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When equitable is not equal: experimental evidence on the division of marital assets in divorce

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Abstract

Upon divorce, marital assets in most U.S. states are divided equitably, often with the underlying legal purpose of equalizing outcomes. To examine whether decision-makers value economic considerations, such as opportunity cost, specialization, and bargaining power, we conducted a vignette study in which we asked subjects to divide marital assets equitably between an employed husband and a wife without labor market income in a wealthy household. Subjects award less than 50 percent of assets to the wife, regardless of her education or the level of marital assets. Men award lower shares but, unlike women, award a larger share to a more educated wife. Equitable division can lead to unequal outcomes for wives who opt out of the labor force. These findings imply that the objective of equalizing post-divorce outcomes would be better accomplished through legal directives that nudge towards equal asset division and assign greater weight to nonmonetary contributions.

Keywords Divorce · Equitable division · Experiment · Gender · Home production · Vignette study

JEL Codes J12 · K36 · D13

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1 Introduction

From the late 1960s to the late 1980s, U.S. states dramatically reformed their divorce laws. As part of this so-called “divorce revolution” (Weitzman 1985), which has formed the basis of a robust prior empirical literature,¹ states transitioned from traditional fault-based divorce regimes, requiring assignment of fault to one party during the proceedings, to no-fault-based divorce regimes. In addition, states moved away from dividing marital property based on title to dividing property either equally or equitably.

The vast majority of U.S. states have elected for an equitable division regime: Currently, forty-seven states and the District of Columbia require equitable division of assets at the time of divorce. Equitable division need not mean equal division; in fact, only three community property states require a 50/50 split in assets. Among the states requiring equitable division, thirteen start with a presumption of—but do not mandate—equal division; the other thirty-four state laws contain no such nudge towards equality.² Regardless of the existence of a presumption, legal decisionmakers in all equitable division states consider a long list of factors in dividing assets—including homemaker contributions, employability, vocational skills, and the ability of each party to acquire capital assets and earnings—when deciding what asset split is fair.

Our study is based on the legal regime in the United States, but at the outset, we note that the level of discretion granted to decisionmakers in dividing marital assets varies throughout Western legal regimes (Glendon 1989). The United Kingdom, for example, allows decisionmakers wide discretion in dividing marital property, similar to the United States (Woodhouse 1990). In contrast, prospective spouses in France choose between common or separate property arrangements that will govern asset ownership in the event of divorce or death (Laferrère 2001).

For a typical middle-class household, the functional difference between an equal division of assets and an equitable division of assets may be negligible. Yet for wealthy households, the stakes can be significant. As exemplified by the high-profile divorces of Jeff Bezos, David Mugrabi, Johnny Depp, and Elon Musk, not all successful individuals have prenuptial agreements to override the state default regime for dividing assets at the time of divorce. Consequently, the difference between equitable and equal division of assets could mean billions of dollars for their spouses.

Far from anomalies, such high-wealth individuals merit study in an environment of well-documented and increasing income inequality. How their assets are divided at the time of divorce becomes particularly complex given two other well-documented tendencies. First, in the marriage market, highly educated individuals typically marry a similarly educated spouse (Schwartz and Mare 2005, Eika et al.

¹ An extensive literature has examined the consequences of changes in divorce law and property division regimes on matters such as marriage and divorce rates, female labor supply, investment in human capital and marriage-specific capital, household savings, nonmarital childbearing, and consequences for children, by utilizing variation by state in the time of enactment of divorce law changes. Examples from this vast literature include Peters (1986), Gray (1998), Stevenson and Wolfers (2006), Wolfers (2006), Stevenson (2007), Voena (2015), and Alshaiikhmubarak et al. (2019). Mechoulam (2005) provides an excellent review of the theoretical literature.

² See Appendix Table 6. Contrary to popular belief, not all community property states require equal division of assets. Instead, only three of the nine community property states mandate equal division at the time of divorce: California, Louisiana, and New Mexico.

2019). Second, rates of opting out of the labor market are highest among female spouses in highly educated couples (Hersch 2013). Although these women have a particularly high opportunity cost of opting out, they also have strong opportunities to contribute to their husband's labor market success.

Determining how marital assets are typically divided—and whether economic considerations influence the division—in a representative sample of cases is quite difficult, if not impossible, regardless of the wealth of the divorcing spouses. Divorce cases are generally subject to simple, nonextensive filing requirements, particularly if they settle. The divorce cases in which more extensive filings and judicial opinions are available are highly contested, and arguably less representative, divorce cases.³ Consequently, to examine the theories of divorce borne out under the modern regime of dividing marital assets, we conducted an experimental vignette study.

Our study tests how non-expert evaluators would choose to equitably divide marital assets in the difficult, but common, case in which the monetary and home-production contributions differ between spouses. The sample of non-expert evaluators acts as a proxy for legal decisionmakers that parties would face if their contested divorce resulted in a trial. Like judges and jurors, our survey respondents are not provided with monetary incentives that depend on their decision; instead they are compensated at a flat rate for their time.⁴

We presented 3017 respondents with a realistic scenario in which a wife has opted out of the labor market to stay at home and raise the couple's children, while the husband has remained employed full-time in the labor market. We varied both the husband's actual level of labor market success—signified by the financial assets accumulated through his market work—and the wife's potential for success had she remained in the labor market—signified by her education and former occupation.

In theory, prenuptial agreements could prevent or reduce disputes over the division of assets. Yet because they are rarely used, divorcing spouses must often negotiate a settlement, or in the failure to reach an agreement, litigate with all the attendant uncertainty over the ultimate outcome.⁵ Within an economic bargaining framework, the wife's level of education and former occupation would indicate her threat point, where the relevant threat is the expected division of assets that would be

³ Information on asset division may be partially available due to the ownership interests of the divorcing couple in publicly traded firms. For example, Jeff Bezos kept 75 percent of the couple's Amazon stock (Weiss 2019). Typically, however, no reliable, aggregate data exist concerning divorces in the United States. Part of the difficulty in compiling observational data on divorces arises from the fact that divorce procedures and filing requirements vary by state. The principal difficulty, however, is that divorce filings are generally sparse in all but the most contentious divorces, containing very few details beyond each spouse's name. Nonetheless, since the 1990s, legal scholars have hand-collected a few, admittedly unrepresentative, data sets on all divorces filed within a short period of time within a single jurisdiction. Brinig (2005) and Garrison (1991, 1996) provide three examples of such scholarship, examining a broad range of outcomes for divorcing spouses in Iowa, New York, and North Carolina.

⁴ In actual jury trials, lawyers have the option to dismiss some of the possible jurors, in contrast to our volunteer survey respondents, who do not face any such participation screens.

⁵ Although there is wide agreement that prenuptial agreements are rare, because they are private contracts that are not recorded by courts, little is known about the specific terms of these agreements or about their prevalence. Leeson and Pierson (2016) provide an analysis of 2171 prenuptial agreements that entered the public court record through a legal dispute. Three-quarters of these agreements entered courts because of divorce litigation.

awarded by the court. Although the dominant litigation models imply that trials should be rare relative to settlements in most legal disputes, court decisions pose a genuine threat to divorce litigants. Farmer and Tiefenthaler (2001) report that 38 percent of the divorces they analyze were heard by a judge at some point before the divorce became final.

Empirical evidence is lacking, but the factors that courts within equitable division regimes are supposed to consider in dividing assets suggests that they are likely to distribute assets from the wealthier to the less wealthy spouse. Indeed, this is the presumed rationale for the use of prenuptial agreements analyzed by Leeson and Pierson (2016), which documents that the median income and net assets of the husband far exceeds that of the wife among divorcing couples with prenuptial agreements. To the extent courts base their asset division on the relative income and wealth of the parties, or on the same factors that would be relevant in drafting a prenuptial agreement, wives who make greater professional sacrifices during marriage would be entitled to a greater share of assets upon divorce.

