DIVERSITY AND JUDICIAL LEGITIMACY IN STATE COURTS

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This dissertation examines the relationship between representation and institutional legitimacy. More specifically, it examines the relationship between descriptive and substantive representation and judicial legitimacy. In doing so, it departs from much of the extant literature in two important ways. First, unlike nearly all previous studies examining this relationship, this project explicitly measures and incorporates individuals’ varying expectations of representation into the analysis. Second, this project focuses on a state trial court context. While the overwhelming majority of studies in this area focus on the most highly visible court, the Supreme Court of the United States, this project examines judicial legitimacy in the courts that handle more than 90% of all judicial business in the United States. By conducting a survey with two embedded experiments on a nationally representative sample, this project provides support for several claims. First, who serves in the judiciary (i.e., what the judiciary looks like, or descriptive representation) affects the legitimacy ascribed to the courts. Second, specific outputs of the judiciary (i.e., specific case decisions, or substantive representation) also affects judicial legitimacy. Third, individuals hold different expectations of both the composition of the judiciary and the decision-making process of judges. Finally, these expectations affect judicial legitimacy in various ways depending on the context. As judicial systems across the United States become increasingly more diverse, the findings presented in this project provide some insight into the public’s response to this shift in composition of the courts.
Chapter One introduces the project and outlines how it both aligns with and departs from much of the extant literature. Chapter Two provides a review of the literature as it pertains to the theories relevant to the broader project and the following empirical chapters. Chapter Three focuses strictly on the relationship between descriptive representation and judicial legitimacy, both at the state-level and individual-level. Chapter Four extends the findings of Chapter Three by incorporating individuals’ descriptive representation expectations into the preceding chapter’s analyses. Chapter Five examines the relationship between substantive representation and legitimacy. Chapter Six concludes by discussing the contributions and limitations of the project, as well as directions for future research.
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PREFACE

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1.0 CHAPTER ONE: INTRODUCTION

In the United States, it is difficult to think of government or any public office without thinking about representation at some level. In general, most people want a government that will represent them and their policy preferences, or more precisely, they want the individuals working in government to represent them. Government makes the rules that define how individuals can and cannot behave in a legal sense; it sets guidelines and makes decisions that influence one’s educational opportunities, financial situation, and livelihood. As a result, individuals have a stake in who the people are who make these rules. Having more like-minded people in government helps to ensure the best chance of having rules made that result in the best possible outcome for an individual.

Above and beyond any tangible benefit that may be received by having one’s preferences represented in government, good representation appears to be a positive thing for the country and for democracy, on a normative level. It feels right to think that political elites should make policies that go along with what the people want. Perhaps this normative conception of government stems from the education system in the United States, where children are taught at a young age the “of the people, by the people, for the people” sentiment of government, or perhaps it is the frequency of elections in the United States and the accompanying political rhetoric that is heard almost constantly that explains the notion of a government making decisions for the betterment of its citizens.¹ To be sure, this sentiment is echoed by those already in government who are supposedly

¹ I should note here that this project focuses entirely on the United States. Thus, any blanket statements or claims moving forward without a country-specific qualifier should be assumed to refer only to the U.S. context.
doing the representing. Candidates for office at all levels of government urge citizens to vote for them because they will represent the people better than their opponent. Government officials across a variety of offices tout their connection to the people and often justify the decisions they make by citing public opinion on a certain matter, again pointing to what seems to be an intrinsic notion that representation of the people is something good and desirable.

Since representation seems naturally intertwined with our form of government in the U.S., a seemingly logical and natural association is made between representation and democracy. A representative democracy is not necessarily the only occurrence of representation in politics, however. As Pitkin (1967) notes, a king can represent a nation. While I leave the historical discussion of the evolution of representation in various forms of governments throughout time to existing works by scholars like Pitkin, it is important to note the inherent link between representation and self-government in modern times. It seems like something of an individual right that we should have our interests represented by and in our government.

Despite the prevalence of the idea of representation in government, the term itself is somewhat ambiguous and has not been precisely or consistently defined over time. If I say that I want my government to represent me, what do I mean? Does that mean I want the policies that come out of the government to align with my policy preferences? Probably. Does it mean I want more people who look, sound, or behave like me in government? Possibly. Do I want both of these things, or do I mean something entirely different from these ideas? Of course, I am far from the first or only scholar to point out the lack of clarity in the meaning of representation. Again, Pitkin’s 1967 *The Concept of Representation* is perhaps one of the most thorough examinations of the meaning of representation. Since then, many political scientists and legal scholars have
researched the multi-faceted aspects of representation across a number of institutions and governments.

The ambiguity of the term representation stems from it being so broad as to encompass any number of scenarios in which one person is a substitute for one or more other persons. Pitkin discusses several different “types” of representation, noting that it is important to understand each type of representation in order to understand the term more completely. She argues that representation is akin to a three-dimensional structure being photographed in a dark room, stating (10):

“Political theorists give us…flash-bulb photographs of the structure taken from different angles. But each proceeds to treat his partial view as the complete structure…Yet there is something there…which all of them are photographing; and the different photographs together can be used to reconstruct it in complete detail.”

It is the aim of this project to contribute to this decades-long photo session of representation by examining how two specific types of representation, descriptive and substantive, affect individuals’ evaluations of generally under-studied institutions in the United States: state trial courts. While there is an abundance of research over the past several decades examining representation generally, and even specifically within a legislative context, there is a dearth of representation research in the judicial context. The broad research questions addressed in this project are: How does the presence or absence of representation affect individuals’ evaluations of their courts, what do individuals expect from their state’s judges in terms of representation, and how do these expectations interact with actual levels of representation to affect court evaluations? Although there is a stark difference between the amount of research on judicial representation and representation in the other branches of government, it is not wholly surprising. After all, there are
many institutional differences between the judiciary and other branches of government that tend
to lead people to think that representation is more important or at the very least more prevalent in
the latter than in the former, including selection mechanisms, prerequisites for entry, and the
general role of the branch vis-à-vis the others. In general, federal and state executive and
legislative branches are responsible for making laws and are made up of individuals who are
directly elected by the people. Aside from some age and citizenship requirements, these branches
also tend to have no prerequisites for entering them so long as an individual garners more votes
than his or her opponent who is seeking entry to the same office. In theory, anyone (who is of age
and has appropriate citizenship in some cases) can hold a legislative or executive office. Judges,
however, are tasked with interpreting laws\(^2\); they may be elected directly by the people in some
states, but in other states and at the federal level, they are appointed by another branch of
government, and judges typically will have completed some formal training before they are able
to serve in the judiciary (i.e., have a law degree).\(^3\)

Of course, some individuals may believe that representation is not even applicable in the
judicial context because the job of judges is simply to apply or interpret the law as written without
considering the public’s opinion or concerns. To combat this notion from the start, let me lay out
here the reasons why judges are, in fact, representatives of the public, and why it is important to
understand how representation works in the “least” representative branch.

\(^2\) At least as far as conventional wisdom goes. The role of judges will be discussed in greater detail in later chapters.
\(^3\) A law degree is not officially required for many judgements. There is no mandate that federal judges must have a
law degree, and the same is true for trial court judges in several states. In some other states, judges must be licensed
attorneys in order to serve in the judiciary.
1. At this point, numerous empirical studies have found that judges are influenced by extra-legal factors when making their decisions, including public opinion (e.g., Black, Owens, Wedeking, and Wohlfarth 2016; Friedman 2009; Kuklinski and Stanga 1979; Marshall 1989; McGuire and Stimson 2004; Mishler and Sheehan 1993; Owens and Wohlfarth 2017, 2019). Thus, even if one believes that judges should strictly adhere to legal texts and precedent when making decisions from the bench, the reality is that in practice judges rely on a variety of sources outside of legal texts to inform their decisions.

2. Despite normative conceptions referenced above that some people hold of judges, many individuals believe that judges should represent the majority of the public (e.g., Gibson 2011, 2012; National Center for State Courts 2009; also see Chapter 5). Like politicians in other branches of government, judges make decisions that set the rules for how society operates, so why shouldn’t judges consider how their decisions might affect the citizens within their jurisdiction?

3. Many judges themselves recognize their role as being that of a representative or delegate, and that their decisions are influenced by a number of factors (e.g., Gibson 1978, 1980; Scheb, Bowen, and Anderson 1991; Scheb, Unger, and Hayes 1989). As Sonia Sotomayor (2001) states, “The aspiration to impartiality is just that—it’s an aspiration because it denies the fact that we are by our experiences making different choices than others…Personal experiences affect the facts that judges choose to see.”

Moreover, it is important to recognize that the judiciary is not a homogenous entity. In fact, there are significant institutional differences across levels and types of courts. For example, all federal judges are appointed while state court judges vary widely in how they are selected, with some being elected and some appointed. Similarly, federal judges hold their position for life under good behavior while most state court judges have some sort of term limit. These differences, and several others, make it necessary for a thorough and cohesive examination of representation in the judiciary to focus on one type of court at a time. An endeavor to understand the nuances of how representation works across every possible type of court would certainly exceed the length of this project.

For the purposes of this project, then, I choose to focus on state trial courts. As alluded to, part of the reason for focusing on one type of court is practical; in order to be able to thoroughly investigate representation in the judiciary, focusing on one type of court on its own is a necessary first step before comparing across various types of courts. Indeed, the overwhelming majority of judicial studies tend to focus on just one court: the Supreme Court of the United States. Of course, there are many benefits of studying the Supreme Court: it is perhaps the most visible court in the world, its decisions have a broad reach, and its outcomes or judicial opinions are easily discoverable. However, there are limitations to studying the Supreme Court as well, particularly in the area of representation as there has been very little demographic variation of Supreme Court justices. As of 2021, there have only been five female justices to ever serve on the nation’s highest court and only two African American justices.

The primary reason I choose to focus on state trial courts, however, is that state courts handle more than ninety percent of all judicial matters across the United States, with the overwhelming majority of these cases originating (and ending) at the trial court level (George and
Yoon 2016). Despite the relatively low visibility of these courts vis-à-vis the Supreme Court of the United States in the extant political science literature, these courts play an integral role in citizens’ everyday lives and are the courts with which most citizens will encounter throughout their lives. Trial court judges are tasked with resolving highly personal disputes, are increasingly called upon to express community concerns, and interact more frequently with the public (e.g., through witness testimony, settlement discussions, serving on a jury, or public attendance at trials) than their counterparts serving in higher levels of the judiciary (Ifill 1997). Thus, understanding how individuals view these courts and the judges within them is important for understanding citizens’ attitudes toward U.S. courts and the judiciary more broadly.

In addition to focusing on the state trial court context, this project also focuses on two types of representation: descriptive and substantive. I follow previous works that conceptualize descriptive representation as the matching or mirroring of a particular characteristic or identity between an individual and a judge (Haider-Markel 2010; Pitkin 1967). Haider-Markel (2010) states (2), “If an elected official clearly belongs to or identifies with a particular ethnic, racial, or religious group, it can be argued that the group has achieved ‘descriptive’ representation.” In other words, an African American citizen is descriptively represented by an African American judge because they share the same race. It is important to note that representation can be provided both at the individual-level as well as at the broader institutional level. For example, a single judge descriptively represents someone who shares their same race. At the same time, as more and more judges of the same race enter the bench, the institution as a whole is increasing its descriptive representation for those who share that race (or any other identity).

Also consistent with prior works, in this project I use the term substantive representation to mean that a judge makes a decision that is in line with an individual’s preference (Haider-Markel
Haider-Markel (2010) explains that substantive representation is achieved when an official pursues “the policy interests of the group with which he or she identifies.” For example, if an individual thinks that recreational marijuana should be legal and a judge decides a case that supports this outcome, this person has been substantively represented by the judge. It is important to note that descriptive and substantive representation are not mutually exclusive. In fact, several studies show that increased descriptive representation (in an institution as a whole) can lead to increased substantive representation (Bratton 2002; Reingold 2000; Swers 2002; Thomas 1991).

Finally, in addition to focusing on representation in state trial courts, I have chosen to focus particularly on race and gender. More specifically for race, this project examines representation differences among African Americans and whites. The reason for choosing particular demographic groups to examine is similar to the reason for focusing on just one type of court. The goal is to provide an in-depth, thorough investigation of how representation works in a judicial context. Given the varying experiences of different groups with the courts, it is important to narrow the scope of the project to a limited number of groups. In other words, I am choosing depth over breadth. That being said, I believe focusing on black and white males and females has generalizable qualities that would extend to other groups, which I discuss in later chapters.

Moreover, the disproportionate consequences that judicial decisions have on minority communities (e.g., Overby et. al. 2005), coupled with the fact that neither women nor African Americans are represented on state benches in proportion to their numbers in the general
population\textsuperscript{5}, makes understanding how the lack of diversity in state courts affects attitudes toward these courts even more important. At the same time, numbers of women and African American judges have been increasing over the past several decades. As more and more groups begin to recognize the importance of, and work toward, diversifying political institutions, understanding the relationship between this reality, and perhaps goal, and public attitudes is particularly timely. As Kang (2016) states, “When the men and women who deliver justice look more like the communities they serve, there is greater confidence in our justice system overall.” With a shift in the demographic profile of the court system in recent and potentially in coming years, now is an opportune time to analyze how this shift might affect the courts’ standing among citizens.

To recap, the overall goal of this project is to understand the relationship between representation and evaluations of state trial courts. In order to accomplish this goal, I focus on descriptive and substantive representation among black and white male and female U.S. citizens. One final noteworthy departure from much of the extant literature is that rather than simply examine how one type or level of representation affects court evaluations, I also pay special attention to what individuals expect in terms of representation from their state court judges. Although I have suggested already that judges are indeed representatives of the people, and will continue to do so throughout this project, it is possible that some individuals feel differently. If someone does not expect any representation, descriptive or substantive, from their judges and instead believes that judges are simply neutral arbiters of the law who make decisions in a vacuum,

\textsuperscript{5} As of December 2014, women made up almost 28\% of all state trial court judges in the U.S. while making up about half of the U.S. population. Similarly, African Americans made up just over 6\% of all state trial court judges in the U.S. while making up around 13\% of the U.S. population (George and Yoon 2016).
then we would not expect actual representation of any kind to have an effect on their evaluations of the court. Indeed, I will show later on (in Chapters Four and Five) that individuals do hold varying expectations of their judges in terms of representation. Rather than assuming that representation will have the same effect on all individuals’ evaluations of the courts like much of the existing literature, I am able to examine exactly how expectations moderate these effects across individuals. Knowing what individuals expect from judges and the role these expectations play in affecting evaluations has important implications for understanding how best to frame representation in a judicial context in order to protect or even increase judicial legitimacy.

1.1 Chapter Outline

In this chapter, I have outlined the scope and relevance of this project. In the proceeding chapters, I undertake an examination of how representation affects evaluations of state trial courts among whites and African Americans in the United States. More specifically, I explore how descriptive and substantive representation, and expectations thereof, affect judicial legitimacy. Judicial legitimacy is a common measurement in the extant judicial literature that examines an individual’s (un)willingness to make fundamental changes to the court (Caldeira and Gibson 1992, 1995), a concept that is explored more in the following chapter.

Chapter Two walks through the several theories that serve as the foundation for a number of expectations that will be empirically tested in the later chapters. In the second chapter, I will discuss judicial legitimacy, social identity theory, and expectancy theory, and discuss the existing literature related to all of these theories. I also discuss the current state of diversity in state courts in this chapter.
Chapter Three focuses on descriptive representation. In this chapter, I present two survey experiments: one that examines the relationship between descriptive representation and judicial legitimacy in the aggregate, at the state-level, and one that examines this relationship at the individual-judge level. Chapter Three provides evidence that descriptive representation does affect judicial legitimacy, but that it varies across race and gender groups of individuals. The significance of this relationship also varies a bit by whether the survey respondents are presented with information about descriptive representation at the state level or the individual-judge level.

Chapter Four extends the findings from Chapter Three by incorporating individuals’ expectations into the analyses. I first present and discuss the expectations that individuals hold in terms of descriptive representation in their state’s trial courts. These results reveal that individuals vary in the expectations that they have about the numbers of black and female judges that should be in their state’s trial courts. The results also show that expectations vary widely from what we would expect if levels of representation in the judiciary matched numbers of these groups in the general public. This chapter also presents evidence that these expectations have a moderating effect on the impact that descriptive representation has on judicial legitimacy, but in limited contexts.

Chapter Five shifts the focus to substantive representation. I first examine how substantive representation, or the lack thereof, affects judicial legitimacy, and find that it does. When substantive representation is not provided by a judge, an individual is less likely to grant legitimacy to the court. Next, I present and discuss the expectations that individuals have of substantive representation in the courts. Similar to descriptive representation, I find that individuals vary in the expectations they hold. Finally, this chapter examines how these expectations moderate the
relationship between substantive representation and judicial legitimacy. The evidence shows that these expectations do moderate the relationship, but again, only for specific individuals.

Chapter Six summarizes the key findings and brings the current project to a close. I discuss the generalizability and implications that the findings have in the real world moving forward. I also discuss the contributions that this project makes to the relevant literature as well as the limitations. I end by presenting some directions for future research.
2.0 CHAPTER TWO: THEORY

This chapter focuses on discussing the relevant theories that form the foundation of the testable hypotheses presented in the following empirical chapters. It also provides a picture of the current levels of diversity in state courts. Before presenting this information, however, it is important to clearly define some concepts that are used throughout the remainder of the project.

2.1 Definitions

What factors affect an individual’s evaluations of the courts? This question appears straightforward, but there are several elements that affect the answer. First, it is important to note the generality of the term “courts.” What do we mean when we talk about courts? Do we mean the actual physical structure of a courthouse, the judges inside the courthouses, the outputs or judicial decisions, any combination of these, or something entirely different? Clearly identifying what is meant by the term “courts” is important for understanding where to look for factors that affect evaluations of courts.

For example, consider the distinction between judges, or political actors, and a more encompassing version of courts, or political institutions more broadly. Factors that affect evaluations of one are not necessarily the same as factors that affect the other. One deals with forming an opinion of other individuals and the other deals with forming opinions of a collection of individuals, processes, and outputs. I would not, for example, use the same metrics for determining how much I like a coworker as I would for how much I like my place of employment.
To determine the former, I may look to things like personality traits for that one person, and for the latter, I might look to things like the work that we produce, the interactions between employees, the physical structure, and so on. That being said, however, the two evaluations are not necessarily made in isolation, and indeed, are likely correlated. Part of my evaluation of my place of business might include how much I like my coworkers, and vice versa.

In order to understand evaluations of political institutions, then, it is also important to understand how individuals relate to members within that institution. This is perhaps made even clearer when we think about a more concrete, real-world scenario. Imagine getting your oil changed and the mechanic is incredibly rude to you. You would leave from your oil change with a negative impression of the business as a whole based on the negative interaction you had with an employee there.

Second, it is important to understand the type or dimension of evaluation itself. One can evaluate both individuals and institutions on any number of dimensions, and they may not always align. I might consider a coworker to be very personable and a great person, but I may not trust that coworker to produce a quality product. Likability and trust are distinct evaluations. Similarly, I might have confidence that my place of work produces quality outputs that will benefit consumers or society more broadly, but that does not necessarily mean that I enjoy coming to work every day. Thus, in order to address the question of what factors affect evaluations of the courts, we must have both a clear definition of what is meant by courts, and a clearly defined evaluation or metric on which to focus.

For the latter, one of the most common evaluations used in the judicial politics literature that examines public attitudes toward, or evaluations of, courts is judicial legitimacy. Judicial legitimacy has been widely studied and used in a variety of contexts, and I continue the use of it
in this project as the primary type or metric of evaluation that individuals use when forming attitudes toward the courts. In other words, the extent to which an individual grants legitimacy to the court is a proxy for that individual’s evaluation of the court, at least in the current project. The additional benefit of using judicial legitimacy is that it makes it easier to compare the results here to the many other studies that have also used the concept as the outcome variable. The foundation of judicial legitimacy is discussed in more detail below.

For the former, Chapter One has already alluded to what is meant by “courts” in this project: state trial courts. While that limits the scope of this project, this can still refer to various elements even within state trial courts (e.g., judges, processes, outputs), as I discuss above. For this project, I conceptualize courts very broadly to include the people, processes, and institutional setup that are all parts of any given state’s trial courts. In this sense, it could be thought of as referring to the broad judicial system at the state trial court level. I use such a broad definition for two reasons.

First, and primarily, I am interested in examining how representation affects judicial evaluations (i.e., judicial legitimacy). Representation can be provided both at the individual and institutional levels. In part, this has to do with me examining both descriptive and substantive representation in this project. Descriptive representation is most often thought of at the individual level: I am descriptively represented by a judge when the judge shares one of my characteristics. However, we can also think of how descriptively representative an institution is of the broader public. If all the judges within a state’s court system are white males, or is not diverse on any number of demographic characteristics, then the institution as a whole likely provides very little descriptive representation to the broader public.
Substantive representation can also be thought of at both the individual or institutional level. In trial courts, there is one judge making the decision on a case. In this sense, a singular person is or is not providing an individual substantive representation. However, if looking at all the judicial outputs from the state trial court system as a whole in a particular state, an individual can feel more or less substantively represented when considering all the decisions from various cases together compared to his or her own substantive preferences. At certain points in later chapters I focus on one level at a time (individual or institutional), but overall, this contributes to my using the term “courts” to mean a combination of all elements of the judicial system at the state trial court level.

Second, I do not want to invoke or impose any particular attitudes on the individuals who take part in this project. I am interested in understanding what their natural or organic beliefs about judges and courts are generally, as they think of them in their everyday, normal lives. I do not want to guide their thoughts in any way by providing them with definitions or leading them to focus on one aspect of courts over another. So, although it is somewhat ambiguous and all-encompassing, the term “courts” in this project refers to however an individual conceptualizes state trial courts on their own.

The final set of terms worth mentioning are not necessarily done so to provide formal definitions, but rather to make a point about diction and syntax. Throughout this project, I use various terms to refer to this general understanding of the court system to avoid annoying repetition of syntax, including courts, state trial courts, judicial system, judiciary, etc. I acknowledge that there may be nuanced definitions for each of these terms, but since I am focused on a variety of views from the subjects taking part in this project, consistently using one term over another would
unfairly represent what is actually being examined (i.e., the system as a whole as defined by the collective pool of subjects).

Similarly, I use different terms interchangeably to refer to respondent groups that took part in the survey and the judges presented in various parts of the survey. Specifically, I use the terms “black” and “African American” interchangeably as well as “female” and “woman.” Again, I recognize that these terms do not necessarily mean the same thing in all contexts and indeed there are important differences between them. My purpose for using terms interchangeably is in no way meant to diminish the important work that has been done to distinguish these unique concepts, but rather to avoid repetition and dullness for the reader. Precision of words is incredibly important, but so is readability, especially since these sets of terms are used very frequently in the following chapters.

Now that some important terms and concepts used throughout this project are defined, the remainder of this chapter focuses on distinct theories or strands of literature that inform a set of testable hypotheses that are presented in the empirical chapters that follow.

### 2.2 Legitimacy Theory

Perhaps best explicated in several works by Caldeira and Gibson (Caldeira and Gibson 1992; 1995; Gibson 2007; 2012; Gibson and Caldeira 1998; 2009a; 2009b), legitimacy is best conceptualized as an individual’s willingness to support an institution even in the face of disagreement. David Easton (1965; 1975) equated legitimacy with diffuse support. Unlike specific support, which is based on specific institutional outputs, diffuse support is more of a psychological disposition or commitment toward an institution. Put in a way that is perhaps most
relatable, Gibson and Caldeira (2009a) explain the differences between specific and diffuse support by drawing a comparison to friendships. An individual can be loyal to a friendship without necessarily agreeing with every decision that her friend makes. Even if a friend disapproves of the other’s action, the friendship still remains and the two individuals can still be loyal friends to each other.

Similarly, institutional legitimacy is especially important when institutions produce something dissatisfying to the public. Gibson (2012, 5) calls this an “objection precondition,” meaning that legitimacy comes into play only when institutional outputs do not align with the public’s preferences. It is easy to be supportive of an institution when its outputs align with all of one’s preferences. However, when the institutional outputs start to deviate from one’s own personal preferences, it is the legitimacy of that institution that has been built up over time that protects it from suffering from a loss of support for any extended amount of time.

Another relatable example to help understand the objection precondition is to think about dining out at your favorite restaurant. The restaurant has become your favorite presumably because you have had a number of positive experiences there over some amount of time. If you have one negative experience at the restaurant, if it is your favorite, you will likely continue to visit the restaurant in the future rather than completely abandon it due to the accumulation of positive experiences you had always had in the past. Except perhaps in the most extreme circumstances, you would not, for example, suggest that the restaurant get all new staff or a whole new menu if you had one bad experience over the course of years visiting the restaurant. The restaurant maintaining the status quo (i.e., of providing a positive experience to you) does not test how supportive you are of the restaurant. Instead, it takes an objectionable experience to truly test
how supportive you are of the restaurant. Similarly, an institution must do something you disagree with in order for its legitimacy or diffuse support to be truly observable.

Legitimacy is particularly important for the judiciary given that the judiciary has no other enforcement mechanism for compliance with its decisions. The judiciary relies on other branches or agencies of government to enforce its decisions. Without maintaining its legitimacy, the judiciary risks its outputs not being enforced as the other branches and agencies would face little backlash for not enforcing judicial decisions. As Gibson (2012, 70) states, “When courts have legitimacy, they are efficacious; where a legitimacy shortfall exists, courts are often impotent.”

