

JUDGE GENDER AND THE VOTING BEHAVIOR OF JUSTICES ON TWO NORTH AMERICAN SUPREME COURTS

SUSAN W. JOHNSON AND DONALD R. SONGER

While there have been a number of previous studies examining the similarities and differences in the voting behavior of male versus female judges, few have attempted cross-national comparisons. Since the early 1980s, the Supreme Courts of both the United States and Canada have had at least one female justice sitting at all times. The first female justice in the United States and the first female justice in Canada are on record as having very different beliefs about the practical effect of gender diversification of appellate courts. The present study is the first analysis to explore which of those perceptions about the consequences of such diversification is consistent with the actual patterns of voting by the justices on both courts. We find that in Canada, there are substantial gender differences on many of the significant policy areas that produce divisions on the Court. However, in the United States, gender differences disappear when one controls for the political party of the justice.

In a recent interview, the first female justice on the United States Supreme Court emphatically denied that the gender of a judge has anything to do with the way he or she decides cases. In an interview with Judy Woodruff, Justice O'Connor agreed that "there's simply no empirical evidence that gender differences lead to discernable differences in rendering judgment" (Woodruff, 2003).

In contrast to the position taken by O'Connor, the first female justice on the Supreme Court of Canada, Bertha Wilson, holds a significantly different view on the matter. According to Justice Wilson, there is "overwhelming evidence that gender-based myths, biases, and stereotypes are deeply embedded in the attitudes of many male judges" and that "gender difference has been a significant factor in judicial decision-making, particularly in the areas of tort law, criminal law, and family law" (Wilson, 1990:512). Justice Wilson argues that women view the world differently from men, and that female judges often bring this alternative perspective to bear on the cases they decide (Wilson, 1990). She argues that the addition of more women to the bench could make a difference in the law, if "women judges, through their differing perspectives on life, can bring new humanity to bear on the decision-making process" (Wilson, 1990:522).

At a time when there is increased political debate about the merits of affirmative-action programs, there continues to be a debate about the empirical effect of judge gender on decision making (Martin and Pyle, 2002). In this analysis, we build on existing studies of the effect of judge gender on decision making in appellate courts. While it is clear that the gender of judges may matter for a number of reasons, both substantive and symbolic, we focus on the potential substantive effects of judge gender on decision making. An implicit premise in the argument for affirmative diversification

in elite appointments is that gender matters substantively; female and male judges or legislators are expected to vary systematically in the way they approach decisions, the criteria they rely on, or the outcomes that they support. We seek to explore the validity of these assumptions by analyzing the votes of judges in the top courts in Canada and the United States.

THE INCREASING GENDER DIVERSIFICATION OF NORTH AMERICAN COURTS

Before the beginning of the Carter administration in 1977 there were few female judges; only eight women had ever served on any federal court in the United States, and none sat on the U.S. Supreme Court. The situation was little different throughout the English common-law world. There had also never been a female justice on the Supreme Court of Canada, the Australian High Court, or the Judicial Committee of the House of Lords.¹ But in the past quarter century, there have been substantial increases in female representation on appellate courts, at least in North America.² Beginning with the appointment of Justice Wilson in 1982, a total of seven women have served on the Supreme Court of Canada (see Figure 1). At the appellate level immediately below the Supreme Court, women served on nine of the eleven provincial courts of appeals by 1997. On six of those courts, women comprised at least a fifth of the membership, and on the Court of Appeal of Alberta, 50 percent of the seats were held by women (Greene et al., 1998:25). Diversification began at about the same time in the United States, but has proceeded more slowly. The first woman was appointed to the U.S. Supreme Court in 1981, but the second (and only other) female appointment occurred more than a decade later (1993). However, women now serve in every circuit of the U.S. Courts of Appeals, and by 2004 over 25 percent of the judges were female. Similarly, by 1998, 23 percent of the justices on the top courts of the states in the United States were female (Martin and Pyle, 2002).

PREVIOUS EMPIRICAL ANALYSES OF GENDER DIFFERENCES

The scholarship on the impact of gender in U.S. courts has generally produced mixed results. Studies have largely focused on the various roles, particularly the roles that female judges might play in their decision-making patterns (see Allen and Wall, 1993; Martin, 1993a, b; Segal, 2000a, b; Aliotta, 1995; Davis, 1993; Sherry, 1986; Ostberg and Wetstein, 2004). In comparing gender behavior on the U.S. and Canadian Supreme Courts, we take a step back from these role studies to address the preliminary question of whether or not female members of the bench simply symbolically represent their respective group, or whether substantive representation occurs through decisions

¹ The "Judicial Committee" serves as the highest appellate court in the United Kingdom, and the law lords who serve on that body also double as the justices for the English Privy Council.

