Political Backrooms, Corporate Boardrooms and Classrooms
Are some sectors lagging behind others?

Cedric Herring: Women and Corporate Profits

Sital Kalantry: Gender Parity in Courtrooms

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For the first time in United States history, three of the nine justices sitting on the Supreme Court are women. About 33 percent of state and federal court judges in the U.S. are women, slightly higher than the global average of 27 percent. Why does this matter? Scores of empirical studies have attempted to determine whether the gender of a judge makes a difference to his or her decisions. But regardless of whether it does, equal representation for women in the judiciary strengthens the rule of law and should be a goal across the Americas.

Increasingly, women in the region have overcome stiff challenges to becoming judges. Although the statistics for Latin American countries are slightly lower overall than in the U.S., they signal impressive progress. [See Table 1] For example, in 2010 18 percent of judges in Brazil’s highest court were women, compared to 0 percent in 1998. In Peru,
A U.S. survey conducted in the early 1990s by the Task Force on Gender Bias for the Federal Court of Appeals for the Ninth Circuit found that men and women judges and lawyers in the U.S. have different perceptions about gender bias. Female judges and lawyers believed that women are excluded from formal and informal networks that influence judicial selection, while male judges and lawyers generally believed that the gender composition of the judiciary was fair.5 Female judges and lawyers also noted that male judges often used connections to be considered.

In addition, 65 percent of the respondents to the Virtue Foundation survey identified finances as a barrier to entry. A high level of educational attainment is a prerequisite to becoming a judge. In many countries in the Global South, public schools are of such poor quality that parents must send their children to expensive private schools. In some countries, particularly in South Asia, where poor families have to choose between educating girls or boys, boys are typically sent to school. As a result, women have disproportionately less access to quality education and are less likely to become judges.

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A notable exception to the low representation of women on judiciaries is the Eastern Caribbean Supreme Court—the highest court for nine countries, including Antigua and Barbuda, Grenada and Saint Kitts and Nevis. Over 60 percent of judges on this court are women.

In terms of gender parity, courts in Latin America and the Caribbean rank second in the developing world.1 [SEE TABLE 4] According to the 2011-2012 UN Women report Progress of the World’s Women, Central and Eastern Europe and Central Asian countries have the most women judges in the world—over 40 percent.2

Even in the U.S., progress toward equality on the courts has been slow. While women occupied approximately 20 percent of all federal judge seats in the U.S. a decade ago, they fill only about 30 percent of such seats today.3 [SEE TABLE 3] Although the Canadian Supreme Court, in which four of nine judges are women, is treated as the world’s first gender-balanced national high court, women comprise about only 32 percent of all judges in Canada’s lower courts.

More troubling still: in some countries the share of women judges has actually decreased over time. Take Guatemala, where women constituted 15 percent of judges on the highest court in 2009, but only 8 percent in 2010. In Panama, women constituted 18 percent of judges (one of nine) on the highest court in 2009, but were entirely absent from the court in 2010. The precise reason for this is unclear, but women were not appointed to fill seats vacated by women judges. In Panama, for example, the Supreme Court’s nine justices each serve a term of only 10 years, so there is fairly frequent turnover and the figure was 23 percent in 2010 versus 6 percent in 1998.

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These findings have not been limited to the United States. In a survey of judges in Northern Ireland conducted in 2004, socializing in informal networks such as “golf clubs” was considered to be influential in judicial appointments. This had an adverse impact on women, who were often excluded from these networking opportunities. One judge noted that even when women were included, family obligations prevented them from participating.5

More recently, women judges from around the world surveyed by the Virtue Foundation in 2011 echoed these findings, with nearly 70 percent of respondents saying that the lack of networks and connections that facilitate advancement is a major challenge for women in their pursuit of judgeships.6 Anecdotally, one female attorney who regularly practices before a High Court in India noted that her male colleagues had the private telephone numbers of male judges among their cell phone contacts. In India, judges are appointed to High Courts upon the recommendation of the senior judges on those High Courts. This attorney clearly felt that she, unlike some of her male counterparts, did not have the connections to be considered.7

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Even after a woman becomes a judge, she faces unique obstacles. The most important challenge cited by women judges in the Virtue Foundation survey was balancing work and family responsibilities (96 percent). Overt discrimination may also keep women from being appointed to powerful court governance committees or lead them to be appointed only to certain types of courts, such as family or juvenile courts. For example, Brenda Hale—Baroness Hale of Richmond—a justice on the Supreme Court of the United Kingdom since 2009 and High Court judge since 2004, recalls that early in her career, male judges asked her to leave the room following dinner so that they could talk among themselves.

**Gender and Decision-Making**

In making the case for increased gender parity in courts, some argue that women reach different (and presumably better) decisions than men. There are a number of theoretical approaches to this question. The “different voice” approach, espoused by psychologist Brenda Hale was pregnant. In 1956, as one of only nine women in a class of 400 at Harvard Law School, she was asked by the dean why she was taking up a place that might otherwise have gone to a man.