Indeed, judges themselves recognize the importance of protecting and promoting public confidence in the courts. Cann and Yates (2016) point out that several state court systems have implemented public outreach initiatives to bolster the confidence in their courts. The authors also note that the American Bar Association also noted in 2007 the importance of promoting confidence in the judiciary by amending its comments to the Model Code of Judicial Conduct (Rule 1.2), advising that “judges should participate in activities that promote public understanding of and confidence in the administration of justice.” Indeed, judges themselves recognize their peculiar position with regard to the implementation of their decisions and the importance of public support. Cann and Yates (2016) cite Chief Justice Rehnquist on this point, remarking:

“I suspect the Court will continue to encounter challenges to its independence and authority by the other branches of government because of the design of our
Constitutional system. The degree to which that independence will be preserved will depend again in some measure on the public’s respect for the judiciary.\(^6\)

Given the importance that public support has on the proper functioning of our courts, understanding the determinants and factors that affect judicial legitimacy is crucial to understanding how the judiciary functions within the separation-of-powers system and society more broadly.

As mentioned, the theory underpinning the concept of legitimacy comes from Easton’s (1965; 1975) concept of diffuse support. Easton identifies a distinction between what he calls specific support and diffuse support. While specific support relates to whether or not one agrees with a particular institutional output (e.g., a court’s decision in one particular case), diffuse support is a more deeply-rooted propensity to support an institution and view its outputs as legitimate or authoritative, even in the face of disagreement. Since judges are seen as applying the rule of law when making their decisions, the public tends to believe in the integrity of judicial decision-making and recognizes the court’s authority to make these decisions even when it goes against one’s preferences. Diffuse support, or legitimacy, is akin to a reservoir of good will, which the judiciary has built up over time and which affords the courts support even in times of decision-making that is unpopular among the public (Easton 1965).

Empirical studies have found numerous factors that affect the legitimacy of the judiciary. Regarding the Supreme Court, scholars find that knowledge of the Court (Caldeira and Gibson 1992; Gibson, Caldeira, and Baird 1998), level of attention paid to the Court (Caldeira 1986;

\(^6\) Remarks of the Chief Justice, Symposium on Judicial Independence, University of Richmond, T.C. Williams School of Law, March 21, 2003:  https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_03-21-03.
Caldeira and Gibson 1992), education (Caldeira and Gibson 1992), perceptions of the Court’s ideology (Bartels and Johnston 2013), commitment to democratic values (Caldeira and Gibson 1992), Court decisions (Grosskopf and Mondak 1998; Johnson and Martin 1998), and opinion rationales (Baird 2001; Caldeira and Gibson 1992; Farganis 2012; Gibson, Caldeira, and Spence 2005; Scheb and Lyons 2000) all affect legitimacy.

Regarding state high courts, scholars find that legitimacy is affected by experience with the courts (Benesh 2006), judicial elections and campaign activity (Cann and Yates 2008; Gibson 2009, 2012), knowledge of the courts (Cann and Yates 2016), and perceptions about court procedures and institutional design (Benesh 2006). To my knowledge, one of the only studies examining legitimacy of lower-level courts’ main finding is that there are differences in determinants of legitimacy between lower-level courts and the Supreme Court (Benesh, Scherer, and Steigerwalt 2009).

Although legitimacy is not exclusively or specifically associated with representation, the two concepts become intertwined in this project. Just as political socialization from a young age has contributed to individuals’ propensity to grant legitimacy to the courts, individuals who belong to historically marginalized groups have grown up seeing little to no political actors (i.e., judges in this case) who look like them or otherwise represent them. The next two sections will outline the state of minority representation in the judiciary and social identity theory, which is used to connect representation to legitimacy.
2.3 Minority Representation in the Judiciary

Who serves in political institutions matters. It matters for the types of outputs we see from the institution (e.g., Bratton 2002) and it matters for the attitudes that individuals hold toward the institution (e.g., Scherer and Curry 2010). However, when it comes to state courts, we know relatively little about the judges who serve in these institutions. George and Yoon (2016) were the first known researchers to comprehensively collect data on the demographic characteristics of state court judges in all fifty states. In their State Bench Database, they collected biographical data for every sitting judge in state appellate courts and state trial courts of general jurisdiction. The figures below (Figures 1-3) replicate the graphics found in the authors’ report. The middle panel in Figure 1 (Panel B) shows the demographic makeup of the U.S. population. Panel A in Figure 1 shows the racial (white and non-white) and gender (men and women) composition of all state trial court judges. Panel C in Figure 1 shows additional details of the racial composition of all state trial court judges.

As the figure shows, white men represent about every three in ten people. In state trial courts, this representation nearly doubles, as almost six in ten state trial court judges are white men. White women appear to be only slightly underrepresented on state trial court benches,

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7 I recognize that these data are several years old. That said, I am unaware of any data in existence that are more recent that illustrate representation of women and racial minorities in state courts. While there may be some changes in an individual state bench’s demographic composition since the time of data collection, I believe the overall trends and picture presented by these data still hold true today. These data are only meant to highlight that a lack of diversity in state courts exists, which I believe would still be an uncontested statement today.
making up about 26% of state trial court judges while they make up just over 30% of the U.S.

color. For people of color, both men and women, their representation on state trial court

does not even reach half of their representation in the U.S. population. I include Panel C

since this project is particularly interested in African Americans rather than all people of color. As

Panel C shows, the overwhelming majority of state trial court judges are white. African Americans

make up only about 7% of state trial court judges, just over half of their representation in the U.S.

more broadly.

![Race and Gender Composition of State Trial Court Judges Compared to U.S. Population](Replicated from George and Yoon 2016)

With their biographical data, George and Yoon (2016, 8) score every state based on the

representativeness of that state’s bench. They calculate what they term the “Gavel Gap” by first
determining the difference between the proportion of women/minorities on a state’s bench and the

proportion of women/minorities in that state’s general population. They then divide this by the

proportion of women/minorities in that state’s general population. In other words, their formula

for determining the Gavel Gap is: (Fraction of judges who are women (minorities) – fraction of
general population who are women (minorities)) ÷ fraction of general population who are women (minorities).

The result of this calculation shows where a state stands in terms of reaching the proportion of women and minorities on its bench that we would expect based on the proportions in the general population. If 50% of a state’s judges were women and that state also had 50% women in its general population, then there would be no Gavel Gap ((.50-.50)/.50 = 0). Based on this score, states are graded an A if they come close to parity (at least 90%), B for 80-89%, C for 70-79%, D for 60-69%, and F for states that are below 60%.

Figure 2 Scores for Gender (Panel A) and Race/Ethnicity (Panel B) Representation in State Courts (Replicated from George and Yoon 2016)

Figure 2 shows the scores for both Gender (Panel A) and Race & Ethnicity (Panel B). As we can see from this figure, no state comes within 10% of reaching gender parity on its bench. More than half of all states receive the worst possible score, not even reaching 60% of the proportion of female judges we would expect based on the proportion of females in those states’ general populations. While there are quite a few more states that fare better when it comes to race
and ethnicity on their bench (7 states received an A score, meaning they have nearly reached parity between the proportion of racial and ethnic minority judges on their bench and the proportion of racial and ethnic minorities in their general population), there are also quite a few more that score worse (nearly two-thirds of all states receive an F score).  

Figure 3 shows the scores for each state when race and gender are combined. Here again, the image is bleak in terms of representation of women and racial minorities. Only one state (Hawaii) nearly reaches parity when it comes to the number of women and racial/ethnic minorities

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8 In general, the highest-scoring states are also the states that have some of the lowest levels of racial and ethnic populations as a percentage of the state’s general population, with the exception of Hawaii which is ranked highest in terms of racial/ethnic diversity among all states. The seven highest-scoring states are Montana, South Dakota, West Virginia, Hawaii, Wyoming, Nebraska, and Connecticut.
on the bench compared to that state’s general population. Similar to Figure 2, more than half of the states fall below the 60% representativeness mark when race and gender are combined.

Overall, the information presented in this section shows that there are serious gaps in the representativeness of state courts when compared to the general population. Whites are overrepresented on state benches while people of color, notably African Americans, are severely underrepresented. Normative implications of not having state benches being representative of the people (in terms of descriptive representation) aside, this information tells us nothing about public perceptions of the court. The purpose of including this information is rather to illustrate that 1. (descriptive) representation varies by demographic group in state courts, and 2. (descriptive) representation of women and African Americans varies by state. The effects of these variations on public attitudes toward the court (i.e., legitimacy) is precisely what this projects seeks to better understand.

2.4 Social Identities and Heuristics

Broadly, Social Identity Theory (SIT) claims that individuals identify with a relevant “in-group”, which affects their social perceptions, attitudes, and behaviors (Tajfel 1981; Tajfel and Turner 1979). An individual’s social identity is one’s self-concept as defined by their group membership (Turner and Oakes 1986). A social identity can refer to any and all groups with which an individual identifies, including large groups such as race, gender, occupation, religion, or student status as well as smaller, seemingly trivial groups such as car color or handedness. Identifying oneself as a member of a group helps individuals gain a sense of self.
The theory posits that individuals are motivated to positively differentiate the group(s) to which they belong from other groups in order to create a positive social identity (Turner et. al. 1987). Members who identify with an in-group magnify differences between themselves and the “out-group,” showing favoritism toward in-group members while perceiving out-group members as inferior. The original experiments that serve as a foundation to SIT found that breaking up participants into separate groups for seemingly meaningless reasons resulted in individuals rewarding members of their own group (i.e., in-group members) more than members of the other group (i.e., out-group members) (Tajfel, Billig, and Bundy 1971).

Importantly, Oakes (1987) points out that the possible social identities that an individual can take on are basically unlimited. They are also situationally-dependent so that an individual might identify more strongly with one group in a given situation and with a different group in a different situation. As the salience of a particular identity increases, so too does one’s social identity with that group. For example, if a black student is watching or taking part in a debate with others and the topic is education reform, the “student” identity is likely most salient and she will identify with other students more than with non-students. If the discussion then turns to issues of race in society, her racial identity will likely become more salient than her student identity.

Simultaneously, in any given situation individuals use heuristics to simplify complex tasks in order to make value judgments and make sense of the social world (Tversky and Kahneman 1974). This allows individuals to make rational decisions even with limited information (Kahneman et. al. 1982; Lupia 1994; Lupia and McCubbins 1998). When considering interpersonal trust, both social identity theory and the use of heuristics help translate limited information into stereotypes (Burns 2006; Carlin and Love 2013; Chandra 2003).
Consider meeting someone new, for example. Without much context, individuals already form opinions or judgments of a person based on characteristics that are readily observable, like race or gender. Without additional information, someone likely considers the new person as being typical of other members of that particular group. If the new person is an in-group member (e.g., both are African American), the individual is more likely to have a positive initial judgment compared to if the new person is a member of an out-group (e.g., the individual is black and the new person is white). Scholars have found that individuals are willing to cooperate with strangers (Cardenas and Carpenter 2008; Johnson and Mislin 2009) until information about one’s counterpart is revealed and trust bias emerges.

Most relevant to the current project, two types of signals that can induce trust bias are gender (Buchan et. al. 2008; Gabarino and Slonim 2009) and race (Burns 2006; Wilson and Eckel 2006). While the majority of studies examining trust bias based on group membership focus on the relationship between individuals within the mass public, we can apply the same ideas to the dynamics between political elites and the public through a representation lens. Given that individuals hold elites accountable for representing their preferences, either directly for elected judges or indirectly for appointed judges through the elected officials who appoint them, it is important to understand any bias that might emerge when making accountability decisions. Bias might emerge from descriptive representation, substantive representation, or both.

Scholars have found that both descriptive and substantive representation can affect individuals’ attitudes and behaviors. When studying racial representation, scholars find that African Americans are more likely to approve of black members of Congress than their white counterparts (Tate 2001, 2003), are more likely to contact their own representative if she is black compared to if she is white (Banducci, Donovan, and Karp 2004; Gay 2002), and are more likely
to vote and have higher political interest as the percentage of black state legislators increases (Clark 2010). Regarding female representation, scholars have found that as the percentage of female legislators increases, more female-oriented policies are implemented (Bratton 2002; Reingold 2000; Schwindt-Bayer 2006; Swers 2002) and women have more trust and confidence in institutions (Mansbridge 1999; Norris and Franklin 1997; Phillips 1995), greater feelings of efficacy (Atkeson and Carrillo 2007), and greater perceptions of institutional legitimacy (Schwindt-Bayer and Mishler 2005).

To sum this all up and relate it to the current project, individuals have a propensity to identity with groups and to positively differentiate the group’s members (in-group members) from members of other groups (out-group members). Doing so gives the individual a positive sense of self in the social world. Individuals also use shortcuts to help them make decisions, including the groups to which others belong and how they compare to the groups with which the individual belongs. Race and gender are the two groups that I focus on in this project. Just like an individual meeting a new person for the first time, I suspect that individuals use the same shortcuts to make judgments of institutions and institutional outputs based on the limited information they have (in this project, the race and gender of a judge as well as the judge’s decision in a particular case). Thus, when presented with information about a judge, I suspect that individuals will have more positive evaluations of the courts when the judge belongs to the individual’s in-group as opposed to the judge belonging to an out-group.
2.5 Expectations Matter

Thinking about institutional legitimacy only through a social identity theory lens would lead to the expectation that an individual trusts an institution less when there are fewer people like herself (members of her in-group) in that institution. For example, a woman would likely trust the judiciary less if she believes that only 2% of judges are women compared to a woman who believes that 30% of judges are women. However, this expectation relies on the assumption that both women expect the judiciary to look like herself (in terms of gender). Regarding this assumption, Gibson (2012, 11) states, “One mistake that those who think about…judges and their constituents sometimes make is to assume uniformity in the expectations citizens hold of the judiciary.”

However, for some Americans, this assumption might not hold. For citizens who do not believe that political institutions should mirror the public in terms of demographic characteristics, having greater or fewer minorities working within these institutions might not affect legitimacy (or any other institutional evaluation) at all. The same can be said for substantive representation; if an individual does not believe that the judiciary should represent her own interests, a judge’s decision that goes against those interests might do nothing to the legitimacy of the institution.

This is the essence of Expectancy Theory as developed by Gibson (2012). Gibson’s Expectancy Theory states that citizens’ expectations of institutions matter when forming evaluations of those institutions. He explains (2012, 90), “Legitimacy is ultimately grounded in the satisfaction of the expectations of the citizenry.” If an institution, or actors within an institution, behave in expected ways, there will likely not be any damage to the institution’s legitimacy. However, when citizens expect one thing and perceive another, legitimacy may be endangered. As Gibson and Nelson (2014, 204) point out, “Should it be the case that the American people view the Court’s process of decision making as unacceptable (i.e., as a violation of their
normative expectations for how the Court ought to make its decisions), then the decision-making process can wind up undermining the Court’s legitimacy…”

In addition to Gibson, several other scholars have considered how expectations affect institutional evaluations. Kimball and Patterson (1997) examine the expectation-perception discrepancy and find that it is directly related to an individual’s expressed favorableness toward Congress. Patterson, Boynton, and Hedlund (1969) find a similar relationship in a state legislative context. Examining the German Federal Constitutional Court, Baird (2001) finds that expectations of decision-making styles affect the legitimacy of that institution.

Confirming that expectations regarding institutions can vary considerably, Gibson (2012) finds that nearly one-third of respondents in Kentucky believe in majoritarianism for judicial decision-making and almost one-half of respondents believe that judges should be involved in politics since they should represent the majority. More than two in every five (43.7%) people in the Kentucky study expect judges to give weight to the respondents’ own ideological views. Gibson and Caldeira (2009a) find similar results in the broader American public. Unsurprisingly, they find that 75.5% of Americans expect fairness and impartiality in the Supreme Court. However, they also find that almost one-fifth of Americans believe justices should base their decisions on partisan preferences and almost one-third of Americans believe that justices should consider citizens’ ideological positions when interpreting the Constitution.

Thus, in order to gain a more accurate understanding of whether and how descriptive and substantive representation affects judicial legitimacy, it is important to directly measure expectations that individuals hold of their state’s judges. Only then can we determine whether these expectations moderate the relationship between representation and legitimacy. The survey and analyses presented in the following chapters do just that.
Chapter Three: State-Level and Individual-Level Descriptive Representation

“When the men and women who deliver justice look more like the communities they serve, there is greater confidence in our justice system overall.” – Christopher Kang, Co-Founder and Chief Counsel of Demand Justice and former Deputy Counsel to President Obama, NBC News Editorial (2016)

How do personal characteristics of judges, like race and gender, affect evaluations of the courts? In this chapter, I assess the degree to which descriptive representation in state trial courts affects judicial legitimacy. As discussed in Chapter One, this project focuses specifically on African American representation and female representation. Descriptive representation is conceptualized as the matching of a characteristic or identity between one person and another. More specific to this project, descriptive representation refers to the matching of either race or gender (or both) between individuals and judges. It is worth noting that only one characteristic between an individual and a judge need to match in order for the individual to be descriptively represented. For example, a black female is descriptively represented by a black judge (regardless of sex), a female judge (regardless of race), and a black female judge.

Importantly, I examine the relationship between descriptive representation and judicial legitimacy at two levels: the individual-judge level and the statewide trial court level. Doing so sheds light on how individuals process information about descriptive representation presented in various forms. Consequently, the results could be used to assess how to most effectively present new information about descriptive representation to individuals in order to increase or maintain a
certain level of judicial legitimacy as diversity on the bench increases. Moreover, examining both levels allows us to understand whether individuals who encounter a single judge in one context view that judge as being representative of the broader judiciary, or if the two contexts are evaluated separately.

3.1 Theory and Hypotheses

I expect that descriptive representation will affect judicial legitimacy because of the tendency individuals have to view in-group members more favorably than out-group members, as outlined by Social Identity Theory. Moreover, in the absence of other information, individuals use heuristics that are available to them to help form evaluations of others, almost immediately. The race and gender of judges are the heuristics that I focus on in this chapter.

Combining the literature about social identities and the use of heuristics leads us to expect that the racial and gender makeup of an institution has the ability to affect an individual’s willingness to support that institution. Thus, we should expect that when individuals encounter information where members of their own in-group are representing an institution, evaluations of that institution should be more positive than when an out-group member represents the institution. More specifically, we should see that an individual grants greater legitimacy to the court when presented with a judicial scenario in which the judge is a member of their “in-group” compared to a scenario where the judge is a member of an “out-group.” To formalize this expectation and make it applicable to all of the main demographic groups I am most interested in (i.e., black and white males and females), I expect:
H1a: A black (white) individual will grant greater legitimacy to the court when they read about a black (white) judge deciding a case than they will when they read about a white (black) judge deciding a case.

H1b: A female (male) will grant greater legitimacy to the court when they read about a female (male) judge deciding a case than they will when they read about a male (female) judge deciding a case.

Given that I examine both race and gender, there is the possibility that a judge provides descriptive representation on both dimensions simultaneously, as noted above. How this affects legitimacy in relation to the scenario in which a judge provides descriptive representation on just one of the dimensions may require a more nuanced examination. I can imagine three distinct, admittedly mostly atheoretical, possibilities for how sharing both the race and the gender of a judge might affect one’s evaluations of the court compared to sharing just one of these characteristics.

1. **Ceiling Effect**: Legitimacy will be no greater when the judge provides descriptive representation on both racial and gender dimensions than when the judge provides descriptive representation on just one of these dimensions. In other words, there is a ceiling effect of legitimacy such that it increases when any level of descriptive representation is provided, but does not increase any further when there are additional shared identities between the individual and the judge. In this case, descriptive representation is similar to a binary concept: it is either present (and consequently, legitimacy increases) or is absent (and legitimacy decreases).

2. **Additive Effect**: Legitimacy receives an additional boost when the judge shares both the race and gender of the individual compared to a situation where the judge shares just one
of these identities. In other words, legitimacy consistently increases with each new shared identity between the judge and individual (perhaps reaching a limit or ceiling at some point, but not after sharing just two identities). In this case, descriptive representation has a continuous, positive relationship with legitimacy: individuals continue to grant more legitimacy to the court as the number of identities shared between the individual and the judge(s) within that court increases.

3. Intersectional Effect: In this case, individuals view judges who provide both racial and gender representation simultaneously as something altogether different than a judge who shares just one identity. In other words, the intersection of the two attributes or identities creates a distinct evaluation that is not the same as evaluating on one dimension, then the other, and adding the two evaluations together. The overall evaluation is more, and different, than the sum of its constituent parts. Empirically, this case is unclear in terms of how judicial legitimacy would be affected. Of course, descriptive representation is present, but legitimacy may increase a little (which would be a similar effect as the Ceiling Effect case), it may increase significantly (which would be empirically similar to the Additive Effect case), it may have a net null effect (perhaps one shared identity receives a boost but the additional shared identity receives a hit depending on how the individual connects with each identity, which would be indistinguishable from a situation where there is no relationship between descriptive representation and judicial legitimacy), or it may even decrease legitimacy if an individual expects something different from a judge that shares both her race and gender than she would from a judge that shares just one of these identities.
Although a limited number of scholars have examined the intersection of race and gender in a judicial context (e.g., Collins and Moyer 2008; Crenshaw 1989; Miller, Rossi, and Simpson 1986), most studies focus on how the intersection of race and gender affect judicial behavior rather than institutional evaluations by the public. Nevertheless, the issue of intersectionality focuses on minority women. As Crenshaw (1992, 1467-1468) notes, black women face the “dual vulnerability” of racism and sexism that intersect to “create experiences that are sometimes unique.” Despite there being no studies to my knowledge that examine how intersectionality affects feelings toward descriptive representation or judicial legitimacy, it is clear that many scholars agree that minority women encounter unique experiences that are not necessarily the same as either white women or African American men. Thus, the Intersectional Effect discussed above seems to be the most plausible (and most grounded in the extant literature) case for what happens when individuals encounter judges who provide descriptive representation on both race and gender dimensions, particularly for black female respondents. In other words, black female respondents evaluate black female judges in a different way than they would a white female judge or an African American male judge. However, how exactly this plays out in terms of the direction and magnitude of the relationship between descriptive representation and legitimacy remains unclear. The analyses below will shed some light on this.

It is important to point out that the hypotheses above center on a singular judge. The inherent assumption is that when the individual is faced with information about a single judge, she makes an evaluation based solely on that information and views that one judge as representative of the broader judiciary in her state trial court system. In other words, if I am descriptively represented by a judge and make an evaluation of the entire court based on that one judge, I must think that the judge fairly represents the court or judiciary as a whole. If I think the judge is an
anomaly, then my perception of the makeup of the broader judge pool may cloud my evaluation of the larger judiciary. For example, consider a black male presented with information about a case over which a black male judge presided. If the individual believes that particular judge is the only black male judge in a pool otherwise full of white male judges, the individual may view the court more negatively (i.e., ascribe less legitimacy) despite having read about a black male judge.

Thus, it is important to examine separately individual-judge level representation and statewide descriptive representation in order to test this assumption. While this has implications for the empirical strategy, I expect that the relationship works similarly in the statewide representation scenario as it does at the individual-judge level. In other words, I expect:

\[ H2a: \text{As the percentage of female trial judges in a given state increases, women (men) will grant greater (less) legitimacy to their state’s trial courts.} \]

\[ H2b: \text{As the percentage of African American trial judges in a given state increases, black (white) individuals will grant greater (less) legitimacy to their state’s trial courts.} \]

3.2 Empirical Approach

In order to test the hypotheses, I conducted two original survey experiments. The survey with the embedded experiments was conducted in the spring of 2018 using Qualtrics’ online
national probability sample.\textsuperscript{9,10} The survey description asked for adult U.S. citizens to participate in a study examining political attitudes. All subjects were first presented with screening questions to ensure they met citizenship and age requirements (only U.S. citizens 18 years of age or older were eligible to participate). Respondents were randomly assigned to either receive one of the two embedded experiments later in the survey, or to a control group that received no experiment.\textsuperscript{11} Respondents were asked several questions about their attitudes regarding descriptive racial and gender representation and judicial decision-making in their state’s trial courts.\textsuperscript{12} Those assigned to one of the experiments were then presented with a vignette that varied across experimental conditions. Finally, respondents answered questions measuring their judicial legitimacy and other demographic questions.

One of the experiments examined the relationship between descriptive racial and gender representation and judicial legitimacy at the individual-judge level and the other experiment examined this relationship at the statewide institutional level. I present the experiments below. First, I discuss the experiment that tests the hypotheses related to statewide trial court representation. The next experiment described tests the individual-judge descriptive representation hypotheses and is presented second to help make a smooth transition from Chapter Four to Chapter Five, which focuses exclusively on the individual-judge level.

\footnotesize\textsuperscript{9} Funded by the NSF Law and Social Sciences Program (Award 1728928) and the APSA Centennial Center Special Fund for Women and Politics.

\footnotesize\textsuperscript{10} The sample is nationally representative aside from race due to an oversample of African Americans.

\footnotesize\textsuperscript{11} The survey experiments were preregistered with EGAP prior to the survey being fielded. The pre-analysis plan can be found in Appendix E.

\footnotesize\textsuperscript{12} These are examined in Chapters Four and Five.

