

Kluwer Arbitration Blog

Sexual Dimorphism in the Appointment of Arbitrators

G. D. Montefeltro · Monday, April 1st, 2019

While the gender imbalance in arbitrator appointments is widely known,¹⁾ the causes are still debated. Before our exhaustive study, however, no one had seriously examined gender taxonomy as a possible cause of variations in the selection of male and female arbitrators, despite scholarship on the subject in other professions, including a noted study in 2004 of the morphology of scientists.²⁾

After careful analysis of the data, we have concluded that sexual dimorphism is indeed the main cause of the frequent selection of male arbitrators over females, owing to greater vertical and horizontal measurements³⁾ in males.

As background, our study combined data on both domestic and wild (non-domestic) arbitrations. This allowed for greater variation in our sample, without the need to account for variations in horizontal arbitrator physiology due to local and regional differences of available feedstock and grazing habits.

Without considering gender differences, the [average arbitrator](#) measures 166 cm vertically and weighs 70 kg, numbers that are consistent with the taxon *homo sapiens*. Surprisingly, these averages are where the similarities end. Morphology among arbitrators is notably skewed, with males measuring on average 172 cm in vertical length and females 160 cm, and weight differences of 77 kg and 63kg, respectively.⁴⁾

The principle of *post hoc ergo propter hoc*, i.e., that correlation equals causation, has been demonstrated in numerous [studies](#). Correlated [data](#) can be especially appealing on [matters](#) of social importance and policy, such as [global warming and transportation accidents](#). While we are aware of one [study](#) questioning this approach with respect to sexual dimorphism in humans, it was limited to cranial capacity and was concluded over 100 years old; thus we did not feel it necessary to address it in our analysis.

Correlating the data on arbitrator appointments, we found sexual dimorphism to be the key differentiator in arbitrator selection, in varying degrees depending on the selecting cohort. According to [published statistics](#), co-arbitrators are the most influenced by arbitrator morphology when appointing arbitrators; [arbitral institutions](#) are the least influenced by height and body weight.

Our conclusions are reinforced by studies showing that over the past 40 years female arbitrators

globally have increased in size.⁵⁾ During the same period, female arbitrator appointments have similarly increased,⁶⁾ providing a vivid and concrete demonstration of the relationship between sexual dimorphism and arbitrator appointments. This trend, however, may be more a cause for alarm than solace for the arbitration community.

While the goal of monophormism of arbitrators is laudable,⁷⁾ initiating an arms race over size may be deleterious for both male and female arbitrators. Studies have shown that increased size may have health consequences for large, non-aquatic mammals.⁸⁾ We suggest gender parity in arbitrator appointments may be better achieved by reducing the average size of male arbitrators.⁹⁾

Obviously, our findings have already prompted many questions for further investigation. In a future second phase of our study, we will explore in detail how arbitrator anatomy may influence the conduct of proceedings and the quality of final awards. We have already received many offers from counsel offering to donate their arbitrators for dissection.

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References

- ?1 L. Greenwood, Getting a Better Balance on International Arbitration Tribunals, *Arbitration International*, Issue 4 (2012).
- ?2 Multiple authors, *The Morphology of Steve*, *Annals of Improbable Research* (2004).
- ?3 More colloquially referred to as “height and weight”.
- ?4 Id.
- ?5 We’re Getting Taller and Heavier, *Anthropocene* (Nov 2018).
- ?6 L. Greenwood, M. Baker, *Is the balance getting better? An update on the issue of gender diversity in international arbitration* (Arbitration International 2012); see also [here](#).
D. Sabharwal & M. Write, *The Diversity Dilemma in Arbitrator Appointments* (Kluwer Arbitration Blog, 31 July 2018) (“the arbitration community as a whole recognises that more needs to be done towards achieving the goal of greater diversity across arbitral appointments”); see also G. Carmichael Lemaire, *Achieving Gender Diversity for Future Generations in Appointments in International Commercial Arbitration Tribunals* (TDM 2015)
- ?8 T. Samaras, H. Elrick, Height, body size, and weight: Is smaller better for the human body (Western Journal of Medicine 2002).
- ?9 Remarkably, we could not find a single arbitration institution with rules regulating the size of arbitrators.

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