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THE DEMOGRAPHY OF PROBATE ADMINISTRATION

Robert A. Stein†
Ian G. Fierstein††

This article is the second in a series of articles reporting the results of a multi-jurisdiction study of estate administration. Specifically, this article focuses on the frequency and types of administration proceedings utilized by decedents' estates; the extent to which fluctuations in testacy rates among states are attributable to various state-specific advantages provided estates left by testate decedents and variables such as age and sex of decedent; and the size and composition of estates undergoing administration proceedings. The data that provide the basis for this article were gathered in 1976. The authors provide an organized presentation of data that will enable advocates and commentators to support their respective positions.

I. INTRODUCTION

The estates of many decedents are required to "go through probate." Probate administration, or more precisely, estate administration, is the process by which the affairs of a decedent are settled.¹ During the course of administration of an estate, the property owned by a decedent is inventoried, debts and taxes are paid, and the property is distributed to those entitled to succeed to it.

There has been much controversy associated with the probate administration process in recent years.² The public has been advised to

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1. In this article, "estate administration" and "probate administration" are used interchangeably. "Probate," a legal term-of-art, refers to the judicial proceeding used to determine whether the decedent's will is valid. J. RITCHIE, N. ALFORD & R. EFFLAND, *CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS* 7 (6th ed. 1982). "Administration" is a more general term; it "refers to the conduct of the *personal representative* of an *intestate*, *testator*, or *testatrix* in collecting assets of the estate, paying the creditors and distributing the residue of the property to those entitled to receive it." *Id.* (emphasis in original).
2. In the late 1960's and early 1970's, probate administration was the subject of numerous critical articles in the popular press. See, e.g., Bloom, *Time to Clean Up Our Probate Courts*, *READER'S DIG.*, Jan. 1970, at 112; Bloom, *The Mess in Our Probate Courts*, *READER'S DIG.*, Oct. 1966, at 102; *Named in a Will? It Can Take Years to Collect*, *BUS. WK.*, June 3, 1972, at 71; *Let's Rewrite the Probate Laws*, *CHANGING TIMES*, Jan. 1969, at 39. Apparently, after some states adopted the Uniform Probate Code (U.P.C.) and other states initiated similar reforms, the controversy subsided. See, e.g., Bloom, *At Last: A Way to Settle Estates Quickly*, *READER'S DIG.*, Sept.

"avoid probate" because of allegedly high fees and unreasonable delays in settling estates.³ A number of reform proposals have been advanced by the legal community.⁴ The National Conference of Commissioners on Uniform State Laws and the American Bar Association have promulgated a Uniform Probate Code (U.P.C.) that has been adopted by several states.⁵ Critics, reformers, and defenders of the estate administration process have joined the fray with little empirical data to support their positions. This article presents the findings of a multi-jurisdiction study of probate administration undertaken to develop information regarding the process of wealth transfer at death.

This article is the second reporting of the results of the multi-jurisdiction study of probate administration.⁶ The first reporting discussed

1972, at 193; *Settling an Estate Could Be Faster and Cheaper*, CHANGING TIMES, Nov. 1972, at 6. Occasionally, however, controversial articles still appear. See, e.g., Flanagan, *Inheritance: Where There's A Will, There's A Wait*, VOGUE, Apr. 1978, at 166; Quinn, *Cutting Probate Costs*, NEWSWEEK, June 23, 1980, at 66.

3. See N. DACEY, *HOW TO AVOID PROBATE* (1965).

4. During the last 20 years, nearly every state, to some extent, has revised its probate code to simplify and modernize probate procedures. See, e.g., *1979 Legislation Affecting Trusts and Estates*, 15 REAL PROP. PROB. & TR. J. 241 (1980); *1974 Legislation on Trusts and Estates*, 10 REAL PROP. PROB. & TR. J. 74 (1975); *State Legislation Affecting Trusts and Estates*, 1 REAL PROP. PROB. & TR. J. 107 (1966).

5. The Joint Editorial Board for the U.P.C. recognizes 14 states as having enacted the substance of the U.P.C. regarding succession law and procedure: Alaska, Arizona, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, and Utah. Six other states have enacted probate codes that show strong U.P.C. influence: Florida, Hawaii, Illinois, Missouri, Oregon, and Wisconsin. Other states that have added U.P.C. inspired provisions to their probate codes are Virginia, Washington, and West Virginia. See 1984 ANNUAL REPORT OF ACTIVITIES OF JOINT EDITORIAL BOARD FOR THE UNIFORM PROBATE CODE; *1979 Legislation Affecting Trusts and Estates*, *supra* note 4, at 241; *1978 Legislation Affecting Trusts and Estates*, 14 REAL PROP. PROB. & TR. J. 212, 212 (1979). South Dakota enacted the U.P.C. in 1974, but repealed it two weeks after it became effective. *Id.* The Wyoming legislature passed the U.P.C. twice, but the Governor vetoed it both times. *Id.*

6. Primary financial support for the study was provided by the American Bar Foundation. A number of persons have made substantial contributions to this study. Dean Laurence M. Katz of the University of Baltimore School of Law, Professor Lennart V. Larson of Southern Methodist University School of Law, Professor James E. Leahy of California Western School of Law, and Dean William Schwartz of Boston University School of Law served as study directors in their respective states.

The following staff members of the American Bar Foundation contributed to the study: Jeannette M. Boulet, Clara N. Carson, Andy Hoover, Elizabeth J. Reed, Katherine J. Rosich, Phyllis A. Satkus, Dietmar Starke, and Kenneth Wilson.

Ralph H. Miller, Esq., of the Utah bar served as chairman of a Study Advisory Committee and as liaison with the American Bar Association Section of Real Property, Probate and Trust Law. Other members of the Advisory Committee were: Luther J. Avery, Esq., of the California bar, Albert S. Barr, III, Esq., of the Maryland bar, Wm. Stansel Belcher, Esq., of the Florida bar, Winston T. Brundige, Esq., of the Maryland bar, A. James Casner, Esq., of the Massachusetts bar, Harrison K. Chauncey, Jr., Esq., of the Florida bar, Hon. Harold R. Clark, of the Florida bar, Everett A. Drake, Esq., of the Minnesota bar, Charles E. Early, II, Esq., of the Florida bar, J. Thomas Eubank, Jr., Esq., of the Texas bar, Dean Henry A. Fenn, of the Florida bar, Allan H. Fisher, Jr., Esq., of the Maryland bar, K. Bruce Fried-

the role of the lawyer in the probate administration process and relied primarily on data developed during interviews with attorneys for select estates.⁷ This article discusses the demography of probate administration and relies primarily on data taken from probate court records in a select sample of estates in five study states: California, Florida, Maryland, Massachusetts, and Texas. These study states were selected because their estate administration practices and procedures are broadly representative of those of other states.⁸

man, Esq., of the California bar, Ronald E. Gother, Esq., of the California bar, Max Gutierrez, Jr., Esq., of the California bar, G. J. Hauptfuhrer, Jr., Esq., of the Pennsylvania bar, Minor L. Helm, Jr., Esq., of the Texas bar, Richard H. Herold, Esq., of the New Jersey bar, Daniel H. Honemann, Esq., of the Maryland bar, Thomas A. Howeth, Esq., of the Texas bar, John A. Jones, Esq., of the Florida bar, Charles J. Kickham, Esq., of the Massachusetts bar, William S. McClanahan, Esq., of the California bar, Clark W. McGants, Esq., of the District of Columbia bar, Malcolm A. Moore, Esq., of the Washington bar, George N. Nofer, Esq., of the Pennsylvania bar, Wesley L. Nutten, III, Esq., of the California bar, Ronald A. Offret, Esq., of the Alaska bar, Matthew S. Rae, Jr., Esq., of the California bar, William E. Remy, Esq., of the Texas bar, John E. Rogerson, Esq., of the Massachusetts bar, Rudolph O. Schwartz, Esq., of the Wisconsin bar, J. Nicholas Shriver, Esq., of the Maryland bar, Shale D. Stiller, Esq., of the Maryland bar, James H. Turner, Esq., of the Colorado bar, Professor Richard Wellman of the Georgia bar, Edward B. Winn, Esq., of the Texas bar, and Walter P. Zivley, Esq., of the Texas bar.

Many other members of the bar provided assistance through comments and advice, but Robert A. Gingell, Esq., of the Maryland bar, deserves special acknowledgment for his valuable contributions.

Other members of the bar providing advice to state advisory committees included: Paul A. Bayse, Esq., of the California bar, Hon. Paul T. Douglas of Florida, Hon. James R. Knott of Florida, Phillip S. Parsons, Esq., of the Florida bar, Allan J. Gibber, Esq., of the Maryland bar, John H. Herold, Esq., of the Maryland bar, James G. McCabe, Esq., of the Maryland bar, W. Jerome Offutt, Esq., of the Maryland bar, G. Van Velsor Wolf, Esq., of the Maryland bar, C. M. Zachavski, Esq., of the Maryland bar, A. MacDonough Plant, Esq., of the Maryland bar, Edward Bavshak, Esq., of the Massachusetts bar, Owen Clark, Esq., of the Massachusetts bar, Hon. Frances W. Conlin of Massachusetts, Hon. Mary C. Fitzpatrick of Massachusetts, Jarves W. Hennigan, Esq., of the Massachusetts bar, Hon. Edward T. Martin of Massachusetts, Nicholas L. Metaxas, Esq., of the Massachusetts bar, William J. McMannus, Esq., of the Massachusetts bar, Hon. Alfred L. Podolski of Massachusetts, Paul Sugerman, Esq., of the Massachusetts bar, Edward M. Swartz, Esq., of the Massachusetts bar, Hon. Augustus F. Wagner of Massachusetts, Harold Metts, Esq., of the Texas bar, and Robert Thomas, Esq., of the Texas bar.

Research assistance in the preparation of the tables was provided by Laurie A. Zenner, Esq., of the Minnesota bar.

In addition to the financial support for this study received from the American Bar Foundation, important support also was received from the American Bar Endowment, the American Bar Association Section of Real Property, Probate and Trust Law, the John J. Leidy Foundation of Baltimore, Maryland, the Louis D. & Hortense G. Michaels Foundation of Baltimore, Maryland, the Leo W. Friedenwald Memorial Fund of Baltimore, Maryland, and the Maryland Bar Foundation.

7. Stein & Fierstein, *The Role of the Attorney in Estate Administration*, 68 MINN. L. REV. 1107 (1984).

8. A number of changes have occurred in the probate and tax laws of the states included in the study and in the federal estate tax law since 1972, the year in which the estates under study were probated. Important changes will be noted where appropriate, to identify areas where the data may not have current validity for a particular jurisdiction.

California, the most populous state in the country, is one of two community property states included in the study.⁹ The probate administration system in California is distinctive because it provides a statutory fee system for attorneys¹⁰ and personal representatives¹¹ handling an estate administration. Fees charged for ordinary services are set by statute as a percentage of the value of the assets of the estate. Attorneys and personal representatives may obtain fees in addition to those provided by statute in the event a court finds that extraordinary services have been performed.¹²

Florida was included in the study to determine whether its estate administration system provides an incentive for retirees to settle there by reducing administration costs and providing prompt estate administration with minimal dispute. Moreover, a number of changes¹³ have been made in the probate administration law of Florida in recent years as the state legislature has sought to simplify the estate administration process.¹⁴ This study attempts to measure the actual or probable effect of these changes.

Massachusetts provides a relatively traditional type of estate administration.¹⁵ The Massachusetts system is believed to be representative of the historical pattern of estate administration in the United States and of the type of estate administration system commonly found in most states. Massachusetts practice contrasts with Maryland and Texas, two states that have reduced the supervisory role of the probate court over the estate administration process.

Maryland is of particular interest because it adopted an early draft of the U.P.C.;¹⁶ its probate law reflects a philosophy of minimizing court

9. Arizona, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, and Washington are also community property jurisdictions. F. HOOPS, FAMILY ESTATE PLANNING GUIDE § 21 (3d ed. 1982).

10. CAL. PROB. CODE § 910 (West 1981).

11. *Id.* § 901.

12. *Id.* §§ 902 (executors and administrators), 910 (attorneys).

13. FLA. STAT. ANN. §§ 731-35 (West 1976 & Supp. 1985). Florida imposes an estate tax equal to the amount of the federal estate tax credit for state death taxes, *see* I.R.C. § 2011 (1982), less the amount paid to other states. FLA. STAT. ANN. § 198.02 (West Supp. 1985). Under this system, Florida receives the maximum revenue it can without burdening taxpayers because estates pay no more total tax than if Florida imposed no state death tax. *See Survey of State Death Tax Systems and of Selected Problems of Double Taxation of Real Property Interests*, 14 REAL PROP. PROB. & TR. J. 277, 308 (1979). *But see* Note, *A Comparison of Estate Taxes in the Southwest*, 5 U. FLA. L. REV. 35, 35 (1952) (concluding that the difference between the state death taxes of Florida and those of six other southeastern states "is not so great as to appear to be a deciding influence in the choice of a permanent domicile"). *See also* 1977 Legislation Affecting Trusts and Estates, 13 REAL PROP. PROB. & TR. J. 138, 146-50 (1978) (discussing the 1977 amendments to the Florida Probate Code).

14. *See* 1977 Legislation Affecting Trusts and Estates, 13 REAL PROP. PROB. & TR. J. 138, 146-50 (1978).

15. MASS. GEN. LAWS ANN. chs. 190-206 (West 1958 & Supp. 1985).

16. MD. EST. & TRUSTS CODE ANN. §§ 1-101 to 12-103 (1974 & Supp. 1985).

supervision of the estate administration process. Maryland is considered to be a state in which corporate representatives (banks and trust companies) are used more extensively than in other states as fiduciaries in estate administrations.¹⁷ Maryland is also unusual in that its probate courts and registers of wills are responsible for supervising the collection of state death taxes in circumstances that are handled wholly administratively in most other states.¹⁸

Texas has provided a system of unsupervised estate administration in varying degrees since 1848.¹⁹ The Texas system of "independent administration" permits an executor who satisfies certain preliminary requirements to act independently of the probate court.²⁰ Because independent administration has been available in Texas for many years, the extent of its use in that state is a measure of the public evaluation of unsupervised administration. The patterns found in Texas are indicative of the patterns likely to develop in states that more recently have adopted unsupervised administration.

In each study state, a sample of estate administrations was selected for examination. First, selection of a sample of counties in each study state was accomplished through the use of a method that permitted the statistical findings to be weighted and generalizations to be derived for the entire state. In each study state, the selected counties varied consid-

17. Conversation with the late J. Nicholas Shriver, Jr., Esq., of the Maryland bar (Oct. 1975).

18. The Maryland estate tax return must be submitted "in duplicate to the register of wills who shall certify to the Comptroller the amount of inheritance tax paid in each case." MD. ANN. CODE art. 62A, § 4 (1983).

19. See generally Marschall, *Independent Administration of Decedents' Estates*, 33 TEX. L. REV. 95, 97-99 (1954) (discussing origin of independent administration).

