

The Influence of a Feminist Legal Framework on Public Opinion

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I. Introduction

Activists in the women's movement have long pursued legal strategies to advance the goal of gender equality throughout the social, economic, and political system in the U.S. Indeed, gains toward gender equality achieved through litigation and legislation, include decisions such as *Craig v. Boren* and *Reed v. Reed*, which created a legal precedent for pursuing claims of gender discrimination. Despite these advances, substantial gender disparities exist in social, economic, and political status of women and men. For example, women earn less than their male counterparts, women are more likely to drop out of the workforce due to the challenges of work-life balance, and women have more restricted access to health care (Shatnawi et al. 2014; Saltzstein, Ting, and Saltzstein 2001; Deutsch 2015). We investigate the ability of feminist legal theory to shift public opinion about the presence of gender discrimination and the need to find successful policy remedies.

While activism through litigation can result in successful legal remedies that advance the economic, social, and political interests of women, public opinion does not always follow suit. The extent to which judicial opinions on issues of equality and discrimination can shape public opinion is the subject of scholarly debate. Depending on the issue, the courts do seem to exert some influence on public opinion (Page, Shapiro, and Dempsey 1987). For example, when the court's decision on an issue receives intense media coverage public opinion can shift. However, this shift in public opinion does not always occur. More recent work provides less clear results. Some scholars have found that the Court tends toward being an opinion leader (Allen 2015) while others have found that the Court actually follows public opinion (Driver 2014), and still yet, another body of scholarship finds that the Court has no discernible effect on public opinion

(Nicholson and Hansford 2014). We investigate whether judicial decisions on gender discrimination issue can affect public opinion about gender equity issues.

Most feminist advances in litigation focus on a framework that creates equality between the sexes that did not previously exist. In other words, before the decision, women and men were “unequal;” after, they were “equal” (*Frontiero v. Richardson* 1973). However, we argue the public may not respond positively to this theoretical lens. We test whether the public responds more positively to alternative feminist frameworks relied on in judicial opinions. The relative dearth of legal scholarship on the relationship between judicial action and public opinion means that the bench and bar are less likely to know the effects of their actions on mass opinion (for a rare example, see Allen 2015). We believe this issue warrants empirical investigation.

As a political institution free from electoral constraints, the courts are in a unique position to make unpopular decisions that have sweeping impacts. The legitimacy of the judiciary comes, in part, from the perception that the court is politically neutral (Gibson 1989). This partially explains the judicial insistence that “what the law *is*” forms the basis of decisions that appear politically motivated (Graber 2003; *Marbury v. Madison* 1803). This idea of political neutrality means that the courts can secure policy changes unavailable through the other political processes, such as legislation (Whittington 2005). But if the court's decisions are not transmitted and transmuted into public opinion, then the question arises: does the court accomplish anything?

We examine the relationship between judicial decisions, feminist legal frameworks, and public opinions with a unique and innovative experiment. In part II of this article, we explain the state of knowledge regarding the relationship between courts and public opinion. Part III develops a theoretical framework that identifies which feminist frames might affect public opinion, and from this framework, we develop a set of hypotheses. Part IV describes the research

design. In Part V we describe the experimental results and in Part VI we explain the substantive significance of our findings beyond the hypotheses we test, and provides a few, cautious, policy recommendations for gender activists.

II. The Role of Courts in Influencing Public Opinion

There are two models to characterize the relationship between the courts and public opinion. The first model posits a limited role for the courts in affecting public opinion change (Bartels, Johnson, and Mark 2015). This model treats the courts as independent arbitrators of disputes that make decisions based on the law, and not based on pressure from the public or political elites (Gibson 1989; Caldeira and Gibson 1992). However, this model does not necessarily mean that public opinion does not affect the judicial decision-making process. Some scholars suggest that the courts, under certain conditions, might actually follow public opinion (Driver 2014). Specifically, the model suggests that courts invalidate state laws that deviate from broad public opinion under specific conditions – when state laws are “holdouts, upstarts, backups, and throwbacks” (Driver 2014: 933). Therefore, under this limited model of influence, it is the courts following public opinion and not the reverse relationship

The second model argues that the courts, under certain conditions, can affect opinion change (Page et al, 1987; Allen 2015; Bartels and Mutz 2009; Carmines and Stimson 1980; Zaller 1991). Under the courts as opinion leaders model, public opinion change in response to a judicial decision is slow and incremental (Page and Shapiro 1992). Moreover, court decisions may not always instigate opinion change in large segments of the public, but in small subsets of the mass public (Bartels et al. 2015). Here, the court’s role is to create the least resistance from subsets of the public that are not necessarily in favor of a policy (Bartels and Mutz 2009); thus, the opinion movement is not necessarily changing opinion from opposition to support, but,

limiting the intensity of opposition. Even with this model, the causal relationship is not from public opinion to the courts, but from the policymaking coalition to courts to some subset of public opinion.

