# Women on the Bench: Citizen Perceptions of Judge Sex and the Courts

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Women on the Bench: Citizen Perceptions of Judge Sex and the Courts

What role do gender stereotypes play in assessments of others? Countless pages of social science research have gone into answering this question. Within political science, a major strain of this question focuses on how gender stereotypes and expectations shape the way citizens assess legislative and executive elites (e.g., members of Congress, presidents, governors, and candidates for these positions) (e.g., Dolan 2012; Sanbonmatsu and Dolan 2009; Sanbonmatsu 2002; Swers 2002; Kahn 1996; Huddy and Terkildsen 1993;). However, scholars have yet to investigate how citizens’ gender expectations shape assessments of sitting judges and, by extension, how those gender expectations ultimately shape assessments of the courts these judges inhabit. As “the least dangerous” branch, the courts maintain their power almost exclusively through carefully sustaining their legitimacy amongst citizens (e.g., Federalist 78). While scholarship has typically investigated individual-level differences amongst citizens that predict different levels of legitimacy (e.g., Gibson and Caldeira 2009; Gibson 2007; Hibbing and Theiss-Morse 1995; Caldeira and Gibson 1992) – and, to some extent, political differences that influence legitimacy (e.g., Nelson and Ringsmuth, forthcoming; Durr et al. 2000; Caldeira 1986) – less is known about how judges’ individual differences might play into this relationship. Given the important role gender expectations play for other political elites, it is reasonable to expect that gender expectations will also play a role in assessments of judges and the legitimacy of their associated courts.

There are intuitive reasons for the lack of attention to gender expectations in the courts – first, citizens have no direct say in who is confirmed to the judiciary, and, once confirmed, there are very few options to remove these sitting judges. Gender expectations will not matter for judges in the same way as they do for political candidates, who must adopt campaign strategies
with these gendered attitudes in mind. Second, the mystique surrounding the judiciary makes individual differences in judges less attractive for study; the dominance of the “robes on” philosophy to judging – that is, the idea of judges as objective purveyors of the law – suggests that personal characteristics, like sex, should not influence judicial decision-making. At the least, citizens may believe these characteristics do not matter and, ultimately, assess judges as judges, to the exclusion of other factors, such as sex of the judge. Given the subtle nature of gender stereotypes, however, it is reasonable to believe that citizens may use gendered beliefs to assess judges, their decisions, and the legitimacy of the courts they serve on, even while explicitly adhering to a gender-neutral philosophy. Moreover, this investigation would inform the normative debate surrounding the representativeness of the bench. For several decades, now, elected officials and scholars alike have argued, for reasons of legitimacy and symbolic representation, that the judiciary should more accurately represent the make-up of the population, particularly in terms of gender, race, and ethnicity (e.g., Martin and Pyle 2000; Segal 2000; Mansbridge 1999; Walker and Barrow 1985). This study is one means of empirically testing the basis of these normative arguments – does judge sex matter to citizens and, if so, how?

Specifically, the study examines whether the same gender expectations that have been widely documented in assessments of candidates also apply to judges. The literature related to candidates focuses on gender expectations in three main areas: ideology, competence, and traits. Women are typically assumed to be more liberal than men (Koch 2000; McDermott 1998, 1997; Dolan 1998; Kahn 1996; Paolino 1995; Alexander and Andersen 1993); and less competent, in general, than men, but more competent than men on specific “compassion” and “women’s” issues (i.e., poverty, education, healthcare, Social Security, and children’s issues; Dolan 2012, 2010; Sanbonmatsu and Dolan 2009; Huddy and Terkildsen 1993; Shapiro and Mahajan 1986;).
In addition, female candidates are generally assumed to be more empathetic than their male counterparts (Huddy and Terkildsen 1993; Kinder 1986). Using a survey experiment, I investigate whether these same expectations apply to judges. Table 1 summarizes the main hypotheses.