² The first woman was not appointed to the top appellate court in Australia until 1987. After her retirement, there was a brief period with no female judges on the High Court of Australia. However, women were appointed in 2005 and in 2007. The top appellate court in England did not receive its only female law lord until 2004.

supportive of underrepresented groups, which would reflect differences in the ideology and views of female and male judges.

The disagreement among female justices on the impact of diversification is mirrored in disagreements among scholars who have studied the behavior of appellate judges. At the U.S. Supreme Court level, several analyses of O'Connor's voting behavior failed to provide much support for the position that O'Connor's decision making is distinct strictly because of her gender (Davis, 1993; O'Connor and Segal, 1990). However, Davis (1993) and Aliotta (1995) found that O'Connor was more supportive of claims involving equality than she was of claims brought against criminal defendants. Palmer (1991), however, concludes that O'Connor's opinion writing provides only mixed support for women's rights and feminism. Preliminary research on Ginsburg suggests that the voting behavior of the two female U.S. Supreme Court justices is better explained by their political-party affiliation than by their gender (Songer and Clark, 2002). However, one recent analysis finds that both of these women are among the Court's strongest supporters of sex-discrimination claimants, even though they differ markedly in other areas (Palmer, 2002). Of course, one is always cautious when drawing conclusions from these small-n studies of O'Connor and Ginsburg exclusively.

In addition to the mixed findings from studies of females on the Supreme Court of the United States, two studies of females on the Supreme Court of Canada have also come to different conclusions. White (2002) examined the Charter opinions of women on the Supreme Court between 1993 and 1996. Based on this limited sample, she concluded that no gender difference existed in Charter cases dealing with legal rights but that the female justices were more supportive than their male colleagues of rights claimants in cases involving fundamental freedoms and equality rights. A recent study (Ostberg and Wetstein, 2007) provides a more comprehensive analysis of votes in both Charter and non-Charter cases. Ostberg and Wetstein found that after controlling for a measure of justice ideology and for the party of the appointing prime minister, female justices were more likely than their male colleagues to support liberal outcomes in equality cases and in free-speech areas (2007:133, 149). However, Ostberg and Wetstein did not examine gendered voting in criminal cases or economic cases.

DATA AND METHODS

In this study we hope to further explore the impact of women by offering a uniquely comparative look at the effects of judge gender on voting behavior. The analysis below compares the voting of male and female judges at the national Supreme Court level in the United States and Canada. While a modest number of previous analyses have explored the significance of gender for judicial voting, the results are uneven and often difficult to compare because different studies have examined different courts and different time periods and have employed different methodological approaches. The current study applies a common methodology to examine the decisions in the major issue areas with political salience across national boundaries.

Like the U.S. Supreme Court, the Supreme Court of Canada comprises nine justices, all appointed by the prime minister without the need for formal confirmation by Parliament. Judges serve during good behavior until they reach the mandatory retirement age of 75. The Supreme Court of Canada controls its own agenda through the “leave to appeal” process, which is similar to the certiorari process in the United States. Further, the Supreme Court of Canada works in a similar fashion to the U.S. Supreme Court in deciding cases. The justices meet at conference and then issue formal written opinions in a manner that is much like the procedures used by the U.S. Supreme Court. Courts in both countries have the power of judicial review and are empowered to use that power to enforce the extensive protections of civil liberties found in the constitutions of both countries. In Canada, the Charter of Rights, which guaranteed constitutional protection of civil rights and liberties, was adopted in 1982. The Charter of Rights permitted judicial review of both national and provincial actions contrary to the rights and freedoms protected in the Charter and, thus, created a legal context for civil-rights adjudication roughly similar to that of the federal courts in the United States.

In both countries, there is substantial evidence that the political preferences of the justices have a substantial impact on the outcomes of the court. Given institutional similarities on both courts, including docket control, judicial independence, and being a court of last resort, it is no wonder that a number of empirical studies of the voting behavior of justices in both countries have found substantial evidence of attitudinal voting by the justices. (For the United States, see Segal and Cover, 1989; Segal and Spaeth, 1993, 2002; Tate, 1981. For Canada, see Ostberg and Wetstein, 2007; Ostberg, Wetstein, and Ducat, 2002; Songer and Johnson, 2007.)

