests of their home countries. Yet, international instruments require that the composition of international courts and tribunals must fairly reflect the diverse geographic realities of the geopolitical world.⁶ Deliberative bodies are representative, but courts are not—why, then, does the international system insist on appointing judges from different geographic regions to international courts and tribunals?

Legal realists may find the short answer—legitimacy—to be unsatisfactory. True, a “rainbow court”⁷ which fairly reflects the demographic characteristics of the region in which it is situated might be perceived as being more legitimate, but international courts are seldom honestly diverse. Judges of “P5” countries disproportionately serve on these courts, and judgeships on international courts are staffed in such a manner that the region which has the most interest in the court’s outcomes gets the most representation on the court.⁸ Since the 1930s,⁹

of government, from whom they derive their political legitimacy; and (2) political branches of government retain the power to remove judges.

3. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

4. *See generally* JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 73–104 (1980).

5. The reference here is to Jeremy Bentham who advocated the idea of the greatest happiness of the greatest number. *See* D.D. RAPHAEL, *BRITISH MORALISTS 1650-1800*, at 314–46 (Hackett Publ’g Co. 1991) (1969).

6. *See infra* notes 43–56 and accompanying text.

7. This is a term which is often used in the context of the South Africa Constitutional Court. *See, e.g.*, Kate Malleson, *Appointments to the House of Lords: Who Goes Upstairs*, in *THE JUDICIAL HOUSE OF LORDS 1876–2009*, at 112, 115 (Louis Blom-Cooper et al. eds., 2009).

8. *See infra* text accompanying notes 50–56. The “P5 countries” (the permanent members of the United Nations Security Council) are the United States, the United Kingdom, France, Russia, and China.

legal realists have claimed that judges decide cases on the basis of “pre-existing social and political commitments.”¹⁰ On international judicial bodies, for example, there is evidence to indicate that the proportion of judges from common law countries on a panel will affect the likelihood of dissent,¹¹ and that judges of the European Court of Human Rights who were formerly government lawyers will be far more deferential towards *raison d'état* than private lawyers or academics.¹² Scholars have extensively debated whether a statistically significant level of alignment exists between a judge on an international tribunal and the judge's home country.¹³ Consciously or unconsciously, then, judges from certain backgrounds might be more (or less) partial to certain causes. Does the geographic background of an international judge impact the manner in which he or she decides cases? If so, is the legitimacy of regionally diverse courts offset by the fear of bias?

In this Article, I seek to quantitatively understand how geographic diversity impacts decision making on the International Criminal Court (“ICC”). So far, the ICC has dealt exclusively with cases arising out of the African continent.¹⁴ Against this backdrop, increasing numbers of judges from the African Group of States have been appointed to the ICC, perhaps on an implicit understanding that their presence on the court is essential to preserve its legitimacy. My research question is: does the presence of a higher number of judges from the African Group of States impact the court's attitude towards African defendants? With an increase in the number of judges from the African Group of States appointed to the ICC, has the court become

9. See Sarah Westergren, Note, *Gender Effects in the Courts of Appeals Revisited: The Data Since 1994*, 92 GEO. L.J. 689, 689 (2004).

10. Barry Friedman, *Taking Law Seriously*, 4 PERSP. ON POL. 261, 263 (2006).

11. See Allison Danner & Erik Voeten, *Who Is Running the International Criminal Justice System?*, in WHO GOVERNS THE GLOBE? 35, 37 (Deborah D. Avant et al. eds., 2010).

12. See Erik Voeten, *The Politics of International Judicial Appointments*, 9 CHI. J. INT'L L. 387, 390–91 (2009).

13. See, e.g., Il Ro Suh, *Voting Behavior of National Judges in International Courts*, 63 AM. J. INT'L L. 224, 224–36 (1969); Erik Voeten, *The Impartiality of International Judges: Evidence from the European Court of Human Rights*, 102 AM. POL. SCI. REV. 417, 417–18 (2008).

14. See, e.g., *Is Africa on Trial?*, BBC NEWS (Mar. 27, 2012, 4:21 ET), <http://www.bbc.co.uk/news/world-africa-17513065>.

more (or less) pro-defendant in its approach, at a statistically significant level, controlling for other factors? If so, can an argument plausibly be made that a disproportionately “diverse” court undermines its own legitimacy by making it susceptible to bias?

Part I begins by analyzing formal rules and informal norms that require national and international courts to be staffed by “diverse” judges, in order to understand the purposes that diversity serves on courts and to develop a framework for determining when those purposes may be compromised. Much of the literature acknowledges that diversity lends legitimacy to courts by making judges “inclusive symbols,” and it typically refutes claims of bias by arguing that diversity makes courts “structurally impartial.”¹⁵ However, the literature does not account for the fact that diversity on courts, especially international courts, is seldom “fair” or “equitable.” The diversity rules of the ICC will be situated within the wider context of this discussion. Part II examines formal and informal diversity arrangements for staffing judgeships on the ICC. In Part III, by coding decisions of the Appeals Chamber of the ICC issued between 2006–2012, and carrying out a logistic regression analysis, this Article presents evidence that suggests that the geographic background of judges, amongst other factors, potentially does make a difference to the manner in which international judges decide cases. This Article presents quantitative evidence that suggests that the post-2009 Appeals Chamber of the ICC, which had a higher number of judges from the African Group of States serving on it as compared to the pre-2009 Appeals Chamber, held against African defendants at a statistically significant level compared to the pre-2009 Appeals Chamber. I conclude with a discussion of what this could potentially mean for the legitimacy of international judicial institutions. Data concerning the judges of the ICC and its decisions have been obtained from the website of the ICC.¹⁶

I. THE DIVERSITY DEBATE

Proponents of diversity argue that it enhances a court’s legitimacy, builds public confidence in the court, remedies past ine-

15. See *infra* text accompanying notes 38–42.

16. INT’L CRIM. CT., http://www.icc-cpi.int/EN_Menus/icc/Pages/default.aspx (last visited Jan. 3, 2013).

qualities, and improves the quality of decision making on the court by bringing a diversity of perspectives to its opinions.¹⁷ A court which fairly reflects¹⁸ different religious, ethnic, geographic, gender, or racial components of society may signal that it is “open to all.”¹⁹ Scholars have suggested that diversity on courts may have symbolic or descriptive value on the one hand, or substantive value on the other.²⁰

At the symbolic or descriptive level, a judge from a “nontraditional”²¹ background may become an inclusive symbol, or stand for something he or she physically resembles, despite not necessarily holding the same viewpoints of members of the community for which she stands or appears to represent. For example, Clarence Thomas, an African American justice on the U.S. Supreme Court, does not share the views held by many members of the African American community in civil liberties cases,²² although he stands for or symbolizes members of that community on the U.S. Supreme Court because he physically resembles them.

At the substantive level, a “nontraditional” judge is more than a mere “cosmetic symbol”²³ on a court. By their very presence on a bench, judges of “nontraditional” backgrounds may remove the prejudices that their colleagues may have about members of their community.²⁴ Such a judge may also bring “traditionally excluded” perspectives to the cases being decided by the court. For example, feminist “difference theorists” argue

17. See, e.g., Mark S. Hurwitz, *Women and Minorities on State and Federal Appellate Benches, 1985 and 1999*, 85 JUDICATURE 84, 84–85 (2001).

18. See Shimon Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 590, 633–35 (Shimon Shetreet & Jules Deschênes eds., 1985).

19. See Barbara L. Graham, *Toward an Understanding of Judicial Diversity in American Courts*, 10 MICH. J. RACE & L. 153, 156 (2004).

20. Hanna Pitkin used the terms “descriptive” and “symbolic” to describe representation. See HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 11 (1967).

21. Sheldon Goldman & Matthew D. Saronson, *Clinton’s Nontraditional Judges: Creating a More Representative Bench*, 78 JUDICATURE 68, 69 (1994); Elliot E. Slotnick, *The Paths to the Federal Bench: Gender, Race and Judicial Recruitment Variation*, 67 JUDICATURE 371, 372 (1984).

22. See Sherrilyn A. Ifill, *Racial Diversity on the Bench: Beyond Role Models and Public Confidence*, 57 WASH. & LEE L. REV. 405, 482 (2000).

23. *Id.* at 480.

24. See Westergren, *supra* note 9, at 699.

that women bring different attitudes and values (e.g., caring, empathy, community) to cases as opposed to men (e.g., abstraction, individualism).²⁵ There is empirical evidence, for example, to suggest that women judges are harsher on women defendants.²⁶ Minority judges might bring “special sensitivity” or “unique perspectives” to decision making.²⁷ However, viewed through this prism, appointing a judge to a court on diversity considerations may enhance the legitimacy and public appeal of the court, but it may simultaneously strike a pejorative blow to the community sought to be represented by the appointment. After all, how can one unelected person “symbolize” or even “represent” the views of a community of others? This form of diversity representation presupposes unanimity of opinions within the community sought to be represented, and undermines the very system of diversity it attempts to create. An unelected judge from a certain racial, religious, ethnic, geographic, or gender background cannot conceivably represent the diverse values and opinions within the community. For this reason, appointing a minority judge to a court purely on diversity grounds would undermine the diversity of opinion which prevails within the community to which the judge belongs.

Some critics of diversity on courts argue that it conflicts with the principle of merit in selecting judges. One scholar calls this the “merit/diversity paradox”: an apparent conflict between either selecting the best judges to a court, or selecting judges that best reflect the members of the society in which the court is situated.²⁸ However, there are at least three reasons why diversity considerations for judicial appointments do not conflict with the merit principle. First, scholars have suggested that merit is not necessarily compromised when judges from diverse backgrounds are selected to courts.²⁹ History provides that justices selected to the U.S. Supreme Court on diversity consider-

25. *See id.* at 691.

