



[Unpublished articles]

Profissionalismo, gênero e diferença: uma reflexão sobre as causas da disparidade de gênero nos Tribunais brasileiros

Professionalism, gender, and inequality: An inquiry into the causes of gender disparity in Brazilian courts

Emerson Ribeiro Fabiani¹

¹ Fundação Getúlio Vargas, São Paulo, São Paulo, Brasil. E-mail: emerson.fabiani@fgv.br.
ORCID: <https://orcid.org/0000-0001-7116-705X>.

Mateus Matos Tormin²

² Universidade de São Paulo, São Paulo, São Paulo, Brasil. E-mail: mateus.tormin@usp.br.
ORCID: <https://orcid.org/0000-0003-3599-3770>.

Article submitted on 07/07/2022 and accepted on 25/02/2023.



This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License.



Abstract

This article discusses the causes behind the patent gender inequality in Brazilian Courts. Based on the seminal work of Maria da Glória Bonelli, it updates data on gender composition of the São Paulo Court of Justice (TJSP) and the Federal Regional Court of the 3rd Region (TRF3). State and federal courts' data evolution is then compared, and Bonelli's previous thesis to explain the findings is discussed. Showing evidence of increasing gender inequality at the federal level and only a small progress at the state level, the article argues this new data contradicts her "professionalism" centered thesis. In addition, two hypotheses are discussed to explain the phenomenon: (i) a greater Executive branch interference in the Federal Justice; and (ii) the effect of subtle legal-related mechanisms both at the entry and the intermediate career levels.

Keywords: Gender inequality; Gendered closure mechanisms; Judiciary; Professionalism; Causal hypotheses.

Resumo

Este artigo discute as causas da patente disparidade de gênero nos Tribunais brasileiros. Partindo do trabalho seminal de Maria da Glória Bonelli, atualizam-se os dados de composição por gênero do Tribunal de Justiça de São Paulo (TJSP) e do Tribunal Regional Federal da 3ª Região (TRF3). Feito isso, compara-se a evolução dos dados nas justiças estadual e federal, e discute-se a tese proposta por Bonelli para explicá-los. Argumenta-se que sua tese, centrada no ideal do "profissionalismo", é falseada pela evolução recente dos dados, que mostram uma involução na justiça federal e um pequeno progresso no âmbito estadual. Além disso e por fim, discutem-se duas hipóteses para explicar os dados: (i) uma maior interferência do Poder Executivo na Justiça Federal; e (ii) o efeito de mecanismos sutis nas regras de seleção e promoção na carreira.

Palavras-chave: Desigualdade de gênero; Mecanismos de fechamento generificado; Judiciário; Profissionalismo; Hipóteses causais.



1. Introduction¹

Nowadays, it is impertinent to dispute the diagnosis of gender inequality in Brazilian legal careers. More than fifteen years of studies have attested to the under-representation of women in various areas of legal practice and in positions in the professional hierarchy. This is not to say that the issue of gender inequality has been resolved or that it will resolve itself naturally over time, but rather that the volume of data that has already been collected, analysed and published means that it is no longer possible to dispute the finding of inequality. Insisting on this point denotes an issue in analysing it, not the non-existence of a widely attested fact. For this reason, this text aims to engage in a dialogue with literature that draws on this fact, that seriously discusses the causes of this inequality and the means of transforming it, and that continues to collect data to monitor the impact of transformation measures.

Reflection on the under-representation of women in legal careers has been carried out in the field of the Sociology of the Legal Professions. In Brazil, the construction and development of this field has a notable leader: Maria da Gloria Bonelli. This position of reference is due to Bonelli's pioneering work in the Department of Sociology at the Federal University of São Carlos (Fontainha and Loss Leite, 2019, p. 289), her ability to train researchers and her academic output. Among the various published works, one stands out in this debate: *Professionalism, gender and the meanings of difference between state and federal judges*, an article published by Bonelli in 2011. With changes, this work was republished in the collection *Professionalism, gender and difference in legal careers* (2013a), which contains data and analyses of various legal careers. As well as allowing a broad comparison between the levels of gender inequality of occupational groups that are rarely compared in latitudinal research, these works explore in a combined way strategies for the social closure of the legal professions, which are usually treated separately.

By assessing whether the discourse that praises knowledge as impersonal and objective capital has neutralised personal and subjective gender characteristics in the workplace, Bonelli brings together two debates: the mastery of abstract knowledge as a constituent element of the idea of "profession" and the impact of certain social markers

¹ The authors would like to thank Bianca Tavorari (Insper), Gabriel Maia (USP) and Luciana Ramos (FGV-SP) for their discussions and comments on preliminary versions of this text.



of difference on professional hierarchies. In doing so, the author investigates whether the discourse of expertise is being used as a strategy to promote inequalities in the professional spaces studied.

Filled with demographic data on legal careers, Bonelli's work allows comparisons to be made between private and public law, between the Public Prosecutor's Office and the Judiciary, among others. As well as comparing different occupational groups, it contrasts professionals from different spheres of the justice system. One of the most interesting comparisons is that between the São Paulo Court of Justice (TJSP) and the Federal Regional Court of the 3rd Region (TRF3). The data is from 2011:

Table 1 - TJSP versus TRF3 in 2011

Gender	First instance		Second instance	
	TJSP (n=2064)	TRF3 (n=301)	TJSP (n=354)	TRF3 (n=41)
Male	64%	62%	96%	54%
Female	36%	38%	4%	46%

Source: own elaboration based on data from Bonelli (2011).

The figures for the Appellate Court are striking: while the gender disparity is striking in TJSP (96 per cent vs. 4 per cent), in TRF3 there seems to be relative equality (54 per cent vs. 46 per cent). Bonelli explains the differences between the proportion of female judges in TJSP and the proportion of women in the second instance of TRF3 using various arguments: professional power, political autonomy, career insulation etc. But what unites his explanation is the concept of professionalism. For Bonelli, "the consolidation of professionalism at a time prior to women entering the career is the factor that explains the barriers to feminisation in [TJSP]" (2013a, p. 17).

TJSP is much older than the Federal Regional Courts, having been installed in February 1874 as the Court of Appeal of São Paulo and Paraná. It was renamed the São Paulo Court of Justice in 1891, with the judicial separation of these two provinces. The Federal Regional Courts, on the other hand, were established in 1988, when they replaced the old Federal Court of Appeals (1946-88), decentralising and regionally organising Federal Justice in Brazil. There are currently six TRFs, each responsible for a number of



states in the federation. TRF3, the subject of Bonelli's study, serves the states of São Paulo and Mato Grosso do Sul.

Bonelli's thesis is that the institutional reform of the Federal Court created the conditions for a court with less gender inequality than that of TJSP, even though the reform did not establish criteria for gender representativeness. As has been said, this would arise from the different moments in which professionalism was consolidated in these courts: the "institutional old age" of TJSP, created around a hundred years before the TRFs, would explain its greater gender inequality when compared to TRF3. In the latter, the "institutional novelty" would have allowed women to enter the career before professionalism was consolidated there and created barriers to feminisation.

Ten years have passed since the research that gave rise to Bonelli's article (2011, 2013a). This text aims to revisit it. In the following sections, we will revisit and discuss her thesis and argument, followed by a presentation of updated figures on the gender composition of the TJSP and TRF3. In the light of this review and the new data, it is argued that although gender inequality is evident, there is still no clear understanding of the causal mechanism that explains the disparities in each of the courts studied. The thesis of "institutional novelty" as an explanation for the differences between the TJSP and TRF3 in terms of gender inequality is therefore contested.

There are two main arguments in support of this position: firstly, it is argued that there is insufficient clarity as to the causal link between the consolidation of professionalism in the respective institutions and the gender inequality observed; secondly, it is argued that even if there were such clarity, the more recent evolution of the data seems to falsify Bonelli's thesis. Given the undeniable gender disparity that exists, it is concluded that further studies on the subject are necessary, with a view to investigating the causal mechanisms behind this phenomenon. In order to contribute to this, two possible hypotheses are discussed to explain it: (i) greater interference by the executive branch in the federal judiciary; and (ii) subtle mechanisms at work in the selection and promotion rules in the state judiciary.