Because we limit analyses to periods in which there were at least two women on each court, the years chosen for analysis are slightly different for our two courts. The first female justice (Sandra Day O'Connor) was appointed to the United States Supreme Court in 1981 and to the Canadian Supreme Court (Bertha Wilson) in 1982. The second female justice was appointed in the United States in 1993 (Ruth Bader Ginsburg) and in Canada in 1987 (Claire LHeureux-Dubé). On each court, there have been at least two female justices continuously since the second female was appointed until the end of our analysis period (2005).³ Thus, our analysis of the U.S. court covers the 1993-2005 terms and for Canada we analyze the 1987-2005 terms.⁴ The Supreme Courts of both the United States and Canada had bipartisan⁵ membership throughout this period.

³ Justice O'Connor subsequently retired from the U.S. Supreme Court, leaving only one active female justice until the appointment of Justice Sotomayor in 2009.

⁴ In Canada, terms of the Supreme Court coincide with calendar years, while in the United States they typically run from October through the following June or July.

⁵ There were both Democratic and Republican judges on the U. S. Supreme Court throughout this period and both Liberal and Conservative party judges on the Canadian Supreme Court.

We test whether these female justices will exhibit more liberal tendencies than their male counterparts in four broad issue domains: equality and discrimination cases, private economic cases (e.g., torts), criminal law, and a combined category of civil-liberties cases that excludes criminal appeals. Since our study is a preliminary comparison of female justices on the Supreme Courts of the United States and Canada rather than a gender role study of a particular issue area, we broadly examine whether these justices are more liberal in all categories than their male colleagues in upholding the legal rights of underrepresented groups. Both the equality and the other civil-rights categories include both statutory and constitutional claims. The criminal category includes appeals of convictions,⁶ procedural claims raised in criminal cases, post-conviction relief, and habeas corpus petitions, and it includes cases raising both constitutional and nonconstitutional claims. The votes of the justices are coded “one” for liberal votes and “zero” for conservative votes.

Demands for equal treatment, economic disputes, civil liberties, and criminal cases represent a broad range of judicial decision making from which to examine differences in female and male judicial decisions on these two courts. Together, these four issue domains appear to include a large majority of appellate court decisions that can be classified unambiguously as presenting a choice between liberal versus conservative outcomes.⁷

We define a “liberal” outcome in the conventional manner, consistent with the definitions used in prior work on the effects of judge gender (e.g., see Songer, Davis, and Haire, 1994; Walker and Barrow, 1985; Songer and Crews-Meyer, 2000). For instance, a vote in favor of a criminal defendant in criminal cases, a vote in favor of the party asserting that they were denied equal protection, or a vote in favor of a person alleging that their civil liberties were violated and the plaintiff in tort actions all were coded as reflecting a liberal position. Our definition of a “liberal” outcome in a case is also consistent with coding used in studies of the Supreme Court of Canada (Tate and Sittiwong, 1989).

The data for the analyses come from several sources. The data include the universe of orally argued, formally decided cases reported in the published decisions of each of the courts. The U.S. Supreme Court data come from the Spaeth U.S. Supreme Court Database.⁸ The Canadian Supreme Court data come from the Comparative Courts High Court Database.⁹ The unit of analysis for each data set was the opinion of the Court.

⁶ The Canadian data set also includes appeals from acquittals. Such appeals are not possible in the United States because of the interpretations of the constitutional prohibition against double jeopardy.

⁷ We also examined the voting behavior of female versus male judges on cases involving government economic regulation and labor relations, but found no significant gender differences on either court.

⁸ The data can be downloaded from the JURI project at the University of South Carolina. Web site: <http://cas.sc.edu/poli/juri>.

⁹ The Canadian data includes the universe of decisions published in the Canadian Supreme Court Reports for the years 1970-2003. The authors coded all of the nonunanimous decisions from 2004 and 2005 following the same coding scheme. We also counted the number of unanimous decisions to enable us to compute the percentage of unanimous decisions for each year. These data are part of a larger project funded by the National Science Foundation, “Collaborative Research: Fitting More Pieces into the Puzzle of Judicial Behavior: A Multi-Country Database and Program of Research,” SES-9975323, and “Collaborative Research: Extending a Multi-Country Database and Program of Research,” SES-0137349, C. Neal Tate, Donald R. Songer, Stacia Haynie, and Reginald S. Sheehan, principal investigators.

