The influence of patriarchal ideology on outcomes of legal decisions involving woman battering cases: an analysis of five historical eras

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Abstract

Numerous qualitative analyses suggest that our legal system has been dominated by a patriarchal ideology that has affected judges’ legal decisions on cases pertaining to woman battering. To provide a quantitative test, we analyzed legal opinions from five historical eras to determine if the number of indicators of patriarchal ideology has changed over time. We also performed logistic regression analyses to determine whether these indicators are actually associated with case outcomes. Consistent with our hypotheses, in the most recent era (a) there has been a decrease in two of the indicators of patriarchal ideology (judges are less likely to assume that the woman was the instigator and they are less likely to make internal attributions to the woman), (b) the probability of battered women winning these cases has increased, and (c) the best predictor of case outcome is the extent to which the judge believes the woman was the instigator. However, we also obtained evidence that the drawbacks of patriarchal ideology may have affected some men, as well as women, in a negative way. © 2002 Elsevier Science Inc. All rights reserved.

1. Introduction

For centuries, western law has been dominated by a patriarchal ideology, which has been defined as (a) a set of beliefs that legitimizes male power and authority over women in...
marriage, or in a marriage-like arrangement, and (b) a set of attitudes or norms supportive of violence against wives who violate, or who are perceived as violating, the ideals of familial patriarchy (Millet, 1969, pp. 222–223). Evidence for patriarchy, and its association with woman battering, has been obtained in a large set of studies both inside the U.S.A. (e.g., del Mar, 1996; Smith, 1990) and in other nations (e.g., Sasson, 1992; Thomas, 1994). Although scholars disagree about the extent to which patriarchy is the main source of woman battering, certainly there is wide agreement that patriarchy provides fertile soil for its development and sustenance (e.g., Kandiyoti, 1988; Stark & Flitcraft, 1996). That patriarchy has changed over time has not necessarily improved matters (del Mar, 1996). For example, del Mar argued that although women’s ability to resist their husbands’ brutality has increased in the 20th century, a more permissive society has led to a simultaneous increase in the tendency for men to gratify their impulses, which may have made woman battering more widespread and severe.

An impressive literature suggests that a patriarchal ideology has led the legal system to be part of the problem, though it is also likely that the legal system has reinforced patriarchal values. MacKinnon (1993) stated that “the law sees and treats women the way men see and treat women” (p. 207). Ferraro (1993), as a result of her review of the literature, drew a similar conclusion. And del Mar (1996) performed an elegant qualitative study documenting how changes in patriarchy since the 19th century have been associated with changes in the testimonies of the people involved in legal cases involving women battering, and with responses of judges to these cases. The research that will be presented here addresses the issue of how patriarchy has affected the responses of the legal system to woman battering cases. But first, we will briefly review this history, with a focus on coverture and the separate spheres principle.

1.1. Coverture

Common law assigned the role of the family’s head and master to the husband; he retained ownership of the property, was expected to support his wife, and was responsible for her debts and discipline. For her part, the wife owed service and sexual fidelity to her husband. The need to control wives, specifically, was legitimized by the concept of coverture, a principle of marital unity stating that:

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover she performs everything .... (Blackstone 1768 [1966: §442])

Because the wife had no separate legal identity, her husband was answerable to the law for many categories of crimes that might be committed by his wife. This responsibility under coverture served as justification for the husband’s right to “discipline” an unruly wife:

The husband also, by the old law, might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement .... (Blackstone 1768 [1966: §442])
This 18th-century right of a husband to chastise his wife using physical measures extended into the next century as woman battering cases continued to be litigated in England. These Blackstonian tenets were also recognized in the United States. Under coverture, the legal principle of marital unity, the male was not only endowed, but virtually charged with the right/duty to control his wife and children.

1.2. Public and private spheres

In the middle of the 19th century, several of the more severe legal handicaps of a wife were remedied by state-promulgated married women’s property acts. For example, there was a Minnesota Women’s Property Act stating:

All property, real, personal and mixed, and all choses in action, owned by any woman at the time of her marriage, shall continue to be her separate property, notwithstanding such marriage; and any married woman, during coverture, may receive, acquire, and enjoy property of every description, and the rents, issues and profits thereof, and all avails of her contracts and industry, free from the control of her husband, and from any liability on account of his debts, as fully as if she were unmarried. [Minn. Stat. Ann. 519.02 (1947)]

At this point, Blackstone’s unity doctrine began to be replaced by the doctrine of separate spheres in which the public sphere of men was governed by law while the private sphere of women remained outside the law (Williams, 1991, p. 16). The separate spheres principle, however, continued to champion male dominance.

