LAW AND COURTS

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In this Issue

From the Section Chair

Martin Shapiro, *University of California-Berkeley*

To honor the scholarship in the law and courts field, the Organized Section makes a number of awards. What follows is a description of the prizes that will be presented next year.

The CQ Press Award is given to the best paper written by a graduate student. If you have a graduate student who has completed a paper of particularly high quality, consider nominating the paper for this year's competition.

The rules for the competition are as follows: The paper must have been written by a full-time graduate student. Co-authored papers are eligible, but each author must have been a full-time graduate student when the paper was written. The paper must have been completed between January 1, 1994 and July 1, 1995. The subject matter should fall within the area of law and courts, broadly defined with respect to subject matter and methods of inquiry. The paper may have been produced for a course, presented at a conference, or written for some other purpose. Submissions should be of normal paper length; this is not a dissertation competition.

To be considered, three copies of the paper should be submitted by July 1 to Bradley C. Canon, University of Kentucky, Lexington KY 40506. Papers may be nominated by a faculty member or submitted directly by the student author.

The American Judicature Society Award is for the best faculty paper presented at the APSA annual meeting in the field of law and courts. According to the award guidelines, the faculty presenter must be a political scientist or one whose collaborative papers are eligible as long as at least one of the authors is a political scientist; and papers resulting from a faculty-student collaboration. Panel chairs are requested to nominate papers by January 15, 1995 to Austin Sarat, Political Science, Amherst College, Amherst MA 01002.

The C. Herman Pritchett award is presented to the best book in the field. Any book authored by a political scientist in the field of law and courts (except casebooks and edited volumes), and published in 1994, is eligible for this award.

If you would like to nominate one or more books, please submit copies of the book(s) to *each* of the three members of this year's selection committee: James L. Gibson (chair), Political Science, University of Houston, Houston TX 77204; Henry R. Glick, Political Science, Florida State University, Tallahassee FL 32306; and Sylvia Snowiss, Political Science, California State University, Northridge CA 91330. Nominations should arrive no later than April 1, 1995.

The Section also wishes to solicit nominations for **The Lifetime Achievement Award** for a distinguished career of significant contributions to knowledge in the field of law and courts.

In order to be eligible, a nominee must be a political scientist (*i.e.*, hold a Ph.D. in political science/government or have a primary appointment in a political science/government department) and must have been professionally active for at least 25 years or be at least 65 years old. Anyone in the Law and Courts Section may nominate someone for this award. Please send the nominee's c.v. with your nomination no later than June 1, 1995 to the chair of this year's selection committee: Henry Abraham, Department of Government, University of Virginia, Charlottesville VA 22901.

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Instructions to Contributors

General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** is published three times a year in Winter, Spring, and Summer issues. Deadlines for submission of materials are: November 1 (Winter), March 1 (Spring), and July 1 (Summer). Contributions to **Law and Courts** should be sent to:

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Articles, Notes, and Commentary

Brief articles and notes describing matters of interest to the field will be published subject to review by the editor. Authors are encouraged to share research findings, teaching innovations, or commentary on developments in the field, which would interest members of the Section.

Footnote and reference style should follow that of the *American Political Science Review.* Please submit two copies of the manuscript. If possible, also enclose a diskette containing the contents of the submission. In a cover letter, provide a description of the disk's format (for example, DOS, MAC) and of the word processing package used (for example, WORD, Wordperfect).

Symposia

Collections of related articles or notes are encouraged. Please contact the editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced if there is sufficient time for submission of materials to the granting or awarding body. Finally, authors of judicial books should inform **Law and Courts** of their manuscript's publication.

Data and Analysis Information

Law and Courts wishes to keep the Section informed about the availability of datasets of interest to the field. Special analysis and data problems or queries of interest to the field will also be published. Send suggestions or information to the editor.

Supreme Courts and Public Opinion: General Paradigms and the Israeli Case

Gad Barzilai with Ephraim Yuchtman-Yaar and Zeev Segal, *Tel Aviv University*

When political scientists study the supreme courts in democracies, usually in the American or European context, they tend to ask two principal questions: a) Do supreme courts constitute political institutions? b) What is the nature of a supreme court's relations with the public?

This essay presents the empirical findings, and their implications for theory, of a study of the Israeli Supreme Court (sitting as a High Court of Justice, hereinafter: "the HCJ"). The study was founded on an extensive July 1991 public opinion poll of attitudes towards the HCJ—the first such poll ever conducted in Israel—among a representative sample of Israel's adult Jewish population. In accordance with practices referred to in the professional literature dealing with public opinion and the Federal Supreme Court in America, we constructed an 81-item questionnaire. The phrasing of several of its questions was based on a systematic content analysis of the court's rulings in regard to a wide range of acts of government, political appointments to the civil service, activities of a military/security nature, minorities' rights, and the rights of Palestinians resident in the occupied territories. Additional questions probed the degree of public knowledge about the court and its decisions, the manner in which the court is perceived by the public, public readiness to comply with the court's decisions, and the social characteristics of the interviewees.

This essay will focus on two issues: public support for the HCJ, and compliance with its rulings. Its chief argument will be that the active adjudication of political issues need not necessarily weaken the extent of diffuse legitimacy or materially reduce public willingness to comply with judicial rulings.

Does the HCJ Constitute a Political Institution?

It is true of several of the world's democracies that their supreme court is a political institution, at least it functions also as a political institution within a broader political process (Dahl 1958; Krislov 1968; Fisher, Horwitz, and Reed 1973, 49-75, 164-269; Smith 1988; Ackerman 1991; Epstein and Kobylka 1992; Gibson and Caldeira, 1993; Shapiro 1993; Shapiro and Stone 1994). Israel is no exception. That the HCJ has been extending the scope of its judicial involvement in the country's political life - to encompass such sensitive and controversial areas as security, the Arab-Palestinian-Israeli conflict in general, and issues of state versus religion - is a particularly striking phenomenon (Lahav 1993; Mautner 1993; Barzilai, Yuchtman-Yaar, and Segal 1994; Edelman 1994).

Notwithstanding Israel's lack of a written constitution, its Supreme Court possesses broad judicial powers of a constitutional and administrative nature. It supervises all of the state's other branches and agencies, including the government itself, the army, the police and the rest of the security forces. Israel has a parliamentary regime, and yet its HCJ has intervened and adjudicated on several of its legislative-parliamentary procedures. Even though Israel features grave sociopolitical rifts, the HCJ has not flinched from acting to establish certain basic civil rights, like the freedoms of expression and of religion. Over the past two decades, indeed, it has emerged as a prime public institution, and one that generates both democratic processes and democratic values. Admittedly, it has resisted being drawn into ruling on the validity ascribable to agreements reached between the government and religious political parties over eligibility for military conscription. It has refrained, equally, from becoming involved on such matters as the validity of certain international-administrative agreements, the initiation of war, and the conclusion of peace. And yet, ever since the mid-1970s, its general tendency has nevertheless been a readiness to adjudicate controversial political issues. Accordingly, for the last twenty years, the Israeli Supreme Court has been a highly visible political institution.[1]

Analysis of the Supreme Court's judicial decisions reveals that its judges have certainly tended to take account of the public's contentions and of the prevailing degree of consensus or, at least, have declared that these factors would be attributed significance. When sitting as the HCJ, they have taken account of Israel's two fundamental cultural narratives - the "Jewish" and the "security" - and have inclined to confine their activities within the sociopolitical boundaries that these narratives feature. The outcome has been considerable restraint in the HCJ's preparedness to exercise judicial review over the security authorities' activities - especially those conducted in the West Bank (Sheleff 1992). It has shown itself to be substantially less reticent in regard to matters occurring within the Green Line (the border marking Israel's pre-1967 territory). There, it has tended to impose new norms of behavior, both on incumbent governments and on the political parties generally, and to introduce greater liberality into the rules of the political game.

Judicial Legitimacy and Compliance

The HCJ has enjoyed a broad legitimacy, with a majority of the public affirming confidence in its rulings. A full 78.1% say they have a great deal of such confidence, only 17.7% indicate merely some confidence, and not more than 4.1% profess to having no confidence in the HCJ at all. 85.5%, moreover, perceive the court as being neutral, while only 8.1% regard it as Leftist, and 6.3% as tending to the Right. Table (1) compares findings for 1991 from the USA and Israel - indicating the considerable degree of support given the HCJ in comparative perspective.

(continued on the next page)

Table 1

Diffuse Support in Supreme Courts, Israel and the USA 1991 (percentage)

	Israel	*USA*
Having a great deal of confidence in the Court[a]	78.1	30
Court is about right/Court is neutral	85.5	9
Court is too liberal/is to the left	8.1	30
Court is too conservative/Court is to the right[b]	6.3	42

[a] The phrasing of the question was: "Do you have confidence in the High Court of Justice (HCJ)?" The distribution of answers in percentage was: 1. do not have confidence at all 2.1; 2. almost do not have confidence 2.0; 3. have some confidence 17.7; 4. have a great deal of confidence 78.1. Sample size=1004; number of respondents to that question=979. Should be noted that in Hebrew we used two sub-categories for a 'great deal of confidence' and that because of the Hebrew meaning given to that term. For the source of the data in the USA, see Epstein, Segal, Spaeth, and Walker 1994, Table 8-25.

