What's So Special about Specialized Courts? The State and Social Change in Salt Lake City's Domestic Violence Court

Rekha Mirchandani

The nationwide growth in specialized or problem-solving courts, including drug courts, community courts, mental health courts, and domestic violence courts, among others, raises questions about the role of the state with respect to social change. According to social control theories of the state, especially theories of technocratic or rationalized justice, law is increasingly about efficiency, speed, and effectiveness. Specialized courts, however, take on a social problem approach to crime, seeking to address crime's "root causes" within the individual, the society, and the larger culture in ways more characteristic of social movements. Are specialized courts about social control or social change? This study examines state action in a specialized court in domestic violence in order to examine this question. I focus on a domestic violence court that arose in February 1997 and four years later employed full-time judges, prosecuting and defense attorneys, and numerous other staff to handle all misdemeanor domestic violence cases in Salt Lake County, Utah. I ask how legal, political, and community officials justify the court and its operation in order to examine some important issues about the role of the state and social change. Ultimately, I suggest that my findings about the complementary roles of social control and social change within domestic violence courts have implications not only for critical theories of technocratic justice and for the battered women's movement but also for democratic theories of the state.

Techniques for making justice speedier and more efficient have produced legal innovations since the Progressive Era and before (Heydebrand & Seron 1990; Resnik 1982, 1985, 2002; Fiss 1983, 1984). Referred to as technocratic or rationalized justice (Heydebrand & Seron 1990)—a move from adjudication to administration—innovations have included unified dockets, more plea bargains and pretrial settlements, managerial judges, additional administrative staff, and an integrated judicial system. Special courts implementing these changes in the Progressive Era included juvenile courts, family courts, and small claims courts; later, also specialized housing, traffic, and narcotics courts (Heydebrand & Seron 1990:25). The 1990s brought a new nationwide

Please address correspondence to Rekha Mirchandani, Department of Sociology, Bowling Green State University, Bowling Green, Ohio 43403; e-mail: rmircha@bgnet.bgsu.edu.

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movement toward special courts, now also called problem-solving courts (Goldkamp 2002; Berman & Feinblatt 2001; Butts 2001; Center for Court Innovation 2003), including drug courts, community courts, mental health courts, and domestic violence courts.[1] And the legal community has greeted these latest organizational innovations with enthusiasm. The American Bar Association (American Bar Association 2001), the Conference of Chief Justices (Conference of Chief Justices 2000), and the Conference of State Court Administrators (Conference of State Court Administrators 2000) each unanimously adopted resolutions endorsing the new courts. In February 2002, the Fordham University Law School hosted an interdisciplinary symposium addressing the legal and social issues involved in the transition from the adversarial system to the problem-solving court system. Former Attorney General Janet Reno reiterated her support of problem-solving courts, and Chief Judge Judith S. Kaye, of the New York Court of Appeals, called problem-solving courts "by far the most exciting, most promising recent development in the law" (Kaye 2002:1925).

Supporters of problem-solving courts claim that the courts allow legal officials to respond not only to individual troubles but also to broader social issues as communities identify them. But what happens when the social problem-solving goals of problem-solving courts confront their technocratic imperatives? How does the court's orientation to technocratic justice—the administrative goals of efficiency, effectiveness, and speed—combine with a social change orientation? The domestic violence court, the focus of this study, carries with it both of these imperatives: as a state institution, it contains technocratic imperatives, but as a problem-solving court and an outgrowth of the battered women's movement, it also contains substantive or value imperatives. Given the excitement among practitioners on the ground, the new special courts—and the questions they raise—merit systematic empirical analysis. This article looks at a domestic violence court for some insight into what differentiates this new wave of special courts from existing models of justice.

Critics of Progressive Era–born rationalized justice (Heydebrand & Seron 1990; Resnik 1982, 1985, 2002; Fiss 1983, 1984) argue that courtroom commitments to speed, efficiency, and effectiveness come at the price of justice. They suggest that technocratic rationality undermines the democratic values formally embodied in the adversarial system—defendants' rights, judicial impartiality, and due process—while furthering state imperatives of social control and

[1] In this article, I use the terms *special courts, specialized courts,* and *problem-solving courts* interchangeably to refer to these new domestic violence courts, drug courts, community courts, and mental health courts, as these terms are used interchangeably in the literature about them.

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social order. Social movements such as the battered women's movement have also been wary of technocratic justice as overcoming the movement's values of grassroots participation and social change (Dobash & Dobash 1992; Pence 1987; Schneider 2000). In this article, I focus on the views of professional stakeholders in a domestic violence court regarding their perceptions of the new courts and of their roles within these courts. To what extent do professional stakeholders describe their new special court in ways consistent with technocratic justice, and to what extent do they depict the court as characterized by the values of social change and democratic participation promulgated by the battered women's movement? Has the technocratic justice adopted from the state overcome the substantive goals adopted from the battered women's movement, as critics of the technocratic state would predict, or are the tensions between technocratic and substantive justice reconcilable?

This article begins by reviewing the theoretical tensions between the state and the battered women's movement, first describing major models and theories of rationalized justice, then detailing the battered women's movement's fears of rationalized justice. A case study of a Salt Lake County court, located in Salt Lake City, Utah, explores in detail professional stakeholders' perceptions of how a domestic violence court operates similarly and differently from the rationalized justice described in the literature. I conclude, as a result of this research, that the technocratic model of the modern state and its courts accurately and insightfully captures domestic violence court stakeholder goals and practices. But professional stakeholders in domestic violence court also retain a fundamental commitment to social change, in ways consistent with the battered women's movement. I argue that despite a theoretical tension, there is, on the ground, a complementarity between the technocratic imperatives of the state and the substantive imperatives of the movement. We still find Progressive Era–style technocratic imperatives in a domestic violence court today, but instead of dominating the court to the exclusion of all else (as the critical theory literature suggests), they facilitate substantive values such as those of the battered women's movement. This finding has implications not only for critical theories of technocratic justice and for battered women's movement research, but for democratic theories of the state that find renewed support in this porousness between social movements and the courts. Evidence for social movement/court complementarity also contributes to the argument that law can play a major role in social movement–furthered social change, although in contrast to studies that focus on how social movements influence courts from the outside through the deployment of rights (Silverstein 1996; McCann 1994; Olson 1984), this work examines the social transformation of courts themselves.

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The Technocratic State and the Battered Women's Movement

The Technocratic State and Its Implications for Substantive Justice

Legal and social science scholars, particularly those operating in the critical school tradition, show caution about the ability of the state and law to promote substantive values such as social and political change. In their important work on U.S. district courts, Heydebrand and Seron analyze the "quiet revolution taking place in American [federal] courts" (1990:1) and discuss the influence of technocratic imperatives on the state and its courts. Their overarching argument is that courts are increasingly administrative agencies using business methods of management to handle court cases rather than the adjudicative due process models of the past. In order to explore the influence of state technocratic imperatives on the special domestic violence court, I develop Heydebrand and Seron's model below and briefly examine evidence of its continuing relevance today.

For Heydebrand and Seron, the forces leading to the rationalization of federal district courts included increasing demands in the range and variability of federal cases and, simultaneously, decreasing resources. Particularly important to the transition to a more rationalized administration of justice was Roscoe Pound's 1906 speech on "The Causes of Popular Dissatisfaction with the Administration of Justice," in which he criticized court delay and technical and antiquated procedural rules and urged legal professionals to move the courts from formal or abstract justice to a more realistic or pragmatic justice better suited to the scale and costs of contemporary courts (Pound 1906). As a result, the American Judicature Society began to push for specialized courts, the American Arbitration Society favored informal dispute resolution, and the American Law Institute advocated the codification, simplification, and systematization of law (Heydebrand & Seron 1990:36).

Other important scholars writing on the history of courts have made similar points. Resnik (1982, 1985, 2002), in her work on managerial judges, documents a similar trend, tracing the Progressive Era growth in businesslike methods of case management to the increase in number of cases and the corresponding *Bleak House*–reminiscent courtroom delays and perceived inefficiencies. Fiss (1983, 1984) emphasizes these same factors, arguing that the "massification" of society, the growing size and complexity of American society, resulted in what he calls the bureaucratization of the legislative, executive, and judicial branches of government.

According to Heydebrand and Seron, Progressive Era organizational reforms resulted in rationalized justice, the selective re-

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alization of the pragmatic or instrumental aspects of rationality[2] in the justice system. Federal courts, according to this analysis, have privileged the speed, effectiveness, and efficiency that are the principles of instrumental rationality. According to Heydebrand and Seron, courts achieve the "technocratic rational" goals of speed, efficiency, and effectiveness in two ways: first, by procedural changes that emphasize systematization, routinization, and standardization; and second, by increasing the informality and flexibility of roles and processes. Note then that the model of technocratic justice differs significantly from bureaucratic models of justice in this emphasis on informality. Informality allows a teamwork approach to problems of justice where judges, law clerks, magistrates, and sometimes even defending and prosecuting attorneys permeate the boundaries that separate their official roles to work together on processing cases more efficiently. According to Heydebrand and Seron, the most prominent example of this Progressive Era–originating rationalized justice is "the expansion and conscious use of plea bargaining to resolve criminal cases" (1990:42) as an alternative to adjudication, full due process, and juries. Other examples of rationalized justice include mini-trials, negotiation, mediation, arbitration, and specialized courts and what Resnik (1982, 1985, 2002), also emphasizing the informality of this form of justice, calls managerial judging, which she finds manifest in pretrial conferences.[3] We will see the informal mechanisms of plea bargaining and pretrial settlements as examples of rationalized justice played out in domestic violence court.

