The Politics of Women's Presence on High Courts:
The Conditional Nature of Cultivating Legitimacy through Descriptive Representation

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ABSTRACT: Recent research demonstrates that the mere presence of more women legislators triggers voters to assume that the legislature is more honest and democratic (Schwindt-Bayer and Alles 2018). This effect, however, has never been tested in the judicial branch of government. This is a glaring omission because, of all the branches, the high court is the one that is most dependent on perceptions of legitimacy for its ability to function. We argue that the stereotypical traits associated with women – e.g., being honest, fair, and thoughtful – are particularly valuable in the context of the high court. That is, given that the idealized court is one that is rooted in honesty and fairness, women's association with these traits should trigger a particularly strong effect on the citizens' appraisal of government legitimacy and quality of the court. However, we also argue that this effect should be limited to democratic regimes; in non-democracies, the high court serves a different purpose and thus the stereotypes associated with women are not as valuable. We present the results from an experiment conducted via Amazon's "Mechanical Turk" (MTurk), and offer evidence that the presence of women on the high court has a strong impact on citizen perceptions of court legitimacy, but only in democracies.

Introduction

As more women justices join the benches of high courts across the world, a substantial body of research has developed regarding the circumstances under which women are appointed to these courts as well as their judicial behavior once there. However, we know very little about the impact of women's presence on citizens' perception of this institution. The way that citizens perceive the high court is particularly important due to the unique fragility of this institution – even the strongest high courts in the world must be careful to consider the impact of their decisions on the legitimacy of their institution before they rule. We argue that the gender balance of the high court impacts how citizens perceive its legitimacy, and that this effect is driven by gender stereotypes about expected personality traits and behaviors. Further, because of the particular stereotypes that people engage about women justices, we argue that this positive effect only occurs in democracies, and that it is lower for those citizens who carry biased views about women. In the non-democratic context, on the other hand, citizens desire different behaviors from the justices, and thus the assumptions made about women do not cultivate similar feelings of trust in the regime, thereby disrupting the relationship between legitimacy and women's descriptive representation. Using an experiment and survey performed on over 1,900 Americans, we find evidence that suggests that women's presence on the high court does indeed boost its legitimacy, but that this effect only holds in democratic contexts. It seems, therefore, that the citizen interpretation of women's presence is at least in part dependent upon the context in which they serve. The differential impact of gender stereotypes in democratic and authoritarian contexts is almost entirely absent from the literature; this study offers a groundbreaking means of beginning this exploration.

Legitimacy and the Courts

The legitimacy of judicial institutions is particularly critical given the limited resources that courts have when it comes to enforcing their rulings. Legitimacy, in this context, has been described as a "reservoir of good will" that can insulate the institution from criticism when making unpopular decisions (Easton 1965). As we use it here, legitimacy is distinct from immediate support of a particular outcome and is more accurately characterized as "diffuse support" over the long term (Easton 1975). That is, "people who believe specific decisions are wrong, even wrongheaded, and individual judges unworthy of their office" will still accept court decisions when the court as an institution is perceived as "generally impartial, just, and competent" (Murphy and Tanenhaus 1968, 359), "appropriate, proper, and just" (Tyler 2006, 376), or possessing "the right (moral and legal) to make decisions" (Gibson and Caldeira 2009, 38).

The critical role of legitimacy in the ability of courts to function effectively has spawned a substantial literature exploring its sources, particularly focused on the United States Supreme Court. Several prominent theories have arisen, most notably positivity theory (Caldeira and Gibson 1992; Gibson and Caldeira 2009; Gibson, Caldeira, and Baird 1998; Gibson and Nelson 2017). This theory suggests that familiarity with the institution increases support and, consequently, legitimacy. This holds true even when learning about decisions with which one disagrees. The ways in which courts are discussed tend to reinforce the underlying expectations of what courts could and should be even when those discussions are critical of specific actions (Gibson and Caldeira 2009). Democratic norms and political socialization, then, play a significant role (Easton 1965; Gibson, Caldeira, and Baird 1998; Hoekstra 2000). Some scholars

do challenge this, emphasizing the importance of ideological agreement and disagreement as a critical driver of legitimacy. This approach suggests that "subjective ideological disagreement" with a court's decisions can increase or decrease the well of support in lasting ways (Bartels and Johnston 2013; Johnston, Hillygus, and Bartels 2014; but see Gibson and Nelson 2014, 2017). Legitimacy may be more fluid than positivity theory would indicate and is driven more by outcomes, but even this approach recognizes the continued importance of democratic norms.

Another approach to the issue of legitimacy in the judiciary leans away from a focus on democratic norms, and instead concentrates on citizen perceptions of process. Tyler (1990, 2003, 2006) argues that a perception of procedural fairness is fundamental to cultivating legitimacy.[1] In this understanding, when people believe that they are treated fairly, even if the outcome is not substantively what they want, they are more likely to regard those institutions as legitimate. Factors such as following ethical principles of conduct, motivations to be fair, and the quality of decisions made each have an impact on the perceptions of procedural fairness (Tyler 1990).

Another factor that contributes to the citizens' perception of legitimacy of the institution and the government as a whole is the level of descriptive representation. The notion of descriptive representation has its origins in the work of Pitkin (1967) and Mansbridge (1999), and refers to whether the people in power share descriptive traits with the people in the citizenry. Existing research, however, has focused primarily on elected positions such as legislatures and executives, and thus little is known about the impact of underrepresented groups serving in the high court. Scherer and Curry (2010) find that descriptive representation does matter, at least

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[1] It is worth noting that this approach is not necessarily at odds with Gibson and Caldeira's (2009), but it does reflect a different emphasis. See Tyler and Rasinski (1991) for a discussion of the connections and distinctions between procedural fairness and legitimacy as characterized in Gibson's research.

with regard to race. Using an experiment focused on U.S. federal courts, they found that African-American evaluations of the legitimacy of courts increased when there was greater descriptive representation. Looking beyond American courts, Huebert and Liu (2017) found that ethnic representation in courts changed the evaluations of legitimacy by indigenous peoples in Latin America. Recognition of minority languages in courts can impact public confidence as well (Liu and Baird 2012).

