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# Just the Facts? Media Coverage of Female and Male High Court Appointees in Five Democracies

Maria C. Escobar-Lemmon

Texas A&M University, [m\\_escobar@pols.tamu.edu](mailto:m_escobar@pols.tamu.edu)

Valerie Hoekstra

Arizona State University, [valerie.hoekstra@asu.edu](mailto:valerie.hoekstra@asu.edu)

Alice Kang

University of Nebraska - Lincoln, [akang2@unl.edu](mailto:akang2@unl.edu)

Miki Caul Kittilson

Arizona State University, [Miki.Kittilson@asu.edu](mailto:Miki.Kittilson@asu.edu)

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# Just the Facts? Media Coverage of Female and Male High Court Appointees in Five Democracies

**Maria C. Escobar-Lemmon**

Texas A&M University

**Valerie Hoekstra**

Arizona State University

**Alice Kang**

University of Nebraska–Lincoln

**Miki Caul Kittilson**

Arizona State University

## Abstract

In this article, we examine gender differences in news media portrayals of nominees to high courts and whether those differences vary across country and time. Although past research has examined gender differences in news media coverage of candidates for elective office, few studies have looked at media coverage of high court nominees. As women are increasingly nominated to courts around the world, it is important to examine how nominations are covered by the news media and whether there is significant variation in coverage based on gender. We analyze media coverage of high court justices in five democracies: Argentina, Australia, Canada, South Africa, and the United States. We compare coverage of women appointed to the highest court with coverage of the most temporally proximate male nominees. We also compare coverage over time within each country as well as between countries that nominated women early with those that did so more recently. We find some evidence of gendered coverage, especially with regard to the attention paid to the gender of the women appointees.

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Q: It seemed to me that male judges do much more abrasive things all the time, and it goes unremarked.

Justice Ruth Bader Ginsburg: Yes, the notion that Sonia is an aggressive questioner—what else is new? Has anybody watched Scalia or Breyer up on the bench?

—*New York Times Magazine*, July 12, 2009

In May 2009, President Barack Obama announced his intention to nominate Sonia Sotomayor for the U.S. Supreme Court. Immediately, the *New Republic* aired criticisms that Sotomayor is “not that smart and kind of a bully on the bench.”<sup>1</sup> Subsequent news outlets picked up the story, including National Public Radio’s *Morning Edition*, which asked, “Is Sonia Sotomayor Mean?”<sup>2</sup> It was not the first time a female justice had been described as aggressive. A 1994 *Newsweek* article on Ruth Bader Ginsburg was entitled “‘Rude’ Ruth.”<sup>3</sup>

Recent studies in the United States find fewer gender differences in the amount and tone of media coverage of female candidates in recent elections (Brooks 2013; Dolan 2014; Hayes and Lawless 2015). Yet are findings from studies of candidates generalizable to women in other political realms? Specifically, are there gender differences in news media portrayals of nominees to high courts? Further, do these differences vary across countries and over time? As calls increase for greater numbers of women on high courts around the world (Hoekstra 2010; Hoekstra, Kittilson, and Bond 2014; Williams and Thames 2008), it is important to examine whether there is systematic variation in coverage of nominees based on gender.

Understanding how the media covers high court nominees is essential, as this coverage may influence appointment outcomes, thereby shaping the composition of the court. Moreover, media coverage may also have long-run implications for the willingness of government officials to nominate women and for women to accept nominations. Negative coverage (especially if it is inaccurate) may reduce the efficacy of women judges by lowering their credibility with their colleagues, their staff, and importantly, lower court judges and other officials charged with

1. Jeffrey Rosen, “The Case Against Sotomayor,” *New Republic*, May 3, 2009, <http://www.newrepublic.com/article/politics/the-case-against-sotomayor> (accessed March 10, 2016).
2. Nina Totenberg, “Is Sonia Sotomayor Mean?,” *Morning Edition*, National Public Radio, June 15, 2009, <http://www.npr.org/templates/story/story.php?storyId=105343155> (accessed March 10, 2016).
3. “‘Rude’ Ruth,” *Newsweek*, April 10, 1994, <http://www.newsweek.com/rude-ruth-186990> (accessed March 10, 2016).

carrying out their decisions. The coverage creates a first impression of the nominee's competence and qualifications (see Harp, Loke, and Bachmann 2010). Finally, negative media coverage might also affect women's judicial ambitions. As Fox and Lawless (2010, 2011) observe, one of the greatest impediments to seeking elected office for women is that they are socialized to perceive themselves as less qualified for office, despite having objectively similar backgrounds as their male counterparts. An important part of the socialization process can be media coverage of the institution, especially when that institution has been predominantly male. Similar socialization effects might hinder women's considerations of their qualifications for judicial appointments.

We analyze differences in news media coverage of high court justices in five democracies: Argentina, Australia, Canada, South Africa, and the United States. We compare coverage of women appointed to the highest court with coverage of the most temporally proximate male appointees. These five cases provide us with variation across the type of judicial system, presidential/parliamentary system, region, the number of subsequent nominations, and the timing of the first woman to be nominated (which varies from 1981 in the United States to 2004 in Argentina). This cross-time and cross-country comparison sheds light on the conditions that ameliorate differences in the media's coverage of male and female nominees.

