

**In Search of Lady Justice:
Female Senators and the Politics of
Supreme Court Confirmations**

by

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DEDICATION

To my daughter, Paige. Just another story about how little girls can grow up and change the world.

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ABSTRACT

While decades of research have substantiated a link between the descriptive representation of women in elective office and the substantive representation of women's policy interests, an overwhelming majority of these studies focus on gender effects during the traditional policymaking process. I seek to extend this research to the broader context of America's system of checks and balances. To do so, I focus on one of the most prominent examples of interbranch relations—the confirmation of justices to the U.S. Supreme Court.

The empirical chapters in this work examine potential gender differences at several steps in the confirmation process. An analysis of forty Supreme Court confirmations reveals that female senators weigh the ideology of a nominee more heavily than their male counterparts when casting a final confirmation vote. Importantly, these differences held after controlling for the fact that noticeable numbers of women have entered the Senate only in recent decades, which have been shown to be a particularly ideological time in confirmation politics. Further investigations reveal that Democratic female senators are the primary driving force behind these noted gender differences.

Additional examinations show that female senators are also more vocal advocates for women's issues during confirmation proceedings. Analyses of floor statements from five confirmations reveal that female senators devoted proportionally more of their floor time to statements defending and advocating for the protection of women's rights. These differences are particularly pronounced when senators are faced with a Republican nominee to the

Court. Qualitative analyses suggest that these gender differences are also present during confirmation hearings.

This dissertation therefore extends the existing literature connecting the levels of women's descriptive and substantive representation to an interbranch context. Such findings highlight how the growing gender diversity in Congress not only affects the legislative branch, but rather reverberates through the entire federal government.

CHAPTER 1

Introduction

On October 8, 1991, seven female Democratic members of the U.S. House of Representatives descended upon the Senate. The congresswomen's intent was to interrupt the regularly scheduled meeting of the Democratic caucus in hopes of convincing their Senate colleagues to delay the impending confirmation vote on Supreme Court nominee Clarence Thomas. The congresswomen were reacting to what they perceived as the Senate's unjust dismissal of the accusations of sexual harassment put forth by law professor Anita Hill. The Senate Judiciary Committee, which had no female members, appeared to be ready to vote on the nomination without formally considering the matter, but the seven congresswomen were committed to delaying the process until Professor Hill's claims were thoroughly investigated. According to Representative Louise Slaughter (D-NY), what the Senate needed to hear, and what the congresswomen were there to deliver, was "the woman's point of view" on this matter (Dowd 1991).

Clarence Thomas's nomination to the Supreme Court would result in one of the most intense confirmation battles in U.S. history. In spite of the congresswomen's success in ultimately delaying the confirmation vote, the Democratically controlled Senate would go on to approve the nomination by the narrow margin of 57-46. However, the significance of the Thomas confirmation did not stop there. This controversial nomination, along with the accompanying allegations of sexual harassment, would also prove to be a watershed for

women in American politics. As the country watched this saga unfold before an all-male Senate Judiciary Committee and an almost entirely all-male Senate, the paucity of female officeholders was suddenly brought to the nation's attention.¹ Such concerns helped turn the electoral tides in favor of female candidates, and in the following 1992 election, a record-breaking number of women took seats in both the House and the Senate, earning it the title of "Year of the Woman".

The number of female senators has continued to rise in recent years, but little systematic research has explored what effects, if any, this increased heterogeneity has had on the inner-workings of the Senate. Nowhere is this oversight more conspicuous than in the arena of confirmation politics. Scholars have cited Thomas's nomination as a catalyst for the historic 1992 election (Kim 1998; Paolino 1995), yet few studies have asked if the subsequent increase in female senators has impacted the confirmation process. This project will explore this question by exploring potential gender differences in various aspects of confirmation proceedings for nominees to the United States Supreme Court.

Interbranch Bargaining and the Political Representation of Women's Interests

At the broadest level, this project is located within the line of research that explores gender differences in legislative behavior. Scholars of gender politics have long been concerned with the potential connection between descriptive and substantive representation, or the extent to which women in public office will work on behalf of women's group interests. A simple question lies at the heart of these analyses: do women in public office

¹ In many respects, this newfound unease over the existing gender imbalance in Congress outlived the Thomas nomination itself. In a poll taken a year after Thomas's confirmation, 14 percent of respondents reported that "the single most important lesson learned from the Hill/Thomas controversy" was that "more women should be elected to the Senate" (Borger, Guest, and Thorton 1992).

make a difference? Decades of research have explored this question by examining potential gender effects from a variety of angles, ranging from differences in legislative priorities and roll-call voting (Vega and Firestone 1995; Thomas 1994; Swers 2002) to differences in leadership styles and constituent responsiveness (Kathlene 1994; Rosenthal 2005; Epstein, Niemi, and Powell 2005). The majority of findings in this area suggest that female officeholders are substantively different from their male counterparts, especially when it comes to issues that disproportionately affect women's lives. On these matters, female legislators are often stronger advocates, spokespersons, and leaders.

While these studies have amassed a wealth of information regarding the effects of women in public office, the existing literature has overlooked several essential activities that legislators engage in. At the federal level, one potentially important area that has been ignored is interbranch relations. Decades of research have explored gender differences within Congress, but little scholarship has analyzed the effects of gender diversity within the larger political environment. American national political institutions, and the representatives in them, do not operate in isolation. Rather, they are embedded within a complex web of Madisonian checks and balances in which no one branch of government is entirely independent from the others. A growing line of literature has looked at this political and governmental overlap by studying multiple institutions concurrently. However, this interbranch framework has unfortunately been absent in the gender and politics literature. To date, we know very little about if and when congresswomen use their power to advocate for the representation of women's interests in the other branches of government, an oversight that could systematically understate female officeholders' true impact on national politics. This study will take a step toward filling that void by positing that female members of Congress will strategically maneuver within the American system of checks and balances

to represent women’s substantive group interests. Because of these efforts, it is expected that the level of women’s congressional representation will not only have an effect within the legislative branch, but, rather, will reverberate throughout the entire layer of the federal government.

Gender and Supreme Court Confirmations

This project will embrace an interbranch framework by focusing on one of the most prominent examples of checks and balances in American governmental institutions—the confirmation of justices to the U.S. Supreme Court. Supreme Court confirmations are high-stakes events that lie at the intersection of all three branches of government. Because of their recognized importance and unique placement within the nation’s system of interbranch relations, Supreme Court confirmations are prominent affairs where a variety of political and institutional factors converge.

Supreme Court politics are also especially relevant to women’s substantive group interests. In recent decades, the Court has handed down a variety of landmark decisions that directly affect the lives of American women—ruling on everything from the legal parameters of gender discrimination (*Reed v. Reed* (1971)), to equality in the workforce (*Wal-Mart Stores, Inc. v. Dukes* (2011); *Corning Glass Works v. Brennan* (1974); *County of Washington v. Gunther* (1981)), to sexual harassment (*Harris v. Forklift Systems, Inc.* (1993)), and reproductive rights (*Griswold v. Connecticut* (1965); *Roe v. Wade* (1973)). While the fates of these issues may be decided outside of the halls of the Congress, they are not entirely outside of the purview of U.S. congresswomen. Members of Congress exercise a variety of powers over the Court, including the right of senators to offer advice and consent through the confirmation process. And since previous research has shown that female legislators make the biggest legislative

impact on issues that are relevant to women's substantive group interests (see Thomas 1989; Swers 2002), it is reasonable to expect that such gender differences may be replicated within the arena of confirmation politics.

The proposed analysis will therefore deepen our understanding of congressional gender politics by asking if there is a connection between descriptive representation (i.e., the number of female officeholders) and substantive representation (i.e., the extent to which women's issues are being addressed) within the context of Supreme Court confirmations. The following chapters will dissect this larger issue by asking a host of more tailored research questions, including: Do male and female senators evaluate nominees to the United States Supreme Court differently? Are female senators more likely than their male counterparts to advocate for the representation of women's interests during confirmations to the U.S. Supreme Court? And, does the presence of female senators during the confirmation process ultimately affect who gets confirmed?

In addition, this project will also contribute to the broader literature on judicial and confirmation politics by highlighting how senators' personal characteristics and opinions can influence their behavior in this arena. Previous studies have looked at the importance of a judicial nominee's race and gender during confirmation proceedings (Nixon and Goss 2001; Martinek, Kemper, and Van Winkle 2002); however, little is known about if and how the levels of descriptive representation among the members of Congress affect these processes. By importing insights from the traditional legislative behavior literature, this project will explore the effects of the growing diversity in the U.S. Senate on this one critical area of interbranch relations.

Gender Differences in Confirmation Proceedings

This work will explore gender differences during confirmation proceedings for Supreme Court nominees from three separate angles: differences in confirmation voting, floor statements, and actions in the Senate Judiciary Committee. The project begins by first situating the research within the larger literature on gender and political representation. Chapter Two reviews the work in this field, identifies lacunas, and then uses insights from the existing literature to develop new theories on the effects of gender diversity in a political landscape predicated upon a system of checks and balances.

Chapter Three explores gender differences in confirmation votes for Supreme Court nominations. Confirmation voting is probably the most studied aspect of nomination politics, but the current literature has been criticized for not adequately accounting for the competing goals and individual preferences of senators (Cameron, Cover, and Segal 1990: 532). This chapter addresses such concerns by introducing gender as a politically relevant social identity factor that can influence how senators evaluate potential Supreme Court justices. The proposed analysis therefore asks if descriptive representation matters in this context by seeing if female senators cast systematically different confirmation votes than their male counterparts.

Previous research has found that senators' confirmation votes are influenced by a variety of political and institutional factors—including partisan considerations, the professional qualifications of the nominee, and the ideological distance between the nominee and senator. Using these insights as a starting point, Chapter Three begins by contending that, of these factors, ideology is the most relevant to women's substantive group interests. If female senators are thinking about the future of women's rights in America, then they should be particularly vigilant over the ideological composition of the Court. Therefore, I

argue that gender differences during this stage of the confirmation process should be manifested through senators' ideological considerations.

The empirical analysis in this chapter explores confirmation votes from forty Supreme Court nominations. The results provide support for the proposed hypothesis by showing that female senators weigh a nominee's ideology more heavily than male senators. In other words, female senators are less likely to support nominees who do not share their ideological viewpoints than are male senators. Additional analyses reveal that this is predominately (if not entirely) a Democratic phenomenon—while female Democrats place strong emphasis on a nominee's ideology, Republican women do not appear to share this priority.

The findings in Chapter Three uncover broad-based ideological gender differences; however, the proposed theory makes more precise predictions about the types of ideological concerns that should separate male and female senators. Specifically, it is hypothesized that female senators' commitment to women's issues is driving the observed gender differences in voting patterns. Such a hypothesis cannot be tested by looking at roll-call data alone. To explore this question, we need to know more about why senators voted the way they did. Chapter Four of the project therefore pursues a different strategy by analyzing senators' floor statements. The goal of this inquiry is to see if female senators are more likely than male senators to use their floor statements to advocate for women's issues.

The empirics in this chapter are comprised of content analyses for a handful of theoretically interesting cases from recent years. These Supreme Court confirmations—those of Sonia Sotomayor, John Roberts, Stephen Breyer, David Souter, and Sandra Day O'Connor—were chosen because they offer variation on a range of important political and institutional factors. The results show that male and female senators address women's issues

at similar rates during their floor statements. However, a second level of analysis reveals that they articulate significantly different viewpoints on these matters. Specifically, female senators devote proportionally more of their floor time to championing women's issues and advocating for continued or expanded legal protections in these areas. The results also suggest that these gender differences are particularly strong when senators are vetting a Republican nominee to the Court.

Chapter Five, the last empirical chapter of this project, looks inside the Senate Judiciary Committee. This Committee has played a vital role in recent Supreme Court nominations. Every nominee since John Harlan in 1955 has provided a public testimony before the Committee, and these testimonies have become highly watched political events. Despite the political and procedural importance of confirmation hearings, very few studies have systematically explored what actually happens in them. In order to better understand this step of the process, Chapter Five takes a detailed look at one confirmation hearing—that of Chief Justice John Roberts. By focusing on one nomination, I am able to directly compare deliberations during different steps of the confirmation process. The analyses reveal that women's issues received proportionally more attention in committee than they did during floor consideration of the nominee. While the small number of women on the Senate Judiciary Committee poses significant challenges to analyzing gender differences during this stage, the evidence provides preliminary support for the assertion that women's presence on the Senate Judiciary Committee (or relative lack thereof) does affect the handling of women's issues during confirmation hearings. During the Roberts confirmation, the discussion about women's issues was significantly more negative in tone during committee deliberations (when only one woman was present) than it was during floor deliberations (when proportionally more women were present). In addition, the one woman

on the Senate Judiciary Committee, Senator Dianne Feinstein (D-CA), was the strongest advocate for women's issues during the confirmation hearing and clearly saw herself as the representative for a national constituency of women.

Conclusion

This project unites two disparate areas of literature—studies analyzing women's representation in legislative institutions (particularly congressional gender politics) and studies analyzing confirmation proceedings for nominees to the U.S. Supreme Court. By uniting these areas of study, I hope to expand our understanding of the possible impacts of congressional gender diversity and explore potential connections between descriptive and substantive representation that have largely been overlooked in the existing research. Finally, by analyzing the confirmation process through a gendered lens, this study may provide a deeper understanding of individual senator's motivations and actions, which could shed new light on the various political and institutional factors at play during confirmation proceedings.

CHAPTER 2

Descriptive Representation and Interbranch Politics

When Representative Louise Slaughter declared that she and the other congresswomen went to the Senate to educate its members about the “women’s point of view,” she claimed to be working for a constituency that was far larger than her electoral district. This type of representation—when a female officeholder purports to represent a larger community of women—is at the heart of this analysis. Legislative and feminist scholars have long been concerned with understanding the extent to which the descriptive representation of women (i.e., the physical presence of women in relevant governing bodies) will lead to the substantive representation of women’s group interests. Specifically, proponents of legislative diversity often contend that the inclusion of female officeholders will make governing bodies better equipped to address women’s issues, usually defined as issues relating to reproductive health, childcare, education, and other social welfare issues. In this sense, female representatives are expected to have a transformative impact on political institutions.

Over the past several decades, as more women have made their way into elected offices, scholars have been given the opportunity to empirically study these supposed links. Research in this area has made significant progress in delineating the impact of women’s political representation; however, the findings are often contradictory and the list of studied activities is far from complete. This chapter will begin by reviewing the broader theory on

gender and substantive representation, including theoretical challenges that have been mounted against this line of work. I will then review the empirical research in this area, paying particular attention to studies that examine the legislative and policy impacts of female officeholders. The chapter will conclude by laying the groundwork for extending this literature to an interbranch setting and, specifically, to confirmation proceedings for Supreme Court nominees.

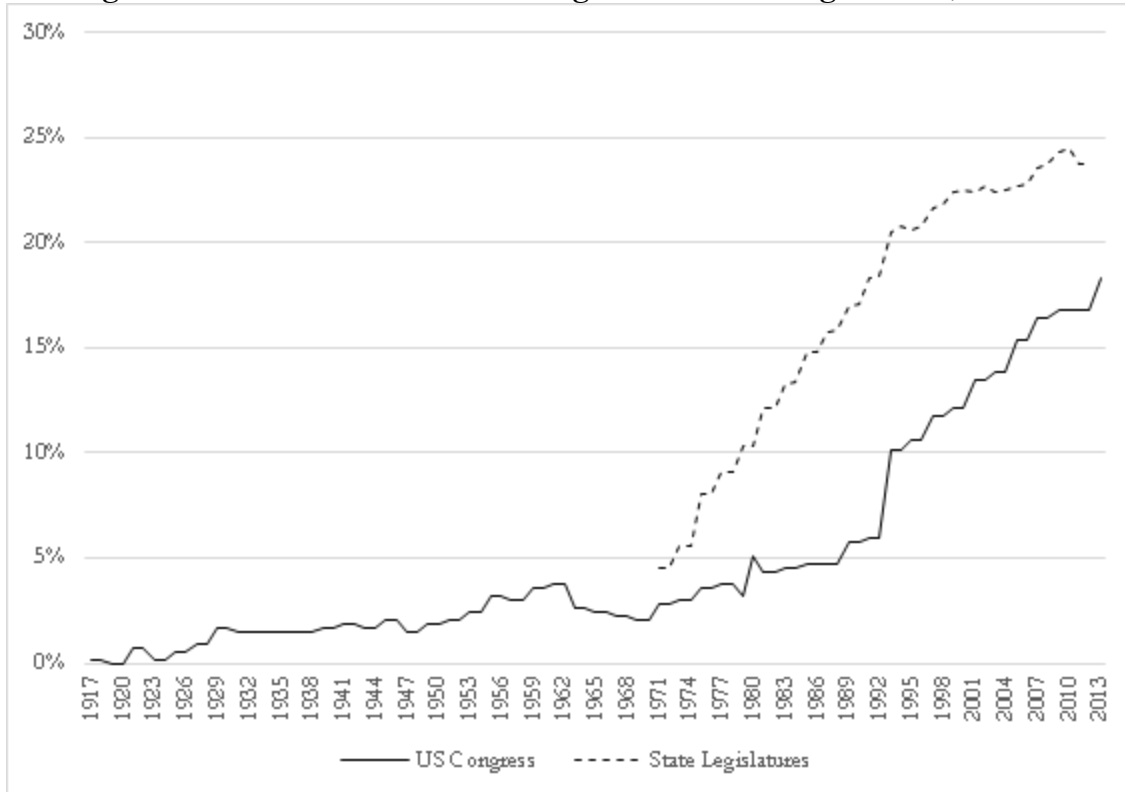
Why Should We Expect a Woman to Represent Women?

As members of a historically marginalized community, female officeholders often have heightened representational demands. In addition to representing their geographic constituency, their political supporters, and their party's interests, female politicians are also frequently seen as representatives of a larger constituency of women. On one hand, this representational role is inherent and automatic, based solely on the social identity of the elected official. This type of representation, which simply looks at the physical similarities between an elected assembly and society at large, is what Hanna Pitkin referred to as descriptive representation in her 1967 seminal work. Substantive representation, by contrast, refers to a legislator's ability to represent the views and interests of his or her constituents, such as when a legislator votes or speaks on behalf of the people.

In terms of gender politics, female officeholders automatically ensure the descriptive representation of women, and, as illustrated in Figure 2.1, there has been an undeniable increase in this type of representation at all levels of public office. From 1981 to 2011, women's representation in state legislatures rose from 12.1% to 23.7%, and the percent of statewide elective executive offices held by female politicians more than doubled, rising from 10.5% to 22.4%. Women's representation at the federal level has historically lagged behind

that of the states. Since 1789, women have only accounted for 2% of Congress's membership. However, these numbers have also been increasing in recent decades, and reached an all time high of 18.3% in the current 113th Congress. (Center for American Women in Politics).

Figure 2.1: Percent of Women in Congress and State Legislatures, 1917-2013



Note: Data for this graph was collected from the Center for American Women in Politics (<http://www.cawp.rutgers.edu>).

For many feminist scholars, these numerical increases alone are a cause for celebration. This rapid growth in the number of female officeholders shows that electoral institutions are becoming more permeable and diverse. Through these changes, electoral bodies are visibly morphing into more accurate mirrors of the larger electorate. Apart from the potential effects on substantive representation, this increased heterogeneity may offer its own benefits, especially in a context of historical marginalization or (in the case of women)

complete political exclusion. At the individual level, minority representatives may serve an important role-model function for other members of their group. In addition, these effects do not necessarily stop at the personal level, but, rather, can spill over to the collective consciousness of a society (Mansbridge 1999). For example, the inclusion of traditionally marginalized members in a nation's relevant governing bodies can challenge long-standing notions of second-class citizenship and thereby rewrite the connotations that are attached to group memberships. Descriptively representative assemblies can also foster a feeling of political inclusion, which may in turn bolster an institution's democratic legitimacy (Mansbridge 1999; Phillips 1991).

While female officeholders, by definition, offer descriptive representation to a larger class of women, their presence may not be a sufficient or even a necessary ingredient for women's substantive representation. Since substantive representation denotes action, a female officeholder has to do more than merely be present to represent women in this capacity—she has to actively work on behalf of women. A particular female officeholder may fail in this regard by neglecting (or cognizantly rejecting) women's views on a particular subject, or simply by being an ineffective legislator. In addition, unlike descriptive representation, a legislator does not have to be a female in order to substantively represent women. A male legislator may be just as effective, or even more effective, than his female colleagues at listening to and working on behalf of women's interests.

Descriptive and substantive representation are therefore separate and discrete concepts. However, a large line of research within the gender and politics literature, and the one that this work is primarily concerned with, posits a connection between these two forms of representation. It is often theorized that members of marginalized communities, such as women and racial minorities, have distinct shared life experiences that enable them to better

represent their group's interests than nonmembers. For women, these differences are usually thought to be the result of biological or sociological distinctions. For example, because women exclusively experience pregnancy and childbirth and have historically been the primary caregivers for children, it is often assumed that female voters and officeholders will have a heightened interest in issues relating to reproductive health and childcare.

Many scholars of gender politics believe that these affective differences will translate into differences in legislative priorities and outcomes when women hold elective office. This assumed connection between descriptive and substantive representation therefore complicates the traditional view of officeholders as single-minded seekers of reelection (Mayhew 1974) by contending that some elected representatives will work on behalf of a population that extends beyond their electoral constituency. Such beliefs are often cited as another justification for descriptive representation. According to this reasoning, governing bodies need to be a microcosm of the larger population in order to ensure that all societal interests will be adequately represented.

Theoretical Challenges to Descriptive Representation

The concept of descriptive representation is certainly not without its critics. On one front, scholars have cast doubt on descriptive representation's ability to bring about substantive policy change. Such criticisms highlight the fact that female politicians are still politicians, and therefore should respond to the same electoral pressures as their male counterparts. According to this logic, the belief that female officeholders will somehow transform political institutions is irrational and politically naive. Instead of acting as agents of

change, female representatives will simply adapt to their political environments and engage in politics as usual.²

Critics have also challenged the idea that a non-traditional political actor can speak on behalf of an entire marginalized community. Here, scholars warn that proponents of gender-based representation come dangerously close to essentialism. This concept refers to the “assumption that members of certain groups have an essential identity that all members of that group share and of which no others can partake” (Mansbridge 1999: 637). The assertion that female officeholders will legislate, first and foremost, as women is particularly vulnerable to two theoretical challenges. First, such beliefs create an imagined homogeneous community of women with a unified set of interests. However, when one recognizes the true diversity that exists amongst women, it becomes harder to entrust a single individual with the duty of representing a coherent group perspective (Weldon 2002). Second, by arguing that male legislators cannot adequately represent women’s interests, there is the opposite logic that women cannot adequately represent men’s interests. Such reasoning could lead to the ghettoization of non-traditional political actors by relegating them to limited representational roles.

In addition to those who argue that the concept of descriptive representation is detrimental to minorities, there are also scholars who are normatively opposed to the idea of segmental politics. Of importance here is the classic Burkean notion of representation, which contends that “representatives should not serve local interests but the nation” (Phillips 1991: 64). According to Burke, the spirit of public service obliges elected officials to work on behalf of an objective national good. As Pitkin notes, “For Burke, political representation is

² These different beliefs about female officeholders are what Thomas (1994) refers to as “reformist” versus “adaptive” expectations.

the representation of interest, and interest has an objective, impersonal, unattached reality” (1967: 168). According to this view, the identity of a particular representative is irrelevant, as all elected officials should recognize and work toward a unified and common public agenda. This homogeneity, in turn, guards against the potential balkanization of the political landscape.

Skeptics of descriptive representation also question “which characteristics are politically relevant for reproduction” (Pitkin 1967: 87). Such criticisms warn that descriptive representation can be the first step down a slippery slope. After all, there are an infinite number of potential groups in any society, and even the strongest supporters of descriptive representation would acknowledge that not all collective identities deserve formal political representation. As one critic pithily stated, “no one would argue that morons should be represented by morons” (Pennock 1979: 314).

The current work will proceed cautiously and take these theoretical challenges to heart. The potential connection between women’s descriptive and substantive representation will not be assumed to be automatic or guaranteed. Throughout the analysis, special care will be taken to theorize precisely how gender diversity might affect a particular stage of the confirmation process. The analysis will recognize and highlight how the existence or level of substantive representation is likely contingent upon various historical and institutional factors—such as electoral considerations, partisan arrangements, and women’s access to key institutional positions. The work will also be careful to pay attention to the differences amongst women, and the actions of male senators will also be examined.

This project does, however, start with the assumption that gender is a socially and politically relevant descriptive trait. While individual women may differ in their opinions and views, women as a group share a certain level of common social and political history which

warrants their grouping as a political cohort. Scholars of representative democracy have identified guiding questions to help discriminate between cases where descriptive representation is and is not justified, including: is the targeted group under-represented in the legislative process compared to their proportions in the electorate? Do members of the group believe that they are able to represent their own interests? And, is there evidence that dominant groups have, in the past or present, actively discouraged or even legally prohibited the group from attaining formal political representation (Mansbridge 1999: 639)? For women within the American political setting, the answer to all of these questions is yes.

What the Evidence Has to Say

The debate around the value of diversity in representative assemblies has not been limited to an abstract exercise in democratic theory. Rather, scholars in this field have moved into the world of empirics and begun analyzing gender differences in a variety of political aspects, including everything from gender differences in partisanship, participation, and public opinion (Box-Steffensmeier, De Boef, and Lin 2004; Shapiro and Mahajan 1986; Huddy, Cassese, and Lizotte 2008; Burns, Schlozman, and Verba 2001) to the experiences of female candidates (Dolan 2008; Sanbonmatsu 2006) and gender differences in leadership styles (Kathlene 1994; Rosenthal 1998). However, the current project is most appropriately situated within the large line of research that explores the possible connections between descriptive and substantive representation.

