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Gender and Deception: Moral Perceptions and Legal Responses

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GENDER AND DECEPTION: MORAL PERCEPTIONS AND LEGAL RESPONSES

Gregory Klass & Tess Wilkinson-Ryan

ABSTRACT—Decades of social science research has shown that the identity of the parties in a legal action can affect case outcomes. Parties’ race, gender, class, and age all affect decisions of prosecutors, judges, juries, and other actors in a criminal prosecution or civil litigation. Less studied has been how identity might affect other forms of legal regulation. This Essay begins to explore perceptions of deceptive behavior—i.e., how wrongful it is, and the extent to which it should be regulated or punished—and the relationship of those perceptions to the gender of the actors. We hypothesize that ordinary people tend to perceive deception of women as more wrongful than deception of men, and that such perceptions can affect both case outcomes and decisions to regulate.

This hypothesis is consistent with research into gender stereotypes, which has shown, for example, that women are perceived as less capable of protecting themselves against deception, and that men have special duties to protect women. Our approach is also of a piece with recent work on moral typecasting, which explores how attributions of agency and patiency affect perceptions of moral wrongfulness, as there is evidence that men tend to be associated with agency and women with patiency.

We report the results of three experimental vignette studies, using simple hypotheticals to elicit subjects’ off-the-cuff intuitions about men and women deceiving and being deceived. We examine the effects of gender by randomly varying party names (Ashley or Josh), by randomly varying the gender associated with a product—e.g., beard trimmer vs. hair dryer—and by randomly varying the gendered noun identifying the victims of a fraud (brothers vs. sisters). We ask subjects to report on their reactions to different deceptive situations by reporting on the ethicality of a behavior, on their support for a regulatory approach, and on their preference for level of punishment. We also explore differential responses of male- and female-identified subjects.

We find preliminary support for the proposition that men deceiving women and firms deceiving women are regarded as somewhat more problematic than men or firms deceiving men. We find suggestive but limited evidence that paternalistic regulation of women’s transactions is

more welcome than that of regulation of men’s consumer choices. We find robust support for the proposition that women are more likely than men to regard deception in the marketplace as an ethical wrong. The studies reported here also suggest the challenges of studying gender as a causal explanation for legal decision-making. We suggest how future research might tease out the explanatory mechanisms that link perceptions of gender to perceptions of deception.

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INTRODUCTION

When students in a consumer law course are introduced to the Federal Trade Commission Act, they often read a pair of cases interpreting Section 5’s rule against “unfair or deceptive acts or practices” in commerce.¹

¹ 15 U.S.C. § 45(a)(1).

Charles of the Ritz Distributors Corp. v. FTC is a 1944 case about a women’s facial cream, branded as Rejuvenescence.² In fact the brand name was the problem: the FTC was concerned that buyers would be led to believe that their skin would somehow age in reverse.³ The Second Circuit was inclined to agree, approvingly citing expert testimony that “the average woman, conditioned by talk in magazines and over the radio of ‘vitamins, hormones, and God knows what,’ might take ‘rejuvenescence’ to mean that this ‘is one of the modern miracles’ and is ‘something which would actually cause her youth to be restored.’”⁴ The court ruled that the FTC was permitted to “insist on the most literal truthfulness” and prohibit the cosmetics company from using the name Rejuvenescence.⁵

The pedagogical companion case came forty years later in a 1984 FTC decision, *In re International Harvester Co.*⁶ *International Harvester* concerned a claim that a tractor company had engaged in a deceptive practice by failing to warn customers of the risk of “fuel geysering.”⁷ Fuel geysering happens when the gas cap on a tractor is removed, often to check the fuel level, while the machine is “running or hot.”⁸ Although there had been a number of reports of serious injuries, and even a death, and although the agency agreed that it was the practice of many farmers to check the fuel this way, the FTC declined to find that the company had deceived its customers under Section 5: “Individual consumers may have erroneous preconceptions about issues as diverse as the entire range of human error, and it would be both impractical and very costly to require corrective information on all such points.”⁹

Reading the cases side by side, it is difficult to avoid a sense that caveat emptor is a rule for he and not for she. The products in question were unusually gendered; there is no question that the court assumed the users of cream to be women and the users of the tractors to be men.¹⁰ At the same

² 143 F.2d 676, 677–78 (2d Cir. 1944).

³ *See id.* at 678.

⁴ *Id.* at 680.

⁵ *Id.* (quoting *Moretrench Corp. v. FTC*, 127 F.2d 792, 795 (2d Cir. 1942)). The company changed the name to Revenescence and moved on.

⁶ 104 F.T.C. 949 (1984).

⁷ *Id.* at 967, 1005.

⁸ *Id.* at 955, 966–67.

⁹ *Id.* at 1059.

¹⁰ In the context of this Essay, we are especially interested in gendered stereotypes, specifically the stereotypes associated with the male and female gender binary. Given that context, our discussion largely focuses on binary comparisons, noting how we have taken account of nonbinary research participants or the perspectives of nonbinary consumers. Our focus on gender in these preliminary studies also means that we do not examine how participants’ race or other socially salient characteristics might interact with gender. As we note in Part III, this question would also benefit from future research.

time, the innate dangerousness of the products was also clearly different—hot tractor fuel as compared to underperforming moisturizer. The upshot of the two decisions is remarkable: women were protected from a fanciful brand name, and men had to figure out the exploding fuel situation for themselves. Granted, gender is not the only difference between the cases. Most importantly, *International Harvester* was decided after the FTC released its 1983 Policy Statement on Deception.¹¹ If the gender of consumers influenced the outcomes of these cases, it was one factor among others. But the respective holdings, and the tones of the two courts, suggest the hypothesis that legal officials and others are more attuned to the social value of protecting women than men in the marketplace, whether implicitly or explicitly.

In a culture where gender is highly salient, it would not be surprising to find that parties' genders sometimes affect case outcomes. Nor should we be surprised if gender sometimes figures into social and individual judgments about deceptive behavior, such as judgments about whether an act of deception is more or less wrongful, or whether it merits a legal response.

Indeed, such connections have been noted by economic and legal historians. In his book *Horse Trading in the Age of Cars: Men in the Marketplace*, historian Steven Gelber reports that in the nineteenth-century United States, the market for horses was a domain of men, one in which lying was generally understood to be permitted: "Nobody—not your neighbor, your best friend, your church brethren, not even the minister himself—could be trusted in a horse trade."¹² In this man's world, "[t]he morality—or more precisely, immorality—of horse trading derived from the way it operated as a game Horse traders expected to be judged by the ethics of the game."¹³ In other words, men engaging in prototypically male markets were expected to absorb the costs of the deception they encountered.

The legal historian Edward Balleisen similarly observes that the nineteenth-century doctrine of caveat emptor belonged to urban marketplaces occupied by white men.¹⁴ By contrast, opinion writers and regulators took a more protective attitude towards members of socially disfavored groups, including women, who were considered less able to

¹¹ FTC Policy Statement on Deception, Letter from James C. Miller III, Chairman, FTC, to John D. Dingell, Chairman, Comm. on Energy & Com., U.S. House of Reps. (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf [<https://perma.cc/8UGF-Y486>].

¹² STEVEN M. GELBER, *HORSE TRADING IN THE AGE OF CARS: MEN IN THE MARKETPLACE* 9 (2008).

¹³ *Id.* at 15. Gelber describes in detail how these practices migrated to car sales and ways that the car market remained and remains highly gendered. *Id.* at 138–63.

¹⁴ See EDWARD J. BALLEISEN, *FRAUD: AN AMERICAN HISTORY FROM BARNUM TO MADOFF* 44–46 (2017).

protect themselves against deceptive practices.¹⁵ Whereas a man who deceived a man triumphed in a contest of equals, a man who deceived a woman took undue advantage of a vulnerable party. As women, immigrants, Black people, and others entered markets that had been reserved for white men, there were calls for more robust protections against deceptive practices, eventually leading to a shift away from caveat emptor.¹⁶

Our social world is very different from that of the nineteenth-century United States, but deception still implicates gender norms. Newsworthy examples and everyday tropes abound. During the 2011 Women’s World Cup, the *New York Times* reported on sharply different attitudes in the men’s and women’s games toward taking a dive—feigning a fall or injury to draw a call against an opponent, or “flopping.”¹⁷ Whereas the practice was relatively common and widely accepted in men’s professional soccer, it was less common in the women’s game, and players tended to frown on it.¹⁸ In securities transactions, when businesses seek to avoid legal liability for nondisclosure of inside information, they issue “Big Boy Letters,” disclaiming reliance on one another’s representations.¹⁹ More subtle is the way gender crept into public conversations about both the 2003 prosecution of Martha Stewart for insider trading and the 2021 prosecution of Elizabeth Holmes for wire fraud.²⁰ There is no way to know what relationship, if any,

¹⁵ *Id.* at 52, 101, 377.