20. At the time the study estates were administered, independent probate administration was permitted only when provided for in the decedent's will, and therefore was unavailable in all intestate cases. A 1977 amendment permitted independent administration in certain other testate and intestate situations. Act of June 15, 1977, ch. 390, § 3, 1977 Tex. Gen. Laws 1061 (codified as amended at TEX. PROB. CODE ANN. § 145 (Vernon 1980)).

erably in per capita income, population density, and death rate.²¹

21. Counties in the Probate Administration Study include:

	<u>Per Capita Income</u>	<u>Population Density per Square Mile</u>	<u>Percentage of Population 65 or Older</u>	<u>Death Rate per 1,000</u>
<u>California</u>				
Humboldt	4,411	4	9.0	8.5
Kern	4,166	43	9.0	8.3
Los Angeles	5,281	1,717	9.8	8.5
Orange	5,519	2,173	7.7	6.1
San Bernadino	4,363	35	10.5	8.3
San Francisco	5,990	14,767	15.3	12.4
San Joaquin	4,573	212	11.2	9.4
San Mateo	6,621	1,300	8.8	7.3
Ventura	4,622	235	7.5	6.1
<u>Florida</u>				
Bay	3,947	119	8.2	7.5
DuVal	4,615	734	8.3	8.3
Hillsborough	4,476	556	10.6	8.8
Lee	4,570	196	10.6	11.2
Palm Beach	6,182	225	21.5	12.1
Pasco	3,779	171	28.6	16.1
Putnam	3,573	56	13.2	12.0
<u>Maryland</u>				
Anne Arundel	11,474	813	6.1	5.7
Baltimore City	8,814	10,919	11.6	11.7
Carroll	10,180	177	10.1	7.4
Dorchester	7,701	50	14.8	12.8
Frederick	9,547	145	8.6	8.0
Montgomery	16,708	1,155	6.8	5.7
Wicomico	8,781	155	10.9	9.6
<u>Massachusetts</u>				
Berkshire	10,266	158	13.0	10.1
Essex	10,935	1,278	12.5	10.2
Middlesex	11,859	1,696	10.7	8.3
Plymouth	10,998	581	9.5	8.2
Suffolk	9,279	12,907	12.1	10.8
Worcester	10,444	429	11.8	9.6
<u>Texas</u>				
Bexar	8,043	733	8.0	6.9
Caldwell	5,635	39	14.6	9.5
Collin	9,612	113	7.7	6.2
Ector	9,245	107	6.2	6.5
Erath	6,000	18	20.7	12.2
Hale	7,110	36	10.3	8.3
Hardin	8,285	38	10.4	9.3
Harris	10,346	1,129	6.3	6.6
Jackson	7,064	15	12.5	8.2
Limestone	5,619	20	20.2	14.3
Smith	8,220	115	12.0	9.8
Webb	4,970	25	8.6	6.1
Wichita	7,912	196	10.8	8.6

All figures are from the CENSUS BUREAU, 1977 COUNTY AND CITY DATA (1977). Per capita income is for 1974, density for 1975, age 65 or older for 1972, and death rate for 1970.

Next, a random sample of residents who died during 1972 was chosen from each of the counties selected for study. A total of 23,591 decedents was selected to provide a sample sufficiently large to represent the estate administration practices in each county and like counties throughout each study state. The year 1972 was selected to ensure that the estates of most of the decedents would be closed when the data were gathered in 1976. Probate court records and tax department files were searched to determine whether an estate administration had been initiated or documents had been filed for any of the decedents in the sample.

Data on the administration of the selected estates were gathered from four sources:²² (1) probate court records; (2) interviews with attorneys; (3) state death tax department records; and (4) interviews with personal representatives, both individual and corporate. Of the 23,591 total decedents studied, probate court records were located and computer analyzed for 5,959 decedents' estates in the five study states. The findings presented in this article are premised on the assumption that no probate proceeding was initiated for a decedent if no record was located in the probate court of the decedent's county of residence. Although it is possible that a proceeding may have been initiated in another county or in the residence county after the court records were searched, the initiation of a probate proceeding would be unlikely because the records were searched three or four years after the decedent's death.

This article presents data concerning the nature and composition of estates and the decedents that leave them, in order to assist advocates and commentators in their efforts to evaluate the existing systems of estate administration and to provide empirical support for suggested modifications. Section II discusses the frequency with which decedents left estates that underwent judicial administration. This section examines several factors that may have affected the findings concerning the frequency of estate administration. Section III presents findings concerning the types of administration proceedings utilized by estates in the study. Section IV discusses the incidence of decedents who died testate and identifies specific provisions of the probate codes of the study states that may have affected the percentages of testate decedents. This section also examines the relationship between the incidence of testacy and survivorship patterns. Section V presents findings concerning the size of estates. Section VI presents findings concerning the composition of estates included in the study.

II. THE FREQUENCY OF PROBATE PROCEEDINGS

No matter how crowded the probate dockets may seem to judges, lawyers, and survivors of decedents, the percentage of all decedents who leave estates that undergo estate administration proceedings is not high.

22. In Maryland, there were no tax department files from which data could be gathered, although similar information was available from the probate court. Individual personal representatives were not interviewed in California and Texas.

Among the study states, the average percentage of decedents' estates that underwent estate administration proceedings ranged from twenty percent in California to thirty-four percent in Massachusetts (Table 2.1).

TABLE 2.1
Percentage of Decedents Leaving Estates That Underwent
Administration Proceedings
(Statewide and by County)

California ²		Florida		Maryland ³		Massachusetts		Texas ⁴	
	%		%		%		%		%
Humboldt	23	Bay	17	Anne Arundel	25	Berkshire	37	Bexar	22
Kern	16	DuVal	17	Baltimore City	18	Essex	35	Caldwell	23
Los Angeles	19	Hillsborough	21	Carroll	30	Middlesex	34	Collin	17
Orange	12	Lee	23	Dorchester	32	Plymouth	34	Ector	25
San Bernadino	10	Palm Beach	27	Frederick	29	Suffolk	30	Erath	24
San Francisco	23	Pasco	23	Montgomery	29	Worcester	36	Hale	34
San Joaquin	29	Putnam	21	Wicomico	32			Hardin	20
San Mateo	19							Harris	35
Ventura	17							Jackson	28
								Limestone	17
								Smith	18
								Webb	10
								Wichita	20
Statewide ¹	20		22		25		34		24
Standard Deviation ⁵	4.54		4.04		4.06		2.49		6.69

¹ The statewide average percentage of decedents having an estate administration proceeding was calculated for each study state by taking a weighted average of the percentage for each study county in the state. Counties were weighted based upon their population and death rate to make the mean, as calculated, representative of the state as a whole. A statement of the methodology is available from the authors.

² Percentage of decedents with regular or small estate proceedings. If other, miscellaneous proceedings were included, these percentages would be higher.

³ Joint tenancy proceedings excluded.

⁴ Including both dependent and independent administration.

⁵ The standard deviation is calculated according to the unweighted percentage for each of the counties in the state.

The percentage of decedents' estates undergoing an estate administration proceeding varied widely among counties, particularly in California and Texas (Table 2.1). In San Bernadino County, California, and Webb County, Texas, for example, only ten percent of all decedents left an estate that had an estate administration proceeding. By contrast, in San Joaquin County, California, twenty-nine percent, and in Harris County, Texas, thirty-five percent of the decedents left an estate which underwent an estate administration proceeding. Estates left by Massachusetts decedents generally had a higher percentage of estate administrations, as each study county had at least thirty percent of all estates undergoing administration. Berkshire County, Massachusetts, at thirty-seven percent, recorded the highest percentage of decedents leaving es-

tates that underwent an estate administration proceeding of any of the study counties. Furthermore, Massachusetts counties were the most uniform in the percentage of decedents' estates having an estate administration, with a standard deviation²³ of only 2.49 (Table 2.1). On the whole, the percentage of decedents leaving estates that underwent an administration proceeding tended to be between fifteen and thirty-five percent.

Differences among the study states in the extent to which decedents' estates were subjected to administration proceedings were expected inasmuch as the probate code of each state imposes state-specific requirements as to when proceedings must be initiated.²⁴ In addition to variations in state law, differences between counties in the distribution of wealth among the general population and in the characteristics inherent generally in the population of decedents were important determinants of the incidence of decedents leaving estates that underwent administration proceedings. Estate administration proceedings are concerned principally with the process of transferring the ownership of a decedent's property. The survivors of a decedent who owned no property at death have little reason to institute administration proceedings. Although few decedents own no property at death, where the decedent owns little property at death and formal transfer of title is unnecessary, the property is frequently distributed informally among survivors without any court involvement.²⁵

To determine whether estate administration proceedings are required, the legal form in which a decedent held property is as important as the amount of property held. So-called "nonprobate property" is property held in such form that succession on death is accomplished without subjecting the property to the jurisdiction of the probate court.²⁶ Perhaps the most common form of nonprobate property is property held in joint tenancy with right of survivorship; each joint tenant shares in the ownership of the property and upon the death of any joint tenant the remaining joint tenants succeed to the deceased's interest in the property. Thus, if there is no prior *intervivos* transfer, eventually the property will be owned by the last surviving joint tenant. Because such succession is "automatic," the probate court usually is not involved in the transfer of

23. Standard deviation is a statistical tool that provides a measure of the degree of dispersion in a distribution of data. In statistical parlance standard deviation is the square root of the arithmetic average of the squares of the deviations from the mean. See J. FREUND, *MODERN ELEMENTARY STATISTICS* 54-58 (6th ed. 1984).

24. See *infra* notes 42-72.

25. See J. RITCHIE, N. ALFORD & R. EFFLAND, *supra* note 1, at 1175.

26. Although specific statutory definitions vary among the study states, "probate estate" will be used to describe those parts of the estate that generally are settled with the assistance of the court. "Nonprobate estate" will refer to those property interests that pass outside the court's jurisdiction but are subject to death taxation at decedent's death (e.g., proceeds of life insurance policies, joint tenancy property, employee death benefits, and property transferred in trust with certain retained interests). "Gross estate" is a tax term and refers to probate and nonprobate estates combined. I.R.C. § 2031 (1982).

ownership rights.²⁷

A. Population Density, Proportion of Land in Farmland, Per Capita Income, and Mean Family Income

On the basis of a pilot study,²⁸ it was predicted that the highest proportions of decedents leaving estates that would undergo administration proceedings would be found in the wealthy and rural counties of each study state. It was likely that wealthy counties would contain a higher proportion of decedents with assets sufficient to require an estate administration proceeding. Because of the agricultural nature of the economy and the importance of farmland titles, rural counties likely would have a higher proportion of decedents owning real estate necessitating an estate administration proceeding for the passage of title.

To determine whether this prediction would hold true, the percentage of all decedents' estates that underwent probate proceedings was computed for each study county, and the counties were compared on the basis of population density, proportion of land in farmland, per capita income, and mean family income. Next, means for each of the variables were computed for each study county. In each study state, the average percentage of decedents leaving estates that underwent administration proceedings in the counties above the mean for each variable was compared to the average percentage of decedents leaving estates that underwent administration proceedings in counties below the mean. In Florida, Maryland, and Massachusetts, counties that fell below the mean in population density had, on the average, a higher percentage of decedents leaving estates that underwent administration proceedings than did the counties that fell above the mean (Table 2.2). However, in California and Texas — the two community property states in the study — counties below the mean in population density had, on the average, a lower percentage of decedents leaving estates that underwent administration proceedings than did the counties above the state mean (Table 2.2). A comparison in each study state of counties above the mean in proportion of land area devoted to farming with those below the mean also produced inconsistent results (Table 2.2). When counties above and below the mean for per capita income and mean family income were compared, similar inconsistencies appeared. In California, Maryland, and Minnesota, all of the poorer counties, when measured by either the per capita income or the mean family income variables, had a higher percentage of decedents leaving estates that underwent administration proceedings than did the richer counties. This pattern was inverted in Florida and

27. See E. SCOLES & E. HALBACH, PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS 42 (3d ed. 1981).

28. The Minnesota Pilot Study reviewed data gathered from the probate court files of four Minnesota counties for decedents who died in 1969 and from the records of the Inheritance Tax Department of Minnesota. For a more detailed report of the findings of that study, see Stein, *Probate Administration Study: Some Emerging Conclusions*, 9 REAL PROP. PROB. & TRUST J. 596 (1974).

Texas; in Massachusetts, there was no difference between richer and poorer counties.

TABLE 2.2

Average Percentage of Decedents Leaving Estates that Underwent Probate Proceedings in Counties Above and Below the Mean for all Study Counties in Density, Percentage of Land in Farm Land, Per Capita Income, and Mean Family Income

	Density		% Land in Farm Land		Per Capita Income		Mean Family Income	
	%Below	%Above	%Below	%Above	%Below	%Above	%Below	%Above
California (N)	18 (8)	23 (1)	17 (6)	26 (2)	19 (5)	18 (4)	20 (5)	17 (4)
Florida (N)	26 (5)	19 (2)	22 (5)	20 (2)	20 (5)	25 (2)	21 (4)	22 (3)
Maryland (N)	30 (6)	18 (1)	30 (4)	30 (2)	28 (5)	27 (2)	28 (5)	27 (2)
Massachusetts (N)	34 (5)	30 (1)	34 (2)	33 (3)	33 (3)	33 (3)	33 (3)	33 (3)
Texas (N)	21 (11)	29 (2)	22 (5)	23 (8)	20 (6)	24 (7)	20 (6)	24 (7)

N = number of counties

B. Confounding Factors

1. The Ecological Fallacy Phenomenon

The above comparisons yielded results that do not confirm the hypothesis that rural and wealthy counties are more likely to have a higher percentage of estate administration proceedings than are urban and poorer counties. Population density measured at the county level can be a misleading characteristic in counties such as San Bernadino County, California, which has a low population density because of the great land area incorporated within its boundaries but includes many areas quite urban in character. Similarly, percentage of land in farmland, per capita income, and mean family income are potentially misleading characteristics. For example, counties that have a high percentage of land in farmland may have a relatively small number of farmers. Furthermore, counties with a high per capita or mean family income may be subject to disparities in the distribution of wealth; accordingly, although a particular county may appear wealthy, individuals holding substantial assets may be relatively few and a large proportion of residents may be poor.²⁹

29. This type of difficulty in inference is known in the social science literature as "ecological fallacy." The difficulty is that the study attempted to draw inferences about

2. Individual Differences

When individual decedents are examined, a host of individual variables such as age, sex, and race, in addition to the wealth and form of wealth of decedents, determine the likelihood of estate administration. Very young decedents are not likely to leave an estate to administer, except, on occasion, estates consisting of wrongful death claims.³⁰ Generally, males may have larger estates than females because traditional occupational roles enable males to earn higher wages; however, an alternate hypothesis posits that females may have larger estates because of greater female longevity and the likelihood of being the surviving spouse.³¹ Race and ethnic background are two additional variables that may affect the frequency of probate, to the extent that these variables are correlated with wealth, form of ownership, and type of property owned.³² All of these variables may affect the probability of estate administration proceedings for a particular decedent. At the county or state level these variables are important insofar as the magnitude of their incidence in the study unit population influences, to an unknown degree, the results of the study.

C. Age, Sex, and Marital Status as Variables in Massachusetts

Among the five study states, only in Massachusetts were pertinent demographic data available for decedents who did not have probate proceedings as well as for those who did. Thus, for the sample of Massachusetts decedents, it is possible to determine the extent to which male and female decedents, young and old decedents, and decedents of varying marital statuses left estates that underwent formal administration. Although the study did not control for variables such as wealth and the propensity of decedents to hold property in a certain form, the age and marital status of decedents appear to be related to the likelihood of estate administration proceedings (Table 2.3). The likelihood of initiation of probate proceedings increased with the age of the decedent at death. With respect to a decedent's marital status, the pattern is more complex: Single decedents and decedents whose marriages had been annulled or

phenomena at the level of the individual decedent (those factors that make it likely that estate administration proceedings will be instituted for a decedent) from measures at the level of the county of the decedent's death (e.g., the percentage of decedents having estate administration proceedings, the percentage of land in farmland, and the per capita income in a county). See CAUSAL MODELS IN THE SOCIAL SCIENCES 474-75 (H. Blalock, Jr. 2d ed. 1985).