2. Development and discussion

2.1 Professionalism and gender inequality: is there a causal link?

As seen in the table presented in the introductory section, in 2011, of the 2064 judges at the first instance of TJSP, 64 per cent were men, and the disparity was even greater at the second instance: of 354 judges, 96 per cent were male. At TRF3, the situation at second instance was quite different: of 41 judges, 54 per cent were men. Despite this, the figures for the first instance were close to those of TJSP, with 62 per cent men out of 301 judges. Having noted the gender disparity between TJSP and TRF3, as well as the differences between these courts, the question arises: what, more specifically, is Bonelli's thesis to explain this data?

Based on the literature in the field, she tells us that there are three distinct patterns through which generified closure occurs: (i) stratification, (ii) segmentation and (iii) sedimentation. The concepts are taken from Bolton and Muzio, who define closure as:

"the process by which social collectives seek to maximize rewards by restricting access to rewards and opportunities to a limited circle of eligibles' (Parkin, 1974: 3). This implies the institution and enforcement of a body of covert and overt rules that can legitimize monopolistic practices and sanction exclusionary dynamics (Murphy, 1988), thus closing off opportunities to outsiders, undesirables and ineligible" (2007, p. 50).

This closure strategy is essential for defining and practising professions such as law and medicine. However, it can also serve to segregate not only laypeople from doctors and lawyers, for example, but also to engender exclusionary dynamics within the professional groups themselves. The generified closure designates this process in relation to women. In this case, it refers to the barriers they face in achieving equal participation in legal careers. For Bolton and Muzio, these barriers are produced by different mechanisms of internal closure and are not mere "accidents of patriarchy" (2011, p. 54).

The main patterns of the gendered division of labour are the three previously mentioned: sedimentation, segmentation and stratification - "[which] are used as powerful internal closure mechanisms by the legal profession, thus maintaining and protecting the masculinised professional core, ensuring that women remain as 'other' and have minimal impact upon the masculine code of the legal profession" (Bolton and Muzio, 2007, p. 54).

Sedimentation "occurs when professionals resort to essentialism as a way of



organising gender identity into enclaves" (Bonelli, 2011, p. 110). In this way, routine work and activities that require care and zeal are relegated to women, while specialised work and activities that require risk-taking fall to men.

Segmentation "takes place horizontally, forming ghettos with women being confined to less valued areas (family law vs. business law)" (Bonelli, 2011, p. 110). Because it occurs horizontally, segmentation is also called horizontal segregation. Kahwage and Severi relate it to gender stereotypes "which delimit what should or should not be practised by men and women within the legal profession" (2019, p. 55). This type of segregation is associated with what is known as the glass wall: the "impediment of access to certain areas or positions in the workplace, and consequent subjection to working in certain areas" (Kahwage and Severi, 2019, p. 55).

Finally, stratification "occurs along vertical lines, denying women access to the top of the occupation" (Bonelli, 2011, p. 110). For this reason, it is also called vertical segregation, consisting of the under-representation of women in positions of greater responsibility, as a result of what is commonly referred to in the literature as the glass ceiling: the "subtle and imperceptible, but sufficiently solid barriers that prevent professional advancement and hinder career opportunities for women" (Kahwage and Severi, 2019, p. 55).

In her article, Bonelli states that segmentation and sedimentation are not noticeable in the courts studied (2011, p. 111). The generified closure would then only occur through the double stratification/glass ceiling, being "the result of the hegemony of professionalism in the court, which preceded the incorporation of difference" (2011, p. 110).

This thesis is formulated several times throughout her article, with slight variations, as can be seen in the examples below:

"Where the consolidation of professional autonomy preceded the inclusion of the 'other' in the body of the judiciary, there is a generified closure, with more stratification. (...) It is argued that professionalism is the differential in the gender composition of these courts [TRF3 and TJSP] (...), with greater female participation where the process of professionalisation is less consolidated" (2011, pp. 104-05).

More directly: "The consolidation of professionalism at a time before women entered the career is the factor that explains the barriers to feminisation in the [TJSP] (...)" (Bonelli, 2011, p. 107).

Given these formulations, two questions arise. The first relates to the concept



of "professionalism", which is central to the explanation given: what exactly is meant by "professionalism"? In the article, Bonelli doesn't define the term precisely, but merely refers to Freidson. It is therefore necessary to take a closer look at the concept in order to move forward with the discussion of the aforementioned thesis.

In *Professionalism: the third logic* (2001), Freidson conceives of professionalism as a logically distinct method of organising and controlling the social, economic and cultural circumstances related to a job (understood here as the exercise of a skill or technique). For him, professionalism would be a specific logic, conceived in contrast to Weberian legal-rational logic, which would represent managerialism, and Smithian free market logic, which would represent consumerism (2001, p. 179). Alongside these two, professionalism would be a "third logic" for organising and controlling work and its circumstances (2001, p. 7). This logic is defined ideal-typically by means of five constant characteristics and a set of possible variables that are contingently associated with it (either to establish it or to strengthen it):

"The defining elements of the ideal type, the theoretical constants, are, first, a body of knowledge and skill which is officially recognized as one based on abstract concepts and theories and requiring the exercise of considerable discretion; second, an occupationally controlled division of labor; third, an occupationally controlled labor market requiring training credentials for entry and career mobility; fourth, an occupationally controlled training program which produces those credentials, schooling that is associated with "higher learning" segregated from the ordinary labor market, and provides opportunity for the development of new knowledge; and fifth, an ideology serving some transcendent value and asserting greater devotion to doing good work than to economic reward" (2001, p. 180)².

In contrast to the other two logics of work organisation and control, professionalism can be summarised as follows:

Table 2 - The three logics of work organisation and control

Logic of work organisation and control	Type of control	Key principles	Main author
Rational-legal bureaucracy or firm ³	Management control (by the managers themselves)	Efficiency through qualified management and	Max Weber

² On the contingency variables associated with type, see Freidson, 2001, p. 180.

³ Freidson states that he oscillates between the terms "firm" and "bureaucracy" in order to make it clear that he is not only referring to capitalist private companies. The type encompasses any formal organisation that carries out managerial control of work, including both firms or companies and the state bureaucracy (2001, p. 4, nt. 1)



		standardisation	
Free market	Consumer control (by consumers themselves)	Free market competition	Adam Smith
Professionalism	Occupational control (by the occupations themselves)	Monopoly on <i>expertise</i> , knowledge and freedom of judgement	Eliot Freidson

Source: based on Freison (2001, pp. 1-14 and 179-81).

In short, professionalism, as the third logic of work organisation and control, is a set of institutions that make occupational control possible:

"I use the word 'professionalism' to refer to the institutional circumstances in which the members of occupations rather than consumers or managers control work. (...) Professionalism may be said to exist when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to evaluate performance. (...) The organized occupation creates the circumstances under which its members are free of control by those who employ them" (Freidson, 2001, p. 12).

This return to the term, looking for its more precise meaning in Freidson, was necessary in order to discuss Bonelli's thesis: as said, according to her, the generified closure in TJSP occurred through stratification/glass ceiling, being "the result of the hegemony of professionalism in the court, which preceded the incorporation of difference" (2011, p. 110). Having returned to the concept, the question arises: what does professionalism imply about these barriers to feminisation in the state courts?

At first glance, based solely on Freidson's definition, there is no obvious relationship between professionalism and barriers to feminisation. Bonelli seems to relate professionalism to an ideal of neutrality based on expertise, pointing to its instrumental use for the generised stratification of TJSP:

"The ideology of professionalism emphasises the common feelings shared by peers, highlighting the neutrality of expertise in order to supplant specific interests. (...) The consolidation of professionalism and its ideology of neutrality before women entered the career acted to make differences invisible and to stratify the profession according to gender in the state court. (...) In the TJSP, the hegemony of professionalism preceded the incorporation of difference and markedly stratified the court. In the TRF3, this hegemony was not constituted, supplanting the gender marks in the progression" (2013, p. 125 and 128).

How should this thesis be interpreted? The structure of the argument seems to be as follows: there is a factual premise and two consequences that would explain the difference between TJSP and TRF3:



- Factual premise: in TJSP, the "professionalism-neutrality" duo was consolidated before women entered the career. This has two consequences:
 - Consequence 01: invisibility of differences in TJSP;
 - Consequence 02: stratification of profession according to gender in TJSP.