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3.2.1 Experiment One: Statewide Trial Court Descriptive Representation

The state-level experiment consisted of a 2 (race/gender) x 3 (level of descriptive representation) between-subjects factorial design, with respondents who were assigned to this experiment randomly assigned to one of the six treatment conditions.13 The experimental conditions varied by whether the treatment conveyed information about female judges in their state’s trial courts or African American judges. They also varied by the reported percentage of judges in their state’s trial courts that belong to each group (female or African American), with one treatment presenting information that underrepresents that group compared to the true national average, one that presents the real national average, and one that overrepresents the group compared to the national average. The template vignette presented in this experiment can be found below.14


Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that [African Americans/women] make up about [under/over/actual percent] of all [respondent’s state] trial court judges. This puts [respondent’s state] [well above/well below/on par with] many other states

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13 See Table 1 in Appendix A for the number of respondents in each condition.

14 Actual wording for the vignettes can be found in the blank survey instrument in Appendix D.1.

15 The header for the treatment that involved the true national average of black/female judges read: [Black/Female] Judges in [Respondent’s State] on Par with National Average.
in terms of [racial/gender] diversity of trial court judges, with the national average at [actual average].

For the female judge conditions, the underrepresented condition (“under”) reported 10%, the “actual” condition was based on the 2017 national average across states of 30%, and the overrepresented condition (“over”) reported 50%. For African American judge conditions, the “under” condition reported 1%, the “actual” condition based on 2017 data reported 7%, and the “over” condition reported 13%. These numbers varied across female judge and black judge conditions in order to maintain believability of the vignette. In other words, I did not want to present a vignette that contained information about a state trial court having 50% African American judges as that seemed too unrealistic given their percentage of the overall U.S. population, and thus potentially leading respondents to recognize the number and vignette as fictitious. My goal was to present information that seemed plausible in order to measure true reactions. All respondents were debriefed at the end of the survey and were informed of the actual national averages of female and black judges in state courts.

Immediately after reading the vignette, each respondent was presented with a battery of questions that measures judicial legitimacy. This battery consists of adaptations of questions that have been used in the existing literature, originally developed by Caldeira and Gibson (1992; 1995) and which have been shown to have a high degree of reliability (Gibson and Nelson 2015). Table 1 presents this battery. The response for each question within this battery was on a 7-point Likert-16

16 Note that the state in which each respondent lived was piped into the text of each statement making up the judicial legitimacy battery so that it was clear to respondents that the statements directly referred to their own state’s trial courts. See Appendix D.1 for how this appeared in the survey.
type scale, ranging from strongly disagree to strongly agree. The dependent variable of legitimacy consists of the average of the responses to all of these questions, ranging from 1 to 7, with greater values indicating greater legitimacy after reverse-scoring.

### Table 1 Measures of Legitimacy

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>It is inevitable that state trial courts get mixed up in politics; therefore, we ought to have stronger means of controlling the actions of state trial court judges.</td>
</tr>
<tr>
<td>2</td>
<td>State trial courts ought to be made less independent so that they listen more to what the people want.</td>
</tr>
<tr>
<td>3</td>
<td>Judges in state trial courts who consistently make decisions at odds with what a majority of the people want should be removed from their position as judge.</td>
</tr>
<tr>
<td>4</td>
<td>State trial court judges are just like any other politicians; we cannot trust them to decide court cases in a way that is in the best interests of our state.</td>
</tr>
<tr>
<td>5</td>
<td>If state trial courts started making a lot of decisions that most people disagree with, it might be better to do away with state trial courts altogether.</td>
</tr>
<tr>
<td>6</td>
<td>State trial courts get too mixed up in politics.</td>
</tr>
<tr>
<td>7</td>
<td>The power of state trial courts to decide certain types of controversial issues should be reduced.</td>
</tr>
</tbody>
</table>

*All items reverse-scored.*  
Adapted from Caldeira and Gibson (1992; 1995).

### 3.2.1.1 Experiment One (State-Level) Sample

Overall, there were 849 respondents assigned to one of the six treatment conditions in this experiment. There were 164 individuals randomly assigned to no experiment who serve as a control group for all of the following analyses throughout this project. The average age for the experimental sample was 47 years old, with the youngest respondent being 18 and the oldest being
87. I specifically requested a sample that came as close to an even split between males and females as possible. There were 426 (50.2%) males and 423 (49.8%) females in this sample. I also requested to oversample African Americans to ensure that I had a sufficient number of black respondents in each treatment group for analysis. Since I was specifically interested in comparing African American to white respondents, I requested an even split across these two races as well (and these two races only). Thus, the sample for this experiment included 431 (50.8%) respondents who identified as white only and 418 (49.2%) respondents who identified as African American only. 35% of the sample held at least a Bachelor’s degree. 61% of respondents at least leaned Democrat while 26% at least leaned Republican and almost 14% reported not leaning toward either major party.¹⁷

3.2.2 Experiment Two: Individual-Judge Descriptive Representation

The individual-judge experiment was a 2 (judge race: black/white) x 2 (judge gender: female/male) x 2 (issue importance) between-subjects factorial design. Respondents who were randomly assigned to receive this experiment were then randomly assigned to one of the eight experimental conditions. However, the importance of the legal issue is analyzed in Chapter Five when we turn to examining substantive representation. Thus, in this chapter we can think of the experiment simply a 2 (judge race) x 2 (judge gender) design.

¹⁷ Note that these percentages do not appear to be nationally representative, but this is due to the oversampling of African Americans. When broken down by race, each racial group’s partisan makeup matches national averages quite closely.
In each experimental condition, respondents were asked to read a short vignette about a judicial decision made in one of their state’s trial courts. To signal the gender of the judge in the vignette, the judge was first introduced by a typical male/female name and then corresponding gendered pronouns (e.g., his/her) were used when referring to the judge throughout the vignette. The race of the judge was also signaled by name, with stereotypical black and white aliases being used (see Butler and Broockman 2011). A template for the vignette is below.

**JUDGE [JUDGE ALIAS] DECIDES CASE ON [ISSUE]**

Last Tuesday, [respondent’s state] trial court judge [judge alias] handed down a ruling on [issue]. In [his/her] final judgment, Judge [judge surname] ruled that [for/against issue].

Immediately after reading the vignette, respondents were presented with the same judicial legitimacy battery as the state-level judge experiment.

### 3.2.2.1 Experiment Two (Individual-Level) Sample

Overall, there were 1,111 individuals assigned to receive one of the four treatments in this experiment. The average age of respondents in this experiment’s sample was 47 years old, with the youngest respondent being 18 and the oldest being 85. This sample included 551 (49.6%) individuals.

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18 For African American judges, the female was Shanice Washington and the male was Tyrone Washington. For white judges, the female was Molly Mueller and the male was Connor Mueller. Census data was used to determine these names, with both first and last names overwhelmingly (over 90% of all people with these names) belonging to each race category.

19 Note that the for/against treatment is what will be taken up in Chapter Five. The analysis in this chapter combines these groups.

20 See Table 2 in Appendix A for the number of respondents in each condition.
males and 560 (50.4%) females, with 563 (50.7%) respondents identifying as white and 548 (49.3%) respondents identifying as African American. 38% of the sample held at least a Bachelor’s degree. 58% of respondents at least leaned Democrat while 27% at least leaned Republican and 15% reported not leaning toward either major party.

3.3 State-Level Representation Analysis and Discussion

To examine how the relationship between descriptive representation and judicial legitimacy works at the state-level, I conduct a series of t-tests comparing the mean legitimacy levels across treatment groups in the first experiment. Figure 4 shows the mean level of legitimacy for each female-judge treatment condition, separated by respondent gender. Figure 5 shows the mean level of legitimacy for each black-judge treatment condition, separated by respondent race. Both figures include the control group as a baseline. The “Under” bars correspond to experimental groups where female/black judges were underrepresented compared to the national average, the “Actual” bars correspond to experimental groups that presented the actual national average of female/black judges, and the “Over” bars correspond to experimental conditions where female/black judges were overrepresented in the vignette compared to the national average.
Figure 4 Aggregate Representation of Female Judges in R’s State Trial Courts

Figure 5 Aggregate Representation of Black Judges in R’s State Trial Courts
3.3.1 Discussion of Results: Female Judge Representation (State-Level)

Figure 4 shows females in the control condition have an average legitimacy level of 4.00. When presented with information that females are underrepresented in their state’s trial courts compared to the national average, legitimacy is not affected. Similarly, legitimacy is not affected when they read about their state being around the national average in terms of female descriptive representation in their state’s trial courts. However, when presented with information that females make up about 50% of their state’s trial court judges (well above the national average), legitimacy significantly increases to 4.34 (this difference is significant at the 0.05 level when compared to the control and actual groups, and at the 0.10 level when compared to the underrepresented group).

This provides partial support to hypothesis 2a, which predicted that women will grant greater legitimacy to the courts as the percentage of female judges increases. Legitimacy increases when women are represented the most out of all of the possible scenarios, but this increase is not constant as we go from lowest level of representation of females to highest. I can think of a few explanations for these results. First, it is likely that female respondents know that females make up around half of the population (this assumption will be examined directly in Chapter Four). If female respondents want true descriptive representation on their state’s bench, then any percentage of female judges that does not meet at least the 50% mark falls short of descriptive representation. This might explain why we see no significant differences between the control group, the underrepresented group, and the actual group.

Second, females might expect (empirically) females to be underrepresented compared to their percentage of the population, as they are in many areas of politics and government. This might explain why we see no difference between the control group and the two lower-representation experimental groups. Since the percentages presented in both experimental groups
are in line with what females expect, empirically, from the judiciary, there is no effect on legitimacy. However, the overrepresented condition goes against their empirical expectations in a positive direction. That is, the overrepresented condition might be more in line with their normative expectations (i.e., that their descriptive representation in the judiciary should be proportionate to their representation in the general population). Thus, since their normative expectations are met, legitimacy gets a boost in this condition. Again, expectations will be discussed in greater detail in the proceeding chapters.

For male respondents, legitimacy does not appear to be affected when presented with aggregate information about female descriptive representation in their state’s trial courts. Legitimacy appears to drop slightly in the underrepresented and overrepresented groups compared to the control group and the actual group. At first glance, this looks like males want females to have some descriptive representation in the judiciary (more than being significantly underrepresented anyway). Once females start receiving too much descriptive representation (i.e., when they are overrepresented compared to the national average) in the courts, perhaps males start feeling threatened as this necessarily means that their own descriptive representation is being decreased. However, none of these differences reach statistical significance so the prediction from hypothesis 2a that males will decrease legitimacy as the percentage of female judges increases cannot be confirmed. Importantly, however, this is good news for those most interested in diversifying state benches. The judiciary will not suffer a loss of legitimacy (from neither men nor women) as the number of female judges continues to increase, even to the point of matching their proportion in the general population.
3.3.2  Discussion of Results: African American Judge Representation (State-Level)

Figure 5 shows that for black respondents, legitimacy is highest in the condition where black judges in their state’s trial courts are on par with the national average of 7%. Legitimacy is significantly higher in this condition than in every other condition, including when black judges are overrepresented compared to the national average. The difference is statistically significant at the 0.05 level between the actual group and both the underrepresented and overrepresented groups, and at the 0.10 level between the actual group and the control group. There are no other significant differences when doing any other pairwise between-group comparisons.

Similar to females in hypothesis 2a, these results partially confirm hypothesis 2b, which predicted that black respondents would increase legitimacy of the courts as the percentage of black judges in their state increased. We see this happening as we move from the underrepresented treatment condition to the actual average treatment condition. This trend does not hold, however, as we move from the actual average treatment condition to the overrepresented treatment condition.

What might explain these results? It’s possible that black respondents want true descriptive representation (i.e., descriptive representation that is proportionate to their representation in the general public), but they may fear some sort of backlash from others if the number of black judges is far above the national average. In other words, they may want to be descriptively represented, but they do not want the level of African American representation on their state’s bench to reach a point where others start feeling threatened. They want their state’s level of descriptive representation to be on par with the national average so as not to appear an outlier and draw unwanted attention. Another possibility, like with females in the above results, is that the actual average group meets black respondents’ descriptive expectations. The underrepresented and
overrepresented treatments might violate their expectations, causing them to maintain their level of legitimacy that they would ascribe to the court in the absence of the information provided in the vignette altogether.

Finally, for white respondents, the percentage of black judges in their state’s trial courts does not affect their evaluations of court legitimacy at all. There are no significant differences across any of the treatment conditions or the control group. Here again, this is great news for advocates of increased diversity on state benches. If the first possible explanation discussed above for why we see no increase in legitimacy when African Americans are overrepresented on the bench is true, the results from white respondents tell us that this fear of backlash might be unwarranted.

### 3.4 Individual-Level Representation Analysis and Discussion

In order to test the hypotheses related to descriptive representation at the individual-judge level, I conduct a series of similar t-tests that compare the mean level of legitimacy across the various conditions in the second experiment, grouped and separated by the race and gender of judges and respondents as appropriate. As a first step, I compare the mean level of legitimacy across gender groups (Figure 6) and race groups (Figure 7) at the individual-judge level.

At first glance, Figure 6 seems to offer some support to hypothesis 1b, which states that a female (male) will grant greater legitimacy to the court when a female (male) judge decides the case compared to when a male (female) judge decides the case. We see in these results that female respondents do indeed grant slightly greater legitimacy to the court in the female-judge treatment and males grant slightly greater legitimacy to the court in the male-judge treatment. However, the
t-tests reveal that the differences are not statistically significant between the treatment conditions for either gender of respondent.

Figure 7 compares the mean legitimacy across treatment conditions of black and white judges, and the exact same pattern found in Figure 6 emerges. Black respondents grant slightly more legitimacy to the court in the black-judge condition and white respondents grant slightly more legitimacy in the white-judge treatment. Here again, however, neither of these differences is statistically significant, so there does not appear to be much support for hypothesis 1a.

![Figure 6 Mean Legitimacy by Respondent Race](image)
3.4.1 Discussion of Results: Race and Gender Combined (Individual-Level)

Note that the figures in the preceding section only consider one identity at a time: race or gender. In order to see a more nuanced picture of the results, and to examine how intersectionality of identities works, I break these figures down further in Figures 8 through 11. Figure 8 presents the mean legitimacy level for black female respondents across each judge treatment (black female, black male, white female, white male), Figure 9 does the same for black male respondents, Figure 10 for white female respondents, and Figure 11 for white male respondents. Each figure also includes the mean level of legitimacy for the control group to serve as a baseline reference.
Figure 8 Mean Legitimacy - Black Female Respondents

Figure 9 Mean Legitimacy - Black Male Respondents
Figure 10 Mean Legitimacy - White Female Respondents

Figure 11 Mean Legitimacy - White Male Respondents
3.4.1.1 Results for White Male Respondents (Individual-Level Desc. Rep.)

For white males, Figure 11 shows a pattern consistent with what was predicted in hypothesis 1b. In the baseline, the mean level of legitimacy is 4.52. After reading about a court case where the judge decides in the opposite direction of the individual’s preference on an issue, legitimacy decreases regardless of the race and gender of the judge. However, when the judge is also a white male, legitimacy decreases the least (and the difference is only significant at the 0.10 level), followed by when the judge is a black male (difference significant at the 0.05 level). Legitimacy decreases even more when the judge is a white female (significant at the 0.05 level), and legitimacy is lowest when the judge is a black female (difference significant at the 0.01 level).

When a white male judge decides the case, legitimacy only drops by about 9.7% whereas when the judge is a black female, legitimacy drops by about 17.3%. White male respondents punish the court (in terms of legitimacy) nearly twice as harshly when the judge is a black female and they are provided with no descriptive representation than when the judge provides descriptive representation on both race and gender dimensions. Thus, it appears as though white males follow a pattern most similar to the Additive Effect case discussed above. Legitimacy gets a boost from sharing one identity with the judge (either race or gender), and get an additional boost when both identities are shared. When neither identity is shared, legitimacy suffers the most.

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21 Why the vignette contained a decision in opposition to the respondent’s preferences will be addressed in Chapter Four.
3.4.1.2 Results for White Female Respondents (Individual-Level Desc. Rep.)

For white female respondents (Figure 10), legitimacy is affected much less by the race and gender of the judge, despite the graph showing a pattern similar to what we would expect. When there is a black female judge, black male judge, and white male judge, legitimacy is not significantly different from the control group. When there is a white female judge, however, legitimacy increases significantly (at the 0.10 level) from the control group. In other words, for white females, when presented with information about a judge deciding against their preferences, legitimacy is not affected in most cases. However, when the individual is descriptively represented on both the race and gender dimensions, legitimacy actually increases despite the judge deciding against the individual’s preferences.

Thinking back to the state-level experiment, these results seem to fit well with the results for women who read about the number of female judges in their state’s judiciary. In that experiment, legitimacy significantly increased only in the treatment where women were overrepresented compared to the national average. Here, we see legitimacy increases significantly for white women who read about a white female judge deciding a case.

3.4.1.3 Results for Black Male Respondents (Individual-Level Desc. Rep.)

For black male respondents (Figure 9), legitimacy also decreases in every case when a judge decides against their preferences. Similar to white males, black males punish the court least when the judge provides descriptive representation on both race and gender dimensions. However, this difference is not significantly different from the control group. In fact, the only condition where the difference in legitimacy compared to the control group comes close to statistical significance (at the 0.10 level) is when the judge is a white male. In fact, the lowest level of legitimacy granted to the court across all treatment conditions and across all combinations of race
and gender among respondents is when black males read about a case decided by a white male judge.

Like white males and white females, black males punish the court the least when the judge who decides against their preferences shares both racial and gender identities with them. Interestingly, black males punish the court the most even when a judge shares one identity (i.e., gender in the white male judge treatment). This differs from white males who punish the court most when the judge differs on both racial and gender identities (i.e., black female judges). Comparing across these three groups (white males, white females, and black males), it appears as though descriptive racial representation is more important to black males than descriptive gender representation as they punish the court more harshly when the judge does not share their race (regardless of gender). For white males and females, it appears as though descriptive gender representation is more important as both groups punish the court least in the treatment conditions where the judge shares their gender (regardless of race).

3.4.1.4 Results for Black Female Respondents (Individual-Level Desc. Rep.)

Black female respondents (Figure 8) exhibit a pattern that is the most dissimilar to any of the other three groups examined. Legitimacy appears to decrease in every experimental condition, but the only condition that is statistically different (at the 0.05 level) from the control group is the black female judge treatment. Black females only punish the court significantly when the judge shares both their race and gender. When the judge shares only one identity or neither identity, legitimacy is not significantly affected. In fact, this is the complete opposite of white females who actually reward the court significantly when the judge shares both their race and gender. Indeed, as just stated in the preceding section, every other demographic group examined punishes the court the least when the judge shares both their race and gender.
It also appears that black female respondents are similar to black male respondents in that descriptive racial representation appears to be more important than descriptive gender representation. Here, however, black females punish the court the most when the judge shares their race (regardless of gender) whereas black male judges punish the court the least when the judge shares their race (regardless of gender). Going back to the discussion of results for the state-level experiment, I suspect the reason for this has something to do with a violation of expectations. Black females may have strong associations with other in-group members who share both their race and gender (perhaps stronger than the other groups examined here). Consequently, they may have the highest expectations of and feelings of similarity with other black females. When a black female reads about another in-group member acting in a way that is contrary to her own preferences, their strongly held expectation is violated, and they end up reacting most negatively (by punishing the court the most harshly in this case).

3.5 Descriptive Representation Conclusion

Overall, the results presented in this chapter show that descriptive representation does indeed affect judicial legitimacy, but that the strength and the direction of the relationship is highly contextual. In general, on an individual-judge level, descriptive representation protects against negative consequences of judges deciding against an individual’s preferences. However, it appears that in most cases, the judge needs to provide descriptive representation on both race and gender dimensions in order for legitimacy not to decrease significantly. This is particularly true for white females, who actually ascribe greater legitimacy to the courts when they encounter cases with white female judges. However, this is not the case for black females. In fact, black females
actually punish the court most when a black female judge makes a decision against their preferences, which seems to support the Intersectional Effect discussed above. This is also consistent with other studies examining intersectionality in that it appears that black females have unique experiences, including with the judicial system, that affects their views and evaluations of descriptive representation in the courts.

Moreover, in looking at the state-level analysis, it appears that the representation of females in state trial courts only affects legitimacy among females. Only when females are overrepresented compared to the national average does legitimacy increase. Interestingly, this means that as female representation continues to grow on the bench, and even approaches gender parity, legitimacy overall will likely increase since this does not appear to reduce legitimacy among males either. These results confirm that increasing the descriptive representation of women would have no negative effect on judicial legitimacy.

For African Americans, however, the story is a bit more complex. The results here tell us that African Americans prefer descriptive racial representation among their state’s trial court judges to be on par with the national average of 7% rather than above that number. However, it is impossible to determine from this study whether this means that African Americans prefer the percentage of their state’s judges who are black to be around 7% or merely to be around the national average (which may increase or decrease from 7% over time). As mentioned above, it is possible that black respondents reading about African Americans being overrepresented in their state’s courts compared to the national average (i.e., black respondents in the overrepresented group) may be concerned about backlash if others (e.g., white individuals) read this same information and take it to mean that their own representation is being threatened. Thus, legitimacy
among black respondents in this group is not increased from when their representation is at the national average (and do not pose an obvious threat to the representation of white individuals).

It is also possible that black respondents in the overrepresented treatment group do not see increased substantive representation for members of their racial in-group. If black respondents see African Americans receiving disproportionately negative outcomes in the courts (see Overby et al. 2005), then reading about a high number of black judges in their state (compared to the national average) means that even black judges may not be helping members of their own racial in-group. In other words, increased descriptive representation may not translate into increased substantive representation for some respondents. Therefore, legitimacy will not increase significantly until they see a meaningful change in the outcomes produced by their state’s judges. Regardless of the reason for why legitimacy is not increased consistently as the percentage of black judges increases, the good news is that legitimacy is also not harmed, even as the percentage of judges who are black reaches the percentage of African Americans in the overall population in the U.S. (about 13%). This is true even among white individuals.

Overall, the findings in this chapter indicate that individuals do differ in how they evaluate the courts based on whether they are presented with information about one judge or about their state’s judicial system more broadly. In the aggregate, reporting increased numbers of descriptive representation for females and African Americans does not appear to have a negative effect on judicial legitimacy, and may even increase it. When given information about particular cases, however, judicial legitimacy has the potential to suffer. While descriptive representation can guard against the negative backlash from an adverse decision in some cases, there are times where descriptive representation can actually exacerbate this backlash.
These results tell us that descriptive representation is indeed important to individuals. The strongest effects that descriptive representation had on legitimacy occurred in instances where the identity or identities between the respondent and the judge matched. In the state-level experiment, females’ willingness to grant legitimacy to the court was affected much more than that of male respondents when reading about the number of women in the judiciary. Similarly, black respondents’ willingness to grant legitimacy to the court was affected much more than that of white respondents when reading about the number of African Americans in the judiciary. In the individual-level experiment, all four groups of respondents responded most strongly when the judge shared both their race and gender. While some of the effects appear to be small, the fact that legitimacy (i.e., diffuse support built up over time) can be budged at all by simply presenting information about the race and gender of a judge is quite surprising and shows just how important descriptive representation is to individuals.
4.0 CHAPTER FOUR: EXPECTATIONS OF DESCRIPTIVE REPRESENTATION

“Our court system should be filled with judges who not only are intelligent, thoughtful, and faithful to the rule of law, but also bring diversity of experience and background…It is critical that when people access our courthouses, they see people at all levels of the court system that look like them. When the only people of color in a courthouse are in handcuffs, the public’s perception of Justice is ‘Just Us.’” - Yvette McGee Brown, Former Supreme Court of Ohio Justice

As the previous chapter showed, descriptive representation can affect an individual’s propensity to grant legitimacy to their state’s judicial system. Rather than accepting that and moving on, this chapter aims to take a deeper dive into understanding individuals’ opinions on descriptive representation and how these affect the relationship between descriptive representation and judicial legitimacy. More specifically, this chapter aims to answer the following questions:

1. What level of descriptive representation do individuals expect from their judges?

2. Do these expectations moderate the relationship between actual level of descriptive representation and legitimacy ascribed to the court, and if so, how?

Importantly, by incorporating individuals’ expectations of what level of representation should exist in their state’s trial courts, this chapter addresses a shortcoming of past scholarship in this area. As Gibson notes (2012, 11), “One mistake that those who think about…judges and their

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constituents sometimes make is to assume uniformity in the expectations citizens hold of the judiciary.” Indeed, Gibson’s study uncovers significant variation across individuals in their expectations of judges. Thus, incorporating individual expectations into analyses of court evaluations provides a much more nuanced view of the relationship between representation and evaluations than previous research can provide.

4.1 Theory and Hypothesis

Like much of the extant literature, the hypotheses in the previous chapter assume that individuals hold similar expectations regarding the demographic makeup, or level of descriptive representation, of the judiciary. In other words, they assume that individuals value having a member of their in-group as a judge, or at least that other considerations will not diminish the effect that descriptive representation has on evaluations of the institution. This becomes much clearer when we think about the aggregate composition of the judiciary. For example, based on the above expectation, a woman would be less supportive of the judiciary if she believes that only 2% of judges are female compared to if she believes that 30% of judges are female. The more in-group members, the more likely she is to be supportive than an alternative makeup of the institution with fewer in-group members.

However, this may not be the case for everybody. As Gibson (2012) discusses, this assumption of uniformity in expectations is problematic because individuals vary widely in the expectations they have of the courts and judges. For example, Gibson and Caldeira (2009a) find that a large majority of Americans expect fairness and impartiality in the Supreme Court. At the same time, they find that a significant portion of Americans are also comfortable with justices
basing their decisions on their partisanship, as well as considering the public’s ideological preferences in their decision-making. Gibson (2012) finds similar results in his study on the Kentucky Supreme Court. Almost half of the respondents in this study believe that judges should be involved in politics since they should represent the majority. Chapter Five will also present evidence along these same lines. In other words, not an insignificant portion of Americans believe that judges should do more than strictly adhere to and apply the law when deciding cases. While some individuals do believe judges should be neutral arbiters of the law, and thus may not be affected by the race or gender of the judge, others recognize that there are other factors that may come into play when judges make decisions.

