

Would Justice Be Better Served in the U.S. if More Supreme Court Judges Were Women?

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Abstract: This paper support that justice would be better served in the U.S. if Supreme Court judges included more women. Considering the powerful influence of the Supreme Court rulings, this paper focuses on the importance of diversity on the bench and females' decision-making characteristics. Diversity on the bench could effectively enhance the fairness of verdicts and positively influence colleagues, as female judges would make decisions with different life experiences. Their presence creates a more fair and open courtroom environment. Also, a diverse bench would increase confidence in U.S. citizens of the Supreme Court. Compared to males, Females' decision-making characteristics would provide a fresh perspective on the bench since these characteristics are essential and beneficial for courtroom decisions.

Keywords: supreme court, diversity on bench, court representation, female decision characteristics

1. Introduction

A blindfolded woman, holding a sword in one hand and scales in the other, stands proudly outside courthouses from ancient Egypt and Renaissance Europe to as recently as 21st-century America. You may recognize her as Lady Justice, an allegorical personification of the moral and righteous force in legal systems. However, this glorified and historic personification seems almost ironic, as few Lady Justices can be found in courtrooms. Even though the number of women in the judiciary worldwide has increased dramatically in recent decades, in many countries, about half of law students are women, and data from 2014 show that women make up more than 54 percent of professional judges in OECD countries. However, women are still vastly underrepresented in senior judicial positions, including high court judges and other high-level positions in the legal Profession.

This essay will focus on whether the presence of women on the Supreme Court in the United States would better serve justice. This topic is discussed with specific consideration of the effects of judicial decisions on American politics, culture, and economics.

2. Background

In the Supreme Court, women hold only 33.6% of the bench positions. This trend is also reflected in the percentage of women in presidential positions. On average, women save 45.9% of the presidencies of the lower courts, 28% of the presidencies of the courts of appeal, and 18.6% of the

presidencies of the Supreme Court [1]. Women tend to be successful in entering the legal sector, but progression into senior positions is slow.

However, considering the characteristics of the Supreme Court, the presence of more women judges is necessary. The Supreme Court can directly shape the interpretation and application of the Constitution and federal laws, which can, in turn, impact elections and executive powers, significantly impacting the political aspect. Culturally, Supreme Court decisions are influenced by and reflective of society, as evidenced by the landmark decision in *Brown v. Board of Education*, which declared segregation in public schools unconstitutional and contributed to the Civil Rights Movement [2]. Economically, Supreme Court decisions can impact business and market regulations, such as antitrust law and the regulation of monopolies. Furthermore, as the ultimate judicial authority, the Supreme Court sets a moral and legal standard of right and wrong for the public, which can influence citizens' ethical standards and understanding of the law.

Based on these specifications, this essay support that the Supreme Court in the U.S would be better served if more female judges were on the bench.

There are several opposing opinions. Some are concerned that women judges are more likely to have a liberal bias and to rule in favor of progressive policies. This concern often originates from the belief that women are more likely to support policies related to reproductive rights, gender equality, and social justice. In this case, Republicans are more likely to view female judges as biased, given that they rate females as more biased than males when dealing with issues such as the abortion controversy. People holding this view assume that all women would mindlessly address controversial topics, such as feminism, with no rational thinking, thus making biased decisions. It is crucial to remember that judges must be neutral and interpret the law without bias, even though female judges are more likely to support laws of social justice, gender equality, and reproductive rights. Even though female judges' personal experience would affect their ruling, every judge would still process each decision rationally and calmly to make the ruling they find most righteous. A female perspective does not indicate a blinding support of feminism but rather a fresh air that would more comprehensively address issues regarding women. Female judges can keep their personal opinions apart from their judicial judgments, just as male judges are allowed to have personal beliefs and biases.

Another popular opposing argument is that if the Supreme Court intentionally increases the concentration of female judges on the bench, women who cannot pass the usual standard bars of men would be selected for the bench. This selection decreases the quality of the Supreme Court judges and thus would harm justice rulings. Also, it assumes that women are less capable of professional abilities and need special treatment. However, the actual case is that women already face bias in selection and at the workplace, having to perform better to be treated equally as men with the same abilities. According to a study by the ABA Commission on Women in the Profession, women and people of color face PIA bias. PIA bias, standing for the prove-it-again factor, occurs when women must prove themselves repeatedly to provide evidence of capacity. At the same time, men with the same qualifications would be more convincing. It is the double standard that men are judged on their potential, while women are considered strictly on what they already have accomplished. According to the study, "women of color reported PIA bias at a higher level than any other group, 35 percentage points higher than white men." [3]. Therefore, in an environment in that women already need to over-perform to get equal chances with men, encouraging gender equality on the bench means that women would be judged with the same standard as men instead of with a higher one.