The implications of rationalized or technocratic justice on federal courts are, for most analysts, more negative than positive. The positive aspects are self-evident from the definition of technocratic justice: a rational system that works speedily, efficiently, and effectively. More negatively, critics argue that these organizational changes threaten the core substantive democratic values that have grounded the courts since their nineteenth-century formation. Heydebrand and Seron in particular follow in the tradition of the critical school of sociology (Horkheimer & Adorno [1944]1987; Horkheimer [1947]1972; Marcuse 1991), with its roots in the work of Weber ([1904–1905]1958, 1968). Heydebrand and Seron share with Weber the idea that the increasing instrumental rationaliza-

[2] Weber uses the terms *means-end* or *instrumental* rationality to mean action that is "determined by expectations as to the behavior of objects in the environment and of other human beings; these expectations are used as 'conditions' or 'means' for the attainment of the actor's own rationally pursued and calculated ends" (Weber 1968:24).

[3] According to Resnik, pretrial conferences between judges and lawyers were first allowed by the original 1930s version of the Federal Rules of Civil Procedure. Ultimately, amendments to the Federal Rules in 1983 and again in 1992 gave judges the power to require parties to attend informal settlement conferences (Resnik 1985:686).

tion of society comes at the cost of substantive or value rationality, action based on a value for its own sake independently of its prospects for success. For Weber, as for the members of the Institute for Social Research writing in the Frankfurt, New York, and California of the 1920s and beyond, instrumental rationality gradually drowned out the values at the base of our social, political, and cultural institutions, leaving Western society and its members valueless: alienated "specialists without spirit" in a meaningless, disenchanted world (Weber [1904–1905]1958:182). For Heydebrand and Seron, writing in this tradition, instrumental or technical rationality also dominates our legal institutions, drowning out democratic commitments, giving us a system of justice that is less concerned with the expression of values than with the realization of pragmatic goals. In particular, Heydebrand and Seron argue that innovations such as plea bargaining and pretrial settlements threaten the democratic values embedded in the formal adversary legal process—judicial impartiality and independence, procedural rights and guarantees, and due process itself—resulting in what some have called a legitimation crisis of the modern state.[4] Resnik (1985) shares these concerns over the dominance of instrumental over substantive justice.[5]

Recent research has confirmed the ongoing ascendance of this model of technocratic justice in late-twentieth-century and early-twenty-first-century federal and state courts. For example, the trial—an instance of the procedural rights, due process, and judicial impartiality that for Heydebrand and Seron constitute formal democracy—has continued to decline. Criminal trial rates in the nation's state and federal courts, the portion of criminal case dispositions that are by trial, decreased from 15 to 5% in the last quarter of the twentieth century; in absolute terms, the rate of criminal trials decreased 30% from 1962 to 2002 (Galanter 2004:510, 523). This decline seems to be motivated, like the turn to technocratic justice generally, by rising caseloads and the resulting need for speed and efficiency (Galanter 2004: 492, 517). The result looks like the technocratic justice Heydebrand and Seron describe: the predominance of a business model of administration involving routinization and informal justice techniques such as managerial judging (Galanter 2004: 520).

[4] For these writers, the changes amount to a crisis, and here they adopt the Habermasian language of legitimation crisis (Habermas 1975), the state crisis that occurs when the economic tasks of the state prevail over its democratic ones, leaving us with a smoothly functioning market but a violation of core values of democracy used to justify state operations to the people (Heydebrand & Seron 1990:4).

[5] According to Resnik, "Case processing is no longer viewed as a means to an end; instead, it appears to have become the desired goal. Quantity has become all important. Quality is occasionally mentioned and then ignored" (1985:689). Resnik also worries about the impact of innovations such as plea bargaining and pretrial conferences on the core democratic values embodied in the legal system.

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Today's special courts, including not only domestic violence courts[6] but also drug courts,[7] community courts,[8] and mental health courts,[9] contribute to the phenomenon of the "vanishing trial" (Galanter 2004) and are part of the ongoing trend toward technocratic justice. While the literature on contemporary specialized or problem-solving courts is just beginning to develop (Berman 2000; Berman & Feinblatt 2001; Butts 2001; Center for Court Innovation 2003; Goldkamp 2002; Kaye 2002, 2004), no discussion of these courts fails to mention the increase in the sheer number of cases confronted by state courts (Berman 2000:80), especially in the areas of domestic violence (Berman & Feinblatt 2001:128) and drugs (Nolan 2001:44; McColl 2002:5; Goldkamp 1994). Special courts promise new methods to help judges and attorneys process cases quickly and efficiently (Kaye 2002:2) with maximum effectiveness (Berman & Feinblatt 2001:129), all goals of technocratic justice.

Where special or problem-solving courts seem to vary from Heydebrand and Seron's model of technocratic justice is in their ability to combine technocratic imperatives with a substantive commitment to solving difficult social problems such as family dysfunction, addiction, and quality-of-life crimes. The courts are an attempt to "try and channel the energies of social change into the judicial branch" (Berman 2000:82), in part by democratizing the judiciary. As Berman suggests, a good (problem-solving court) judge is "someone who is open to other people's ideas, who listens, who is informed . . ." (2000:81). While Heydebrand and Seron do see an inherent instability in technocratic justice that leaves it open to substantive values such as these, they ultimately call this hope "Utopian" (1990:216), concluding that "the democratic kernel in the current flurry of reform and change seems precarious and endangered" (1990:9). Their conclusions about the prevalence of

[6] Domestic violence courts were among the earliest of the new wave of problem-solving courts (Littel 2003), with calendars devoted to domestic violence cases cropping up in Philadelphia, Pennsylvania (1982); Cook County, Illinois (1984); and Quincy County, Massachusetts (1987). Keilitz (2000) estimates that by 2000, more than 300 judicial systems nationwide had specialized structures, processes, and practices to handle domestic violence cases now commonly referred to as "domestic violence courts." For more on what a domestic violence court is, see Karan et alia 1999, Epstein 1999, and Tsai 2000.

[7] As of summer 2001, drug courts were reported to number more than 1,200, operating in all 50 states, the District of Columbia, Guam, and Puerto Rico (Nolan 2002a:ix). For a good discussion of the drug court and the drug court movement, see Nolan 1998, 2001, 2002a, and 2002b.

[8] As of 1999, approximately 11 community courts were operating within the United States, and six more were expected to open by the end of 2000 (Lee 2000), focusing on the types of social problems that impact a neighborhood or community and incorporating community participation into court processes (Lee 2000; Clear & Karp 1999).

[9] There were four mental health courts in 2000, and those numbers are increasing as well (Goldkamp & Irons-Guynn 2000).

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technocratic justice seem no more rosy than the orientations of Weber and the Frankfurt School. To what extent then has technocratic justice swallowed up the problem-solving imperatives of the specialized domestic violence courts I analyze, and to what extent have the courts been able to achieve the substantive justice they seek? I will approach this question through the case study of a domestic violence court after I examine some battered women's movement fears about technocratic justice.

The Battered Women's Movement and Its Fears of the Technocratic State

The rationalized or technocratic justice associated with the state was at the forefront of the battered women's movement's concerns as it began to seek legal intervention into domestic violence in the 1970s. State intervention was not an automatic goal: the battered women's movement developed out of the 1960s civil rights and women's movements as an outsider movement dedicated to fundamental grassroots change in social understandings of and response to domestic violence (Schechter 1982; Tierney 1982). The goal was to change the way the public thought about domestic violence so that the public was aware of its damaging impact, not only on victims, but also on families and society at large. But the movement also petitioned the state, which had historically not addressed violence behind the curtains of the private sphere (Epstein 1999:7; Dobash & Dobash 1979; Pleck 1987; Gordon 1988),[10] to be legislatively innovative at local and federal levels. Early coalitions and shelters thus created legal arms and devoted substantial funds and hope toward legal change (Schechter 1982:71). And ultimately, the battered women's movement succeeded in sparking enormous legal reform of police, prosecution, and victim treatment.

Today, mandatory arrest laws nationwide require police officers to see their role as law enforcers rather than mediators or peacemakers by mandating arrest if there is probable cause to believe that an assault took place (Zorza 1992; Martin 1981; Straus et al. 1980). Present-day "no drop" policies for prosecutors mean that once charges are brought, the case must go to trial regardless of the wishes of the victim (who may be pressured by her partner to drop charges) if the courts possess adequate criminal evidence (Hanna 1996). And finally, civil protection or restraining orders, ex parte relief orders, and post-trial relief for victims provide protection and

[10] The battered women's movement has long faced a state that was unsupportive, even hostile to its goals. "Indeed the European and American legal systems have a long history of complicity in- and even approval of- intimate abuse, particularly when perpetuated by men against their wives and children" (Epstein 1999:7).

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financial resources that make it easier for the victim to file charges, leave an abusive relationship, and remain independent (Klein & Orloff 1993).[11] The battered women's movement has both provided initiative for these legislative changes and mobilized federal and local governments for funding for battered women's movement organizations (Dobash & Dobash 1992). Today, most shelters, educational projects, and legal programs across the United States rely in part on government funding for their daily operations (Schechter 1982:93; Schneider 2000:184); the most recent source of such funding is the 1994 federal Violence Against Women Act (VAWA), which apportions federal money for further state responses to domestic violence.

Despite these notable successes, battered women's movement advocates continue to have an ambivalent relationship with the state and with the law (Schneider 2000). They worry about a technocratic state with its goals of instrumental rationality—efficiency, speed, and effectiveness—colonizing the goals of a movement devoted to substantive change. In particular, the movement fears that the technocratic state will undermine its orientation to participation, social change, and anti-patriarchy. I consider each of these threats in turn below.