Of course, this is not to say that courts scholars have ignored issues of gender. However, existing work in political science has tended to focus on how the presence of women on the court can change the court’s decisions, either directly (i.e., women decide differently) or indirectly (i.e., female judges can influence their male colleagues) (e.g, Boyd, et. al. 2010). Those who come from a legal perspective have investigated the role of gender – both for the judge and litigants – and noted its role in things such as sentencing (e.g., Guevara, et al 2006; Steffensmeier and Hebert 1999; Daly 1987). This study can add a new perspective to these previous analyses – while existing studies document effects of sex (i.e., differential sentencing), this study can start addressing the different parameters male and female judges may inhabit (e.g., might female judges sense they carry an empathy advantage and use it strategically?). Even more broadly, disciplines as diverse as sociology, organizational psychology, and management have wrestled with the question of structural versus social roles (e.g., Cech and Blair-Loy 2010; Eagly and Karau 2002; Aguinas and Adams 1998; Eagly 1987) – in sum, are female leaders assessed exclusively as leaders or are they inescapably assessed as female leaders? This study provides one more perspective on when – and at what level of professionalization – structural roles may trump or moderate gender expectations.

Research Design. In order to test the influence of gender expectations on assessments of judges (and, ultimately, their effects on support for the judge’s specific decision and court legitimacy), I propose to present respondents with a simulated New York Times article which reports on a 2007
decision of the 7th Circuit Court of Appeals. This vignette borrows heavily from a Times report about the Supreme Court decision in the actual Lilly Ledbetter case\textsuperscript{1}. The decision significantly narrowed the timeframe during which women could sue for sex-based employment discrimination. The most significant modifications to this article from the original are to change the venue and authoring judges, shorten the article overall, and some other minor changes to make the report consistent with a lower court venue (e.g., to change the final vote to 3-2 instead of 5-4). I change the venue from the Supreme Court to a circuit court in order to limit the effect of respondents’ potential prior knowledge about the Supreme Court – it seems feasible that respondents might have pre-established opinions about Justice Alito (the majority author) and Justice Ginsburg (the dissenting author). The text for the article is included in the appendix.

The key difference between the two conditions is the authors of the majority and dissenting opinions. In the first condition, a fictitious male judge, Judge Anthony Purlane, is the author of the majority opinion which significantly restricts the rights of women to sue for pay discrimination. The dissenting opinion is penned by fictitious female judge Margaret Beeler. In the second condition, the authors are switched. After reading the vignette, respondents will be asked to complete a questionnaire, which includes questions aimed to tap support for the opinions, as well as particular aspects of candidate gender expectations; a battery of questions to measure the respondent’s assessment of the court’s legitimacy (based on Gibson, et al 2003); the modern sexism scale (Swim, et al, 1995); and a manipulation check. The proposed questions are included in the appendix.

In the fall of 2011, I undertook a pilot study of the survey experiment with 114 undergraduates at a mid-sized university. Given the skew of my sample towards a young, well-educated demographic, it was not surprising that for many questions, the structural view of judges appeared to hold. Holding the direction of the decision constant, female judges and the decision they authored were not viewed as more liberal than their male counterparts. Similarly, there were no sex-based differences in competence. Interesting differences did emerge in assessments of empathy, however. A female author of a dissenting opinion (which, here, means that the author argued not to significantly restrict the timeframe during which women could sue) was rated as more empathetic than the male author of the same opinion. Moreover, the female judge lost this empathy advantage when she was the author of the majority opinion. Additional analyses revealed that respondents’ empathy assessments influenced their overall level of support for the decision itself (both majority and dissenting) and, ultimately, their assessments of overall court legitimacy. See Tables 2, 3, and 4 for a summary of the pilot study’s findings.

Given these results, it is vital that I carry this survey to a general population sample to help improve our understanding of the subtle role gender expectations play in the assessment of judges and courts. The socialization process experienced by my young, college-educated pilot sample has, no doubt, predisposed them to socially-acceptable gender-neutral responses. Even so, this sample shows some specific inclinations towards a gendered assessment of judges.

