

A justice rendered by women for women ? What judicial intervention does to gender wealth gap

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Introduction

In common law countries, the influence of judges' characteristics on judicial decisions is :

- ▶ an essential issue : jurisprudence forms the basis of judicial activity ;
- ▶ an ambivalent question : judges are elected and may assume a role as representatives of minorities.

In legislated-law countries :

- ▶ the judge is supposed to be an "anonymous interpreter of the law" (Schulz and Shaw, 2013) ;
- ▶ in France, the feminization of justice has become a political issue : associations defending fathers' rights denounce a "justice rendered by women for women" (Fillod-Chabaud, 2016).

Introduction

Does the diversification of the social characteristics of judges generate more equality or inequality ?

In France, we observe :

- ▶ A gender wealth gap largely due to the gendered division of labor (domestic and paid) within different-sex couples ;
- ▶ Several legal mechanisms to compensate for these inequalities at divorce/separation ;
- ▶ A feminization of justice : women accounted for 28,5% of judges in 1982, 50,5% in 2001, 66% in 2017

Introduction

Research question : do we find evidence of a feminist justice or of a justice “rendered by women for women” ?

- ▶ Existing models and empirical evidence show that female judges act in a homogeneous way as representative of other women
- ▶ This paper : focus on decisions related to divorce/separation
 - ▶ Final decisions (child custody, child support, compensatory benefits) and procedural decisions
 - ▶ Two types of measurement of the “feminism” of decisions : level and relative

Introduction

Why the decisions about marital separations are relevant ?

- ▶ The gender of judicial decisions is a question that is politically and publicly discussed in France
- ▶ Different types of decisions : frequency, judge's "discretion" ;
- ▶ A litigation that concerns men and women and all social classes ;
- ▶ Marital separation = mass litigation :
 - ▶ 301,926 referrals to the family court in 2017, including 101,992 requests for divorce → 40% of all civil cases
 - ▶ Easier to provide comparability across cases

Context

The type of judicial decisions depends on the status of couples

- ▶ Unmarried partners : child physical custody and child support
- ▶ Married couples : decisions about children + compensatory benefits (goal : “to compensate for the disparity that the breakdown of the marriage creates in the respective living conditions”)

How the decisions are made ?

- ▶ In case of agreement between spouses, 95% of divorces are homologated
- ▶ In case of disagreement :
 - ▶ Child physical custody : the undefined “interests of the child” ;
 - ▶ Child support : indicative guidelines ;
 - ▶ Compensatory benefit : no strict guidelines but a (long) list of parameters

Who are the judges ?

- ▶ Civil servants recruited through several tracks
- ▶ All judges follow the same 31 months training
- ▶ Depending on your ranking, you can choose the geographical location, the type of function but not the specialization
- ▶ 1 single judge per case ; 800 cases per year
- ▶ Family judge : entry-level or mid-career function

Data

Choices :

- ▶ not working on mock trials (Bourreau-Dubois et al., 2014);
- ▶ working on the "whole range" of cases (Bourreau-Dubois et al., 2020; Boyd, 2016).

Sample :

- ▶ 7 French trial courts over the whole country
- ▶ We randomly selected 10% of these judgments to form a random sample of 3,012 cases closed in 2013
- ▶ 3 types of cases : divorces by mutual consent, contested divorces and litigations between unmarried (or already divorced) parents

Empirical analysis

$$y_{i(j)} = \beta_0 + \beta_1 \text{FemaleJudge}_j + \beta_2 X_j + \beta_3 X_i + u_i$$

3 outcomes :

- ▶ Child physical custody
- ▶ Child support
- ▶ Compensatory benefits

Robust clustered standard errors at the judge level

Empirical analysis

Control variables :

- ▶ Judges (X_j) : courts, seniority, other position (president or VP)
- ▶ Cases (X_i) : type of case, age, occupation, labor market status, number of children, age of the children, fault divorce, reported violence against the children/partner and a dummy if the spouse is represented by a lawyer (+ for compensatory benefits only, duration of marriage and assets/liabilities of each spouse)

Agreement/disagreement :

- ▶ Agreement if mutual consent/request or same type of custody requested or similar value of child support/compensatory benefits

Table – Effect of the judge's sex category on child physical custody

	(1) All	(2) Agreement	(3) Disagreement
Sole mother	Ref.	Ref.	Ref.
Sole father			
Female judge	0.216 (0.188)	0.361 (0.345)	-0.573 (0.681)
Joint custody			
Female judge	-0.199 (0.218)	-0.318 (0.225)	0.847 (1.046)
Controls :			
Judges (J_i)	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes
N	1,790	1,393	220
Spec	Multinomial logit	Multinomial logit	Multinomial logit

Standard errors in parentheses; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table – Effect of the judge's sex category on child support

	(1) Granted All	(2) Granted Agreement	(3) Granted Disagreement	(4) Value All	(5) Value Agreement	(6) Value Disagreement
Female judge	0.0362 (0.135) [0.005]	-0.188 (0.171) [-0.034]	0.466 (0.628) [0.015]	3.929 (7.684)	-2.420 (11.954)	10.11 (15.903)
Controls :						
Judges (J_i)	Yes	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes	Yes
N	1,836	1,135	306	1,271	783	423
Spec	Logit	Logit	Logit	OLS	OLS	OLS

