INDIVIDUAL DIFFERENCES IN JUDICIAL BEHAVIOR: PERSONAL CHARACTERISTICS AND PRIVATE LAW DECISION-MAKING

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Previous research suggests that differences in judicial decisions stem from differences in personal characteristics of the decision-maker. Dutch private law proceedings permit a research approach in which the judicial decision-making task is simulated by presenting written decisional problems to judges. Judges (N=114) made decisions on the same nine cases and completed questionnaires on role conceptions and personality.

Findings suggest that judicial decisions are only moderately influenced by the personal characteristics of the judges. The judges, however, differed considerably in their decisions. Neither the influence of personal characteristics of the judges nor the characteristics of the cases can explain to a substantial extent the differences in the decisions. It was concluded that judicial decisions stem from an interaction of personal and case characteristics.

In most private law suits the outcome is uncertain, for the litigants would have settled out of court or no suit would have been brought if the final judgment had been clearly predictable. Even when the facts of a case are undisputed, the legal implications of those facts may be unclear to the parties involved. Thus, in one study (Van Koppen and Ten Kate, 1980) lawyers confronted with four simple private law cases were in each case almost equally split on whether the decision should favor the plaintiff or defendant.

When cases are indeterminate in this way, it is hard to characterize judicial decisions as right or wrong. Yet even

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though judges realize that they often differ with their colleagues about the relevance of certain facts or the interpretation of particular rules, most judges present their decisions as the inevitable result of logical reasoning. This may have important functions for the way the public perceives the law, but it is likely to be misleading if we seek to understand what judges do. Because many cases can go either way, social scientists should treat judicial decisions as subjective *choices* for particular solutions to particular conflicts and not as results of compelling reason.

Subjectivity may influence various aspects of a lawsuit. During the proceedings the judge has to interpret, select, evaluate, and combine all the relevant facts. People differ in the way they perform these tasks (Mischel, 1973; Nisbett and Ross, 1980). Thus, we expect that variation in judicial decisions is at least partially attributable to differences in the personal characteristics of judges.

During the last two decades judicial decision-making, especially in the United States, has been the subject of extensive social scientific research (Gibson, 1983). Among the personal characteristics that have been thought to influence judicial decision-making are: judicial attitudes (Atkins, 1974; Goldman, 1975; Howard, 1981; Rohde and Spaeth, 1976; Schubert, 1965; 1974), role orientations (Gibson, 1981b; Ungs and Baas, 1972; Vines, 1969), social background (Goldman, 1979; Schmidhauser, 1979), and aspects of personality, especially self-esteem (Atkins *et al.*, 1980; Gibson, 1981a). The present study looks at the influence of these factors using a simulation of private law decisions among Dutch judges.

I. SIMULATING JUDICIAL DECISIONS

Most of the research relating judicial decision-making to personal characteristics uses either the self-reports of the judges as dependent variables (see, e.g., Gibson, 1981a; Atkins *et al.*, 1980) or their decisions in actual cases. However, the relationship between self-report data and actual behavior is suspect, especially in areas like judicial decision-making where particular actions are known to be normative or socially desirable. The problem in working with actual decisions is to ensure that the different cases heard by different judges are comparable on all relevant dimensions. While techniques exist to enhance comparability, they fall far short of perfection, and substantial error variance due to differences among cases remains. Moreover, to measure what is idiosyncratic to

particular cases is no solution, for a decision-making model which takes account of all factors may become too complicated to handle (Lind and Walker, 1979).

To meet these difficulties we developed a set of protocols that simulate the decision-making tasks that confront trial judges. Dutch private law procedure lends itself to a simulation approach because Dutch civil cases generally proceed entirely through the exchange of written documents. Thus, to present Dutch judges with written decisional problems does not greatly deviate from actual court practice. At the same time it allows us to control and limit the variables the judges confront, thus producing a framework in which specific theories can be clearly tested.

Our simulation presented judges with nine protocols of about one page each summarizing the facts in nine cases (see Appendix). We constructed our cases so that respectable legal arguments could be made for pro-plaintiff and pro-defendant decisions. In order to be sure that the judges focused on the core issues, we specified that the parties had agreed on the facts as they were presented.

We asked our respondents for their decisions but did not ask them to follow the common procedure in actual cases of providing justifications for the decisions reached. Our simulation was also unlike actual cases in the brevity of the written material and in the fact that our judges, like judges in self-report studies, knew that the fate of actual litigants did not depend on their decisions.

II. ASPECTS OF PRIVATE LAW DECISIONS

Decisional Dimensions

Students of judicial decision-making are primarily concerned with whether judges respond consistently to particular aspects of cases and, if so, whether observed consistencies can be explained by judges' personal or social characteristics. To do this, one has to specify the ways in which judicial decisions might be consistent across the cases studied. Thus, one might look only at race cases and classify judges by whether they decide in favor of minority plaintiffs (Goldman, 1979), or one might look at criminal procedure cases and classify judges by whether they vote[1] to expand the protections of the Fourth, Fifth, and Sixth Amendments

[1] In the Dutch legal system public dissenting is not allowed. Majority decisions are publicly announced as unanimous decisions of the court.

(Schubert, 1965). In the current study, our case materials involve nine areas of civil law sufficiently different that one would not expect consistently pro-plaintiff or pro-defendant decisions. Thus, we were forced to examine the case protocols and patterns of decisions to spot those features that might plausibly be related to decision-making tendencies. We were able to identify three such features.[2] Judicial decisions with respect to these features are arrayed on what we call *decisional dimensions*.

