

The argument of the "different voice" in the professional careers of the TJPA Judges

O argumento da "voz diferente" nas trajetórias profissionais das desembargadoras do TJPA

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Article received in 05/05/2020 and accepted in 25/11/2020.



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Resumo

Nosso objetivo é analisar a relação entre gênero e atuação jurisdicional no Tribunal de Justiça do Pará (TJPA), composto, majoritariamente, por desembargadoras, em termos de efetivação de direitos humanos de mulheres. Buscamos problematizar a hipótese de uma “voz diferente”, recorrente em pesquisas sobre mulheres na profissão jurídica: afinal, a maior presença de mulheres no Judiciário pode trazer uma perspectiva diferente? A metodologia utilizada é qualitativa, tendo como instrumento privilegiado de coleta de dados entrevistas semiestruturadas com as desembargadoras do órgão. Concluímos que a atuação jurisdicional das entrevistadas é influenciada por uma leitura androcêntrica do princípio da imparcialidade, que suprime quaisquer sinais de diferença, seja das próprias juízas, seja dos jurisdicionados. Esses resultados apontam para a necessidade de se repensar não apenas a cultura masculina imbricada na profissão jurídica, mas, principalmente, os fundamentos capazes de servir como sólida base teórica para assegurar a igualdade de gênero (e de outros marcadores de diferenças sociais) no Poder Judiciário.

Palavras-chave: Democratização do sistema de justiça; Direitos humanos de mulheres; Argumento da diferença.

Abstract

Our objective is to analyze the relationship between gender and jurisdictional action in the State of Pará Court of Justice, mainly composed of judges, regarding the effectiveness of women's human rights. We seek to problematize the hypothesis of a "different voice," recurrent in research on women in the legal profession. After all, may the greater presence of women in the judiciary bring a different perspective? The methodology used is qualitative, having as a privileged instrument of data collection semi-structured interviews with the judges of the organ. We conclude that the jurisdictional performance of the interviewees is influenced by an androcentric reading of the principle of impartiality, which suppresses any signs of difference, whether from the judges themselves or from the people under their jurisdiction. These results point to the need to rethink not only the male culture imbricated in the legal profession, but also the foundations capable of serving as a solid theoretical basis to ensure gender equality (and other markers of social differences) in the judiciary system.

Keywords: Democratization of the justice system; Women's rights; Difference argument.



1 Introduction

This text is the result of our master's research work, in which we seek to analyze, based on data on the gender composition of the State Courts of Justice in Brazil, why the State of Pará Court of Justice (hereafter referred to as TJPA) is the only one whose composition of female judges exceeds male judges; and if this fact impacts the jurisdictional procedure of the organ, in terms of the effectiveness of women's human rights.

Although there is considerable academic production on the presence of women in the judiciary, in Latin America the discussion is still gaining strength, especially concerning the impacts that the insertion of female judges can offer for the magistracy and the Law. For these reasons, the TJPA study, in addition to contextualizing research on the feminization of the legal profession in the Brazilian scenario based on gender composition in Brazilian Courts, seeks to problematize the possible contributions of the female presence in institutions historically composed of men.

The sociodemographic profile of the Brazilian judiciary has changed very little since the 1990s: most judges declare themselves white, from middle and upper social strata, married, with children, and, on average, 46 years old. Most also claim to be Catholic and have close relatives in the same profession. Despite some increase in women and non-white people in the last two decades, the white and male profile at the top of the career remains almost unchanged (CNJ, 2018).

An exception, at least regarding the gender profile, is the State of Pará Court of Justice. In 2014, there were 64% of women at the top of their careers. In addition, the TJPA was the first Brazilian court to appoint a woman to its presidency, back in 1979, a period in which several courts did not even have judges in their composition. Over the past ten years, the judges have held most of the TJPA's presidency terms.

While most studies on inequalities in legal careers have been dedicated to understand the obstacles for the Brazilian judiciary to expand the percentages of women and non-white people in its composition, the investigation that supports this article sought to identify, based on the perspective of the judges themselves, two main aspects: first, what justifies the majority-female composition of the TJPA, which differs from the profile of other Brazilian courts, as well as its presence at the highest levels of the career? The second aspect refers to the hypothesis of a "different voice": does the



more significant presence of women in the Court of Justice of Pará result in a different perspective in the judicial decision-making process in cases directly related to women's rights?

To answer these questions, we analyzed the perceptions of female judges from the TJPA on the impacts of greater female presence in the Court. As we will demonstrate in the results, preliminary to considering a hypothesis of a "different voice" about women and other minority groups is the need to rethink the nuances and obstacles of a male culture imbricated in the legal profession, which represses the emergence of any markers of social differences in the judiciary.

2. Is there a "different voice" in the judiciary?

Investigations into the effects of women's presence in the legal profession have been recurrent in several countries¹, especially concerning the judge's career. For Kate Malleson (2007), the popularity of this type of study lies in two main aspects: a) it provides an attractive argument in favor of the participation of women in the judiciary; b) it is an argument that counterbalances the supremacy of attributes considered masculine and, at the same time, validates the feminine characteristics, until then marginalized and excluded from the public sphere.

In general, these are researches that aim to answer questions such as: are women capable of qualitatively influencing the legal profession, resulting in a differentiated performance of tasks and legal functions? Is there a "female voice" able to establish reasoning and acting differently in relation to men, even if only in judgments directly related to gender issues? (HUNTER, 2015; GASTRON, 2009; BERCHOLC, 2015).

The hypothesis of a different voice² is anchored in perspectives of the so-called feminism of difference, among which the work of Carol Gilligan (1993) stands out, *in a Different Voice: Psychological Theory and Women's Development* In it, Gilligan (1993)

¹ Like the United States, United Kingdom, Israel, Argentina, Mexico, Canada, Australia, New Zealand and Japan.