Nonetheless, we find that respondents consistently favor the husband in distributing the couple's assets, awarding on average less than 50 percent to the wife, with men favoring the husband more strongly than do women. This result holds true regardless of the wife's education and former occupation. Male respondents do award a greater share to the wife when her education and former occupation indicate better labor market opportunities, but women do not vary their award based on the wife's education and former occupation. Because respondents of both genders award less to the wife on average, we conclude that evaluators may not view equal division to be equitable, even when the non-breadwinning wife's opportunity cost is high and her efforts have contributed to building the value of a couple's assets. Indeed, our conclusion is strengthened after reviewing respondents' stated motivations for their asset division decisions.

2 Marital asset division in theory and in practice

In theory, what constitutes the best legal rule for division of assets at least partially depends upon the principal goal in the legal facilitation of divorce—whether that be encouraging efficient investments by both parties during the marriage, minimizing the individual losses incurred by each party at the time of divorce, minimizing the overall losses incurred by both parties at the time of divorce, or ensuring that both parties are in the best position to maximize their earnings after the divorce is completed (Borenstein and Courant 1989, Smith 2007).

For our purposes, two relevant theories of marriage exist to support predictions about the division of marital assets: bargaining theories and human capital theories of the household. Under bargaining theories, the laws governing divorce and property division are of special relevance in determining bargaining position. In this context, we interpret the bargaining position as one to which the parties would have agreed *ex ante* in the development of a prenuptial agreement. We believe this position provides a reasonable proxy for the expected outcome of asset division awarded by the court, should the parties fail to reach agreement. The shift from fault-based to no-fault-based divorce generally weakened women's bargaining position in the period

that women had weaker employment opportunities. In contrast, property division rules, which moved away from title-based regimes to either equitable or equal division around the same period as the shift to no-fault divorce, strengthened women's bargaining position.

Notably, economic theory only predicts when a wife's bargaining position, and presumably her share of assets, will be comparatively larger. It does not suggest a natural starting point for dividing assets, nor does it predict that assets will be split in a specific way, such as equally or equitably. Yet it does suggest that greater opportunities outside of marriage provide a stronger bargaining position within the marriage.⁶ This stronger bargaining position may be reflected in quasi-rents, as indicated in the seminal work by Grossbard-Shechtman (1993). For instance, when wives are relatively more educated, their husbands may do more housework or purchase more jewelry for them. A stronger pre-marriage position also denotes a stronger post-marriage position, which may enable a spouse to launch a costly divorce battle.

In human capital models of the household, partners make decisions about the allocation of each partner's respective contributions to the household and to the labor market. The allocation may enhance individual or household income but leave partners differentially situated for labor market success. The resulting differential in post-divorce labor market opportunities may influence the division of marital assets. Specifically, when the household decides that one spouse will leave the labor market to specialize in childcare and household tasks, the employed spouse is better able to specialize in market work and may be more successful than he would have been if both spouses had remained employed.⁷ But the spouse who has left the labor market incurs a substantial opportunity cost by limiting career development and permanently altering the earnings trajectory, even after resumption of market work (Manser and Brown 1980, McElroy and Horney 1981). As the wife's education increases, so does her opportunity cost of leaving the labor market, but also her value within the household. A more educated wife will have greater expected productivity within the household and, thereby, a higher implicit wage rate for her household work; this higher implicit wage should imply a higher settlement upon divorce (Grossbard-Shechtman 1993).⁸ In addition, more educated wives are better equipped to contribute to their husband's human capital and, consequently, his greater labor market success (Grossbard-Shechtman and Neuman 1991). Like bargaining models, models of household investments in human capital do not predict a specific asset split. But

⁶ For a rich discussion of spousal bargaining dynamics at the time of divorce as an argument in favor of allowing postnuptial agreements, see Williams (2007).

⁷ A substantial literature documents a male marital wage premium of 10 to 20 percent, which economic theory attributes to the ability of the male partner to specialize in market work and the female partner to specialize in home production. For a discussion of the male marital wage premium literature, see Becker (1991) and Hersch (2003).

⁸ Further expanding on Grossbard-Shechtman's work that rigorously models the parallel between work at home and work in the market, Grossbard-Shechtman (1994) proposes that divorce settlements be understood as a worker benefit—specifically as a form of severance pay. More highly skilled workers can expect higher wages while in the labor force and, thereby, a higher settlement in the case of either work termination or divorce. A key difference between Grossbard-Shechtman's proposal and our study, however, is that we focus on allocation of marital assets at dissolution, not ex-post compensation for the earnings consequences of housework performed during marriage.

they are suggestive about the situations in which the wife in a divorcing couple should be awarded a larger share of marital assets. How marital assets are actually divided is based on the applicable legal standards, to which we now turn.

U.S. legal standards regarding property division are based on a notion of fairness. The underlying legal norm in property division is the understanding of the marital household as an economic and familial unit to which both parties contributed. States vary in the manner through which they have chosen to achieve this goal of fairness. As indicated in Appendix Table 6, three states require equal division of assets at the time of divorce, while the other forty-seven states and D.C. require equitable division. Of these forty-seven states, thirteen start from a presumption of equality, while the remaining have no such starting point. Regardless of whether they mandate a starting point, equitable division states require decisionmakers to consider a host of subjective factors in dividing marital assets, including the relative contributions and economic circumstances of each spouse.⁹ For instance, the subjective factors suggested by the 1973 Uniform Marriage and Divorce Act (UMDA), which has been at least partially adopted by many states, include

the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit.¹⁰

Of particular relevance to the current study is the role of nonmonetary contributions of a spouse as a homemaker. In states with divorce statutes that have adopted or have been influenced by the UMDA's language, the nonmonetary contributions of a homemaker are specifically listed as a consideration in dividing marital assets equitably.¹¹ The inclusion of the role of homemakers within the statute is emphasized

⁹ For example, many equitable division states have codified the property disposition language contained with the 1973 Uniform Marriage and Divorce Act (UMDA) into law. (Some have codified the exact language; others have codified similar language.) The UMDA requires decisionmakers to consider, among other things, the "health, vocational skills and employability of the respective spouses and these contributions to the acquisition of the assets, including allowance for the contribution thereto of the 'homemaker's services to the family unit.'" See National Conference of Commissioners on Uniform State Laws (1973).

¹⁰ In fact, the UMDA suggests two alternative sets of statutory language for marital property division regimes, depending upon whether the state recognizes community property. Recognizing that most states are *not* community property regimes, the drafters of the UMDA indicated that the non-community property alternative, quoted above, is the "alternative recommended generally for adoption." Nonetheless, the subjective factors listed in both alternatives are substantially similar.

¹¹ Both of the UMDA's suggested alternatives of the property disposition alternatives ask decisionmakers to consider the noneconomic contributions of a homemaker. Alternative A (for non-community property regimes) lists the "contribution of a spouse as a homemaker or to the family unit" as a relevant factor. Alternative B (for community property regimes) lists "contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker" as a relevant factor.

in the 1988 Connecticut divorce case of *O'Neill v. O'Neill* (1988), in which the court held that nonmonetary contributions must be considered in distribution of property upon divorce. In theory, such legal provisions should increase a homemaker's bargaining power by improving the asset division upon divorce, and in practice, at least some empirical evidence suggests that they actually do. Using variation in states' timing of enacting homemaker provisions, Wong (2016) demonstrates that greater protection of homemaker contributions upon divorce increases marriage rates.