But what does this mean, specifically? That the ideal of professionalism wasn't something that affected the people involved in the structuring and composition of the Federal Courts? There is no evidence of this. On the contrary, based on the concept of professionalism, it is plausible to assume that this ideal is something that permeates the entire field of the legal professions and is essential to its very constitution. The ideal-typical concept proposed by Freidson seems to be geared much more towards an analysis of the different professions (the way in which they establish themselves, consolidate themselves, dispute spaces for action, organising and controlling such workspaces) than to an analysis of exclusionary mechanisms that operate within institutions (such as the courts):

"In the most elementary sense, professionalism is a set of institutions which permit the members of an occupation to make a living while controlling their own work. (...) The two most general ideas underlying professionalism are the belief that certain work is so specialized as to be inaccessible to those lacking the required training and experience, and the belief that it cannot be standardized, rationalized or, as Abbott (1991b: 22) puts it, 'commodified'" (Freidson, 2001, p. 17)⁴.

As can be seen from the excerpt, there is no obvious relationship between professionalism and barriers to feminisation. What is needed is mediation, a more detailed explanation of the mechanisms linking this specific logic of work organisation and control to gender inequality in the courts studied.

When specifying factors associated with barriers to feminisation, Bonelli points to the existence of the glass ceiling (2011, p. 109). But this is a fact, not an explanation. Later on, she also points out that the judges need to move from city to city to advance in the career, which would disproportionately disadvantage women – a possible explanation:

"another factor that constrains female progression within the state justice system is the pattern of geographical mobility that the careers of judge and prosecutor demand, making it more difficult for them to combine professional practice and private life. (...) Although there is spatial mobility in federal careers, professionals arrive more quickly in large and medium-sized

⁴ The second of these ideas underpinning professionalism has been called into question. See, for example, the works by Susskind: 2010, pp. 27-57; 2013, pp. 23-38.



cities, with fewer courts spread over numerous locations, as in the state justice system" (2011, pp. 109-10).

Although it may be true⁵, it should be noted that this explanation does not relate to the old age of the state courts (i.e. the fact that professionalism was consolidated in the TJSP before women joined), but to the simple fact that they are state courts: the state courts need to have more capillarity than the federal courts, regardless of when they were organised.

This brings us to the second argument against Bonelli's thesis: not only does there seem to be no clear causal mechanism showing that the previous consolidation of professionalism explains the generified closure in the Courts, but the recent evolution of the data seems to falsify this explanation.

2.2 The recent evolution of data: TJSP and TRF3 (2011-2020)

The São Paulo Court of Justice website has a list of judges by seniority. Although it does not specify the date of entry into the appellate court, it is possible to see the pattern of appointments over the years. If one divides the list of 354 judges in half, one gets a list of the oldest and a list of the newest judges. In the oldest half, there are only eight female judges (4.5 per cent of 177); in the most recent, 23 (13 per cent of 177). In terms of how they joined the court, eight were nominated by the constitutional one-fifth⁶ of the legal profession, four of whom were sworn in in the oldest half of the list. Three female judges were nominated by the fifth of the Public Prosecutor's Office, two of whom

⁵ This is a hypothesis, and there is no known study to test it. There are, however, similar cases that cast doubt on it, such as the São Paulo City Attorney's Office. The position of Municipal Prosecutor is hotly contested, well paid (an average of R\$36,245.88, considering the three levels together and noting that part of this amount is due to legal fees) and also allows the occupant to practise private law in parallel. Although it doesn't require spatial mobility, it is a predominantly male career (61% men, according to data from <http://transparencia.prefeitura.sp.gov.br/funcionalismo/>, accessed on 22/3/2022). If the requirement of ample spatial mobility were the cause of the low participation of women in the judiciary, one would expect that the gender disparity could not be observed in similar careers (such as the São Paulo Municipal Prosecutor's Office) that did not have this requirement. But this is not the case: in both the Judiciary and the Prosecutor's Office, there is a notable male predominance. Therefore, either spatial mobility is not the factor that explains the difference, or there are other variables that interfere in the case, so that we have a different result than expected.

⁶ The "constitutional one-fifth" is established in Article 94 of the Brazilian Constitution and applies to both the Federal Regional Court of the 3rd Region (TRF3) and the São Paulo State Court of Justice (TJSP): "Article 94. One-fifth of the seats in the Federal Regional Courts, the State Courts, and the Courts of the Federal District and Territories shall be filled by members of the Public Prosecutor's Office, with more than ten years of service, and by lawyers of recognized legal expertise and unblemished reputation, with more than ten years of effective professional practice, nominated in a six-candidate list by the representative bodies of their respective classes."



were among the judges in the oldest half of the list. Twenty female judges, therefore, reached the second instance through career progression in the judiciary (but only two were appointed from the oldest half of the list).

These figures allow two conclusions to be drawn about the career at TJSP. Firstly, it can be said that for a long time the Court practically didn't recognise women as qualified to act as judges and justices. The first female judge joined the court in the early 1980s, while other states in the Federation already had women in the judiciary (Bruschini, 2007, p. 4). In addition, data shows that in 1990, women accounted for 41.8 per cent (10,154) of law graduates, a proportion that reached 45 per cent the following year and exceeded 50 per cent in 1998 (Bruschini, 2007, p. 3). Considering these numbers, it cannot be said that the low participation of women was justified by their late entry into higher education.

Secondly, we can see a change in the way appointments are made: in the older half of the list, the majority of women reach the second instance through recognitions outside the judiciary (six out of eight cases). In the most recent half, the scenario is the opposite: of the 23 appointments made in the period, 18 came from promotions within the judiciary, which is a sign of improvement.

Although slow, this evolution, combined with the most recent data from the TRF3, seems to contradict Bonelli's thesis: Not only did the figures in the TJSP improve, but gender inequality also worsened in the Federal Court.. Although institutional novelty could explain the initial composition of TRF3 (with less asymmetry than that found at the same time in TJSP), its recent photograph perhaps shows us that its "novelty" gave way to "institutional old age" before a point of equilibrium was reached. If a more optimistic reading of Bonelli's argument could signal that institutional innovation would solve (or at least minimise) the problem of gender inequality, the data shows, on the contrary, that at least in TRF3 the gains made with institutional novelty have eroded over time. The figures are for 2020 and allow for a comparative assessment with those for 2011, presented above in Table 1:

Table 3 - TJSP versus TRF-3 in 2020

Gender	First Instance		Second Instance	
	TJSP (n=2164)	TRF-3 (n=301)	TJSP (n=354)	TRF-3 (n=42)
Male	60%	62%	91%	79%
Female	40%	38%	9%	21%

Source: own elaboration based on data from TJSP and TRF-3 web pages.



The percentage of female judges in the lower courts of TJSP (40 per cent) has become higher than in TRF3 (38 per cent), unlike the situation found by Bonelli in 2011 (2011; 2013a). In addition, the relative equality then found in the appellate courts of TRF3 was reversed: currently, 79 per cent of its 42 judges are men (compared to a previous percentage of 54 per cent). From 2011 to 2020, female participation in the appellate courts of TJSP doubled (although this still represents barely 9 per cent of the total number of seats), while in TRF3 it surprisingly fell by more than 50 per cent, dropping from 46 per cent to 21 per cent. This decline has occurred despite the fact that more women are entering the lower courts and the debate and struggles for gender parity have expanded.

If the explanation for the disparity is indeed linked to professionalism and institutional old age, how can we interpret the recent evolution of TJSP and the involution of TRF3? This result seems to strengthen an alternative explanation, to which Bonelli herself alludes: the difference between the courts (TRF3 and TJSP) could simply be explained by a peculiarity of the Federal Court. It is not explained by the novelty or old age of the institution itself, but by the fact that appointments to the top of the Federal Court are more affected by politics, "[since] it comes down to the federal government to decide on the creation of new courts, where they will be installed and the decision on promotion to the appellate courts" (Bonelli, 2011, p. 108). The 2011 figures are partly the result of choices made by the executive branch.

Bonelli alludes to this type of explanation when she states that: "characteristics of professionalism (Freidson, 2001), such as professional power, autonomy, jurisdictional control, the definition of progression criteria and career insulation mark the differences between the TJSP and the TRF-3" (Bonelli, 2011, p. 107). Professionalism would act through greater isolation of the state courts from the executive branch, as well as through subtle mechanisms in the rules for selection and career progression, differentiating them from the federal courts. But Bonelli does not indicate specific mechanisms, nor does she attempt to describe them. This brings us back to the previous section's question: what, in terms of professionalism, do these barriers to feminisation in the state courts entail? How does this causal mechanism come about, more specifically? The next section discusses these two possible hypotheses in more detail: (i) greater interference by the Executive in the Federal Judiciary; and (ii) subtle mechanisms at work in the selection and promotion rules in the State Judiciary.