² The existence of a different voice is also advocated by critical racial theorists. According to Johnson and Rohwer (2004), "critical race theory defended the concept of 'voice of color', which states that minorities speak with a distinct voice or, in some ways, observe the world differently from white." (2004, p. 11). For the authors, the importance of a voice of color in the Judiciary lies in the possibility for judges belonging to minority groups to approach the Law from a different perspective, changing the course of discussions, challenging stereotypes, limiting inappropriate comments, and inserting important information up to now disregarded and excluded.



analyzes the moral psychological development of boys and girls, through the presentation of moral dilemmas, as well as the perception of morality of men and women. The author states that, in psychological theories about human moral development, the male experience constitutes the parameter of human experience, culminating in excluding women's voices. Based on the assumption of silencing and inferiority to which female voices are submitted, Gilligan (1993) carried out three studies on conceptions of self, morality, conflict and choice experiences. One of the conclusions is that the moral psychological development of girls is different from that of boys, which leads to the consolidation of different moralities between men and women. For the author, the result of such differentiated perceptions of morality would be a product of the socialization processes to which men and women are subjected, and not something that refers to the essence of genders.

According to the author, women approach moral problems based on an "ethics of care," based on values such as care, connection and context/particularity. That is, women reason morally from an approach focused on responsibility in relationships. On the other hand, the moral reasoning of men is based on individual and abstract rights, to the detriment of concrete relationships – that is, on an "ethics of justice" (GILLIGAN, 1993).

In this scenario, the main hypotheses of changes that women can promote in the exercise of jurisdictional activity are: a) the transformation of the judicial system into less competitive and more cooperative institutions (GASTRON, 2009); b) the replacement of an abstract and impartial "ethics of justice" with an "ethics of care," centered on the notions of cooperation and alternative dispute resolution (COONEY, 1993); c) the shift in emphasis on individual rights to notions of inclusion, collectivity and social responsibility (COONEY, 1993), and d) the most remarkable empathy and sensitivity, at least in cases involving women's human rights (WILSON, 1992).

Among theorists who bet on the existence of a different voice and the possibility of changes in the androcentric and formalist perspective of Law, Carrie Menkel Meadow (2013) stands out. For the author, based on a different professional performance than men, women can change the logic of competitiveness and aggressiveness present in litigation, whose outcomes result in losses and gains³. Another

³ In this sense, "women can look for solutions to moral problems without choosing abstract right or wrong answers, and will try to keep the relationship of the parties in constant moral dilemmas" (MENKEL-MEADOW, 2013, p. 86).



possibility is the design of different work structures, as is already happening in the United States with the creation of feminist law firms in which women have established more horizontal relationships and less hierarchical work structures.

Bertha Wilson (1992), a retired Supreme Court of Canada judge, also defends the transformative potential that the increased presence of women can bring to the judiciary. The magistrate believes that there are areas of Law more (or less) susceptible to the application of a female perspective and, based on the identification of these viable spaces for discussion and transformation, some of the expected effects are: the symbolic-educational potential of the presence of women; the deconstruction of particular gender stereotypes of the magistracy; the increase in public confidence that the diversification of the judiciary will bring by inserting more women; and the reduction of gender discrimination in judicial institutions.

The criticism of the argument that women, because they have a different perspective about men, can act differently in their careers or even modify the prevailing model of jurisdictional action is quite broad. For Deborah Rhode (2003), for example, the division of the world based only on gender ignores other markers of social difference and circumstances that impact the perspectives of individuals, which is why it is necessary to pay attention when claiming a female voice, in order not to fall into the homogenization of the diversity of experiences, even among women. Depending on culture, social class, race, ethnicity, age, etc., prejudice and values among women vary a lot and it is not possible to think of a different voice as a parameter for women's experiences in a universalizing and essentialist way.

In addition, the author points out that this form of dualistic division between an approach based on abstract principles and individual rights and another based on an ethics of care ends up reinforcing socially entrenched gender stereotypes - a result contrary to the objectives of any feminist proposals for legal reform and the legal profession. For this reason, Rhode (2003) believes that it is necessary to move away from discourses that make use of an essential nature of women (care, maternal, hysteria, emotion, etc.).

Kate Malleson (2007) also criticizes the argument arising from feminisms of difference when applied as a theoretical substrate in debates on gender equality – a fact that has been recurrent to the point of relegating other theoretically more solid discourses (such as legitimacy and equity) to the position of complementary



fundamentals. For the author, it is necessary to be cautious when using the difference between genders as a discursive strategy to support the demand for numerical and functional parity in the Judiciary, as it is a theoretical and empirically fragile discourse, which entails problems related to essentialisms and the reinforcement of social roles between men and women.

In her essay *La justificación de la igualdad de género en la magistratura: por qué la diferencia no funciona* (2007), Malleson does a bibliographical review of studies focused, above all, on the analysis of court decisions. She concludes that there are no significant differences in judgment between men and women. Even in cases where differences were found, such as in litigation involving sex discrimination⁴, they do not always correspond to the expected gender stereotypes⁵. Although it does not rule out the possibility of a differentiated gender role between men and women⁶, the contradictions found in such studies demonstrate the theoretical and empirical fragility of this argument, giving rise to uncertainty about the existence, scope and future of gender differences in the judiciary.

If gender difference is the only theoretical substrate for the defense of gender equality, what happens if or when there is evidence that there are no significant differences? And if these differences exist, what happens when it is found that they do not interfere with the Judiciary service?