The state's technocratic values have threatened the battered women's movement first because of the movement's central concern to preserve the democratic participation of battered women in the movement's organization itself (Elshtain 1985:56; Dobash & Dobash 1992:30; Pence 1987:104, 118; Gaddis 2001:14). Central to the inception of the movement were feminists who, if not battered women themselves, wanted to retain the voices of battered women as leaders of the movement. As a result, these activists organized some shelters and other movement institutions horizontally rather than vertically, stressing group participation, consensus decision-making, and universal, rather than specialized, task allotment (Elshtain 1985; Dobash & Dobash 1992:30; Pence 1987:104). Movement activists have thus worried about the hierarchizing impact of the state: the concerns have been that state funding specifications will require that horizontally organized shelters be replaced by boards of directors, executive committees, and other formal positions that provide efficiency, effectiveness, and speed but limited openness to battered women's participation. A related concern has been that the hierarchical organization of state institutions themselves, from the courts to state and federal legislative bodies, will allow few opportunities for battered women's participation.

[11] It is important to note inconsistencies in the actual enforcement of these legislative changes from arrest to prosecution (Epstein 1999:13–4), leading to the movement's ongoing wariness of state mechanisms to protect battered women (Schneider 2000:184).

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The battered women's movement has worried second that the state's technocratic focus on efficiently processing individual cases by assigning individuals to counseling will be achieved at the cost of a definitive goal of the movement: large-scale social change (Mirchandani 1989; Pence 1987). Movement activists have encouraged battered women to identify examples of how social institutions from marriage counseling to medicine to the judiciary[12] and cultural beliefs from religion to pseudo-science[13] support violence against women and to mobilize to change them (Pence 1987). Battered women–led projects of institutional change have ranged from testifying at legislative hearings in support of protective orders and new arrest laws to bringing church group representatives or hospital administrators to battered women's meetings.[14] Cultural change projects have involved Take Back the Night marches, vigils on issues regarding violence against women, and educational activities in high schools and grade schools (Pence 1987). The movement's fear about state intervention is that diagnosing battered women as mentally ill and sending them to counseling is a more efficient response than facilitating movement efforts at large-scale social and cultural change. A state emphasis on technocratic goals over social change was seen centrally in the Law Enforcement Alliance of America (LEAA) response to domestic violence, which seemed to suggest that for the state, "social change means changing bureaucracies to make them work more effectively" (Schechter 1982:189).

Finally, the battered women's movement has worried that the state's technocratic orientation will undermine the movement's stand against patriarchy. The movement defines patriarchy as a top-down, nondemocratic type of authority in which men seek power and control over women through multiple measures. On the power and control wheel, a diagram developed by formerly battered women to identify the common tactics of control,[15] the

[12] Battered women have discussed, for example, how marriage counselors ignore the man's use of violence or equate it to her yelling at him, how doctors prescribe Valium for battered women rather than addressing the reason for their suffering, and how judges lecture women during protective order hearings, stating that they too are part of the problem (Pence 1987).

[13] At the cultural level, battered women have discussed how cultural beliefs such as religious beliefs regarding the subservience of women to men or pseudo-scientific beliefs regarding the natural violence of men support batterers (Pence 1987).

[14] We can see this focus on social change in the platform of the main national body of the battered women's movement, the National Coalition Against Domestic Violence (NCADV), which has resolved to work toward the complete elimination of domestic violence (Dobash & Dobash 1992:36).

[15] The feminist approach to battering as a manifestation of power and control dynamics by men over women was formalized by formerly battered women in Duluth, Minnesota, in the 1970s. They embodied this approach in a diagram called the power/control

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hub is the intention of all the tactics—to establish power and control. Each spoke represents a particular tactic (economic abuse, emotional abuse, isolation, and so forth), while the rim of the wheel is the physical abuse itself, giving the wheel strength and holding it together (Pence 1987). A central point of the wheel is that battering is a form of dominance and control that pervades our culture and cultures worldwide. The battered women's movement fear of the state is that it will replicate some of these forms of power and control in its practices and attitude toward battered women. The concern is not only that do individual judges, prosecutors, and police continue to show patriarchal attitudes toward battered women, but also that legal reforms formalize these responses. For example, mandatory arrest and no-drop policies that require that police arrest and prosecutors prosecute regardless of the will of the individuals involved may give professionals complete power over a case. In many cases, a prosecutor will operate as the sole decision maker and ignore the victim or require her, often unwillingly, to testify as a witness to the crime against the state. This leads to a more efficient, effective, and speedy case processing but may also result in a deprivation of autonomy and self-determination and a sense of revictimization (Epstein 1999:16).

In sum, because of its participatory nature, its commitment to large-scale social and cultural change, and its battle against patriarchy, the battered women's movement has been wary of the state it has simultaneously mobilized. Battered women's advocates have asked critically about the reform efforts they have lobbied for: do they continue to bring women together to participate democratically in the struggle to end domestic violence? Or does the technocratic state ultimately undermine the feminist, social change–oriented, and democratic spirit of the movement? The tension between the movement and the state has been a pervasive one. As one chronicler of the law and battered women has put it, "The role of the state was one of the most vexing issues that this movement faced" (Schneider 2000:182).

It is important to note at this point that battered women's movement fears of the state in part reflect tensions within the very movement itself.[16] The movement itself has always included both sides of these dichotomies: anti-bureaucrats and those who favor the speed of hierarchical organization, activists and professionals, those oriented to social change and those oriented to psychological healing, anti-patriarchal feminists and those more wary of feminism. Nonetheless, despite this variation, the national movement,

wheel, which was used to raise the consciousness of battered women as well as to treat batterers (Hanna 1998).

[16] Thanks are due to an anonymous reviewer for pointing out the complexity of battered women's movement responses to domestic violence. See Wharton (1987) for more.

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national spokespeople for the movement, and prominent local affiliates such as the city of Duluth, Minnesota, have remained resolutely feminist, democratic, and social change–oriented (Pence 1987). In my analysis of battered women's movement influence on domestic violence court, I refer to these national movement values.

Research Method

This study focuses on a domestic violence court in Salt Lake County, Utah. The Salt Lake County domestic violence court opened in February 1997 and four years later employed full-time judges, prosecuting attorneys, legal defenders,[17] and numerous other staff to handle all misdemeanor domestic violence cases in the county, some five to six thousand a year. I used a number of methods to gather data for this case study. First, my courtroom observations extended over nine months: on 12 Tuesday mornings between October 2000 and June 2001, I observed the domestic violence court in operation for three to four hours each morning. Second, to explore the legal, political, and community justifications for and understandings of the court, I examined local newspaper accounts dating from spring 1997 to spring 2001 regarding the inception and functioning of the domestic violence court. Third, I reviewed audiotapes of Utah legislative debate on domestic violence in 1990 and 1996, important years in formulating state policy on domestic violence. Finally, I conducted in-depth interviews with professional stakeholders in the domestic violence court. I describe the interview process and the analysis of interview data, courtroom data, and newspaper and audiotape accounts in more detail below.[18]

Over the course of the nine months of this study, I conducted interviews with one or more representatives of all the major professional stakeholders either working in the court or in areas related to the court. There were seven major professional stakeholders in the domestic violence court: (1) the court itself, including the domestic violence court judges and their clerks; (2) the city prosecutor's office, with its designated staff of domestic violence court prosecutors; (3) the legal defender's office, with its designated staff of domestic violence court legal defenders; (4) and the police department, with its designated victims' advocates and detectives. Organizational groups related to the court and also hold-

[17] Public defenders in Salt Lake County are referred to as legal defenders, and I appropriate this terminology in this article.

[18] My method shares similarities with other studies of domestic violence programs. See Merry (2001). Like her, I focus on observation and interviews, though unlike her, because of my focus on court ideology, I do not interview victims and defendants whose contact with the court was limited.

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ing a stake in it included (5) agencies contracted to provide domestic violence counseling, (6) a group coordinating intervention in and prevention of domestic violence across Utah and serving in an advisory role to the governor, and (7) a traditional battered women's shelter.

In choosing specific interviewees, I made sure to select individual stakeholders who were identified as central to the court by newspaper accounts, by their courtroom role, or by their prominence in conversations about the court. Additional interviewees were selected with the goal of getting a roughly equivalent number of representatives from each professional stakeholding group in and out of the court. In total, I conducted 15 one- to two-hour interviews, including one central domestic violence court judge, one court clerk, three domestic violence court prosecutors, two legal defenders, two victims' advocates, two domestic violence detectives, two staff members from an agency contracted to provide domestic violence counseling, a chief administrator of the advisory council to the governor, and a chief administrator of a shelter. Seven interviewees, or approximately half of those interviewed, were female. The questions I asked were open-ended and directed to explore how professional stakeholders justified the court and their role within it and to gather their practical explanations about how the court worked.