The influence of patriarchal ideology in legal decision making is manifested in the maintenance of a dual-sphere framework: one sphere public, dominant, political, and work-related for the male; the other sphere private, subordinate, personal, and domestic for the female. The legal system has, in many instances, perpetuated this patriarchal arrangement of separate spheres, treating it as a natural basis for decision making in many woman battering-related cases.

The classic legal pronouncement reflecting the separate spheres ideology was made by Supreme Court Justice Bradley, concurring in the decision in Bradwell v. Illinois (1873, p. 141):

... the civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belong to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.

Clearly, although the Bradley opinion is an advance over the coverture principle intrusting husbands with the power of domestic chastisement, it seems to be quite a clear statement that men and women are “different,” and that men should be in the superior position. After all, how could husbands be “women’s protector and defender” if they were in an inferior position? And, if husbands were legally superior, it might at least be plausible that women were at a disadvantage in women battering cases.

The separate spheres ideology did not begin to be formally repudiated until the Supreme Court, probably in response to the feminist movement, incorporated a more rigorous standard of
review to sex discrimination cases beginning in 1971 (Williams, 1991, p. 17). More generally, the patriarchal ideology that has dominated our legal system for the past several centuries has only recently begun to change.

1.3. Indicators of patriarchal ideology

A large number of scholars have made assertions suggesting that judicial authorities in the U.S.A. have been influenced by a patriarchal ideology, to the detriment of women involved in cases pertaining to woman battering (e.g., Andersen & Reid-Andersen, 1992; Bart & Moran, 1993; del Mar, 1996; Ferraro, 1993; Jurik & Gregware, 1992; MacKinnon, 1993; Pleck, 1987; Schneider, 1986; Stiehm, 1982; Williams, 1991; Wilson, 1997). However, these assertions, valuable as they may have been from an hypothesis generating or social policy standpoint, have been the result of either unsystematic observation (e.g., intuition) or qualitative studies. To determine quantitative relations between patriarchal ideology and case outcomes, a quantitative study is necessary. A quantitative study is also necessary to demonstrate that these relations, or changes in patriarchy or case outcomes over time, are not simply a matter of chance. Of course, to perform such a study, it is necessary to devise a set of indicators of patriarchal ideology that can be correlated with case outcomes. These indicators, which are based on the premise that a man should be dominant over his wife, are as follows.

1. The judge regards family privacy/stability as being more important than the individual rights of the battered woman.
2. The judge regards intimate-battering as a social problem rather than a legal one.
3. The judge considers the battered woman to be the instigator or provocateur of the battering incident(s).
4. The judge negatively stereotypes the behavior of the battered woman.
5. The judge uses male-based standards or masculine generics.
6. The judge employs gender stereotypes in his descriptions of situations and/or references to the batterer and battered woman.

We believe that these variables circumscribe the central social elements of judicial decisions readily available from the legal records across time that will help us better understand the role the patriarchal ideology has played in deciding the fates of women before the bar.

There is an additional way to look at patriarchy. Suppose that, rather than considering a man who batters his wife, we also consider the rarer cases where a wife batters her husband. Under an assumption that a man should dominate his wife, man battering is difficult to justify. Clearly, a man who is battered by his wife is failing to dominate her. But if it is a man's duty to dominate his wife, then his being battered is irrefutable proof that he has failed in this duty. Thus, we would predict that battered men should be even more likely to be discriminated against by judicial authorities who endorse patriarchy than should battered women.

In sum, the quantitative study to be presented tests two hypotheses. First, indicators of patriarchal ideology on the part of judicial authorities should predict woman battering case outcomes. Second, battered men should do even worse than battered women in court decisions pertaining to battering.
2. Method

2.1. Case procurement

2.1.1. Description of the battered women cases

Each case includes a written opinion that provides a rationale for the judicial decision. Cases were selected from five time periods:

1. 1800–1899: Cases from this period reflect classic patriarchal responses based on coverture.
2. 1900–1929: This post-coverture era is characterized by the availability to women of property rights and some educational and professional opportunities.
3. 1930–1959: Cases from this period reflect the impact of changes including the post-war influence on gender issues.
5. 1990–1997: Socio-political influences on women's issues, and thus, on decisions in woman battering cases during this period, are to be clarified with the help of the analyses of the cases from these years.