The argument of different actions between men and women is also problematic from a strategic point of view. According to Malleson (2007), in practice, the defense of a particular form of exercising the Law will create new categories of "work for women," a kind of "ghettoization" (MALLESON, 2007, p. 45) which will reinforce the division of male and female working areas, reducing the possibilities of career and functional equality in the Judiciary. Furthermore, the author is skeptical about the possibility of re-signifying and valuing "female" characteristics in the legal sphere since these same characteristics have been systematically disqualified in our

⁴ The author cites the research: CROWE, Nancy. The effects of Judges' Sex and Race on Judicial Decision Making on the U.S. Courts of Appeals. PhD dissertation, The University of Chicago, Department of Political Science, 1999.

⁵ Malleson (2007) cites examples of research in which the results showed a tendency among female judges to impose higher prison sentences on women: STEFFENSMEIER, Darrel; HEBERT, Chris. Women and Men PolicyMakers: Does the judge's Gender Affect the Sentencing of Criminal Defendants? *Social Forces* 77, 1999; GRUHL, John; SPOHN, Cassia; WELCH, Susana. Women as Policymakers: The Case of Trial Judges. *American Journal of Political Science*, 1981.

⁶ In this sense, Malleson (2007) points out that there are important qualitative investigations that are not based solely on the content of sentences, such as studies that analyze the perceptions of judges about the nature of the gender difference in judicial decisions and its role in the judiciary.



society. Thus, she believes that, far from being recognized and valued, such attributes will be disqualified again, thus undermining the justification for gender balance in the judiciary.

Taking a different position supported by studies that both confirm and refute the existence of a different voice, Rosemary Hunter (2015) argues in favor of the possibility of a diversified judicial composition substantially impacting the judicial decision, but only when the differences are articulated with other elements: *opportunity and personal commitment*.

Personal commitment means the presence of feminist judges, aware and involved in judgments with a gender perspective, who consider the experiences of women and the discrimination to which they are subjected. Feminist judgments are not synonymous with decisions in favor of women; they are judgments informed by feminist theories and an understanding of gender experiences -- associated with other markers of social difference -- and their implications. Adopting feminist judgments is nothing more than "paying attention to excluded or marginalized voices and experiences and interpreting the facts of the case from that perspective; be aware of intersectoral experiences of gender and race/ethnicity, religion, sexuality, age and disability" (HUNTER, 2015, p. 13).

However, the feminist stance and the adoption of a gender perspective in judicial deliberations are not enough to ensure a differentiated performance. There are limits to the opportunity for this type of action. First, there is not always scope for any form of feminist judicial action and gender-sensitive trials in the Court or within the jurisdiction in which the judge works⁷; second, most cases do not raise such questions.⁸

Considering the lack of opportunities, Hunter (2015) noted that North American studies in Political Science found gender differences only in the judgments of cases involving *women's issues*, such as sex discrimination and maintenance of pensions

⁷ Hunter (2015) offers the example of one of the female magistrates she interviewed: "One female magistrate stated that she was limited by the quality of evidence presented to the court, and that it was sometimes frustrating that, in cases of domestic violence, the police not bring all the evidence necessary for the protection of people." (HUNTER, 2015, p. 15). Another example mentioned by the author was that of a magistrate who stated that, in the Court where he works, decision-making is highly linked to precedents, which reduces the space for action aimed at any perspective that does not reflect traditional positions.

⁸~ç This point became evident to Hunter (2015) when she conducted a systematic study of all judgments of Australian judge Marcia Neave, during the first three years of her appointment, to the State Court of Appeal. Marcia Neave was known for her record of commitment to the feminist cause, both as a lawyer and in academia. Of the 204 cases she worked on during the first three years in Court, Hunter (2015) only found feminist or gender-related issues in 66 of them, equivalent to 32%. The expressive majority of cases were of a criminal nature.



in divorces, which are a minority of court decisions. For this reason, it seems plausible for the author that quantitative North American studies, in general, do not find gender differences in most judgments, but only in some specific cases⁹.

A more diversified court system may bring differentiated court decisions, but it will not necessarily do so. If it is a wish that a diversified Judiciary means a fairer deliberation process for society, opportunities should be seized whenever they arise. This will require a shift towards supporting and encouraging substantial judicial diversity, in addition to "appointing judges and female judges who have the commitment and courage to make a difference" (HUNTER, 2015, p. 23).

The answer to the question about whether female judges judge differently (and in favor of women's rights) does not seem to be denied entirely, nor overestimated (GASTRON, 2009).

3. Methodology

This article presents data and analysis produced within the scope of the master's research "Women in Pará's magistracy: an analysis of the perceptions of the judges of the State of Pará Court of Justice on professional trajectory and jurisdictional action aimed at enforcing the human rights of women," and the research project "Institutional policies and strategies of the Judiciary Power to improve the conditions of access to justice for women in situations of violence: a study with the women's state coordinators of the state courts of justice in Brazil," carried out with support from the Foundation for Research Support of the State of São Paulo (FAPESP).

The research carried out is empirical and qualitative, and used semi-structured interviews, document analysis and a field diary as a data collection. In total, eleven interviews were carried out: eight acting judges, one retired judge, and two assistant judges were summoned at the research time. The interviews were conducted at the TJPA, according to the availability of each judge, and lasted, on average, 30 to 40 minutes.

⁹Famous feminist judge decisions (such as Bertha Wilson of the Supreme Court of Canada and Ruth Bader Ginsburg of the Supreme Court of the US) have occurred in cases involving women's issues, such as violence against women, sexual and reproductive rights, and the appreciation of women's work, including unpaid care work.