Table 1
Proportion of Liberal Votes Cast by Individual Female Justices in Nonunanimous
Votes Compared to the Average Support for the Liberal Position by All Male Justices
in Selected Issue Areas in the U.S. Supreme Court, 1993-2005

	Civil Liberties	Criminal	Equality	Private Economic
Ginsburg	71% (254)	70% (200)	85% (40)	67% 30
Male Mean	47 (1,951)	42 (1,380)	48 (276)	41 (207)
O'Connor	43 (240)	29 (187)	50 (40)	21 (29)

Table 2
Proportion of Liberal Votes Cast by Individual Female Justices in Nonunanimous
Votes Compared to the Average Support for the Liberal Position by All Male Justices
in Selected Issue Areas in the Supreme Court of Canada, 1987-2005

	Civil Liberties	Criminal	Equality	Private Economic
Arbour	82% (11)	83% (30)	75% (04)	62% (08)
Abella	80 (05)	10 (10)	100 (03)	100 (01)
McLachlin	67 (48)	42 (145)	67 (18)	43 (28)
Charron	60 (05)	22 (09)	100 (03)	100 (01)
Deschamps	50 (12)	31 (16)	83 (06)	25 (04)
Wilson	50 (12)	62 (47)	50 (02)	83 (06)
L'Heureux- Dubé	42 (40)	10 (153)	69 (13)	76 (29)
Male Mean	39 (333)	48 (1187)	42 (111)	47 (179)

ASSESSING GENDER DIFFERENCES IN THE NONUNANIMOUS DECISIONS OF THE COURTS

We first examined the voting patterns of individual justices on each court. The proportion of liberal votes cast by each justice on each of the four issue areas is presented in Appendix 1 and Appendix 2 (in each appendix, female justices and their scores are presented in boldface). To simplify the gender comparisons, the data in Table 1 and Table 2 present only the voting patterns of each of the female justices on each court compared to the mean level of support by male justices.

The analysis in Appendix 1 and Table 1 indicates that the differences among the women are striking. On the U.S. Supreme Court, the Democrat Justice Ginsburg has a more liberal record than Justice O'Connor on all four issues. In fact, on three of the four issues, Justice Ginsburg is more than 60 percent more likely than Justice O'Connor to support liberal outcomes. Moreover, on three of the four issues, the Republican O'Connor is more conservative than the average male justice, while Justice Ginsburg is more liberal than the average male justice on every issue. Rather than there being a typical "female" and a typical "male" pattern, the two female justices are found on opposite sides of the average male-voting pattern.

Turning to the Canadian Supreme Court (Table 2 and Appendix 2), we see a somewhat different pattern. For both equality cases and for the category of combined civil-liberties cases, the pattern is drastically different from the pattern in the United States. Specifically, in both issue areas, every one of the seven female justices has a more liberal pattern of voting than mean level of support displayed by the male justices. Some of these patterns are based on very small numbers of votes, so some caution is in order when interpreting the significance of this finding. Nonetheless, in both equality cases and general civil-liberties cases the data are consistent with the assertion that gender is an important contributor to the positions of the justices. In criminal cases, the pattern is more similar to the U.S. pattern; in particular, as in the United States, some female justices can be found on both sides of the mean male level of support, and the differences between the most liberal and most conservative female justice are quite large (e.g., both the most liberal and most conservative justice on the Court in criminal cases are females). Two of the justices appointed by Liberal Party prime ministers (Arbour and Wilson) have quite liberal records on criminal cases, while both of the justices appointed by Progressive Conservative Party prime ministers (McLachlin and L'Heureux-Dubé) and the remaining three Liberal party justices (Abella, Charron, and Deschamps) have more conservative records than the average male justice. Analysis of the records of individuals in private economic disputes is made difficult by the small number of votes in nonunanimous cases cast by several of the justices. With this qualifier noted, the data show that one female justice has a substantially more conservative record than the average male justice, one is close to the male average, and the remaining five female justices have substantially more liberal records than the average male justice.