26. *See* John Gruhl et al., *Women as Policymakers: The Case of Trial Judges*, 25 AM. J. POL. SCI. 308, 320 (1981); Westergren, *supra* note 9, at 698.

27. Goldman & Saronson, *supra* note 21, at 68.

28. Leny E. De Groot-Van Leeuwen, *Merit Selection and Diversity in the Dutch Judiciary*, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 145, 145 (Kate Malleson & Peter H. Russell eds., 2006).

29. *See, e.g.*, BARBARA A. PERRY, A “REPRESENTATIVE” SUPREME COURT? THE IMPACT OF RACE, RELIGION, AND GENDER ON APPOINTMENTS 4 (1991).

ations always met a minimum standard of merit, and a few of them even went on to become some of the greatest justices the Court had ever seen.³⁰ Second, merit cannot be defined in a social or contextual vacuum. Within the Indian context, George H. Gadbois has suggested that the idea of merit is contextual.³¹ The diversity of a “nontraditional” judge might well be considered an element of his or her own individual merit. Third, the very idea of merit may be “self-reflective,”³² “self-select[ing],”³³ or “self-cloning.” In other words, the definition of merit varies with the persons who judge merit—judges of merit, consciously or unconsciously, may seek a replication of their own credentials in the candidate they seek out. The judge of merit may seek out a candidate who is least likely to challenge the establishment.³⁴ Some scholars have suggested that it is a “myth” that merit is a neutral standard.³⁵ The conflict between merit and diversity has also been categorized as one between traditionalists and behavioralists—the former want judges to objectively and neutrally find the law, the latter recognize that judging is inherently a political process.³⁶

Other critics of diversity argue that it conflicts with democratic theory in that judges, unlike legislators, are not meant to “represent” constituents.³⁷ In this sense, judges from “nontraditional” backgrounds who bring the perspectives of their community to cases threaten to make themselves less impartial to their community’s viewpoint.³⁸ Much of the scholarly literature argues that judges are seldom neutral adjudicators—judging,

30. *See id.*

31. *See generally* George H. Gadbois, Jr., *Judicial Appointments in India: The Perils of Non-Contextual Analysis*, 7 *ASIAN THOUGHT & SOC’Y* 124, 124–43 (1982).

32. Kate Malleson, *Diversity in the Judiciary: The Case for Positive Action*, 36 *J.L. & SOC’Y* 376, 381 (2009) (quoting Sian Elias, Chief Justice of N.Z., Address to the Australian Women Lawyers’ Conference (June 13, 2008), <http://www.courtsofnz.govt.nz/speechpapers/13-06-08.pdf>).

33. Rachel Davis & George Williams, *Reform of the Judicial Appointments Process: Gender and the Bench of the High Court of Australia*, 27 *MELB. U. L. REV.* 819, 835 (2003).

34. *See* Lady Hale, *Making a Difference? Why We Need a More Diverse Judiciary*, 56 *N. IR. LEGAL Q.* 281, 282 (2005).

35. *See, e.g.*, Davis & Williams, *supra* note 33, at 830–33.

36. *See* PERRY, *supra* note 29, at 138.

37. *See, e.g.*, Hale, *supra* note 34, at 287.

38. *See id.*

in constitutional cases, is a political process—and personal value choices often color decisions.³⁹ For this reason, it is argued that “nontraditional” or “traditionally excluded” judges on a panel may ensure that no single set of people or values dominates a court’s opinions.⁴⁰ In this sense, diversity is said to enhance the “structural impartiality” of the court.⁴¹ There is also the criticism that allowing judicial appointments to be made on considerations other than merit, like diversity, will inappropriately afford a backdoor entry for political influence to enter the system of judicial appointments.⁴² However, this argument once again assumes that diversity candidates appointed to courts are non-meritorious. Ensuring that such candidates meet a certain threshold level of merit may serve to exclude political influence.

A. Geographic Diversity

There is a particularly large volume of literature on geographic diversity in international bodies.⁴³ Article 23 of the U.N. Charter calls on the General Assembly to elect non-permanent members to the Security Council, keeping in mind the principle of “equitable geographical distribution.”⁴⁴ This principle seems to have percolated into international judicial bodies as well, even though judges nominated by states are not state representatives and do not represent national interests. International judicial bodies have formal mechanisms for ensuring geographic diversity. Although judges on the ICJ are required to be appointed regardless of their nationality,⁴⁵ the statute of the ICJ formally provides that no two judges on the court can belong to the same nationality.⁴⁶ Similarly, formal

39. See, e.g., Ifill, *supra* note 22, at 411–12.

40. See *id.*

41. Sherrilyn A. Ifill, *Judging the Judges: Racial Diversity, Impartiality and Representation on State Trial Courts*, 39 B.C. L. REV. 95, 106 (1997).

42. See Malleson, *supra* note 32, at 378.

43. See, e.g., Amber Fitzgerald, *Security Council Reform: Creating a More Representative Body of the Entire U.N. Membership*, 12 PACE INT'L L. REV. 319 (2000); Michael J. Kelly, *U.N. Security Council Permanent Membership: A New Proposal for a Twenty-First Century Council*, 31 SETON HALL L. REV. 319 (2000).

44. U.N. Charter art. 23, para. 1.

45. See Statute of the International Court of Justice, art. 2, June 26, 1945, 59 Stat. 1031, 33 U.N.T.S. 993.

46. See *id.* art. 3, para. 1.

provisions exist on the International Criminal Tribunal for the former Yugoslavia ("ICTY")⁴⁷ and the International Criminal Tribunal for Rwanda ("ICTR").⁴⁸ However, informal norms determine geographic representation on these bodies, and state representation on these bodies is not always equal. Accordingly, "a judge from each P-5 member, except for China, has sat . . . on the ICJ since the Court's inception,"⁴⁹ and the remaining ten seats on the court are distributed regionally, such that Africa gets three seats (one seat each for North Africa, francophone Sub-Saharan Africa, and anglophone Sub-Saharan Africa), Western Europe/Other, Latin America/Caribbean, and Asia each hold two seats, and one seat goes to Eastern Europe.⁵⁰ This arrangement matches the distribution of non-permanent seats on the Security Council.⁵¹ Judges of P5 countries have also consistently held seats on either the ICTY or the ICTR.⁵² However, judgeships on the ICTY are dominated by Western judges, while judgeships on the ICTR are dominated by African judges,⁵³ indicating that geographic representation on these bodies is organized in such a manner that the region that has the most interest in the tribunal's outcomes, or in the stability of the area with which the tribunal deals, gets the most representation on the tribunal.⁵⁴ It seems apparent that "equitable" geographic distribution on these bodies does not mean "equal" representation, and, in this sense, state representation on international judicial bodies does not comport with the principle of the sovereign equality of states, especially on account of the dominance of powerful states on these bodies. On the other hand, an informal norm dictates that each member state of the European Court of Justice gets to appoint a judge to the

47. See Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, art. 12, para. 1, May 25, 1993, U.N. Doc. S/RES/827.

48. See Statute of the International Criminal Tribunal for Rwanda, art. 11, para. 1, Nov. 8, 1994, U.N. Doc. S/RES/955.

49. Jacob Katz Cogan, *Representation and Power in International Organization: The Operational Constitution and Its Critics*, 103 AM. J. INT'L L. 209, 229 (2009).

50. See *id.* at 231.

51. See *id.*

52. See *id.* at 229–30.

53. See Danner & Voeten, *supra* note 11, at 49.

54. See *id.* at 50.

court.⁵⁵ Geographic representation is perceived as being necessary for the legitimacy of these international judicial bodies.⁵⁶

Geographic representation was an important consideration in staffing appointments to the U.S. Supreme Court up until the late nineteenth century. The convention of seeking to achieve a geographically balanced court began with President George Washington himself, who emphasized “geographic suitability” on the court because he wanted to be “president of *all* the states of the fledgling nation,” and who consequently rewarded a strategic state with a Supreme Court appointment on occasion.⁵⁷ Barbara Perry notes that the convention of balancing the U.S. Supreme Court’s membership by state or region was meant to make the court an “inclusive symbol.”⁵⁸ This convention was said to be especially relevant in the early history of the United States,⁵⁹ a time period when U.S. Supreme Court justices “rode circuit,”⁶⁰ knowledge of local laws was necessary,⁶¹ and when “regional disputes were the foremost conflict of the era.”⁶² There was an informal practice that New England, Virginia, Pennsylvania, and New York would get seats on the U.S. Supreme Court.⁶³ The 1999 edition of Henry J. Abra-

55. See Cogan, *supra* note 50, at 233.

56. See Medard R. Rwelamira, *Composition and Administration of the Court*, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE 153, 165–66 (Roy S. Lee ed., 1999); William J. Aceves, *Critical Jurisprudence and International Legal Scholarship: A Study of Equitable Distribution*, 39 COLUM. J. TRANSNAT’L L. 299, 384–85 (2001).

57. HENRY J. ABRAHAM, JUSTICES AND PRESIDENTS: A POLITICAL HISTORY OF APPOINTMENTS TO THE SUPREME COURT 78–79 (3d ed. 1992).