Determining what is equitable may prove particularly challenging for legal decisionmakers in cases where one spouse has disproportionately contributed to the development of an intangible asset to the marriage, such as the other spouse's human capital. The paradigmatic case is that of *O'Brien v. O'Brien* (1985), in which a wife financially supported her husband through medical school, only to be served with divorce papers three months after he obtained his medical license. In such a case, the concept of equity does not provide a clear guidepost as to how much interest the wife has in the husband's medical license and resulting future earnings. Instead, it suggests estimating two counterfactuals—how much less successful the husband would have been, and how much more successful the wife would have been, in the absence of her contribution to the husband's career (Raymond 1999). Similar issues arise for a wife who contributes disproportionately to the business development and career advancement of her husband, often at the expense of her own career. The highly publicized divorce of Lorna and Gary Wendt sent shock waves through corporate America as Lorna Wendt argued that her ex-husband owed his success to her contributions to his career—entitling her to 50 percent of the marital assets, instead of the 8 percent he offered as a settlement.¹²

Yet all available evidence indicates that non-working spouses are rarely awarded more than 50 percent of marital assets. At best, non-working spouses retain half of the couple's assets upon divorce, but as total assets increase, legal scholars have noticed a trend across state court decisions: “the more [property] there is, the smaller [the] percentage the non-propertied spouse receives” (Wenig 1990). Some courts have justified low percentage awards with statements of only awarding as much as the non-working spouse “needs,” as though dividing up marital assets were simply a “privatized welfare system at the expense of the working spouse” (Williams 1999). Such statements raise concerns that in dividing assets, legal decisionmakers eschew directives to weigh the relative contributions and sacrifices of each spouse in favor of traditional notions of the entitlement of breadwinners to their earnings—the cornerstone of former title-based property division regimes. Our experiment is designed

¹² *Wendt v. Wendt* (1998) received extensive media coverage, including a cover story in *Fortune* magazine. Myra Strober served as the economic expert for Lorna Wendt. See Strober (2002) for a description of her legal argument for an equal split of assets, based on the understanding that the Wendt marriage constituted a two-person career with equal contributions. This argument was not persuasive to the *Wendt* judge (who only awarded Lorna Wendt about 20 percent of the marital assets), nor do we expect this argument to be persuasive to our experimental subjects. There are no data regarding whether other courts have ever assigned value to the nonmonetary contributions of homemakers to household assets. It is worth noting, however, that in lawsuits over wrongful death of a homemaker, the nonmonetary contributions to household assets are not specifically valued. Instead, her contributions to the household are valued at either replacement cost (what it would take to hire outside services to perform her functions) or opportunity cost (what she would have earned in the formal labor market with the amount of time she devoted to home production). See Hersch (2003) for a discussion.

to test how heavily such traditional notions weigh on individuals' minds in spite of the fact that they are asked to divide assets between divorcing spouses equitably. In order to provide information on the degree to which need drives perceptions of equity in the division of marital assets, we specifically focus on high-asset divorce cases.

3 Experimental design

To perform our experiment, we recruited 3017 subjects, entirely comprised of voluntary workers who opted in to perform tasks on Amazon's Mechanical Turk (mTurk). Workers eligible for participation had to be at least eighteen years old and had to reside in the United States. We paid \$1.50 to each worker who successfully completed the survey, which we described as taking (and, on average, actually took) about fifteen minutes to complete.¹³

All subjects were presented with a scenario in which a couple—with one spouse in the labor market and the other spouse not in the labor market—were divorcing; subjects' task was to equitably distribute assets between the divorcing spouses.¹⁴ Drawing on the economic rationales that may influence asset division, previously discussed in Section II, we varied the education and occupations of the spouses to allow for differences in both the non-working spouse's opportunity cost and the non-working spouse's ability to contribute to the working spouse's labor market success.

Although our subjects do not necessarily have legal training (and many presumably have no legal training), their insights into the way in which assets are divided—and the motivations behind these divisions—are still valuable for several reasons. First, most people have some experience with marriage and divorce; at the very least, our subjects' answers provide insight into how individuals approach their own divorce negotiations. If a homemaker believes at the beginning of her divorce negotiations that she does not deserve half of the marital assets (as our results indicate in the next section), then she will likely not ask for half of the assets, even as a starting point for her own divorce negotiations.

¹³ Subjects were directed from mTurk to the survey instrument, which was programmed using the survey software Qualtrics. Our fifteen-minute survey provided four scenarios; we limit discussion to the one scenario of relevance to this paper. Some immediate concerns that may arise with respect to our subjects relate to both who mTurk workers are and how seriously these workers take experiments (since they earn approximately \$6 per hour for taking surveys like ours). Our subjects, whose demographic information is presented in Appendix Table 7, average high levels of education and are very likely to be employed, which is typical for an mTurk subject pool (Shinall 2019). In addition, prior evidence suggests that mTurk subject pools may take surveys like ours even more seriously than other experimental subject pools. Berinsky et al. (2014), for instance, found that mTurk workers, who were compensated in a similar fashion to our experiment, paid more attention to screening questions than subjects recruited from other online sources.

¹⁴ Our scenarios, which involve a married mother not in the labor force, reflect a fairly common household situation. In 2012, 29 percent of all married mothers with children under age 18 were not in the labor force (Cohn et al. 2014). The share of mothers not in the labor force is highest for households with high-earning husbands; in households with husbands who earn over \$250,000, 46 percent of mothers are out of the labor force (VerBruggen and Wang 2019). There are no available data on the wealth distribution of couples filing for divorce.

Second, a great deal of empirical legal literature exists to support the idea that legal decisionmakers are subject to the same norms and biases as are non-legal decisionmakers.¹⁵ As such, similar subject pools and vignette studies have been previously used by empirical legal scholars to identify the inherent biases, norms, and intuitions that influence all individuals, regardless of their legal training.¹⁶ Most notably, a similar methodology has been used by Wilkinson-Ryan and Baron (2008) in the divorce context to identify “moral norms about the marriage contract” in assigning fault to one of the spouses (despite the fact that modern divorce regimes have largely renounced the relevance of fault). Inherent norms and biases may or may not comport with the law; thus, a major concern with surveying only individuals with legal training is that such individuals may not always be honest about the true motivations behind their decisions. Surveying a broader pool of individuals gives a true sense of the social values that influence opinions about the roles, entitlements, and obligations of marriage partners.

Third, this methodology is particularly appropriate in our context, given that the task of distributing assets between divorcing spouses is often assigned to non-judicial and non-legally-trained (but highly educated) actors. Due to the ease of filing requirements in most divorces, representative statistics do not exist regarding precisely how many divorces are settled by non-judicial actors, but one expert has estimated that 95 percent of divorces are settled outside of the courtroom (Neal 2002). As discussed in the previous section, equitable division of marital assets involves balancing a large number of subjective factors without weights. Comporting with the statutory guidance on equitable division does not require sophisticated legal analysis—or even legal training—of the decisionmaker. Rather, the statutory guidance on equitable division merely requires a decisionmaker to conduct a highly ad hoc assessment of the importance of various contributions that parties made to the marriage and of the situation parties face after divorce.

Nor is there any reason to believe that lawyers and judges, as a whole, would be better equipped or more experienced at making such ad hoc assessments. Family law is not a required course in law schools accredited by the American Bar Association,¹⁷ so only the lawyers and judges who have previously enrolled in an elective family law class, have practiced domestic law, or have endured their own personal divorce would have any prior experience in this area.

For all these reasons, it is not surprising that an increasing number of divorcing couples rely on mediators—who may be social workers or psychologists—in dividing assets. Our mTurk subject pool is particularly helpful here since, like real-world decisionmakers in the divorce context, our subjects average high levels of education. As seen in Appendix Table 7, over 90 percent of our subjects have at least some college, and 12 percent have a graduate degree. Still, even the less educated

¹⁵ For examples of papers finding evidence that judges are subject to the same inherent norms and biases as are non-lawyers, see Guthrie et al. (2007) and Wistrich et al. (2005).