Judicial decisions can lead to broad and mass opinion change, and this sweeping effect is likely to occur under two conditions: high issue salience and ambivalent public opinions (Carmines and Stimson 1980; Zaller 1991). High issue salience means that the issue must be visible on the public radar, and the public must be aware of the judicial decision and its consequences (Page and Shapiro 1992). Generally, the media plays a critical agenda-setting function in increasing the salience of an issue for the public. When this occurs, there may be opinion change, but that change does not occur overnight (Carmines and Stimson 1989). Second public opinion must be ambivalent (Baumgartner, De Boef, and Boydston 2008). This means the public must have both positive and negative opinions about an issue—the public must not be polarized or split into competing camps on an issue. For example, the death penalty is an issue where most individuals experience conflict when they form or explain their opinion on this issue. Many in the public feel torn between a desire for justice and a worry over fairness in the judicial process. These two conditions: high issue salience and public ambivalence can lead to opinion change; but determining how and when public opinion change occurs under these conditions is not always entirely clear.

When opinion change does occur the response can be in two directions. Public opinion can converge with the judicial decision or the public can oppose the judicial decision. The courts served as opinion leaders on civil rights issues in the 1950s and the 1960s by making unpopular decisions, such as school desegregation, and public opinion, over a period of decades gradually shifted to support civil rights (Page and Shapiro 1992). Conversely, a judicial decision can create

a backlash toward marginalized groups with women and racial and ethnic minorities being particularly vulnerable (Sanbonmatsu 2008; Zagari 2007; Fejes 2008). Opinion backlash occurred after *Roe v. Wade* where highly mobilized groups became strong and intense advocates against reproductive rights (Klarman 2012). Not all judicial decisions concerning marginalized groups necessarily lead to backlash. Bishin et al (2015) tested whether opinion backlash occurred toward the LGBTQ community after the recent court decisions expanding marriage rights, and found no evidence of a backlash effect.

Opinion change in response to judicial decisions that affect women as a marginalized group suggest that this group, in particular, may experience opinion backlash from vocal minorities in the public. The most notable evidence of this backlash occurred around *Roe v. Wade* (Klarman 2012). While most of the public holds ambivalent attitudes about reproductive rights (Fiorina and Abrams 2008), an intense and vocal opposition has arisen over the last four decades. Those opposed to reproductive rights secured policy change at the state and federal level that restricts the reproductive rights of women. Research on the judicial system and gender equity issues shows that the gender of the judge matters for public responses to decisions (Kenney 2013). More specifically, when female judges make decisions that favor women a backlash can occur against women collectively (Nelson 2015). This finding suggests that activism through litigation may not always be an effective strategy around gender issues. We seek to build on these findings by testing how the content of judicial decisions affects public responses to such decisions.

In sum: courts can move public opinion. However, these effects are highly conditional depending on the issue salience and public ambivalence. Moreover, the conditions under which positive opinion change occurs or opinion backlash occurs is not entirely clear. In the next

section, we develop a theoretical framework that posits whether feminist frames lead to opinion support or opinion backlash, and we use this framework to develop a set of hypotheses.

III. A Typology of Feminist Legal Frames

Feminist legal theory “presents a theory of gender and challenges the assertions and assumptions of gender-neutrality and objectivity in received disciplinary knowledge” (Fineman 2005: 14). Using Fineman’s typology, we identify and use four different approaches to feminist legal theory in our experiment: the difference engine, gender dominance, neo-liberal, and post-modern.¹ We briefly discuss each of these four frames, and then develop a set of hypotheses about the effects of these frames.

The first frame we use focuses on the fact that “facially neutral rules could also generate inequalities, particularly since women’s and men’s societal circumstances were so different” (Fineman 2005: 17). We refer to this frame as the “difference engine,” because it emphasizes the biological differences between women and men. Most relevant to our experiment are those who argue that “[b]ecause sexual harassment was a central mechanism for perpetuating women’s inferior status in the workplace, it ought to be regarded as sex discrimination” (Chamallas 1999: 55). We operationalize this frame to focus on the biological capacities of women (West 1987). The social, political, and economic positions of women have strong connections to the biological roles women fill as mothers (Eagly and Wood 2012; Wood and Eagly 2012). From an evolutionary psychology perspective, women’s subordinate social roles originate directly from their biological abilities. Women, traditionally, performed caregiving, communal functions while men performed power-related tasks that placed them in the dominant power position.

¹ We recognize these are not the only feminist frames that might be employed in judicial decisions, but these four frames offer a useful starting point for identifying the relationship between judicial framing and public opinion.

Next, we use a male dominance frame, which emphasizes the path-dependent nature of patriarchy (MacKinnon 1989). The male dominance frame recognizes that even formal equality does not create substantive equality when men set the terms under which women are equal. Under this approach to feminism, men bear the primary responsibility for dismantling male privilege; while women have an important role to play in highlighting inequality, deconstructing privilege, and demanding equality, women can only *create* equality in a separate, woman-created sphere of influence. As MacKinnon states, “take your foot off our necks; then we will hear in what tongue women speak” (MacKinnon 1987: 45). In this frame, the plaintiff’s supervisors bear the blame for failing to protect her from workplace harassment. This frame, similar to the difference frame, highlights the differential power structures between women and men. Unlike the difference frame, the dominance frame places the responsibility of correcting inequities between women and men on men as they are in the dominant power position.