[b] The question and the answers regarding the HCJ's perceived political orientation were: "In your opinion is the HCJ: 1. very much to the right 0.6%; 2. to the right 5.7%; 3. not a leftist nor to the right (neutral) 85.5%; 4. leftist 6.5%; 5. very leftist 1.6%." sample size 1004; number of respondents to that question: 948. The meaning in the Hebrew language is basically identical to the question asked in the U.S.A: "In general, do you think the U.S. Supreme Court is too liberal or too conservative?"; see Epstein, Segal, Spaeth, and Walker 1994, Table 8-24.

Public consensus over the HCJ is widely prevalent, while dissentient views towards it and dissent over its rulings is rare. Typically, the HCJ is supported by a limited consensus - meaning, at least 65% of the public - or by a broad one - at least 75% of the public. Dissent will arise only when a ruling seems to counter the national narratives. Thus, the public is prone to reject the court's judicial intervention in the operations of Israel's security forces in the occupied territories. Its decision in favor of upholding the exclusion of the radical right-wing Kach Party from participation in the 1988 national parliamentary elections is opposed by a fairly substantial minority (around one third) of the public. But repudiation of the court's rulings invariably remains below the 50% mark, and in respect of none of its judicial decisions have we been able to conclude that any public consensus of antipathy was engendered. Public backing for the HCJ is not significantly eroded even in those rare cases where its ruling somehow contradicts either the "security" or the "Jewish" narrative. We claim, therefore, that the court enjoys widespread legitimacy. Table (2) portrays further interesting findings.

Table 2

Willingness to Comply with HCJ's Rulings (percentage)

No	8.4
Usually No	4.6
Sometimes Yes, Sometimes No	16.6
Usually Yes	22.8
Yes	47.6

Note: The question was: "Do you conceive the HCJ as a supreme institution all of whose decisions should be complied with even if they contradict your attitudes? Sample size=1004; number of respondents=979.

Table (3), below, portrays the interconnections between diffuse legitimacy when measured as confidence in the court, diffuse legitimacy when measured as a perception of the court as neutral, and compliance with the court's rulings (for the definition and analysis of diffuse support, see: Caldeira and Gibson, 1992; Gibson and Caldeira 1992). Confidence in the court, and the belief that it contributes to preserving Israel's democracy, are the best predictors of compliance with the court's decisions. It is not only diffuse legitimacy, however, that exercises an effect on compliance. Of importance, too, are the presence of a belief that preserving Israeli democracy has value, and an orientation towards the political Left (which, in Israel, is more liberal than the Center and the Right).

Such variables as age, class, gender, ethnic origin and religiosity are found to have at best a strictly limited and often insignificant impact on diffuse legitimacy and compliance. The latter prevail almost to the identical degree among all of the various sectors of Israeli society and are only marginally affected by the severe sociopolitical rifts which characterize it and which are relevant to so many of the court's constitutional decisions. The same is true regarding partisan affiliations which, despite their polarization in Israel, significantly neither boost nor erode the public status of the HCJ, unlike other of the state's organs.

Conclusions

That a court is prepared to actively adjudicate issues of a political nature does not necessarily cause the public to support it less or lessen public willingness to comply with its rulings. Courts may be in receipt of a high degree of institutional support and hence be capable of generating compliance even on the part of those opposing the content of its rulings. Diffuse

legitimacy produces compliance that is not significantly contingent upon such content. This is true as long as the court does not operate outside the confines of fundamental national narratives. The Israeli case demonstrates that legalization of controversial issues does not reduce the scope of judicial legitimacy. The HCJ, accordingly, is a crucial institution which not only resolves constitutional crises, but also contributes much to preserving the state's democratic tenets.

Table 3

A Multivariate Model: Compliance with the HCJ's Rulings

Variable	*r*	*B*	*beta*	*p<*
Confidence in the HCJ[a]	.39	.46	.29	.00001
HCJ contributes to Israeli Democracy[b]	.30	.19	.13	.0003
Importance of the preservation of the Israeli democracy[c]	.21	.15	.09	.006
Political orientation (left-right)[d]	.17	.10	.07	.03
Neutrality of the HCJ[e]	-.06	.03	.01	.75

N= 851
Multiple R= .43
R Square= .18
Adjusted R Square= .18
F= 37.93; Significance F= .00001

[a] For the wording of this question, see Table 1.

[b] The wording: "In your opinion, to what degree does the HCJ contribute to the Israeli democracy? 1. not at all; 2. almost not; 3. to a certain extent; 4. to a great extent; 5. very much."

[c] The wording: "To what degree is the preservation of the Israeli democracy important for you? 1. not at all; 2. almost not; 3. to a certain extent; 4. a great deal; 5. very much."

[d] Based on an index of two questions: A. "How do you define your political orientation? 1. very much to the right; 2. right; 3. neutral; 4. left; 5. very much to the left." B. In your opinion, what is the best solution to the Arab-Palestinian-Israeli conflict and to the issue of the West Bank and Gaza? 1. Annexation and expulsion of the Palestinians; 2. Annexation without an expulsion; 3. the present status quo; 4. autonomy; 5. a territorial compromise with Jordan without a Palestinian State; 6. The establishment of a Palestinian State."

[e] For the wording of that question see Table 1.

Note

1. Certain innovative constitutional reforms have recently taken place in Israel. Two new so-called Basic Laws, Basic Law: Freedom of Occupation, and Basic Law: Human Dignity and Freedom, were enacted during 1992 (with the former being reenacted in 1994). Several civil rights, such as the freedom of occupation, the right to property, and the right to freedom, privacy, and human dignity, are therefore no longer capable of being infringed other than by means of legislation meeting certain criteria (*e.g.*, the need for a special majority in respect of a regular bill). In addition, the aforesaid new Basic Laws empower the Supreme Court to rescind other pieces of legislation shown to contradict certain human and/or civil rights. Overall, the reforms that they introduce may cause the HCJ, as a constitutional court, to develop closer resemblance with the constitutional courts of France and Germany, and with the U.S. Supreme Court.

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Gender and Asset Settlements in Divorce Proceedings

Nancy Crowe, *University of Chicago*

[Editor's Note: This article received the CQ Press Award for the Best Paper by a Graduate Student in the Field of Law and Courts. The Selection Committee's citation is reprinted on page 21 of **Law and Courts.** *]*

Task forces set up by bar associations, state legislatures, and governors, have documented biases against women in the courts ranging from demeaning comments from opposing counsel and judges, to outcomes determined in part by one's gender.[1] Not atypical was the conclusion of the New York Task Force on Women in the Courts that "women litigants (1) have limited access to the courts; (2) are denied credibility; and (3) face a judiciary underinformed about the matters integral to many women's welfare."[2] Specifically, the task force documented biases in property, child support and alimony settlements in divorce cases, and in the treatment of female rape victims. New Jersey's task force arrived at similar conclusions, finding that stereotyped ideas, beliefs and attitudes affected judicial processes and decision making, especially in the areas of domestic violence, matrimonial law and criminal sentencing (Schafran 1987, 283).

Nearly all of the task forces chronicled gender biases in divorce proceedings, especially regarding property distribution, child custody awards and enforcement of child support payments. For example, a study of divorced women in California concluded that "on the average, divorced women and the minor children in their households experience a 73 percent decline in their standard of living in the first year after divorce. Their former husbands, in contrast, experience a 42 percent rise in their standard of living" (Weitzman 1985, xii). A national study showed that the average woman's standard of living dropped 30 percent after divorce, while the average man's increased between 10 percent and 15 percent, and this is one of the more conservative estimates of disastrous effects divorce has on the economic well-being of women and, consequently, their children (Duncan and Hoffman 1985, 427-471). These dramatic shifts in economic well-being, and the fact that over fifty percent of marriages end in divorce, underline the importance of examining the determinants of property allocation in divorce.

The divorce codes in most states are based on the Uniform Marriage and Divorce Act, which stipulates that courts shall consider "the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the [marital property], and as the contribution of a spouse as a homemaker or to the family unit."[3] These laws all draw on an economic partnership theory of marriage. An economic is similar to a business partnership, in which both parties contribute to the value of the shared business, although not necessarily by the same means, or in the same proportions. The implication of this for a marriage is that all assets acquired during the marriage are considered the joint property of both parties.

One explanation offered by the state task forces for the inequitable property allocation in divorce is that the courts consistently undervalue the non-economic contributions women made to their marriages. Non-economic contributions include the opportunity costs of foregoing an education, work experience, a career, or accepting less lucrative employment, etc., and the value added to the marriage through enterprises such as raising children and upkeep of the home. For example, the New York Task Force concluded that the courts "ignore the irretrievable economic losses women incur when they forego developing income-generating careers and vested retirement rights to become homemakers for the benefit of their families."[4] This sort of undervaluation leads to property distributions which are unfavorable to women.

Another explanation is that judges "cannot conceive of a woman having a right to a share of 'the man's business.' Judges, too, often refer to it as 'his business' and 'their house' and 'his pension.' Under equitable distribution it should be thought of as 'their business' and 'their pension,' etc."[5] Homes, because they are inhabited by both the husband and the wife, are considered to be joint property. On the other hand, many work-related assets (i.e., pension plans, stock options) are viewed by judges to be solely the property of the husband.