Gender is a social process that assigns meaning to sex differences, and judicial selections are events in which gender is constructed (Kenney 2012). As did Kenney (2012, 45), we find that the social construction of sex differences is not identical across countries or time, but it nevertheless persists "with variations in different contexts." Our findings suggest that gendered coverage often frames nominees in terms that reference professionally irrelevant factors (such as personal and family life) rather than professional qualifications and achievements.

## **Gender and News Media Coverage**

Nearly all research on gender in news media coverage focuses on candidates for elected office in the United States. Initial studies demonstrated that compared with men, women candidates in U.S. elections received less media coverage, less prominent coverage (Kahn 1992, 1994; Kahn and Goldenberg 1991), more negative coverage, greater focus on the viability of their campaigns (Kahn 1996), and greater emphasis on appearance and personal life; the coverage also

deemphasized individual accomplishments and often corresponded with common gender stereotypes. However, Smith (1997) and Jalalzai (2006) report a general trend toward more equitable coverage and less gender stereotyping for candidates for the U.S. Senate or governorships. Bystrom, Robertson, and Banwart's (2001) analysis of the 2000 Senate and gubernatorial primaries concludes that women candidates received more coverage than men, suggesting less pronounced differences over time.

Across U.S., Australian, and Canadian elections, women politicians are more often portrayed in terms of feminine stereotypes (Acker 2003; Kittilson and Fridkin 2008; Robinson and Saint-Jean 1995). In television news coverage of the 1993, 1997, and 2000 Canadian elections, messages of female party leaders were less likely to receive neutral coverage than those of male party leaders (Gidengil and Everitt 2003). In the 2000 election, newspaper headlines employed more aggressive language for male party leaders and more passive language for the female party leader (Sampert and Trimble 2003). The Canadian and Australian media emphasize women's physical attributes and backgrounds (Deutchman and Ellison 2004; Everitt 2003; Gingras 1995).

Only a few comparative studies examine gender differences in media coverage of heads of state, but they suggest that differences in press treatment appear to be more dramatic for highly visible, prestigious positions, and these differences do not appear much diminished over time. Norris (1997) finds that women receive less coverage than their male counterparts.<sup>4</sup> Murray (2010) shows that, cross-nationally, female candidates for executive office receive more coverage about their appearance than their male peers. Furthermore, news stories on female leaders commonly mention gender-related themes, employing the "first woman" frame.

Taken together, existing research on elected office shows that gender stereotypes are often invoked in news coverage of elected officials. How, then, does the news media cover women in nonelected, appointed positions such as those on supreme and constitutional courts? We think this is an open and important question.

Although the literature on elections leads us to expect less or gender-stereotyped news coverage for women relative to men, this may not hold for high court

4. Elizabeth Dole's bid for the 2000 Republican presidential nomination received less coverage and less positive coverage than the campaigns of some male opponents, including those trailing her in the polls. The coverage she received focused on her appearance, her sex, and her campaign's viability (see, for instance, Aday and Devitt 2001; Bystrom 2006; Heldman, Carroll, and Olson 2005).

nominees. In elections, higher amounts of news media coverage benefit all candidates by increasing visibility and name recognition. However, where judges are appointed, it is not clear that a lack of publicity is a negative; potential appointees appear to do little to “campaign” for office. Therefore, women appointees, especially the first woman, may receive more coverage than male nominees based on the novelty of having a woman in a powerful post traditionally dominated by men. Additional coverage may reflect negative attention emphasizing weaknesses or undermining a nominee’s credentials or integrity. Further, it is not clear that positive traits associated with elected officials are necessarily considered ideal for highly regarded justices. For instance, holding a strong position on issues and being “unwavering” might be positive for a candidate for elected office, but for a justice, being “impartial,” “neutral,” and “independent” might carry more positive connotations.

We expect to find gender differences in news media coverage of high court nominees. Given the relatively low numbers of women on high courts, women’s nominations will be covered as a novelty. Further, as high courts have traditionally been dominated by male justices, women may be depicted as lacking in qualifications or necessary experience. Stories may depict female nominees on the basis of dominant feminine traits and stereotypes. When female nominees depart from these gender stereotypes, these traits may be highlighted in news stories. High court positions are prestigious leadership positions in institutions with strongly traditional symbolism. If the gendered nature of media coverage of high court justices reflects that of elected officials, then we expect a reduction in gender differences for more recent nominees across countries and less gendered news coverage for subsequent nominees within countries.

As norms of gender equality and inclusion diffuse cross-nationally (Meyer et al. 1997), so, too, may perceptions of gender inequality as a public problem. Hughes and Paxton (2007) suggest that as the international women’s movement has strengthened in recent decades, demands for inclusion increasingly highlight gender balance in decision-making bodies. Further, “pressure to respond to these changing messages would be uniform across states” (Hughes and Paxton 2007, 375).