While critics of descriptive representation have reminded us of the dangers associated with equating an individual's voice with that of a group perspective, the extant empirical research does suggest that there is at least a perceived connection in these regards within the context of gender politics. For example, studies have shown that female legislators

are more likely than their male counterparts to see women as a distinct part of their constituency and are more likely to see themselves as representatives of those interests (Reingold 1992; Dodson 2006; Thomas 1994). Studies have also found that female legislators believe that they are better qualified than male representatives to speak on behalf of women's interests (Reingold 1992). These findings suggest that female legislators not only have a sense of obligation to a larger community of women; they also believe that they bring a unique female perspective to the political realm, which can alter existing political dialogues. Such sentiments were captured in a 1997 interview with Representative Nancy Johnson (R-CT). When reflecting on her personal legislative goals and responsibilities, Representative Johnson remarked:

We need to integrate the perspective of women into the policy-making process, just like we have now successfully integrated the perspective of environmental preservation, the perspective of worker safety...Whenever something comes up, we automatically think, 'Gee, how will this affect the environment? How will this affect the working people at the work site?' But we don't really think 'How is this going to affect women who work at home? Women in the workplace with home responsibilities? Women who are single parents?' And so I do feel a special responsibility to participate in the public process in a way that assures that...I think through 'How will this affect women who are at home taking care of children who need to re-enter the workforce later on? How does this affect women who didn't get to go beyond high school because their family thought only boys should go to college, and now they're stuck.' I know a lot more [than congressmen] about the shape of women's lives and the pattern of women's lives, so I need to look and see: How will the public policy affect those patterns? And how will they help or hurt? (qtd. in Carroll 2002: 54)

In addition to these beliefs and perceived responsibilities, surveys have also consistently uncovered significant ideological gender gaps among political elites. In a survey study of legislators in twelve states, Thomas found that women were more likely than men to identify with a liberal political ideology while men were more than twice as likely as women to prescribe to a conservative ideology (1994). It is important to note that these

differences were significant even after controlling for party affiliation, meaning that ideological gaps between female and male legislators exist over and above those that can be explained by party cleavages alone.

Such affective differences have also been reflected in the legislative priorities of male and female legislators. In a 1991 study, Thomas and Welch found that women rate pieces of legislation pertaining to women, children, and families as a higher priority than male legislators. This same study also found that such priority differences were reflected in the distribution of committee seat shares, and that women were more likely than men to mention their work on policies pertaining to these issues when asked about their proudest legislative accomplishments. Male legislators, by contrast, were more likely to mention their work on bills pertaining to business and commerce.

These studies seem to establish evidence in favor of the claim that female legislators have distinct policy priorities. Yet, the question remains if their presence actually affects final policy outcomes. Here, the evidence is more mixed. Studies have found that female officeholders do impact the legislative agenda by sponsoring and cosponsoring bills relating to women's issues at a higher rate than male officeholders (Vega and Firestone 1995; Swers 2002; Bratton and Haynie 1999). However, this relationship does not appear to hold at the aggregate level, as institutions with higher percentages of female legislators do not necessarily produce more women-related legislation (Thomas 1994). Such findings suggest that individual-level differences do not necessarily translate into institutional-level changes. This representational puzzle is at the heart of the debate over critical mass theory, which will be explored later in this chapter.

Studies examining the influence of gender on voting behavior are similarly inconclusive. In this area, scholars have found that female legislators tend to have slightly

more liberal voting records than their male counterparts; however, such differences are often small and not always statistically significant (Frankovic 1977; Welch 1985; Vega and Firestone 1995). More consistent gender differences have been uncovered in studies examining roll-call voting on specific women's issue legislation, such as bills relating to abortion and women's health; although, the strength of these findings often vary across time and political landscapes (Day 1994; Tatalovitch and Schier 1993; Swers 1998; Dolan 1998; Swers 2002). This complicated connection between gender and roll-call voting will take center stage in Chapter Three.

An Interbranch Theory of Women in Congress

The bulk of existing research exploring gender differences between male and female legislators has taken place at the state level; yet, recent work has replicated these findings within the halls of Congress. While such efforts have therefore extended gender analyses to the federal level, the literature still has virtually nothing to say about women's influence on the broader array of national political institutions. Congressional responsibilities extend beyond the traditional policymaking process and include other important governmental activities, some of which allow members of Congress to interject themselves into the ongoing affairs of the executive and judicial branches. A growing line of research has adopted an interbranch framework by exploring various aspects of the American system of checks and balances—including the relationship between the president and Congress (Cameron 2000; Mayhew 1991), the courts and Congress (Segal 1997; Hettinger and Zorn 2005), Congress and the bureaucracy (Wood and Waterman 1991; Carpenter 1996; Shipan 2004), and processes such as judicial nominations which involve all three branches of

government (Moraski and Shipan 1999; Johnson and Roberts 2005; Rhode and Shepsle 2007).

Unfortunately, the gender and politics literature has largely ignored these institutional crossroads and thereby overlooked the possible effects of gender diversity within this interbranch context. Yet, the same theories that explain gender differences in legislative behavior should not be expected to stop with bill sponsorship or roll-call voting. If female officeholders have a sense of obligation to represent women's issues, coupled with a heightened interest in these matters, then such sentiments should be reflected in all of their legislative activities. Therefore, this study theorizes that congresswomen not only represent women's interests through their legislative capacities, but they also work within the system of checks and balances to enhance women's substantive representation in all branches of the federal government.

Evidence of descriptive representation's interbranch effects can be found in the parallel literature on race and politics. Studies in this area have shown that black legislators have a positive impact on the levels of political representation afforded to minority interests (Canon 1999; Whitby 1998; Tate 2003). In addition, this connection between descriptive and substantive representation has been found to extend beyond legislators' voting behavior and into the realm of checks and balances. For example, research in this area has shown that minority members of Congress are more likely than white members to participate in oversight hearings pertaining to racial issues (Minta 2009). Arguably, by taking the time to interject and participate in the process of federal agency policymaking (costly activities with likely minimal electoral rewards), minority members of Congress thereby exhibit a greater commitment to minorities' substantive group interests (*ibid.*). Such evidence also shows how

congressional diversity can have a spillover effect that impacts the inner-workings of the other branches of government.

There is also evidence that female voters are cognizant of these institutional crossroads and expect officeholders to represent their interests in these interbranch capacities. Again, the controversy surrounding Clarence Thomas's nomination brought these concerns to the forefront. When the nomination battle got underway, female voters looked to members of Congress (particularly Democratic senators) to protect their interests during the confirmation process and thereby in the judicial branch. As one lead activist for a women's rights organization at that time explained:

For years, they [female donors] have been reaching deep into their pockets to help protect the Democratic majority in the Senate because they truly believed only a Democratic Senate could protect them from an increasingly conservative judiciary and an outwardly hostile executive branch. (qtd. in Berke 1991)

The political fallout from the Thomas controversy was clearly seen in the following election cycle. The Democratic Senatorial Campaign Committee lost the support of female voters—who were previously among the organization's most solid backers—and several women's rights organizations targeted Democratic senators who voted for Thomas's confirmation (Berke 1991). These electoral consequences suggest that female voters and activists did hold senators accountable for failing to represent women's perceived interests within the system of checks and balances.

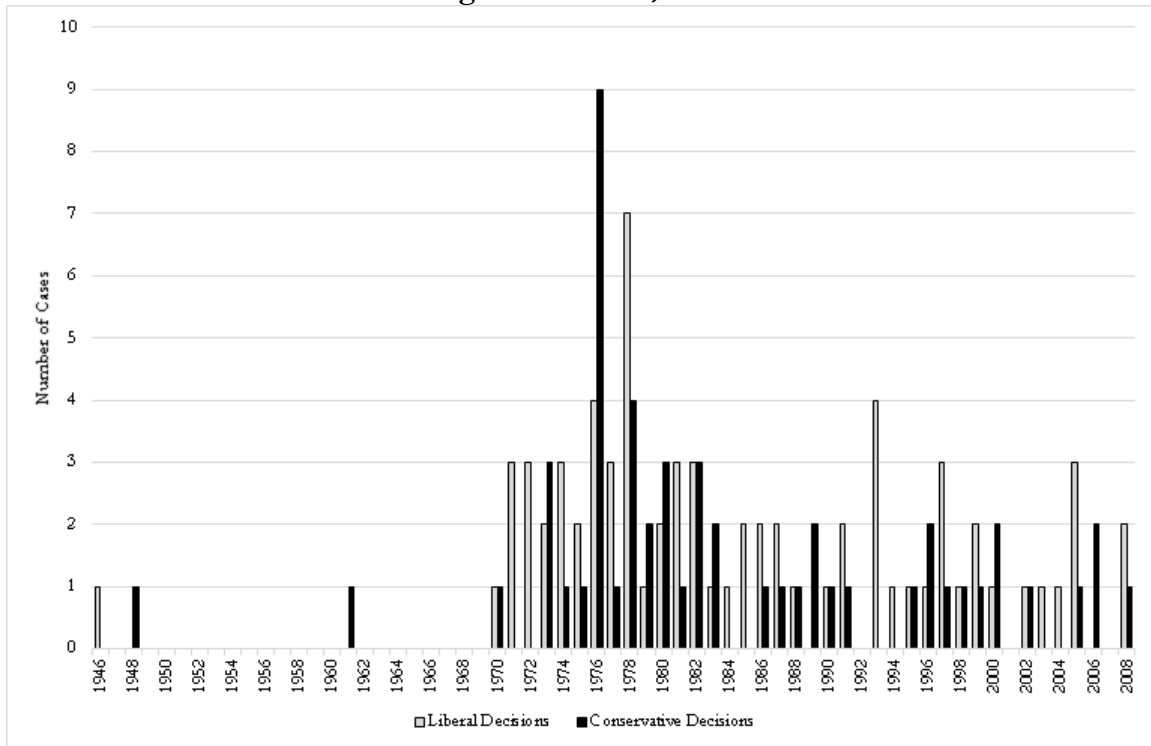
The Advice and Consent of Women

This dissertation will test the hypothesis that female senators are more likely than their male colleagues to represent women's issues during the confirmation process for nominations to the U.S. Supreme Court. In this sense, the greater commitment and intensity

that female officeholders have been found to exhibit for women's issues during the traditional policymaking process is expected to be replicated within the context of interbranch relations.

In recent decades, many important questions of women's rights have been determined in the judicial branch, not the legislative. As Figure 2.2 shows, the 1970s marked a new court-centered era for women's issues as many key components of the feminist movement, such as gender equality and reproductive freedoms, were rolled into the broader "rights revolution" in American jurisprudence. Cases such as *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973) suddenly added a new constitutional component to reproductive and family planning matters. During this time, the Court also began recognizing new constitutional protections for American women. In 1971, the Court handed down the landmark *Reed v. Reed* ruling, in which the Court ruled for the first time ever that gender discrimination was a violation of the equal protection clause of the Fourteenth Amendment. Once this precedent was set, the floodgates opened and a host of other victims sought protection in the courts. In fact, in the three decades following the *Reed* ruling, the Court handed down twenty-nine gender discrimination decisions based on equal protection arguments (Mezey 2003: 16). The following chapters theorize that female senators were cognizant of this judicialization of women's rights in America, and therefore used their advice and consent powers to defend and promote women's issues in the judicial branch.

Figure 2.2: Number and Decision Direction of Supreme Court Cases Dealing with Gender, 1946-2008



Note: Data for this graph was collected from The Supreme Court Database (<http://scdb.wustl.edu/>). Cases dealing with sex discrimination (both employment and non-employment based) as well as those dealing with abortion and contraceptives are reflected in the reported figures.

The Confirmation Setting

While women’s issues are becoming an increasingly relevant aspect of judicial politics, Supreme Court confirmations are multidimensional events that raise a host of ideological and non-ideological concerns. There is no written protocol that a senator must follow when evaluating a potential justice to the U.S. Supreme Court, and two senators evaluating the same nominee may weigh different factors in their decision calculi, including the nominee’s background and qualifications, partisan considerations, and an endless litany of ideological issues that may come before the Court.

A benefit of this complex environment is that we will be able to explore potential gender differences in an area that is relevant to women’s issues, though it may not

necessarily be framed as such. This research design will therefore allow us to see the extent to which, if at all, female senators use their power to explicate women's issues when they are embedded within a host of other ideological, political, and institutional constraints. In addition, confirmations are intricate proceedings that offer many opportunities for action. Senators not only consent to a Supreme Court nomination, they also offer advice—which can include a senator vetting a nominee, expressing approval or concern about a particular aspect of a nominee's background, and lobbying his or her fellow colleagues. Such activities are often arduous and costly and are therefore particularly useful in assessing senators' "revealed intensities" for the issue in question (Hall 1996).

On the other hand, this environmental complexity may make it harder for gender effects to emerge. Past studies have found differences in the legislative behavior of male and female officeholders in seemingly non-gender-related matters (see Kathlene 1995; Hall 1996), but the largest effects are usually seen in areas that are explicitly gender-related (see Osborn and Mendez 2010; Thomas 1989; Swers 2002). In addition, because Supreme Court confirmations are not an area in which senators directly consider and vote on a specific policy question, when gender effects do emerge, they may be mediated or channeled through broader ideological considerations. The following chapters will therefore proceed cautiously and spell out exactly how gender effects may manifest themselves during the different stages of the confirmation process.

Defining "Women's Issues"

As has been pointed out, women are not a monolithic voting bloc with uniform ideological and policy preferences. Rather, gender is a broad-based social identity factor that encompasses approximately half of the eligible electorate. Furthermore, public opinion polls

have consistently failed to uncover significant gender gaps on traditional feminist issues, such as attitudes toward abortion and women in the workplace (Shapiro and Mahajan 1986; Kaufmann and Petrocik 1999). Thus, labeling a given policy area or even a particular topic as a “women’s issue” is a complicated matter in and of itself.

This dissertation will take a broad approach to the topic of gender and politics by looking at issues that directly affect women as a group, such as issues related to women’s health and gender equality, as well as those that disproportionately affect women due to societal patterns and traditional gender roles, such as social welfare and education issues (Thomas 1994; Swers 2002; Osborn and Mendez 2010). When appropriate, the following chapters will break up the analysis into subgroups according to how directly a given issue affects women as a unified cohort, usually by differentiating among direct women’s issues (those that explicitly and systematically impact women as a collective group), traditional women’s issues (those that are relevant to women’s interests albeit in an indirect manner), and general civil rights issues.³ Based on past studies, I expect the greatest deviation between male and female senators to occur when gender is directly relevant to the issue at hand.

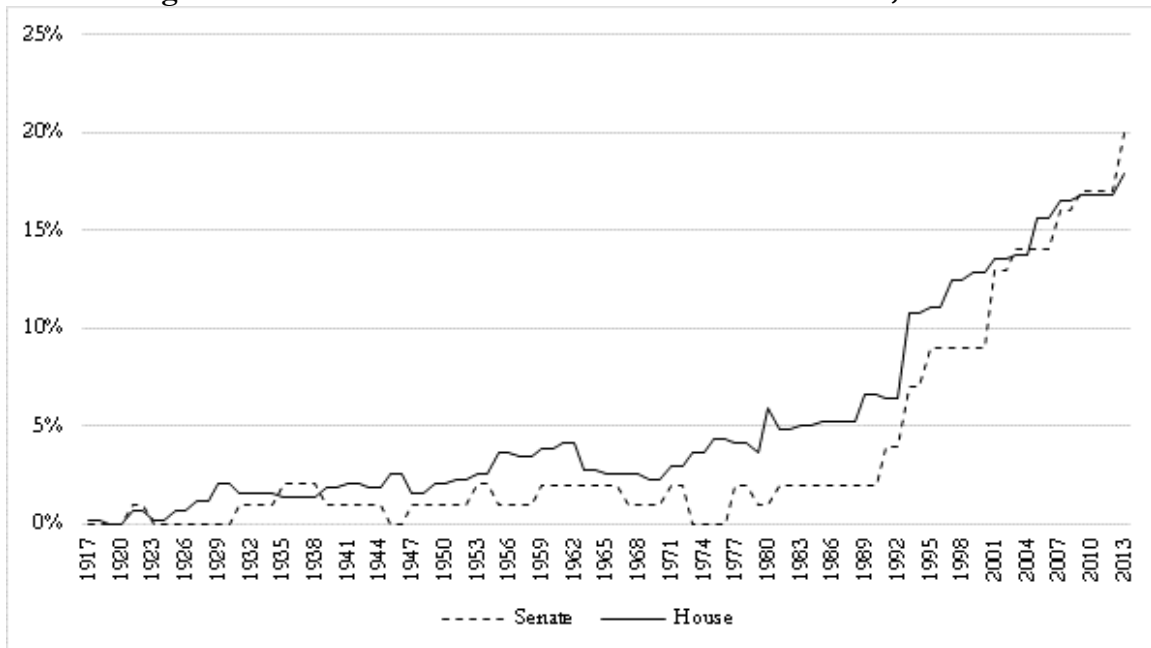
Women in the Senate

This dissertation will also provide a rare look at women in the United States Senate. Decades of studies have explored the legislative behavior of female officeholders, but a large portion of this work was conducted at the state level. Furthermore, when studies have turned their attention to the federal level, they have almost exclusively examined gender differences in the House of Representatives.

³ These distinctions are adapted from Osborn and Mendez’s 2010 work, and will be further explained in the following chapters.

In one sense, these patterns are perfectly understandable and are simply a result of women's scarce representation in the Senate. As displayed in Figure 2.3, women have historically constituted only a small minority of that body's membership. To date, only forty-four women have ever served in the U.S. Senate, and it took until the 104th Congress for a major Senate committee to be chaired by a woman (CAWP: Women in the U.S. Senate 1922-2013). However, the academic neglect of the women in America's upper house is unfortunate and is becoming increasingly unjustifiable. For one, although women's representation in the Senate has traditionally lagged behind that in the House, recent elections have put roughly equal proportions of women in both chambers. In the current 113th Congress, women actually have a slight edge in the Senate, comprising 20% of that body's membership compared to 17.9% in the House.

Figure 2.3: Percent of Women in U.S. House and Senate, 1917-2013



The Senate is also interesting to study because of its unique representational functions. The American system of bicameralism affords each chamber of Congress with specific institutional powers and duties. Due to these differences, senators and representatives not only serve in different institutions, they also play different roles. For example, senators represent larger geographic areas, serve longer terms, and are expected to adopt a more generalist approach to policymaking as compared to their more specialized colleagues in the House. Also, the internal workings of the Senate are less formal and supposedly less hierarchical. The Senate is often referred to as the world's greatest deliberative body. It is supposed to be a place where political equals engage in unfettered and unlimited discussions about the most important issues of the time.

These institutional differences could have important ramifications for gender representation in the two chambers. For example, since senators are expected to serve broader representational roles, female senators may have a harder time specializing in and championing women's issues than their colleagues in the House. In addition, while the Senate is supposed to be the more egalitarian body, its informal networks and culture of norms could be particularly hard for a marginalized member to navigate. This lack of institutional structure may pose a challenge to women as they try to advance internally and have their voices heard.

Despite these institutional differences, the scant research that has been conducted on female senators tends to substantiate the findings from the broader gender and politics literature. Interviews with female senators generally report that they, just like their female colleagues in other offices, feel a sense of duty to represent the interests of women. In a 1996 interview with the Center for American Women and Politics, Senator Barbara Boxer (D-CA) reflected on such obligations by noting:

There are still so few women in Congress...so you really do have to represent much more than your own state...Women from all over the country really do follow what you do and rely on you to speak out for them on issues of women's health care, reproductive choice, condition of families, domestic priorities, environment,...equal pay for equal work...And I remember when I came [to the Senate], Barbara Mikulski said, "Oh, my god, thank god, someone I can share this with," because she carried the load for so long as the only Democratic woman in the Senate. (qtd. in Carroll 2002: 53)

Some female senators even report that such issues motivated them to get into politics in the first place. For example, Senator Patty Murray (D-WA) claims that her political career began when the Washington state legislature cut funding for a parent-child educational program that she was enrolled in. When Murray went to the state capitol to lobby on behalf of the program, one legislator crassly remarked, "Lady...You can't make a difference. You're just a mom in tennis shoes" (qtd. in Whitney 2000: 40). According to Murray:

That's what got me involved in politics. I understood for the first time that the decisions government made had an impact on me. And I figured that I could sit at home and say 'Oh, well, that's too bad,' or I could get involved and be a part of the decision-making process. (qtd. in Whitney 2000: 41-42)

Murray eventually succeeded in getting the parent-child program reinstated. She then went on to become the first female senator from the state of Washington, and is currently the highest ranking woman in the United States Senate.⁴

Research has indicated that female senators not only feel a sense of obligation to represent women's issues, they also act on these issues once in office. In their 2010 work, Osborn and Mendez looked at senators' floor statements in the 106th Congress. Their results revealed that female senators were more likely than male senators to speak on issues that

⁴ Senator Murray is currently the Democratic Conference Secretary, which is the fourth highest ranking party leadership position in the Senate. It is interesting to note that the two previous people to occupy this position were also women: Senator Barbara Mikulski from 1995-2005 and Senator Debbie Stabenow from 2005-2007.

directly affect the lives of women, such as women's health care and family matters. However, there were no significant gender differences in the rate at which male and female senators spoke on non-women's policy issues, such as defense and budget matters.

Studies have also taken an institutional approach to exploring the representation of women in the United States Senate. Here, findings show that female senators are not clumped on traditional women's committees. Rather, their committee membership is broad and diverse, which allows them to be involved in a wide array of policy jurisdictions. However, the small number of female senators present in any given session, coupled with the chamber's lack of accommodations to compensate for such representational disparities, means that female senators still yield a relatively low level of institutional power (Arnold and King 2002).

Institutional, Political, and Contextual Constraints

The existing literature therefore seems to suggest that female officeholders, including senators, use their political power to work on behalf of women's group interests. However, this project will not assume an automatic connection in these regards. As Reingold (2008) warned, "The link between women's descriptive and substantive representation is not always assured. The existence or strength of that linkage can—and often does—vary across individuals, time, and space" (135). The following chapters will therefore recognize and explore these intervening factors and contextual nuances.

One issue that could promote or hinder women's representation during Supreme Court confirmations is access to institutional power. The entire Senate provides advice and consent on Supreme Court nominations, but some institutional players are particularly powerful during these proceedings. The Judiciary Committee, for example, has come to play

an increasingly prominent role during the confirmation process. While the committee does not exercise traditional gate-keeping power, actions during this stage of the process are vitally important for a nominee's confirmation prospects. Members of this committee are responsible for conducting confirmation hearings. It is here that nominees are vetted and where they get to make their initial appeals for confirmation. In addition, these early events may be particularly influential in determining which issues get raised and how a nomination gets framed. Since women have been historically underrepresented on this committee (even in comparison to their already low numbers in the Senate), female senators may have a particularly hard time participating in these deliberations.

Women's ability to influence the confirmation process may also vary according to the party politics in the Senate. Previous research has found that women's ability to impact a variety of congressional proceedings heavily depends on the majority party status in their institution (Swers 2002). Research has also shown that Supreme Court confirmations are inherently partisan events and are becoming even more so over time (see Shipan 2008). As such, this analysis will consider factors such as the partisanship of the president and individual senators, as well as the overall seat shares in the Senate.

The amount of attention afforded to gender issues during the confirmation process may also be contingent upon the number of women in the Senate. Borrowing from scholars who looked at minorities in other majoritarian institutions, such as the corporate environment (Kanter 1977), feminist scholars have long theorized that the true impact of women's political representation may not be realized until female officeholders move beyond mere token status and instead constitute a critical mass in governing bodies.

The empirical research on this topic has been rather mixed. Specifically, there appears to be a disconnect between the efforts of individual women and the overall

legislative output of an institution. Studies have shown that female legislators are more devoted to women's issues when their numbers approach parity, but legislatures with the highest proportions of women do not necessarily provide more substantive representation than institutions with fewer female officeholders (Thomas 1994).

Other research has revealed that there are “diminishing returns” in terms of gender representation—token female officeholders make a larger marginal impact on the legislative process than female officeholders in more gender-balanced institutions (Crowley 2004). One possible explanation for these findings is a backlash effect. Studies have found that male legislators become increasingly hostile toward their female coworkers when their proportional majorities become threatened (Kathlene 1994). Similarly, studies in the U.S. House of Representatives have also found that congressmen become less supportive of their female partisan colleagues as the proportion of women in their party increases (Kanthak and Krause 2010).⁵ This rising aggression and professional ostracism could hinder women's legislative effectiveness and thereby ultimately impede their ability to impact final policy outcomes.

Since women's presence in the Senate has fluctuated drastically in recent decades, this analysis will afford us the ability to examine gender relations in several different institutional environments. Table 2.1 lists the percent of female senators during all Supreme Court confirmations over the past three decades. The following analyses will keep these numbers in mind and ask if and how the Senate's gender balance impacted the actions of individual senators as well as the overall confirmation process.

⁵ Kanthak and Krause's study examined member-to-member PAC contributions in the House of Representatives from the 105th-108th Congresses.

**Table 2.1: Percent of Female Senators During
Supreme Court Confirmations Over the Past 30 Years**

| Nomination | Year | Percent Female |
|--------------------------------|-------------|-----------------------|
| Elena Kagan | 2010 | 17% |
| Sonia Sotomayor | 2009 | 17% |
| Samuel Alito | 2005 | 14% |
| John Roberts, Jr. | 2005 | 14% |
| Stephen Breyer | 1994 | 7% |
| Ruth Bader Ginsberg | 1993 | 7% |
| Clarence Thomas | 1991 | 2% |
| David Souter | 1990 | 2% |
| Anthony Kennedy | 1987 | 2% |
| Robert Bork | 1987 | 2% |
| Antonin Scalia | 1986 | 2% |
| William Rehnquist ⁶ | 1986 | 2% |
| Sandra Day O'Connor | 1981 | 2% |

Conclusion

The following chapters will test the hypothesis that female senators advocate for women's issues during confirmations to the United States Supreme Court. Despite the warnings of theoretical critics, the empirical research indicates that there is a connection between descriptive and substantive representation within the context of gender and politics. Previous research has substantiated this link in the opinions and beliefs of political elites, as well as in a range of legislative behaviors. This research will attempt to expand these findings to an interbranch framework that will further elucidate the potential impact of gender diversity in America's highest legislative bodies.

⁶ This was Rehnquist's 1986 nomination, when he was elevated from an associate justice to chief justice.

CHAPTER 3

Gender Differences in Confirmation Voting

When John Roberts replaced William Rehnquist as Chief Justice of the United States Supreme Court, he was confirmed by what was then considered an unusually small margin, 78-22. While all of the Republican senators in the 109th Congress approved of President Bush's nominee for the nation's highest court, the Democratic senators were evenly divided in their support, with 22 voting in favor of Roberts's confirmation and 22 voting against it.

