

The Judge is often a Woman. Professional Perceptions and Practices of Male and Female Family Court Judges in France[☆]

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Abstract

In France, a civil-law country, disputes relating to marital dissolution are heard in the Family Chambers of the Superior Courts (*Chambres de la famille des Tribunaux de Grande instance*) by a single judge (a family court judge). As the judiciary becomes more feminized, the question of what influence a judge's gender has over rulings in family cases has become a controversial topic and a media hobbyhorse, under mounting pressure from fathers' rights organizations. Using the results of a collective survey conducted in four Superior Courts between 2008 and 2010, this article shows that male and female family court judges do not have the same personal and professional paths into the profession and do not take up their jobs under the same circumstances or at the same points in their careers, and thus perceive their roles in quite different ways. Despite all these differences, there is great homogeneity in these judges' decisions, regardless of their sex.

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In France, a civil-law country, the feminization of the judiciary has been a rapid and very far-reaching process: since the early 2000s, women have come to account for more than half of judges (58% in 2011), a position only open to them since 1946 and where only 6% were female

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in 1959 (Boigeol, 1993). This situation is in marked contrast with common-law countries, where only a minority of judges are women: they represent over a quarter of all state and federal judges in the USA (Center for Women in Government and Civil Society, 2011), 32% of district judges and 17% of high court judges in the UK (Judicial Database 2012-13), and around one third of federal and provincial judges in Canada (Ryerson University's Diversity Institute, 2012).

These large differences in levels of feminization are due to the different routes into the judiciary, which vary in their causes and their transparency from one country to another (Schultz and Shaw, 2008, p. 2). Whereas becoming a judge in common-law countries is the culmination of a legal career, in countries under civil law the judiciary is a separate career, chosen during initial legal training. In France, judges are civil servants recruited by examination after four years' study of the law, then educated at a specific school, ENM (*École Nationale de la Magistrature* — National Judiciary School). The social standing of judges varies with the institutional context in each country: since they become judges at an earlier age (often under 30), the salaries and social status of French judges are significantly lower than in North America (Biland and Steinmetz, 2013). This is the context to the massive influx of women into the French judiciary: in 2011, three quarters of the judges graduating from ENM were women.

In the Family Courts, which handle the mass litigation associated with marital dissolution (divorces, disputes between unmarried or divorced parents), the feminization of the judiciary has become a sensitive issue. The cases dealt with by the family courts almost invariably involve disputes between a man and a woman¹ on issues such as the division of parental duties and household finances, matters that are highly gendered. Since 1993, these disputes have been heard by a single judge, the JAF ("*juge aux Affaires familiales*" — family court judge, subsequently referred to as FCJ) who today, in around 7 out of 10 cases, is a woman.

The question of the influence of the judge's sex on decisions about child custody or alimony has become a media hobbyhorse for fathers' rights groups, who complain of women favoring women in their application of the law.² "Women make gut decisions [...]. The hyper-feminization of the judicial professions is a real problem! Women understand women [...]. Just like the women who want their own gender representatives in politics, we fathers demand the same thing in the judiciary. A judge should be sexless, because he decides on people's lives," declared Fabrice Mejias, chairman of SOS Papa, France's equivalent of Fathers-4-Justice, in the August 31, 2004 edition of France's weekly news magazine *le Point*.

This sexist argument is not new: in France, as elsewhere, it is part of a backlash that has followed the arrival of women in positions of power (Kenney, 2013, pp. 135-160). Anne Boigeol has shown how the feminization of the judiciary in France prompted very strong resistance within the profession. In the 1950s, the reports of the ENM examination panels, written by senior judges, questioned the suitability of women for the profession (tone of voice, capacity for authority, reasoning and self-control); and in the 1970s, when the feminization of the judiciary was already irreversible, the panels began to worry about the "peril" of "excessive" feminization in the profession (Boigeol, 1996, pp. 116-121). Throughout their history, women in the legal profession

¹ Until now, homosexual couples have very rarely appeared in legal separation procedures, because of the prohibition on gay marriage until 2013, but also because of the problem of legal recognition for same-sex parents.

² The feminization of the legal professions in France is not confined to judges. Women lawyers have recently overtaken men in numbers: they accounted for 51% of all practising lawyers in 2010 (Moreau, 2010). The history of the feminization of the profession of court clerk has a longer pedigree: it reflects the feminization of the offices in the early 20th century, and gathered pace with the granting of civil service status to court clerks in the 1960s (Bossis, 2003). In 2009, 87% of court clerks were women.

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