There are 32 questions in the proposed questionnaire, along with a vignette worth 2 units (i.e., 34 respondent-units). Given TESS guidelines, I am requesting a sample of 350, or 175 respondents per condition. This will be more than enough for a bivariate comparison, but will also provide the statistical power to break my results down by some important sub-groups, such as respondent sex, and control for levels of modern sexism (Mutz 2011, 98-99).
Table 1 – Summary of Hypotheses

<table>
<thead>
<tr>
<th>Hypothesis Name</th>
<th>Hypothesis Summary</th>
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<tbody>
<tr>
<td>Ideology Hypothesis</td>
<td>Holding all else equal, female judges, and the decisions they author, should be rated as more liberal than male judges and their associated actions.</td>
</tr>
<tr>
<td>Issue Competency Hypothesis</td>
<td>Holding all else equal, female judges should be deemed more knowledgeable regarding the issue area of employment-related sex discrimination than male judges.</td>
</tr>
<tr>
<td>General Competency Hypothesis</td>
<td>Holding all else equal, female judges should be rated as less knowledgeable overall than male judges.</td>
</tr>
<tr>
<td>Empathy Hypothesis</td>
<td>Holding all else equal, female judges should be rated as more empathetic overall than male judges.</td>
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Table 2 – Bivariate Comparisons of Mean Ratings for Empathy in Pilot Study, by Condition (Pilot Study)
(Shaded cells indicate a female author. Significant differences between conditions [p<.1] are denoted with *. Differences between the “Majority Opinion” and “Dissenting Opinion” cells within a condition are statistically significantly different from one another.)

Table 2.a – How empathetic of harassed women is the judge who wrote the…
(Scale of 1-6, higher numbers indicate more empathy)

<table>
<thead>
<tr>
<th></th>
<th>Majority Opinion</th>
<th>Dissenting Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition A</td>
<td>2.28</td>
<td>5.02*</td>
</tr>
<tr>
<td>Condition B</td>
<td>2.47</td>
<td>4.28*</td>
</tr>
</tbody>
</table>

Table 2.b – How empathetic of women in general is the judge who wrote the…
(Scale of 1-6, higher numbers indicate more empathy)

<table>
<thead>
<tr>
<th></th>
<th>Majority Opinion</th>
<th>Dissenting Opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition A</td>
<td>2.69</td>
<td>4.95*</td>
</tr>
<tr>
<td>Condition B</td>
<td>2.86</td>
<td>4.10*</td>
</tr>
</tbody>
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2 Typical of a pilot study, I erred in the specific wording of this question. “Harassed women” will be changed to “Women who experience discrimination.”
Table 3 – Regression, Impact of individual assessments on agreement with the decision (Pilot Study)

<table>
<thead>
<tr>
<th></th>
<th>DV: Support for the majority opinion</th>
<th>DV: Support for the dissenting opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perceived conservatism of authoring judge</td>
<td>-.22** (.08)</td>
<td>-.20** (.09)</td>
</tr>
<tr>
<td>Judge’s perceived knowledge: specific</td>
<td>-.03 (.12)</td>
<td>.13</td>
</tr>
<tr>
<td>Judge’s perceived knowledge: general</td>
<td>.02 (.12)</td>
<td>.03</td>
</tr>
<tr>
<td>Judge’s perceived empathy: specific</td>
<td>.16* (.09)</td>
<td>.34* (.19)</td>
</tr>
<tr>
<td>Judge’s perceived empathy: general</td>
<td>.26** (.09)</td>
<td>-.24 (.17)</td>
</tr>
<tr>
<td>Gender Discrimination Consciousness</td>
<td>-.05** (.02)</td>
<td>.06* (.02)</td>
</tr>
<tr>
<td>Constant</td>
<td>3.53** (.81)</td>
<td>1.56* (.92)</td>
</tr>
</tbody>
</table>

**=p<.05, two-tailed  
*=p<.1, two-tailed

Table 4 – Regression, Effect of Specific Support on Federal Court Legitimacy (Pilot Study)

