

# Would justice be better served in the United States if more Supreme Court judges were women?

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**Abstract.** Judges are people who are officially appointed to preside over a court or conduct hearings and decide disputes and enforce the law. With the development of time and social progress, more and more women are getting rid of the drudgery of household chores. They began to receive education and work. In the legal profession, judges also began to appear as women. However, the emergence of women was accompanied by prejudice. This article will start with the social prejudice against women, and meanwhile, give a brief description of such difficulties faced by women. However, women do play important roles in some specific events, based on their gender attributes. In the legal profession, some female judges have made influenced social progress. But from an objective view, there is no evidence to suggest which gender would better contribute to the achievement of justice. Finally, it will propose the main points of the paper: there's no necessary connection between legal decisions and the gender of the judge.

**Keywords:** Women; Judge; Prejudice.

## 1. Introduction

Judges are people who are officially appointed to preside over a court or conduct hearings and decide disputes and enforce the law. With the development of time and social progress, more and more women are getting rid of the drudgery of household chores. They began to receive education and work. In the legal profession, judges also began to appear as women. However, the emergence of women was accompanied by prejudice. Women weren't thought to be capable of success in any sector, according to a lot of individuals. According to conventional wisdom, women were supposed to have domestic responsibilities and raise their children, and the only way for them to succeed was to marry wealthy, powerful men. Women's ability to make objective judgments has been questioned. Women appear to be associated with sensuality in the minds of most people, and thus they are seen as unfit for such a crucial role. Contrary to popular belief, both men and women can achieve success. In the legal profession, the inclusion of women will have no impact and will not affect the administration of justice.

This article will start with the social prejudice against women, and meanwhile, give a brief description of such difficulties faced by women. However, women do play important roles in some specific events, based on their gender attributes. In the legal profession, some female judges have made influenced social progress. But from an objective view, there is no evidence to suggest which gender would better contribute to the achievement of justice. Finally, it will propose the main points of the paper: there's no necessary connection between legal decisions and the gender of the judge.

## 2. Prejudice towards Women Since Traditional Society

Since always, the topic of women has started to be popular in many scenarios. Many problems exist in reality around women and should be focused on, such as social discrimination, sexual harassment, domestic violence, mind control, independent and autonomous line, etc <sup>[1]</sup>. All of these issues are infringing on women's rights in some way. Stereotypes about women are deeply rooted in the minds of most people.

In a patriarchal society, women are the ones who are more vulnerable and stigmatized. Traditional societies believe that some of the women's relatively inferior innate characteristics, such as physical strength, menstruation, and other physiological constructs, are the fundamental reasons why they are

objects of male protection or domination. Society's prejudice against women is evident in all stages of their conception, birth, education, and employment<sup>[2]</sup>. Such stereotypes have influenced and even shaped the public perception of several generations<sup>[3]</sup>.

### 3. The Contribution of Women Judges

Despite inherent biases, there have been many outstanding women entering various industries throughout history. In the field of legal practice, female judges have indeed rewritten the judgment of individual cases through their efforts. Although there are twists and turns in their careers, they have made American justice better through their efforts. In a male-dominated society, it is difficult and takes a long time for women to make a difference. Because the United States is a country that uses case law as a source of law, women need to wait for the right time to make a change. After years of perseverance, women have finally begun the journey.

Sandra Day O'Connor was the first woman to sit on the U.S. Federal Supreme Court. Her emergence contributed greatly to American legal history and the status of women in the legal profession. O'Connor was born in the southern United States in Texas and lived on a ranch in Lazy B, Arizona. This environment has formed O'Connor's tenacious and resilient character [4]. With her brilliant mind, O'Connor went on to Stanford University, where she majored in economics and law. After graduation, O'Connor engaged in many jobs, which paved the way for her to become a judge later in life. At that time, many people believed that women were not capable of holding the important position of judge. Inevitably, O'Connor experienced gender discrimination in the workplace. O'Connor has also made significant contributions to cases concerning women. In *Roe v. Wade*, O'Connor cast the critical vote in the justices' vote to legalize abortion and protect women's rights. Moreover, in her criteria, O'Connor has been more deferential to precedent, more focused on the facts of the case, more weighing of interests, and more minimalist in her approach to cases. As a result of following such rules in making decisions, O'Connor's decision-making in each case has been flawless. O'Connor's success has given more women confidence and more people believe in women's abilities [5].