¹⁶ For examples, see Hersch and Shinall (2016) (legal rules about hiring), Sevier (2016) (evidence), Wilkinson-Ryan and Hoffman (2015) (contract formation), and Ginther et al. (2014) (mens rea, or the level of intention or knowledge behind criminal activity).

¹⁷ The American Bar Association Standards and Rules of Procedure for Approval of Law Schools have a professional responsibility requirement, a writing requirement, and an experiential requirement. Family law is not a typical first-year core requirement in law school, nor is it tested on the Multistate Bar Examination.

subjects in our mTurk pool can provide useful insight into the division of marital property since divorcing couples increasingly bypass hiring a third party altogether, opting instead to use an online service like CompleteCase, DivorceWriter, or LegalZoom.¹⁸ Additionally, in a handful of states, divorcing parties may request a jury trial for at least some aspect of the legal proceedings.¹⁹

In our experiment, we randomly assigned subjects to view one—and only one—of six experimental conditions; regardless of the assigned condition, all subjects viewed the following information:

John and Susan began dating in 1995, shortly after they began their first professional jobs. They married in 1998, and both continued to work until 2003, when the first of their three children was born. After the birth of their first child, John and Susan decided they could live comfortably on John's income. Susan left her job in 2003 in order to focus on raising their three children, and she has never returned to work.

Subjects then viewed one of the six following conditions, indicated by the letters A through F, with each scenario containing varying information about the spouses' education, occupation, and accumulated net assets.²⁰ All six scenario versions explained that John had filed for divorce after 17 years of marriage, citing irreconcilable differences. All versions concluded with instructions to divide the net assets between John and Susan in compliance with the law of John and Susan's state of residence, which requires that assets are divided fairly, but not necessarily equally.

Scenarios A/B (spouses have equivalent education and potential earnings at time of marriage):

Both John and Susan have M.D. degrees, and they met while working at the same hospital during their final year of internal medicine residency. At the time Susan left her job in 2003, John and Susan had been equally successful in their careers and had the same earnings. John went on to have a very successful career [A: as a physician in private practice/B: in hospital administration], and by 2015, the couple had net marital assets of [A: \$5 million/B: \$20 million]. Throughout their marriage, they often discussed work issues and were able to give each other advice.

Scenarios C/D (spouses have nonequivalent education and potential earnings at time of marriage):

John has an M.D. degree and Susan has a bachelor's of science degree in nursing. When they met in 1995, John was in his final year of internal medicine

¹⁸ In addition, a growing number of attorneys in the United States are taking the position that couples should be able to negotiate their divorce settlements via online dispute resolution. For examples of these arguments, see Linneman (2018) and Brennan (2011).

¹⁹ According to 56 A.L.R.4th 955 II(§3) (Ghent 2011), eleven states have at least one positive judicial decision in favor of allowing jury trials for divorce proceedings.

²⁰ Per referee request, we emphasize that each subject saw only one of the six scenario versions.

residency, and Susan worked at the same hospital as a registered nurse. At the time Susan left her job in 2003, John's earnings were about four times that of Susan's earnings. John went on to have a very successful career [C: as a physician in private practice/D: in hospital administration], and by 2015, the couple had net marital assets of [C: \$5 million/D: \$20 million].²¹

Scenarios E/F (no information on relative education and potential earnings at time of marriage):

John went on to have a very successful career, and by 2015, the couple had net marital assets of [E: \$5 million/F: \$20 million].

Regardless of the experimental condition viewed above, all versions of the scenario concluded in the following manner:

The demands of John's career and his busy work schedule have taken a toll on his seventeen-year marriage to Susan. This year, John filed for divorce from Susan, citing irreconcilable differences.

You should assume that you have been authorized by John and Susan's attorneys to divide their assets, and John and Susan have agreed to abide by your decision.

All assets were accumulated during their marriage. The assets are liquid and are easily divisible between John and Susan. The only matter to decide is the division of the net assets. All financial and custodial matters involving their children were settled amicably and are separate from the division of marital assets.

The law in their state requires that you divide the [A/C/E: \$5 million, B/D/F: \$20 million] **fairly** between John and Susan, but you need **not** divide the [A/C/E: \$5 million, B/D/F: \$20 million] equally between them.

Subjects were then asked what percent of the couple's assets they would award to Susan and were prompted to type in a number between one and one hundred. To ensure that subjects fully understood their answer, the survey immediately showed the subjects the dollar value of their distributions to both Susan and John.²² We deliberately prompted subjects to distribute the assets "fairly" (as opposed to "equitably") to promote subjects' ease of understanding and because the two terms

²¹ Net marital assets are influenced not only by assets accumulated during marriage, but also current and prior educational debt. Total educational debt will be far higher in the A/B scenarios, in which both John and Susan have M.D. degrees, than in the C/D scenarios, in which John has an M.D. degree and Susan has a bachelor's degree in nursing. For this reason, even if Susan is better equipped to discuss work as an M.D. (which is not certain), it is not obvious that the net marital assets will be greatest in the dual-M.D. scenarios (A/B).

²² After seeing the dollar value of their distributions, subjects had an opportunity to correct their percentage distribution, if desired.

are considered legally interchangeable.²³ Finally, subjects were asked a series of questions about the motivations behind their distribution decision. Subjects rated on a five-point Likert scale the importance of John's education, Susan's education, John's likelihood of remaining employed, Susan's likelihood of returning to the workforce, John's anticipated future earnings, Susan's anticipated future earnings, John's role in supporting the family before the divorce, Susan's decision to leave the workforce, the entitlement of breadwinners to their earnings, the value of staying home to raise children, the role of each party in keeping the marriage together, and the role of each party in breaking the marriage apart in reaching their distribution decision.

4 Results

Table 1 reports by scenario the share of subjects awarding exactly 50 percent to each spouse as well as the share that would award less than or exactly 50 percent to Susan. The full distribution of asset share awarded to Susan is also documented visually in Fig. 1. For all subjects, the average award to Susan is less than 50 percent under every scenario. Although the modal award is a 50/50 split, the distribution is clearly skewed in favor of a higher award to John, and no more than 10 percent of the sample would award Susan more than 50 percent of the assets. Additionally, Table 1 and Fig. 1 report the distribution of asset share awarded to Susan by gender of subject. The distribution of awards by male subjects is much more left-skewed than the distribution of awards by female subjects, who more strongly preferred a 50/50 split.

Table 2 presents the mean distribution decisions by scenario and gender of subject.²⁴ Three notable findings emerge. First, male subjects consistently award Susan less than do female subjects. Second, men award larger shares to the more educated wife, but women's allocation does not vary based on Susan's education. Third, regardless of the scenario presented—and regardless of her education and the career that Susan gave up to stay home—subjects still award Susan, on average, less than half of the assets. In fact, only 7.82 percent of all subjects award Susan more than 50 percent of the couple's assets. Women were much more generous to Susan than were men; across scenarios, women's average distribution to Susan was 47.04 percent of the assets, while men's average distribution was 41.12 percent. Moreover, although 9.90 percent of female subjects award Susan more than half of the couple's assets, only 5.95 percent of male subjects gave Susan more than half. Despite the fact that women were more generous with Susan than were men, it is nonetheless striking how few women were willing to award Susan more than half of the couple's assets. Also striking is the lack of difference in the share of assets women subjects would award,

²³ In *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 133 (1995), Justice Ruth Bader Ginsburg noted, "In legal systems... 'equitable' signals that which is reasonable, fair, or appropriate." Family law scholars similarly endorse the legal equivocation of equity and fairness. See, for example, Ratner (2011, p. 23) ("[J]udges feel compelled to assign to the term equitable its well-known general meaning in law: do the fairest thing given the circumstances."), and Ellman et al. (2010, p. 386) ("'Equitable' is merely a four-syllable word for 'fair.'")

²⁴ The demographics of our subjects are presented in Appendix Table 7.