On the other hand, a study by ABA profile of the legal Profession concluded that in the U.S., 55.3% of all law students were women in 2021 [4]. This data indicates that in the field of law, the proportions of genders are relatively equal. Thus, the proportions of gender on the bench should

also be equal since female law talents do not lack. By including more women as Supreme Court judges, women are not treated differently but instead equally.

3. Enhance Diversity in the Bench

The Supreme Court is responsible for conducting the final decisions on legal cases, thus, is one of the most potent judiciary institutions. As explained above, the decisions made in court have a massive impact on modern American society since they represent and set the values and morals of citizens. Thus, judging cases from all over the country, the bench should appropriately represent American society. In other words, the races and genders of the bar should resemble that of the U.S. society [5]. However, this has not been the case for the Supreme Court, as the gender and race ratios are imbalanced and contrast with the U.S. population composition. Women are represented in the judiciary but at a much lower rate than men. Historically, only 6 Supreme Court Justices have been women [6]. Diversity on the bench is necessary to well-served justice, as it induces more consideration of decision, enhances the representation of various communities, and thus elevate citizens' confidence in the judicial system and the Supreme Court.

3.1. Fairness

3.1.1. Backgrounds and Ruling Style

Firstly, diversity in gender would give a more thoughtful and comprehensive decision in court. Research suggests that judges from different backgrounds would have different opinions and thus rule differently in specific categories of cases, especially civil rights cases. Different backgrounds indicate various life experiences, which influence the judging process. Justice Sonia Sotomayor once mentioned, "Personal experiences affect the facts that judges choose to see." [7]. Even though this statement has been attacked occasionally, it is an inevitable truth. Different experiences make judges focus on certain things over others. Personal experiences would affect a judge's ruling style, indicating that if the bench is composed of judges of the same background, the ruling would be based on one perspective and can be judged as unfair. But if the court consists of judges with different life experiences and focuses, the case would be more carefully considered in various aspects.

A diverse bench would mean fresh perspectives and more comprehensive evaluation, thus leading to richer jurisprudence, which is especially important for the Supreme Court. A real-life example would be Justice Sotomayor, who was commented as "raises questions that nobody else was asking, such as what is the effect on racial minorities." A diverse bench would mean fresh perspectives and a more comprehensive evaluation, thus leading to richer jurisprudence. Similarly, women would view things affected by their experience as a female living in society.

3.1.2. Influence on Colleagues

Studies have concluded that the presence of a woman on the bench would affect how their colleagues judge as well. A survey of a three-judge bar found that when a female judge is on the court, their fellow male judges would more likely support the plaintiffs in civil rights cases. This indicates that diversity on the bench brings one unique perspective and influences other judges to be more reflective.

Ginsburg once stated in a documentary, "I did see myself as kind of a kindergarten teacher in those days because the judges didn't think sex discrimination existed. One of the things I tried to plant in their minds was, think about how you would like the world to be for your daughters and granddaughters." [8]. In the *Safford Unified School District v. Redding* case, Ginsburg explained

her experiences as a 13-year-old girl. The *Safford Unified School District v. Redding* case decided in 2009 would be a perfect example of how women's view is essential. This case involved a 13-year-old girl being strip-searched in school, who considered this act a violation of the Fourth Amendment right to be free of unreasonable search and seizure. Ginsburg was the only female judge when the Supreme Court judged this case. As Judge Stevens expressed his confusion on why the girl felt violated of her rights, Ginsburg provided a statement of a women's view, partially based on her own experience [9]. She stated that her colleague "has never been a 13-year-old girl" and argued, "It's a very sensitive age for a girl. I didn't think that my colleagues, some of them, quite understood." Ginsburg added, "Maybe a 13-year-old boy in a locker room doesn't have that same feeling about his body. But a girl (might be) embarrassed about that." This example perfectly demonstrates how important one's personal life experience might clarify a case's understanding. Ginsburg's statement is believed to have influenced her male colleagues, which is another proof diversity would enhance fairness in the ruling.