An alternative explanation for women's unequal treatment by the courts is that women represent only about ten percent of state court, federal district, and circuit court judges. This fact leads to speculation that more female judges would have a measurable impact on the administration of justice. According to Judge Patricia Wald (1989, 54) of the U.S. Court of Appeals for the District of Columbia, "only through the appointment of more female judges beyond token levels can we successfully counteract the latent prejudices and processes that perpetuate gender inequities in our courts of law." Also, legal theorists such as Carrie Menkel-Meadow (1985) and Judith Resnik (1988) suggest that greater representation of women in law will help transform law by reflecting a greater emphasis on care and responsibility. Suzanna Sherry (1986) argues that women judges have a distinctive feminist jurisprudence centered on contexts and relations and that female judges would decide cases differently because they are more likely to be informed about matters important to females in the judicial system.[6] In short, these theorists argue that the consequence for the legal system as a whole would be less bias (or a more balanced set of biases).[7]

(continued on the next page)

There are reasons to expect that women and men on the bench behave differently. Many of the theorists just mentioned based their ideas on the works of Carol Gilligan and Nancy Chodorow. In her examination of moral decision making, Gilligan (1982) concluded that while men tend to reason in terms of the abstract principles of rights and justice, women reason more contextually, using relationships and responsibility as references.

Attitudinal studies carried out specifically on judges also documented differences between women and men. Female trial judges were found to have strong attitudes in favor of new social roles for women, contrasted with the weaker and sometimes hostile views of male judges (Cook 1979; cited in Wikler 1980, 204). Cook (1981) found women judges more strongly and more openly committed to the liberation of women. Martin (1990) noted that the life cycles of female and male judges appointed by President Carter varied significantly — nearly two thirds of the female judges were chiefly responsible for the administration of their household, while over 80% of the male judges had spouses who assumed primary household responsibility. The female judges were more adjusted to thinking about gender-related issues in personal terms, and were attitudinally more feminist. In sex discrimination cases, the presence of even one woman judge on a state supreme court led to more liberal rulings by the court as a whole.

These studies suggest that female judges differ from male judges in that they have distinct life cycles, different attitudes, are more likely to think about gender issues in personal terms, and are stronger supporters of more expansive roles for women. The fact that female and male judges do maintain different attitudes, however, does not mean that distinct behavior by women and men on the bench is a necessary outcome. Nor do the attitudinal differences imply that more women on the bench will translate into reduced bias in the judicial system. Personal attitudes are not supposed to matter in the determination of justice. So the question remains: do female judges behave differently than their male counterparts, and if so, to what degree does this behavior affect gender bias in the legal system? Therefore, the hypothesis that female judges behave differently than male judges warrants further attention.

An increase in the numbers of women on the bench would have a significant impact on the administration of justice if it is the case that the presence of female judges in the court system reduces bias. Thus, it is critical to examine the behavior of female judges compared to their male counterparts, as well as the effects any behavioral differences have on gender bias in the legal system. If female judges are found to have an impact on judicial outcomes, then increasing the number of female judicial appointments would be an appropriate tool for ameliorating bias in the judicial system. This paper will evaluate whether or not female judges do have such an impact by examining the division of assets in divorce cases, specifically looking at whether female and male judges distribute assets in consistently different proportions.

Previous Literature

Most studies of women in the courts examined the effects of judicial outcomes on women without addressing the role which a judge's gender played in creating those outcomes. Therefore, these studies offer only speculative evidence about the behavior of female and male judges, and the implications of this behavior for judicial bias. Nagel and Weitzman (1971) found that female criminal defendants were less likely to be convicted than male defendants, and when convicted were given lighter prison sentences. Further, female personal injury plaintiffs were less likely to win jury trials, and when they did win, were awarded less compensation for their injuries than male plaintiffs. Male dominated juries gave awards above the average to male plaintiffs, and awarded female plaintiffs much less than the average. Female dominated juries reversed the trend, favoring female over male plaintiffs.[8]

There are also studies which examine the treatment of female criminal defendants in the judicial system. Morris (1987) studied the factors which go into a judge's determination of sentence length in criminal cases, and concluded that the more a woman conformed to traditional gender norms (i.e., married, economically dependant) the more lenient the sentence she received. These same factors did not matter in the sentencing of males, where the most important consideration for judges was the offense committed. Chesney-Lind (1978) also determined that judges were enforcing traditional norms about female sex roles, although she concluded that the major factor influencing the sentencing of women was whether or not the offense committed was "unlady-like" (i.e., armed robbery).

Evidence for the sex-roles contention is also supported by studies of the treatment of girls and boys in the juvenile courts. Datesman and Scarpitti (1980) found that boys received harsher punishment for criminal offenses, while girls received harsher sentences for status offenses. Morris (1987) also concluded that juvenile court judges were employing the law to enforce traditional norms of female sexual morality.

Most studies which do consider the gender of the judge have drawn on the records of state courts, federal appeals courts, and district courts. Unfortunately, because there are so few women on the bench at the upper levels of the judicial system, most of these studies have a relatively small sample size. Gottschall (1983) examined Carter appointments to the U.S. Court of Appeals and found that female judges were more liberal in their voting than male judges in race and sex discrimination cases, but were on par with men in criminal cases. Cook (1981) presented state trial judges with a hypothetical case involving a woman wishing to resume using her maiden name. The gender of the judge was significantly related to the decision to approve the name change, with female judges more likely to approve than male judges. Gryski, Main and Dixon's (1986) study of state courts revealed that the presence of even one woman judge on a state supreme court led to more liberal rulings by the court as a whole.

The presence of more female judges at the trial court level has led to several studies examining the effects of a judge's gender on trial outcomes. Virtually all of these studies focused on conviction and sentencing rates in criminal court cases. Gruhl, Spohn and Welch (1981) found that female judges treat all criminal defendants equally. Compared to male defendants, female defendants were less likely to be convicted or sentenced to prison by male judges. Further, the sentences male judges gave to females were lighter than those given to males. Gruhl et al. therefore concluded that male judges had paternalistic attitudes toward female defendants.

This finding was challenged by Kritzer and Uhlman (1977)

who studied the same metropolitan area. They found the treatment of female defendants documented by Gruhl et al. common to both female and male judges. Kritzer and Uhlman therefore concluded that while male judges acted out of chivalry, female judges tended to empathize with female defendants. Other support for the "empathy factor" was found in rape cases, in which female judges were more likely to sentence, and gave more severe sentences than male judges.

Unfortunately, in both of these studies, the number of female defendants was small, making analysis difficult.[9] This is especially problematic if one desires to understand the impact of female judges. The fact is that the number of cases with female judges presiding over female defendants is typically very meager, making it difficult to compare the treatment of male and female defendants by female judges.[10]

Hypotheses

Building on past studies which have shown attitudinal differences between women and men on the bench and on the documentation of dissimilar behavior of judges according to their gender in handing down criminal convictions and sentences, especially in areas of the law of particular concern to women (i.e., rape), I expect to find that female judges will behave differently than male judges. Accordingly, I anticipate that in divorce settlements female judges will distribute assets between male and female parties in different proportions than their male counterparts.

Further, because it appears that female judges are more accustomed to thinking about gender in personal terms, and may have life experiences more similar to the females who appear before their court, I expect that they will be more sensitive to women's contributions to their marriages, and will therefore assign a greater percentage of marital assets to females than the percentage male judges allocate to females.

Although there is not necessarily a link between thinking about gender issues in personal terms and being more sympathetic to the female party in a divorce case, there might be such a relationship. Female judges may be more inclined to consider the consequences of a particular property settlement on the life of a female divorcee; and, because it has been shown that female judges share life cycles similar to female parties, they may be more likely to consider the non-economic contributions many women make to marriages, and other opportunities foregone by women. Consequently, I hypothesize that female judges will assign a greater percentage of marital assets to females than the percentage male judges allocate to females.

The alternative hypothesis is that there is no bias as a consequence of a judge's gender. This corresponds to the traditional legal paradigm of blind justice. According to this model all judges, regardless of their gender, would distribute assets solely according to the contribution of each spouse to the marriage. Thus, the traditional legal model is one that predicts equality. Because judges are aware of the blind justice norm, and as a general rule the legal community believes the norm to be true, the alternative hypothesis may provide a better explanation, contrary to expectation.

Research Design

This study surveys divorce settlements at the county level in the domestic relations court in a major metropolitan area, in a state with a divorce law modeled after the Uniform Marriage and Divorce Act. The county level court was chosen for three reasons. First, compared to state, federal, and appeals courts, there are more female judges at the county level. Of the 380 judges on this particular judicial circuit, fifty are women (13%). The domestic relations division is responsible for divorce cases and has positions for up to 35 judges, although often they are not all filled. These 35 judges, however, do not constitute the entire universe of judges hearing divorce cases. Judges who move from one division to another continue to hear cases assigned to them prior to their transfer; further, judges who once served in the domestic relations division may still be given divorce cases if the load in domestic relations is particularly heavy.[11] Thus, in the sample studied here, there were 40 judges, 11 of whom were women (28%).

