

Breaking Barriers and Shaping Justice—The Transformative Power of Increasing Female Representation in the Supreme Court

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Abstract. The United States Supreme Court, responsible for interpreting the Constitution and shaping legal precedents, historically lacked gender diversity with significant underrepresentation of women. This essay explores the advantages of increasing female presence on the Court, asserting that greater gender diversity can contribute to a fairer and more comprehensive judicial system. Through an examination of relevant legal cases, scholarly research, and comparative examples, this essay highlights the positive impact of female representation, including improved decision-making, diverse perspectives, enhanced legitimacy, and increased public confidence in the judiciary.

Keywords: gender diversity; female presence; judicial system; legitimacy.

1. Introduction

There is a certain degree of correlation between the gender of judges and justice. Generally, female justices of the Supreme Court are more likely to make judgments that balance group justice and social justice compared to male justices based on their female personality traits.

2. The Importance of Gender Diversity in the Judiciary

Gender diversity in the judiciary is crucial for a just and inclusive society, impacting decision-making, the quality of justice, and public trust. It ensures fairness, which refers to the impartial and equitable treatment of all individuals, regardless of their gender. Justice Ruth Bader Ginsburg, a trailblazing jurist, exemplifies the transformative influence of gender diversity in the judiciary. Her groundbreaking recognition of gender-based discrimination as a violation of the Equal Protection Clause reshaped gender equality jurisprudence, promoting a fairer legal system. By challenging norms and advocating for equal treatment, Justice Ginsburg dismantled barriers and fostered a more just and equitable society. This study emphasizes the significance of gender diversity in the judiciary, ensuring fairness, embracing diverse perspectives, and fostering public confidence.

3. Enhanced Decision-Making and Legal Interpretation

Previous studies have consistently indicated that the presence of women on collegiate courts leads to more inclusive decision-making processes. This empirical evidence supports the notion that female justices are more supportive of gender equality and civil rights, influencing the Court's jurisprudence in areas such as reproductive rights, workplace discrimination, and gender-based violence. Moreover, the inclusion of women with diverse backgrounds and experiences on the Supreme Court enriches legal reasoning and contributes to a more comprehensive understanding of societal issues. Justices with varied experiences bring unique perspectives that can shed light on previously overlooked aspects of cases, ensuring that a multitude of voices are heard and represented. This diversity fosters a broader examination of complex legal issues and promotes a nuanced understanding of their implications. The impact of gender diversity on case outcomes becomes evident through the analysis of significant Supreme Court cases. Female justices have played pivotal roles in shaping decisions that advance gender equality and LGBTQ+ rights. For example, in cases like *United States v. Virginia* and *Obergefell v. Hodges*, the presence of female justices influenced the Court's decisions to strike

down discriminatory policies and protect the rights of marginalized communities. Therefore, gender diversity within the Court not only enhances inclusivity in decision-making processes but also contributes to a more equitable and just legal system.

4. Judicial Perspectives and Empathy

Empathy is the ability to better understand others' perspectives not only cognitively but also emotionally, by empathizing and thinking from their perspective. Empathy is a prerequisite for fair judicial decision-making. Only with corresponding emotional and cognitive abilities can we truly understand the factual disputes and litigation claims of both parties and only by empathizing with the case can we provide satisfactory results to the parties involved; Empathy is also a guarantee of fair judicial decision-making. Empathy can overcome the bias of judges and discrimination against vulnerable groups. At the same time, empathy has limitations such as familiarity bias and right here bias, which can lead to bias in judges' decisions. Therefore, judges must resort to experience and common sense, use learning mechanisms to alleviate or eliminate familiarity bias and use correct empathy methods to alleviate or eliminate right here and right now bias. [1]

The judging profession faces an "occupational gender stereotype" due to the mutually exclusive gender temperaments of men and women. One prominent explanation is "biological determinism," which argues that women's lower spatial awareness leads to irrational thinking, contradicting the core of legal reasoning.[2] Additionally, prevailing theories on the nature of law, which prioritize rationality over emotions, contribute to the exclusion of women.[3] These theories, particularly the rational judicial Aristotelian logic theory, reinforce the use of strict logical thinking in the judge's application of law and adjudication process, undermining the role of emotional factors, such as personal experience and emotions, in legal decision-making. Furthermore, traditional gender theory reinforces occupational stereotypes and the division between women and judges by highlighting the socio-economic and cultural construction of gender roles. It is evident that contemporary gender concepts remain heavily influenced by traditional social norms, gradually shaping the gender temperament and roles of men and women over time.

However, there is no definite conclusion as to whether women tend towards sensibility, and legal reasoning is not strictly rational reasoning. Some explorations have shown that female thinking relies on its sharp and delicate advantages, freely galloping in the field of legal reasoning, playing a unique role that male thinking cannot replace. Moreover, the application of law and the handling of cases mostly occur in the fusion of rationality and sensibility. Even if women's thinking is emotional, it does not conflict with legal thinking itself, and to some extent, it can even compensate for the shortcomings of rational thinking. That is to say, women are also creators and supporters of the law. Therefore, it is urgent to identify and leverage the advantages and values of female judges, truly incorporate a female perspective in the judicial process, and achieve the integration of women and the legal profession.

Gender diversity does not undermine impartiality; rather, it enhances the Court's ability to strike a balance between impartiality and compassion. Justices of diverse genders bring a range of legal philosophies and approaches while still upholding the principles of fairness and justice.