To his Democratic opponents, Roberts was a right-wing ideologue who would use his place on the Court to chip away at constitutional protections for large classes of American citizens. These senators looked to Roberts's past and highlighted his views on a number of controversial issues, including abortion, civil rights, and worker protections. As Senator Debbie Stabenow (D-MI) explained in a statement she released:

In case after case, Judge Roberts argued that the Constitution did not protect workers, voters, women, minorities and the disabled from discrimination. He also argued that the Constitution does not firmly establish the right of privacy for all Americans. In all of his memos, writings and briefs, Judge Roberts took the view that the Constitution only protects Americans in the most narrow and technical ways, and does not convey to us fundamental rights, liberties and freedoms. Because of these views, after much deliberation, I have concluded that Judge Roberts is the wrong choice for a lifetime appointment as Chief Justice of the United States Supreme Court—where he may well be making decisions on the rights of our children and grandchildren for the next 30 to 40 years. (Stabenow 2005)

While half of the Democratic senators shared Stabenow's characterization of John Roberts, the other half painted a drastically different picture of the nominee. To these senators, Roberts was a distinguished and acceptable (albeit conservative) choice for the Court. As the other Democratic senator from the state of Michigan, Carl Levin, explained:

Judge Roberts possesses extraordinary credentials, suitable for this revered position. That he is highly qualified is not in doubt, and to say that he is highly capable is an understatement. Judge Roberts has an unusually fine legal mind. His ability to cite and synthesize case law has impressed us all. He has great respect for the law, and extensive experience arguing cases before the Supreme Court. Judge Roberts is articulate and unflappable, with both a judicial temperament and a personal demeanor worthy of our highest court. (Levin 2005)

Why did these two senators—who are members of the same party, represent the same state, and are similar ideologically—arrive at such drastically different evaluations of John Roberts? Why was ideology a central concern for Senator Stabenow's voting decision, while Senator Levin chose to instead focus on Roberts's professional qualifications? More broadly, why did over half of all Democratic male senators support Roberts's nomination, while only a third of female Democratic senators did so?

This chapter will add a gender component to the traditional models of confirmation voting by contending that female senators weigh Supreme Court nominees' ideology more heavily than male senators when casting confirmation votes. It is theorized that this emphasis on ideology reflects female senators' concern over the impending fate of women's issues in the judicial branch. In this sense, the greater levels of commitment and dedication that female officeholders have been found to have for women's issues in other political settings is expected to be similarly carried out in the arena of confirmation politics.

I will begin by reviewing the literature on Supreme Court confirmations, and then provide a brief synopsis of the work on gender and political representation in roll-call voting.

Next, I will replicate and extend previous models of confirmation voting by introducing a gender component to the analysis. The results reveal that gender is a significant, and previously overlooked, factor in senators' decision-making processes during confirmation voting. Specifically, the statistical analyses show that female senators are less likely to support an ideologically distant nominee than are male senators. Further examination reveals that such differences can more accurately be attributed to the ideological voting patterns of Democratic female senators. A final analysis confirms that such gender effects hold even when controlling for the fact that significant numbers of females have entered the Senate only in recent decades, which have been shown to be an ideologically charged time in confirmation politics.

Senate Confirmation of Supreme Court Nominees

Presidents have the privilege of naming nominees to the U.S. Supreme Court, but the fate of each such potential justice is decided in the Senate. The confirmation process is one of the most prominent examples of checks and balances in the American governmental system and has thus garnered much attention from political scientists. Studies in this field have covered a range of topics, including strategic considerations at the nomination stage (Moraski and Shipan 1999; Johnson and Roberts 2005; Rhode and Shepsle 2007), the timing of presidential nominations (Shipan, Allen, and Barga forthcoming), the length of the confirmation process (Shipan and Shannon 2003), and why some nominations fail to gain Senate approval (Segal 1987; Ruckman 1993; Krutz, Fleisher, and Bond 1998).

Other scholars have sought to understand how individual senators arrive at voting decisions during Supreme Court confirmations. Two seminal pieces have laid the theoretical groundwork for this line of inquiry. The first was Cameron, Cover, and Segal's (hereinafter

referred to as CCS) 1990 article. In this article the authors proposed a neoinstitutional framework for evaluating confirmation votes, in which senators assess Supreme Court nominees on a variety of criteria and eventually arrive at a voting decision that is rooted in electoral incentives.

The CCS model identified several independent variables that could affect a senator's confirmation vote. Chief among these was ideology, with senators preferring nominees with judicial philosophies proximate to their own. Ideology is thus a spatial element, with the measure of interest being the squared Euclidean distance between a nominee's ideology and that of a senator.

While ideology played a central role in the CCS model, four other factors were also thought to influence senators' confirmation votes. Professional competence was proposed as a possible factor, with the expectation that less qualified nominees should face harder confirmation battles than those with widely recognized credentials. It was also surmised that presidential strength should influence the process, with strong presidents having an easier time getting their nominees confirmed than weaker presidents. Party was included as another possible factor, with members of the president's party being more likely to support nominees than those of the opposing party. Finally, the authors also included an interaction between qualifications and ideology, indicating that senators are particularly unlikely to vote to confirm a nominee who is perceived as being both unqualified and ideologically distant.

CCS tested their model in a dataset comprised of over 2,000 confirmation votes, covering the nominations of Earl Warren through Anthony Kennedy. Their statistical results lend support to all of their proposed hypotheses, with the interaction between qualifications and ideology yielding the largest coefficient in the model.

In their 2006 article, Epstein et al. built on CCS's seminal work. While the underlying theoretical story remained essentially the same, the authors did offer some important methodological updates to the earlier model. Epstein et al. first expanded the earlier dataset to cover the nominations of Hugo Black through John Roberts, thereby raising their N to 3,709. The authors then offered an updated measure of ideological distance. Unlike CCS, Epstein et al. used NOMINATE Common Space scores, as opposed to ADA scores, to gauge the ideology of senators. The authors then employed a bridging technique to translate Segal-Cover ideology scores for judicial nominees into Common Space indicators. This new measure significantly contributed to the literature by providing an ideological scale that crosses institutional barriers, thus allowing for a more direct comparison between the ideologies of senators and nominees. Finally, Epstein et al. dropped the interaction term between ideology and qualifications, contending that interaction terms are inappropriate and unnecessary in probit models.

Epstein et al.'s findings essentially echoed those reported by CCS. In addition to replicating the original model, the authors also examined the effects of ideology over time. This temporal element made it possible for the authors to test the common assertion that Supreme Court nominations have become more ideological since Robert Bork's failed nomination in 1987. The authors' analysis provided general support for such claims. While the importance of ideology had been on the rise for three decades prior to Bork's nomination, its coefficient did dramatically increase in the post-Bork era. Thus, Bork's nomination may not have started the fire, but it did fan the flames of ideological divides, thereby ushering in a new era of confirmation politics.

While these models identify several important factors that likely influence senators' confirmation votes, the underlying theoretical story remains unsatisfying to a certain extent.

As CCS note in their conclusion:

The framework assumes senators are 'single-minded seekers of reelection', but we know this is not so. A more appealing framework would allow senators to trade off among competing goals in their roll call votes. In particular, to what extent do senators follow the (presumptive) desires of their constituents, and to what extent do they 'shirk' by voting their personal preferences? (532)

One such factor that has been shown to influence the personal preferences and legislative behavior of officeholders is gender.⁷

Gender and Confirmation Voting

As discussed in Chapter Two, decades of research has explored potential gender differences in legislative behavior. At the state level, studies have shown that female officeholders are ideologically more liberal than their male counterparts, and they are more likely to promote and support women's issues during the policy-making process (Thomas 1994; Bratton and Haynie 1999; Thomas and Welch 1991; Dodson and Carroll 1991).

As more women got elected to Congress, similar research was conducted at the national level. Here again, numerous studies documented differences between the legislative behavior of male and female officeholders, including differences in roll-call voting. Early

⁷ Another factor that is arguably missing from the reviewed literature is public opinion. It is reasonable to expect that a senator will look to his or her constituents' opinions when deciding how to vote on a given nominee. However, this study will not attempt to control for public opinion for two reasons. First, there is no readily available measure to control for such effects. Public opinion data on Supreme Court nominees has only recently been systematically collected, and even then we are left with national and not state specific measures (however see Kestelce, Lax, and Phillips 2008 for recent advancements in this field). Second, the studies that have examined the effects of public opinion on confirmation voting have yielded mixed results, with some showing it does affect senators' voting while others find no such evidence (Kestelce, Lax and Phillips 2008; Segal, Cameron, Cover 1992; Calderia and Wright 1998)

studies examining the voting behavior of female members of Congress found that congresswomen were a cohesive group, and that they exhibited more liberal voting patterns than their male colleagues (Frankovic 1977; Welch 1985; Vega and Firestone 1995). Even stronger evidence has been found to support the claim that gender affects voting on specific women's issue legislation. Studies have uncovered significant differences in voting patterns between congressmen and women on a host of gender issues, including bills relating to abortion, women's health services, equality in the workplace, violence against women, and family and children's programs (Tatalovitch and Schier 1993; Dolan 1998; Swers 1998, 2002). This research has also shown that gender exerts the biggest impact on voting behavior when members of Congress are presented with bills that directly impact women—such as abortion and reproductive health issues— as opposed to bills where women's interests are more indirect—such as bills relating to children, education, and family matters (Swers 1998).

Given the importance of the Supreme Court in determining the fate of a variety of women's issues, I hypothesize that these same gender differences will be replicated within the context of confirmation voting. However, these effects may be partially masked by the complexity of the situation at hand. Confirmation voting is a multi-dimensional event. A senator cannot decide to vote in favor of a nominee's qualification, but vote against his or her ideological views (let alone support the nominee's views on one issue, but oppose them on another). Rather, a senator has to assess the totality of the evidence and then judge the individual nominee as a whole. Thus unlike the traditional policymaking process—in which legislators can usually amend proposals or express support or disapproval for various versions of a bill—in the confirmation setting, senators must cast a definitive up or down vote.

In addition to the senator's personal evaluation of the nominee, she may also face strong institutional and party pressure to support or oppose the president's pick. While these factors are always present in the political landscape, they can be particularly strong during confirmation proceedings. Nominating Supreme Court justices is one of the most important powers of the chief executive, and a vacancy on the bench may present the president with an opportunity to leave a lasting legacy. Thus, pressure from the White House and party leaders (especially those of the president's party) may be noticeably elevated during the consent process.

The one previous study on gender and confirmation voting found that these institutional and party considerations largely outweighed gender differences during Supreme Court nominations (Swers and Kim 2013). In this study, the authors examined confirmation votes for the Roberts and Alito nominations (including the cloture vote on Alito) and found little evidence that gender had an overall impact.⁸ In the end, factors such as party and ideology seemed to explain voting patterns—Republican senators lined up behind the president's nominees, while liberal Democrats equally stood in opposition to them. However, the authors did find evidence that gender had a significant impact on a subset of senators, namely moderate and conservative Democrats.

This study will build on that of Swers and Kim by extending the range of studied nominations and by modeling the effects of gender in a slightly more nuanced manner. Specifically, I theorize that gender differences are going to be multiplicative in nature and

⁸ The authors ran three separate models of Democratic senators' confirmation votes: one looking at the Roberts confirmation, one looking at the Alito cloture vote, and a pooled model looking at both confirmation votes and the cloture vote. Gender produced a negative coefficient in all three models, but it was only significant in the last one.

interact with ideological considerations.⁹ If a female senator is assessing a nominee based on his or her stance on particular policy issues, then the senator is inherently placing a primacy on ideology. Thus, I expect that gender differences will be manifested through ideological voting, with female senators weighing these factors more heavily in their decision-making processes.

Hypothesis: *Female senators will be less likely to vote to confirm an ideologically distant nominee to the United States Supreme Court than will male senators.*

Data and Methods

In this section I will test the proposed theory by building on the classic CCS/Epstein et al. model.¹⁰ The analysis thus begins with the following four variables:

- (1) *Lack of Qualifications*: A measure indicating the perceived professional competence of a given nominee. Scores range from 0 to 1, with 0 representing the most highly qualified candidates and 1 representing the least qualified nominees. Qualification scores were derived by analyzing newspaper editorials from the time of the nomination.
- (2) *Strong President*: A dichotomous variable representing the strength of a president. A president was coded as being strong if his party controlled the Senate at the time of the nomination and if he was not in the final year of his term.
- (3) *Same Party*: Senators belonging to the same political party as the president were coded as 1, while all others were coded as 0.

⁹ This methodological change is needed in order to expand the analysis across additional nominations. Swers and Kim (2013) only looked at the confirmation votes for Roberts and Alito—both nominees of Republican president George W. Bush, and both of whom had questionable views on a variety of women’s issues. Thus, Swers and Kim included gender as an independent variable and expected that female senators would be less likely to support the nominees. However, when the analysis is extended to additional nominations, there is no longer a reason to believe that female senators will be more likely to oppose confirmation.

¹⁰ For this project I will build on Epstein et al.’s dataset, which was graciously made available online at: <http://epstein.law.northwestern.edu/research/Bork.html>.

- (4) *Ideological Distance*: Epstein et al.'s Common Space measure of the ideological distance between a nominee and a senator.

The first substantive change I will make is to reintroduce CCS's interaction term between qualifications and ideology. While Epstein et al. agreed with the theoretical reasoning behind this term, they did not see a methodological need for its inclusion. According to the authors, probit models are inherently non-linear and can thus capture conditional relationships among variables without utilizing a multiplicative term. The authors contend that an interaction term would offer no additional theoretical value and complicate the analysis by yielding results that are not readily interpretable (299).

While Epstein et al. are correct in asserting that effects in probit models are conditional, they err in their conclusion that this relationship eliminates the need for interaction terms. Since probit models predict probabilities, they take on an S-shaped functional form, which is bounded by a lower point of 0 and an upper point of 1. The effect that an independent variable has on the dependent variable thus depends on the location in the functional form, with changes in independent variables being felt less when probabilities are already near the endpoints (Kam and Franzese 2007: 112). However, if there is a theoretical reason for including a conditional relationship beyond that which is implied by the given functional form, then the author is justified in modeling that relationship with a separate interaction term (Kam and Franzese 2007: 111-113; Nagler 1991). For this reason, interaction terms will be included in the proposed model.

Next, I will add a dichotomous variable indicating the gender of each senator to the dataset.¹¹ Since the proposed theory suggests that what we are truly interested in is the interaction between gender and ideological distance, a multiplicative term will also be

¹¹ The gender of each senator was determined by consulting the Biographical Directory of the United States Congress, available online at <http://bioguide.congress.gov/biosearch/biosearch.asp>.

introduced. While the theory does not predict that gender should be significant on its own, the female dummy variable will be retained as a constitutive term in the model (Brambor, Clark, and Golder 2006).

The final methodological revision to the CCS/Epstein et al. model involves accounting for the structure of the data. Since the dataset consists of the approximately 100 votes that were cast for each of forty nominees, it is unrealistic to assume that all of the observations are independent (Shipan 2008). While such an assumption may hold for inter-nominee observations, it likely fails when looking at votes within the same nomination. A failure to correct for this multilevel characteristic of the data would essentially over-represent the amount of independent information that truly exists, which could result in deflated standard errors (Primo et al. 2007).

In order to account for this aspect of the dataset, I will cluster by nomination. While there are alternative methods to correct for such a problem, clustered standard errors have been found to be an appropriate, and sometimes preferable, technique for a variety of statistical analyses, including probit (Primo et al. 2007). The reliability of the procedure increases with the number of clusters, and the forty groupings in the dataset should be sufficient to yield reliable results (Primo et al. 2007; Bertrand et al. 2004).

Analysis

Table 3.1 displays the results from the traditional CCS/Epstein et al. model (model 1) as well as the results from the proposed model (model 2). The models are probit analyses with the dependent variables being the confirmation votes cast by individual senators (coded 1 for yeas and 0 for nays).

The results of model 1 essentially reflect earlier findings, with the interaction term between ideology and qualifications again having the largest substantive impact. However, it should be noted that the model does not perform as well as it did in CCS's article, in which they used a truncated dataset and did not correct for the stacked nature of the data.

The results of model 2 provide support for the theory proposed in this paper. The Female*Ideological Distance interaction is negative, statistically significant, and yields one of the largest coefficients in the model. Such findings show that female senators weigh ideology more heavily than male senators when casting confirmation votes. As expected, the female dummy variable is not statistically significant on its own, while the remaining findings closely mimic those presented in model 1.

Table 3.1: Models of Confirmation Voting

| Variable | Model 1 | Model 2 |
|--|---------------------|---------------------|
| Lack of Qualifications | -.909* (.379) | -.931* (.393) |
| Ideological Distance | -.966 (.562) | -.904 (.560) |
| Strong President | .690** (.269) | .728** (.259) |
| Same Party | .528* (.232) | .514* (.233) |
| Qualifications/Ideology Interaction | -6.085** (1.513) | -6.21** (1.479) |
| Female | — | .551 (.503) |
| Female/Ideology Interaction | — | -5.867** (1.431) |
| Constant | 1.530** (.263) | 1.536** (.267) |
| N | 3709 | 3709 |
| Log-Likelihood | -798.460 | -785.03 |
| Pseudo R2 | 0.412 | 0.422 |

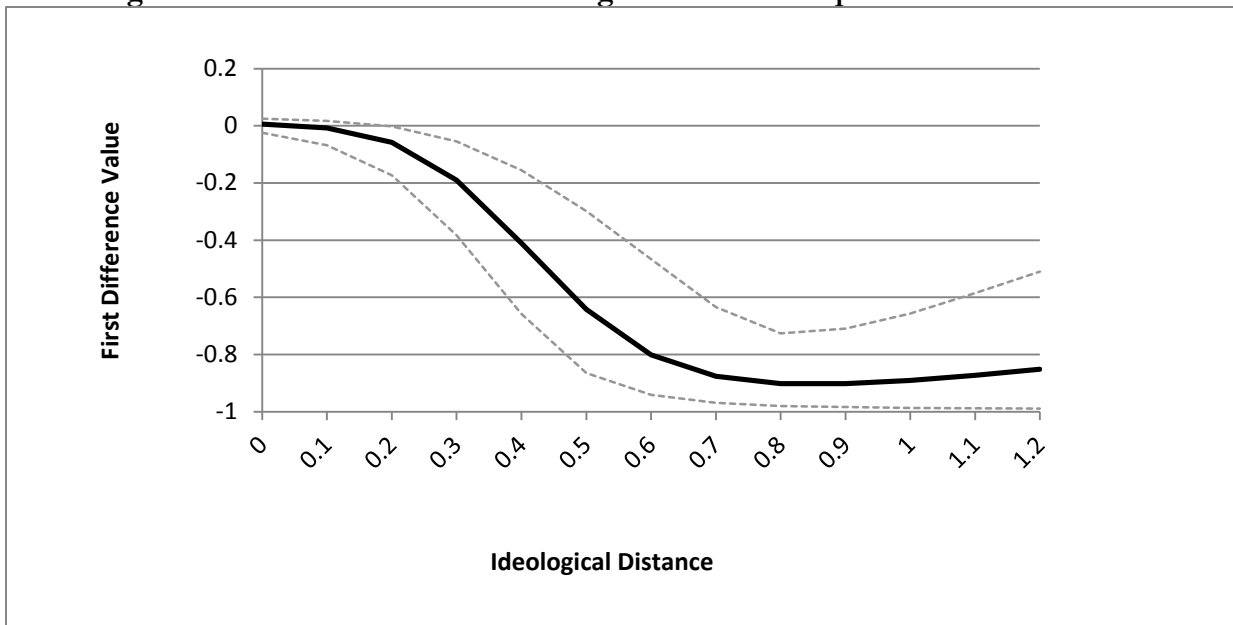
Note: Cell entries are probit coefficients with robust standard errors in parentheses. ** indicates significance at the $p \leq .01$ level; * denotes significance at the $p \leq .05$ level. Standard errors are clustered by nomination.

While the female/ideology interaction achieved a level of statistical significance, we cannot fully assess its impact simply by looking at the coefficient. To make the interaction effect more lucid, Figure 3.1 plots the impact that gender has on the probability of a yes vote at varying levels of ideological distance. The values in the graph were obtained using King, Tomz, and Wittenberg's CLARIFY statistical software (2000). The y-axis plots first difference values, or the probability of a yes vote when the female variable equals 1 minus that of when it equals 0. The x-axis plots varying levels of ideological distance, ranging from

its minimum at around 0 to its maximum at slightly over 1.2, with its mean located at .1823. The remaining dichotomous independent variables were held constant at their mode, while all others were held at their mean.

As the results reveal, the effect of gender starts off small, and then increases as ideological distance becomes more extreme. In fact, for the average ideological distance there is hardly a noticeable gender effect at all (it seems to emerge slightly above the average at .2); however, female senators appear to be significantly less tolerant of ideologically distant nominees.

Figure 3.1: Effect of Gender on Voting to Confirm a Supreme Court Nominee



Time Period Effects

The interaction term between gender and ideology seems to reveal that female senators are more sensitive to the ideological characteristics of Supreme Court nominees than are their male counterparts; however, the current analysis is not yet definitive. For example, these findings could simply be reflecting the fact that women have entered the

Senate in larger numbers in recent decades, during which time nomination battles have become increasingly ideological. As Epstein et al.'s study revealed, the coefficient on ideology soared after Bork's failed 1987 nomination. Since this is roughly the same time period in which noticeable numbers of women began to take seats in the Senate, the previous findings could be indicative of a time period effect and not distinct gender differences.

In an attempt to separate the effects of these simultaneous events, Table 3.2 shows the results of the proposed model within a post-Bork only dataset. As the results show, the female interaction term remains significant, although the magnitude of the coefficient decreases from -5.867 in the full dataset to -4.967 in the post-Bork era. The continued significance of this term suggests that the noted gender effects cannot solely be attributed to time period effects. Even within this ideological era of confirmation politics, female senators still emerge as more ideological voters than their male counterparts.

Table 3.2: Gender Differences in the Post-Bork Era

| Variable | Model 1 |
|--|---------------------|
| Lack of Qualifications | -4.137** (1.525) |
| Ideological Distance | -6.669** (.939) |
| Strong President | -.038 (.275) |
| Same Party | 1.310* (.642) |
| Qualifications/Ideology Interaction | -.739 (4.971) |
| Female | .663 (.683) |
| Female/Ideology Interaction | -4.967* (2.135) |
| Constant | 3.645** (.538) |
| N | 591 |
| Log-Likelihood | -97.950 |
| Pseudo R2 | .614 |

Note: Cell entries are probit coefficients with robust standard errors in parentheses. ** indicates significance at the $p \leq .01$ level; * denotes significance at the $p \leq .05$ level. Standard errors are clustered by nomination.

Partisan Differences

While the chapter thus far has argued that women are more ideological voters in Supreme Court confirmations, not all female senators may display these same tendencies. One possible factor that could significantly differentiate female senators is partisanship. Previous studies have found that party affiliation explains much of the ideological divide between male and female legislators. However, significant gender differences have been found between members of the same party. These differences are especially pronounced within conservative cohorts, such as Republicans and Southern Democrats. For example,

studies have found that Republican women are considerably more liberal and more supportive of women's issues than are their co-partisan colleagues (Tatalovitch and Schier 1993; Vega and Firestone 1995; Welch 1985; Dolan 1998; Swers 1998, 2002).

Swers and Kim's 2013 study of gender differences in confirmation voting was different in that it found evidence of gender effects among (moderate) Democrats. However, these findings are easily understood within the context of partisan politics. Both of the nominees in their study—Roberts and Alito—were appointed by Republican president George W. Bush. Therefore, Republican senators (male and female alike) were most likely subjected to strong party pressure to support the president's nominees. Previous research has shown that party pressure in confirmation voting is strong and has been growing over time (Shipan 2008). It is becoming increasingly unlikely that a senator of the president's party will oppose a nomination, even in the face of ideological mismatch. As Shipan explains,

...for members of the president's party, it takes the combination of questionable qualifications and ideological divergence to cause a senator to vote against the nominee. Absent both conditions, the senator will vote for the nominee, regardless of ideology. (72)

Within the current dataset, most of the modern Supreme Court confirmations took place under Republican presidents. Therefore, I anticipate that gender differences between male and female Republican senators will be mitigated due to the underlying partisan currents and pressure from the White House.

The analyses in Table 3.3 therefore tests for partisan effects by looking at differences in the populations of Democratic and Republican senators. The results reveal some interesting findings. First, the noted gender effects are found to be a strictly Democratic phenomenon. While such results were expected, the magnitude of the partisan difference is quite striking. In the Republican model, the female interaction term is small and statistically

insignificant; yet, the Democratic female interaction term is strongly significant and yields the largest coefficient in the model.¹² Based on these findings, it appears as though Democratic female senators are the driving force behind the reported gender differences. Ideology plays a significant role in the Democratic model overall, but for female Democratic senators, these concerns take center stage.

The analyses also show other interesting partisan divides. For example, while ideology is significant in the Democratic model, it is not significant in the Republican model. Lack of qualifications is significant in the Republican model, but not in the Democratic model. However, the interaction between ideology and qualifications is significant in both. In addition, the overall model performs slightly better in the Democratic dataset, with a pseudo R-squared of .474 compared to .381.

¹² While the independent female dummy variable is also found to be significant in the Democratic model, I have no theoretical explanation for this finding and suspect that such results are again related to particular partisan contexts of the nominations under investigation.

Table 3.3: Gender Effects in Confirmation Voting, by Party

| Variable | Model 1: Republicans | Model 2: Democrats |
|--|----------------------|---------------------|
| Lack of Qualifications | -1.671** (.419) | .194 (.626) |
| Ideological Distance | -.078 (.753) | -1.500* (.732) |
| Strong President | .768 (.524) | .730 (.500) |
| Same Party | .568 (.499) | .161 (.536) |
| Qualifications/Ideology Interaction | -6.009** (2.156) | -8.780** (2.068) |
| Female | -.156 (.375) | 1.912* (.977) |
| Female/Ideology Interaction | -.114 (1.834) | -9.421** (2.880) |
| Constant | 1.745** (.544) | 1.546** (.315) |
| N | 1498 | 2203 |
| Log-Likelihood | -257.375 | -485.246 |
| Pseudo R2 | .381 | .474 |

Note: Cell entries are probit coefficients with robust standard errors in parentheses. ** indicates significance at the $p \leq .01$ level; * denotes significance at the $p \leq .05$ level. Standard errors are clustered by nomination.

Conclusion

This analysis has built on previous models of confirmation voting by introducing a gender component. The results reveal that male and female senators (and more specifically female Democratic senators) do evaluate Supreme Court nominees differently, with the latter weighing ideology more heavily than the former when casting a confirmation vote.

Importantly, these results hold even after controlling for the fact that significant numbers of females have entered the Senate only in recent decades.

The reported results have something to offer both the broader literature on gender and politics as well as that on Supreme Court confirmations. First, the analysis highlights how senators' personal characteristics and opinions can influence their behavior during the confirmation process. CCS were right—their framework did need to be expanded to account for the competing goals and preferences of individual senators.

Second, the presented results uncover new connections between descriptive and substantive representation. This marriage of gender and confirmation politics is also a theoretically interesting extension. Previous research has shown gender differences in legislative activities that are explicitly gender related, but the connection in confirmation politics is more implicit. Women's rights are not necessarily at the forefront of confirmation politics, and senators can consider a variety of characteristics when evaluating a given nominee. This complex environment thus provided an opportunity to examine if female senators use their power to explicate issues related to women's rights when these issues are embedded within other ideological and non-ideological concerns. It appears as though they do.