Second, unlike criminal cases where there are very few female defendants (especially female defendants who come before female judges), in divorce proceedings half of the parties are necessarily women. Thus, 50 percent of the individuals who appear before any judge will be female, and 50 percent will be male. This greatly facilitates comparisons of how female judges treat the women and men who come before their court.

Third, focusing on the county level courts allows for analysis of asset division over a greater spread of household income levels than do studies of gathering data from appeals courts. It is costly to file an appeal, so in appeals courts individuals from upper income brackets are over-represented.

Prior to gathering the data, interviews were conducted with both judges and divorce lawyers in order to gather background information, in particular information regarding the role they believe gender plays in decisions made during divorce proceedings. Divorce lawyers were selected randomly from the yellow pages of the phone book within the metropolitan area. Letters requesting an interview were sent to all of the female judges and about a third of the male judges currently sitting on the domestic relations court. The male judges were selected randomly from all male judges in the domestic relations division who had been sitting on the bench for more than two years. Prior to the interviews, all of the subjects were informed that the purpose of the research was to gather information on the process of decision-making in divorce proceedings generally, and more specifically about decisions pertaining to the division of marital assets. No mention of gender was made.

Data were randomly sampled from all divorce cases filed with the county clerk of courts during 1991. Four hundred case files were obtained, of which 34% of which yielded usable information (n=136). Pauper filings and cases with no marital assets were not recorded.[12] Divorces granted by default were also not recorded since the assets are only provisionally awarded to the party present at the hearing, and may be brought before a judge again should the absent party return to contest the property division.[13] Foreign divorces were excluded because of jurisdictional questions relevant to the division of the assets. None of the annulments in the sample involved any property. And

(continued on the next page)

those case which were still pending or involved parties who had reconciled could not be included.

Further, any case which was transferred from one judge to another during the course of the divorce proceeding was excluded. This was done because there would be an incentive for counsel representing a man and assigned to a female judge to attempt to switch judges if the hypotheses are true and it is the case that female judges devise asset settlements more sympathetic to female parties. The same would be true of counsel representing a woman and assigned to a male judge. A similar pattern may exist in settlement behavior; assignment to a judge of a particular gender may provide an added incentive to settle out of court. The interviews were used to determine the extent of this selection bias problem, if any.

The items documented from the case files followed the state's divorce law list of factors for judges to consider.[14] The employment status and age of both the parties, duration of the marriage, information on which party was named custodial parent of the children, and a list of all marital assets was available for each of the cases examined. Incomes, occupations and the monetary value of the assets were not always present, but were recorded whenever available. Generally, there were five types of assets involved: automobiles, businesses, residences, debts, and other monetary assets (i.e., checking and savings accounts, pension plans, stocks, stock options, IRAs, etc.). For just slightly over fifty percent of the couples, automobiles and a residence constituted the entire set of marital assets. Some judges awarded actual assets to one spouse or the other, noting their dollar value. Other judges awarded a certain percentage of the assets to each party. In order to facilitate analysis, all cases in the first category were converted to percentages and were treated identically to the second category.

Background material on the judges in the sample was obtained from *Martindale-Hubbell's*, telephone conversations with clerks and secretaries, and in some cases the judges themselves. This was done in order to document the gender and birth date of the judge, as well as the amount of time the judge had been sitting on the bench. Appointment date may be important if there is an adjustment period before new judges settle into standard procedures. Because society's views on the role of women have changed over time, the age of the judge may be an influential factor. An attempt was made to determine the political ideology of the judges by examining affiliation with partisan organizations, but this information was difficult to obtain, and a fair number of the individuals involved refused to divulge their party affiliation.

Results and Analysis: Interviews

The first stage of this study consisted of background interviews with both divorce lawyers and judges. The interviews were open-ended and largely unstructured. The lawyers were asked to "talk about" what they felt was important in deciding to settle out of court or go before a judge, what factors they felt judges considered in distributing assets, and what personal characteristics of the judges themselves they felt were important. Judges were asked to "talk about" how they determine property divisions (including the state law and characteristics of the parties), and the role of the lawyers (settlement behavior of attorneys was brought up under this heading).

Six lawyers were interviewed, two of whom were women, and all of whom represented both female and male clients in their practices. There was a great deal of consensus that, as one lawyer explained, "whenever possible, you settle out of court. You just have more control that way." Aside from control, lawyers also mentioned that for the parties to feel as if they resolved their differences themselves is in the best interest of a functional ongoing relationship between them, especially when children were involved. Some of the lawyers reported using judges to lower some of the unreasonable expectations of their clients. Since lawyers generally will only go before a judge if absolutely necessary, the possibility of a lawyer deciding to settle after being assigned to a judge of a particular gender should not unduly worry us. Having a case heard by a judge is a forced situation, and one which would have been avoided if possible. And it seems that attorney in this situation, if assigned to a judge of an undesired gender, will have little additional power to force an already immovable client to settle.

For lawyers, the most important background characteristic of a judge is reputation. It appears from the interviews, however, that reputations are unrelated to either the gender of the judge or the client. Instead, reputations seem to come in two forms. First, several of the lawyers made statements regarding personal dislike for certain judges, as one stated, "Judge Smith is out to get me, and it doesn't matter how reasonable I am.[15] Other reputations were based on how timely a judge decided cases, the propensity of a judge to order a sale of assets, not being detail-oriented or careful, and other related factors. Aside from reputation, several lawyers mentioned that they did not like being assigned to new judges, whom they view as being "somewhat erratic."

In terms of the factors determining the distribution of property there was not much consistency to the lawyer's statements, with the exception that the party who has custody of the children is awarded the marital residence. However, this attests only to which party acquired certain items of property, and said nothing about the overall distribution of property.

Five judges were interviewed, two of whom were women, and all of whom had been on the bench for at least five years. The most common sentiment expressed is best exemplified by the statement of one judge that "I'm so busy all the time, I don't have time to think about what I'm doing or how I'm doing it. I just do it." All of the judges expressed this attitude to degree. So if certain lawyers, or lawyers representing a female (or male) client tended to settle out of court after being assigned to a particular judge, beyond rejoicing that their case load has shrunk, the judges did not seem to notice.

Further, while the state's law lists the elements the courts must consider (if relevant) in distributing property, it does not prioritize or weight those factors. Because there are over fifteen elements listed in the law, judges have a great deal of room for discretion in balancing the various criteria and determining their importance or relevance to a particular situation. Surmising from the interviews, the judges apparently did not explicitly prioritize the factors either, or at least did not do so consciously. The one exception to this rule is the almost absolute presumption that the spouse with custody of the children will retain possession of the marital residence.

Results and Analysis: Data

At first glance there appear to be differences in the distribution

of the assets broken down by the gender of the divorcee (see Table 1). On average, females were awarded 38% of monetary assets, while males were awarded 62%. There is reason to suspect that the differences in the distribution of monetary assets may be even greater than appears. The judges tended to divide up checking accounts, savings accounts, CDs, IRAs and other personal finances according to their value. However, employment related benefits, such as pension plans and stock options were often distributed without noting their value, and were doled out by means of the statement "both parties shall retain as their sole property any pension plans or retirement benefits, 401Ks, Keoughs, or profit sharing plans to which they are currently named beneficiaries." Allocations of this type were excluded from analysis since it was not possible to determine the true percentage of assets allotted to each party.

Table I
Division of Assets by Gender of Party

Asset	*Percent Awarded To Female*	*Percent Awarded To Male*	*N*
Automobile	46%	54%	138
Business	0	100	3
Debt	29	71	44
Residence	58	42	70
Monetary Assets	38	62	36

However, because in those cases where employment benefits were distributed the females generally either had no benefits, or benefits of a lesser value, there is reason to assume that the omitted cases differ systematically from the cases left in the sample. In fact, two thirds of retirees receiving private employment pension benefits are male. Further, the size of the average male's pension plans is larger—in retirement they receive on average $670/month, while women receive $370/month (Watson 1990, 15-16). Thus, the omission has the effect of making the distribution of monetary assets appear more equal than it truly is. Leaving each party the benefits currently in their name gives males a greater percentage of the monetary assets than they would be awarded if the judge were actually to take care to divide the assets according to their value.

There was an even wider gap in the distribution of debt; males were responsible for 71% of the debt, while females were liable for only 29% of the debt. There were only three businesses in the sample, all of which were awarded to the male party. Females received 46% and males 54% of the marital automobiles.[16] But, like employment benefits, automobiles were not typically distributed according to their monetary value. Rather, when there were two automobiles, individuals were given the title to the automobile for which they were the primary driver. This practice was so common that there is too little variability present in this distribution to analyze the data further.

Aside from automobiles, residences were distributed more equally than any of the other assets, with females receiving 58% and males receiving 42% of the marital residence. In contemplating this particular property allocation, it is important to keep in mind that, by law, the party with custody of the children will be given strong preference for ownership of the residence. This in fact occurred without variation—in no case was the custodial parent not awarded the marital residence. Further, in every case but two the female was awarded custody of the children.