We expect less gendered coverage for female nominees in recent years because women have been nominated to high courts and other elite-level political positions in other countries. As women become common in top-level positions, the novelty of a woman’s nomination may fade, and news media coverage may become more similar for male and female high court nominees. In the absence of

a strong prior research tradition, we build our expectations from the literature on media coverage of candidates.

Specifically, we expect to find the following:

- Women appointed to high courts will receive more coverage than men.
- Women appointed to high courts will receive less positive coverage than men.
- Women appointed to high courts will receive more coverage emphasizing personal traits.
- Coverage of female appointees will mention gender more than coverage of the male nominees.
- As norms of gender equality spread internationally and over time, we will observe fewer gender differences for more recent nominees.

### **The Basis Of Comparison: Data and Approach**

We compare coverage from one or two national newspapers of all women appointed to the highest court with coverage of the one most temporally proximate male appointment in five countries: Argentina, Australia, Canada, South Africa, and the United States.<sup>5</sup> In the United States, South Africa, and Australia, there have been four women appointed to their high courts. In Canada, there have been six women. Argentina has appointed two women to its high court.

Nomination and selection mechanisms vary across these cases. In the United States and Argentina, justices are nominated by the president and confirmed by the senate. In Canada and Australia, in practice, appointments are made on the advice of the prime minister. In South Africa, the president appoints the judges in consultation with the judicial service commission.

The type of judicial system also varies. In Argentina, Australia, Canada, and the United States, there is a single national high court, while in South Africa, there was a separate court of last resort and a constitutional court. Argentina and the United States are presidential systems; Australia, Canada, and South Africa are parliamentary. Additionally, these cases span the Americas, the Pacific, and Africa and include three high-income economies (Australia, Canada, and the United States) and two middle-income economies (Argentina and South Africa).

5. We study appointees and not nominees because we are concerned about the differences between the selection systems. This means we exclude the failed nomination of Harriet Miers in the United States. While we know of no failed nominations in the other countries, some nominees may have “failed” behind closed doors before their names were announced.

In addition, our cases allow us to examine newspaper coverage across a span of more than 20 years. The first woman was appointed in the United States in 1981, in Canada in 1982, and in 1986 in Australia. South Africa appointed its first women in 1994, and in 2004, two Argentinean women joined their high court.

We coded newspaper stories on the high court appointees to identify differences in the amount and tone of coverage and mentions of gender, family, appearance, and personal attributes, as well as professional preparation. We coded two national newspapers for each country except Argentina, where we focused on one newspaper, and Australia, where we included one national newspaper and the largest circulating newspaper. Because the process of appointment is different in each country, and because of variation in the availability of newspapers for different countries/appointees, the time frames and number of newspapers coded vary slightly (see the supplementary material for details).

For the United States, newspaper coverage is based on a sample of articles about the nominees from the *New York Times* and *Washington Post*. For Canada, articles were collected from the *Globe and Mail* and the *Toronto Star*. For South Africa, coverage includes articles about the nominees from *The Sowetan*, a widely read left-leaning daily, the *Mail and Guardian*, and the *Sunday Times*. For Australia, coverage comes from *The Australian*, and the *Sydney Morning Herald*. Finally, in Argentina we used *La Nación*. For each country, we coded news articles, excluding editorials and other commentary, that appeared in the print edition.<sup>6</sup> Table 1 summarizes the number of appointments and number of articles for each country.<sup>7</sup>

## Results

We first examine the overall differences in the coverage of female and male appointees. Next, we look in depth at the newspaper coverage in each country and compare coverage of the first woman and the most proximate male appointee, followed by a comparison with subsequent female appointees in that country.

6. We include only news articles to provide for more consistency across our samples, as the policies of the different newspapers differ regarding editorials. This is a more stringent test of our hypotheses because editorials are much more likely to offer criticisms than news articles.

7. To a certain extent, our selection of newspapers was limited by availability over the time frame of our analyses. However, it was the most widely read and national papers that tended to be available. We believe it is appropriate to rely on these sources because they are most likely to influence other media as well as reach more readers.



**Table 1.** Male and female appointees by country, pairs, and appointment year

Country	Justice pairs	
Argentina 2 female/87 articles 2 male, 47 articles	Argibay (2003) Zaffaroni (2003)	Highton de Nolasco (2003) Lorenzetti (2004)
Australia 4 female/20 articles 3 male/49 articles	Gaudron (1986) Toohey (1986)	Cremnan (2005) Heydon (2003) Keifel (2007) French (2008)
Canada 8 female/34 articles 6 male/27 articles	Wilson (1982) Lamer (1980)	L'Heureux-Dubé (1987) Gonthier (1988) McLachlin (1989) Cory (1989)
South Africa 4 female/24 articles 9 male/43 articles	Mokgoro, O'Regan, Didcott, Kriegler, Langa, Sachs (1994)	Abella, Charron (2004) Deschamps (2002) Fish (2002)
United States <sup>a</sup> 4 female/252 articles 3 male/140 articles	O'Connor (1981) Stevens (1975)	Arbour (1999) Binnie (1998) Khampepe, Froneman, Jafta, Mogoeng (2009) Sotomayor (2009) Kagan (2010) Alito (2005)

a. We took a sample of cases because of the extensive number of articles written about each of the appointees.