The presented results uncover interesting patterns of confirmation voting, but several questions remain. While the statistical analyses seem to support the claim that female senators give more weight to ideology than male senators during confirmations to the U.S. Supreme Court, the proposed theory offers a more detailed explanation of these ideological differences—namely, that they are rooted in a connection between the descriptive representation of female legislators and the substantive representation of women's interests. Further exploration of this hypothesis will require an unpacking of the “ideology” variable used in this analysis. If the proposed theory is correct, then we should be able to observe specific ideological differences between male and female senators. To get at this piece of the

puzzle, we need to know more detailed information about the types of ideological considerations that are behind the reported findings. In other words, we need to know which specific issues female senators had in mind when they cast their confirmation votes. The following chapters will therefore take a closer look at the gender differences by exploring senators' legislative activities during floor debates and confirmation hearings.

CHAPTER 4

Girl Talk: Female Senators' Floor Statements on Supreme Court Nominees

The previous chapter revealed that female senators weigh ideology more heavily than male senators when casting confirmation votes for Supreme Court nominees. While confirmation voting is the final and most studied aspect of the confirmation process, several important steps precede that endpoint. This chapter will step back and analyze an earlier but no less critical stage in the confirmation process—senators' floor statements regarding Supreme Court nominees. Floor statements are an important aspect of the Senate's confirmation proceedings. They provide senators with an opportunity to explain their voting decisions, appease given constituencies, and perhaps even persuade their colleagues. Important for this dissertation, floor statements also offer senators the opportunity to highlight certain issues and scrutinize the nominee's past.

This chapter will therefore move beyond voting and ask if female senators use their time on the Senate floor to openly act as advocates for women's rights in the context of Supreme Court nominations. The following research aims to provide a rich descriptive analysis of male and female senators' floor behavior during confirmation proceedings. This in-depth examination will explore the rates of participation for male and female senators, as well as the types of statements senators make. The following analysis could also help contextualize the results in Chapter Three. The previous chapter revealed that female

senators are more ideological voters than male senators, but such findings do little in the way of explaining why. Floor statements allow a senator to articulate the logic behind a vote in his or her own words. Such statements will therefore be useful tools to help uncover the underlying causes that explain the observed gender differences in voting patterns.

This chapter will begin with a discussion of the importance of floor speeches, followed by a more tailored discussion of these activities in the United States Senate. Next, I will review literature that specifically deals with gendered patterns of speech within legislative contexts. The methodology section will then provide an in-depth content analysis of five Supreme Court nominations—those of Sandra Day O’Connor, David Souter, Stephen Breyer, John Roberts, and Sonia Sotomayor. The results reveal that female senators do bring a unique perspective to confirmation proceedings by acting as vocal champions and defenders of women’s rights.

The Importance of Floor Statements

Legislators have a lot of activities competing for their time: they need to raise campaign money, make public appearances, do casework for their constituents, perform committee work, draft legislation, and research and vote on bills. Why, then, would an officeholder take the time to prepare and deliver a floor statement? If talk is cheap, why would a policymaker prioritize speaking on an issue over another form of legislative action?

At first glance, floor statements may seem like time-intensive activities with minimal potential rewards. However, there are several benefits that legislators can receive from engaging in these tasks. One major prospective payoff is electoral incentives. In his seminal 1974 book, Mayhew described a world where congressmen are “single-minded seekers of re-election” (5), a view that has been widely embraced by legislative scholars. Mayhew went on

to identify three types of activities that congressmen engage in while attempting to further their personal electoral interests. One such activity is position taking, which Mayhew defines as the “public enunciation of a judgmental statement on anything likely to be of interest to political actors” (61). According to Mayhew, congressmen do not necessarily have to produce legislative outcomes in order to reap electoral rewards. Rather, the very act of uttering a position can be politically advantageous. As Mayhew explains:

The congressman as position taker is a speaker rather than a doer. The electoral requirement is not that he make pleasing things happen but that he make pleasing judgmental statements. The position itself is the political commodity. (62)

Floor statements afford legislators an ideal opportunity to engage in position taking. Through floor speeches, politicians can explain their votes and pay lip service to observant constituencies. In this sense, floor speeches are intended to speak to an audience beyond the institution’s walls. In addition, such activities are becoming increasingly important as technology has opened up many governmental proceedings and made it easier than ever for politicians to publicize their floor speeches. In the U.S. Congress, C-SPAN and C-SPAN2 bring officeholders right into viewers’ living rooms. Many members of Congress now also post links to their floor speeches on their websites and Twitter feeds.¹³

Beyond electoral considerations, politicians may find other potential benefits from speaking on the floor. For example, a congressman motivated by good public policy (subjectively defined) may find that these opportunities offer him a captive audience and a soapbox from which to espouse his views. A member of Congress may also take the floor in hopes that her statements will help frame the context of a debate or perhaps even persuade one of her colleagues to adopt her viewpoint.

¹³ C-SPAN began broadcasting House proceedings in 1979, and C-SPAN 2 was launched for the Senate in 1986. See Fenno (1989) for an interesting summary of the debate surrounding the televising of Senate affairs.

In short, floor speeches give legislators the opportunity to publically engage in political conversations. While this type of legislative participation has several potential payoffs, it does require notable effort on the speaker's behalf. Not only does the legislator have to take the time to prepare and deliver the remarks, but, in addition, by publically articulating his or her views, the legislator can become a type of advocate or spokesperson for the issue. Thus, the act of delivering a floor statement may be a useful signal about how intensely a policymaker feels about the issue at hand (Hall 1996).

Floor Statements in the United States Senate

Floor speeches therefore offer broad political appeal to all officeholders, but such activities are especially important in the United States Senate (Smith 1995; Schneier and Gross 1993). A popular historical story that captures the *raison d'être* of the Senate involves a lively exchange between Thomas Jefferson (who was abroad during the Constitutional Convention) and George Washington. According to the story, Jefferson and Washington dined together shortly after Jefferson's return. During the meal, Jefferson asked Washington why the delegates at the convention decided to create a Senate. Washington responded by comparing the Senate to a tea saucer—just as a tea saucer helps cool off the tea, the Senate helps cool off the legislative process.¹⁴

As discussed in Chapter Two, the United States Senate was deigned to be a deliberative legislative body. One institutional feature that slows down and “cools off” the policymaking process is the ability of senators to engage in open and extended debate. While some scholars have claimed that such institutional arrangements have more to do with

¹⁴ For some historical information and an account of this story, visit the Senate's legislative page: http://www.senate.gov/legislative/common/briefing/Senate_legislative_process.htm.

protecting senators' individual political interests than about a blind fidelity to the institution's deliberative nature (Binder and Smith 1998), it is clear that floor speeches hold an important place in the institution's political culture. This reflective nature affects all Senate business, including debate over Supreme Court nominations. Senator Norm Coleman (R-MN) expressed this sentiment during John Roberts's confirmation proceedings when he urged his colleagues to have an open and thorough confirmation, noting that:

We [members of the Senate] pride ourselves on being the greatest deliberative body in the world. This is our moment to show that to the country and the world. Let us do it right. (*Congressional Record*, July 20, 2005: S8504)

Even though the Senate was designed to be the more deliberative chamber, most of the research on floor activities (like most research on Congress in general) tends to focus on the U.S. House of Representatives. However, the few studies that have looked inside the Senate generally support the broader legislative theories in this area. For example, floor activities in the Senate appear to be at least partially motivated by electoral considerations, as scholars have found that senators use floor speeches as an opportunity to symbolically represent and connect with members of their constituency (Hill and Hurley 2002). Research has also shown that other political and institutional factors—such as committee membership, party affiliation, and election cycles—can also affect the likelihood of a senator deciding to speak on the Senate floor (Osborn and Mendez 2010; Hill and Hurley 2002).

There is also evidence that such tactics have been increasingly used in recent decades. Several scholars have written about the change of the Senate from a “communitarian” institution to a more “individualistic” body (Sinclair 1985, 1986; Fenno 1989; Smith and Flathman 1989). As Fenno (1989) explained, “The communitarian Senate...was a markedly self-contained, self-regulated, inward-looking institution” (315). In

these earlier times, the Senate functioned more like a team sport. In this institutional setting, senators knew their positions, guarded the field from outsiders, and had a deep respect for the game.

However, for various reasons, the Senate's team spirit began to disintegrate in the 1980s. According to Fenno:

Changing political processes—more openness, more special interest group participation, more media visibility, more candidate-centered elections, weaker partisan ties and party organizations—produced newcomers with an ever stronger sense of political independence. (317)

In this “individualistic” Senate, team players were replaced by independent maverick superstars. Senators began looking more and more to the outside world and acting in their own political best interests. Soon the prevailing game in the Senate transitioned from a team to more of a solo sport.

Autonomous and visible actions, such as speaking on the floor, fit particularly well in this new senator-focused Senate. After all, a senator cannot pass a bill on his own, but he can talk about doing so. As a result of these new priorities and incentives, the Senate floor has seen heavier traffic in recent decades, and Senate leadership has even had to change their governing tactics to accommodate this increased demand (Smith and Flathman 1989).

Female Legislators Speaking as Women

Floor speeches are therefore an important part of the legislative process—especially in the United States Senate—and the remainder of this chapter will be devoted to exploring potential gender differences in these activities. As mentioned in Chapters Two and Three, decades of previous research have documented gender differences in roll-call voting patterns. Again, the predominant underlying theory of these studies is that female legislators

use their power and political positions to advocate for women's issues, variously defined. This chapter will build on and extend this logic to see if these same gender differences are discernible in this other aspect of legislative behavior.

The following research will also be particularly useful in helping us better understand the gender differences in confirmation voting that were uncovered in the previous chapter. While the results in Chapter Three revealed that female senators are more ideological voters when it comes to approving Supreme Court nominees, we have no way of knowing if these differences are linked to concerns about women's issues. By analyzing floor statements, we will get to hear senators articulate a rationale for their voting decision in their own words.

Previous research has shown that textual and discourse analyses can be useful tools to gain a deeper understanding of the surface-level gender differences that are observable in legislative patterns. In her 1995 work, Kathlene analyzed transcripts from interviews with forty-seven Colorado state legislators. Her interviews revealed that male and female legislators viewed crime and recidivism through fundamentally different lenses. Female legislators were more likely to take into consideration contextual factors, and saw criminals as bounded agents working within a constrained (and often severely limited) environment. Male legislators, on the other hand, were less likely to take such mitigating circumstances into consideration and were therefore more likely to see the criminal as possessing sole responsibility for his or her actions. Kathlene theorized that such differences were the result of gendered socialization patterns that taught men to see individuals as autonomous beings, while women were taught to embrace a more contextualized worldview. Interestingly, and perhaps most importantly for this research, these philosophical differences were reflected in the types of legislation that male and female legislators sponsored on this matter. Female legislators were far more likely to introduce bills that had a broader approach to crime, such

as bills looking at criminal prevention and intervention tactics as well as legislation focused on providing assistance to victims of crime.

Floor statements offer another opportunity to glean a glimpse of the philosophical roots that lead to emergent gender differences in legislative behavior. In addition, they are also an indication of how active male and female policymakers are on given matters. In his 1996 book on legislative participation in Congress, Hall found significant gender differences in the rates of participation in floor activities in three of the six House bills he examined. While two of the bills were relevant to issues on the Women's Caucus agenda at that time, one bill (the 1981 Farm Bill), was less directly relevant to women's issues. However, the congresswomen used their floor time to highlight how aspects of the Farm Bill did, in fact, impact women's lives. As Hall explained:

The record suggests that in an important way, the peanuts title did evoke the concerns of low-income women—concerns that were altogether submerged in policy development in this area prior to 1981. None of the women who participated on the House floor represented peanut-producing districts and none spoke in support of peanut producers; rather, all of them called attention to the program's effect on the price of peanut butter and hence the cost to the care providers for low-income children. (209)

The Farm Bill is a good example of how female legislators can use their floor statements to articulate a woman's perspective on a given piece of legislation. Through their words, female policymakers can reframe an issue in gendered terms. This case is also a good reminder of how broad and diverse "women's issues" can be, and it provides support for the idea that female legislators (at least sometimes) speak on behalf of a larger women's constituency that extends beyond their own electoral district.

While Hall's study looked at floor participation in the House, others have found similar findings in the United States Senate. In their 2010 study, Osborn and Mendez

conducted a content analysis of floor speeches in the 106th United States Senate. The authors constructed a coding scheme that divided floor statements into one of three policy realms: direct women's issues, traditional women's issues, and non-women's policy issues. Direct women's issues included policy domains that explicitly affect women as a constituency, including abortion and other matters related to women's health and safety. Traditional women's issues, by contrast, were those policy domains that tended to disproportionately impact women due to gendered social patterns. Policies in this category included health care, education, family matters, and general social welfare issues. Finally, non-women's issues were policy areas that did not appear to have a significant (direct nor indirect) gender component. Policies in this area included matters such as defense and monetary issues.

After analyzing 3.5 million lines of text, the authors found that female senators did in fact devote a higher percentage of their floor statements to women's issues. The strongest gender differences were found in issues that directly impact women's lives. Female senators devoted proportionally more of their floor statements to matters such as women's healthcare and safety than did their male colleagues. Perhaps because of its salience in the overarching political landscape, abortion was the one direct women's issue that men and women touched on at roughly the same rate. Women were also more vocal advocates for some of the traditional and non-women's issues—such as family and foreign policy matters—but overall the evidence of gender differences in these categories was much more sporadic.

Even more relevant to this study, Swers and Kim (2013) found that female senators were more likely than male senators to speak about women's issues during confirmations to the U.S. Supreme Court. In this study, the authors looked at the political circumstances surrounding the replacement of Justice Sandra Day O'Connor—the first female member of

the Court—and the accompanying nominations of John Roberts and Samuel Alito.¹⁵ Despite the nominees' questionable support of women's rights, the authors found little evidence that gender affected final confirmation voting. However, the authors did find that female senators, particularly Democratic female senators, were more likely to raise issues of concern to women throughout the confirmation proceedings. After analyzing floor statements, statements of Judiciary Committee members, and press releases, the authors found that Democratic female senators were more likely than their male co-partisans to talk about women's issues during both nominations.¹⁶ Overall, Republicans talked about these matters at a lower rate than Democrats. In addition, the gender differences that were present in the Democratic cohort were not present among Republican senators.

The current chapter builds on these previous studies and similarly expects that female senators will use their floor time to vocalize a distinct woman's point of view. However, since this study will extend the analysis across multiple nominations that span several decades, there are many historical and institutional variables that may influence female senators' overall participation at this stage of the confirmation proceedings. Unlike the analysis of confirmation voting in the previous chapter (where every senator automatically gets an equal vote), the legislative participation in this chapter becomes somewhat contingent upon institutional position, power, and access. One potentially important factor that could influence women's participation during floor debates is simply the overarching cultural and institutional gender dynamics.

¹⁵ President Bush first nominated John Roberts to fill O'Connor's seat. However, Bush withdrew this nomination and re-nominated Roberts for the position of chief justice after the death of William Rehnquist. Samuel Alito was then nominated to fill O'Connor's associate justice position.

¹⁶ Similar to Osborn and Mendez (2010), Swers and Kim (2013) also found that there was not a significant gender gap when it came to addressing the issue of abortion.

First, women are severely under-represented in the Senate, especially throughout many of the nominations under examination here. While this token status may increase the pressure on female senators to speak on behalf of a women's constituency, their minority role could ultimately hinder their ability to function within the institutional structures and hierarchy. As critical mass theorists have noted:

Tokens appear to operate under a number of handicaps in work settings. Their possible social isolation may exclude them from situations in which important learning about a task is taking place and may also prevent them from being in a position to look good in the organization. (Kanter 1977: 987)

Indeed, many of the women who have served in the Senate were not in institutional positions that encourage participation during judicial confirmation proceedings (e.g., no woman has ever served in a leadership position in the Senate, and only a handful of women have held seats on the Senate Judiciary Committee). Such institutional barriers may be less of a roadblock in the Senate, where legislators are seen more as broad generalists, than in the House Representatives, where there is stronger pressure on legislators to specialize in policy domains. Nevertheless, the low number of female senators coupled with their institutional positioning may result in a muting of women's voices throughout the entire course of the deliberations.

Female senators may also face other cultural barriers when making floor speeches. Although the Senate is supposedly a chamber of equals, any time social interactions (such as speech) come into play, one should be aware of the possibility of inequality and informal dominance. Several studies have found that women have a particularly hard time getting their voices heard in legislative settings. In her 1994 analysis of state committee hearings, Kathlene found that "female committee members engage later [in the conversation], speak significantly fewer words, take significantly fewer turns, and make and receive fewer

interruptions than their male counterparts” (569). Somewhat contrary to the expectations of critical mass theory, Kathlene actually found that male committee members had increasingly hostile and aggressive speech patterns as the percent of female committee members grew.¹⁷

Gender has also been found to affect how government officials receive witnesses during congressional hearings. In her 1998 article, Mattei utilized discourse analysis techniques to analyze the Senate Judiciary Committee’s hearings on the nomination of David Souter to the U.S. Supreme Court. While women accounted for 40% of the hearing’s witnesses, the effectiveness of their testimonies was undermined by prevailing gender dynamics—senators interrupted female witnesses at a higher rate than male witnesses; male witnesses were given proportionally more floor time to speak; and female witnesses were more likely to have their testimonies and expertise openly challenged. Thus, while women were physically present during the deliberations, they were not necessarily equal partners in the conversation.

Because of these findings, the following analysis will be cognizant of gendered barriers to legislative speech, and will therefore begin by asking if female senators are speaking on the Senate floor at the rate at which they should. However, the bulk of the analysis will be primarily concerned with assessing the issues that male and female senators address in their floor speeches, with the expectation that female senators will place a higher priority on women’s issues.

***Hypothesis:** Female senators will be more vocal advocates for women’s issues during their floor statements than their male counterparts.*

¹⁷ Other research has also found that male officeholders become less supportive of their female colleagues as the percent of women in the legislative setting increases. For example, Kanthak and Krause (2010) examined member-to-member leadership PAC contributions in the U.S. House of Representatives from the 105th Congress through the 108th. Their results revealed that male-to-male contributions increased but male-to-female contributions decreased as more women entered the chamber.

Data and Methods

The proposed content analysis will be performed on Senate floor statements from five Supreme Court nominations: those of Sonia Sotomayor, John Roberts, Stephen Breyer, David Souter, and Sandra Day O'Connor. These nominations were chosen because they offer a range of theoretically interesting political and institutional settings. As displayed in Table 4.1, these cases include two examples of a Democratic nomination going to a Democratic Senate, two examples of a Republican nomination going to a Republican Senate, and one case of a divided government nomination. The selected cases also offer analytical leverage by including three male and two female nominees, and valuable historical perspective by spanning the course of three decades. The number of female senators also fluctuates across the nominations, from a low of two during O'Connor's confirmation to a high of seventeen during Sotomayor's confirmation.

For each nomination, I began by first collecting all floor statements that senators made in which the nomination in question was the primary topic of focus. To do this, I searched the Congressional Record (which I accessed through Thomas and Lexis-Nexis) for the nominee's name, beginning with the date the nomination was officially announced by the president and ending with the date of the Senate's final confirmation vote. For each returned hit, I then looked to see if the senator's statement was primarily about the nominee, or if the senator was simply mentioning the nominee's name in passing. For example, statements that were merely talking about the order of business in the Senate (e.g., "This week the Senate will begin consideration of the following nominations...") and other statements where the speaker was not truly addressing the nomination in question were excluded from the analysis.

Table 4.1: Senate and Presidential Information for Supreme Court Nominees

| Nominee | Nomination Year | Nominating President | Party Control in Senate | Number of Women in Senate |
|---------------------|-----------------|----------------------|-------------------------|---------------------------|
| Sonia Sotomayor | 2009 | Barack Obama (D) | Democratic Party | 17 |
| John Roberts | 2005 | George W. Bush (R) | Republican Party | 14 |
| Stephen Breyer | 1994 | Bill Clinton (D) | Democratic Party | 7 |
| David Souter | 1990 | George H.W. Bush (R) | Democratic Party | 2 |
| Sandra Day O'Connor | 1981 | Ronald Reagan (R) | Republican Party | 2 |

Coding of the Dependent Variable

Once a statement was identified as dealing with the given Supreme Court nomination, the following coding rubric was applied. First, the entire statement was divided into substantive and procedural components. Procedural words were simply floor utterances that were of a technical or otherwise non-germane nature. These included things like a senator asking how much floor time she had left, yielding the floor, asking for something to be inserted into the Congressional Record, or thanking the presiding officer. Since these statements offer no insight into the senator's views on the nominee, they were dropped from the analysis. The remainder of the senator's statements—those that somehow specifically addressed the nominee or the impending confirmation vote—were classified as substantive.

Substantive statements were then assessed to see if the remark dealt with a specific women's issue. While "women's issues" have been variously defined throughout the literature, I followed in the footsteps of Osborn and Mendez (2010) and developed a coding rubric that classifies statements into different categories depending on how relevant the issue is to a broad constituency of women. Specifically, the following four categories were used:

1. Direct Women's Issues: Direct women's issues are those that directly affect women as a constituency. Statements in this category are either inherently gender-related, or are explicitly framed in such a way as to highlight the issue's impact on women. Issues in this category include things like violence against women, matters related to women in the workplace (e.g., maternity leave, gender discrimination, sexual harassment, etc.), gender diversity on the Court, abortion, and other issues related to women's healthcare. Since issues in this classification are the most relevant to women's substantive group interests, this will be the primary classification of interest. In addition, previous studies have suggested that female officeholders make the biggest legislative impact on policy areas that are the most directly relevant to women's lives (Osborn and Mendez 2010; Day 1994; Tatalovitch and Schier 1993; Swers 1998; Dolan 1998; Swers 2002), so I expect to find the biggest gender differences on these matters.

2. Traditional Women's Issues: Traditional women's issues are those that disproportionately impact women. Their relevance to women as a constituency is not automatic or biological. Rather, it is primarily based on prevailing gender norms in which women predominately operate in the private sphere and are viewed as society's natural caregivers. Specific policy issues that fall into this category include things like healthcare, family matters, childcare, education, and other general social welfare issues (e.g., direct assistance programs for low-income individuals and families including Medicaid, food stamps, Temporary Assistance to Needy Families, or, in earlier years, Aid to Families with Dependent Children).¹⁸

3. Civil Rights Issues: Some issues—such as affirmative action, diversity, and discrimination—affect female constituents but may be raised in regards to another minority group or framed as broader questions of general civil rights.

¹⁸ According to the United States Census, women and children are still disproportionately affected by poverty. In 2011, 13.6% of men and 16.3% of women were living in poverty. Children under the age of 18 had an even higher poverty rate of 21.9%. (DeNavas-Walt, Proctor, and Smith: 2012).

The third women’s category captures these policy matters. Building on The Supreme Court Database Codebook, these issues include “non-First Amendment freedom cases which pertain to classifications” that are socially and politically relevant (43). Because some direct women’s issues are a subset of larger civil rights matters, these two categories may overlap at times. In these situations, direct women’s issues trump civil rights issues. For example, if a statement talked about affirmative action programs for women, then it was coded as a direct women’s issue statement. However, if a statement talked about affirmative action programs in general or for another group, then it was coded as a civil rights issue statement.

4. Privacy Issues: Cases such as *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973) firmly placed the issues of abortion and access to contraceptives within a broader legal context of privacy rights. While these policy issues are now firmly entrenched in the battles over the right to privacy, many other issues—everything from homosexuality to the War on Terrorism—also raise these concerns. A final issue category was created to account for statements that touched on the constitutional right to privacy. Again, direct women’s issues will at times overlap with privacy issues. In fact, in many instances, “right to privacy” is almost used as a code phrase for abortion and reproductive freedoms. Senator Bill Bradley (D-NJ) commented on this tendency during Souter’s confirmation when he stated:

All of us know that one of the inseparable aspects of a right to privacy is the right for a woman to choose whether or not to have an abortion. Indeed when the question of the right to privacy was raised in the Judiciary Committee, Judge Souter appeared to presume that it was nothing more than a euphemism for the right to a safe and legal abortion. (*Congressional Record*, September 26, 1990: S13891)

Senator Bradley went on to talk about the right to privacy in the arenas of contraceptive and reproductive health policies. However, he ended

his remarks by reminding his colleagues that privacy rights also pertain to other important social issues, such as limitations on governmental intrusions.

The coding rubric handles the overlap of privacy and direct women's issues the same way it did with the civil rights category. In situations where privacy issues are explicitly raised in regards to abortion and family planning matters, direct women's issues trump privacy issues. However, if a statement only talked about a general right to privacy or if it raised other policy matters related to privacy issues, then it was coded as a privacy issue statement. Thus, when Senator Bradley talked about a women's right to choose, it was coded as a direct women's issue. When he talked about limits on governmental intrusions, it was coded as a privacy issue statement.

All women's issue statements were then coded in terms of policy stance. This next level of analysis was added to give some insight into the types of policy positions that senators were espousing during their floor statements—after all, two senators could talk about the exact same issue for the same amount of time, but have drastically different viewpoints on the matter. To account for this potential variation, coded statements were marked as pro if the comment advocated for the continued or increased protection of the women's issue under consideration. By contrast, coded statements were marked as con if the comment articulated a position that wanted to repeal protections in these areas, or if the statement expressed disregard for the rights of the group in question. Statements were coded as neutral if they touched on the subject but did not clearly articulate a policy position on the matter.

The following three examples illustrate these different policy stances in regards to a single high-profile women's issue—abortion. In the first example, Senator Barbara Boxer (D-CA) is describing how she, in a recent campaign advertisement, pledged her support for a woman's right to choose, and how she viewed John Roberts's appointment to the Court as a potential threat to that commitment:

I said in my own words, right in that commercial, I would do everything in my power to ensure that we never go back to those dark days of back-alley abortions, when thousands of women died and many others were rendered infertile. We know that Judge Roberts signed a brief calling for Roe to be overturned...To simply say Roe is precedent...is not good enough. (*Congressional Record*, September 21, 2005: S10275)

Since Boxer was talking about an issue that directly affects women, and she was articulating a desire for continued legal protection in this area, this was coded as a pro/direct women's issue statement. Throughout the course of the confirmation, other senators touched on this same issue, but expressed clear opposition to a women's right to choose. These sentiments were therefore coded as con/direct women's issue statements. One such statement was delivered by Senator Sam Brownback (R-KS):

Some of my colleagues have argued that...a right to abortion has been beneficial to women. They argue the right to abortion has 'freed' them to pursue goals as full participation in the workforce. But there are certain other effects of this right which should be identified...I have pointed out repeatedly that in the wake of Roe, 40 million children have been aborted in America—40 million souls who could have brightened our existence and made their contribution to the habits of the American heart. (*Congressional Record*, September 28, 2005: S10532)

Other statements, such as the following quote from Senator Arlen Specter (R-PA), touched on the issue of abortion, but either did so in passing or did not clearly articulate a view on the matter. These statements were therefore coded as neutral/direct women's issues:

Since I believe it is inappropriate, for example, to ask about an issue realistically likely to come before the Court, I did not ask whether he [John Roberts] would sustain or overrule *Roe v. Wade*. (*Congressional Record*, September 19, 2005: S10170)

The coding rubric also established other procedural guidelines for the content analysis. First, only entire sentences were coded. If a sentence touched on a women's issue, then all words in that sentence were coded. Since a single sentence can raise a multitude of issues simultaneously, this system could result in the coding of irrelevant words. For example, during Sotomayor's confirmation, Senator Chuck Schumer (D-NY) noted that, "At one point, the Republican Party argued for precedent and for strict construction because they wanted to push back on certain new precedents that they thought were beyond the Constitution—precedents such as *Roe* and *Miranda* (*Congressional Record*, August 5, 2009: S8817). This was coded as a direct women's issue statement, even though the sentence also touched on the rights of criminal suspects and broader issues of judicial philosophy and the appropriate use of precedent.