Women's Presence and Legitimacy

There is an emerging consensus that women's political presence enhances the legitimacy of the institution that they are associated with, but the common path of the literature is to focus on the executive and legislative branches of government. Schwindt-Bayer (2010) and Schwindt-Bayer and Alles (2018), for example, find evidence that the presence of women in the legislatures in Latin America correlates with citizen feelings of trust in the legislature and greater satisfaction with the democracy as a whole. And, if we expand the definition of legitimacy to include perceptions of fairness and a lack of corruption, there are several studies that demonstrate that the presence of women leads voters to assume lower levels of corruption in legislatures (Barnes and Beaulieu 2014; Esarey and Schwindt-Bayer 2018; Valdini 2019), police agencies (Barnes, Beaulieu, and Saxton 2018), and in post-conflict societies (Shair-Rosenfield and Wood 2017).

The research that does engage the relationship between women's presence on the court and legitimacy is quite limited, though there are exceptions.[2] Grossman (2012) lays out a

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[2] It is worth noting here that our interests are distinct from the more substantial literature on the effects of gender on judicial decision-making. Gilligan's (1982) work on differing voices along with subsequent evaluations of this impact (see, for example, Miller and Maier 2008; Boyd, Epstein, Martin 2010; Boyd 2013) suggest that women may approach judging differently than men in some circumstances. This does

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normative argument against underrepresentation of women on international courts, linking it explicitly with the descriptive representation literature. She argues that overrepresentation of either men or women on courts is damaging to legitimacy because people believe that men and women "think differently," leading to different results (Grossman 2012, 661). Using case studies drawn from the United States and Europe, Kenney likewise (2013) argues that gender plays a critical role in the courts for both legitimacy and decision-making reasons, particularly because of the benefits of diverse perspectives on the courts, but does not offer a test of this association. Nelson (2015) directly addresses citizen perceptions of women on the bench in the United States, and finds evidence that women judges are subject to "double-bind" expectations similar to those found in other areas of public life where "heightened assessments of empathy are balanced with lower assessments of judicial competence" (238). Particularly relevant to our study, Nelson finds that whether gender matters in these evaluations depends on the context: when making decisions that emphasize their identities as women, the double bind is in effect, while it is not as evident in other areas.

Thus, while there is existing evidence that supports the ideas that people associate women's presence with a less corrupt and more democratic state, the question of the whether women's presence on courts matters to citizens in similar ways has yet to be answered. The judicial branch, after all, is not meant to rest on a foundation of representation; it is the branch that is meant for horizontal accountability, resolving disputes, protecting the values of the constitution or simply being the final step in the bureaucratic process of adjudication. It may be, therefore, that citizens do not notice the gender balance of the court and, if they do notice, they might not care.

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not, however, speak directly to the perceptions of women judges by the public, a topic that has received far less attention.

<u>Women's Presence on the High Court Matters…Sometimes</u>

We argue that, similar to the existing findings on the executive and legislative branches, women's representation on the high court generates legitimacy for the institution and the government as a whole. However, contrary to what one might expect based on the previous research, we argue that the effect of women's presence on the high court on legitimacy only works in democracies. Specifically, we assert that gender stereotypes are the causal reason for the association of women with legitimacy, and that those stereotypes are most valuable in the democratic context. In the non-democratic context, on the other hand, citizens desire different behaviors from the justices, and thus the assumptions made about women do not cultivate similar feelings of trust in the regime, thereby disrupting the relationship between legitimacy and women's descriptive representation.

In the context of a democracy, it is easy to see how the stereotypes associated with women could be particularly valuable on the high court. The most common and well-researched understanding of gender stereotypes finds that people assume women to have more "communal" qualities than a man (Bem 1981; Alexander & Anderson 1993; Huddy & Terkildsen 1993; Sanbonmatsu 2002; Spence and Buckner 2000; Eagly and Karau 2002). Communal traits are those associated with traditional notions of femininity, such as being compassionate, careful, cooperative, gentle, honest, and loyal. And, when one considers the traits that people desire in their high court justices, many of these come to mind. Justices, unlike legislators, are expected to be thoughtful, honest, and deliberative. The ideal justice is not aggressive or focused on achievement for their district or party, but is instead wise, careful, and willing to listen to all sides of a story. These characteristics match up well with the sought-after characteristics that can

generate judicial legitimacy; positivity theory depends on courts reflecting norms of careful deliberation and fairness, and procedural fairness appraisals look to citizen's contentment with how they are treated and whether they feel heard by judicial institutions. Further, an examination of the criteria established by the American Bar Association for states conducting judicial performance evaluations also suggests that communal traits are particularly valuable in the democratic judicial context.[3] The guidelines include fairly straightforward elements such as "knowledge of substantive law" and "making decisions and rulings in a prompt, timely manner," but they also include language about "consideration of both sides of an argument before rendering a decision," "treating all people with dignity and respect," and "acting with patience and self-control."[4] The inclusion of these communal norms of behavior in the performance evaluations of American judges supports our claim that citizens conceptualize ideal judges differently than other leaders; it is not simply about aggressive leadership in the judicial context. The combination of stereotypical characteristics of women judges with these underlying expectations for judicial legitimacy should therefore generate more positive evaluations by the public.