All cases were constructed so that one litigant was more wealthy, more powerful, or of generally higher social status than the other. The first decisional dimension measures the extent to which judges respond to these status differences. To do this, we coded the proportion of cases in which the judge's decision supports the socio-economically weaker party. The resultant variable we called *Underdog*. Scores on the underdog dimension increased with decisions for the weaker parties, such as, in one of the cases, a tenant threatened with eviction by the City of Rotterdam (Appendix: Case 3).

The second dimension concerns a matter that has received considerable attention in the Dutch legal literature (e.g., Langemeijer, 1967; Scholten, 1974; Ter Heide, 1967; Van Dunné, 1974). This is the degree to which a judge's decisions respond more to formal legal considerations than to the relative interests[3] of the parties. The protocols were constructed so that the requisites of formal law and attention to the parties' interests arguably pulled in opposite directions. We call the dimension that is defined by the proportion of decisions that hew closely to the formal legal rules *Legalism*. As an example of what we considered a legalistic decision, consider the case of De Jong (Appendix: Case 9), who repaired his rented house without either the consent of his landlord, Arends, or the permission of the "Kantongerecht" (Cantonal Court), and deducted the costs from the rent. De Jong had done this

[2] We also attempted to define decisional dimensions inductively by a factor analysis of the response patterns in our survey using a varimax rotation. Three factors explained 44% of the total variance. Each of the three rotated factors correlated highly with one *a priori* decisional dimension: Factor 1 with Underdog (r=.67), Factor 2 with Legalism (r=.63), and Factor 3 with Majority (r=.64). Other correlations between factors and *a priori* decisional dimensions were all below .4. Cronbach's Alpha indicated that the *a priori* decisional dimensions were more reliable than the decisional dimensions based on the factor analysis. Therefore, the analyses we report in this paper proceed on the basis of the *a priori* decisional dimensions alone.

[3] The interest of a litigant is the difference between the utility of winning and the utility of losing the suit, as recognized within the legal system. The party with the greatest interest need not be the underdog.

because Arends had on several occasions ignored his requests for needed repairs. However, Dutch law provides that a tenant must have his landlord's consent or a Kantongerecht's permission in order to charge repairs to the landlord. In these circumstances, we interpreted a decision favoring Arends as more legalistic than one favoring De Jong.

Finally, judges may be more or less likely to reach the "correct" decision in a case. We cannot, however, define this directly since in these protocols, as in most private law suits, the right decision is not obvious. We can, however, define "correct" phenomenologically as the decision that most judges confronted with a particular case would reach. Thus, we define a dimension we call *Majority* and measure it by the proportion of cases in which the judge agrees with the majority of the judges deciding that case. For those who believe that it is somewhat arbitrary to style the majority decision as correct, we point out that the tendency of one judge to agree with others is, in itself, of interest.

III. PERSONAL CHARACTERISTICS

Now that we have defined the dimensions along which we expect judicial decison-making to vary, we must specify those personal characteristics that might relate to such variation. In doing so, we shall focus separately on *personality*, *social-psychological*, and *biographical* characteristics.

A. Personality Characteristics

Personality variables which we could measure and which seemed important include *Need for security* (Winick *et al.*, 1961), *Social orientation*, and *Self-esteem* (Atkins *et al.*, 1980; Gibson, 1981a). We measured these characteristics by the Maslow Need Questionnaire (MNQ; Liebrand, 1978), which, with respect to the traits we are interested in, is known to be a valid, reliable instrument (Liebrand, 1977).

We expected *Need for security* to relate to legalistic decision-making, for hewing close to the law is one way to resolve uncertainty about what decision is appropriate and is a less risky style of adjudication than more substantively oriented approaches in that the resultant decision is probably less likely to be reversed on appeal (Van Dunné, 1974). *Social orientation* is a personality characteristic associated with attention to the needs of others. In our research we presumed it would relate to the judges' tendencies to become empathically involved in the cases before them. If this

assumption is correct, we would expect judges high on this dimension to be less legalistic than low-scoring judges and to disproportionately favor the underdog since underdogs are likely to benefit most from empathic understanding. Judges high on *Self-esteem* are likely to conform less to the expectations of others than judges low on this dimension. To the extent that the dimension *Majority* reflects not the abstractly correct decision but the decision that most judges believe would be expected on the facts, one would expect judges high on self-esteem to score low on this dimension. To the extent that legalistic decisions are generally expected of judges, one would expect judges high on self-esteem to be low on this dimension as well.

Having identified the personality characteristics that interested us and specified the likely direction of their effects, we should note that we did not necessarily anticipate strong effects. Our cautious expectations reflect the substantial dispute in personality theory between advocates of situational models of behavior (Mischel, 1968; Mischel *et al.*, 1973) and advocates of trait models (Allport, 1961; Eysenck, 1970). While some attempts have been made to predict behavior from the interaction between personality traits and situational characteristics (Bem and Funder, 1978; Mischel, 1977), these have not been very successful (Mischel and Peake, 1981). It has, however, been suggested that in ambiguous settings where various actions are possible, knowledge of an individual's character traits is especially useful in predicting behavior (Price and Bouffard, 1974; Monson *et al.*, 1982). If so, the expectation of a substantial relationship between the variables we identify here and our decisional dimensions is a plausible one since close cases like those in our protocols are ambiguous settings for judicial decision-making.