2.1.2. Identification of cases

2.1.2.1. Databases. Cases were identified using WESTLAW's WestMate software. This software accesses the most comprehensive legal databases available but some limitations should be noted. According to reference attorneys at West Group (personal communication, August 18, 1997), WESTLAW AllCases databases contain cases submitted by individual judges; the higher the level of the court the more likely is WESTLAW to have the cases. Many cases that are submitted to WESTLAW and published in their databases are not published in print. The West Group reference attorneys say that some cases are not submitted for publication for various reasons including the following:

- Some jurisdictions have rules for publication of cases; sometimes these rules are imposed by Supreme Court orders.
- Some cases are terminated by settlements specifying no publication.
- Some cases have no written opinions.

West Group attorneys could not specify the percentage of total cases that are published by WESTLAW in their databases; nor would they characterize the level of representativeness of cases submitted by the individual judges. Obviously, the study to be presented was limited by all of these factors.

2.1.2.2. Search strategies. The AllCases and AllCases-Old databases were used; the former includes State- and Federal-level cases from 1945 to the present and the latter includes pre-1945 cases from both levels. Keyword searches were made of synopsis (SY) and digest (DI) case fields, using WESTLAW's system of terms and connectors. Keyword combinations such as "Battered [within five words of] woman or women" were used to generate cases for each time period.
2.1.2.3. Decision rules for accepting cases. The following rules were used to decide which cases would be accepted to be in the population of possible cases to be analyzed (see next subsection for the selection of actual cases analyzed).

1. The primary issue in the case was intimate battering.
2. The battered intimate was female; the batterer was male (except for the control group).
3. The case focused on the battered victim's (living or posthumous) legal interests.
4. The court dealt with substantive (versus strictly procedural) issues. In criminal cases, what appears to be a focus on procedural issues is frequently artificially dispositive. Therefore, cases that seemed to be dealing with procedural issues were carefully examined to determine if substantive issues were also present.
5. There was enough linguistic material for analysis (usually, a minimum of one page of written opinion).

2.1.2.4. Random selection of cases from each era. Finally, the SPSS random number generator was used to select 25 cases for analysis from each of the second, third, and fourth time periods. All 18 cases from the first time period and all 26 cases from the fifth time period were used for analysis. Thus, a total of 119 cases were chosen for analysis.

2.2. Control group

2.2.1. Identification of cases
An attempt was made to determine the extent to which patriarchal ideology may be present in judicial responses to battering cases in which the victims are not female intimates. A group of cases involving men as the victims of intimate battering was selected for analysis. During the first-round (on-screen) evaluations of 4,021 cases in which men were alleged to be battering victims of female intimates were identified and hard-copied for further evaluation. Twenty-one man battering cases from 1872 to 1974 were identified that fit the five decision rules. We could not find enough of these cases in the most recent era to justify analysis, and so all of the man battering cases represent the first four eras.

2.2.2. Selection of cases for analysis
The 21 man battering cases were subjected to a second-round (hard-copy) evaluation to establish compliance with the five decision rules for acceptance. These rules were the same as those used for the woman battering cases except that here, the battered intimate was required to be male and the batterer female. This evaluation process reduced the number of man battering cases available for analysis to 17. All 17 of these cases were used for analysis.

2.3. Case analysis

2.3.1. Content analysis
Each court decision was subjected to a content analysis using manifest and latent coding procedures to identify indicators of patriarchal ideological influence. The concepts were operationalized as the six items already explained in Section 1.3.
3. Results

Two people coded the judges' responses to the cases. Although they were not allowed to communicate with each other about the cases, reliability between them was quite good (kappa = .83). Thus, we proceeded to the more important analyses.

3.1. Analyses of the variables by era

Before testing the two hypotheses, we wished to determine whether either case outcomes or indicators of patriarchal ideology changed over time. These analyses will be presented in turn.

3.1.1. Winning by era

There were no significant differences in the proportion of cases won by women in the first four eras ($p > .1$ in all cases), though it was a surprisingly high number (70%). However, a Fisher's exact test shows that in the most recent era (1990–1997), women had an even greater likelihood of winning (85%, $p < .05$).