3.1.3. Enhance Justice in Court

Diversity benefits not only the ruling of the case but also the justice in the courthouse, especially issues regarding gender bias. Gender-biased behavior includes courtroom interactions, judges' conduct, and substantive decisions. Women judges would be more likely to address and intervene in gender biases in their courtrooms. Research on the Eighth Circuit and the Ninth Circuit report observed that female judges notice more incidences of gender-biased misconduct at a higher frequency than men [10]. People are less likely to see gender bias if they engage in the same behavior. Therefore, compared to women, male judges have a higher possibility of not noticing gender biases.

In addition, female judges are more likely to receive attorney requests for assistance and interventions in court than their male colleagues. The presence of female judges encourages attorneys to bring forward more concerns since they are assured that female judges would be able to intervene and solve the problem appropriately. This would enhance court justice which would increase ruling justice.

The presence of a female judge would also discourage gender-based language and tone [11]. Gender-biased language implicitly or explicitly expresses one gender's superiority over the other gender. For instance, a constant refers to the pronoun of male to cover all genders that, implicitly imply that male is the dominant gender. Or more explicitly, an inappropriate depiction of a gender's societal role. Since language could influence a person's thinking process, gender-biased language in court might negatively impact one's treatment of a specific gender. It is believed that a female judge on the bench would decrease the rate at which gender-based language is used since people speaking in the court would not like to offend the Supreme Justice. Consequently, they would mind their language and perform with a more gender-neutral language.

3.2. Representation and Confidence

A federal district court Judge Edward Chen expressed, "It is the business of the courts, after all, to dispense justice fairly and administer the laws equally How can the public have confidence and trust in such an institution if it is segregated — if the communities it is supposed to protect are excluded from its ranks?" [12]. It depicts that a Supreme Court bench that includes different gender would resemble American society more. Dealing with cases with people from other communities, the Supreme Court should welcome other communities on its bench. Diversity on the bench would also enhance Americans' confidence and trust in the Supreme Court. One study indicates that more excellent representation of Black judges on the bench would make Black Americans find the court

more legitimate [13]. It is the same case with gender diversity on the bar. Including more female judges in the Supreme Court would encourage Americans to have more faith in American Justice System. Besides enhancing confidence, more women in court promote a gender perspective and provide equal gender visibility. As the highest Justice court in the U.S., a female Supreme Court Justice would be a role model for aspiring women and show them there are fewer barriers in the justice field.

4. The Characteristics of Women's Decision

Women's decision characteristics are believed to influence judges' ruling process positively. This decision characteristic contrasts with the male decision characteristic, which provides a more carefully thought-over ruling. Each decision characteristic has its benefits and disadvantages; the features would complement each other when judging if both are present on the bench. This essay would specify three female decision and moral judgment characteristics to demonstrate how females benefit from making a fair justice decision.

4.1. Prioritize Care-related Concerns

According to research by John Gibbs in 2021, females tend to use more care-related concerns during their moral judgment [14]. This indicates that when making decisions, females are more relational, communion, and people-oriented. This characteristic determined that, contrasting male judges' aggression and rigidity, female judges tend to be more flexible and socially expressive. It makes female judges adaptable when ruling since they tend to consider each background and case-to-case relational situations.

The 'ethics of care' theory by psychologist Carol Gilligan applies to this case and thoroughly explains it. Gilligan explains three stages of ethics of care; by each stage, women grow to care and concern about others [15]. In conclusion, the feminine moral viewpoint is frequently contextual and is formed from a code of conduct based on empathy and care for others. Gilligan also claims this trait is not developed because of experiences but rather a natural cognitive ability common in women. However, some research suggests that social experience in the female community would also enhance this trait. There are four main elements for care, according to Tronto and Bernice Fischer, who point out that care is "a species of activity that includes everything we do to maintain, contain, and repair our 'world' so that we can live in it as well as possible." [16]. The first element is attentiveness, a tendency to notice needs. Female judges who present attentiveness in court are more prone to see biases and details in cases and court behaviors. The second one is a responsibility, a willingness to act and meet needs. In court, female judges would be more likely to address the issues they notice, provide care, and, if appropriate, help. Thirdly, competence is also a key element, the ability to provide adequate care. Female judges are better at finding the best and most balanced method of addressing needs in court and making a reasonable ruling. The last element is responsiveness, meaning females consider others' points of view and recognize the possibility of abuse in care. This last element reduces the risks of the previous elements; even though women are more attentive to needs, they would be sensitive to noticing whether the condition is appropriate, such that the care is not over-provided. These elements contribute to female judges' making rulings with humanistic care towards society and considering needs in every case better to serve justice to the majority of U.S citizens.