58. PERRY, *supra* note 29, at 4.

59. See F.L. Morton, *Judicial Appointments in Post-Charter Canada: A System in Transition*, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 56, 58 (Kate Malleson & Peter H. Russell eds., 2006); Barbara A. Perry, *The Life and Death of the “Catholic Seat” on the United States Supreme Court*, 6 J.L. & POL. 55, 56 (1989).

60. “Riding circuit” involved going to different states and serving as a circuit court judge. See David R. Stras, *Why Supreme Court Justices Should Ride Circuit Again*, 91 MINN. L. REV. 1710, 1711 (2007).

61. See PERRY, *supra* note 29, at 5; Paul A. Freund, *The New England Seat on the Supreme Court*, 87 PROC. MASS. HIST. SOC’Y 32, 32 (1975).

62. Jeffrey Toobin, *Diverse Opinions*, NEW YORKER, June 8, 2009, at 37.

63. See *id.*; John W. Whitehead & John M. Beckett, *A Dysfunctional Supreme Court: Remedies and a Comparative Analysis*, 4 CHARLESTON L. REV. 171, 195 (2009).

ham's classical work on U.S. Supreme Court justices reveals that the states of New York, Virginia, Ohio, Massachusetts, Pennsylvania, and Tennessee, in that order, had the highest number of justices appointed to the U.S. Supreme Court, and that justices had been appointed to the Court from thirty-one of the nation's fifty states.⁶⁴

By the late nineteenth century, the notion of "geographic suitability" faded. Perry attributes three reasons to the demise of the convention of geographic balance in staffing appointments to the U.S. Supreme Court. First, the Circuit Court of Appeals Act of 1891 ended the practice of circuit-riding, and with it the practical necessity of having Supreme Court justices with knowledge of local laws.⁶⁵ Second, with the end of the Civil War, the "old order" came to an end, and the forces of regionalism diminished in strength.⁶⁶ Finally, other "representative" factors, such as religion, race, ethnicity, and gender, lessened the importance of geography as a measure of diversity.⁶⁷ However, geography was still given some weight until the mid-twentieth century,⁶⁸ with Richard Nixon being the last president to seriously take into account geographic considerations.⁶⁹ When it existed, the norm of geographic diversity granted legitimacy to the U.S. Supreme Court's decisions—one scholar argues that the fact that the Court's desegregation decision in *Brown v. Board of Education* was issued by a court that included one justice each from Alabama (Justice Hugo Black), Kentucky (Justice Forman Reed), and Texas (Justice Tom Clark) bolstered the legitimacy of the decision.⁷⁰ Today, geographic representation is said to be irrelevant for judicial appointments

64. HENRY J. ABRAHAM, *JUSTICES, PRESIDENTS, AND SENATORS: A HISTORY OF THE U.S. SUPREME COURT APPOINTMENTS FROM WASHINGTON TO CLINTON* 46 (1999). See also ABRAHAM, *supra* note 57, at 62.

65. See PERRY, *supra* note 29, at 7; John Benjamin Ashby, *Supreme Court Appointments Since 1937*, at 15–16 (Jan. 1972) (unpublished Ph.D. dissertation, University of Notre Dame).

66. See PERRY, *supra* note 29, at 7.

67. See *id.*

68. See ABRAHAM, *supra* note 57, at 254 (stating that even President Dwight D. Eisenhower—in office from 1953 to 1961—considered "geographic balance" on the Supreme Court to be important).

69. See Joel K. Goldstein, *Choosing Justices: How Presidents Decide*, 26 J.L. & POL. 425, 457 (2011).

70. See Freund, *supra* note 61, at 44.

to the U.S. Supreme Court.⁷¹ For example, few commentators noted the fact that Justices Sandra Day O'Connor and William Rehnquist served on the same court despite both being from the state of Arizona.⁷²

Judges are appointed to the Supreme Court of Canada by an informal norm of geographic representation, although formal law only requires that three judges be appointed to the court from the province of Quebec.⁷³ Informally, three judges are appointed to the court from Ontario, one from Atlantic Canada,⁷⁴ and two from the western provinces⁷⁵—typically one from British Columbia and one from the three Prairie⁷⁶ provinces.⁷⁷ Ontario's presence on the court declined to two judges in 1979, with the appointment of William McIntyre (British Columbia) to replace Wishart Spence, although this was rectified in 1982 with the appointment of Bertha Wilson (Ontario) following Ronald Martland's retirement.⁷⁸ There is some debate as to whether at least one of the non-Quebec judges should be francophone, and whether one of the Quebec judges should be anglophone.⁷⁹ By convention, since the 1930s the post of Chief Justice has also typically alternated between a judge from

71. See Toobin, *supra* note 62.

72. See *id.*

73. See IAN GREENE ET AL., FINAL APPEAL: DECISION-MAKING IN CANADIAN COURTS OF APPEAL 101–02 (1998); Richard Devlin et al., *Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary, or Towards a "Triple P" Judiciary*, 38 ALTA. L. REV. 734, 763 (2000); James C. Hopkins & Albert C. Peeling, *Aboriginal Judicial Appointments to the Supreme Court of Canada* 12 (Apr. 6, 2004) (unpublished paper prepared for the Indigenous Bar Association), available at <http://www.indigenousbar.ca/pdf/Aboriginal%20Appointment%20to%20the%20Supreme%20Court%20Final.pdf>.

74. The "Atlantic Provinces" are New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. See *Maritime Provinces*, BRITANNICA ONLINE ENCYCLOPÆDIA (Jan. 5, 2013), <http://www.britannica.com/EBchecked/topic/365528/Maritime-Provinces>.

75. Devlin et al., *supra* note 73, at 763.

76. The "Prairie Provinces" are Manitoba, Saskatchewan, and Alberta. See *Prairie Provinces*, BRITANNICA ONLINE ENCYCLOPÆDIA (Jan. 5, 2013), <http://www.britannica.com/EBchecked/topic/473851/Prairie-Provinces>.

77. See Peter McCormick, *Selecting the Supremes: The Appointment of Judges to the Supreme Court of Canada*, 7 J. APP. PRAC. & PROCESS 1, 13 (2005).

78. See *id.* at 13 n.32.

79. See *id.* at 22.

Quebec and a judge from the rest of Canada.⁸⁰ This form of regional representation on the Canadian Supreme Court is meant to reassure provinces that their special circumstances will receive a “fair hearing.”⁸¹ Peter McCormick says that though regional representation on the Canadian Supreme Court is a “very strong convention,”⁸² it “complicate[s] the professionalism of a merit-based system”—after all, “what if the objectively best judges at the occasion of any vacancy, over and over again, are sitting on the Ontario Court of Appeal, easily and always the country’s strongest provincial court of appeal?”⁸³

A similar convention of geographic representation exists in Europe. In the United Kingdom there is a tradition of ensuring “an appropriate ethnic balance” on the House of Lords by conferring representation to all three of the nation’s constituent parts⁸⁴—two judges typically hail from Scotland⁸⁵ and one from Northern Ireland⁸⁶—although the convention of having one judge from Northern Ireland serving on the court is not as firmly followed.⁸⁷ There is also a debate in the United Kingdom as to whether one judge should be appointed from Wales.⁸⁸

There is some indication that judgeships on the Federal Constitutional Court of Germany are “distributed proportionately on the basis of geographical origin and party affiliation”⁸⁹—that seats are evenly distributed on the court between the four regions of Germany: Bavaria, the Rhineland, the Northeast, and

80. *List of Justices of the Supreme Court of Canada*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_Justices_of_the_Supreme_Court_of_Canada (last visited Jan. 6, 2013).

81. Morton, *supra* note 59, at 58.

82. McCormick, *supra* note 77, at 13.

83. *Id.* at 22.

84. Hale, *supra* note 34, at 291.

85. See Malleon, *supra* note 7, at 114.

86. See Shetreet, *supra* note 18, at 634.

87. See Graham Gee, *Devolution and the Courts*, in DEVOLUTION, LAW MAKING AND THE CONSTITUTION 252, 283 (Robert Hazell & Richard Rawlings eds., 2005).

88. E-mail correspondence with a noted scholar of judiciaries in the United Kingdom (on file with author).

89. Donald P. Kommers, *Autonomy Versus Accountability: The German Judiciary*, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 131, 147 (Peter H. Russell & David M. O’Brien eds., 2001).

Southwestern Germany.⁹⁰ The 1814 constitution of the Netherlands provided that judges of the Supreme Court should be picked from “all provinces and landscapes,”⁹¹ although this was “last referred to” in 1902.⁹² Geographic considerations are irrelevant on the High Court of Australia, where appointments are driven by considerations of merit,⁹³ but where, consequently, some states see greater representation than others.⁹⁴

In India, an attempt is made to ensure that judges of the Supreme Court represent the different geographic regions.⁹⁵ Further, seats on the Supreme Court of India are sought to be distributed between states. Not more than two (or in rare cases, three) judges belonging to the same High Court serve on the Supreme Court of India at the same time.⁹⁶ Judges are considered to belong to the region or state where they were first appointed as a High Court judge,⁹⁷ irrespective of where they

90. See DONALD P. KOMMERS, *JUDICIAL POLITICS IN WEST GERMANY: A STUDY OF THE FEDERAL CONSTITUTIONAL COURT* 147 (1976).

91. De Groot-Van Leeuwen, *supra* note 28, at 148.

92. *Id.*

93. See George Williams, *High Court Appointments: The Need for Reform*, 30 SYDNEY L. REV. 161, 162–63 (2008).

94. See John M. Williams, *Judicial Independence in Australia*, in *JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD* 173, 177 (Peter H. Russell & David M. O'Brien eds., 2001). However, one scholar claims that the requirement that the attorney-general consult state attorneys-general before making recommendations for judicial appointments briefly increased state representation. See Elizabeth Handsley, “*The Judicial Whisper Goes Around*”: *Appointment of Judicial Officers in Australia*, in *APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD* 122, 124 (Kate Malleson & Peter H. Russell eds., 2006).