2.3 Possible hypotheses to explain the data

2.3.2. Is TRF3 less insulated from the executive branch?

One possible hypothesis mentioned by Bonelli (2011, p. 108) to explain the 2011 data for the courts studied would be that TRF3 is less insulated from the executive branch when compared to TJSP. Is this a plausible hypothesis?

In the federal courts, career appellate judges are chosen by the President of Brazil, based on three-candidate shortlist drawn up by the courts according to the criteria of seniority and merit⁷. The judges who enter through the “constitutional one-fifth” are also chosen by the president from triple lists drawn up by the courts, which in turn are drawn up from lists of six-person judges sent in by the bar and prosecutor's associations.⁸

In TJSP, the selection of judges for the one-fifth is also made by the head of the executive branch (the state governor) based on three-judge lists. These are drawn up by the Superior Council of the TJSP from lists drawn up by the Brazilian Bar Association (OAB) and the Public Prosecutor's Office (MP), and then voted on by the Special Organ of the Court of Justice, made up of 25 judges⁹. The Superior Council is also responsible for drawing up the lists for the promotion of judges from the first to the second instance, and the Special Organ is responsible for making the choice.

In short, vacancies are filled in two ways: by the constitutional one-fifth or by career promotion according to the criteria of seniority and merit. The vacancies in the fifth are chosen by the head of the Executive (either state or federal) from the three options on the list submitted to him. The career vacancies, the remaining 80 per cent, are filled, as said, by seniority and merit. In the first case, the court sends a single name to the chief executive. It is, therefore, a filling with very little discretion: if the most senior magistrate is not to be appointed, the votes of the absolute majority of the court (or its special organ) are required, and the vote is repeated until a name is reached.¹⁰ Appointments based on merit, on the other hand, assess a person's merit, talent and performance using indicators that are, at least in theory, objective: the judge's conduct,

⁷ Art. 93, III, of the Brazilian Federal Constitution.

⁸ Art. 94 of the Brazilian Constitution.

⁹ Arts. 8; 13, inc. II, al. “I”; 16, incs. I and II of TJSP Rules of procedure of the court.

¹⁰ Art. 80, §1º, inc. III of LOMAN; art. 93, inc. II, “d” of the Brazilian Constitution.



efficiency ("operativeness") are taken into account¹¹ in the exercise of the office, the number of times he/she has appeared on other merit lists and his/her performance in internal improvement courses. In this case, three names are sent to the chief of the Executive branch, who selects them¹². Under constitutional provisions, anyone who appears three times consecutively (or five times alternately) on triple merit lists must be promoted.¹³

Since the career vacancies are filled alternately by seniority and merit, it follows that $\frac{3}{5}$ of the total positions are filled by the Executive's choice through a triple list submitted to it by the court ($\frac{1}{5}$ of the vacancies refer to the constitutional fifth and $\frac{3}{5}$ to the vacancies filled by merit), while the other $\frac{2}{5}$ are filled by seniority, with less interference from the Executive.

Therefore, even though it is conditional on previously selected names, the executive branch interferes in both TRF3 and TJSP - which is not taken into account in Bonelli's article (which seems to treat the Federal Court as a separate case, less insulated from the executive branch).

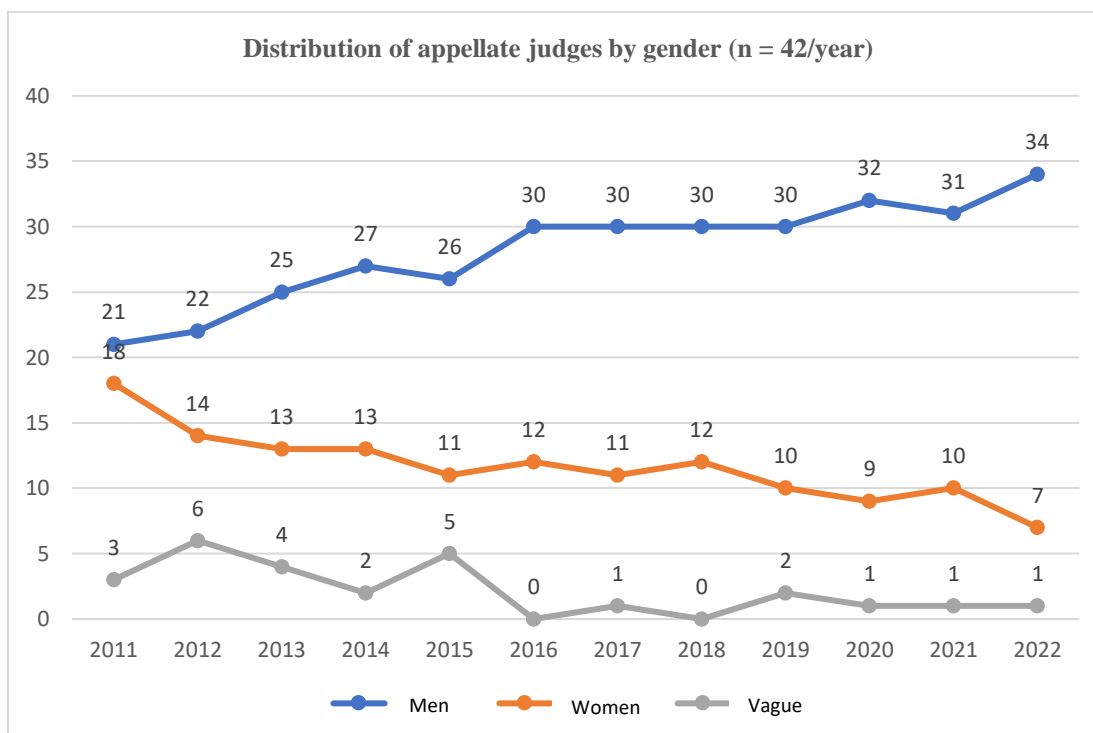
Regardless of this, the appointment data for TRF3 seems to suggest that the pattern of appointments that has resulted in a decrease in the number of women on the court is not related to who heads the executive branch. As can be seen in the graph below, the decrease in the number of women (from 18 in 2011 to 7 in 2022) occurred mostly under the Workers' Party, in Dilma Rousseff's administration:

¹¹ Art. 80, §1º, inc. II, of LOMAN. The Brazilian Constitution provides that merit is measured according to "performance and objective criteria of productivity and promptness in the exercise of jurisdiction and by attendance and success in official or recognised training courses". (art. 93, II, c).

¹² Article published by Folha de S. Paulo (01/12/2010), in a blog specialised in legal matters (*Para entender Direito*), explains in simple terms how the promotion of magistrates works: < [Como funciona a promoção de um magistrado? - Para Entender Direito](#) >. Access 15/01/2022.

¹³ Art. 93, II, "a".





Fonte: based on the composition of the Plenary Court published on TRF3 website.¹⁴

The situation of relative equality observed in 2011 changed as female judges retired and were replaced by men. With the exception of Judge Regina Helena Costa (who was appointed to the position of STJ Minister in 2013), fifteen female judges left the TRF3 because they had retired: Eva Regina (31/3/11), Suzana Camargo (17/7/12), Ramza Tartuce (6/12/12), Leide Polo (29/2/12), Marianina Galante (6/12/12), Vera Jucovsky (2/9/13), Vesna Kolmar (23/07/13), Salette Nascimento (5/1/15), Alda Basto (11/8/15), Cecília Mello (8/9/17), Ana Pezarini (15/1/19), Tania Marangoni (13/9/19), Cecília Marcondes (16/3/20), Lucia Ursaia (27/11/21) and Diva Malerbi (27/12/2021).

Over the analysed period, 25 appointments were made (most of them, 16, during Dilma Rousseff's administration). In 2010, still under Luiz Inácio Lula da Silva, Fausto de Sanctis was appointed; in 2012: Paulo Fontes; in 2013: Mônica Nobre, Toru Yamamoto, Marcelo Saraiva, Tânia Marangoni, Souza Ribeiro and David Dantas; in 2014: Maurício Kato, Gilberto Jordan, Hélio Nogueira and Paulo Domingues; in 2016, still under Dilma Rousseff: Carlos Delgado, Wilson Zauhy, Ana Pezarini, Nelson Porfírio and Valdecir dos Santos; in 2018, already under Michel Temer, Inês Virgínia; finally, in 2020-22, under

¹⁴ Available at < [Members of the Court: Federal Regional Court of the 3rd Region](#) >. Accessed on: 10/01/2022. Although the TRF3 has 43 positions of Judge (Art. 1 of the RI-TRF3), the lists provided by the court itself list only 42 positions.



