Gender Discrimination in the Courts: Judge Preferences and Economic Consequences

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Judges play a prominent role in common law legal systems. In U.S. federal courts, they are not only tasked with applying existing legislation, but, given their ability to set precedent (Gennaioli and Shleifer 2007), they actively shape the legal system moving forward. Yet, we still have a limited understanding of the forces that affect judges’ decision making. This paper contributes to the question by studying how judges’ preferences, and in particular their implicit biases, impact judicial decisions and, in turn, what consequences this has for the broader economic environment.

We study judges’ implicit bias along a specific dimension: gender. This offers a number of advantages. First, we can identify a well-defined set of cases for which we expect gender bias to matter: those relating to gender discrimination and sexual harassment. Second, these cases have real world economic consequences (Chen and Sethi 2017). Finally, gender discrimination and sexual harassment in the workplace, and the consequences they have for women’s labor market outcomes, have recently come to the forefront of the public debate, which makes understanding the role of legislation in shaping these matters especially timely and important.

Judges’ implicit biases are likely to influence their decisions. Outside of the legal context, implicit biases have been shown to influence choices ranging from how physicians’ make clinical decisions (Green et al. 2007) to which candidates receive call-backs for job applications (Rooth 2010). However, standard measures used to proxy for implicit biases in the existing literature, such as Implicit Association Tests, are unfeasible in our context. We address this challenge by developing a measure that combines a unique feature of the setting, the large corpus of text that is available for each federal judge, and recent machine learning applications aimed at measuring semantic biases in text corpora (Caliskan et al. 2017).

Our measure proxies for implicit bias by looking at the difference between the relative co-occurrence of positive and negative sentiment words (e.g. pleasant versus nasty) for men and women. We compute this lexical gender bias measure for each judge in a corpus of opinions covering 1970-2013. We find that male judges have higher lexical gender bias (that is, implicit
male preference) than female judges. Moreover, relative to Democratic judges, Republican judges also demonstrate higher lexical gender bias.

The fact that judges exhibit lexical gender bias, however, does not necessarily imply policy relevance. For it to matter, it must be the case that, first, they impact judicial decisions and, second, that these decisions have consequences for the broader economic environment. Given the correlation between lexical gender bias and judges’ demographic characteristics that we just discussed, we start by using as instruments the gender or nominating party of the judge, but we will explore further the direct effect of judges’ implicit biases in future work. We find that Democratic judges and female judges are more likely to decide in favor of plaintiffs both in gender discrimination and in sexual harassment cases.

That judges with different preferences have a different likelihood of making pro-plaintiff decisions in gender discrimination cases, thereby setting different precedents across districts, cumulatively creates variation in regional law that can be used to evaluate the effect of legislation forbidding gender discrimination on labor market outcomes. To claim causality, we exploit the random assignment of judges to cases. If judges are randomly assigned and different judges have different propensities to rule in favor of plaintiffs in gender discrimination cases, i.e. if the randomization provides a valid instrument, we can implement an instrumental variable specification to recover the causal effect of these legal changes on labor market outcomes.

We find that forbidding sexual harassment increased the employment status, hours worked, wages, and management status of women relative to those of males. However, these ameliorative effects on gender inequality are reduced for women who were previously in the labor force, which is consistent with an insider-outside theory of gender discrimination as discussed in Chen and Sethi (2017). In addition, we find that sexual harassment law trumps gender discrimination law on employment status and management occupation: the positive effects on gender inequality come entirely from sexual harassment law, not gender discrimination law.

In future work, we plan to further characterize how judges’ implicit gender bias impact judicial decisions. Among other things, we plan to study how gender bias evolves over time and, in particular, whether it is impacted by sitting on a panel with a woman and whether and how implicit biases diffuse across different levels of federal courts.