In summary, in the United States examination of the record of individual justices provides no support for the proposition that females produce systematically different patterns of decisions than do male justices. However, in Canada, the evidence suggests that in at least some issue areas, gender might make a difference. The other pattern that is apparent is that the impact of gender on judicial voting patterns may be substantially affected by the party of the appointing chief executive. A number of studies of judicial voting in the United States have found that the party of the appointing president provides a rough surrogate for judicial ideology and that judges appointed by Democratic presidents are consistently more likely than judges appointed by

Republican presidents to favor liberal outcomes (see, for example, Carp and Rowland, 1983; Goldman, 1975; Songer and Crews-Meyer, 2000; Songer, Sheehan, and Haire, 2000; Tate, 1981). Similarly, a number of studies of the Supreme Court of Canada find a statistically significant association between the party of the appointing prime minister and judicial voting (e.g., Ostberg and Wetstein, 2007; Ostberg et al., 2009; Songer and Johnson, 2007; Tate and Sittiwong, 1989). Thus, in the second phase of our analysis, we explore the relationship between judicial voting and judge gender with a control for the party of the president or prime minister who appointed each justice.

Our comparison of the effects of judge gender on judicial voting when controlled by the party of the appointing executive was accomplished by estimating models with judge vote as the dependent variable with party and gender as the independent variables. Since this dependent variable is dichotomous, and ordinary least squares is inappropriate, we elected to use logistic regression, a maximum-likelihood technique (Aldrich and Nelson, 1984). This method produces parameter estimates for the model's independent variables in terms of each variable's contribution to the probability that the dependent variable falls into one of the designated categories, voting either liberal or conservative. For each independent variable, we calculated the maximum-likelihood estimate (MLE), along with its standard error. The MLEs represent the change in the logistic function that occurs from one-unit changes in each independent variable. The results for the United States and Canada are presented in Tables 3 and 4.

The analysis in Table 3 provides strong evidence that on the United States Supreme Court, judge gender has little if any independent effect on the voting decisions of the justices. There was no statistically significant relationship between judge gender and judicial voting behavior in any of the four issue areas. In contrast, the party of the appointing president was strongly related to judicial voting in every issue area. In all four of the types of cases, Democratic justices were substantially more likely than their Republican colleagues to support liberal outcomes. These results are, of course, consistent with previous findings that presidents usually attempt to nominate justices who share the political values of the presidents and that the attitudes of Supreme Court justices are strongly related to their voting choices (Segal and Spaeth, 1993, 2002).

The analysis of voting on the Supreme Court of Canada (see Table 4) displays a strikingly different pattern. On the Canadian Court, there is a statistically significant relationship between judge gender and the votes of the justices in every one of the four issue categories examined. On the Supreme Court of Canada, the female justices are more likely than their male colleagues to support liberal outcomes in equality cases, general civil-liberties cases, and private economic cases even after one has accounted for the influence of political party. For criminal cases, the relationship between gender and votes is equally strong, but in the opposite direction. Female justices on the Supreme Court of Canada have a greater tendency to support conservative outcomes (i.e., pro-government) than their male colleagues. In a follow-up analysis (not dis-

Table 3
Logistic Regression Analysis of the Effect of Justice Gender and Party on the Likelihood of a Liberal Nonunanimous Vote for Selected Issue Areas in the U.S. Supreme Court, 1993-2005

	All Civil Liberties	Criminal	Equality	Private Economic
Female	0.180 (0.113)	-0.138 (0.131)	0.149 (0.309)	-0.273 (0.340)
Democrat	1.0081*** (0.116)	1.233*** (0.132)	2.258*** (0.389)	0.909** (0.351)
Intercept	-0.421 (0.051)	-0.483 (0.058)	-0.311 (0.129)	-0.440 (0.147)
N	2,248	1,767	356	266
Chi sq	114.3***	95.0***	38.2***	06.9*
-2LLR	2,981.4	2,322.1	434.9	355.1
Gamma	0.382	0.024	0.616	0.366

*p < .05
 **p < .01
 ***p < .001

Note: MLE coefficients with standard errors in parenthesis beneath MLE.