3.1.2. Indicators of patriarchy by era

There were no significant differences across eras on indications that family privacy/stability is more important than the individual rights of the battered women (6%); intimate battering is a social, rather than a legal, problem (4%); the battered woman conforms to a negative stereotype (8%); or male-based legal standards were used (3%). In contrast, judges were less likely to assume the woman was an instigator (4% vs. 20%) or make an internal attribution to the woman (4% vs. 27%) in the most recent era than in the other eras ($p < .05$ for both Fisher's exact tests).

3.2. Prediction of case outcomes from the predictor variables

The first hypothesis was that the presumed indicators of patriarchal ideology on the part of judicial authorities actually predicted case outcomes. Consequently, we computed phi coefficients between each of the indicators and case outcomes, and displayed these coefficients in Table 1. However, to determine the effect of each indicator on case outcomes, while controlling for the effects of the other indicators, we also made use of logistic regression. These are discussed in turn.

<table>
<thead>
<tr>
<th>Predictor variables</th>
<th>$r_\phi$</th>
<th>$p$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male-based legal standards used</td>
<td>-.11</td>
<td>ns</td>
</tr>
<tr>
<td>Family privacy/stability judged to be important</td>
<td>-.31</td>
<td>.001</td>
</tr>
<tr>
<td>Intimate battering regarded as a social problem</td>
<td>-.32</td>
<td>.001</td>
</tr>
<tr>
<td>Judge held negative gender stereotypes</td>
<td>-.23</td>
<td>.05</td>
</tr>
<tr>
<td>Judge viewed woman as instigator</td>
<td>-.62</td>
<td>.001</td>
</tr>
<tr>
<td>Judge used gender stereotypes to make attribution about the woman</td>
<td>-.49</td>
<td>.001</td>
</tr>
</tbody>
</table>
3.2.1. Phi coefficients

Only the indicator concerned with male-based legal standards failed to significantly correlate with outcomes ($r_\phi = -0.11, p > .1$). The other correlations suggest that women were less likely to win if (a) the judge placed importance on family privacy/stability ($r_\phi = -0.31, p < .001$); (b) the judge regarded intimate battering as a social, rather than legal, problem ($r_\phi = -0.32, p < .001$); the judge held negative gender stereotypes ($r_\phi = -0.23, p < .05$); (d) the judge viewed the woman as the instigator ($r_\phi = -0.62, p < .001$); or (e) the judge used gender stereotypes ($r_\phi = -0.49, p < .001$).

3.2.2. Logistic regression

Case outcome was regressed on to all of the indicators of patriarchal ideology in a logistic regression analysis, where all of the indicators were entered simultaneously. Conveniently, all but one of the indicators dropped out of the equation (i.e., the beta weights were not significant). Only the indicator concerned with whether the judge viewed the woman as the instigator significantly ($p < .001$) predicted case outcomes, controlling for the effects of all of the other indicators.

Another way of making the same point is to calculate a measure of association between all of the indicators and case outcomes to determine whether prediction is improved over considering only judges' perceptions that the woman was the instigator. In fact, prediction was not improved over the $r_\phi = .62$ value obtained with only the single indicator.

In sum, the phi coefficients demonstrate that most of the indicators of patriarchal ideology predict case outcomes. However, because these indicators are correlated with each other, and particularly with whether the judge viewed the woman as the instigator, this latter indicator could have been responsible for the significant phi coefficients that were obtained. When the effect of this indicator was statistically controlled, there is no evidence that any of the other indicators of patriarchal ideology made a direct contribution to predicting case outcomes. Put simply, it seems that when the judge deems the woman to be an instigator, the judge is more likely to rule against her.

3.3. Man versus woman battering

According to the second hypothesis, men who have been battered by their wives failed to live up to their duty, implied by a patriarchal ideology, to dominate and control their wives. Thus, these men should have been treated particularly badly by a legal system that adopts patriarchal principles. More specifically, battered men should have won fewer cases than battered women. We tested this hypothesis using a Fisher's exact test to pit the proportion of men who won in man battering cases against the proportion of women who won in woman battering cases. Consistent with the hypothesis, the proportion of men winning was significantly less than the proportion of women winning (47% vs. 75%, $p < .05$). Hays (1994) and Howell (1997) noted that it is difficult to obtain significant findings with small sample sizes unless the effect being tested is a powerful one. Because the sample size in the control group was small, and a significant effect was nevertheless obtained, we can conclude that the effect is powerful, as well as statistically significant.
4. Discussion