¹⁶ *See id.* at 52, 101.

¹⁷ Jeré Longman, *Routine Ruse in Men’s Soccer Tumbles into Women’s World Cup*, N.Y. TIMES (July 11, 2011), <https://www.nytimes.com/2011/07/12/sports/soccer/at-the-womens-world-cup-drama-without-all-the-dramatics.html> [perma.cc/MJ8H-7V7W].

¹⁸ *Id.*

¹⁹ Edwin D. Eshmoili, Note, *Big Boy Letters: Trading on Inside Information*, 94 CORNELL L. REV. 133, 135 (2008).

²⁰ *See, e.g.*, Laurie P. Cohen, ‘Gender Card’ Out of Stewart Case, CHI. TRIB. (July 23, 2003), <https://www.chicagotribune.com/news/ct-xpm-2003-07-23-0307220362-story.html> [perma.cc/X8H3-JSXY] (discussing Stewart’s lawyers’ representation that her indictment was based on the fact that “she is a woman who has successfully competed in a man’s business world” and the significance of the U.S. Attorney’s decision to appoint a female lawyer as lead prosecutor); Melissa Fletcher Stoeltje, *Martha Stewart Turning into Symbol of Female Solidarity*, CHI. TRIB. (Mar. 24, 2004), <https://www.chicagotribune.com/news/ct-xpm-2004-03-24-0403240106-story.html> [https://perma.cc/BZJ5-Z87F] (noting the increased negative publicity accompanying Stewart’s charges as compared to coverage of similar charges against prominent male executives); Joan MacLeod Heminway, *Save Martha Stewart? Observations About Equal Justice in U.S. Insider Trading Regulation*, 12 TEX. J. WOMEN & L. 247, 271–74 (2003) (“Martha Stewart may be enduring a grueling and detailed investigation and may be facing the prospect of a protracted legal proceeding simply because she is a woman.”); Katelyn Fossett, *Elizabeth Holmes: Girlboss or Victim?*, POLITICO (Jan. 7, 2022), <https://www.politico.com/newsletters/women-rule/2022/01/07/elizabeth-holmes-girlboss-or-victim-495630> [https://perma.cc/5AUP-UWPR] (observing how Holmes’s gender became a central defense theme, with her lawyers portraying her “not as a powerful, determined boss, but as a victim of emotional

gender has to fraud prosecutions, but many public commentators drew the link.

For researchers investigating the relationship between gender and deceptive behavior, there are a number of potential lines of inquiry. One might ask whether gender is a predictor of the propensity to engage in deception or to be deceived, either in general or in specific contexts. For example, men are reportedly more likely to engage in deception on the soccer pitch than are women. Are there other contexts in which either men or women are more likely to employ deception? Are there contexts in which men or women are more likely to be deceived? Second, one could ask whether a person's gender is predictive of his or her attitudes toward the morality of deception, again either in general or in specific contexts? It seems, for example, that women on the soccer pitch are more likely to judge deception wrongful than are men. Are there other contexts in which men and women tend to diverge about deception?²¹ Finally, one might ask if the respective genders of deceiver or deceived figure into third-party judgments of the blameworthiness of a deceptive act. In the late nineteenth-century United States, deception of men in the marketplace appears to have been viewed as more acceptable than was deception of women. Are there other contexts in which people consider lying more or less wrongful on the basis of the gender of the parties at either end of the deal?

This Essay focuses on the last question: How does the gender of the actor (deceiver or deceived) affect how others perceive and judge the actor's behavior? The empirical tools we use allow us also to say something about the second question—i.e., whether a person's gender is a predictor of their judgments regarding the permissibility of deception. We do not discuss any relationships between gender and propensity to deceive or be deceived.²² Our focus is on common moral attitudes toward deception, not deception itself.

and physical abuse by Sunny Balwani, Holmes's ex-boyfriend and former deputy at Theranos, which they suggested affected her judgment and business choices at the company"); Lara Stemple, *Elizabeth Holmes' Conviction Is Actually a Win for Women*, SLATE (Jan. 4, 2022), <https://slate.com/news-and-politics/2022/01/guilty-verdict-in-elizabeth-holmes-trial-is-a-win-for-women.html> [https://perma.cc/SZ7C-2AEA] (analyzing Holmes's "competing masculine and feminine images" and her lawyers' portrayal of her as a victim of abuse); Claire Carusillo, *Elizabeth Holmes Is a Woman*, GAWKER (Jan. 4, 2022), <https://www.gawker.com/media/elizabeth-holmes-is-a-woman> [https://perma.cc/PPC4-NNWT] (collecting press stories).

²¹ Although the first two questions are distinct, we might expect their answers to be connected. One would hope, for example, that a person who is more likely to view deception as wrongful is less likely to engage in deceptive practices. Contrariwise, motivated moral reasoning might lead those with a propensity to deceive to judge deception to be less wrongful than do those who lean toward candor.

²² There exists a large literature on this question. See, e.g., Jessica A. Kennedy & Laura J. Kray, *Gender Similarities and Differences in Dishonesty*, 48 CURRENT OP. PSYCH. 1, 1 (2022) (reviewing evidence that men are often more dishonest than women).

We know of no systematic examination of whether or how the gender of deceiver and deceived parties affects people's assessment of the wrongfulness of deceptive acts. Inspired by the opportunity of this symposium, this Essay opens a discussion about how one might approach the topic and reports the results of three preliminary studies. Our research used simple vignette experiments to elicit subjects' off-the-cuff intuitions about men and women deceiving and being deceived. We examined the effects of gender by randomly varying party names (Ashley or Josh, for example), by randomly varying the gender associated with a product (beard trimmer versus hair dryer), and by randomly varying the gendered noun identifying the victims of a fraud (brothers versus sisters). We asked subjects to report on their reactions to different deceptive situations by reporting in Study 1 on the ethicality of a behavior, in Study 2 on their support for a regulatory approach, and in Study 3 on their preference for level of punishment.

The studies reported here show some clear patterns and some mixed results. Although not the primary question of the studies, we found robust support for the proposition that women are more likely than men to regard deception in the marketplace as an ethical wrong. We also found some support for the proposition that men deceiving women and firms deceiving women are regarded as somewhat more problematic than men or firms deceiving men. We also report suggestive but limited evidence that paternalistic regulation of women's transactions is more welcome than that of men's consumer choices. Finally, we suggest some pathways forward for more research.

This Essay proceeds in three Parts. Part I discusses existing psychological literature that suggests possible connections between gender stereotyping and moral assessments of deceptive behavior. Part II describes three preliminary studies of whether gender affects subjects' perceptions or judgments of the morality of deceptive acts and discusses their results. Part III considers the implications of this research and outlines a potential research agenda for the law and psychology of gendered consumer protection.

I. THE MORAL PSYCHOLOGY OF MEN, WOMEN, AND DECEPTION

Our interest in gender and deception was piqued by histories of the law of deception and examples like *Charles of the Ritz* and *International Harvester*. But recent empirical work in moral psychology also supports the hypothesis that participants' gender can be relevant to perceptions or judgments regarding the morality of a deceptive act. More specifically, it suggests that women may be perceived as weaker market participants than

men, making it less fair to target them and more reasonable to protect them from transactional harms.

A. *Descriptive and Prescriptive Gender Stereotypes*

There is a long history of social psychology research associating gender roles with transactional roles and attitudes. Prejudicial attitudes like sexism are sometimes understood to be a form of simple animus. Yet intergroup bias and prejudices have discernible, measurable content. Bias on the basis of age, for example, functions differently from bias on the basis of gender, as stereotypes about the elderly are not the same as stereotypes about women.

In order to understand how a bias functions in the social world, we need to know what attitudes and cognitions it embodies. Social psychologists map stereotypic content through the empirical study of the beliefs and attitudes people associate with different roles. So, for example, researchers might ask a panel of experimental participants to rate, on a scale from one to seven, the extent that the participants think that “friendliness” is an important feminine trait, and then whether it is an important masculine trait. If they find that respondents rate it as important for femininity but not for masculinity, they have discovered a piece of information about the constitutive elements of a gender stereotype. A number of studies of stereotyping and bias collate and evaluate the beliefs and attitudes that comprise the bias—i.e., sexism, racism, ageism, ableism, or others—and use them to create an instrument for measuring bias in individuals. The theory behind these studies is that individuals who endorse more stereotypic beliefs are more biased.

