

Gender Cues and Acceptance of Supreme Court Decisions: An Experimental Study on Source Cues

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Abstract:

The issue of gender, politics, and the judiciary has widely been reviewed. Previous research has observed judges craft both *gender motivated* and other *self interested* decisions. Rather than conducting an examination into possible gender motivated decision making; an experimental investigation is employed to examine the acceptance rates of perceived gender motivated decisions by the Supreme Court. This study employs the use of cues (information shortcuts) presented to participants as to the gender of the justice in a Supreme Court decision regarding women's rights in order to measure differences in acceptance rates. It is theorized that a relationship exists between a perceived gender motivated decision and a decline in acceptance rates of specific decision; or in other words when it appears a judge is acting in a self interested manner through this will yield lower rates of publics' acceptance of the Court's decision. The previous theory is advanced further to suggest as to when a judge issues an opinion or behaves in a way that goes against general expectations the actions are perceived by the public to be more credible. This is demonstrated in the study below which finds when a female Supreme Court Justice issues a majority opinion that is against women's rights the decision enjoys a statistically significant greater rate of acceptance; than a male justice issuing the same decision. This finding parallels with previous research across multiple disciplines of political science, psychology, and communications on credibility of a communicator (Supreme Court Justice) and the use of a cue (gender).

Keywords: Supreme Court, gender, cues, source cues, communication, gender motivated, self interest, judicial decision making

Introduction:

Historically there has been an imbalance of gender representation on the Supreme Court. In the Supreme Court's over two hundred twenty year history only four women have or are currently serving as justices. Voting behavior of female judges in both the settings of State Supreme Courts, the US Court of Appeals, and the US Supreme Court has widely been researched (Davis, Haire, and Songer, 1993). Rather than conducting an examination into possible gender motivated decision making; another experimental investigation is employed to examine the acceptance or rejection of perceived gender motivated decision making in relation to acceptance of the Supreme Court decisions.

Given the Supreme Court is generally observed by the public as formal legal institution that ranks highest in public approval when compared to Congress or the Executive (Gibson and Calderia 1992). How might perceived *gender motivated self interested* decisions by the Court affect the public's acceptance of specific decisions, support for the Supreme Court, and further the effect on the legitimacy of the Supreme Court. Further, how might decisions that were against general *self interested* principles effect the support for a decision handed down by the Supreme Court.

Judicial Decisions, Gender, and Approval

It has statistically been shown that female judges vote differently than their male counterparts. There is a concept of female judges behave in the "role of representative" (Davis et al., 1993; McCall, 2003; Allen, 1993; and Peresie, 2005) the perception that female judge's act as representatives to their gender; and furthermore, are politically willing to support women's rights in their decisions. Female judges take on what class been classified as the "role of representative" when they actively make decisions that directly affect the status of women.

However, for the purposes of this study there is no interested in how judges of either gender render decisions on gender-issue cases before them. Here the question is how public accept of cases will vary depending on perceptions of the *gender motivated* decisions while taking into account the gender of the judge.

Perception and acceptance of decisions is a crucial element in regards to legitimacy for the Supreme Court, Gibson and Calderia (1992) argue the legitimacy of the Court has origins in two types of public support. First, diffuse support a general reservoir of goodwill to the Supreme Court carried by the public, even when the Court hands down a controversial decision the diffuse support for the Supreme Court waivers little to one. On the other hand specific support for the Supreme Court is the reaction to a specific decision made by the Court (Gibson and Caldeira 1992; Gibson 2004).

Often is the case the Supreme Court retains a high degree of legitimacy due to the complex legalistic operations of the Court; often the relationship between the public and the Court is observed by scholars as a low information environment. Previous research has yielded that in low information settings a certain cue (i.e. information shortcuts) can be used to make judgments about an attitude object for which they have limited information (Eagly and Chaiken 1993, McDermot 1994; and Huddy 1993). For this study the cue treatment was the gender of the Justice handing down the majority opinion on a Supreme Court decision.