I analyzed the collected interview data as follows. I took notes during the interviews verbatim in shorthand. Immediately afterward, I transcribed interviews and wrote a short summary of important themes. I then reread each interview and court session transcript to find evidence of the technocratic state, coding my interview data and courtroom transcripts, as well as the newspaper accounts and audiotapes, by the central variables in Heydebrand and Seron's definition of technocratic rationality, including (1) speed; (2) efficiency; (3) effectiveness; (4) cost-effectiveness; (5) techniques of systematization, routinization, and standardization in the court system; and (6) catalysts to technocratic justice: increasing loads and insufficient resources. I also included the informal aspects of technocratic justice, coding my data according to the categories of informality and flexibility of procedures, including (1) teamwork approaches to justice inside and outside the courtroom, and limits to this cooperation; (2) collapse of boundaries between official roles; (3) collapse of boundaries among disciplines; and (4) common courtroom culture. Finally, I coded the data according to the battered women's movement themes, including: (1) theories on the causes of domestic violence, (2) proposed solutions to domestic violence, (3) implementation of offender responsibility-taking, (4) encouragement of victim participation, (5) anti-patriarchal values, and (6) other battered women's movement values. To perform the

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courtroom observations, I arrived at the court just as defendants were arriving for review by the administrative staff, I was present for the entrance of the judge, and I stayed through the pretrial and trial sessions. I took notes on courtroom interactions verbatim and in shorthand and, as with the interviews, transcribed them immediately afterward. I coded courtroom observations first according to courtroom procedures ranging from administrative review of returning offenders to judicial congratulation of those who had successfully completed the plea conditions to the pretrial and trial sessions and what was discussed and accomplished at the various stages. Second, I coded courtroom observations using the same thematic variables ennumerated in the interview section above: themes of formal and informal technocratic justice and battered women's movement themes.

To explore newspaper accounts of domestic violence court, I surveyed the major Salt Lake City newspaper, *The Salt Lake Tribune*, and collected all articles that mentioned Salt Lake's domestic violence court from spring 1997, when the court first opened, until the end of the study in spring 2001. I also gathered some articles that mentioned domestic violence generally in order to examine rates and specific examples of domestic violence in the state. I then took notes on the newspaper articles and coded these notes according to the same themes used to code interviews and courtroom processes. I used these same central categories to code audiotapes of Utah legislative debate on domestic violence in 1990 and 1996.

The data gathered enables me to identify the goals that professional stakeholders attach to this domestic violence court and how they believe these goals are reached. Note that I do not discuss here the court's impact on offenders but focus on the beliefs that legal and other officials connected with the court have about the purpose of the court and their role within it. In other words, this research yields some insight into the ideology of court participants, not the court's impact on defendants and victims. This is a study about the ideological goals of a putatively new type of court, without any consideration of whether the claims of the court are in fact realized.[19]

Technocratic Rationality and Substantive Social Movement Values in Salt Lake's Domestic Violence Court

As we will see below, the question of state involvement in issues of social change gets posed anew with domestic violence courts.

[19] I thank an anonymous reviewer for expressing the focus of this study in the way described in the last three sentences of this paragraph.

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What I found is that local professionals show technocratic values in their emphasis on efficiency, speed, and effectiveness, but that they are also open to the substantive values and goals of the battered women's movement. Below I examine the perspectives of key professional stakeholders in the domestic violence court, the perspectives of local journalists, and my own courtroom observations to discuss the combined technocratic and social movement origins of the courts, and their day-to-day combined technocratic and social movement–influenced operations before turning to analyze why these reportedly conflicting and tension-ridden perspectives manage to coexist and even complement one another in what has to be called the special character of the domestic violence court.

Technocratic Origins

The nationwide push to institutionalize special courts or courts whose docket is devoted to one social problem stems from an increase in docket size and a decrease in resources: "the double bind of rising demand and lagging resources" (Heydebrand & Seron 1990:2; Resnik 1982, 1985; Fiss 1983, 1984). According to local newspapers, one of the key arguments for the Salt Lake City domestic violence court was the "crushing caseload" (Rivera 1999b:D-1) faced by Salt Lake courts and the "thousands of cases that clutter police stations, prosecutors' offices and the courts each year" (Rolly 1997:D-2). This "sheer volume" (Rolly 1997:D-2) is accompanied by the problem of "no resources" (Rolly 1997:D-2): "Though domestic violence has become a volatile political issue, resources . . . remain virtually nonexistent. And no legislation requesting new money is on the horizon" (Rolly 1997:D-2). Thus, this domestic violence court shares with technocratic justice in the rationale of high case volume and low financial resources. As a result, the important concerns that professional stakeholders and public supporters stressed were largely the hallmarks of Heydebrand and Seron's technocratic justice: effectiveness, efficiency, and speed.

The limited *effectiveness* of existing domestic violence court processes was a particularly important point in the local newspapers. Both in Utah and nationwide, critics recognized that defendants were coming up multiple times on the same charges and simply ignoring judicial orders. In before-and-after stories, *Salt Lake Tribune* reporters noted the seemingly invincible offenders who reportedly felt that they ran the courts rather than being subject to them and who continued to harass their partners, post-prosecution, showing up in the middle of the night, hounding them at work, breaking their noses and knocking out their front teeth (Rivera 1999a). They contrasted these offenders with offenders post-court-inception who saw jail time and victims who, har-

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assment-free, were able to begin new lives. That effectiveness was a big issue for the local media is no surprise, as domestic violence was the leading cause of homicide in Utah (Horiuchi 1998:B-1), a reason for shame in a "family-friendly" state that touts America's largest per capita consumption of Jell-O and its highest birth rate.[20]

The technocratic rational goal of *efficiency* was also important to the court's founding, as journalists, court founders, and participants pointed out. A domestic violence incident can trigger a series of civil and criminal cases: civil cases can include protective orders, divorce, and child custody; criminal cases can include misdemeanor and/or felony assault and protective order violation. Victims can find themselves in multiple courtrooms, in more than one courthouse, facing multiple judges and even conflicting judicial orders. This is confusing and time-expensive for the victims as well as for the judges, who have to shuffle great amounts of paperwork to discover the backgrounds of the defendants in front of them. It also leads to defendants escaping the system: according to an officer in Salt Lake's police force,

> Many of these guys just learned how to beat the system. They would be assigned counseling with one judge, then have another hearing before another judge. We were getting people who were charged over and over again with domestic violence. And they weren't facing any consequences. (quoted in Rolly 1997:D-2)

Thus, if a court could be created to coordinate all the cases and all the remedies for all the cases and induce cooperation among the various agencies and branches of government typically involved in domestic violence cases, from police to counseling to advocates to judges to prosecuting and defense counselors to the victims and defendants themselves, efficiency (as well as effectiveness) might result. And indeed, professional stakeholders contrast the pre- and post-domestic-violence-court case handling in terms of efficiency: according to local papers, "[v]ictim advocates and abuse counselors have lauded the court's success saying the *efficient* processing of cases helps stop the cycle . . ." (Rivera 1999a:C-1; emphasis added).[21]

[20] High rates of domestic violence and domestic violence homicide have been particularly difficult for Utah officials to accept, given their self-identity as a family-friendly state. The Utah Domestic Violence Council points out that domestic violence is the leading cause of homicide in the state (including both women killed by men and men killed by women); this has been true for seven out of the past 10 years (Warchol 1999).

[21] The other side of time efficiency is *financial efficiency*, and stakeholders pointed out that the domestic violence court was founded with no initial outlay of financial resources. Instead, one founding judge made a bargain: She traded cases from her own rotation for domestic violence cases at a price of one driving under the influence case for five domestic violence cases, resulting in an average of 200 cases a week—one day she reportedly had 160 appearances (Rolly 1997)—for a total of 5,000–6,000 cases a year. In addition, a city prosecutor I observed justified the court in financial efficiency terms as follows: "In a

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Finally, professional stakeholders in the domestic violence court justify its founding by reference to its pure speed. Speed is important to technocratic rationality, as commentators on technocratic institutions from McDonalds to Wal-Mart have noted (Ritzer 2000). Salt Lake's domestic violence court officials agree that "speed is key," and they tout the domestic violence court's ability to get the defendant into the system quickly (Rolly 1997:D-2). The speed is far greater than in other courts, as prosecutors and legal defenders alike mentioned in their interviews. Said one prosecutor I observed, "Overall, in domestic violence court, a lot happens in a very short period of time. It is a *fast* track. The incident happens, arraignment should be the next day, pretrial in a week or two." Said a legal defender I observed on the same topic and in a more neutral commentary on the court, "Three quarters of the time I have never seen the files beforehand even because the process is so *quick*. The arraignment is on Tuesday, the pretrial on Thursday and the referral and file don't get here [to her office] in time." Ultimately, this aspect of technocratic rationality is key; officials note that speed is particularly important to domestic violence cases, where an escalating cycle of violence can present real danger to victims.

Substantive Origins in the Battered Women's Movement

Although the rationale for the court and its innovative procedures was to create a more efficient, speedy, and effectively operating system, professional stakeholders described other less obvious but equally important influences as well. One avenue of the battered women's movement's influence has been in the government funding available for state domestic violence initiatives, especially victim aid. Federal grants to fight domestic violence are in large part due to the efforts of the battered women's movement, and it is a testimony to the movement's success that the movement's values and language are institutionalized in policy documents along with the grant money. Funding for establishing domestic violence advocates in the Salt Lake City police department's Victim Resource Center was initially received from provisions of legislation preceding the 1994 VAWA, which established law enforcement grants to reduce violent crimes against women. Salt Lake victims' advocates were trained with federal funds to work in court with victims, to aid victims with protective orders, and to provide

domestic violence case, officers are more likely to be killed, there are more murder victims in domestic violence cases than any other cases. And it takes a lot of community resources. If it costs $60 per officer per hour and two officers go to a crime scene, it costs $120. If the officers have to go ten times in a month, that is $1200. If we can get some of the problem solved, we're not there to rely on citizens to bear the cost."

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community education about domestic violence.[22] Commenting on the LEAA, the precursor to the National Institute of Justice and programs it has sponsored such as VAWA, Dobash and Dobash have said that "LEAA programmes might be seen as the Trojan horses which allowed feminist inspired ideas and programmes to enter criminal justice machinery" (1992:205).

