The Gender Gap in Supreme Court Legitimacy

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Abstract

Men and women diverge in their political behavior and attitudes. We test whether gender-based variation in political attitudes extends to perceptions of US Supreme Court legitimacy. Using a dataset covering the years 2012-2017, we show that one's identification as a man or a woman predicts their diffuse support for the Court. In particular, women almost always extend less legitimacy to the Court than men do. This is true *within* both Republican and Democratic identifiers, and regression analysis shows the gender gap holds when controlling for partisanship, ideology, race, age, education, income, and Supreme Court approval. Additionally, we included a series of questions in a 2021 Cooperative Election Study (CES) module to explore *why* the gender gap in perceived legitimacy exists. We find that differences in perceptions of the Court's representation of women and its fairness drive the gender gap in legitimacy.

Justices of the United States Supreme Court must persuade presidents, members of Congress, and the public to accept Court decisions as authoritative and binding, even in the face of potential disagreement with the policy implications of those decisions (Hall 2010). Accordingly, scholars have spent decades trying to understand the nature of public attitudes towards the Court. A substantial body of research has shown that the public expresses institutional loyalty to the Court even when it makes unpopular decisions. Institutional loyalty (or "diffuse support") for the Court is associated with allegiance to democratic principles and procedural fairness (Caldeira and Gibson 1992; Tyler 2006). Recently, research has shown that diffuse support for the Court is strongly predicted by "specific support" (i.e., approval or satisfaction with the Court's outputs) (Bartels and Johnston 2020).

Surprisingly, there is little research on the role of gender in structuring diffuse support. This is significant, as in other contexts gender is critical to understanding political behavior and attitudes (Box-Steffensmeier, De Boef and Lin 2004) and we think that gender may be equally important in this context. Our primary purpose in this article is to test whether there exists a gender gap in perceptions of Supreme Court legitimacy (i.e., diffuse support) in recent years and over a substantial period of time (2012-2017). Our secondary purpose is to explore reasons for this gap based on an additional survey we administered in 2021.

This article relies primarily on two datasets. First, we explore trends in diffuse support from 2012 to 2017 using The American Panel Survey (TAPS). This long-running panel will allow us to consider the gender gap in diffuse support over a lengthy period of time spanning multiple presidencies and to persuasively compare differences across time. We provide context to the gender gap by considering it alongside racial and partisan gaps. Second, we fielded a module in the 2021 Cooperative Election Study (CES) survey. In this survey, we included additional questions to explore potential reasons for the gender gap.

We find that women almost always extend less legitimacy to the Supreme Court than do men. This is true *within* both Republican and Democratic identifiers, and regression analysis shows the gender gap holds when controlling for partisanship, ideology, race, age, education,

and income. The gender gap appears to be unique to the Court (the same gaps do not persist if we look at support for Congress and the presidency). The gender gap is consistent and nearly as large as the well-known racial gap in diffuse support (Gibson and Caldeira 1992); it is more consistent and generally larger than partisan gaps in diffuse support. Furthermore, our CES data suggest that differences in viewpoints on gender representation and the fairness of the Court explain why men and women differ in their support for the Court.

Why Study Gender Gaps in Supreme Court Legitimacy?

The Supreme Court, like any government entity, depends upon legitimacy, or "the belief that authorities, institutions, and social arrangements are appropriate, proper, and just" (Tyler 2006, 376). This belief encourages people to defer voluntarily to it even when they might not agree with its decisions. As an unelected body without any enforcement powers, the Court is especially reliant on its legitimacy, or "reservoir of goodwill," otherwise its decisions may not be efficacious (Dahl 1957; Caldeira and Gibson 1992; Epstein and Knight 1997).

Academics have considered a broad range of issues related to Supreme Court legitimacy. Early work explored differences between "diffuse" and "specific" support, the former being a "reservoir" of positive feelings towards the institution and the latter referring to the effect of policies/rulings on support. Caldeira and Gibson (1992, 638) note the importance of conceptualizing diffuse support in terms of "support for the maintenance of the institution" as opposed to simply defining it as "affective orientations toward the Court as a whole."

Scholars have found that strong levels of diffuse support for the Court discourage Congress from curbing the Court legislatively and lead various political actors to implement Court decisions (Clark 2009; Ura and Wohlfarth 2010). Conventional wisdom is that diffuse support is moderately correlated with specific support (Gibson and Nelson 2014). However, a growing body of work suggests that diffuse support is strongly connected to whether one supports the Court's outputs or decisions (see Bartels and Johnston 2020).

A new area of important research on legitimacy focuses on how group attitudes shape Court support (Zilis 2020, 2021). For example, African Americans see the Court as less legitimate, due to a combination of historical treatment and perhaps oppressive legal symbolism (Gibson, Lodge and Woodson 2014; Gibson and Nelson 2018). This research finds that regimes of judicial decisions have long-term, sticky effects, not easily altered by individual decisions in individual Court terms or by other one-off events. So, for example, Blacks who reached adulthood during the Warren Court era tended to have more positive views of the Court than subsequent generations (Gibson and Caldeira 1992).

The Court's historical lack of gender representation and negative treatment of women's rights suggests that we might also observe negative views of the Court among women, yet research is silent on whether a gender gap exists in diffuse support for the Court. This is surprising because gender is often an important predictor of political attitudes in the United States. In the nearly four decades since Klein (1984) first brought attention to the political gender gap, a very large body of scholarship has grown up, showing a persistent gap in electoral choices, party identification, and public opinion (Manza and Brooks 1998; Sapiro 2003; Box-Steffensmeier, De Boef and Lin 2004; Eagly et al. 2004; Huddy, Cassese and Lizotte 2008; Winter 2010; Lizotte 2020). We think it important to consider whether gender-based differences in diffuse support exist.

Research suggests that descriptive and substantive representation may explain gender gaps in legitimacy. People care about both descriptive and substantive representation (Hayes and Hibbing 2017) and underrepresentation harms support for institutions (Schwindt-Bayer and Mishler 2005; Clayton, O'Brien and Piscopo 2019; Stauffer 2021). People tend to trust institutions less that are connected to a history of political subordination and when people are poorly represented both descriptively and substantively by institutions (Mansbridge 1999).

Our primary purpose in this article is to establish the existence of a meaningful and durable gender gap in diffuse support. A secondary purpose is to test a few of the primary theories which we think might explain this gap, including the roles of descriptive and sub-

stantive representation briefly mentioned above. While we believe these theoretical tests are reasonable and that our conclusions are supported by the data, our theoretical findings are meant only to be suggestive. We encourage future research to test theories of gender gaps in diffuse support using more explicit and rigorous research designs tailored for that purpose.

Testing For a Gender Gap in Diffuse Support

This study employs two sets of data, which collectively yield sixteen waves of survey responses over a period of approximately ten years (2012-2021). Throughout our analysis, we consider average gaps across time as well as trends in gender, racial, partisan, and ideological gaps. In an important study tracing growth in the partisan gender gap over time, Box-Steffensmeier, De Boef and Lin (2004, 527) conclude "the [partisan] gender gap both is persistent and is a product of the interaction of societal conditions and politics."

The analysis proceeds in two stages. First, we analyze trends in diffuse support from 2012 to 2017 using fifteen waves of The American Panel Survey (TAPS). With the same data, we perform a single test of the average gender gap in diffuse support from 2012-2017 using regression analysis and various control variables. In the second stage we use a 2021 module of the Cooperative Election Study to test theories explaining the gender gap.