In an authoritarian regime, on the other hand, the role of courts can be different and, therefore, the ideal traits of the justices should be different as well. Indeed, one common finding across research on courts in authoritarian contexts is that they behave and operate differently than those in democratic regimes and need to be studied as such (Moustafa 2014; Shapiro 2008). In particular, much of the research on courts in authoritarian regimes highlights this struggle to

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[3] American Bar Association, *Black Letter Guidelines for the Evaluation of Judicial Performance*, https://www.americanbar.org/content/dam/aba/publications/judicial_division/jpec_final.authcheckdam.pdf

[4] It is worth noting that not all of the criteria map onto communal stereotypes. Others, such as "maintaining control over the courtroom" and "acting in a dignified manner" perhaps map more closely onto stereotypes associated with men.

secure and maintain independence from the government, and is typically focused on the intra-state institutional battles that occur. Moustafa (2007), for example, explores how Egypt's high court maintained some independence from the government only by making itself sufficiently valuable as a solution to administrative complications, while Popova (2012) highlights how structural insulation grants some precarious judicial independence in emerging democracies. Of particular relevance to this project, Urribarri (2011) finds that hybrid regimes sometimes allow judicial independence because they fear reducing their own legitimacy, emphasizing the importance of judicial independence to the public (see also Cheesman 2011; Ghias 2010; Hilbink 2007; Hurst 2018; Ip 2012; Sievert 2018).

Where that independence can be carved out, it is of real value to citizens and therefore should play an important role in their evaluation of the legitimacy of the institution. Authoritarian regimes want, for example, to utilize courts for purposes such as social control and legitimization of the regime, but courts are only effective if they are seen as being distinct enough from the regime to exercise actual power. If courts are given actual power to constrain the regime, it generates opportunities for "rightful resistance" by regime opponents. Rightful resistance is "a form of popular contention that operates near the boundary of authorized channels, employs the rhetoric and commitments of the powerful to curb the exercise of power, hinges on locating and exploiting divisions within the state, and relies on mobilizing support from the wider public" (O'Brien and Li 2006, 13). In Egypt, the existence of an independent judiciary enabled activists to challenge the state without having to engage in the risky behavior of forming a broad social movement (Moustafa 2014, 287; see also Tam 2013). Citizens in authoritarian regimes value judicial independence because it allows opportunities to voice challenges that would not otherwise be possible. Not all the challenges emerging in these courts

even need to be successful in order to be valuable; symbolic benefit can exist just from the step of challenging suppressive policies in a court that is sufficiently independent to hear them. Given the importance of judicial independence to citizens in authoritarian regimes, we should expect perceptions of legitimacy to be closely tied to perceptions of independence.

This presents a crucial difference in emphasis from democracies. In democracies, the legitimacy of the high court rests on the institution being perceived as honest, careful, and fair. In authoritarian systems, on the other hand, courts can be a site of resistance; their legitimacy rests, at least in part, on their ability to stand strong against the regime. Given the different context, it is reasonable to expect that gender perceptions will also play out in different ways. Those same stereotypical traits that positively reinforce courts in a democracy could very well undermine the legitimacy and support for courts in authoritarian regimes; where courts operate as one of the few bulwarks against governmental authority, women may be perceived as too subservient, too cooperative, and not aggressive enough to defend the interests of the country over those of the government. In the authoritarian context, therefore, the presence of women justices may not translate into legitimacy benefits.

Testing: Methods

To examine the effect of regime type and justice gender balance on the legitimacy of the court, we administered a survey via Amazon.com's Mechanical Turk service (MTurk) in April 2018. All respondents were United States residents over 18, and we required a "HIT approval rate" from previous requesters' jobs of over 95% for participation. We provided a payment of $1 to all respondents who successfully completed the survey and did not fail the robot test (see appendix I for full survey). 1882 respondents successfully completed the survey and, while the

respondents did skew young and left-wing, we were able to get sufficient demographic variation

(see appendix II for table showing the demographic breakdown of the sample).[5]

After accepting participation in the survey, our respondents were each randomly assigned

to one of six groups. Each of these groups was then given a one paragraph description of the

current high court in the anonymous country.[6] In three of the groups, we offered a description of

the court that signaled that the country was a well-functioning democracy. In the other three

groups, we offered a description that signaled that the country was a non-democracy by

emphasizing that elections were no longer free and fair. In addition to the regime type variation

in the descriptive paragraphs, we also varied the gender balance of judges on the anonymous

high court. We offered three different justice gender scenarios: in the first, there were 6 men and

1 woman on the court. In the second, there were 4 men and 3 women on the court. And in the

third, there were 6 women and 1 man on the court. We did not strongly emphasize the gender of

the judges, but rather mixed that material in with supplementary information about the judicial

selection mechanism and term length. In Figure 1, we offer a sample of the democratic and non-

democratic paragraphs.

-Figure 1 about here-

After reading the assigned paragraph, the respondent was then given 6 questions designed

to elicit their opinion on the likelihood of that court achieving goals usually associated with the

idealized high court. These were, in short, our operationalization of legitimacy, and thus

designed to pick up different facets of the idealized high court. These questions initially focused

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[5] While not ideal, MTurk samples are more representative of the American population than other types of convenience samples and experiments (Horton, Rand, and Zeckhauser 2011; Huff and Tingley 2015; Mullinix, Leeper, Druckman, and Freese 2015).

[6] We attempted to establish that the country was not the United States by describing a judicial selection method that is quite different from the US system of selecting Supreme Court justices.

on the trial scenario mentioned in the paragraph – a government official accused of corruption –

but then broadened out to capture more general feelings about the well-being of the institution

and the country. For example, one question asked the respondent's opinion regarding the

likelihood that the court will "issue a fair ruling on the corruption of the accused government

official," while another asked for a more general opinion on whether the respondent would "trust

this court if you lived in this country."