Another avenue for the battered women's movement's influence is through courtroom officials themselves (Ptacek 1999). In Salt Lake's domestic violence court, the founding judge in particular was motivated and trained by battered women's activist Sarah Buel, known nationwide as a battered woman turned law professor and legal reformer. Buel's influence, and through her the influence of the battered women's movement, on the Salt Lake domestic violence court cannot be underestimated. According to a founding judge, "She [Sarah Buel] had a lot of influence [on the domestic violence court]."

That advocates such as Buel found an eager audience among domestic violence court officials may have been facilitated by the fact that a founding Salt Lake domestic violence court judge, a significant proportion of the prosecuting and defense attorneys, and most of the victims' advocates were women. While this fact does not make them feminists, still it has been observed that women may be more receptive to the message of the battered women's movement. As Dobash and Dobash suggest,

> From our observation of American courts, it also seems that many innovative [justice system] programmes are staffed by women . . . . Class, race and socialization into professional orientations are important intervening factors in gender empathy, but certainly some of these professional women have feminist orientations and others have considerable empathy for abused women. Such women play a role in facilitating the process whereby the state plays a role in enabling women to overcome violence. (1992:206)

Below I will describe the ways in which first the technocratic goals of the court were manifest in its operations and second, the ideals and values of the battered women's movement manifested themselves in the courtroom despite their posited tension with technocratic ideals.

Technocratic Operations: Formal and Informal

As Heydebrand and Seron suggest in their description of technocratic rationality (1990), these technocratic goals of effectiveness,

[22] The goals were twofold: in the words of a director of the Victim Resource Center, first, at the individual level, to "help a victim of violent crime, as much as possible, become whole again," and second, at the community level, to "stop domestic violence."

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efficiency, and speed are largely achieved by standardization of procedure. Three significant Salt Lake domestic violence court innovations are generally believed to have these results. The first is standardized plea bargain terms. Feeley nicely captures the nature of much of the plea bargaining in American courts: "[t]he reality of American [criminal justice] . . . is more akin to modern supermarkets in which prices for various commodities have been clearly established and labeled in advance" (Feeley 1979:262, quoted in Heydebrand & Seron 1990:111). In a standard case in Salt Lake's domestic violence court, a defendant charged with two counts of misdemeanor battery and disturbing the peace pleads guilty to a single charge of battery, resulting in a suspended sentence. In return, the defendant agrees to comply with the court's order of counseling, usually 26 sessions, and community service, usually 25 hours. As prosecutors typically say when making this recommendation to the court, "We are asking for the standard conditions"; and indeed, if the prosecutorial recommendation varies, the judge asks for explanation. Having an established package, officials believe, enables the court to quickly, efficiently, and effectively hear and resolve dozens of domestic violence misdemeanors each morning.

A second innovation that professional stakeholders suggested has increased effectiveness and efficiency is a strict review system including a 10-day, a 30-day, and an end-of-probation review. A color-coded system of review slips has bloomed: defendants bring a pink slip to court showing that they have made contact with a court-licensed counseling agency (10 days), a yellow slip showing that they are actively participating in counseling (30 days), and a purple slip showing that they have completed counseling and community service requirements (six months). In addition, defendants are required to keep good probation—in other words, not to commit any more crimes. To provide a check on the review process, a court tracker oversees defendant progress. Defendants found not in compliance with counseling or court review requirements or sometimes with punctuality expectations have their plea agreement revoked and may be thrown in jail. Having a review system, officials believe, helps the court respond efficiently and effectively to domestic violence.

A third domestic violence court innovation is regular domestic violence court personnel. Salt Lake's judicial system, prosecutor's office, and legal offender's office each designate domestic violence court personnel, most of whom work for rotations from one month (judges) to six months (prosecuting attorneys and legal defenders); administrative personnel such as clerks and bailiffs and court trackers are given ongoing domestic violence court duty. This means that at any given time the Salt Lake domestic violence court

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is staffed by designated domestic violence court officials, most of whom are accustomed to working together and, even more important, are acquainted with the defendants, their characteristics, and their cases. As professional stakeholders suggest, this standardization of personnel contributes to the court's effectiveness: "Plus, repeat offenders appear before a familiar face, not an unknown black robe," according to a founding judge. "'That's a tremendous advantage because there's not the anonymity anymore. Someone is going to know who they are, and they're going to be more accountable for their actions'" (quoted in Rivera 1999a:C-1). Said one domestic violence court legal defender, "But I'll tell you, the longer I'm in domestic violence court, the more I see repeat clients, the more I know about my clients. I know which ones have a problem." By having regular officials, the court is able to efficiently and effectively respond to domestic violence misdemeanors.

According to Heydebrand and Seron (1990) as well as Resnik (1985), technocratic rationality also involves using informal mechanisms to increase speed, efficiency, and effectiveness. Officials operate more efficiently by crossing the boundaries that separate their official legal roles of judge, prosecutor, defender; by working across disciplinary boundaries of law, psychology, and social work; by reaching out across the gaps that separate the legal system from the community. And Salt Lake domestic violence court officials are particularly vocal in support of this ideology. According to officials, Salt Lake's domestic violence court was founded specifically to increase communication among officials involved in a case and continues to do this. A founding judge pointed out that she knew that everything was in place for the court to open when the various legal units, from prosecutors to police to counselors to legal defenders, had voiced a specific commitment to the court. Courtroom officials from counselors to legal defenders speak favorably about the level of communication.[23] Said one of Utah's state government officials on the court, "We're further ahead of other states in terms of collaboration."[24]

[23] According to a chief administrator of domestic violence counseling at one of the court-licensed agencies, "A few months ago, she [a founding judge] had all the domestic violence counselors over for a luncheon. We discussed what was working and what was not. . .. She cares about our perspective on and experience with the process." And according to one prosecuting attorney, commenting on the legal defenders, "The working relationship is really good. . .. The cooperative aspect of it in domestic violence court is unique."

[24] One of the points here then is that this domestic violence court constitutes a courthouse community (Eisenstein et al. 1988; Nardulli et al. 1988) defined by a common workplace, interdependence (Eisenstein et al. 1988:24), and a local court culture (Church 1982; Kritzer 1979). I examine the values of this community below in "Beyond Technocratic Rationality."

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Professional court stakeholders recognize the costs of the new model of justice outlined in the literature, particularly its negative impact on the adversary process, judicial impartiality, due process, and defendant rights. But, as we see below, they are not as pessimistic about the implications of these changes for justice as are Heydebrand and Seron (1990), Resnik (1982, 1985, 2002) and Fiss (1983, 1984). According to one of the city legal defenders, there are two tracks within domestic violence court: the "team track" and the "adversarial track." The team track means by definition that there is not an adversarial relationship at work, and legal defenders describe the new mindset as requiring less aggressiveness. Instead, the judge, the prosecutor, the legal defenders, and the treatment staff meet on a semi-regular basis to, in one legal defender's words, "Take some of the 'dys' out of their [defendants'] functioning." Some legal defenders, however, have had a hard time accepting the loss of the conventional role of representing the defendant in an adversary process. The following series of statements reflect one legal defender's thoughts—her internal debate—on her role in domestic violence court:

> Usually the issue is what is the best thing I can do for this client. But the mentality in domestic violence court is different.
>
> My [usual] job is to get the best deal I can for my client. Without being unethical or shady, of course. But the objective in domestic violence court with judges and the prosecution is reformation. It is similar to the drug court in that way.
>
> So, you're trying to expedite the plea-in-abeyance [the standard pretrial settlement or plea bargain] . . . yet you also have a duty to the client.
>
> So you have a duty to the client through and through. There is also the duty to the client for the purpose of reformation. Which is your duty?

Another issue for professional court stakeholders, particularly legal defenders, is the loss of judicial impartiality. Legal defenders feel judicial pressure to settle. One legal defender explained that up until trial his role was to explain very thoroughly the alternatives to trial, and he pointed out that some judges have even suggested that he "persuade" defendants of the advantages of plea bargaining. Another legal defender said similarly,

> Pressure . . . is to plead your clients out. Judges don't want to spend their time trying misdemeanor cases. I've had judges call me back and say, can you talk to your client again? Anything that I can do or say? Some judges have called me back 10 times. Not [the] right thing for judges to do, not ethical. In domestic court, with the theme of reformation, [there is] pressure from judges for going against this theme.

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But despite their changed roles within the adversary system and despite the loss of some judicial impartiality where it comes to the good of settling, legal defenders and prosecutors alike tout the virtues of the court. These virtues include breaking the cycle of violence at the individual level and across generations, thus allowing defendants to lead happy lives. One prosecutor said that the ultimate goal of the court and the prosecutor in court is a "person who gets in the system, goes through counseling, changes his conduct and lives happily ever after." Said another prosecutor,

> I like the way domestic violence court is set up. They know up front what is expected of them and the consequences. Hopefully, this is helping them understand relationships: that there are expectations and then consequences. ... We are contributing to making a more peaceful society.

In sum, professional court stakeholders, especially defenders and prosecutors, are aware of the costs that technocratic justice has exacted on the traditional model of justice—particularly its effect on the adversary system and on judicial impartiality—but they also see these as outweighed by the perceived good of the specialized court, which I explore more below.