Standard errors in parentheses and marginal effect in brackets; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Child physical custody and child support - Robustness tests

- ▶ Effect of control variables
 - ▶ Child physical custody : occupation, age of children (< 5 y.o.)
 - ▶ Child support : type of cases, occupation, number of children and age of children
- ▶ Alternative definitions of missing requests
- ▶ Child support : logs instead of levels, total value instead of average support per children, focus on the cases in which the mother is the creditor

Table – Effect of the judge's sex category on compensatory benefits

	(1) Granted All	(2) Granted Agreement	(3) Granted Disagreement	(4) Value All	(5) Value Agreement	(6) Value Disagreement
Female judge	-0.221 (0.197) [-0.023]	-0.240 (0.286) [-0.019]	-0.303 (0.647) [-0.043]	31174.6* (15933.848)	42564.1 (44726.943)	84333.2*** (29343.844)
Controls :						
Judges (J_i)	Yes	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes	Yes
N	1,009	779	172	199	110	89
Spec	Logit	Logit	Logit	OLS	OLS	OLS

Standard errors in parentheses and marginal effect in brackets; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table – Effect of the judge's sex category on compensatory benefits (ctd)

	(1) Granted All	(2) Granted Agreement	(3) Granted Disagreement	(4) Value All	(5) Value Agreement	(6) Value Disagreement
Female × Exp>15y	0.297 (0.490)	0.707 (0.879)	3.923** (1.720)	-14227.7 (30261.031)	-25072.3 (47126.962)	23920.0 (54741.473)
Female judge	-0.328 (0.257)	-0.448 (0.371)	-1.881** (0.896)	36062.5* (21280.136)	52169.7 (55199.567)	77915.5** (34391.314)
Exp > 15 years	-0.431 (0.406)	-0.978 (0.769)	-2.512* (1.370)	15580.5 (26518.147)	1691.4 (49254.987)	-12408.1 (36625.125)
Controls :						
Judges (J_i)	Yes	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes	Yes
N	1,009	779	172	199	110	89
Spec	Logit	Logit	Logit	OLS	OLS	OLS

Standard errors in parentheses ; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Compensatory benefits - Robustness test

- ▶ Effect of control variables : wealth and contentious cases (fault, reported violence)
- ▶ Control for income
- ▶ Control for requests
- ▶ Winsorizing at 5% (instead of 1%)

Discussion - Litigants' claims

So far, litigants' claims not used but absence of differences between male and female judges \neq unbiased decisions

Problem : decision closer to one of the litigants' claim \neq biased decisions. Because :

- ▶ No clear benchmark (except maybe for child support)
- ▶ Even when we have a benchmark, any deviation could be justified

Two steps :

- ▶ What are the litigants' claims ?
- ▶ Are the judges' decisions closer to one of the litigants' claim ?

Table – Type of claims among couples who disagree

Panel A : Child custody				
Claims	Men	Women	Decisions	
No claim	44.2%	10.6%	Closer to men's claims	19% (35%)
Solely to the mother	6%	84.9%	Closer to women's claims	77% (60%)
Solely to the father	32.8%	0.8%	Neutral	4% (5%)
Shared custody	17%	3.7%		
Panel B : Child support				
Claims	Men	Women	Decisions	
No claim	51.5%	24.4%	Closer to men's claims	40% (44%)
Mean value if claims	180€	272€	Closer to women's claims	42% (24%)
Median value if claims	120€	193€	Neutral	18% (32%)
Ratio women's / men's claims	1.9			
Panel C : Compensatory benefits				
Claims	Men	Women	Decisions	
No claim	95.5%	81.7%	Closer to men's claims	54%
<i>incl. income gap < 10%</i>	98.2%	88.9%	Closer to women's claims	46%
<i>incl. 10% ≤ income gap < 30%</i>	98.3%	78.3%	Neutral	0%
<i>incl. 30% ≤ income gap < 50%</i>	91.0%	71.2%		
<i>incl. income gap ≥ 50%</i>	83.4%	56.4%		
Mean value if claims	111,158€	102,476€		
Median value if claims	47,500€	40,000€		
Ratio women's / men's claims	3.2			

Discussion - Alternative mechanisms

Our paper : no systematic “pro-women” or “pro-mother” decisions when the case is handled by a female judge so not consistent with the representational mechanisms

Identification of 2 opposite forces :

- ▶ Training and organization
 - ▶ Large discretionary power for some decisions but similar training and organizational constraints may explain the absence of differences for most decisions
- ▶ Information
 - ▶ Female judges request more frequently home investigations but no significant effect when interacted with gender
 - ▶ Female judges more sensitive to other information like domestic violence