Further supporting the notion that personal experiences can impact a judge’s decisions, academics Pat Chew and Robert Kelley found that, in cases of racial discrimination in employment, judges’ decisions can be affected by the probability of a judge deciding in favor of the party alleging discrimination decreased by 10 percentage points when the judge was a male. Conversely, when a woman was on such a panel, the likelihood of a male judge ruling in favor of the plaintiff increased from 2 to 14 percent.

The authors believe their results are consistent with an informational account of the impact of gender. The assumption that the authors must make is that the women judges they have at some point in their careers faced discrimination in the workplace and have brought those experiences to bear when deciding cases in which such claims are made.

There are many well-known examples of such discrimination. For example, U.S. Supreme Court Justice Ruth Bader Ginsburg was forced to work as a typist after being denied a civil service position because she was pregnant. In 1956, as one of only nine women in a class of 400 at Harvard Law School, she was asked by the dean why she was taking up a place that might otherwise have gone to a man.

A third theory, described by academics Christina Boyd, Lee Epstein and Andrew Martin, is the “informational account of the impact of gender.” The theory suggests that women don’t necessarily represent a class but that their professional experiences give them unique and valuable information that may impact their decision-making.

According to Professors Boyd, Epstein and Martin, over 30 empirical studies have been conducted to determine whether the gender of a judge influences the decisions she or he makes. About one-third of these studies show that women judges come to different conclusions than male judges, about one-third have mixed results, and the final third find no sex-based differences whatsoever. A cluster of studies, however, show a correlation between gender and judicial outcomes in a specific set of cases: cases involving sex discrimination. A study by Boyd, Epstein and Martin analyzed 13 areas of decisions handed down by U.S. appellate courts, where judges hear and decide cases in panels of three. They found that in cases involving sex discrimination, women judges are more likely to rule in favor of the plaintiff. When the judge was a female, the probability of a judge deciding in favor of the party alleging discrimination decreased by 10 percentage points when the judge was a male. Conversely, when a woman was on such a panel, the likelihood of a male judge ruling in favor of the plaintiff increased from 2 to 14 percent.

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first place where people have direct contact with the justice system: as witnesses, plaintiffs, defendants, victims, and observers. Trial courts are also effectively courts of last resort for many people, since most trial court judgments are never appealed.

Many women survivors of violence recount the discriminatory attitudes they encounter within the criminal justice system and courtrooms by police and prosecutors who don’t believe them and by judges who are insensitive to them or question their motives. This problem exists in many parts of the world today and the U.S. is no exception. Although clearly changing, the gender bias task forces created by courts in the mid-1980s and 1990s found that some judges presume that victims of domestic violence provoked or deserved violence. Of course there are exceptions—not all women will behave sensitively toward other women, and there are many gender-sensitive male judges—but overall, more gender-balanced courtrooms can make the process less agonizing for women and girls who appear before them, particularly trauma victims.

Related to this is the role that women judges can play in eradicating gender-based violence. Globally, common estimates are that one in every three women experiences violence over the course of her lifetime. (And much of it is believed to occur at the hands of a family member.) By complying with the law in their decisionmaking and implementing structural changes to improve access to justice for women and girls, women judges are leading the charge against gender-based violence.

In a recent article in the Cornell International Law Journal, former Supreme Court Justice Sandra Day O’Connor and Avon Global Center steering committee Chair Kim Azzarelli noted many such examples. Chief Justice Georgina Wood in Ghana has spearheaded the creation of a specialized Family Justice Center that provides holistic support to survivors of violence. Justice Inés Highton de Nolasco, vice president of the Argentine Supreme Court, helped launch a domestic violence office in the court that focuses exclusively on providing legal, medical and other professional support to survivors of domestic violence. Judge Ann Claire Williams of the U.S. Federal Court of Appeals for the Seventh Circuit has led training programs for other judges around the world on best practices in gender justice issues.

Examples like these abound across the world. Justice Gita Mittal of the Delhi High Court in India is creating a courtroom that allows child witnesses who have been victims of violence to testify on a live video camera rather than confront their alleged abusers in person. We have yet to achieve gender parity in judiciaries across the Americas. Progress has been made, but it is slow and sometimes there has been regression. We don’t know definitively whether, all else being equal, women and men judges rule differently. We do know, however, that there must be gender parity in the judiciary to further equality of opportunity for all people, enhance courts’ legitimacy and strengthen the rule of law. Most important, equality on the bench can promote fairness in the courts and structural changes that improve access to justice for women and girls.

Sital Kalantry is clinical professor of law at Cornell Law School and faculty director of Cornell’s Avon Global Center for Women and Justice.

For source citations see: www.americasquarterly.org/kalantry