Table 4
Logistic Regression Analysis of the Effect of Justice Gender and Party on the Likelihood of a Liberal Nonunanimous Vote for Selected Issue Areas in the Canadian Supreme Court, 1987-2005

	All Civil Liberties	Criminal	Equality	Private Economic
Female	0.680** (0.208)	-0.776*** (0.117)	1.385*** (0.374)	0.563* (0.274)
Liberal	0.096 (0.196)	0.118 (0.104)	0.147 (0.335)	-0.267 (0.269)
Intercept	-1.170 (0.400)	0.768 (0.215)	-1.953 (0.689)	-0.370 (0.523)
N	461	1,661	82	265
Chi sq	10.74**	45.9***	13.8***	5.37#
-2LLR	625.2	2,254.2	214.9	361.8
Gamma	0.211	0.196	0.387	0.238

*p < .05
 **p < .01
 ***p < .001
 #.05 < P < .07

Note: MLE coefficients with standard errors in parenthesis beneath MLE.

played)¹⁰ we elaborated on these models by adding controls for the region, religion, and pre-court career experiences of the justices and found quite similar results. In each of these more elaborate models, judge gender continued to be significantly related to judicial support for liberal or conservative outcomes.

DISCUSSION

Most previous empirical analyses of the relationship between judge gender and judicial behavior interpreted findings of gender differences in one or more types of cases as being produced either by differences in the life or socialization experiences of male versus female lawyers, differences in the self-selection of male or female lawyers who pursued appointment or election to the bench, or differences in the pool of male versus female lawyers who were considered by elites involved in judicial selection to be available for judicial selection. Scholars have disagreed over what specific effects gender may be expected to have on judicial behavior, but there seems to have been at least an implicit assumption that the gender differences or the absence of gender differences were characteristic of judges as women or men per se. This article began by recalling the published perceptions of the first female on each Supreme Court as to whether gender would make a difference. The justices disagreed about their expectations, but neither conditioned their remarks by suggesting that there was something special about their particular court that would condition the relationship of gender to judicial behavior.

Yet our findings suggest that in spite of national cultures in which the roles of gender appear similar, the relationship between gender and judicial behavior is substantially different in these two neighboring nations, which share an English common-law tradition and Supreme Courts with similar institutional features. In one sense, both justices O'Connor and Wilson appear to have been right about the relationship of gender to judicial behavior—but only if their remarks were interpreted as applying only to their own courts instead of to female and male justices in general. Several explanations for these differences might be plausible. First, it is possible that the much more politically charged, partisan selection system in the United States produces justices who are ideologically closer to the appointing president than in Canada where the process is, to a degree, less dominated by politics. In Canada, the prime minister must take into account other factors besides partisanship, including regional balance. In the United States., it is possible for presidents to choose justices who are female, thus making a symbolic appointment to the Court, but without sacrificing a moderate or conservative judicial philosophy if that is the desired nominee. In Canada, prime ministers are constrained by maintaining regional balance, thus vastly limiting the number of choices of suitable appointees.

It might also be possible that judging in Canada is substantively different than in the United States because of the way that feminist values have taken hold in each Court. Justice L'Heureux-Dubé, the most conservative member of the Supreme Court

¹⁰ Available from the authors upon request.

of Canada in criminal cases, is also quite liberal in civil liberties and equality cases. L'Heureux-Dubé is an interesting case because of the cross-cutting cleavages in her response to issues addressed by the cases on the Court. She has authored several opinions in which she expresses a viewpoint in line with communitarian values over individual rights, especially in the area of violence against women (see *R. v. Able Esau*; *Terry McDonnell v. R.*; *Donald Leo R. et.al. v. R.*; and *Steven Seabryer v. R* for examples of L'Heureux-Dubé's unique approach in female-violence cases). This substantive female ideology has not been represented on the U.S. Supreme Court as of yet. Justice Ginsberg, while feminist in her approach to some issues, is decidedly in the formal-equality camp, rather than a substantive-equality proponent (Becker et al., 2007). These differences in approaches, whether as a result of legal culture and legal socialization or overall cultural differences in the two countries, might also, in part, explain the differences we find in female judging across the two courts.