The third frame we test is the neo-liberal frame, and this is anecdotally, the most successful in the courts. The neo-liberal approach resorts “to doctrinal arguments that women and men should be treated the same” (Fineman 2005: 16; *see also* MacKinnon and Emerson 1979). This framing “apparently means . . . only getting things for women that can also be gotten for men” (MacKinnon 1989: 222). The neoliberal goal, in feminist thought, as we understand it, is to ensure that anything that would be unlawful if done to a man is unlawful if done to a woman, and *vice versa* (Reskin and Hartmann 1986; Pint 1983). This construction of feminism taps into value preferences in the public for equality and liberty (Jacoby 2006, 2014). We exclude from our analysis Marxist-feminist critiques that are frequently lumped in with neo-liberal framings (*see* MacKinnon 1989; Barnett 2013), but that do not fit the same public opinion

frame. This model of neo-liberal framing, unlike the other frames, comes the closest to creating equality between women and men.

The American Civil Liberties Union's Women's Rights Project used the neo-liberal framing to secure feminist advances in *Reed v. Reed* (1971), which extended equal protection to gender discrimination; *Frontiero v. Richardson* (1973), which acknowledged the need for heightened scrutiny in gender claims; and *Weinberger v. Wiesenfeld* (1975), which established "intermediate scrutiny" as the standard for gender discrimination claims. This framing, predicated on the notion that legal equality or formal equality is equivalent, or at least can lead, to substantive equality, we expect to tie closely to existing opinion frames that have significance and strength across the opinion spectrum (Jacoby 2006).

The final frame we use we refer to as "postmodern feminism," though some refer to it as "anti-essentialist feminism" (Wong 1999). Anti-essentialist feminism contests "the universalizability of particular descriptions across all categories of women" (Ortiz 1993). Thus, the postmodern approach that we use denies that there is any meaning to "being a woman" beyond what each individual woman ascribes for herself (Rhode 1988, 1989). The postmodern approach appears to divorce self-identity from group identity, and draws attention away from issues associated with gender.

We use a framing approach to test the effects of legal decisions because frames, broadly, affect how individuals form opinions by increasing attention to some aspect of a problem or an issue and decreasing attention to other aspects of a problem or an issue (Kahneman and Tversky 1979; Tversky and Kahneman 1981; Kahneman and Tversky 1982; Tversky and Kahneman 1982). Evidence shows that frames, whether embedded in media coverage of a political issue, speeches of politicians, or some other information source, can change how people think about an

issue, and their opinions about an issue (Druckman 2001a, b; Chong and Druckman 2007). For example, support for allowing a KKK rally increases when the rally is framed as a free speech issue and support for allowing such a controversial rally decreases when the rally is framed as a public safety concern (Nelson, et al. 1997). We posit that feminist frames will affect public opinion by shifting attention toward issues of gender discrimination as a problem.

We test how these four frames—difference, male dominance, neo-liberal, and post-modern—affect public opinion around issues related to gender discrimination. Rather than delineating a series of hypotheses about each frame, we develop broader hypotheses about the effects of feminist framing more generally. The first hypothesis outlines the effect of feminist frames on perceptions of gender discrimination as an important problem:

Gender Discrimination Hypothesis: Feminist frames, compared to decisions that do not use feminist frames, will affect opinions about the extent to which individuals see gender discrimination as an important social problem.

There are two possibilities for the direction of these effects. First, feminist frames can have an agenda-setting effect where they increase the importance of gender discrimination as a problem (McCombs and Shaw 1972; Nelson and Oxley 1999). The neo-liberal frame is most likely to have this positive effect because the frame encourages readers to put themselves in the position of someone who is facing harassment based on their gender. Thus, this frame may be able to elicit empathy from individuals.

Second, feminist frames may lead to opinion backlash where individuals rate gender discrimination as less of a problem to counter the narrative put forth by the feminist frames. This reaction is most likely to occur in the difference and dominance frames. These frames both threaten the dominant patriarchal paradigm that favors men (Jost, et al. 2001). These threats to

status quo power systems can lead to resentment and anger, and this negative reaction can occur among both women and men. The negative reaction from men comes from the direct threat to their power. The negative reaction from women also comes from the threat to the status quo that women have incentives to maintain even though that status quo places women in a subordinate position. Essentially, women benefit from depending on men because they receive economic security and protection, and do not necessarily see themselves as being at the bottom of the power hierarchy (Jackman 1994).

The second effect we examine is how the public evaluates the judicial system. Individuals may see the use of feminist frames as a case of judicial activism where judges are enacting their policy preferences rather than forming decisions based on the law (Segal and Spaeth 2002; Lehne and Reynolds 1978; Benesh 2006; Adamany and Grossman 1983). We expect judicial directed backlash to occur if we see evidence of opinion backlash toward women as a marginalized group. If individuals feel threatened by feminist frames, they may direct some of their anger and resentment toward the judge who issued the decision (Nelson 2015). This backlash could threaten the independence of the judiciary from public opinion. The judicial independence hypothesis describes the predicted effect:

Judicial Independence Hypothesis: Feminist frames will increase support for a judiciary that pays more attention to public opinion compared to non-feminist frames.

Essentially, individuals will want to restrict the independence of the judiciary if they disagree with the feminist reasoning employed in the decisions.

In sum, we focus our predictions on two ways that public might respond to feminist frames. First, the public can change their perceptions of gender discrimination as a problem, and

second, the public can change their opinions about the need for judicial independence. In the next section, we outline the design of our experiment and the key measures used in the study.