We coded newspaper stories on the high court appointees to identify differences in the amount and tone of coverage and mentions of the appointee's sex, family, appearance, personal attributes, as well as professional preparation. Because article length varies, we divided the number of mentions of these characteristics by the total number of paragraphs in the article to generate a mentions-per-paragraph statistic for each article. Because the legal and political context varies considerably across countries, we analyzed each country separately by conducting a difference of means test to see whether the difference in the rate of mentions between men and women is statistically distinguishable from zero. We summarize these results in Table 2, where we report the percentages for those where the probability that the difference was distinguishable from 0 was greater than .10.

In Table 2, we observe that only in Australia were news articles more likely to contain criticisms of female nominees than of male nominees. On average, for every 10 paragraphs about a female appointee, there were 1.3 criticisms, but for a male appointee, there was only 0.2 criticism per 10 paragraphs. While criticism was equally frequent of male and female appointees in the other cases, which is interesting as the United States and Canada are nearly contemporaneous, we observe other differences in the nature of the coverage.

In Canada, women were not criticized more or less, but prior experience was mentioned less frequently. For every 10 paragraphs written about appointees in Canada, we found 3 mentions of prior experience on the bench for men, but for female appointees, we only found 1.3 mentions. Mentions of lack of qualifications were more frequent for female appointees in the United States than for male appointees. Out of every 100 paragraphs about a female appointee in the United States, we found 1.6 mentions of a lack of qualifications, but for a man, we found 0.01 mentions. However, in Argentina, male appointees averaged 1.6 mentions of lack of qualifications per 100 paragraphs, but female appointees only 0.2 mentions per 100 paragraphs. This suggests that while gender differences are present in all five countries, they are not uniformly negative.

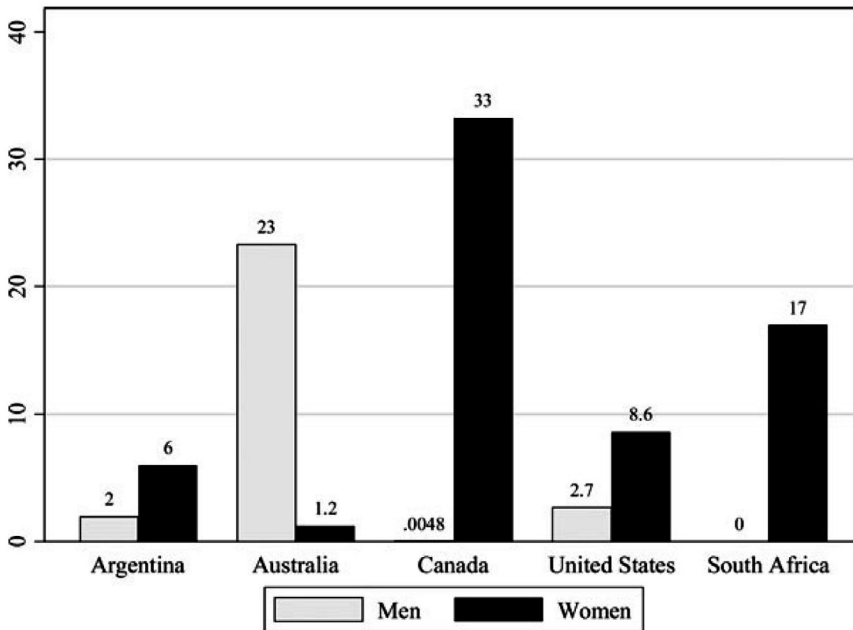
Table 2 shows variation in differences in coverage across our countries. The only consistent finding across the five cases is the absence of differences in mentions of physical appearance. Additionally, in four countries—Australia, Canada, South Africa, and the United States—the appointee's gender is consistently mentioned more when the appointee is a woman. This provides support for our hypothesis that gender is more salient for female appointees. We want to note that

**Table 2.** Summary of statistically significant differences between male and female appointees by country

	Argentina	Australia	Canada	South Africa	United States
Rate of criticism <sup>a</sup>		W = 0.130 M = 0.019*			
Rate of mentions of: Lack of qualifications	W = 0.002 M = 0.016***		W = 0.130 M = 0.299*		W = 0.016 M = 0.000***
Prior experience on the bench					
Work qualifications		W = -0.182 M = 0.182 *			W = 0.081 M = 0.046 *
Educational preparation	W = 0.011 M = 0.050 *			W = 0.039 M = 0.001**	
Other qualifications	W = 0.005 M = 0.034 ***				
Physical Appearance					
Percentage of: Articles that mention the appointee's marital status				W = 8% M = 0.0%	
Paragraphs devoted to the appointee's family members				W = 3.06% M = 0.65%***	W = 0.29% M = 0.0%*
Paragraphs covering the appointee's gender		W = 23.3% M = 1.25%***	W = 33.27% M = 0%***	W = 17.0 M = 0.0%***	W = 8.6% M = 2.7%***

a. The rate of criticism is a measure of frequency that takes into account the amount of coverage a justice received. It is computed for each article by dividing the number of criticisms by the number of paragraphs and then obtaining the average across that country-gender. We follow the same procedure for all other variables listed here.