This decisions presented by the Court were portrayed as “in the interest of women’s rights” or “against the interest of women’s rights”. The two different decisions presented to the subjects are from previous Court cases: *Geduldig v. Aiello* (1974) and *Meritor Savings Bank v. Vinson* (1986).¹

¹ Please see Appendix A for a summary of *Geduldig v. Aiello* (1974) and *Meritor Savings Bank v. Vinson* (1986).

H1: Self Interested Hypothesis: When it is a female justice writing the majority opinion for a decision that is observed as against women's rights, it will receive more support than a male justice ruling of the same case.

Below the hypothesized table ranks expected highest supported decision to the least supported decision in the four conditions presented:

Rank (highest to lowest support)	Condition:
1	Male Justice – favors women's rights decision
2	Female Justice- favors women's rights decision
3	Female Justice- against women's rights decision
4	Male Justice – against women's rights decision

Research previously conducted in the area of psychology suggest that perceptions of credibility, competence, and trustworthiness can be influenced by a number of source factors, in this study the position advocated by the communicator (i.e. author of the majority opinion) is known as the source factor. Communicators are more likely to be perceived as more competent, more credible, and more trustworthy if the position advocated disconfirms the audiences' expectations (O'Keefe 1990; Nicolson 2011). When this source factor or position on a case advocated is combined with the a gender cue: it is expected that female justices will receive greater acceptance for decision against women's rights than their male counterpart simply because they are ruling against the expected position of acting in a *self interested* or *gender motivated* way.

Implications of this study relates public acceptance of a decision, however unpopular, to legitimacy of the Supreme Court. The legitimacy of the Supreme Court is an important feature of

American politics essential to the Court properly being able to function. As the Court lacks the power to fund or enforce its rulings it must rely on this legitimacy to see the decision implemented and respected (Gibson and Caldeira 1992; Gibson 2004).

Data and Methods:

A computer based survey was taken within the Political Science Department's Computer Lab using the program MediaLab. The experiment was structured in a 2 by 2 format with the gender cue of the Justice (i.e. male or female) and Supreme Court Decision, either in the interest of women or against the interest of women; totaling 4 possible conditions. A single condition was presented each participant under a randomized setting.

The participants in the study were 202 undergraduate students at University of California, Merced. The participants were paid in the form of SONA credits which are applied as extra credit in certain undergraduate courses. Of the participants 145 identified as female and 57 identified as male; the average age of the participant was 19 years old. This and other basic demographic information was included into the measures to control for a possible endogenous effect of female participants supporting the case in the interest of women, simply because they themselves are gender biased or a vice versa effect with male participants and their acceptance of decision by male justices.

The political party affiliation of each participant was obtained by originally asking each to identify with one of the three presented options: Democrat, Republican, or Independent. In the study, 181 participants identified a political party (29 identified as Republican and 152 as Democrats), and 21 chose the Independent option. For participants with the Independent option a follow up question was presented regarding ideology leaning; this yielded 4 Republican leaning and 17 as Democrat leaning. Those who subsequently identified their party leaning preferences

were then aggregated to that party. Once aggregated of the 202 participants there were: 33 (16.3% of participants) Republicans and 169 (83.6% of participants) Democrats.²

The Supreme Court decision was presented in the form of a vignette with the preceding direction of “The following excerpt is similar to language that would be found in a nationally recognized newspaper. Please read carefully.” Of the four possible vignette conditions presented to the subjects were all similar in text length and vocabulary. For example the vignette for the case against the interest of women, the Justice was interchanged by Sandra Day O’Connor and Paul Stevens and the use of “he” and “she” was interchanged.³