To define the interviewed professionals, we made direct contact with all the judges and assistant judges who were present in the TJPA building during the visit periods, inviting them to participate in the research. In total, there were three visits: from 05/12/15 to 12/12/15, from 10/24/16 to 10/28/16, and 04/05/17 to 04/12/17. During such periods, in addition to interviews, we used a field diary to record information and informal conversations with TJPA professionals. We also collected documents from the Court Museum, especially copies of books and biographies about the judges who already acted in the Court.

The interviews followed a script composed of four main questions about education and professional path, experience in the Court, perception of the reasons why there are many women in the composition of the TJPA, and the relationship between this differentiated composition and the jurisdictional performance of the organ, emphasizing cases involving women. In order to ensure the confidentiality of the interviewees, their names were all replaced by fictitious names and the names of the municipality or judicial districts where they worked were suppressed. In the transcripts, some expressions that, although incorrect from the standpoint of normative grammar, demarcated signs of regionality, such as the expression "tu entendeu?", were kept.

4. Characterization and history of the TJPA: seeking to understand why there are more women

The percentage of 64% of women in the composition of the TJPA is atypical both in relation to other courts of justice in Brazil as well as in the composition of higher courts in several other countries. Not only are they a majority, but they have also held most of the Court's presidency terms, at least in the last ten years.

Our first research question, then, was to try to identify elements that could explain the reasons for this significant number of women there, since the literature analyzed on the feminization of the judiciary, national and foreign, has reiterated diagnoses about the low presence of women in legal careers, especially in the court (KAHWAGE, 2017; SEVERI, 2016).

The explanation for the gender composition of the TJPA is told by the interviewees through a unified narrative: the magistracy was a career that paid very



little and men, as mainstays of the family, ended up migrating to Law - which, at the time, had better salaries. According to some judges, it was only in the 1980s that the wages of the magistracy began to increase and attract men to careers. The similarity between the lines and the recurrence with which this narrative also appeared in the corridors of the Court¹⁰ suggests that it is a story told and repeatedly heard, almost a kind of local legend.

Based on the reports about the low values perceived in the Pará judiciary, we requested information about the salaries of judges between 1970 and 2016¹¹, via email, from the transparency sector of the TJPA and TJSP¹². In response, we received tables with the salaries of judges of first, second and third levels and of high court judges since 1992 and 1994, respectively. Although there are some differences between the tables.¹³ We selected, for this analysis and comparison between the courts, the category of 1st level judges, in three specific periods: 1995, 2000, and 2015.

Until 1998, the total remuneration of the magistrature in Pará was composed of the base salary plus a representation bonus of 170% of the value of the respective base salaries. This addition was a way to increase the remuneration received by judges in Pará since the base salaries received were, in fact, very low compared to other Brazilian states.

By way of illustration, in 1995, the salary of the magistrature of the State of Pará at the first level was R\$731,72 (seven hundred thirty-one reais and seventy-two cents), while in the magistrature of the State of São Paulo, this amount was R\$5.260,61 (five thousand, two hundred sixty reais and sixty-one cents). With the bonus addition (R\$1.243,92), the total remuneration of the magistracy of first level went from R\$731.72 to R\$1.975,64 (one thousand, nine hundred and seventy-five reais and sixty-four cents), that is 38% of the total amount paid to the judges of first instance in São Paulo.

¹⁰Before the interviews, we made incursions into the Court to get to know the place and some of its employees, and most gave the same answer to the composition of the TJPA.

¹¹The request for data on the remuneration of the São Paulo magistrates arises from the need to compare the amounts received and confirm (or not) the information provided by the interviewees about the low salaries of the Pará magistrates.

¹²The State of São Paulo Court of Justice (TJSP) was used in the research for purposes of comparison with some data from the TJPA, such as the total remuneration received in the magistracy in the two TJs. The choice of the TJSP is justified by the fact that the Court is analyzed by the study group of which we form, the Study Group on Human Rights, Education and Citizenship, which conducts research on the thematic axis democratization of the justice system and gender composition of the Courts of Country justice.

¹³The differences in the tables result from the fact that salary readjustments do not occur simultaneously in both courts.



In 1995, the minimum wage was R\$100,00 (one hundred reais), which means that, without the representation bonus, a judge from Pará received the equivalent of 7 minimum wages, while a judge from São Paulo received more than 50 minimum wages. With the inclusion of the bonus, the total remuneration reaches almost 20 minimum wages.

In 2000, the year when magistrates from Pará no longer received the representation bonus, the total remuneration of magistrates in São Paulo was R\$7.259,97 (seven thousand, two hundred and fifty-nine reais and ninety-seven cents), while in Pará this amount was R\$5.144,25 (five thousand, one hundred and forty-four reais and twenty-five cents), or 71% of the total remuneration in São Paulo.

Currently, the tendency is for the remuneration to become equivalent in both states. In 2015, the total income in São Paulo was R\$26.125,92 (twenty-six thousand, one hundred and twenty-five reais and ninety-two cents), while in Pará this amount was R\$24.509,65 (twenty-four thousand, five hundred and nine reais and sixty-five cents), that is, 94% of what the São Paulo magistrature receives.

A point that stood out in some narratives was the *complementary* nature of the family income conferred by the remuneration of the judgeship. For some interviewees, the amount obtained was a kind of help for their husband and children and not an effective participation in the family's financial organization. In this sense, the discourse on the complementarity of the interviewees' income, present in statements such as "*I will help my husband with this little bit*" (Interviewee 4), "*the woman worked only for herself or only gave a hand to the children*" (Interviewee 5), "*the woman was looking for an activity whose contribution was for her expenses and with the children, right*" (Interviewee 7), symbolizes the low remuneration received and also seems to correlate with the historical devaluation of women's work - which affects even careers of difficult access, such as the magistrature.