IV. Research Design

We test the effects of feminist framing using a novel survey experiment. An experiment is appropriate here because it allows us to directly isolate the effects of feminist frames on individual attitudes about gender discrimination. The high level of control over the information participants in the study receive provides us with enough internal validity to allow us to make causal claims about how feminist frames affect public opinion (McDermott 2002; Mutz 2011). In this section, we describe the overall design of the study, and then discuss characteristics of the experimental sample, and the key measures used in the study before moving onto discussing the results.

Each participant in the study read a fictional vignette about a recent federal court case. We use a fictional vignette, rather than details of an actual gender discrimination case, to strengthen the internal validity of our findings (Mutz 2011). Adapting actual court cases in the experiment is risky because participants may know of the case and have preconceived opinions about the issue. The fictional vignette gives us a clearer idea of the effect of the feminist frames on public opinion about gender discrimination. This vignette described a judge's recent decision to allow a former employee's sexual harassment case against her former employer to move forward. All participants read the same background information about the case in which the former employee, Karen Baily, alleged her former employer, a fictional big box retailer, allowed co-workers to harass her.

We then randomized the framing of the judge's reasoning in allowing the decision to go forward. We randomly assigned participants to one of the four judicial reasoning frames: neo-

liberal feminism, difference critique, dominance critique, and postmodern feminism. Individuals could also have been randomly assigned to control condition; therefore, in total our experiment has five conditions. Table 1 highlights how these four frames differ, and we include the full vignettes in Appendix 1. Briefly, The difference engine frame highlights the biological differences between the sexes while the dominance critique focused on traditional patriarchal power structures. The neoliberal feminism frame considers how reactions to sexual harassment would differ if the victim were a man and not a woman. Finally, the postmodern feminism frame argues that expressions of gender identity are part of free speech rights.² Again, all participants read the same background information about the case, and the experimental manipulation changed how the judge's reasoning in allowing the case to move forward changed.

[Table 1 Here]

Sample

We conducted the study using Amazon's Mechanical Turk (MTurk). MTurk is an innovative online survey platform where participants complete short tasks for a nominal fee. Important to note is that participants self-select to complete studies on MTurk and these samples are not generated through a random sampling probability method. Nevertheless, studies show that MTurk samples do produce results comparable to nationally representative samples (Berinsky, et al. 2012). Additionally, studies show social desirability pressures are less likely to affect results in MTurk samples compared to other Internet based samples (Krupnikov, et al. forthcoming). The focus of our experiment on attitudes about gender discrimination may indeed involve some social desirability pressure; thus, MTurk is a useful sample for our study.

[Table 2 Here]

² We conducted a pre-test with the control text that all participants read to ensure that the vignettes were believable and readable (N=100).

Table 2 displays key characteristics of our experimental sample, and compares this sample to other commonly used Internet-based samples. Notably, 58% of our sample is female, and nearly 50% of our sample identifies as Democrat. These sample demographics may reduce the likelihood of a backlash effect against gender discrimination. This dynamic, therefore, only gives us a more conservative estimate of any negative effects. Approximately, N=460 participants completed the experiment, and this gives us about n=92 participants in each of the five experimental conditions. A power analysis shows that this sample size is large enough to detect group differences in opinion (Maxwell and Delaney 2004).

Measures

Our first set of questions focus on attitudes about the extent to which gender discrimination is a problem. We adapted these questions from the American National Election Study. Our first key question asked: *How serious a problem do you think discrimination is against women in the United States?* This question lets us test the extent to which feminist frames affect global attitudes about gender discrimination. For this outcome variable, we rescaled it from 0 to 1, and coded it so that higher values indicate gender discrimination is a serious problem. Second, we asked a question gauging the extent to which individuals perceive gender bias in the opportunities for women and men with the following question: *In the United States today, do men have more opportunities for achievement than women have, do women have more opportunities than men, or do they have equal opportunities?* On these questions, we might see two effects. First, there could be a backlash effect. This backlash effect may be strong when the feminist frame places the blame of gender discrimination on men in the dominance frame. If this occurs, we should see a significant difference between the treatment and the control groups; and this difference should show that gender discrimination is less of a problem in the treatment

conditions. Second, the judicial decision could increase awareness and attention of gender discrimination issues. If this effect occurs we should, again, see a significant difference between the treatment and the control group, but the direction of the difference should show that gender discrimination is more of a problem in the treatment conditions. On the opportunity for achievement variable, we treat it as a category variable and compare changes in the percentages of individuals in each category across the experimental conditions.

Finally, we asked two questions about the judicial system. First, we asked whether *judges should make decisions that reflect public opinion*; and second, we asked whether *judges should be removed if they make decisions that are unpopular*. Here, we might two effects. First, there may be a backlash against the independence of the judicial system. If this negative effect occurs, we should see responses indicating that judges should follow public opinion in decisions and judges should face removal for making unpopular decisions. Second, people might be supportive of the judicial system playing a role in reducing gender discrimination through litigation. If this effect occurs, there should be no significant differences in the treatment to the control group on these two questions. For these outcome variables, we rescaled them to range from 0-1 and coded them so that higher values indicate more support for the status quo of the judicial system.

These four questions allow us to test the two dynamics posited in our predictions. First, that feminist frames will affect public attitudes about gender discrimination, and second, that feminist frames will affect public attitudes about the judicial system. Our predictions are agnostic about which feminist frames will have the greatest effect, but the experiment allows us to investigate how the public responds to these different framing strategies. The next section outlines our analytical strategy and presents the results of our analyses.