Every survey wave we analyze included five statements designed to measure individual perceptions of Supreme Court legitimacy. The measure's validity has been well established and versions of the five statements have been used for many years (Gibson, Caldeira and Spence 2003; Gibson and Nelson 2015, 2017). With respect to each statement, respondents indicated their agreement or disagreement on a likert scale. We recoded the scale such that higher scores indicate higher levels of Court legitimacy. We measure individual-level perceptions of Supreme Court legitimacy by calculating the mean response across the five statements.[1] The greater the legitimacy score, the greater one's loyalty to the Court.

[1]See Supplemental Material for question wording and discussion of measurement reliability and validity.

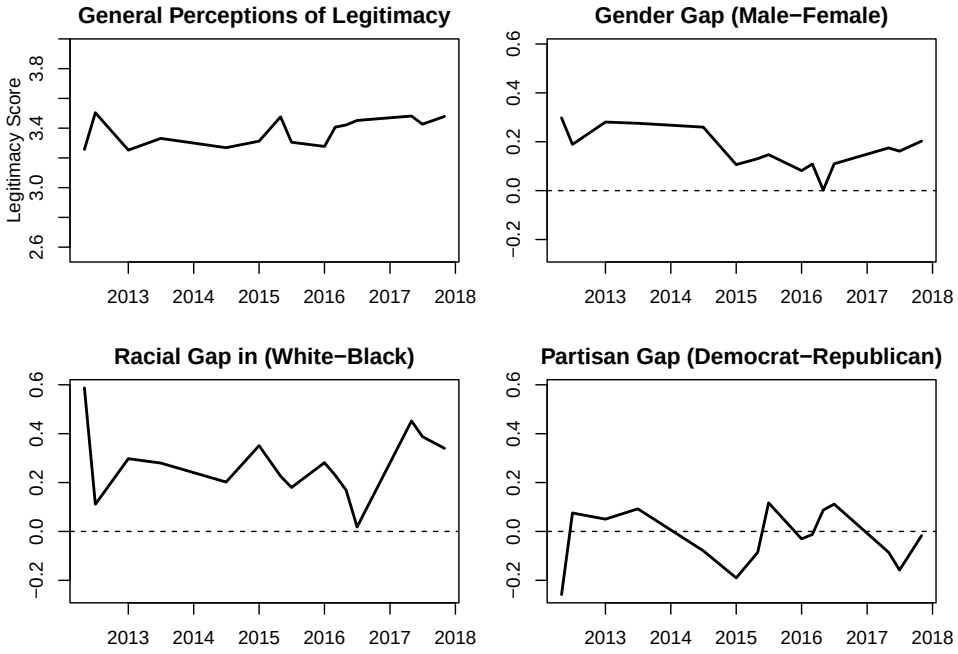
Throughout our analyses, we reference racial and partisan gaps in diffuse support to provide context. Race is a key demographic predictor of Supreme Court legitimacy. Gibson and Caldeira (1992, 1140) provide data showing that African Americans are "decidedly less positive [toward the Court] than whites." More recently, Gibson and Nelson (2018) argue that the racial gap in diffuse support is driven by both personal and vicarious experience with the legal system, as well as the degree to which individuals feel an attachment to a racial or ethnic group. Partisanship may also matter. In recent years, scholars have found that public perceptions of Court rulings and legitimacy responding to partisan cues (Nicholson and Hansford 2014; Clark and Kastellec 2015; Badas 2019). In 2013, Bartels and Johnston argued that Court legitimacy may rest on "political and ideological foundations" (197).

Results: TAPS (2012-2017)

We begin with testing for a gender gap from 2012 to 2017 using the The American Panel Survey (TAPS). Importantly, this panel was formed with probability sampling and it is representative of the American adult population. The survey is accompanied with sampling weights, of which we take advantage. As will be seen, the results obtained using the TAPS data are consistent with the gap in diffuse support which we observe using the Cooperative Election Study (CES) data in the subsequent section. The consistency in results across the datasets strengthens our confidence that the gender gap in perceptions of Supreme Court legitimacy is both real and durable.

There are 1,448 respondents in the TAPS data that have responded to the same legitimacy questions we will use to measure diffuse support throughout the article. These questions were presented to TAPS respondents at fifteen different points in time between 2012 and 2017. Responses to these questions were ordered on a five-point scale, from less supportive to more supportive answers. For each individual at each wave, we averaged their responses across

Figure 1: Trend in diffuse support over time (upper left), and gaps in diffuse support based on gender (upper right), race (lower left), and partisanship (lower right). Plots based on weighted TAPS data.



the legitimacy questions in order to create our measure of diffuse support.[2] We analyze the general trends in diffuse support over time, as well as differences between subgroups.

In Figure 1, we observe the general trend in legitimacy and break down gaps in legitimacy based on gender, race, and partisanship using four separate plots. Estimates and plots employ survey weights included with the TAPS data so that we can make accurate inferences to the American public. In the upper-left plot, we show average levels of diffuse support for each of the 15 waves and connect these with lines to demonstrate the overall trends. The high point in diffuse support was 3.50 (out of 5) in July of 2012. The average level of diffuse support is 3.38. The upper-right plot shows the gender gap in legitimacy , the bottom-left plot shows the racial gap, and the bottom-right plot shows the partisan gap.

The results reveal the gender gaps in legitimacy over time based on the weighted TAPS data. The gender gap is always positive, indicating that men feel the Court is more legiti-

[2]The factor scores and the mean response to the item set are strongly correlated ($\approx$.99).

mate. Difference in means tests between men and women at each wave show a statistically significant gender gap in diffuse support in 12 of the 15 waves.[3] Similarly, we observe consistently low levels of support among blacks; the racial gap is statistically significant for 11 of the 15 waves also (lower-left plot). Finally, for partisan gaps (lower-right plot), we observe that neither party is consistently more or less supportive of the Court than the other. The partisan gap is statistically significant in only 2 of the 15 waves.[4]

The trends in the TAPS data reveal a consistent gender gap in diffuse support. The gender gap is normally slightly smaller than the racial gap, but it is as consistent over time as the racial gap. The gender gap is more durable than partisan gaps in diffuse support. For both race and gender, the legitimacy gaps *temporarily* diminish in early 2016, shortly after Justice Scalia's unexpected passing. This may have been a time of uncertainty in which individuals of different backgrounds were prospectively re-evaluating their support for the Court (Bartels and Kramon 2021). Otherwise, the gender gap is fairly stable from 2012-2017.

In the descriptive plots above, however, we do not include controls. Variation in gaps across individual waves may be influenced by factors related to partisanship or external events (like the Scalia vacancy or an election). Furthermore, theoretically we believe the gender gap (like the racial gap) will be driven by historical and long-term trends in the treatment and representation of women on the Court. This means we expect the gender gap to be somewhat stable, especially during a period like this in which descriptive gender representation and the ideological direction of the Court's decisions hardly changed.

We present a test of our argument that the gender gap changes slowly over time near the end of the article. For now, we are interested in the average gender gap from 2012-2017. Accordingly, we next perform a single and simultaneous test of the existence of various gaps in diffuse support from 2012-2017, using multiple regression analysis.

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[3]We use $p < .05$ and two-tailed statistical tests throughout the article.

[4]If we analyze ideological gaps in diffuse support instead of partisan ones, we more frequently observe a meaningful and persistent gap. See Supplemental Information.

We estimate two linear mixed-effects regression models. Model 1 estimates the effects of gender (male and female), race (white, black, Hispanic, and other), and partisanship (Democrat, Independent, Republican, and other) on our dependent variable (which is the five-point measure of diffuse support). Model 2 substitutes ideology (7-point continuous variable) for party identification. In both models we control for education, household income, and age, which variables we operationalize as continuous variables. We include random effects for individuals and survey waves. The random effects will allow us to estimate the average gender, racial, and partisan gaps across individuals and across waves.