This is the opposite of Kohlberg's theory of moral development, which claims moral reasoning is primarily concerned with pursuing and upholding justice. According to research, the ethics of care and Kohlberg's theory of moral evolution are moral orientations a person can develop [17]. However, the first is more influential in females, while the second affects males more.

Therefore, females and males develop different moral judging characteristics. A good example would be Justice O’Conner, giving different opinions when dealing with cases, with a new standard for each case. While other male judges tend to have a more rigid standard that applies to almost all cases they deal with. This is beneficial when dealing with people and socially related matters, which comprise a considerable proportion of Supreme Court cases. Even though female judges are more suitable for dealing with some instances, it is still important that the bench has a diversity of decision characteristics. A combination and collaboration of strict and adjustable would produce a decision that is indifferent to unique backgrounds but also stands by essential rules. More female judges would neutralize the aggression and rigidity of male judging that takes up most of the bench by adding flexibility and more care.

4.2. Risk Aversion

Men are more likely to make risky decisions than women—multiple studies on gender differences have supported this claim. There are several theories behind this claim. One of which is that different characteristics would affect the process of decision-making. Men are more competitive, optimistic, adventurous, and overconfident than women. Thus, they make risky decisions [18].

On the other hand, the sexual selection theory suggests that risk-taking in males is a primitive way of having more chances to pursue a mate.

Additionally, according to a study on gender differences in risk-taking, it is suggested that females are more pessimistic about the outcome of decisions than males and, thus, would think thoroughly before making one [19]. While Females, on the other hand, do not face any of the above two situations; therefore, compared to men, they are more risk-averse. From the evolution angle, risk aversion might be a biological trait for females. Female face being pregnant and carrying offspring require a high level of caution and induces female to make less risky decisions. This indicates that females tend to take more notice when decision-making since they carefully consider multiple factors to make the safest decision [20].

In the context of legal systems, specifically the Supreme Court, decisions must be made with caution and careful consideration from all angles. A fundamental requirement for a judge is to apply the law fairly and impartially, ignoring all personal biases that would influence their decision-making process. Female judges’ natural characteristic of risk aversion would enable them to judge after understanding and considering all factors. On the other hand, males are more prone to fixate on achieving a specific goal or outcome, even though it means more risk would be taken.

Therefore, increasing female judges on the bench would decrease risk factors in Supreme Court rulings. As the Supreme Court profoundly influences American society, decisions should be made more rationally and comprehensively. Justice would be better served since decisions would be more carefully considered.

4.3. Neutral

Although the conservative camp is putting forward the nominations for female justices to the Federal Supreme Court, there is evidence suggesting that female judges tend to rise above their party ideology, adopt a moderate stance, and make middle-of-the-road opinions that lean towards humanistic decisions. After all, the highest federal judges have a sacred duty to defend the Constitution through the unconstitutional review process, with the primary function of the Constitution being to safeguard the fundamental rights of human beings.

For instance, Justices O’Connor and Ginsburg, known for their moderate views, have supported women’s right to abortion by not only affirming its legality but also advocating for some

restrictions on abortion. They have also expressed reservations in support of affirmative action, not just to protect the interests of disadvantaged groups but also to uphold the constitutional principles of equal opportunity and fair play. On the issue of the separation of church and state, they have taken a centrist approach, swaying from side to side and remaining unpredictable.

The several female justices in the United States are distinguished by their analytical approach to decision-making, in which they do not make ideology a criterion but rather explore the complexities of specific cases and make reasonable decisions. This approach has prevented American society from experiencing an excessively drastic and radical shift to the right.

5. Conclusion

In conclusion, justice would be better served in the U.S. if Supreme Court included more female judges. Female judges would enhance diversity on the bench which would, in turn, increase the fairness of ruling, positively affect colleagues' views and maintain court justice. Also, women's judging characteristics are relatively prosocial, risk-averse, and neutral compared to male judges.

For thousands of years, justice was represented as Lady Justice, a woman. Only one Lady Justice is standing outside of the Supreme Court. But inside the court, there should be more 'Lady Justices.' This is not only for the benefits of gender equality representation but for the development of the U.S. with better-served justice.

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