Jair Bolsonaro, judges José Carlos Francisco, João Batista Gonçalves, Leila Paiva Morrison, Marcelo Vieira de Campos, Victório Giuzio Neto, Ali Mazloun and Herbert Cornélio Pieter de Bruyn Júnior took office.

In other words, only five women were promoted to the position of judge in the analysed period: three by merit, one by seniority and one in a vacancy allocated to the Public Prosecutor's Office. Even though they accounted for a large part of the period (2010-16), only three of these appointments took place with the executive branch under the command of the Workers' Party, to the left of Michel Temer's MDB and Jair Bolsonaro's government. The result does not, therefore, seem to be explained by the TRF3's greater or lesser isolation from the executive branch - either by analysing the rules that regulate promotions, or by analysing the TRF3's numbers and appointments over the last decade.

In November 2021, the Law nº 14.253 was enacted, transforming vacant positions of substitute federal judge into positions of judge, creating 57 new vacancies for federal judges, 12 of them in TRF3. This is a 41 per cent increase in the number of vacancies for federal judges, which jumped from 139 to 196.¹⁵ Some appointments were made in 2022 by President Jair Bolsonaro and there are still vacancies to be filled by President Luís Inácio Lula da Silva, based on triple lists that will be submitted to him by the courts.

As already explained, the vacancies reserved for the judiciary are filled by means of a list on which federal judges apply based on the criteria of seniority and merit. In the case of seniority, the federal courts submit a single name to the President of the Republic; in the case of merit, three names are submitted to him, and it is up to him to choose. The vacancies for the one-fifth constitutional position, on the other hand, are filled by nominations from the Public Prosecutor's Office and the OAB (Brazilian Bar Association). From this list, the courts draw up another, with three names, which are presented to the President of the Republic. Therefore, the Executive's interference, although it exists, is limited (at least on a formal level). On a political level, however, it is known that the

¹⁵ In October 2021, Law 14.226/21 was enacted, creating TRF-6. Made up of 18 new judges, the court is responsible for the state of Minas Gerais. This brings the total number of federal judges to 214. All of TRF-6's vacancies have already been filled, resulting in a court made up of 15 men and 3 women. Of the latter, two were appointed on merit: Luciana Pinheiro Costa and Simone dos Santos Lemos Fernandes. The third is Mônica Sifuentes, a former member of TRF-1 who opted for removal to TRF-6. The full list is available at this link: < [President Bolsonaro appoints 17 federal appellate judges to the first composition of the TRF6 \(stj.jus.br\)](https://stj.jus.br) >.



influence of the President of the Republic is significant, and it will be interesting to compare the evolution of the data in order to see if there will be a change in the pattern of appointments by Lula's third term in office.

2.3.2. Subtle mechanisms in the selection and promotion rules?

In her article, Bonelli points out that "TJSP approved the entry of the first female judge into the career in the early 1980s. Only in 2003 did two female judges reach the Plenary of the court" (2013, p. 128). This statement leads us to a second possible hypothesis to explain the data on the courts studied: the subtle mechanisms at work in the selection and promotion rules in the state judiciary. Since professionalism had already been consolidated in the TJSP before women joined the court, the autonomy that came with it – defining the profession and enabling control over access, among other powers – may have allowed incumbents to restrict women's entry through these rules.

As Kahwage and Severi rightly point out, "it is possible that the criteria for entry and promotion in the career include areas of discretion that cause gender inequalities within the career and in the gender composition of the country's courts of justice" (2019, p. 57). Bonelli herself reports that until 1996, candidates for admission to the judiciary were identified by name at all stages. When names were replaced by numbers in the written exams, there was an increase in female admission rates, to the point that in 2011 a higher percentage of women than men reached the public oral exam (at this stage, however, more men passed) (Bonelli, 2011, pp. 105-06)¹⁶. Kahwage and Severi, comparing careers in different types of legal traditions, formulate the hypothesis more explicitly:

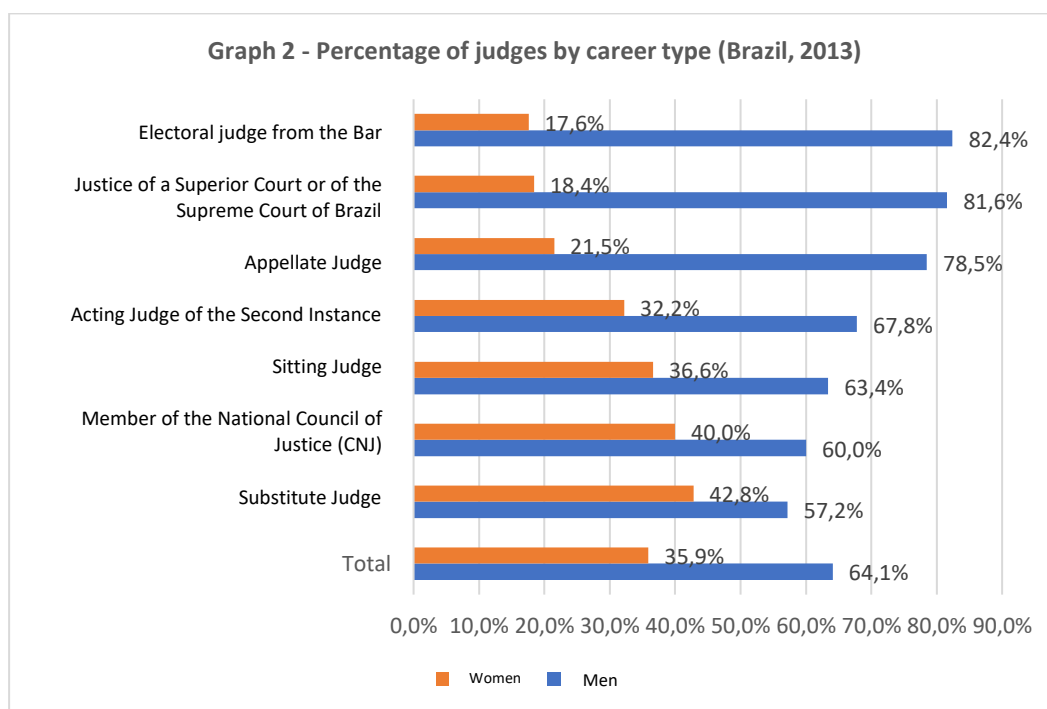
" Despite the small differences in each type of tradition [civil law and common law], women's careers tend to stagnate in the lower echelons of the judiciary - they generally remain in the lower courts (vertical segregation). Even with totally different judicial selection processes, the low percentages of women who climb the career ladder suggest the existence of discretionary spaces that enable men to perpetuate themselves in higher positions and prevent women from reaching such positions" (2019, p. 58).

In order to evaluate this hypothesis for the TRF3 and TJSP cases, it will be necessary to describe the rules that underlie (and therefore condition) appointments and promotions in the Brazilian Judiciary.

¹⁶ The sources of this information are not cited in the article.



As mentioned by Bonelli herself (2011, p. 112), there are more steps in the state career compared to the federal one. For those entering the TJSP, there are four steps: substitute judge, initial level, intermediate level and final level. At TRF3, the career is structured with one less step: substitute judge, assistant judge and full judge. Thus, those who enter the judiciary start as substitute judges. According to Bonelli, "the gender stratification observed in the TJSP begins in the final instance, which has 28 per cent female judges, and is very marked in the appeal court" (2011, p. 112). According to the data already presented (for 2011 and 2020), the inequality is actually less at the entry level, with around 60 per cent men and 40 per cent women in the two courts studied¹⁷. In the same vein, the data presented in the Judiciary Census (2013-2014) shows that:



Source: National Council of Justice (CNJ), 2014, p. 38.