Table 1 presents the regression results.[5] The control variables perform as expected, with more educated, wealthier, and older individuals all expressing stronger diffuse support. Again, we find support for the existence of a significant and durable gender gap. On average, across individuals and years covered by the TAPS data, women are less supportive of the Court than men (.14- or .15-point gap). The divergence in support between blacks and whites has been well documented, and it provides a nice benchmark by which to compare the gender gap. In particular, the gender gap is approximately equal in size to the racial gap (the racial gap is .18- or .16- points).[6]

The gender gap is independent of one's partisanship.[7] Neither race nor partisanship

[5]In the Supplemental Information, we re-estimate these models with an additional independent variable: approval of the Supreme Court. The effect of gender does not change substantially regardless of whether this measure of specific support is included in the analysis. Thus, it appears that gender differences are likely based on something more than "specific support" alone. The effect of partisanship, however, does change meaningfully when including this measure of specific support.

[6]Interestingly, the gap between Republicans and Democrats is also statistically significant, with Republicans less supportive of the Court on average from 2012 to 2017. Model 2 shows liberals are more supportive when we substitute ideology for partisanship. These findings are consistent with the ideological gap discussed in the Supplemental Information.

[7]Bartels and Johnston (2013) argue that people have different perceptions of the ideological leanings of the Court, and that *subjective* ideological distance from the Court explains variation in legitimacy. Unfortunately, the TAPS survey only included both legitimacy battery questions and subjective ideological perception

Table 1: Linear mixed-effects regression analyses of legitimacy scores from 2012-2017, using weighted TAPS data. Random effects included for respondent ID (standard deviation=.76 and .77 for Model 1 and Model 2, respectively) and wave (standard deviation=.08 and .08).

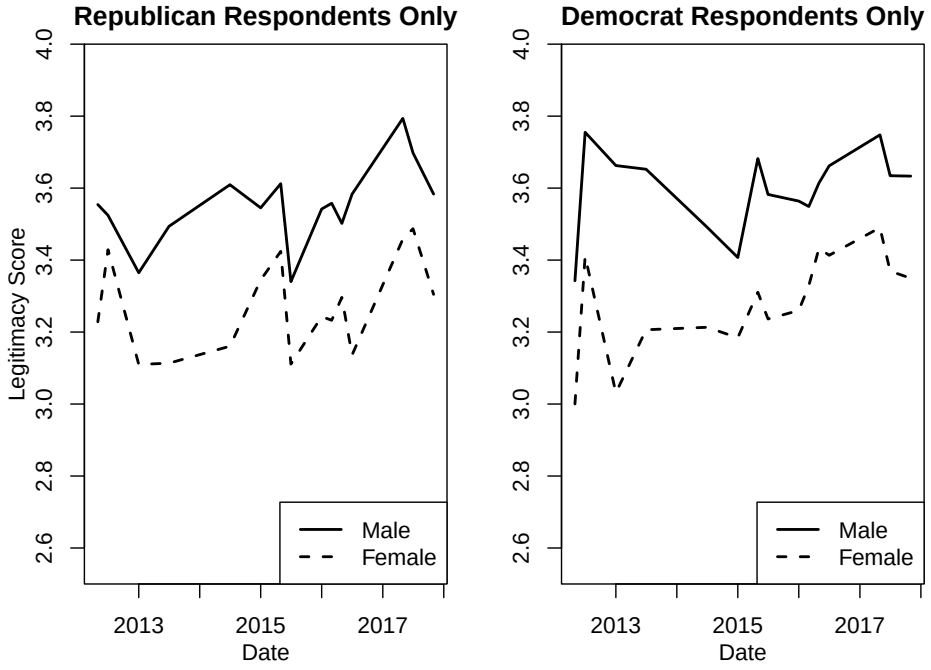
	DV: Legitimacy Score	
	Model 1	Model 2
Sex: Male	0.14^*	0.15^*
	(0.04)	(0.05)
Race: Black	-0.18^*	-0.16^*
	(0.08)	(0.08)
Race: Hispanic	-0.20^*	-0.21^*
	(0.07)	(0.07)
Race: Other	-0.30^*	-0.27^*
	(0.08)	(0.09)
Party Identification: Republican	-0.12^*	
	(0.06)	
Party Identification: Independent	-0.09	
	(0.05)	
Party Identification: Other	0.03	
	(0.10)	
Ideology (liberal to conservative)		-0.03^*
		(0.01)
Age (birth year)	-0.00^*	-0.00^*
	(0.00)	(0.00)
Education	0.15^*	0.15^*
	(0.01)	(0.01)
Income	0.03^*	0.03^*
	(0.01)	(0.01)
(Intercept)	3.59^*	3.69^{***}
	(0.05)	(0.07)
Observations.	14,296	13,568
Adjusted R^2	0.77	0.81

$^*p < 0.05$

interacts with gender to explain diffuse support. (See Supplemental Information containing full models with interaction terms.) Consider Figure 2, which plots the gender gap in diffuse support over time using the TAPS data for both Republican and Democratic respondents. At no point do women become more supportive than men of the Court, regardless of whether

questions on the same survey in their May of 2012 survey wave. Still, we replicated the model in Table 1 for this wave only, but replacing partisanship/ideology with a measure of subjective ideological distance. The gender gap is robust to including this measure. See Supplemental Information.

Figure 2: Differences in legitimacy between genders from 2012-2017 (TAPS data). Dashed lines represent average legitimacy scores for women and the solid lines represent average legitimacy scores for men, at each survey wave in which legitimacy was measured. Consistent with regression above, the gender gap exists independent of partisanship.



those individuals are Republican or Democrat. Additionally, the gender gap is unique to the Court and not a result of affective orientations towards governmental institutions more generally. In the Supplemental Information, we show plots of approval for each of the branches revealing no consistent gender gaps in approval for any of the branches.[8]

So far, we have demonstrated the existence of a durable and robust gender gap in Supreme Court legitimacy. In the next section, we put forth four potential reasons for this gender gap, and then we proceed to test whether these reasons explain legitimacy using our 2021 CES data. Afterwards, we revisit the TAPS data to demonstrate how the gender gap in diffuse support has slowly reduced over time, consistent with our theoretical expectations and the CES data analysis.

[8]In the Supplemental Information, we also replicate the existence of a gender gap in 2018 using a separate, two-wave survey administered by SSI following the confirmation hearings for Brett M. Kavanaugh.

Explaining the Gender Gap in Legitimacy

Representation

There is strong evidence that women (and others) support institutions that look like them (descriptive representation) and act in their interests (substantive representation) (Mansbridge 1999; Hayes and Hibbing 2017).

Descriptive representation matters across different types of institutions. Despite the uniquely non-representative nature of the judicial role, scholars have found repeatedly that descriptive representation influences public evaluations of courts and that gender and racial diversity among judges affects judicial decision-making. Scherer and Curry (2010) show that increasing the (perceived) aggregate racial diversity within the courts (via experiment) increases the legitimacy of the courts among members of the underrepresented class. Similar relationships show up in observational studies. Badas and Stauffer (2018) demonstrate, for example, that women on a survey who identified as conservative or very conservative were more supportive of the confirmation of Justice Kagan (a woman) than men who identified as conservative or very conservative.