30. See *infra* Table 5.5. It is interesting to note that in their study of decedents, Sussman, Cates, and Smith found the average age of the decedent in "small estates" to be two years lower than that of the decedent in large estates. See M. SUSSMAN, J. CATES & D. SMITH, *THE FAMILY AND INHERITANCE* 173-75 (1970). This does not necessarily invalidate the hypothesis, of course, as a large number of very young, poor decedents could have offset the number of elderly, poor decedents.

31. See *infra* text accompanying Table 5.6.

32. Data concerning race and ethnicity of the decedents were unavailable in the public records examined.

who were widows or widowers at death were more likely to leave estates that underwent administration proceedings than were decedents who were still married at death or who had become separated or divorced prior to death. Joint tenancy is a popular nonprobate form of property ownership among married couples, and this may account for the somewhat lower percentage of married decedents who left estates subject to probate proceedings. This, however, does not explain the similarly low percentage of divorced decedents leaving estates that underwent probate proceedings. Furthermore, there was no material difference in the extent to which male and female decedents left estates that underwent administration proceedings (Table 2.3).

TABLE 2.3

Massachusetts

Percentage of All Decedents Leaving Estates that Underwent Probate Proceedings by Sex, Age, and Marital Status

	Sex			
	Male	Female		
Percentage having probate proceedings (N)	34.6 (1,870)	34.7 (1,598)		
	Age			
	< 39 Years	41-49 Years	< 60 Years	
Percentage having probate proceedings (N)	19.0 (271)	34.2 (582)	41.7 (2,715)	
	Marital Status			
	Single/ Annulled	Married/ Separated	Widow/ Widower	Divorced
Percentage having probate proceedings (N)	33.2 (646)	28.4 (1,509)	33.5 (1,277)	28.5 (136)

The principal conclusion to be drawn is that the administration process is subject to limited utilization: Only a minority of decedents leave estates that undergo administration proceedings. Seldom do more than one out of three decedents leave estates that undergo administration. Thus, it appears that in this area of law, legal doctrine and judicial resources are devoted to consideration of problems and situations that di-

rectly affect the estates of only a minority of the population.³³

Although the phenomenon of limited utilization is present, to some extent, in most other areas of the law,³⁴ the limited reach of the body of law surrounding the administration of decedents' estates is significant. Fewer than one-half of all decedents leave estates subject to judicial administration (Table 2.1). In evaluating the functioning of the probate administration process, it is necessary to remain cognizant of the needs and characteristics of the minority segment of the population affected by the estate administration process.

III. TYPES OF PROCEEDINGS

A. "Normal" Administration Proceedings

The probate code of each state defines a unique set of estate administration proceedings, and within each state there are various types of proceedings.³⁵ The probate code of each study state defines a "normal" administration, even though "normal" administration as set forth in the statutes is not necessarily the procedure utilized by most of the estates.

The codes also provide for additional proceedings under varied circumstances. Commonly, estates with assets below a certain amount are exempted from the "normal" pattern. In some states, variations from the "normal" administration are available at the election of a testator in his will or by the request of interested parties. For example, Texas formerly made the procedure of "independent administration" available only to testators who directed it in their wills.³⁶ In Maryland, a person administering the estate may, in cases where the estate has a gross value of \$10,000 or less, elect to file a petition for administration of a small estate, which will follow a different course than the "normal" administration contemplated elsewhere in the statute.³⁷ All state procedures, however, must provide answers to three basic questions that arise at death. Who will manage the decedent's estate following his death? How are the decedent's obligations to surviving dependents, creditors, and the tax collector to be discharged? Who ultimately will receive the decedent's estate?

33. Of course, a broader group, including creditors and other persons interested in an estate, actually are affected by administration proceedings.

34. For example, corporate law, which is concerned with the organization, internal governance, and dissolution of business organizations, exerts a direct effect only on persons who participate in the organization and governance of business organizations.

35. See *supra* Table 3.1.

36. At the time of this study, independent probate administration was permitted only when provided for in the decedent's will. This made independent administration unavailable in all intestate cases. During the period following data collection, however, this provision was amended to permit independent administration in certain other testate and intestate situations. See Act of June 15, 1977, ch. 390, § 3, 1977 Tex. Gen. Laws 1061 (codified as amended at TEX. PROB. CODE ANN. § 145 (Vernon 1980)).

37. MD. EST. & TRUSTS CODE ANN. § 5-601 (Supp. 1985).

The categories of estate administration proceedings available in each of the study states and the proportion of proceedings empirically determined to fall within each category are listed in Table 3.1. The number of categories of estate administration available differs from state to state. Some of the study states have types of proceedings that either do not exist in other states or are not identifiable as such in other states (e.g., Muniment of Title proceedings in Texas³⁸). In some instances, similar types of proceedings commonly are known by different names (e.g., General Administration in Florida; Regular Administration in California, Maryland, and Massachusetts; and Dependent Administration in Texas³⁹).

In the course of a "normal" estate administration, the state statutes typically provide for: delivery of the will, if any, to the court; filing of a petition for probate of the will or for administration in the absence of a will; notice to interested parties; a hearing on the initial petition; appointment of a personal representative; a personal representative's oath and bond; issuance of formal letters of authority to the personal representative; notice of the proceedings and a limited time for the filing of claims of creditors of the decedent; granting to surviving dependents an allowance during the period of administration; inventorying and valuing of the property in the estate; paying or contesting creditors' claims; sales of personal and real property; payment of expenses of administration and death taxes; accounting to the court for the conduct of the administration; and distribution of the estate to designated survivors.⁴⁰ In appropriate cases, the probate code also may provide for the appointment of guardians for minors and incompetents.⁴¹

B. Differences Among Study State Probate Codes

At the time of this study there were some differences of substance among the state probate codes, even as respects the "normal" estate administration. For example, California and Maryland required formal notice of a petition to probate a will,⁴² but Florida, Massachusetts, and Texas did not.⁴³ Texas permitted the admission of self-proved wills without testimony from or deposition of witnesses.⁴⁴ Maryland also permitted

38. TEX. PROB. CODE ANN. § 89 (Vernon 1980).

39. These names are either commonly used in the statutes of the respective states for the "normal" type of proceeding or are unofficial names provided by members of the state advisory committees to the study.

40. See generally E. SCOLES & E. HALBACH, PROBLEMS AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS 38-42 (3d ed. 1981). Recent probate code revisions, such as those embodied in the U.P.C., may eliminate one or more of these steps.

41. See MD. EST. & TRUSTS CODE ANN. § 13-201 (1974).

42. CAL. PROB. CODE §§ 327, 328 (West Supp. 1972); MD. EST. & TRUSTS CODE ANN. § 7-104 (1974).

43. FLA. STAT. ANN. §§ 732.09, 732.28 (West 1964) (current informal notice provisions codified at FLA. STAT. ANN. § 731.301(2) (West 1976)); MASS. GEN. LAWS ANN. ch. 192, § 12 (West 1958); TEX. PROB. CODE ANN. § 128 (Vernon 1956).

44. TEX. PROB. CODE ANN. § 84(a) (Vernon 1956).

TABLE 3.1
Proceeding Types

California ¹	Florida ²	Maryland ³	Massachusetts ⁴	Texas ⁵
%	%	%	%	%
Regular Admin. 92	General Admin. 72	Regular Admin. 57	Regular Admin. 84	Dependent Admin. 9
Summary Admin. 8	Unnecessary 27	Small Estate 23	Voluntary Admin. 15	Independent Admin. 73
	Miscellaneous 1	Joint Tenancy 12	Miscellaneous 1	Muniment of Title 12
		Motor Vehicle 5		Small Estate 2
		Miscellaneous 3		Spouse/Community 2
				Miscellaneous 3
(N) (1,082)	(593)	(1,590)	(1,229)	(1,440)

¹ Joint tenancy proceedings excluded from sample.

² Administration Unnecessary category includes proceedings initiated in general administration but terminated as administration unnecessary. Miscellaneous category includes ancillary administrations and proceedings that, for one reason or another, apparently were abandoned without a formal closing.

³ Small Estate category includes small estates with unprobated wills. Joint Tenancy category includes joint tenancy proceedings that were connected with motor vehicle proceedings, life estate proceedings, unprobated wills, and probated wills. Motor Vehicle category includes motor vehicle proceedings with unprobated wills. Miscellaneous category includes special administrations, unprobated wills, probated wills, life estate proceedings, and ancillary administrations. Distinguishing among administrative probate and judicial probate, both of which could be either "regular" or small estate proceedings and also nonprobate procedures, the breakdown would be as follows: administrative probate: 77%; judicial probate: 1%; nonprobate procedures: 22%.

⁴ Miscellaneous category includes proceedings that apparently were abandoned shortly after the filing of a petition, proceedings in which no petition was filed, and proceedings that were instituted for the purpose of filing a wrongful death action.

⁵ Small Estate category includes small estate proceedings combined with proceedings to determine heirship. Miscellaneous category includes temporary administrations, proceedings to determine heirship, guardianship terminations, and orders of no administration.

the admission of wills having face validity and a recital by attesting witnesses of facts constituting the proper execution of the will.⁴⁵ California, Florida, and Massachusetts required testimony from or deposition of available witnesses.⁴⁶ In Massachusetts, if the surviving spouse, all heirs, and all next of kin consented, a will could be proved without testimony.⁴⁷

In 1972, the study states took differing positions regarding the authority of the personal representative to act without prior court approval. In Massachusetts, a personal representative's authority to act was quite restricted.⁴⁸ By contrast, in Maryland, a personal representative was endowed with broad authority to act; among the study states, only in Maryland could a representative sell property without prior court authorization.⁴⁹

All five study states required an inventory of the decedent's property to be filed within a certain number of months following the appointment of the personal representative. Florida required an inventory to be filed within sixty days of a representative's appointment.⁵⁰ Each of the other study states, however, permitted the representative a period of three months in which to file an inventory.⁵¹

The procedures used to appraise the decedent's property varied among the study states. In Florida, the court appointed appraisers to value the property in the estate.⁵² In Massachusetts, the typical representative personally appraised the property in the estate or hired his own appraiser to value it.⁵³ Maryland law permitted the personal representative to appraise corporate stocks that were listed on a national or regional exchange, debts owed to the decedent, bank accounts, money, and sav-

45. MD. EST. & TRUSTS CODE ANN. § 5-303 (1974). Apparently, this provision did not apply to judicial probate; instead, it appeared to apply to administrative probate, which comprised the largest proportion of probate cases. *See supra* note 3 to Table 3.1.

46. CAL. PROB. CODE § 329 (West 1956) (amended in 1979 to permit proof of an uncontested will by "an affidavit in the original will which may include or incorporate the attestation clause," *see* CAL. PROB. CODE § 329 (West Supp. 1985)); FLA. STAT. ANN. § 732.24 (West 1964) (amended in 1976 to allow self-proved wills, *see* FLA. STAT. ANN. § 733.201 (West 1976)); MASS. GEN. LAWS ANN. ch. 192, § 2 (West 1958) (amended in 1976 to allow self-proved wills, *see* MASS. GEN. LAWS ANN. ch. 192, § 2 (ii) (West Supp. 1985)).

47. MASS. GEN. LAWS ANN. ch. 192, § 2 (West 1958) (current version at MASS. GEN. LAWS ANN. ch. 192, § 2 (iii) (West Supp. 1985)).

48. *See generally* MASS. GEN. LAWS ANN. ch. 195 (West 1958) (amended in 1976 to provide personal representatives with broader powers, *see* MASS. GEN. LAWS ANN. ch. 195, § 5A (West Supp. 1985)).

49. MD. EST. & TRUSTS CODE ANN. § 7-401(a)-(n) (1974).

50. FLA. STAT. ANN. § 733.03 (West 1964) (current version at FLA. STAT. ANN. § 733.604 (West Supp. 1985)).

51. CAL. PROB. CODE § 600 (West 1956); MD. EST. & TRUSTS CODE ANN. § 7-201 (1974); MASS. GEN. LAWS ANN. ch. 195, § 5 (West 1958); TEX. PROB. CODE ANN. § 250 (Vernon Supp. 1972) (90 days).

52. FLA. STAT. ANN. § 733.04 (West 1964) (amended to allow personal representative to hire appraisers, *see* FLA. STAT. ANN. § 733.605 (1976)).

53. MASS. GEN. LAWS ANN. ch. 195, § 6 (West Supp. 1972).

ings and loan association shares.⁵⁴ The Probate Court in Texas appointed appraisers on application of an interested person or if the court deemed such action necessary.⁵⁵ The general practice in Texas was that appraisers were not appointed by the court; instead, the personal representative selected the appraisers and his choices received perfunctory court approval.⁵⁶ California provided a two-step appraisal process performed by the executor or administrator and a probate referee. Cash items were appraised by the representative of the estate, but "all assets other than those appraised by the [representative were] appraised by a probate referee."⁵⁷

The study states also permitted creditors differing amounts of time to file their claims against the estate following either publication of notice to creditors or appointment of the representative. California, Florida, and Massachusetts (for solvent estates) required presentation of claims within four months.⁵⁸ Maryland, Texas, and Massachusetts (for insolvent estates) required filing of creditors' claims within six months.⁵⁹ In all of the states except Texas, the claim of a creditor who did not file within the statutory period was barred.⁶⁰ California, Florida, and Maryland required all claims to be presented, including claims that were not due and contingent.⁶¹ Massachusetts required only the filing of claims that were due and not contingent.⁶²

The five study states all provided special short cut procedures for

54. MD. EST. & TRUSTS CODE ANN. § 7-202(a) (1974).

55. TEX. PROB. CODE ANN. § 248 (Vernon Supp. 1972).

56. Smith, *Appraisers and Appraisalment Under The Texas Probate Code*, 45 TEX. L. REV. 842, 844 (1967).

57. CAL. PROB. CODE § 605 (West Supp. 1972).

58. CAL. PROB. CODE § 700 (West Supp. 1972); FLA. STAT. ANN. § 733.15 (West Supp. 1974) (amended in 1975 to shorten period for presentation of claim to three months, see FLA. STAT. ANN. § 733.701 (West Supp. 1985)); MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1977) (current version at MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1985)).

59. MD. EST. & TRUSTS CODE ANN. § 8-103 (1974); MASS. GEN. LAWS ANN. ch. 198, § 9 (West 1958); TEX. PROB. CODE ANN. § 298(a) (Vernon Supp. 1972).

60. CAL. PROB. CODE § 707 (West Supp. 1972); FLA. STAT. ANN. § 733.16(1) (West Supp. 1974) (current version at FLA. STAT. ANN. § 733.701 (West Supp. 1985)); MD. EST. & TRUSTS CODE ANN. § 8-103 (1974); MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1977). In Texas, claims filed after the deadline were postponed and assigned a low priority. TEX. PROB. CODE ANN. § 298 (Vernon Supp. 1972).

61. CAL. PROB. CODE § 707 (West Supp. 1972); FLA. STAT. ANN. § 733.16(1) (West Supp. 1974) (current version at FLA. STAT. ANN. § 733.702(1) (West Supp. 1985)); MD. EST. & TRUSTS CODE ANN. § 8-103 (1974).

62. MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1975) (current version at MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1985)). The Massachusetts Code provides different time limits for claims that accrue one year or more after the decedent's death, see MASS. GEN. LAWS ANN. ch. 197, § 13 (West Supp. 1985) (presentment of claim prior to full administration of estate), and actions for personal injury or death, see MASS. GEN. LAWS ANN. ch. 197, § 9A (West Supp. 1985) (commencement of action more than nine months after the giving of bond by executor or administrator, but within next three years following accrual of cause of action). All other claims against solvent estates are governed by MASS. GEN. LAWS ANN. ch. 197, § 9 (West Supp. 1985). For the provisions governing presentment of

the administration of small estates. In 1972, California and Florida set their small estate limits at the relatively higher levels of \$5,000 and \$10,000, respectively.⁶³ By contrast, in Maryland, Massachusetts, and Texas, the small estate limits were \$2,000,⁶⁴ \$1,000,⁶⁵ and \$2,500,⁶⁶ respectively. Massachusetts imposed an additional requirement on eligibility for a small estate proceeding: The estate had to consist entirely of personal property.⁶⁷

Maryland and Texas provided simplified administration procedures for all sizes of estates if elected by the testator in his will. Maryland utilized a form of "administrative probate," which permitted a register of wills, instead of a judge, to admit a will to probate.⁶⁸ Prior notice and hearing were not required. Further administration, however, was the same whether probate was initiated administratively or judicially.⁶⁹

In Texas, a testator could elect in his will to proceed without court

claims against insolvent estates see MASS. GEN. LAWS ANN. ch. 198, § 9 (West 1958).

63. CAL. PROB. CODE § 630 (West Supp. 1973) (current version at CAL. PROB. CODE § 630 (West Supp. 1985)); FLA. STAT. ANN. § 735.01 (West Supp. 1974) (current version at FLA. STAT. ANN. § 735.201 (West Supp. 1985)). By 1984 amendment, the California procedure is now applicable to estates where real property does not exceed \$10,000, and where real and personal property, with some exceptions, does not exceed \$60,000. See CAL. PROB. CODE § 630 (West Supp. 1985). By 1974 amendment in Florida, "Family Administration" was substituted for the "small estate" procedure. Family Administration is available in estates where the gross estate for federal estate tax purposes is less than \$60,000 and certain other criteria are met. FLA. STAT. ANN. § 735.101 (West 1976). "Summary Administration" also is available in Florida in cases where the value of property located in Florida, less the value of property that is exempt from the claims of creditors, does not exceed \$25,000 or the decedent has been dead for more than three years. FLA. STAT. ANN. § 735.201 (WEST SUPP. 1985).
64. MD. EST. & TRUSTS CODE ANN. § 5-601 (1974) (current version at MD. EST. & TRUSTS CODE ANN. § 5-601 (Supp. 1985) (\$10,000 limit on gross value of property of decedent at date of death)).
65. MASS. GEN. LAWS ANN. ch. 195, § 16 (West Supp. 1972) (current version at MASS. GEN. LAWS ANN. ch. 195, § 16 (West Supp. 1985)). In 1972, the Massachusetts legislature raised the statutory limit for small estates to \$2,000. See Act of June 8, 1972, ch. 405, 1972 Mass. Acts 250. The current limit of \$5,000 was established in 1980. See Act of May 2, 1980, ch. 126, 1980 Mass. Acts 84.
66. TEX. PROB. CODE ANN. § 137 (Vernon Supp. 1974) (current version at TEX. PROB. CODE ANN. § 137 (Vernon Supp. 1985)). In 1979, the Texas legislature raised the limit for small estates to a remarkable \$50,000. See Act of June 13, 1979, ch. 713, § 14, 1979 Tex. Gen. Laws 1747. A substantially increased proportion of Texas estates now have the option of utilizing the small estate procedure. See Table 5.2.
67. MASS. GEN. LAWS ANN. ch. 195, § 16 (West Supp. 1972) (current version at MASS. GEN. LAWS ANN. ch. 195, § 16 (West Supp. 1985)). In 1979, the Massachusetts legislature enacted section 16A, which provides for a small estate procedure where the decedent leaves a will that names an executor and the estate consists entirely of personal property valued at \$3,000 or less. See Act of Nov. 14, 1979, ch. 744, § 2, 1979 Mass. Acts 780. The current small estate limit in section 16A is \$5,000. See MASS. GEN. LAWS ANN. ch. 195, § 16A (West Supp. 1985).
68. MD. EST. & TRUSTS CODE ANN. §§ 5-301 to 5-304 (1974) (current version of § 5-304 at MD. EST. & TRUSTS CODE ANN. § 5-304 (Supp. 1985)).
69. MD. EST. & TRUSTS CODE ANN. § 5-402 (1974).

action in the settlement of an estate; however, the probate and recording of the will and the filing of an inventory, an appraisal, and a list of claims required action by the court.⁷⁰ Thus, without court approval, an independent executor could: receive, classify, allow, pay or reject claims; set aside exempt homestead property; and provide for a family allowance.⁷¹ A final accounting was made to the court only if requested by an interested party.⁷²

TABLE 3.2

Percentage of All Proceedings that are Major Proceedings by State and County

		State					
California ¹		Florida ²		Maryland ³		Massachusetts ⁴	Texas ⁵
92%		72%		57%		84%	81%* 9%**
		County					
	%		%		%		%* %**
Humboldt	88	Bay	39	Anne Arundel	63	Berkshire	84 (A) 82 10
Kern	93	DuVal	79	Baltimore City	55	Essex	93 (B) 93 6
Los Angeles	94	Hillsborough	71	Carroll	41	Middlesex	84 (C) 78 11
Orange	92	Lee	69	Dorchester	53	Plymouth	78 (D) 82 12
San Bernadino	99	Palm Beach	77	Frederick	68	Suffolk	81 (E) 92 5
San Francisco	92	Pasco	71	Montgomery	54	Worcester	84 (F) 84 6
San Joaquin	76	Putnam	56	Wicomico	67		(G) 76 9
San Mateo	94						(H) 69 8
Ventura	98						(I) 84 0
							(J) 84 14
							(K) 75 12
							(L) 85 18
							(M) 85 6

¹ % of all proceedings which are regular administrations.

² % of all proceedings which are general administrations.

³ % of all proceedings which are regular administrations.

⁴ % of all proceedings which are regular administrations.

* % of all proceedings which are independent or dependent administrations.

** % of all proceedings which are dependent administrations.

(A) Bexar (E) Erath (I) Jackson (M) Wichita

(B) Caldwell (F) Hale (J) Limestone

(C) Collin (G) Hardin (K) Smith

(D) Ector (H) Harris (L) Webb

70. TEX. PROB. CODE ANN. § 145 (Vernon Supp. 1974). In 1977, section 145 was amended to permit, under certain circumstances, an administrator to elect independent administration. See Act of June 15, 1977, ch. 390, § 3, 1977 Tex. Gen. Laws 1061 (codified at TEX. PROB. CODE ANN. § 145 (Vernon 1980)).

71. TEX. PROB. CODE ANN. § 146 (Vernon Supp. 1974).

72. *Id.* § 149A.

C. *"Major" and "Minor" Proceedings*

To compare types of proceedings among the study states, it is useful to distinguish between "major" and "minor" estate administration proceedings. To some extent this distinction is subjective; nevertheless, during the data collection phase, the probate code in each study state appeared to distinguish between a normal or regular administration (major proceedings) and variant forms that were applicable only in limited circumstances (minor proceedings). Table 3.2 indicates the proportion of all proceedings in each state that were major proceedings. In California, regular administration proceedings were considered to be major proceedings and summary administrations to be minor proceedings. In Florida, general administration proceedings were considered to be major proceedings. Estates in which administration formally was determined to be unnecessary and such miscellaneous proceedings as ancillary administrations were deemed minor proceedings. In Maryland, regular administration proceedings were considered to be major proceedings, and small estates, joint tenancy proceedings, motor vehicle proceedings, and other miscellaneous proceedings were considered to be minor proceedings. In Massachusetts, regular administration proceedings, were considered to be major proceedings, and voluntary administration and miscellaneous proceedings were considered to be minor proceedings.

Table 3.2 presents in two columns the types of estate administration proceedings that were available in Texas. The left-hand column indicates the percentage of all proceedings that were either independent or dependent administrations and the right-hand column gives the percentage of all proceedings that were dependent administration proceedings alone. A dependent administration proceeding in Texas was one in which the full supervisory authority of the probate court was exercised pursuant to the provisions in the probate code.⁷³ Thus, a dependent proceeding certainly was a major proceeding in Texas. Although the Texas probate code seemed to contemplate that a dependent administration proceeding would be the normal route for estate administration, only nine percent of all estate proceedings in Texas fell within the dependent administration category (Tables 3.1 and 3.2).

Independent administration proceedings, which were made available under a special section of the Texas probate code,⁷⁴ were by far the most prevalent type of estate administration proceeding in Texas (Tables 3.1 and 3.2). In fact, the availability of independent administration only in testate estates may account for the extraordinarily high percentage of testate estates in Texas.⁷⁵ The provisions of the U.P.C. that provide for unsupervised administration⁷⁶ are based upon the Texas form of in-

73. TEX. PROB. CODE ANN. §§ 4, 5 (Vernon 1956 & Supp. 1974).

74. TEX. PROB. CODE ANN. § 145 (Vernon Supp. 1974).

75. See *infra* Table 4.1.

76. UNIF. PROB. CODE §§ 3-301 to 3-311, 8 U.L.A. 245-56 (1983).

dependent administration. In Texas, the normal administration contemplated by the statutes was not the empirical norm.

TABLE 3.3

Percentage of All Decedents Leaving Estate that Underwent Major Estate Administration Proceedings by State and County

California ¹		Florida ²		State Maryland ³		Massachusetts ⁴		Texas ⁵	
17%		14%		18%		29%		20%	
				County					
	%		%		%		%	%*	%**
Humboldt	9	Bay	6	Anne Arundel	17	Berkshire	31	(A) 18	2
Kern	15	DuVal	13	Baltimore City	12	Essex	31	(B) 21	1
Los Angeles	18	Hillsborough	15	Carroll	21	Middlesex	29	(C) 13	2
Orange	11	Lee	16	Dorchester	21	Plymouth	27	(D) 20	3
San Bernadino	10	Palm Beach	20	Frederick	24	Suffolk	24	(E) 22	1
San Francisco	21	Pasco	16	Montgomery	24	Worcester	30	(F) 28	2
San Joaquin	22	Putnam	12	Wicomico	23			(G) 15	2
San Mateo	19							(H) 24	3
Ventura	17							(I) 24	0
								(J) 14	2
								(K) 13	2
								(L) 8	2
								(M) 17	1
Standard									
Deviation:**	4.54		4.04		4.06		2.49	5.38	0.8
¹ % of all proceedings that are regular administrations. ² % of all decedents having general administrations. ³ % of all decedents having regular administrations. ⁴ % of all decedents having regular administrations. ⁵ % of all decedents having independent or dependent administrations. * % of all decedents having dependent administrations. ** The standard deviation was calculated using the unweighted percentages for each county.									
(A) Bexar		(E) Erath		(I) Jackson		(M) Wichita			
(B) Caldwell		(F) Hale		(J) Limestone					
(C) Collin		(G) Hardin		(K) Smith					
(D) Ector		(H) Harris		(L) Webb					

The proportion of all proceedings that were major proceedings varied considerably from state to state (Table 3.2). One might think that the variation among the study states (and among counties within the states) in the percentages of decedents leaving estates that underwent administration proceedings would have been counterbalanced by the extent to which the proceedings in each state (or county) were "major" or "minor." For example, the relatively high percentages of decedents in Massachusetts and Maryland who left estates that underwent administration would have been counterbalanced by a finding that in these states a relatively low percentage of those estates that underwent estate administration were the subject of "major" proceedings. Tables 3.3 and 3.4,

however, present data indicating that the percentage of the decedent population leaving estates that underwent estate administration proceedings was not counterbalanced by the extent to which the proceedings were "major" or "minor."

TABLE 3.4

Mean Percentage of Decedents' Estates that Underwent any Estate Administration Proceeding by Rank

	%
California	20
Florida	22
Texas	24
Maryland	25
Massachusetts	34

Mean Percentage of Decedents' Estates that Underwent a Major Estate Administration Proceeding by Rank

	%
Texas ¹	2
Texas ²	20
Florida	14
California	17
Maryland	18
Massachusetts	29

¹ Dependent Administrations Only.

² Independent and Dependent Administrations.

Table 3.3 presents percentages, by state and study county, of all decedents' estates that underwent major estate administration proceedings. Of course, the percentage of decedents in each study state leaving estates that were the subjects of only major proceedings was smaller than the percentage of decedents who left estates that underwent either major or minor proceedings. A comparison of Table 3.3 with Table 2.1, however, reveals no greater uniformity among the study states with respect to the percentage of all decedents having major estate administration proceedings than with respect to the percentage of decedents having any estate administration proceeding, whether major or minor. The rank of the study states changes only slightly when they are compared in this respect (Table 3.4). Massachusetts and Maryland, for example, appear consistently as the two states in which a relatively high proportion of decedents left estates that underwent administration, whether measured by the percentage of decedents' estates undergoing

any administration proceeding, or by the percentage of decedents' estates undergoing a major estate administration proceeding.