It is important to emphasize that this analysis was based only on the answers given by the interviewees and on the salary tables obtained from the Courts of Justice of São Paulo (TJSP) and Pará (TJPA), as mentioned above, without forgetting the possibility of interference of other factors in the amounts received by the magistrates, such as the cost of living in the North and Southeast regions. Thus, other elements should not be disregarded as influencing factors, and further research on the theme is needed in order



to deepen the hypothesis raised by the female judges about the low amounts received by the magistrates.

5. More women make a difference?

We asked the interviewees if the different configuration of the TJPA affects the agency's jurisdictional performance, especially in cases involving women's human rights. None of them answered that there are differences between men and women in the way they judge; some were more assertive in their denials, others fell into contradictions when justifying their answers. Given this scenario, it has become fundamental to understand the reasons behind the unanimous refusal of a "different voice."

The explanations provided are varied. The most recurrent aspects in the answers were: six interviewees affirmed that, although there is no difference in performance, women are more sensitive when compared to men; seven mentioned the principle of impartiality as an obstacle to differentiated performance; and finally, two of them, although they answered that there is no difference (due to neutrality), immediately afterward presented divergences and contradictions in their statements, either affirming that men and women judge differently or denying such information. Based on these answers, we organized the content of the answers into three groups: 1) emphatic denial of different judgments; 2) belief in a greater female sensibility, without this affecting the judgments; 3) existence of a different voice, which was later denied.

Group 1 (emphatic denial of different judgments based on gender)¹⁴ consists of three interviewees who responded assertively that men and women judge strictly based on the evidence on the record or on abstract reasoning: *"I think that both women and men judge according to the evidence on the record"* (Interviewee 1); and *"intellect does not depend on sex, the intellect has to be considered concerning people... more competent people, less competent people, regardless of sex."* (Interviewee 5).

In group 2 (women are more sensitive than men, but this fact does not affect judgments), the interviewees believe that women are more sensitive, but that they do not necessarily judge differently because of it. The female sensitivity may, for example,

¹⁴ Although some interviewees in the first group mentioned a greater female sensitivity, their most definitive and emphatic answer was in relation to the denial of a different performance, between men and women, reason why we chose to separate them from group 2), of sensitivity.



lead to a greater understanding of the situations experienced by women, but it does not interfere with judgment: *"The understanding [of sensitivity] yes, I'm talking in terms of judgment (...) It may be the sensitivity due to the fact that we are women and we understand better"* (Interviewee 10).

For Interviewee 2, many men do not have the necessary sensitivity to perceive the Maria da Penha Law (MPL) as an affirmative action, lacking understanding about gender inequalities. However, she then pointed out: *"Not that the women judge better, but because she experiences it, because she has a more sensitive perception, and I am not talking about any specific case within the State of Pará Court of Justice, but I have read some news that reported this issue [of the inadequate application of the MPL]."* Her speech revealed, throughout the interview, a double concern: first, to protect the institution in which she works, emphasizing that none of the cases mentioned refer to the TJPA; second, concerning the judicial impartiality, dissociating herself from eventual extremes - *"not that women judge better."*

Interviewee 6, in turn, gave us a contradictory answer, sometimes affirming that the sensibility belongs to the judge (be it a man or a woman), and other times stating that women can imprint more sensibility in the judgments, a characteristic that is even praised by the high court judges of the organ:

Sensibility has to be the judge's, whether male or female, so gender shouldn't influence anything. Indeed, women can bring a greater sensibility on the judgment, but nothing prevents them from recognizing it, and quite the contrary, they always honor it, so there is nothing in our court that says that women stand out more because of it than men. (Interviewee 6)

The question about different judgments was interpreted by Interviewees 6 and 2 as synonymous with female superiority, a position at odds with the impartiality required by the magistrature. On this aspect, Maria Bonelli (2010) states that being a magistrate means not only presenting oneself in a serious, discreet and modest manner - characteristics compatible with the function - but, above all, living any differences only in the intimate sphere. Gender, then, is one of the identity differences erased and internalized as subjectivity by the adoption of the collective and professional identity of the magistracy. Thus, the women interviewed tend to constantly reaffirm the equality between men and women or refute any signs of superiority or female prominence, since this would correspond to a kind of deviation from the professional identity of the magistrature, from the essence of being a magistrate.



In line with Bonelli (2010), Hunter (2015) justifies the difficulty of finding gender differences between male and female judges because of a judicial ideology. The notion is that the academic training and the set of norms of the legal system are able to depart from a judge's opinion or belief when he or she exercises his or her office. A related point of judicial ideology is the individuality of difference, which is the idea that demonstrating any kind of difference is detrimental to the judicial function. In this sense, the slightest sign of differentiation opens the margin for the qualification and competence of women to be questioned since they entered the judiciary under the condition of acting in conformity with the hegemonic *ethos* - that is, the masculine one.

Another caveat pointed out in relation to greater female sensibility consists in contesting the previously stated sensibility, followed by the affirmation of the equality of sensibilities between men and women. Although women are more sensitive, men are too, because "*the sensitivity belongs to the judge.*" At this point, it is interesting to note how some interviewees resorted to the composition of the domestic violence courts, in Belém, capital of Pará, to prove their equal sensitivity:

Now, of course, being a woman, I believe you have more sensibility when treating a woman, although I wouldn't say that a man doesn't have it either, because we have a male judge in violence against women. So, we have a court of domestic and family violence against women, in which the judge is a man and makes decisions that, in fact, in which you verify, that there is sensitivity to this issue. (Interviewee 10)

Today we have three domestic violence courts in the capital city, two of these three courts have male judges, only one has a female judge, and they have done an excellent job in protecting the rights of women, in disseminating the work, you know? So I think it (differentiated composition) does not interfere. (Interviewee 3)

The affirmation of greater female sensitivity followed by its denial seems to be related to gender stereotypes about the psychological profile of women: while men are more aggressive, firm and assertive, women's behaviors are focused on sensitivity, empathy, emotionality etc. The attribution of gender stereotypes to women in masculinized careers such as the magistracy helps perpetuate the idea that women are "naturally" carriers of characteristics such as cooperation and weakness. As a result of this constant reaffirmation of socially devalued gender stereotypes, female judges end up assuming discourses and strategies to distance themselves from such characteristics, since they work in careers in which they must demonstrate strength and authority-that is, masculinize themselves (HUNTER, 2013).