While the following analysis will primarily rely on individual word counts, coding was done in this sentence-by-sentence manner for several reasons. First, coding at such a micro-level as individual words is nearly impossible since a certain amount of context is needed to interpret any verbal utterance. Alternatively, we could have coded entire paragraphs at a time. However, transcriptions in the *Congressional Record* are not always clearly laid out in a neat paragraph form. In addition, many senators switched topics or stances throughout the course of their statements, and a chunkier coding approach may have missed some of those nuances. Breaking statements down by sentence therefore seemed like a sensible middle-of-the-road approach that most accurately captured the complexities of the statements that were delivered.

The coding rubric also allows statements to be coded for multiple measures. This rule accounts for the fact that some statements talk about multiple topics in conjunction with one another. For example, during John Roberts’s confirmation, Senator Jon Corzine (D-NJ) stated:

I have been struck, in listening to the statements of many of my colleagues who have struggled with how to vote on this nomination, by the simple fact that we are all guessing—guessing if Judge Roberts will uphold the right to privacy, guessing if he will restrict the right of a woman to choose...guessing if he will support the gains we have made in the area of civil rights during the past 40 years. (*Congressional Record*, September 29, 2005: S10638)

Since Corzine’s statements touched on three of the four issue categories—direct women’s issues, privacy issues, and civil rights—it was triple coded.

Again, there are tradeoffs to this approach. The downside is that this multiple-coding may artificially inflate a senator’s statements in the analysis (i.e., the same sentence could get counted multiple times). However, the only alternative would be to prioritize the different categories and—beyond the previously noted exceptions where direct women’s issues are framed as a subset of the broader civil rights and privacy classifications—I have no theoretical reason to create such a hierarchy. In addition, the sentence-by-sentence approach to coding reduced the amount of words that needed to be double coded, and the following analyses will often be broken down by single issue-areas.

Finally, the following content analysis includes all statements that were verbally delivered on the Senate floor. Often times, senators had various written materials (e.g., newspaper articles, journal articles, letters from outside groups endorsing or opposing a nominee, etc.) inserted into the Congressional Record. These items were not included in the content analysis unless a senator actually read them aloud on the Senate floor. In a few rare instances, senators delivered part of their statements verbally, but then had their fuller

written statements inserted into the Record (most often because of time constraints on their floor time). In the few cases where this happened, I used the senator's longer written statement in lieu of their truncated floor speech.¹⁹

The content analysis for each nomination was performed by me or by one of my two research assistants. To ensure for inter-coder reliability, approximately one-third of the statements were independently coded by two readers. The results were remarkably consistent. Overall, the percent agreement for all substantive statements approached 94%. Policy stance was the trickiest aspect to code, but even in this area the percent agreement hovered around 90% for all women's issue statements.

Since the goal of the following analysis is to compare the rate at which male and female senators address women's issues in their floor speeches, the main dependent variable will be a percent measure. The denominator consists of all substantive policy words a senator spoke during the course of the confirmation, while the numerator includes the number of words that were dedicated to the identified women's issues.

I chose to focus on the rate of speech, as opposed to the actual quantity of words spoken, for several reasons. First, this decision builds on previous studies in this area (see Osborn and Mendez 2010 and Swers and Kim 2013). Second, the rate of speech offers a good indication of how a legislator chose to spend his or her floor time and therefore may be a better measure of legislative priorities. Absolute numbers, on the other hand, could be misleading. For example, two senators may talk about an issue for the same amount of time, but one senator may go on to talk more overall. Percent measures, therefore, get around this

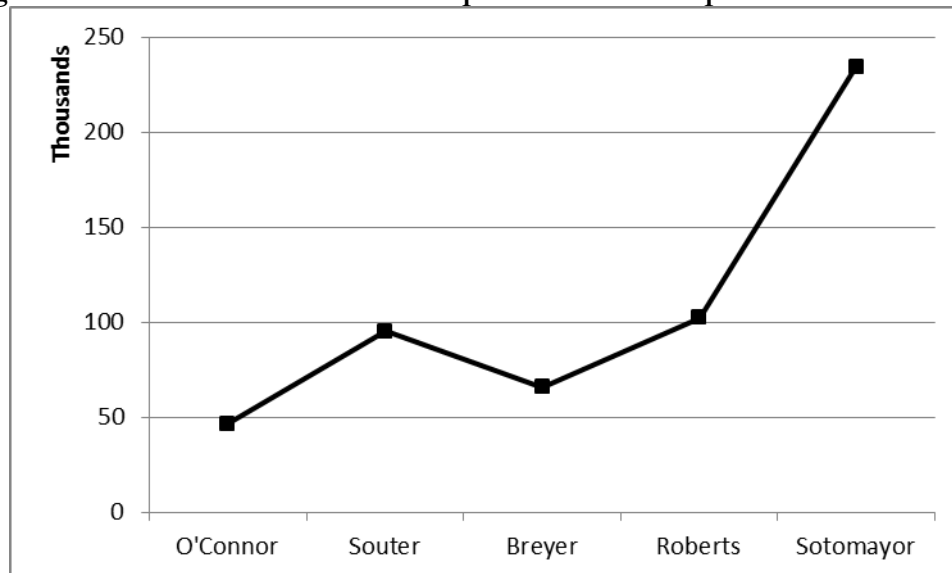
¹⁹ To ensure this decision did not affect the results, the following analyses were tried with both the written and verbal statements. In the end, the results did not change according to which measure was used. First, only a handful of senators added fuller written statements to the Record (less than 1% of the overall statements that were analyzed). The vast majority of senators verbally delivered their entire statement on the Senate floor. Second, while the few written statements were longer, the following analyses primarily rely on a percent measure, so in the end the overall outcome was virtually identical.

problem and more accurately reflect a senator’s “strategic decision of how to allot time” (Osborn and Mendez 2010: 8).

Analysis

The final dataset includes 271 individual floor statements and 544,715 total substantive words. As Figure 4.1 reveals, the number of substantive words that were spoken varied from confirmation to confirmation. Throughout the course of Sandra Day O’Connor’s confirmation proceedings in 1981, forty-nine senators spoke a total of 46,766 substantive words. Flash-forward to Sonia Sotomayor’s confirmation proceedings in 2009, and eighty-seven senators spoke 234,268 substantive words.²⁰

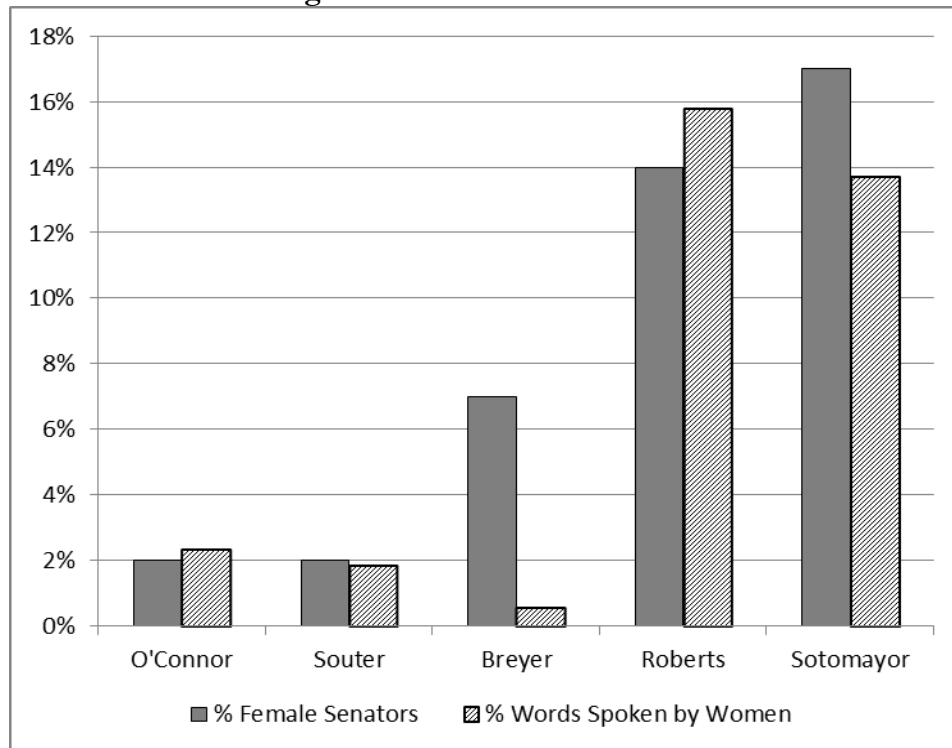
Figure 4.1: Number of Total Words Spoken for each Supreme Court Nominee



²⁰ As displayed in Table 4.1, Sotomayor’s confirmation garnered a lot more attention than previous nominees, including Roberts’s confirmation a few years earlier. While it is not entirely clear why this was the case, it is expected that the hyper-partisan environment coupled with controversial remarks from the nominee’s past (such as Sotomayor’s “wise Latina” comment) motivated opposition senators to speak on the floor. The data provides some preliminary evidence for this, as thirty-four Republican senators accounted for over half of the words spoken about Sotomayor throughout her confirmation. These findings could also be reflecting what has been found at the lower court level, where female and minority nominees tend to face more scrutiny and a longer confirmation process in the Senate (Nixon and Gross 2001).

As displayed in Figure 4.2, the preliminary evidence also suggests that female senators spoke at roughly the rate we would expect given their presence in the Senate. In two nominations (Breyer’s and, to a much lesser extent, Sotomayor’s) women’s voices were noticeably muted. However, in the remaining three nominations female senators spoke roughly in proportion to their numbers, and actually spoke considerably more than their numbers would warrant throughout the course of Roberts’s confirmation proceedings.

Figure 4.2: Female Senators’ Rate of Participation During Confirmation Floor Statements



There were also noticeable differences in the amount of words that were dedicated to the identified women’s issues throughout the course of each confirmation. Figures 4.3-4.7 display the percent of words that dealt with each coded issue-area for the five confirmations under investigation. Women’s issues were most prominent in Sandra Day O’Connor’s confirmation. Her confirmation had the highest total percent of floor statements that were

dedicated to women's issue overall, as well as the highest percent of words dedicated to direct women's issues. The greater importance of these issues during O'Connor's nomination is not surprising given the historical significance of her being the first woman nominated to the Court. However, the magnitude of this distortion is still noteworthy—while direct women's issues accounted for around 3% of the total cases the Supreme Court heard in the decade preceding O'Connor's nomination, over 30% of the floor statements made during her confirmation touched on these matters.²¹

²¹ I used the Supreme Court Database to calculate the number of Supreme Court cases that dealt with direct women's issues (<http://scdb.wustl.edu>). I included all cases in their sex discrimination subcategories (employment and non-employment) and their abortion subcategory (which includes contraceptives) in my estimate of direct women's issues cases.

Figure 4.3: Floor Statements during O'Connor's 1981 Confirmation by Subject Area

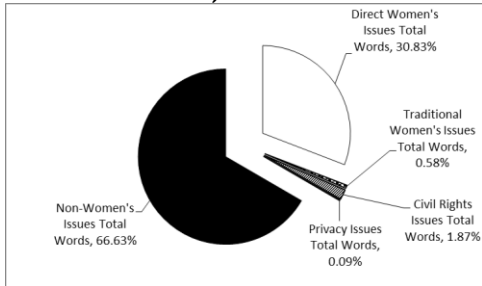


Figure 4.6: Floor Statements during Roberts's 2005 Confirmation by Subject Area

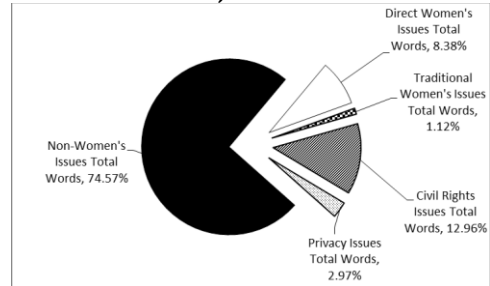


Figure 4.4: Floor Statements during Souter's 1990 Confirmation by Subject Area

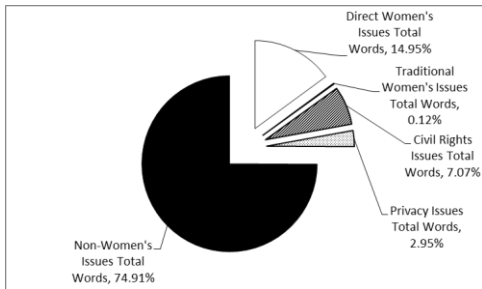


Figure 4.7: Floor Statements during Sotomayor's 2009 Confirmation by Subject Area

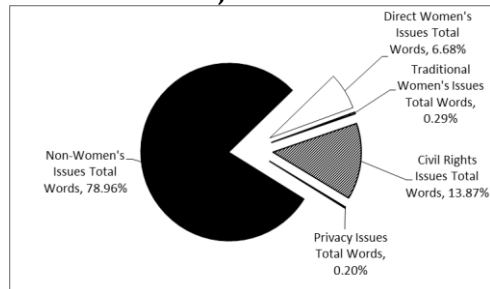
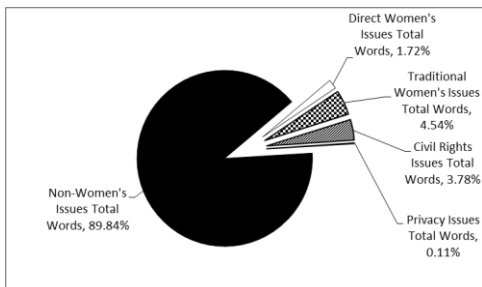


Figure 4.5: Floor Statements during Breyer's 1994 Confirmation by Subject Area

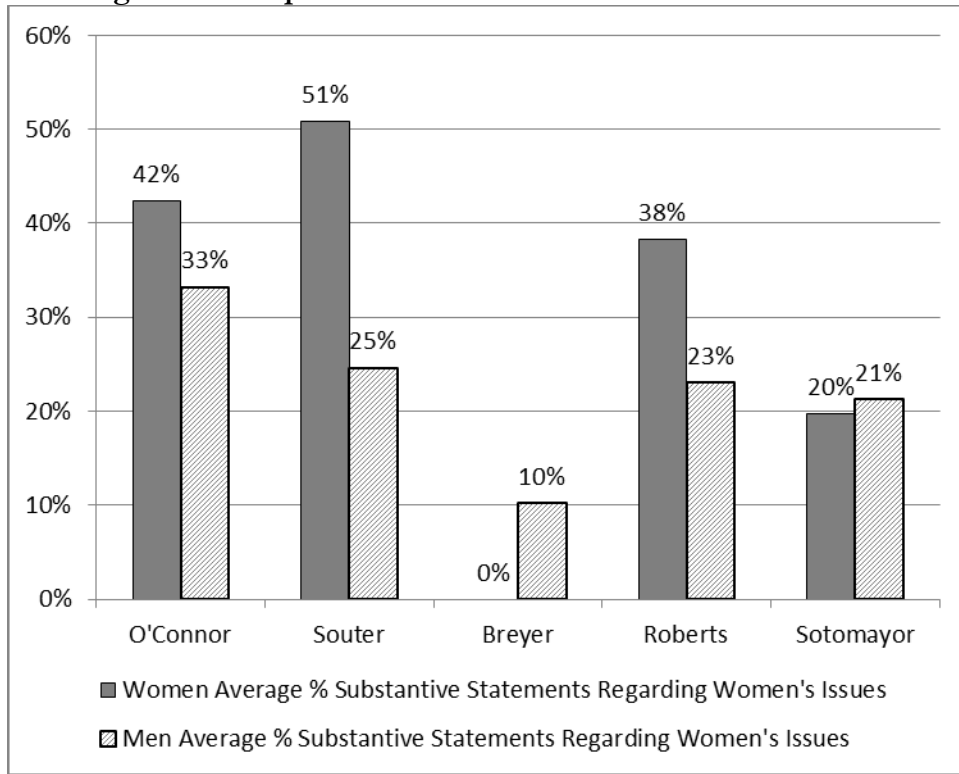


Many of the direct women's issue statements during O'Connor's confirmation dealt with diversity on the Court (or the historical lack thereof). In later nominations though, several other topics in this category were common talking points—most frequently statements dealing with abortion, contraceptives, and gender discrimination. Poverty law was the most common topic in the traditional women's issue category, including statutory and constitutional protections for indigent individuals. Civil rights issues were a popular subject of conversation in several of the nominations under investigation. Topics such as affirmative action, voting rights, and rights of the disabled topped this category. Privacy issues tended to receive somewhat less attention than the other categories. When privacy matters were raised, they tended to be framed in broad discussions about a general right to privacy from inappropriate state action, although a few specific policy matters (such as homosexuality and the right to die) were included in these statements.

The preliminary evidence also suggests that female senators were more likely to raise topics related to all four of these women's issue categories during their floor statements. As displayed in Figure 4.8, in three out of the five nominations under consideration, female senators dedicated a higher percent of their floor statements to the identified women's issues. Once again, the nominations of Stephen Breyer and Sonia Sotomayor stand out. In Sotomayor's nomination, male and female senators spoke about women's issues at almost the exact same rate. As previously noted, women hardly spoke at all during Breyer's nomination and, when they did, none of their statements were about women's issues. It is interesting to note that Sotomayor and Breyer are the two Democratic nominations in the study. It could be that female senators are more motivated to speak about women's issues when they view a nominee as hostile to these matters. By contrast, when a nominee is viewed as a potential ally, silence may be a form of tacit approval. There is some anecdotal

evidence that this reasoning was at least partially at play during Sotomayor's confirmation battle. When asked about why women's groups (such as abortion rights advocates) were noticeably absent during the deliberations, Senator Barbara Boxer (D-CA) remarked, "Things are going well. There's no need to get involved" (qtd. in Bradley).

Figure 4.8: Proportion of Statements about Women's Issues



There is even stronger evidence of gender differences when one looks at the types of women's issue statements made by male and female senators. As Table 4.2 displays, women frequently made a disproportionate share of pro women's issue comments, and a lower than proportionate share of con statements. In addition, these gender differences have become especially pronounced in the more recent nominations in the dataset. For example, during Roberts's confirmation, women accounted for 14% of the Senate's membership, yet they made 41% of the pro/direct women's issues statements. Similarly, the seventeen female senators present during Sotomayor's confirmation made 31% of the pro/direct women's issue statements. Female senators also accounted for a disproportionate share of the pro statements in the tradition women's and privacy issue categories during these two confirmations. Interestingly, these distortions were not present in the earlier three

nominations. These results therefore seem to correspond with the expectations of critical mass theorists. It appears as though female senators have started speaking more—and more favorably— about women’s issues as more women have entered the Senate.

Table 4.2: Male and Female Senators' Policy Stances on Women's Issues

| Percent of Senate | O'Connor | | Souter | | Breyer | | Roberts | | Sotomayor | |
|------------------------------------|-------------|-----------|------------|------------|-------------|-----------|------------|------------|------------|------------|
| | Male | Female | Male | Female | Male | Female | Male | Female | Male | Female |
| | 98% | 2% | 98% | 2% | 93% | 7% | 86% | 14% | 83% | 17% |
| Direct Women's Issues: | | | | | | | | | | |
| Pro | 100% | 0% | 93% | 7% | 100% | 0% | 59% | 41% | 69% | 31% |
| Con | 97% | 3% | 100% | 0% | 100% | 0% | 100% | 0% | 99% | 1% |
| Neutral | 95% | 5% | 100% | 0% | 100% | 0% | 100% | 0% | 97% | 3% |
| Total | 97% | 3% | 96% | 4% | 100% | 0% | 69% | 31% | 81% | 19% |
| Traditional Women's Issues: | | | | | | | | | | |
| Pro | - | - | 55% | 45% | 100% | 0% | 69% | 31% | 42% | 58% |
| Con | - | - | - | - | 100% | 0% | 100% | 0% | 100% | 0% |
| Neutral | 100% | 0% | 100% | 0% | 100% | 0% | 100% | 0% | 100% | 0% |
| Total | 100% | 0% | 81% | 19% | 100% | 0% | 81% | 19% | 53% | 47% |
| Civil Rights Issues: | | | | | | | | | | |
| Pro | 100% | 0% | 98% | 2% | 100% | 0% | 83% | 17% | 82% | 18% |
| Con | 100% | 0% | 100% | 0% | 100% | 0% | 100% | 0% | 99% | 1% |
| Neutral | 100% | 0% | 99% | 1% | 100% | 0% | 97% | 3% | 87% | 13% |
| Total | 100% | 0% | 98% | 2% | 100% | 0% | 85% | 15% | 91% | 9% |
| Privacy Issues: | | | | | | | | | | |
| Pro | 100% | 0% | 92% | 8% | - | - | 53% | 47% | 75% | 25% |
| Con | - | - | - | - | - | - | 100% | 0% | 100% | 0% |
| Neutral | - | - | 100% | 0% | 100% | 0% | 81% | 19% | 100% | 0% |
| Total | 100% | 0% | 95% | 5% | 100% | 0% | 57% | 43% | 81% | 19% |

Statistical Model

The preliminary evidence seems to suggest that female senators are more vocal advocates of women's issues during Supreme Court confirmations. However, a more rigorous empirical analysis is needed in order to control for potentially confounding factors. Before proceeding, it must first be recognized that the subject matter of interest (senators' floor statements) presents somewhat of a statistical challenge. Because we can only analyze floor statements of senators who actually spoke, we are dealing with a type of censored data. In order to account for this selection bias, the following analysis will use a Heckman model. The outcome equation will attempt to explain the factors that affect the percent of a senator's floor statements that pertain to women's issues, while the selection part of the model will include factors that affect a senator's likelihood of speaking on the floor in the first place.

This earlier selection equation will contain a number of independent variables. First, a dummy variable indicating membership on the Senate Judiciary Committee will be included. Previous research has shown that members of relevant committees are more likely to engage in pertinent floor activities, including floor speeches (Hall 1996). Members of the Senate Judiciary Committee are likely to have more information about the nominee's background and judicial philosophy, and therefore may be more likely to deliver a floor speech. In addition, members of the Committee may expect others in the chamber to look to them for talking points and cues on how to vote.

A control for party leadership will also be included. Since party leaders are, in a sense, spokespersons for their parties, they may be more likely to engage in visible floor activities (Maltzman and Singelman 1996). For each Senate in the analysis, the president pro

tempore as well as the majority and minority leaders and whips will be coded as party leaders.

Electoral considerations may also affect a senator's propensity to take to the floor. Due to the Senate's staggered elections, only one-third of senators are up for reelection at a given time. If a senator's term is ending in the next election cycle, she may be more interested in communicating with her constituents and therefore more likely to make a floor statement (Hill and Hurley 2002). For this reason, a dummy variable indicating reelection will be included in the selection equation.

Other factors may potentially decrease the chances of a senator making a floor statement. New senators, for example, may be disadvantaged in resources and within the internal institutional hierarchy (Hall 1996; Hill and Hurley 2002; Osborn and Mendez 2010). Such challenges may therefore make it harder for freshman senators to prepare and deliver floor speeches. As the previously reviewed literature suggests, female officeholders may also have a harder time getting their voices heard compared to their male colleagues (Kathlene 1994; Mattei 1998).

Gender is also the main independent variable in the outcome model. This time, however, gender is expected to have a positive impact on the rate at which senators address women's issues in their floor speeches. The female variable is a dichotomous measure which is coded as 1 if the senator is a woman, 0 otherwise. The outcome model will also include a control for partisanship, coded as 1 if the senator is a Democrat. This control accounts for the fact that the pro women's issues policy stances generally coincide with a more liberal ideology, which is more frequently associated with members of the Democratic Party.

Finally, as with the statistical model in Chapter Three, I will again cluster by nominee in order to account for the stacked nature of the dataset. The reported standard errors have therefore been adjusted to account for the five separate nominations under investigation.

Table 4.3: Explaining the Percent of Senators' Floor Statements That Deal with Women's Issues

| Variable | Model 1: All Women's Issues | Model 2: Pro Statements for All Women's Issues | Model 3: Direct Women's Issues | Model 4: Pro Statements for Direct Women's Issues |
|----------------------------|-----------------------------|--|--------------------------------|---|
| Female | 3.540 (3.411) | 7.217** (3.395) | 2.270 (1.781) | 4.559*** (1.669) |
| Democrat | 2.700 (5.600) | 10.324*** (3.630) | -.811 (3.248) | 4.114*** (1.678) |
| Constant | 18.081*** (3.208) | 6.014*** (.838) | 8.693** (4.387) | 1.716 (1.801) |
| <i>Selection Model</i> | | | | |
| Female | .400 (.346) | .398 (.346) | .393 (.348) | .393 (.345) |
| Judiciary Committee Member | .997*** (.231) | .997*** (.230) | .997*** (.234) | .996*** (.233) |
| Party Leader | 1.368*** (.260) | 1.360*** (.255) | 1.352*** (.255) | 1.360*** (.262) |
| Reelection | .020 (.092) | .020 (.094) | .029 (.092) | .030 (.093) |
| Freshman | -.199 (.134) | -.206 (.135) | -.211 (.135) | -.202 (.131) |
| Constant | -.112 (.238) | -.111 (.240) | -.113 (.239) | -.114 (.242) |
| N | 500 | 500 | 500 | 500 |
| Log Likelihood | -1495.915 | -1446.676 | -1417.813 | -1311.681 |

Note: Cell entries are Heckman coefficients with standard errors in parentheses. *** indicates significance at the $p \leq .01$ level; ** denotes significance at the $p \leq .05$ level; * denotes significance at the $p \leq .10$ level. Standard errors are clustered by nomination.

