

Linguistic Theory, Gender Schemas and Wills

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Karen Sneddon, [Not Your Mother's Will: Gender, Language, and Wills](#), 98 **Marq. L. Rev.** 1535 (2015).

Language matters. In her recent article, *Not Your Mother's Will: Gender, Language, and Wills*, Karen Sneddon details just how much language matters in the context of wills and trusts. In a comprehensive review of linguistic theory and its intersection with inheritance law, Sneddon illuminates how will clauses and trust structures reflect gender schemas about men and women.

Sneddon first lays a foundation for her hypothesis that will drafting reflects masculine and feminine roles and norms by acquainting the reader with basic linguistic theory. She notes that wills are one of the most personal and oldest forms of legal writing. Sneddon goes on to introduce the concept of androcentrism as a driver of language-based gender norms. Phrases that focus on men as the typical and women as the atypical mirror what Sneddon describes as the remnants of patrimony. Cultures perform and reproduce gender through language. Using terms like “executor” and “executrix” implies that the latter is the less important variation on the central role. Interestingly, Sneddon asserts that prior to the nineteenth century there were fewer gender distinctions in language and actually more female executors. She suggests that the rise of Victorian ideals relating to the delicate nature of womanhood may have contributed to this shift away from women performing such public duties and that the increase in the gendered form “executrix” reflects those societal changes.

Sneddon proceeds to give the reader several striking examples of form book instructions and sample clauses that clearly reflect gendered views of women. For example: “As one author generalized in 1970, ‘Many older women with no family (and usually with estates that do not exceed \$2,000) want to leave each memento they own to a different person.’”

These gender schemas are reified when included in form books in ways that are subtle but powerful. Sneddon highlights this entrenching effect when she writes, “Some modern form books continue to endorse gendered recommendations, such as a form that limits a daughter’s ability to appoint property to her husband. The form book does not present a similar sample provision to limit a son’s ability to appoint property to his wife.”

In addition to specific language in the text of instruments, Sneddon points out the gendered nature of estate planning structures like qualified terminable interest property trusts (QTIPs). For example: “Due to life expectancies, QTIPs are more frequently created for female spouses with the ultimate disposition of the trust property then being directed by the deceased male spouse.”

Sneddon goes on to note additional examples of gendered terms, like “testator” and “testatrix,” that imply the norm is male and the feminine version is the “other.” She gives examples of cases, form books and even a fairly recent ABA **Probate & Property** article that use gendered terms like “testatrix.” Sneddon argues that the continued use of these gendered labels, despite attempts to gender-neutralize the language of inheritance law, reinforces the idea that men and women can be expected to behave differently in bequeathing property and making dispositive decisions that reallocate their property after death. The use of such terms also diminishes women and tends to make them less visible in discourse within the field. Positing women as the “other” and the persistence of androcentrism

in language slows our progress toward gender equality.

While I highly recommend this article to all those interested in both inheritance law and gender equality, it could be more succinct. That said, one reason it is fairly long is that the footnotes contain such a rich array of sources, some of which are tangential to the main point about gendered language, but all of which are fascinating to read.

In conclusion, Sneddon's readers will be exposed to intellectual disciplines, like linguistic theory, that give new depth to the words in testamentary instruments as one reads them in the future. Readers will also think more carefully about the choice of words as they draft instruments for their clients. And since being thoughtful wordsmiths is one of our primary roles as estate planners, that's a very good thing.

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