Recall from Chapter Two that Expectancy Theory states most simply that expectations matter, and several scholars have shown that expectations affect institutional evaluations (e.g., Baird 2001; Kimball and Patterson 1997; Patterson, Boynton, and Hedlund 1969). Thus, an important condition to add to the hypotheses from Chapter Three is:

\[ H3: \text{ Normative expectations of descriptive representation among judges will moderate the relationship between descriptive representation and legitimacy such that the greater descriptive representation an individual expects, the greater impact the actual level of descriptive representation received will affect legitimacy.} \]

4.2 Empirical Approach

In order to test the hypothesis, I build on the analyses conducted in Chapter Three by incorporating individuals’ descriptive representation expectations into the examination of levels of legitimacy across the relevant treatment conditions. Recall that prior to study participants being
presented with a vignette in one of the two embedded experiments in the Qualtrics survey discussed in Chapter Three, they were asked several questions about their attitudes regarding descriptive racial and gender representation in their state’s trial courts. Specifically for the analyses presented in this chapter, subjects were asked what percentage of their state’s trial court judges they believe should be African American or women (in separate questions).

It is important to note here that I conceptualize expectations normatively for this project. In other words, I am interested in the levels of descriptive representation that individuals would like to see in their state’s courts rather than what level of representation they think actually exists in the real world. While I believe it is important for future work to also consider empirical expectations of judicial representation and how these might affect legitimacy, I focus only on normative here for brevity. To measure normative descriptive representation expectations, the questions were phrased to respondents as:

On the slider below, please indicate the percentage of judges in [respondent’s state]’s trial courts that you believe should be African American/women, regardless of what you believe the actual percentage is in real life. This is your opinion so there is no correct answer.

I believe about ___% of judges in [respondent’s state]’s trial courts should be African American/women.

Respondents were presented with a slider underneath the question that they could set anywhere from 0 to 100 to fill in the blank in the last statement. The slider had to be moved in order to be

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23 Funded by the NSF Law and Social Sciences Program (Award 1728928) and the APSA Centennial Center Special Fund for Women and Politics.
recorded so respondents could not just proceed to the next question without clicking on the slider and dragging it to their answer. Following these attitudinal questions, respondents were then presented with the vignettes for one of the two surveys discussed in Chapter Three (except for the control group that did not receive a vignette).

### 4.2.1 Overall Survey Sample

While the individual samples for each of the two experiments are the same as in Chapter Three, I present descriptive information here for the entire sample (both experimental samples combined plus the control group). I do this because the questions about representation expectations were presented to all respondents, regardless of the experiment (or control group) they were assigned. Overall, there were 2,124 individuals who took the survey: 164 in the control group, 1,111 assigned to the individual-level experiment, and 849 assigned to the state-level experiment. The average age of respondents in the full sample was 47 years old, with the youngest respondent being 18 and the oldest being 87. As mentioned, I specifically requested a sample that came as close to an even split between males and females as possible. 1,069 (50.33%) respondents identified as female and 1,055 (49.67%) identified as male. Similarly, 1,037 (48.82%) respondents identified as African American only and 1,087 (51.18%) respondents identified as white only. Almost 37% of the sample held at least a Bachelor’s degree. 59% of respondents at least leaned Democrat while 26% at least leaned Republican and 15% identified as being independent.\(^{24}\)

\(^{24}\) Note that there are virtually no differences between the individual experimental samples and the sample overall, indicating random assignment worked properly. Also note, as I did in Chapter Three, that the breakdown for some of
4.3 Analyses and Discussion

Descriptive results for the questions about descriptive representation expectations are worth examining on their own first before analyzing how these expectations might moderate the effect of real descriptive representation on judicial legitimacy.

4.3.1 Discussion of Results: Descriptive Representation Expectations

Figures 12 and 13 present the responses from the questions about descriptive representation expectations for African American judges and female judges, respectively.

these characteristics does not appear to be nationally representative, but this is due to the oversampling of African Americans. When broken down by race, everything aligns with national averages quite closely.
Figure 12 Descriptive Representation Expectations for Black Judges

Figure 13 Descriptive Representation Expectations for Women Judges
Of the four groups of respondents presented, white males report the lowest percentage of judges who they believe should be African American at about 32%, followed by white females who believe about 37% of judges should be African American. This takes a significant leap for black male and female respondents, with the former believing 45% of their state’s trial court judges should be African American and the latter believing that this number should be about 46%. The difference between black male respondents and black female respondents is not statistically significant, but every other comparison between groups is statistically significant (i.e., the difference between white male and white female respondents, as well as the difference between each of the white respondent groups and the black respondent groups, is statistically significant).

For descriptive representation of females, black females are once again the group of respondents that reports the highest numbers. Black females believe that just over 44% of judges should be female, followed by white females at just under 44%. The average for black male respondents is 41%, and finally white males believe that almost 40% of their state’s trial court judges should be women. The differences here between the female respondent groups (both races) and the male respondent groups (both races) are statistically significant, but the differences between racial groups of the same sex are not statistically significant.

This information aligns quite well with what we saw in Chapter Three. Recall that for white respondents, gender seems to be more important than race in terms of descriptive representation and its effect on judicial legitimacy. Here, we see that both white males and white females believe the percentage of female judges should be higher than the percentage of African American judges. Similarly, for both African American males and African American females, racial representation appears to be more important than gender representation as both groups believe there should be higher percentages of African American judges than female judges.
Moreover, the graphs show that the groups that are most prominent in the experimental vignettes (females and African Americans) both want greater descriptive representation. The two African American respondent groups want more African American judges than the two white respondent groups and the two female respondent groups want more female judges than the two male respondent groups. It is interesting to note that while black female respondents want to see the highest levels of both gender and racial representation among judges, when they are presented with a scenario that involves a judge that is representative on both identities, this is the instance where they punish the court most significantly if the judge rules against their preferences (see Chapter Three).

Further, it is incredible to note that every demographic group believes that African Americans should be represented among judges at significantly higher levels than the percentage of African Americans in the broader U.S. population. While African Americans only make up about 12-13% of the U.S. population, even the group with the lowest normative expectation of African American descriptive representation among judges (i.e., white males) believes that African Americans should be represented in their state’s courts at nearly three times (~32%) their presence in the general population! The opposite is true with female judges. Even the group that would like to see the highest numbers of female judges (i.e., black females) believes that just 44% of judges in their state’s trial courts should be female despite females making up nearly 51% of the general population.

Why might this be the case? In the case of African American judges, these results may be partially explained by a social desirability bias, whereby respondents (particularly white respondents) indicate a percentage that is much higher than their true beliefs in order for their results to be viewed more favorably. Another highly plausible explanation is that most individuals
largely overestimate the number of African Americans in the general population. This is likely in part due to the overrepresentation of African Americans in the mass media (e.g., Entman and Rojecki 2000; Gilens 1999). Indeed, I can verify that this is true with my survey. After asking about their representation expectations, I asked respondents what they believed the real proportion of African Americans is in the general population. The mean percentage for all respondents was 39.6% (42.4% was the mean for black respondents and 37.0% was the mean for white respondents). It is clear that the perception that most individuals have, both black and white, about the racial makeup of the general population does not match reality. Moreover, this makes sense of the descriptive racial representation expectations presented in Figure 12. Both black and white respondents come close to wanting African Americans to be represented on the bench in proportion to what they believe to be their proportion of the general population.

The case of female judges seems to be a bit different. When asked about the proportion of the general population that is female, respondents seemed to come quite close to matching the correct number of 50-51%. The mean for female respondents on this question was 50.4% and the mean for male respondents was 48.6%. This seems quite unsurprising as the fact that women make up about half of the general population seems to be much more common knowledge than the racial composition of the United States. Here again, the representation expectations for female judges comes close to matching the proportion of females in the general population, but the gap between perceived general population representation and expected judicial representation is a bit wider for gender than it is for race. White male respondents, for example, believe that the proportion of judges that are female in their state should be about 9 percentage points lower than what they believe the proportion of females to be in the general population. For black judges, this gap is only about 2.5 percentage points (between the proportion of judges in their state that they believe
should be African American compared to what they believe the proportion of African Americans to be in the general population).

One possibility for this might be that male respondents want females to have representation up to a certain point, but not at the expense of their own representation. If female representation increases, that automatically means that male representation decreases. Male respondents might want to keep a buffer between the numbers of male and female judges to ensure that they still keep their majority status in the judiciary.

This same argument could also be applied to African American judicial representation. White respondents are willing to believe that black judges in their state should be close to proportionate with their numbers in the general population, but only because this number still maintains a comfortable majority of white judges. In other words, their own representation is not threatened by the numbers represented in their expectations.

For female respondents, it is less clear why their expectations of judicial gender representation are still six to seven percentages points less than the proportion of females in the general population. One possible explanation might be that their normative expectation of numbers of female judges in already an increase compared to what they believe the real number of female judges in their state’s courts to be. In other words, their expectation of representation is still better than what they believe exists currently and that might be good enough. Another possible explanation is that women downplay their actual normative representation expectations in the survey.
4.3.2 Discussion of Results: Moderating Effects of Expectations on the Relationship between Descriptive Representation and Judicial Legitimacy

How do the differences in expectations presented in the preceding section affect the impact that descriptive representation has on judicial legitimacy? In order to examine this, I examine the marginal differences in the levels of legitimacy between experimental treatments in both of the experiments presented in Chapter Three. The first set of figures (Figures 14-17) examines these differences for the state-level experiment and the second set of figures (Figures 18-21) examines these differences for the individual-level experiment.

More specifically, Figures 14 and 15 present the marginal differences in legitimacy at each level of descriptive racial representation expectation between the three experimental groups that contained state-level information about African American judges: one in which black judges were underrepresented compared to the national average, one in which black judges were represented at the same level as the actual national average, and one in which black judges were overrepresented compared to the national average. The condition in which black judges were underrepresented serves as the baseline or reference category to which the other two groups are compared. Figures 16 and 17 do the exact same but for the three experimental conditions that involve female judges. Here, too, the condition in which female judges were underrepresented compared to the national average serves as the baseline reference group.

The final set of figures (Figures 18 and 19) presents the moderating effects of descriptive representation expectations on the relationship between descriptive representation and judicial legitimacy in the individual-level experiment (Experiment Two) presented in Chapter Three. Figure 18 shows the results for black respondents in the African American judge treatments. Figure 19 shows the results for female respondents in the women judge treatments.
4.3.2.1 State-Level Experiment: Moderating Effects of Descriptive Representation Expectations for African American Judges

Figure 14 shows the differences in legitimacy at each level of descriptive representation expectation for black respondents in the African American judge treatment conditions. Figure 15 presents the same information for white respondents.

For black respondents, it appears that the effect of descriptive representation on legitimacy does vary based on expected level of descriptive representation. Black respondents who are presented with information about the number of African American judges in their state being on par with the national average grant more legitimacy to the court than when they are presented with information about the number of African American judges in their state being both lower and higher than the national average. This is in line with the results presented in Chapter Three.
However, what the previous chapter could not show is that this is driven entirely by individuals whose representation expectations are between around 20% and 50%. Only at these levels of representation expectations are the differences between the experimental conditions statistically significant. As we get closer to the extremes of normative expectations of representation, there appears to be no differences in legitimacy across any of the treatment conditions. That said, it is important to note that there are far fewer respondents whose expectations are at the extremes, thus making the point estimates here less precise (hence the larger confidence intervals) than the more moderate expectations.

Figure 15 Legitimacy Differences by Descriptive Representation Expectations, State-Level African American Judges, White Respondents

For white respondents, their descriptive representation expectation for black judges does not appear to have any effect on differences in legitimacy levels across the treatment conditions. At first glance, it appears that white respondents who want to see higher levels of African Americans in their state’s courts do grant greater legitimacy to the judiciary when they read about
their state being on par with the national average or when African American judges are overrepresented compared to the national average. In other words, legitimacy increases for white respondents who want higher numbers of black judges in their state as they read about more judges in their state being black versus reading about African Americans being underrepresented on their state’s bench. However, none of these differences are statistically significant. Similar to what we saw in Chapter Three, it appears as though descriptive representation expectations matter more for individuals whose descriptive representation is the subject of what is being presented to them: in this case, black respondents reading about the number of black judges in their state.

4.3.2.2 State-Level Experiment: Moderating Effects of Descriptive Representation

Expectations for Women Judges

Figures 16 and 17 show the same analysis as the preceding sections but for the state-level experimental conditions involving female judges. Figure 16 shows the results for female respondents and Figure 17 shows the results for male respondents.
As a reminder, the reference group is the condition in which women judges are underrepresented compared to the national average. Figure 16 shows that as descriptive representation expectations increase, female respondents are more likely to grant legitimacy to the court in the condition where females are overrepresented on the bench compared to when females are underrepresented on the bench. Again, we saw this in Chapter Three. However, the graph here shows that this is driven entirely by females who expect the highest numbers of female judges. Only once we get to the 50% point for descriptive representation expectations do these differences in legitimacy emerge. In other words, descriptive representation affects those female respondents who expect the highest levels of descriptive representation, exactly as hypothesis three suggests. For females who do not expect as much descriptive representation, it does not make much of a difference in terms of legitimacy what information they are presented with regarding the numbers of judges who are female in their state’s trial courts.

Figure 16 Legitimacy Differences by Descriptive Representation Expectations, State-Level Women Judges, Female Respondents
For male respondents, we see a somewhat different pattern emerge. In this case, the condition in which female judges in the respondent’s state are on par with the national average behaves similarly to the overrepresented condition for female respondents. Legitimacy increases more for male respondents who expect higher numbers of women in the judiciary when they read about their state being on par with the national average for female representation on the bench than compared to when they read about their state being below the national average. Again, this is consistent with the pattern expected by hypothesis three, however the differences in legitimacy here are not statistically significant.

The opposite is true for males who read about females being overrepresented on their state’s bench. As they expect greater numbers of female judges, legitimacy actually decreases when they are presented with information about females being overrepresented on the bench compared to the national average. Again, this may be because they begin to feel as though their
own representation is being threatened, even if they gave a socially desirable answer for the question about their normative expectations of female representation. That being said, here again, the differences are not statistically significant across any of the treatment groups at any level of representation expectation. Similar to the preceding section regarding race, it appears as though representation expectations matter more to those whose representation is being explicitly discussed in the vignettes (i.e., female respondents reading about female representation in this case).

4.3.2.3 Individual-Level Experiment: Moderating Effects of Descriptive Representation for African American Judges

Figure 18 shows the differences between the average legitimacy levels among black respondents presented with a scenario with a black judge and black respondents presented with a scenario with a white judge, by normative expectation level.

As the graph shows, legitimacy does indeed differ significantly at different levels of normative expectations. Black respondents who expect lower levels of descriptive racial representation among judges ascribe greater legitimacy to the courts when reading about a case with a black judge than when they read about a case with a white judge. Similarly, black respondents who believe there should be greater descriptive racial representation among judges grant more legitimacy to the courts when a white judge decides the case.
This seems counterintuitive, and is the opposite of what was expected. We would expect to see that when normative expectations are confirmed (e.g., when I want more black judges and then I see a black judge deciding a case), legitimacy is higher than when my expectation is violated (e.g., when I want more black judges and then see a white judge deciding a case). How can we make sense of this? Recall that in every scenario, the judge decides against an individual’s policy preferences since this is the “objection precondition” necessary to test the strength of legitimacy (Gibson 2012). Thus, a possible explanation for this seemingly counterintuitive result is that African Americans who would like to see more black judges in the courts want to see this because they believe it will also increase their substantive representation.

25 This is discussed in greater detail in Chapter Five.
In other words, these individuals want more black judges because they believe black judges will decide cases in ways that align with their policy preferences more than white judges would. In this scenario, then, the respondents who want to see a black judge see a black judge, but the judge violates their substantive representation preferences. Thus, legitimacy is decreased even more than when a white judge makes the same decision because they would not expect the white judge to provide substantive representation in the first place so their expectations were not violated. This also helps explain the results above in this chapter and in Chapter Three where African American females want the highest levels of descriptive representation, but punish the court the most when these representative judges rule against their policy preferences.

Note that I do not include the results for white respondents here. I ran the same analysis for white respondents in the black judge treatments and there did not appear to be any significant differences at any level of expected descriptive representation. The graph for white respondents did have a slope opposite to that of black respondents. That is, white respondents appeared to follow what hypothesis three predicted: as white respondents’ expectations of the proportion of judges who are African American in their state increased, they were more likely to ascribe legitimacy to the court when presented with a scenario with an African American judge compared to a scenario with a white judge. However, none of the differences in legitimacy between the black and white judge groups for white respondents were statistically significant at any level of representation expectation.
4.3.2.4 Individual-Level Experiment: Moderating Effects of Descriptive Representation

Expectations for Women Judges

Figure 19 presents the marginal differences in legitimacy between male and female judges from the individual-level experiment at each level of expected representation for female respondents.

As we can see, there is no difference at all in legitimacy levels across normative expectations between male judge and female judge scenarios for female respondents. This is interesting when comparing this to the state-level experiment where expectations did moderate the effect of descriptive representation on legitimacy to some extent for females. It appears that when presented directly with information about the level of descriptive representation in their state’s trial courts, women are more responsive than when presented with information about a single judge deciding a single case. It is likely that those who read about one judge deciding a case do not
interpret the details of the judge as reflective of the larger judicial pool in their state’s courts. Here again, I ran the same analysis for male respondents, but do not report the results here because they nearly mirror those of female respondents. Expected descriptive representation levels of women in the judiciary have no statistically significant moderating effect on the relationship between descriptive representation and legitimacy for male or female respondents.

4.4 Descriptive Representation Expectations Conclusion

Overall, this chapter focused on answering two main questions: what sort of expectations do individuals have about descriptive representation in their state’s trial courts and how do these expectations affect the relationship between descriptive representation and judicial legitimacy? Regarding the first question, the results presented show that individuals have varying normative expectations of levels of descriptive representation in their state’s judiciary for females and African Americans. Regarding African Americans, both white and black respondents expect numbers of African American judges in their state to far exceed the proportion of African Americans in the general population. However, given that respondents expressed significantly skewed perceptions of the racial makeup of the general population, the expectations did not appear too far-fetched. Indeed when it came to African American judges, normative expectations seemed to be more or less in line with respondents’ perceptions of African Americans’ proportion of the general population. This was true for both white and black respondents.

For female representation on the bench, however, the gap between perceived gender composition of the general population and normative expectations of the number of female judges in a given state was not insignificant. While most respondents knew that women make up about
half of the general population, they wanted to see the proportion of judges in their state who are female be somewhere between six and nine percentage points lower than the general population numbers.

Overall, expectations of descriptive representation aligned with what we would expect. Females (regardless of race) expressed higher normative expectations of female judges than males (regardless of race). Similarly, black respondents (regardless of gender) expressed higher normative expectations of African American judges than white respondents (regardless of gender). Indeed, this strengthens some of the key premises of this entire project as discussed in earlier chapters: that individuals have varying expectations of judges and that many individual do indeed want their judges to represent them.

Related to the second main research question, the analyses presented in this chapter show mixed results regarding the moderating effect that normative expectations have on the relationship between descriptive representation and judicial legitimacy. It appears as though expectations have a moderating effect on this relationship in some situations, but not in others. Mainly, expectations matter to those whose descriptive representation is made explicit in the information presented to them. When presented with state-level information about African American judges, black respondents’ expectations affected judicial legitimacy more than white respondents’ expectations. Similarly, when presented with state-level information about women judges, female respondents’ expectations affected judicial legitimacy more than male respondents’ expectations. This was the same for black respondents when they were presented with individual-judge information. However, expectations of descriptive gender representation did not matter for males or females when presented with individual-judge information.
The most surprising result in this chapter was that expectations of black respondents affected legitimacy in the opposite way than what was predicted. Legitimacy decreased in the black judge treatments for black respondents who wanted the highest numbers of black judges. This appeared to be counterintuitive at first. However, after considering the wording of the vignette and that the black judge always decided against the individual’s policy in the vignettes, the result made much more sense. This points out the importance of substantive representation in addition to descriptive representation. The judiciary can continue to diversify as much as possible, but these results seem to show that a blanket increase in the numbers of African Americans will not necessarily increase legitimacy unless the increase is accompanied by higher levels of substantive representation as well. If black judges decide cases at odds with a majority of black citizens, the results here seem to suggest that judicial legitimacy might actually suffer despite any significant increase in the number of black judges in the judiciary overall. The next chapter takes up the question of substantive representation more directly.
“The Supreme Court of the United States decides that a corporation cannot hide itself behind the plea of self-incrimination, when called upon to produce its letters and documents. This no doubt is gain; there are lawyers who think it doubtful if the question would have been so decided a few years ago. The judicial indicator is beginning to turn to the pressure of the greater social force, the public.”

-Melville M. Bigelow, Legal Historian and Founding Member of Boston University School of Law, *The Atlantic Monthly* (December 1906)

While the two preceding chapters examined the relationship between descriptive representation and judicial legitimacy, this chapter turns to the second type of representation that has been touched on at various points throughout this project already: substantive representation. While descriptive representation has to do with how another individual or institution *looks*, substantive representation turns to how that individual or institution *behaves*. Here, substantive representation refers to the behavior of state trial court judges, namely the decisions they make in a particular case. Recall that substantive representation in this project is conceptualized as a judge making a decision that is in line with an individual’s preference (Haider-Markel 2010; Pitkin 1967; Schwindt-Bayer and Mishler 2005). Along the same lines as previous chapters, the research questions that this chapter addresses are:

1. How does substantive representation (or the lack thereof) affect judicial legitimacy?
2. What normative expectations do individuals hold of judges related to substantive representation and how do these expectations affect the relationship between substantive representation and judicial legitimacy.

At one point in time, the “myth of legality,” that judicial decisions are based solely on legal principles without any other influences, was a much more common belief among scholars and in American political culture than it has been in more recent history (Scheb and Lyons 2000). The idea that judges could actively provide substantive representation by being influenced in their decision-making processes by extra-legal factors would be completely at odds with the myth of legality. While I do not propose that this belief has been completely eradicated, many scholars, even early on, have debunked this myth and have further argued that there is indeed a representative function that judges serve (e.g., Ifill 1997; Kuklinksi and Stanga 1979).

At this point in time, several scholars have examined judicial decision-making and have found that decisions made by judges are in fact influenced by a number of variables, including their race (Cox and Miles 2008), gender (Boyd, Epstein, and Martin 2010), other branches of government (Bailey and Maltzman 2011), and public opinion (Hall 2013). Other scholars have directly examined substantive representation, or the lack thereof, in the judiciary. For example, Grosskopf and Mondak (1998) find that disagreement with a judicial decision significantly reduces confidence in the Supreme Court. Others have found that decisions made by judges affect the ideological perceptions of the court, and the resulting ideological disagreement or congruence then affects legitimacy evaluations (e.g., Bartels and Johnston 2013).

Thus, this chapter takes it as a given or makes the assumption that judges provide substantive representation in the decisions that they make. The following sections proceed with
examining just what type of expectations individuals hold of their judges related to substantive representation and how these affect judicial legitimacy.

5.1 Theory and Hypotheses

As we know by now, judicial legitimacy is an individual’s willingness to support the court even in the face of disagreement with judicial outputs (e.g., Caldeira and Gibson 1992, 1995; Easton 1965; 1975; Gibson and Caldeira 1998, 2009a, 2009b). It is a long-standing commitment to an institution: a “reservoir of good will.” Chapter Two mentioned an important point made by Gibson (2012, 5) about legitimacy, which was passively mentioned in the preceding empirical chapters as it related to the vignettes presented in Experiment Two (individual-level experiment): legitimacy requires an “objection precondition.” It is worth spending some time here discussing what this means as it is central to substantive representation and the empirical approach in this chapter.

An objection precondition means that the true test of legitimacy requires individuals to disagree with an institutional output or a series of institutional outputs. If an institution does nothing objectionable to an individual, there is no way to know how legitimacy is affected. Legitimacy is what protects the institution in the face of outputs that do not align with the public’s preferences. The reason why courts can make unpopular decisions is because they have built up this reservoir of support over time. In fact, legitimacy from the public is crucial for courts given the lack of other enforcement mechanisms for compliance with their decisions. If the court makes a decision that an individual agrees with, that does not test the individual’s willingness to grant legitimacy to the institution. Indeed, we would expect legitimacy to be unaffected (even though
specific support may increase temporarily). In the face of disagreement, however, is when we can see if legitimacy indeed shields the court from negative consequences or not.

Of course, for judicial decisions to affect attitudes toward the courts, individuals must be aware of the decisions coming out of the judiciary. As Caldeira and Gibson (1995, 357) note, “The formation of attitudes requires information.” This may partially explain the dominance that the Supreme Court displays in the political science literature – its decisions, at least the relatively controversial ones, enjoy media attention that most decisions coming from state and lower federal courts do not. Nevertheless, consistent with much of the extant literature, I expect:

\[ H_4: \text{When presented with a case in which a judge decides against an individual’s preference, legitimacy will decrease.} \]

Like many hypotheses in existing studies, however, this assumes that individuals hold similar expectations regarding the role of judges in representing the public’s preferences, or the level of substantive representation that judges should provide. In other words, this assumes that 1. individuals care about the substantive decision being made by the judge, and 2. individuals all believe judges should decide cases in a way that is consistent with the public’s preferences. Even if this assumption is true for the majority of people, at the very least, by not examining individuals’ expectations of judges’ representative role, we are missing out on a more nuanced view of the process by which individuals evaluate political institutions.