From the earliest days of the study of sex role stereotyping, it was clear that many of the traits most strongly associated with one gender or the other also described transactional styles. Sandra Bem’s 1974 “Sex Role Inventory” found the stereotypical masculine role to include characteristics such as “self-reliant,” “assertive,” “analytical,” and “competitive,” whereas the feminine role included characteristics such as “yielding,” “susceptible to flattery,” and “gullible.”²³ Together these traits paint a particular picture of a typical man who will resist an unfair deal (competitive, assertive) and a typical woman who will go along (patient, gullible). The inventory of traits therefore suggests a widespread assumption that a woman would be more likely than a man to go along with a bad or deceptive deal—that women are less able to protect themselves against deception.

²³ Sandra Lipsitz Bem, *The Measurement of Psychological Androgyny*, 42 J. CONSULTING & CLINICAL PSYCH. 155, 156–58 (1974); see also Ellen Lenney, *Sex Roles: The Measurement of Masculinity, Femininity, and Androgyny*, in MEASURES OF PERSONALITY AND SOCIAL PSYCHOLOGICAL ATTITUDES 573, 575–76 (John P. Robinson, Phillip R. Shaver & Lawrence S. Wrightsman eds., 1991) (discussing Bem’s contributions to sex-role research).

A 2002 updated survey of gender stereotypes from Deborah Prentice and Erica Carranza tells a similar story.²⁴ The researchers examined a range of attributes and identified what they called “relaxed” and “intensified” prescriptions and proscriptions.²⁵ For example, it is a positive trait overall for a person to be friendly or to have good business sense.²⁶ But it is especially important for women to be friendly, and especially important for a man to have good business sense.²⁷ Prentice and Carranza found that naivete and gullibility are acceptable traits for women.²⁸ By contrast, for men they are third-rail attributes that are especially disfavored.²⁹ These attributions would predict a social expectation that men are more able to protect themselves against deceptive practices than are women.

The relevance of these gender stereotypes to expectations of deception is suggested by a 2014 study investigating the hypothesis that women are perceived as more easily misled than are men.³⁰ Subjects who read otherwise identical vignettes were more likely to predict that a buyer would be misled if named “Patricia” than if named “Michael.”³¹ Women were evaluated as less competent but more warm—willing to go along to get along—and therefore regarded as more vulnerable targets.³² These findings are consistent with both elements of Bem’s Sex Role Inventory and Prentice and Carranza’s updated inventory.

While some researchers were taking stock of gender stereotypes, others were taxonomizing gender-based attitudes.³³ Sexism has traditionally been understood to be essentially hostile, encompassing attitudes such as a belief that women are unintelligent or too emotional, or simply a dislike of women.

²⁴ See Deborah A. Prentice & Erica Carranza, *What Women and Men Should Be, Shouldn’t Be, Are Allowed to Be, and Don’t Have to Be: The Contents of Prescriptive Gender Stereotypes*, 26 PSYCH. WOMEN Q. 269 (2002).

²⁵ *Id.* at 271.

²⁶ *Id.* at 271, 273.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 279–80.

³⁰ Laura J. Kray, Jessica A. Kennedy & Alex B. Van Zant, *Not Competent Enough to Know the Difference? Gender Stereotypes About Women’s Ease of Being Misled Predict Negotiator Deception*, 125 ORG. BEHAV. & HUM. DECISION PROCESSES 61, 69 (2014).

³¹ See *id.* at 63, 66.

³² See *id.* at 62, 66.

³³ See Peter Glick & Susan T. Fiske, *The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70 J. PERSONALITY & SOC. PSYCH. 491, 491, 495 (1996) [hereinafter Glick & Fiske, *The Ambivalent Sexism Inventory*]; Peter Glick & Susan T. Fiske, *Hostile and Benevolent Sexism: Measuring Ambivalent Sexist Attitudes Toward Women*, 21 PSYCH. WOMEN Q. 119, 120, 127 (1997); Peter Glick & Susan T. Fiske, *The Ambivalence Toward Men Inventory: Differentiating Hostile and Benevolent Beliefs About Men*, 23 PSYCH. WOMEN Q. 519, 520 (1999); Peter Glick & Susan T. Fiske, *Ambivalent Sexism*, 33 ADVANCES EXPERIMENTAL SOC. PSYCH. 115, 117 (2001).

In a 1996 article, Peter Glick and Susan Fiske presented evidence of what they termed “benevolent” sexism, which encompasses norms that might be described as chivalrous or admiring, or which might be described more simply as “paternalistic.”³⁴ Benevolent sexism espouses beliefs like: “A good woman should be set on a pedestal,” “[w]omen should be cherished and protected by men,” and “[w]omen have a superior moral sensibility.”³⁵ Several attitudes associated with benevolent sexism in particular hold that women are deserving of special protection, suggesting that the deception of women might be especially wrongful.

Together, these findings suggest that acts of deception might be perceived or judged differentially depending on whether the deceiver or deceived is a man or a woman. If a person believes women are weaker or more gullible, and therefore more likely to be deceived, we might expect him or her to believe that deceiving a woman is especially wrongful—a form of punching down rather than fair play.

B. Moral Typecasting

Recently, empirical studies of gender stereotypes have informed new lines of research in moral psychology. Experimental moral psychology studies how ordinary people reach everyday judgments about whether an act is moral or immoral, about who is responsible for a moral wrong, about morally just deserts, and the like.³⁶ Experimental psychologists Neil Hester and Kurt Gray have recently observed that to date, there has been little study of how race, gender, age, or other individual characteristics figure into such judgments.³⁷ One reason is that much of the work in empirical moral psychology seeks to test propositions from moral *philosophy*. To a moral philosopher developing a normative theory, no defensible resolution of, for example, the trolley problem, would depend on the race or gender of the trolley driver or the potential victims.³⁸

³⁴ See Glick & Fiske, *The Ambivalent Sexism Inventory*, *supra* note 33, at 491–92, 495.

³⁵ *Id.* at 500.

³⁶ For an overview, see John Doris, Stephen Stich, Jonathan Phillips & Lachlan Walmsley, *Moral Psychology: Empirical Approaches*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2020), <https://plato.stanford.edu/archives/spr2020/entries/moral-psych-emp> [<https://perma.cc/52UG-NZ45>].

³⁷ Neil Hester & Kurt Gray, *The Moral Psychology of Raceless, Genderless Strangers*, 15 PERSPS. ON PSYCH. SCI. 216, 216–17 (2020). *But see* Brian D. Earp, Killian L. McLoughlin, Joshua T. Monrad, Margaret S. Clark & Molly J. Crockett, *How Social Relationships Shape Moral Wrongness Judgments*, 12 NATURE COMM’N 1, 2–4 (2021) (testing moral judgments in the context of common social relationships including romantic partners, roommates, close friends, and siblings).

³⁸ A trolley problem explores the choice between allowing injury to one person or persons (typically by a runaway trolley) and acting to prevent that injury in a way that injures a different person (say by

There are, however, reasons to expect the identity of the participants in a morally salient act to affect how ordinary people *perceive* its morality or immorality. This is the bottom line of well-documented implicit bias research across a wide range of legal domains. Prosecutors, courts, and juries regularly assess wrongfulness and assign responsibility, and decades of empirical legal scholarship, especially in criminal law, has shown that the identity of both the defendant and of the victim often affects legal officials' decisions.³⁹

The theory of moral typecasting suggests one way gender might figure into moral judgments generally. Philosophers have long recognized that morally salient acts typically involve dyadic, asymmetrical interactions between moral agents and moral patients.⁴⁰ The agent causes the morally salient event; the patient experiences its effects. The theory of moral typecasting addresses both how attributions of agency and patiency connect to perceptions of personhood generally and how they operate in people's moral perceptions and judgments. It also suggests a more specific path by which gender might figure into the perception or judgment of deceptive acts as moral or immoral.

In a foundational 2009 article, psychologists Kurt Gray and Daniel Wegner reported a series of studies about the role of moral typecasting in subjects' moral perceptions.⁴¹ The studies showed that people associate moral agents with characteristics such as “causality, intentionality, morality, responsibility, and praise,” and that they view moral patients as being especially sensitive to pain or pleasure—as experiencers.⁴² The studies also provided empirical support for an inverse relationship between perceptions of moral agency and moral patiency: perceiving someone as an agent caused subjects *not* to associate them with characteristics associated with patiency; perceiving someone as a patient caused subjects *not* to associate them with

throwing a switch on the track). The problems can be used to explore, for example, the limits of consequentialist moral theories and the different ways acts and omissions figure into everyday moral reasoning—questions that are not tied to race or gender.