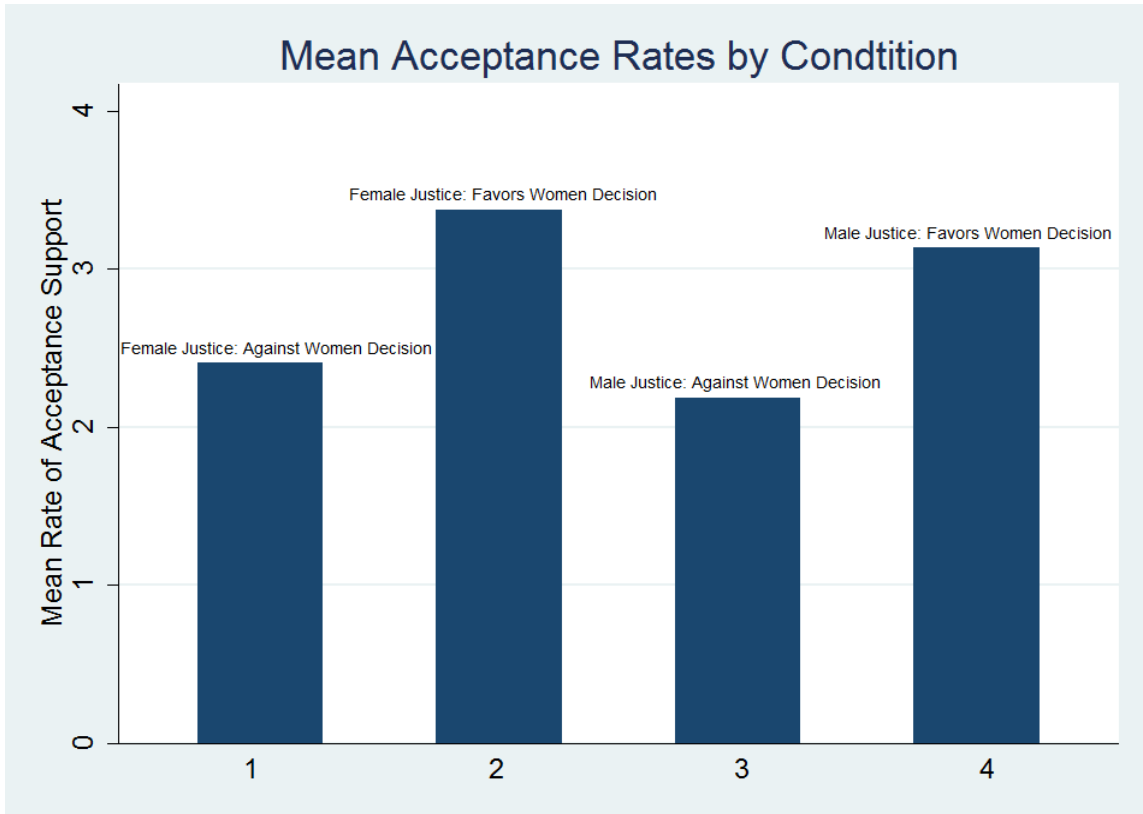
The data was collected by MediaLab and converted into CVS format which was next imported into a dataset using STATA.

Results & Discussion:

The regression model evaluated the relationship between decision support and the gender of the justice, while controlling for the decision handed down by the Court, the gender of the subject, party identification, and norm to democracy. The results of the regression suggest that there is a moderate effect occurring on decision acceptance rates by participants when the gender of the justice is taken into account. Here the coefficient for the gender of the justice is 0.235, to be interpreted as when the gender of the justice was a female acceptance rate for the decision increased by 23.5%. With a corresponding p-value is 0.036 making these results statistically significant. Furthermore while analyzing the output of the model the variable regarding the

² The participants also filled out a corresponding survey on the MediaLab program. The survey sought to measure other aspects such as: interest and knowledge of the Supreme Court, loyalty to the Supreme Court, interest and knowledge of politics in general, and social policy questions to measure to separate an identified political ideology and individuals stance salient social issues. Results of many of these measures yielded statistically speaking, insignificant results for various reasons. For further information on these measures please contact the author at: renber.kristen@gmail.com.

³ Please see Appendix B for an example of one of the four possible vignette conditions.



decision by the Court in regards to acceptance rates suggested a significant effect on the acceptance rates by the subjects. A coefficient of 0.964 was specified, with an analogous p-value of 0.000. This coefficient regards an increase in acceptance rate of the decision by 96.4% when the decision of the Court is in the interest of women. Overall the r-squared value of the model is 0.290, with the resulting F-test indicating acceptable fit of the model.

Figure One: Mean Acceptance Rates by Conditions

Above, Figure One shows the differences of acceptance rates depending on both the condition of decision by the Court and the gender of the Justice. While the condition with the highest and lowest acceptance rates were: a female justice in the interest of women’s rights decision; the lowest being a male justice being against interest of women’s rights decision.