The presence of a minority judge on a judicial panel clearly affects decision-making. Black judges are more likely to uphold affirmative action programs than nonblack judges. What is more, random assignment of a black judge to a three-judge panel increases the likelihood that the panel upholds affirmative action programs by about 20 percentage points (Kastellec 2013). The same can be true for the presence (or lack thereof) of a woman on a judge panel. Boyd, Epstein and Martin (2010) use advanced matching techniques to show that women are 10 percentage points more likely to vote in favor of the plaintiff in a sex discrimination case than men. Furthermore, the likelihood that a man rules in favor of the plaintiff increases by 12 to 14 percentage points when a woman sits on his panel in those same cases.

We argue that evidence of greater representation (whether descriptive or substantive) will increase the legitimacy of the Court among women. A lack of representation will be associated with lesser legitimacy. The Supreme Court has long been dominated by men

descriptively and substantively. Descriptively, not a single woman served on the Court until 1981.[9] And only recently have even three women served on the Court at the same time. Never have a majority of justices on the Court been women, despite women making up a majority of the US population and a majority (55%) of students in ABA-approved law schools.[10] This matters greatly. Studies are clear that descriptive representation on courts influences perceived legitimacy (Scherer and Curry 2010), support for judges (Badas and Stauffer 2018) as well as actual decision-making (Boyd, Epstein and Martin 2010).

Substantively, the Court's history is replete with examples of support for legislation treating women as second-class citizens, both politically and legally. For example, it was only after the elected representatives overrode the Court's unanimous *Minor v. Happersett* (1875) precedent in 1920 by passing the 19th Amendment that women were guaranteed the right to vote. The 14th Amendment's equal protection clause was not applied to protect women from gender discrimination until 1971, in *Reed v. Reed*. As recently as 1961, the Court allowed states to exclude women from jury service unless they made an affirmative request to serve in this capacity (*Hoyt v. Florida* 1961). While women enjoy greater rights and protections today than in the past, women may be hesitant to extend legitimacy to an institution with this history of negative treatment.

To test our theory that descriptive and substantive representation drive the gender gap, we measure perceptions of gender representation on the Court using two items. The first item asks, "What do you think of the level of female representation on the Supreme Court today?" Response options ranged from well represented to poorly represented on a four-point scale. We also asked respondents, "How important do you feel it is for women to serve on

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[9]Sandra Day O'Connor was appointed to the Court in 1981—nearly 200 years after the Supreme Court was officially established. Justice Ginsburg, the Court's second appointed woman, was not appointed until 1993. Three additional women were appointed to the Court by the time our survey was in the field in 2021.

[10]See `https://www.abalegalprofile.com/legal-education.php`. Despite their strong showing in law school numbers, women comprise only 23% of all current federal judges (Carp, Manning and Holmes 2022).

the Supreme Court?" Response options ranged from not important to very important on a four-point scale.[11] We combine the two measures using an additive scale. We expect that women will be most likely to say women are poorly represented and that it is important for women to serve on the Court. Differences in perceptions of representation will correlate with differences in perceptions of the Court's legitimacy.[12]

Fairness

The public expects the President and Congress to represent particular viewpoints, for that is the purpose of elections in a democracy. The Supreme Court, on the other hand, is typically viewed as distinct in this sense. Rather than "representing" a party or a subset of people, the justices collectively are expected to act neutrally in interpreting and enforcing the laws. It is in this sense that Alexander Hamilton argued in *Federalist #78* that the Supreme Court would exercise "neither FORCE nor WILL, but merely judgment." Because they are unelected, hold life tenure, and are virtually unaccountable to the public, legitimacy comes when the justices are perceived as resolving disputes fairly and neutrally.

To strengthen this sense of fairness, justices emphasize legal text, precedent, and canons of legal interpretation when justifying their decisions. A vast literature argues that these references to law create perceptions of procedural fairness and perhaps a legitimacy-reinforcing "myth of legality." Tyler (2006, 375) argues that perceptions of procedural fairness lead peo-

[11]Women may feel poorly represented on the Court descriptively or substantively. Likewise, women may feel it is important for other women to serve on the Court for descriptive or substantive purposes. While descriptive and substantive representation are theoretically distinct concepts, they both predict greater legitimacy in our study, even if for different reasons. We label this section and the associated items as *representation*, indicating our ambivalence regarding whether our measure estimates views related to descriptive representation or substantive representation or some combination of both.

[12]We checked to make sure men and women had similar views about the *objective* level of descriptive representation on the Supreme Court. There was no statistical differences in perceptions in this regard (91% of women said one-third of the justices were women, compared to 94% of men stating the same.)

ple to "feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear or punishment or anticipation of reward."

In the judicial context, fair procedures can even be more important than favorable outcomes. For example, Hollander-Blumoff and Tyler (2008) studied whether objectively good outcomes were as important as subjectively fair negotiation proceedings between two parties. When negotiations between attorneys were perceived as fair, people reported more positive feelings and greater willingness to accept the outcome, independent of whether the outcome was objectively good . Tyler (2021, 736) argues that "people will focus on how decisions are made, not [just] on the decisions themselves, when making evaluations of fairness."

Work more directly tied to the federal judiciary produces similar findings. For example, Krewson and Owens (2022) demonstrate that people evaluate federal decisions based on their agreement with outputs as well as the judicial philosophy employed in a case. Using a person's less preferred judicial philosophy caused them to be less trusting of a judge and less willing to accept a judge's decision, compared to their trust and acceptance for an identical decision using their preferred philosophy. In other words, liberal (conservative) respondents reacted more negatively to a liberal (conservative) decision that was decided in the "wrong way" compared to the same decision decided the "right" way. Baird and Gangl (2006) demonstrate that the use of legal framing to describe a decision of the Supreme Court strengthened perceptions of procedural fairness. Opinion rationale and other characteristics of decisions independent of the policy content of the outcomes alter perceptions of fairness and shape views of courts (see Farganis 2012; Zink, Spriggs and Scott 2009).

Perceptions of procedural fairness vary by collective experience. Indeed, recent research has heavily emphasized the extent to which group identity shapes perceptions of the judiciary's fairness. Ono and Zilis (2022) demonstrate that perceptions of impropriety in the rule of law and bias depend on judge characteristics, political identity, and gender. Gibson and Caldeira (1992) demonstrated as early as 1987 that diffuse support among African Americans was "decidedly less positive" than it was among whites, largely because African

Americans felt the Court had no longer treated blacks fairly since the Warren Court era.

More recently, Gibson and Nelson (2018) argued that legal symbols—traditionally understood as enhancing Court legitimacy—may work differently among marginalized groups. For example, an image of a gavel may to some indicate rule of law and order, while to others it may represent repression and abuse—see Gibson and Nelson (2018, xix-xx) for enlightening comments on this theme. Gibson, Lodge and Woodson (2014) include and exclude legal symbols as part of an experimental manipulation; they find that black students attached negative affect to the symbols more strongly than white students reading their vignette. Other research suggests that legal symbolism works differently between men and women as well. Symbolically, many core concepts surrounding the Court (such as whether its members are acting in a "judicious" manner) are considered to be gendered masculine (Chen and Bryan 2021), which may naturally lead men to show greater support for the Court.[13]

Accordingly, we argue that women will be less likely than men to have confidence in the Court's fairness. This is largely due to the differences in perceptions driven by asymmetrical effects of legal symbols of procedural fairness, as well as derivative effects related to the Court's representation of women.[14] If women are consistently less confident that the Supreme Court will make fair decisions, then that view may explain their lower level of support for the Court. To measure perceptions of fairness, we ask "How much confidence do you have in the Supreme Court to make fair decisions?" Responses are coded from "none" to "a great deal" of confidence on a 5-point scale.