Following the completion of the 6 questions central to our analysis, we then transitioned

into collecting control variables. These included the standard demographic variables – age,

gender, ideology, education, party ID – as well as two sets of questions designed to capture the

respondent's other personal beliefs that may be impacting their response to our described court.

In the first set, we focused on their general feelings regarding the trustworthiness of courts, and

of the US Supreme Court in particular. Finally, we asked a set of questions to measure sexism of

the respondent, which will be discussed at length in the section on the second phase of results.

Results- Phase One

We begin with a test of the effect of regime type on the perceptions of high court

legitimacy, varying the number of women justices across the treatments. All of our dependent

variables – i.e., the respondents' opinions on the legitimacy of the described court – are ordered,

categorical variables with a range of either 6 categories of the scale (extremely unlikely=1 to

extremely likely=6) or of 4 categories of the scale (low, somewhat low, somewhat high, high).

Thus, we used ordered probits to estimate the models and, while the coefficients cannot be

directly interpreted, the significance and direction of the coefficients offer insight into the

relationships among these variables.

-Table 1 about here –

In Table 1, we present the results of four of our models. Two of these employ data from the democracy conditions, and the other two are from the non-democracy treatment.[7] In models 1 and 2, the conditions are set at democracy only – that is, all data points in these models are individual survey respondents operating under the assumption that they are answering questions about a high court in a well-functioning democracy. In model 1, the dependent variable is the respondents' opinions on the likelihood that the high court described to the respondents will ensure that justice is served, measured on a 6 point categorical scale. The independent variable of interest is a categorical variable as well, with three categories being different gender balances on the court: In category 1, respondents are given a court with mostly male judges. In category 2, the gender balance is relatively even. And in category 3, respondents are presented with a court that is composed of mostly female judges.

The results from model 1 demonstrate a positive, significant relationship between the perception that the court will be just and the presence of women justices, thereby offering support for our hypothesis on the effect of women justices in this regime type. In addition, two of our control variables achieved conventional levels of significance, both of them in the expected directions: as the age of the respondent and their level of positive feelings about the US Supreme Court increases, so does their opinion on the likelihood of the court ensuring justice. In model 2, the dependent variable is the level of trust in the high court, measured on a four-point categorical scale. Similar to the previous model, there is a positive, significant relationship between the level of trust expressed about the high court and the presence of women justices; in short, more

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[7] These particular models were selected for presentation in the table because the legitimacy measures of whether the described court will ensure justice is served and the level of trust in the court were significant while the other 4 measures of legitimacy – available in appendix iii – did not achieve conventional levels of significance. As discussed in the text, none of the non-democracy models achieved significance.

women justices correlates with higher levels of trust. And again, the control variable capturing general positive feelings about the US Supreme Court is positive and significant. To get a better sense of this relationship, Table 2 presents the predicted probabilities for each level of trust in the court and the number of women justices.

- Table 2 about here -

In Table 2, a clearer picture emerges on the effect of women justices on trust in the high court. When the high court is composed of 6 men and 1 woman (and all other variables are set at their means) the probability of the respondent answering that they have a low level of trust in this court is 4.8%. When the high court is composed of 6 women and 1 man, on the other hand, the probability of answering that they have a low level of trust in the court decreases to 3.0%. A similar relationship is found at the opposite end of the trust scale: when the court includes 6 men and 1 woman, the probability that the respondent feels a high level of trust in the court is 8.6%, while a high court with 6 women and 1 man increases that probability to 12.5%. Thus, these results offer support for our expectation that the presence of women justices reinforces the legitimacy of courts in democracies. It is interesting to note that the biggest jump in trust seems to occur when the court changes from 6 men and 1 woman to 4 men and 3 women. This suggests that there may not need to be a majority of women on the court to generate legitimacy; the state can generate almost as much high court legitimacy through a relatively gender balanced court as they can with a court that has a clear majority of women justices. There does not appear to be a negative impact, though, from having a court more heavily favoring women rather than men.

Returning to Table 1, we also present the results of the same models but with one crucial difference: the respondents in Models 3 and 4 were given conditions of a non-democracy. In other words, these respondents were given the same treatments of the varying number of female

justices and answered the same questions regarding their opinions on the legitimacy of the court and regime. The only difference for these respondents is that the paragraph description of the regime signaled a non-democracy (refer back to Figure 1 for the descriptions). For ease of comparison, we used the same two legitimacy measures as we did in the democracy models: the likelihood of justice being served by the high court and the general level of trust in the high court. As demonstrated by Models 3 and 4, neither of these measures achieved significance in the non-democracy setting.[8] These results suggest support for our hypothesis on the conditional effect of women justices on generating legitimacy; it seems that the presence of women justices increases the respondents' trust and general feelings of court legitimacy in a democracy, but not in a non-democratic regime.

Results- Phase Two

If it is indeed the case that, as we argue, citizens are activating stereotypes about the likely behaviors of women justices on the high court, then we should see the power of these stereotypes change depending on respondents' level of gender bias. In other words, our argument rests on the premise that people (and specifically, our respondents) notice the gender of the high court justices and make assumptions about the likely behavior of those justices. If this is true, then one should not expect all citizens to respond in the same way to women justices – instead, if an individual is sexist, the activation of gender and its related stereotypes may trigger a less positive response to the institution. In short, if people are indeed noticing justice gender, then this should cut both ways; for those citizens who think that women are inferior to men, noticing

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[8] This was true for all the potential legitimacy measures in the other models for non-democracies.

gender may not generate the same consequence for court legitimacy as it does for those who view women and men as equals.