After O'Connor, there is once again a Jewish female justice in the American legal field--Ginsburg. What she has done has given feminists great hope. Ginsburg has spent her life eliminating the stereotypes of women, which are not only harmful to women but also men to some extent [6]. Despite the difficulties and obstacles in the path to women's rights, Ginsburg did not give up on this goal and used the law to win a victory for women [7]. In "*Ledbetter v. Tire & Rubber Company*", Ginsburg addressed the long-standing issue of the gender pay gap. Ledbetter worked for a company where she became a regional manager based on her intelligence and talent. But inside the company, a male supervisor often tried to sexually harass her. Due to Ledbetter's refusal, the male supervisor often gave her very low ratings on business appraisals. After this, the male boss did not stop harassing her. Ledbetter had to put up with it for the sake of her job. In 1996, when Ledbetter was about to retire from the company, someone slipped an anonymous letter into her mailbox. She then realized that her salary was much lower than that of her fellow managers. Ledbetter angrily filed a lawsuit in court. However, the court dismissed the original judgment because she did not file the lawsuit within 180 days. Justice Ginsburg was very disappointed with the verdict. So she issued a dissenting opinion in public calling attention to the case. Eventually, because of congressional intervention, Ginsburg's proposal was upheld. Then, because presidential candidate Obama supported Ginsburg's idea, Congress passed a Fair Pay Act named after Lilly Ledbetter. This case is a good example of Ginsburg's importance to protect women's rights .

## **4. Factors that exclude the influence of Judges' Gender on the result of cases**

### **4.1 Professional Ethics of Judges**

Judges exist to decide each case fairly and impartially and follow the legal process. During this time, the judge will use the evidence, facts, and laws as the sole criteria for judgment, and will analyze the case very objectively to reach a verdict. The important role of a judge, then, requires a long period of effort up front. At the outset, American universities do not offer a law major for undergraduate studies. Therefore, one can only pursue a master's degree in law after obtaining a bachelor's degree in another major. What's more, it is difficult to become a judge directly after just a graduate or master's degree. Typically, in China, people need to become a judge's assistant or clerk for a year or two before they are eligible to become a judge candidate. However, to sit on the bench there are layers of selection. The selection of judges in the United States is very strict. The United States has a set of rigid procedures and standards, to maintain a good image of judges, to avoid the occurrence of unjust, wrong, and false cases [8]. However, it is not enough to master theoretical knowledge. The most important factor to become a judge is to have rich experience and the ability to calmly make fair decisions on complex cases. To sum up, becoming a judge is a job that takes a long time to hone and has many prescribed criteria for the profession. Therefore, the influence of gender on a judge's decision-making is minimal. Whether they are male or female, they will follow the ethical standards of a judge and abide by the law in making their decisions.

### **4.2 Precedent**

Currently, there are two major legal systems in the world: the civil law system and the common law system. The latter is also known as the case law system. As a representative country of the case law system, the most important source of law in the United States is case law, as well as a certain number of statutory laws. Among them, case law dominates. Under this system, court decisions are required to be "stare decisis". That is to say, follow precedents. Precedent following means the way judges decide cases based on the similarity of prior and current precedents. Following precedent can help judges decide effectively and avoid arbitrary and capricious treatment of issues. Nevertheless, not all cases can be referred to as precedent, precedent requires that the formal requirements of the common law be met and that the content of the decision be consistent with the law. And there is no other prior decision that is more authoritative and in conflict with it. These two criteria should be met before precedent can be established. However, not all judges follow precedents, but they do try to find similarities to the previous precedents before deciding [9]. Therefore, in contrast, precedents in similar case judgments have a more direct impact on the outcome of the case than the gender of the judge. Even in many cases, it ensures that judges are not influenced by gender when making judgments.

### **4.3 Political Party**

The last factor that can influence the court's decision is the Party that the judge supports. There is a case in the United States called *Marbury v. Madison*. This case can be famous because it reached a compromise between the judiciary and the political parties [10]. The three areas in which political parties can influence the United States are the judicial power, the legislative power, and the executive power. In 1800, the Federalist Adams lost the presidential election as well as the control of Congress. That means the Federalists were deprived of both executive and legislative power. To retain the only judicial power, Adams appointed Secretary of State Marshall to the Supreme Court and nominated 42 Federalists to be magistrates. However, due to Marshall's busy work, 17 appointments were not delivered. The 17 warrants were withheld after the new Secretary of State, Republican Madison, discovered them. *Mabry* and the others, who were supposed to be appointed as magistrates, took Madison to court. By this time, Marshall had become a justice and asked Madison to explain the reason for the seizure of the warrants, but Madison ignored it. The final verdict was that Marshall, who was a Federalist, let Madison win the case. The reason why *Mabry* lost was that *Mabry* filed the

lawsuit based on a judicial regulation passed by the Republicans called the Judicial Regulation 1789. But this ordinance was unconstitutional. Subsequently, Marshall announced the cancellation of the 1789 Judiciary Act. And, Marshall declared that it was the authority and responsibility of the judiciary to determine what the law was. After this, the judicial power was solidified and the Federalists retained their position of judicial power. It is easy to see that the party that judges follow affects the decisions they make in cases.

## 5. Conclusion

Whether an increase in the number of women judges in the U.S. judiciary would make American justice better is a question worth exploring. There have been several outstanding female justices in the history of American law. To some extent, they are more empathetic to cases involving women, and strive to bring justice to them. However, every judges are held to the same standard when making decisions: the ethical standards of the legal profession. The jurisprudence and the Party affiliation of the judge also influence the outcome of court's decision. Therefore, objectively speaking, the gender of judges does not constitute a factor that affects judgments, whether in the present or in the future.