But gender stereotypes do not always act negatively towards women. One example is provided by the speech of Interviewee 4, who interprets *being a woman* - understood here as synonymous with motherhood and taking care of the home - as a positive recognition for the profession, resulting in a kind of differential *in work management and administration*:

I just think that it could be that women for having this... let's say, we were born to be a mother, we were born to be a housewife, we were born to manage a house, maybe, with this quality, which I think is in the blood of every woman, we are also able to reach an office, know how to manage it better, have more sensibility, but that's it. I think that is all. (Interviewee 4).

The attribution of positive stereotypes in the professional practice ensures that women have some advantage in their careers since they have a greater capacity for time management and administration due to the different tasks with home, children, and family. Thus, what would be a problem becomes a comparative advantage for some management positions: the ability to manage time as a female virtue before the court (FRAGALE et al., 2016).

Finally, group 3 understands that there is some kind of differentiated performance between men and women, although this perspective was also refuted afterward. This is exemplified by the speech of Interviewee 7, who during the interview even stated that the male and female views are different, this being a positive point for the collegiate, "*because they both value evidence and have views that you reach a much better result, and society is made by men and women.*"

However, when asked specifically if women judge differently than men, the interviewee affirmed that, although their views are different, the application of technique, at the moment of judicial deliberation, makes male and female judges equal: "*I have a different view, but that doesn't make me better or worse than him, it makes me equal to him when I use the technique. It is the technique that makes us equal. It's not the different perspective, but it's the technique.*" (Interviewee 7).

The interviewee also reported that women are usually more demanding than men in judgments. The toughness she refers to corresponds to the strict use of the technique by women, without any elements extraneous to the rationality of the trials interfering in the process:

I even think that we are more demanding than men. (...) People look at us with that thing that... "Ah, women judge with their hearts", right? They make us weak, even professionally, because of it, right? Incredible as it may seem, women are very technical when making their judgments, as far as I



have observed, and they are more decisive in what they believe in. (...) We need to demonstrate to everyone that we are technical, professional, and much more confident of the judgment we make.
(Interviewee 7)

The interviewee's mention of more outstanding female toughness signals the existence of a different voice, however, not in the sense of care ethics¹⁵. The harshness in the way of judging stems from the need to be respected in the profession and to avoid certain feminine stereotypes - that is, not to be weakened and seen as "*women who judge with their heart.*"

Women's professional performance is based on the constant need to distance themselves from stereotypes that can weaken them and question their credibility. To emphasize the use of the technique in the judgments ("*we need to demonstrate to everyone that we are technical, professional and much more certain of the judgment we make*") is, therefore, one of the ways found to prove authority and credibility ("technique and security").

The second interviewee in group 3, on the other hand, approached a different voice founded on an ethics of care. Based on her personal experiences, fraught with financial difficulties, Interviewee 10 showed sensitivity and empathy in her speech:

There are thousands of people behind this [process], an old man is awaiting his pension, a child is asking for child support there is a company on the verge of bankruptcy, you know, a person is waiting to be hospitalized, and there is no hospital (...). So that's why I tell you, the people who sit in a chair like this, first of all, they have to be human, to have the sensitivity to help the person who is really knocking at your door, who is waiting for a decision from you, because they are needy people (...).

What happens, your profession weighs more on your back because you know the weight of the responsibility, and those who have never been through this don't value it, don't even want to know, they were born in a cradle of gold, you know, screw the poor... But those who came from below understand what this is. (Interviewee 10)

Although, in this case, the interviewee is not referring specifically to gendered experiences, the fact that she relates personal experiences to her professional performance suggests an approximation with the hypothesis of a different voice. Her background and humble origin seem to guide her jurisdictional performance and bring her closer to care ethics based on values such as attention, connection, and context/particularity.

¹⁵ On the existence of a different female voice that does not relate to the ethics of care, we return to the literature review conducted by Kate Malleson (2007). The author found research whose results point to a greater "harshness" at the moment of delivering their judgments.



The interviewee also showed sensitivity towards domestic violence by stating that *"we know what it is because we are women. You just have to put yourself in the place of a woman like that and the suffering gets under your skin."* She added:

You look at things with more sensibility; you understand the suffering of a woman like that, being beaten (...). Then you sit here, as a woman who has a home, who raises children, you know what this is, do you think we will see this kind of violence against a woman and just sit back? We have to help these women; yes, we have to. (Interviewee 10)

The different voice based on the ethics of care appears in the argumentation in favor of women's human rights. In her way of analyzing such cases, aspects of gender and social origin that mark their experience or the process of socialization intersect. The conditions of subordination and subjugation to which women are subjected are inevitably brought into the judgment. But this "sensitivity" may also be associated with their social origin, atypical concerning the general standards of the Brazilian Judiciary Power.

Sensitivity towards women's human rights issues is interpreted as a result of family and maternity experiences, in short, what is understood as intrinsic to women, such as being a mother or wife: *"a woman already carries it in her essence, and this is accentuated when you work in the courts."* These are experiences lived mainly in the private sphere and brought to the public sphere at the time of the trial. Thus, the interviewee refers to the notion of care ethics "emphasized" when brought to the public sphere.

