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Gender and Deception: Moral Perceptions and Legal Responses

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INTRODUCTION

When students in a Consumer Law course are introduced to the Federal Trade Commission Act, they often read a pair of cases interpreting Section 5’s rule against “unfair and deceptive acts or practices” in commerce. Charles of the Ritz vs. FTC is a 1944 case about a women’s facial cream, branded as Rejuvenescence. In fact the brand name was the problem: the FTC was concerned that buyers would be led to believe that their skin would somehow age in reverse. The Second Circuit was inclined to agree, approvingly citing expert testimony that “the average woman, conditioned by talk in magazines and over the radio of ‘vitamins, hormones, and God knows what,’ might take ‘rejuvenescence’ to mean that this ‘is one of the modern miracles’ and is ‘something which would actually cause her youth to be restored.’” The court ruled that the FTC was permitted to “insist on the most literal truthfulness” and prohibit the cosmetics company from using the name Rejuvenescence. (The company changed the name to Revenescence and moved on.)

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

Reading the cases side by side, it is difficult to avoid a sense that caveat emptor is a rule for he and not for she. The products in question were unusually gendered; there is no question that the court assumed the users of cream to be women and the users of the tractors to be men. At the same time, the innate dangerousness of the products was also clearly different—hot tractor fuel as compared to underperforming moisturizer. The upshot of the two decisions: women were protected from a fanciful brand name, and men had to figure out the exploding fuel situation for themselves.

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1 Charles of the Ritz Dist. v. Fed. Trade Com’n, 143 F.2d 676 (2d Cir. 1944).
Granted gender is not the only difference between the cases. Most importantly, *International Harvester* was decided after the FTC Policy Statement on Deception in 1983. If the gender of consumers influencing the outcomes of these cases, it was one factor among others. But the opinions’ holdings and tones suggest the hypothesis that there may be more implicit appeal to the consumer protection of women than the consumer protection of men.

In a culture where gender is highly salient, it is not surprising that parties’ gender might affect case outcomes. Nor should we be surprised if gender sometimes figures into social and individual judgments about deceptive behavior, including judgments about whether an act of deception is more or less wrongful, or whether it merits a legal response. In his book *Horse Trading in the Age of Cars: Men in the Marketplace*, historian Steven Gelber reports that in the nineteenth century United States, the market for horses was a domain of men, one in which lying was generally understood to be permitted. “Nobody—not your neighbor, your best friend, your church brethren, not even the minister himself—could be trusted in a horse trade.” In this man’s world, “[t]he morality—or more precisely, immorality—of horse trading derived from the way it operated as a game. ... Horse traders expected to be judged by the ethics of the game.”

The legal historian Edward Balleisen also observes that the nineteenth century doctrine of *caveat emptor* belonged to urban marketplaces occupied by white men. By contrast, opinion writers and regulators took a more protective attitude towards members of socially disfavored groups, including women, who were considered less able to protect themselves against deceptive practices. Whereas a man who deceived a man triumphed in a contest of equals, a man who deceived a woman took undue advantage of a vulnerable party. As women, immigrants, Black people, and others entered markets that had been reserved for white men, there were calls for more robust protections against deceptive practices, eventually leading to a shift away from *caveat emptor*.

Our social world is very different from that of the nineteenth century United States. Yet gender has not disappeared from the cultural landscape, or from attitudes about when deception is and is not permissible. Newsworthy examples and everyday tropes abound. During the 2011 Women’s World Cup, the *New York Times* reported on sharply different attitudes in the men’s and women’s games toward taking a dive—feigning a fall or injury to draw a call against an opponent. Whereas the practice was relatively common and widely accepted in men’s professional soccer, it was less common in the women’s game, and players tended to frown on it. When businesses seek to avoid legal liability for nondisclosure of inside information, they issue “Big Boy Letters,” disclaiming reliance on one another’s representations. And more subtly, gender creeped into public conversations about the 2003 prosecution of Martha Stewart for insider trading and the 2021

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3 FTC Policy Statement on Deception, 10 FTC 110, 174 (October 14, 1983).
5 Gelber at 15. Gelber describes in detail how these practices migrated to car sales, and ways that the car market remained and remains highly gendered. *Id.* at 138-63.
prosecution of Elizabeth Holmes for wire fraud.\(^9\) There is no way to know what relationship, if any, gender has to fraud prosecutions, but it is notable in itself that public commentators naturally drew the link.