There is one more important factor to consider — judge's decisions often made explicit reference to balancing out the differences in the division of the residence by awarding the party who did not receive the residence more assets elsewhere in the settlement. Thus, quite often, anything the female gained in having a greater percentage of the residence allotted to her, she lost in the division of other types of property. When monetary assets (which disproportionately went to males) were distributed, however, the judges did not make comments about offsetting the unequal division elsewhere in the property settlement. So it appears that while females' gains in asset distribution were offset elsewhere, gains made by males in monetary assets were not lost in other areas of asset division. It would be interesting to know if males who are awarded the residence also lose out in the rest of the settlement, but there was only one male in this sample who retained possession of the marital residence.

The information related so far discloses nothing about the consequences of the gender of the judge on asset distribution. Ordinary least squares regression was employed to assess these effects for the allocation of marital residences, debts, and monetary assets. This was not done for businesses, since the number of cases was too small. Likewise, no regressions were performed on automobiles because there was almost no variation in the dependent variable to be explained.

Table 2 reports the relationship between the gender of the judge and the percentage of the marital residence awarded to the female.[17] Female judges awarded a greater percentage of this

Table 2
Regression of Percentage of Marital Residence Awarded to Females by Gender and Age of Judge and Marriage Duration

Variable	*Estimated Coefficient*	*Standard Error*	*T-Statistic*
Constant	0.16	0.24	0.68
Gender of Judge (1=female)	0.10	0.09	0.28
Judge's Age	0.00	0.00	0.52
Years Married	0.02	0.01	3.22*

Standard Error = 0.28, R^2=.20, n=51

*p<0.05

type of property to females than male judges did, increasing the percentage of the residence awarded to the female divorcee by nine points. The age of the judge was not a factor in determining the distribution of the residence. The ordinary least squares regression line determined from the sample was:

Percent Residence Awarded Female = 0.16 + 0.09 (Gender of Judge) + 0.02 (Marriage Length)

The estimated coefficient for the gender of the judge was not significant, and the fraction of the variance in the values of the dependent variable explained by the regression was low. Thus, the analysis here failed to confirm the hypothesis that female judges will assign a greater percentage of marital assets to females than the percentage male judges allocate to females.

The division of the marital home was best explained by an entirely different factor—the duration of the marriage. The longer the marriage, the more of the residence a female was awarded. Increasing the marriage length by one year increased the percent of the residence awarded to the female by two percentage points. The intercept has no meaning in this equation, since there were no couples married for zero years. The coefficient for the marriage length was significant at the 0.05 level.

There is no readily apparent theoretical explanation for this fact. One possibility is that in newer marriages there are no children, so the preference for keeping the home with the custodial parent (which in practice means awarding the home to the female) does not hold; the result is that males are awarded the residence. One would then expect the same in longer marriages in which the children have grown. Unfortunately, the average length of the marriage in the sample was eleven years, and there were almost no marriages of more than fifteen years, and in both cases any children, unless born prior to the marriage, would still be minors. Consequently, it is not possible to test the expectation about the role of children with the data available here.

The results of the analysis for monetary assets, as reported in Table 3, were similar to that of the marital home. Unfortunately, the number of divorcing couples with monetary assets was not great, so the sample size here is relatively small. Female judges awarded a greater percentage of the monetary assets to females than did male judges. The regression equation produced from the data was:

Percent Monetary Assets Awarded Female = 0.49 + 0.08 (Judge's Gender) + 0.01 (Marriage Length)

Females judges awarded 8 percent more of the monetary assets to females than males judges did. But, as with the marital residence, the coefficient for gender was not significant, and the portion of the variance explained by the model was low. Unlike the residence distribution, however, the length of the marriage is not important here. In fact, none of the variables are good predictors of how judges allot monetary assets. Thus, this analysis too fails to confirm the hypothesis that female judges allot a greater percentage of marital assets to females than males allot to females.

The relationship between the percentage of marital debt distributed to females and the gender of the judge is reported in Table 4. Female judges distributed less debt to females than did male judges by seven percentage points. And a one year increase in the duration of a marriage increases the percentage of debt allotted to females by one point.

Percent Debt Distributed to Female = 1.09 - 0.07 (Gender of Judge) + 0.01 (Years Married) - 0.01 (Judge's Age)

The coefficient for the judge's gender was not significant, and the fraction of the variance explained by the model was low. Again, the hypothesis about the importance of the judge's gender was not confirmed.

The percentage of debt females were liable for was best explained by the age of the judge. A one year increase in the age of the judge decreased the percent of marital debt distributed to the female by one percentage point. The estimated coefficient for the judge's age and the value of the intercept were both significant at the 0.05 level. There was no interpretation of the intercept in this case, since it is not possible to have a judge with no age (or an age of zero).

The findings presented here for the division of marital debt could be consistent with the hypothesis that conventional notions of the association of gender spheres with public/private split have changed over time. Traditionally, a woman's realm was thought to be private — the home. The domain of the man, on the other hand, was business — finances and money were his responsibility (see Filene 1986). Debt is part of this latter category, the man's sphere. If older judges cling to traditional roles to a greater extent than younger judges do, one would expect that older judges to assign more of the debt to males than females.

In terms of more equitable property settlements for women, the implications of the hypothesized cohort effects found in

Table 3

Regression of Percentage of Monetary Assets Awarded to Females by Gender and Age of Judge and Marriage Duration

Variable	*Estimated Coefficient*	*Standard Error*	*T-Statistic*
Constant	0.49	0.38	1.28
Gender of Judge (1=female)	0.08	0.15	-0.57
Judge's Age	0.00	0.01	-0.66
Years Married	0.01	0.01	0.26

Standard Error = 0.29, R^2=.08, n=24

Table 4

Regression of Percentage of Marital Debt Distributed to Females by Gender and Age of Judge and Marriage Duration

Variable	*Estimated Coefficient*	*Standard Error*	*T-Statistic*
Constant	1.10	0.29	3.74**
Gender of Judge (1=female)	-0.07	0.13	-0.53
Judge's Age	-0.01	0.01	-2.98*
Years Married	0.01	0.01	0.95

Standard Error = 0.29, R^2=.25, n=32

*p<0.05 **p<0.01

the distribution of debt are not good. Ironically, the purported liberalizing attitudes of younger judges lead to settlements less favorable to women. As judges become younger they allocate more of the debt to females. This outcome, however, is not compensated for by greater allocations of monetary assets or a greater percentage of the residence—the age of the judge had no effect on the distribution of these assets. Thus, as older judges retire and are replaced by younger individuals, the cohort effect will lead to settlements which, on the whole, are less favorable to women, other things being equal.

It is possible that there is an interaction between gender and age which accounts for property distribution because female judges tend to be younger than male judges. Since the cohort effects were present in the allocation of debt, this hypothesis was tested on the debt data. The results of the regression with the interaction coefficient are reported in Table 5. It appears that there is no interaction between age and gender. A one year increase in age decreases the percentage of debt allocated to the female by one percentage point regardless of the gender and age of the judge.

Discussion and Conclusion

The fact that the hypotheses were not confirmed could be a result of several factors. It may be the case that the alternative hypothesis of the legal model is true, and justice is genuinely blind. However, before accepting the blind justice model it is important to consider several factors. First, while the gender of the judge may not have a role, the age of the judge does. The blind justice model, however, predicts that a judge is a judge; no personal background characteristics, age included, should influence the outcomes of cases.

Second, while none of the coefficients on the gender of the judge were significant, neither were any of the coefficients pointing in a direction contrary to expectations. Thus, female judges awarded females a greater percentage of residences and monetary assets, and a smaller percentage of debt than did male judges. The insignificance of the coefficients may have been the result of an insufficient sample size.

Third, breaking marital property down into different types of assets, while necessary to analyze the data given the state's reporting procedures, may have obscured the true relationship, especially if judges were making trade-offs between different types of assets. Unfortunately, while monetary values can be summed across types of assets, it is not possible to combine the percents across types of assets in a meaningful way in order to determine if such trade-offs were common, or were being made at all.

Fourth, there may have been pressure on female judges to conform to any practices already established in the judicial community. If these standard practices contained biases against women, then in the process of internalizing these procedures, female judges would simultaneously, although inadvertently, internalize the biases in their decision-making processes. It would be interesting to interview more female judges, especially those appointed in the recent past, in order to determine whether or not this was a factor. A similar effect might occur through the socialization of women into the legal profession, both in law school and in legal practice. Further, it is not implausible to consider the contention that "women who have made it in a man's world" may have succeeded because, whether consciously or not, they have conformed to the norms of a world that is still biased because of the legacy of a legal tradition that treated women as property rather than people.

Another feasible implication of this study is that the bias in divorce proceedings is systemic. Property distributions may be completely unassociated with a judge's gender. Rather, it may be the case that all judges were guided by elements in the law or the legal process that necessarily created bias. Given the amount of discretion the law grants a judge in dividing assets, it is difficult to imagine such an element. Nonetheless, the systemic explanation is still a possibility.

In terms of bias generally, the fact that women tended to receive their share of the marital property through retaining possession of the marital residence, while males were more likely to receive a greater portion of monetary assets, especially employment related benefits, points to a potential inequity in the distribution of liquid, income-generating assets. While homes appreciate in value, they do not produce income, and they are not liquid. Homes also require expenditure on maintenance that assets such as CDs do not. The property typically awarded to males — savings accounts, CDs and other monetary assets — do produce liquid income. Thus, females not only receive fewer assets in the settlement, their share of the pie is tied up in a home which often cannot be sold for many years (due to the terms of the settlement), until any children are no longer minors.