Most interestingly is that the condition with the female justice ruling against the interest of women’s rights gathers more acceptance than a male justice ruling the same. As mentioned previously that often is the case with public opinion that communicators or in this experiment,

Supreme Court Justices, are more likely to be perceived as more competent, more credible, and more trustworthy if the position advocated disconfirms the audiences' expectations (O'Keefe 1990; Nicolson 2011). In the *self interested* hypothesis it was hypothesized that women would receive less acceptance of their decisions when ruling in favor of women's rights; as it is seen by the public that they are using their position to further the interest of women the results of experiment did not support this hypothesis. However, in the condition when a female justice acts in the opposite of a *self interested gender motivated* decision making manner, which is contrary to the public's expectation the level of support is seen to increase.

Another important feature to point out is that all four conditions receive an average acceptance rate of 2.7 from a scale of 1 to 4 (which ranges lowest support to highest levels of acceptance). When it was an a condition in which the decision handed down by the Supreme Court was against the interest of women; regardless of the gender of the justice in the vignette, the average acceptance rate was a 2.3. Subsequently, the average rate for the condition where the Supreme Court's decision was in the interest of women; regardless of the gender of the justice a mean acceptance rate of 3.2 was found. Meaning that for all four conditions, even those classified as against the interest of women's rights they still receive on average more slight or full acceptance (i.e. a mean rate of acceptance over 2.0) from the subjects in the than slight or full rejection mean rates.

Endogeneity of Gender Studies & Concerns with OLS Regression

Throughout this study there can be a concern for the relationship between the gender of the participant and the effect that it may have with acceptance of the gender cue condition, whether male or female. Included in the OLS regression analysis was the gender of the participant to be controlled for during the analysis. In this study 72% (145 of 202 participants)

were females. The results of the OLS model indicate a coefficient of -0.03, meaning that when a participant identified as female there was very little effect of decreasing support by less than 1% when controlling for the condition presented. However, the corresponding p-value for this coefficient is 0.754 and therefore does not meet the threshold of 0.05, making it statistically insignificant. It can be said with moderate confidence and critical thinking that there is an endogenous relationship of the gender of the participant affecting their support of the decision rather than the gender cue of the justice.

Further examination into the issue regarding the influence of the gender of the participant and the outcome of acceptance rates was analyzed through the production of bar graphs as seen in Appendix C. Here we find that there is relatively little difference in acceptance rates based on which of the four conditions the participants of either gender was randomly assigned to as the same rank order of highest to lowest acceptance is the same between the two genders. By separating the mean rates of acceptance by gender the graphs presented provide further evidence of there being no effect by the gender of the participant on acceptance rates.

Another concern with the experiment is the dependent variable measured in the study of decision acceptance an ordinal variable with a range of 1 to 4. An assumption made when conducting OLS regression is that in fact the parameters of the model are linear. A measurement issue may be at hand, biasing the output.

Arguably one of the many reasons behind these findings may be due to the concept that certain political groups “own” policy areas of a high degree of interest to them. For example the Democrat Party “owns” the agenda of health care policy. Here since the decision handed down by the Supreme Court is in relation to women’s rights, regardless of in favor or against the argument can be made that the participants in the study view that female judges “own” women’s

policy issues. This is why for all for both conditions of the Supreme Court handing down a policy favoring or opposing women's rights the female justice condition was always approved of at a higher acceptance rate than the male justice. If this study were to be replicated however with the use of another policy area for example federal parking and transportation laws a policy area which no political or social group's agenda "own" then it is hypothesized that a variation would not exist in the rates of acceptance with induction of gender cues.

Conclusion:

The results of this study support existing research in areas of psychology of cues, most importantly source cues. By examining the effect of the gender of the Justice coupled with decision handed down by the Supreme Court we find a clear instance by both male and female participants allocate a higher rate of acceptance to conditions where the Justice rule in a way opposite of obvious expectations increased the credibility of the decision.