To date, no one has systematically studied whether and how gender figures into people’s perceptions of or judgments about the wrongfulness of deceptive acts. There are three questions one might ask about gender and deception.

First, is gender a predictor of the propensity to engage in deception or to be deceived, either in general or in specific contexts? Men are reportedly more likely to engage in deception on the soccer pitch than are women. Are there other contexts in which either men or women more likely to employ deception? Are there contexts in which men or women are more likely to be deceived?

Second, is a person’s gender a predictor of their perceptions of or judgments about the morality of deception, again either in general or in specific contexts? It seems, for example, that women on the soccer pitch are more likely to judge deception wrongful than are men. Are there other contexts in which men and women tend to diverge in attitudes toward the permissibility of deception?\(^10\)

Third, do the genders of deceiver or deceived figure into people’s judgments regarding the blameworthiness of a deceptive act, in general or in specific contexts? In the late nineteenth century United States, deception of men in the marketplace appears to have been viewed as more acceptable than was deception of women. Are there other contexts in which people consider it more or less wrongful for a man to lie to a woman, for a man to lie to a man, for a woman to lie to man, or for a woman to lie to a woman?

This essay is focused on the third question: Does the gender of the deceiver and of the deceived ever figure into perceptions or judgments regarding whether a deceptive act is morally blameworthy? The empirical tools we use allow us also to say something about the second: whether a person’s gender is a predictor of their judgments regarding the permissibility of deception. At this point, we do not say anything about any relationships between gender and propensity to deceive or be deceived.\(^11\) Our focus is on common moral attitudes toward deception, not deception itself.


\(^10\) Although the first two questions are distinct, we might expect their answers to be connected. One would hope, for example, that a person who is more likely to view deception as wrongful is less likely to engage in deceptive practices. Contrariwise, motivated moral reasoning might lead those with a propensity to deceive to judge deception to be less wrongful than do those who lean toward candor.

\(^11\) There exists a large literature on this question. See, e.g., Jessica A. Kennedy & Laura J. Kray, Gender similarities and differences in dishonesty, 48 Current Opinion in Psychology (2022), https://doi.org/10.1016/j.copsyc.2022.101461 (reviewing evidence that men are often more dishonest than are women).
We know of no systematic examination of whether or how the gender of deceiver and deceived parties affects people’s assessment of the wrongfulness of deceptive acts. Inspired by the opportunity of this symposium, this essay makes a start in thinking about how one might approach the topic and reports the results of three preliminary studies. Our research uses simple vignette experiments to elicit subjects’ off-the-cuff intuitions about men and women deceiving and being deceived. We examine the effects of gender by randomly varying party names (Ashley or Josh, for example), by randomly varying the gender associated with a product (beard trimmer vs. hair dryer), and by randomly varying the gendered noun identifying the victims of a fraud (brothers vs. sisters). We ask subjects to report on their reactions to different deceptive situations by reporting in Study 1 on the ethicality of a behavior, in Study 2 on their support for a regulatory approach, and in Study 3 on their preference for level of punishment.

The studies reported here show some clear patterns and some mixed results. We find robust support for the proposition that women are more likely than men to regard deception in the marketplace as an ethical wrong. We also find some support for the proposition that men deceiving women and firms deceiving women are regarded as somewhat more problematic than men or firms deceiving men. We also find suggestive but limited evidence that paternalistic regulation of women’s transactions is more welcome than that of regulation of men’s consumer choices. Finally, we suggest some pathways forward for more research.

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

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

Our interest in in gender and deception was piqued by histories of the law of deception and examples like Charles of the Ritz and International Harvester. Recent empirical work in moral psychology also supports the hypothesis that participants’ gender can be relevant to perceptions or judgments regarding the morality of a deceptive act. More specifically, it suggests that women may be perceived as weaker market participants than men, making it less fair to target them and more reasonable to protect them from transactional harms.