95. See Abhinav Chandrachud, *An Empirical Study of the Supreme Court's Composition*, *ECON. & POL. WKLY.*, Jan. 1, 2011, at 71.

96. India has a unitary judicial structure; there are no separate state and federal courts. High Courts in India are appellate courts, roughly equivalent to circuit courts in the U.S. High Court decisions can be appealed before the Supreme Court of India, which occupies the highest rung in the appellate hierarchy. See generally Abhinav Chandrachud, *Speech, Structure, and Behavior on the Supreme Court of India*, 25 *COLUM. J. ASIAN L.* 222, 231–33 (2012).

97. If a person is first appointed to the post of additional judge on a High Court, and is later appointed a permanent judge while serving on another High Court, he or she is typically still considered as belonging to the state or region in which he or she was initially appointed as an additional judge on a High Court. See Chandrachud, *infra* note 99.

were born, where they lived for most of their life, or what their mother tongue is. The most striking illustration of this occurred during Chief Justice K.G. Balakrishnan's term between 2007-2010, during which the retirement of a judge each from the states of Tamil Nadu, West Bengal, Uttar Pradesh, Punjab and Haryana, Madhya Pradesh, Orissa, and Assam (including Nagaland, Meghalaya, Manipur, Tripura, Mizoram, and Arunachal Pradesh), and from the National Capital Territory of Delhi, was compensated by appointing to the Supreme Court of India one judge from each of those respective states or territories.⁹⁸ "The court has grown more geographically inclusive with every passing decade."⁹⁹

B. Religion, Race, and Gender

On national courts, religion, race, and gender have typically supplanted geographic diversity as criteria for staffing judge-ships. Religion was an informal factor considered while making appointments to the U.S. Supreme Court starting with the late nineteenth century, although its role substantially, if not entirely, diminished by the late twentieth century.¹⁰⁰ The U.S. Constitution prohibits religious tests for public office, and the practice of appointing justices to the Court for the religion they represent could therefore only be an informal one.¹⁰¹ Presidents who appointed justices belonging to religious minority communities often did so to reward their core constituency or to at-

98. See Chandrachud, *supra* note 95.

99. Abhinav Chandrachud, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India* (May 2012) (unpublished SPLS master's thesis, Stanford Law School) (on file with Stanford Law School).

100. See ABRAHAM, *supra* note 57, at 63–64; THOMAS KARFUNKEL & THOMAS W. RYLEY, *THE JEWISH SEAT: ANTI-SEMITISM AND THE APPOINTMENT OF JEWS TO THE SUPREME COURT* 144–46 (1978); PERRY, *supra* note 29, at 46–47, 79–81; Sheldon Goldman, *Why We Have a Catholic-Majority Court: The Politics of Appointing Catholics to the Federal Courts*, 4 U. ST. THOMAS L.J. 193, 202 (2006); Paul Horwitz, *Religious Tests in the Mirror: The Constitutional Law and Constitutional Etiquette of Religion in Judicial Nominations*, 15 WM. & MARY BILL RTS. J. 75, 127 (2006); Perry, *supra* note 59, at 56; Philippa Strum, (Untitled), 79 J. AM. HIST. 1207, 1207–08 (1992) (reviewing BARBARA A. PERRY, *A "REPRESENTATIVE" SUPREME COURT? THE IMPACT OF RACE, RELIGION, AND GENDER ON APPOINTMENTS* (1991)); Ashby, *supra* note 65, at 16–17.

101. See Goldman, *supra* note 100, at 195. *But see* Horwitz, *supra* note 100, at 127.

tract members of that constituency as voters.¹⁰² Members of the religious community may have viewed a Supreme Court appointment as confirmation of their “integration into American public life.”¹⁰³ In 1836, Justice Roger Taney was the first Roman Catholic appointed to the U.S. Supreme Court—he was later appointed Chief Justice by Andrew Jackson—but religion had little to do with his appointment, and no Catholic served on the court for thirty years after his death.¹⁰⁴ The “Catholic seat” on the U.S. Supreme Court is said to have begun with the appointment of Justice Edward White in 1894, who was subsequently appointed Chief Justice in 1910 by William H. Taft in order to attract the Catholic vote, according to some.¹⁰⁵ Religion played a definite role in the appointment of Justice Joseph McKenna to the Court by William McKinley in 1898, consequent to which two Catholic justices served simultaneously on the Court for the first time in its history.¹⁰⁶ The appointments of Justice Pierce Butler by Warren Harding in 1922 and Justice Frank Murphy by Franklin D. Roosevelt in 1940 were similarly colored by considerations of religion.¹⁰⁷ When Justice Murphy died in 1949, Harry Truman did not replace him with another Catholic justice, but Dwight Eisenhower restored the “Catholic seat” by appointing Justice William Brennan to the Court in 1956.¹⁰⁸ Religion had a marginal role, if any, in the appointments of subsequent Catholic justices to the court,¹⁰⁹ as other diversity factors, such as race and gender, took precedence.

The “Jewish seat” was established on the U.S. Supreme Court with the appointment of Justice Louis Brandeis to the Court by Woodrow Wilson in 1916.¹¹⁰ Justice Benjamin Cardozo was later appointed to the Court in 1932 by Herbert

102. See KARFUNKEL & RYLEY, *supra* note 100, at 144; Goldman, *supra* note 100, at 208.

103. KARFUNKEL & RYLEY, *supra* note 100, at 144.

104. See PERRY, *supra* note 29, at 20–23.

105. See *id.* at 23–26, 29–31 (citations omitted).

106. See *id.* at 26–29.

107. See *id.* at 31–39.

108. See *id.* at 39–42.

109. These were the appointments of Antonin Scalia and Anthony Kennedy by President Ronald Reagan in 1986 and 1988 respectively, of Clarence Thomas by President George H. W. Bush in 1991, of John Roberts and Samuel Alito by President George W. Bush in 2005 and 2006 respectively, and of Sonia Sotomayor by President Barack Obama in 2009.

110. See KARFUNKEL & RYLEY, *supra* note 100, at 144.

Hoover, followed by Justice Felix Frankfurter (Roosevelt, in 1939), Justice Arthur Goldberg (John F. Kennedy, in 1962), and Justice Abe Fortas (Lyndon Johnson, in 1965).¹¹¹ With the resignation of Justice Fortas from the Court in 1969, Nixon chose not to continue the tradition of the “Jewish seat” on the court, appointing a Methodist (Justice Harry Blackmun) instead.¹¹² Scholars have suggested that the “Jewish seat” ended on the court because Republican presidents did not find it advantageous, as the Jewish vote was typically Democratic,¹¹³ and Jewish leaders did not significantly pursue the issue.¹¹⁴ Perry suggests that it came to an end because Jews had better assimilated into American society by that time, and gender began to take precedence on the Court.¹¹⁵ Others have suggested that the “Jewish seat” had outlived its usefulness, since the Jewish community had “shed its considerable insecurity,” and the community was not “overly disturbed” when the seat was eliminated.¹¹⁶

Religion has generally been less relevant for appointments to the Court in the late-twentieth century.¹¹⁷ For example, the fact that Justice Antonin Scalia and Justice Anthony Kennedy were Catholic was entirely coincidental to their appointments.¹¹⁸ As one commentator notes, “[r]eligious tensions have also cooled,”¹¹⁹ which is why religious “seats” on the Court have disappeared. Today, the Court has six Roman Catholic justices (Chief Justice John Roberts and Justices Scalia, Kennedy, Thomas, Samuel Alito, and Sonia Sotomayor) and three Jewish justices (Justices Ruth Bader Ginsburg, Stephen Breyer, Elena Kagan).¹²⁰ With Justice Kagan’s appointment to the Court in

111. See PERRY, *supra* note 29, at 67–79.

112. See *id.* at 79.

113. See Strum, *supra* note 100, at 1207.

114. See *id.*

115. See PERRY, *supra* note 29, at 80.

116. KARFUNKEL & RYLEY, *supra* note 100, at 146.

117. See Goldman, *supra* note 100, at 193.

118. See Perry, *supra* note 59, at 56, 88.

119. Toobin, *supra* note 62.

120. See Cathy Lynn Grossman, *Does the U.S. Supreme Court Need Another Protestant?*, USA TODAY (Apr. 9, 2010, 2:55 PM), <http://content.usatoday.com/communities/Religion/post/2010/04/supreme-court-justice-stevens-catholic-jewish/1>; *Obama Chooses Elena Kagan for Supreme Court*, CNN POLITICS (May 12, 2010, 10:31 AM), <http://www.cnn.com/2010/POLITICS/05/10/scotus.kagan/index.html>.

2010, for the first time since its establishment in 1789, the U.S. Supreme Court does not have a Protestant justice.¹²¹ However, one scholar has argued that religion was still a “plus” or “minus” factor for recent appointments made or sought to be made to the U.S. Supreme Court, as was the case with Chief Justice Roberts, who was questioned as to whether his religious beliefs would conflict with his ability to decide abortion cases.¹²² To some extent, those questions suggest that religion has ceased to become a form of descriptive or symbolic representation on the Court, but rather is now substantive or active representation—religion on the Court is no longer a symbol of inclusiveness, but its presence signals a fear that it may cloud legal interpretation.