Substantive Orientations Inspired by the Battered Women's Movement

One fear of the battered women's movement has been that the state, with its technocratic stance and its psychological orientation, would wash out the movement's cultural and social understandings of violence. But my findings show that the technocratic or instrumental operations of the court exist side by side with an agenda devoted to the substantive values of the battered women's movement. According to professional stakeholders and other commentators, domestic violence courts are indeed characterized by the very approach that has been feared by the battered women's movement: special courts, like the state they operate within, are seen as technocratically rational. But, as we see below, the technocratic rationalization of courts has not meant the triumph of means/end or instrumental rationality over substantive or value rationality. It is interesting to note, as I also show below, that in the case of Salt Lake's domestic violence court, the technocratic goals of speed and efficiency seem to operate not at the price of substantive values such as those expressed by the battered women's movement but rather consistently with these values. I found that the three central battered women's movement values, discussed above, influence the court in three ways: court understandings of violence as patriar-

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chal, court efforts to involve battered women in court processes, and court commitment to large-scale social change.

Despite the battered women's movement worry that individual judges, prosecutors, and police would show patriarchal attitudes toward battered women, I found evidence that officials are anti-patriarchal in their understandings of both the causes of domestic violence and the solutions to domestic violence. Domestic violence court attorneys who spend most of their time either defending or prosecuting domestic violence offenders quickly understand offender behavior as fundamentally about power and control. Two female litigators I interviewed see offenders as attempting to continue to dominate their victims in court and to dominate courtroom processes as well—especially where these processes involve women. One female litigator suggested that offenders who refuse to plea-bargain are particularly likely to have "control issues," even saying that they would make sure that the victim did not come to court. Another female litigator, the prosecuting attorney who had worked for two and a half years as the domestic violence court prosecutor, spoke firmly against these offender attempts at control: "The bottom line is that they can't come in and take over. I don't want them controlling the system as they did their relationship. I don't want them to call the shots at all."

In addition, professional stakeholders in domestic violence court follow the battered women's movement in understanding the causes of domestic violence as patriarchal, i.e., cultural definitions of masculinity.[25] For some courtroom officials, this understanding of violence as a masculine prerogative is clearest in the prosecution of foreign-born defendants, who are believed to reflect different cultural backgrounds. Said one prosecuting attorney,

> For Hispanics and Pacific Islanders, it is very hard for them to admit guilt, to say that what I did was wrong because what they did was what their culture permits.

[25] Courtroom stakeholders even go so far as to embrace some current academic reconceptualizations of domestic violence as domestic terrorism, which put battered women into the context of international human rights and assert the violence as a public sphere issue rather than a personal or private sphere problem (Beasley & Thomas 1994; Copelon 1994; Marcus 1994). Battered women, it is argued, like those threatened by terrorism, live in a constant state of fear, but victims of terrorism, unlike battered women, are not generally asked "What did you do to provoke this?" Two stakeholders, one prosecuting attorney and a judge, brought up and commented on the analogy to terrorism:

> In Salt Lake, we recognize just how egregious this [battering] is. Some people call it domestic terrorism. In order to build a healthy community we have to address it.

> I recognized that women stay with men who do this because they want to stay alive. . .. No guarantees if you leave, in fact the rate of violence goes up when she leaves. A good way to see them is as victims of terrorism.

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> There was also the case with a man from Sudan. He was beating his wife in the back yard with a belt. He had apparently been doing this regularly. In this culture apparently if your wife disrespects you, it is OK to correct her. This was acceptable in this culture.

A few courtroom officials turned the mirror inward to recognize continuities between foreign and Western culture. Said a legal defender,

> There is a lot of ethnicity in domestic violence court. Police target ethnic minorities. Lot of Latinos . . . numerous African refugees. From a female perspective, their attitude is very difficult.
>
> I'll give you an example. I had a Russian who had broken—or allegedly broken—his wife's finger. He said "I broke her finger. I had a right to do it. She disobeyed me. She had not cleaned the house." And they want to take it to jury trial because they think the jury will acquit them.
>
> There are different dynamics. Some of them come from cultures where this is acceptable. Vast majorities come from families where this is acceptable. We recognize it less for families from here but maybe we should more.

A founding judge of the domestic violence court seemed particularly sensitive to the genesis of domestic violence in cultural definitions of masculinity as reflected in American families. And indeed she regularly addressed cultural definitions of masculinity in her courtroom addresses to offenders:

> I don't know whether in the homes you grew up in people hit each other and it was OK. Maybe it was a macho or masculine thing. I don't know.

And she made correcting this cultural impression of masculinity a major task of her courtroom:

> Battery, whether it is hitting, shoving, slapping, dragging, is not manly.
>
> Whatever you did to get her out of the car, I don't see that it was your responsibility. If she had done something wrong, there are other ways to deal with her. That behavior [pushing] is unlawful, not manly, uncivilized.
>
> No matter what she did, it [hitting her] is not manly. Not civilized. Not lawful.
>
> Just want to be clear about this. You are in criminal court.

The battered women's movement's cure for domestic violence, given its patriarchal roots, is, not surprisingly, to end patriarchy both institutionally and ideologically. Part of this process involves getting batterers to recognize and disown the patriarchal privilege of violence against women by taking responsibility for their battery

as a crime. This is important because, as the movement argues, historically women have taken responsibility for domestic violence, allowing men to deny personal and legal responsibility for their acts (Pleck 1987; Parnas 1970). Court officials see plea bargaining not just as a quick and efficient way to process cases but also as a method to encourage offender accountability. By going through what is for the offender a lengthy process of plea bargaining, including a long initial court day followed by return court visits for reviews and a minimum of 26 sessions of counseling, offenders are slowly socialized into taking responsibility for having committed the crime of battering. Legal defenders point out that defendants would actually rather pay a fine and move on, but that the process of counseling and community service foster a sense of responsibility for the battering.[26] According to a founding judge, "I think the key parts [of domestic violence court] are acknowledgement by the perpetrator, his accountability to the court by returning for reviews, and his accepting the consequences of his actions."[27]

Court officials not only emphasize the importance of men taking responsibility for their battery as a criminal act, but, consistent with the anti-patriarchal stance of the battered women's movement, they also emphasize the importance of women not taking responsibility for men's battery. A founding domestic violence court judge evidenced a great deal of alacrity in asking to talk to the victim if present and carrying on the following sorts of dialogues with them:

> All I would like you to know is that you don't deserve to be treated in any way that is physically endangering.
>
> Nothing justifies the use of force. I appreciate that there may have been miscommunication. What I don't want is for the force to escalate. You need not take responsibility for what he did. He has to appreciate what he did.

These dialogues also present evidence that contrasts with a second battered women's movement fear, that state intervention will hamper, if not prevent, battered women's participation in courtroom procedures. While there are obvious limits to the participation of battered women in the courtroom trials of batterers for what amounts to a crime against the state, the judges attempt to involve the victims, especially in pretrial settlements, almost always asking if they are present and, if they are, finding out as much as possible

[26] According to one legal defender, "In general the defendants would much rather pay the fine and get on with it. But it [going through court-ordered counseling and community service] is kind of a responsibility thing. They need to take responsibility for their actions."

[27] In his classic study, *The Process Is the Punishment* (1979), Feeley also demonstrates the ways in which bureaucratic courtroom procedures can themselves become part of the sanction, though he is more critical about this than the professional stakeholders I interviewed.

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about the victims' situation. Other court officials show a strong commitment to getting battered women into the courtroom, often a challenging process. Victims' advocates, located in the police department, screen cases for domestic violence, and once these are identified, try to reach the victim by mail, phone call, or any other means possible. Prosecutors also work to bring victims into the courtroom: one domestic violence court prosecutor described in detail her methods for summoning victims, from asking victim advocates to have the victim contact her to contacting the victim directly herself, sending out what she called witness tracking letters asking them to call her. If these methods didn't work she would try to call victims, staying late at work to phone them in the evenings if they were unreachable during the day. It is true that these attempts have often been futile, resulting in either a failure to find the victim or a victim unwilling to get involved in the legal process. These failures, however, are in some ways a testimony to the success of the movement because they are evidence that its central value of battered women's participation has penetrated into the court, even if the court has not been able to achieve it.

A third fear of the battered women's movement has been that the instrumental interest of the state in fast, efficient, effective case processing will dominate over its substantive commitments to social change. But in interviews, most officials simultaneously eschewed their technocratic roles and emphasized their commitment to social change. In fact, legal officials from judge to prosecutor to counselor to clerk stressed a dislike of technocratic roles and a commitment to social change. Said one legal defender, in commenting on a judge,

> The clients respond really well to [the judge]. Clients say, "I really like her. I really connected with her." There is a real person up there. She actually cares, asks about life, finds out more than the police report says. Talks to them like a real person. She has sincere concern: I think she really wants the changes.

Said one prosecutor, in emphasizing her role as other than technocrat,

> If I talk to them [victims] and take the legalese out, so that they can see you as a person and not as a bureaucrat and say, "Don't you think it would be a good idea for him to go to counseling?" and she will say, "Yes, I've been asking him to go," and then they will come to court [to testify against the batterer].

and then on her commitment to social change,

> I would have been happy to continue. I felt that I was using my skills and time usefully. I did enjoy it. Didn't mind working late. Prosecutors have a greater opportunity than anyone to effectuate change. DUI [driving under the influence] is important. But in

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> domestic violence court, you see more immediate impact. I can ensure that this family is not further endangered.

One of the counselors emphasized his commitment to anti-technocracy as follows:

> I connect with these guys because I was once on the wrong side of the tracks. I acknowledge that they don't want to be here. I immediately try to separate them from the court system. I say that I've been booked for assault.

And he emphasized his commitment to social change in this way:

> I'm also an ex-college professor so that they can see where I've come from but also potential of where they can go. There is a closeness, but also a distance. I identify enough to facilitate change. They can see a past and a future.