In the next phase of testing, we address the reality that some voters may respond to women candidates with a negative bias, which in turn complicates the relationship between regime type, the number of women justices, and the perception of legitimacy of the court. To capture this effect, the final section of the MTurk survey utilized 5 questions from the benevolent/hostile sexism battery created by Glick and Fiske (1996). For example, we included a question that asked how much the respondent agreed or disagreed with the statement that "women tend to exaggerate problems at work" – which is classified as hostile sexism – as well as questions designed to pick up benevolent sexism (e.g., agree or disagree with the statement that "women should be cherished and protected by men").

To examine if individual bias changes the relationship between women's presence on the high court and perceptions of legitimacy of the institution, we introduce two new variables into our models: one which captures an individual's gender bias (measured by a sexism battery question), and an interaction of gender bias with the number of women on the high court. We then ran all of the models again, testing each variation of both the legitimacy measure and sexism measure. In the democracy data set, the interaction term reached significance in 6 out of 30 of the models. The measure of gender bias that seemed to have the most consistent effect was the respondent's answer to the question of which gender is "better suited for politics" (women, men, or equally suited) as this produced a significant interaction in 4 out of 6 of the models. In the non-democracy data set, the interaction term also reached significance in 6 out of 30 of the models. However, none of the models measuring sexism with the "better suited for politics" interaction reached significance, and the 6 significant interactions were found in the models

measuring bias as hostile sexism (i.e., level of agreement with either the phrase "women tend to exaggerate problems at work" or "women are too easily offended"). The interaction terms composed of measures of benevolent – as opposed to hostile – sexism did not attain conventional levels of significance in any of the models, no matter regime type.

- Table 3 about here –

Table 3 presents the results of our models that include the interaction of sexism with the number of women judges on the high court. As we did in earlier models, we use an ordered probit due to the fact that our dependent variables are measured as ordered categories. It is unwise to interpret the coefficients of interaction terms (Kam and Franzese 2007) and thus in Table 4 we present the predicted probabilities based on the democracy model (Model 1). However, before we get to that, it is interesting to note a change in the effects of our control variables: the gender of the respondent now has a negative, significant effect on the perception of court legitimacy. In our data set, women respondents were coded as '0' and men as '1' and, while we cannot directly interpret the coefficient because it was generated by a probit, this tells us that being male had a significant, negative effect on the perception of court legitimacy.[9]

-Table 4 about here-

Table 4 offers the predicted probabilities of answers to the following question from the democracy data set only: "One of the most important jobs of the high court is to determine whether or not a law is unconstitutional. Do you believe that this court will review laws in a fair and unbiased way?" As anticipated by our theory, these probabilities change depending on the gender balance of the high court, as well as the level of hostile sexism held by the respondent.

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[9] At this point in the research, we do not have an explanation for this effect. Feel free to suggest one!

Specifically, when an individual is biased against women, the presence of 6 women justices on the high court has a negative effect on the probability that the respondent will believe the court is capable of effective judicial review. And, when the individual is least biased against women (i.e., they strongly disagree that women tend to exaggerate their problems at work), the probability that they believe the court is "extremely likely" of carrying out effective judicial review is at its highest.

In non-democracies, on the other hand, the effect of gender bias does not seem as straightforward. In Figure 2, we offer a graph of an isolated set of responses to demonstrate the effect of regime type on the probability that a respondent will believe that the high court is capable of effective judicial review. Specifically, these are the respondents who were given a high court with 6 women and 1 man as justices, and the graph shows the predicted probability that they answered that the court is "extremely likely" to effectively carry out judicial review.

-Figure 2 about here-

As shown in Figure 2, the effect of bias against women is fairly linear in democracies: when faced with an almost all female court, the likelihood that the respondent views the court as capable of effective judicial review decreases as their sexism increases. In the non-democratic context, on the other hand, the effect of bias could perhaps best be described as delayed or subject to a tipping point; the level of bias does not change the probability of viewing the majority female court as capable of effective judicial review until it reaches high levels (i.e., "agree" or "strongly agree" that women exaggerate their problems at work). That is, there seems to be a hesitation to believe that the court is capable of effective judicial review, even with a majority women court. To be clear, this is expected – it would be odd if respondents believed that the court was "extremely likely" to effectively review the constitutionality of laws in a

regime that we described as non-democratic. The key finding here is that those who demonstrate the lowest levels of bias against women do not view the presence of women as able to overpower the regime type; women's presence in the non-democratic court, in other words, does not seem to inspire faith in the court, even for those people who are the least biased against women.

Conclusion

Our findings indicate that gender is a significant consideration in public evaluations of the legitimacy of democratic courts; in a democracy, the mere presence of women is enough to alter an evaluation of whether justice will be served or the court can be trusted. Of particular interest, though, is the contextual nature of this influence: first, outside of the democratic context, the presence of women does not aid in perceptions of legitimacy in non-democratic regimes. And second, the presence of hostile sex bias moderates the otherwise positive influence in democracies. In short, our evidence suggests that the gender of judges can matter for perceptions of the legitimacy of the high court, but this effect only occurs under specific conditions.

The implications of this research are substantial and multi-faceted. First, it advances the literature on court legitimacy by incorporating judicial demographics into the analysis. This moves beyond the existing studies on descriptive representation to highlight the interaction between perceptions of gender and perceptions of legitimacy by the public. That is, we argue that legitimacy increases not just because people feel that the makeup of the court is representative of the underlying population but also because the characteristics associated with women reinforce the norms associated with democratic courts. While complementary to theories like positivity theory and procedural fairness, this opens up significant areas of future research in this area that more accurately capture the nuances and interactions underlying measures of court legitimacy.