Religious “seats” on supreme courts are not limited to the United States alone. In the Netherlands, until 1968, a practice existed that a vacancy on the Supreme Court arising out of the retirement or death of a Catholic judge would be followed by the appointment of a Catholic judge to the court.¹²³ By 1913, the court had four Catholic judges.¹²⁴ Seats were also reserved on the court for Protestants, and a Jewish judge was appointed occasionally.¹²⁵ Although this custom is no longer followed on the Supreme Court, it is still “widely practiced” on other courts in the Netherlands.¹²⁶ On the Supreme Court of Israel, a seat has typically been reserved for an Orthodox Jew, and since 1962, a seat has unofficially been reserved for a Sephardic judge.¹²⁷ There have been calls to appoint judges from different

121. Cf. Adam Liptak, *Stevens, the Only Protestant on the Supreme Court*, N.Y. TIMES (Apr. 10, 2010), http://www.nytimes.com/2010/04/11/weekinreview/11liptak.html?_r=0 (“[Justice John Paul Stevens] retirement . . . makes possible something that would have been unimaginable a generation or two ago—a court without a single member of the nation’s majority religion.”).

122. See Horwitz, *supra* note 100, at 127–28 (citations omitted).

123. See De Groot-Van Leeuwen, *supra* note 28, at 148; Peter J. Van Koppen, *The Dutch Supreme Court and Parliament: Political Decisionmaking Versus Nonpolitical Appointments*, 24 LAW & SOC’Y REV. 745, 770 (1990).

124. See *id.*

125. See *id.*

126. See *id.*

127. See Eli M. Salzberger, *Judicial Appointments and Promotions in Israel: Constitution, Law, and Politics*, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 241, 250 (Kate Malleson & Peter H. Russell eds., 2006).

religious and ethnic backgrounds to the Supreme Court of Israel in order to make the court more “reflective”—as opposed to “representative”—of different groups within society.¹²⁸ In Germany, one scholar has suggested that a religious equilibrium (i.e., a balance between the Catholic and Protestant members of the court) be maintained on the Federal Constitutional Court, and there is some suggestion of implementing an informal norm that judges of Jewish ancestry be appointed to the court.¹²⁹ Informal barriers existed in the United Kingdom against the appointment of Catholic and Jewish justices to higher courts, although in more recent times, the proportion of Jewish justices serving on higher courts is believed to be greater than the number of Jews in the general population.¹³⁰

In the United States, gender and race have replaced geography and religion as informal diversity criteria in making judicial appointments—as one commentator puts it, “the rules of diversity have changed.”¹³¹ There is a large volume of scholarly literature on the question of whether any particular system of appointing judges to state courts makes it more or less likely that racial minorities and women will be appointed.¹³² When Justice Thurgood Marshall, the Court’s first African American justice, was appointed by Johnson to the U.S. Supreme Court in 1967, the primary consideration was race.¹³³ Similarly, gender was the primary consideration when Justice O’Connor was appointed the first female justice on the Court by Ronald Reagan in 1981.¹³⁴ Jimmy Carter is widely considered to be the first president to appoint women and racial minorities to the lower federal courts in large numbers.¹³⁵ However, ethnic and

128. *See id.*

129. *See* KOMMERS, *supra* note 90, at 121, 147–48.

130. E-mail correspondence with a noted scholar of judiciaries in the United Kingdom (on file with author).

131. Toobin, *supra* note 62.

132. *See, e.g.*, Adam Goldstein, Note, *Judicial Selection As It Relates to Gender Equality on the Bench*, 13 *CARDOZO J.L. & GENDER* 369, 386–90 (2007); Graham, *supra* note 19, at 153; Mark S. Hurwitz, *Selection System, Diversity and the Michigan Supreme Court*, 56 *WAYNE L. REV.* 691, 700 (2010); Malia Reddick, *Merit Selection: A Review of the Social Scientific Literature*, 106 *DICK. L. REV.* 729, 731–32, 744 (2002).

133. *See* PERRY, *supra* note 29, at 99–102.

134. *See* ABRAHAM, *supra* note 57, at 338–40.

135. *See* Goldman & Saronson, *supra* note 21, at 68; PERRY, *supra* note 29, at 120.

racial minorities are still considered underrepresented on federal and state courts,¹³⁶ although great progress has been made in recent decades.¹³⁷ Today, the U.S. Supreme Court has three female justices (Justices Ginsburg, Sotomayor, and Kagan), one of whom also happens to be of Hispanic background (Justice Sotomayor), and one African American justice (Justice Thomas).

Again, this form of diversity is not limited to the United States alone. In the United Kingdom, there has been “official support” for increasing diversity in the judiciary since the 1990s.¹³⁸ In order to thwart some of the problems associated with “tap on the shoulder” type appointments—where candidates are approached and invited to become judges—judicial positions are now advertised and “nontraditional” candidates are encouraged to apply. The Judicial Appointments Commission under the Constitutional Reform Act of 2005, established in 2006, has a statutory duty to “have regard to the need to encourage diversity in the range of persons available for selection for appointments.”¹³⁹ The British judiciary, however, is still criticized for being largely elite, male, white, old, upper class, and out of touch.¹⁴⁰ Baroness Hale of Richmond was the first female Law Lord appointed to the House of Lords, and as of this writing, she is the only female judge on the Supreme Court of the United Kingdom.¹⁴¹ In her own words, she was not the first woman lawyer good enough to sit with the other male judges, only the first one who was “visible to them.”¹⁴² The Australian judicial system has been criticized for its absence of diversity—judges are typically male and of Anglo-Saxon or Celtic background.¹⁴³ More recently, however, female justices have

136. See Graham, *supra* note 19, at 153.

137. See Hurwitz, *supra* note 17, at 84.

138. Malleon, *supra* note 32, at 376. See also Kate Malleon, *The New Judicial Appointments Commission in England and Wales: New Wine in New Bottles?*, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 39, 43 (Kate Malleon & Peter H. Russell eds., 2006) (citations omitted).

139. Constitutional Reform Act, 2005, c. 4, § 64(1) (U.K.).

140. See Malleon, *supra* note 138, at 42.

141. Cf. *Biographies of the Justices*, SUPREME COURT, <http://www.supremecourt.gov.uk/about/biographies-of-the-justices.html> (last visited Jan. 6, 2013).

142. Hale, *supra* note 34, at 291.

143. Davis & Williams, *supra* note 33, at 827 (citations omitted).

increasingly been appointed to the High Court of Australia. The first female justice to be appointed to that court was Mary Gaudron in 1987—the first female amongst forty-four justices appointed to the High Court in the last century.¹⁴⁴ However, the court now has three female justices (Susan Crennan, Susan Kiefel, and Virginia Bell, appointed in 2005, 2007, and 2009, respectively). The constitution of South Africa contains an explicit requirement that the need to “reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.”¹⁴⁵ Women and black judges have increasingly been appointed to the courts.¹⁴⁶ However, gender diversity in South Africa is considered subordinate to racial diversity.¹⁴⁷ Consequently, as Chief Justice Arthur Chaskalson noted in his retirement speech in 2005, although 50 percent of the judiciary was black, only 15 percent consisted of women.¹⁴⁸ Two original members of the Constitutional Court of South Africa were women (Kate O’Regan and Yvonne Mokgoro) and the court presently has two women serving on it (Bess Nkabinde-Mmono and Sisi Khampepe).¹⁴⁹ Canada has made some of the strongest efforts at attaining gender diversity.¹⁵⁰ Bertha Wilson, in 1982, became the first female justice appointed to the court.¹⁵¹ When this was written, the Canadian

144. *See id.*

145. S. AFR. CONST., 1996, ch. 8, §174(2). *See also* FIJI CONST., Sept. 23, 1988, § 134 (mandating that the “composition of the judiciary should, as far as practicable, reflect the ethnic and gender balance of the community.”).

146. *See* Hugh Corder, *Seeking Social Justice? Judicial Independence and Responsiveness in a Changing South Africa*, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 194, 198 (Peter H. Russell & David M. O’Brien eds., 2001).

147. *See* Ruth B. Cowan, *Women’s Representation on the Courts in the Republic of South Africa*, 6 MD. L.J. RACE, RELIGION, GENDER & CLASS 291, 309–11 (2006).

148. *Id.* at 303 (citations omitted).

149. *Cf. Former Judges*, CONST. CT. S. AFR., <http://www.constitutionalcourt.org.za/site/judges/formerjudges.htm> (last visited Jan. 6, 2013); *Current Judges*, CONST. CT. S. AFR., <http://www.constitutionalcourt.org.za/site/judges/currentjudges.htm> (last visited Jan. 6, 2013).

150. *See* Hale, *supra* note 34, at 285; Claire L’Heureux-Dubé, *Outsiders on the Bench: The Continuing Struggle for Equality*, 16 WIS. WOMEN’S L.J. 15, 20 (2001).