A. Descriptive and Prescriptive Gender Stereotypes

There is a long history of social psychology research associating gender roles with transactional roles and attitudes. Prejudicial attitudes like sexism are sometimes understood to be a form of simple animus. Yet intergroup bias and prejudices have discernible, measurable content. Bias on the basis of age, for example, functions differently than bias on the basis of gender, because the stereotypes about the elderly are not the same as stereotypes about women.
In order to understand how a bias functions in the social world, we need to know what attitudes and cognitions it embodies. Social psychologists map stereotypic content through the empirical study of the beliefs and attitudes people associate with different roles. So, for example, researchers might ask a panel of experimental participants to rate, on a scale from 1 to 7, the extent that the participants think that “friendliness” is an important feminine trait, and then whether it is an important masculine trait. If they find that respondents rate it as important for femininity but not for masculinity, they have discovered a piece of information about the constitutive elements of a gender stereotype. A number of studies of stereotyping and bias collate and evaluate the beliefs and attitudes that comprise the bias—i.e., sexism, or racism, or ageism, ableism, or others—and use them to create an instrument for measuring bias in individuals. The theory behind these studies is that individuals who endorse more stereotypic beliefs are more biased.

For our purposes, we are not interested here in who is rated as more or less sexist. Our interest is in understanding what beliefs are associated with gender bias. From the earliest days of the study of sex role stereotyping, it was clear that many of the traits most strongly associated with one gender or the other also describe transactional styles. Sandra Bem’s 1974 Sex Role Inventory found the stereotypical male role to include characteristics such as “self-reliant,” “assertive,” “analytical,” and “competitive,” whereas the stereotyped female role included characteristics such as “yielding,” “susceptible to flattery,” and “gullible.” In the context of a market transaction, these different traits suggest that a woman would be more likely than a man to go along with a bad or deceptive deal—that women are less able to protect themselves against deception.

A 2002 updated survey of gender stereotypes from Deborah Prentice and Erica Carranza tells a similar story. The researchers examined a range of attributes and identified what they called “relaxed” and “intensified” prescriptions and proscriptions. For example, it is a positive trait overall for a person to be friendly or to have good business sense. But it is especially important for women to be friendly, and especially important for a man to have good business sense. Prentice and Carranza found that although naivete and gullibility are not aspirational traits per se, they are acceptable traits for women. By contrast, for men they are third-rail attributes that are especially disfavored.

The relevance of these gender stereotypes to expectations of deception is suggested by a 2014 study investigating the hypothesis that women are perceived as more easily misled than are men. Subjects who read otherwise identical vignettes were more likely to predict that a buyer would be misled if named “Patricia” than if named “Michael.” Women were evaluated as less competent but more warm—willing to go along to get along—and therefore regarded as more vulnerable targets.

14 Laura J. Kray, Jessica A. Kennedy, Alex B. Van Zant, Not competent enough to know the difference? Gender stereotypes about women’s ease of being misled predict negotiator deception, 125 Organizational Behavior and Human Decision Processes 61 (2014), https://doi.org/10.1016/j.obhdp.2014.06.002.
These findings are consistent with both elements of Bem’s Sex Role Inventory and Prentice and Carranza’s updated inventory.

While some researchers were taking stock of gender stereotypes, others were taxonomizing gender-based attitudes.\textsuperscript{15} Sexism has traditionally been understood to be essentially hostile, encompassing attitudes such as a belief that women are unintelligent or too emotional, or simply a dislike of women. In a 1996 article, Peter Glick and Susan Fiske presented evidence of what they termed “benevolent” sexism, which encompasses norms that might be described as chivalrous or admiring. Benevolent sexism espouses beliefs like “Women should be put up on a pedestal,” “Women should be cherished and protected by men,” and “Women are more moral than men.” Although Glick and Fiske’s work is not about moral judgments per se, these components in their inventory suggest how sexist attitudes might affect moral perceptions and judgments. Several attitudes associated with benevolent sexism in particular hold that women are deserving of special protection, suggesting that the deception of women might be especially wrongful.

Together, these findings suggest that acts of deception might be perceived or judged differentially depending on whether the deceiver or deceived is a man or a woman. If a person believes women should be put up on a pedestal, they might also think that women should be protected from predatory sellers. If a person believes women are weaker or more guilivable, and therefore more likely to be deceived, we might expect them to believe that deceiving a woman is especially wrongful, a form of punching down rather than fair play.

\textit{B. Moral typecasting}

The empirical studies of gender stereotypes discussed above are suggestive as to how gender might figure into moral judgments. They are not, however, studies of moral perception or judgment \textit{per se}.