Table 4.3 displays the results from four separate models. The dependent variable in Model 1 is the percent of senators' floor statements that touched on any of the coded women's issue-areas. The selection equation reveals that, as expected, members of the Senate Judiciary Committee and party leaders are more likely to make floor statements during

confirmation proceedings.²² Contrary to expectations, the outcome equation in Model 1 reveals that neither women nor Democrats are more likely to speak about women's issues in their floor statements. While both of these measures are positive, neither one reaches a level of statistical significance.

However, when policy stance is taken into consideration, the expected relationships are confirmed. Model 2 looks at the percent of senators' floor statements that were pro/women's issues. The same two variables remain significant in the selection equation, but this time both the female and Democrat variables are statistically significant and large enough to be quite substantively meaningful—Democrats dedicated ten percent more of their floor statements to pro women's issue policy stances than Republicans, and female senators dedicated over seven percent more of their statements to these matters than men.

Similar findings are uncovered when we look just at statements dealing with direct women's issues. As shown in Model 3, neither the female nor the Democrat variable was a significant predictor of how much a senator talked about direct women's issues on the floor of the Senate. However, both of these variables are highly significant in Model 4, which looks at pro/direct women's issue statements. Democrats, on average, dedicated four percent more of their floor statements to positive commentaries on these matters. The female variable yielded a slightly larger magnitude, with women in the Senate dedicating 4.5 percent more to these matters than their male colleagues.

Previous studies have found that male and female legislators talk about some women's issues (such as abortion) at similar rates (Osborn and Mendez 2010; Swers and

²² It might also be expected that partisanship could affect senators' floor participation. Majority party members, for example, might have institutional and political clout that could increase their likelihood of speaking on the Senate floor. To test this theory, a dummy variable indicating majority party membership was included in the selection model. The results were insignificant. Similarly, a dummy variable indicating membership in the president's party was also not significant.

Kim 2013); however, the findings reported in this chapter take the analysis a step further and show that male and female senators articulate significantly different viewpoints on these matters. Even after controlling for partisan differences, female senators were significantly more likely to use their floor time to advocate for women's issues and to raise concerns about how a potential Supreme Court justice might affect the progression of women's rights.

The data also seems to support my expectation that female senators would make the biggest difference in terms of direct women's issues during confirmation proceedings. Additional models revealed that female senators did not dedicate more of their floor time to addressing or advocating for traditional women's issues, civil rights issues, or privacy issues. These results therefore support the findings in the broader gender and politics literature that female officeholders make the biggest impact on issues that most directly relate to the lives of American women.

The data also seem to support the earlier observation that female senators were most active on women's issues during recent Republican nominations to the Court. While not displayed, when the analysis is broken down by each individual confirmation, the results show that female senators were most vocal about women's issues during the confirmation proceedings for Justices David Souter and John Roberts.²³ This again suggests that female senators may be more active on women's issues when they believe they are in a defensive position. Table 4.4 therefore reruns the models from Table 4.3, but includes an interaction term between female senators and Republican nominations to the Court. The results show that female senators are much more concerned about women's issues when faced with a

²³ Models 2 and 4 were run for each individual nomination. The female variable in the outcome model was positive and significant at the .05 level in both models for the Roberts confirmation. The variable was also significant at the .10 level in Model 4 for the Souter confirmation. Model 2 was unable to run for the Sotomayor confirmation. The female variable was insignificant in all of the remaining models.

Republican nominee, as the female/Republican nominee interaction term is large and statistically significant in all four models. These findings suggest that the impact of female senators during the confirmation process may be contingent upon partisan considerations.²⁴

Table 4.4: Female Senators During Republican Nominations to the Court

| Variable | Model 1: All Women's Issues | Model 2: Pro Statements for All Women's Issues | Model 3: Direct Women's Issues | Model 4: Pro Statements for Direct Women's Issues |
|---------------------------------------|-----------------------------|--|--------------------------------|---|
| Female | -2.008 (2.265) | 2.121 (2.328) | -2.290 (3.012) | 2.033 (1.646) |
| Democrat | 3.186 (5.660) | 10.772*** (3.782) | -.509 (3.181) | 4.335** (1.729) |
| Female/Republican Nominee Interaction | 16.380*** (4.500) | 15.046*** (4.608) | 10.186* (4.293) | 7.430** (3.490) |
| Constant | 17.930*** (3.156) | 5.870*** (.816) | 8.679** (4.293) | 1.727 (1.557) |
| <i>Selection Model</i> | | | | |
| Female | .397 (.346) | .397 (.346) | .393 (.346) | .394 (.344) |
| Judiciary Committee Member | .998*** (.230) | .998*** (.229) | .997*** (.235) | .996*** (.234) |
| Party Leader | 1.368*** (.260) | 1.360*** (.254) | 1.354*** (.255) | 1.361*** (.262) |
| Reelection | .020 (.091) | .021 (.093) | .029 (.091) | .029 (.091) |
| Freshman | -.198 (.132) | -.205 (.134) | -.211 (.136) | -.203 (.133) |
| Constant | -.113 (.237) | -.112 (.240) | -.113 (.239) | -.114 (.242) |
| N | 500 | 500 | 500 | 500 |
| Log Likelihood | -1493.663 | -1443.937 | -1416.268 | -1309.88 |

Note: Cell entries are Heckman coefficients with standard errors in parentheses. *** indicates significance at the $p \leq .01$ level; ** denotes significance at the $p \leq .05$ level; *denotes significance at the $p \leq .10$ level. Standard errors are clustered by nomination.

²⁴ Once again, neither the female variable nor the female/Republican nominee interaction term were significant when looking at civil rights or privacy issues.

What Women Had to Say

The evidence suggests that female senators did make a difference in the confirmation proceedings under investigation. While all senators were talking about women's issues in their floor statements, female senators were saying substantively different things. Specifically, women were more likely to speak positively about women's issues, praising the existing protections in these areas and calling for greater equality in the future.

On several occasions, female senators unequivocally spoke as women and even expressed a duty to work on behalf of all females in America. As Senator Barbara Boxer (D-CA) stated during John Roberts's confirmation:

The role of the women senators is very important. Women across America are counting on us to stand up, to ask questions, and to get the answers. When we vote on this nomination, it must be an informed vote either yes because we believe he will protect our rights and freedoms or no because we have not been convinced. (*Congressional Record*, September 12, 2005: S9910)

Throughout the course of the Roberts confirmation, a number of female Democratic senators even joined together and created a website for the public to have input in the confirmation proceedings. While the purpose of the site was to allow any concerned citizen to submit questions about the nominee, the female senators framed their intentions in a broader historical narrative about inclusion and access. As Senator Barbara Mikulski (D-MD) explained:

Before the Senate left for its August break, I joined with six of my Democratic women colleagues to launch a website allowing Americans to have a voice in the confirmation process. The American people have a right to be part of the process and let the Senate know what they want Judge Roberts to answer. And we want them at the table. We want them to feel included and have the chance to participate. The Democratic women launched a Web site to allow them that opportunity. We remember how we were shut out during the judicial proceedings on Clarence Thomas. There were no women on the Judiciary Committee. Now there are. But we know what it is like not to have a seat at the table. We know what it is like not to be able to raise our questions. (*Congressional Record*, September 12, 2005: S9908)

Senator Mikulski expressed similar sentiments during Souter's confirmation several years earlier. In this confirmation, Mikulski highlighted the nominee's evasiveness on women's issues, noting:

I have no doubt that Judge Souter is professionally competent. Nor do I question his personal integrity. But I cannot cast my vote to confirm a man who has been silent, vague, or evasive every time he has been asked if he would uphold fundamental constitutional rights—rights of concern to every American and particularly of concern to America's women...Mr. President, women were not even allowed to vote in this country until 1920. Only 16 women have ever stood on the floor of this Chamber as a U.S. Senator. Only in the last generation have many women truly started to gain control over their lives, their careers, and their families. And we still have far to go. We have worked too hard and come too far to accept silence and evasion from a Supreme Court nominee. (*Congressional Record*, October 2, 1990: S14363)

In addition to providing evidence of a female senator acting as a surrogate for a larger constituency of women, Senator Mikulski's statement is also potentially informative in regard to the findings in Chapter Three. The statistical findings there suggest that female senators weigh nominees' judicial philosophy more heavily than male senators. This ideological primacy is noted in the first sentences of Mikulski's statement, and is explained as being rooted in her deep concern over the future of women's rights in America.

Conclusion

The content analysis in this chapter—which includes floor statements made during five Supreme Court confirmations spanning the course of three decades—provides support for the assertion that female senators actively work as advocates for women's issues during the confirmation process. Taken as a whole, the evidence in this chapter suggests that female senators do make a difference when it comes to floor consideration of Supreme Court nominees. Women's issues are a popular talking point during confirmation proceedings, and

no one group has a monopoly on these topics. However, upon further investigation it becomes clear that female senators are adding a unique perspective to these conversations. Female senators dedicated more of their floor time to articulating pro policy positions on issues that affect the lives of American women, particularly when faced with a Republican nominee. In many instances, these statements involved female senators speaking first and foremost as women, and on behalf of a larger women's constituency.

These findings offer insight into the levels of intensity that male and female senators have regarding women's issues, and may even help better explain the voting differences uncovered in Chapter Three. Chapter Five—the final empirical chapter of this work—will continue along these lines by exploring potential gender differences within the Senate Judiciary Committee.

CHAPTER 5

Inside the Senate Judiciary Committee

During the fallout from the Clarence Thomas-Anita Hill controversy, the National Women's Political Caucus took out a full-page advertisement in the *New York Times* posing one simple question: "What if fourteen women, instead of fourteen men, had sat on the Senate Judiciary Committee during the Clarence Thomas confirmation hearings?" (Burrell 1994, qtd. in Swers 2002: 89). The advertisement was expressing a common belief at that time—that the lack of women on the Senate Judiciary Committee compromised its ability to consider the proposed allegations of sexual harassment. The underlying assumption was that the lack of women's descriptive representation during the confirmation hearings must have meant that women's substantive interests were not represented. In an effort to do damage control in the aftermath of the controversy, some members of the Senate scrambled to address this glaring gender imbalance. Then chairman of the Judiciary Committee, Senator Joseph Biden (D-DE), allegedly proclaimed, "Come hell or high water, there will be women on that committee," and he ultimately succeeded in convincing party leadership to take the unusual step of increasing the size of the committee in order to accommodate new female members (Arnold and King 2002: 286).

In the following 103rd Congress, female senators Dianne Feinstein (D-CA) and Carol Moseley-Braun (D-IL) both joined the Judiciary Committee, and since that time the committee has consistently had at least one female member. While women's descriptive

representation on the committee has clearly increased, little empirical work has asked if gender diversity on the committee actually affects the representation of women's substantive group interests. This chapter will explore this question by looking inside the Senate Judiciary Committee. The analysis will be structured as a case study that examines male and female senators' actions during the confirmation hearing for Chief Justice John Roberts. I will then compare these deliberations to the floor consideration of the nominee to see if discussions of women's issues systematically vary between these two stages of the confirmation process. The results suggest that female senators do act as champions of women's issues during confirmation hearings, and that the scarcity of women on the Senate Judiciary Committee may influence how women's issues are discussed throughout committee deliberations.

The Importance of Committees

Committees have long been recognized as a central feature of the policy-making process within the United States Congress. The committee system creates a division of labor that allows individual members to develop policy expertise in a given area, work for targeted benefits for his or her constituents, and ultimately claim credit for beneficial policy actions within the committee's jurisdiction—all activities that aid a member of Congress's electoral aspirations (Mayhew 1974). Committee members are also given an insider's advantage when it comes time to legislating on an issue within their committee's domain. Membership on a relevant committee gives members of Congress certain informational advantages and institutional resources, benefits that lower the cost of entry that officeholders must pay when they decide to take an active role in a particular legislative matter (Hall 1996). Furthermore, not only do committee members have advantages during the early phases of the policy-

making process, they are also more likely to have the last say in policy deliberations through their involvement at the conference stage (Shepsle and Weingast 1987).

Women in the Committee System

While the committee system is a fundamental building block of the legislative process, relatively few studies have looked at the behavior or potential influence of female officeholders at this stage of policy development. Studies have found that women bring a different social dynamic to the committee process and exhibit less aggressive speech patterns during committee deliberations. Kathlene (1994), for example, found that female committee chairs spoke fewer words, took fewer turns, and made fewer interruptions than their male counterparts. Similarly, Rosenthal (1998) surveyed committee chairs from all fifty state legislatures and found that female chairs saw themselves as more affectionate and team-oriented leaders. Female committee chairs were also more people-oriented, and were more likely to be motivated by integrative leadership approaches, such as coalition building and bringing people together.

Another line of research has focused on the importance of gender during the committee assignment process. Studies in this area have found that female House members are not at a disadvantage when it comes to attaining valuable committee portfolios (Friedman 1996). In fact, some studies have even found evidence that women in the House of Representatives actually have more success at attaining prestigious committee assignments than their male counterparts (Gertzog 1995). By contrast, studies in the U.S. Senate have found that female members of that chamber are not the beneficiaries of better-than-average committee portfolios (Arnold and King 2002). Beyond a few rare instances where female senators were successful at quickly navigating the institutional hierarchy (such as the historic

class of 1992), generally male and female senators appear to be on equal footing when it comes to securing highly coveted committee positions.

However, the abovementioned studies looked at the overall prestige of committee portfolios (usually by relying on Stewart and Groseclose's Committee Power Index). In a 2003 article, Frisch and Kelly used an alternative approach and compared House members' committee requests to their final committee assignments. This technique allowed the authors to consider individual representative's personal preferences. Unlike the previous studies, here it was found that congresswomen of both parties were at a disadvantage in attaining their preferred committee assignments. These gender differences were particularly prevalent between male and female Republican House members.²⁵

Findings are also mixed over whether or not female officeholders seek out committee positions that better enable them to work on women's policy matters. Studies at the state level have found that women gravitate toward committees with jurisdiction over women's issues, and congresswomen appeared eager to take on these same representational duties at the national level (Thomas 1994; Carroll 2002). However, Frisch and Kelly's (2003) study found that congresswomen were not more likely to request seats on women's issue committees, and others have found that congresswomen have diverse committee portfolios that span a variety of policy domains (Arnold and King 2002).

²⁵ Interestingly, Frisch and Kelly attribute the relative success of Democratic congresswomen to the presence of female members on the party's Committee-on-Committees, access that their counterparts in the Republican Party were denied. Such evidence bolsters arguments about the importance of women's descriptive representation within institutional positions of power.

The Legislative Effect of Women in Committees

No matter how they get their seats, research has shown that committee assignments are crucial to female legislators' ability to substantively represent women's interests. By being placed on relevant committees, female legislators gain the institutional power and access to affect legislation in these areas. Studies at the state level have found that officeholders with seats on relevant committees are significantly more likely to introduce bills aimed at bettering the welfare of women and minorities (Bratton and Haynie 1999). Similarly, other studies have also found that female state representatives use their committee power to block bills that are viewed as hostile to women's interests, such as legislation aimed at restricting abortion rights (Berkman and O'Connor 1993).

Similar patterns have been found at the national level. In her study of the 103rd and 104th Congresses, Swers found that female members of Congress were more likely than male members to use their committee positions to advocate for women's interests, specifically by offering pro-feminist amendments during committee markups and floor debates (2002).

In her 2002 study, Norton showed that congresswomen's presence on committees and subcommittees with jurisdiction over reproductive and welfare reform policies (such as the Appropriations, Commerce, Judiciary, and Education and the Work Force Committees) greatly increased after the 103rd Congress. Importantly, as women's descriptive representation on these committees increased, so too did the substantive representation of women's interests. Norton's study further revealed that congresswomen have been particularly successful at gaining and using seats on pertinent conference committees to steer the direction of reproductive policies. Between the 90th and 102nd Congresses, women sat on only 5.5% of conference committees dealing with reproductive policy matters. However, between the 103rd and 105th Congresses, this number jumped to 83.7%. This increased

presence allowed women to have a say later in the policy-making process, and greatly enhanced their ability to impact final policy outcomes. As Norton explained:

When women held two or fewer seats on the conference committee, the position supported by committee women was likely to fail. Sixty-one percent of the conferences with two or fewer women could be counted as reproductive policy failures for women committee members. On the other hand, when women held three or more seats, on the conference committee, 72 percent could be counted as partial or complete success for committee women. (333)

The Senate Judiciary Committee

Such findings extend the purported connection between the descriptive and substantive representation of women to the committee level. If this relationship holds true, then a cursory glance at the Senate Judiciary Committee's membership may be a cause of concern. As shown in Table 5.1 and Figure 5.1, only six women have ever served on the Senate Judiciary Committee, and women's representation on the Committee has frequently lagged behind the proportion of women in the Senate. The first female committee member, Maryon Pittman Allen, was appointed to the Senate following the death of her husband in 1978 and served in the institution for only five months. Consistent female membership on the Committee only came in the aftermath of the Clarence Thomas controversy. The newest female senator on the Committee, Mazie Hirono (D-HI), took her seat at the beginning of the 113th Congress. Her addition brings the total number of female senators currently serving on the Committee up to three (accounting for almost 17% of the Committee's membership), the highest it has ever been.

Table 5.1: Female Members of the Senate Judiciary Committee

| Senator | Party Affiliation | Congress of Committee Membership |
|----------------------|-------------------|--------------------------------------|
| Maryon Pittman Allen | Democrat | 95 th |
| Dianne Feinstein | Democrat | 103 rd -113 th |
| Carol Moseley-Braun | Democrat | 103 rd |
| Maria Cantwell | Democrat | 107 th |
| Amy Klobuchar | Democrat | 111 th -113 th |
| Mazie Hirono | Democrat | 113 th |

Note: Information for this table was collected by perusing the Senate Judiciary Committee's membership page: <http://www.judiciary.senate.gov/about/PreviousCommitteeMembership.cfm>

Figure 5.1: Percent of Women on the Senate Judiciary Committee, 90th Congress-113th Congress



The scarce representation of women on the Senate Judiciary Committee is particularly troublesome considering the important place this committee holds in the American system of checks and balances. In addition to its regular committee functions, the

Senate Judiciary Committee also has the significant task of evaluating Supreme Court nominees. The committee does not usually exercise a gatekeeper function in this area (it almost always reports Supreme Court nominees to the full Senate); however, only two nominees have ever gone on to gain Senate confirmation after receiving an unfavorable recommendation from the committee (Rutkus and Bearden 2006).²⁶

In their efforts to evaluate potential Supreme Court justices, the committee holds public confirmation hearings, during which it receives testimonies from the nominees. While this was not always part of the confirmation process, every nominee since John Harlan in 1955 has appeared before the committee (History of the Senate Committee on the Judiciary). Today, Supreme Court confirmation hearings have become high-profile political events, yet relatively little academic attention has been devoted to exploring what actually happens in them. In their 1994 study, Guliuzza, Reagan, and Barrett conducted a content analysis of twenty-three Supreme Court confirmation hearings to examine the types of questions and commentaries senators made during committee deliberations. Their results revealed that constitutional matters (as opposed to questions about the nominee's character or competency) clearly dominated confirmation hearings. Somewhat surprisingly, the authors also found that this emphasis on constitutional matters was not unique to the post-Bork era. While Bork did receive a high level of constitutional questions (around 93% of all of the questions he received dealt with such matters), many other nominees—both before and after his nomination—had similar confirmation proceedings.

Ringhand and Collins (2010) also found that Bork's confirmation hearing was not all that different from others. In this study, the authors developed a new database that examined statements made during every Supreme Court confirmation hearing where a

²⁶ The two nominees were Stanley Matthews in 1881 and Lucius Lamar in 1888.

nominee was present since 1939.²⁷ Their results revealed that questions about a nominee’s judicial philosophy typically account for 10-20% of all comments, and Bork’s confirmation hearing fell within this normal range. The authors also found that, starting in the 1970s, civil rights issues have overwhelmingly been the dominant issue in these proceedings.²⁸ Since this time, matters related to civil rights accounted for at least one out of every five questions a nominee received (18). Within this category, questions dealing with racial discrimination have been the most prolific, accounting for almost a quarter of all civil rights comments. However, there is evidence that other issues are moving into the spotlight. Starting in the 1980s, the predominance of comments dealing with racial discrimination started to decline, while comments about discrimination on the basis of gender and sexual orientation have been steadily increasing.

Ringhand and Collins also considered whether or not the identity of a nominee affected confirmation hearings. Here, the authors presented significant evidence that female and minority Supreme Court nominees face substantively different confirmation proceedings than their white male counterparts. For example, senators engaged minority and female nominees with less “chatter” during their hearings (i.e., non-substantive verbal interactions). Senators also asked these nominees fewer questions about government operations, but significantly more questions about their personal judicial philosophies.

This chapter will further explore confirmation hearings through a gendered lens by comparing the actions of male and female senators. It is again expected that female senators

²⁷ In 1925, Harlan Stone appeared before the Senate Judiciary Committee to answer questions about his role in the Teapot Dome scandal. This was the first time a Supreme Court nominee was called to testify before the Committee. However, such testimonies did not become common practice until the mid-1950s, starting with President Eisenhower’s nomination of John Harlan. (History of the Senate Committee on the Judiciary).

²⁸ The authors based their coding on the Policy Agendas Project. As such, their civil rights category encompasses several sub-issues, including: abortion rights; freedom of speech and religion; voting rights; the right to privacy (non-abortion); and discrimination on the basis of race, age, physical ability, gender, and sexual orientation.

will act as advocates for women's substantive group representation. In addition, women's historical underrepresentation on the Senate Judiciary Committee is expected to have consequences in terms of how women's issues are handled during this stage of deliberations. First, given the salience of women's issues in the overarching political landscape, I expect that senators will devote proportionally more time to these matters in committee than they did during floor statements. Committee deliberations are the first examination of a nominee and, in a sense, are the nation's introduction to a potential Supreme Court justice. As such, I expect that committee members will use this opportunity to press the nominee on high-profile political issues that garner national interest, including women's issues. Second, as the results in Chapter Four revealed, male and female senators talked about direct women's issues at about the same rate during their floor statements, but women were systematically more likely to express support for these matters. Due to the low number of women on the Senate Judiciary Committee, I expect the conversations about direct women's issues at this stage to be more negative in tone than they were during floor debates.

***Hypothesis 1:** Women's issues will receive proportionally more attention during committee hearings than they did during floor statements.*

***Hypothesis 2:** Direct women's issue statements will be more negative in tone during the committee stage.*

Data and Methods

Unlike the previous studies in this area which looked at multiple hearings over time, this analysis will be structured as a case study that compares what happens in the confirmation hearing to what happens during floor consideration of a nominee. This approach will therefore highlight any potential differences in these two important steps of the confirmation process.

As such, the following analysis will focus on one nomination in depth—that of Chief Justice John Roberts. The Roberts nomination was chosen because it offers valuable analytical leverage with respect to women’s interests during the confirmation process. First, Roberts’s confirmation was the first one in history with a significant presence of female senators (Swers and Kim 2013). With fourteen women serving the Senate, Roberts’s nomination had double the number of female senators that were present during the preceding confirmation of Justice Stephen Breyer. Roberts’s nomination was also a historically significant one for American women. President Bush originally nominated Roberts to replace the first female member of the Court, Justice Sandra Day O’Connor. Roberts’s nomination therefore stood to decrease the gender balance on the Court. O’Connor herself lamented this loss of women’s representation on the bench when she remarked that Roberts was “good in every way, except he is not a woman” (Bumiller 2005). However, Roberts’s confirmation took an unexpected turn after the death of William Rehnquist, at which point President Bush withdrew Roberts’s nomination and then re-nominated him for the vacated chief justice position. Therefore, by the time the Senate hearings began, the stakes in this confirmation were particularly high. In addition, many women’s rights activists were concerned with the possibility of Roberts being placed into such a powerful position on the Court, as evidence in his background suggested that he was opposed, and even at times openly hostile, toward abortion rights and the enforcement of anti-discrimination laws (Swers 2009).

An in-depth analysis of Roberts’s confirmation will therefore allow me to discern if and when women’s rights advocates were able to voice their concerns during the confirmation proceedings. The comparison of the confirmation hearing to the floor consideration by the entire chamber will also juxtapose two settings in which women had

noticeably different levels of descriptive representation. Of the fourteen women in the Senate at that time, Senator Dianne Feinstein (D-CA) was the only one on the Judiciary Committee, putting women's representation on the committee at around 5.5%.

The following analysis includes all verbal statements senators made during the confirmation hearing. This includes each senator's opening remarks, as well as statements made during both rounds of questioning of the nominee. To conduct the content analysis, I employed the same coding rubric described in the previous chapter. This research design therefore offers some natural controls—the same nominee, the same coding rubric, and nearly identical partisan breakdowns—which aid in the comparison between the hearing and floor stages of the confirmation process.

Women's Issues During Roberts's Confirmation Hearing versus Floor Statements

As displayed in Table 5.2, more substantive words were spoken about John Roberts during his confirmation hearing than during floor consideration of the nominee (117,603 substantive words in committee compared to 102,355 substantive words on the floor). These results reflect the overall importance of the committee hearings and the vital role that committee members play during the confirmation deliberations.

As expected, the results also reveal that women's issues garnered more attention during Roberts's confirmation hearing than they did during the floor debates. Every coded issue category was discussed at a higher rate during this earlier stage of the confirmation process. The biggest difference was with direct women's issue statements, which accounted for 8.4% of all substantive floor statements but 12.2% of all substantive words during the hearing. Traditional women's issues also received noticeably more attention in committee than on the floor, 4.8% of substantive statements compared to 1.1%. The other two issue

categories were also discussed more in committee, although at rates closer to their floor proportions (15% compared to 13% for civil rights issues and 3.7% compared to 3% for privacy issues).

Table 5.2: Percent of Substantive Words Dealing with Women’s Issues During Roberts’s Confirmation Hearing versus Floor Statements

| | Confirmation Hearing Total Substantive Words: 117, 603 | Floor Statements Total Substantive Words: 102,355 |
|------------------------------------|--|---|
| Direct Women’s Issues: | | |
| Pro | 7.9% | 6.2% |
| Con | 3.1% | 0.6% |
| Neutral | 1.2% | 1.5% |
| Total | 12.2% | 8.4% |
| Traditional Women’s Issues: | | |
| Pro | 4.4% | 0.7% |
| Con | 0.1% | 0.1% |
| Neutral | 0.2% | 0.4% |
| Total | 4.8% | 1.1% |
| Civil Rights Issues: | | |
| Pro | 11.6% | 11.0% |
| Con | 1.7% | 0.1% |
| Neutral | 1.7% | 1.9% |
| Total | 15.0% | 13.0% |
| Privacy Issues: | | |
| Pro | 2.5% | 2.7% |
| Con | 0.2% | 0.1% |
| Neutral | 1.0% | 0.2% |
| Total | 3.7% | 3.0% |

Note: All differences are significant at the .01 or .05 level under a two-sample test of proportions.