Finally, it should be pointed out that there may also be problems with the generalizability of the conclusions to this study.

While the divorce laws of most states are based on the Uniform Marriage and Divorce Act, there are minor, though potentially consequential, variations from one state to another which may affect the outcomes of the cases.[18]

Further, while the actual laws may not vary significantly from state to state, the unwritten procedures used by judges to implement the laws may differ tremendously.

Table 5

Regression of Percentage of Marital Debt Distributed to Females by Gender and Age of Judge, Marriage Duration, and Gender/Age Interaction

Variable	*Estimated Coefficient*	*Standard Error*	*T-Statistic*
Constant	1.09	0.32	3.46*
Gender of Judge (1=female)	-0.03	0.80	-0.04
Judge's Age	-0.01	0.01	-2.69*
Years Married	0.01	0.01	0.37
Gender/Age Interaction	-0.00	0.01	0.91

Standard Error = 0.29, R^2=.25, n=32

*p<0.05

Notes

1. At the start of 1990, 30 states had task forces investigating gender bias in the legal system. See Schafran 1990, 186.

2. New York Task Force on Women in the Courts, Report of the New York Task Force on Women in the Courts, reprinted in *Fordham Urban Law Journa*l, 15 (1986-1987), p.26.

3. Uniform Marriage and Divorce Act, Alternative A, Section 307(b). Illinois law states that the court shall consider "the contribution of a spouse as a homemaker or to the family unit." Illinois Annotated Statute, chapter 40, paragraph 503(d)(1). See Appendix A.

4. New York Task Force on Women in the Courts, Report of the New York Task Force on Women in the Courts, *Fordham Urban Law Journal*, 15 (1986-1987), p. 67

5. Id., at 72.

6. The contention is not that women have an essential nature which is inherently different from men, but rather that the nature of every individual is constructed, and that at this particular place and time, women are constructed as described. See Rubin 1976; Riley 1988.

7. If this hypothesis can be proven, the results would provide a strong rationale for increasing the numbers of female judicial appointments at all levels of the legal system.

8. Male dominated juries awarded male plaintiffs compensation 12 percent above average, while female plaintiffs were awarded 17 percent less than average. Female dominated juries awarded male plaintiffs 3 percent more than average, and female plaintiffs were awarded 17 percent more than average. Nagel and Weitzman 1971, 195-196.

9. For example, of 2020 larceny cases in the Kritzer and Uhlman sample, only 48 of the defendants were female, and only three of the 48 female defendants' cases were handled by female judges. Similar patterns existed in the other criminal categories.

10. The largest N with a female judge and a female defendant in the Kritzer study was in sentencing of drug offenders (N=19 out of 4314 total drug sentencing cases in the sample).

11. Telephone conversation with the clerk of the court.

12. Individuals who wish to file as paupers must demonstrate that they are too poor to pay the filing fee.

13. Generally, this means that the party desiring the divorce is unable to locate his or her spouse.

14. These factors include: welfare of children, length of marriage, contribution to property acquisition, and economic circumstances. For the full text of the law, see Appendix A.

15. Names have been changed to protect the anonymity of the study participants.

16. Unfortunately, values of the automobiles were often not given in the court records. Thus this variable is computed as the number of autos awarded to the female (male) divided by the total number of marital autos.

17. Results are reported for females only. To determine the results for males flip the sign on the coefficient for the gender of the judge, and subtract the constant from one.

18. Some states, for example, do not require judges to consider the tax consequences of the property division as this state's law does. Very general statements used in the state's law, such as the "needs of each party," are not present in the laws of all states.

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Appendix A
Typical Divorce Law Regarding Division of Property

In a proceeding for a dissolution of marriage or declaration of invalidity of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

(1) the contribution or dissipation of each party in the acquisition, preservation, or depreciation or appreciation in value, of the marital and non-marital property, including the contribution of a spouse as a homemaker or to the family unit;

(2) the value of the property set apart to each spouse;

(3) the duration of the marriage;

(4) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(5) any obligations and rights arising from a prior marriage of either party;

(6) any antenuptial agreement of the parties;

(7) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(8) the custodial provisions for any children.

(9) whether the apportionment is in lieu of or in addition to maintenance;

(10) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(11) the tax consequences of the property division upon the respective economic circumstances of the parties.

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Nancy Crowe thanks Michael Dawson, Mark Hansen, Gerald Rosenberg, Lynn Sanders and the participants of the Master's Seminar in American Politics and the American Politics Workshop at the University of Chicago for their valuable comments and criticism. She welcomes suggestions. Contact her by e-mail at the above address.

The *Review* seeks not only to critique current scholarly books but also to evaluate text books which members of the Section might wish to use. In October-November 1992, Susan Mezey edited a highly acclaimed special issue of the Review which examined a large number of constitutional law texts. The *Review* is now planning two successors to that issue. In February, 1995, Michael McCann will edit a special issue reviewing all current texts for judicial process, American courts, and law and politics courses *(see below)*. Later in the year or early in 1996, Lettie Wenner will do the same with case books and texts for courses in administrative law. Each of these special issues will contain reviews written by experienced teachers and scholars.

The *Review* depends entirely on the voluntary assistance of a large number of reviewers. We have been extremely fortunate in gaining the enthusiastic collaboration of many scholars in the field. However we occasionally miss a book that ought to be reviewed. That happens when a reviewer occasionally neglects to write the review to which he or she has agreed; more often, it occurs when we do not notice advertisements for the book or the publisher neglects to send us a copy. If there are such books which have been published since June 30, 1994 that you believe ought to be reviewed, please alert me with an e-mail message at MZLTOV@NWU.EDU or drop me a note via the U.S. mail. If the book is not already scheduled (we presently have 24 reviews in the pipeline), we will try to fill the gap. Please also send me any other suggestions you might have.

—Herbert Jacob, *Editor*

The Law and Politics Book Review Column...

Notes and Announcements

Herbert Jacob, *Northwestern University*
Michael W. McCann, *University of Washington*

The *Law and Politics Book Review* soon will publish a special series reviewing undergraduate texts on law, courts, and judicial processes.

The general criteria used to qualify texts for this series is their use in introductory undergraduate (and perhaps graduate) classes on law and courts. Three overlapping categories of texts and edited readers will be covered: introduction to legal system and process; judicial process; and law and society. Moreover, only texts published in the last five years and still in print will be reviewed. Overall, twenty texts are scheduled for examination. Each text will be reviewed independently by a different scholar. These essays will resemble in form and content other reviews in the *Law and Politics Book Review,* although reviewers will focus assessments to some extent on issues pertaining to classroom utility of the texts for teachers. The series editor, Michael McCann, will write a general introduction and overview for the series. In all these regards, the new series will follow and parallel the wonderful reviews of constitutional law texts edited in 1992 by Susan Gluck Mezey.

Stay tuned for this exciting forthcoming event, which is scheduled to appear in February and March 1995, just as most of the new series on another electronic medium (TV) will have been cancelled. The book review series promises at least to be far more informative than the latter.

—Mchael W. McCann, *Special Editor*

The U. S. Supreme Court Judicial Database Column....

Using the Database to Identify Issues and Legal Provisions

Harold J. Spaeth, *Michigan State University*

By the time you read this, the 1993 edition of the Database will have been sent to the Consortium. Although I have no control over the time the Consortium requires to ready the data for distribution, I hope it has expired. The 1993 edition covers the entire 1993 term, Blackmun's last and Ginsburg's first.

Also by way of announcement, at Jeff Segal's suggestion I have further segmented the Court's orally argued decisions. Heretofore, these were divided into signed opinions (DEC_TYPE=1) and orally argued per curiams (DEC_TYPE=6). Separated from the former are judgments of the Court (DEC_TYPE=7). Although I mention this change at the beginning of the documentation of the 1993 edition, it is sufficiently important to warrant reiteration here. Failure to recognize this change will result in omission of judgments from cases you consider in your analysis. Note that this change does not affect the coding of orally argued per curiam decisions (DEC_TYPE=6). Note also that the separation of judgments from the other signed opinions is systematic: all judgments are now separately coded, not just those from the 1993 term.

In this issue of **Law and Courts,** I want to discuss the use of the Database to identify issues and legal provisions. These concerns are a bit more difficult that those presented in the last issue: how liberal or conservative a given justice is, and the frequency with which the Court reverses the lower courts.

The Identification of Issues

The Database differentiates between issues and legal provisions. ISSUE focuses on the subject matter of the controversy—the public policy issue (*e.g.,* abortion, Miranda warnings, affirmative action, parochiaid, bankruptcy, venue, federal preemption of state court jurisdiction)—rather than on the legal provision(s) that the case concerns. Although the decision rules governing the specification of a case's issue do not lend themselves to articulation and, as a result, may be considered more subjective than the other variables in the Database, nonetheless intercoder reliability substantially exceeds 90 percent (see pp. 67-68 of the Database Documentation for a list and discussion of the coding discrepancies). Unlike a case's legal provision, an effort was made to restrict each case to a single issue. Less than 3 percent of the records in the Database display a second issue. No case has more than two. The Database identifies 253 issues, organized into thirteen major groupings or issue areas under the variable name VALUE. (The list of issues may be found on pp. 58-66 of the Documentation; the issue areas on pp. 68-69.)