\*  $p < .10$  ; \*\*  $p < .05$  ; \*\*\*  $p < .01$



**Figure 1.** Mentions of appointee's gender in coverage of male and female appointees.

mentions of a female candidate's gender is not necessarily sexist, as the discussion could be positive (e.g., recognizing gender imbalances or the lack of women on the high court). However, the effect is to raise the salience of gender, as if having a woman justice is unusual.

Figure 1 graphs the percentage of paragraphs devoted to coverage of the appointee's gender as an issue. The graph convincingly reveals substantial differences in coverage between male and female appointees. This is especially true in Canada and South Africa, where there was no coverage of the male appointees' gender. We note that while much of the coverage of gender was in reference to the "first woman," there were also mentions of gender for subsequent nominees, especially in circumstances (e.g., Australia) in which a man was appointed after the retirement of a female justice. The absence of differences in Argentina is attributable to repeated criticism that the nominee was not a woman. Although the kinds of gendered coverage found in reference to elected candidates do not appear consistently in the coverage of judicial appointees, we find consistent coverage of the personal lives of female nominees. How this varies by country is detailed next.

## ***United States***

In the United States, Ronald Reagan kept his campaign pledge and nominated Sandra Day O'Connor as the first woman to the U.S. Supreme Court on August 19, 1981. Comparison of newspaper coverage of O'Connor with that of John Paul Stevens, who was nominated just before O'Connor in 1975, highlights the pervasive "first woman" frame. Synonymous with O'Connor's name was the phrase "first woman on the Supreme Court." Nearly every article about O'Connor mentioned her gender, while about one-third of the articles about Stevens mentioned his gender or that women's organizations were upset that President Gerald Ford had not nominated a woman to the Supreme Court. In line with the expectations about the novelty of being the first woman on the high court, more stories were written about O'Connor's nomination (57) than about Stevens's nomination (35). Further, coverage of O'Connor frequently mentioned her husband, enough that the difference is statistically different from zero (see Table 2), unlike coverage of Stevens. In fact, one headline just after O'Connor was confirmed read, "Justice O'Connor's Husband Joins DC Law Firm."<sup>8</sup>

Since O'Connor's groundbreaking nomination, three women have been appointed to the U.S. Supreme Court. Comparing news coverage of these female nominees with coverage of the males nominated in closest proximity, some differences emerge. Justice Ruth Bader Ginsburg was often referred to as the "second woman" of the Supreme Court. Further, her experience in gender-based discrimination and the law was a common theme, with one story labeling her the "Thurgood Marshall of Gender Equality Law."<sup>9</sup> Coverage of Sonia Sotomayor's nomination marked the intersection of ethnicity and gender, and nearly every article mentioned that she is a Latina. Further, the tag on Sotomayor was that she was emotional and tough, commonly held stereotypes about Latinas.

By the time Elena Kagan was nominated, mentions of her gender were substantially less frequent. Instead, the tag commonly associated with Kagan was "inexperienced." Most newspaper articles mentioned that she had "less legal experience," perhaps contributing to the significant difference in mentions of

8. "Justice O'Connor's Husband Joins DC Law Firm," *Washington Post*, November 11, 1981.

9. "The Supreme Court," *The New York Times*, June 15, 1993.

this that we note in Table 2. Several articles described her as a political operative rather than a legal expert.<sup>10</sup> A few articles mentioned that Kagan is not married and has no children. By contrast, none of the stories about male nominees mentioned the lack of a spouse or children, contributing to a statistically significant difference in Table 2. One story went as far as to address rumors about Kagan's sexuality.<sup>11</sup>

### **Canada**

The first woman nominated to the Canadian Supreme Court was Bertha Wilson on March 30, 1982. Wilson's nomination garnered far more news articles (6) than that of Antonio Lamer (1), who had been nominated to the court two years prior. Similar to O'Connor's nomination in the United States, nearly all of the articles mentioned more than once that Wilson was the "first woman appointed to the Supreme Court," while no articles referenced Lamer's sex. Headlines of coverage of Wilson included "Woman Justice to Take Oath," "Lavish Praise Welcomes First Woman to Canada's Top Court," and "Woman Judge Still Avoiding Press."<sup>12</sup>

Although Supreme Court nominations in Canada had been largely uncontroversial and not deemed newsworthy, news articles noted some opposition to Bertha Wilson's nomination. One article quoted a law professor (unidentified) as saying, "If she were not a woman she wouldn't even have been considered."<sup>13</sup> This was common enough that we observe a significant difference in mentions of prior experience (Table 2). Further, one article about Wilson noted that she was "childless, though not by choice."<sup>14</sup> By contrast, not one article about a male nominee mentioned choices about whether to have children. Male nominees without children did not garner mentions of the absence of children in the articles we analyzed. Akin to the coverage of Ruth Bader Ginsburg in the United States, Wilson's prior legal decisions on gender and racial discrimination were also covered in depth.<sup>15</sup>

10. "Kagan's Approach? Modest," *Washington Post*, June 29, 2010.