V. Results

In this section, we test how feminist legal frames affect perceptions of gender discrimination as a social problem and how these frames affect perceptions of judicial independence. Throughout our analyses, we use the following analytical strategy: we compare the average ratings on our outcome variables in each feminist treatment condition to the control condition using a series of two-tailed t-tests. Thus, we make four sets of comparisons. This approach allows us to test whether feminist framing affects public opinion, and allows us to pinpoint which frames have the greatest affect on public opinion.

Perceptions of Gender Discrimination

The gender discrimination hypothesis predicts that feminist legal frames will affect opinions about the extent to which this type of discrimination is a problem. There are two possibilities for the direction of these predicted effects. First, feminist frames may decrease the extent to which gender discrimination is a problem. If this occurs, individuals may see the judicial decision as a positive step toward reducing discrimination. Alternatively, a decrease in perceptions of gender discrimination as a problem could offer evidence of a backlash effect. Second, feminist frames may increase the extent to which individuals see gender discrimination as a problem. Under this outcome, the increased attention to gender discrimination will have an agenda setting effect that heightens the salience of these issues in the minds of individuals.

Figure 1 shows the mean ratings of participants in each feminist frame condition, along with the 95% confidence intervals. This variable ranges from 0 to 1, with 1 indicating that individuals perceive gender discrimination to be more of a problem and 0 indicating gender discrimination is less of a problem. Across all the conditions, individuals do indicate that gender discrimination is indeed a problem. The control condition rating of 0.60 points ($SD=0.32$) is quite high. Thus, the simple act of a woman bringing forth a legal claim about gender

discrimination, without the use of feminist frames in judicial decisions, has a positive agenda-setting effect.

[Figure 1 Here]

The only significant change in the problem of gender discrimination occurs in the postmodern framing condition, $p=0.0413$. Here, the ratings on gender discrimination as a problem decrease by nearly 0.098 points or nearly 10%. This is a significant and noteworthy decrease relative to the control condition. One reason why this decrease occurs may be that the postmodern frame shifted the focus of the case away from gender and onto free speech issues. The postmodern frame presented the argument that expressions of gender are part of free speech rights, and employers have an obligation to create an environment that supports this expression of free speech. The postmodern frame may draw attention too far away from the social and economic power imbalances between women and men, and in this condition participants may be thinking more about free speech issues and less about gender equity issues.

Thus far, support for the gender discrimination hypothesis is mixed. Only the postmodern frame shifted perceptions of gender discrimination, and the effect suggests the possibility of a backlash toward women as a marginalized group. The second gender discrimination asks whether women or men have more opportunities for achievement. Table 3 shows the percentage of participants in each condition who said that men had more opportunities, women had more opportunities, or whether women and men have equal opportunities. In the control condition, 72% of participants thought men had more opportunities for achievement, and 27% thought men and women had equal opportunities. There is a significant difference in these perceptions in the difference engine, $p=0.0265$, and the dominance frame, $p=0.0426$, conditions. In each of these conditions, participants were more likely to think men and women had equal opportunities for

achievement compared to the control condition. Thirty-five percent of participants in the difference condition thought women and men had equal opportunities for achievement, and 37% expressed gender equality in opportunities in the dominance condition. In the dominance and difference conditions, there is also a significant increase of participants indicating that women have more opportunities for achievement compared to the control condition.

[Table 3 Here]

These patterns suggest the potential of a backlash toward women as a marginalized group. Both the dominance and the difference frames draw attention to the biological differences between women and men, and highlight the patriarchal power structures between women and men. The components of the frames may breed antagonism among participants who feel that the frames do not accurately represent their experiences, or they feel threatened by a change to these power structures. System justification theory argues that individuals will react negatively to any threat to dominant power structures, and these negative reactions can come from both the people at the top of the hierarchical power structure and those in a subordinate power position (Jost, et al. 2001). Male participants may see the judicial decision as a threat to their own privileged status, and female participants may deny the existence of institutional barriers to economic success. (Jost, et al. 2001)

We tested whether women and men responded differently to these frames. Important to note is that these results are very preliminary as the low proportion of men in the sample may not provide a high enough level of statistical power to draw broad inferences from these comparisons. With that caveat in mind, we find that both women and men are more likely to think that women and men have equal opportunities in the difference and dominance conditions. But, comparing the average size of the treatment effect for women to the average size of the

treatment effect of men in the difference frame shows a significant difference, $p=0.0042$, and we also find this same difference in the dominance frame condition, $p=0.0364$. In both of these conditions, male participants are more likely to say that women and men have equal opportunities or that women have more opportunities compared to women. Notably, only two female participants in the difference frame thought women had more opportunities for achievement, and no women indicated that women had more opportunities in the control condition. This disproportionately negative reaction from men provides support for a backlash against women as a marginalized group in the difference and the dominance framing conditions. This effect is not surprising in these particular conditions given that these frames directly reference the dominant social and economic power structures that place men in at the top of the hierarchy and women in a subordinate position.