The results can be summarized easily. First, women have been more likely to win in women-battering cases in the most recent era than in any other era. In addition, this change is paralleled by a corresponding change in judges' written opinions that the women instigated the event; such perceptions have been less likely in the most recent era than in any other era. (Also, judges' use of gender stereotypes was shown to be significantly decreased in the 1990s.) Second, although several of the indicators were associated with case outcome, the only indicator that predicted unique variance in case outcomes was judges' perceptions that the woman instigated the event. In other words, after controlling for the effect of judges' perceptions that the woman instigated the event, the other variables were not found to predict case outcomes. Finally, men were found to be more likely to lose man battering cases than women were to lose woman battering cases. This last finding suggests a somewhat surprising conclusion about the patriarchal ideology that has dominated our legal system. Specifically, the ideology has not only hurt women (cf., Millet, 1969), but it has had negative consequences for men too, at least those men who have been battered by women! Patriarchal ideology may contribute to the idea that men are supposed to control the behavior of their women, whereas man battering suggests that the man has failed to fulfill this obligation (if the man had controlled his wife, she wouldn't have battered him). On the positive side, however, the analyses by era indicate that, consistent with qualitative data (e.g., del Mar, 1996), patriarchy has decreased in recent times. Possibly, this is the result of an increased number of women judges and/or lawyers who may have affected the interpretation of laws. Or, perhaps the increased number of women in Congress (or in state congresses) has led to the passage of more equitable laws. Or, in more general terms, as more women have participated in all walks of life, and have consequently made increased contributions to society in a variety of ways, general attitudes towards women may have changed, which has been reflected in the legal system.

Unfortunately, we were unable to identify a sufficient number of criteria fitting man battering cases to perform analyses by era on them. It would be interesting to find out if, analogous to the woman battering cases, men also have an increased likelihood of winning man battering cases in the 1990s.

The fact that judges' perceptions of the woman as instigator was the only indicator of patriarchal ideology that contributed unique variance to the prediction of case outcomes suggests some opposing arguments. Consider, for example, the possible argument that it makes sense for cases to be decided against the person who is thought to have been the instigator—after all, without an instigator, the woman battering would not have happened. Thus, this is an indicator of how legal authorities have been reasonable rather than of how they were influenced by a patriarchal ideology. In contrast, it could also be argued that woman battering cannot be justified, even under provocation (we tend toward this view), and a person who attempted to justify woman battering under the excuse that the woman instigated it was probably an adherent to patriarchal principles. According to this perspective, we were justified in using this as an indicator of patriarchal ideology. Note, however, that even if the former view were accepted, it would nevertheless remain possible (and even likely) that conceptions of whether the woman was the instigator could have been affected by patriarchal ideology. The correlations of the
other indicators of patriarchal ideology with both perceptions of the woman as instigator and case outcomes supports this possibility.

One problem confronted by those interested in ameliorating the traumas of woman battering is that the patriarchal ideology that has contributed to woman battering may have had its effects in a variety of different ways. We have identified six indicators of patriarchal ideology, but there may be many more that we have not identified. To be sure, patriarchy has changed, and is, perhaps, less of a problem than in some past eras, but it still influences beliefs, attitudes, social norms, and the legal process. We believe that it would be useful for scholars to identify other indicators of patriarchal ideology. We also believe that in addition to correlational and multiple regression research paradigms, such as were employed in the present study, it would also be useful to perform experiments to document the influence of patriarchal ideology on the legal system. Obviously, this cannot be done directly. However, patriarchal ideology can be made cognitively accessible with priming techniques (e.g., Trafimow, Triandis, & Goto, 1991), and participants (especially male participants) could judge cases based on written transcripts of films. If patriarchal ideology contributes to decisions against women, then women should be less likely to win when patriarchal ideology is primed than when it is not primed. If male participants can be demonstrated to be affected in this way, then it stands to reason that male judges can be similarly affected.

In conclusion, although much of the literature on patriarchal ideology is based on qualitative methodology, and qualitative methods have often been criticized as too subjective, and as not capable of eliminating chance as an alternative way of accounting for the data, the present quantitative approach has resulted in largely similar conclusions. That is, support was obtained for the existence of a patriarchal ideology; and its harmful effect on some men, as well as women, was demonstrated. Thus, we would argue that both types of approaches can be valuable, and that a literature including both can increase the validity of our conclusions beyond what could be obtained with only one approach.

References


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