11. "Obama Shows Growing Comfort," *Washington Post*, May 8, 2010.

12. "Woman Justice Takes Oath," *Globe and Mail*, March 26, 1982; "Lavish Praise Welcomes First Woman to Canada's Top Court," *Globe and Mail*, March 31, 1982; "Woman Judge Still Avoiding Press," *Globe and Mail*, March 9, 1982.

13. "Wilson's Appointment Hailes as a Victory for Women," *Toronto Star*, March 5, 1982.

14. "Wilson's Appointment Hailes as a Victory for Women," *Toronto Star*, March 5, 1982.

15. "Bertha Wilson: Champion of the Underdogs," *Toronto Star*, March 14, 1982.

The “woman” frame lost some salience for subsequent female nominees to the Supreme Court, but gendered tags did not disappear. The second woman nominated to the Canadian Supreme Court, Claire L’Heureux-Dubé, was tagged as an empathetic judge, stating that “(s)he is a judge with a heart.” The same article highlighted her experience with family law.<sup>16</sup> Beverly McLachlin’s headline in the *Globe and Mail* read, “Mulroney Appoints 3rd Woman to Court.”<sup>17</sup> Clearly, the novelty of a female justice had not vanished entirely. When McLachlin was elevated to chief justice, the coverage touted her as the “first woman chief justice” but also referred to McLachlin as a “farm girl.”<sup>18</sup> The common denominator in coverage of Louise Arbour’s appointment was her experience as chief prosecutor of the International Criminal Tribunal for the former Yugoslavia and Rwanda. Like Sonia Sotomayor’s nomination in the United States, coverage of Rosalie Silberman Abella’s nomination in Canada made reference to her ethnic identity and gender. Abella was framed as the “first female Jewish judge” in several articles.<sup>19</sup> Similar to the coverage of Elena Kagan in the United States, Andromache Karakatsanis was criticized for her lack of experience; one article addressed rumors that she had “jumped the queue” ahead of more experienced justices.<sup>20</sup>

### **Australia**

The first woman nominated to the Supreme Court of Australia was Mary Gaudron in December 1986. She was sworn in January 1987. Concurrently, John Toohey was nominated for another opening on the court, and a sitting justice was elevated to chief justice. Thus, many of the articles analyzed discuss more than one appointment.

While there were infrequent criticisms or mentions of spouse, children, and gender for Mary Gaudron, mentions of spouse, children, and gender were nonexistent for John Toohey. It is important to note that Gaudron was considered a more partisan nominee than Toohey because of her affiliation with the Labour Party and because unlike most appointees—and similar to Elena Kagan in the United States—she lacked prior judicial experience. Instead, Gaudron was acting solicitor general

16. “Second Woman Appointed to Supreme Court,” *Toronto Star*, April 16, 1987.

17. “Mulroney Appoints 3rd Woman to Court,” *Globe and Mail*, March 31, 1989.

18. “New Justice Sworn In,” *Toronto Star*, April 18, 1989.

19. “Abella Promises,” *Toronto Star*, August 25, 2004.

20. “High Court Nominees Grilled on Credentials,” *Toronto Star*, October 20, 2011.

for New South Wales. This fits with the observed statistical differences in rates of criticism and mentions of work qualifications observed in Table 2.

This pattern generally holds for the three additional women and two additional men subsequently appointed—there were few overt differences in coverage except for the continued salience of the gender of the nominees. In addition to Mary Gaudron being consistently referenced as the “first woman” when she retired, there were criticisms that her replacement, Dyson Heydon, was not a woman. It was not until 2005 that another woman, Susan Crennan, was appointed. Again, there were references to the lack of women on the court and mentions of Crennan’s gender. Articles about Crennan were titled “Renaissance Woman” and “Woman ‘of Merit’ Joins High Court.”<sup>21</sup> Susan Keifel, appointed in 2007, was referred to as the “third woman.” The same article also mentioned that when “she took silk in 1993 ... she became used to workers laughing at the sight of a woman in legal robes.”<sup>22</sup> The most recent woman appointed, Virginia Bell in 2009, was frequently referenced as the third sitting woman judge.

A qualitative assessment of the news media reveals more gendered coverage of nominees. One of the first articles about possible replacements on the Supreme Court, prior to the announcement of the actual appointments, was titled “Merit Should Be Criterion, Say Lawyers.”<sup>23</sup> Two days earlier, there was another article, “Woman Mooted for High Court.”<sup>24</sup> One month later, the paper ran an article entitled “Gaudron Not a Token.”<sup>25</sup> In discussing her resignation from an earlier position, the paper referred to Gaudron as “naïve.”<sup>26</sup> This gendered coverage appears for subsequent nominees as well. For instance, when Susan Crennan was appointed, one article was titled, “Grandmother Takes Seat on Highest Court.”<sup>27</sup> Most obvious was the coverage of Virginia Bell’s appointment in 2009.