Despite the construction of a narrative based on the importance of personal experiences, sensitivity and empathy, when asked about differences between men and women in judicial performance, the interviewee rejected such divergence due to the principle of judicial impartiality and the belief that a different judgment is synonymous with a biased decision:

To say that it influences the decisions, I can assure you that it doesn't, because the judge has to be impartial, you know, I can't judge a case "not just because he is a man, I will condemn him." But the fact that there are more women makes us pay more attention to these cases. You look more carefully, with more affection, you go deeper into the trial, even in the speed you give to it. Because it is what I say, we are women, and we feel this way because we are women. It touches us. (...) It may be the sensibility due to the fact that we are women, and we understand better. (Interviewee 10).

The striking element of the above speech is the denial of a different judicial deliberation followed by its affirmation - *"more care, with more affection, go deeper in*



the judgment, even in the speed.". As it occurred with other interviewees, the confirmation of the existence of a different judicial performance seems to be unacceptable. The difficulty is related to the assumption that men and women judgments are synonyms of biased judgments, that is, in favor of the woman, regardless of what is in the records - "*we will judge even if the woman is not right*" (Interviewee 11); "*I cannot judge a case not just because he is a man I will condemn him*" (Interviewee 10); "*we cannot judge with our hearts, we have to judge with reason*" (Interviewee 5). The notion that women have their own voice judged differently or are more sensitive is therefore equivalent to a judgment with the heart, *irrational*, in strict violation of the principle of impartiality.

Despite the negative answers, we cannot affirm that there are no gender differences in the the State of Pará Court of Justice, because, throughout the interviews, differences were observed of jurisdictional performance in some speeches (as in the case of interviewees 10, 7, and 4), despite the consequent attempts to suppress them throughout the discourse. By analyzing the interviewees' narratives, we realize that the muffling of distinctions is due, especially, to a requirement of impartiality inherent to the magistrature.

But, after all, what would this impartiality be? As we will better argue in the next topic, for the interviewees the notion of impartiality is synonymous of a performance that disregards the characteristics of those who seek the justice system, ignoring the unequal relations and oppressions of gender, sexuality, race, class, etc. that exist and are perpetuated in the judiciary system - this is, therefore, an androcentric perspective of impartiality.

6. Why do we find no difference?

As we demonstrated in the previous topic, impartiality was mentioned in order to reject the notion of different judgments between men and women. The women interviewed defended impartiality as a deliberate act of indistinctness of the parties that plead with the judiciary: the litigants are all equal, regardless of whether the party in a case is male, female, Black, white etc. This reading was presented in the analyzed narratives as a



demonstration of integrity and equivalence to the position, in affirmation of belonging and adequacy to the place they occupy.

The principle of impartiality in the Brazilian legal system¹⁶ imposes the absence of interests of the magistrate in the dispute or relationships between the judge and the parties. Ada Pellegrini Grinover (GRINOVER et al., 2011), in a substantial interpretation of impartiality (and based on the Universal Declaration of Human Rights), states that this principle comprises a jurisdictional performance devoid of interests in the cause and without close relationships with the parties, to ensure that they are heard and can plead, *on equal terms*, whatever is necessary for the resolution of the dispute.

In terms proposed by Grinover (2011), if we consider that one of the valuable foundations of impartiality consists in the substantial - and not only legal-formal - equality of conditions of the litigants, we must question whether, and in what way, this equality has been guaranteed to women and other historically subordinated social groups. Or in the terms proposed by Fabiana Severi (2016, p. 583), "what sense of equality are we seeking to construct by advocating for the recognition, exercise, and enjoyment of rights for women?"

One of the main feminist criticisms of modern liberal law concerns the notion of universal citizenship, which, based on the ideals of abstraction and impartiality, assumes an androcentric perspective (SEVERI, 2016). That is, man is referenced as the parameter of human experiences and only his point of view is amenable to consideration. The male perspective, constantly reaffirmed in our society, becomes systemic and hegemonic, detached, impartial. Once the male perspective and values (white and heterosexual) form the standard to be followed, all other views become invisible, even if they concern half of the world's population, such as women¹⁷. In this regard, we want to argue that what is commonly understood as impartiality has been interpreted from an androcentric perspective that, because it is dominant, is presented as "neutral" and, therefore, not situated. A judicial performance based on an

¹⁶In Brazilian legislation, judicial impartiality is provided for in articles 144 (disqualification) and 145 (recusal) of the 2015 Code of Civil Procedure (in Portuguese, CPC). The principle of impartiality does not have a substantial provision in legislation, only the articles provided for in the CPC.

¹⁷ Similarly, according to Carmen Hein (2011), the social and political context in which gender discrimination relations are produced and perpetuated affects the production of doctrines, legal reasoning and the drafting of laws. There is no lack of examples of judicial decisions discriminating against women, which corroborate the understanding that Law is based on androcentric values and reasoning. In the same way that scientific neutrality is a mere pretense - since the conceptual systems of the sciences and academic disciplines are marked by markers of social differences - impartiality is also a perspective that reflects masculine values and views.



androcentric notion of impartiality (that is, on legal-formal equality), which ignores the social markers of differences of those who prosecute, is a way of disregarding the existence of inequalities and the engendered, racialized and class oppression that exists in our society - and that is brought to justice.