³⁹ See OJMARRH MITCHELL & DORIS L. MACKENZIE, DOJ, THE RELATIONSHIP BETWEEN RACE, ETHNICITY, AND SENTENCING OUTCOMES: A META-ANALYSIS OF SENTENCING RESEARCH 126–27 (2004), <https://www.ojp.gov/pdffiles1/nij/grants/208129.pdf> [<https://perma.cc/K4SK-9646>]. For an early example, see Arnold M. Rose & Arthur E. Prell, *Does the Punishment Fit the Crime? A Study in Social Valuation*, 61 AM. J. SOCIO. 247, 248 (1955).

⁴⁰ See, e.g., ARISTOTLE, THE NICOMACHEAN ETHICS 1111a3–6 (W. D. Ross trans., Oxford Univ. Press 2009) (distinguishing “who” an agent is, “what” an agent is doing, and “what or whom” an agent is acting on).

⁴¹ Kurt Gray & Daniel M. Wegner, *Moral Typecasting: Divergent Perceptions of Moral Agents and Moral Patients*, 96 J. PERSONALITY & SOC. PSYCH. 505, 506–07 (2009).

⁴² *Id.* at 505.

characteristics associated with agency.⁴³ And the studies indicated that these associations tend to endure beyond the scenario that triggers the assignments. Subjects who were told a story that portrayed a character as a moral agent were less likely to view that person as sensitive to pain or pleasure going forward. For example, subjects reported that the leader of an employee walkout would feel less pain from later having hot coffee spilled on them than would an employee who followed the leader on the walkout.⁴⁴

Although the roles of agent and patient can be set by the structure of a morally salient event, there is evidence that people also attribute agency and patiency based on more lasting personal traits—on a person’s identity. To take some extreme examples, people associate robots and deities with the characteristics of agency and not those of patiency, and they associate frogs and infants with characteristics of patiency and not those of agency.⁴⁵ Several studies have suggested that gender also influences people’s perceptions of agency or patiency. In one study, subjects tended to behave more altruistically toward females than toward males, and the difference was driven at least in part by the perception that women are more sensitive to suffering than are men—a core characteristic of patiency.⁴⁶ A more recent review reported a group of studies finding across four countries that women were more easily categorized as victims and men more easily categorized as perpetrators.⁴⁷ A recent working paper reports a computational-linguistic analysis of a corpus of over 141,000 English-language documents spanning two hundred years that showed a significant, though decreasing, association of characteristically male nouns with agency words and a significant though decreasing association of characteristically female nouns with experience words.⁴⁸ Some have even argued that gender is the more fundamental category—that the pervasive role of masculinity and femininity in people’s social cognition explains the categories of agency or patiency.⁴⁹

⁴³ *Id.* at 512.

⁴⁴ *Id.*

⁴⁵ Heather M. Gray, Kurt Gray & Daniel M. Wegner, *Dimensions of Mind Perception*, 315 *SCIENCE* 619, 619 (2007).

⁴⁶ Oriol FeldmanHall, Tim Dalgleish, Davy Evans, Lauren Navrady, Ellen Tedeschi & Dean Mobbs, *Moral Chivalry: Gender and Harm Sensitivity Predict Costly Altruism*, 7 *SOC. PSYCH. & PERSONALITY SCI.* 542, 546, 548 (2016).

⁴⁷ Tania Reynolds, Chuck Howard, Hallgeir Sjøstad, Luke Zhu, Tyler G. Okimoto, Roy F. Baumeister, Karl Aquino & JongHan Kim, *Man Up and Take It: Gender Bias in Moral Typecasting*, 161 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 120, 134 (2020).

⁴⁸ Eliot Ash, Dominik Stambach & Kevin Tobia, *What is (and Was) a Person? Evidence on Mind Perceptions from Natural Language*, *COGNITION* (forthcoming), <https://papers.ssrn.com/a=3959847> [<https://perma.cc/RYP7-QNDJ>].

⁴⁹ Ashley E. Martin & Michael L. Slepian, *The Primacy of Gender: Gendered Cognition Underlies the Big Two Dimensions of Social Cognition*, 16 *PERSPS. ON PSYCH. SCI.* 1143, 1144, 1148, 1150 (2021).

Perceptions of patiency and agency are closely linked to perceptions of moral harm, to assignments of moral responsibility, and thereby to assessments of moral wrongfulness. The more patiency a person is perceived to have, the greater the perception of harm to them; the more agency a person is perceived to have, the greater the assignment of responsibility to them; the greater the harm and greater the responsibility, the more wrongful an act is judged to be. Thus “[i]f the essence of morality is captured by the combination of harmful intent and painful experience, then acts committed by agents with greater intent and that result in more suffering should be judged as more immoral.”⁵⁰ These general findings suggest that if women tend to be typecast as patients and men typecast as agents, then wrongs committed by men against women will be perceived as more wrongful than those committed by women against men, men against men, or women against women, which is the hypothesis this Essay seeks to test.

The hypothesis that the gender of deceiver and deceived sometimes affects people’s assessments of the morality of deceptive acts therefore coheres with the theory of moral typecasting. That said, several cautions are in order.

First, we do not yet know whether participant gender affects moral judgments in general. Although the theory of moral typecasting suggests reasons to think it does, there have been relatively few studies of whether or how the gender of the participants affects judgments regarding a particular act’s wrongfulness. It would be interesting to know, for example, the effect of varying participants’ gender in the experiments originally used to test the moral typecasting hypothesis.

Second, few if any studies of moral typecasting address how people evaluate acts of deception. Studies have asked subjects about wrongs like killing, negligently causing bodily harm, stealing, polluting, not paying for goods or services, or causing a fellow employee to be fired.⁵¹ Although some of these scenarios involve deception to hide the wrong, none targets deception simpliciter. Moreover, deception differs from other wrongs in two ways that, according to the theory of moral typecasting itself, could affect how people perceive or judge the wrongfulness of a deceptive act. First, the moral typecasting theory suggests that perceptions of harm play a significant role in the identification of moral wrongs,⁵² and the harms of deception are not as immediate or palpable as are the harms of other wrongs. A story about

⁵⁰ Kurt Gray, Liane Young & Adam Waytz, *Mind Perception Is the Essence of Morality*, 23 PSYCH. INQUIRY 101, 106 (2012).

⁵¹ See generally Gray & Wegner, *supra* note 41 (exploring moral typecasting through seven studies).

⁵² See Chelsea Schein & Kurt Gray, *The Unifying Moral Dyad: Liberals and Conservatives Share the Same Harm-Based Moral Template*, 41 PERSONALITY & SOC. PSYCH. BULL. 1147, 1151–52 (2015).

someone stepping on broken glass due to another's negligence is likely to elicit a more visceral reaction than a story about someone agreeing to pay tens of thousands of dollars for dance lessons she will never use. Second, deception involves a degree of agency on both sides of the transaction. When deception causes material harm, it is because the deceived party *believes* the deceiver and *acts* in reliance on the falsehood. Such belief and action suggest agency on the part of the deceived. The agency on both sides of a deception complicates application of the theory of moral typecasting. Thus, the law has long recognized that the deceived party's reliance can be more or less reasonable, and it assigns liability for deception accordingly. It does not blame the seller who engages in puffery but the buyer who unreasonably relies on it. Taken together, these considerations suggest that even if we had evidence that the genders of agent and patient affect moral judgements of wrongdoing generally, we would want additional evidence that they affect moral assessments of acts of deception specifically.

Our hypothesis that the gender of deceiver and deceived affects judgments regarding the wrongfulness of a deceptive act therefore extends the theory of moral typecasting in two ways—first, in the direction of participants' identity, as distinguished from their role in a moral event, and second, in the direction of wrongs of deception, as distinguished from other types of moral wrong. This does not mean that our hypothesis is at odds with the theory. But it suggests that the relation is complex.

II. VIGNETTE STUDIES

Our hypothesis is that the respective genders of deceiver and deceived affect people's moral and legal judgments of deception. More specifically, our prediction is that people tend to judge male deception of females as more wrongful than deception involving other gender pairings.

