

Interaction Between Gender of Judges and Judicial Decisions: Take the US Supreme Court as an Example

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Abstract: With the rise of feminist movements and calls for equal rights around the globe, people have become concerned about the gender ratio in various fields, including distribution of male and female judges in courts, and has thus led to the question of whether the judges' gender influences their judgements. To further explore the question, this essay takes the US Supreme Court as the research object. The paper studies the basic professionalism of judges, judges' decisions in famous jurisprudence on women's rights in the history of the U.S. Supreme Court (which often lead into the discussion of whether female judges are influenced by their own gender when making judgemental decisions), as well as relevant statistical data like the ratio of judges that incline to different partisanship at the Supreme Court. By studying the above, the paper has come to the conclusion that gender of the judges do not necessarily influence their judgements.

Keywords: Gender, women judges, the US Supreme Court

1. Introduction

John Rawls once said: "Justice is the first virtue of all social institutions [1]." With the rise of the feminist movements and the increase in the number of female judges on the United States Supreme Court, a discussion on whether appointing more women as Supreme Court justice would promote justice in the United States has been raised. Before launching into the discussion, the key term "justice" needs to be defined. The concept of justice encompasses equity and fairness. In a society in which justice is served, individuals and groups are treated in a just and impartial manner. The outcome of this includes impartial application of laws and rules; fair allocation and distribution of resources and opportunities as well as people receiving what they deserve and having their rights protected [1].

This essay will argue that an increase in the number of women justices on the US Supreme Court will not promote justice. The reason for this is that the Supreme Court judges should be governed by the principle of impartiality and their judgements are mainly influenced by their ideological leanings. Some opponents may claim that more female justices on the Supreme Court would contribute to more female-friendly court decisions, as well as strengthen the sense of legitimacy and public trust. However, this essay will argue that, for the first claim, it would be against the basic professionalism of judges if they make judgements merely in favor of women; this is because justice implies that men and women are equal so they should be treated equally and fairly. As for the second claim, irrelevant factors like gender cannot be put into consideration in the process of appointing judges because of the requirement of conducting neutrally and transparently in procedural justice.

2. The Historical Development of American Legal Profession

2.1. Development of Female Practitioners

Since Lemma Barkaloo became the first female law student in the U.S. in 1869, American women's experience in the law field of requesting for the right to study and practice had started. In 1870, Ada Kepley became the first women in American history who earned a law degree. Since then, the law education for women in the US has been developing: law schools in the country had gradually started to accept women as law students, and law schools for women such as Washington College of Law (now the law school of the American University) is also founded, making it easier for women to gain access to knowledge in law field. What also needs to be mentioned is that legal education in the United States generally begins at the end of an undergraduate degree, with the associated undergraduate degree serving more of a preparatory role for the study of law, which allows U.S. law students to generally receive a more in-depth legal education for subsequent work in the legal profession.

For women's practice in the area, Arabella Mansfield became the first female American admitted to the bar in 1870, which started the practice of women in American law field. In the same year, Esther McQuigg Morris becomes the first woman judge in the country. Subsequently, a number of outstanding female legal practitioners have emerged, including the renowned Supreme Court judge Sandra Day O'Connor and Ruth Bader Ginsberg [2].

It follows that in the long history of the development of the legal field in the United States, the relevant education received by women has been as reliable and profound as that received by men. Thus, through receiving systematic legal education, American women are also equipped with specialized legal skills and judicial professionalism as traditional male judges.

2.2. Similarity Between Male and Female Judges in Delivering Respectable Judgements

It should also be noticed that, in the judicial history of the United States, both male and female judges have made judgemental decisions that live in infamy. For instance, the case decided by nine men Supreme Court judges, *Brown v. Board of Education* in 1954, recognized the unconstitutionality of black and white student segregation in public schools. This is certainly a notable case that has had a notable impact in advancing racial equality. Meanwhile, there are also renowned cases like *Roe V. Wade* in which women judges played essential roles: in the judging procedure, the "troika" formed by female judge Sandra Day O'Connor, judge Suter and judge Kennedy played an integral part. It can therefore be seen that both women and men judges can establish reasonable and great judgemental decisions, just as Minnesota Supreme Court Justice Jeanne Coyne once said: "A wise old man and a wise old woman reach the same conclusion." Except that the men and women in the sentence do not necessarily need to be old.