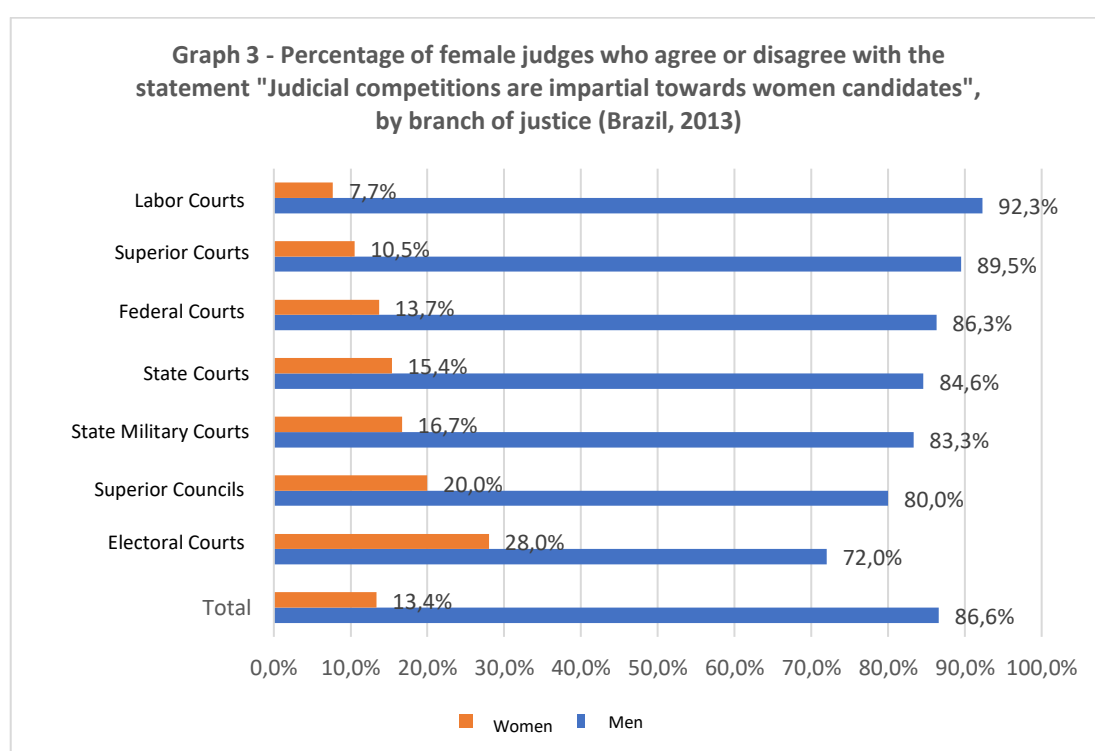
The first career level (substitute judge) has the highest percentage of women (42.8 per cent), which decreases as the career progresses, reaching only 21.5 per cent in

¹⁷ In 2011, the lower court of TJSP was 64 per cent male, compared to 62 per cent for TRF3. In 2020, 60% in TJSP and again 62% in TRF3. In the judiciary as a whole, there has been an improvement in recent decades: according to data from the National Council of Justice (CNJ) (2019, p. 42), female participation in the judiciary jumped from 24.6 per cent in 1988 to 38.8 per cent in 2018.



the position of appellate judge ¹⁸.

This objective data is in line with the subjective perceptions of female judges. The vast majority of them believe that the competitions to enter the judiciary are impartial and do not discriminate between men and women: the Census noted that 84.6 per cent of judges in the TJSP totally agree or agree that "the admissions' exams for the judiciary are impartial in relation to women candidates", a figure that reaches 87 per cent in TRF3.¹⁹ These percentages are practically the same (with slight variations) according to the branch of justice (2014, p. 87), the age groups of the respondents (2014, p. 93), whether or not the magistrate has children (2014, p. 99) and the type of position she holds (2014, p. 105). As an example, the following graph shows the data by branch of justice:



Source: National Council of Justice, 2014, p. 87.

¹⁸ Five years on from the Census, the figures remain practically the same: data from the National Council of Justice (CNJ) itself shows that, in 2018, women accounted for 44 per cent of substitute judges, 39 per cent of full judges and 23 per cent of judges (CNJ, 2018, p. 8). This data suggests that the thesis that "the arrival of women in the courts and bodies of the judiciary is a matter of time" is doubtful, as Bruschini (2007, p. 7) and Fragale, Moreira and Sciammarella (2015, p. 74) have stated.

¹⁹ Although interesting, this data should be taken with some caution. As the CNJ Census only considers female candidates who were approved, there is a possible selection bias in the sample, known in the literature as "survivorship bias". This bias can be defined as "a cognitive shortcut that occurs when a visible group that was successful is mistakenly taken to be the whole group, because the subgroup of those who were unsuccessful is not visible. The name of the bias comes from the mistake someone makes when, in a data set, they consider only the 'surviving' observations, disregarding those that did not survive a given event" (The Decision Lab - The Survivorship Bias, explained)."



According to Article 93(I) of the Brazilian Constitution, admission to the judiciary is through a public competitive examination consisting of tests and academic credentials, with a requirement of at least three years of proven legal experience for Law graduates. In addition, art. 78, §2 of the Organic Law of the Judiciary stipulates that candidates must "undergo an investigation into moral and social aspects, as well as a physical and mental health examination". There are five stages to the competition, according to CNJ Resolution 75/09: (i) an objective test, which is eliminatory and qualifying; (ii) two written tests, which are also eliminatory and qualifying; (iii) a background check and social investigation, a physical and mental health examination and a psychotechnical test, which are eliminatory; (iv) an oral test, which is eliminatory and qualifying; and (v) an evaluation of titles, which is only qualifying.

As already mentioned, Bonelli (2011, pp. 105-16) noted a bias in the second stage when candidates were still identified by name, which was resolved by replacing the names with numerical identification. If, as Kahwage and Severi point out, there is any room for discretion that makes it difficult for women to enter, it would be in the investigation and/or oral exam stages. In fact, according to art. 10, sole paragraph, of CNJ Res. 75/09, those who are contraindicated in the investigation stage are eliminated, and it should be investigated whether a disproportionate number of female candidates are eliminated at this stage.

As for the oral exam, the CNJ resolution stipulates that it must be held in a public session and recorded by any means that allows its subsequent reproduction (art. 64, caput and sole paragraph) - a measure that makes arbitrariness more difficult. It is up to the Examining Committee to assess the candidate's command of legal knowledge, the appropriateness of their language and the articulation of their reasoning, as well as their capacity for argument and the correct use of the Portuguese language (art. 65, §3, of CNJ Res. No. 75/09). The final mark awarded to the candidate is calculated as the simple arithmetic mean of the marks awarded by the examiners. Although the rules dilute the possibility of bias (due to the fact that the session is public and recorded and the grade is the average of the grades given by a group of people), there are reports that men are disproportionately more successful in the oral stage of the competition (Bonelli, 2011, pp. 105-06).

In any case, both the objective data cited above and the subjective perceptions of the magistrates point to the fact that inequality, although it exists at the moment of



entry into the career,²⁰ is more evident during progression.

Promotions are carried out as described in the previous section, following the criteria of seniority and merit laid down in the Federal Constitution (art. 93), the Organic Law of the Judiciary (art. 80) and CNJ Resolution 106/2010. The latter revoked Resolution 6 of 2005, which previously regulated the assessment of merit for the promotion of magistrates and access to the lower courts. The contrast between the level of detail in the current and old resolutions is striking. The 2005 Resolution limited itself to repeating constitutional precepts, delegating the establishment of more specific criteria to the Courts by means of their own administrative acts, which would give greater room for discretion. Resolution 106/10 sets out a series of objective and specific criteria for assessing merit. Article 4 of the resolution lays down four groups of criteria: performance criteria (qualitative aspect of the judicial service); productivity criteria (quantitative aspect of the judicial service); promptness in the performance of duties; and technical improvement criteria. For each of these, the resolution sets out a series of specific parameters (respectively in arts. 5, 6, 7 and 8). The magistrates registered for promotion, after being made aware of the information regarding all the contenders, can challenge the process (art. 13). All the debates and reasons for the vote are recorded and made available (art. 14).