The three studies we report below rely on the same basic method. In each study, online survey-takers are asked to read a short scenario describing a form of market deception. Roughly speaking, subjects in each study are randomly assigned to read about a transaction involving deception in which the parties are either male or female. In different ways, the studies ask subjects to report on the implications of either men or women deceiving either women or men. Across the three studies, we prompt subjects to consider a variety of reactions. Is the deception ethically wrong? Should the deceived person have legal recourse? Should the transaction be banned or regulated across the board? Should the deceiver be punished? Subjects also report basic demographic information about themselves, including age, gender, education level, and political ideology.

A. Study 1: Buyer–Seller Gender Pairings and Perceptions of Deception

Our first study asked the basic question: does the gender dyad (pairing) affect perceptions or judgments of wrongfulness in a commercial transaction? In a basic transaction between two people, and assuming a gender binary for sake of exposition, there are four gender pairings: A man selling to a man (MM), a man selling to a woman (MW), a woman selling to a man (WM), and a woman selling to a woman (WW). Our baseline hypothesis was that different gender pairings produce different intuitions about the wrongfulness of misleading or deceptive behavior. Our specific preregistered hypotheses are described below in more detail.

1. Method

To study the effect of gender dyad on deception intuitions, we chose a simple scenario involving an individual seller and an individual buyer bargaining over a used kitchen table. Because we were describing individuals acting on behalf of themselves only—i.e., not a salesperson at a store—we could pin down the gender of the parties with some specificity just by changing the names of the buyer and seller—“Ashley” or “Josh.” The sale of a used piece of basic furniture was not obviously a highly gendered purchase or a highly gendered consumer context.

The first scenario described the sale of a table. Each subject was randomly assigned to read it in one of four conditions: MM, MW, WM, or WW. In the MW condition, the scenario read as follows:

Please imagine that when Josh moved into his first apartment, his parents gave him their old kitchen table. Josh used the table for a few years, and then decided to sell it when he was moving out of state.

Josh remembers when his parents bought the table about ten years ago from a big box store, for about \$100. The table is solid wood and in good condition. It actually looks like an antique, but in fact similar tables can still be purchased from stores like Target or Wal-Mart for under \$200.

Josh decides to advertise the table on a listserv for people who live in and around his neighborhood. About 1,000 people are on the email list. The posting reads: “Well-loved kitchen table. \$500 firm!” and includes pictures. Josh gets an email from someone named Ashley who he does not know. Ashley lives about 30 minutes away and recently joined the listserv. She messages Josh to say she is interested. She thinks \$500 is a reasonable price for an older or vintage wooden table.

Before they come to an agreement, Josh and Ashley briefly email back and forth about the table. In all cases assume that Josh ultimately sells Ashley the table for \$500.

In the following items, you are being asked to assume the basic facts above and then consider a series of different possible outcomes.

Subjects were then asked to consider a series of ways the seller might mislead the buyer. The prompt asked each subject to consider all three possible deceptive situations in turn, and to rate “the ethicality of Josh’s behavior” on a 1 to 7 scale, where 1 is “highly unethical,” 4 is “neutral,” and 7 is “highly ethical.” The prompt was worded as follows (variable name used for statistical tests is given in brackets):

For each hypothetical below, please evaluate the ethicality of Josh’s behavior.

[Offer] Hypo 1: Ashley offers to pay \$500 and pick up the table and Josh accepts.

[Omission] Hypo 2: Before she makes her offer, Ashley emails to say she is interested and writes, “OK, great. It looks like it’s in good shape considering it’s probably 60 years old.” Josh does not correct her. Ashley offers to pay \$500 and pick up the table and Josh accepts.

[Lie] Hypo 3: Before she makes her offer, Ashley emails to say she is interested and asks if Josh has any additional information about the table and Josh writes “It’s an antique that I bought at an estate sale.” Ashley offers to pay \$500 and pick up the table and Josh accepts.

After considering the ethicality question, subjects were asked to consider the legal implications of misleading sales practices. On a new page, subjects saw the following prompt:

Assume that what has happened is that Ashley has emailed Josh, “OK, great. It looks like it’s in good shape considering it’s probably 60 years old,” and Josh has not corrected her. She has paid Josh \$500 via a payment app and borrowed a friend’s truck to pick up the table.

About a week later, Ashley notices a small stamped label on an inner corner of the table, and the brand name is familiar. She looks online and sees that it is a mass market label, and this table is still sold at some chain stores, for less than half of what she paid Josh. She wants to return the table to Josh and get her money back.

Subjects were then asked to rate their level of agreement, on a 1 to 7 scale where 1 was “strongly disagree” and 7 was “strongly agree,” with the statement, “**Legally, Ashley should be able to return the table and get her money back.**”

2. Results

We recruited 1,004 subjects, 49.6% of which were male, via the online platform Prolific to participate in an online questionnaire study.⁵³ Ages ranged from eighteen to eighty-one, with a median age of thirty-four. Subjects read two scenarios in a fixed order, first the table scenario and then a scenario about a car. The second scenario is not described here, though it is included in the preregistration.⁵⁴

a. Subjects reported that it was less objectionable for men to deceive other men than for men to deceive women.

When we designed this study, we had three predictions about the main effects of the gender pairing condition. We can reject the null hypothesis for only one of those predictions. In other words, we found significant evidence supporting only one of the hypotheses.

We predicted that we would see a difference between the MM and the MW condition, with scenarios in which men deceive other men rated as more ethical than men deceiving women. This hypothesis was borne out. Consistent with preregistration, we also tested the overall difference (Total) between MM and MW, and that difference was statistically significant ($W = 35106$, $p = 0.017$). The trend was reflected in the data for Offer ($W = 34247$, $p = 0.058$), for Omission ($W = 33760$, $p = 0.109$), and for Lie ($W = 34066$, $p = 0.060$), though these are individually only marginally significant.⁵⁵ Finally, we tested the MM-MW difference for Legal in the MM vs. MW condition, and saw that subjects were more likely to support a right to rescission from a male seller if the buyer was a woman rather than a man ($W = 28020$, $p = 0.043$).

⁵³ In each study here, we ask subjects to report their gender identity (not biological sex), and we rely on self-reported gender identity to construct gender categories for data analysis. In each study, we have subjects reporting that they identify as male, female, or nonbinary. We did not have specific predictions about the difference between nonbinary subjects and male or female subjects. Although we did not have enough nonbinary subjects to analyze them as a separate group, we did not want to exclude their responses from analysis. We analyzed individual differences with male subjects versus nonmale subjects, where nonmale subjects include subjects who report that they identify as female or nonbinary and subjects who elected not to report their gender identity. This might be thought of as a distinction between subjects who are more or less likely to assume that they will personally have access to the privileges of patriarchal structures. The study was preregistered at [AsPredicted.org, #105983](https://AsPredicted.org/#105983).

⁵⁴ The second scenario condition was randomly assigned. There was no effect of condition on ratings of ethicality—but there were some effects of the *condition from the first scenario* on the *responses to the second scenario*. This evidence of a priming effect suggested that the results of the second scenario were affected by the first scenario. In other words, the results from the second scenario were caused in some part by subjects' immediate prior experiences with the first scenario, rather than by the genders of participants in the scenarios.

⁵⁵ We are using a standard $p < 0.05$ threshold for statistical significance, and identifying any p -values higher than 0.05 but lower than 0.10 as “marginally significant” to the extent that they are reported.

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TABLE 1: MEAN RATINGS OF ETHICALITY BY GENDER-PAIR CONDITION
(1 TO 7 SCALE WHERE 7 IS “HIGHLY ETHICAL”)

	Man → Man	Man → Woman	Woman → Man	Woman → Woman
Offer	4.8	4.5	4.8	4.9
Omission	2.9	2.7	3.1	2.8
Lie	2.1	1.9	2.2	2.0

b. Subjects did not show an overall preference for same-gender deception over cross-gender deception; MM was not more ethical than WM and WW were not more ethical than WM.

Our initial hypothesis, drawn partially from pilot data, was that subjects would be more favorable toward same-gender deception than mixed-gender deception. In fact, the most sensible inference drawn from these results is that the one category distinct from the others is men fooling women. We predicted that subjects would find it more ethical for men to fool men than for women to fool men. This was clearly not borne out—indeed, if there is a trend, it is in the opposite direction. We also predicted that women fooling women would be more ethically acceptable than women fooling men. Again, this clearly was not borne out, as is obvious from even a cursory look at the means.

In our preregistration, we also posited two differences based on the gender of subjects. In line with our observations from previous pilot studies, we expected a more robust differentiation between the MM and MW conditions from male respondents than from female and nonbinary respondents, and this is what we observed. Male respondents were significantly more likely to rate men fooling men as more ethical than women fooling women ($W = 8709.5, p = 0.038$) and female and nonbinary respondents showed a similar trend, but the difference was not statistically significant ($W = 8681.5, p = 0.238$).

c. Female subjects thought deception was less permissible than male subjects.