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Appendix A:

The case of *Geduldig v. Aiello* (1974) is within the condition of against the interest of women's rights. The issue presented in the case was classified as a legal question of equal protection, in which the Supreme Court ruled on whether unfavorable treatment to pregnant women could count as sex discrimination. The Court held that the denial of insurance benefits for work loss resulting from a normal pregnancy did not violate the Fourteenth Amendment. This decision by the Court was later overturned by the Pregnancy Discrimination Act of 1978 ("*Geduldind v. Aiello*").

The case presented as in the interest of women's rights was *Meritor Savings Bank v. Vinson* (1986). The decision handed down by the Supreme Court emphasized the recognition of certain forms of sexual harassment as a violation of Civil Rights Act of 1964 Title VII, and established the standards for analyzing whether conduct was unlawful and when an employer would be liable ("*Meritor Savings Bank v. Vinson*").

Appendix B

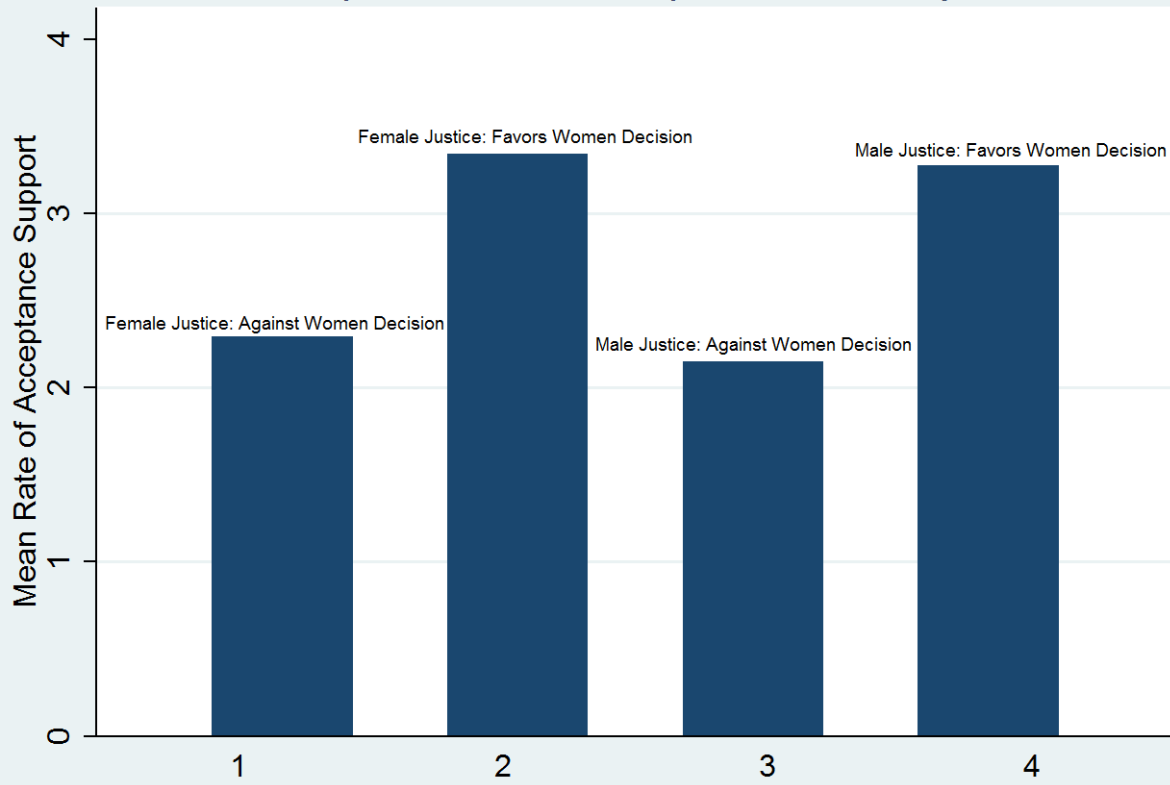
Condition 3: male justice, in interest of women

After being fired from her job at a Meritor Savings Bank, Ms. Mechelle Vinson sued Mr. Sidney Taylor, the Vice President of the bank. Ms. Vinson charged that Mr. Taylor had coerced her to have sexual relations with him and made demands for sexual favors while at work. She argued such harassment created a hostile working environment and a form of unlawful discrimination under Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination by employers in the context of any contractual employer and employee relationship.