Feminist frames do affect perceptions of gender discrimination, but they do not increase the salience of gender discrimination as an important issue in need of increased attention. Rather, feminist frames lead participants to underrate the existence of gender discrimination. These effects are certainly troubling because they suggest that activism on gender issues through litigation is unlikely to mobilize public opinion in a positive way. The difference and dominance frames, because they focus so extensively on the biological capacities of women and men and the patriarchal power structures, have the highest potential for a backlash against gender activism. The postmodern frame has a subtler and possibly less pernicious effect. This frame did decrease the perception that gender discrimination is a problem, but this effect is likely because the frame draws attention away from women and focuses attention on free speech.

Perceptions of Judicial Independence

Our last two questions focus on the relationship between the judiciary and the public. Some may see the use of feminist legal reasoning as evidence of judicial activism, and these frames may cause a backlash against the principles of judicial independence. The first question we asked is whether judges should follow public opinion and the second question asked whether judges that fail to follow public opinion should face removal. Overall, most participants did not think judges should follow public opinion, and the feminist frames did not move opinions on this point. There is a marginally significant effect in the neoliberal condition, $p=0.0562$; and this effect is such that more participants in this opinion thought judges should follow public opinion.

On the second question, we again see very limited effects--feminist frames did not threaten judicial independence. Most participants did not think judges should face removal even if they make unpopular decisions in each of the conditions. There is a marginally significant effect in the difference frame condition, $p=0.0541$, and participants in the difference frame did think judges should be removed for breaking with public opinion. Again, these effects are small. For the most part, we do not see a backlash about the judicial system when judges use feminist frames, and we do not find support for the judicial backlash hypothesis.

Results Summary

We tested two major effects in our experiment. First, we tested whether feminist frames change public opinion about gender discrimination as a social problem. We found that feminist frames do not increase support for issues related to gender discrimination, and these frames actually *decrease* the extent to which participants see gender discrimination as a problem. The difference and dominance conditions have the largest negative effects. Both of these frames draw attention to the biological differences between the sexes, traditional gender role distinctions, and highlight patriarchal power structures. These aspects of the frames may cause a

negative reaction among participants who feel motivated to defend the status quo as not being discriminatory toward women (Jost, et al. 2001; Glick, et al. 2004). Second, we tested whether the judicial system faces a backlash from employing feminist frames. We found no evidence of a major backlash effect.

VI. Implications & Conclusion

This study uncovered several critical findings. First, the study further clarified when the court can shift public opinion around issues of discrimination. Issues around gender discrimination are not always highly salient issues for the American public, indeed, women's issues do not even make the list of the Gallup's routinely asked most important problem question for late 2015 and early 2016 (Gallup 2016). However, the public may be more ambivalent around issues affecting women as a group. The rhetoric surrounding the ongoing Democratic primary offers evidence of this ambivalence. Younger women who are less likely to have experience with gender discrimination, especially gender discrimination in the workplace are far less likely to vote for Hillary Clinton compared to older women who do have more direct experience with gender discrimination (Filipovic 2016). Activists who hope to use the courts to instigate policy change and to mobilize public opinion in support of such policy changes may face a steep uphill battle.

Within the context of the study, only the difference and dominance frames resonated with the participants in this study—and the effects in these conditions suggest the possibility of opinion backlash. Employing these frames in judicial decisions, to the extent the public is aware of these decisions through news coverage, can have unintended consequences. These frames can reduce support for gender-related advocacy and create more hostility toward women as a marginalized group. Important to note is that this study provides a very conservative estimate of

these negative effects. The hypothetical judicial decision is from a lower court and simply allows the case to move forward. If this were a decision from a circuit court or the Supreme Court with greater policy implications, we expect to find larger and more substantive negative effects. Decisions at higher levels of the judiciary have broader policy implications, and may produce greater opinion backlash. Additionally, we did not disclose the gender of the justice issuing the decision, but manipulating this factor could also increase the size of the backlash effect we see (Nelson 2015).

The neo-liberal and post-modern frames did little to move opinion on gender discrimination issues. This may be a case of opinion stability, or the null effect may be because the frames simply failed to resonate with the public. In the neo-liberal, post-modern, and control conditions most individuals did express, at a high rate, that gender discrimination was a serious problem. Future work should identify the specific psychological mechanisms that become activated when individuals read news coverage of judicial decisions that employ feminist frames.

The extent to which activists can effectively use the courts to institute policy and public opinion change is not entirely clear from this study. On the one hand, when justices use neo-liberal or post-modern frames opinion backlash is unlikely. Nevertheless, using frames that draw attention to the power structures that guide relationships between women and men leads to backlash. This does not necessarily mean that the courts are ineffective tools for policy change, but they may not be strong opinion leaders for activists involved around gender issues. The dominance frame, in particular, may create a particularly negative reaction because of the implication that men must be responsible for improving gender inequalities. Placing responsibility for solving gender inequalities on men has the dual effect of disempowering women and blaming men for the gender inequality.

Future work on the ability of feminist frames to move public opinion can build on this study in several ways. First, expanding the range of gender issues is one critical next step. We focused this manipulation on a case of workplace harassment. In addition, the manipulation made clear that harassment occurred. However, oftentimes cases of gender discrimination are less clear-cut. One of the reasons why litigating gender based pay discrimination, for example, is difficult is that employers often have other reasons to justify a pay imbalance between women and men (*Wal-Mart v. Dukes* 2011). Employers can claim difference in education levels, prior experience, or job performance to justify a pay imbalance – or, as in the Wal-Mart case, claim that individual managers have chosen to discriminate to prevent women from engaging in collective action (*Wal-Mart v. Dukes* 2011). In these types of cases, proving gender discrimination is more difficult, but feminist frames can help clarify the nature of discrimination.