These findings therefore provide support for hypothesis 1. Again, I anticipated these results due to the high-profile nature of many specific women’s issues. Confirmation hearings are highly watched political events, thereby giving committee members an ideal platform from which to tackle prominent national issues. There is some evidence that this logic was at play during Roberts’s confirmation hearing. For instance, Senator Arlen Specter (R-PA), then chairman of the Senate Judiciary Committee, kicked off the first round of questioning of the nominee by stating:

Judge Roberts, there are many subjects of enormous importance that you will be asked about in this confirmation hearing, but I start with the central issue which perhaps concerns most Americans, and that is the issue of a woman's right to choose and *Roe v. Wade*. (*Confirmation Hearing on the Nomination of John G. Roberts*: 141)

As displayed in Table 5.3, many senators on the Committee followed suit and touched on women's issues during the confirmation hearings. The most popular issue areas were civil rights and direct women's issues. In fact, nearly every committee member spoke about these two issues at some point throughout the deliberations (with the exception of Chuck Grassley (R-IA) who did not speak about direct women's issues and Russ Feingold (D-WI) who did not speak about civil rights).

There are also some interesting partisan differences that emerged. As shown in Table 5.3, every committee member spoke during the confirmation hearings. However, only slightly over half of those senators also spoke on the floor of the Senate. Republican committee members were much more likely to deliver a floor statement about John Roberts than were Democratic committee members, most likely due to partisan pressures to support and advocate for the president's nominee. It also appears that the increased attention women's issues received in committee was largely a result of Republican committee members' statements. As shown in Table 5.4, members of both parties talked about women's issues at a higher rate in committee than on the floor, but these differences were much larger for Republican senators. For example, Republicans devoted 6.2% of their substantive floor statements to direct women's issues, but nearly double that (11.9%) during committee deliberations. Again, I expect these differences are the result of the high-profile nature of many specific women's issues coupled with strong partisan pressures to defend the nominee on these grounds.

Table 5.3: Individual Senators' Statements During the Confirmation Hearing versus Floor Statements

| Senator | Direct Women's Issues: Confirmation Hearing | Direct Women's Issues: Floor Statements | Traditional Women's Issue: Confirmation Hearing | Traditional Women's Issues: Floor Statements | Civil Rights Issues: Confirmation Hearing | Civil Rights Issues: Floor Statements | Privacy Issues: Confirmation Hearing | Privacy Issues: Floor Statements |
|---------------|---|---|---|--|---|---------------------------------------|--------------------------------------|----------------------------------|
| Biden (D) | 43.8% | -- | 12.0% | -- | 4.0% | -- | 33.1% | -- |
| Brownback (R) | 22.0% | 7.4% | 2.5% | 0.0% | 17.7% | 0.0% | 4.4% | 0.0% |
| Coburn (R) | 8.5% | -- | 0.0% | --- | 1.9% | -- | 0.0% | -- |
| Cornyn (R) | 3.7% | 0.0% | 0.0% | 0.0% | 2.3% | 2.3% | 5.2% | 0.0% |
| Dewine (R) | 0.9% | 8.9 | 1.1% | 0.0 | 11.8% | 1.5 | 0.0% | 0.0 |
| Durbin (D) | 3.9% | 0.0 | 12.1% | 9.4 | 19.0% | 34.4 | 1.3% | 6.0 |
| Feingold (D) | 9.1% | -- | 0.0% | -- | 0.0% | -- | 17.3% | -- |
| Feinstein (D) | 49.3% | -- | 21.1% | -- | 21.3% | -- | 12.9% | -- |
| Graham (R) | 12.6% | -- | 0.9% | -- | 11.8% | -- | 0.0% | -- |
| Grassley (R) | 0.0% | -- | 0.0% | -- | 11.1% | -- | 0.0% | -- |
| Hatch (R) | 9.6% | 2.1% | 3.3% | 0.0% | 9.5% | 0.5% | 0.0% | 0.0% |
| Kennedy (D) | 10.3% | 12.3% | 4.8% | 1.6% | 92.3% | 56.9 | 0.9% | 0.0% |
| Kohl (D) | 10.4% | -- | 6.1% | -- | 7.4% | -- | 1.7% | -- |
| Kyl (R) | 2.1% | 1.9% | 5.5% | 0.0% | 0.2% | 0.8% | 2.2% | 0.0% |
| Leahy (D) | 11.6% | 5.1% | 6.1% | 9.8% | 5.8% | 4.0% | 1.5% | 2.6% |
| Schumer (D) | 10.7% | -- | 0.0% | -- | 12.4% | -- | 12.5% | -- |
| Sessions (R) | 14.7% | 0.8% | 1.7% | 0.0% | 14.9% | 0.6% | 0.0% | 0.0% |
| Specter (R) | 25.8% | 16.8% | 0.0% | 0.0% | 9.4% | 19.4% | 2.1% | 2.0% |

Note: Cell entries display the percent of a senator's substantive statements that were devoted to each issue-category. Totals for some senators add up to over 100% because sentences were multiple-coded if they touched on more than one topic.

**Table 5.4: Percent of Substantive Statements Devoted to Women’s Issues
In Committee and on the Floor, by Party**

| | Direct Women’s Issues | Traditional Women’s Issues | Civil Rights Issues | Privacy Issues |
|---|--------------------------------------|---------------------------------------|------------------------------------|---------------------------|
| Committee | | | | |
| % of Democratic Substantive Statements | 12.5% | 7.5% | 19.8% | 5.5% |
| % of Republican Substantive Statements | 11.9% | 1.8% | 10.0% | 1.8% |
| Floor | | | | |
| % of Democratic Substantive Statements | 10.8% | 2.3% | 20.8% | 5.1% |
| % of Republican Substantive Statements | 6.2% | 0% | 5.8% | 1.1% |

The findings also offer some (albeit more modest) evidence to support hypothesis 2. In addition to looking at the rate at which women’s issues were addressed, Table 5.2 also shows information about the tone of these statements. As expected, the conversation about direct women’s issues was significantly different in the committee setting, with a higher proportion of con statements directed towards these matters. During floor consideration of Roberts, con statements regarding direct women’s issues were only 0.6% of the substantive comments; yet, these statements accounted for over 3% of the substantive comments during the committee phase. However, some caveats are in order. First, given the limited scope of the data and research design, it is impossible to tell if these findings are simply the result of the increased attention Republicans gave these issues during the committee phase, or if an increased women’s presence on the committee would have affected these trends. In addition, at 3%, con/direct women’s issues were still a small portion of the overall substantive remarks, and pro/direct women’s issues were also more common in the committee hearings than they were during floor statements.

Like in the floor setting, many of the direct women’s issue statements in committee dealt with abortion and reproductive policy matters. The 1994 Violence Against Women Act, and the following *U.S. v. Morrison* case, were also common talking points. Several senators also used this opportunity to investigate evidence from Roberts’s past to glean some insight into his views on various women’s issues. Senators on the Democratic side of the aisle generally used this evidence to portray Roberts as a right-wing ideologue who was hostile towards women’s rights. For example, Democratic senators frequently cited memos that Roberts authored during his time in the Reagan administration, in which he seemingly called for less federal protection in the area of gender discrimination. As Senator Ted Kennedy (D-MA) explained:

In 1981, you supported an effort by the Department of Education to reverse 17 years of civil rights protections at colleges and universities that received Federal funds...As a result, more colleges and universities would legally be able to discriminate against people of color, women, and the disabled...You vehemently opposed the Civil Rights Restoration Act. Even after the *Grove City* Court found otherwise, you still believed that there was—and this is your quote—“a good deal of intuitive appeal to the argument that Federal loans and grants to students should not be viewed as Federal financial assistance to the university”...Judge Roberts, if your position prevailed, it would have been legal in many cases to discriminate in athletics for girls, women. (*Confirmation Hearing on the Nomination of John G. Roberts*: 174)

Another cause of concern for Democratic senators was a legal brief Roberts had written over a decade earlier, in which he articulated a conservative interpretation of Title IX protections. The brief was about the landmark case *Franklin v. Gwinnett County*. In this case, Franklin, a female high school student, attempted to use Title IX to seek monetary damages against her school district after allegedly being subjected to repeated sexual harassment and abuse by one of her teachers. Senator Patrick Leahy (D-VT) questioned Roberts about this case early in the first round of questioning:

Your brief that you wrote in 1991, when you were Kenneth Starr's political deputy. This was in *Franklin v. Gwinnett Public Schools*. Now, in that case, a girl, Christine Franklin, had been sexually harassed. She had been abused from the time she was in the 10th grade by a teacher and a sports coach. The school was aware of the sexual harassment but took no action, in fact they even encouraged her not to complain. The Office for Civil Rights at the Department of Education investigated and found her rights were violated under title IX of our civil rights law; she had been physically abused; her right to complain about gender discrimination had been interfered with. You argued that she had no right to damages for this abuse. Now, your view was rejected by the Supreme Court...So do you now personally agree with and accept as binding law the reasoning of Justice White's opinion in *Franklin*? (*Confirmation Hearing on the Nomination of John G. Roberts*: 156)

Republican senators attempted to rebut such criticisms by arguing that Roberts's views were not outside of the conservative mainstream. This strategy was employed by Senator Jeff Sessions (R-AL) in his discussion of the *Franklin* case. While the U.S. Supreme Court ultimately sided with Franklin and agreed that Title IX did allow for the award of monetary damages, Senator Sessions highlighted how this decision was not in line with the interpretation of the lower federal courts:

Senator Sessions: On the *Gwinnett* case, the Title IX, the women's education case, the position you took that would deny the right to sue a State entity, a government entity for money damages, was that not a position consistent with the position of the court of appeals that had written the only opinion on that subject?

Judge Roberts: Yes, that was the court of appeals position.

Senator Sessions: So you, in advocating that position, were expressing a view that was the view of the highest Federal court in the land at time?

Judge Roberts: Yes. (*Confirmation Hearing on the Nomination of John G. Roberts*: 230)

Sessions used this same strategy later in his statement, when he responded to Democrats' concerns over gender discrimination in the workplace and the related issues of pay equity and comparable worth. Again, the goal seemed to be to deflect criticisms by painting Democrats as liberal extremists, and thereby depicting Roberts as a moderate voice of reason on issues of women's rights.

Senator Sessions: With regard to the question of comparable work, I think Senator Feinstein was clear about this, but I would like to make it a little bit clearer. You have consistently favored equal pay for equal work, have you not, and did not President Reagan also favor that explicitly and openly?

Judge Roberts: Absolutely.

Senator Sessions: It is the question of this comparable worth theory that apparently one district court found in favor of, but that every circuit court and every other court that considered it, rejected it, that said that some body, some commission, I guess, would decide whether a secretary should be paid as much as a truck driver and make those kind of value judgment decisions. Is that not the difference between those two theories?

Judge Roberts: That's right. Yeah, there is no question of equal pay for equal work. It's the idea that someone should decide that different jobs are of comparable worth and that therefore they should be paid the same. And the district court adopted that approach, was reversed by the Ninth Circuit Court of Appeals in an opinion by then-Judge Anthony Kennedy.

Senator Sessions: That is right. I know he did right on that, and I think that the Sixth, Seventh, Tenth, and Ninth Circuits all rejected that idea, and frankly, it has not been heard from since. I am glad that you and President Reagan did not agree to that at the time. (*Confirmation Hearing on the Nomination of John G. Roberts: 232*)

The Impact of Dianne Feinstein

Women's issues therefore received a substantial amount of discussion throughout the course of Roberts's confirmation hearing; however, only one woman was actually present on the Senate Judiciary Committee to participate in the deliberations—Senator Dianne Feinstein (D-CA). While Feinstein did not speak on the floor of the Senate at all about Roberts's nomination, she was an active participant during his confirmation hearing, particularly when it came to issues affecting the well-being of women. As Table 5.3 reveals, Feinstein devoted proportionally more of her statements to direct and traditional women's issues than any other senator on the committee. Direct women's issues alone accounted for almost half of Feinstein's substantive remarks, and the other issue categories were also frequently mentioned during her statements (21.1% for traditional women's issues, 21.3%

for civil rights, and 12.9% for privacy issues).²⁹ All of her comments on these matters were either positive or neutral in tone, and she alone accounted for nearly 24% of all of the positive statements about direct women's issues during this stage of the confirmation process.

Figures 5.2 and 5.3 visually display the difference between Feinstein's remarks and those of her male colleagues on the Judiciary Committee. These "word clouds" are based on senators' opening statements for the confirmation hearing and depict the frequency of words by their size in the image (with more common words appearing larger).³⁰ Figure 5.2 includes opening statements for all senators on the committee minus Feinstein, while Figure 5.3 only includes Feinstein's opening remarks.

²⁹ The categories total over 100% because many of her statements were coded for multiple issues.

³⁰ These images were created by using Wordle (<http://www.wordle.net/>). When creating the images, I had the program remove common English words, such as "a", "an", and "the."

Figure 5.2: Opening Statements for Roberts’s Confirmation Hearing
(minus Feinstein)

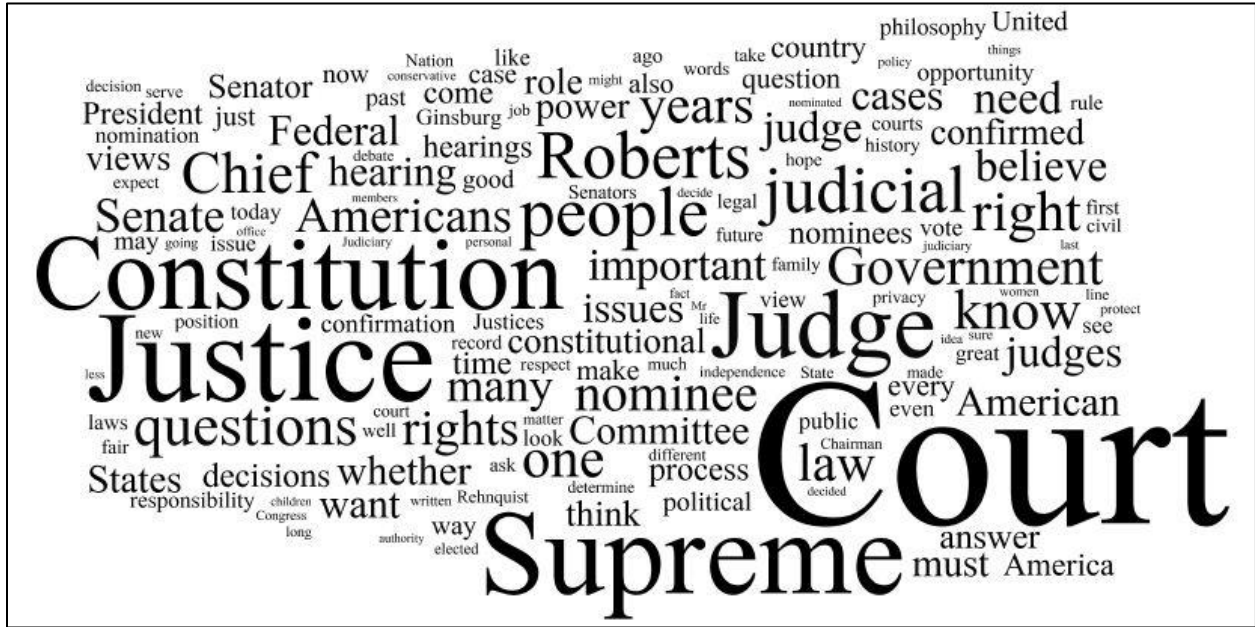
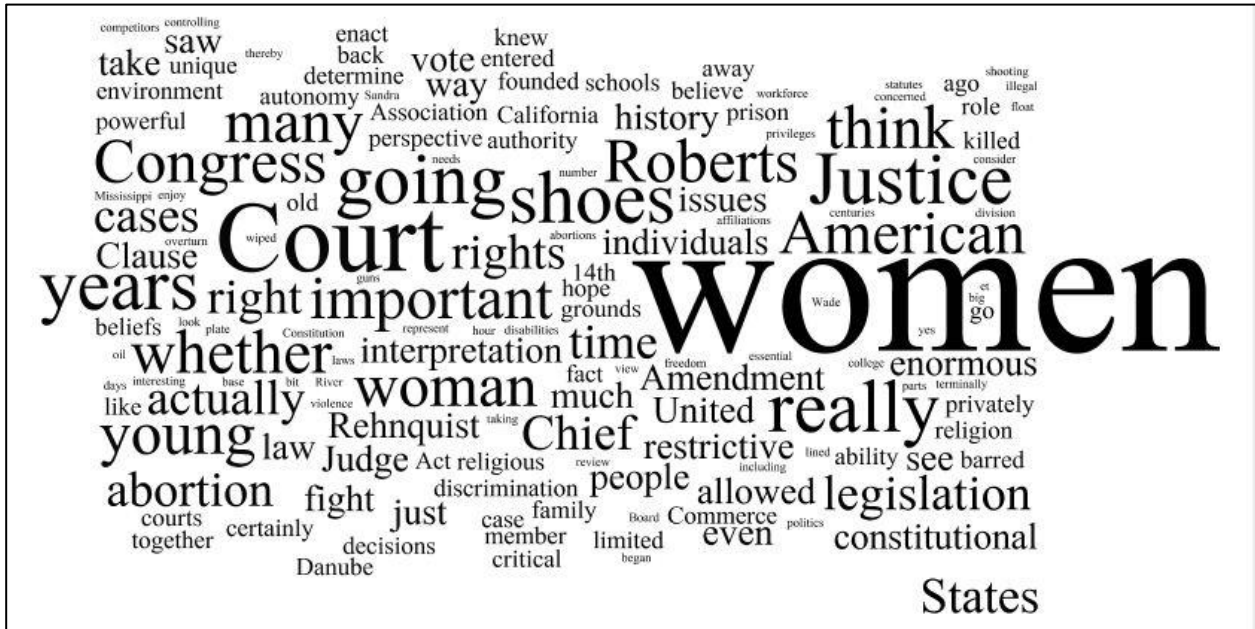


Figure 5.3: Feinstein’s Opening Statement for Roberts’s Confirmation Hearing



As the figures show, the opening statements by the male committee members were not overwhelmingly dominated by a theme of women’s issues. While the image includes several words we would expect to hear during a confirmation hearing (e.g., “Supreme”, “Court”, “Constitution”, “judge”, etc.) the words do not suggest a particular emphasis on the topics under investigation in this analysis. On the other hand, Feinstein’s image prominently displays several words that fall into the coded issue categories. For example, the large appearance of words like “women”, “woman”, and “abortion” suggest frequent commentary on direct women’s issues, while words like “family” and “school” indicate statements regarding traditional women’s issues.

There is also evidence that Feinstein felt a distinct obligation to represent women’s interests throughout the course of the hearing. As she clearly articulated halfway through her opening statement,

Now, as the only woman on this Committee, I believe I have an additional role in evaluating nominees for the Supreme Court, and that is to see if the hard-earned autonomy of women is protected. (*Confirmation Hearing on the Nomination of John G. Roberts*: 28)

Feinstein then went on to recall the history of gender discrimination in America—from battles over inheritance rights, child custody laws, women working outside the home, to the expansion of suffrage and reproductive freedoms. Throughout her statement, Feinstein frequently spoke on behalf of a national constituency of women. She acknowledged that women are a heterogeneous group, but she also emphasized the common past and heritage that tie American women together. In her words,

Like any population, women enjoy diverse opinions, beliefs, political affiliations, priorities, and values. And we share a history of having to fight for many of the rights and opportunities that young American women now take so much for

granted...By virtues of our accomplishments and our history, women have a perspective, I think, that has been recognized as unique and valuable. (*Ibid*)

Interestingly, at times, male senators on the Judiciary Committee attempted to challenge this idea of a collective women's identity by speaking on behalf of conservative women. For example, in his opening statement Senator Lindsey Graham (R-SC) commented,

My good friend from California [referring to Senator Dianne Feinstein] has expressed a view about *Roe v. Wade*, which I completely understand and respect. I can just tell you, Judge Roberts, there are plenty of women in South Carolina who have an opposite view about abortion. (*Confirmation Hearing on the Nomination of John G. Roberts: 66*)

Despite such challenges, Feinstein continued to speak as an authoritative voice for women throughout the course of the hearing. There is also evidence that her sense of sisterly-camaraderie extended to her female colleagues in the Senate. During Roberts's hearing, Feinstein took the unusual step of submitting written questions to the nominee on behalf of another female senator, Senator Barbara Mikulski (D-MD). This procedural maneuver essentially allowed a non-committee member to have a say in the confirmation hearing process. Interestingly, Senator Mikulski primarily used this opportunity to press the nominee on his views about women's rights. As the following examples demonstrate, Senator Milkulski raised a number of direct women's issues, including abortion, reproductive rights, and gender discrimination:

The *Griswold* decision and its progeny established the implied right of privacy in the Constitution. How would you use the provisions of the Constitution and its Amendments to the Constitution to support the right of privacy in other instances?

What kinds of facts and circumstances would you need in order to decide that there was a constitutionally protected right to privacy in the reproductive rights context?

Your testimony regarding a past memorandum about gender discrimination is unclear about the level of scrutiny you would give these types of cases. At the time that you wrote the memo, the Supreme Court had already concluded that gender was a suspect classification entitled to intermediate scrutiny. Yet your memo on this issue implies that even intermediate scrutiny should not be given to gender discrimination issues even though it was the law of the land at that time. Please describe specifically what your memo was advocating and why. (*Confirmation Hearing on the Nomination of John G. Roberts*: 624).

The small-N of women on the Senate Judiciary Committee, coupled with the fact that there has never been a Republican female committee member, makes it nearly impossible to quantitatively examine the influence of female senators during confirmation hearings in any rigorous way. However, the qualitative evidence presented here suggests that women are actively working to represent women's substantive group interests at this stage of the confirmation process. Throughout the course of Roberts's hearing, Senator Feinstein openly spoke for and as a woman. In addition, she also used her intuitional power and access to enable another woman (Senator Barbara Mikulski) to have a say during the committee deliberations. In the end, both of these women used their voices to provide substantive representation by speaking on behalf of American women at-large.

Conclusion

This chapter looked inside the Senate Judiciary Committee to see how women's issues are treated during this step of the confirmation process. By focusing on one nomination in-depth (that of John Roberts), I was able to directly compare the comments made within the committee setting to those made during floor consideration of the same nominee. The results reveal that, for the confirmation under investigation, women's issues received proportionally more attention during committee deliberations than they did on the floor of the Senate. Such findings were expected, given the prominence of many specific

women's issues in the overarching political landscape. The eagerness of committee members to tackle these high-profile issues early on in the confirmation deliberations is particularly intriguing given the low-level of female representation on the Senate Judiciary Committee. Apparently women's issues received greater consideration in a setting that was largely devoid of women. In addition, the absence of women's voices may have contributed to the somewhat more hostile tone these matters were met with during the committee stage.

Finally, the one woman who was on the committee—Senator Dianne Feinstein—clearly saw herself as the women's representative on the committee. She openly spoke on behalf of a national women's constituency, and she adamantly worked to advocate for women's issues throughout the course of the confirmation hearings. She even used her power as a committee member to give another female senator an opportunity to weigh in on the deliberations. While future studies will have to further examine these connections across various political and gender-balanced settings, the limited empirics in this chapter do seem to suggest that the presence of women on the Senate Judiciary Committee (or relative lack thereof) may impact the level of women's substantive representation during confirmation hearings for Supreme Court nominees.

CHAPTER 6

Conclusion

Of the 1,948 people who have served in the United States Senate since 1789, only forty-four have been women (Senators of the United States; Women in the U.S. Senate). While women's voices have been essentially absent in the nation's highest political institutions for much of American history, recent Congresses have seen an influx of female representatives. In the current 113th Congress, an all-time high of twenty women are serving in the U.S. Senate, nine of whom are leading committees (Steinhauer 2013). This recent increase in women's descriptive representation leads to questions about potential policy implications. Female senators—like other female officeholders—reportedly recognize the historical significance of their positions and feel a sense of obligation to work on behalf of women's substantive group interests. Whether it is waiting in line for one of the only two women's bathroom stalls near the Senate floor, or hearing from women who live outside of their state, female senators on both sides of the aisle have noted the challenges and responsibilities that come with helping break the political glass ceiling (*ibid*).

Decades of research have asked if the presence of female officeholders in pertinent governmental institutions matters. The majority of studies in this area conclude that female officeholders do make a difference, particularly when it comes to legislating in policy domains that directly or disproportionately impact the lives of American women. Yet, the breadth of this research is somewhat limited since an overwhelming majority of these studies

focus on the traditional policy-making process. This dissertation sought to expand this line of research by exploring potential connections between women's descriptive and substantive representation within a broader context of national governmental institutions and America's system of checks and balances. By focusing on confirmation proceedings for Supreme Court nominees, I was able to see if female senators use their power and access to indirectly advocate for women's issues in the judicial branch.

Summary of Dissertation

The empirical chapters in this work approached this question from three separate angles. Chapter Three looked at gender differences in confirmation voting. Previous research identified several factors that influence senators' chances of voting for a given Supreme Court nominee. Chief among these causes was ideological distance, with senators being significantly less likely to support nominees who do not share their ideological viewpoints. The professional qualifications and reputation of the nominee also matter, with highly-distinguished nominees facing easier confirmation battles. In addition, the relationship between ideological distance and the professional qualifications of a nominee has been found to be multiplicative in nature, as senators are particularly intolerant of lesser-qualified nominees who are ideologically incompatible with their own beliefs. Other institutional and political factors also come into play during confirmation voting. Strong presidents (i.e., presidents who are not in the final year of their term and whose party controls the Senate) have an easier time getting their nominees through the confirmation process. Finally, partisan politics also matter at the individual level, as senators of the president's party are more likely to vote in favor of confirmation.

While existing models on confirmation voting have highlighted relevant political and institutional factors that affect voting decisions, the literature has been criticized for ignoring the personal preferences of individual senators (Cameron, Cover, and Segal 1990). Chapter Three recognized such shortcomings and therefore proposed gender as an important individual-level characteristic that could influence the weighing of potential Supreme Court nominees. Since decades of research have found that female officeholders are more likely than their male counterparts to prioritize and advocate for women's issues, I theorized that female senators would be particularly concerned with the ideological characteristics of a potential Supreme Court justice.

To model this proposed relationship, I added an interaction term between gender and ideological distance. I then tested this theory in a dataset comprised of confirmation votes for forty Supreme Court nominations. The results revealed that female senators do weigh a nominee's ideological preferences more heavily than male senators. Additional analyses revealed that such gender differences are not merely the result of time period effects. Female senators have only recently entered the Senate in noticeable numbers, and modern confirmations have been thought to be a more ideological time in confirmation voting. Many scholars and commentators have speculated that Robert Bork's unsuccessful confirmation to the Court was the catalyst that ushered in this new ideological era. However, the results in Table 3.2 show that the gender/ideology interaction term remains significant even in post-Bork nominations. The final statistical model in Chapter Three further reveals that this focus on ideology is characteristic among female Democratic senators. While the female/ideology interaction term was significant and produced a substantially large coefficient in a model of Democratic senators, it was small and insignificant in a model of their Republican counterparts.