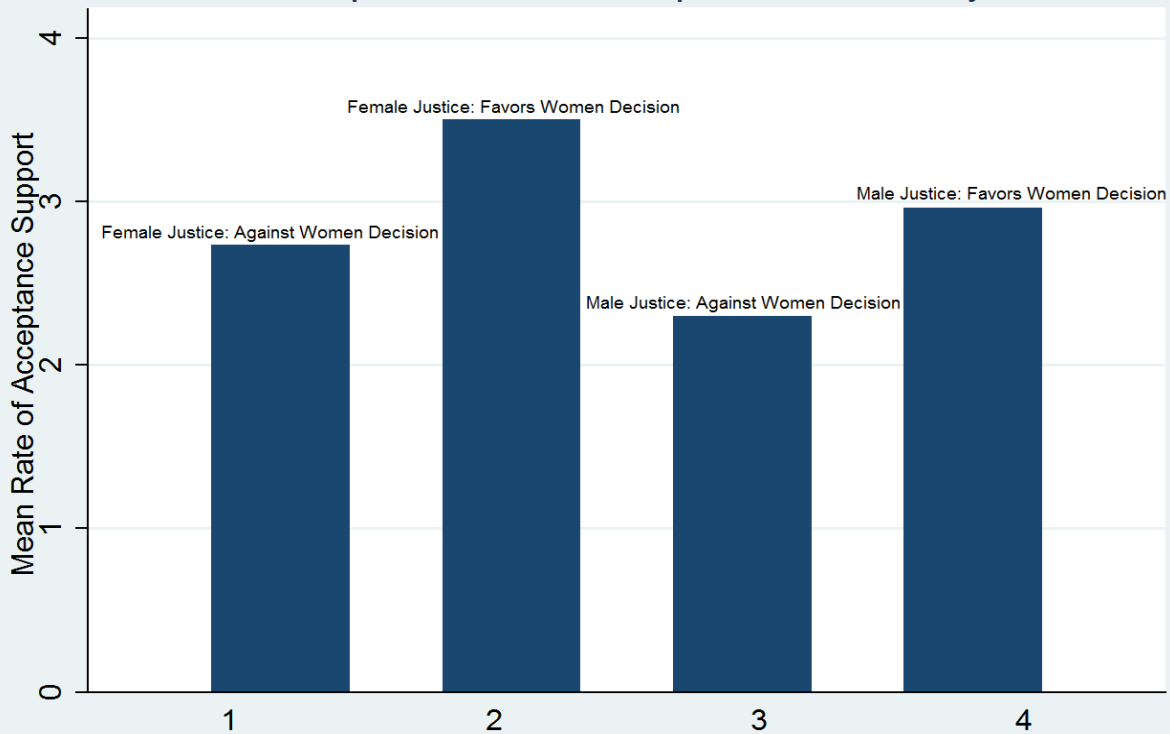
The Supreme Court had to decide if hostile working environment was a form of unlawful discrimination under Title VII of the Civil Rights Act of 1964. Ultimately, The Supreme Court decided that hostile working environments based on the discrimination of sex did violate Title VII of the Civil Rights Act of 1964. Justice William Rehnquist pointed out that sexual harassment leading to noneconomic injury was a form of sexual discrimination prohibited by Title VII. Justice William Rehnquist further recognized that plaintiffs could establish violations of the Civil Rights Act of 1964, he stated “by proving that discrimination based on sex has created a hostile or abusive work environment.”

Appendix C:

Male Participant: Mean Acceptance Rate by Condition



Female Participant: Mean Acceptance Rates by Condition



Kristen Renberg



Kristen Renberg from Fresno, CA is currently in her fourth year at UC Merced and plans to graduate in Spring 2015. She is majoring in political science with a minor in public health. Kristen has worked as a research assistant in the Political Science Department's experimental laboratory for the past three years. She intends to pursue her PhD in political science and has a strong research interest in behavior and attitudinal political science research.