Experimental moral psychology studies how ordinary people reach everyday judgments about whether an act is moral or immoral, about who is responsible for a moral wrong, about morally just deserts, and the like.\textsuperscript{16} Experimental psychologists Neil Hester and Kurt Gray have recently observed that to date, there has been little study of how race, gender, age, or other individual characteristics figure into such judgments.\textsuperscript{17} One reason is that much of the work in empirical moral \textit{psychology} seeks test propositions from moral \textit{philosophy}, which almost never turn on the


identity of adult wrongdoers or their adult victims. To a moral philosopher, the correct resolution of a trolley problem does not depend on the race, gender, politics, or other individual characteristics of the driver of the trolley or of those in its path. Accordingly, philosophers and psychologists who have investigated people’s moral judgments about trolley problems treat the effects of identity as noise rather than signal.

There are, however, reasons to expect the identity of the participants in a morally salient act to affect how ordinary people perceive its morality or immorality. As Hester and Gray observe, “[d]ecades of research on stereotyping and prejudice highlight how identity categories such as race, gender, age, nationality, and religion shape interpersonal judgments.”18 This conclusion should be no surprise to legal scholars. Prosecutors, courts, and juries regularly assess wrongfulness and assign responsibility, and decades of empirical legal scholarship, especially in criminal law, has shown that the identity of both the defendant and of the victim often affects legal officials’ decisions.19 If one is interested in how actual people in fact perceive moral situations or reach moral judgments, one should attend also to ways in which the identity of the participants affects those perceptions and judgments.

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

In a recent article in the Journal of Personality and Social Psychology, psychologists Kurt Gray and Daniel Wagner reported a series of studies about the role of moral typecasting in subjects’ moral perceptions.20 The studies showed that people associate moral agents with characteristics such as causality, intentionality, morality, responsibility, and praise, and that they view moral patients as being especially sensitive to pain or pleasure—as experiencers. The studies also provided empirical support for an inverse relationship between perceptions of moral agency and moral patiency: perceiving someone as an agent caused subjects not to associate them with characteristics associated with patiency; perceiving someone as a patient caused subjects not to associate them with characteristics associated with agency. And the studies indicated that these associations tend to endure beyond the scenario that triggers the assignments. Subjects who were told a story that portrayed a character as a moral agent were less likely to view that person as

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18 Hester & Gray at ___.
sensitive to pain or pleasure going forward. And subjects who were told a story that portrayed a character as a moral patient were less likely to view that person as acting intentionally or assign them responsibility in future transactions in which the person did not occupy the role of patient.

Although the roles of agent and patient can be set by the structure of a morally salient event, there is evidence that people also attribute agency and patiency based on more lasting personal traits—on a person’s identity. To take some extreme examples, people associate robots and deities with the characteristics of agency and not those of patiency, and they associate frogs and infants with characteristics of patiency and not those of agency.21 Several studies have suggested that gender also influences people’s perceptions of agency or patiency. A 2016 article reported that subjects tended to behave more altruistically toward females than toward males, and that this difference is driven at least in part by the perception that women are more sensitive to suffering than are men—a core characteristic of patiency.22 A 2020 article reported a group of studies finding across four countries that women were more easily categorized as victims and men more easily categorized as perpetrators.23 A recent working paper reports a computational-linguistic analysis of a corpus of over 141,000 documents English-language documents spanning 200 years that showed a significant, though decreasing, association of characteristically male nouns with agency words and a significant though decreasing association of characteristically female nouns with experience words.24 Some have even argued that gender is the more fundamental category—that the pervasive role of masculinity and femininity in people’s moral reasoning explains the categories of agency or patiency.25

Perceptions of patiency and agency are closely linked to perceptions of moral harm, to assignments of moral responsibility, and thereby to assessments of moral wrongfulness. The more patiency a person is perceived to have, the greater the perception of harm to them; the more agency a person is perceived to have, the greater the assignment of responsibility to them; the greater the harm and greater the responsibility, the more wrongful an act is judged to be. “If the essence of morality is captured by the combination of harmful intent and painful experience, then acts committed by agents with greater intent and that result in more suffering should be judged as more immoral.”26 Consequently, if women tend to be typecast as patients and men typecast as agents, one might

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expect wrongs committed by men against women to be perceived as more wrongful than those committed by women against men, men against men, or women against women.