Of course, this analysis is based on a small number of justices, and in particular small numbers of female justices. Thus, one should be cautious about generalizing too readily from the empirical findings. Nonetheless, the strikingly different results in the two courts suggest the need for future research that more expansively investigates the factors that may condition the relevance of gender for judicial and, quite possibly, other elite behavior. **jsj**

REFERENCES

- Aldrich, J., and F. Nelson (1984). *Linear Probability, Logit and Probit Models*. Beverly Hills, CA: Sage.
- Aliotta, J. M. (1995). "Justice O'Connor and the Equal Protection Clause: A Feminine Voice?" *78 Judicature* 232.
- Allen, D. W., and D. E. Wall (1993). "Role Orientations and Women State Supreme Court Justices," *77 Judicature* 156.
- Becker, M., C. G. Bowman, V. F. Nourse, and K. A. Yuracko (2007). *Feminist Jurisprudence: Taking Women Seriously: Cases and Materials*. St. Paul: West Publishing.
- Carp, R. A., and C. K. Rowland (1983). *Policymaking and Politics in the Federal District Courts*. Knoxville: University of Tennessee Press.
- Davis, S. (1993). "The Voice of Sandra Day O'Connor," *77 Judicature* 134.
- Goldman, S. (1975). "Voting Behavior on the United States Courts of Appeals Revisited," *69 American Political Science Review* 491.
- Greene, I., C. Baar, P. McCormick, G. Szablowski, and M. Thomas (1998). *Final Appeal: Decision-Making in Canadian Courts of Appeal*. Toronto: James Lorimer and Company.
- Martin, E. (1993a). "The Representative Role of Women Judges," *77 Judicature* 166.
- (1993b). "Women on the Bench: A Different Voice?" *77 Judicature* 126.
- Martin, E., and B. W. Pyle (2002). "Gender and Racial Diversification of State Supreme Courts," *24 Women and Politics* 235.

- O'Connor, K., and J. A. Segal (1990). "Justice Sandra Day O'Connor and the Supreme Court's Reaction to Its First Female Member," 10 *Women and Politics* 95.
- Ostberg, C. L., S. W. Johnson, D. R. Songer, and M. E. Wetstein (2004). "The Nature and Extent of Attitudinal Conflict in the Supreme Court of Canada." Presented at the Annual Meeting of the American Political Science Association, Chicago.
- Ostberg, C. L., and M. E. Wetstein (2007). *Attitudinal Decision Making in the Supreme Court of Canada*. Vancouver: University of British Columbia Press.
- (2004). "Equality Cases and the Attitudinal Model in the Supreme Court of Canada." Presented at the Annual Meeting of the Canadian Political Science Association.
- Ostberg, C. L., M. E. Wetstein, and C. R. Ducat (2002). "Attitudinal Dimensions of Supreme Court Decision Making in Canada: The Lamer Court, 1991-1995," 55 *Political Research Quarterly* 235.
- Ostberg, C. L., M. E. Wetstein, D. R. Songer, and S. W. Johnson (2009). "Ideological Consistency and Attitudinal Conflict: a comparative Analysis of the U.S. and Canadian Supreme Courts," 42 *Comparative Political Studies* 763.
- Palmer, B. (2002). "Justice Ruth Bader Ginsburg and the Supreme Court's Reaction to Its Second Female Member," 24 *Women and Politics* 1.
- (1991). "Feminist or Foe? Justice Sandra Day O'Connor, Title VII Sex-Discrimination and Support for Women's Rights," 13 *Women's Rights Law Reporter* 159.
- Segal, J. (2000a). "Representative Decision Making on the Federal Bench: Clinton's District Court Appointees," 53 *Political Research Quarterly* 147.
- (2000b). "Are Men from Mars and Women from Venus? Judicial Decision Making on the Federal District Court Bench." Paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago.
- Segal, J. A., and A. D. Cover (1989). "Ideological Values and Votes of U.S. Supreme Court Justices," 83 *American Political Science Review* 557.
- Segal, J. A., and H. J. Spaeth (2002). *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.
- (1993). *The Supreme Court and the Attitudinal Model*. Cambridge: Cambridge University Press.
- Sherry, S. (1986). "Civil Virtue and the Feminine Voice in Constitutional Adjudication," 72 *Virginia Law Review* 543.
- Songer, D. R., and A. Clark (2002). "Judge Gender and Voting in Appellate Courts: A Cross National and Cross Institutional Analysis." Presented to the Southern Political Science Association, Savannah, Georgia.
- Songer, D. R., and K. A. Crews-Meyer (2000). "Does Judge Gender Matter? Decision Making in State Supreme Courts," 81 *Social Science Quarterly* 750.
- Songer, D. R., S. Davis, and S. Haire (1994). "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals," 56 *Journal of Politics* 425.
- Songer, D. R., and S. W. Johnson (2007). "Judicial Decision Making In the Supreme Court of Canada: Updating the Personal Attribute Model," 40 *Canadian Journal of Political Science* 911.