TABLE 3.5
Proceeding Type by Age

California	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
	%	%	%	%	%	%	%	%
Regular	88.9	91.0	91.9	89.0	89.1	91.7	96.6	91.6
Summary	11.1	9.0	8.1	11.0	10.9	8.3	3.4	8.4
(N)	(7)	(14)	(41)	(113)	(181)	(302)	(325)	(71)
Florida	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
	%	%	%	%	%	%	%	%
General	68.8	56.9	75.8	68.5	71.8	74.4	74.1	80.1
Unnecessary	16.1	28.1	18.3	26.5	26.7	23.8	23.3	19.9
Gen. to Unnec.	15.1	15.0	2.9	5.0	0.1	1.3	0.7	0
Ancill. Admin.	0	0	0	0	0.8	0.2	0.8	0
Misc. Admin.	0	0	2.9	0	0.6	0.3	1.0	0
(N)	(8)	(15)	(30)	(52)	(148)	(186)	(128)	(14)
Maryland	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
	%	%	%	%	%	%	%	%
Regular	60.3	26.9	44.2	48.9	60.3	55.9	68.7	69.8
Small Estate	29.9	57.0	45.2	30.3	21.7	23.3	14.4	18.5
Special Estate	0	0	0.6	0	0	0	0	0
Other Estate	9.8	16.1	10.1	20.9	18.0	20.8	16.9	11.7
(N)	(33)	(26)	(133)	(224)	(304)	(416)	(264)	(51)
Massachusetts	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
	%	%	%	%	%	%	%	%
Voluntary	23.1	55.5	17.4	25.1	18.0	13.7	6.2	19.5
Regular	76.9	44.5	77.9	74.9	81.6	85.4	93.8	80.5
No Petition	0	0	0	0	0.4	0.3	0	0
Aborted								
Proceeding	0	0	4.7	0	0	0.6	0	0
(N)	(17)	(15)	(61)	(134)	(268)	(352)	(294)	(64)
Texas	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
	%	%	%	%	%	%	%	%
Ind. Admin.	80	53.4	50.9	68.1	79.6	79.6	76.0	80.6
Dependent								
Admin.	0	11.5	14.4	10.9	3.8	3.2	4.4	3.7
Muniment of								
Title	0	25.7	29.2	17.6	15.6	16.1	18.2	8.0
Spse. Comty.								
Admin.	0	9.5	2.9	3.0	0	0	0	0
No Admin.-								
Mis.	0	2.5	0	0.5	0.4	1.4	0	0
Term. Guard.	0	0	0	0	0	0	0	2.1

Small Estate	0	0	0	0	0	0	0	0
Heirship	20	0	0	0.4	0	0.3	0	5.6
Temp. Admin.	0	0	0	0	0.5	0.2	0	0
Small Est.- Heirship	0	0	0	0	0	0.3	0	0
Temp. Admin.- Heirship	0	0	0	0	0	0	0	0
(N)	(4)	(18)	(57)	(160)	(306)	(368)	(255)	(45)

TABLE 3.6
Proceeding Type by Sex

<u>California</u>	Males %	Females %
Regular	88.8	95.6
Summary	11.2	4.4
(N)	(524)	(558)
<u>Florida</u>	Males %	Females %
General	69.7	74.9
Unnecessary	26.8	22.8
General to Unnecessary	2.7	0.9
Ancillary	0.5	0.3
Miscellaneous	0.2	1.1
(N)	(322)	(271)
<u>Maryland</u>	Males %	Females %
Regular Estate	56.4	65.6
Small Estate	24.9	21.2
Special Administration	0.4	0.1
Other Estate	18.3	13.1
(N)	(935)	(678)
<u>Massachusetts</u>	Males %	Females %
Regular	80.9	87.6
Voluntary	18.4	4.8
No Petition	0.2	0.2
Aborted Proceeding	0.5	0.3
(N)	(631)	(271)
<u>Texas</u>	Males %	Females %
Independent Administration	68.3	69.1
Dependent Administration	9.5	8.1
Muniment of Title	16.0	16.7
Spse. Comty. Administration	1.2	1.0
No Administration - Miscellaneous	0.9	1.5
Term. Guard.	0	0.2
Small Estate	3.3	1.5
Heirship Proceeding	0.5	1.6
Temporary Administration	0	0
Small Estate - Heirship	0.2	0
Temporary Administration - Heirship	0	0.3
(N)	(884)	(556)

D. Proceeding Type by Age and Sex of Decedent

An examination of the nexus between age of the decedent and the type of proceedings reveals no consistent pattern (Table 3.5). Curiously, the estates of female decedents were somewhat more likely to fit the normal statutory pattern — a greater percentage of regular or general administrations — than were the estates of male decedents (Table 3.6). This pattern was present in every study state except, possibly, Texas, where the estates of male and female decedents appear to have been similarly distributed among the various types of proceedings. The data on estate size does not provide the basis for the finding that the estates of female decedents were more likely to fit the normal statutory pattern, because the estates of female decedents were not consistently larger than those of male decedents.⁷⁷

IV. TESTACY

The percentage of decedents who died testate and left estates subject to estate administration proceedings varied considerably among the five study states (Table 4.1), ranging from a low of fifty percent in Massachusetts to a high of eighty-six percent in Texas. The percentages shown in Table 4.1 do not indicate the proportion of all decedents who left a will in the various states; rather, they indicate the proportion of decedents who left a will and an estate subject to estate administration proceedings. As discussed in Section II, only a minority of all decedents left estates that actually underwent estate administration proceedings. Information about that minority forms the basis for the subsequent discussion.

At some point during his or her lifetime, a decedent who died testate decided to execute a will. Examination of the variant, state-specific advantages and disadvantages associated with the making of a will may explain differences in the frequency of testacy among the study states.

TABLE 4.1
Percentage of Testate Decedents Leaving an Estate That Underwent
Administration

	California	Florida	Maryland	Massachusetts	Texas
% Testate	72%	65%	54%	50%	86%
(N)	(1,082)	(593)	(1,615)	(1,229)	(1,440)

The estate of a decedent who dies without executing a will is distributed in accordance with state statutes of descent and distribution.⁷⁸

77. See *infra* Table 5.6.

78. See, e.g., CAL. PROB. CODE §§ 6400-14 (West Supp. 1985); FLA. STAT. ANN. §§ 732.101 to 732.111 (West 1976 & Supp. 1985); MD. EST. & TRUSTS CODE ANN. §§ 3-101 to 3-110 (1974 & Supp. 1985); MASS. GEN. LAWS ANN. ch. 190, §§ 1-8

These statutes are the "will" that the states write for a person who does not write his own. One of the disadvantages of intestacy is that a person who does not make his own will risks having his estate distributed in proportions different from, or to persons different from, those he would select himself. The probate code of a particular state may make testacy advantageous in other ways as well. For example, testate estates may be subject to less restrictive administrative procedures if the testator so elects in his will. Table 4.2 presents a brief outline of the advantages of testacy in the study states at the time of data collection in 1976.

The remarkably high percentage of Texas decedents who died testate (Table 4.1) can be explained by the clear advantages that Texas granted to testate estates. In Texas, at the time of the study, a testator could elect "independent administration" for his estate.⁷⁹ The "independent administration" option was highly attractive: eighty-one percent of the estate administration proceedings in the Texas sample elected this procedure. Another incentive to have a will in Texas may have been that state's complex law of intestate succession.⁸⁰ In Texas, separate property and community property were subject to different rules of succession.⁸¹ Moreover, in the case of separate realty, a surviving spouse, where there also were surviving children, could take only a one-third interest for life in the realty.⁸² Testators may have wanted to avoid such an arrangement.

No other study state provided an advantage to testacy that was as significant as the Texas "independent administration" procedure. The relatively higher percentages of decedents who left estates subject to administration proceedings in California and Florida do not appear to be attributable to either special administration procedures that were available at the election of testators or to peculiar patterns of intestate succession that testators might have wanted to avoid. California, however, like Texas, is a community property state. One might speculate that the residents of the community property states had a heightened awareness regarding the succession of property at death.

If the conclusion that the availability of independent administration in Texas provided a strong incentive for testacy is correct, it might be expected that higher rates of testacy would be found in U.P.C. jurisdictions. Under the U.P.C., one advantage of testacy is that the testator has the option of electing unsupervised administration of his estate, which the court will defer to unless it finds that supervised administration is

(West 1958 & Supp. 1985); TEX. PROB. CODE ANN. §§ 37-47 (Vernon 1980 & Supp. 1985).

79. See *supra* note 36.

80. See generally TEX. PROB. CODE ANN. §§ 1-56, 178-414 (Vernon 1956 & Supp. 1975).

81. Compare TEX. PROB. CODE ANN. § 38 (Vernon 1956) (separate property) with *id.* § 45 (community property).

82. *Id.* § 38(b)1.

TABLE 4.2
Advantages of Testacy at Time Study Data Was Collected

California	Florida	Maryland	Massachusetts	Texas
<p>A testator may waive the requirement that the executor give a bond, unless the court, for good cause shown, requires one. §§ 541, 543.</p> <p>An executor may be a nonresident; an administrator may not. (The requirement that an administrator be a resident was eliminated by amendment in 1980.) §§ 405.1 to 405.6, 420.</p> <p>A testator may limit the powers of an executor otherwise available under § 591.6.</p> <p>[Effective July 1, 1975, a testator, in his will, may prevent administration of the estate under the Independent Administration of Estates Act §§ 591 to 591.7, § 591.1.]</p>	<p>A Testator may waive the requirement that the executor give a bond, unless it appears to the court that the executor is mismanaging, wasting, or directing the estate or will do so. §§ 732.61(1), 732.63.</p> <p>A testator can grant the executor power to sell or dispose of property of the estate. No court order is required to confirm such a sale. §§ 733.22, 733.25.</p> <p>A testator may exempt the executor from filing accounts, but the court may, upon the application of any interested party or upon its own motion, require the filing of accounts. § 733.50.</p>	<p>A testator may excuse the executor's giving a bond by express provisions of the will, but not with respect to payment of debts and inheritance tax. § 6-101(4).</p> <p>A testator may provide for greater compensation for the executor than that provided by statute. § 7-601(b).</p> <p>A testator may limit the exercise by his executor of any of the broad powers set forth in § 7-401.</p> <p>By expressly limiting a power granted by will to the executor named therein, a testator may prevent successor representatives from exercising such powers. § 6-202.</p>	<p>A Testator may waive the requirement that the executor give a bond. Ch. 205, § 4.</p> <p>A testator may nominate a person to represent unborn or unascertained persons, or request that such representation be disposed of with, for the purpose of receiving notice of application for allowance of the final account. Ch. 206, § 24.</p>	<p>A testator may direct that no bond be required of an executor or independent executor. §§ 195(a), 149.</p> <p>No court order is needed for a sale of property of the estate when the executor is so authorized by the will. § 332.</p> <p>A testator may forbid the representative to allow property of the estate to be held by a nominee. § 398A.</p> <p>A testator may provide for independent administration or direct that it not be employed. § 415.</p>

necessary for protection of persons interested in the estate.⁸³ Although unsupervised administration is also available to intestate estates,⁸⁴ a testator can increase the likelihood that the administration will be unsupervised merely by including such a direction in his will. The data gathered in this study do not permit assessment of the hypothesis that jurisdictions that have adopted the U.P.C. have higher testacy rates than jurisdictions that have not adopted it. At the time that sample selection of decedents was undertaken, in 1972, none of the study states had adopted the U.P.C.⁸⁵

One would expect that the more wealthy an individual, the more likely that individual is to make a will. Previous studies have demonstrated this relationship,⁸⁶ and this result was obtained in all of the study states (Tables 4.3 and 4.4). In California and Florida, the percentages of testate administrations ranged from forty-nine percent in the smallest estate category to well over eighty percent in the larger categories of estates (Table 4.3). In Maryland and Massachusetts, the pattern was similar except that only thirty percent of the smallest estates were subject to testate administration, as opposed to one hundred percent of the largest estates. In Texas, the differences between the smaller and larger estate categories were not as pronounced, owing to the relatively high percentage of testate estates overall. A clearly discernible relationship existed between testacy and size of estate in all study states (Table 4.4). In each of the five study states, the mean size of the probate estate in testate estates was almost three times larger than the mean size of the probate estate in intestate estates.

TABLE 4.3
Percentage Testate by Size of Probate Estate

	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
\$1 - 9,999	53	(256)	49	(246)	31	(681)	32	(570)	84	(256)
\$10-19,999	66	(161)	61	(101)	74	(163)	60	(212)	91	(251)
\$20-29,999	75	(135)	78	(61)	71	(79)	64	(124)	84	(174)
\$30-59,999	86	(179)	82	(69)	82	(142)	80	(128)	93	(223)
\$60-99,999	92	(114)	95	(41)	84	(58)	89	(48)	90	(114)
\$100-499,999	94	(148)	94	(54)	85	(140)	90	(55)	95	(157)
\$500,000+	98	(16)	83	(8)	100	(10)	100	(11)	96	(28)

83. UNIF. PROB. CODE § 3-502, 8 U.L.A. 293-94 (1983).

84. *Id.*

85. *See* UNIF. PROB. CODE, 8 U.L.A. 1 (1983). In 1974, however, Florida enacted a probate code that contained many provisions modelled on provisions in the U.P.C. *See* Act of May 31, 1974, ch. 74-106, 1974 Fla. Laws 213.

86. *See, e.g.,* M. SUSSMAN, J. CATES & D. SMITH, *THE FAMILY AND INHERITANCE* 173 (1970); Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RESEARCH J. 321, 336-38 (1978).

TABLE 4.4

Mean Dollar Value of Probate Estate by Testacy and Intestacy

	California mean (N)	Florida mean (N)	Maryland mean (N)	Massachusetts mean (N)	Texas mean (N)
Testate	66,946 (695)	66,964 (381)	52,881 (812)	83,799 (596)	86,050 (930)
Intestate	20,759 (361)	20,759 (198)	12,055 (695)	9,260 (568)	34,166 (108)

TABLE 4.5

Percentage Testate by Age of Decedent

	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
Under 20	0	(0)	0	(11)	0	(5)	0	(20)	0	(1)
20-29 Years	42	(7)	0	(8)	0	(32)	0	(17)	80	(4)
30-39 Years	20	(14)	0	(15)	6	(22)	13	(15)	79	(18)
40-49 Years	38	(41)	30	(30)	30	(127)	24	(61)	83	(57)
50-59 Years	43	(113)	53	(52)	47	(207)	30	(134)	90	(160)
60-69 Years	72	(181)	62	(148)	54	(281)	43	(268)	97	(306)
70-79 Years	72	(302)	74	(186)	61	(390)	54	(352)	98	(368)
80-89 Years	87	(325)	83	(128)	68	(239)	72	(294)	97	(255)
90+ Years	85	(71)	90	(14)	82	(51)	52	(64)	93	(45)

TABLE 4.6

Percentage Testate by Sex of Decedent

	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
Males	66	(524)	62	(322)	49	(866)	44	(630)	86	(873)
Females	78	(558)	69	(271)	60	(640)	55	(597)	88	(549)

The study also investigated the relationships between testacy and age (Table 4.5) and testacy and sex (Table 4.6) of the decedents. As expected, in all study states older decedents were more likely to be testate; however, some interstate differences appear. These differences were related to the extent to which testacy was prevalent in the state in general. In Florida, Maryland, and Massachusetts, very few young decedents died testate; however, in California the proportion was nearly one-third (Table 4.5). In Texas, over three-quarters of all decedents below thirty-nine years of age died testate. Only fifty-two percent of decedents over ninety years of age were testate in Massachusetts. Ninety-three percent of such decedents were testate in Texas.

Data concerning the relationship between decedents' sex and testacy reveal that females were more likely to be testate than were males (Table 4.6). It is interesting to speculate that this higher rate could be accounted for in part by the experience of widows with the administration of their husbands' intestate estates. The data, however, did not include sufficient information to permit differentiation among female decedents on the basis of their status immediately prior to death as widows, divorcees, or women who had never married. With regard to the relationship between decedents' sex and testacy, Texas presents a unique picture. In Texas, the difference between the percentages of male and female decedents who died testate was less pronounced than in the other study states.

The study also investigated the relationship between testacy and the different patterns of decedent survivorship. This relationship was found to be complex and not amenable to easy summarization (Table 4.7). In those cases where information was available, the survivorship pattern for decedents was categorized as: (1) spouse only; (2) spouse and minor children, or spouse and minor and adult children; (3) spouse and adult children; (4) spouse and one or both parents, and no children; (5) minor children and no spouse; (6) adult children and no spouse; (7) grandchildren and no spouse or children; (8) one or both parents and no spouse or children; and (9) siblings and/or issue of siblings and no spouse or children or parents. These categories are analogous to those established by intestate succession laws. The study examined the hypothesis that persons who had dependents would be more likely to make a will than those who did not. The two survivorship patterns that had seemed most likely to indicate dependency — "spouse and minor children" and "minor children" — however, did not show the expected higher than average rates of testacy. The "spouse and minor children" category consistently exhibits a relatively low rate of testacy when the rate for that category is compared to the rates for other categories in each of the study states. With the exception of Maryland, the same result was obtained for the "minor children" category. Of course, testators who had minor children were likely to be relatively younger than those who did not, and, as noted, the results of the study indicate that testacy was correlated highly with advanced age (Table 4.5).