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

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

Second, few if any studies of moral typecasting address how people evaluate acts of deception. Studies have asked subjects about wrongs like killing, negligently causing bodily harm, stealing, polluting, not paying for goods or services, or causing a fellow employee to be fired. Although some of these scenarios involve deception to hide the wrong, none target deception simpliciter. And deception differs from other wrongs in two ways that, according to the theory of moral typecasting itself, could affect how people perceive or judge the wrongfulness of a deceptive act. First, the harms of deception are as not as immediate or palpable as are the harms of other wrongs. A story about someone stepping on broken glass due to another’s negligence is likely to elicit a more visceral reaction than a story about someone agreeing to pay tens of thousands of dollars for dance lessons she will never use. The moral typecasting theory suggests that perceptions of harm play a significant role in the identification of moral wrongs. Second, deception involves a degree of agency on both sides of the transaction. When deception causes material harm, it is because the deceived party believes the deceiver and acts in reliance on the falsehood. Both belief and action involve agency. Thus the law has long recognized that the deceived party’s reliance can be more or less reasonable, and it assigns liability for deception accordingly. The agency on both sides of a deception complicates application of the theory of moral typecasting. Taken together, these considerations suggest that even if we had evidence that the genders of agent and patient affect moral judgments of wrongdoing generally, we would want additional evidence that it affects moral assessments acts of deception in specific.

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

27 See Gray & Wegner 2009 at ___.
II. VIGNETTE STUDIES

Our hypothesis is that the gender of deceiver and deceived affects people’s perceptions of or judgments regarding the wrongfulness of an act of deception. More specifically, our prediction overall is that people tend to perceive or judge male deception of females as more wrongful than deception involving other gender pairings.

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

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

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

1. Method

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

The first scenario described the sale of a table. Each subject was randomly assigned to read it in one of four conditions: Male Seller/Male Buyer; Male Seller/Female Buyer; Female Seller/Male Buyer; and Female Seller/Female Buyer. In the Male Seller/Female Buyer condition, the scenario read as follows:

Please imagine that when Josh moved into his first apartment, his parents gave him their old kitchen table. Josh used the table for a few years, and then decided to sell it when he was moving out of state.
Josh remembers when his parents bought the table about ten years ago from a big box store, for about $100. The table is solid wood and in good condition. It actually looks like an antique, but in fact similar tables can still be purchased from stores like Target or Wal-Mart for under $200.

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

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

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

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

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

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

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

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

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

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

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

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

2. Results

1004 subjects were recruited via the online platform Prolific to participate in an online questionnaire study. 49.6% of subjects were male.\textsuperscript{29} Ages ranged from 18 to 81, with a median age of 34. The study was preregistered as AsPredicted #105983. Subjects read two scenarios in a fixed order, first the table scenario and then a scenario about a car. The second scenario is not described here, though it is included in the preregistration.\textsuperscript{30}

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

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

We predicted that we would see a difference between the MM and the MW condition, with scenarios in which men deceive other men rated as more ethical than men deceiving women. This hypothesis was borne out. For Offer (W=34247, p=.058), for Omission (W=33760, p=.109), and for Lie (W=34066, p=.060), the trend was in line with predictions, with marginally significant results. Consistent with preregistration, we also tested the overall difference (Total), and that difference was statistically significant (W=35106, p=.017). Finally, we tested the MM-MW difference for Legal in the MM vs. MW condition, and saw that subjects were more likely to support a right to rescission from a male seller if the buyer was a woman rather than a man (W=28020, p=.043).

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\textsuperscript{29} In each study here, we ask subjects to report their gender identity (not biological sex), and we rely on self-reported gender identity to construct gender categories for data analysis. In each study, we have subjects reporting that they identify as male, female, or non-binary. We did not have specific predictions about the difference between non-binary subjects and male or female subjects. We analyzed individual differences with male subjects vs. non-male subjects, where non-male subjects include subjects who report that they identify as female or non-binary and subjects who elected not to report their gender identity.

\textsuperscript{30} The second scenario condition was randomly assigned. There was no effect of condition on ratings of ethicality—but there were some effects of the condition from the first scenario on the responses to the second scenario. This evidence of a priming effect suggested that the results of the second scenario were affected by the first scenario.
b. Subjects did not show an overall preference for same-gender deception over cross-gender deception; MM was not more ethical than WM and WW was not more ethical than WM.