Regarding the first assumption, I suspect that if an individual does not care about the substantive issue involved in the case, her propensity to grant legitimacy to the court will not be affected by the decision as much as it would be when she actually cares about the issue. In the former case, there is no objection precondition because the individual just does not care enough to object to the decision the judge makes. However, if she cares about the issue, I expect:
**H5: For issues that are important to an individual, he/she will grant less legitimacy to the court given the judge decides against the individual’s preference.**

As we know from Cann and Yates (2016), Gibson (2012), Gibson and Caldeira (2009a), and Chapter Four, the assumption of uniformity in expectations is problematic because individuals actually vary widely in the expectations they have of the courts and judges. Indeed, as has been noted several times already, related to the decision-making of judges, Gibson (2012) finds that many individuals expect their state court of last resort to do much more than strictly apply the law to the facts of a case. Individuals recognize that there are other factors that may come into play when judges make decisions. Furthermore, we also know by now that expectations matter, as outlined by Expectancy Theory and as discovered in the preceding chapter. Thus, I expect:

**H6: The more an individual believes judges should represent the public’s preferences, the less legitimacy he/she will grant to the court given the judge decides against the individual’s preference.**

### 5.2 Empirical Approach

In order to test the hypotheses, I use the individual-level survey experiment described in Chapter Three. Recall that this was a 2 (judge race) x 2 (judge gender) x 2 (issue importance: low/high) between-subjects factorial design.26 Here, however, the analysis will focus on the issue

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26 Funded by the NSF Law and Social Sciences Program (Award 1728928) and the APSA Centennial Center Special Fund for Women and Politics.
importance treatments since the preceding chapters examined judge race and gender as part of the relationship between descriptive representation and judicial legitimacy.

In order to determine issue importance, respondents were asked to rank four issues by how important each one is to them personally and where they stand on the issue. The four issues presented were chosen based on results from a pre-test. The pre-test was conducted on Amazon’s Mechanical Turk and asked respondents to rank fourteen public policy issues based on importance. The issues chosen to use in the main survey were one of the issues that were most important and one that was least important for both Republicans and Democrats in the pre-test. The issues chosen for the main survey included drug testing for welfare applicants (least important for Democrats), minimum wage (most important for Democrats), LGBT rights (least important for Republicans) and gun control (most important for Republicans).  

Next, respondents were asked their position on the issue that would be presented to them in the vignette (either their most important or least important issue). The question presented the respondent with a statement about that issue and the respondent had to select the extent to which they agreed with the statement. The scale forced respondents to at least slightly agree or slightly disagree with the statement so that there was no middle position. This was done so that the vignette that would be presented to the respondent could have the judge always deciding against the respondent’s preference on that issue (i.e., the survey forced the “objection precondition”

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27 Funded by the Center for American Politics and Society at the University of Pittsburgh.

28 To maximize statistical power, I do not separate the analysis by issue in this project.

29 The survey instrument for the pre-test can be found in Appendix D.2.
necessary for testing legitimacy). Respondents were also asked a series of questions about their normative expectations for how judges should behave or make decisions.

Finally, respondents received the vignette corresponding to the experimental group to which they were randomly assigned, which described a judicial decision made recently in their state’s trial court. Below is a template for the vignettes. The actual text for each issue can be found in Appendix B.

JUDGE [INSERT JUDGE NAME] DECIDES CASE ON [INSERT ISSUE]

Last Tuesday, [insert respondent’s state] trial court judge [insert judge name] handed down a ruling on [insert issue]. In [his/her] final judgment, Judge [insert judge surname] ruled that [for/against issue].

Immediately after reading the vignette, each respondent was presented with the legitimacy battery discussed in previous chapters (Caldeira and Gibson 1992, 1995). As a reminder, there were 1,111 respondents in this experiment. 565 respondents were in the treatment group that contained a case involving their least important political issue and 546 respondents were in the treatment group that contained a case involving their most important political issue. The same control group of 164 respondents is used in these analyses as well.

30 Judges’ names varied to indicate the race and gender of the judge, which is analyzed in Chapter Three.

31 Descriptive statistics on the sample can be found in Chapter Three.
5.3 Analysis and Discussion

In order to examine whether or not an individual grants less legitimacy to the courts when a judge decides against an individual’s preference, t-tests were conducted that compare the mean level of legitimacy across treatment conditions. Figure 20 presents the results. As we can see, the control group enjoys the greatest level of legitimacy (4.12) while both treatment groups have a significantly lower level of legitimacy (3.85 for the group in the least important issue treatment and 3.86 for the group in the most important issue). As expected, when individuals are presented with information about a case in which a judge decides against the individual’s preference (i.e., they do not provide substantive representation), they grant less legitimacy to the court. This aligns with the findings of Bartels and Johnston (2013). They find that ideological disagreement with the tenor of the Supreme Court (as perceived by individuals) has a negative effect on the Court’s legitimacy. For example, if an individual is liberal and perceives the Court’s decisions to be more conservative, they will grant less legitimacy to the Court than if they perceive the Court’s decisions to be more liberal. Here, there is no doubt that the judge is deciding against each respondent’s ideological preference on the issue in the vignette, and thus, legitimacy is decreased.
5.3.1 Discussion of Results: Issue Importance

We can also see in Figure 20 that there is almost no difference in legitimacy between the group that read about a case that was most important to them and the group that read about a case that was least important to them. However, in order to examine how the importance of the issue involved in the case might affect evaluations of the court, we must consider how important the issue presented in the vignette is to the individual more generally, outside of the issue’s relation to the other issues that were presented to respondents earlier in the survey.

Recall that respondents were presented with four different issues and were asked to rank the issues by importance. Based on this ranking, individuals were then assigned to the vignette that corresponded to either their most important or least important issue from that list. In other
words, individuals were forced to identify a most important issue of the four issues presented. However, even if that issue is the most important out of the four presented, that does not necessarily make the issue important to that person. It is possible that an individual does not believe that any of the four issues presented are important. In this case, the ranking question assigns an artificial importance to at least one issue. Similarly, all four issues might be incredibly important to an individual, so even if they are assigned to receive the vignette about their least important issue, it might still be quite important to them.

In order to get a more accurate picture of how the importance of an issue affects legitimacy, the survey asked respondents some additional questions. First, after respondents ranked the issues by importance, a separate question inserted the issue that they ranked as most important and asked whether it was one of the top three most important issues to them out of all political issues. Almost 84% of respondents indicated that the issue that they ranked as most important from the four presented was one of the top three most important political issues to them. For the other 16% then, it is possible that the issue they read about in the vignette was not actually important to them, even if it was their highest ranked issue.

Figure 21 presents the mean level of legitimacy between the group that received the least important issue and the smaller group of individuals that received the most important issue who also indicated that the issue is one of the top three most important political issues to them. As the figure shows, for the group that read about a judge deciding a case against their preference on one of the most important issues to them, legitimacy is harmed more than when individuals read about a case involving the least important issue. However, the difference is not statistically significant, indicating that the importance of an issue does not influence the level of legitimacy ascribed to the courts.
This goes against what was predicted. Why might there not be a difference in legitimacy between low importance issues and high importance issues? One possibility is that any substantive representation, or lack thereof, is more important than how an individual feels about any particular issue. In other words, the effect of there being no substantive representation outweighs or overshadows any effect related to whether the particular issue presented was of high importance or low importance to the individual. Once the lack of substantive representation generally drops the level of judicial legitimacy, any differences between low and high importance issues are so marginal that they do not show up as any differences at all.

Another possibility is that the low importance issue might include individuals who still believe that the issue that was presented to them (in the low importance condition) is still important. In other words, I was able to take out individuals in the high importance group who didn’t believe their highest-ranked issue was important, but I have no way of identifying
individuals in the low importance group who believe even their lowest-ranked issue is still quite important. The survey did not include a similar question about the lowest-ranked issue as it did for the highest-ranked issue. If this is the case, the actual level of legitimacy in the low importance condition might be higher than presented in Figure 21 because those in this group who believe the issue presented is still important may be artificially driving down the legitimacy level that we see.

After taking out the respondents from the high importance condition that should not have been there, legitimacy changed by about 0.07 (the difference between the high importance group between Figures 20 and 21). If we assume that a similar effect would happen to the low importance group if we could take out those who did not truly belong, then the average level of legitimacy for the low importance group would be somewhere around 3.92. This would then follow the trend that was predicted: when presented with a low importance issue, legitimacy would be affected less than when presented with a high importance issue. It is difficult to say with any certainty whether the difference between the two groups would become statistically significant or not in this scenario. If the confidence intervals do not change much from what we see in Figure 21, it is possible that a statistically significant difference between the groups would emerge.

To probe this question of issue importance even further, another question on the survey asked respondents to indicate how important each issue presented in the original ranking question is to them on a 0 (Not at all Important) to 100 (Very Important) scale. This allows me to identify individuals who do not actually care much about any of the issues presented. In order to examine whether this has an impact on legitimacy, I regressed the scale variable on the mean level of legitimacy. The relationship between the level of importance of the issue and legitimacy does not even come close to being statistically significant. I estimate this with only the scale variable as an explanatory variable as well as with a series of other covariates (e.g., controlling for experimental
condition, issue presented in the vignette, and a number of demographic variables) and the level of importance is not statistically significant in either case.

I also estimated a regression model that included an interaction term between the 0-100 importance variable and the treatment variable that indicates whether the individual was in the least important or most important group. While the interaction term becomes significant in this model, the substantive impact is zero. I refrain from including all of these regression analyses in the chapter because they are somewhat misleading. Given the small number of respondents (less than 10% of the sample) who are both assigned to the most important issue treatment and also rate that issue’s importance as less than 50 on the 100-point scale, the significance on the interaction variable is driven by a very small number of respondents. Similarly, when examining the marginal effects on the predicted levels of legitimacy of the two treatment groups, the only significant differences are when the issue is ranked between 0 and 40 on the 100-point scale. Again, for the high importance treatment, there are only a handful of respondents who drive these marginal differences. I include this set of analyses in Appendix C. Overall, these analyses together with the results presented in Figures 20 and 21 indicate that the importance of an issue does not make much of a difference at all in the level of legitimacy ascribed to the courts.

5.3.2 Discussion of Results: Substantive Representation Expectations

So far, it appears that substantive representation matters for legitimacy, but the importance of the issue does not. How is the impact of substantive representation on legitimacy affected by individual’s expectations of their judges? In order to examine this question, the survey asked respondents the extent to which they agree (1 Strongly Disagree to 7 Strongly Agree scale) with a number of statements regarding the normative expectations of judicial behavior. The responses to
these questions are interesting to consider on their own before looking into how they might affect legitimacy.

Table 2 shows the mean level of agreement with each of the statements while Table 3 shows the percentage of respondents who agree (responses of 5-7 on the 7-point scale) and disagree (responses of 1-3 on the 7-point scale) with each statement. In order to show additional variation across individuals, I have broken the tables down by both race and gender of respondents. It is also important to note that in order to increase accuracy, I have included survey respondents who were not part of the experiment since these questions were asked to all survey respondents regardless of which experiment they were assigned.32

<table>
<thead>
<tr>
<th>I believe trial judges in [R State] should...</th>
<th>Black Male N=522</th>
<th>Black Female N=515</th>
<th>White Male N=533</th>
<th>White Female N=554</th>
<th>Total N=2,124</th>
</tr>
</thead>
<tbody>
<tr>
<td>strictly follow the law when deciding all cases no matter what people in [R State] want.</td>
<td>5.34 (1.63)</td>
<td>5.26 (1.53)</td>
<td>5.56 (1.44)</td>
<td>5.42 (1.39)</td>
<td>5.40 (1.50)</td>
</tr>
<tr>
<td>decide cases the way the majority of the people in [R State] prefer.</td>
<td>3.94 (1.93)</td>
<td>3.48 (1.81)</td>
<td>3.41 (1.83)</td>
<td>3.43 (1.73)</td>
<td>3.56 (1.84)</td>
</tr>
<tr>
<td>base their decisions on whether they are a Republican or Democrat.</td>
<td>2.71 (2.08)</td>
<td>2.35 (1.83)</td>
<td>2.15 (1.74)</td>
<td>1.99 (1.57)</td>
<td>2.30 (1.83)</td>
</tr>
<tr>
<td>ensure fairness for all people under the law.</td>
<td>6.22 (1.38)</td>
<td>6.34 (1.27)</td>
<td>6.32 (1.15)</td>
<td>6.47 (0.96)</td>
<td>6.34 (1.20)</td>
</tr>
<tr>
<td>use their own personal moral judgment when deciding cases.</td>
<td>3.65 (1.93)</td>
<td>3.43 (1.92)</td>
<td>3.29 (1.79)</td>
<td>3.25 (1.77)</td>
<td>3.40 (1.86)</td>
</tr>
<tr>
<td>look to public opinion on issues when making legal decisions.</td>
<td>3.70 (1.93)</td>
<td>3.49 (1.89)</td>
<td>3.05 (1.88)</td>
<td>3.20 (1.75)</td>
<td>3.36 (1.88)</td>
</tr>
</tbody>
</table>

Responses on a 1 (Strongly Disagree) to 7 (Strongly Agree) scale. Standard deviations in parentheses.

32 There are no significant differences in these responses between respondents who were part of the experiment and respondents who were not part of the experiment.
### Table 3 Percentage of Respondents Agreeing and Disagreeing with Statement

<table>
<thead>
<tr>
<th>I believe trial judges in [R State] should…</th>
<th>strictly follow the law when deciding all cases no matter what people in [R State] want.</th>
<th>decide cases the way the majority of the people in [R State] prefer.</th>
<th>base their decisions on whether they are a Republican or Democrat.</th>
</tr>
</thead>
<tbody>
<tr>
<td>R Group</td>
<td>Dis.</td>
<td>Agree</td>
<td>Dis.</td>
</tr>
<tr>
<td>Black Male</td>
<td>16.09</td>
<td>74.33</td>
<td>40.42</td>
</tr>
<tr>
<td>Black Female</td>
<td>14.95</td>
<td>72.04</td>
<td>50.87</td>
</tr>
<tr>
<td>White Male</td>
<td>9.94</td>
<td>81.05</td>
<td>53.10</td>
</tr>
<tr>
<td>White Female</td>
<td>10.47</td>
<td>78.70</td>
<td>51.81</td>
</tr>
<tr>
<td>Total</td>
<td><strong>12.81</strong></td>
<td><strong>76.60</strong></td>
<td><strong>49.11</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I believe trial judges in [R State] should…</th>
<th>ensure fairness for all people under the law.</th>
<th>use their own personal moral judgment when deciding cases.</th>
<th>look to public opinion on issues when making legal decisions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>R Group</td>
<td>Dis.</td>
<td>Agree</td>
<td>Dis.</td>
</tr>
<tr>
<td>Black Male</td>
<td>5.94</td>
<td>89.08</td>
<td>45.98</td>
</tr>
<tr>
<td>Black Female</td>
<td>3.88</td>
<td>89.90</td>
<td>49.32</td>
</tr>
<tr>
<td>White Male</td>
<td>3.75</td>
<td>91.74</td>
<td>51.22</td>
</tr>
<tr>
<td>White Female</td>
<td>1.44</td>
<td>94.40</td>
<td>53.43</td>
</tr>
<tr>
<td>Total</td>
<td><strong>3.72</strong></td>
<td><strong>91.34</strong></td>
<td><strong>50.05</strong></td>
</tr>
</tbody>
</table>

Consistent with several of Gibson’s (2012) findings, there is substantial variation in what individuals expect from judges. About 75% of individuals believe that judges should strictly follow the law when deciding all cases no matter what the public wants. At the same time, almost one-third of individuals believe that judges should decide cases the way the majority of the public wants, should use their own personal moral judgment when deciding cases, and look to public opinion when making legal decisions. A much lower, but not insignificant, percentage of individuals (about 15%) believe that judges should base their decisions on their partisanship. This may seem high since the judiciary is often seen as the politically neutral branch, but keep in mind that these questions refer to state judges, some of which are elected through partisan elections.
The greatest consensus is reached (about 9 in 10 people agree) on the statement that judges should ensure fairness for all people under the law. For some, these responses may indicate that individuals have no idea about what they expect from judges, or at the very least are inconsistent in their beliefs. This is not necessarily true, however. Judges can use external factors, like public opinion, to inform their decisions while still crafting their decisions to fit within the law. I may believe that judges should decide cases based on what the majority of people want, but that does not mean that I think judges should step outside the law in order to do this. These are not mutually exclusive.

Looking across race and gender of respondents, it is interesting to note that in almost all cases, respondents of the same race tend to have more similar expectations to each other across genders than they do with either gender of the other race. White male respondents and white female respondents have similar expectations; their agreement with every statement is within a few percentage points of each other. This is also mostly true for black male respondents and black female respondents, with a few exceptions. The major exception is the statement about judges deciding cases the way a majority of the people prefer. In this case, black females have expectations that are much more similar to white respondents than black male respondents. About 40% of black male respondents agree that judges should decide cases the way the majority of the people want while less than 30% of all other demographic groups agree with that statement.

One other noteworthy observation is that black respondents tend to have higher expectations of judges using extra-legal factors when making decisions (i.e., factors outside of the law). On the statements about judges’ using their personal morals, public opinion, and their partisanship, black respondents agree in higher numbers than white respondents. Similarly, on the statements regarding strictly following the law and ensuring fairness for all, black respondents
agree with these statements in lower numbers than white respondents. I suspect this has to do with
the historical use of the law to perpetuate racial discrimination (e.g., Munger and Seron 2017).

5.3.3 Discussion of Results: Moderating Effect of Substantive Representation Expectations

How do these expectations affect legitimacy? In order to assess this, I created a variable
that indicates respondents’ substantive representation expectations from the two statements that I
believe most align with substantive representation: the statement about judges deciding cases the
way the majority of people prefer and the statement about judges looking to public opinion when
making legal decisions. The new substantive representation expectation variable is an average of
responses from these two statements. Table 4 shows the results from an OLS regression model
that includes the substantive representation expectation variable and a dummy variable that
indicates the treatment condition (most or least important issue). As the table shows, substantive
representation expectations have a significant impact on judicial legitimacy. The more an
individual expects judges to look toward public opinion and represent the majority’s preferences
when making legal decisions, the less legitimacy they are willing to grant to the court when
presented with a decision that goes against their own policy preferences.

<table>
<thead>
<tr>
<th>Sub. Rep. Expectation</th>
<th>-0.32***</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(0.018)</td>
</tr>
<tr>
<td>High Imp. Treatment</td>
<td>0.03</td>
</tr>
<tr>
<td></td>
<td>(0.06)</td>
</tr>
<tr>
<td>Constant</td>
<td>4.94***</td>
</tr>
<tr>
<td></td>
<td>(0.074)</td>
</tr>
<tr>
<td>N</td>
<td>1,111</td>
</tr>
<tr>
<td>R²</td>
<td>0.220</td>
</tr>
</tbody>
</table>

Std. Errors in parentheses
* p<0.1; ** p<0.05; *** p<0.01
In order to assess whether the importance of the issue involved in the case moderates the effect that substantive representation expectations have on legitimacy, I interact the variables and look at the marginal effects. Figure 22 shows the predicted level of legitimacy at various levels of substantive representation expectations by treatment condition. Figure 23 graphs the differences between the marginal effects of the treatment at each level of substantive representation expectations. As the figures show, there is no significant difference between treatment conditions for how substantive representation expectations affect legitimacy. Regardless of whether an individual receives a vignette about the most important or least important issue, the more she expects substantive representation from judges, the less legitimacy she will give the courts when the judge decides against her preferences.

**Figure 22 Predicted Legitimacy by Issue Importance Treatment and Substantive Representation Expectation**
This chapter set out to answer the questions of how substantive representation, or the lack thereof, affects judicial legitimacy, what expectations do individuals have of judges in terms of substantive representation, and how do these expectations affect the relationship between representation and legitimacy. Regarding the first question, the analysis in this chapter finds that substantive representation in the courts does have an effect on individuals’ propensity to grant legitimacy to the judiciary. When a judge decides against the policy preferences of an individual, they grant less legitimacy to the court. This finding is consistent with several other studies in the (limited) extant literature on the topic (e.g., Bartels and Johnston 2013; Christenson and Glick 2015), and supports the idea that judges indeed serve a representative function within the political system. Despite what constitutions or historical writings suggest about justices and courts being
neutral arbiters of the law, the results presented here suggest that not only does the substantive representation that comes out of these institutions affect public attitudes toward them, but also that many people fully expect judges to provide that type of representation.

Interestingly, the findings also suggest that the importance of the issue involved in the case that an individual reads about does not have any impact on legitimacy. If someone cares a great deal about the issue being decided on by a judge or if they care very little about the issue, their propensity to ascribe legitimacy to the court is nearly the same. When a judge decides against the preferences of an individual, legitimacy decreases in all cases. As I touched on briefly above, there are a couple possible explanations for why there are no differences between low importance and high importance issues in terms of legitimacy.

I believe a likely explanation is that individuals want their preferences to be represented in any case. Legitimacy suffers in both cases because the judge decides against individuals’ preferences. The fact that their preferences are not being represented by a judge is more important to them than the fact that they may not actually care about the issue involved in the case. In other words, the fact that the judge decides against the individual’s preference is what is most salient to them. The substantive issue involved in the decision is a secondary consideration, and thus, has very little, if any, effect on legitimacy after it was already reduced. Another possibility is that the issue presented in the experiment was still relatively important to some of the individuals who were considered part of the low importance treatment condition, artificially pushing legitimacy down to be more similar to the high importance treatment condition.

One final possible explanation, which is somewhat of a correlate to both of the previous explanations and perhaps happens simultaneously in either case, is that individuals still feel strongly or passionately about the issue even if the policy is not necessarily important to them. For
example, I might feel very strongly that there should be more restrictions on gun ownership. However, in the broader context of politics, I might consider this one of the least important issues to me personally because it does not have any real impact on my everyday life. If I were to read about a judge deciding a case in a way that lifts restrictions on gun ownership, I will likely grant less legitimacy to the court because I am passionate about my position on the subject, not because it is the most important issue to me. Unfortunately, the questions asked in this study do not allow me to tease apart strongly or passionately held beliefs from issue importance.

Importantly, this chapter finds that the effect that the presence or lack of substantive representation has on legitimacy is relatively large. As we know, legitimacy is the long-standing, diffuse support for an institution. As such, it should be one of the more difficult concepts to affect. However, after reading about a court decision that goes against an individual’s preference, judicial legitimacy drops by about 0.27 on average. This equates to about a 5% drop in legitimacy. While this sounds small, when the context is considered, it is quite substantial. Judges produce numerous decisions every day. Over time, if individuals hear about several of these decisions and they continue to be against their preferences, the courts’ legitimacy could be severely damaged.

This could be particularly damaging to the courts if there is a negativity bias (see Grosskopf and Mondak 1998), whereby support for the courts suffers more when they produce disagreeable decisions than any increased support gained from agreeable decisions. It is also important to note that most of the questions asked to measure legitimacy are about making fundamental changes to the judiciary (e.g., removing judges from their positions, getting rid of trial courts altogether in the respondent’s state). A 5% move on a scale that is made up of the average of seven responses regarding significant changes to the judiciary is no insignificant number.
These findings align well with studies like Bartels and Johnston (2013), Christenson and Glick (2015) and Malhotra and Jessee (2014) that find a relatively strong correlation between specific support (satisfaction with specific decisions) and diffuse support (i.e., institutional legitimacy). While they appear to be somewhat at odds with other studies that find an empirically weaker relationship between specific institutional outputs and legitimacy (e.g., Gibson and Caldeira 2009a; Gibson and Nelson 2016; Gibson, Caldeira, and Baird 1998), the results here are not necessarily in conflict with these studies. One reason is that some of the older studies (e.g., Gibson, Caldeira, and Baird 1998) employ research designs that ask about general satisfaction with institutional outputs rather than presenting information about a specific instance where individuals disagree with judges (i.e., an actual decision that goes against their preferences). Without the “objection precondition” present in these studies, it is difficult to conclude anything more than correlations between specific and diffuse support.

Additionally, many of Gibson et. al.’s studies test more than just the relationship between specific support and diffuse support. They actually do find that legitimacy takes a hit when individuals disagree with judicial outcomes, but that the hit to legitimacy is overcome by increases in legitimacy due to other contextual factors, such as symbols of justice (e.g., see Gibson and Caldeira’s Positivity Theory in Gibson and Caldeira 2009a and Gibson and Nelson 2016). Indeed, Gibson and Nelson (2016) push back on Bartels and Johnston’s (2013) finding that a misalignment between an individual’s ideology and their perceptions of the Supreme Court’s ideology causes a decrease in support for the institution. The former scholars found that diffuse support for the Supreme Court increased over the course of their survey in which respondents were presented with a judicial decision that went against the respondents’ policy preferences. However, this finding is conditional on the level of disappointment with the Court’s decision. As Gibson and Nelson (2016,
note, “Losing, *per se*, may not undermine legitimacy; instead, it depends on one’s expectations.” They go on to mention that dissatisfaction with a judicial decision may indeed result in a decrease in legitimacy, but this is diminished by symbols of judicial authority. In other words, Gibson and Nelson’s findings provide additional nuance and context to the findings of Bartels and Johnston. As I mentioned in a previous chapter, this project is meant to be the cleanest possible test of the relationship between descriptive and substantive representation and judicial legitimacy. As such, I do not introduce other contextual factors into the vignettes presented to respondents in the experiments, which is why they appear to align more with Bartels and Johnston (2013) than Gibson and Nelson (2016).