Table 1 Distribution of marital assets awarded to Susan

Scenario	Susan's prior occupation	Couple's assets	Share awarding 50% to Susan			Share awarding ≤ 50% to Susan		
			All respondents	Male respondents	Female respondents	All respondents	Male respondents	Female respondents
A	M.D.	\$5 million	62.35	58.75	65.65	92.43	94.17	90.84
B	M.D.	\$20 million	57.59	47.15	67.43	91.72	92.28	91.19
C	R.N.	\$5 million	52.28	39.92	63.74	92.87	96.30	89.69
D	R.N.	\$20 million	46.72	37.31	56.79	89.46	92.69	86.01
E	Unknown	\$5 million	55.03	48.35	61.13	92.11	94.21	90.19
F	Unknown	\$20 million	56.19	46.55	63.75	94.52	96.12	93.10
N			3017	1463	1554	3017	1463	1554

regardless of Susan's prior occupation. Even when Susan is also a doctor—and presumably in the best position to contribute to her husband's professional success—women do not value Susan's contributions to her husband's earnings, nor do they account for what Susan is sacrificing monetarily both currently and in the future by being outside of the labor market.

One interpretation of the gender differentials in respondents derives from Shoshana Grossbard's work-in-household model (Grossbard-Shechtman 1984).²⁵ Men place greater value on market work and recognize the opportunity costs associated with Susan's prior occupation. At the same time, women place greater value on home production and award more to Susan than do men in recognition of this value. Women's focus on the home may further explain their lack of variation in awards based on prior occupation. Nonetheless, by awarding less than 50 percent to Susan, even women, it seems, may undervalue the contribution and sacrifices of women in marriage both inside and outside the home.

The gender differentials in respondents persist in Table 3, which presents OLS regressions of subjects' percentage award to Susan on scenario characteristics and subjects' demographic characteristics—including age, race, ethnicity, education, and marital status—in columns 1 through 3. (Columns 4 through 6 add variables regarding subjects' motivations and will be discussed after presenting summary statistics on these motivations in Table 4.) Column 1 includes all subjects; columns 2 and 3 present regression results by gender of subject. The regressions indicate that John's level of success (as signaled by the couple's assets) do not influence subjects' determination of asset split. Thus, when total assets are larger, subjects do not seem to penalize the non-working spouse by awarding her a lower share on the basis of 'need.' Moreover, the regressions present only limited evidence that subjects are taking into account Susan's relative opportunity cost in dropping out of the workforce. For the scenarios in which Susan has an M.D., Susan is consistently awarded a larger portion of the assets, although as column 2 makes clear, this result seems to be driven by male subjects only. In the R.N. scenarios, Susan has no advantage in asset distribution, as compared to Susan in the no-information scenarios. In addition, male subjects award significantly fewer assets to Susan than do female subjects after

²⁵ Work-in-household is also referred to as work-in-marriage. See Grossbard-Shechtman (2003) for an overview of her model, which develops work in the household in a manner analogous to work in the labor market.

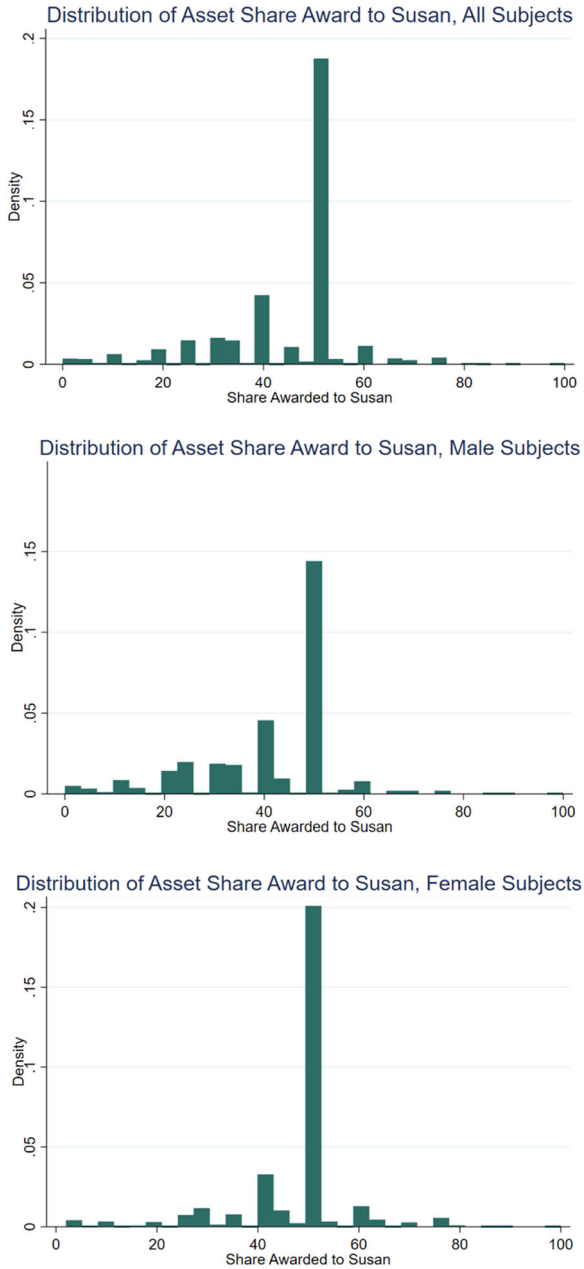


Fig. 1 Distribution of asset share award to Susan

controlling for scenario and other demographic characteristics. Our results align with the previous experimental results of Dickinson and Tiefenthaler (2002), who also found gender differences among third-party decisionmakers. Specifically, they found

Table 2 Mean percent of marital assets awarded to Susan

Scenario	Susan's prior occupation	Couple's assets	All respondents % of assets awarded to Susan	Male respondents % of assets awarded to Susan	Female respondents % of assets awarded to Susan
A	M.D.	\$5 million	46.00	44.54	47.35
B	M.D.	\$20 million	45.19	42.91	47.34
C	R.N.	\$5 million	43.48	39.21	47.45
D	R.N.	\$20 million	42.99	39.52	46.70
E	Unknown	\$5 million	44.12	40.75	47.21
F	Unknown	\$20 million	43.19	39.88	46.13
Significant scenario differences			A-C, A-D, A-F, B-D	A-C, A-D, A-E, A-F, B-C, B-D	
<i>N</i>			3017	1463	1554

Significant differences between scenarios are calculated at the 10% level based on a Bonferroni multiple comparison test. All male-female differences within scenarios are significant at the 1% level

that women were far more likely than men to allocate outcomes equally and, when given information about merit, men (but not women) gave greater allocations to those deemed to deserve more.

Besides gender, subjects' demographic characteristics have little explanatory power for our results. According to Table 3, married men tend to award Susan more assets, and older men and women also tend to give more to Susan. The most notable demographic effect, other than gender, comes from education. More highly educated men and women award Susan more of the couple's assets.²⁶ Religion, political party, employment status, geographic location, and prior service on a jury (which provides information about subjects' experience with the legal system) do not appear to influence individuals' asset distribution decisions.

While the results in Tables 2 and 3 reveal the demographic characteristics that are correlated with individuals' valuation of Susan's entitlement to assets, they do not identify the values and norms that lie behind subjects' distribution decisions. Table 4 details the motivations that individuals selected as important or extremely important in reaching their distribution decision, by scenario and subjects' gender. Motivations such as John's education, Susan's education, John's likelihood of remaining employed, Susan's likelihood of returning to the workforce, John's anticipated future earnings, and Susan's anticipated future earnings go to the importance that subjects have placed on Susan's opportunity cost in dropping out of the workforce. Although more women than men tend to rate these motivations as important, still less than half of women across scenarios identify education or anticipated future earnings as important.