The enactment of the resolution coincides in time with Bonelli's research, which means that her results do not capture any possible effect of these rules. In any case, it is enough to look at the current composition of the lower court to realise that the problem persists. The description and detailed reading of the rules that guide the process suggest that the problem may not lie so much in the lack of transparency or loopholes that allow for bias, but rather in the types of criteria established, which indirectly penalise women (if not in their careers, at least in their personal lives)²¹. An example of this is the criterion laid down in Article 6, sole paragraph, of Resolution 106/10:

“When assessing productivity, one should consider the average number of

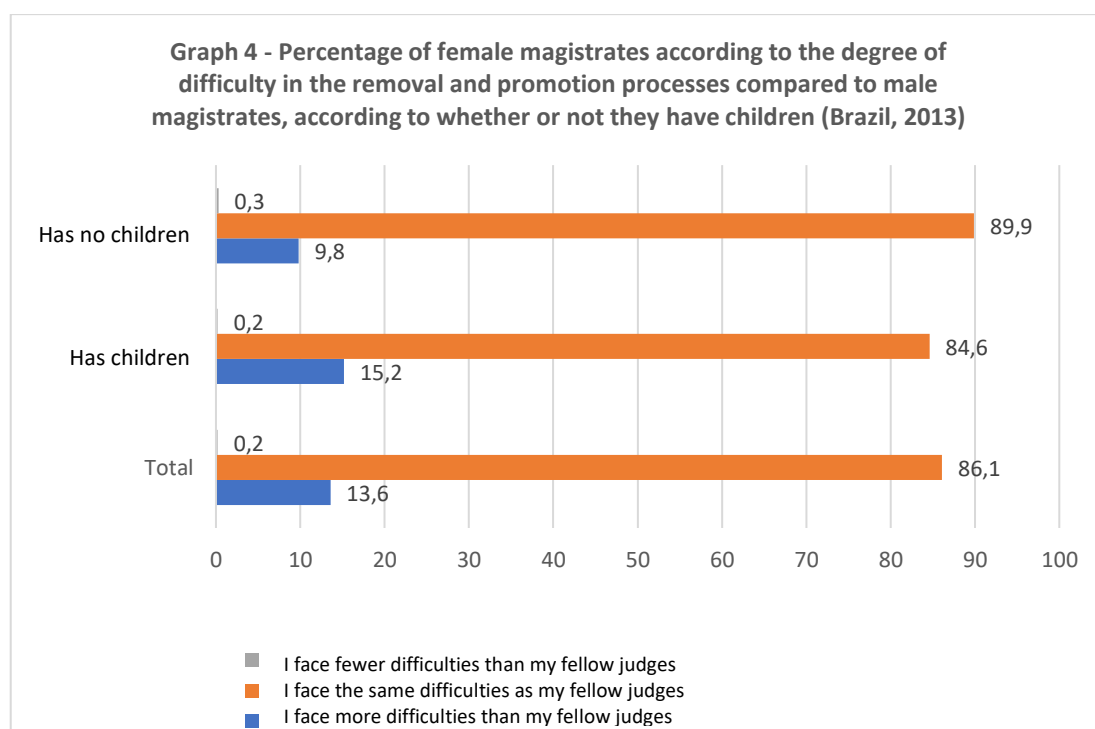
²⁰ Even though the proportion of women is stagnating at close to 40 per cent, figures from the CNJ suggest some progress: “the gender distribution according to the period of entry into the career shows that among active magistrates who entered up to 1990, the proportion of women is only a quarter. For those who joined between 1991 and 2000, the proportion of women reaches 40 per cent. Women represent 41 per cent of those who joined between 2001 and 2010; and 37 per cent of those who joined the career from 2011 onwards” (CNJ, 2018, p. 8). In addition, in a survey carried out in 2020 on female participation in competitive examinations for the judiciary, it was concluded that “in recent years, women have begun to show approval rates identical to those of men, although the low percentage of both represents an increase in competition” (2020, p. 27).

²¹ Fragale, Moreira and Sciammarella seem to point in this direction (2015, pp. 61-26). According to data from the CNJ, 14% of female judges are divorced and 13% are single, compared to 6% and 8% of men (2018, p. 11).



sentences and hearings compared to the average productivity of judges in similar units, using the median and standard deviation institutes from the science of statistics, favouring, in all cases, magistrates whose conciliation rate is proportionally higher than the rate of sentences handed down within the same average”.

Although quite objective, the criterion adopted can emphasise the trade-off between career and motherhood, for example.²² According to the CNJ Census, 53.6 per cent of female judges at TRF3 think their personal lives are affected by their work to a greater extent than their male counterparts, a figure that reaches 55.1 per cent at TJSP. Overall, although the majority of female judges report facing the same difficulties as their fellow judges in the processes of removal and promotion in their careers, this number is lower among female judges who have children:



Source: National Council of Justice (CNJ), 2014, p. 100.

²² In all branches of justice, the percentage of female judges without children exceeds the percentage of their male counterparts: 35% vs. 27% in the Federal Courts, 25% vs. 18% in the State Courts and Labor Courts, and 29% vs. 17% in other branches of justice (CNJ, 2018, p. 14).



3. Conclusion

In a recently published editorial, entitled "Toga mais diversa" ("A more diverse Judiciary"),²³ the Folha de São Paulo newspaper highlighted the gender disparity that exists in the Brazilian Judiciary, especially in senior positions. The problem is not new, and progress has been slow, even in the face of widening debate and struggles for gender parity. In this context, studies that try to understand the mechanisms behind the phenomenon are important: by investigating its possible causes, it becomes easier to reverse it. One of these studies is the article *Professionalism, gender and meanings of difference between state and federal judges*, by Maria da Glória Bonelli, published in 2011 and republished in the collection *Professionalism, Gender and Differences in Legal Careers* (2013b).

In the article, Bonelli compares the presence of women in the São Paulo State Court of Justice (TJSP) and the Federal Regional Court of the 3rd Region (TRF3). After noting less gender inequality at the federal level, she argues that "the consolidation of professionalism at a time before women entered the career is the factor that explains the barriers to feminisation in the [TJSP]" (2013a, p. 17). For Bonelli, the institutional reform of the Federal Court created the conditions for a court with less gender inequality than the TJSP. This occurred due to the different moments in which professionalism was consolidated in these courts: the "institutional old age" of TJSP, created around a hundred years before the TRFs, would explain its greater gender inequality when compared to TRF3. In the latter, the "institutional novelty" allowed women to enter the career before professionalism was consolidated there and created barriers to feminisation.

This article revisits Bonelli's study. Ten years on from the research that gave rise to her work, it assessed whether there has been a reduction in gender inequality in TJSP and TRF3 and how these courts behaved in relation to each other over the last decade. After a careful review of Bonelli's thesis and argument, it was argued that although gender inequality in the courts is evident, there is still no clear understanding of the causal mechanism that explains the disparities in each of the courts studied. The "institutional novelty" thesis was thus challenged as an explanation for the differences between TJSP and TRF3 in terms of gender inequality.

There were two main arguments to support this position. Firstly, it was argued

²³ Available online: [Toga mais diversa - 06/01/2022 - Opinião - Folha](#). Access 17/01/22.



that there is insufficient clarity as to the causal link between the consolidation of professionalism in the respective institutions and the gender inequality observed; secondly, it was argued that even if there were such clarity, the more recent evolution of the data seems to undercut Bonelli's thesis. Given the undeniable gender disparity that exists, it is concluded that more studies on the subject are needed to investigate the causal mechanisms behind the phenomenon. As Kahwage and Severi point out, this is no easy task:

“the explanation for the persistence of inequalities between women and men in labour relations is complex, since discriminatory practices (barriers/obstacles to careers) result from multiple mechanisms that are difficult to analyse and demonstrate (BARBERÁ RIBERA; ESTELLÉS MIGUEL; DEMA PÉREZ, 2009)” (2019, p. 58).

But this is no reason to give up. In order to help elucidate the phenomenon, two possible hypotheses were discussed to explain it: (i) greater interference by the Executive in the Federal Judiciary; and (ii) subtle mechanisms in the selection and promotion rules in the State Judiciary. In the first case, based on the rules governing career promotion and the appointment data for the TRF3 over the last decade, it was concluded that political interference by the Executive is not, at least formally, a good hypothesis to explain the differences in this period between the federal court and the TJSP.