Second, in this study we focused on women as a marginalized group. Feminist legal reasoning could apply to other marginalized groups such as the LGBTQ community. While recent studies find little evidence of opinion backlash around the Supreme Court’s same-sex marriage decisions (Bishin et al 2015), there is evidence of policy backlash at the state and local level. A number of states and cities have passed laws permitting businesses to discriminate against gay couples on the grounds of religious reasons (Hamilton 2015; National Conference of State Legislatures 2015) and cities are passing laws restricting public bathroom access to the LGBTQ community (Somashekhar 2016). These are cases where the neo-liberal or the post-modern feminist frames may be particularly effective in moving opinion change—through whether that change will lead to backlash, stability, or positive support is not clear.

Third, future work can also expand the type of feminist legal reasoning that justices might employ, and that might affect public opinion. We used four frames based on feminist legal

research, but these frames might not always be relevant in litigating on issues of gender. A weakness of these frames is that they conflate gender and sex with one another, and stick to definitions of sex as a biologically defined concept. The dominance and difference frames focus more on sex and less on gender in defining relationships between women and men. Moreover, these frames rely on a hetero-normative conception of the relationship between women and men. The dominance frame, in particular, has an underlying patriarchal message that men must fix gender discrimination because men hold all the power. But, if men put systems in place to end gender discrimination men still hold the power and responsibility for maintaining these systems. Frames that rely on more expansive definitions of gender and that examine the intersectionality of gender with race, sexuality, and other individual identities may shed light on how litigation can lead to positive opinion change.

The ability of the courts to affect public opinion around issues of gender discrimination has critical implications for gender activism more broadly. Advances toward gender equity have largely stalled in the U.S. over the last fifty years. Policy change through state legislatures, and the U.S. Congress, is not a practical option given the gridlock and polarization in the legislatures (Farina 2015). Whether the courts are a viable path for policy and public opinion change for gender activists is not clear. But we note that in the United States, courts have no power to decide disputes that are not put before them (Shapiro 1981; U.S. Const. Art. III; *Warth v. Seldin* 1975). If potential litigants do not recognize the legitimacy of their claims, they will self-select out of litigation (Priest and Klein 1984). Even if the plaintiff files a lawsuit, if the jury of laypersons does not deem the claim legitimate, they may return a nominal verdict, or a defense verdict (Devine 2012; Ogloff and Rose 2005; Lieberman 2009). Without public acceptance and

internalization of the judicial decision increasing equality, issues of gender discrimination will persist.

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Table & Figures:

Table 1: Experimental Conditions

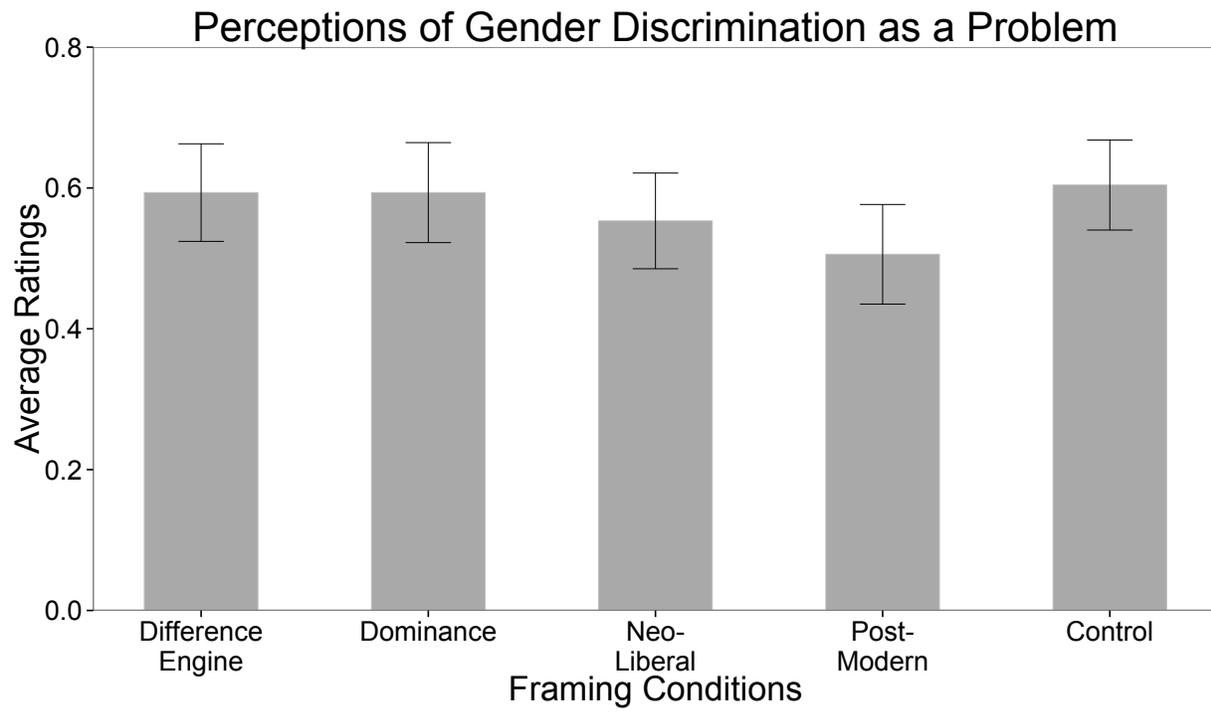
Treatment Condition	Vignette Content
Neoliberal Feminism	Considers how reactions of sexual harassment would differ if the victim were a man and not a woman
Difference Engine	Focuses on biological differences between women and men
Dominance Critique	Highlights traditional gender roles that place men in a dominant position of power
Postmodern Feminism	Treats expressions of gender as part of free speech rights
Control	No feminist frames