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[13]See Ono and Zilis (2022) and Nelson (2015) for more examples of how gendered stereotypes relate to the Court, including perceptions of impropriety, judiciousness, and legal competence.

[14]We acknowledge that we do not fully separate out the effects of representation from the effects of fairness in our analyses below. The questions associated with representation ask about perceptions of representation directly, while the questions related to fairness focus on confidence in the Court's outputs, but even then the two concepts are closely interrelated. Our study shows that both fairness and representation explain the gender gap in diffuse support, but we leave to future research the difficult task of more rigorously teasing out the independent effects of each of these concepts. Ours is a crucial first step.

Bias

We next consider group affect. It is well known that Republicans and Democrats in the United States increasingly dislike and distrust members of the other political party: "Democrats and Republicans both say that the other party's members are hypocritical, selfish, and closed-minded, and they are unwilling to socialize across party lines"; this "animosity" towards one another is termed *affective polarization* and is based on "the power of partisanship as a social identity" (Iyengar et al. 2019, 129). The effects of in-group bias associated with affective polarization are *driven by identity* rather than driven by differences in policy positions.

Likewise, in-group and out-group orientations may impact Court support. We've already shown that the gender gap in diffuse support is independent of political identity (such as ideology and partisanship). We consider now whether women are more likely to see the Court as less legitimate because women identify with other marginalized groups whom they perceive to be mistreated historically by the Court as an institution. Instead of focusing specifically on representation and fairness, here we consider whether people who generally see the Court as biased towards marginalized groups perceive the Court as less legitimate.

As a marginalized group, women may sympathize with other marginalized groups historically disfavored by the Court, including racial and ethnic minorities, LGBTQ individuals, and criminal defendants. This is a reasonable theory to consider. A belief that the Court is biased towards some groups over others has long been acknowledged in the literature as an important predictor of legitimacy (Gibson, Caldeira and Spence 2003).

In fact, recent research places beliefs in how the Court treats *other* groups as crucial to our understanding of public evaluations of the Court. Zilis (2020, 183) argues that "citizens see a court as less legitimate when its decisions benefit groups that they dislike" and he finds support for this argument when analyzing the legitimacy of the Court as a function of affective attitudes towards conservative and liberal groups benefited by its rulings. Consistent with his theoretical arguments and empirical findings, Zilis concludes that court evaluations

related to legitimacy and other rule-of-law concepts stem in part "from the psychological tendency to evaluate political outcomes based upon the groups that benefit" (180).

But Court evaluations based on orientations towards out-groups go far beyond "political" groups. For example, Zilis (2021) analyzes observational data to show that antipathy towards gays and immigrants was associated with lower levels of Court legitimacy following same-sex marriage and immigration rulings favoring these groups. He finds similar results using experimental data as they relate to views of other social groups. We think that women are more likely than men to sympathize with marginalized groups; and believing the Court is biased against marginalized groups may be associated with less Supreme Court legitimacy.

To test whether the gender gap is driven by a belief that the Court is biased against marginalized groups generally (rather than against women specifically due to a lack of gender representation or perceived unfairness against women), we stated to survey takers that "Some people believe the Supreme Court is biased, while others believe it treats all groups equally." Then, focusing first explicitly on women, we asked "Thinking about women as a group, do you think Supreme Court decisions tend to favor men or women?" After they answered this question, individuals were provided a likert scale in which, for each of (1) racial and ethnic minorities, (2) LGBTQ individuals, and (3) criminal defendants, they also indicated "the degree to which Supreme Court decisions are also biased against the group." We combined responses related to each of the four groups using an additive scale.

The Conflictual Nature of the Supreme Court

Finally, we briefly consider whether the "conflictual nature" of the Supreme Court dampens Supreme Court legitimacy for women. On average, perhaps women may have lower levels of tolerance for conflict and disagreement than do men, but a large literature has debated whether this explains gender gaps in political participation and political attitudes (Ulbig and Funk 1999; Schneider et al. 2016; Wolak 2020), with evidence available to support both sides of the debate. Judicial scholarship has found that divisiveness on the Court can influence

views of the Court (Zink, Spriggs and Scott 2009), but no work we know of has tested whether divisiveness on the Court is of particular salience to women relative to men.

It is possible that conflict aversion among women may explain their greater tendency to attribute less legitimacy to the Court. The Court is by definition conflictual. Its job is to pick sides in the context of a case and the judicial role is one of justice (rightness) rather than mercy (compromise). The judges are divided when they resolve salient issues and the Court often entrenches division as it chooses sides in the most contentious political issues of the day (such as on issues surrounding gun rights, abortion, free speech, etc.). Still, little consensus regarding the influence of conflict on gender gaps in the judicial and broader literatures leaves us skeptical of its explanatory power. Given the prominence of conflict-avoidance as an explanation for gender gaps, though, we test its effect here in the judicial context.

To test this theory, we asked individuals first whether they "think the justices on the Supreme Court are divided or in agreement when resolving important cases before them?" Then, we followed up with asking "Do you think Supreme Court decisions tend to increase or decrease conflict in society?" The first question analyzes the internal divisiveness of the Court and the second considers whether the Court's actions cause conflict in society. Again, we combined the responses to the two questions using an additive scale.

Explaining the Gender Gap: CES (2021)

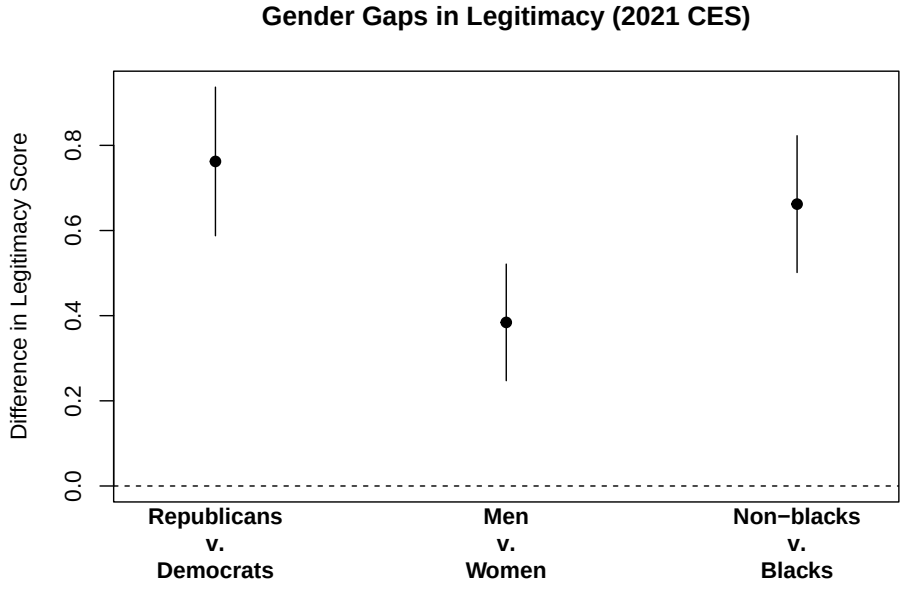
The 2021 Gender Gap in Diffuse Support

The Cooperative Election Study (formerly the Cooperative Congressional Election Study) is a large national stratified sample survey. Half of the questionnaire consists of "Team Content," in which groups can include questions asked to subsets of 1,000 people per group. The CES survey was in the field from November 2 to December 9 of 2021. This was immediately following the 2021 elections. We measured legitimacy using the same measure as employed in TAPS. This battery of questions continued to perform well, with each of the questions loading on the same factor (each loading greater than .76 on the first factor) and obtaining a

cronbach's alpha of .91. We ordered the responses to the legitimacy battery questions so that larger values indicated greater institutional support. Also as before, we average responses to these legitimacy questions. The resulting legitimacy variable has a range of 1-5.