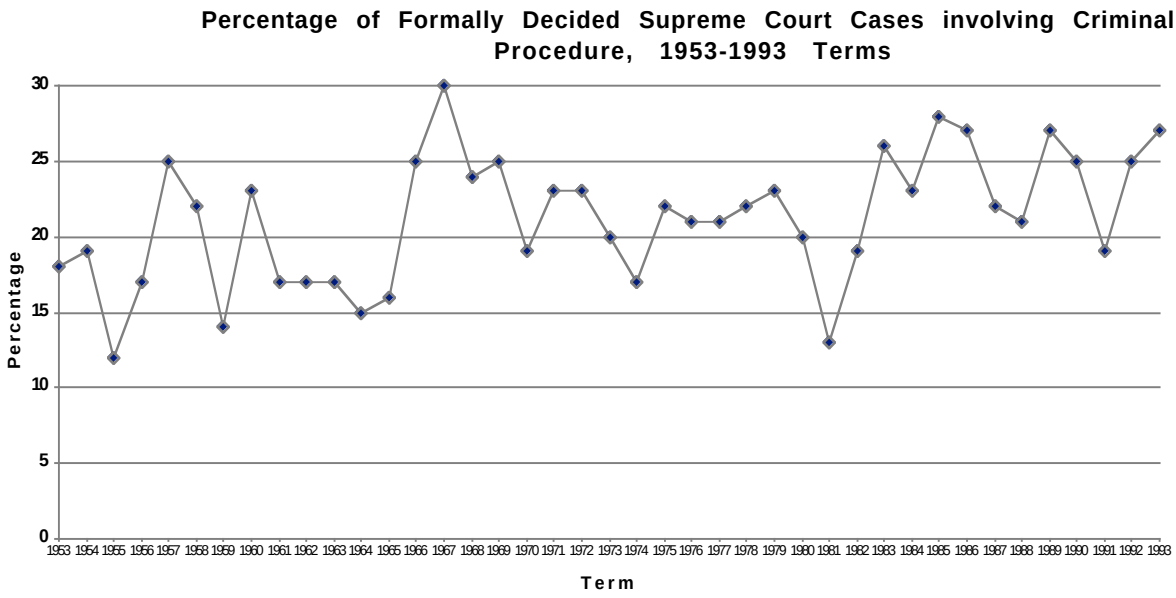
To identify the issue that a case contains requires an initial specification of the type of decisions you wish to consider. Let's assume the orally argued ones. Thus (using SPSS command language): SELECT IF (DEC_TYPE=1 OR DEC_TYPE=6 OR DEC_TYPE=7). Identification of how you wish to count cases—*i.e.,* to determine the unit of analysis (ANALU)—is also a prerequisite. Because issues do not differ between or among cases docketed together under a single citation, I will omit from consideration docket number (ANALU='1'), along with split vote cases (ANALU='4') because these split votes pertain to a single issue. I also omit cases containing multiple legal provisions (ANALU='3') because these records will all pertain to the same issue. By focusing on case citation (ANALU=' ') you will capture the same issue that appears in the records with that citation that also show ANALU equaling 1, 4, or 3.

But two other units of analysis remain in the coding scheme presented on pp. 3-4 of the Documentation: those pertaining to multiple issues (ANALU='2') and to cases containing both multiple issues and multiple legal provisions (ANALU='5'). Therefore, to completely list all of the citations belonging to a given issue you will need to use the SELECT IF command for the type of decision as well as the unit of analysis. Thus

```
SELECT IF (DEC_TYPE=1 OR DEC_TYPE=6 OR
DEC_TYPE=7)

SELECT IF (ANALU=' ' OR ANALU='2' OR ANALU='5')
```

If you follow these commands with FREQUENCIES VARIABLES=ISSUE you will obtain the number of citations bearing on each issue in the Database. But this number will be slightly redundant because some of the citations—arguably a trivial number—will contain, say, four legal provisions apportioned over two issues. Said citation will contain a blank in the ANALU field of the first record, a 2 in the second, and probably a 5 in the third and fourth records. It may well be that the ISSUE field of the first record may involve x, the second y, and the third and fourth also x corresponding to the four different legal provisions that the case considers. Accordingly, this citation will have



Note: Formally decided cases include those with signed opinions and orally argued per curiams. Criminal procedure includes the rights of persons accused of crime except for the due process rights of prisoners.

Source: U.S. Supreme Court Judicial Database, with orally argued citation as the unit of analysis.

counted the frequency of issue x as 3 rather than 1. As a result you will need to list the citations in order to obtain an accurate count by replacing the word FREQUENCIES with LIST and adding one of the citation variables (US, LED, SCT) to ISSUE:

```
LIST VARIABLES= US, ISSUE
```

If you then visually examine the output and clerically remove the citations with a redundant issue, your totals will be accurate. Most users, of course, will be interested only in a certain issue, or a related subset of issues. Visual examination of the output to exclude redundant citations will then be a brief and simple matter.

Users investigating issues will typically want to couple this information with other variables, such as those discussed in the last issue of **Law and Courts** (how liberally or conservatively a justice votes; the frequency with which the Court reverses lower court decisions). Other plausible links may include analysis of who writes what sort of opinions on particular issues, the ebb and flow of issues over time, linkage with administrative agency action, and the size and direction of the decision of the winning coalition.

The Identification of Legal Provisions

This variable (LAW) identifies the constitutional provision(s), statute(s), or court rule(s) that the Court addressed in deciding the case in question. Unlike ISSUE, LAW contains no upper bound; as a result, many more cases contain multiple legal provisions that they do issues. Moreover, the number of legal provisions that a case contains not uncommonly will exceed the upper bound of two that governs issues.

Decision rules determining the legal provisions that the Court has addressed admit of considerable precision, so

(continued on the next page)

much so that intercoder reliability approximates 100 percent. The basic criterion is a reference in at least one of the numbered holdings in the summary of the *United States Reports,* which appears before the main opinion in the case. Subsidiary rules are found on pp.42-43 of the Database Documentation. The list of legal provisions, which are made much more subject to change than issues, may be found on pp. 44-49 of the Documentation.

Do note, however, that the order in which the Database lists the legal provisions has absolutely no correlation with their importance to the Court's decision. If a legal provision conforms to the criteria for inclusion in the Database, it is included. The fact that it may be specified in five of six numbered headings in the syllabus does not give it Database primacy over one that appears in only a single numbered heading. Any judgment of importance must be made by you, not the Database. Thus, unlike issue, selecting ANALU=' ' does not give you the primary law considered in each case.

I will again assume that your research interest extends only to orally argued cases. Hence, you will repeat the command used above:

```
SELECT IF (DEC_TYPE=1 OR DEC_TYPE=6 OR
DEC_TYPE=7)
```

Unlike a focus on issues, an interest in legal provisions may warrant docket number as your unit of analysis. Occasionally, but not very often, the legal provision will differ between or among docketed cases decided under a single citation. Hence,

```
SELECT IF (ANALU=' ' OR ANALU='1' OR ANALU='3'
OR ANALU='5')
```

ANALU='3' will collect cites and dockets containing multiple legal provisions in which the issue remains constant. ANALU='5', as mentioned, indicates a cite or docket in which the legal provision as well as the issue differs from those found in the first record of the case.

If you follow the foregoing two commands with

```
FREQUENCIES VARIABLES=LAW
```

you will get the number of records for each legal provision. Surprisingly perhaps, redundancy will be less than redundancy of issue. This is because a common issue may pertain to all the legal provisions considered by the Court is a given case. The reverse is much less likely: a second issue pertaining to a common legal provision. Nonetheless, you are well advised to visually inspect your output in order to delete any duplications. You may do so by the command,

```
LIST VARIABLES=US, DOCKET, LAW
```

You may, of course, substitute LED or SCT for US as an alternative citation enabling you to spot a docket in which a given legal provision appears more than once.

The Database provides an alternative method of extracting legal provisions. This operates if you wish to use a given legal provision as your unit of analysis; that is, if you wish to focus only on those cites or dockets in which a given legal provision is the sole one the Court considered or, alternatively, if a given legal provision is addressed along with at least one other. The variable LAWS exists for this purpose. If the field is blank, no other legal provision is involved; if a 2 or an asterik appears, the Court considered at least one other legal provision.

Thus, for example, if you wish to know all cases in which Aid for Families to Dependent Children is the only legal provision at issue, you would use the following commands

```
SELECT IF LAW='AFDC'
SELECT IF LAWS= ' '
SELECT IF (ANALU=' ' OR ANALU='1')
```

and couple them with the appropriate LIST VARIABLES command. As I illustrated with regard to issues, you may also couple analysis of legal provisions with any of the other variables in the Database.

Finally, note that some legal provisions also appear as issues. *E.g.,* habeas corpus, First Amendment, Fourth Amendment/search and seizure, due process, Federal Rules of Civil Procedure, the Internal Revenue Code/federal taxation, among others. If you are unconcerned whether a given focus appears as a legal provision rather than an issue, simply use separate SELECT IF statements, one for LAW, the other for ISSUE.

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Section News

At the 1994 meeting of the American Political Science Association, the Law and Courts section announced the recipients of three awards. What follows are the selection committees' citations.