Discussion - Peer effects

Table – Judges' sex category and peer effect

	Child custody Pro-mother	Child support Value	Child support Value	Comp. ben. Granted
Fem. judge in high share court	Ref.	Ref.	Ref.	Ref.
Fem. judge in low share court	0.242 (0.686)	-34.62*** (13.137)	-18.70* (10.754)	0.541 (0.930)
Male judge in low share court	-0.204 (0.924)	-30.50 (23.244)	-6.708 (13.814)	0.281 (0.895)
Male judge in high share court	0.223 (0.652)	-57.59** (25.041)	-21.56 (18.038)	0.391 (0.753)
Controls				
Judges	Yes	Yes	Yes	Yes
Cases	Yes	Yes	Yes	Yes
Litigants' claims	No	No	Yes	No
<i>N</i>	391	372	372	162
Spec.	Logit	OLS	OLS	Logit

Note : "high share court" means that the share of female judges in the court is larger than the national mean.

Conclusion

- ▶ We study the influence of the judges' sex category on decisions related to marital separations
- ▶ We do not find evidence of a feminist justice
- ▶ Despite the judge's discretion for some decisions and differences in the use of information, importance accorded to litigants' agreements and claims and organizational constraints explain the limited difference between male and female judges' decisions.

→ Limitations of the representational approach in understanding the decisions made in family cases and the role of justice in offsetting economic inequalities between former partners.

Introduction

Despite the egalitarian legal framework and the massive entry of women into the labor market, the gender wealth gap has almost doubled in France since 1998 (Frémeaux and Leturcq, 2020)

Women's living standards and wealth are more dependent on their marital trajectory than those of men

- ▶ Gender gap among singles and couples : Morin (2014)
- ▶ Marriage : Frémeaux and Leturcq (2020)
- ▶ Divorce/separation : Bonnet et al. (2021) and Bessière and Gollac (2020)

Next steps

- ▶ Wealth at divorce :
 - ▶ Difficult to track wealth at divorce because some assets have already been sold
 - ▶ Necessary to combine of surveys and judicial decisions
 - ▶ Direct estimate of compensatory benefits on wealth inequality
- ▶ Data on appeal cases :
 - ▶ Influence of jury's characteristics (vs single judge in trial cases) ?
 - ▶ Selection into appeal

Supplementary slides

Table – Effect of sex category on child support

	Alternative definition			Cases in which mother = creditor		
	(1) Value All	(2) Value Agreement	(3) Value Disagreement	(4) Value All	(5) Value Agreement	(6) Value Disagreement
Female judge	3.344 (7.703)	2.198 (17.261)	1.555 (8.397)	2.053 (8.090)	-3.872 (12.207)	15.89 (18.226)
Controls :						
Judges (J_i)	Yes	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes	Yes
N	1,271	431	775	1,108	681	374
Spec	OLS	OLS	OLS	OLS	OLS	OLS

Standard errors in parentheses; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table – Effect of sex category on compensatory benefits

	(1) Granted All	(2) Granted Agreement	(3) Granted Disagreement	(4) ln(Value) All	(5) ln(Value) Agreement	(6) ln(Value) Disagreement
Female judge	-0.208 (0.230)	-0.348 (0.394)	-0.837 (1.032)	0.236 (0.196)	0.424 (0.377)	0.703*** (0.248)
Controls :						
Judges (J_i)	Yes	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes	Yes
Income	Yes	Yes	Yes	No	No	No
N	1,008	779	172	199	110	89
Spec	Logit	Logit	Logit	OLS	OLS	OLS

Standard errors in parentheses ; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Figure – Effect of the judge's sex category on compensatory benefits depending on specifications

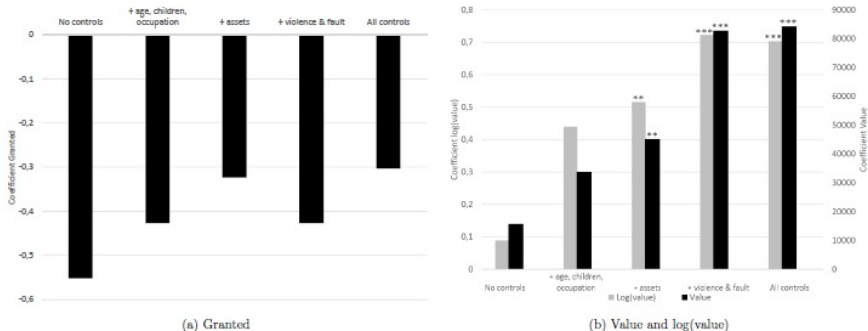


Table – Effect of sex category on litigants' claims

	(1) Physical custody Pro-mother	(2) Physical custody Pro-father	(3) Child support Pro-mother	(4) Child support Pro-father	(5) Compensatory benefits Pro-wife
Female judge	0.420 (0.449)	-0.277 (0.453)	-0.179 (0.211)	0.193 (0.210)	-1.797 (1.427)
Controls :					
Judges (J_i)	Yes	Yes	Yes	Yes	Yes
Cases (X_i)	Yes	Yes	Yes	Yes	Yes
N	482	482	983	983	122
Spec	Logit	Logit	Logit	Logit	Logit

Standard errors in parentheses; * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.