TABLE 4.7

Percentage of Decedents Dying Testate by Survivorship Pattern

	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
Spouse Only	54	(29)	76	(76)	49	(64)	61	(27)	88	(160)
Spouse and Minor Children	59	(42)	34	(29)	54	(22)	45	(48)	84	(98)
Spouse and Adult Children	71	(128)	69	(143)	55	(365)	56	(184)	95	(498)
Spouse and Parent	0	(4)	0	(0)	49	(8)	17	(11)	100	(1)
Minor Children	28	(5)	9	(13)	57	(4)	47	(26)	85	(8)
Adult Children	86	(282)	70	(157)	65	(500)	65	(332)	90	(312)
Grandchildren	100	(10)	100	(6)	95	(18)	37	(4)	77	(7)
Parents Only	47	(13)	13	(27)	7	(35)	5	(36)	40	(5)
Siblings and Issue	76	(207)	67	(85)	48	(213)	61	(260)	90	(170)
Other Pattern ¹	65*	(292)	85*	(51)	73	(187)	54**	(104)	91	(67)

¹ "Other Pattern" means other known patterns, unknown patterns are excluded.

* Excludes escheat to the state.

** Voluntary - no petition estates - were excluded.

A third survivorship pattern, "parents only," also exhibited a consistently low rate of testacy. On the other hand, categories that exhibited consistently higher rates of testacy were "adult children" and "spouse and adult children." Once again, these results correlate with advanced age at time of death. Data collected on other survivorship patterns yielded mixed findings, with relatively high rates of testacy recorded in some states, and relatively low rates recorded in others.

Dependency does not appear to affect the relationship between survivorship pattern and testacy, perhaps because the survivorship patterns were confounded with other demographic variables such as age, sex, and wealth. The category "parents only," for example, encompassed mostly young decedents, but also could have included a number of older decedents who were without spouses, siblings, or children. The category "spouse and minor children" included decedents of great differences in age, but generally represented younger decedents. Similarly, as will be discussed in Section V, survivorship patterns could be related in various ways to the size of the decedent's estate.

In order to determine how current a decedent's estate plans were, the date of execution of the decedent's will was compared to the date of the decedent's death and the number of months by which the will preceded death was calculated for the testate estates in Florida, Massachusetts, and Texas. Lawyers frequently advise their clients to review and update their estate plans at periodic intervals in light of significant

changes in wealth, in family structure, or in the laws governing the estate administration process or death taxation. Table 4.8 presents this information as a function of estate size; Table 4.9 presents this information as a function of decedent age.

TABLE 4.8
Mean Time (in months) from Will Execution to Death
by Size of Probate Estate

Size of Probate Estate	Florida		Massachusetts		Texas	
	mean	(N)	mean	(N)	mean	(N)
\$ 1- 9,999	69	(117)	89	(163)	84	(135)
\$10- 19,999	71	(61)	63	(118)	84	(166)
\$20- 29,999	53	(47)	79	(78)	85	(100)
\$30- 59,999	55	(57)	81	(100)	97	(161)
\$60- 99,999	52	(38)	77	(43)	72	(72)
\$100-499,999	76	(50)	80	(49)	75	(97)
\$500,000+	14	(6)	68	(11)	60	(14)
All Estates	63	(382)	78	(579)	84	(745)

TABLE 4.9
Mean Time (in Months) from Will Execution to Death by Age
of Decedent at Death

Age (in years)	Florida		Massachusetts		Texas	
	mean	(N)	mean	(N)	mean	(N)
1-19	—	(0)	—	(0)	—	(0)
20-29	—	(0)	—	(0)	0.6	(3)
30-39	—	(0)	5	(1)	49	(10)
40-49	97	(9)	46	(15)	81	(29)
50-59	55	(27)	46	(36)	79	(90)
60-69	44	(92)	74	(108)	77	(184)
70-79	71	(136)	75	(182)	98	(218)
80-89	68	(106)	89	(203)	84	(152)
90+	70	(11)	93	(34)	79	(23)

On the average, testate decedents executed a will approximately five to seven years prior to their deaths. This time period did not vary substantially for decedents leaving estates of different sizes, with the exception of Florida decedents who left very large estates. Moreover, the five to seven year time period did not vary substantially among decedents of different ages.⁸⁷

87. With the major changes that have been made in federal estate tax laws in recent

V. SIZE OF ESTATES: PROBATE AND GROSS ESTATES

A. *Overview of Data Relative to Estate Size*

This article began with the observation that only a small fraction of all decedents leave estates that are subject to the estate administration process.⁸⁸ Analysis of the data, based on the variable of estate size, shows that most of the estates subject to administration are relatively small. Table 5.1 presents the mean probate estate size for each of the study states respectively and the mean gross estate size in California, Maryland, and Texas, the three study states in which gross estate information was available. The mean probate estate size was less than \$100,000 in all of the study states. The mean gross estate size was also less than \$100,000 in the three states in which gross estate size information was available. Even after accounting for the extent of inflation since 1972, the year in which the estates under study were valued, these figures are relatively low.

TABLE 5.1
Mean Dollar Value of Probate Estate and Gross Estate

	California		Florida		Maryland		Massachusetts		Texas	
	Mean	(N)	Mean	(N)	Mean	(N)	Mean	(N)	Mean	(N)
Probate Estate	74,046	(1008)	51,192	(579)	38,361	(1615)	47,433	(1164)	79,985*	(1404)
Gross Estate	90,670	(1056)			45,650	(1615)			88,017**	(1404)

* Includes all of the separate property and half of the community property for each estate.

** Includes exempt insurance.

The mean size figures, however, do not demonstrate adequately the extent to which estates that underwent administration were of relatively small size. In Maryland and Massachusetts, at least one-half of the estates subject to estate administration were less than \$10,000 in probate estate size (Table 5.2). In all study states, more than one-half of the estates were less than \$30,000 in size (Table 5.2). This trend was evident also in data gathered on gross estate size. When it is recalled that only twenty to thirty-four percent of all decedents left any estate requiring administration,⁸⁹ it is clear that relatively few decedents leave a substantial estate requiring judicial administration.

years, particularly the Tax Reform Act of 1976 and the Economic Recovery Tax Act of 1981, it is likely that many testators of taxable estates have had their estate plans revised and reexecuted on a more frequent basis.

88. See *supra* Table 2.1.

89. *Id.*

TABLE 5.2
Percentage of Estates in Probate Estate Size Categories

Size of Probate Estate	California %	Florida %	Maryland %	Massachusetts %	Texas ¹ %
\$ 1 - 9,999	25	42	53	50	22
\$ 10 - 19,999	16	17	13	18	20
\$ 20 - 29,999	13	11	6	18	14
\$ 30 - 59,999	18	12	11	11	18
\$ 60 - 99,999	11	7	5	4	10
\$100 -499,999	15	9	11	5	13
\$500,000+	2	1	1	1	2
(N)	(1008)	(579)	(1520)	(1510)	(1217)
Number of estates having no size information ²	74	14	95	105	223

¹ Includes all separate property and half of the community property for each estate.

² Estates for which no inventory was filed.

In 1972, a federal estate tax return was required to be filed for all decedents who left an estate of at least \$60,000.⁹⁰ The probate study data revealed that an estate tax return was required to be filed for only seven percent of all decedents in California, five percent of all decedents in Maryland, and seven percent of all decedents in Texas.

The overwhelming prevalence of small estates has significant implications for the estate administration process. If most of the estates subject to estate administration are relatively small and free of dispute,⁹¹ the judicial process available to accomplish the transfer of these estates should be able to accomplish transfer in a relatively simple, inexpensive, and prompt manner. On the other hand, optional procedures to deal with larger, more complex estates and estates in which disposition is subject to dispute should be available.

This is the flexible approach to estate administration, which is the fundamental premise underlying the U.P.C. As stated by the National Conference of Commissioners on Uniform State Laws in Code's Comment to Article 3 of the U.P.C. which sets forth the Code's system of administration of decedents' estates:

The provisions of this Article describe the Flexible System of Administration of Decedents' Estates. Designed to be applica-

90. I.R.C. § 6018 (1970). The minimum estate size that requires the filing of a federal estate tax return has been amended several times since 1972. Currently, the minimum estate size requiring the filing of a return is \$600,000. I.R.C. § 6018 (West Supp. 1985).

91. The relative infrequency of disputes in the probate process will be the subject of a future article in this study.

ble to both intestate and testate estates and to provide persons interested in decedents' estates with as little or as much by way of procedural and adjudicative safeguards as may be suitable under varying circumstances, this system is the heart of the Uniform Probate Code.

. . . .

Overall, the system accepts the premise that the Court's role in regard to probate and administration, and its relationship to personal representatives who derive their power from public appointment, is wholly passive until some interested person invokes its power to secure resolution of a matter. The state, through the Court, should provide remedies which are suitable and efficient to protect any and all rights regarding succession, but should refrain from intruding into family affairs unless relief is requested, and limit its relief to that sought.⁹²

The probate study data provide support for such a system of administration, although such a system may not substantially lower attorneys fees for estate administration because of the relatively high percentage of attorney time unrelated to the presence or absence of court procedures.⁹³

TABLE 5.3
Percentage of Estates in Gross Estate Size Categories

Size of Gross Estate	California %	Maryland %	Texas ¹ %
\$ 1 - 9,999	20	51	20
\$ 10 - 19,999	12	13	18
\$ 20 - 29,999	13	6	14
\$ 30 - 59,999	16	11	18
\$ 60 - 99,999	12	5	12
\$100 - 499,999	23	13	15
\$500,000+	2	1	3
(N)	(1017)	(1442)	(1217)
Number of estates having no size information ²	65	173	223

¹ Includes all separate property and half of the community property for each estate.

² Estates for which no inventory was filed.

92. UNIF. PROB. CODE General Comment, art. III, 8 U.L.A. 218, 220 (1983).

93. See Stein & Fierstein, *The Role of the Attorney in Estate Administration*, 68 MINN. L. REV. 1107, 1146-47 (1984); Table 6.1 and accompanying text.

B. Variables Affecting Estate Size

1. Age

This study also attempted to discern whether there was a relationship between mean probate and mean gross estate size and the age and sex of decedents. As was expected, both mean probate and gross estate size increased with the age of the decedent (Table 5.4 (mean probate) and Table 5.6 (mean gross)). This pattern generally is visible in the data collected for each of the study states. As people grow older they are more likely to accumulate wealth. In the very top age brackets, however, a reduction in the average estate size was expected, as it was predicted that retirement from active employment would result in the consumption of persons' estates for the purposes of retirement living and, perhaps, for medical expenses. Gifts in contemplation of death also could have reduced the estates of elderly decedents.

TABLE 5.4
Mean Probate Estate Size by Age of Decedent

	California	Florida	Maryland	Massachusetts	Texas ¹
All Estates	\$69,979	\$51,129	\$31,793	\$47,432	\$82,894
(N)	(1031)	(569)	(1454)	(1154)	(953)
20-29 Years	\$6,480	\$2,534	\$3,474	\$1,343	\$2,193
(N)	(7)	(7)	(33)	(12)	(3)
30-39 Years	\$40,008	\$6,238	\$3,937	\$7,275	\$45,956
(N)	(14)	(15)	(26)	(12)	(15)
40-49 Years	\$85,464	\$23,343	\$11,575	\$19,203	\$38,652
(N)	(36)	(28)	(133)	(52)	(51)
50-59 Years	\$55,750	\$66,223	\$15,545	\$11,538	\$91,021
(N)	(111)	(51)	(224)	(125)	(141)
60-69 Years	\$66,451	\$48,689	\$27,689	\$21,325	\$83,492
(N)	(174)	(146)	(304)	(258)	(170)
70-79 Years	\$69,272	\$54,742	\$30,367	\$91,483	\$103,743
(N)	(296)	(182)	(416)	(342)	(313)
80-89 Years	\$83,403	\$63,491	\$45,063	\$38,229	\$72,116
(N)	(322)	(127)	(264)	(290)	(220)
90+ Years	\$50,382	\$19,066	\$37,598	\$71,685	\$220,841
(N)	(71)	(13)	(54)	(63)	(40)

¹ Includes all of the separate property and half of the community property for each estate.

TABLE 5.5
Mean Probate Estate Dollar Value by Sex

	California		Florida		Maryland		Massachusetts		Texas ¹	
	mean	(N)	mean	(N)	mean	(N)	mean	(N)	mean	(N)
Males	64,077	(512)	65,393	(322)	27,815	(935)	57,309	(596)	82,542	(709)
Females	75,591	(543)	31,622	(271)	37,357	(678)	57,121	(568)	85,318	(467)

¹ Includes all of the separate property and one half of the community property for each estate.

TABLE 5.6
Mean Size of Gross Estate by Age Categories

	California	Maryland	Texas ¹
All Age Groups	\$90,671	\$46,650	\$91,197
(N)	(1031)	(1578)	(1052)
20-29 Years	\$12,464	\$11,032	\$14,693
(N)	(7)	(26)	(3)
30-39 Years	\$54,325	\$9,130	\$65,296
(N)	(14)	(133)	(15)
40-49 Years	\$118,453	\$21,481	\$54,151
(N)	(36)	(224)	(51)
50-59 Years	\$84,574	\$33,051	\$99,688
(N)	(111)	(304)	(141)
60-69 Years	\$91,577	\$37,950	\$92,858
(N)	(174)	(416)	(269)
70-79 Years	\$87,084	\$40,840	\$108,794
(N)	(296)	(264)	(313)
80-89 Years	\$97,261	\$63,863	\$77,061
(N)	(322)	(54)	(220)
90+ Years	\$83,931	\$54,638	\$267,492
(N)	(71)	(157)	(40)

¹ Includes exempt insurance.

The pattern for Maryland approximates this hypothetical distribution; both mean probate estate size and mean gross estate size increase relatively uniformly with age, reaching a peak between ages eighty to eighty-nine, and then decrease (Tables 5.4 and 5.6). In California, the distributions of data on both mean probate estate size and mean gross estate size, and in Florida, the distribution of data on mean probate estate size alone, show two peaks in mean estate size. In California, one peak occurred between ages forty and forty-nine and another between ages eighty and eighty-nine. In Florida, the initial peak appeared between ages fifty and fifty-nine and the second between ages eighty and

eighty-nine. In Massachusetts and Texas, the relationship between mean estate size and age of decedents seems idiosyncratic, although a general increase in estate size as the age of the decedent increased nevertheless is apparent (Table 5.4).

TABLE 5.7
Mean Size of Gross Estate by Sex

	California	Maryland	Texas ¹
Male (N)	\$88,388 (512)	\$43,933 (935)	\$90,438 (709)
Female (N)	\$92,885 (543)	\$48,126 (678)	\$94,407 (467)

¹ Includes exempt insurance.

2. Sex

The data yielded no consistent relationship between the size of the probate or gross estate and the sex of the decedent (Table 5.5 (mean probate) and Table 5.7 (mean gross)). In California, Maryland, and Texas, female decedents, on the average, left larger estates than did male decedents. In Florida and Massachusetts, male decedents left larger estates on the average (Table 5.5). The lack of any consistent relationship between estate size and sex of the decedent is equally apparent from the data presented in Tables 5.8 and 5.9, where the mean size of the probate and gross estates is indicated by sex of decedent, while controlling for age of the decedent. In each of the study states it appears that at some ages, male decedents left larger estates on the average than did females, while at other ages, female decedents left larger estates on the average than did males. Moreover, this relationship exhibits no discernible pattern. Neither older male decedents nor older female decedents typically left the larger estates. A reasonable hypothesis might be that estates left by females are larger because females generally have longer life spans than do males. Estates of widows would be combined with those of their husbands for a greater total estate. On the other hand, the tendency for women to live longer could mean that they decrease their estates in order to fund retirement, living, and medical expenses, thus making estates left by females smaller than those of their male counterparts. The data accumulated in the study, however, did not confirm any of these hypotheses (Tables 5.5, 5.7, 5.8, and 5.9).