Said one legal defender on being asked about potential domestic violence court burnout,

> I love what I do. I enjoy it very much. It's a good cause. I think a lot of attention has to be paid. For me it's important. It's scary. I think it's a violent society. I guess it makes me feel good to see changes.

As I suggest further below, it may be that the very technocratic efficiency of the court is what allows officials room to be less focused on technocracy.

The Complementarity of Technocratic and Substantive Justice

In sum, then, the technocratic or instrumental operations of the court exist side by side with an agenda devoted to the substantive values of the battered women's movement. According to professional stakeholders and other commentators, domestic violence courts embody the battered women's movement's fears: special courts, like the state they operate within, are technocratically rational. But, as we see above, the technocratic rationalization of courts does not mean the triumph of means/end or instrumental rationality over substantive social change goals. One conclusion of this analysis is that elements of the feminism of the battered women's movement have percolated into the ideology of professional domestic violence court stakeholders so that instead of being defined one-dimensionally by technocratic rationality as feared (by Weber, the Frankfurt School, critical sociological thinkers on the courts such as Heydebrand and Seron, and by the movement itself), the courts operate with a substantively rational value system that shares similarities with that of the battered women's movement. So while I found evidence of tension between the technocratic justice and formal democratic values, I found little evidence of tension between technocratic justice and social movement values.

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What permits court officials to expand their technocratic roles to embrace an anti-patriarchal democratic social change agenda? Is it possible that the answer lies in the routinization and standardization of the process? In other words, rather than taking away from the substantive values of the battered women's movement, could technological rationalization as a means of social control actually contribute to social change? We can explore this question by examining the judge's role in more detail.

Formally, and consistently with Resnik's (1982) descriptions of the technocratic or managerial judge, the judge has a number of administrative tasks. Sequentially, the judge's first role is to dismiss defendants who have showed up for the first, second, and third reviews with the proper paperwork by reading aloud their names. In truth, this is a somewhat superfluous task as clerks have already, in a pre-court process, met with the defendant, processed the relevant forms (pink slip: you've seen the counseling center; yellow slip: shows you're in counseling; purple slip: you're done), heard about any problems they are having with compliance, and reminded them of outstanding community service, counseling sessions, and fines. In fact, then, complicating Resnik's findings, the routinization of courtroom bureaucratic tasks leaves the judge free of managerial tasks to fulfill other functions. In this court, the judge encourages the process of change that defines the court. This is done by public statements of congratulation and encouragement: "Those of you who are here for reviews, let me congratulate you on succeeding today, complying with the court, and being on your way to success." The judge might add, "Good to see so many of you doing so well."

The judge's second formal courtroom task is to facilitate the plea bargaining by reminding each perpetrator who agrees to a plea of the constitutional rights they are abrogating, of the charges filed against them and what the penalties are, of what they are pleading to, of what will happen to them if they do not comply with the plea requirements, and of the exact plea obligations. But again, this second courtroom task has already been performed by the city prosecutor, who has, in the corridors of justice, reviewed with the defendant each of these provisions, both orally through discussion and in written form, and indeed has, by the time the defendant appears in front of the judge, already secured the signature to the plea. In addition, the judge almost always follows the plea recommendations of the prosecutors who have read the police report and talked to the alleged perpetrator. The judge's task, then, in meeting with the defendant in front of the courtroom is not of a technocratic nature. The judge sees his or her task as one of facilitating individual and social change. The judge speaks one-on-one with the defendant, asking him if he has questions, what the nature of the relationship with the victim is or was, if they have children together, what the facts of the case are.

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> Before I go ahead .. . . Would you tell me, you're separated? Don't plan to get back together?
>
> Did you grow up in a house with fighting? No one pushed you around? Alcohol?
>
> You've heard me talk to others. Anything you want to say? You don't have to but you can.
>
> Anything you want to tell me? Anything I should know before I go forward with this?
>
> Tell me about your family. Married still? Tell me about your kids. What ages?

If the victim is also there, the judge will ask similar questions of her. And the judge makes clear to the defendant and the victim, perhaps to him- or herself, and certainly to the larger courtroom that this commitment to individual change is part of a larger project of social change. Commonly during courtroom sessions, in a sometimes quite lengthy and very publicly staged monologue,[28] a judge counters the male prerogative of violence, reiterates the battered women's movement idea that domestic violence is a "cycle of violence"[29] that begins with a kick or a push and may end in death, and stresses the importance of individual and social change:

> The reason that I ask [the series of questions such as those quoted above] is that this is learned behavior. And one place that this learning takes place is in the family. A lot of men who are in court, when they were kids, watched their fathers hit their moms. Sometimes you learn it at home, sometimes you learn it someplace else. But there really isn't anything that justifies the use of force. That is regardless of the situation or the circumstances. The reason we are concerned about it . . . . If you have watched the headlines [in *The Salt Lake Tribune*] in the last five days, there have been four homicides—two of them have been domestic. Fifty to eighty percent of women who are murdered have been killed through domestic violence. I've had homicides where there has been one punch and the person was gone. It's just a matter of seconds and of circumstances . . . . Let me just say how important it is that you fix this. . . .

[28] Goldkamp recognizes this aspect of problem-solving courts when he talks about "using the courtroom as a theater in the square" (2002:2001), as does Nolan when he talks about courtroom theater (2001). Salt Lake judges are aware of the public and performative aspects of the speeches, as are other court officials. Said one legal defender, "She uses the first person [before her] as a chance to say what she has to say to the whole courtroom. . .."

[29] *Cycle of violence* is a concept that originated with Lenore Walker, one of the ideological founders of the battered women's movement, who points out in her groundbreaking book, *The Battered Woman* (1979), that an episode of violence—a kick, a punch, a slap—typically cycles in and out with periods of remorse (the "hearts and flowers," or honeymoon stage), and the cycle escalates over time, concluding not infrequently in death.

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Conclusion

Domestic violence courts, as explored in this case study, push us to utilize and develop the model of courts depicted in prevailing critical theory theories of the state. In particular, Heydebrand and Seron's (1990) critical theory of rationalized justice, based on a study of federal courts, has been a productive framework for examining this domestic violence court. Heydebrand and Seron hypothesize first that an increasing volume of legal cases combined with decreasing resources leads to the creation of new administrative methods—what they call technocratic justice—for managing courts. And indeed, their model of technocratic justice elegantly and insightfully captures most of the goals of the domestic violence court examined here: professional stakeholders describe the need for efficiency, speed, and effectiveness in the face of increased caseloads as important reasons for the court's creation. In addition, we can see that the court employs routinized procedures similar to those Heydebrand and Seron find operating in federal district court: standardized, "supermarket-style" plea bargaining, a formal review system of defendant progress, and regular courtroom personnel. And also similar to Heydebrand and Seron's federal district court processes, professional stakeholders describe these systematized courtroom procedures as complemented by informality and flexibility in the courtroom: the breakdown of boundaries between official roles and disciplinary knowledge in favor of a team approach—a courthouse community orientation—to solving the issues at hand.

Second, Heydebrand and Seron hypothesize like Resnik (1982, 1985) and Fiss (1983, 1984) that there are political implications to courtroom reorganization, arguing that the rationalization they observe threatens the formal democracy of the courtroom. And in the court under analysis here, I found, consistently with these thinkers, that professional stakeholders show some similar awareness of the costs of the organizational changes, particularly the ways that technocratic justice compromises formal democratic elements such as the adversary system, defendant rights, and judicial impartiality. But professional stakeholders seem to suggest that the virtues of the court, specifically its social change goals and their own roles in furthering that social change, outweigh its costs.

What seems special about special courts, then, is first the domestic violence court's substantive rationality exemplified by its enthusiastic embrace of social change. This is significant, and it motivates my suggestion that we further develop the model of courts offered by Heydebrand and Seron for this new wave of courts. Critics of technocratic justice, from Weber to the Frankfurt School to Heydebrand and Seron's critical theories of the courts to the battered women's movement itself, have predicted that techno-

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cratic justice would overwhelm any orientation to substantive justice, leaving institutions such as the courts value-less and disenchanted. What I have found here, however, is that this domestic violence court uses technocratic justice to *facilitate* substantive justice goals of social change. The efficiency, speed, and effectiveness of the routinized plea bargaining process means that the judge can mobilize the battered women's movement's rhetoric and use the courtroom to challenge the patriarchal attitudes and cultural values that support violence against women. This observation would suggest that Heydebrand and Seron's technocratic model of the courts be extended to account for the ways that the instrumental or administrative approach to justice can actually contribute to processes of social change and other substantive values. It would also suggest that the battered women's movement's worries about the state be tempered to account for the goals and values of domestic violence courts.

The second special characteristic of this special court is its porousness to the public, to the community around it, particularly to the battered women's movement. Judges, lawyers, clerks, detectives, victims' advocates, and others show a devotion to the battered women's movement's feminism in their anti-patriarchal stance, their commitment to large-scale social change, and their stress on the participation of battered women. The significance of movement values impacting the state cannot be underestimated. While Heydebrand and Seron are pessimistic about the democratic possibilities of the technocratic justice, given its negative impact on due process, judicial impartiality, and the adversary system, the connection between the public sphere and the courts found here might suggest that there is indeed a "democratic kernel in the flurry of reform" (1990:9). In fact, the findings here suggest a need to revise technocratic, patriarchal, postmodern, and other social control theories of the state to thematize their democratic aspects, i.e., the ways in which the public sphere can affect the shape and substance of legal institutions. And indeed, recent theories of the state have come to see the state as both more complex (Haney 1996, 2000) and more positive (Skocpol 1999), even referring to the "enabling" (Dobash & Dobash 1992:109) or democratic state that "involve[s] a newly structured relationship between the state and civil society, and not a complete separation between them" (Dobash & Dobash 1992:109). I examine these theories more below.