First, we confirm that the gender gap in legitimacy we observed in previous surveys existed in November-December of 2021. We also want to compare this gender gap to partisan and racial gaps. Figure 3 plots the differences in legitimacy scores reflecting each of these gaps along with the 95 percent confidence intervals of the gap estimates. As before, the gender gap remains, with woman feeling the Court is less legitimate. The racial and partisan gaps are larger. The slightly larger racial gap is consistent with our TAPS analysis. Typically, the partisan gap is not this large. It is possible that the solidified conservative Court majority created with the appointment of Justice Barrett or the prominence of the Court as 2021 election issue enhanced the partisan gap in diffuse support.

Figure 3: Estimates of differences in legitimacy scores by partisanship, gender, and race based on a subset of 1000 respondents from the 2021 CES data. A positive point estimate indicates that the first group listed below it is more supportive of the Court than the second group listed below it. Vertical lines represent 95 percent confidence intervals.



Across an extensive set of high-quality survey waves, we have found that women consistently view the Court as less legitimate than do men. Why? We now answer this question, based on additional and novel questions appended to the 2021 CES module.

Testing Explanations for the 2021 Gender Gap in Diffuse Support

As previously discussed, we employed nine questions to measure perceptions of (1) women's representation on the Court, (2) the Court's fairness, (3) its bias against marginalized groups, and (4) the conflictual nature of the Court.

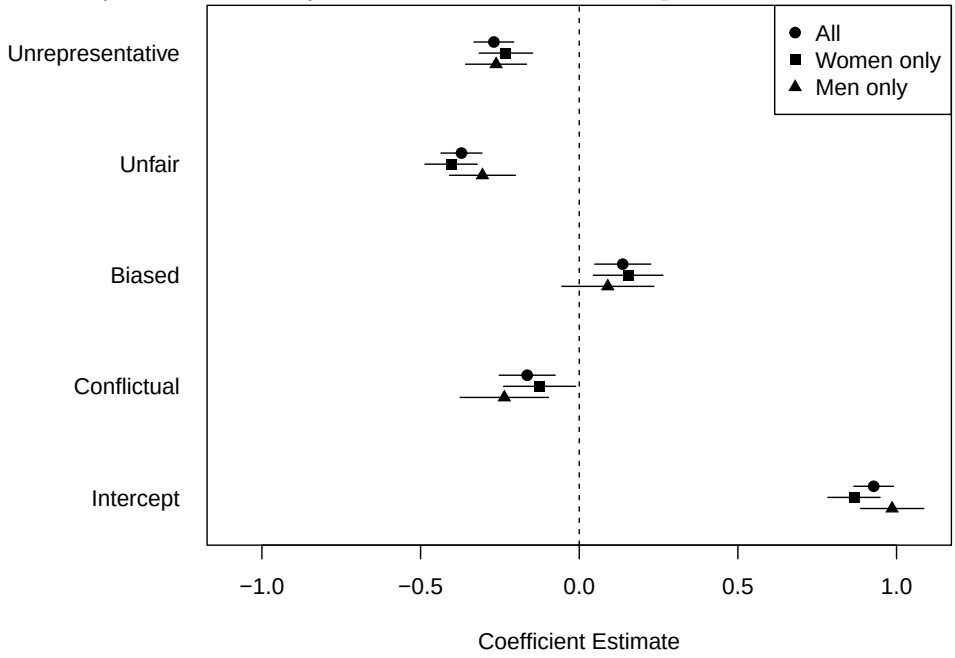
We now test how these four variables explain variation in diffuse support. We first regress our measure of diffuse support on the four measures. In Figure 4, we provide a coefficient plot of our results. Horizontal lines indicate 95 percent confidence intervals. Any horizontal line that intersects with the vertical dashed line indicates statistical insignificance for the associated coefficient. We estimated our model on all the data (filled circles), for women only (filled squares), and for men only (filled triangles).

For most of the variables (excluding perceptions of a *Biased* Court, for men), we find statistically significant relationships between our measures and diffuse support. This is true regardless of the gender of respondent. That is, for each, the estimated effects *do not* depend on the gender of the respondent.[15] The direction of the relationships are as expected for most variables. The stronger the perception that the Court is unrepresentative, unfair, or conflictual, the less legitimate people perceived the Court to be. Interestingly, the effect of perceived bias against marginalized groups is in the wrong direction; the more one perceives the Court as biased against marginalized groups, the more legitimate they perceive the Court to be. Finally, the differences across intercepts reflect the residual gender effect: all else equal, men are more likely to see the Court as legitimate.

Clearly, differences in coefficient *effect sizes* do not explain the gender gap in diffuse support. For example, men and women who see the Court as unfair are equally likely see

[15]Interactions between gender and these measures are not statistically significant in an interaction model.

Figure 4: Coefficient plot of regressions of diffuse support on Court views. Filled circles for regression results using all data, filled squares for analysis of women only, and filled triangles for regression analysis of men only. Horizontal lines are 95 percent confidence intervals.



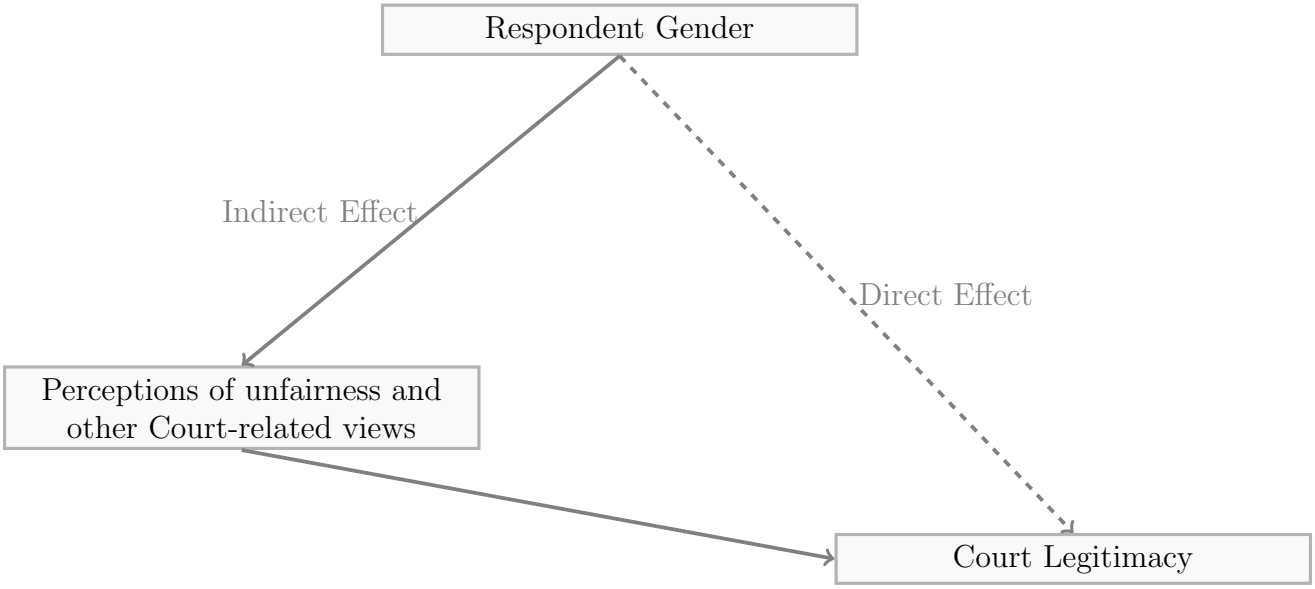
the Court as less legitimate. Logically, if these viewpoints explain the gender gap it won't be because of effect size but it may be due to overall differences in the viewpoints themselves. For instance, if women tend to see the Court as unfair and men tend to see the Court as fair, *then the coefficient estimates combined with those baseline differences in viewpoints* would predict the gender gap we have uncovered over many waves from 2012-2021. That is, legitimacy would be positively correlated with men *because they tend to see the Court as fair* and negatively correlated with women *because they tend to see the Court as unfair.*