The second possible explanation seems to be a more promising hypothesis: when it comes to access to the career ladder, there is room for possible discretionary measures that disadvantage women in the background check and oral exam stages; when it comes to promotion, the criteria for judging merit are fairly objective, indicating that the problem may not lie so much in a lack of transparency or loopholes that allow for bias, but rather in the types of criteria established, which can indirectly penalise women (if not in the career sphere, at least in their personal lives). Once again, given the undeniable gender disparity that exists, we conclude that more research is needed on the subject.²⁴

Regardless of the specific causal mechanisms behind the disparity, the data allows us to say that initiatives such as the one taken by the São Paulo Bar Association (OAB-SP), which adopted gender parity when drawing up its six-person lists for appointing judges to TJSP, are commendable. In order to minimise the problem, the Public Prosecutor's Office should make the same commitment. As has been pointed out

²⁴ The CNJ took an important step by issuing Resolution No. 255 of 04/09/2018, which establishes the National Policy to Encourage Women's Institutional Participation in the Judiciary. In recent years, the organisation has carried out important studies on the subject (CNJ, 2019; 2020).



throughout this text, 20 per cent of vacancies in the lower court are filled on the basis of lists drawn up by lawyers and prosecutors.

In the same direction, it would be important to have a measure to ensure that female candidates fill the vacancies of retiring judges: as the analysis of TRF3 figures from 2011 to 2020 showed, the decline in gender disparity in the court is explained by the fact that retiring judges (who were already a minority in the court) have been replaced mostly by men. There are also valid discussions about measures such as the regulation of teleworking (home office), which, according to some female judges, can contribute to achieving the productivity criteria without imposing too much sacrifice on family and personal life²⁵.

Although it is possible to glimpse an improvement in the data (especially in the first instance), one piece of information cited in the editorial summarises the problem well: according to a survey carried out in February 2020, the TJSP had more judges called Luiz (32) than women (31) - not to mention another seven magistrates called Luís, with an "s"! We hope this article contributes to the debate, encouraging new studies on the subject, as well as providing information for the adoption of concrete measures aimed at reducing the existing disparity.

References

BOLTON, Sharon C.; MUZIO, Daniel. Can't live with 'em; can't live without 'em: gendered segmentation in the legal. *Sociology*, [s. l.], v. 41, n. 1, p. 47-64, Feb. 2007.

BONELLI, Maria da Glória, *Profissionalismo, Diferença e Diversidade na Advocacia e na Magistratura Paulistas*, RBCS, vol. 28, nº 83, out., 2013, pp. 125-40.

_____. *Profissionalismo, Gênero e Diferença nas Carreiras Jurídicas*, São Carlos, EdUFSCar, 2013a.

_____. *Profissionalismo, gênero e significados da diferença entre juízes e juízas estaduais e federais*, *Contemporânea*, n. 1, Jan-Jun., 2011, pp. 103-23.

²⁵ As reported in the Folha de São Paulo newspaper: "'From a gender perspective, while it is true that teleworking has confused what was already confusing, which are these public and private planes, it has made tasks that women already performed more flexible and easier,' says judge Clara Mota, secretary general of Ajufe (Association of Federal Judges of Brazil), and director of the Ajufe women's commission. She says that the majority of female judges are in favour of regulation". Available online: < <https://www1.folha.uol.com.br/poder/2022/01/judiciario-vive-dilema-sobre-manutencao-de-trabalho-remoto-e-audiencias-online.shtml?origin=uol> >. Accessed on 17/01/22.



BRASIL. Conselho Nacional de Justiça. *A Participação Feminina nos Concursos para a Magistratura*, Brasília -- DF, 2020.

_____. Conselho Nacional de Justiça. *Censo do Poder Judiciário*: VIDE: Vetores Iniciais e Dados Estatísticos. Brasília -- DF, 2014.

_____. Conselho Nacional de Justiça. *Diagnóstico da Participação Feminina no Poder Judiciário*, Brasília -- DF, 2019.

_____. Conselho Nacional de Justiça. *Perfil Sociodemográfico dos Magistrados Brasileiros*, Brasília -- DF, 2018.

_____. Conselho Nacional de Justiça. *Resolução no 75, de 12 de maio de 2009*. Dispõe sobre os concursos públicos para ingresso na carreira da magistratura em todos os ramos do Poder Judiciário nacional. Brasília, DF: Conselho Nacional de Justiça, 2009.

_____. Conselho Nacional de Justiça. *Resolução no 106, de 6 de abril de 2010*. Dispõe sobre os critérios objetivos para aferição do merecimento para promoção de magistrados e acesso aos Tribunais de 2o grau. Brasília, DF: Conselho Nacional de Justiça, 2010.

_____. [CF88]. *Constituição da República Federativa do Brasil de 1988*.

_____. *Lei Complementar no 35, de 14 de março de 1979* [LOMAN]. Dispõe sobre a Lei Orgânica da Magistratura Nacional.

_____. Tribunal de Justiça do Estado de São Paulo. *Regimento Interno*. São Paulo, SP: Tribunal de Justiça, 2013.

_____. Tribunal Regional Federal da Terceira Região. *Regimento Interno*. 2021.
BRUSCHINI, Maria Cristina A. (2007), Elas chegaram para ficar. *Difusão de Idéias*. Fundação Carlos Chagas, outubro, pp. 1-7.

FOLHA DE S. PAULO. *Bolsonaro nomeará 75 desembargadores, na maior canetada da história recente*. Publicado pela coluna de Mônica Bergamo em 10/11/2021.

_____. *Como funciona a promoção de um magistrado?* Publicado no blog “Para Entender Direito” em 01/12/2010.

_____. *Judiciário vive dilema sobre manutenção de trabalho remoto e audiências online*. Reportagem publicada em 02/01/22.

_____. *Toga mais diversa*. Editorial publicado em 06/01/22. Disponível on-line em: < [Toga mais diversa - 06/01/2022 - Opinião - Folha](#) >. Acesso em 17/01/22.

FONTAINHA, Fernando; LOSS LEITE, Maria. “Profissões, gênero e Sociologia do Direito”. Entrevista com Maria da Glória Bonelli. *Plural*, v. 26, n. 2, 2019. Disponível on-line em: <<https://doi.org/10.11606/issn.2176-8099.pcs0.2019.165728>>. Acesso em 10/4/2022.

FRAGALE FILHO, Roberto; MOREIRA, Rafaela Selem; SCIAMMARELLA, Ana Paula. *Magistratura e gênero: um olhar sobre as mulheres nas cúpulas do judiciário brasileiro*. E-



Cadernos CES, Coimbra, n. 24, 2015.

FREIDSON, Eliot. Para uma análise comparada das profissões: a institucionalização do discurso e do conhecimento formais. *Revista Brasileira de Ciências Sociais*, v. 11, n. 31, 1996.

_____. *Professionalism: the third logic*. Cambridge, UK: Polity Press, 2001.

KAHWAGE, Tharuell Lima; SEVERI, Fabiana Cristina. Para além de números: uma análise dos estudos sobre a feminização da magistratura. *Revista de Informação Legislativa: RIL*, Brasília, DF, v. 56, n. 222, p. 51-73, abr./jun. 2019.

PORTAL CONSULTOR JURÍDICO (Conjur). *Bolsonaro sanciona lei que aumenta em 41% o número de juízes*. Publicação em 01/12/21.

SUSSKIND, Richard. *The End of Lawyers? Rethinking the Nature of Legal Services*. New York: Oxford University Press, 2010, cap. 2, p. 27-57.

_____. *Tomorrow's Lawyers: an introduction to your future*. Oxford: Oxford University Press, 2013, p. 23-38.

WEBER, Max. *The Methodology of the Social Sciences*, trad. eng. por Edward A. Shils and Henry A. Finch. New York: Free Press, 1949.

About the authors

Emerson Ribeiro Fabiani

Doctor of Laws from the University of São Paulo. Professor at FGV DIREITO SP. E-mail: emerson.fabiani@fgv.br. ORCID: <https://orcid.org/0000-0001-7116-705X>.

Mateus Matos Tormin

PhD in Philosophy from the University of São Paulo (USP). He holds a Master's degree in Political Science and Bachelor's degrees in both Law and Philosophy from the same institution. E-mail: mateus.tormin@usp.br. ORCID: <https://orcid.org/0000-0003-3599-3770>.

The authors contributed equally to the writing of the article.

About the translator

Bernardo Diniz Accioli de Vasconcellos

Doctoral student and Master of Laws at the State University of Rio de Janeiro (UERJ). Substitute Professor of Civil Law at the Federal University of Rio de Janeiro (UFRJ). E-mail: vasconcellos.bernardo@posgraduacao.uerj.br.