Table 2: Sample Demographics

	MTurk Sample	2012 Pew	2014 CCES	2010 Census*
% Women	58%	55.74%	53%	50.8%
% Democrats	48%	40%	37%	**
% White	84%	80.87%	74%	74.83%
Age				
18-24	15%	10.25%	8%	13.08%
25-44	61%	23.41%	21%	35.01%
45-64	21%	39.01%	47%	34.74%
65+	3%	27.33%	25%	17.17%

Table 3. Perceptions of Differences in Opportunities for Women and Men by Experimental Condition			
	Men have More Opportunities	Women have More Opportunities	Equal Opportunities
Difference	59%	7%	34%
Dominance	59%	5%	36%
Neo-Liberal	69%	3%	28%
Post-Modern	65%	2%	29%
Control	72%	1%	27%

Figure 1. Average Ratings on Perceptions of Gender Discrimination



Note: 95% Confidence Levels Included

Appendix 1: Experimental Treatments

A federal judge ruled today that a woman who alleged that she was sexually harassed because her male co-workers falsely thought her to be a lesbian could pursue claims against her employer. Karen Bailey of Springfield had filed a lawsuit alleging that because of her short haircut, preference for men's jeans and boots, and absence of any discussion about her personal life, they had assumed she was lesbian. She alleged that they then groped her unexpectedly and without her consent, made crude sexual jokes about her “needing a man,” and other inappropriate conduct. She further alleged that her supervisors did nothing to stop them when she complained.

Bailey's employer, Buy'n'Large, Inc. (NYSE: BNL), had asserted that even if Bailey's claims were true, that they were based in her sexual orientation, not her gender, and thus were not legally cognizable. Federal judge Sam Jones ruled that Bailey's case could go forward, holding that the distinction between sexual orientation and gender was not meaningful in her case.

[Randomly Assign Participants to Read on the following four treatments]

[TREATMENT 1: NEO-LIBERAL FEMINISM]

Judge Jones wrote, “The pernicious effects of gender discrimination can most easily be seen when we consider how awful the alleged conduct would be if we reversed the situation. If the conduct would be illegal if done to Kevin Bailey, a male, then it must be illegal when done to the Plaintiff. Nor does it matter that the tormentors were male; the Plaintiff’s allegations would be just as illegal if done by women. Equality requires that we focus on the conduct alleged, not the target or the perpetrators. The Court finds that Bailey’s allegations, if true, would be improper and illegal when done to a man; it thus finds that the Plaintiff's case may go forward.”

Neither Bailey's attorney nor Buy'n'Large could be reached for comment as of press time.

[TREATMENT 2: DIFFERENCE ENGINE]

Judge Jones wrote, “The pernicious effects of gender discrimination can most easily be seen when one considers the unique role of women. The simple biological fact that women can bear children makes unwelcome advances particularly noxious. Bailey may have been abstaining from sex altogether because she wanted no children; or she may have had no interest in her coworkers because she regarded none of them as fit fathers. Or any number of other valid reasons. While Bailey's allegations, if alleged by a man, might be explained away as the “workplace culture” of a rough and tumble group of blue-collar workers, the Plaintiff is no man. The Court finds that Plaintiff’s case may go forward.”

[TREATMENT 3: DOMINANCE CRITIQUE]

Judge Jones wrote, “The pernicious effects of gender discrimination can most easily be seen through the power dynamics of the workplace. Bailey's male supervisors could have prevented her treatment. They chose not to do so, and thus deprived her of the same safe working

environment that her male counterparts enjoyed. It was ever thus; men use positions of power to express their disapproval of women playing roles they believe should be reserved for men. This same dynamic has been used to force women into the domestic sphere for centuries, and to then devalue housework as “women’s work.” Because Plaintiff’s supervisors are alleged to have disapproved of her and thus permitted her harassment, Plaintiff’s case may go forward.

TREATMENT 4: POSTMODERN FEMINISM

Judge Jones wrote, “The pernicious effects of gender discrimination can most easily be seen when we realize that self-expression is more than speech. It extends to the most minute details of one’s own appearance and identity. Plaintiff’s co-workers and supervisors had the right to make assumptions about Plaintiff based on her appearance; this Court is not the thought police. Where their rights end, however, is when they took action on their assumptions against the Plaintiff’s wishes. The Plaintiff has every right to express her identity and her preferences in ways that are meaningful to her; her co-workers had no business making her uncomfortable for doing so. The Court finds that Plaintiff’s case may go forward.”