21. Chris Merritt, “Renaissance Woman,” *The Australian*, September 21, 2005, 11; Elizabeth Colman and Natasha Robinson, “Woman ‘of Merit’ Joins High Court,” *The Australian*, September 21, 2005, 1.

22. “Third Time’s the Charm,” *The Australian*, August 14, 2007, 11.

23. “Merit Should Be Criterion, Say Lawyers,” *Sydney Morning Herald*, November 8, 1986, 7.

24. Verge Blunden, “Woman Mooted for High Court,” *Sydney Morning Herald*, November 6, 1986, 3.

25. Mike Steketee, “Gaudron Not a Token, Hawke Says,” *Sydney Morning Herald*, December 10, 1986, 3.

26. “The High Court Appointments,” *Sydney Morning Herald*, December 9, 1986, 16.

27. Elizabeth Colman, “Grandmother Takes Seat on Highest Court,” *The Australian*, November 9, 2005, 8.



News articles made reference to another Virginia Bell, a stripper and adult film star from the 1950s and alluded to the appointee's past as a television barrel girl and her unmarried status.<sup>28</sup>

### **South Africa**

The first women nominated to South Africa's Constitutional Court were Yvonne Mokgoro and Catherine (Kate) O'Regan. Their nominations, along with those of four men (John Didcott, Johan Kriegler, Pius Langa, and Albie Sachs), were announced in October 1994. All the judges of the country's first Constitutional Court were sworn in on February 14, 1995.

While we did not find the media's tone to be more negative toward female appointees than toward male appointees, we find gendered differences in coverage between Mokgoro, O'Regan, and their closest male appointees. Headlines for stories focused on Mokgoro and on O'Regan mentioned their status as mothers; a story in *The Sowetan* focused on Mokgoro had the subheading, "Mother of Four Joins Team of Top Legal Eagles in New Constitutional Court."<sup>29</sup> The feature story contained a paragraph on Mokgoro's husband and another paragraph on Mokgoro's children. In none of *The Sowetan's* features on the nearest appointed men was fatherhood mentioned.<sup>30</sup> This difference emerges in the statistical analysis in Table 2 as well. A story that featured Kate O'Regan in the *Mail and Guardian* had the heading, "Judge Kate O'Regan...I'm in Meetings All Morning. Then I Have to Fetch the Kids from School."<sup>31</sup> While the parents or number of siblings of male appointees were mentioned, in no instance did they feature prominently in the headline.

The gendered media coverage appears to wane for subsequent female appointees. First, fewer paragraphs were written on the newer female and male judges on the court than for the first two women. Second, in the stories we analyzed, subsequent female appointees were not described as mothers or wives. Similarly, media coverage of the nearest appointed male judges still did not describe them as husbands or fathers.

28. Nicola Berkovic and Chris Merritt, "A Great Step Forward," *The Australian*, December 16, 2008, 2.

29. Luiama Luti, "New Judge Committed to Human Rights," *The Sowetan*, October 24, 1994, 11.

30. A male judge not included in our study, Tholakele Hope Madala, did have a feature in *The Sowetan* that mentioned his wife and his children in the last paragraph of the article. "Madala Sets to Work with Top Legal Team," *The Sowetan*, November 7, 1994, 9.

31. *Mail and Guardian*, February 17, 1995, 12-13.

News media coverage of the appointees for South Africa's Constitutional Court focused more on issues of race and ethnicity or a combination of race and gender than on gender alone. For instance, when six nominees were announced in October 1994, *The Sowetan* cited a criticism from the Azanian People's Organisation that "[t]he judiciary in our country is already too white as it is. This is where it derives its legitimacy crisis."<sup>32</sup> Two additional news stories also presented the Black Lawyers Association's lament that only four of the 11 judges were black.<sup>33</sup> The day after the swearing in ceremony, *The Sowetan* published a story on the national languages in which the justices took their oaths rather than on the gender of the judges.<sup>34</sup> Given the salience of race and ethnicity in South African politics, the focus on the court's racial composition may explain why the racial or ethnic composition of the court was deemed a more newsworthy issue than the gender of the judges.

### **Argentina**

Two male and female judges joined Argentina's high court in a roughly 18-month period. President Nestor Kirchner's first nominee was a man, Eugenio Raúl Zaffaroni.<sup>35</sup> He was criticized for not nominating a woman or someone from the interior of the country. In December 2003, he nominated Carmen Argibay,<sup>36</sup> and in February 2004, Elena Highton de Nolasco.<sup>37</sup>

Coverage of Argibay's nomination was more extensive than that of any other appointee. Twice as many articles (62) were written about her than were written about her male counterpart, Zaffaroni (30). Coverage fell dramatically for Highton de Nolasco (25) and even further for Ricardo Lorenzetti, nominated October 2004 (17). Distinct from the other five countries, most articles about Carmen Argibay did not mention that she was the first woman to be nominated for the Supreme Court; only 25% of articles contained a reference to her sex. However, it was noted that she was known for her active involvement in associations

32. Ismail Lagardien, "Six Get Nod for SA's High Court," *The Sowetan*, October 13, 1994, 3.

33. SAPA, "BLA Wants More Black Judges," *The Sowetan*, October 14, 1994, 7; Mzimasi Ngudle, "Focus on Law," *The Sowetan*, February 7, 1995, 8.