- Songer, D. R., R. S. Sheehan, and S. B. Haire (2000). *Continuity and Change on the United States Courts of Appeals*. Ann Arbor: University of Michigan Press.
- Tate, C. N. (1981). "Personal Attribute Models of the Voting Behavior of U.S. Supreme Court Justices: Liberalism in Civil Liberties and Economic Decisions, 1946-1978," 75 *American Political Science Review* 355.
- Tate, C. N., and P. Sittiwong (1989). "Decision Making in the Canadian Supreme Court: Extending the Personal Attributes Model Across Nations," 51 *Journal of Politics* 4.
- Walker, T. G., and D. J. Barrow (1985). "The Diversification of the Federal Bench: Policy and Process Ramifications," 47 *Journal of Politics* 596.
- White, C. C. (2002). "Gender Differences on the Supreme Court." In F. L. Morton. (ed.), *Law and Politics and the Judicial Process in Canada*, 3rd ed., pp. 85-90. Calgary: University of Calgary Press.
- Wilson, B. (1990). "Will Women Judges Really Make a Difference?" 28 *Osgood Hall Law Journal* 507.
- Woodruff, J. (2003). "Sandra Day O'Connor: The Majesty of the Law," In *CNN Exclusive Interview*.

CASES CITED

- Donald Leo R. et.al. v. R.* [1996] 2 S.C.R. 291.
- R. v. Able Esau* [1997]2 S.C.R. 777.
- Steven Seabryer v. R.* [1991] 2 S.C.R. 577.
- Terry McDonnell v. R.* [1997]1 S.C.R. 948.

APPENDIX 1

Support for Liberal Policy Outcomes by Justices of the U.S. Supreme Court in Nonunanimous Decisions, 1993-2005

	Civil Liberties	Criminal	Equality	Private Economic
Blackman	94% (17)	82% (17)	100% (3)	83% (6)
Stevens	87 (254)	87 (200)	85 (40)	83 (30)
Souter	73 (253)	66 (200)	77 (40)	43 (30)
Ginsburg	71 (254)	70 (200)	85 (40)	67 (30)
Breyer	65 (236)	62 (183)	92 (37)	45 (22)
O'Connor	43 (240)	29 (187)	50 (40)	21 (29)
Kennedy	32 (254)	29 (198)	35 (40)	27 (30)
Rehnquist	18 (234)	15 (182)	30 (37)	27 (29)
Scalia	13 (254)	19 (200)	10 (40)	27 (30)
Thomas	10 (252)	12 (200)	05 (38)	30 (30)

APPENDIX 2

Support for Liberal Policy Outcomes by Selected Justices of the Canadian Supreme Court in Nonunanimous Decisions, 1993-2005*

	Civil Liberties	Criminal	Equality	Private Economic
Arbour	82% (11)	83% (30)	75% (04)	62% (08)
Abella	80 (05)	10 (10)	100 (03)	100 (01)
Binnie	79 (19)	46 (48)	75 (08)	18 (11)
Fish	75 (08)	100 (15)	80 (05)	50 (02)
McLachlin	67 (48)	42 (145)	67 (18)	43 (28)
Cory	62 (29)	59 (114)	63 (11)	65 (20)
Charron	60 (05)	22 (09)	100 (03)	00 (01)
Iacobucci	54 (37)	57 (134)	47 (15)	43 (23)
Deschamps	50 (12)	31 (16)	83 (06)	25 (04)
Wilson	50 (12)	62 (47)	50 (02)	83 (06)
Sopinka	44 (25)	74 (117)	33 (09)	38 (16)
L'Heureux-Dubé	42 (40)	10 (153)	69 (13)	76 (29)
Major	42 (33)	75 (125)	46 (13)	38 (24)
Dickson	42 (12)	38 (40)	50 (02)	80 (05)
Lamer	39 (28)	70 (140)	33 (09)	33 (12)
LaForest	28 (29)	52 (120)	12 (08)	47 (15)
Bastarache	27 (22)	21 (57)	33 (09)	(50) (12)
Gonthier	24 (41)	25 (149)	33 (15)	60 (25)
Lebel	20 (15)	64 (28)	00 (07)	56 (09)

* Male justices having fewer than 5 participations in civil-liberties cases have been excluded from the table for ease of presentation