²⁶ The fact that highly educated individuals award more to Susan (albeit still less than 50 percent of the assets, on average) is notable since judges and mediators charged with dividing marital assets are likely to be highly educated.

Table 3 OLS regression of asset split on Susan's prior occupation

	Dependent variable: Percent of assets awarded to Susan					
	Baseline			Motivations included		
	All respondents (1)	Male respondents (2)	Female respondents (3)	All respondents (4)	Male respondents (5)	Female respondents (6)
Susan M.D.	1.85*** (0.54)	3.16*** (0.86)	0.71 (0.66)	1.64*** (0.51)	3.21*** (0.79)	0.41 (0.64)
Susan R.N.	-0.50 (0.56)	-0.95 (0.88)	0.18 (0.70)	-0.05 (0.52)	-0.08 (0.80)	0.26 (0.66)
\$20 million	-0.48 (0.45)	-0.48 (0.70)	-0.33 (0.55)	-0.62 (0.41)	-0.21 (0.62)	-0.70 (0.53)
Male	-5.15*** (0.46)	-	-	-3.50*** (0.43)	-	-
Married	1.70*** (0.48)	2.78*** (0.77)	0.52 (0.61)	1.22*** (0.45)	1.95*** (0.69)	0.34 (0.59)
Age	0.45*** (0.11)	0.56*** (0.18)	0.35*** (0.14)	0.29*** (0.11)	0.34*** (0.16)	0.29*** (0.14)
Age ² /100	-0.33*** (0.13)	-0.42*** (0.20)	-0.26 (0.16)	-0.21* (0.12)	-0.25 (0.18)	-0.23 (0.16)
Black	-0.74 (0.99)	0.30 (1.52)	-1.64 (1.26)	-0.39 (0.93)	1.06 (1.41)	-1.42 (1.20)
Asian	-0.26 (1.27)	-0.72 (1.66)	0.88 (1.93)	-0.95 (1.18)	-0.98 (1.53)	-0.19 (1.83)
Multi-race/other race	1.69 (1.05)	0.12 (1.69)	2.65** (1.22)	1.47 (0.99)	-0.19 (1.55)	2.53*** (1.17)
Hispanic	-0.11 (1.04)	1.84 (1.52)	-2.54* (1.34)	0.65 (0.99)	2.54* (1.43)	-1.69 (1.25)
U.S. native	-1.11 (1.42)	-2.69 (2.28)	0.66 (1.64)	-1.33 (1.35)	-2.19 (2.11)	-0.16 (1.61)
Some college	2.99*** (0.97)	2.02 (1.42)	3.82*** (1.28)	2.54*** (0.89)	1.37 (1.25)	3.83*** (1.22)
Bachelor's degree	2.35** (0.98)	1.56 (1.39)	2.94** (1.33)	2.11** (0.90)	1.05 (1.22)	3.06** (1.28)
Graduate degree	5.16*** (1.05)	4.22*** (1.53)	5.52*** (1.40)	4.31*** (0.96)	3.12** (1.37)	5.09*** (1.31)
Religious	0.91 (0.61)	1.50 (0.95)	0.61 (0.78)	0.86 (0.59)	1.06 (0.89)	0.60 (0.76)
Employed	-0.84 (0.60)	-1.12 (1.19)	-0.93 (0.64)	-0.49 (0.56)	-0.90 (1.07)	-0.51 (0.61)
Served on a jury	0.11 (0.63)	0.70 (1.01)	-0.62 (0.76)	0.12 (0.60)	0.22 (0.92)	-0.07 (0.74)
Republican	-1.01 (0.64)	-1.17 (1.04)	-0.68 (0.76)	-0.58 (0.60)	-0.11 (0.93)	-0.65 (0.73)
City	-0.26 (0.61)	0.99 (1.01)	-0.95 (0.74)	-0.09 (0.56)	0.89 (0.90)	-0.72 (0.69)

Table 3 continued

	Dependent variable: Percent of assets awarded to Susan					
	Baseline			Motivations included		
	All respondents (1)	Male respondents (2)	Female respondents (3)	All respondents (4)	Male respondents (5)	Female respondents (6)
Suburb	0.21 (0.54)	1.97** (0.94)	-1.02 (0.64)	0.14 (0.50)	1.69** (0.82)	-0.93 (0.62)
John's education	-	-	-	-4.65*** (1.08)	-4.41*** (1.41)	-4.76*** (1.64)
Susan's education	-	-	-	2.56** (1.09)	1.62 (1.43)	3.10* (1.67)
John's likelihood of remaining employed	-	-	-	1.04* (0.59)	0.44 (0.86)	1.57* (0.81)
Susan's likelihood of returning to workforce	-	-	-	0.07 (0.61)	-0.74 (0.91)	0.51 (0.82)
John's anticipated future earnings	-	-	-	2.28*** (0.69)	1.32 (0.99)	3.43*** (0.98)
Susan's anticipated future earnings	-	-	-	-0.48 (0.71)	1.16 (1.02)	-2.25** (1.00)
John's role in supporting the family before divorce	-	-	-	-1.51*** (0.55)	-1.04 (0.83)	-1.36* (0.72)
Susan's decision to exit the workforce	-	-	-	-0.94** (0.47)	-1.96*** (0.72)	0.09 (0.62)
Entitlement of breadwinners to earnings	-	-	-	-7.27*** (0.46)	-9.46*** (0.68)	-5.16*** (0.60)
Value of staying home to raise children	-	-	-	5.39*** (0.54)	6.54*** (0.76)	3.78*** (0.76)
Role of each party in keeping marriage together	-	-	-	0.17 (0.57)	0.67 (0.83)	-0.17 (0.81)
Role of each party in tearing marriage apart	-	-	-	1.05* (0.59)	0.62 (0.86)	1.40* (0.80)
Susan M.D. = Susan R.N.	No	No	Yes	No	No	Yes
R ²	0.11	0.09	0.05	0.24	0.28	0.15
N	3017	1463	1554	3017	1463	1554

Dependent variable is a continuous value between 0 and 100, inclusive. Heteroskedasticity-robust standard errors in parentheses below estimated coefficient. Religious is defined as attending a religious service at least once per month. Omitted categories for non-dichotomous variables are white (race), high school graduate or less (education); rural area (geographic location). All motivation variables are indicator variables equal to one if the respondent reported the motivation as important or very important in reaching the asset split decision. Significant difference in the Susan M.D./Susan R.N. coefficient is calculated at the 5% level

*** $P < 0.01$, ** $P < 0.05$, * $P < 0.10$

Table 4 Important motivations for asset split, by Susan's prior occupation and gender of respondent

Motivations	Reported: Percentage of respondents rating motivation as important or very important for chosen asset split							
	Scenarios A/B: Susan as M.D.		Scenarios C/D: Susan as R.N.		Scenarios E/F: Susan's occupation unknown		All scenarios	
	Males	Females	Males	Females	Males	Females	Males	Females
John's education	42.09	45.12	43.74*	38.42	25.11	24.14	37.12	35.84
Susan's education	41.07*	47.04	37.57	35.45	18.14	20.72	32.40	34.36
John's likelihood of remaining employed	52.16	56.79	46.92***	57.43	44.09**	50.38	47.71***	54.83
Susan's likelihood of returning to workforce	56.06	60.99	48.91**	55.64	42.62***	51.71	49.21***	56.11
John's anticipated future earnings	42.09	47.04	41.75**	49.31	41.77	39.16	41.83*	45.11
Susan's anticipated future earnings	47.64**	53.92	46.32	50.69	44.09	43.35	46.00*	49.29
John's role in supporting the family before divorce	70.64**	76.86	69.38	71.49	68.35**	75.48	69.45***	74.65
Susan's decision to exit the workforce	61.19	65.20	58.45**	51.29	56.33	56.84	58.65	57.85
Entitlement of breadwinners to earnings	47.02***	34.61	51.09***	39.41	47.89***	36.88	48.67***	36.94
Value of staying home to raise children	68.58***	83.56	63.62***	77.82	62.66***	78.90	64.94***	80.12
Role of each party in keeping marriage together	47.64	50.48	39.76	44.36	41.35	46.01	42.86**	46.98
Role of each party in breaking marriage apart	42.30	43.98	35.39*	40.79	39.87	41.83	39.10*	42.21
Percent of assets awarded to Susan	43.71***	47.35	39.37***	47.09	40.32***	46.67	41.12***	47.04
N	487	523	503	505	474	526	1463	1554