CQ Press Award

Selection Committee: Micheal W. Giles, chair; Susan Sterett; and Harry Hirsch

The CQ Press Award for 1993-94 goes to **Nancy Crowe** of the University of Chicago for her paper entitled, "Gender and Asset Settlements in Divorce Proceedings." In focusing on the tangible outcomes of court cases, this paper squarely frames the political role of courts in American society. Attacking this issue at the trial court level reflects both a willingness on the part of the author to venture into the less traveled avenues of the subfield and to confront the sometimes daunting task of collecting data from case files. The author blends this case data with information gleaned from interviews conducted with divorce lawyers and judges presiding over divorce cases to provide a rich and varied context for hypothesis testing. Confronted with null findings, the author does not shy from the possibility that the "legal model" may actually be operative while providing a solid assessment of why her research may not have been able to detect gender effects. Taken as a whole, this paper reflects a scholarly maturity that is seldom seen in a graduate paper and which qualifies it to receive the award as the best paper by a graduate student in the field of law and courts.

American Judicature Society Award

Selection Committee: Susan Gluck Mezey, chair; Kevin McGuire; and Richard L. Pacelle, Jr.

The committee awarded the American Judicature Society prize for the Best Paper presented at the 1993 American Political Science Association to the paper entitled "Rethinking Litigation: The Role of the Courts in Producing Litigation" by **Christine Harrington** of the New York University and **Daniel Ward** of Rice University. Although the committee thought that all the papers were interesting and worthy of nomination, we felt that the Harrington and Ward paper was the most broadly theoretical, and dealt with an interesting and relatively new area of investigation. Focusing on circuit courts of appeal, their paper looked at the way in which the courts affected the decisions of parties to pursue their interests through litigation.

C. Herman Pritchett Award

Selection Committee: Michael W. McCann, chair; Susan Lawrence; and C. Neal Tate

The C. Herman Pritchett Award is awarded for the best book in the field of Law and Courts authored by a political scientist each year. This years committee chose one prize winner for 1993, but it also decided to commemorate two other important contributions in the award ceremonies at the annual section business meeting.

First of all the committee enthusiastically acknowledged the important contributions of **Lee Epstein**, **Jeffrey A. Segal, Harold J. Spaeth,** and **Thomas G. Walker** in their volume, *The Supreme Court Compendium* (Congressional Quarterly). While a compendium such as this did not meet the standard criteria for the prize, the committee recognized that this collection of data was an outstanding achievement that will benefit both research and teaching in the field for some time to come.

Second, the committee agreed that the runner-up book in the competition was sufficiently distinguished to deserve a special honorable mention award. The book is *The Supreme Court Bar: Legal Elites in the Washington Community* (University Press of Virginia), by **Kevin McGuire,** University of Minnesota. This work, the prize committee determined, fills an important gap in our knowledge about the elite lawyers who appear before the high court and the politcs of the legal advocacy process.

Finally, and most important, the committee awarded the Pritchett prize to **Howard Gillman,** University of Southern California, for *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Duke University Press). The Committee assessed that this well researched and compelling historical study will have a broad impact on contemporary debates regarding how Supreme Court justices do their work, the role that the judiciary plays in our polity, the complex ways that law figures into social change, and the proper relationship between the regulatory state and civil society generally.

Conference Schedule, 1995-96

Western Political Science Association	Portland, Oregon	March 16-18, 1995
Southwestern Political Science Association	Dallas, Texas	March 22-25, 1995
Midwest Political Science Association	Chicago, Illinois	April 6-8, 1995
Law and Society Association	Toronto, Ontario	June 1-4, 1995
American Political Science Association	Chicago, Illinois	August 31- September 1, 1995
Southern Political Science Association	Tampa, Florida	November 1-5, 1995

Law and Society Association

The Law and Society Association has issued a Call for Participation for its 1995 Annual Meeting to be held June 1-4 at the Royal York Hotel in Toronto, Canada. The theme of the meeting is "Being, Doing, Remembering: The Practices and Promises of Sociolegal Research at the Close of the Twentieth Century." Invited are proposals for paper, panel, and roundtable participations. Due date: December 15, 1994 (later submissions considered on space available basis). For a copy of the Call contact: Executive Offices, Law and Society Association, Hampshire House, University of Massachusetts, Amherst MA 01003. Phone (413) 545-4617; Fax 413/545-1640; E-mail LSA@LEGAL.UMASS.EDU

The University of Iowa, Center for Advanced Studies

Obermann Fellowships for the 1995 Faculty Research Seminar
Comparative Law and Politics in Europe

Directed by William Reisinger and Sally Kenney (Political Science) and John Reitz (Law).

June 5-29, 1995. Discussion of submitted papers and revision of the papers for a published book or special edition of a journal. Eight to ten participants (some from within The University of Iowa) to be selected. $3500 stipends. Applications due January 15, 1995.

Write or call Jay Semel, Center for Advanced Studies, The University of Iowa, Iowa City, IA 52242. Phone (319) 335-4034; E-mail 1ORNA-OLSON@UIOWA.EDU

IPSA Research Committee on Comparative Judicial Studies

The 1995 Interim Meeting of the International Political Science Association's Research Committee on Comparative Judicial Studies will be held August 20-22, 1995 at The Université de Sherbrooke, Quebec. One these will be: Protecting Individual and Community Rights. Individuals interested in presenting papers on that theme or on other topics should contact: Professor Martin Edelman, Department of Political Science, State University of New York at Albany, 135 Western Avenue, Albany NY USA 12222. Fax 518/442-4298.

Announcements

Replication Datasets

An increasing number of political science journals, book presses, and granting organizations are requiring authors to add a footnote to publications indicating in which public archive they will deposit the information necessary to replicate their numerical results, and the date when it will be submitted (or an explanation if the data could not be archived). In order to encourage these contributions to the scholarly community, **Law and Courts** will provide authors writing in our field some additional visibility by listing a brief citation to their "replication dataset," and the corresponding publication for which it was created, in our next available issue.

Two of the archives willing to accept replication datasets include the Social Science Research Archive collection of the Public Affairs Video Archive (PAVA) at Purdue University and the "Class V collection" at the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan. Both archives will forever keep and distribute replication datasets and make them known to others. In order to submit data, put it on a disk or tape and mail it to PAVA (Director, Public Affairs Video Archive, Purdue University, 1000 Liberal Arts Building, West Lafayette, Indiana 47907-1000) and/or the ICPSR (Director, User Support, ICPSR, P.O. Box 1248, Ann Arbor, Michigan 48106). An easier approach is to put your data in a self-extracting archive file (with a utility such as PKZIP for the DOS operating system, TAR for Unix, or StuffIt for the MacIntosh) and submit it via anonymous FTP; you should also announce the file name, and article, book or dissertation citation in an accompanying electronic mail message. To send to PAVA, FTP to PAVA.PURDUE.EDU in directory PUB/INCOMING and send electronic mail to INFO@PAVA.PURDUE.EDU. To submit to the ICPSR, FTP to FTP.ICPSR.UMICH.EDU in directory PUB/INCOMING and electronic mail to JAN@TDIS.ICPSR.UMICH.EDU

More Books

The Summer 1994 edition of **Law and Courts** listed new books published in 1993 and 1994. The following volumes were inadvertently omitted:

Gottlieb, Stephen E., ed. 1993. *Public Values in Constitutional Law.* Ann Arbor, MI: University of Michigan Press.

Smith, Christopher E. 1993. *Courts, Politics, and the Judicial Process.* Chicago: Nelson-Hall.

Young, James V. 1993. *Landmark Constitutional Law Decisions: Briefs and Analyses.* Lanham, MD: University Press of America, Inc.

The Law and Courts Preprint Archive

Conference papers are now available via the Internet! The Law and Courts Preprint Archive contains papers from several socio-legal and political science conferences. They may be downloaded and read at no cost; this is another service of the Law and Courts Section of APSA.

Beginning with papers from the 1994 Law & Society meetings, the preprints are available in their original form, complete with footnotes, tables, and graphs. When you access the archive, via gopher, WWW, or Mosaic you will want to read the following files: 1) An Introduction to the Archive—this file gives detailed instructions on how to download papers; 2) Abstracts—each paper in the archive that cannot already by read in ASCII form has an abstract in ASCII which you can immediately read on your screen; 3) *.pdf files—these are the full texts of the papers in Acrobat form. Acrobat is a product from Adobe which permits documents to be transferred across various computer platforms. To read these documents you will first have to download the appropriate Acrobat Viewer which is also available in the archive and costs you nothing. Once you have downloaded and installed the viewer on your desktop computer, you can read the *.pdf files as soon as you have downloaded them.

To access the archive point your gopher to NUINFO.NWU.EDU 70 or point Mosaic to HTTP//WWW.NWU.EDU then select "Library Services".

Law and Courts is the newsletter of the Law and Courts Section of the American Political Science Association. We gratefully acknowledge the support of Washington University in helping to defray the editorial and production costs of the newsletter.

Subscriptions of **Law and Courts** are free to members of the APSA's Law and Courts section. Please contact the APSA to join the Section.

Submissions to **Law and Courts** are welcome. The deadline for submissions for the next issue is March 1, 1995.

Law and Courts

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