Finally, we observed significant baseline differences between male and nonmale subjects in their ratings of ethicality overall, irrespective of the gender of the parties.

TABLE 2: MEAN RATINGS OF ETHICALITY BY SUBJECT GENDER

	Male Subjects	Female and Nonbinary Subjects
Offer*	4.91	4.68
Omit**	3.16	2.72
Lie***	2.20	1.93

* $W = 135550, p = 0.021$

** $W = 144690, p < 0.0001$

*** $W = 135090, p = 0.020$

In other words, on the whole men assessed deception as more ethical than did other subjects.

d. Corporations are male.

At the end of the Study 1 questionnaire, we appended a short follow-up item with the idea of setting up future studies. Study 1 offers a somewhat unusual transactional context, with an individual buyer and seller. The overwhelming majority of consumer transactions are between a corporation and an individual. Accordingly, our results have greater practical relevance if we can map corporation-individual transactions onto the gender dyads we studied. Our intuition was that corporations are implicitly gendered male,⁵⁶ but the gender of corporations is a somewhat difficult question to ask subjects to respond to without either being too leading or asking them to say that they are biased about men and women in business.

We asked subjects to answer the following:

This might seem like an odd question, but here is the premise: for certain non-human actors, some people intuitively assign genders. For example, people often think of dogs as male and cats as female by default, even though there are male cats and female dogs.

How do you think that most people would assign an intuitive gender to the category of “corporations”—i.e., the companies that they do business with every day?

⁵⁶ A recent study using natural language processing found that the collective concept of person or people was not gender neutral but prioritizes men over women. April H. Bailey, Adina Williams & Andrei Cimpian, *Based on Billions of Words on the Internet, PEOPLE=MEN*, SCI. ADVANCES, Apr. 1, 2022, at 1, 6.

Of the 466 subjects who answered the question about the gender of corporations, 68% reported that corporations are male, 2% reported that corporations are female, and 30% reported that corporations are neither.⁵⁷

3. Summary

Overall, we came out of Study 1 with two main findings and a set of questions. First, although the magnitude of the effect was small, we found that subjects across the board thought that it was more unethical for a man to deceive a woman than any other gender dyad. We also found that women, more than men, thought deception was morally problematic, whether it was just misleading pricing, or failure to disclose material information, or outright lying. And we confirmed an overall view that companies, to the extent that they are perceived to have a gender, are gendered male.

B. Study 2: Regulating Men's and Women's Products

In Study 2, we wanted to start thinking about possible further implications of gender effects on perceptions of the wrongfulness of deception, and how they might be tested. If it is more acceptable for men to lie to men than for men to lie to women, does that intuition carry over into attitudes toward consumer protection? If so, it would suggest that it is more acceptable to regulate products sold to women rather than products sold to men.

In the spirit of hypothesis generation, Study 2 takes a very exploratory approach, randomly assigning subjects to read about products that are typically gendered as either male or female. Because it is impossible to hold other attributes of these products constant, we cannot rule out the possibility that differences we observe resulted from product characteristics other than

⁵⁷ We asked the other half of the subjects to fill out a different question getting at something similar:

The following question may seem unusual, but there is no wrong answer—it is asking about how you imagine the gender break down of the decision-makers in large organizations.

Most of the transactions that we engage in everyday are not person-to-person but rather company-to-person. In every company-to-person transaction, a sale agreement is made between you, the buyer, and a company, the seller. Within these companies, there are decision-makers—people who decide the terms of these sales agreements, including the pricing, return policies, billing practices, etc.

Please slide the scale to indicate your guesstimate of the percentage of these decision-makers in each industry that are *female*.

The medians are as follows.

Regional supermarket chain: 40

Streaming service: 35

Clothing retail: 60

Online retail: 50

Fast food: 39

their association with men or women. Nonetheless, we decided it was worth it to start with a series of products that would presumably have real-world resonance with subjects.

1. Method

Each subject was randomly assigned to read about a restrictive regulation that would possibly affect the availability of a product with market demand. There were four kinds of products: alcoholic beverages, antiaging cosmetics, home grooming appliances, and facial cleansers.

Every subject saw the following statement before reading about any particular product:

All consumer protection regulations have costs and benefits. Regulations can make it more expensive for companies to do business with consumers, which sometimes increases the cost to consumers and restricts the variety of products available to consumers. On the other hand, some regulations ensure product safety, remove unsafe products from the market, or increase the information consumers have available before they make a purchase.

For each product type, subjects were randomly assigned to read about a product typically associated with either men or women.

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TABLE 3: TEXT OF PROPOSED REGULATORY INTERVENTIONS,
BY PRODUCT CATEGORY AND GENDER MARKET

	Product for Men	Product for Women
Alcohol	Assume commercially brewed beers usually contain between 4.5%–6.0% alcohol. Concerned about alcohol consumption, the state is considering implementing a new regulation that commercially brewed beers—i.e., not microbrews or craft beers—can contain no more than 5.0% alcohol.	Assume boxed wines usually have alcohol content between 12.5%–14.5%. Concerned about alcohol consumption, the state is considering implementing a new requirement that boxed wine can contain no more than 13% alcohol.
Antiaging Pharmaceutical	The state health department is considering a requirement that consumers obtain a prescription for hair-growth foams and serums that contain more than 2% of the active ingredient minoxidil after reviewing some customer reports of mild skin irritation.	The state health department is considering a requirement that consumers obtain a prescription for “antiaging” facial creams and gels that contain more than 2% of the active ingredient retinol after reviewing customer reports of mild skin irritation.
Home Grooming Electronics	The state consumer protection agency is considering limiting the availability of professional-grade clippers and beard trimmers for home use after some reports of minor injuries.	The state consumer protection agency is considering limiting the availability of professional-grade hair dryers for home use after a few reports of minor burns.
Facial Cleanser	The Food and Drug Administration requires that manufacturers of shaving cream and aftershave products marketed for facial use disclose clearly if they contain ethyl alcohol. The state health department has also reviewed some complaints about alcohol causing skin irritation and is considering a new regulation banning alcohol in these products altogether, which would remove some popular products from the market.	The Food and Drug Administration requires that manufacturers of makeup remover and makeup removing wipes marketed for facial use disclose clearly if they contain ethyl alcohol. The state health department has also reviewed some complaints about alcohol causing skin irritation and is considering a new regulation banning alcohol in these products altogether, which would remove some popular products from the market.

Each subject saw only one product description and answered a series of questions. The primary dependent variable was: To what extent would you support this regulation in your state? Subjects responded on a 1 to 7 scale, where 1 was “strongly disfavor” and 7 was “strongly support.”

Subjects then responded to four follow-up prompts:

- This is something I have used or consumed in the last 6 months.
- This product poses serious risks or dangers to users.
- This product is a luxury or an indulgence for consumers, not a necessity.

- This product is more often used or consumed by men than women.

Finally, subjects answered four demographic questions, indicating age, gender identity, education level, and political views.

2. Results

In this study, we had 1,606 respondents who were paid \$0.50 each to complete a one-minute questionnaire. In total, 784 subjects identified as men, 774 as women, 33 as nonbinary, and the remainder did not indicate their gender identity. Ages ranged from eighteen to eighty-four with a median of thirty-five. 22.5% of subjects described themselves as very conservative or leaning conservative; 22.4% of subjects described themselves as moderate; and 55.0% of subjects were leaning or very liberal.

a. Manipulation check

We first ran a manipulation check to confirm that the products we had chosen to randomly vary were in fact associated with a specific gender as we expected. Male subjects were more likely to have used male-targeted products recently (clippers, aftershave, Rogaine, and beer) than women ($t = 6.19$, $df = 785.34$, $p = 0.000$) and women were more likely than men to have used female-targeted products recently (hair dryer, makeup remover, retinol, and boxed wine) ($t = -5.50$, $df = 790.92$, $p = 0.000$). When asked to rate the extent to which a product was largely targeted at men on a 1 to 7 scale, the median rating for women's products was a 2 and the median for men's products was a 5.

b. Effect of product gender and subject gender on support for regulation

We did not find the main preregistered result here. We predicted, based on pilot results, that support for regulation would be gender-specific—that is, that men would support restrictive regulations on women's products and women would support restrictive regulations on men's products. It is difficult to know from historical evidence how we should understand the motivation to regulate women's consumer products. One possibility is that both men and women are more enthusiastic about restrictive cross-gender regulation than they are about regulation of their own valued consumer products, but that women have rarely been in the position of making legal or regulatory decisions about male products. The other possibility is that everyone thinks regulating women's markets is more desirable or important. Because we conducted a small pilot test, we had some preliminary evidence, and it pointed us toward the former hypothesis, but it was not replicated here. We did not see the cross-gender result in any strong form, as is clear from a basic table of means.