C. *Percentage of Estate in Probate Assets*

The relationship between the size of the decedent's gross estate and the percentage of the estate in probate assets was examined to determine whether decedents with larger estates made a greater effort to avoid pro-

TABLE 5.8
Mean Value of Probate Estate by Age and Sex Categories

	All Ages	1-19	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
California										
Male (N)	\$64,077 (512)	--	\$7,329 (6)	\$36,874 (11)	\$111,655 (21)	\$47,043 (73)	\$88,457 (94)	\$50,452 (61)	\$77,120 (122)	\$49,765 (31)
Female (N)	\$75,591 (543)	--	\$2,557 (1)	\$48,962 (4)	\$48,922 (15)	\$72,331 (38)	\$40,759 (80)	\$85,461 (159)	\$87,383 (200)	\$50,852 (40)
Florida										
Male (N)	\$65,393 (322)	\$2,047 (5)	\$2,262 (8)	\$9,959 (8)	\$18,580 (16)	\$85,646 (35)	\$54,958 (97)	\$69,338 (97)	\$107,632 (52)	\$11,125 (2)
Female (N)	\$31,622 (271)	\$13,514 (6)	--	\$1,327 (6)	\$26,181 (13)	\$20,763 (17)	\$34,904 (51)	\$36,466 (89)	\$32,867 (76)	\$19,999 (11)
Maryland										
Male (N)	\$27,815 (935)	\$319 (2)	\$3,386 (29)	\$5,005 (17)	\$10,189 (79)	\$13,755 (156)	\$22,386 (196)	\$30,775 (225)	\$49,858 (106)	\$49,906 (18)
Female (N)	\$37,357 (678)	\$581 (3)	\$4,068 (4)	\$1,681 (8)	\$14,072 (47)	\$19,681 (68)	\$37,908 (106)	\$29,887 (191)	\$41,833 (158)	\$31,763 (37)
Massachusetts										
Male (N)	\$57,309 (596)	\$2,345 (4)	\$1,534 (10)	\$1,605 (7)	\$21,598 (44)	\$8,064 (91)	\$15,143 (159)	\$151,030 (173)	\$37,514 (89)	\$23,218 (18)
Female (N)	\$37,121 (568)	\$8,576 (3)	\$395 (2)	\$15,385 (5)	\$6,503 (8)	\$20,868 (34)	\$31,331 (99)	30,862 (170)	\$38,546 (201)	\$90,387 (45)
Texas¹										
Male (N)	\$82,542 (709)	--	\$2,193 (3)	\$52,308 (11)	\$34,183 (40)	\$80,218 (92)	\$70,042 (178)	\$124,090 (176)	\$82,088 (110)	\$263,694 (15)
Female (N)	\$85,318 (467)	--	--	\$27,863 (4)	\$55,769 (11)	\$111,307 (49)	\$111,099 (91)	\$77,905 (136)	\$62,165 (110)	\$193,609 (24)

¹ Includes all of the separate property and one half of the community property for each estate.

TABLE 5.9
Mean Value of Gross Estate by Age and Sex Categories

	All Ages	1-19	20-29	30-39	40-49	50-59	60-69	70-79	80-89	90+
California										
Male (N)	\$88,388 (512)	--	\$14,200 (6)	\$55,511 (11)	\$156,134 (21)	\$80,173 (73)	\$121,799 (94)	\$66,666 (61)	\$89,656 (122)	\$96,988 (31)
Female (N)	\$92,885 (543)	--	\$4,432 (1)	\$50,934 (4)	\$65,814 (15)	\$92,955 (38)	\$56,294 (80)	\$104,646 (159)	\$102,077 (200)	\$73,964 (40)
Maryland										
Male (N)	\$439,924 (935)	\$483 (2)	\$12,067 (29)	\$12,658 (17)	\$25,048 (79)	\$36,062 (156)	\$32,872 (196)	\$43,269 (225)	\$72,053 (106)	\$58,311 (18)
Female (N)	\$48,125 (678)	\$581 (3)	\$4,068 (4)	\$1,681 (8)	\$15,055 (47)	\$26,090 (68)	\$45,307 (106)	\$37,983 (191)	\$58,347 (158)	\$52,896 (37)
Texas ¹										
Male (N)	\$90,438 (709)	--	\$14,693 (3)	\$65,207 (11)	\$51,761 (40)	\$91,430 (92)	\$75,957 (177)	\$132,089 (176)	\$88,588 (110)	\$265,752 (15)
Female (N)	\$94,407 (467)	--	--	\$65,551 (4)	\$63,303 (11)	\$115,196 (49)	\$127,112 (91)	\$79,178 (136)	\$65,558 (110)	\$268,597 (24)

¹ Includes exempt insurance.

bate. If so, one would expect that the larger the estate, the lower the percentage of the estate in probate assets. The relationship between the size of decedent's gross estate and the percentage of the estate in probate assets differed for all three states for which information was available, and no consistent pattern emerged (Table 5.10).

TABLE 5.10
Percentage of Estate in Probate Assets by Size of Gross Estate

Size of Estate	California %	Maryland %	Texas %
\$ 1- 9,999 (N)	95 (204)	80 (732)	98 (278)
\$ 10-19,999 (N)	89 (123)	76 (190)	95 (253)
\$ 20-29,999 (N)	84 (137)	75 (93)	95 (197)
\$ 30-59,999 (N)	85 (168)	83 (152)	88 (262)
\$ 60-99,999 (N)	71 (126)	69 (70)	90 (167)
\$100-499,999 (N)	68 (238)	76 (190)	87 (209)
\$500,000+ (N)	91 (22)	15 (53)	91 (38)

California's pattern is most consistent with the proposition that the largest estates are more likely to include property in nonprobate form. In California, with the exception of only the very largest estates, as the size of the gross estate increased, the mean percentage of the gross estate in probate assets decreased. In Maryland, the mean percentage of the gross estate in probate assets fluctuated among the various estate size categories; however, among the largest estates there was a dramatic decrease in the mean percentage of estates in probate assets. In Texas, the mean percentage of gross estates in probate assets decreased as the size of the gross estate increased, but a plateau of approximately ninety percent of the estate represented by probate assets was reached relatively early in gross estates of approximately \$60,000. There is some evidence of probate avoidance in the large estate categories (Table 5.10); however, except in the very largest estates in Maryland, no more than thirty-two percent of the gross estate passed outside the probate administration system.

VI. COMPOSITION OF THE DECEDENT'S ESTATE

This section considers the kind of assets that made up the probate and gross estates of decedents in the study and the extent to which decedents' estates consisted of real estate, personality, and corporate stock.

The section also examines data concerning the principal types of nonprobate assets contained in decedents' estates. Finally, whether the composition of decedents' estates varied with the size of the estates is examined.

A. *Real and Personal Property*

Tables 6.1 and 6.2 present, by estate size, complementary information regarding the proportions of the probate estate that consisted of real property and personal property. Tables 6.3 and 6.4 present, also by estate size, complementary information regarding mean values of real and personal property. The data concerning the proportion of probate estate consisting of real property reveal a pattern that generally conforms to that of a typical bell curve: The proportion of the probate estate in real property increased with the size of the estate, generally reaching a peak in probate estates of \$20,000 to \$29,999, and then decreased in the larger estate size categories. This pattern appeared consistently in each of the study states, except Texas where the proportion of probate estate in real property was highest in the lower estate size categories (Table 6.1). The relatively high proportion of the probate estate represented by real property in Texas estates is also noteworthy.

TABLE 6.1
Proportion of Probate Estate Consisting of Realty by Size
of Probate Estate

Size of Estate	California		Florida		Maryland		Massachusetts		Texas ¹	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
All Estates	33	(1008)	28	(572)	17	(1615)	26	(1173)	46	(1189)
\$ 1- 9,999	19	(256)	22	(243)	8	(802)	8	(574)	60	(237)
\$ 10- 19,999	45	(159)	47	(98)	31	(198)	51	(215)	51	(256)
\$ 20- 29,999	47	(135)	56	(60)	40	(95)	52	(125)	46	(174)
\$ 30- 59,999	35	(179)	25	(69)	28	(177)	47	(130)	37	(233)
\$ 60- 99,999	29	(113)	15	(38)	25	(71)	24	(49)	42	(114)
\$100-499,999	32	(149)	10	(53)	20	(170)	20	(56)	34	(157)
\$500,000+	28	(17)	8	(8)	28	(12)	9	(11)	25	(23)

¹ Includes all of the separate property and half of the community property for each estate.

TABLE 6.2

Percentage of Probate Estate Consisting of Personality by Size of Probate Estate

Size of Estate	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
All Estates	67	(1008)	71	(572)	83	(1615)	73	(1173)	54	(1189)
\$ 1- 9,999	81	(256)	78	(243)	98	(802)	92	(574)	40	(256)
\$ 10- 19,999	55	(159)	53	(98)	69	(198)	49	(215)	49	(237)
\$ 20- 29,999	53	(135)	44	(60)	60	(75)	48	(125)	54	(174)
\$ 30- 59,999	65	(179)	75	(69)	72	(177)	53	(130)	63	(223)
\$ 60- 99,999	71	(113)	85	(38)	75	(29)	76	(49)	58	(114)
\$100-499,999	68	(149)	90	(53)	80	(170)	80	(56)	66	(157)
\$500,000+	72	(17)	92	(8)	72	(12)	92	(11)	75	(28)

TABLE 6.3

Mean Value of Real Property by Size of Probate Estate

Size of Estate	California	Florida	Maryland	Massachusetts	Texas ¹
All Estates	\$23,734	\$7,973	\$8,746	\$8,172	\$31,517
(N)	(1008)	(581)	(1615)	(1213)	(1190)
\$ 1- 9,999	\$1,273	\$1,402	\$426	\$449	\$3,793
(N)	(256)	(239)	(802)	(574)	(256)
\$ 10- 19,999	\$7,070	\$7,019	\$4,470	\$7,425	\$7,609
(N)	(159)	(96)	(198)	(215)	(237)
\$ 20- 29,999	\$11,520	\$12,939	\$9,359	\$12,726	\$11,151
(N)	(135)	(59)	(95)	(125)	(174)
\$ 30- 59,999	\$15,211	\$10,442	\$11,924	\$18,159	\$16,128
(N)	(179)	(69)	(177)	(130)	(223)
\$ 60- 99,999	\$22,465	\$10,387	\$18,679	\$18,793	\$32,125
(N)	(113)	(40)	(71)	(49)	(114)
\$100-499,999	\$65,577	\$20,286	\$36,439	\$29,771	\$70,588
(N)	(149)	(53)	(170)	(56)	(157)
\$500,000+	\$356,615	\$73,157	\$210,639	\$135,346	\$508,892
(N)	(17)	(8)	(12)	(11)	(28)

¹ Includes all of the separate property and half of the community property for each estate.

TABLE 6.4
Mean Value of Personal Property by Size of Probate Estate*

Size of Estate	California	Florida	Massachusetts
All Estates	\$50,312	\$42,848	\$39,713
(N)	(1008)	(576)	(1176)
\$ 1- 9,999	\$3,565	\$2,696	\$2,260
(N)	(256)	(244)	(574)
\$ 10- 19,999	\$7,717	\$7,505	\$7,021
(N)	(159)	(98)	(215)
\$ 20- 29,999	\$13,180	\$10,846	\$11,934
(N)	(135)	(60)	(125)
\$ 30- 59,999	\$27,181	\$32,779	\$22,097
(N)	(179)	(69)	(130)
\$ 60- 99,999	\$58,645	\$64,532	\$60,184
(N)	(113)	(38)	(49)
\$100-499,999	\$143,564	\$163,137	\$130,084
(N)	(149)	(53)	(56)
\$500,000+	\$842,686	\$1,172,460	\$2,663,248
(N)	(17)	(8)	(12)

* This information was unavailable in Maryland and Texas.

The most common item of real property present in the estates of all size categories was the decedent's residence. The real estate represented by the decedent's residence increased as a percentage of the probate estate throughout the smaller size categories, as the likelihood that the decedent owned his home increased with estate size. As the estate became quite large in size, however, the decedent's residence — although often owned by decedent — accounted for a smaller percentage of all of decedent's property.

In all sizes of probate estates, on the average, a significant proportion of the probate estate consisted of real property (Table 6.1). Hence, it is clear that real property title clearance remains an important function of the estate administration process. The system of estate administration adopted by a particular state, although operating in a prompt and inexpensive manner, must produce a secure title to the decedent's real estate in the hands of the successors that can be relied upon in conveyances to third parties.

This study was designed to assess the extent to which the estate administration process functions to clear title to real property. In Texas, an astonishing eighty-four percent of estates had some amount of probate real property subject to estate administration (Table 6.5). At the other extreme, only twenty-nine percent of Maryland estates included probate real property. In all of the study states, the larger the probate estate, the more likely the estate was to contain some probate real property.

TABLE 6.5

Percentage of Estates that Included Probate Real Property by Size of Probate Estate

Size of Estate	California		Florida		Maryland		Massachusetts		Texas ¹	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
All Estates	51	(1008)	44	(582)	29	(1520)	37	(1160)	84	(1190)
\$ 1- 9,999	23	(256)	25	(247)	11	(802)	10	(574)	81	(256)
\$ 10- 19,999	54	(159)	54	(102)	45	(198)	60	(215)	84	(237)
\$ 20- 29,999	55	(135)	82	(60)	58	(196)	67	(125)	82	(174)
\$ 30- 59,999	57	(179)	52	(70)	47	(172)	70	(130)	81	(233)
\$ 60- 99,999	57	(113)	49	(40)	49	(71)	49	(49)	89	(114)
\$100-499,999	76	(149)	54	(54)	55	(170)	61	(56)	90	(157)
\$500,000+	95	(17)	72	(8)	58	(12)	80	(11)	85	(28)

Percentage of Estates that Contained No Size Information

California	Florida	Maryland	Massachusetts	Texas ¹
8%	2%	6%	6%	17%

¹ Includes all of the separate property and half of the community property for each estate.

Probate real estate was less prevalent in Florida, Maryland, and Massachusetts than in California and Texas.⁹⁴ This finding may be attributable to the greater use of the nonprobate arrangement of joint tenancy between spouses in the ownership of family residences in the common law states of Florida, Maryland, and Massachusetts than in the community property states of California and Texas. In California and Texas, a surviving spouse owns (and does not inherit) half of the community property. The other half is subject to free testamentary disposition by the deceased, and succession to the deceased's half of the community property is incorporated into the estate administration process.⁹⁵ In common law states such as Florida, Maryland, and Massachusetts, an individual who wants his spouse to succeed automatically to ownership of the family residence will hold the property in joint tenancy with right of survivorship. Joint tenancy property is not subject to estate administration. Notwithstanding the probable greater use of joint tenancy in common law states as a form of holding title to real estate, it is clear that

94. See *supra* Table 6.5.

95. See CAL. PROB. CODE § 201.5 (West Supp. 1975) (repealed and reenacted as CAL. PROB. CODE §§ 66, 6101 (West Supp. 1985)); TEX. PROB. CODE ANN. § 45 (Vernon 1956). Subsequent to the time of the study, CAL. PROB. CODE § 202, which required administration of community property passing to a surviving spouse, was repealed. The California Probate Code currently provides that no administration of the community property or separate property passing to a surviving spouse is required. CAL. PROB. CODE § 649.1 (West Supp. 1985).

the estate administration process must be designed to efficiently document the succession of land titles of the property that is subject to estate administration.⁹⁶

B. Corporate Stock

Corporate stock is another relatively common type of asset found in probate estates. Data were collected on the relationship between probate estate size and the proportion and value of corporate stocks in the probate estate. As probate estate size increased, the proportion of the probate estate that consisted of corporate stock (Table 6.6) and the mean value of corporate stock in the probate estate (Table 6.7) also increased. It appears that all categories of Texas probate estates also had unusually high proportions of assets in corporate stock (Table 6.6).