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

In our preregistration, we also posited two differences based on the gender of subjects. In line with our observations from previous pilot studies, we expected a more robust differentiation between the MM and MW conditions from male respondents than from female and non-binary respondents, and this is what we observed. Male respondents were significantly more likely to rate men fooling men as more ethical than women fooling women (W=8709.5, p=.038) and female and non-binary respondents showed a similar trend but the difference was not statistically significant (W=8681.5, p=.238).

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

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

<table>
<thead>
<tr>
<th></th>
<th>Male Subjects</th>
<th>Female and Non-Binary Subjects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer*</td>
<td>4.91</td>
<td>4.68</td>
</tr>
<tr>
<td>Omit**</td>
<td>3.16</td>
<td>2.72</td>
</tr>
<tr>
<td>Lie***</td>
<td>2.20</td>
<td>1.93</td>
</tr>
</tbody>
</table>

*W=135550, p=.021
**W=144690, p<.0001
***W=135090, p=.020

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

d. Corporations are male.

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

But overall, our results matter more most transactions are implicitly viewed as either MM or MW—i.e., if sellers are more likely to be viewed as male. We asked subjects to answer the following:
This might seem like an odd question, but here is the premise: for certain non-human actors, some people intuitively assign genders. For example, people often think of dogs as male and cats as female by default, even though there are male cats and female dogs.

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

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

3. Summary

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

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

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

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

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

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

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

The medians are as follows.
- Regional supermarket chain: 40
- Streaming service: 35
- Clothing retail: 60
- Online retail: 50
- Fast food: 39
In the spirit of hypothesis generation, Study 2 takes a very exploratory approach, randomly assigning subjects to read about products that are typically gendered as either male or female. Because it is impossible to hold other attributes of these products constant, we cannot rule out the possibility that differences we observe resulted from product characteristics other than their association with men or women. Nonetheless, we decided it was worth it to start with a series of products that would presumably have real-world resonance with subjects.

1. Method

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

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

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

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

<table>
<thead>
<tr>
<th>Product for Men</th>
<th>Product for Women</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alcohol</strong></td>
<td><strong>Anti-aging</strong></td>
</tr>
<tr>
<td>Assume commercially brewed beers usually contain between 4.5-6.0% alcohol. Concerned about alcohol consumption, the state is considering implementing a new regulation that commercially brewed beers (i.e., not microbrews or craft beers) can contain no more than 5.0% alcohol.</td>
<td>Assume boxed wines usually have alcohol content between 12.5-14.5%. Concerned about alcohol consumption, the state is considering implementing a new requirement that boxed wine can contain no more than 13% alcohol.</td>
</tr>
<tr>
<td><strong>Anti-aging pharmaceutical</strong></td>
<td>The state health department is considering a requirement that consumers obtain a prescription for “anti-aging” facial creams and gels that contain more than 2% of the active ingredient retinol after reviewing some customer reports of mild skin irritation.</td>
</tr>
</tbody>
</table>
Each subject saw only one product description and answered a series of questions. The primary dependent variable was: To what extent would you support this regulation in your state? Subjects responded on a 1 to 7 scale, where 1 was strongly disfavor and 7 was strongly support.

Subjects then answered four follow-up questions:

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

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

2. Results

In this study we had 1,606 respondents who were paid $.50 each to complete a 1-minute questionnaire. 48.9% of subjects were men, and 2.0% of subjects were non-binary. Ages ranged from 18 to 84 with a median of 35. 22.5% of subjects described themselves as “very conservative” or “leaning conservative”; 22.4% of subjects described themselves as moderate; and 55.0% of subjects were leaning or very liberal.

a. Manipulation Check

We first ran a manipulation check to confirm that the products we had chosen to randomly vary were in fact associated with a specific gender as we expected. Male subjects were more likely to
have used male-targeted products (clippers, aftershave, Rogaine, and beer) recently than women (t=6.19, df=785.34, p=.000) and women were more likely than men to have used female-targeted products recently (hair dryer, makeup remover, retinol, and boxed wine) (t=-5.50, df=790.92, p=.000). When asked to rate the extent to which a product was largely targeted at men on a 1 to 7 scale, the median rating for women’s products was a 2 and the median for men’s products was a 5.

b. Effect of Product Gender and Subject Gender on Support for Regulation

We did not find the main pre-registered result here. We predicted, based on pilot results, that support for regulation would be gender-specific—that is, that men would support restrictive regulations on women’s products and women would support restrictive regulations on men’s products. We did not see that result in any strong form, as is clear from a basic table of means.