## References

- [1] Li Yi.(2020). Analysis of Gender Differences in public opinion under feminist epistemology. *World of Sound Screen* (03),88-90.
- [2] Liu Cuiyu.(2007). On feminist views on gender equality. *Guangxi Social Sciences* (03),175-177.
- [3] He Peiqun.(2019). Equality, Difference and gender. *Fudan Political Science Review* (01),58-88.
- [4] Wu Yongqiang.(1981). Sandra O 'Connor, the first female Justice of the United States. *World Knowledge* (16),32.
- [5] Brown, Judith Olans and Parmet, Wendy E. and O'Connell, Mary E.(1999). The Rugged Feminism of Sandra Day O'Connor (January 18, 1999). *Indiana Law Review*, Vol. 32, No. 4, pp. 1219-1246.
- [6] Li Xin & Qi Qingwen.(2020). Shaping and Mission of Legal Man: The Moment of Dissent: The Infamous Justice Ginsburg. *Sichuan University Law Review* (01),255-267.
- [7] Zheng Yueming.(2020).A Study on Justice Ginsburg's Thought of Equal Rights(Master's Thesis, Liaoning University)
- [8] [https://kns.cnki.net/kcms2/article/abstract?v=RwZ2rG8ejA\\_ftBGGpb8sOHHdwYQnDmdnUsdL4L77y xowCNcVerdrjMCuUcdzU88bSt-e9NWLNLRVhkh7bxzJPddN14a0hq\\_pxLDr-C0faVNVcUt-e6-INFSjtg0Uvkibsy7rjkqE0A=&uniplatform=NZKPT&language=CHS](https://kns.cnki.net/kcms2/article/abstract?v=RwZ2rG8ejA_ftBGGpb8sOHHdwYQnDmdnUsdL4L77y xowCNcVerdrjMCuUcdzU88bSt-e9NWLNLRVhkh7bxzJPddN14a0hq_pxLDr-C0faVNVcUt-e6-INFSjtg0Uvkibsy7rjkqE0A=&uniplatform=NZKPT&language=CHS)
- [9] Quan Liang.(2013). The appointment system of judges in the United States and its reference. *Qiu Suo*(08),195-197. doi:10.16059/j.cnki.cn43-1008/c.2013.08.053.
- [10] Bai Junsheng.(2008). On the principle of following precedents. *Journal of Inner Mongolia University for Nationalities (Social Science Edition)* (05),112-114. doi:10.14045/j.cnki.nmsx.2008.05.021.
- [11] Zhang Xuanmeng.(2005). On the Influence of American Party Politics on Justice (Master's Degree Thesis, Party School of the CPC Central Committee)
- [12] [https://kns.cnki.net/kcms2/article/abstract?v=e3KdcOOmYTojeiyNgCN6VYqETe67\\_S9Nxcz4VheuD HOUcJJnPaLlaVsFKWTIYcA\\_PN8mV4N8gVZ8Ln6sw8g5fjgfhApRmTJSV1uuorudllec-PlnKi7LCxcl4Ca9xHE1&uniplatform=NZKPT&language=CHS](https://kns.cnki.net/kcms2/article/abstract?v=e3KdcOOmYTojeiyNgCN6VYqETe67_S9Nxcz4VheuD HOUcJJnPaLlaVsFKWTIYcA_PN8mV4N8gVZ8Ln6sw8g5fjgfhApRmTJSV1uuorudllec-PlnKi7LCxcl4Ca9xHE1&uniplatform=NZKPT&language=CHS)
- [13] Songer, D. R., & Crews-Meyer, K. A. (2000). Does Judge Gender Matter? Decision Making in State Supreme Courts. *Social Science Quarterly*, 81(3), 750–762. <http://www.jstor.org/stable/42864001>
- [14] Bratton, K. A., & Spill, R. L. (2002). Existing Diversity and Judicial Selection: The Role of the Appointment Method in Establishing Gender Diversity in State Supreme Courts. *Social Science Quarterly*, 83(2), 504–518. <http://www.jstor.org/stable/42955803>
- [15] Peresie, J. L. (2005, May 1). Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts. *Yale Law Journal - Female Judges Matter: Gender and Collegial Decisionmaking in*

the Federal Appellate Courts. <https://www.yalelawjournal.org/note/female-judges-matter-gender-and-collegial-decisionmaking-in-the-federal-appellate-courts>

- [16] Feminist engagement with restorative justice | 22 | Feminist Theories. (n.d.). Taylor & Francis. <https://doi.org/10.4324/9781315094113-22>
- [17] United States v. Ginsberg, 243 U.S. 472 (1917). (n.d.). Justia Law. <https://supreme.justia.com/cases/federal/us/243/472/>
- [18] Greenawalt, K. (n.d.). Religion and American Political Judgments. Scholarship Archive. [https://scholarship.law.columbia.edu/faculty\\_scholarship/3483](https://scholarship.law.columbia.edu/faculty_scholarship/3483)