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
</tr>
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<tbody>
<tr>
<td>Level of support for the majority opinion</td>
<td>1.71* (.65)</td>
</tr>
<tr>
<td>Level of support for the dissenting opinion</td>
<td>1.69** (.73)</td>
</tr>
<tr>
<td>Constant</td>
<td>17.98** (4.13)</td>
</tr>
</tbody>
</table>

**=p<.05, two-tailed  
*=p<.1, two-tailed
Appendix: Proposed Vignette and Survey Questions, with response options in brackets

Vignette Text: CHICAGO, May 29 – The 7th Circuit Court of Appeals issued a ruling on Tuesday, which would make it harder for many workers to sue their employers for discrimination in pay, insisting in a 3-to-2 decision on a tight time frame to file such cases. The dissenters said the ruling ignored workplace realities.

The decision came in a case involving a supervisor at a steel refinery in Gadsden, Ala., the only woman among 16 men at the same management level, who was paid less than any of her colleagues, including those with less seniority. She learned that fact late in a career of nearly 20 years -- too late, according to the Circuit Court’s majority.

In a ruling issued by [Judge Anthony Purlane/Judge Margaret Beeler], the court ruled that employees may not bring suit under the principal federal anti-discrimination law unless they have filed a formal complaint with a federal agency within 180 days after their pay was set. The timeline applies, according to the decision, even if the effects of the initial discriminatory act were not immediately apparent to the worker and even if they continue to the present day.

In the opinion, Judge [Purlane/Beeler] rejected the view of the federal agency, the Equal Employment Opportunity Commission, that each paycheck that reflects the initial discrimination is itself a discriminatory act that resets the clock on the 180-day period, under a rule known as "paycheck accrual."

[He/She] writes, 'Current effects alone cannot breathe life into prior, uncharged discrimination.'

In [her/his] dissenting opinion, [Judge Margaret Beeler/Judge Anthony Purlane] said the majority opinion "overlooks common characteristics of pay discrimination." [She/He] said that given the secrecy in most workplaces about salaries, many employees would have no idea within 180 days that they had received a lower raise than others.

An initial disparity, even if known to the employee, might be small, Judge [Beeler/Purlane] said, leading an employee, particularly a woman or a member of a minority group "trying to succeed in a nontraditional environment" to avoid "making waves." Judge [Beeler/Purlane] noted that even a small differential "will expand exponentially over an employee's working life if raises are set as a percentage of prior pay."

Judge [Beeler/Purlane] invited Congress to correct the court’s “cramped interpretation” of the law.
Survey Questions

Warm Up: How interesting was The New York Times article you just read? [5 options, ranging from “extremely interesting” to “not at all interesting.”]

Article specific:

Specific Support Majority: After reading about this court decision, how much would you say you agree or disagree with the decision of the majority of the court (written by Judge [Anthony Purlane/Margaret Beeler])? [5 options, ranging from “agree strongly” to “disagree strongly.”]

After reading about this court decision, how much would you say you agree or disagree with the dissenting opinion (written by Judge [Margaret Beeler/Anthony Purlane])? [5 options, ranging from “agree strongly” to “disagree strongly.”]

Ideology Expectations Majority: After reading about this court ruling, how liberal or conservative do you think the majority opinion, written by Judge [Anthony Purlane/Margaret Beeler], is? [7 options, ranging from “extremely liberal” to “extremely conservative.”]

After reading about this court ruling, how liberal or conservative do you think Judge [Anthony Purlane/Margaret Beeler], the judge who wrote the majority opinion, is? [7 options, ranging from “extremely liberal” to “extremely conservative.”]

Competence Expectations Majority: After reading about this court ruling, how knowledgeable do you think Judge [Anthony Purlane/Margaret Beeler], the judge who wrote the majority opinion, is about this area of the law? [6 options, ranging from “extremely knowledgeable” to “not at all knowledgeable.”]