TABLE 4: MEAN RATINGS OF DESIRABILITY OF STRONG REGULATION FOR PRODUCTS, BY GENDER MARKET AND SUBJECT GENDER

	Male Subjects	Female and Nonbinary Subjects
Product for Men	3.72	4.00
Product for Women	3.93	4.07

The design of this study randomly assigns subjects to read about a product gendered male or female, and roughly pairs the products up. However, the comparisons are not especially tight. There are a number of differences between beer and wine, or between clippers and hair dryers, other than the fact that they are products usually marketed to one gender or the other. With that in mind, the questions on luxury and danger were included to try to get at typical reasons that people would be in favor of regulation (genuine safety concerns). For this reason, our analysis plan of the effect of condition also includes a linear regression to see the effect of the randomized condition holding constant subject characteristics but also, more importantly, perceived luxury and danger of the product.

The first regression (preregistered) tests the hypothesis that condition and gender will interact such that men are less willing to regulate male-gendered products and women are less willing to regulate female-gendered products. This was not borne out in the regression.

TABLE 5: REGRESSION RESULTS: DESIRABILITY OF STRONG REGULATION, INCLUDING PRODUCT GENDER, SUBJECT GENDER, AND INTERACTION TERM

	Estimate (Standard Error)
Intercept	1.49*** (0.335)
Age	0.005 (0.003)
Female Subject	0.154 (0.123)
Education	0.074 (0.073)
Liberal	0.116*** (0.035)
Luxury	-0.127*** (0.026)
Danger	0.523*** (0.027)
Men's Product	-0.297 (0.274)
Men's Product × Female Subject	0.077 (0.173)
<i>N</i>	1606
<i>R</i> ²	0.217

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

We did not anticipate that the condition alone (male- versus female-gendered product class) would have a main effect on propensity to regulate; we thought that it would depend on the subject's own gender. However, given the results of our first regression, we departed from our preregistered plan and ran the same regression again, but now without the interaction term. We found that there was a small but statistically significant effect of product gender on propensity to regulate. Holding constant demographic variables, luxuriousness, and danger, subjects seeing a male-targeted regulation were less supportive of regulation than subjects seeing a female-targeted regulation, which is what we see in Table 6 below.

TABLE 6: REGRESSION RESULTS: DESIRABILITY OF STRONG REGULATION, INCLUDING PRODUCT GENDER AND SUBJECT GENDER, NO INTERACTION TERM

	Estimate (Standard Error)
Intercept	1.43*** (0.309)
Age	0.005 (0.003)
Female Subject	0.193* (0.087)
Education	0.075 (0.073)
Liberal	0.117** (0.036)
Luxury	-0.128*** (0.026)
Danger	0.543*** (0.027)
Men's Product	-0.181* (0.088)
N	1606
R²	0.217

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

There are a few things to note about the associations suggested by Table 6. Some of these are useful because they comport with baseline assumptions we would make about what these variables mean. Political liberalism, for example, is commonly associated with an increased support for regulation, and that association is borne out by our findings. Subjects were more interested in regulating dangerous products and less interested in regulating luxury items here. And, in line with our preregistered prediction, male subjects were less likely than female or nonbinary subjects to favor regulation, all else being equal. We also see that subjects are less enthusiastic about burdensome regulation of men's products.

3. Summary

The results of Study 2 are suggestive but by no means dispositive. There is a small effect of product gender on support for intrusive regulation, where subjects overall are more open to bans on women's products than men's products, holding constant their perceptions of the product's luxuriousness and riskiness. In line with Study 1, where women were more concerned about deception in the marketplace, in Study 2 we saw that women were more open to regulation of dangerous or risky products overall than men.

C. Study 3: Punishment for Fraud

In Study 3, our goal was to consider how attitudes about who deserves protection might inform punitive responses *ex post*, as distinguished from regulatory intuitions that prevent consumer harm *ex ante*.

1. Method

In this study, we gave subjects a short scenario describing a criminal fraud and a question about the appropriate punishment for it. We varied whether the defendant was convicted of defrauding “brothers” or “sisters.” The scenario involving brothers read as follows:

Imagine you are a federal judge presiding over a criminal case against defendant David Simpson. The jury has found Mr. Simpson guilty of criminal fraud based on evidence that he defrauded two middle-aged brothers out of \$650,000. Mr. Simpson held himself out to be a fortune teller and charged clients a fee for claiming to tell their futures. Over the course of several months Mr. Simpson cultivated a relationship with the brothers, offering them advice on a variety of personal and professional matters. After establishing that relationship of trust, Mr. Simpson advised them to invest a total of \$650,000 in a small local startup. In fact, that business was a front, and the bank account they sent the money to was controlled by Mr. Simpson. After the money was deposited, Mr. Simpson withdrew it and attempted to flee the jurisdiction. The authorities apprehended him two months later. Unfortunately, they were not able to recover any of the money the brothers had provided.

In federal court, it is the judge’s job to decide a convicted defendant’s sentence. Based on the above facts, the sentencing guidelines give you discretion to sentence Mr. Simpson to anywhere between six months and twelve years of prison. **Which of the following sentences do you think would be most appropriate?**

Subjects could choose 0.5, 1, 2, 4, 6, 8, or 12 years. They also answered a series of standard demographic questions including their political orientation.

2. Results

Study 3 had 501 participating subjects.⁵⁸ Among participants, 48.7% were male and 2.4% of subjects were nonbinary. Ages ranged from eighteen to seventy-five with a median age of thirty-two.

Our preregistered hypothesis was that subjects would assign a longer sentence to fraudsters whose victims were women rather than men. This was what we found in the pilot study. It did not replicate in the main study. Analyzing each response according to its numeric sentence value, subjects

⁵⁸ Study 3 was preregistered at AsPredicted.org, #114435.

on average wanted to sentence the fraudster who deceived brothers to 6.51 years in prison and the same fraudster who deceived sisters to 6.77 years. That difference is not statistically significant ($W = 30168$, $p = 0.447$). Similarly, a regression of age, sex, education, politics, and gender condition on the recommended sentence does not show an effect of condition on the sentence.

This result surprised us, so we decided to look deeper into the data. The following analyses reported were not preregistered and should be considered only as grist for future studies.

Our conclusion from looking at our data is that the gender of the victim does have a significant effect on subjects' aggregate sentencing responses, but that some subjects give higher sentences for male-victim crimes and other subjects give higher sentences for female-victim crimes. Our preliminary suggestion is that the moderator of this effect is political liberalism.

TABLE 7: LINEAR REGRESSION OF SUBJECT AGE, SUBJECT GENDER, EDUCATION, POLITICAL LIBERALISM, VICTIM GENDER, AND POLITICAL LIBERALISM \times VICTIM GENDER INTERACTION TERM ON YEARS OF PRISON TIME RECOMMENDED

	Estimate (Standard Error)
Intercept	11.05*** (2.30)
Age	0.048*** (0.012)
Female Subject	-0.782* (0.322)
Education	0.074 (0.271)
Liberal	-1.167** (0.448)
Sisters	-3.138* (1.361)
Sisters \times Liberal	0.713* (0.235)
<i>N</i>	501
<i>R</i> ²	0.049

* $p < 0.05$
 ** $p < 0.01$
 *** $p < 0.001$

Overall, women gave slightly lower sentences than men, with a marginally significant result ($W = 34227.5$, $p = 0.070$). Age is also significant here, where older subjects give longer sentences overall. This regression suggests that liberal subjects give higher sentences to fraud on the sisters and conservative subjects give higher sentences to fraud on the brothers—that is the meaning of the interaction term.

3. *Summary*

The results were more complex in Study 3 for reasons that likely reflect the complex relationships among political values, punishment, and gender. Liberal subjects and women tend to prefer lower prison sentences overall, but those are also the constituencies we would expect to be more concerned at baseline with crimes against women. In retrospect, we regret that we did not include any nonlegal dependent variables, such as the gravity of the moral violation or the sense of outrage.

D. Summary of Results

These studies offer some clues for moving forward and some good reminders about why it is so difficult to study gender effects experimentally.