The findings in this paper also highlight the value in accounting for regime type when discussing courts. Courts in authoritarian regimes interact with their publics in ways that are markedly different from democratic courts and these distinctions extend beyond institutional variations. This paper contributes to the burgeoning research on these types of courts, hopefully drawing attention to the ways in which the expectations and demands of the public also shape how those courts operate.

In addition, our research has implications for the gender and politics literature. First and foremost, these results suggest that – as always – institutions matter. But we find that they matter in a more nuanced and specific way than is described in existing research. That is, while all governing institutions are gendered masculine, our research suggests that some institutions have norms and idealized behaviors of members that are- under some circumstances- more feminine. Thus, we cannot understand the impact and power of gender stereotypes without considering how citizens conceptualize their ideal members of the particular institution in which women serve. The other important implication of our results concerns the incentives that male elites have to increase the descriptive representation of women for reasons other than a desire for gender equality. As Weeks (2018) and Valdini (2019) discuss, the inclusion of more women in power seems to run counter to the rational interests of the male elite class, so there must be more to this story – i.e., what are those in power getting out of women's increased presence? Our results suggest that in democracies, the presence of women on the high court triggers an increase in the perceptions of legitimacy of the court. This means, in short, that the state can benefit from the signal that women's presence sends, but only in democracies.

This research, while promising, remains preliminary. Additional studies, including samples of citizens outside the United States, will allow for greater confidence about the scope of

influence found here. We do not find any positive impact from women judges in authoritarian regimes, but we also did not find a negative relationship; more research on non-democratic regime types would be beneficial, including exploring the implications of the "tipping point" finding for the influence of gender bias in non-democracies. Nonetheless, the results presented here clearly demonstrate the value in pursuing this further and offer insight into a previously under-examined aspect of courts and gender.

TABLE 1: Ordered Probit Results: Respondent Perception of High Court Legitimacy

	Model 1 (democracy)	Model 2 (democracy)	Model 3 (non-dem)	Model 4 (non-dem)
Women Justices	0.106** (0.044)	0.106** (0.045)	0.030 (0.043)	0.020 (0.044)
Ideology	-0.010 (0.021)	-0.023 (0.022)	-0.030 (0.021)	-0.023 (0.021)
Gender	-0.083 (0.071)	-0.010 (0.074)	-0.143** (0.071)	-0.111 (0.073)
Age	0.006** (0.003)	-0.000 (0.003)	0.003 (0.003)	0.001 (0.003)
Education	-0.016 (0.041)	0.002 (0.042)	-0.007 (0.039)	0.017 (0.041)
US Court Fairness	0.525*** (0.034)	0.662*** (0.037)	0.549*** (0.035)	0.597*** (0.037)
Cut 1	0.122 (0.270)	1.001 (0.271)	-0.244 (0.256)	1.050 (0.254)
Cut 2	0.652 (0.263)	2.272 (0.275)	0.700 (0.244)	2.469 (0.261)
Cut 3	1.212 (0.261)	4.022 (0.289)	1.392 (0.244)	4.130 (0.277)
Cut 4	2.144 (0.265)		2.352 (0.249)	
Cut 5	3.879 (0.280)		4.147 (0.269)	
N	940	940	942	942
χ^2	253.25	345.66	270.21	287.7
PseudoR^2	0.099	0.1557	0.0988	0.1283

Ordered probit with standard errors in parentheses.
*** = $p < 0.01$, ** = $p < 0.05$, * = $p < 0.10$

TABLE 2: Predicted Probabilities of Trust in Court, Democracy Treatment

Trust Level	Gender Balance of Justices		
	6 Men, 1 Woman	**4 Men, 3 Women**	**1 Man, 6 Women**
Low	4.8%	3.1%	3%
Somewhat Low	30%	24.8%	24.3%
Somewhat High	56.4%	59.8%	60.1%
High	8.6%	12.1%	12.5%

TABLE 3: Ordered Probit Results: Determinants of Respondent Opinion of High Court Legitimacy

	Model 1 (democracy)	Model 2 (non-democracy)
Women Justices	0.277***	0.236**
	(0.097)	(0.093)
Ideology	-0.004	-0.027
	(0.023)	(0.022)
Gender	-0.122*	-0.160**
	(0.071)	(0.070)
Age	0.004	0.001
	(0.003)	(0.003)
Education	0.016	-0.050
	(0.040)	(0.039)
US Court Fairness	0.572***	0.519***
	(0.035)	(0.034)
Bias: Hostile Sexism	0.069	0.160**
	(0.072)	(0.069)
Interaction: Bias & Women Justices	-0.076**	-0.083***
	(0.033)	(0.031)
Cut 1	0.348	.038
	(0.331)	(0.298)
Cut 2	1.265	0.962
	(0.325)	(0.294)
Cut 3	1.793	1.743
	(0.325)	(0.295)
Cut 4	2.720	2.550
	(0.329)	(0.299)
Cut 5	4.098	3.804
	(0.339)	(0.309)
N	940	942
χ^2	318.15	260.52
PseudoR^2	0.1120	0.0863

Note: Ordered probit, with standard errors in parentheses.