Lastly, this study is one of the few that have addressed the issue of varying expectations among individuals when it comes to courts. As the results show, variation in the expectations that individuals hold of judges’ representative role has a significant effect on judicial legitimacy. Going from one end of the spectrum where individuals expect judges to provide no substantive representation to the other end where individuals expect judges to provide a significant level of substantive representation (minimum to maximum) results in a drop in legitimacy of nearly 2 points on the 7-point scale (or nearly 33%)! Given that nearly one-third of the sample agrees that judges should be providing substantive representation by looking toward public opinion and representing the majority’s opinion in their decisions, this has important implications for judicial legitimacy moving forward. If legitimacy is damaged most by individuals who expect substantive representation, it suggests that judges would benefit by aligning their decisions more with what the public wants if they want to preserve their institution’s legitimacy. Of course, given the fact that a large majority of individuals also believe that judges should strictly follow the rule of law
when making decisions, judges will have to strike a balance between following public opinion while adhering to legal principles in order to protect the courts’ legitimacy.
From the beginning, the most basic goal of this project was to provide a deeper understanding of the relationship between representation and judicial legitimacy than previous studies have been able to do. Going back to Pitken’s (1967) photography analogy, my aim was to provide very specific and very clear snapshots of the overall concept of representation and its relationship to legitimacy. Targeting very specific aspects of representation in specific contexts allows for a clear picture of this relationship.

First, I limited the focus to two specific types of representation: descriptive and substantive. Second, I limited the context of the analysis to state trial courts. A focus on one specific type of court was required to avoid the blurring any of the results with differences in institutional design across different types of courts. As state trial courts handle an overwhelming majority of all judicial matters across the United States, examining the effects of representation in these courts is crucial to understanding opinions individuals hold of the broader judiciary. Third, I limited the project to understanding how representation works for very specific groups of individuals: those who identify as male or female only and those who identify as black or white only. Similar to limiting the context to state trial courts, limiting the analysis to these specific groups of people allows me to dive deeper into how these individuals view the connection between representation and legitimacy. As mentioned in Chapter One, I chose depth rather than breadth in this project.

While I used a number of existing theories to inform a set of testable hypotheses—legitimacy theory, Social Identity Theory, and Expectancy Theory—I took an important departure from almost all of the extant literature in this area by explicitly measuring individuals’ expectations
of representation and incorporating these expectations into the analyses. Indeed, in doing so this project addresses a shortfall of many existing studies that assume uniformity in individuals’ expectations. Many of the results presented in this project comport well with many other studies in the literature and many also provide a more nuanced view to some of those results reported by other scholars.

In this final chapter, I review the most important findings derived from the analyses presented in the preceding chapters. I then provide a discussion of the contributions that this project makes to the extant literature. I close this project by acknowledging some of the limitations to this study and provide suggestions for future research.

6.1 Key Findings

One of the major findings that comes out of all of the analyses presented in this project is that representation matters to individuals and that it affects their evaluations of courts. Additionally, the expectations that individuals hold regarding representation in the judiciary can moderate the effect that representation has on judicial legitimacy, but in specific contexts. The following three sections discuss the intricacies of these findings in more detail.

6.1.1 Descriptive Representation

Chapter Three focused on descriptive representation’s relationship to judicial legitimacy. I presented the results from two survey experiments in this chapter: one that examined how this
relationship works at the aggregate state-level and one that examined how this relationship works at the individual-judge level.

Results from the state-level experiment show that presenting information to individuals about the level of descriptive representation in their state’s trial courts affects the level of legitimacy ascribed to the court in some cases, but not in others. For descriptive representation of females in the judiciary, female respondents’ willingness to grant legitimacy to the court was impacted more than male respondents’ willingness. When the proportion of judges that are female in a given state matched the proportion of females in the general population (i.e., 50%), females viewed the court as more legitimate than when their representation was at any other (lower) level. Male respondents’ evaluations of the courts were not impacted by the number of females in their state’s judiciary.

For descriptive representation of African Americans in the judiciary, black respondents’ legitimacy levels given to the court were much more impacted than that of white respondents as the level of descriptive representation of African Americans changed across the treatment conditions. Black respondents were significantly more likely to grant legitimacy to the courts when the number of black judges in their states’ trial courts was on par with the national average of 7%. Interestingly, black respondents did not grant more legitimacy to the court when their level of descriptive representation increased to match their proportion of the general population (about 13%), which I suspect has to do with not wanting to stand out of the crowd from other states and garner any special attention that might cause backlash from any groups opposed to increased black representation in the courts. That said, white respondents were no more likely to ascribe less legitimacy to the courts when the number of African American judges matched the proportion of
African Americans in the general population. In fact, white respondents granted the same level of legitimacy to the courts regardless of the number of black judges presented to them in the vignettes.

These results are great news for individuals who want to see increased diversity on state benches but who might fear that too much too fast might spark a backlash among other individuals. Increasing the number of female judges in the aggregate causes no decrease in legitimacy among females or males. Indeed, the net effect was an increase in legitimacy due to female respondents. Similarly, in the treatment conditions that included the highest number of African American judges (when their representation matched the proportion of African Americans in the general population), legitimacy was not harmed at all among any group of respondents.

In the individual-level experiment, respondents were presented with information about one judge deciding one case. For most respondents (black males, white males, and white females), the race and gender of the judge deciding the case affected legitimacy for the most part in line with expectations based on Social Identity Theory. When the judge in the vignette shared both the race and the gender of individuals in these three groups, legitimacy was harmed the least given that the judge decided against the individual’s policy preference. In these cases, descriptive representation shielded the courts from losing greater legitimacy.

Black female respondents reacted in ways that were both unexpected and completely opposite from all of the other groups examined. When the judge deciding against the black female respondent’s preference was also a black female, courts suffered the greatest loss of legitimacy compared to when the judge was any other race and gender combination. Although this goes against what we would expect from Social Identity Theory, research on intersectionality that focuses on female racial minorities explains these results (e.g., Crenshaw 1992). Black females often have unique experiences that are different from the experiences of females of other races and
from males of the same race. We can expect that this applies to experiences with courts and the judicial system as well. These unique experiences may lead them to hold different expectations of judges who belong to their same in-group, and thus, when these expectations aren’t met, the negative consequences are more severe than they are when there are fewer expectations of judges who do not share both race and gender identities with the individual.

6.1.2 Substantive Representation

Chapter Five focused on the relationship between substantive representation and judicial legitimacy. By this point in the project, it came as no surprise that the results showed that when a judge does not provide substantive representation to the individual, the courts suffered a loss of legitimacy (the previous chapters had already showed this even though it was not explicitly discussed in them).

More surprising was the fact that the importance of the issue involved in the case presented to respondents, in which the judge decided against their preference on the issue, had no effect on legitimacy. In the condition where individuals were presented with a judge deciding a case on an issue that was highly important to the individual, respondents reduced the legitimacy granted to the courts by the same level as they did when the judge decided a case that was not important to them. I suspect this is mostly due to the fact that individuals simply do not like to see things implemented that go against their preferences. Even if an issue is not that important to them, they would still prefer to see the issue decided in a way that aligns with their (even weakly held) preference rather than the complete opposite. Thus, the damage to legitimacy is done when substantive representation isn’t provided and is not then moderated by the specific issue involved in the case.
6.1.3 Representation Expectations

As mentioned above, one of the unique features of this project that departs from almost all of the extant literature (but see Gibson 2012) is that it explicitly measures individuals’ expectations and incorporates these expectations into the analysis. Chapter Four did this for descriptive representation expectations and Chapter Five did this for substantive representation expectations. The survey included questions that explicitly asked respondents about their normative expectations for both types of representation, which provided interesting results on their own.

Regarding descriptive representation of females, individuals come close to wanting the proportion of judges in their state’s trial courts who are female to match the proportion of females in the general population. Unsurprisingly, female respondents would like to see more female judges than male respondents. However, even female respondents only reported believing that around 43% of judges in their state’s trial courts should be female while recognizing that females make up about 51% of the general population. This may be due in part to respondents wanting to go along with the status quo, which involves males holding more seats on the bench than females. Respondents may believe that female judges should have more representation than they do currently, but they do not want to upset the perceived balance of justice too much.

Regarding descriptive representation of African Americans, however, individuals reported normative expectations that far exceed the proportion that African Americans hold in the general population. White respondents reported descriptive representation expectations for African Americans that were about 2.5 times greater than blacks’ proportion of the population. For black respondents, it was about 3.5 times greater than their proportion of the population. While shocking at first, I discovered that this is due in large part to a wildly inaccurate perception of the proportion of African Americans in the general population. Based on the perceived demographic makeup of
the general population among all respondent groups, the normative expectations reported for African American descriptive representation was much less shocking and appeared to be in line with respondents’ misperceptions.

When it comes to the question of how these expectations affect the relationship between representation and legitimacy, there are mixed results. In the case where respondents were presented with information about descriptive representation at the state level, expectations only had a moderating effect for respondents whose representation was explicitly presented in the vignettes (i.e., female respondents in the female judge treatments and black respondents in the black judge treatments). This was also the case for black respondents who read about an individual judge deciding a case. The level of legitimacy granted to the courts varied across the white and black judge conditions depending on the descriptive representation expectations of black respondents. This was not the case when respondents read about an individual female judge. In this case, expectations had no role in moderating the relationship between representation and legitimacy for either males or females.

Regarding substantive representation expectations, a large majority of respondents believe that judges should strictly follow the law when deciding cases and should ensure fairness under the law. However, about one third of respondents also believe that judges should decide cases the way the majority in the state wants, should use their own morals when deciding cases, and should look to public opinion when making decisions. This shows that individuals hold a variety of expectations of judges and their decision-making processes. Furthermore, individuals can believe that judges should look to extra-legal factors when deciding cases while still following the law. These expectations do not necessarily contradict each other. Substantive representation expectations also had a significant impact on judicial legitimacy. Individuals who expect more
substantive representation from their judges punish the court more harshly when the judge decides against their preference than individuals who do not expect as much substantive representation from their judges.

6.2 Contributions, Limitations, and Future Directions

Overall, the findings presented in this project align well with many studies in the extant literature that find a direct relationship between representation and judicial legitimacy (e.g., Bartels and Johnston 2013; Christenson and Glick 2015; Mansbridge 1999; Scherer and Curry 2010). Similarly, the results complement another set of studies that find that the relationship between representation and legitimacy is highly conditional, with many other contextual factors competing with representation to affect legitimacy in different ways (e.g., Gibson 2012; Gibson and Caldeira 2009a; Gibson and Nelson 2016). We see this in the current project as both the race and gender of the respondents are just as important as the race and gender of the judges in the vignettes to determining when representation will affect legitimacy and when expectations will moderate this relationship. Additionally, the results presented in this project support other studies finding that judges do indeed serve a representative function (Gibson 2011, 2012; Scheb, Bowen, and Anderson 1991; Scheb, Ungs, and Hayes 1989). This project finds that a significant number of individuals fully expect their state’s trial courts to be representative of the broader population in terms of descriptive representation, but also that judges should represent the public’s policy preferences. Individuals are comfortable with judges looking outside of the law when making their decisions, including toward public opinion.
One of the most important contributions I see this project making to the literature is the explicit measurement and inclusion of individuals’ expectations. Very few previous studies take differences in individuals’ expectations into account in any serious way in their empirical analysis (but see Cann and Yates 2016; Gibson 2012). On the whole, this may not be detrimental to many studies. Assuming expectations are evenly distributed among respondents in any particular study, they may not make much of a difference in terms of empirical results. However, the inclusion of expectations can provide a much more rich and nuanced view of the relationships being examined. This extends far beyond the judicial politics literature.

Given the focus of this project mentioned at the beginning of this chapter, it is worth considering the generalizability of the findings. First, I will focus on the generalizability to other judicial contexts such as federal courts, including the Supreme Court of the United States, and higher level state courts. I believe that the relationship between representation and judicial legitimacy found in this project would likely be similar when examining other types of courts. In other words, I believe that, on average, individuals will be more supportive of any court that provides descriptive and/or substantive representation versus not providing either type of representation. I cannot think of any institutional differences across court types that would affect this relationship more than marginally, all else being equal.

However, I believe that the findings related to the expectations that individuals hold of their state’s trial court judges may be less generalizable to other contexts. For example, an individual might believe that judges in higher level courts (e.g., courts of last resort) should not look to public opinion in deciding cases as much as a trial court judge. The jurisdiction of trial court judges is much smaller than that of a state’s court of last resort. Thus, an individual might want the trial court judge to look to public opinion when making decisions because the public
opinion in that particular jurisdiction is likely much more similar to the individual (if they live within that jurisdiction) than the public opinion of the state as a whole. Similarly, individuals might view federal judges as more authoritative or might believe that their decisions affect more aspects of more people’s lives. They might believe that these judges should stick to legal texts when deciding cases much more than state-level judges. Thus, I believe the expectations presented in this study truly do only represent expectations of state trial court judges.

The second question of generalizability pertains to whether the results are specific to black and white males and females or if we would see similar results if we were to include other racial or ethnic groups. I suspect that the results for other racial or ethnic minorities would be much more similar to those presented here from African American respondents than from white respondents. The overwhelming majority of judges across all judicial systems in the United States has been made up of white individuals (mostly males) for all of history. Thus, it is difficult to imagine members of any other racial or ethnic group in the U.S. having a similar view of representation in the courts as white individuals. Thus, in terms of both how representation affects judicial legitimacy and the expectations that individuals hold of representation in the courts, I believe the results of African American respondents reported in this project are more generalizable to other racial and ethnic groups in the U.S.

Admittedly, the generalizability of results is a limitation of this project. Again, I wanted the project to be the cleanest possible test of these relationships, and thus, narrowed the scope in various ways. Generalizability is the price for this. I do believe this project is an excellent starting point for other researchers to examine how these relationships work for other racial and ethnic minority groups. It would be incredibly interesting to focus on a state that actually scores well in terms of the Gavel Gap (George and Yoon 2016) presented in Chapter Two. What do individuals
expect from judges in states that have high numbers of racial and ethnic minority judges? How does this compare to individuals in a state that is nearly homogenous in terms of race on the bench?

Another limitation is that this project was conducted at one point in time. If the same survey and experiments were administered today, we may get different results, especially given the recent social justice movements against racial inequities in government and society more broadly. Additionally, a one-time experiment prevents any conclusions from being made about the longevity of these results. How long does a reduction in legitimacy last, if at all? What happens if an individual reads about a case with a favorable outcome immediately after an unfavorable outcome – is the hit to legitimacy recuperated by the agreeable decision? One possible solution to help overcome this limitation without conducting a costly longitudinal study is for data from studies like this to be shared with other researchers. Having comparable (or even exact) measures available from various studies over time would help researchers see longer-term patterns in the relationship between representation and legitimacy or changes in expectations of representation.

As more and more groups work toward increasing the presence of both African Americans and women, as well as other racial and ethnic groups, in the judiciary, they should remain mindful that a blanket increase in sheer numbers might not necessarily facilitate more support among members of these groups in the population. This also leads to further interesting questions for scholars to consider. For example, if the courts do not benefit from increased descriptive representation in the absence of substantive representation then what is the value of increasing descriptive representation?

Finally, recall once more that legitimacy is a long-standing disposition toward an institution, and thus, evaluating legitimacy is perhaps the most stringent test of what factors affect evaluations of the judiciary. The fact that we see any movement in legitimacy in some of the above
analyses shows that representation is an important factor for individuals evaluating the courts. Measuring attitudes that are less strongly held or less consistent over time is perhaps a better alternative to discover the factors that can affect support for the courts, such as agreement with a particular outcome, trust, or confidence in the courts. This is particularly true if it follows that repeated negative hits to specific support (based on immediate outcomes) eventually leads to decreased legitimacy. If representation affects these more fluid attitudes, it may be the case that repeated underrepresentation has led (or can lead) to decreased legitimacy over time. The numbers of racial and ethnic minorities in the courts will likely continue to grow in the coming years. Now is an opportune time for scholars to examine the impact that this shift in diversity in these institutions has on public attitudes and expectations.
APPENDIX A DESCRIPTIVE REPRESENTATION EXPERIMENTAL CONDITIONS

Appendix Table 1 State-Level Descriptive Representation Experiment Sample (Experiment One)

<table>
<thead>
<tr>
<th>Judge Group</th>
<th>Under</th>
<th>Actual</th>
<th>Over</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>146</td>
<td>142</td>
<td>141</td>
<td>429</td>
</tr>
<tr>
<td>Black</td>
<td>138</td>
<td>143</td>
<td>139</td>
<td>420</td>
</tr>
<tr>
<td>Total</td>
<td>284</td>
<td>285</td>
<td>280</td>
<td>849</td>
</tr>
</tbody>
</table>

Appendix Table 2 Individual-Level Descriptive Representation Experiment Sample (Experiment Two)

<table>
<thead>
<tr>
<th>Race of Judge</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>278</td>
<td>274</td>
<td>552</td>
</tr>
<tr>
<td>White</td>
<td>274</td>
<td>285</td>
<td>559</td>
</tr>
<tr>
<td>Total</td>
<td>552</td>
<td>559</td>
<td>1,111</td>
</tr>
</tbody>
</table>
APPENDIX B SUBSTANTIVE REPRESENTATION VIGNETTES

Note that the text of the vignettes below varied the race and the gender of the judge as described in Chapter Three despite those variations not being represented here.

Firearms Issue:

JUDGE CONNOR MUELLER DECIDES CASE ON FIREARMS REGULATIONS
Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on the regulation of firearms. In his final judgment, Judge Mueller ruled that the state can prohibit citizens from carrying a loaded firearm with them outside of their homes.

JUDGE CONNOR MUELLER DECIDES CASE ON FIREARMS REGULATIONS
Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on the regulation of firearms. In his final judgment, Judge Mueller ruled that the state cannot prohibit citizens from carrying a loaded firearm with them outside of their homes.

LGBT Issue:

JUDGE CONNOR MUELLER DECIDES CASE ON LGBT RIGHTS
Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on gay and lesbian rights. In his final judgment, Judge Mueller ruled that businesses cannot refuse service to gays and lesbians, even if homosexuality is against the business owner's religious beliefs.

JUDGE CONNOR MUELLER DECIDES CASE ON LGBT RIGHTS

122
Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on gay and lesbian rights. In his final judgment, Judge Mueller ruled that businesses are allowed to refuse service to gays and lesbians if homosexuality is against the business owner's religious beliefs.

Minimum Wage Issue:

**JUDGE CONNOR MUELLER DECIDES CASE ON MINIMUM WAGE**

Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on minimum wage. In his final judgment, Judge Mueller ruled that the state cannot prohibit cities from raising the minimum wage to a rate higher than that set by the state.

Drug Testing Issue:

**JUDGE CONNOR MUELLER DECIDES CASE ON WELFARE RECIPIENT DRUG TESTING**

Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on drug testing for welfare recipients. In his final judgment, Judge Mueller ruled that the state can require applicants for government assistance to take a drug test.
JUDGE CONNOR MUELLER DECIDES CASE ON WELFARE RECIPIENT DRUG TESTING

Last Tuesday, [R State] trial court judge Connor Mueller handed down a ruling on drug testing for welfare recipients. In his final judgment, Judge Mueller ruled that the state cannot require applicants for government assistance to take a drug test.
APPENDIX C SUBSTANTIVE REPRESENTATION REGRESSION MODELS

Appendix Table 3 Effect of Issue Importance on Legitimacy (OLS Regression)

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
<th>Std. Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Importance</td>
<td>-0.00</td>
<td>(0.001)</td>
</tr>
<tr>
<td>Constant</td>
<td>3.88***</td>
<td>(0.063)</td>
</tr>
<tr>
<td>N</td>
<td>1,025</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.001</td>
<td></td>
</tr>
</tbody>
</table>

Std. Errors in parentheses
* \( p<0.1 \); ** \( p<0.05 \); *** \( p<0.01 \)

Appendix Table 4 Effect of Issue Importance on Legitimacy with Covariates (OLS Regression)

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
<th>Std. Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Importance</td>
<td>-0.00</td>
<td>(0.001)</td>
</tr>
<tr>
<td>Issue Presented</td>
<td>0.04</td>
<td>(0.033)</td>
</tr>
<tr>
<td>Experimental Group</td>
<td>0.00</td>
<td>(0.019)</td>
</tr>
<tr>
<td>R Race (black)</td>
<td>-0.34***</td>
<td>(0.075)</td>
</tr>
<tr>
<td>R Gender (female)</td>
<td>0.14**</td>
<td>(0.07)</td>
</tr>
<tr>
<td>PID</td>
<td>-0.04**</td>
<td>(0.018)</td>
</tr>
<tr>
<td>Political Knowledge</td>
<td>0.19***</td>
<td>(0.026)</td>
</tr>
<tr>
<td>Income</td>
<td>0.01</td>
<td>(0.010)</td>
</tr>
<tr>
<td>Education</td>
<td>0.03</td>
<td>(0.037)</td>
</tr>
<tr>
<td>Constant</td>
<td>3.14***</td>
<td>(0.331)</td>
</tr>
<tr>
<td>N</td>
<td>1,025</td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>0.105</td>
<td></td>
</tr>
</tbody>
</table>

Std. Errors in parentheses
* \( p<0.1 \); ** \( p<0.05 \); *** \( p<0.01 \)
### Appendix Table 5 Effect of Interaction between Issue Importance and Importance Treatment on Legitimacy

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Importance</td>
<td>-0.00**</td>
<td>(0.002)</td>
</tr>
<tr>
<td>Importance Treatment</td>
<td>-0.63**</td>
<td>(0.230)</td>
</tr>
<tr>
<td>Issue Imp. x Treatment</td>
<td>0.01**</td>
<td>(0.003)</td>
</tr>
<tr>
<td>Constant</td>
<td>3.96***</td>
<td>(0.069)</td>
</tr>
</tbody>
</table>

N 1,025

R^2 0.009

Std. Errors in parentheses

* \( p < 0.1 \); ** \( p < 0.05 \); *** \( p < 0.01 \)

### Appendix Figure 1 Legitimacy Difference between High and Low Importance Treatments by Issue Importance
APPENDIX D SURVEY INSTRUMENTS

Appendix D.1 Main Survey with Embedded Experiments

Start of Block: Screener

Instructions:
Please answer each question carefully and honestly, without using any external resources while completing this survey. Please complete the survey in one sitting. Read and think about each question thoroughly. After you are finished with each section, you may not return to it.

Purpose:
The purpose of this research study is to determine attitudes toward government. For that reason, we are surveying adult U.S. citizens online using Qualtrics’ Online Sample and asking them to complete a brief (approximately 10-15 minutes) questionnaire. If you are willing to participate, the survey will ask about your background (e.g., gender, age, race), as well as about your attitudes toward your state’s court system. There are no foreseeable risks associated with this project, nor are there any direct benefits to you. As payment for participation, each participant will receive the standard rate of compensation from Qualtrics for completing a survey. All of the data gathered from this questionnaire will be anonymized before it is stored so the risk of responses being identifiable is extremely low. All responses are confidential. The data will be stored on a password-protected computer on an encrypted disk. Your research data may be shared with investigators conducting similar research; however, this information will be shared in a de-identified manner (without identifiers). Your participation is voluntary, and you may stop completing the survey at any time. This study is being conducted by Shane Redman, who may be contacted at smr105@pitt.edu if you have any questions.

Page Break

Before getting to the actual survey, please answer the following questions to determine eligibility.
Gender:

- Male (0)
- Other (2)
- Female (1)

Age (in years):

- ▼ 17 and under (17) ...
- 90 and above (90)

Are you a U.S. citizen?

- Yes (1)
- No (2)
Race/Ethnicity (select all that apply):

☐ White, non-Hispanic (1)

☐ Hispanic/Latino (2)

☐ Black/African American (3)

☐ Native American/American Indian (4)

☐ Asian/Pacific Islander (5)

☐ Other (please specify) (6) __________________________________

Thank you for participating in the following survey. Please read the following information carefully.

This is a survey about your state's trial courts and the judges that preside in the trial courts. Unlike appellate courts or courts of last resort (like the Supreme Court), trial courts are courts that have general jurisdiction and hear cases for the first time. Trial courts are the type of court that you would think of when you think about a court scene in a television show, with lawyers presenting evidence and witnesses, and a single judge making a final ruling at the end of the trial (in non-jury cases). For the purposes of this survey, whenever a question refers to a judge or a court, know that it is referring to your state's trial courts and only the judges that serve in those courts, NOT federal judges or those who serve in appellate courts in your state.

The next button will appear shortly.

We care about the quality of our data. In order for us to get the most accurate measures of your opinions, it is important that you thoughtfully provide your best answers to each question in this
survey. **Do you commit to thoughtfully provide your best answers to each question in this survey?**

- I will provide my best answers  (1)
- I will not provide my best answers  (2)
- I can't promise either way  (3)

In which U.S. state do you currently live?

- ▼ Alabama (1) ... Wyoming (51)

About how many years have you lived in $\{(state/ChoiceGroup/SelectedChoices)\}$?