3. Impartiality

3.1. Definition of Impartiality

One reason why more female Supreme Court justices would not promote justice is that impartiality is the basic requirement for judges. Impartiality is an attribute of a set of decisions made by a certain agent, directed toward a certain group [3]. In Winter's Handbook for Judges, the essential qualities of a judge include integrity and independence, impartiality, flexibility, creativity, responsibility, and common sense [4]. The principle of impartiality requires judges of different genders to make decisions independent of their own gender, which makes the gender factor irrelevant when judges vote in court.

3.2. Neutral and Impartial

One major part of impartiality is relevant to the interpretation and application of the law. The basic requirement of it is that judges need to be neutral and impartial: decisions need to be made based on the merits of the case. They should make decisions in accordance with applicable laws, precedents and legal principles instead of irrelevant considerations. As a consequence, if the former precedent is supportive of the protection of women's rights, justices need to follow the precedent; that is, judges need to adopt a supporting attitude toward the benefits of women, regardless of their gender.

3.3. No Bias

Another vital part of impartiality is no bias. Pursuant to Code of Conduct for United States Judges, Canon 3, judges "should not engage in behavior that is harassing, abusive, prejudiced, or biased" when performing judicial office duties [5]. Therefore, decisions out of consideration of any irrelevant factors such as gender should not be made, and the increase of women judges on the Supreme Court does not influence the act and verdicts of it.

4. Ideology Influencing Judgemental Decisions

4.1. Different Ideological Leanings of Judges

The second argument for why increasing female Supreme Court judges would not make a difference is that where there is disagreement about justice, the decisions of judges are mainly influenced by their ideological leanings instead of their gender.

There is a common divergence about the conception of justice. Often, judges can reach agreement on a large proportion of legal issues, such as that murder is a crime. However, on many other topics, diversion appears. It is only where there is disagreement that it is sensible to discuss what factors influence the judges' deciding. This essay shall argue that party affiliation has a significant impact on the voting decisions.

4.2. Party Affiliation

Party affiliation is a vital part of American political life, and different Parties emerge precisely because people have different value judgments toward social issues. The judges' decisions are also inextricably related to their Party affiliations.

Ideally, judges are not supposed to be influenced by their partisanship while making judgements. As mentioned in Courts and Tribunals Judiciary, "it follows that judges should, so far as is reasonable, avoid extra-judicial activities that could result in reasonable apprehension of bias or would result in a conflict of interest. This may involve... avoiding involvement with a political party, in such a way as to give the appearance of political bias [6]". This suggests that, in ideal situations, judges should not let party affiliation influence their voting choices in court. The reason for this requirement is that partisanship has a great likelihood to affect the fairness of judgements since justices might be more inclined to vote in the interests of their own Party in ways that can increase their Party's influence and empower their own Party's decisions. That is, the judges could make unjust votes due to being affected by partisanship.

4.3. Appointment of Judges being Influenced by Partisanship

However, ironically, the appointment of judges in the US largely depends on the judges' ideological leanings. For instance, US president George W. Bush appointed two Supreme Court judges (Samuel Alito and John Roberts) during his term, and both nominees were identified as conservative in

ideology before being mentioned by the president as the Supreme Court judge appointee. After taking office as judges, they had also proved to be performing as expected of them by the president and the conservative force. Alito's decisions in the Supreme Court had demonstrated his support for conservatives, as exemplified by his vote to overturn *Roe v. Wade*; as for Justice Roberts, of the 15 precedent-overturning cases with partisan implications that had come before the Supreme Court, he voted for a conservative outcome 14 times, which took 93% of the cases [7].