Chapter Three revealed that female senators (and particularly female Democratic senators) are strong ideological voters, but the results do not provide any insight into why. Chapter Four therefore looked at senators' floor statements in order to gain a better understanding of what issues senators were concerned with and how they explained their voting decisions. The analyses in Chapter Four include all floor statements that dealt with a nominated Supreme Court justice, starting with the day the president announced the nomination through the final confirmation vote. The data includes statements from five Supreme Court nominations, those of Sonia Sotomayor, John Roberts, Stephen Breyer, David Souter, and Sandra Day O'Connor. These cases were selected because they offer leverage on a range of theoretically interesting political and institutional arrangements.

Floor statements were then broken down into substantive and procedural comments. Procedural comments—those that were not about the pending nomination, but, rather, were about Senate business or an unrelated topic—were discarded from the analysis. The remaining substantive words were then analyzed to see if the remark pertained to a specific women's policy issue. Women's issues have been variously defined throughout the literature, so this work employed a coding rubric that included four-tiers of women's issues: direct women's issues (those that directly affect women as a constituency); traditional women's issues (those that disproportionately impact women due to prevailing gender roles and societal norms); civil rights issues (those that raise questions about the rights and freedoms of politically relevant social categories); and privacy issues (those that raise questions about Americans' constitutionally-protected right to privacy). As explained in Chapter Four, according to the extant literature, the strongest gender differences seem to emerge when legislators are presented with issues that directly affect women. Therefore, I expected to find the biggest gender effects in the direct women's issue category.

All women's issue statements were then coded in terms of policy stance. This layer of the content analysis provided more specific information about the views a senator was espousing. For each women's issue category, statements were coded as pro if the comment advocated for continued or expanded legal protections. By contrast, statements were coded as con if the senator articulated a stance that criticized protections in these areas, or were otherwise opposed to the rights of the group in question. Finally, statements were coded as neutral if a senator touched on one of the issue categories, but did not clearly state an opinion on the matter.

The final dataset included 271 floor statements and close to 550,000 substantive words. Initial glances at the data revealed that, for Republican nominations to the Court, female senators spoke at roughly the rate we would expect given their numbers in the Senate. However, women were noticeably quiet during Democratic confirmations. Descriptive statistics also revealed a similar pattern in regards to the types of statements senators made throughout the confirmation proceedings. In three confirmations—those of John Roberts, David Souter, and Sandra Day O'Connor—female senators dedicated a higher percent of their substantive statements to women's issues. However, once again, the nominations of Sonia Sotomayor and Stephen Breyer stood out. In these nominations female senators addressed women's issues at approximately the same or lower rate than their male counterparts. Since these were the two Democratic nominations in the dataset, I theorized that female senators might be more likely to speak about women's issues when the nominee is viewed as potentially hostile to these matters. The initial data also suggested that female senators were much more likely to speak positively about women's issues. Female senators frequently accounted for a disproportionate share of pro statements and a lower

than proportionate share of con statements, especially in the more recent nominations to the Court.

In order to more rigorously test these findings, I developed a Heckman selection model. This model was chosen in order to account for the censored nature of the dataset—after all, we can only analyze floor statements for senators who actually spoke on the floor of the Senate. The selection model included controls for factors that could affect a senator’s likelihood of making a floor statement—including membership on the Senate Judiciary committee, being a party leader, being up for reelection, gender, and freshman status. The outcome equation included controls for factors that could increase the amount of time a senator devotes to women’s issues throughout the course of his or her floor statements, including gender and partisanship. Table 4.3 displayed the results of this model in four separate datasets. The first two models looked at all coded women’s issues. The results from the first model revealed that party leaders and members of the Senate Judiciary Committee were significantly more likely to speak on the floor throughout confirmation proceedings. Neither of the variables in the outcome equation were significant in Model 1. However, Model 2 looked just at positive statements that dealt with women’s issues. Here the results revealed that female senators and Democrats dedicated more of their floor time to advocating for the protection of women’s substantive group interests. Similar results were found in Models 3 and 4, which only looked at direct women’s issues. Once again, members of the Judiciary Committee and party leaders were more likely to speak on the Senate floor. Women and Democrats did not dedicate more of their floor time to direct women’s issues overall, but they did dedicate more of their floor time to making pro/direct women’s issue statements than their Senate colleagues.

The final models in Chapter Four further explored the partisan dynamics of gender effects. Table 4.4 displayed the results of the same four models from Table 4.3, but this time included an interaction term between gender and Republican nominations to the Court. The results revealed that female senators are particularly concerned with women's issues when facing a Republican nominee. In these nominations, female senators dedicated more of their floor time to addressing and advocating for women's issues (including direct women's issues as well as women's issues overall). These results suggest that female senators are more vigilant and active in the area of women's rights when they feel a given nominee might be a potential threat to these issues.

Chapter Five, the final empirical chapter of this work, looked inside the Senate Judiciary Committee. While the scarcity of women on the Committee poses a significant challenge to rigorously studying gender effects at this stage, Chapter Five offered some insight into this matter by looking at one nomination (that of Chief Justice John Roberts) at different steps in the confirmation process. By employing the same coding rubric as in Chapter Four, I was able to directly compare the deliberations that took place in committee to those that occurred on the Senate floor. The results revealed that women's issues received proportionally more attention in the committee hearings than they did during senators' floor statements. Such findings confirmed my expectations that committee members would be eager to tackle high-profile issues, including women's issues, in this earlier and highly visible step of the confirmation process. Also as expected, the results revealed that the conversations about women's issues were more negative in tone in the committee setting, where proportionally fewer women were able to contribute to the discussions. Finally, the one woman on the Committee, Senator Dianne Feinstein (D-CA) was the strongest and most vocal advocate for women's issues throughout the confirmation hearings.

Implications and Suggestions for Future Research

Taken as a whole, the empirical findings in this dissertation offer support for those who argue that female officeholders make a difference. Time and time again, female senators differed from their male colleagues throughout the course of the confirmation proceedings. From actions at the committee stage down through final confirmation voting, female senators repeatedly stood out by acting as advocates for women's rights and interests.

This dissertation therefore extended the existing literature connecting the levels of women's descriptive and substantive representation to an interbranch context. While numerous previous studies have found that female officeholders are more likely to represent women's interests in the traditional policy-making process, this study replicated these findings in a broader framework of national political institutions and America's system of checks and balances. These findings highlight how the growing gender diversity in Congress should not be studied in isolation. Rather, the increasing levels of gender parity in the two chambers can have a ripple effect throughout the entire federal government.

Future work should continue along these lines to see if congresswomen are using other institutional crossroads to promote women's interests in the judicial and executive branches. For example, while this dissertation showed how female senators worked to represent women's substantive interests throughout the confirmation process, they might also be active during the earlier nomination process as well. Evidence suggests that such interbranch petitioning has happened at the Supreme Court level. After David Souter announced his retirement from the Court, Senators Barbara Boxer (D-CA) and Olympia Snowe (R-ME) sent a letter to President Obama urging him to nominate a woman. According to the female senators, "The most important thing is to nominate an exceptionally well-qualified, intelligent person to replace Justice Souter—and we are

convinced that person should be a woman” (Zeleny 2009). The senators went on to state that in order for the court to be relevant, it needed to be diverse and better reflect America (ibid).

As of now, little is known about the potential influence of congresswomen in the other branches of government, and several exciting questions remain unanswered: Do female senators represent women’s interests in other high-profile nominations and confirmations? Do congresswomen take a more active role on women’s issues during oversight hearings in general? Are female members of Congress more active on budgetary issues relating to women’s interests?

Conclusion

This dissertation set out to explore if and how the growing gender diversity in the United States Senate has impacted confirmation proceedings for potential Supreme Court justices. The results unequivocally show it has. Female senators consistently differed from their male colleagues and used their positions to champion women’s issues at every step throughout the confirmation process. While women are still far from attaining parity in the Senate, the progress they have already made has left a mark. Better understanding the implications of Congress’s increasing heterogeneity will be key for institutional scholars moving forward.

BIBLIOGRAPHY

- Arnold, Laura and Barbara King. 2002. "Women, Committees, and Institutional Change in the Senate" in *Women Transforming Congress*, ed. Cindy Rosenthal. Norman, OK: University of Oklahoma Press.
- Berke, Richard. 1991. "The Thomas Confirmation: Women Accusing Democrats of Betrayal." *New York Times*, October 17.
- Berkman, Michael and Robert O'Connor. 1993. "Do Women Legislators Matter? Female Legislators and State Abortion Policy." *American Politics Research* 21(1): 102-124.
- Bertrand, Marianne, Ester Duflo, and Senhil Mullainathan. 2004. "How Much Should We Trust Differences-in-Differences Estimates?" *Quarterly Journal of Economics* 119(1): 249-75.
- Binder, Sarah and Steven Smith. 1998. "Political Roles and Procedural Choice in the Senate." *Journal of Politics* 60(2): 398-416.
- Borger, Gloria, Ted Guest, and Jeannye Thorton. 1992. "The Untold Story." *U.S. News and World Report*. October 12.
- Box-Steffensmeier, Janet, Suzanna De Boef and Tse-min Lin. 2004. "The Dynamics of the Partisan Gender Gap." *American Political Science Review* 98(3): 515-528.
- Bradley, Jessica. 2009. "Female Senators Stand Up for Sotomayor; Witness List for Hearing Released." *Roll Call*, July 9.
- Brambor, Thomas, William Clark, and Matt Golder. 2006. "Understanding Interaction Models: Improving Empirical Analyses." *Political Analysis* 14: 63-82.
- Bratton, Kathleen and Kerry Haynie. 1999. "Agenda Setting and Legislative Success in State Legislatures: The Effects of Gender and Race." *Journal of Politics* 61(3): 658-679.
- Bumiller, Elizabeth. 2005. "Court in Transition: The President; An Interview By, Not With, The President." *New York Times*, July 21.
- Burns, Nancy, Kay Schlozman and Sydney Verba. 2001. *The Private Roots of Public Action: Gender, Equality, and Political Participation*. Cambridge: Harvard University Press.

- Calderia, Gregory and John Wright. 1998. "Lobbying for Justice: Organized Interests, Supreme Court Nominations, and United States Senate." *American Journal of Political Science* 42(2): 499-523.
- Cameron, Charles, Albert Cover, Jeffrey Segal. 1990. "Senate Voting on Supreme Court Nominees: A Neoinstitutional Model." *American Political Science Review* 84(2): 525-534.
- Canon, David. 1999. *Race, Redistricting and Representation: The Unintended Consequences of Black Majority Districts*. Chicago: University of Chicago Press.
- Carroll, Susan. 2002. "Representing Women: Congresswomen's Perceptions of their Representational Roles," in *Women Transforming Congress*, ed. Cindy Rosenthal. Norman, OK: University of Oklahoma Press.
- Congressional Record*. 1990. 101st Cong., 2nd sess.
- Congressional Record*. 2005. 109th Cong., 1st sess.
- Congressional Record*. 2009. 111th Cong., 1st sess.
- Cook, Elizabeth Adell and Clyde Wilcox. 1991. "Feminism and the Gender Gap—A Second Look." *Journal of Politics* 53: 111-22.
- Crowley, Jocelyn. 2004. "When Tokens Matter." *Legislative Studies Quarterly* 29: 108-136.
- DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith. 2012. *Income, Poverty, and Health Insurance in the United States: 2011*. Washington, D.C.: U.S. Government Printing Office. NTIS, P60-239.
- Dodson, Debra. 2006. *The Impact of Women in Congress*. Oxford: Oxford University Press.
- Dodson, Debra and Susan Carroll. 1991. *Reshaping the Agenda: Women in State Legislatures*. New Brunswick: Center for American Women and Politics.
- Dolan, Julie. 1998. "Support for Women's Interests in the 103rd Congress: The District Impact of Congressional Women." *Women and Politics* 18(4): 81-94.
- Dolan, Julie, 2008. "Running Against a Woman: Do Female Opponents Shape Male Candidate Behaviors?" *Social Science Quarterly* 89: 765-779.
- Dowd, Maureen. 1991. "The Thomas Nomination: Seven Congresswomen March to Senate to Demand Delay in Thomas Vote." *New York Times*. October 9.
- Epstein, Lee, Rene Lindstadt, Jeffrey Segal and Chad Westerland. 2006. "The Changing Dynamics of Senate Voting on Supreme Court Nominees." *Journal of Politics* 68(2): 296-307.

- Epstein, Michael, Richard Niemi and Lynda Powell. 2005. "Do Women and Men State Legislators Differ?" in *Women in Elective Office: Past, Present, and Future*. eds. Sue Thomas and Clyde Wilcox. New York: Oxford University Press.
- Fenno, Richard. 1989. "The Senate through the Looking Glass: The Debate over Television." *Legislative Studies Quarterly* 14(3): 313-348.
- Frankovic, Kathleen. 1977. "Sex and Voting in the U.S. House of Representatives: 1961-1975." *American Politics Research* 5: 315-330.
- Friedman, Sally. 1996. "House Committee Assignments of Women and Minority Newcomers, 1965-1994." *Legislative Studies Quarterly* 21(1): 73-81.
- Frisch, Scott and Sean Kelly. 2003. "A Place at the Table: Women's Committee Requests and Women's Committee Assignments in the U.S. House." *Women and Politics* 25(3): 1-26.
- Gertzog, Irwin N. 1995. *Congressional Women: Their Recruitment, Integration, and Behavior*. 2nd ed. Westport, CT: Praeger.
- Hall, Richard. 1996. *Participation in Congress*. New Haven: Yale University Press.
- Hawkesworth, Mary. 2003. "Congressional Enactments of Race-Gender: Toward a Theory of Race-Gendered Institutions." *American Political Science Review* 97(4): 529-550.
- Hill, Kim and Patricia Hurley. 2002. "Symbolic Speeches in the U.S. Senate and Their Representational Implications." *Journal of Politics* 64(1): 219-231.
- "History of the Senate Committee on the Judiciary."
<http://www.judiciary.senate.gov/about/history/index.cfm> (October 4, 2013).
- Huddy, Leonie, Erin Cassese and Mary-Kate Lizotte. 2008. "Gender, Public Opinion, and Political Reasoning," in *Political Women and American Democracy*, eds. Christina Wolbrecht, Karen Beckwith and Lisa Baldez. Cambridge: Cambridge University Press.
- Johnson, Timothy and Jason Roberts. 2005. "Pivotal Politics, Presidential Capital, and Supreme Court Nominations." *Congress and the Presidency* 32(1): 31-48.
- Kam, Cindy and Robert Franzese. 2007. *Modeling and Interpreting Interactive Hypotheses in Regression Analysis*. Ann Arbor: The University of Michigan Press.
- Kanter, Rosabeth Moss. 1977. "Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women." *American Journal of Sociology* 82(5): 965-990.
- Kanthak, Kristin and George Krause. 2010. "Valuing Diversity in Political Organizations: Gender and Token Minorities in the U.S. House of Representatives." *American Journal of Political Science* 54(4): 839-854.

- Kastellec, Jonathan, Jeffrey Lax, and Justin Phillips. 2008. "Public Opinion and Senate Confirmation of Supreme Court Nominees." Paper prepared for the 2008 annual meeting of the American Political Science Association, Boston. August 28-31.
- Kathlene, Lyn. 1994. "Power and Influence in State Legislative Policymaking: The Interaction of Gender and Position in Committee Hearing Debates." *American Political Science Review* 88 (3): 560-576.
- Kathlene, Lyn. 1995. "Alternative Views of Crime: Legislative Policymaking in Gendered Terms." *Journal of Politics* 57(3): 696-723.
- King, Gary, Michael Tomz, and Jason Wittenburg. 2000. "Making the Most of Statistical Analyses: Improving Interpretation and Presentation." *American Journal of Political Science* 44(2): 347-361.
- Kaufmann, Karen and John Petrocik. 1999. "The Changing Politics of American Men: Understanding the Sources of the Gender Gap." *American Journal of Political Science* 43(3): 864-887.
- Krutz, Glen, Richard Fleisher, and Jon Bond. 1998. "From Abe Fortas to Zoe Baird: Why Some Presidential Nominations Fail in the Senate." *American Political Science Review* 92(4): 871-882.
- Leader, Shelia Gilbert. 1977. "The Policy Impact of Elected Women Officials," in *The Impact of the Electoral Process*, eds. Louis Maisel and Joseph Cooper. Beverly Hills: Sage Publications.
- Levin, Carl. 2005. "Senator Carl Levin's Senate Floor Statements on His Vote in Favor of the Confirmation of Judge John G. Roberts to the U.S. Supreme Court." September 27. <http://www.levin.senate.gov/newsroom/press/release/?id=c10f1096-bb0d-4e93-a8e8-ee9515551e67> (October 4, 2013).
- Lupia, Arthur and Matthew McCubbins. 1994. "Learning from Oversight: Fire Alarms and Police Patrol Reconstructed." *Journal of Law, Economics, and Organization* 10: 96-125.
- Maltzman, Forrest and Lee Sigleman. 1996. "The Politics of Talk: Unconstrained Floor Time in the U.S. House of Representatives." *Journal of Politics* 58(3): 819-830.
- Mansbridge, Jane. 1999. "Should Blacks Represent Blacks and Women Represent Women? A Contingent 'Yes'." *Journal of Politics* 61(3): 628-657.
- Martinek, Wendy, Mark Kemper and Steven Van Winkle. 2002. "To Advice and Consent: The Senate and Lower Federal Court Nominations: 1997-1998." *Journal of Politics* 64(2): 337-361.
- Mattei, Laura Winsky. 1998. "Gender and Power in American Legislative Discourse." *Journal of Politics* 60(2): 440-461.
- Mayhew, David. 1974. *Congress: The Electoral Connection*. New Haven: Yale University Press.
- McCarty, Nolan, Keith Poole, and Howard Rosenthal. 1997. *Income Redistribution and National Politics*. Washington, D.C.: AEI Press.

- Mendez, Jeanette Morehouse and Tracy Osborn. 2010. "Gender and the Perception of Knowledge in Political Discussion." *Political Research Quarterly* 63(2): 269-279.
- Mezey, Susan Gluck. 2003. *Elusive Equality: Women's Rights, Public Policy, and the Law*. Boulder, Colorado: Lynne Rienner Publishers.
- Minta, Michael. 2009. "Legislative Oversight and the Substantive Representation of Black and Latino Interests in Congress." *Legislative Studies Quarterly* 34(2): 193-218.
- Moraski, Byron and Charles Shipan. 1999. "The Politics of Supreme Court Nominations: A Theory of Institutional Constraints and Choices." *American Journal of Political Science* 43: 1069-1095.
- Nagler, Jonathan. 1991. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review* 85(4): 1393-405.
- Nixon, David and David Goss. 2001. "Confirmation Delay for Vacancies on the Circuit Courts of Appeals." *American Politics Research* 29(3): 246-274.
- Norton, Noelle. 2002. "Transforming Policy from the Inside: Participation in Committee," in *Women Transforming Congress*, ed. Cindy Rosenthal. Norman, OK: University of Oklahoma Press.
- Osborn, Tracy and Jeanette Morehouse Mendez. 2010. "Speaking as Women: Women and Floor Speeches in the Senate." *Journal of Women, Politics, and Policy* 31(1):1-21.
- Pennock, James. 1979. *Democratic Political Theory*. Princeton: Princeton University Press.
- Phillips, Anne. 1991. *Engendering Democracy*. University Park, Pennsylvania: The Pennsylvania State University Press.
- Pitkin, Hanna. 1967. *The Concept of Representation*. Berkeley: University of California Press.
- Policy Agendas Project. <http://www.policyagendas.org> (October 4, 2013).
- Primo, David, Matthew Jacobsmeier, and Jeffrey Milyo. 2007. "Estimating the Impact of State Policies and Institutions with Mixed-Level Data." *State Politics and Policy Quarterly* 7(4): 446-459.
- Reingold, Beth. 1992. "Concepts of Representation among Female and Male Legislators." *Legislative Studies Quarterly* 17(4): 509-537.
- Ringhand, Lori and Paul Collins. 2010. "May It Please the Senate: An Empirical Analysis of the Senate Judiciary Committee Hearings of Supreme Court Nominees, 1939-2009." UGA Legal Studies Research Paper Number 10-12.
- Rohde, David and Kenneth Shepsle. 2007. "Advising and Consenting in the 60-Vote Senate: Strategic Appointments to the Supreme Court." *Journal of Politics* 69(3): 664-677.

- Rosenthal, Cindy Simon. 1998. *When Women Lead: Integrative Leadership in State Legislatures*. New York and Oxford: Oxford University Press.
- Ruckman, P.S. 1993. "The Supreme Court: Critical Nominations, and the Senate Confirmation Process." *Journal of Politics* 55(3): 793-805.
- Rutkus, Denis and Maureen Bearden. 2006. "Supreme Court Nominations, 1789-2005: Actions by the Senate, the Judiciary Committee, and the President." CRS Report for Congress. Order Code RL 33225.
- Sanbonmatsu, Kira. 2006. *Where Women Run: Gender and Party in the American States*. Ann Arbor: University of Michigan Press.
- Schneider, Edward V. and Bartram Gross. 1993. *Legislative Strategy: Shaping Public Policy*. New York: St. Martin's Press.
- Segal, Jeffrey. 1987. "Senate Confirmation of Supreme Court Justices: Partisan and Institutional Politics." *Journal of Politics* 49(4): 998-1015.
- Segal, Jeffrey, Charles Cameron, and Albert Cover. 1992. "A Spatial Model of Roll Call Voting: Senators, Constituents, Presidents and Interest Groups in Supreme Court Confirmations." *American Journal of Political Science* 36(1): 96-121.
- "Senate Legislative Process."
http://www.senate.gov/legislative/common/briefing/Senate_legislative_process.htm
 (October 4, 2013).
- "Senators of the United States: 1789-Present."
<http://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf> (October 4, 2013).
- Shapiro, Robert and Harpreet Mahajan. 1986. "Gender Differences in Policy Preferences: A Summary of Trends from the 1960s to the 1980s." *Public Opinion Quarterly* 50:42-61.
- Shepsle, Kenneth and Barry Weingast. 1987. "The Institutional Foundations of Committee Power." *American Political Science Review* 81(1): 85-104.
- Shipan, Charles. 2008. "Partisanship, Ideology, and Senate Voting on Supreme Court Nominees." *Journal of Empirical Legal Studies* 5(1): 55-76.
- Shipan, Charles and Megan Shannon. 2003. "Delaying Justice(s): A Duration Analysis of Supreme Court Confirmations." *American Journal of Political Science* 47(4): 654-668.
- Shipan, Charles, Brooke Thomas Allen, and Andrew Bargan. "Choosing When to Choose: Explaining the Duration of Presidential Supreme Court Nomination Decisions." *Congress and the Presidency*. Forthcoming.

- Sinclair, Barbara. 1985. "Agenda Control and Policy Success: Ronald Reagan and the 97th House." *Legislative Studies Quarterly* 10(3): 291-314.
- Sinclair, Barbara. 1986. "The Role of Committees in Agenda Setting in the U.S. Congress." *Legislative Studies Quarterly* 11(1): 35-45.
- Smith, Steven. 1995. *The American Congress*. Boston: Houghton Mifflin.
- Smith, Steven and Marcus Flathman. 1989. "Managing the Senate Floor: Complex Unanimous Consent Agreements since the 1950s." *Legislative Studies Quarterly* 14(3): 349-374.
- Stabenow, Debbie. 2005. "U.S. Senator Debbie Stabenow Statement on the Nomination of John Roberts to Be Chief Justice of the Supreme Court." September 23.
<http://votesmart.org/public-statement/125821/us-senator-debbie-stabenow-statement-on-the-nomination-of-john-roberts-to-be-chief-justice-of-the-supreme-court/?search=roberts>
 (June 26, 2013).
- Steinhauer, Jennifer. 2013. "Once Few, Women Hold More Power in Senate." *New York Times*, March 21.
- Supreme Court Database. <http://scdb.wustl.edu> (October 5, 2013).
- Swers, Michelle. 1998. "Are Congresswomen More Likely to Vote for Women's Issue Bills Than Their Male Colleagues?" *Legislative Studies Quarterly* 23: 435-448.
- Swers, Michelle. 2002. *The Difference Women Make: The Policy Impact of Women in Congress*. Chicago: University of Chicago Press.
- Swers, Michelle. 2009. "Gender and the Politics of Supreme Court Nominations". Presented at the Annual Meeting of the Midwest Political Science Association, Chicago. April 2-5, 2009.
- Swers, Michelle, and Christine Kim. 2013. "Replacing Sandra Day O'Connor: Gender and the Politics of Supreme Court Nominations." *Journal of Women, Politics & Policy* 34: 23-48.
- Tatalovich, Raymond and David Schier. 1993. "The Persistence of Ideological Cleavage in Voting on Abortion Legislation in the House of Representatives, 1973-1988." *American Politics Quarterly* 21: 125-139.
- Tate, Katherine. 2003. *Black Faces in the Mirror: African Americans and Their Representatives in the U.S. Congress*. Princeton: Princeton University Press.
- Thomas, Sue and Susan Welch. 1991. "The Impact of Gender on Activities and Priorities of State Legislators." *Western Political Quarterly* 44(2): 445-456.
- U.S. Congress. Senate. Committee on the Judiciary. 2005. *Confirmation Hearing on the Nomination of John G. Roberts, JR. to be Chief Justice of the United States*. 109th Cong., 1st sess., 12-15 September.

- Vega, Arturo and Juanita Firestone. 1995. "The Effects of Gender on Congressional Behavior and the Substantive Representation of Women." *Legislative Studies Quarterly* 20(2): 213-222.
- Welch, Susan. 1985. "Are Women More Liberal than Men in the U.S. Congress?" *Legislative Studies Quarterly* 10(1): 125-134.
- Weldon, S. Laurel. 2002. "Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policymaking." *Journal of Politics* 64(4): 1153-1174.
- Whitby, Kenny. 1998. *The Color of Representation: Congressional Behavior and Black Interests*. Ann Arbor: University of Michigan Press.
- Whitney, Catherine. 2000. *Nine and Counting: The Women of the Senate*. New York: HarperCollins.
- "Women in the U.S. Senate: 1922-2013."
http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/senate.pdf (October 4, 2013).
- Wordle. <http://www.wordle.net> (October 4, 2013).
- Zeleny, Jeff. 2009. "Female Senators Plead for Another Woman on the Court." *New York Times*, May 11.