 *** = p < 0.01, ** = p < 0.05, * = p < 0.10

TABLE 4: Predicted Probability of Respondent's Opinion on Effective Judicial Review, By Court Gender Balance and Respondent Bias Level

Sexism (Women Exaggerate)	Court Gender Balance	Likelihood of Effective Judicial Review					
		1 (Extremely Unlikely)	2	3	4	5	6 (Extremely Likely)
1	Male	1.5%	6.2%	8.7%	26.2%	41.2%	16.2%
(Strongly	Even	1.1%	5.1%	7.6%	24.5%	42.6%	19.1%
Disagree)	Female	0.7%	3.6%	5.9%	21.4%	44.0%	24.4%
2	Male	2.4%	8.6%	10.9%	28.7%	37.6%	11.8%
	Even	1.9%	7.4%	9.9%	27.7%	39.4%	13.7%
	Female	1.7%	6.7%	9.2%	26.8%	40.5%	15.2%
3	Male	3.2%	10.3%	12.1%	29.8%	35.1%	9.6%
	Even	1.5%	6.2%	8.8%	26.2%	41.1%	16.1%
	Female	2.4%	8.5%	10.7%	28.6%	37.8%	12.0%
4	Male	2.6%	9.1%	11.2%	29.1%	36.9%	11.0%
	Even	2.9%	9.6%	11.6%	29.4%	36.2%	10.4%
	Female	2.7%	9.3%	11.4%	29.2%	36.6%	10.8%
5	Male	1.0%	4.6%	7.0%	23.5%	43.2%	20.8%
	Even	2.6%	9.0%	11.1%	29.0%	37.1%	11.2%
	Female	4.1%	11.9%	13.3%	30.4%	32.5%	7.8%
6	Male	5.7%	14.5%	14.8%	30.8%	28.6%	5.8%
(Strongly	Even	13.7%	22.8%	17.6%	27.3%	16.6%	1.9%
Agree)	Female	8.6%	18.3%	16.5%	30.0%	23.0%	3.6%

Note: Court Gender Balance:
    Male = 6 Male Judges, 1 Female Judge
    Even = 4 Male Judges, 3 Female Judges
    Female = 1 Male Judge, 6 Female Judges

FIGURE 1: Comparison of Treatments in Mturk Experiment

Democracy Treatment,
Male Majority Court:

Non-Democracy Treatment,
Female Majority Court:

We would now like to get your opinion about the legal system of a particular country. This country is a long-standing democracy with a long history of respect for political rights and civil liberties.

Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 men and 1 woman serving as Supreme Court Justices. Three of the justices are selected by the country's democratically-elected president. The remaining four are selected by majority vote of the country's democratically-elected legislature.

Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

We would now like to get your opinion about the legal system of a particular country. This country was a democracy for many years, but now that designation is in question. In recent elections, there were systematic and substantial abnormalities found in the electoral results. Further, while many civil liberties are still protected, there have been recent reforms that have decreased the government protections of political rights and civil liberties.

Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 women and 1 man serving as Supreme Court Justices. Three of the justices are selected by the country's president. The remaining four are selected by majority vote of the country's legislature.

Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

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FIGURE 2: Predicted Probability of Responding "Extremely Likely" to Judicial Review Capability, in Majority Female Justice High Court
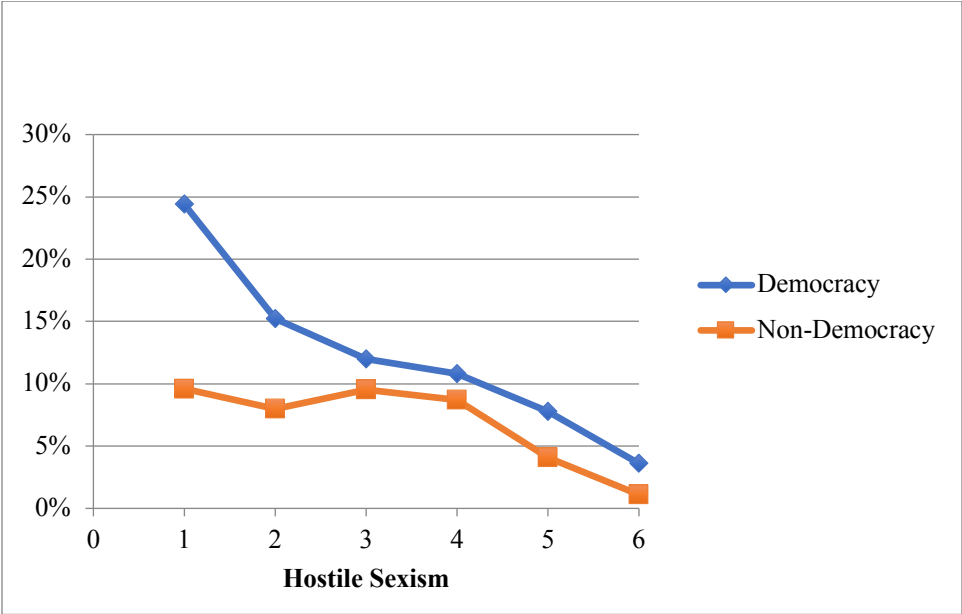
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Appendix I: <u>MTURK SURVEY</u>

DEMOCRACY TREATMENTS:

TREATMENT 1: We would now like to get your opinion about the legal system of a particular country. This country is a long-standing democracy with a long history of respect for political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 men and 1 woman serving as Supreme Court Justices. Three of the justices are selected by the country's democratically-elected president. The remaining four are selected by majority vote of the country's democratically-elected legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

TREATMENT 2: We would now like to get your opinion about the legal system of a particular country. This country is a long-standing democracy with a long history of respect for political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 4 men and 3 women serving as Supreme Court Justices. Three of the justices are selected by the country's democratically-elected president. The remaining four are selected by majority vote of the country's democratically-elected legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

TREATMENT 3: We would now like to get your opinion about the legal system of a particular country. This country is a long-standing democracy with a long history of respect for political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 women and 1 man serving as Supreme Court Justices. Three of the justices are selected by the country's democratically-elected president. The remaining four are selected by majority vote of the country's democratically-elected legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

NON-DEMOCRACY TREATMENTS (HYBRID REGIME)