B. Social-Psychological Characteristics

Our second set of personal characteristics is designed to reflect ways in which judges relate to the institutional settings in which they operate. The necessary link is provided by concepts drawn from role theory. Gibson (1978; 1981b; 1983), in particular, has singled out three aspects of the judicial role that are of particular importance to understanding decision-making by judges. These are role expectation, role orientation, and role behavior. *Role expectation* reflects those situational constraints that exist because judges believe that those they interact with professionally expect them to behave in certain

ways. *Role orientation* reflects judges' conceptions of how they should act professionally. *Role behavior* is the manner in which judges actually perform their role.

A person's perceived role expectations and subjective role orientation typically differ to some extent. Judges, for example, will accept some but not all of the ideas that they perceive others have about how they should behave. In addition, judges will receive conflicting messages from those they interact with about their expected behavior and will have to choose from among the various messages. The perceived expectations of others are, according to role theory, a powerful situational constraint on how actors behave. However, the need to choose between expectations and sometimes conflicting personal preferences means that the actual role behavior of judges will probably be situated somewhere between their role orientation and role expectations. If we think of the dominant expectations that judges perceive as being at one end of a continuum and judicial role orientations at the other, we can expect that the location of judicial role behavior on that continuum will be a function of the judges' self-esteem. The less judges look to the views of others for measures of self-worth, the more likely they should be to follow their own inclinations (Gibson, 1981a).

In this study, the role behavior of interest is the decision the judges reached in the nine cases we presented to them. Role expectations and role orientation were measured by two identical item questionnaires based on discussions of the judicial role in the contemporary Dutch legal literature. Refined versions of the questionnaires, each containing the same 33 items, were developed from a pilot study of graduate law students (N=99). Factor analysis indicated three major orthogonal dimensions.[4] For the role orientation questionnaire the first factor scale, which we label *Legality*,[5] contains 14

[4] An oblique factor rotation of the factors showed the correlations among the rotated factors to be low: for the role orientation questionnaire the correlations ranged from .01 to .12, and for the role expectation questionnaire from .07 to .21. We concluded that the three scales were sufficiently independent that we were justified in treating them as orthogonal.

[5] A typical item from the *Legality scale* of the role orientation questionnaire is, "Ideally a judge should leave the solving of fundamental problems to the legislator." A typical item from the *Empathy scale* is, "Ideally a judge should not create any distance between himself and the parties." A typical item from the *Autonomy scale* is, "Ideally a judge should make decisions which he feels are right in the specific case." The subjects responded on a 6-point Likert-type scale, ranging from "always" to "never."

The role expectation questionnaire contained exactly the same items as the role orientation questionnaire, but the items were presented in a different random order and preceded by the heading: "According to most people a judge should . . . " (The items are translated from the Dutch.)

items. It is designed to capture the extent to which judges feel that their role is to maintain the legal order by the strict application of the law and the clear separation of facts from norms. The second scale, containing 11 items, we label *Empathy*. Items on this scale reflect the extent to which judges believe they should strive for good communication with the litigants, seek to reach decisions acceptable to them, and be open to social change. The last scale we label *Autonomy*. This scale contains 8 items that measure the extent to which judges believe that they may appropriately strive to achieve their own policy objectives.

The three scales of the role expectation questionnaire, containing the same items placed in the context of the views that others hold of the judicial role, were interpreted analogously. Analysis of the judges' responses to the two questionnaires reveals a pattern similar to that obtained from the law students. Cronbach's Alpha shows that the scales are sufficiently reliable that we are justified in using the judges' scale scores as variables in our study.[6]

C. *Biographical Characteristics*

We were limited in our ability to generate biographical data on the judges by our respondents' insistence that their responses to our questionnaires remain anonymous. The one characteristic we inquired about and include is judicial experience as measured by the number of years each judge has served on the trial bench.[7] Other biographical information that we acquired either had insufficient variance to be of use (e.g., gender) or was revealed by preliminary analysis to be unimportant (e.g., type of court and prior education). We did not inquire about political affiliations for fear that the inquiry would diminish our response rate.

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[6] With 108 judicial respondents in the final study, alphas for the role expectation scales of Legality, Empathy, and Autonomy were .75, .73, and .65, respectively. On the similarly labeled role orientation scales, alphas were .73, .74, and .60, respectively. Those interested in an analysis of the data from our pretest sample of law students may receive an English language version by writing to the authors.

[7] All Dutch judges are required to have a degree from a Dutch law school and, subsequently, to have acquired at least six years of experience, either through judicial officers' training or as a practicing lawyer.

IV. RESEARCH DESIGN

A. *Subjects*

All 421 Dutch Cantonal Court and Trial Court judges[8] were invited by mail to participate in the study. To encourage cooperation, this invitation was preceded by informal contacts with judges, a presentation of the study in a symposium at the Department of Justice, a meeting with and subsequent approval by the Board of the Dutch Judges Association, and an article in the monthly journal of that association.

Ultimately, 114 judges (27 percent) participated. A biographical data sheet completed by the judges indicated that the sample was representative of all Dutch judges with respect to gender, age, number of years on the bench, kind of education, and prior experience. The sample differed from all judges in that a relatively greater number of Cantonal Court judges participated (35 percent versus 24 percent). This difference is probably due to the fact that almost all Cantonal Court judges decide civil cases while a considerable number of Trial Court judges specialize in criminal law. Letters we received from non-participating Trial Court judges indicated that many of them did not participate because they were lacking recent private law experience.