151. *See* *Bertha Wilson*, BRITANNICA ONLINE ENCYCLOPÆDIA (Jan. 6, 2013), <http://www.britannica.com/EBchecked/topic/1339736/Bertha-Wilson>.

court had four female justices serving—its Chief Justice (Beverley McLachlin) and Justices Marie Deschamps, Rosalie Silberman Abella, Andromache Karakatsanis—only one short of a female majority.¹⁵²

II. DIVERSITY AND THE ICC

Eligibility for appointment to one of the eighteen positions on the ICC requires a candidate to satisfy four criteria: character, experience, fluency, and diversity.¹⁵³ First, judges have to possess “high moral character, impartiality and integrity,” and ought to be qualified in their own states for appointment to the highest judicial office.¹⁵⁴ Second, they ought to possess established competence in one of two areas: criminal law and procedure or international law.¹⁵⁵ Third, judges must be fluent in one of the working languages of the court.¹⁵⁶ Fourth, judges must come from diverse geographic (and demographic) backgrounds—no two judges can be nationals of the same state¹⁵⁷—and in appointing judges to the court, States Parties (i.e., the countries that are parties to the Rome Statute of the ICC)¹⁵⁸ must take account of the need for: (1) representation of the principal legal systems of the world, (2) equitable geographic representation, and (3) fair representation of female and male judges.¹⁵⁹ The Rome Statute, which establishes the ICC and sets out its powers, is perhaps the “first major international

152. *Cf. Judges of the Court*, SUP. CT. CAN., <http://www.scc-csc.gc.ca/court-court/ju/cfpju-jupp/index-eng.asp> (last visited Jan. 6, 2013). Justice Deschamps retired on August 7, 2012. *See About the Court: Judges of the Court*, SUPREME COURT OF CANADA, <http://www.scc-csc.gc.ca/court-court/ju/deschamps/index-eng.asp> (last visited Feb. 1, 2013).

153. *See* Rome Statute of the International Criminal Court art. 36, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

154. *Id.* art. 36(3)(a).

155. *Id.* art. 36(3)(b). Specific experience dealing with violence against women and children is also preferable. *Id.* art. 36(8)(b).

156. *Id.* art. 36(3)(c).

157. *Id.* art. 36(7).

158. *See ICC—The States Parties to the Rome Statute*, INT'L CRIM. CT., http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited Jan. 6, 2013), for a list of States Parties to the Rome Statute.

159. Rome Statute, *supra* note 153, art. 36(8)(a).

agreement” to emphasize gender representation.¹⁶⁰ Accordingly, the formal provisions of the Rome Statute call for three types of diversity in appointing judges to the ICC: geographic diversity, gender diversity, and a diversity of professional experiences.

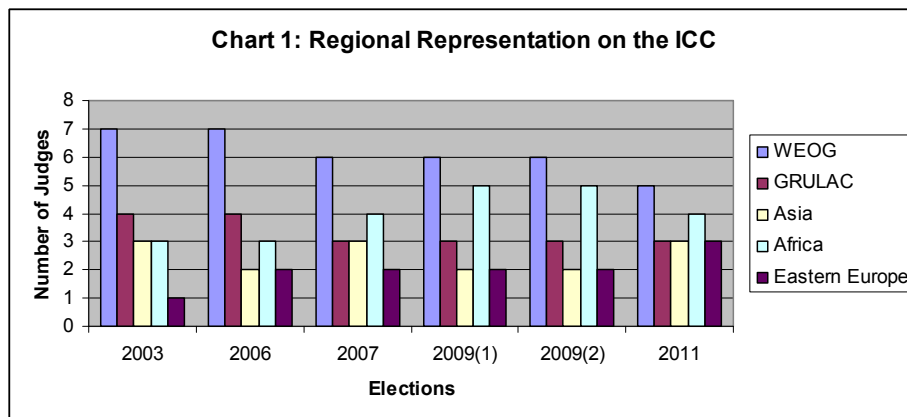
However, although judicial appointments to the ICC have to be made on considerations of diversity, between 2003 and 2011, the diversity rule of the court did not guarantee equal representation to different groups. Thus, for example, judges with experience in criminal law and procedure have typically outnumbered those with experience in international law.¹⁶¹ Since the court deals with criminal law cases, experience in criminal law is perhaps naturally considered more valuable than generalist experience in the field of international law. Since 2009, the female judges on the court have outnumbered the male judges—the ICC is perhaps one of the few prominent courts in the world to have accomplished this. Typically, though not universally, at least half of the judges appointed to the ICC have significant prior judicial experience working either on a high court in their home countries or on an international tribunal or court.

Like the other international tribunals, geographic diversity on the ICC is measured in terms of regional subgroups. Five regional subgroups are sought to be informally represented on the court: Western European and Others Group of States (“WEOG”), Latin American and Caribbean Group of States (“GRULAC”), Asian Group of States (“Asian States”), African Group of States (“African States”), and the Group of Eastern European States (“Eastern Europe”). Although there is no formal law that requires this, and although cases which the ICC have dealt with predominantly concern Africa so far, since its inception the largest number of judges on the ICC have always come from the WEOG states. Further, both the P5 countries that are States Parties to the Rome Statute (the United King-

160. Aceves, *supra* note 56, at 384–85.

161. In other words, the “List A” judges have typically always outnumbered the “List B” judges. However, consequent to the 2007 elections, the total number of List A and List B judges on the court was the same, until the election in 2009. Under article 36(5) of the Rome Statute, there are supposed to be two lists of candidates for election to the court—broadly speaking, List A consists of candidates who have criminal law expertise, while List B consists of candidates with international law expertise.

dom and France) have always had one of their judges serve on the court. Thus, for example, when Claude Jorda (France) resigned from the court in 2009, Bruno Cotte (France) was appointed to the court to compensate for the French vacancy. Similarly, when Sir Adrian Fulford's (United Kingdom) term on the court came to an end in 2012, Howard Morrison (United Kingdom) was appointed to the court to compensate for the British vacancy on the court. Chart 1 below reveals that the number of judges from the African States has gradually increased on the ICC, perhaps when it increasingly began to be realized that the court's docket dealt primarily with cases of that region. Having a large contingent of judges from the African States is therefore perhaps necessary from the point of view of the court's legitimacy. One gets the sense that the GRULAC contingent on the court has diminished in strength against the rise of the African States on the court.



Unlike the ICJ and several national supreme courts, the ICC does not regularly convene in plenary sessions to perform its work.¹⁶² Instead, the ICC has three divisions, and each division performs its work in chambers. The three divisions are: Ap-

162. See *ICC at a Glance*, INT'L CRIM. CT., http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx (last visited Jan. 6, 2013).

peals, Trial, and Pre-Trial.¹⁶³ The Appeals Division consists of the president of the ICC and four other judges.¹⁶⁴ The Trial and Pre-Trial Divisions consist of not less than six judges each.¹⁶⁵ ICC judges typically serve nine year non-renewable terms in office,¹⁶⁶ and judges assigned to the Appeals Chamber must spend the entire length of their terms on that chamber,¹⁶⁷ perhaps to ensure that they are insulated from being biased in favor of judges whose decisions they are considering on appeal. Judges in the other divisions are required to serve in that division for a three year term,¹⁶⁸ which suggests that they possibly rotate between divisions. The Rome Statute mandates diversity even in the allocation of judges to divisions. Thus, each division is required to have an “appropriate combination” of expertise in criminal law and procedure and in international law.¹⁶⁹ Further, the Trial and Pre-Trial divisions are to be composed primarily of judges with criminal experience.¹⁷⁰

There are five regional subgroups on the ICC, but not all have been equally represented on the Appeals Chamber. Judge Song (Asian States) and Judge Kourula (WEOG) have served on the Appeals Chamber since the inception of the ICC.¹⁷¹ Nearly 80 percent of the decisions of the Appeals Chamber were issued by either Judge Kirsch (WEOG), Judge Pillay (African States), and Judge Pikis (Asian States), or by Judge Ušacka (Eastern Europe), Judge Nsereko (African States), and Judge Kuenychia (African States), along with Judges Song and Kourula. Thus, a GRULAC state has never had a judge on the Appeals Chamber. Between 2006 and 2008, cases were decided by an Appeals Chamber that had two judges each from the Asian States and WEOG, and only one judge from the African States. However, more recently, the balance has tipped in favor

163. See *Chambers*, INT'L CRIM. CT., http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/chambers/Pages/chambers.aspx (last visited Jan. 6, 2013).

164. Rome Statute, *supra* note 153, art. 39(1).

165. *Id.*

166. *Id.* art. 36(9)(a). However, a judge assigned to a Trial or Appeals Chamber must stay on until a trial or appeal is concluded. *Id.* art. 36(10).

167. *Id.* art. 39(3)(b).

168. *Id.* art. 39(3)(a).

169. *Id.* art. 39(1).

170. *Id.*

171. Both judges served on the court initially from 2003–2006, and their terms were later renewed until 2015.

of the African States, and cases decided by the Appeals Chamber from 2009 onwards typically had two judges from the African States and one each from WEOG, the Asian States, and Eastern Europe. Accordingly, the heavy presence of Africa on the docket of the ICC has ensured that the African judges on the Appeals Chamber of the ICC outnumber judges from each individual sub-region on that chamber.

Interestingly, although the ICC has a majority of judges with criminal law experience serving on it, the Appeals Chamber typically has a majority of judges with generalist international law experience. At an appellate level, it is perhaps thought fit to have judges think of the law on generalist terms at a normative level, instead of at a technical criminal law level. Further, although the ICC has had a majority of female judges serving on it since 2009, the Appeals Chamber has typically always featured a majority of male judges. In terms of diversity of gender and professional experience, the Appeals Chamber of the ICC therefore stands in contrast to the general body of the ICC.