34. Mzimasi Ngudle, "Diversity in Oaths," *The Sowetan*, February 15, 1995, 3.

35. Oliver Galak, "Zaffaroni, el juez que enciende la polémica," *La Nación*, August 10, 2003.

36. "Carmen Argibay fue propuesta por el Gobierno para ir a la Corte," *La Nación*, December 31, 2003.

37. Although Argibay was the first woman nominated to the Supreme Court under a democratic government, Highton de Nolasco became the first to sit on the court under a democratic government. Highton de Nolasco's confirmation process was faster and Argibay's service on the International Criminal Tribunal for the former Yugoslavia delayed her taking her seat.

of women judges and that she was aggressive in defending the rights of women and criticizing violence against women. Articles about the second woman, Elena Highton de Nolasco, were more likely to mention her gender (44%). This, combined with criticism that Zaffaroni was not female, is likely why we detect no difference in paragraphs covering gender (Table 2).

Coverage of only the female appointees was dominated by discussions of their views on abortion. After Argibay indicated she was prochoice and an atheist, most articles labeled her a “militant atheist.” In contrast, the most common criticisms of Zaffaroni were judicial ideology and service as a judge during the military dictatorship. Highton de Nolasco was questioned about her views on abortion but was less heavily criticized.

Zaffaroni and Argibay never married; this was mentioned in five articles about Argibay but only one about Zaffaroni. Both Highton de Nolasco and Lorenzetti are married with children, but this fact was mentioned twice as often in articles about the female justice.

## Conclusion

In this study, we compared news media coverage of the appointments of men and women to high courts in five democracies. Although women are beginning to occupy more seats on high courts, gender remains salient in news media coverage of female justices. We find few differences in the gendered nature of coverage between newer and established democracies. Further, whether the first woman joined the court more recently or decades ago, female justices are covered in terms of their gender and the novelty of having the first woman on the high court. In this way, female justices are often covered as women—and by extension, news coverage is different for men and women. The male appointee simply becomes another justice, whereas the female appointee retains the additional badge (and baggage) of the “Woman on the Court.” Our statistical analysis reveals that the most consistent evidence of gendered coverage across countries and across time is in references to women as women. For some countries, we find statistically significant gender differences in coverage of prior experience, education, professional qualifications, and mentions of family.

Our qualitative analysis reveals negative coverage of female appointees, and the nature of these criticisms is context dependent: in Argentina, “militant atheist”; in Australia, “not a token,” and “merit should be sole consideration”; in Canada, “childless, though not by choice.” Operating under the framework that gender is

a social process, we suggest that media coverage of female and male appointees reinscribes gender stereotypes. If female judicial appointees do not conform to traditional feminine stereotypes, such as not having children or questioning aggressively on the bench, then these traits are often highlighted in news coverage. This type of coverage serves to support shared perceptions of high courts as largely a masculine arena and women's entrance as a novelty. On the one hand, if female justices do not conform with the traditional traits and backgrounds associated with justices, then they face scrutiny in the media based on inexperience or lack of qualifications. On the other hand, when female justices do conform with masculine stereotypes, the media may similarly call them out on these characteristics, dubbing them abrasive or militant. In this way, gender pervades news media coverage of high court appointments, reflecting patterns uncovered in the electoral arena. In short, news coverage of female justices is not neutral and has implications for the way gender is constructed in law and society. The implications are important. As we noted earlier, this kind of media coverage may inhibit women's willingness to be considered for appointment, women's perceptions of their own qualifications for office, and elected officials' willingness to appoint them to high courts.

**Supplementary Material** for this article ("NEWSPAPERS INCLUDED IN THE DATASET") follows the **References**.

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**Maria C. Escobar-Lemmon** is Associate Professor of Political Science at Texas A&M University: [m\\_escobar@pols.tamu.edu](mailto:m_escobar@pols.tamu.edu)

**Valerie Hoekstra** is Associate Professor of Political Science in the School of Politics and Global Studies at Arizona State University: [Valerie.Hoekstra@asu.edu](mailto:Valerie.Hoekstra@asu.edu)

**Alice Kang** is Assistant Professor of Political Science and Ethnic Studies at the University of Nebraska-Lincoln: [akang2@unl.edu](mailto:akang2@unl.edu)

**Miki Caul Kittilson** is Professor of Political Science in the School of Politics and Global Studies at Arizona State University: [Miki.Kittilson@asu.edu](mailto:Miki.Kittilson@asu.edu)