<table>
<thead>
<tr>
<th>Product for Men</th>
<th>Male Subjects</th>
<th>Female and Non-Binary Subjects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product for Women</td>
<td>3.72</td>
<td>3.93</td>
</tr>
<tr>
<td>Product for Women</td>
<td>4.00</td>
<td>4.07</td>
</tr>
</tbody>
</table>

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

The first regression (preregistered) tests the hypothesis that condition and gender will interact such that men are less willing to regulate male-gendered products and women are less willing to regulate female-gendered products. This was not borne out in the regression.32

32 The regression results for the preregistered analysis are here:

<table>
<thead>
<tr>
<th></th>
<th>Estimate</th>
<th>Std Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>1.49</td>
<td>.335</td>
<td>.000</td>
</tr>
<tr>
<td>Age</td>
<td>.005</td>
<td>.003</td>
<td>.114</td>
</tr>
<tr>
<td>Female Subject</td>
<td>.154</td>
<td>.123</td>
<td>.210</td>
</tr>
<tr>
<td>Education</td>
<td>.074</td>
<td>.073</td>
<td>.313</td>
</tr>
<tr>
<td>Liberal</td>
<td>.116</td>
<td>.035</td>
<td>.001</td>
</tr>
<tr>
<td>Luxury</td>
<td>-.127</td>
<td>.026</td>
<td>.000</td>
</tr>
<tr>
<td>Danger</td>
<td>.523</td>
<td>.027</td>
<td>.000</td>
</tr>
<tr>
<td>Men’s Product</td>
<td>-.297</td>
<td>.274</td>
<td>.279</td>
</tr>
<tr>
<td>Men’s Product*Female Subject</td>
<td>.077</td>
<td>.172</td>
<td>.656</td>
</tr>
</tbody>
</table>
We did not anticipate that the condition alone (male vs female gendered product class) would have a main effect on propensity to regulate; we thought that it would depend on the subject’s own gender. However, given the results of our first regression, we departed from our pre-registered plan and ran the same regression again, but now without the interaction term. We were surprised to find that overall there was a small but statistically significant effect of product gender on propensity to regulate. Holding constant demographic variables, luxuriousness, and danger, subjects seeing a male-targeted regulation were less supportive of regulation than subjects seeing a female-targeted regulation, which is what we see in the regression table below.

<table>
<thead>
<tr>
<th></th>
<th>Estimate</th>
<th>Std Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>1.43</td>
<td>.309</td>
<td>.000</td>
</tr>
<tr>
<td>Age</td>
<td>.005</td>
<td>.003</td>
<td>.117</td>
</tr>
<tr>
<td>Female Subject</td>
<td>.193</td>
<td>.087</td>
<td>.026</td>
</tr>
<tr>
<td>Education</td>
<td>.075</td>
<td>.073</td>
<td>.307</td>
</tr>
<tr>
<td>Liberal</td>
<td>.117</td>
<td>.036</td>
<td>.001</td>
</tr>
<tr>
<td>Luxury</td>
<td>-.128</td>
<td>.026</td>
<td>.000</td>
</tr>
<tr>
<td>Danger</td>
<td>.543</td>
<td>.027</td>
<td>.000</td>
</tr>
<tr>
<td>Men’s Product</td>
<td>-.181</td>
<td>.088</td>
<td>.039</td>
</tr>
</tbody>
</table>

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

3. Summary

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

C. Study 3: Punishment for Fraud

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

In this study, we gave subjects a short scenario describing a criminal fraud and a question about the appropriate punishment for it.

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

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

Subjects could choose .5, 1, 2, 4, 6, 8, or 12 years. They also answered a series of standard demographic questions including their political orientation.

2. Results

501 subjects participated in Study 3, which was preregistered at Aspredicted.org #114435. 48.7% of participants were male. Ages ranged from 18 to 75 with a median age of 32.

