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How Masculinity Can Shape Judicial Decision Making

Rebecca D. Gill, Michael Kagan, and Fatma Marouf

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Key Implications

- Gender roles can influence the behavior of men and women.
- Men judge other men harshly when they are not masculine enough.
- Making decisions in mixed-gender groups may change this dynamic.
- Mixed-gender decisionmaking groups are not without bias.

Background

For a long time, researchers have tried to determine whether women judges behave differently when they make decisions. Most of this research has assumed that the way men decide cases is the "normal way." In other words, people assume that there is something about women that make their decisions different, but there is nothing about men that shapes how they make decisions.

We decided to see whether there is anything about *masculinity* (the attributes, behaviors, and roles associated with boys and men) that influences the way that men decide court cases. To do this, we used two main ideas: masculinity theory and chivalry theory.

Masculinity theory is the idea that men expect each other to be "manly." This theory predicts that men will judge another man harshly if he is weak, if he needs help, or if he cannot provide for his family.

Chivalry theory is the idea that men should protect women, and that women need to be protected by men. This theory predicts that men will be lenient on women who are in vulnerable positions.

In our paper, we try to determine whether either of these two theories helps us understand judicial decision making.

Focus of Study

In our study, we looked at decisions made by federal appellate courts about immigration appeals. We did this because people who are appealing deportation are in vulnerable positions. This makes it possible for us to test whether men judge vulnerable men harshly, and whether men are lenient when judging vulnerable women.

Research Design

We assembled data about 589 cases where petitioners appealed a decision by the Board of Immigration Appeals. These cases were decided by three-judge panels in the federal Courts of Appeals between 2009 and 2012.

We looked at these cases to determine whether panels with no women decided cases differently, and whether these differences depended upon the gender identity of the immigrant. We used a statistical model to estimate these relationships. We controlled for other factors that could influence the probability that a petition would be successful.

Key Findings

Overall, we found that all-male panels and mixed-gender panels differ on these measures. First, men with cases in front of all-male panels win about 8.3% of the time. In front of mixed-gender panels, they win about 14.7% of the time. For women, on the other hand being in front of an all-male panel is better. Women with cases in front of all-male panels win about 17.8% of the time. In front of mixed-gender panels, women win only 8.2% of the time.

Some of the other variables also influence the probability that a petitioner will win. Asylum seekers have a lower probability of success. Petitioners who raise novel issues have a higher chance of winning.

Significance

Our results seem to support the idea from masculinity theory that men judge vulnerable men more harshly. This difference is significant, meaning that there is a very small chance that this effect is found because of chance.

Our findings do not lend much support for chivalry theory, or that men are more lenient when judging vulnerable women. There is a difference in success rates, but it is not statistically significant.

We assumed that mixed-gender panels would give men and women petitioners an

It is important not to assume that men are "neutral."

equal probability of winning. There is no statistically significant difference, even though men do better than women.

Discussion

Previous work focused on understanding how gender roles influence the behavior of women. Our study provides some evidence that we should consider the way that gender roles affect the behavior of men. We think that our findings show that men judge vulnerable men more harshly. When there are women on the judge panel, the decision tends to be less harsh.

We found no significant evidence to support chivalry theory, but we think that a study with more cases might find this pattern. The same can be said for our findings about mixed-gender panels. We think that more research should be done to see if mixed-gender panels really have equal results for men and women petitioners.

Overall, we argue that it is important not to assume that men are "neutral." Gender roles can influence how men make decisions, too. We also think that this research is another important example of why we need to have a diverse group of people as judges.

Learn More About This Brief

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The Study:

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