III. DOES DIVERSITY IMPACT DECISION MAKING ON THE ICC?

I decided to quantitatively test whether diversity makes any difference to the manner in which cases are decided on the Appeals Chamber of the ICC. Although only one case has been concluded by the ICC so far,¹⁷² and the vast majority of its “decisions” are housekeeping matters (e.g., directions for the prosecution and defense to file replies within stipulated periods of time, orders scheduling hearings and appointing presiding officers, etc.), the Appeals Chamber of the ICC has issued a sizeable number of decisions in cases involving adversarial contests. I decided to test whether the presence of a higher number of African judges on the Appeals Chamber of the ICC made the court more or less likely to hold in favor of African defendants. So far, the ICC has dealt exclusively with cases arising out of Africa, and appointments made to the ICC in recent times have

172. See Press Release, International Criminal Court, ICC First Verdict: Thomas Lubanga Guilty of Conscripting and Enlisting Children Under the Age of 15 and Using Them to Participate in Hostilities (Mar. 14, 2012), http://www.iccpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/press%20releases/Pages/pr776.aspx.

reflected a shift towards appointing more judges from the African States. My research question was: does a higher number of African judges on the court make the court more or less defendant friendly, given that all the defendants are of African origin?

As discussed above, before 2009, the Appeals Chamber of the ICC had only one judge from the African States serving on it. Judges Song, Kirsch, Pikis, Pillay, and Kourula decided the vast majority of cases in the pre-2009 Appeals Chamber. Only Judge Pillay belonged to the African States. However, starting in 2009, the Appeals Chamber had two judges from the African States serving on it. Judges Kuenyichia, Kourula, Ušacka, Nsereko, and Song decided the vast majority of cases in the post-2009 Appeals Chamber, which included Judges Kuenyichia and Nsereko of the African States. The post-2009 Appeals Chamber also had an Eastern Europe judge serving on it (Ušacka). The question was, controlling for other variables, did the pre- and post-2009 Appeals Chambers of the ICC adopt different attitudes towards defendants?

I systematically analyzed decisions¹⁷³ of the Appeals Chamber of the ICC between 2006 and 2012.¹⁷⁴ Each decision was

173. Including orders and judgments.

174. I did not count any of the following types of decisions of the Appeals Chamber: orders appointing a presiding judge, setting time limits, directing the prosecution or defense to respond to an application for extension of time or page limits, scheduling orders, requests for views of parties, or decisions where the arguments of the prosecution and defense were aligned (e.g., where both took the same position towards an attempted amici intervention or victim participation, etc.), where the contest was not one between the prosecution and defense (e.g., where the prosecution and registrar of the court were in contest), or where the Appeals Chamber did not conclusively find in favor of either prosecution or defense over the other (e.g., where the Appeals Chamber found merit in the cross appeals of both the prosecution and defense and reversed the Trial Chamber's decision). The following types of cases were counted: grants of applications for extension of time, rejections of documents as being inadmissible, ex parte orders seeking to know from the prosecution why certain documents should continue to remain confidential, and of course, confirmations or reversals of appeals. If a trial chamber's decision was partly reversed and partly affirmed, then the Appeals Chamber was counted as having decided in favor of the prosecution if more of the prosecution's contentions were accepted rather than denied, and vice versa. A conscious attempt was made to code cases by outcome. Thus, where the Appeals Chamber found that the prosecution's request for an extension of page limits was superfluous, because the prosecution erroneously believed the page limit to be

coded based on its outcome and assigned a value of 1 if the decision went in favor of the defendant and 0 if the decision went against the defendant or in favor of the prosecution. The independent variable was whether the case was decided by the pre-2009 or post-2009 Appeals Chamber of the ICC—the decision was assigned a value of 1 if it was decided by the post-2009 Appeals Chamber of the ICC and 0 if it was decided by the pre-2009 Appeals Chamber of the ICC. I controlled for the type of case with which the Appeals Chamber was dealing based on the identity of the defendant. Thus, for example, if the defendant in the decision was Joseph Kony,¹⁷⁵ the decision was assigned a value of 1, if not, a value of 0, and this process was repeated for each defendant variable. The results of the logistic regression analysis are set out below.

The upshot is that the post-2009 Appeals Chamber—the one with two African judges—held against the defendant at a statistically significant level¹⁷⁶ when compared to the pre-2009 Appeals Chamber of the ICC. This is suggestive of the hypothesis that the geographic and national background of judges does, in fact, make a difference to the manner in which cases are decided. The regression analysis I have conducted suggests that the presence of more African judges on the Appeals Chamber may have made it more likely for the Appeals Chamber to decide cases against the defendants, all of whom were African. Perhaps African judges, who are more closely aware of the atrocities alleged to have been committed by the defendants, are less likely to decide cases in favor of African defendants. Their presence in a larger number on the Appeals Chamber of

twenty pages (whereas it was 100 pages), the case was counted as a prosecution case, since the prosecution achieved its desired result/interpretation in outcome.

175. The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, Case No. ICC-02/04-01/05, Warrant of Arrest (July 8, 2005), <http://www2.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0204/Related+Cases/ICC+0204+0105/Court+Records/Chambers/Pre+Trial+Chamber+II/Warrant+of+Arrest+for+Joseph+Kony+issued+on+8th+July+2005+as+amended+on+27th+September+2005.htm>. Kony stands accused of crimes against humanity, enslavement of children, etc. See generally KATHY COOK, *STOLEN ANGELS: THE KIDNAPPED GIRLS OF UGANDA* (2007).

176. The p value is 0.0412.

the ICC might have had a “panel effect”¹⁷⁷ on the working of the chamber.

Dependent Variable: OUTCOME
 Method: ML - Binary Logit (Quadratic hill climbing)
 Date: 03/07/12 Time: 13:50
 Sample: 1 76
 Included observations: 76
 Convergence achieved after 4 iterations
 Covariance matrix computed using second derivatives

Variable	Coefficient	Std. Error	z-Statistic	Prob.
BENCH	-2.617438	1.281890	-2.041859	0.0412
MBARUSHIMANA	2.617438	1.625805	1.609934	0.1074
MUTHAURA	1.231144	1.700953	0.723796	0.4692
KATANGA	-0.223144	0.670820	-0.332643	0.7394
GOMBO	2.165453	1.370039	1.580577	0.1140
KONY	1.750666	1.192555	1.467997	0.1421
JAMUS	2.617438	1.908728	1.371300	0.1703
DYILO	-0.470004	0.403113	-1.165936	0.2436
Mean dependent var	0.394737	S.D. dependent var	0.492042	
S.E. of regression	0.486710	Akaike info criterion	1.436254	
Sum squared resid	16.10828	Schwarz criterion	1.681594	
Log likelihood	-46.57764	Hannan-Quinn criter.	1.534304	
Deviance	93.15528	Restr. deviance	101.9646	
Avg. log likelihood	-0.612864			
Obs with Dep=0	46	Total obs	76	
Obs with Dep=1	30			

However, it is important to underscore that the evidence presented above is only suggestive and not conclusive of the hypothesis that geographic background impacts decision making. Although both the pre- and post-2009 Appeals Chambers had the same number of List A and List B judges (i.e., the same number of judges who were criminal law specialists and international law generalists), the post-2009 Appeals Chamber had

177. CASS SUNSTEIN ET AL., ARE JUDGES POLITICAL? AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY 7 (2006).

two female judges on it as opposed to the pre-2009 Appeals Chamber which had only one female judge. It is possible that the presence of a higher number of female judges would make the Appeals Chamber more likely to decide cases against defendants (all of whom were male), particularly when many victims of the crimes were women—but the evidence presented in the coming paragraphs tends to negate this theory. It is possible that the presence of the Eastern Europe judge on the post-2009 Appeals Chamber had an impact on the court's likelihood to decide cases against the defendant—but the evidence presented in the coming paragraphs tends to negate this hypothesis as well. The evidence does not rule out the possibility that the Appeals Chamber might have become less defendant-friendly over time. However, the evidence suggests that geographic factors, namely the presence of an additional judge from the African States, could possibly explain the Appeals Chamber's statistically significant unfriendly attitude towards defendants after 2009.