After reading about this court ruling, how knowledgeable do you think Judge [Anthony Purlane/Margaret Beeler], the judge who wrote the majority opinion, is about the law in general? [6 options, ranging from “extremely knowledgeable” to “not at all knowledgeable.”]

Trait Expectations Majority: After reading about this court ruling, how empathetic do you think Judge [Anthony Purlane/Margaret Beeler], the judge who wrote the majority opinion, is towards women who experience discrimination? [6 options, ranging from “extremely empathetic” to “not at all empathetic.”]

After reading about this court ruling, how empathetic do you think Judge [Anthony Purlane/Margaret Beeler], the judge who wrote the majority opinion, is towards women in general? [6 options, ranging from “extremely empathetic” to “not at all empathetic.”]

Ideology Expectations Dissent: After reading about this case, how liberal or conservative do you think the dissenting opinion, written by Judge [Margaret Beeler/Anthony Purlane], is? [7 options, ranging from “extremely liberal” to “extremely conservative.”]
After reading about this case, how liberal or conservative do you think Judge [Margaret Beeler/Anthony Purlane], the judge who wrote the dissenting opinion, is? [7 options, ranging from “extremely liberal” to “extremely conservative.”]

*Competence Expectations Dissent:* After reading about this case, how knowledgeable do you think Judge [Margaret Beeler/Anthony Purlane], the judge who wrote the dissenting opinion, is about this area of the law? [6 options, ranging from “extremely knowledgeable” to “not at all knowledgeable.”]

After reading about this case, how knowledgeable do you think Judge [Margaret Beeler/Anthony Purlane], the judge who wrote the dissenting opinion, is about the law in general? [6 options, ranging from “extremely knowledgeable” to “not at all knowledgeable.”]

*Trait Expectations Dissent:* After reading about this court ruling, how empathetic do you think Judge [Margaret Beeler/Anthony Purlane], the judge who wrote the dissenting opinion, is towards women who experience discrimination? [6 options, ranging from “extremely empathetic” to “not at all empathetic.”]

After reading about this court ruling, how empathetic do you think Judge [Margaret Beeler/Anthony Purlane], the judge who wrote the dissenting opinion, is towards women in general? [6 options, ranging from “extremely empathetic” to “not at all empathetic.”]

*Court Legitimacy [Response options for all: 5 options, ranging from “agree strongly” to “disagree strongly.”]* If the federal courts started making a lot of decisions that most people disagree with, it might be better to do away with the federal courts altogether.

The right of the federal courts to decide certain types of controversial issues should be reduced.

The federal courts can usually be trusted to make decisions that are right for the country as a whole.

The decisions of the federal courts favor some groups more than others.

The federal courts get too mixed up in politics.

The federal courts should have the right to say what the Constitution means, even when the majority of the people disagree with the federal courts’ decisions.

People should obey the federal courts even when they disagree with their decisions.

The federal courts ought to be made less independent so that they listen a lot more to what the people want.

*Modern Sexism [Same response options as legitimacy]:* Discrimination against women is no longer a problem in the United States.

Women often miss out on good jobs due to sexual discrimination.

It is rare to see women treated in a sexist manner on television.
On average, people in our society treat husbands and wives equally.

Society has reached the point where women and men have equal opportunities for achievement.

It is easy to understand the anger of women’s groups in America.

It is easy to understand why women’s groups are still concerned about societal limitations of women’s opportunities.

Over the past few years, the government and news media have been showing more concern about the treatment of women than is warranted by women’s actual experiences.

Manipulation Check: Having read the article and taken the survey, think again about the majority opinion author (the opinion which greatly restricted the ability of women to sue for employment discrimination.) Was this opinion written by a male or a female? [Male/Female]
References


Caldeira, Gregory. 1986. “Neither the Purse Nor the Sword: Dynamics of Public Confidence in the Supreme Court.” American Political Science Review 80: 1209-1226.


[http://thomas.loc.gov/home/histdox/fed_78.html](http://thomas.loc.gov/home/histdox/fed_78.html).