B. *Description of Cases*

In addition to filling out the questionnaires we have described, respondent judges were asked to decide nine cases. The cases consisted of brief, relatively simple protocols. The facts in every case were undisputed by the parties, but the legal and social positions of the parties were such that a decision on behalf of either party was defensible. Although we tried with the aid of an advisory committee[9] to make the cases close enough that an equal split among the judges was likely, the mean split in our sample was 77 percent for one party and 23 percent for the other.

As an example of the cases used, consider *Meegens v. Knol*,

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[8] In the Dutch judicial system, a continental code system, there is no trial by jury; all cases are tried by judges. At the Cantonal Court level judges sit alone. In the Trial Court and the Appellate Courts, three judges generally sit *en banc*. In the Supreme Court (Hoge Raad), cases are heard by five justices.

[9] Our advisory committee consisted of J.M. van Dunné, Professor of Law at Erasmus University; J.M.L. Pompe, judge at the Rotterdam Cantonal Court; J.G. Hoogenraad and A.F. Bakker, both attorneys in Rotterdam; and J. Knottenbelt, lecturer at the Erasmus University. We are grateful to them for their advice and assistance in choosing and drafting the cases.

the shortest of our case protocols.[10] This case (#8) involves a contract made by a minor, which under the Dutch Civil Code can be repudiated when the minor reaches the age of majority.

> Bas Meegens was born on November 1, 1959, so November 1980 is a turning point in his life, because he comes of age according to Dutch law. He is a clerk and has lived apart from his parents since the summer of 1978.
>
> For years he has dreamed of an adventurous sailing trip. In the spring of 1980 he bought an old boat for 3000 guilders (about $1200). The vendor, Mr. Knol, a retired boatman, received 1000 guilders in cash and agreed to the payment of the remainder in four monthly installments.
>
> Unfortunately, Bas' sailing trip ended in a small disaster. Due to his lack of experience, he collided with a river vessel; his boat sank and was not worth salvaging. Bas fortunately was unhurt, but he will not be able to sell his boat after the trip, as he planned to do in order to pay the remaining debt to Mr. Knol.
>
> Bas asked his father for help. His father (who did not know anything of the purchase made by his son) sues Mr. Knol, in perfect accordance with the applicable section of the Dutch Civil Code, to have the contract repudiated because his son is a minor.

The major issues in the other eight cases were labor, breach of contract, tenancy, tort, social security, and unpaid debts.

C. *Decisional Dimensions*

The participating judges not only decided every case but also indicated the degree to which they were certain that they had made the right decision. Thus, for every case a decisional scale could be drawn, ranging from +5 (a certain decision in favor of the plaintiff) to −5 (a certain decision in favor of the defendant). Scores were assigned to judges on each dimension by coding each case plus or minus one on that dimension depending on the characteristics of the case, multiplying by the certainty score, and summing the resultant totals across all cases for each judge.[11] Scores (on a scale from −5 to 5) ranged between −3.7 and 3.3 on Legalism and between −1.9 and 3.8 on Underdog. On Majority, scores (on a scale between 0 and 5)

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[10] Translations of the other eight cases appear in the Appendix. The coding of the decisional dimensions of these cases is available from the authors.

[11] One case was left out of the Legalism dimension, because the authors did not agree on which decision was more legalistic.

ranged between 1.6 and 4.6. Twelve judges decided with the majority in all cases, but some received different scores depending on the certainty of their convictions.

V. RESULTS

The decisions made by the judges[12] are summarized in Table 1.

Table 1. Decisions Made by Judges (N=114) on Nine Cases

CASE	Issue	Underdog party	Party with strongest legal construction	Percentage of the judges favoring the plaintiff
1	labor	plaintiff	defendant	81
2	tort	plaintiff	defendant	83
3	tenancy	defendant	plaintiff	79
4	tort	plaintiff	—	73
5	contract	defendant	defendant	77
6	tort	plaintiff	plaintiff	80
7	social security	defendant	plaintiff	12
8	contract	defendant	plaintiff	33
9	tenancy	defendant	plaintiff	35

Table 2 reports the associations between the judicial characteristics that we measured and the judges' scores on our decisional dimensions.[13] Looking first at the personality characteristics we measured with the MNQ, we see virtually no association between the aspects of personality we identify and scores on our decisional dimensions. The only statistically significant relationship is between social orientation and the tendency to decide as most people do. While this relationship is in the predicted direction, we are reluctant to make much of a pattern in which only one of nine associations achieves statistical significance.

[12] Case #5 differs from the other cases in that both the pro-underdog and legalistic decisions favor the defendant, while the majority of the judges favored the plaintiff. To see if this case had a peculiar influence on the overall results, we ran the analyses below without Case #5. We found that including this case improved both the Cronbach's Alphas of the decisional dimensions and the correlations with the independent variables.

[13] The relations between the variables were scrutinized for curvilinearity, but none departed significantly from linearity. Plausible interactions between the role scales and the personality characteristics Self-esteem and Need for security did not improve the predictability of the decisional dimensions. Neither did the other possible interactions among the independent variables.

In a study by Gibson (1981a) an interaction between self-esteem and role expectation was reported to improve the predictability of the judge's role orientation. In the present study we focused on the prediction of the *decisions*.