Thus far, our analytical method has not allowed the strength of viewpoints to differ by gender. We use the `lavaan` package in *R* to estimate a structure of equations that tests for such mediation effects. We regress gender on each of our viewpoint measures related to representation, fairness, bias, and conflict, in order to account for overall differences in viewpoints by gender. We also regress legitimacy on each of these viewpoint measures and on gender itself. Doing so allows us to separate the direct effect of gender on legitimacy from

its mediated effect. That is, the model separates the effect of gender into its direct effect on legitimacy and its indirect effects through perceptions of Court representativeness, fairness, bias, and conflict.[16]

Figure 5 visualizes our simplified theoretical model, where respondent gender directly impacts Court legitimacy but also indirectly impacts legitimacy through its effect on measures of views of the Court. We already determined that the gender gap in legitimacy is not a result of an interaction between gender and viewpoints related to things like representation (see Figure 4). So, if the gender gap is driven instead by baseline differences in these viewpoints, then we should observe a strong direct connection between *Respondent Gender* and *Perceptions of unfairness and other viewpoints*, as well as strong connections between those viewpoints and *Court Legitimacy*; the direct effect of *Respondent Gender* on *Court Legitimacy* should attenuate or disappear.

Figure 5: Simplified mediation analysis diagram, presenting the theoretical causal pathway by which we expect respondent gender to shape views of Supreme Court legitimacy. The dashed line is meant to indicate that the effect of gender on legitimacy should be mostly indirect. We test this theoretical model using a structural equation modeling approach. See Table 2 below.



[16]This is a mediation model, where the effect of gender is mediated through our other viewpoint measures.

The analysis results are in Table 2. In the system of equations, an exogenous variable is one that predicts other variables but is not predicted itself by other variables. Endogenous variables (predicted by other variables) can themselves explain other endogenous variables. The exogenous variable in our model is an indicator for women. Gender directly predicts one set of endogenous variables (each of the particular views related to the Court). Those endogenous variables predict Court *Legitimacy*, after accounting for the direct effect of gender itself on legitimacy. The coefficients within the system of equations are estimated simultaneously.

Table 2: A mediation analysis using a structural equation model, in which respondent gender directly explains legitimacy and indirectly explains legitimacy through its effect on perceptions of gender representation, fairness, bias, and Court conflict. All coefficients estimated in system of equations (sem) model using the `lavaan` package in R. The coefficient estimates in the Table are standardized for ease of comparability.

	Views of Court				*Outcome*
	Unrepresentative	Unfair	Biased	Conflictual	Legitimacy
Exogenous:					
Female Respondent	0.115*	0.055*	0.033*	-0.007	-0.048*
	(0.017)	(0.017)	(0.013)	(0.012)	(0.016)
Endogenous:					
Unrepresentative					-0.245*
					(0.028)
Unfair					-0.362*
					(0.030)
Biased					0.130*
					(0.039)
Conflictual					-0.175*
					(0.042)
Observations: 953					
BIC: -608.490					

*p<0.05

We standardized all estimates so they are comparable to one another. First, consider the direct relationship between gender and each of the *Views of the Court*. The strongest gender effect is on perceptions of the Court as unrepresentative. The effect size of gender on this variable is more than double the effect size of gender on the other viewpoints. The

second largest effect of gender is on perceptions of unfairness, followed by perceptions of bias. Gender is not related to a view that the Court is conflictual.

Not only is there a gender difference in belief that the Court poorly represents women, but that variable also has a strong effect on legitimacy itself. Thus, representation (whether descriptive or substantive) is a strong reason for lower legitimacy among American adult women. The other Court-related viewpoint important in explaining the gender gap is perceptions of unfairness. Women are moderately more likely than men to perceive the Court as unfair, and unfairness has a strong effect on legitimacy in the expected direction.

Perceptions of bias towards marginalized groups and a belief that the Court is conflictual cannot explain the gender gap in diffuse support we have uncovered. Perceptions of conflict lead to less legitimacy, *but* men and women do not differ in their perceptions of the conflictual nature of the Court. As for perceptions of bias, women are slightly and significantly more likely to see the Court as biased against marginalized groups, but this viewpoint is *positively* related to views of legitimacy and thus cannot explain the gender gap we have uncovered.[17]

Note that the *direct* effect of gender on legitimacy is still significant after having accounted for the mediated (or indirect) effects of gender. That is, the gender gap is not explained completely by perceptions of the Court's gender representation and levels of fairness. But accounting for indirect effects is important. In fact, the combined indirect effect of gender on legitimacy through perceptions of both representation and fairness is as large as the estimated direct effect of gender on legitimacy of -0.048.[18] That is, approximately 50% of the total effect of gender on legitimacy can be explained by differences in perceptions of representation and unfairness between men and women.

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[17]There may be more variation among women in how they view Court decisions negatively affecting outside groups, due to variation in ideological and political identity; whereas groups like African Americans may be more monolithic in their orientations towards outside groups due to more ideological/political homogeneity.

[18]The indirect (mediated) effect of gender on legitimacy, through perceptions related to representation, is -0.028. The indirect (mediated) effect of gender on legitimacy through perceptions of unfairness is -0.020. Thus, the combined indirect effect of gender on legitimacy through these two viewpoints is -0.048.

Exploring Partisans Differences in the Reasons for the Gender Gap in Diffuse Support

We aggregated over women of different partisan identities in the analysis of mediated effects. But Republican women and Democratic women may have different perceptions of the Court's gender representation, fairness, bias, and conflictual nature. In other words, the reasons for the gender gap in diffuse support might vary between party, with Democratic women and Republican women viewing the Court as less legitimate than men but for different reasons.

To test this consideration, we re-estimated our Table 2 analysis on Republicans only and Democrats only. Table 3 shows the effects of gender (`Woman`=1) on each of the measured viewpoints of the Court. The first row shows the estimated effect of gender on these views as already reported. The second row includes results for Republicans only and the third for Democrats only. We see that *even within each partisan group* women are more likely than men to say the Court poorly represents women. The gender effect on perceptions of representation is strongest within Republicans. For perceptions of Court unfairness, though, we observe the gender differences for Republicans but not for Democrats. The gender effect on perceptions of a biased or conflictual Court are meaningless, regardless of partisanship.

Table 3: Estimated gender effects (`Woman`=1) on perceptions of Court representation, fairness, bias, and conflictual nature, by respondent party identification. Democrat men and women do not differ in perceptions of unfairness. As within Republicans, Democrat men and women differ in their perceptions of gender representation on the Court.

	Gender Effect on Latent Variables			
Party	**Unrepresentative**	**Unfair**	**Biased**	**Conflictual**
All	0.115* (0.017)	0.055* (0.017)	0.033* (0.013)	-0.007 (0.012)
Republicans	0.131* (0.029)	0.067* (0.030)	0.023 (0.017)	-0.001 (0.020)
Democrats	0.061* (0.018)	0.019 (0.021)	0.004 (0.018)	-0.021 (0.016)

In sum, the gender gap is explained largely by differences between men and women in their perceptions of representation on the Court. Another important predictor—though with no explanatory power for Democrats alone—is that women tend to see the Court as less fair to them. Even for perceptions of representation, the gender differences in viewpoint is twice as large for Republican respondents as it is for Democratic respondents.