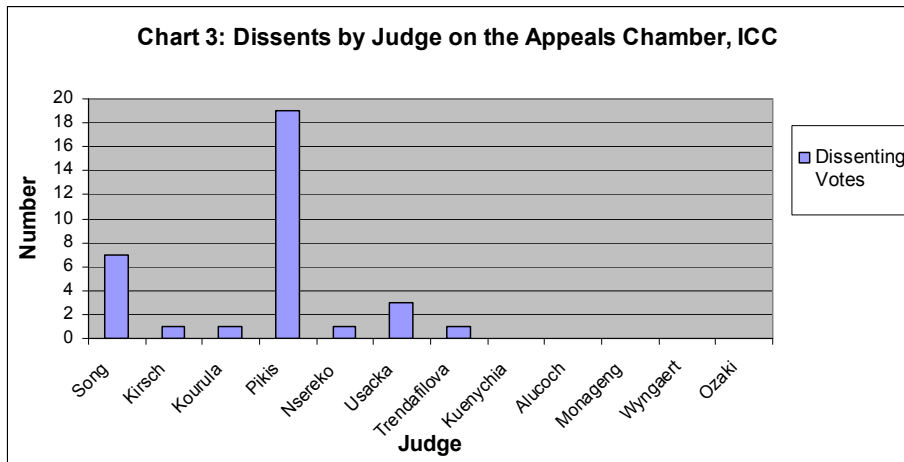
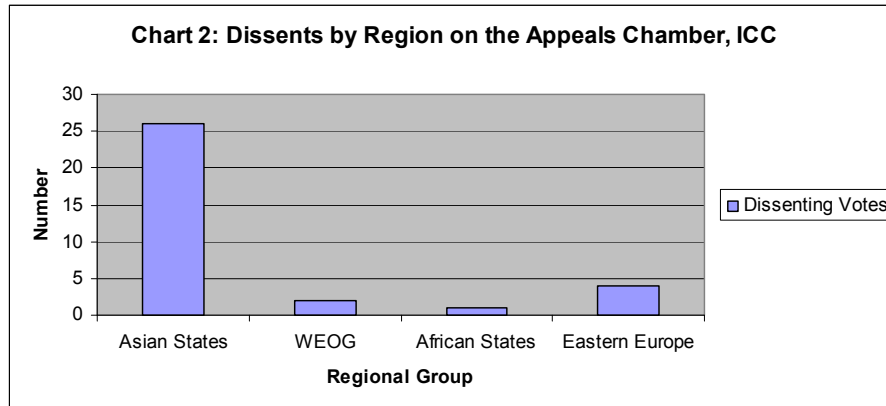
Judges dissented in approximately 30 percent of the coded decisions of the Appeals Chamber of the ICC—decisions that were genuine contests and not housekeeping matters. More decisions generated dissent in the pre-2009 Appeals Chamber than in the post-2009 Appeals Chamber, and the difference in the proportion of dissents recorded in the pre- and post-2009 Appeals Chambers was statistically significant.¹⁷⁸ Further, there was a statistically significant (at the 90 percent confidence interval) negative relationship between the outcome of the decision (i.e., whether it was pro- or anti-defendant) and whether a dissent would be recorded in the decision—in other words, there was a higher likelihood of a dissent being recorded if the majority decision went in favor of prosecution than if it went in favor of the defense. The results of the logistic regression are reported below. The data suggest that dissenters were typically pro-defendant, and given that a statistically significant higher proportion of dissents were recorded in the pre-2009 Appeals Chamber, this is more evidence that the pre-2009 Appeals Chamber was less anti-defendant than the post-2009 Appeals Chamber.

178. P value: 0.0131.

Logistic regression	Number of obs =	64
	LR chi2(5) =	12.38
	Prob > chi2 =	0.0300
Log likelihood = -28.660033	Pseudo R2 =	0.1776

Dissent	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
Outcome	-1.380216	.8001284	-1.72	0.085	-2.948439	.1880068
Bench	-.8817229	1.203531	-0.73	0.464	-3.2406	1.477154
Mathaura	.2616994	1.582903	0.17	0.869	-2.840734	3.364133
Katanga	1.432974	.8676172	1.65	0.099	-.2675249	3.133472
Gombo	-1.016989	1.517064	-0.67	0.503	-3.990879	1.956401
_cons	-.5752514	.4926285	-1.17	0.243	-1.540786	.3902828

The dissenting judges were almost overwhelmingly from the Asian States. Judges Pikis and Song were the key dissenters on the Appeals Chamber. Chart 2 breaks the dissents on the court down by region and Chart 3 breaks the figures down by the individual dissenting judge. Importantly, judges from the African States recorded the lowest level of dissent on the Appeals Chamber of the ICC. Since the data above reveal that dissenters tended to be pro-defendant, the fact that judges from the African States recorded the lowest level of dissent adds weight to the hypothesis that they were more anti-defendant than other judges on the Appeals Chamber. After the Asian States judges, the highest number of dissenting votes during this period were recorded by a female judge—Anita Ušacka—also the only Eastern Europe judge on the Appeals Chamber between 2009 and 2012 for the cases coded. Although Judge Ušacka registered only three dissenting votes during this period, in two of those three cases the majority of the Appeals Chamber decided the case against the defendant. Again, this tends to suggest that the presence of more female judges on the post-2009 Appeals Chamber, and the presence of the Eastern Europe judge in that Chamber, may not have been the influences driving the shift in the Appeals Chamber’s attitude towards defendants starting in 2009.



CONCLUSION

Much of the scholarly literature surveyed in this Article argues that diversity enhances a court's legitimacy by making it seem more inclusive. However, this Article presents evidence to suggest that the legitimacy of international courts might be undermined by a justifiable fear that judges from particular geographic regions—regions that dominate judgeships on international courts—might harbor conscious or subconscious biases towards or against certain causes. The results of this study are suggestive, but not conclusive. The quantitative analysis relies on only seventy-six observations, and a more definitive answer to my research question cannot be provided until a substantially larger number of decisions are issued by the ICC. However, the analysis in this Article suggests that the

geographic background of a judge has the capacity to impact the manner in which he or she decides cases. What this means for the international system is that the criterion of “fair” geographic representation in appointing judges to international courts must be carefully assessed. The presence of a higher number of judges from the African States might bolster the legitimacy of the ICC—the court may consequently be seen as a truly inclusive judicial body, and not merely as an institution where “outsiders” pass judgment on Africans. At the same time, however, the presence of a higher number of judges from the African States on the ICC has the potential to undermine the very legitimacy of the court that its inclusiveness seeks to engender. By virtue of their backgrounds, judges may appear to be biased against the African defendants whose alleged crimes they know so well. Allegations of bias can be as damaging to a court’s legitimacy as accusations of under-inclusiveness.

This Article does not canvas an argument that diversity on international or national courts is illegitimate or inadvisable. There are tensions between diversity and impartiality on courts, but these tensions can be appropriately addressed by staffing judgeships fairly amongst diverse constituencies or groups. The problem with the norm of geographic representation on international courts is that it is rarely ever truly or honestly inclusive. Judges of P5 countries dominate judgeships on international bodies, as do judges of regions that have a stake in the stability and security of the region with which the court deals. The Appeals Chamber of the ICC has five judges serving on it and representation on the Chamber can consequently be given to each of the five regional subgroups—but this has not happened. A judge each from France and the United Kingdom has always served on the ICC, and judges from the African States have increasingly been appointed to the court. This undermines the perception that the ICC, or any other international court, is a neutral adjudicator of disputes, one which dispassionately applies international law to specific factual situations in a political vacuum. Instead, the court opens itself up to accusations of bias which may undermine its credibility and unseat the very legitimacy that a system of diversity seeks to create. In order to be perceived as legitimate, the norm of geographic diversity on international courts must embrace true diversity—not just diversity fostered by geopolitical realities.

APPENDIX: JUDGES OF THE INTERNATIONAL CRIMINAL COURT
(2003–12)

Judge	A / B	Group	Country	Gender	Term	Renew	Other Term Expir. Cause
Philippe KIRSCHÉ	B	WEOG	Canada	M	2003-09		
Akua KUENYEHIA	B	African States	Ghana	F	2003-06	2006-15	
René BLATTMANN	B	GRULAC	Bolivia	M	2003-09		
Karl T. HUDSON- PHILLIPS	A	GRULAC	Trinidad & Tobago	M	2003-12		Resig.
Claude JORDA	A	WEOG	France	M	2003-09		Resig.
Georghios M. PIKIS	A	Asian States	Cyprus	M	2003-09		
Elizabeth ODIO BENITO	A	GRULAC	Costa Rica	F	2003-12		
Navanethem PILLAY	B	African States	South Africa	F	2003-09		
Sang-Hyun SONG	A	Asian States	Korea	M	2003-06	2006-15	
Hans-Peter KAUL	B	WEOG	Germany	M	2003-06	2006-15	
Mauro POLITI	B	WEOG	Italy	M	2003-09		
Maureen Harding CLARK	A	WEOG	Ireland	F	2003-12		Resig.
Erkki KOURULA	B	WEOG	Finland	M	2003-06	2006-15	
Fatoumata Dem- bele DIARRA	A	African States	Mali	F	2003-12		
Anita UŠACKA	B	Eastern Europe	Latvia	F	2003-06	2006-15	
Sir Adrian FULFORD	A	WEOG	UK	M	2003-12		
Sylvia STEINER	A	GRULAC	Brazil	F	2003-12		
Tuiloma Neroni SLADE	A	Asian States	Samoa	M	2003-06		

Ekaterina TRENDAFILOVA	A	Eastern Europe	Bulgaria	F	2006-15		
Daniel David Ntanda NSEREKO	A	African States	Uganda	M	2007-12		
Fumiko SAIGA	B	Asian States	Japan	F	2007-09	2009-18	Death
Bruno COTTE	A	WEOG	France		2008-12		
Joyce ALUOCH	A	African States	Kenya	F	2009-18		
Sanji Mmasenono MONAGENG	B	African States	Botswana	F	2009-18		
Mohamed SHAHABUDDEE N	B	GRULAC	Guyana	M	2009-18		Resig.
Cuno TARFUSSER	A	WEOG	Italy	M	2009-18		
Christine VAN DEN WYNGAERT	A	WEOG	Belgium	F	2009-18		
FERNÁNDEZ DE GURMENDI	A	GRULAC	Argentina	F	2010-18		
Kuniko OZAKI	B	Asian States	Japan	F	2010-18		
Miriam DEFENSOR- SANTIAGO	B	Asian States	Philip- pines	F	2012-21		
Anthony Thomas Aquinas CARMONA	A	GRULAC	Trinidad & Tobago	M	2012-21		
Robert FREMR	A	Eastern Europe	Czech Republic	M	2012-21		
Olga Venecia HERRERA CARBUCCIA	A	GRULAC	Domini- can Re- public	F	2012-21		
Howard MORRISON	A	WEOG	UK	M	2012-21		
Chile EBOE- OSUJI	A	African States	Nigeria	M	2012-21		

Source: These data have been compiled by the author, using information posted on the website of the ICC.