5. Public Confidence and Perceptions of Justice

After World War II, the equal rights movement (also known as the Civil Rights Movement) rose in American society and had a profound impact. As a branch of the equal rights movement, the women's rights movement did not end with the end of the black Civil Rights Movement. In the context of the social history in which men dominated, women have always been considered as the appendages of men, and cannot have complete civil rights. Therefore, the women's rights movement continues to this day. The traditional view is that the Supreme Court often plays the role of a guide and promoter in affirmative action movements. [4] In fact, the role of the Supreme Court was not achieved overnight,

including the tireless efforts of civil rights advocates. Ruth Bader Ginsburg was one of the nine justices of the United States Supreme Court, and also a leader of the Supreme Court's liberal movement. She considers civil rights issues from the perspective of a judge, and her egalitarian ideas originated from the feminist movement but were not limited to it. She personally promoted the egalitarian movement through judicial practice, and her egalitarian ideas are representative. Representative institutions build trust, and a gender-diverse Supreme Court enhances public trust in the judiciary. When the Court is inclusive and representative, citizens have confidence in its fair decisions. Research shows growing acceptance of women on the Supreme Court, as they demonstrate capabilities and contribute significantly. Comparative examples from Canada, New Zealand, and the United Kingdom support increased gender diversity, leading to effective and inclusive decision-making. Diverse perspectives ensure fairness and quality judgments. More female judges foster public trust and a robust decision-making process. Embracing gender diversity aligns the judiciary with the diverse society it represents.

6. Critiques and Counterarguments

In addition to presenting arguments in favor of gender diversity on the Supreme Court, it is important to acknowledge opposing views. Some individuals hold anti-feminist perspectives that question the merits of increasing the number of female judges. They express concerns about preferential treatment, dilution of merit-based selection, and potential compromises to judicial neutrality. By considering these viewpoints, a comprehensive understanding of the debate surrounding gender diversity on the Court can be achieved.[5]

In the international context of the post-war US-Soviet Cold War, a trend of calling for women to "return home" emerged in American society. In the late 1970s, it was influenced by Anti-feminism forces. Anti-feminists have established many organizations, with the Eagle Forum as the main representative, and the Phyllis Schlafly report as the "vanguard" of public opinion to promote Antifeminism ideas, criticize the drawbacks of the Equal Rights Amendment, and call on American citizens to recognize the huge negative impact of the Equal Rights Amendment. Therefore, the process of promoting the adoption of the Equal Rights Amendment has been seriously hindered, due to various complex reasons, the amendment was not finally written into the United States Constitution. The different attitudes of supporters and opponents towards the Equal Rights Amendment also internally reflect the differences in the values of women's gender roles between the two sides.

Gender diversity on the Court attracts both drawbacks and criticisms that merit attention. One concern raised is the possibility of preferential treatment or a dilution of merit-based selection. However, these apprehensions can be effectively addressed through the implementation of transparent and rigorous nomination processes that prioritize both merit and diversity, ensuring a fair and balanced approach. Critics also argue that gender diversity may compromise judicial neutrality. Nonetheless, empirical evidence suggests that a diverse Court can enhance neutrality by incorporating a wider range of perspectives and experiences. This inclusivity fosters fairness and justice as diverse backgrounds and viewpoints are taken into account when making crucial legal decisions. By considering a multitude of perspectives, a diverse Court can bolster impartiality and maintain the highest standards of justice.[6]

7. Overcoming Challenges and Implementing Change

Efforts should be actively undertaken to enhance gender diversity within the Supreme Court by prioritizing the nomination and appointment of more women. The roles of presidents and senators in shaping the Court's composition make it crucial for them to consciously prioritize gender diversity during the selection processes. By carefully considering and selecting more women for these positions, they can contribute to a Court that better reflects the diversity of the population and brings a broader range of valuable perspectives to the bench.

Additionally, the establishment of standardized evaluation criteria can promote an objective assessment based on merit, thus mitigating the influence of unconscious biases. Providing unconscious bias training to all individuals involved in the selection process can enhance awareness and minimize the impact of biases, leading to a more inclusive judiciary.

Investing in legal education and professional development programs designed to empower women is critical in encouraging gender diversity. These programs can offer valuable resources, mentorship opportunities, networking platforms, and leadership initiatives to cultivate a strong and highly qualified pool of female candidates for judicial positions. Supporting initiatives that focus on the advancement of women in the legal profession will significantly contribute to greater gender diversity at all levels, including the Supreme Court.[7]

In conclusion, promoting gender diversity in the Supreme Court requires active efforts from key decision-makers, the implementation of strategies to address bias in the selection process, and the support of women through legal education and professional development initiatives. By integrating these approaches, we can work towards creating a more inclusive and representative judiciary that benefits from the unique perspectives and contributions of female judges.

8. Conclusion

Enhancing justice in the United States requires a Supreme Court that reflects the diversity of the population it serves. By increasing gender diversity in the Court, the justice system can benefit from enhanced decision-making, a broader range of perspectives, increased legitimacy, and improved public confidence. The inclusion of women on the Supreme Court contributes to a more just and balanced judiciary that is responsive to the needs of all citizens. It is imperative for the United States to prioritize gender diversity in the selection and appointment processes to strengthen the Court's ability to uphold justice in an increasingly diverse society.

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