For Democrats, the direct effect of gender on legitimacy is no longer statistically significant, meaning that perceptions of representation completely explain differences in legitimacy between Democratic men and women. For Republicans the direct effect of gender remains significant, suggesting that while perceptions of representation and fairness between Republican men and women explains much of the gender gap in legitimacy, they do not explain away those differences completely.

Discussion

What are the implications of our findings? First, we find clear evidence that gender representation strongly impacts women's views of the Court. Relatedly, women have less confidence that the Court will make fair decisions. These viewpoints directly explain differences in levels of perceived Court legitimacy and substantially account for the robust and stable gender gap we have uncovered.

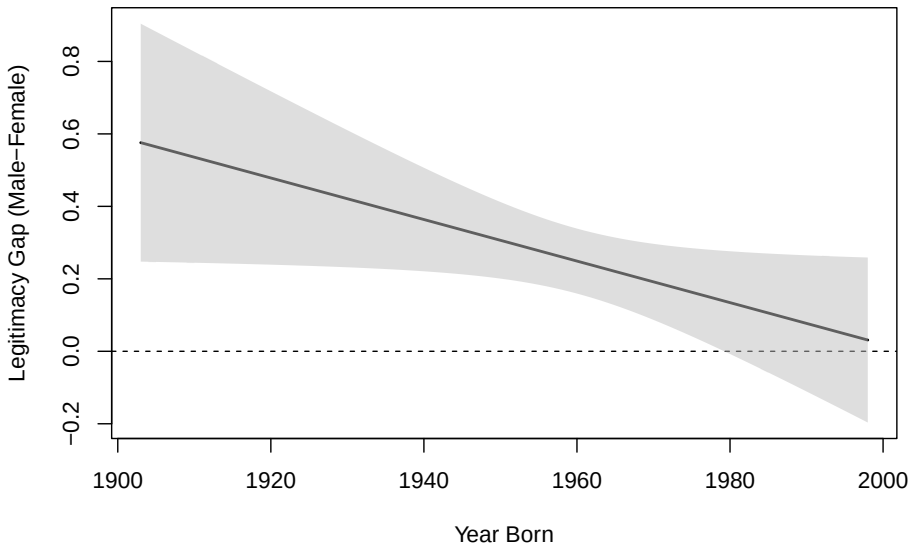
If our arguments are correct, then the increased number of women appointed to the Supreme Court should reduce the gender gap over time by mitigating concerns about descriptive representation and perhaps substantive representation. Over the course of our TAPS data, the number of women on the Court remained unchanged. However, we can take advantage of the fact that individuals in the TAPS survey grew up in very different periods. Older individuals grew up during a time when women were unrepresented on the Court and were treated more negatively in terms of women's rights. Younger individuals have experienced a Court with greater gender diversity and equality.

Just as we see differences between Black Americans of different generational cohorts in Court support—based on the long term effects of Court decisions on Court legitimacy as they reached adulthood (Gibson and Caldeira 1992)—we expect the gender gap to be particularly larger for older generations. To test this, we estimated a simple multiple regression model using the TAPS data. We regressed legitimacy on respondent party identification, gender,

year of birth, and an interaction between a respondent's gender and the year they were born. As before, we estimate random effects for individuals and survey waves. A table of results is in the Supplemental Information.

Figure 6 plots the predicted gender gap by year of respondent's birth. The solid line assumes a linear effect of year of birth and the gray bands are 95 percent confidence intervals. Controlling for party identification, the interaction effect between year of birth and the gender gap is statistically and substantially significant. Recall that the average gender gap we uncovered earlier was approximately .14-.15 using the TAPS data. Here, we see that for people born in 1975 or earlier, there was predicted to be a gender gap of .16 or above.[19] Based on the estimates of uncertainty, we cannot be sure from the model that the gender gap even existed for people born as recently as 1980.

Figure 6: Predicted gender gaps in legitimacy based on regression of legitimacy on partisanship, gender, year born, and the interaction between gender and year born. Gray bands represent 95 percent confidence intervals. Based on all TAPS data. Random effects included for individual and survey wave.



[19]Using in our model a non-linear, squared measure of year born would predict that the gender gap hovered around .36 for those born in 1943 or earlier.

These results support our argument that, for those who lived in earlier eras where the Court was less representative of women and where women were less confident in the fairness of the Court's decisions, the gender gap was massive. What about today? For the younger generation (and controlling for partisanship), men and women hold similar views of the Court's legitimacy. Women who were born in the 1980s and 90s have grown up in an era where they feel more secure about their legal rights and less fearful of Court unfairness to women, at least relative to men. They also live in an era where women are more represented on the Court descriptively. The findings here using TAPS data are consistent with the conclusions we made earlier from the CES data.[20]

Conclusion

Is there a gender gap in diffuse support for the United States Supreme Court? Though scholars find evidence of a persistent gender gap in other political contexts, the question has garnered little attention with respect to the judiciary.

We analyzed gender gaps in diffuse support for the Court using two quality datasets, collectively measuring views of adult Americans over 16 survey waves spanning the years 2012-2021. Our findings reveal a meaningful and stable gap between men and women in their support for the Court. Using the industry-standard measure of Supreme Court legitimacy, we find that gender played a role equally important as race and often more important than political identities like partisanship and ideology. Why do we observe a gender gap in diffuse support? The questions we added to the 2021 Cooperative Election Study survey go some

[20]In full transparency, we note here that an analysis of our CES data reveals that older women did not feel less represented by the Court than younger women, based on the measure of perceptions of representation we developed above. This contradicts our expectations. As we have emphasized consistently throughout this article, however, our findings regarding *causal* inference are meant only to be suggestive as we are only the first to theorize about gender gaps in Supreme Court legitimacy. We encourage future research to build upon our work using research designs better tailored to testing causal inference claims.

ways towards answering this question. First, there is clear evidence that women feel they are not represented well by the Supreme Court. Second, women are less confidence the Court will treat them fairly. Both of these viewpoints predict lesser perceived Court legitimacy.

The paper has important implications for how we think about the judiciary. First, despite the Court's non-representative role, representation is apparently crucial if it wants to develop institutional support. The Court's legitimacy among different groups may depend on the perception that it can represent those groups and treats them fairly in its deliberations. Second, increased representation of women and perceptions of gender-relevant fairness may have narrowed the gender gap in recent years, at least among younger Americans, but this question deserves further testing.[21]

Still, important questions remain. Of particular interest is comparing legitimacy evaluation criteria across institutional context. Does the Court's ability to create perceptions of procedural fairness through legal symbolism give it an advantage over other institutions relying on more "political" justifications for its decisions? Also, we suggested that the increased number of women appointed to the Court in recent years has led to a smaller gap in legitimacy among younger generations; would better representation in Congress lead to similar changes? We hope that scholars will pursue these and other questions.

This article supports a recent push in the literature to consider the role of group identities when explaining perceptions of Court legitimacy and willingness to support Court-curbing (Gibson and Nelson 2018; Zilis 2018; Bartels and Johnston 2020). Along with one's race, gender is a group characteristic that should not be overlooked.

[21]We considered whether the differences in perceptions of representation and fairness which explain the gender gap in legitimacy are historically based—by analyzing cohort differences in legitimacy and perceptions of representation and fairness—with mixed results. See "Discussion" section, including footnote 20.

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