TABLE 6.6
Percentage of Probate Estate that Consisted of Corporate Stocks by
Size of Probate Estate

Size of Estate	California		Florida		Maryland		Massachusetts		Texas	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
All Estates	15	(1008)	16	(541)	12	(1615)	13	(960)	42	(1189)
\$ 1- 9,999	7	(256)	7	(225)	6	(802)	10	(460)	25	(256)
\$ 10- 19,999	6	(159)	10	(95)	10	(198)	11	(181)	35	(237)
\$ 20- 29,999	9	(135)	10	(60)	11	(95)	6	(107)	42	(174)
\$ 30- 59,999	16	(179)	17	(62)	21	(177)	14	(114)	54	(223)
\$ 60- 99,999	29	(113)	52	(38)	22	(71)	25	(37)	50	(114)
\$100-499,999	31	(149)	44	(52)	38	(170)	45	(50)	57	(157)
\$500,000+	38	(17)	54	(8)	55	(12)	64	(11)	66	(28)

96. See *supra* note 27. Another possible explanation for the greater frequency of estate administration in California and Texas is the presence of substantial oil and mineral interests which, for title purposes, are treated as real estate and require an administration to clear title.

TABLE 6.7
Mean Value of Corporate Stock by Size of Probate Estate

Size of Estate	California	Florida	Maryland	Massachusetts
All Estates (N)	\$21,594 (1008)	\$21,456 (550)	\$13,039 (1615)	\$26,337 (1220)
\$ 1 - 9,999 (N)	\$512 (256)	\$222 (227)	\$313 (802)	\$286 (571)
\$ 10 - 19,999 (N)	\$744 (159)	\$1,416 (100)	\$1,473 (197)	\$1,279 (215)
\$ 20 - 29,999 (N)	\$2,143 (135)	\$2,552 (60)	\$2,809 (96)	\$1,219 (125)
\$ 30 - 59,999 (N)	\$6,870 (179)	\$7,303 (62)	\$9,398 (172)	\$5,361 (130)
\$ 60 - 99,999 (N)	\$23,947 (113)	\$39,723 (38)	\$16,609 (71)	\$15,409 (49)
\$100 - 499,999 (N)	\$65,456 (149)	\$72,350 (52)	\$73,927 (170)	\$73,181 (53)
\$500,000+ (N)	\$456,485 (17)	\$726,712 (8)	\$422,854 (12)	\$2,386,352 (11)

C. *Miscellaneous Assets*

1. *Lifetime Transfers*

The study also assessed the extent to which certain lifetime transfers, life insurance proceeds, and joint tenancy property were included in the gross estates of decedents in those states in which gross estate size information was available: California, Maryland, and Texas. Property that was transferred during the decedent's lifetime for less than valuable consideration conceptually can be considered part of a decedent's estate, because lifetime gifts are a clear alternative to transfers of property by will or intestate succession at death. The federal estate tax law at the time of the study included in the gross estate those gifts made "in contemplation of death" within three years before death.⁹⁷ In 1976 the federal estate tax law was amended to tax most gifts made within three years of death, regardless of the motive for the gift.⁹⁸ Following additional changes in 1981, current estate tax laws subject most gifts made within three years of death, which exceed the annual exclusion, to the gift tax; however, such gifts are not included in the gross estate for estate tax purposes.⁹⁹ Other lifetime transfers included in a decedent's gross estate are those made with certain interests retained by the donor decedent.¹⁰⁰

97. I.R.C. § 2035 (1970).

98. See Tax Reform Act of 1976, § 2001(a)(5), 90 Stat. 1848 (codified at 26 U.S.C. § 2035 (1976)).

99. I.R.C. §§ 2035, 2501 (1982).

100. *Id.* §§ 2036-38.

TABLE 6.8
Percentage of Gross Estate that Consisted of Lifetime Transferred
Property by Size of Gross Estate

Size of Estate	California		Maryland		Texas	
	%	(N)	%	(N)	%	(N)
All Estates	2	(1016)	0	(1615)	1	(1189)
\$ 1 - 9,999	0	(204)	0	(733)	0	(230)
\$ 10 - 19,999	17	(122)	0.1	(204)	0	(212)
\$ 20 - 29,999	7	(137)	0	(100)	0	(170)
\$ 30 - 59,999	5	(168)	0	(178)	0	(229)
\$ 60 - 99,999	12	(125)	0.3	(78)	1	(138)
\$100 - 499,999	10	(239)	0.1	(223)	2	(178)
\$500,000+	1	(22)	0.3	(18)	5	(33)

In 1972, federal and state death tax laws limited the amount of information that was available on lifetime property transfers in California, Maryland, and Texas. The proportion of gross estate acquired by lifetime transfers represented a *de minimis* fraction of the gross estate in Maryland and in all but the very largest estates in Texas (Table 6.8). In California, in certain size categories of estates, the average proportion of the gross estate consisting of lifetime transfers was surprisingly high: seventeen percent in gross estates of between \$10,000 and \$19,999, and twelve percent in estates in gross estates of between \$60,000 and \$99,999. Among all California estates, however, only two percent of the gross estate consisted of taxable lifetime property transfers.

2. Life Insurance Proceeds

Life insurance proceeds are included in the gross estate for federal estate tax purposes if the policy is made payable to the decedent's estate or if the decedent had incidence of ownership in the policy at the time of his death.¹⁰¹ Therefore, not all of the insurance coverage on the decedent's life will be included in the gross estate; however, most insurance proceeds will be included by the two criteria identified above. Although life insurance proceeds were present in most estates in all size categories (Table 6.9), such proceeds generally represented a relatively small percentage of the total gross estate.

3. Joint Tenancy Property

The prevalence of joint tenancy property in gross estates (Table 6.10) was greater than that of property acquired by lifetime transfer (Table 6.8) or life insurance proceeds (Table 6.9), except for gross estates contained in the Texas sample, where joint estate property was almost

101. I.R.C. § 2042 (1982).

entirely absent. It is possible that the community property system in Texas discouraged the use of joint tenancy ownership arrangements. The finding that joint tenancy property was quite prevalent in California, which is also a community property state, tends to discredit this possibility. In fact, joint tenancy property was more prevalent in California than in Maryland, a common law state, although joint tenancy property was used extensively in Maryland as well.

TABLE 6.9
Percentage of Gross Estate that Consisted of Life Insurance by Size of Gross Estate

Size of Estate	California		Texas ¹	
	%	(N)	%	(N)
All Estates	1.2	(1004)	6	(1189)
\$ 1 - 9,999	1.9	(200)	1	(230)
\$ 10 - 19,999	0.3	(122)	5	(212)
\$ 20 - 29,999	2.8	(137)	4	(170)
\$ 30 - 59,999	0.2	(165)	11	(229)
\$ 60 - 99,999	0.4	(125)	8	(138)
\$100 - 499,999	1.4	(233)	8	(178)
\$500,000+	0.1	(22)	1	(33)

¹ Includes both exempt and nonexempt insurance.

TABLE 6.10
Percentage of Gross Estate that Consisted of Joint Tenancy Property by Size of Gross Estate

Size of Estate	California		Maryland		Texas	
	%	(N)	%	(N)	%	(N)
All Estates	13	(1016)	7	(1615)	1	(1189)
\$ 1 - 9,999	3	(204)	4	(733)	0	(230)
\$ 10 - 19,999	6	(122)	13	(204)	0	(212)
\$ 20 - 29,999	10	(137)	14	(100)	1	(170)
\$ 30 - 59,999	14	(168)	12	(178)	0	(229)
\$ 60 - 99,999	25	(125)	14	(78)	0	(138)
\$100 - 499,999	23	(239)	4	(233)	1	(178)
\$500,000+	5	(22)	4	(18)	3	(33)

In both California and Maryland, the proportion of the gross estate consisting of joint tenancy property varied consistently with the overall size of the gross estate. In each state, the proportion of the gross estate consisting of joint tenancy property was the least in the smallest and largest estate size categories. In California, however, estates between

\$100,000 and \$400,000 in gross estate size also had a high percentage of the gross estate in joint tenancy property.

VII. CONCLUDING REMARKS

This article presents information about decedents and the nature and size of their estates in order to provide a data base to support recommended modifications in the existing systems of probate administration. The collection, analysis, and presentation of data has been undertaken in an objective manner so that the data can be relied upon as an accurate source of information by all advocates.

The estate administration process in the United States is not used by the survivors of most decedents. Only a minority of decedents leave property of a kind and amount that requires the judicial involvement of the estate administration process, a finding that suggests that a significant amount of property passes outside of the legal process designed to facilitate wealth transfer at death. In some cases, this is because the estate of the decedent is so small or liquid that it easily can be transferred informally. In other cases, this is due to an intentional effort to escape the probate administration process through various kinds of "probate avoidance" arrangements.¹⁰² At a minimum, the system provided by law to facilitate the transfer of wealth at death should not be viewed as an obstacle to be avoided, thereby encouraging property owners to make plans to bypass the process.

It should not be inferred that only the estates of wealthy decedents utilize the probate administration process. Perhaps the most important finding regarding the estate administration process system is that of the estates utilizing the process, an overwhelming number are relatively small. Well over one-half of the estates in the estate administration process are small by any definition.

The probate system must service the needs of this large number of small and relatively uncomplicated estates. Moreover, the system must operate at a relatively low cost to transfer a decedent's property to survivors in a prompt and efficient manner. Procedures should be available, however, to handle the disputes that may arise in some estates and to provide more rigorous safeguards that may be required in the administration of larger estates. The U.P.C. was designed to provide efficient, reliable, and cost effective administration mechanisms for both small and large estates.

The U.P.C. has the virtue of providing a simple estate administration process with many optional proceedings to meet the specific needs of an individual estate. To a significant extent, some of the optional procedures are already a part of more traditional probate systems. In each of the study states, the "normal" administration was not utilized in many of

102. See Langbein, *The Non-Probate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108, 1115-17 (1984).

the estates. Generally, administrators elect special proceedings for two reasons: 1) to obtain a summary procedure because of the small size of the estate; or 2) to utilize a shortcut procedure available because of the nature of the assets. The U.P.C. provides optional summary and shortcut procedures, designed to meet the needs of individual estates, at the election of the personal representative during all stages of the administration proceeding.

Whether the U.P.C. will be successful in reducing the costs of probate is uncertain. Lawyers' fees are one of the largest costs of estate administration; however, only a relatively small proportion of attorney hours are consumed by court procedures that might be avoided under the options afforded by the U.P.C. A large proportion of attorney hours in estate administration are devoted to communication and personal contact with the personal representative of the decedent's estate and other survivors.¹⁰³ The amount of attorney hours devoted to communication and client contact is unlikely to be reduced significantly by modifications in court procedures.

A significant majority of the decedents included in the study left a valid will controlling the disposition of their estates. By far, the highest percentage of testate decedents was found in Texas, where a significant administration benefit, independent administration,¹⁰⁴ could be obtained by election in a will. It would appear that the availability of administrative options at the election of a testator provides an incentive that leads to a higher level of testacy.

Perhaps the availability of a testate option such as a "blockbuster will," which would direct the disposition of all property — probate and nonprobate — would also lead to a higher percentage of testacy. At least one state has provided a limited form of such a benefit.¹⁰⁵ A statutory provision that enables a testator to control the disposition of such nonprobate assets as joint tenancy property, life insurance proceeds, and pension and profit sharing plan proceeds in a common scheme of disposition with the probate property, would be a powerful incentive toward testacy, and possibly would restore the probate administration system to a greater level of influence in facilitating transfers at death.¹⁰⁶

The large number of small estates involving relatively few disputes of record provides strong support for a minimal streamlined system of administration, such as the U.P.C., with options available to the parties for judicial resolution of any disputed issues that might arise. It seems unwise to require tens of thousands of estates to incur the time and ex-

103. Stein & Fierstein, *The Role of the Attorney in Estate Administration*, 68 MINN. L. REV. 1107, 1161 (1984).

104. See *supra* Tables 3.1 and 4.1.

105. See MINN. STAT. ANN. 528.05(d) (West 1975) (permitting a testamentary provision to control the disposition of the balances in joint bank accounts that contain funds deposited by the decedent).

106. See generally Langbein, *supra* note 102, at 1138 (discussing judicial refusal to recognize testator disposition of assets).

pense of a particular judicial review because one or two of the thousands of estates might have a particular problem. Of course, if a system is to be based upon optional proceedings available at the request of interested parties, it is essential that information be readily available to heirs and beneficiaries regarding invocation of procedures to protect themselves.

In evaluating a system of estate administration, the interests of those other than the immediate successors to the decedent must also be considered. Estate administration traditionally has protected the rights of creditors and provided for the making of a formal record of the transfer of recorded title. In recent years, creditors have not tended to rely upon the probate process for two reasons: 1) only a minority of decedents leave estates that undergo probate proceedings; and 2) those decedents leaving estates that undergo probate proceedings often leave large amounts of wealth that bypass the probate process entirely.¹⁰⁷ Informal notice of the decedent's death, provided to creditors by the survivors of the decedent, together with credit insurance, will provide adequate protection for creditors in most cases. If the probate system were extended to so-called non-probate transfers by making the decedent's share of nonprobate assets subject to creditors' claims, this undoubtedly would make probate more useful for the protection of creditors. Modern commercial practices, however, do not appear to require such a change.

Society's need for a formal record of the transfer of title to a decedent's property is perhaps the most significant remaining concern reflected in the probate administration process. Many decedents own real estate or other assets that are formally recorded in their names. This is reflected in the significant percentage of real estate and corporate stocks and bonds included in the inventories of the estates selected for study.¹⁰⁸ As time passes, however, the estates of most persons will contain progressively less real estate and other assets with a recorded title and progressively more of the benefits and interests that are governed by contract, such as life insurance, pension and profit sharing, and other miscellaneous employment benefits.¹⁰⁹ Thus, it can be anticipated that society's need for a formal record of the transfer of title to decedent's property, which is much less significant now than a century earlier, will continue to decline in importance in the years to come.

An effective system of estate administration must meet several objectives: 1) it must provide creditors an opportunity to protect their rights; 2) it must provide an efficient method of collecting death taxes due as a result of decedent's death; 3) it must provide a procedure for clearing title to real estate and other registered property so that it can be conveyed by decedent's survivors; and 4) most of all, it must ensure that the decedent's property passes to those persons whom the decedent wishes to have it. In addition, an effective system of estate administra-

107. *Id.* at 1120.

108. *See supra* Tables 6.1 and 6.6.

109. *See* Langbein, *supra* note 102, at 1119.

tion should accomplish these objectives in an expeditious, inexpensive manner.¹¹⁰

110. A future article reporting the study data will examine the duration of and expenses associated with administration under the various probate systems.