Table 2. Correlations Between Decisional Dimensions and Personal Characteristics

	DECISIONAL DIMENSIONS								
	Underdog			Legalism			Majority		
	r	Beta[a]	Mult. R with Block Omitted	r	Beta[a]	Mult. R with Block Omitted	r	Beta[a]	Mult. R with Block Omitted
MNQ			.45			.47			.42
Self-esteem	.00			−.04			.06		
Social orientation	.15			−.14			.19*		
Need for security	−.08			−.10			−.11		
Role expectation			.42			.41			.38
Legality	.07			−.24*	−.18		.15		
Empathy	.02			−.14			.08		
Autonomy	.15			−.22*			.16		
Role orientation			.32**			.34**			.37
Legality	−.18*	−.22		−.01			−.06		
Empathy	.20*	.19		−.33*	−.23		.28*	.28	
Autonomy	.28*	.24		−.27*	−.17		.23*		
Experience as a judge	.10		.45	−.26*		.46	−.02		.43
Multiple correlation of stepwise regression	.39			.40			.28		
Multiple correlation including all variables	.46			.47			.43		

* $p < .05$

** The increase in the multiple R when this block of variables is added to all others is significant at the .05 level.

[a] The Beta weights are computed, with a stepwise regression procedure, which included all variables that improved prediction and were significant at at least the .10 level.

The judges' views of how others expect them to behave appear unimportant in explaining either support for the underdog or tendencies to decide with the majority. However, two of the three associations between aspects of role expectation and legality reach statistical significance. As we anticipated, judges who believe that others expect them to act autonomously appear to be *less* responsive to the legalities of a case than judges who perceive the opposite view. But to our surprise, judges who believe others expect them to act legalistically also are less legalistic in their decisions. If this represents more than a fluctuation that by chance has achieved significance, the relationship is hard to explain for it is contrary to the predictions of role theory. One possibility is that judges who are used to slighting the law when they disagree with the result it entails have been criticized for their performance and, while not changing how they act, believe that the public has

particularly strong, if somewhat misguided, expectations for legalistic decision-making. Another possibility is that judges who perceive legalistic role demands react to the idea that others think their decisions should be determined by the literal language of the law and decide less legalistically, in part, to assert their freedom. This suggestion is consistent with Brehm's (1972) theory of reactance.

Aspects of role orientation, unlike the other characteristics we measure, appear to be related to every decisional dimension. Judges' beliefs that they should act legalistically are associated with statistically significant tendencies to decide against the underdog party. This relationship was expected because in only two of eight cases in which the law clearly went one way did the underdogs have the law on their side. What was unexpected is that legalistic orientation can achieve significance on the Underdog dimension while failing to approach significance when Legalism is dependent. This suggests the possibility that judges who espouse a policy of hewing close to the law are really mouthing what is for judges a socially acceptable version of "might makes right." One rationale may be substituted for the other if, as in our cases, it is usually the wealthier, higher status parties who have the law on their side.

Empathic and autonomous role orientations are, as expected, associated with decisions for the underdog and a tendency not to be legalistic. These features are also associated with a tendency to decide with the majority. We thought that those who were autonomous might be somewhat less likely to do so and had no firm expectations with regard to empathy.

Our one biographical characteristic, years served as a trial judge, has its expected negative association with legalism but is not significantly associated with tendencies to decide for the underdog or with the majority.

If the role behavior of a judge corresponds more with role expectation than with role orientation, it can be expected that the decisions of that judge are better predicted from the role expectation variable. The mean squared residue, after the regression of the three scales of the role orientation questionnaire on the nine decisions was, therefore, deducted from the mean squared residue after the regression of the three scales of the role expectation questionnaire on the nine decisions. The resulting difference was used as a measure of the extent to which judges adhere either to their role

expectations or to their role orientation (a difference above zero indicates a relative adherence to role expectations). The hypothesis that this measure would correlate with the self-esteem of the judges was not supported (r=−.14, N=110, p=.36).

What emerges from all this is a picture of the judge as an essentially inner-directed professional. Judges are influenced more by their own conception of their role than by other personality characteristics, and they care relatively little for the views that others hold of how they should behave on the bench. Tendencies toward professional autonomy do, however, tend to be strengthened by external circumstances. Thus, judges who believe that others expect them to act autonomously, as well as those who have been fortified by long experience on the trial bench, are less likely to act legalistically than judges without these sources of support.

Our data do not, however, support the conclusion that a judge's personal characteristics largely determine support for the underdog, tendencies toward legalism, or the likelihood of agreement with other judges. Our respondents often sided with the underdog in one case but decided for the "upperdog" in the next, and they frequently appeared to follow the formal law closely in one decision only to apparently ignore it when different issues were involved. Tendencies to agree with the decisions of most other judges were, after controlling for the generally high rate of agreement, essentially random. These tendencies toward inconsistency can be seen in Table 3, which treats decisions along the dimensions we have defined as scales and presents the associated reliabilities.

Table 3. Reliability (Cronbach's Alpha of the Judges' Votes with Respect to the Decisional Dimensions)

	alpha	# of items	N
Underdog	.25	9	114
Legalism	.31	8	114
Majority	.08	9	114

Since these scales reflect the consistency of our respondents' decisions, they capture the effects of *all* judicial personal characteristics, including the many we could not measure. The reliability levels raise the question of whether pure issues of legality or pure issues of social status are, apart from everything else about a case, ever likely to be of overwhelming importance to particular "types" of judges. While it may be that we could have identified more salient

decisional dimensions,[14] it appears more likely that judges, at least in ordinary civil litigation, respond to the complexities of a case and weigh different aspects against each other with a sensitivity that makes the search for crude consistencies fruitless. To the extent that studies of judges in other areas, such as civil rights litigation, reveal greater decisional consistency than we have spotted, it may be because the categories chosen divide cases consistently across a number of dimensions or because the identified dimension is of far greater salience to the judges than any dimensions one can abstract from a mix of ordinary civil cases. In studies of Supreme Court decisions, there is the additional possibility that the Justices consciously strive for the consistent application of a small set of principles.