Our preregistered hypothesis was that subjects would assign a longer sentence to fraudsters whose victims were women rather than men. This was what we found in the pilot study. It did not replicate in the main study. Analyzing each response according to its numeric sentence value, subjects on average wanted to sentence the fraudster who deceived brothers to 6.51 years in prison and the same fraudster who deceived sisters to 6.77 years. That difference is not statistically significant (t=-.811, df=498.82, p=.420). Similarly, a regression of age, sex, education, politics, and gender condition on the recommended sentence does not show an effect of condition on sentence.

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

Our conclusion from looking at our data is that the gender of the victim does have a significant effect on subjects’ sentencing responses, but that some subjects give higher sentences for male-victim crimes and other subjects give higher sentences for female-victim crimes. The underlying moderator appears to be political ideology, which is clear from the regression here:
<table>
<thead>
<tr>
<th></th>
<th>Estimate</th>
<th>Std Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>11.05</td>
<td>2.30</td>
<td>.000</td>
</tr>
<tr>
<td>Age</td>
<td>.048</td>
<td>.012</td>
<td>.000</td>
</tr>
<tr>
<td>Female Subject</td>
<td>-.782</td>
<td>.322</td>
<td>.016</td>
</tr>
<tr>
<td>Education</td>
<td>.074</td>
<td>.271</td>
<td>.786</td>
</tr>
<tr>
<td>Liberal</td>
<td>-1.167</td>
<td>.448</td>
<td>.009</td>
</tr>
<tr>
<td>Sisters</td>
<td>-3.138</td>
<td>1.361</td>
<td>.021</td>
</tr>
<tr>
<td>Sisters * Liberal</td>
<td>.713</td>
<td>.235</td>
<td>.012</td>
</tr>
</tbody>
</table>

Overall, women gave slightly lower sentences than men, with a marginally significant result \((t=1.76, \text{df}=498.17, p=.078)\). That is reflected in the regression above, where the gender of the subject is statistically significant and the sign is negative. Age is also significant here, where older subjects give longer sentences overall. This regression suggests that liberal subjects give higher sentence to fraud on the sisters and conservative subjects give higher sentences to fraud on the brothers—that is the meaning of the interaction term.

3. Summary

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

D. Summary of Results

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

Main Effect of Target Gender

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

Main Effect of Subject Gender

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

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

Our conclusion is that just as gender stereotyping is incredibly complex, so is the study of deception. As one of us has observed elsewhere, studying suckers is really hard, because people feel ambivalent about both schemers (savvy but unethical) and their marks (foolish but sympathetic). And an act might be morally wrong but not deserve regulation or punishment. For this reason, our proposal moving forward is for a systematic research agenda that investigates smaller questions with the ultimate goal of piecing together a picture of men, women, deception, judgments regarding morality, and judgments regarding legal protection.

III. GENDER AND CONSUMER PROTECTION: A RESEARCH AGENDA

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

The literature, including the studies reported here, provide some support for gendered readings of Vokes. If people tend to view women as especially susceptible to deception, men as having an obligation to protect women, and male deception of women as especially wrongful, we might expect gender to figure into the outcomes of lawsuits based on deceptive practices.

33
35 212 So.2d at ___.
36 Id. at ___.
37 See Threedy, supra note 34.
The studies reported above are far from the last word on how the gender of deceiver or deceived might affect attitudes both about the ethicality of deception or the desirability of laws of deception. They are, however, suggestive. And they indicate several directions for future research.

1. Replication

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

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

2. Mechanism

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

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

The last two categories—beliefs that women have different capacities than do men and that men owe special duties towards women—both involve gender bias. As noted in Section 1.2 above, psychologists have developed several tools to measure an individual’s gender bias. Future studies might also employ these tools to ask whether gender-driven attitudes towards the wrongfulness of deception are correlated with more generic forms of gender bias.

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

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

3. Deserving Help, Deserving Supervision

Finally, there is another framework that bears exploring. Social perceptions of consumer protection generally can be conceptualized along two axes: Who deserves protection (help), and who is it permissible to constrain (supervise)? The most robust consumer protection in the United States is almost certainly targeted at products sold to or used by children—and this makes sense. People have positive attitudes about children, who are understood to “deserve” a range of social benefits and social services that denied to adults. And people have no qualms about constraining children’s choices. Questions of consumer freedom or liberty just don’t apply to children as they would with adults.

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

* * *

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