Regina Graycar (2009) understands that besides being marked by gender, the act of judging is implicitly masculine, a fact that derives from a series of social, legal, political practices and beliefs deeply rooted in the substantial body of law. Considering that women could not practice law until the twentieth century, for Graycar (2009), there is no doubt that the important legal doctrines used in judicial practice were developed by men, about men and for men. These doctrines reflect men's problems and concerns, as well as their perspectives on the world. For the author, the recent entry of women into the legal profession has not yet been able to bring significant changes to legal doctrines and legal reasoning, which seem to have remained almost practically invulnerable to perspectives different from that (dominant) of white middle-class men.

Rethinking the concept of impartiality, understanding that what underpins judicial action today is a *partial* and androcentric perspective, means taking a stance in favor of substantial equality of opportunities. It is to say that, in a judicial proceeding, the particularities of the subjects will be considered, starting from the recognition that women (as well as black, indigenous, "quilombola people," LGBTQIA+) are at a disadvantage, that is, they do not have the same legal *status* when compared to white and heterosexual men - the parameters of humanity. Considering this disadvantage in the conduct of proceedings, far from being a *partial* act, configures a means of building substantial equality, the axiological foundation of the principle of impartiality and of correcting the history of inequalities to which women have been subjected.

Bringing these reflections to the TJPA, we understand that it is not a matter of denying the existence of a different voice in the body or even affirming that the interviewees do not see gender differences in the jurisdictional performance - even because, as we observed, there is the recognition of these differences in several excerpts. What stands out is that even though the existence of differences is acknowledged, they are actively and repeatedly denied in the name of a perspective of androcentric impartiality that is closely linked to a masculine meaning of judicial activity.

Understanding the successive negatives offered by the women interviewed in this regard involves the notion that impartiality works as a device that prevents



differences from happening even in spaces that are composed mostly by women. In the name of the so-called impartiality of the magistracy, the differences constituted by the intersections between gender, race and class are suppressed to maintain a model of androcentric judicial performance that does not offer room for diversity - since it would be incompatible with the judicial function - in addition to raising doubts about the competence and capacity of the female magistrate who dares to show any dissonance.

Now, if the possibilities of a differentiated judgment are hindered by the imposition of an idea of impartiality based on values thought of by, for and about a situated subject - which is the male subject - what exactly do we expect from women entering the judiciary? In other words, the expectation is for the existence of a different jurisdictional performance, based on gender, when the greatest effort is aimed at "resisting or surviving in the face of a situation of such disadvantage or stigmatization to which they are subjected are enormous"? (SEVERI, 2016, p. 104)

On this subject, Erika Rackley (2002) situates the greater presence of women in the judiciary and the existence of different voices in paradoxical terms: while on the one hand there is the desire for the court to be more diverse and representative of various social locations, on the other, there is also the expectation that male and female judges have no perspective - which renders the very desire for innocuous representativeness. And this is closely related to the construction of the social imaginary about who the judge is (and can be) - men (white and heterosexual), the only individual capable of stripping himself of his own characteristics and assuming those desirable for judicial performance: impartiality, independence, justice, etc.

The author (2002) also offers us new avenues for reflection by stating that the most important thing is to seek to understand "what happens to women, as women, when they claim their right to participate authoritatively in an interpretive community that has been, for most of its existence, *male*." (2002, p. 614). The question posed by the author leaves the axis of the existence of a different voice and turns to the question: do legal professions and/or Law provide space for any call that does not reflect the (purportedly impartial) characteristics of masculinity? Is there room, in our social imaginary, about the figure of the magistrate, to hold other images that do not reflect that of the white, heterosexual, owner and Christian man? Thus, before thinking about a different judicial performance, we need to think about the structure of the legal profession and, mainly, on the constructed figure of the magistrate.



6. Final Considerations

In this paper, we sought to understand two main aspects of the TJPA: what justifies its composition, which is mostly female, and whether there is a relationship between its composition and a jurisdictional performance focused on the defense of women's human rights. Concerning the number of women in the body, the predominant answer among the interviewees was that the remuneration of the magistrates in Pará was very low, which led men to migrate to other careers in Law. Based on the data tables provided by the TJPA and the TJSP, we noticed that the amount earned by the women magistrates from Pará was lower than what received by the women magistrates from São Paulo, which justifies, at least in part, the lack of interest of men (considered to be the "mainstay" of the family) in the career.

In relation to the second aspect, concerning composition and the existence of a different voice in the judiciary, some developments should be mentioned. In the interviews, we found answers that pointed to gender differences in judicial performance, almost always followed by negatives, based on impartiality. This fact led to a shift in our research, which, instead of focusing only on the different voices, began to analyze the possibilities of the emergence of other voices, considering that the judiciary is marked by a masculine *ethos*¹⁸.

In other words, before we expect substantial changes in the judiciary just by the increased presence of women, we must question whether women can not only judge but disrupt and make unstable traditional assertions about legal authority (RACKLEY, 2002). As long as our image of the one who judges is that of the man able to nullify his *self* and his subjectivity to judge litigation (assuming the attributes mentioned above), the emergence of counter-images becomes unfeasible, as well as other voices. For this reason, any changes in the composition of the judiciary require transformations in legal culture and, in particular, in the understanding of what it means to be a magistrate - and, especially, who is allowed to judge (RACKLEY, 2002).

Thus, if, on the one hand, we understand that women can make a difference in terms of judicial deliberation, given the opportunity and personal commitment to do so

¹⁸. Without disregarding the power of agency of women even in institutions inhospitable to diversity, especially that of the female judges of the TJPA, the issue involving the constant efforts to conform to a socially established (and masculine) image of the judge should be raised and reflected upon in the debates involving the democratization of the Judiciary.



(HUNTER, 2015), on the other hand, we cannot disregard the persistence of a male culture of Law, which, based on devices such as impartiality and the social imaginary about who is or can be a judge, suppresses the emergence of new images and voices, perpetuating the exclusion and marginalization.

Translation

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