1. *Main Effect of Target Gender*

In Studies 1 and 2, we saw subjects more willing to validate concerns about women being deceived by men or by companies, and less concern about men being fooled by other men or by companies. In Study 3, we might be seeing an effect of victim gender, but in the context of carceral punishment, liberal and conservative subjects react to gender in divergent ways. Liberal subjects favor higher sentences when the victim is female and conservative subjects favor higher sentences when the victim is male.

2. *Main Effect of Subject Gender*

Women subjects were more likely to express that consumer deception is unethical and more likely to support regulation of consumer deception or risky consumer products. They favored lower prison sentences, however, than men.

3. *Cautions*

These studies also offer a number of cautions. The most robust result in these studies was the difference between male and female subjects. In every study, the effect of the deceived party's gender was statistically marginal and relatively fragile. More than once, we found a significant effect in a pilot that was smaller or nonexistent in the confirmatory study.

Our conclusion is that just as gender stereotyping is incredibly complex, so is the study of deception. One reason is that people feel ambivalent about both schemers (savvy but unethical) and their marks (foolish but sympathetic). And people might consider an act to be morally wrong but not deserving of regulation or punishment. For this reason, our proposal moving forward is for a systematic research agenda that investigates smaller questions with the ultimate goal of piecing together a picture of men, women, deception, morality, and regulation.

III. GENDER AND CONSUMER PROTECTION: A RESEARCH AGENDA

Vokes v. Arthur Murray, Inc. is a staple of first-year contracts courses and a case whose outcome the above studies can possibly explain. In it, an appellate court considers whether a female plaintiff can rescind contracts for 2,302 hours of dance lessons at a cost of \$31,091.45—over a quarter million dollars in today’s currency.⁵⁹ The court concludes that the plaintiff has stated a claim based on instructors’ alleged misrepresentations regarding her dancing ability and progress. Although the opinion invokes neutral rules about half-truths and reliance on statements of opinion, it is impossible to miss the court’s condescending and even paternalist attitude toward the female plaintiff. Mrs. Vokes is introduced as “a widow of 51 years and without family, [who] had a yen to be ‘an accomplished dancer’ with the hopes of finding ‘new interest in life.’”⁶⁰ The opinion (and perhaps also the complaint) paints a picture of a woman who, because of her sex, age, and marital status, was easy prey for “blandishment and cajolery” and “the flowery eulogiums heaped upon her by defendants,” someone who lacked judgment, if not capacity.⁶¹ Although the court applies gender-neutral doctrines, its application of them to Mrs. Vokes is not.

The literature, including the studies reported here, provide some support for gendered readings of *Vokes*.⁶² If people tend to view women as especially susceptible to deception, men as having an obligation to protect women, and male deception of women as especially wrongful, it is unsurprising that gender could figure into the outcomes of lawsuits based on deceptive practices such as the *Vokes* case.

More importantly, the studies reported above indicate that the relationship between gender and deception that appears to have been at work in the *Vokes* case is neither unique nor uncommon. A robust research agenda would aim at showing that *Vokes* is not an outlier while providing useful empirical findings about gender and perceptions of consumer protection. These studies are far from the last word on how the gender of deceiver or deceived might affect attitudes both about the ethicality of deception or the desirability of laws about deception. They are, however, suggestive. And they indicate several directions for future research.

⁵⁹ 212 So. 2d 906, 907–08 (Fla. Dist. Ct. App. 1968). For scholarly commentary, see Robert W. Gordon, *Unfreezing Legal Reality: Critical Approaches to Law*, 15 FLA. ST. U. L. REV. 195 (1987); Debora L. Threedy, *Dancing Around Gender: Lessons from Arthur Murray on Gender and Contracts*, 45 WAKE FOREST L. REV. 749 (2010).

⁶⁰ *Vokes*, 212 So. 2d at 907.

⁶¹ *Id.* at 907, 909.

⁶² See Threedy, *supra* note 59, at 767.

A. Replication

First, and most importantly, these results need to be replicated. The studies described here yielded mixed results. Before one can have confidence in these results, they would need to be replicated, with the analyses described here (re-)preregistered.

These studies could also be fruitfully replicated with subtle modifications to the materials, varying the kinds of products at issue and the kinds of judgments subjects are asked to report on.

B. Mechanism

If additional studies further support our hypotheses, the next question would be why the gender of deceiver and deceived affects perceptions and judgments regarding the morality of a deceptive act or the legal regulation of deception. What is the mechanism that causes people to sometimes perceive a man who deceives a woman as more blameworthy than they do a woman who deceives a man? There are a number of hypotheses worth exploring.

The effect of gender might stem from subjects' beliefs about differences between men and women. Such beliefs can be divided into three broad categories. The first comprises beliefs about social facts like the relative power or wealth men and women have, which can figure into moral judgments. If, for example, a person believes women are socially disadvantaged relative to men in general, they might consider a man's deception of a woman as a form of punching down and therefore especially problematic. Second are beliefs about the relative competence of men and women. A person who believes that women are less able to protect themselves against deception might view a man who deceives a woman as engaging in an especially wrongful form of predatory behavior. The third category of beliefs is about different obligations of men and women. A belief that men should put women on a pedestal or that obligations of chivalry require that men protect women, for example, might lead subjects to view male deception of females as especially wrongful.

The last two categories—beliefs that women have different capacities than do men and that men owe special duties towards women—involve gender bias. As noted in Section I.B above, psychologists have developed several tools to measure an individual's gender bias. Future studies might also employ these tools to ask whether gender-driven attitudes towards the wrongfulness of deception are correlated with more generic forms of gender bias.

Explanations that call on subjects' other beliefs all suggest that gender-driven perceptions or judgments about the wrongfulness of deception are in

some sense rational, though perhaps based on false premises. If one believes (wrongly or rightly) that women are less capable of protecting themselves against deception than are men, then it is rational to hold that it is especially wrong for a man to deceive a woman. The theory of moral typecasting suggests an explanation of a different type: that people unreflectively tend to associate men with characteristics of agency and women with characteristics of patiency, and that those associations cause them to perceive or judge male deceivers of females as especially wrongful.

Although the theory of moral typecasting is consistent with the hypothesis that the gender of deceiver and deceived can affect how people perceive and judge the wrongfulness of an act of deception, we would want evidence that moral typecasting is in fact at work in this sphere. First, it would be important to know whether gender affects moral typecasting generally. One might, for example, add gender as an independent variable to the studies Heather Gray, Kurt Gray, and David Wegner reported in their 2007 paper. Second, one would want evidence that moral typecasting is at play in assessment of the wrongfulness of deception generally. As noted above, deception differs from many other wrongs in at least two respects: the harms of deception are often less immediate or visceral than those of other wrongs, and the deceived also exhibits agency in producing those harms. It would therefore also be important to ask whether moral typecasting is at work in assessments of deceptive wrongs generally.

C. Other Forms of Identity

Our study has focused on the role of party gender in assessments of moral blame and legal responsibility. Decades of scholarship on intersectionality suggests that other forms of participant identity—race, age, class, and so forth—not only affect moral and legal judgments, but also interact with gender in forming those judgments. And though we did not prompt subjects with information regarding other forms of identity, we would not be surprised if a significant proportion of subjects responded to our prompts based on implicit assumptions about the identity of the characters in our vignettes—for example, that they were not Black. Future research should explore how other forms of identity intersect with gender in this area.

D. Deserving Help, Deserving Supervision

Finally, there is another framework that bears exploring. Social perceptions of consumer protection generally can be conceptualized along two axes: Who deserves protection (help), and who is it permissible to constrain (supervise)? The most robust consumer protection in the United

States is almost certainly targeted at products sold to or used by children—and this makes sense. People have positive attitudes about children, who are understood to “deserve” a range of social benefits and social services that are denied to adults. And people have no qualms about constraining children’s choices. Questions of consumer freedom or liberty just don’t apply to children as they would with adults.

In light of the vast work on social perception and stereotyping, it would be worth using these frameworks to explore whether other forms of identity figure into attitudes toward legal regulation. The literature suggests that both beliefs about who deserves protection and beliefs about permissible constraints on liberty are likely to be influenced by, among other things, attitudes about race, class, and gender. The preliminary studies reported above can be considered first steps in addressing these broader questions.

CONCLUSION

The patterns of regulatory approaches and attitudes to consumer protection have never received serious social science inquiry. But the stakes are high, especially when we consider the role consumer protection plays in a myriad of legal and policy judgments, from how we regulate cryptocurrencies to what constraints are placed on multilevel marketing operations. For legal scholars, this is an area of study that has rich theoretical questions and real-world stakes. Our hope is that we are at the very beginning of a larger project in the psychology of consumer protection.