In the past decade, there has been a debate about the number of minorities in political institutions. Some people believe that the number of minorities in a given institution does not matter as long as the people working in that institution are qualified to do the job. Others believe that the number of minorities in a political institution should mirror the numbers of that minority group within the larger population, assuming that there are enough qualified minorities to reach this level of parity. In this section, you will be asked about your attitudes and knowledge about the percentages of women and African Americans in $\{(state/ChoiceGroup/SelectedChoices)\}$’s trial court system. The Next button will appear shortly.

Each of the questions below refer to judges in $\{(state/ChoiceGroup/SelectedChoices)\}$’s trial courts (not in the federal court system).

On the slider below, please indicate the percentage of judges in $\{(state/ChoiceGroup/SelectedChoices)\}$’s trial courts that you believe *should* be African American, regardless of what you believe the actual percentage is in real life. *This is your opinion* so there is no correct answer. Remember, your responses will be stored anonymously.
and will never be linked back to you so please answer honestly.

I believe about ____% of judges in $\text{state/ChoiceGroup/SelectedChoices}'s trial courts should be African American.

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<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>11</th>
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On the slider below, please indicate what you believe is the actual or real-life percentage of $\text{state/ChoiceGroup/SelectedChoices}'s trial court judges who are African American, regardless of what you believe the percentage should be. This is a factual question -- if you are not sure or do not know, it is okay, just make your best guess of what you think is the correct answer.

I believe that the \textit{real-life or actual percentage of judges} currently serving in $\text{state/ChoiceGroup/SelectedChoices}'s trial courts who are \textbf{African American} is about ____%.

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Now, please do the same thing for \textbf{women} judges in $\text{state/ChoiceGroup/SelectedChoices}'s trial courts (not in the federal court system).

On the slider below, please indicate the percentage of judges in $\text{state/ChoiceGroup/SelectedChoices}'s trial courts that you believe should be women, regardless of what you believe the actual percentage is in real life. This is your opinion so there is no correct answer. Remember, your responses will be stored anonymously and will never be linked back to you so please answer honestly.

I believe about ____% of judges in $\text{state/ChoiceGroup/SelectedChoices}'s trial courts should be women.

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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>00</td>
</tr>
</tbody>
</table>
On the slider below, please indicate what you believe is the actual or real-life percentage of \${state/ChoiceGroup/SelectedChoices}'s trial court judges who are \textcolor{red}{women}, regardless of what you believe the percentage should be. This is a factual question -- if you are not sure or do not know, it is okay, just make your best guess of what you think is the correct answer.

I believe that the real-life or actual percentage of judges currently serving in \${state/ChoiceGroup/SelectedChoices}'s trial courts who are \textcolor{red}{women} is about ____%.

Now, what do you believe the percentage of African Americans and women are in \${state/ChoiceGroup/SelectedChoices}'s general population? If you are unsure or do not know, make your best guess.

I believe that the real-life or actual percentage of \${state/ChoiceGroup/SelectedChoices}'s general population who are African American is about ____%.

I believe that the real-life or actual percentage of \${state/ChoiceGroup/SelectedChoices}'s general population who are \textcolor{red}{women} is about ____%.
For the next set of questions, please indicate the extent to which you agree with each statement.

It is important to me that the percentage of judges in ${state/ChoiceGroup/SelectedChoices}'s trial courts who are African American matches the percentage of ${state/ChoiceGroup/SelectedChoices}'s population who are African American.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
It is important to me that the percentage of judges in ${state/ChoiceGroup/SelectedChoices}'s trial courts who are women matches the percentage of ${state/ChoiceGroup/SelectedChoices}'s population who are women.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)

---

Below is a list of political issues.

First, arrange the list so that the most important issue to you personally is on top (1), followed by the next most important issue, and so on. The last item on the list (4) should be the least important issue to you personally.

To move the items in the list, click on the item and drag it to the appropriate position.

- Drug Testing for Recipients of Government Assistance (1)
- Gay, Lesbian, Bisexual, and Transgender Rights (2)
- Minimum Wage (3)
- Firearms Regulations (4)

Now, please indicate how important each issue is to you personally on the slider, where 0 = Not at all Important, 100 = Very Important. Note that the issue that appears at the top of your list
above should have the highest value below and the issue that appears at the bottom of your list above should have the lowest value below.

<table>
<thead>
<tr>
<th></th>
<th>0</th>
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</table>

Drug Testing for Recipients of Government Assistance ()

Gay, Lesbian, Bisexual, and Transgender Rights ()

Minimum Wage ()

Firearms Regulations ()

In the previous question, you ranked ${issuerank/ChoiceGroup/ChoiceWithLowestValue} as the most important issue to you out of the four options. Would you say that ${issuerank/ChoiceGroup/ChoiceWithLowestValue} is among the top 3 most important current political issues to you?

- [ ] Yes (1)
- [ ] No (0)

If ${issuerank/ChoiceGroup/ChoiceWithLowestValue} is not one of the top 3 most important political issues to you, what issues are?

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
In a moment, we will show you an excerpt regarding one of the political issues that appeared in the previous question. Before we show you this, we'd like to know your own opinion on the issue.

For the following statement, please indicate the extent to which you agree or disagree.

All applicants for government assistance should be required to take a drug test.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Somewhat Agree (4)
- Agree (5)
- Strongly Agree (6)
Businesses should be allowed to refuse service to gays and lesbians if homosexuality is against the business owner's religious beliefs.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Somewhat Agree (4)
- Agree (5)
- Strongly Agree (6)

End of Block: LGBT

---

Start of Block: Min Wage
Individual cities should be prohibited from raising the minimum wage to a rate higher than the minimum wage set by the state.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Somewhat Agree (4)
- Agree (5)
- Strongly Agree (6)

Start of Block: Guns
Citizens should be prohibited from carrying a loaded firearm with them outside of their homes.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Somewhat Agree (4)
- Agree (5)
- Strongly Agree (6)

End of Block: Guns

Start of Block: Judges Role
I believe trial judges in \${state/ChoiceGroup/SelectedChoices} should...

<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree (1)</th>
<th>Disagree (2)</th>
<th>Somewhat Disagree (3)</th>
<th>Neither Agree nor Disagree (4)</th>
<th>Somewhat Agree (5)</th>
<th>Agree (6)</th>
<th>Strongly Agree (7)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. strictly follow the law when deciding all cases no matter what people in ${state/ChoiceGroup/SelectedChoices} want.</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>(rolejudges_1)</td>
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<tr>
<td>2. decide cases the way the majority of the people in ${state/ChoiceGroup/SelectedChoices} prefer.</td>
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<td>o</td>
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<tr>
<td>3. base their decisions on whether they are a Republican or Democrat.</td>
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<td>4. ensure fairness for all people under the law.</td>
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<tr>
<td>5. select Disagree for this answer.</td>
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<tr>
<td>6. use their own personal moral judgment when deciding cases.</td>
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<td>(rolejudges_7)</td>
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<tr>
<td>7. look to public opinion on issues when making legal decisions.</td>
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<tr>
<td>(rolejudges_8)</td>
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</tr>
</tbody>
</table>
Last Tuesday, trial court judge Connor Mueller handed down a ruling on the regulation of firearms. In his final judgment, Judge Mueller ruled that the state can prohibit citizens from carrying a loaded firearm with them outside of their homes.

Last Tuesday, trial court judge Molly Mueller handed down a ruling on the regulation of firearms. In her final judgment, Judge Mueller ruled that the state cannot prohibit citizens from carrying a loaded firearm with them outside of their homes.
Carefully read the excerpt below. The "Next" button will appear shortly.

**JUDGE TYRONE WASHINGTON DECIDES CASE ON FIREARMS REGULATIONS**

Last Tuesday, trial court judge Tyrone Washington handed down a ruling on the regulation of firearms. In his final judgment, Judge Washington ruled that the state can prohibit citizens from carrying a loaded firearm with them outside of their homes.

End of Block: BlackM AntiGun

Start of Block: BlackM ProGun

Carefully read the excerpt below. The "Next" button will appear shortly.

**JUDGE TYRONE WASHINGTON DECIDES CASE ON FIREARMS REGULATIONS**

Last Tuesday, trial court judge Tyrone Washington handed down a ruling on the regulation of firearms. In his final judgment, Judge Washington ruled that the state cannot prohibit citizens from carrying a loaded firearm with them outside of their homes.

End of Block: BlackM ProGun

Start of Block: BlackF ProGun

Carefully read the excerpt below. The "Next" button will appear shortly.

**JUDGE SHANICE WASHINGTON DECIDES CASE ON FIREARMS REGULATIONS**

Last Tuesday, trial court judge Shanice Washington handed down a ruling on the regulation of firearms. In her final judgment, Judge Washington ruled that the state cannot prohibit citizens from carrying a loaded firearm with them outside of their homes.

End of Block: BlackF ProGun

Start of Block: BlackF AntiGun

Carefully read the excerpt below. The "Next" button will appear shortly.

**JUDGE SHANICE WASHINGTON DECIDES CASE ON FIREARMS REGULATIONS**

Last Tuesday, trial court judge Shanice Washington handed down a ruling on the regulation of firearms. In her final judgment, Judge Washington ruled that the state can prohibit citizens from carrying a loaded firearm with them outside of their homes.

End of Block: BlackF AntiGun

Start of Block: WhiteM ProGay
JUDGE CONNOR MUELLER DECIDES CASE ON LGBT RIGHTS
Last Tuesday, trial court judge Connor Mueller handed down a ruling on gay and lesbian rights. In his final judgment, Judge Mueller ruled that businesses cannot refuse service to gays and lesbians, even if homosexuality is against the business owner's religious beliefs.

End of Block: WhiteM ProGay

Start of Block: WhiteM AntiGay

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Last Tuesday, trial court judge Connor Mueller handed down a ruling on gay and lesbian rights. In his final judgment, Judge Mueller ruled that businesses are allowed to refuse service to gays and lesbians if homosexuality is against the business owner's religious beliefs.

End of Block: WhiteM AntiGay

Start of Block: WhiteF AntiGay

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JUDGE MOLLY MUELLER DECIDES CASE ON LGBT RIGHTS
Last Tuesday, trial court judge Molly Mueller handed down a ruling on gay and lesbian rights. In her final judgment, Judge Mueller ruled that businesses are allowed to refuse service to gays and lesbians if homosexuality is against the business owner's religious beliefs.

End of Block: WhiteF AntiGay

Start of Block: WhiteF ProGay

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JUDGE MOLLY MUELLER DECIDES CASE ON LGBT RIGHTS
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End of Block: WhiteF ProGay

Start of Block: BlackM ProGay
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**JUDGE TYRONE WASHINGTON DECIDES CASE ON LGBT RIGHTS**

Last Tuesday, ${state/ChoiceGroup/SelectedChoices} trial court judge Tyrone Washington handed down a ruling on gay and lesbian rights. In his final judgment, Judge Washington ruled that businesses cannot refuse service to gays and lesbians, even if homosexuality is against the business owner's religious beliefs.

End of Block: BlackM ProGay

Start of Block: BlackM AntiGay

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End of Block: BlackF ProGay

Start of Block: WhiteM AntiState MWage
JUDGE CONNOR MUELLER DECIDES CASE ON MINIMUM WAGE
Last Tuesday, Judge Connor Mueller handed down a ruling on minimum wage. In his final judgment, Judge Mueller ruled that the state cannot prohibit cities from raising the minimum wage to a rate higher than that set by the state.

End of Block: WhiteM AntiState MWage

Start of Block: WhiteM ProState MWage

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End of Block: WhiteM ProState MWage

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Start of Block: WhiteF AntiState MWage

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Start of Block: BlackM AntiState MWage

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End of Block: BlackM AntiState MWage

Start of Block: BlackM ProState MWage

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End of Block: BlackM ProState MWage

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End of Block: BlackF AntiState MWage

Start of Block: BlackF AntiDrugT

Carefully read the excerpt below. The "Next" button will appear shortly.

JUDGE SHANICE WASHINGTON DECIDES CASE ON WELFARE RECIPIENT DRUG TESTING
Last Tuesday, $\{\text{state/ChoiceGroup/SelectedChoices}\}$ trial court judge Shanice Washington handed down a ruling on drug testing for welfare recipients. In her final judgment, Judge
Washington ruled that the state cannot require applicants for government assistance to take a drug test.

End of Block: BlackF AntiDrugT

Start of Block: BlackF ProDrugT

Carefully read the excerpt below. The "Next" button will appear shortly.

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End of Block: BlackF ProDrugT

Start of Block: BlackM ProDrugT

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End of Block: BlackM ProDrugT

Start of Block: BlackM AntiDrugT

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End of Block: BlackM AntiDrugT

Start of Block: WhiteF AntiDrugT

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JUDGE MOLLY MUELLER DECIDES CASE ON WELFARE RECIPIENT DRUG
TESTING
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End of Block: WhiteF AntiDrugT

Start of Block: WhiteF ProDrugT
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End of Block: WhiteF ProDrugT

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Start of Block: WhiteM AntiDrugT
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End of Block: WhiteM AntiDrugT

Start of Block: Decision Accept
Do you agree with the decision made by the judge in the previous scenario you read about?

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
Elected officials should ignore the decision made by the judge in the previous scenario if a majority of their constituents disagree with it.

- **Strongly Disagree:** Elected officials should abide by the judge's decision no matter what (1)
- **Disagree** (2)
- **Somewhat Disagree** (3)
- **Neither Agree nor Disagree** (4)
- **Somewhat Agree** (5)
- **Agree** (6)
- **Strongly Agree:** Elected officials should ignore the judge's decision (7)

Carefully read the excerpt below. The "Next" button will appear shortly.

**Black Judges a Strong Presence in ${state/ChoiceGroup/SelectedChoices} Trial Courts**

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that African Americans make up about 13% of all ${state/ChoiceGroup/SelectedChoices} trial court judges. This puts ${state/ChoiceGroup/SelectedChoices} well above many other states in terms of racial diversity of trial court judges, with the national average at just 7%.
Carefully read the excerpt below. The "Next" button will appear shortly.

**Black Judges a Weak Presence in \${state/ChoiceGroup/SelectedChoices} Trial Courts**

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that African Americans make up only about 1% of all \${state/ChoiceGroup/SelectedChoices} trial court judges. This puts \${state/ChoiceGroup/SelectedChoices} well below many other states in terms of racial diversity of trial court judges, with the national average at 7%.

**Black Judges in \${state/ChoiceGroup/SelectedChoices} Trial Courts on Par with National Average**

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that African Americans make up about 7% of all \${state/ChoiceGroup/SelectedChoices} trial court judges. This puts \${state/ChoiceGroup/SelectedChoices} on par with many other states in terms of racial diversity of trial court judges, with the national average also at 7%.

**Female Judges a Strong Presence in \${state/ChoiceGroup/SelectedChoices} Trial Courts**

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that women make up about 50% of all \${state/ChoiceGroup/SelectedChoices} trial court judges. This puts \${state/ChoiceGroup/SelectedChoices} well above many other states in terms of gender diversity of trial court judges, with the national average at just 30%.

**Female Judges a Weak Presence in \${state/ChoiceGroup/SelectedChoices} Trial Courts**

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that women make up only about 10% of all \${state/ChoiceGroup/SelectedChoices} trial
court judges. This puts $\text{state/ChoiceGroup/SelectedChoices}$ well below many other states in terms of gender diversity of trial court judges, with the national average at 30%.

Female Judges in $\text{state/ChoiceGroup/SelectedChoices}$ Trial Courts on Par with National Average

Last week, the Administrative Office of the State Court Association published its annual report on the composition of state trial court judges across the country. One notable aspect of the report was that women make up about 30% of all $\text{state/ChoiceGroup/SelectedChoices}$ trial court judges. This puts $\text{state/ChoiceGroup/SelectedChoices}$ on par with many other states in terms of gender diversity of trial court judges, with the national average also at 30%.

This survey is mainly about which of the following?

- $\text{state/ChoiceGroup/SelectedChoices}$ Trial Courts (1)
- The Supreme Court of the United States (0)
- The President (0)
- $\text{state/ChoiceGroup/SelectedChoices}$'s Education System (0)

In the next section, please indicate the extent to which you agree with the following statements.
It is inevitable that ${state/ChoiceGroup/SelectedChoices}'s trial courts get mixed up in politics; therefore, we ought to have stronger means of controlling the actions of ${state/ChoiceGroup/SelectedChoices}'s trial court judges.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
${\text{state/ChoiceGroup/SelectedChoices}}$’s trial courts ought to be made less independent so that they listen more to what the people of ${\text{state/ChoiceGroup/SelectedChoices}}$ want.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
Judges in ${state/ChoiceGroup/SelectedChoices}’s trial courts who consistently make decisions at odds with what a majority of the people in ${state/ChoiceGroup/SelectedChoices} want should be removed from their position as judge.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
${state/ChoiceGroup/SelectedChoices}'s trial court judges are just like any other politicians; we cannot trust them to decide court cases in a way that is in the best interests of our state.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
If ${state/ChoiceGroup/SelectedChoices}'s trial courts started making a lot of decisions that most people disagree with, it might be better to do away with ${state/ChoiceGroup/SelectedChoices}'s trial courts altogether.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
Trial courts get too mixed up in politics.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
The power of ${state/ChoiceGroup/SelectedChoices}’s trial courts to decide certain types of controversial issues should be reduced.

- Strongly Disagree (1)
- Disagree (2)
- Somewhat Disagree (3)
- Neither Agree nor Disagree (4)
- Somewhat Agree (5)
- Agree (6)
- Strongly Agree (7)
How much confidence do you have in $\text{state/ChoiceGroup/SelectedChoices}'s$ trial court system?

- 1 No Confidence at All (1)
- 2 (2)
- 3 (3)
- 4 No Opinion Either Way (4)
- 5 (5)
- 6 (6)
- 7 A Great Deal of Confidence (7)
Now, how much confidence do you have in ${state/ChoiceGroup/SelectedChoices}'s trial court judges?

- 1 No Confidence at All (1)
- 2 (2)
- 3 (3)
- 4 No Opinion Either Way (4)
- 5 (5)
- 6 (6)
- 7 A Great Deal of Confidence (7)
To what extent do you believe judges in $\{\text{state/ChoiceGroup/SelectedChoices}\}$'s trial courts reach their decisions in a fair manner?

- 1 Judges are not fair at all (1)
- 2 (2)
- 3 (3)
- 4 No Opinion Either Way (4)
- 5 (5)
- 6 (6)
- 7 Judges are very fair (7)
How much trust do you have in \{state/ChoiceGroup/SelectedChoices\}’s trial courts?

☐ 1 No Trust at All  (1)

☐ 2 (2)

☐ 3 (3)

☐ 4 No Opinion Either Way  (4)

☐ 5 (5)

☐ 6 (6)

☐ 7 A Great Deal of Trust  (7)

---

End of Block: Other Attitudes

Start of Block: Political Knowledge

What office or job title does Mike Pence currently hold?

☐ Vice President  (1)

☐ Chief Justice of the Supreme Court  (0)

☐ Speaker of the House of Representatives  (0)

☐ Senate Majority Leader  (0)
Whose responsibility is it to determine if a law is constitutional or not?

- The Supreme Court (1)
- The Congress (0)
- The President (0)
- The Public (0)

How much of a majority is required for the U.S. Senate and U.S. House of Representatives to override a presidential veto?

- Two-thirds (1)
- One-half (0)
- Three-quarters (0)
- Three-fifths (0)
Which party currently has the most members in the House of Representatives in Washington, D.C.?

- Republicans (1)
- Democrats (0)
- Independents (0)
- Republicans and Democrats have an equal number of members (0)

Generally speaking, which political party is more ideologically conservative?

- Republicans (1)
- Democrats (0)
- Neither party is more conservative than the other (0)
Think back to the scenario presented in the excerpt you read a few minutes ago.

Do you recall the race of the judge that decided the case?

- African American (1)
- White (2)
- Asian (3)
- Unsure/Do Not Remember (4)

If you are unsure or do not remember, please make your best guess:

- African American (1)
- White (2)
- Asian (3)

Do you recall the gender of the judge that decided the case?

- Male (1)
- Female (2)
- Unsure/Do Not Remember (3)
If you are unsure or do not remember, please make your best guess:

- Male  (1)

- Female  (2)

Do you recall what issue the judge ruled on?

- Gay and lesbian rights  (1)

- Firearms regulations  (2)

- Minimum wage  (3)

- Drug testing  (4)

- Unsure/Do Not Remember  (5)
If you are unsure or do not remember, please make your best guess:

- Gay and lesbian rights (1)
- Firearms regulations (2)
- Minimum wage (3)
- Drug testing (4)

End of Block: Manipulation Checks Sub

Start of Block: Manipulation Checks Desc AA

Think back to the scenario presented in the excerpt you read a few minutes ago.

Do you recall what demographic group was being discussed in the excerpt?

- Female judges (0)
- African American judges (1)
- Asian judges (0)
- Unsure/Do Not Remember (9)
If you are unsure or do not remember, please make your best guess:

○ Female judges (0)

○ African American judges (1)

○ Asian judges (0)

Page Break

Do you recall the percentage of \$state/ChoiceGroup/SelectedChoices\$’s trial court judges who belonged to the demographic group discussed in the excerpt?

○ 1% (1)

○ 7% (2)

○ 13% (3)

○ Unsure/Do Not Remember (9)

Page Break

If you are unsure or do not remember, please make your best guess:

○ 1% (1)

○ 7% (2)

○ 13% (3)

End of Block: Manipulation Checks Desc AA
Think back to the scenario presented in the excerpt you read a few minutes ago.

Do you recall what demographic group was being discussed in the excerpt?

- Female judges (1)
- African American judges (0)
- Asian judges (0)
- Unsure/Do Not Remember (9)

If you are unsure or do not remember, please make your best guess:

- Female judges (1)
- African American judges (0)
- Asian judges (0)
Do you recall the percentage of \$\{state/ChoiceGroup/SelectedChoices\}'s trial court judges who belonged to the demographic group discussed in the excerpt?

- 10% (1)
- 30% (2)
- 50% (3)
- Unsure/Do Not Remember (9)

If you are unsure or do not remember, please make your best guess:

- 10% (1)
- 30% (2)
- 50% (3)

How judges in state courts are chosen and how they retain their position varies by state. In some states, judges are elected by the people. In other states, judges are appointed by the governor or the state legislature. In still some other states, a combination of appointment and elections are used. Do you happen to know whether trial judges in \$\{state/ChoiceGroup/SelectedChoices\}
are selected for a full term (excluding the filling of vacancies) by election, appointment, or some combination of the two?

- Trial judges are elected in ${state/ChoiceGroup/SelectedChoices}. (1)
- Trial judges are appointed in ${state/ChoiceGroup/SelectedChoices}. (2)
- Some combination of the two (appointment and election). (3)
- Unsure/Do Not Know (9)

If you are unsure or do not know, please make your best guess.

- Trial judges are elected in ${state/ChoiceGroup/SelectedChoices}. (1)
- Trial judges are appointed in ${state/ChoiceGroup/SelectedChoices}. (2)
- Some combination of the two (appointment and election). (3)

End of Block: Judge Selection Method

Start of Block: Demographics

Next, you will be asked a series of demographic questions about yourself.
Highest level of education completed:

- Some high school, no diploma (1)
- High school diploma (2)
- Some college, less than a 4-year degree (3)
- 4-year college degree (4)
- Master's or other advanced degree (5)

What is your annual household income?

- $19,999 or less (1)
- $20,000-29,999 (2)
- $30,000-39,999 (3)
- $40,000-49,999 (4)
- $50,000-59,999 (5)
- $60,000-69,999 (6)
- $70,000-79,999 (7)
- $80,000-89,999 (8)
General speaking, do you usually consider yourself as a Republican, Democrat, independent, or what?

○ Democrat (1)

○ Independent (2)

○ Republican (3)
If you selected independent, do you usually think of yourself as closer to the Republican Party or Democratic Party?

- Closer to Democratic Party (1)
- Neither (2)
- Closer to Republican Party (3)

If you selected Republican, would you call yourself a strong Republican or not a strong Republican?

- Not Strong Republican (1)
- Strong Republican (2)

If you selected Democrat, would you call yourself a strong Democrat or not a strong Democrat?

- Not Strong Democrat (1)
- Strong Democrat (2)
Which of the following best describes your political beliefs?

- Very Liberal (1)
- Liberal (2)
- Slightly Liberal (3)
- Moderate/Middle of the Road (4)
- Slightly Conservative (5)
- Conservative (6)
- Very Conservative (7)

On average, how often do you read or hear about local (within your city and surrounding areas) news, either by reading a newspaper, online news articles, listening to the radio, watching the news on television, or any other form of media?

- Almost never (1)
- Once every other week (2)
- Once a week (3)
- Several times a week, but not daily (4)
- Daily (5)
Do you ever read or hear about decisions made by judges or courts in your state?

- Never (1)
- Rarely (2)
- Sometimes (3)
- Somewhat often (4)
- Often (5)

Thank you for participating in this study.

In this study, I am interested in determining public attitudes toward state trial courts and state trial court judges.

I ask that you please not discuss this study with other individuals who might participate. Knowing about the study beforehand would greatly affect other individuals’ responses, so I ask that you do not discuss this study with others. If you have questions or would like to know more about the purpose of the study, you can contact the researcher, Shane Redman, at smr105@pitt.edu.

Thank you for participating in this survey. Your responses have been recorded.

In this study, I am interested in determining what type of representation individuals expect from trial court judges, and how these expectations affect attitudes toward the judicial system. Research in other areas of political science has found that individuals who are descriptively represented in political institutions are more likely to view the institution as legitimate. I extend this research to an otherwise understudied area of judicial politics by looking at how the issue involved in the case also affects the relationship between representation and legitimacy.