Null hypothesis is that an equal percentage of male and female respondents rate the motivation as important or very important. *P*-value is calculated using a two-sample *t*-test
 Male respondents significantly different from female respondents: ****P* < 0.01, ***P* < 0.05, **P* < 0.10

Instead, the motivations that appear to be most salient for male and female subjects are John's role in supporting the family before the divorce, the entitlement of breadwinners to their earnings, and the value of staying home to raise children. More than two-thirds of male and female subjects identified John's role in supporting the family before their divorce as an important motivation behind their asset distribution decision. The greatest differences in motivations between genders, however, lie in the importance of entitlement of breadwinners to their earnings and the value of staying home to raise children. Almost half of men identified the entitlement of breadwinners to their earnings as an important motivation; less than 37 percent of women found this motivation important. On the other hand, more than 80 percent of women (but only about 65 percent of men) found the value of staying home to raise children important.

Table 4 is suggestive that norms about traditional rights of property titleholders to their assets may be driving many subjects' asset distributions; Table 4 further suggests that disparate beliefs regarding the value of certain intangible contributions to a marriage may be driving some of the gender differences in asset distribution. Columns 4 through 6 of Table 3 explore these issues by considering whether subjects' identified motivations have any explanatory power in their determinations of asset distribution. In these regressions, the percent of assets awarded to Susan is regressed on the scenario presented, subject demographics, and the motivations subjects identified as important. Subjects who rated the entitlement of breadwinners to their earnings as important gave significantly more assets to John; subjects who rated the value of staying home to raise children as important gave significantly more assets to Susan.²⁷

From Table 4, we know that more men rated entitlement of breadwinners as important, but more women rated the value of staying home as important. Given these results, and the results in columns 4 through 6 of Table 3, we explore to what extent these gender differences in motivations drive the gender differences in assets awarded to Susan in Table 5 using Oaxaca-Blinder decomposition.²⁸ We find that a significant portion of the difference between male and female subjects' awards come from the different values they assign to the entitlement of breadwinners and value of staying home.²⁹ In fact, 14.38 percent of the total difference in male and female subjects' awards can be explained by men's greater valuation of the entitlement of breadwinners; 13.87 percent of the difference can be explained by women's greater valuation of staying home with children.

²⁷ Shinall (2019) presents evidence that decisionmakers award male breadwinners a greater share of assets than similarly situated female breadwinners, indicating that the disadvantage faced by women in equitable division proceedings may be particularly insurmountable.

²⁸ The full Oaxaca-Blinder decomposition results are presented in Appendix Table 8.

²⁹ After noticing that female subjects who rated Susan's education as an important motivation also awarded more to Susan, an anonymous referee suggested that we add interaction terms between subjects' educational levels and subjects' education-related motivations to our regressions in Table 3. The hypothesis was that actual educational levels may be different among subjects for whom John's and Susan's education served as important motivations. Although quite plausible, this hypothesis did not find any support in our data; the coefficients on the interaction terms between subjects' educational levels and their education-related motivations were individually and jointly insignificant.

Table 5 Oaxaca-Blinder decomposition of male-female differences in awards to Susan

Aggregate decomposition		
Female respondents' average award	47.04*** (0.28)	
Male respondents' average award	41.12*** (0.36)	
Total difference	5.91*** (0.46)	
Explained difference	2.42*** (0.25)	
Unexplained difference	3.50*** (0.43)	
Explained difference: Detailed decomposition		
	Amount of total difference explained	Percent of total difference explained
Entitlement of breadwinners to earnings	0.85*** (0.14)	14.38
Value of staying home to raise children	0.82*** (0.12)	13.87
All other motivations	0.22** (0.09)	3.72
Demographics	0.51*** (0.13)	8.63
Susan's former occupation, total assets	0.02 (0.03)	–

Decomposition is based on the regressions in columns (5) and (6) of Table 3; the dependent variable is percent of assets awarded to Susan. Heteroskedasticity-robust standard errors in parentheses below estimated coefficient

*** $P < 0.01$, ** $P < 0.05$, * $P < 0.10$

5 Conclusion

In our vignette study, we sought to test how individuals approached the division of assets—when a great deal of assets were at stake—and why they took their chosen approach in a realistic divorce setting under an equitable distribution regime. Focusing on high-asset divorces is particularly revealing because it provides insight into how decisionmakers divide assets when perceived need may influence perceptions of equity. Given prior scholarly evidence that equitable division regimes are far more generous to men than to women, despite a guiding principle of fairness, our study provides insight into the inherent norms and social values that may guide both divorcing spouses and legal decisionmakers in dividing marital assets. Even though equitable division regimes were intended to override the traditional notion of property-holder entitlement, which historically favored men, we find evidence that many individuals (and particularly men) nonetheless retain and give weight to this notion in high-asset divorces. We also find evidence that women assign more value to traditional childcare and family roles than do men. Yet neither women nor men fully appreciate the opportunity cost of a woman sacrificing her career in order to stay home with children, nor the value of their contribution to the husband's career.

Our results not only support the existing body of evidence indicating that equitable division regimes can lead to inequitable gender outcomes, but they also suggest at least some explanations behind these inequitable gender outcomes. As long as traditional notions of property-holder entitlement persist in society—in spite of the fact that current no-fault divorce laws were intended to override such notions—more

explicit directives to legal decisionmakers may be necessary in equitable division regimes. One potential solution is to add explicit language to equitable division divorce statutes negating any assumptions that breadwinners should be entitled to the majority of a divorcing couple's assets. But given that most equitable division statutes already present legal decisionmakers with a list of criteria to consider (or not to consider) when dividing a couple's assets, it is unclear what effect adding another criterion to the list would have on women's outcomes. Another potential solution may be greater reliance on prenuptial agreements. But this too may have limited efficacy because of the challenge of writing a complete contract in the face of uncertainty about the future.

Still another potential solution for increasing women's share at divorce is to increase the use of forms and formulae in dividing marital assets. Such forms are already widely used throughout U.S. states in the family law context, particularly to calculate child support. Yet to be helpful for women—and particularly for women outside the paid labor force—marital asset division formulae would have to value women's household contributions adequately. Such valuations have typically relied on expert witness calculations of either the woman's replacement cost or her opportunity cost when calculating loss from wrongful death or injury. But for households in which marital assets are sizeable (as in our experiment) or the wife was not a high earner in her prior career, explicitly accounting for a woman's replacement cost (even by assigning an above-market value to her contributions to her husband's career) or opportunity cost is unlikely to increase the woman's asset share significantly.

Thus, perhaps the best solution for women may be the approach already taken by thirteen states: instructing legal decisionmakers to begin with the presumption that wives are entitled to at least half of a divorcing couple's assets. Although the presumption is rebuttable, it allows men and women at least to begin the asset division process in equipoise and may anchor the decisionmaker at a 50/50 split. To further counteract the tendency to award women less than half of a couple's marital assets, legal reforms might require decisionmakers to issue written findings, or justifications, whenever they deviated from an equal split. Not only would such solutions help to ameliorate the disadvantage faced by many women in dividing marital property, but it would also help to curb the unfettered discretion inherent in equitable division regimes that has been criticized by prominent U.S. legal scholars like Mary Ann Glendon.³⁰

In the absence of more direct nudges towards equality in marital asset division, our study suggests that women—and particularly women not in the paid labor force—may continue to struggle in the divorce negotiation process. As a result, asset division upon divorce may continue to favor men throughout the majority of U.S. states and throughout other legal systems that lack clear guidance, beyond fairness, regarding the distribution of property between divorcing spouses.