In the United States, judges can be distinguished into three categories: those who hold a conservative philosophy of law and judicial interpretation; those who hold a moderate one; and those who hold a liberal one. In a study of invalidating laws, researchers have found that when looking at the predicted probability of invalidating legislative actions in relation to ideologies, the probability of overturning a liberal law decreases from 0.52 to 0.20 as moving from the most conservative to the most liberal judges. In contrast, the probability of overturning a conservative law drops from 0.81 to 0.31 as moving from the extreme conservatives to the most liberal judges [8]. This reflects the influence of partisanship on justices' decisions since liberal judges are more likely to invalidate conservative laws and conservatives are the opposite. Therefore, partisanship is arguably one of the major factors contributing to judgemental decisions.

5. Rebuttal to Possible Challenges

5.1. Women Judges Are Not Necessarily in Favor of Women Rights

It should be mentioned that there are opponents who may object that women justices on the Supreme Court would contribute to more female-friendly court decisions and enhance the sense of legitimacy and public trust. However, in fact, unlike what opponents might expect, the appointed female judges may not make judgements in favour of women. Examples of this are not rare. For instance, the reverse on June 24, 2022 of the landmark of legislation protecting women's body autonomy, *Roe V. Wade* is a good example. In the ballot of the judgement delivery, woman judge Amy Coney Barrett joined the synergy opinion to reverse the case. This is a strong indication that female judges may not choose to support women's rights when making decisions.

The opposing view of believing female judges will rule more favourably in cases concerning women's rights is resulted from the opponents' one presupposition: they consider that male and female judges have different attitudes to gender-related issues. The opponents may assume that male judges are prone to discriminatory attitudes towards women, but this is not the case.

To date, there have been four waves of feminist movements in the world. In these four campaigns, women fought for voting opportunities, equal opportunities, abortion rights and other rights; sexism and other isms were also opposed, and women fought for more rights in work, education and other areas [9] With the rise of the feminist movements, there are many men who have become feminists, and these men are as equally supportive of the promotion of gender equality and the protection of women's rights as women.

For instance, in the 1992 case *Planned Parenthood v. Casey*, *Roe v. Wade*, the landmark of legislation protecting women's right to abort in the United States, was at stake. At this point, two male Justices (Justices Souter and Kennedy) joined with female Justice O'Connor to form the famous "troika" to defend *Roe*. The three Justices drafted an opinion in secret and circulated it within the Supreme Court on June 3, 1992. Since each part of the opinion was essentially concurred in by two other justices (only different justices concurred in each part), the opinion was recognized as a controlling opinion. The *Roe* case was saved in large part by the efforts of these two male justices and one female justice. Thus, male judges are not necessarily discriminatory against women. Some of them may even be more supportive of the protection of women's rights than some women judges.

Also, researchers have found that there is no evidence shown in the survey results that indicate female judges are overall more favorably disposed to female applicants than male judges are. The coefficients for female applicants were not significantly different for all judges from those for male applicants, which also implies that whether the judge is a woman does not impact the decision made by the judge [10].

5.2. Increasing the Number of Women Judges Do Not Necessarily Contribute to Public Credibility

With regard to the opponents' second claim, they might think the increase of women justices would enhance the legitimacy of court decisions and contribute to the public's credibility with the court.

Politicians may deliberately nominate more women judges not because they perceive that an increase in women judges will substantially promote justice, but merely as a pro forma effort out of political correctness. But these formal efforts will not make the decisions of women judges more just in fact. On the contrary, it may also run afoul of the requirements of procedural justice. This is because when irrelevant factors like gender are put into consideration in the appointment of judges, the requirement of conducting neutrally and transparently in procedural justice is violated. Therefore, increasing female judges out of political correctness or symbolism may lead to a lack of credibility.

6. Conclusion

To sum up, whether the increase of woman judges in the Supreme Court will better protect the legitimate interests of US citizens depends on what decisions the judge makes. Two main factors influence this: the impartiality of the judges and their ideological leanings. For impartiality, judges of different genders all need to obey this basic rule of their profession, and make the judgement free from the judge's personal considerations to the greatest possible extent. For ideological leanings, although judges are supposed to be impartial in principles, the partisan leanings still influences the decisions of US Supreme Court judges to a large extent due to the significance of partisanship in American legal profession. Therefore, since these two factors are irrelevant to the gender of the judges, increasing the number of woman judges at the Supreme court will not make justice better served in the United States.

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