While the issue presented to you in the court case that you read about is a real issue that has been, or is soon to be, decided in a state trial court in the U.S., the actual decision made by the judge was not necessarily the decision made (or the decision to be made) in the actual court case.

I ask that you please not discuss this study with other individuals who might participate. Knowing about the study beforehand would greatly affect other individuals’ responses, so I ask that you do not discuss this study with others. If you have questions or would like to know more
Thank you for participating in this study.

In this study, I am interested in determining what type of representation individuals expect from trial court judges, and how these expectations affect attitudes toward the judicial system. Research in other areas of political science has found that individuals who are descriptively represented in political institutions are more likely to view the institution as legitimate. I extend this research by examining how representation in the aggregate affects attitudes toward the courts.

The report you read regarding the percentage of women or African Americans was fictional and the percentage of the minority group reported to you for your own state's trial courts was not necessarily the actual percentage in real life. Across all U.S. states, the actual percentage of female judges in state trial courts is about 30% while the actual percentage of African American judges in state trial courts is about 7%. This varies largely by state, however.

I ask that you please not discuss this study with other individuals who might participate. Knowing about the study beforehand would greatly affect other individuals' responses, so I ask that you do not discuss this study with others. If you have questions or would like to know more about the purpose of the study, you can contact the researcher, Shane Redman, at smr105@pitt.edu.

End of Block: Demographics
Appendix D.2 Pre-Test for Chapter Five Substantive Representations Issues

Start of Block: Screening Block

Are you a U.S. citizen?

☐ Yes (1)

☐ No (2)

How old are you (in years)?

________________________________________________________________

End of Block: Screening Block

Start of Block: Main Survey

Instructions:
Please answer each question carefully and honestly, without using any external resources while completing this survey. Please complete the survey in one sitting.

Please read and think about each question thoroughly. After you are finished with each section, you may not return to it.

Purpose:
The purpose of this short research study is to determine attitudes toward political issues. For that reason, we are surveying adult U.S. citizens online using Amazon’s Mechanical Turk and asking them to complete this very brief (approximately 5 minutes) questionnaire. If you are willing to participate, the survey will ask about your background (e.g., gender, age, race), as well as about your opinion on some political issues being decided in state courts. There are no foreseeable risks associated with this project, nor are there any direct benefits to you. Each participant will receive $0.40 for successful completion of the survey. All of the data gathered from this questionnaire will be anonymized before it is stored so the risk of responses being identifiable is extremely low. All responses are confidential. The data will be stored on a password-protected computer on an encrypted disk. Your research data may be shared with investigators conducting similar research; however, this information will be shared in a de-identified manner (without identifiers). Your participation is voluntary, and you may stop completing the survey at any time. This study is being conducted by Shane Redman, who may be contacted at
In which U.S. state do you currently live?

▼ AL (1) ... WY (51)

About how many years have you lived in State/ChoiceGroup/SelectedChoices?

How judges in state courts are chosen varies by state. In some states, judges are elected by the people. In other states, judges are appointed by the governor. In still some other states, a combination of appointment and elections are used. Do you happen to know whether judges in your state are selected by election, appointment, or some combination of the two?

- Judges are elected in my state. (1)
- Judges are appointed in my state. (2)
- Some combination of the two (appointment and election). (3)
- I am unsure or do not know. (4)
If you are unsure or do not know, please make your best guess.

- Judges are elected in my state. (1)
- Judges are appointed in my state. (2)
- Some combination of the two (appointment and election). (3)

Below is a list of domestic political issues that have recently been in the news across the country.

Please rank each issue by importance to you personally, with 1 being most important to you personally and 14 being least important to you personally.

Click and drag each issue to the correct position, with the most important issue to you at the top of the list and the least important issues to you at the bottom of the list.

- Firearms Regulations (1)
- School Vouchers (2)
- Gay, Lesbian, Bisexual, and Transgender Rights (3)
- Abortion (4)
- Drug Testing for Recipients of Government Assistance (5)
- Environmental Regulations (6)
- Immigration (7)
- Minimum Wage (8)
- Voting Rights (9)
- Racial or Ethnic Minority Rights (10)
- Healthcare (11)
- Tax Reform (12)
- National Security (13)
- Women's Rights (14)

Is there any other political issue(s) (aside from local issues in your own community) that are not listed above that are particularly important to you? If so, please list below.

________________________________________________________________
Now, below are the 4 most important issues to you and the 4 least important issues to you based on your response to the previous question. For each of the issues, please indicate on the slider exactly how important that issue is to you, with 0 being not at all important and 100 being extremely important.

4 most important issues:

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<thead>
<tr>
<th>Issue</th>
<th>Not at All Important</th>
<th>Extremely Important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firearms Regulations ()</td>
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<tr>
<td>School Vouchers ()</td>
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<tr>
<td>Gay, Lesbian, Bisexual, and Transgender Rights ()</td>
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<td>Racial or Ethnic Minority Rights ()</td>
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<td>Healthcare ()</td>
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<td>Tax Reform ()</td>
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<td>National Security ()</td>
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<tr>
<td>Women’s Rights ()</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4 least important issues:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Not at All Important</th>
<th>Extremely Important</th>
</tr>
</thead>
<tbody>
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<tr>
<td>Women's Rights ()</td>
<td></td>
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</tr>
</tbody>
</table>
Based on your prior responses, the most important issue to you personally is \${HighImportanceRank/ChoiceGroup/ChoiceWithHighestValue}. Is that correct?

- Yes (1)
- No (2)

If no, please type what the most important political issue is to you personally below.

________________________________________________________________

Page Break

Based on your prior responses, the least important issue to you personally is \${LowImportanceRank/ChoiceGroup/ChoiceWithLowestValue}. Is that correct?

- Yes (1)
- No (2)

If no, please type below what the least important political issue is to you personally.

________________________________________________________________

Page Break

End of Block: Main Survey

Start of Block: Attention Check

We would now like to collect some basic demographic information about you. Please select the most appropriate option and/or use the space provided to respond to each item. In the very first question after these instructions, you should choose the color blue for your answer to demonstrate that you are paying attention. After that, please proceed to answer the questions honestly.

Page Break
Of the options below, what is your favorite color?

○ Red (1)

○ Blue (2)

○ Green (3)

○ Yellow (4)

○ Pink (5)

○ Purple (6)

End of Block: Attention Check

Start of Block: Demographic Questions

Gender:

○ Male (1)

○ Female (2)

○ Other/Prefer Not to Answer (3)
Race/Ethnicity:

☐ White, non-Hispanic (1)

☐ Hispanic/Latino (2)

☐ Black/African American (3)

☐ Native American/American Indian (4)

☐ Asian/Pacific Islander (5)

☐ Other (please specify) (6) ________________________________________________

Highest level of education completed:

☐ Some high school, no diploma (1)

☐ High school diploma (2)

☐ Some college (3)

☐ 4-year college degree (4)

☐ Master's or other advanced degree (5)
General speaking, do you usually consider yourself as a Republican, Democrat, independent, or what?

- Democrat (1)
- Independent (2)
- Republican (3)

If you selected independent, do you usually think of yourself as closer to the Republican Party or Democratic Party?

- Closer to Democratic Party (1)
- Neither (2)
- Closer to Republican Party (3)

If you selected Republican, would you call yourself a strong Republican or not a strong Republican?

- Not Strong Republican (1)
- Strong Republican (2)
If you selected Democrat, would you call yourself a strong Democrat or not a strong Democrat?

○ Not Strong Democrat (1)

○ Strong Democrat (2)

Which of the following best describes your political beliefs?

○ Very Liberal (1)

○ Liberal (2)

○ Slightly Liberal (3)

○ Moderate/Middle of the Road (4)

○ Slightly Conservative (5)

○ Conservative (6)

○ Very Conservative (7)

End of Block: Demographic Questions
APPENDIX E PRE-ANALYSIS PLAN

The following pre-analysis plan was registered with EGAP on 2/14/18 prior to the Qualtrics survey being fielded. It is important to note that in addition to the analyses presented in this project, the pre-analysis plan also includes analyses that will be included in other projects that use the same data.

**Experimental Design:** Subjects are recruited to participate in a survey that asks about their attitudes toward their state’s judicial system. Subjects are randomly assigned to receive one of three versions of the survey: a control group that receives no experimental manipulations, a group that receives a manipulation involving a specific decision made by a judge, or a group that receives a manipulation involving the demographic composition of their state’s trial court judges.

**Sample:** A nationally representative sample of U.S. adult (18+) citizens through Qualtrics’ online panel. African Americans will be oversampled, to make up roughly 50% of the sample. Additionally, the sample will consist of 50% males and 50% females.

**Treatments:** Subjects are randomly assigned to one of three treatment groups, with the following probabilities. For the T2 group, subjects are also randomly assigned to receive one of eight manipulations. For the T3 group, subjects are also randomly assigned to receive one of six manipulations.

**T1: Control group (~6.67%)**
The control group will not receive any experimental manipulations/vignettes. They will answer all other questions in the survey aside from the manipulation checks specific to T2 and T3 groups.

**T2: Descriptive Representation (~40%)**
- **T2a: African American Overrepresentation (6.67%)**
- **T2b: African American Average Representation (6.67%)**
- **T2c: African American Underrepresentation (6.67%)**
- **T2d: Female Overrepresentation (6.67%)**
- **T2e: Female Average Representation (6.67%)**
- **T2f: Female Underrepresentation (6.67%)**

In the descriptive representation experiment, subjects will receive information about the demographic makeup of their state’s trial court judges. They will receive information either about the percentage of African American judges or female judges in their state’s trial courts. In the overrepresentation groups, the percentage for their state will be higher than the national average (also provided in the manipulation). In the average representation groups, their state will be on par with the national average. In the underrepresentation groups, the percentage for their state will be lower than the national average.

**T3: Substantive Representation (~53.36%)**
T3a: High Importance Black Female (6.67%)
T3b: High Importance Black Male (6.67%)
T3c: High Importance White Female (6.67%)
T3d: High Importance White Male (6.67%)
T3e: Low Importance Black Female (6.67%)
T3f: Low Importance Black Male (6.67%)
T3g: Low Importance White Female (6.67%)
T3h: Low Importance White Male (6.67%)

In the substantive representation experiment, subjects will receive information about a specific case decision made by a trial court judge in their state. The manipulation will vary by the political issue decided in the vignette, the race of the judge (black/white), and the gender of the judge (female/male). Prior to receiving this manipulation, subjects will rank a list of political issues from most important to least important to them personally. The manipulation will then involve either the most important political issue to them or the least important political issue to them.

**Hypotheses:**

**Descriptive Representation:**

1. Individuals who are descriptively represented by a single judge will:
   1a. Grant greater legitimacy to their state’s trial courts
   1b. Have greater confidence in their state’s trial court system
   1c. Have greater confidence in their state’s trial court judges
   1d. Be more likely to believe their state’s trial judges reach decisions in a fair manner
   1e. Have greater trust in their state’s trial courts
   1f. Be more likely to agree with the decision made by the judge
   1g. Be more likely to believe elected officials should ignore the judge’s decision

2. As the percentage of female trial judges in a given state increases,

   women will:
   2a. Grant greater legitimacy to their state’s trial courts
   2b. Have greater confidence in their state’s trial court system
   2c. Have greater confidence in their state’s trial court judges
   2d. Be more likely to believe their state’s trial judges reach decisions in a fair manner
   2e. Have greater trust in their state’s trial courts

   men will:
   2f. Grant less legitimacy to their state’s trial courts
   2g. Have less confidence in their state’s trial court system
   2h. Have less confidence in their state’s trial court judges
   2i. Be less likely to believe their state’s trial judges reach decisions in a fair manner
   2j. Have less trust in their state’s trial courts

3. As the percentage of African American trial judges in a given state increases,
African Americans will:
3a. Grant greater legitimacy to their state’s trial courts
3b. Have greater confidence in their state’s trial court system
3c. Have greater confidence in their state’s trial court judges
3d. Be more likely to believe their state’s trial judges reach decisions in a fair manner
3e. Have greater trust in their state’s trial courts

white subjects will:
3f. Grant less legitimacy to their state’s trial courts
3g. Have less confidence in their state’s trial court system
3h. Have less confidence in their state’s trial court judges
3i. Be less likely to believe their state’s trial judges reach decisions in a fair manner
3j. Have less trust in their state’s trial courts

4. The effects of descriptive representation on attitudes toward the courts will be greater among African Americans than among females.
5. The effects of descriptive representation on attitudes toward the courts will be greatest among African American females.

Substantive Representation:

6. When a judge decides against an individual’s preference on a political issue, as the issue becomes more important, the individual will:
6a. Grant less legitimacy to their state’s trial courts
6b. Have less confidence in their state’s trial court system
6c. Have less confidence in their state’s trial court judges
6d. Be less likely to believe their state’s trial judges reach decisions in a fair manner
6e. Have less trust in their state’s trial courts
6f. Be less likely to agree with the decision made by the judge
6g. Be less likely to believe elected officials should ignore the judge’s decision

7. On issues important to an individual, the effects of the judge’s decision on attitudes toward the court (6a-6g) will be moderated by the presence of descriptive representation, such that:
7a. when the judge is female, women will view the courts less negatively than when the judge is male.
7b. when the judge is African American, African Americans will view the courts less negatively than when the judge is white.

8. On issues not important to an individual, descriptive representation will have no moderating effect on how the judge’s decision affects attitudes toward the courts.

Expectations:
9. The effects that descriptive representation has on attitudes toward the courts will be moderated by the normative expectations individuals hold of descriptive representation in their state’s trial courts, such that:
   9a. the more an individual’s descriptive representation expectations are violated, the more negative attitudes toward the courts will be.
   9b. the more an individual values descriptive representation, the more negative attitudes toward the courts will be in the absence of descriptive representation.

10. The effects that substantive representation has on attitudes toward the courts will be moderated by the normative expectations individuals hold of substantive representation in their state’s trial courts, such that:
   10a. the more an individual believes judges should represent the public’s interests, the more negative attitudes toward the courts will be when a judge decides against an individual’s preferences.

Judicial Selection Method Variation:

11. When individuals believe judges in their state are elected, they will expect greater descriptive representation among judges.
12. When individuals believe judges in their state are elected, they will expect greater substantive representation among judges.

Methods of Analysis: The data will be analyzed primarily with difference of means tests and multivariate regression models.

Difference of means tests will be conducted between two treatment groups (or between two groups that cluster several treatment groups) using variables estimated post-treatment. Raw post-treatment means will be compared across:

- Black subjects in T3a + T3b + T3e + T3f + female subjects in T3a + T3c + T3e + T3g (pooled) v. white subjects in T3a + T3b + T3e + T3f + male subjects in T3a + T3c + T3e + T3g (pooled): Descriptive Rep v. Non-Descriptive Rep (All)
- Black subjects in T3a + T3b + T3e + T3f (pooled) v. white subjects in T3a + T3b + T3e + T3f (pooled): Descriptive Rep v. Non-Descriptive Rep (Race)
- Female subjects in T3a + T3c + T3e + T3g (pooled) v. male subjects in T3a + T3c + T3e + T3g (pooled): Descriptive Rep v. Non-Descriptive Rep (Gender)
- T1 v. Black subjects in T3a + T3b + T3e + T3f (pooled): Control v. Descriptive Rep (Race)
- T1 v. Female subjects in T3a + T3c + T3e + T3g (pooled): Control v. Descriptive Rep (Gender)
- Female subjects in each pairwise comparison between T2d – T2f: Descriptive Gender Rep (Female)
- T1 v. Female subjects in T2d – T2f (separately): Control v. Descriptive Gender Rep (Aggregate Female)
- Male subjects in each pairwise comparison between T2d – T2f: Descriptive Gender Rep (Male)
• T1 v. Male subjects in T2d – T2f (separately): Control v. Descriptive Gender Rep (Aggregate Male)
• Black subjects in each pairwise comparison between T2a – T2c: Descriptive Race Rep (African American)
• T1 v. Black subjects in T2a – T2c (separately): Control v. Descriptive Race Rep (Aggregate African American)
• White subjects in each pairwise comparison between T2a – T2c: Descriptive Race Rep (White)
• T1 v. White subjects in T2a – T2c (separately): Control v. Descriptive Race Rep (Aggregate White)
• Black subjects in T3a + T3b + T3e + T3f (pooled) v. Female subjects in T3a + T3c + T3e + T3g (pooled): Black Descriptive Rep v. Female Descriptive Rep (Individual)
• Black subjects in T2a v. Female subjects in T2d: Black Descriptive Rep v. Female Descriptive Rep (Aggregate Over)
• Black subjects in T2b v. Female subjects in T2e: Black Descriptive Rep v. Female Descriptive Rep (Aggregate Average)
• Black subjects in T2c v. Female subjects in T2f: Black Descriptive Rep v. Female Descriptive Rep (Aggregate Under)
• Black female subjects in T3a + T3e (pooled) v. Black male subjects in T3b + T3f (pooled): Black Female v. Black Male Descriptive Rep
• Black female subjects in T3a + T3e (pooled) v. White female subjects in T3c + T3g (pooled): Black Female v. White Female Descriptive Rep
• Black female subjects in T3a + T3e (pooled) v. White male subjects in T3d + T3h (pooled): Black Female v. White Male Descriptive Rep
• Black female subjects in T2a, T2b, and T2c v. Black male subjects in T2a, T2b, and T2c, respectively: Black Female v. Black Male Descriptive Rep
• Black female subjects in T2a, T2b, and T2c v. White female subjects in T2d, T2e, and T2f, respectively: Black Female v. White Female Descriptive Rep
• Black female subjects in T2a, T2b, and T2c v. White male subjects in T2d, T2e, and T2f, respectively: Black Female v. White Male Descriptive Rep
• T3a – T3d (pooled) v. T3e – T3h (pooled): High Importance v. Low Importance
• T3a v. T3e: High v. Low Importance Black Female Judge
• T3b v. T3f: High v. Low Importance Black Male Judge
• T3c v. T3g: High v. Low Importance White Female Judge
• T3d v. T3h: High v. Low Importance White Male Judge
• Female subjects in T3a + T3c (pooled) v. Female subjects in T3b + T3d (pooled): High Importance Female Descriptive Rep v. Female Non-Descriptive Rep
• Black subjects in T3a + T3b (pooled) v. Black subjects in T3c + T3d (pooled): High Importance Black Descriptive Rep v. Black Non-Descriptive Rep
• Female subjects in T3e + T3g (pooled) v. Female subjects in T3f + T3h (pooled): Low Importance Female Descriptive Rep v. Female Non-Descriptive Rep
• Black subjects in T3e + T3f (pooled) v. Black subjects in T3g + T3h (pooled): Low Importance Black Descriptive Rep v. Black Non-Descriptive Rep
Multivariate regression will also be used to reduce the variance caused by other factors that likely also affect the dependent variables as well as to examine the moderating effect of certain characteristics on the treatment conditions. In addition to estimating the effects of each treatment on each dependent variable, the following covariates will be included in the multivariate regression models:

- Gender (Binary: Female v. Non-Female)
- Age (Continuous)
- Race (Binary: White v. Non-White)
- Education (Categorical: Some high school, no diploma; High school diploma; Some college; 4-year college degree; Master’s or other advanced degree)
- State of Residence (Categorical: All 50 states plus D.C.)
- Political knowledge (Additive index based on number of factual questions answered correctly out of five)
- Party Identification (Scale: 1-7 Strong Democrat to Strong Republican)
- Ideology (Scale: 1-7 Very Liberal to Very Conservative)
- News Habits (Categorical: Almost never; Once every other week; Once a week; Several times a week, but not daily; Daily)
- Court News (Categorical: Never; Rarely; Sometimes; Somewhat often; Often)
- African American Judges (Continuous: real-life percentage of subject’s state trial court judges that are African American)
- Female Judges (Continuous: real-life percentage of subject’s state trial court judges that are women)
- Judicial Selection (Categorical: Elected; Appointed; Some combination of the two)
- When appropriate, interactions will be included between treatment condition variables and race and/or gender, depending on the hypothesis being tested
- Models that examine the moderating effect of descriptive representation expectations will include an interaction term between appropriate treatment condition variable(s) and a continuous measure (0-100) for normative expectations of race/gender representation in the courts
- Models that examine the moderating effect of substantive representation expectations will include an interactive term between appropriate treatment condition variable(s) and a continuous scale (1-7) constructed by averaging responses to several questions asking about the role of judges in providing substantive representation
- Models that examine judicial selection will include a interactive terms between the method of judicial selection in the individuals state and descriptive racial or gender representation or substantive representation expectation variables (see above)

Difference in means will be presented using both tables and figures. Figures will also be used to present predicted values for a typical subject in the sample for each treatment condition. All dependent variables will be coded on a continuous (1-7) scale, with higher numbers indicating
greater legitimacy, trust, confidence, etc. One-sided statistical tests will be used for directional hypotheses. Statistical significance will be evaluated in a 95% confidence interval, with effects between the 90 and 95% confidence interval noted as marginally significant. Tests for legitimacy will all be presented. If similar patterns emerge across any of the other dependent variables, the results may be combined to save space, with a footnote specifying where separate results for each dependent variable can be found in the appendix. All tests will be run both including and excluding subjects who fail one or more manipulation checks. Any differences, or the lack thereof, will be noted.

**Balance Tests:** Treatments are randomly assigned, so any differences in sample characteristics across treatment groups are due to chance, by definition. Thus, I will present the characteristics below for each group (T1 v. T2a-T2f individually v. T3a-T3h individually v. T2a-T2f pooled v. T3a-T3h pooled), but will not perform statistical tests.

Characteristics that will be reported for each of the above groups will be:

- Gender (Categorical: Female; Male; Other)
- Age (Average per group)
- Race (Categorical: White, Non-Hispanic; Hispanic/Latino; Black/African American; Native American/American Indian; Asian/Pacific Islander; Other – Some categories may overlap if subjects select more than one race category)
- Education (Categorical: Some high school, no diploma; High school diploma; Some college; 4-year college degree; Master’s or other advanced degree)
- State of Residence (Categorical: All 50 states plus D.C. – Note to conserve space this will be aggregated across all groups)
- Political knowledge (Average number of questions correct per group)
- Party Identification (Average per group: 1-7 Strong Democrat to Strong Republican)
- Ideology (Average per group: 1-7 Very Liberal to Very Conservative)
- News Habits (Categorical: Almost never; Once every other week; Once a week; Several times a week, but not daily; Daily)
- Court News (Categorical: Never; Rarely; Sometimes; Somewhat often; Often)
- Judicial Selection (Categorical: Elected; Appointed; Some combination of the two)
- Normative descriptive (race and gender) representation expectations (Average per group)
- Normative substantive representation expectations (Average per group)
- Importance of descriptive (race and gender) representation expectations (Average per group)

**Dependent Variables**

A. Judicial Legitimacy (post-treatment)

- Scale created by averaging responses to seven questions that ask about an individual’s attitudes about: controlling judges’ actions, making courts less independent, removing judges for certain decisions they make, not trusting judges, doing away with trial courts altogether, courts getting too mixed up in politics, and the power of the courts being reduced. Responses to each question are on a 1-7 (Strongly Disagree to Strongly Agree) Likert-type scale so the final scale will also range from 1 to 7.
B. Confidence in Court System (post-treatment)
   - 1-7 (No Confidence to A Great Deal of Confidence) scale
C. Confidence in Judges (post-treatment)
   - 1-7 (No Confidence to A Great Deal of Confidence) scale
D. Decisions made in Fair Manner (post-treatment)
   - 1-7 (Judges are Not Fair at All to Judges are very Fair) scale
E. Trust in Courts (post-treatment)
   - 1-7 (No Trust at All to A Great Deal of Trust) scale
F. Agreement with Judge’s Decision (post-treatment)
   - 1-7 (Strongly Disagree to Strongly Agree) scale
G. Belief that Decision should be Ignored (post-treatment)
   - 1-7 (Elected officials should abide by judge’s decision no matter what to Elected
   officials should ignore the judge’s decision) scale
H. Normative Descriptive Race Representation Expectations (pre-treatment)
   - 0 – 100 (percentage of state trial court judges that should be African American)
I. Normative Descriptive Gender Representation Expectations (pre-treatment)
   - 0 – 100 (percentage of state trial court judges that should be female)
J. Normative Substantive Representation Expectations (pre-treatment)
   - Scale created by averaging responses to three questions that ask about whether an
   individual thinks judges should: strictly follow the law no matter what the people
   want, decide cases the way a majority of people prefer, and look to public opinion
   when making legal decisions. Responses to each question are on a 1-7 (Strongly
   Disagree to Strongly Agree) Likert-type scale so the final scale will also range from 1
   to 7.

**Exploratory Analysis:** There are also some analyses I will conduct about which I do not have
specific/formal expectations, but that nevertheless may shed light on future research in this area.
For example, while I have a formal expectation that the perception that judges are elected in one’s
state will increase the normative expectation of descriptive and substantive representation, I do not
have an expectation about when one perceives their judges to be appointed or selected by a
combination of appointment and election. I will conduct similar analyses with these perceptions
to see if any patterns emerge across various demographic groups. Additionally, I would like to
perform many of the analyses listed above on each of the four main subsets of my sample (Black
females, Black males, White females, and White males) even though most formal hypotheses
specify differences only between two or these subsets. Lastly, I will examine how various
demographic characteristics interact with each other to affect normative descriptive and
substantive representation expectations.