VI. CONCLUSIONS

In this paper we have examined the results of a simulation that presented protocols of nine cases to more than a quarter of the trial judges in the Netherlands.

The facts presented to the judges were relatively simple in all nine cases, but none of the cases led to an obvious decision since both litigants forwarded reasonable arguments to support their point of view. In each case but one we could identify one litigant with a stronger interest while the other had the better legal argument, and in each case one litigant might be considered the underdog. In these respects the cases used in this study were homogeneous. Yet, the judges' decisions with respect to these dimensions were not. This suggests that decisions in our sample cases were not largely determined by personal characteristics. By the same token, decisions in these cases cannot be explained by a single factor that applies to every case. If, for example, the decisions of judges across cases largely depended on the strength of the litigants' legal arguments, one would expect the judges to decide every case the same, yet on the average 23 percent of our judges disagreed with the majority's decision.[15]

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[14] Had we been able to do so, we probably could have predicted judicial performance on such dimensions from personal characteristics better than we could in this study. The tendency of judges to respond inconsistently to the factors we identified limited our ability to predict their decisions from what we knew about them.

[15] It is, however, possible that judges are responding to the same perceived factor, but with respect to some factors (e.g., justice) case characteristics leave substantial room for different perspectives. The factors we focus on in this study, underdog status and legality, were specified with sufficient clarity that we can be sure that the judges were not responding consistently with respect to their perceptions of them.

The fact that judges did not consistently respond to the features of the cases we identified hampered our ability to spot associations between personal characteristics and decisional behavior. Nevertheless, the decisional dimensions correlated moderately with personal characteristics, especially role orientation. This means that part of the variance in decision-making, however small, is consistently due to the influence of personal characteristics.

Actual cases might produce higher correlations between personal characteristics and tendencies to decide in certain *a priori* identifiable ways. The nine cases used in the present simulation deviated from actual court practice in two ways: the cases were summarized to the length of one page and the facts were undisputed. The extra information supplied in actual court files makes the factual situations of actual cases more complex and ambiguous than those presented in this study. Litigants and witnesses often give contradictory information. Personal characteristics can lead judges to attend selectively to the information presented, and this selective attention may in turn be reflected in decision-making. On the other hand, the greater complexity of actual cases may mean that many more factors come into play and the judge responds to the complex gestalt of law and facts in ways that make it difficult to associate personal characteristics with any single feature that the cases have in common.

In general, the decisional dimensions correlated with the scales of the role questionnaires as expected, but the fact that fewer legalistic decisions were made by judges who saw others as expecting them to behave legalistically was a genuine surprise. Findings of Atkins *et al.* (1980) and Gibson (1981b), which indicated a relation between personality characteristics and decision-making behavior, were not replicated in this study. This may reflect the nature of the simulation or the low reliabilities of our dependent variables. It may also reflect differences in the training of continental and common law judges and the ways they approach their task. However, if relations between personality and decisions were strong, they probably would have emerged despite the difficulties with this simulation. Thus, this study may be taken as some evidence that decisions in ordinary civil cases are not greatly influenced by the aspects of personality we measured.

Though the cases in the present study were designed to evoke a more or less even split among the judges, in most of

them there was substantial consensus. When confronted with cases in which a decision favoring either party was defensible, the judges had more in common than we anticipated. This may reflect the fact that Dutch judges are as a group homogeneous: most are male and come from upper-class families; all are highly educated, and they have no extreme left or right wing political affiliations. Thus, the differences we spotted in our personality and role questionnaires may, to some extent, have been offset by commonalities of training and background we did not measure.

It does appear, if one may generalize from Dutch data, that judges in ordinary civil litigation are more influenced in their decision-making by their conception of the judicial role than they are by what they perceive to be the conceptions of those with whom they interact or by other aspects of their personality. Judicial decision-making also appears to be a complex task, and the search for consistency with respect to particular factors may be hampered by the fact that in no two cases will the perceived salience of the various factors that research can identify be, for a judge, exactly the same.

APPENDIX

CASES USED IN THE STUDY

Case 1: Van Aarenhout v. FINCO

Van Aarenhout is 43 years old, married, and the father of two children. Since 1970 he has worked at a small branch office of the national business bank FINCO. His superiors are very satisfied with him. Van Aarenhout has risen to the position of managing clerk, and thus is well known in town.

At the end of December 1980, gossip emerged to the effect that Van Aarenhout had been involved in a fraud in his former hometown. Within a short time, the local tradespeople knew all the ins and outs of the affair, including various compromising details. When the manager of the branch office returned from a holiday and learned from several people that his clerk might have been involved in a fraud, he called Van Aarenhout in. Van Aarenhout told him that he had been sentenced for forgery, but the sentence was a fine of only 1000 guilders. The rumors in town indicated a much more spectacular fraud than that indicated by the sentence. The manager, citing urgent cause, dismissed Van Aarenhout immediately following his confession because this information, which FINCO thought very relevant, had not been revealed during the application process in 1970. At that time, Van Aarenhout had been working at his father's insurance company. Though Van Aarenhout's father had written the letter of

recommendation for him, the branch manager had given it considerable weight.