It is interesting to note that these characteristics of domestic violence court, its technocratic nature combined with its special characteristics of substantive justice and democratic porousness to social movements, are shared by other contemporary special courts: drug courts, mental health courts, and community courts. Elements of technocratic justice are found in special courts (Berman 2000:80; Berman & Feinblatt 2001:128–9), including stand-

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ardized plea bargaining (Nolan 2002b:29), review systems (Nolan 2002b:29), regular personnel (Steen 2002:58–9), and the use of informal procedures to get things done (Nolan 2002a:xiii; Nolan 2002b:29, 34; McColl 2002:19–20; Steen 2002:59). While drug court researchers also thematize the costs of technocratic justice to substantive values, such as the loss of a formal democratic adversarial system (Boldt 2002; Nolan 2002b:31; McColl 2002:4, 20–1; Steen 2002:51; Goldkamp 1994; Hoffman 2000, 2002) and the loss of judicial impartiality (Nolan 2002b:32–6; Hoffman 2000), the developing literature on specialized courts finds that they have a commitment to substantive justice especially as it emerges from the public sphere below. Drug court judges, for example, see drug courts "as a powerful and innovative way to build a community's faith in its courts and criminal justice system" (Tauber 1999:3, quoted in Nolan 2001:58). This has resulted in drug courts' democratic porousness to communities that take responsibility for the social problems encountered in the courts: communities that participate on advisory boards and organize community service projects for offenders or that provide health care, education, or job training. Community involvement is also characteristic of community courts, which are built on the idea that courts can play a role in solving complex neighborhood problems. Mental courts too build bridges with the community: at their core is the idea of a new partnership between the courts and community mental health programs. And finally, there is an ever increasingly recognized need for legal institutions such as domestic violence courts to emphasize community participation as well (Kelly 2003).

As mentioned above, this connection between the community or social movements and the courts, found in my analysis of a domestic court and in research on present-day special courts, has larger implications for theories of the state. Recent democratic theories of the state suggest that we might see courts as democratic —not in formally democratic ways such as judicial impartiality, due process, and formal rights—but in more informal ways, such as in the ability to connect to what a central democratic theorist of the state, Habermas, calls the public sphere: community, social movements, etc. In other words, these courts may be characterized as democratic because they are undergirded by and porous with the public sphere, places of open discussion among members of a collectivity about their common concerns. According to Habermas (1994, 1996a, b, 1998, 2001), pressure from the public sphere can result in both the production of new legal norms and the overthrow and reorganization of legal institutions themselves: recent decades have seen the effects of the civil rights movement, the women's movement, the gay and lesbian movement, the disabled movement, and the environmental movement among others on

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both the form and substance of state institutions. In their turn, Habermas suggests, state institutions, including the courts, benefit from the diagnostic capacities of the public sphere: the public sphere's informality, diversity, wide-range, and spontaneity means that public sphere institutions are better at registering social problems generated by citizens. This study provides some evidence for a complementarity between social movements and state legal institutions and thus for theories of the state that are more positive about their potential for social change and democracy and other substantive values than prevailing critical theoretical or technocratic justice theories such as that of Heydebrand and Seron, which see the law as tied to dominant rather than social change interests.

This evidence of social movement/court complementarity and the resulting criticism of critical school equations of law and social control is consistent with recent research on law, rights, social movements, and social change (Olson 1984; McCann 1994; Silverstein 1996). Work on the disabled movement (Olson 1984), the pay equity movement (McCann 1994), and the animal rights movement (Silverstein 1996), as well as the battered women's movement (Schneider 2000) itself, shows that law can play a major role in social movement–fostered social change. But instead of examining how social movements influence courts from outside through the deployment of rights, this article examines the transformation of courts themselves through staffing, discursive strategies, orientation to case processing, and the like.[30] My analysis thus focuses on social movement outcomes (rather than social movement origins and processes). It examines the operation of a court that has already itself incorporated social movement social change or problem-solving goals and investigates how these combine with existing technocratic or bureaucratic practices. What I begin to suggest is that legal institutions themselves may be changed from within by the popular discourse of social movements as incorporated and interpreted by professional stakeholders within the system, and that the technocratic efficiency of these institutions may contribute to their ability to be effective promulgators of social change.

But if we are to create an extended model of technocratic justice, one that thematizes courts' permeability to substantive justice coming from community and social movement activities in the public sphere below and their ability to effect social change, four sorts of questions arise as productive topics of research. Questions concern first the broader applicability of the present findings. How well does this new model of technocratic justice/substantive justice comple-

[30] Thanks to an anonymous member of the *Review*'s Editorial Board for pointing out the connections between this work and research on law and social change through the mobilization of rights.

mentarity work to describe specialized courts today, and how well does it work to describe similar sorts of judicial innovations historically? Some research suggests that other judicial innovations from specialized courts such as the Progressive Era juvenile courts[31] and the family courts[32] to the innovations of 1970s alternative dispute resolution techniques[33] can be described using this model. In other words, findings about this domestic violence court can be an inspiration to revisit and redescribe these other justice approaches. Related to the issue of broader applicability, questions arise about the perception of these courts in the experiences of their clients: how effective is a court in achieving its technocratic and substantive aims both objectively and subjectively (e.g., Lind & Tyler 1988)?

Second, questions arise about the porousness of courts to the public sphere below it: this research has not been able to fully trace the route by which movement goals have come to influence state actors. What we need now is more research to determine the paths between these institutional forms. How specifically do social movement goals or community values get into the court system? Is there a special character to the judges and other professional stakeholders who are open to substantively rational values and who can mobilize a courtroom around these values? Does this process require what Weber calls charismatic authority (1946:245–52), what sociologist Howard Becker (1963) more recently terms a "moral entrepreneur," or what Dzur calls "democratic professionals" (Dzur 2004; Olson & Dzur 2004)? If so, what are the implications for the future, i.e., the second generation of the courts? Relatedly, does this permeability to the public sphere work to quell social movement worries about the state?

[31] The comparison between the new specialized courts and early-twentieth-century juvenile courts in particular has been made (Butts 2001:121). The new domestic violence courts share with juvenile courts ideological features such as the belief that external pressures cause criminal behavior and call for large-scale social change involving treatment and community involvement (Holland & Mlyniec 1995:1791–5). These commonalties between juvenile court and domestic violence court lead to similar research questions, such as, to what degree are these court reforms strategic administrative reforms, and to what extent are they substantive legal reforms (Sutton 1985:110)? Future research may productively explore commonalties between the developing special courts and the turn-of-the-century juvenile courts.

[32] It is interesting to note that the family and juvenile courts, established in the early twentieth century in Buffalo, New York, in 1910, and in most large cities by the 1920s, were *not* characterized by similar sorts of substantive commitments to social change, nor were they influenced by social movement activity (Pleck 1987:137). In sum, then, it is first the social change focus of the domestic violence court, including its use of technocratic justice to promote this social change, as well as (second) the complementarity between the court and the battered women's movement that makes the domestic violence court special.

[33] Silbey and Sarat (1989) also make the point that alternative dispute resolution (ADR) techniques have succeeded at combining technocratic efficiency with substantive justice: ADR innovations have brought together "demands for substantive justice with technocratic concerns for efficiency, adaptability and cost effectiveness. Indeed efficiency and substantive justice claims often seem inseparable in this field" (1989:445).

Third, questions arise about the democratic nature of these courts. It is worth noting that currents in the public sphere are unpredictable, and undoing the formality of the court to make it porous to outside influences opens it up to both productive and unproductive, constructive and unconstructive, cultural forces. Future research may examine how the courts, working with communities or movements within the public sphere, will ensure that the cultural forces from below are positive, as democratic theorists posit they will be. For example, how will the system avoid a cultural relativist attitude toward women and violence as might be bred by outside cultural influences? In other words, future research will contribute to a more nuanced account of how democratic traditions are not undermined but reconfigured by recent developments such as special courts.

Fourth, this particular study has not been able to address how other aspects of the new courts mix with their technocratic justice/substantive justice orientation. Future research may focus not just on the community influences on the courts but also on the community aspects of the court itself (Eisenstein et al. 1988; Nardulli et al. 1988) and how well this local court culture (Church 1982; Kritzer 1979) combines with its technocratic orientation. Future research may also explore the known patriarchal[34] and therapeutic[35] elements of domestic violence court. Research on these questions will give us more insight into the special character of the new and increasingly common specialized court.

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[34] Domestic violence courts are sometimes said to be patriarchal because they depend on strong judges who (arguably) replicate the kind of power and control dynamics that exist in the battering relationship itself (Pateman 1988; MacKinnon 1989, Scheppele 1992). For more on why domestic violence courts may be more patriarchal than the general jurisdiction courts, see Hanna (1996:1888–98) and Epstein (1999).

[35] I also found domestic courts to be therapy-oriented, as have Merry (2001) and Nolan (1998, 2001).

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Rekha Mirchandani *received her Ph.D. from the University of North Carolina at Chapel Hill. She is Assistant Professor of Sociology at Bowling Green State University. Her research combines different forms of social theory and empirical research related to law and society. A current project seeks to understand new specialized or problem-solving courts such as domestic violence courts by using and developing contemporary characterizations of the modern state as technocratic, therapeutic, and patriarchal. Her articles have been included in* Sociological Theory, Current Perspectives in Social Theory, *and* The Good Society.

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