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³⁰ See, for example, Glendon (1984) at 1556 (discussing the “defects in discretionary distribution,” including being “widely perceived as unfair by litigants”).

Compliance with ethical standards

Conflict of interest The authors declare that they have no conflicts of interest.

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6 Appendix

Tables 6–8

Table 6 Default legal rules for division of marital assets in fifty U.S. states and D.C.

State	Community property	Default rule for division of marital assets
Alabama	No	Equitable division
Alaska	Optional	Equitable division/Equal division for community property option
Arizona	Yes	Equitable division with presumption of equality
Arkansas	No	Equitable division with presumption of equality
California	Yes	Equal division
Colorado	No	Equitable division
Connecticut	No	Equitable division
D.C.	No	Equitable division
Delaware	No	Equitable division
Florida	No	Equitable division with presumption of equality
Georgia	No	Equitable division
Hawaii	No	Equitable division
Idaho	Yes	Equitable division with presumption of equality
Illinois	No	Equitable division
Indiana	No	Equitable division with presumption of equality
Iowa	No	Equitable division
Kansas	No	Equitable division
Kentucky	No	Equitable division

Table 6 continued

State	Community property	Default rule for division of marital assets
Louisiana	Yes	Equal division
Maine	No	Equitable division
Maryland	No	Equitable division
Massachusetts	No	Equitable division
Michigan	No	Equitable division
Minnesota	No	Equitable division
Mississippi	No	Equitable division
Missouri	No	Equitable division
Montana	No	Equitable division
Nebraska	No	Equitable division
Nevada	Yes	Equitable division with presumption of equality
New Hampshire	No	Equitable division with presumption of equality
New Jersey	No	Equitable division
New Mexico	Yes	Equal division
New York	No	Equitable division
North Carolina	No	Equitable division with presumption of equality
North Dakota	No	Equitable division
Ohio	No	Equitable division with presumption of equality
Oklahoma	No	Equitable division
Oregon	No	Equitable division with presumption of equality
Pennsylvania	No	Equitable division
Rhode Island	No	Equitable division
South Carolina	No	Equitable division
South Dakota	No	Equitable division
Tennessee	No	Equitable division
Texas	Yes	Equitable division
Utah	No	Equitable division with presumption of equality
Vermont	No	Equitable division
Virginia	No	Equitable division
Washington	Yes	Equitable division
West Virginia	No	Equitable division with presumption of equality
Wisconsin	Yes	Equitable division with presumption of equality
Wyoming	No	Equitable division

Table 7 Demographic characteristics of respondents

	All respondents	Male respondents	Female respondents
Male	0.48	–	–
Married	0.38	0.33***	0.44
Age	34.78	33.69***	35.81
Black	0.07	0.06***	0.09
Asian	0.05	0.08***	0.03
Multi-race/other race	0.07	0.07	0.06
Hispanic	0.07	0.08**	0.06
U.S. native	0.96	0.96	0.96
High school or less	0.09	0.10	0.09
Some college	0.39	0.35***	0.43
Bachelor's degree	0.39	0.42***	0.37
Graduate degree	0.12	0.13	0.12
Religious	0.21	0.18***	0.23
Employed	0.81	0.87***	0.76
Served on a jury	0.13	0.15**	0.12
Democrat	0.44	0.41***	0.47
Republican	0.19	0.18	0.19
City	0.34	0.37***	0.30
Suburb	0.41	0.42*	0.40
Rural or town	0.25	0.20***	0.30
<i>N</i>	3017	1463	1554

Null hypothesis is that demographics of male and female respondents are the same. *P* value is calculated using a two-sample *t*-test. Religious is defined as attending a religious service at least once per month

Male respondents significantly different from female respondents: ****P* < 0.01, ***P* < 0.05, **P* < 0.10

Table 8 Full Oaxaca-Blinder decomposition of male-female differences in awards to Susan (including demographic variables)

Aggregate decomposition	
Female respondents' average award	47.04*** (0.28)
Male respondents' average award	41.12*** (0.36)
Difference	5.91*** (0.46)
Explained difference	2.42*** (0.25)
Unexplained difference	3.50*** (0.43)
Explained Difference: Detailed Decomposition	
Susan M.D.	0.01 (0.03)
Susan R.N.	0.00 (0.01)
\$20 million	0.01 (0.01)
Married	0.13** (0.05)
Age	0.62** (0.26)
Age ² /100	-0.36* (0.22)
Black	-0.01 (0.03)
Asian	0.04 (0.05)
Multi-race/other race	-0.01 (0.02)
Hispanic	-0.02 (0.02)
U.S. native	-0.01 (0.01)
Some college	0.21** (0.09)
Bachelor's degree	-0.11* (0.06)
Graduate degree	-0.06 (0.05)
Religious	0.04 (0.03)
Employed	0.05 (0.06)
Served on a jury	-0.00 (0.02)
Republican	-0.01 (0.01)
City	0.01 (0.04)
Suburb	-0.00 (0.01)
John's education	0.06 (0.08)
Susan's education	0.05 (0.05)
John's likelihood of remaining employed	0.07 (0.05)
Susan's likelihood of returning to workforce	0.01 (0.04)
John's anticipated future earnings	0.07 (0.05)
Susan's anticipated future earnings	-0.02 (0.02)
John's role in supporting the family before divorce	-0.08** (0.04)
Susan's decision to exit the workforce	0.01 (0.02)
Entitlement of breadwinners to earnings	0.85*** (0.14)
Value of staying home to raise children	0.82*** (0.12)
Role of each party in keeping marriage together	0.01 (0.02)
Role of each party in breaking marriage apart	0.03 (0.03)
Unexplained Difference: Detailed Decomposition	
Susan M.D.	-0.93*** (0.34)

Table 8 continued

Susan R.N.	0.11 (0.34)
\$20 million	-0.25 (0.40)
Married	-0.62* (0.34)
Age	-1.66 (7.31)
Age ² /100	0.24 (3.18)
Black	-0.18 (0.13)
Asian	0.03 (0.11)
Multi-race/other race	0.18 (0.13)
Hispanic	-0.30** (0.14)
U.S. native	1.95 (2.52)
Some college	0.97 (0.68)
Bachelor's degree	0.79 (0.69)
Graduate degree	0.24 (0.23)
Religious	-0.10 (0.24)
Employed	0.34 (1.01)
Served on a jury	-0.04 (0.16)
Republican	-0.10 (0.22)
City	-0.56 (0.38)
Suburb	-1.08** (0.42)
John's education	-0.13 (0.78)
Susan's education	0.49 (0.73)
John's likelihood of remaining employed	0.57 (0.60)
Susan's likelihood of returning to workforce	0.64 (0.64)
John's anticipated future earnings	0.92 (0.60)
Susan's anticipated future earnings	-1.62** (0.68)
John's role in supporting the family before divorce	-0.21 (0.78)
Susan's decision to exit the workforce	1.19** (0.55)
Entitlement of breadwinners to earnings	1.84*** (0.38)
Value of staying home to raise children	-2.04*** (0.78)
Role of each party in keeping marriage together	-0.38 (0.52)
Role of each party in breaking marriage apart	0.32 (0.47)

Decomposition is based on the regressions in columns (5) and (6) of Table 3; the dependent variable is percent of assets awarded to Susan. Heteroskedasticity-robust standard errors in parentheses below estimated coefficient

*** $P < 0.01$, ** $P < 0.05$, * $P < 0.10$

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