Because of his age and the circumstances of the discharge, Van Aarenhout feared long-term unemployment. He kept himself available to FINCO and turned to the Cantonal Court to have the discharge nullified. He wrote to FINCO that he would not mind a transfer to the same position at another branch office somewhere in the country. FINCO's immediate reaction was that it would be impossible to return because of the violated trust and the nature of the concealed offense. At the Cantonal Court, Van Aarenhout opposed the urgency of the discharge, citing his willingness to work at a branch office elsewhere in the country.

Case 2: I DOREMI v. Academy of Music

In the week before Christmas 1980 the Academy of Music in X planned to have, as it had in 1979, a small modern music festival, open to the public. The festival was organized by Warendorf, a fourth year student who had also organized the 1979 festival. In September 1980 Warendorf phoned the leader of "I DOREMI," an experimental musical company from Dordrecht, which had been a big success at the previous year's festival. The date of the concert, December 18th, and the payment, 2000 guilders, were arranged at that time. In December two famous foreign musicians were to play with the company, so this amount was nearly one and a half times the prior year's fee. The question of whether the musicians of "I DOREMI" would give a workshop for the students of the Academy of Music the day after the concert, December 19th, was left open.

In the middle of October the leader of "I DOREMI" called the Academy of Music because he wanted to know for certain if the workshop would take place. The dean, who was very busy, asked him to arrange this matter with Warendorf. The leader of the society learned from Warendorf that no decision had yet been made about the workshop. The subject of the December 18th concert was also casually raised. Warendorf informed the leader that because of a cash shortage the musicians would have to pay their expenses themselves. After some protest, the musicians agreed to this arrangement.

On November 28th the dean of the Academy of Music phoned the leader of "I DOREMI" to call off the concert; there was only enough money for the workshop on December 19th. "I DOREMI" reacted sharply. The dean said that Warendorf had only been authorized to do some preliminary negotiations, for the Academy could only be bound by the dean. The dean reminded the leader of "I DOREMI" of the procedure in 1979, in which after preliminary talks between Warendorf and "I DOREMI," the dean eventually drafted and signed the contract. The musicians, however, were of the opinion that the signing of the contract was merely a formal confirmation of earlier arrangements; the more so as the signing took place only two weeks prior to the concert. This procedure led "I DOREMI" to believe that Warendorf was authorized to bind the Academy of Music. In addition, the dean had allowed students to organize the festival. For these reasons, "I DOREMI," in an abbreviated procedure, demanded an injunction ordering the Academy of Music to fulfill the arrangement.

Case 3: Municipality of Rotterdam v. Gades

Johanna Gades, a 37-year-old unmarried female cafeteria worker, lived in a badly maintained house in an old district of Rotterdam. To speed the demolition, the municipality offered her another rental apartment. This apartment was one of the few the municipality had available to help urgent cases.

Two months after Johanna Gades moved to the new apartment, she moved again to live temporarily with her married brother. Her sister-in-law was suffering from a lengthy illness, and Miss Gades' help was welcomed. In the meantime she sublet the two downstairs rooms of her apartment to two foreign employees and put her belongings in a small bedroom on the second floor. The rent she owed to the municipality, 125 guilders a month, was payed regularly, as were the bills for gas and electricity. She received 350 guilders a month from her tenants.

After ten months the municipality learned from the neighbors what the situation was and demanded that Miss Gades end the illegal subtenancy. In the tenancy agreement, accepted by the municipality and Miss Gades, it was explicitly stated that subtenancy and relet were forbidden without the permission of the lessor. Miss Gades replied that she would return to her house as soon as her sister-in-law had recovered, but that it was impossible to say how long this would take.

The municipality, nevertheless, decided to issue a subpoena to evict Miss Gades. Even without such problems the municipality finds it difficult to execute housing policy, and it was frustrated by this course of events. The City summons pointed out the blatant violation of the tenancy agreement and the vacating of the rented house.

Case 4: Radicals v. Pacifists

A mansion at the Henegouwerlaan in Rotterdam was occupied in January 1980 by a party of eight squatters, after being empty for more than two years. The owner of the house, a commercial landlord in Utrecht, has written to the squatters several times, telling them to leave the house immediately, but he has not taken any further action.

The building had formerly been used as an office, but in a short time the eight squatters made it suitable to live in. It was large enough to give every occupant a large room of his own. In the beginning the squatters got on well, but because some of them attended demonstrations elsewhere in the country, relations among them cooled down. An ideological gap arose between the more radical and more pacifist members of the group. The gap became so large that from June 1980 on, the two factions ceased interacting.

One weekend the three radical squatters left town with some friends. When they came home, they could not get in the house because the other squatters had put a new lock on the front door. Also, their belongings had been put under a piece of plastic in a sheltered corner of the garden. They learned from neighbors that the five remaining squatters had plans to give the three now empty rooms to friends.

Because the evicted squatters wanted to return to their rooms, they secured a subpoena against the other five squatters seeking restoration of the original situation, ex art. 1401 Civil Code.

The owner of the house knows nothing about what is going on.

Case 5: Pludeco v. Hoos

H. Hoos and his wife are the sole stockholders of "Hendrik Hoos BV" (BV signifies that the firm is a private incorporated company with limited liability), a poultry slaughterhouse. The BV was formed in January 1979 and a record of incorporation was filed in the public register of the local Chamber of Commerce. Before this, H. Hoos had a similar business of his own. The BV has its office in the Hoos' residence. Mrs. Hoos does the administration, answers the phone, etc.