TREATMENT 4: We would now like to get your opinion about the legal system of a particular country. This country was a democracy for many years, but now that designation is in question. In recent elections, there were systematic and substantial abnormalities found in the electoral results. Further, while many civil liberties are still protected, there have been recent reforms that have decreased the government protections of political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this

country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 men and 1 woman serving as Supreme Court Justices. Three of the justices are selected by the country's president. The remaining four are selected by majority vote of the country's legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

TREATMENT 5: We would now like to get your opinion about the legal system of a particular country. This country was a democracy for many years, but now that designation is in question. In recent elections, there were systematic and substantial abnormalities found in the electoral results. Further, while many civil liberties are still protected, there have been recent reforms that have decreased the government protections of political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 4 men and 3 women serving as Supreme Court Justices. Three of the justices are selected by the country's president. The remaining four are selected by majority vote of the country's legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

TREATMENT 6: We would now like to get your opinion about the legal system of a particular country. This country was a democracy for many years, but now that designation is in question. In recent elections, there were systematic and substantial abnormalities found in the electoral results. Further, while many civil liberties are still protected, there have been recent reforms that have decreased the government protections of political rights and civil liberties. Unfortunately, a high-ranking member of the government was recently accused of corruption, and thus political scientists are now reviewing the legal system of this country to make sure that it is functioning as intended. Here's what we know: the judicial branch of this country is centralized around a Supreme Court made up of seven justices. Currently, there are 6 women and 1 man serving as Supreme Court Justices. Three of the justices are selected by the country's president. The remaining four are selected by majority vote of the country's legislature. Once appointed, these justices serve non-renewable 15 year terms. Cases are resolved based on a majority vote of the justices. The court hears criminal, civil, and constitutional questions and has the explicit authority to declare laws unconstitutional.

QUESTIONS GIVEN TO ALL PARTICIPANTS:

Variable: JUSTICE SERVED

1. Based on this description, how likely do you think it is that the court will ensure justice is served?
   a. Extremely unlikely
   b. Unlikely
   c. Somewhat unlikely
   d. Somewhat likely
   e. Likely
   f. Extremely likely

VARIABLE: DEMOCRACY HEALTH

2. Based on this description, how likely do you think it is that the court will contribute to the overall health and well-being of democracy in this country?
   a. Extremely unlikely
   b. Unlikely
   c. Somewhat unlikely
   d. Somewhat likely
   e. Likely
   f. Extremely likely

VARIABLE: FAIR RULING

3. Based on this description, do you trust this court to issue a fair ruling on the corruption of the accused government official?
   a. Extremely unlikely
   b. Unlikely
   c. Somewhat unlikely
   d. Somewhat likely
   e. Likely
   f. Extremely likely

VARIABLE: JUDICIAL REVIEW

4. One of the most important jobs of the high court is to determine whether or not a law is unconstitutional. Do you believe that this court will review laws in a fair and unbiased way?
   a. Extremely unlikely
   b. Unlikely
   c. Somewhat unlikely
   d. Somewhat likely
   e. Likely
   f. Extremely likely

VARIABLE: FAIR COURT

5. Based on this description, how likely do you think it is that the court will treat parties who try a case before the court fairly?
   a. Extremely unlikely
   b. Unlikely
   c. Somewhat unlikely
   d. Somewhat likely
   e. Likely
   f. Extremely likely

VARIABLE: TRUST LEVEL

6. Based on this description, to what extent would you trust this court if you lived in this country?
    a. Low level of trust
    b. Somewhat Low level of trust
    c. Somewhat High level of trust
    d. High level of trust

7. Which of the following is not a color?
    a. Red
    b. Yellow
    c. Cat
    d. Purple

The following questions will help us to learn more about your beliefs and experiences:

1. How would you describe your Political Ideology? (please circle one)
    a. Extremely Liberal
    b. Liberal
    c. Somewhat Liberal
    d. Moderate/Middle of the Road
    e. Somewhat Conservative
    f. Conservative
    g. Extremely Conservative
    h. Haven't Thought much about it
2. Generally speaking, do you usually think of yourself as a Democrat, Republican, Independent, or what?
    a. Democrat
    b. Republican
    c. Independent
    d. Other Party (please specify) _____
    e. No preference
3. Would you call yourself a STRONG (Party preference from question 2 here) or a NOT VERY STRONG (Party preference from question 2)
4. What gender do you primarily identify with? (please circle one)
    a. Female
    b. Male
    c. Neither
5. What is your age? (open spot for age)
6. What level of education have you completed?
    a. Some high school
    b. High school
    c. Some college
    d. College
    e. Some graduate work/graduate degree

7. Some people use automated systems and bots to complete surveys. To make sure that's not happening, please answer the following question: How many kittens are in this picture?

(INSERT CUTE KITTEN PICTURE)

   a. 2
   b. 4
   c. 3
   d. 0
   e. 1

8. Please tell me if you agree or disagree with this statement: The US Supreme Court is a fair and unbiased institution that can be trusted to do what is best for the country.
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree

9. Please tell me if you agree or disagree with this statement: The criminal courts in the United States give people fair trials and tend to ensure that justice is served.
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree

(sexism battery- via Glick & Fiske 1996)

1. Which statement best represents your views? Would you say that:
   a. Most men are better suited emotionally for politics than are most women.
   b. Men and women are equally suited.
   c. Most women are better suited emotionally for politics than are most men.

2. Please tell me if you agree or disagree with this statement: Women are too easily offended
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree

3. Please tell me if you agree or disagree with this statement: Women exaggerate problems at work
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree

4. Women should be cherished and protected by men.
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree

5. Women have a quality of purity that few men possess.
   a. Strongly Disagree
   b. Disagree
   c. Somewhat Disagree
   d. Somewhat Agree
   e. Agree
   f. Strongly Agree