In September 1979 Hoos ordered 143,000 guilders worth of chickens from the French chicken farm Pludeco SA. It was the first foreign transaction for these two companies. In December 1979 the chickens were delivered, but "Hendrik Hoos BV" did not pay.

After "Hendrik Hoos BV" became bankrupt, Pludeco sued Hoos in person because the French poultry farm had the impression that Hoos had made the transaction on his own account. Hoos had used an old letterhead, on which the abbreviation "BV" did not appear, although the use of the abbreviation is legally compulsory for every BV. Hoos says that this mistake occurred because his new letterhead was still at the printer's when he ordered the chickens. Apart from that, in the three telexes preceding the definitive order to Pludeco, he did use the abbreviation "BV." All telexes start with: *"bonjour, ici hendrik hoos b.v. kerkstraat 13 lunteren"*and end with: *" au revoir hendrik hoos."* The letters that Pludeco sent to Hoos, however, were addressed as follows:

Hendrik Hoos
13 B.V. Kerkstraat
Lunteren
Pays Bas

Hoos says that he entered into the contract as the manager of the BV and that everyone could have known of this juridical status because it was filed in the public register of the Chamber of Commerce. Pludeco, however, is of the opinion that Hoos led him to believe that he personally was the contracting party. Therefore, Pludeco wants to recoup the 143,000 guilders from the Hoos' private property, which consists of their house and the surrounding grounds.

The parties' agreement did not contain any uncommon or peculiar terms of delivery. Both parties agree that Dutch law must be applied.

Case 6: Wessel v. Beukers

A Rotterdam taxi driver named Wessel was badly injured in a street accident on the Nieuwe Binnenweg. The accident was caused by Mrs. Beukers. Her car hit the front of the taxi as she carelessly overtook another car. The crash caused Wessel to hit his head against the windshield. He was badly hurt. Like most taxi drivers, Wessel did not use his safety belt. His passenger, who sat in the back, was not injured.

Wessel fractured his skull and also had to undergo several operations by a plastic surgeon. For a full year he was not able to work. Wessel asked Mrs. Beukers for 5000 guilders in damages: 4000 guilders for lost earnings and 1000 guilders for damage to his taxi.

Mrs. Beukers refused to pay the full 5000 guilders. She said that the seriousness of the injuries was partly due to Wessel's not using the safety belt that was installed in his car. It is an established fact that if he had used his safety belt the injuries would have been less serious and his recovery period would have been no more than three months. Therefore, Mrs. Beukers said she should not have to pay more than 2000 guilders. Wessel, however, demanded the whole 5000 guilders. It is undisputed that the crash was Mrs. Beukers' fault. According to law taxi drivers do not have to use their safety belts if they have passengers in their cars (art. 95a RVV lid 2, under VIII).

Case 7: Municipality of Utrecht v. Bosch Bros.

In January 1974, a 65-year-old, still vital wine merchant named Bosch won a large prize in the National Soccer lottery. After taxes 60,000 guilders remained. Bosch did something he had long wanted to do: provide some money for his sons, who had helped him in the shop when they were still at school. Both sons were given 30,000 guilders. Because their father wanted to improve the layout and the inventory of his shop, the sons simultaneously lent him 30,000 guilders each.

In December 1976, Bosch slipped and fell, and from then on he was slightly crippled. Being a widower, Bosch had to sell his shop and move to a service apartment. From the proceeds of the sale, Bosch paid his debts, including the loans from his sons, and used the rest to pay the high costs of the service apartment. After a few months, in May 1977, Bosch could not meet his expenses, so he appealed to the Social Security. From then on Bosch received additional payments from the City of Utrecht.

In December 1980 a Social Security official of the Municipality of Utrecht learned by accident about the gift to the sons. Ex art. 59a of the "*Algemene Bijstandswet*" (General Social Security Act; the article says that donations given in the knowledge that one is or may become infirm can be reclaimed by the city), the municipality of Utrecht sought to reclaim from the sons the amount it had given to support Bosch senior; namely 15,000 guilders.

Case 8: Meegens v. Knol

See text at p. 234.

Case 9: Arends v. De Jong

Mr. De Jong, who works as a sailor on a tugboat, lives with his wife and two children in a working-class house in the north of Rotterdam. The house was built in the beginning of this century. In March 1979, De Jong noticed a leak in the roof above his kitchen, and he asked his lessor, Mr. Arends, to repair this leak. Because he heard nothing from Arends and the leak got worse, he wrote another letter to

his lessor, this time worded a little more strongly. Arends answered that the leak would soon be repaired.

On a wet day in October of the same year another leak appeared in the bedroom of De Jong's little son. A very angry De Jong went to Arends the next day and demanded that the leak be repaired within three days. Arends replied he would exert himself to the utmost. By the time Arends' handyman arrived after two weeks, the leak had been repaired by a contractor, a friend of De Jong. Many things had to be repaired, and Arends was sent a bill for 1500 guilders.

Arends refused to pay this bill because the costs would have been much lower if he had repaired the leak himself. De Jong decided not to pay the rent, 150 guilders a month, during ten months, starting the first of January 1980. After four useless dunning letters at the beginning of 1980, De Jong was summoned by Arends before the Cantonal Court of Rotterdam. Arends demanded that the back rent be paid, the tenancy agreement nullified, and the rented house vacated.

Arends has decreased his claim for back rent by 500 guilders. He estimates that that's the amount that he would have paid if he had repaired the leak himself.

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