Women's place(s): a socio-legal analysis of gender inequalities in the Colombian judiciary

Maria Adelaida Ceballos-Bedoya
Faculty of Law
McGill University, Montreal
April 2023

A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Doctor of Civil Law.

TABLE OF CONTENTS

DEDICATION

This thesis is dedicated to my parents and teachers, Laura Cecilia Bedoya Ángel and Elpidio Ceballos Maya. May the light of their wisdom and affection never cease to shine on me.

"Someone, I tell you, in another time,
will remember us."
– Sappho of Lesbos –[1]

[1] Sappho of Lesbos, *The Complete Poems of Sappho*, Willis Barnstone, ed (Boston: Shambhala Publications, 2009) at xxxix.

ABSTRACT

I ask two questions in my dissertation. First, where are women and men judges situated within the structure of the Colombian judiciary in terms of three variables: hierarchy, territorial location, and the type of appointment. Second, why do women seem to be disproportionately accessing poorly valued judicial positions rather than highly valued positions.

Most academic literature on gender diversity in the judiciary refers to countries traditionally labelled as strong states. In these contexts, the academic debate focuses on institutional design and formal state rules with the assumption that formal rules will be followed. However, little research exists regarding judicial diversity in Colombia—and Latin America more generally—, a context where informal rules are often more prevalent than formal ones. My dissertation seeks to complement the existing literature by studying gender inequalities in the judiciary from a new context (the Colombian one) while going beyond the study of formal rules and remedies.

Due to the current gap in Colombian legal literature, data on the gender composition of the judiciary and its appointment systems are scarce. Preliminary information suggests that women tend to be in lower judicial positions and hold discretionary appointments – i.e. non-meritocratic, temporary, and low-status appointments, usually located in peripheral municipalities.[2] To complete and examine this information, my dissertation asks the two aforementioned questions about women's distribution in the judiciary (the where) and the (dis)advantages they encounter on their journey to become judges (the why).

In order to answer these questions, I used a feminist qualitative methodology and collected data through documentary research and semi-structured interviews with more than ninety Colombian jurists and judges (women and men). Feminist (legal) theories illuminated all my research decisions and, as the fieldwork progressed, I created a blend of field theory and heterodox approaches to bureaucratic power. This blend allowed me to explore the gendered power dynamics behind both formal and informal rules in the judicial bureaucracy.

My findings seek to challenge dominant stereotypes about the gendered impacts of appointment systems. On the one hand, meritocratic appointments do not necessarily guarantee equal access for women—in fact, women tend to fare worse than men in merit-based competitions.

[2] This category of judges with discretionary appointments does not include judges who are part of the judicial decongestion policies (known as *jueces de descongestión*).

And on the other hand, discretionary appointments do not necessarily work against women even though most appointers are men—in fact, more women than men hold discretionary appointments. These findings emphasize the relevance of empirically based theorizations and recommendations, as well as the analytical importance of studying complex contexts such as Colombia's beyond oversimplifying labels such as "clientelism" and "institutional weakness."

Dans ma thèse, je pose deux questions. Premièrement, je m'interroge sur la place des femmes et des hommes juges dans la structure judiciaire colombienne en ce qui concerne trois variables: la hiérarchie, la localisation territoriale et le type de nomination. Deuxièmement, je cherche à comprendre pourquoi les femmes semblent accéder de manière disproportionnée à des postes judiciaires moins valorisés plutôt qu'à des postes hautement valorisés.

La majorité de la littérature académique sur la diversité des genres dans les systèmes judiciaires se réfère à des pays traditionnellement considérés comme des États forts. Dans ces contextes, le débat académique se concentre sur la conception institutionnelle et les règles formelles, en supposant que ces dernières seront respectées. Toutefois, les recherches sur la diversité judiciaire en Colombie – et en Amérique latine plus généralement – sont rares, un contexte où les règles informelles prévalent souvent sur les règles formelles. Ma thèse vise à combler cette lacune en examinant les inégalités de genre dans le système judiciaire colombien et en dépassant l'étude des règles et des remèdes formels.

En raison du manque d'intérêt pour ce sujet dans la doctrine colombienne, les données concernant la composition par sexe du système judiciaire et de ses systèmes de nomination sont rares. Les informations préliminaires indiquent que les femmes ont tendance à occuper des postes judiciaires inférieurs et à être nommées à des postes discrétionnaires, c'est-à-dire des postes non méritocratiques, temporaires et de statut inférieur, généralement situés dans des municipalités périphériques. Pour analyser ces données, ma thèse pose les deux questions mentionnées ci-dessus sur la répartition des femmes dans le système judiciaire (le ‘où’) et les avantages et inconvénients qu'elles rencontrent dans leur parcours pour devenir juges (le ‘pourquoi’).

Afin de répondre à ces questions, j'ai adopté une méthodologie qualitative féministe et collecté des données grâce à des recherches documentaires et des entretiens semi-structurés avec

plus de quatre-vingt-dix juristes et juges colombiens (femmes et hommes). Les théories féministes (juridiques) ont éclairé toutes mes décisions de recherche et, au fur et à mesure de l'avancement du travail de terrain, j'ai combiné une théorie de terrain et des approches hétérodoxes du pouvoir bureaucratique. Cette combinaison m'a permis d'explorer la dynamique de pouvoir genrée qui sous-tend les règles formelles et informelles de la bureaucratie judiciaire.

Mes conclusions remettent en question les stéréotypes dominants concernant les impacts genrés des systèmes de nomination. D'une part, les nominations méritocratiques ne garantissent pas nécessairement l'égalité d'accès pour les femmes – en effet, elles ont tendance à obtenir des résultats moins bons que les hommes dans les concours basés sur le mérite. D'autre part, les nominations discrétionnaires ne fonctionnent pas nécessairement au détriment des femmes, même si les hommes sont responsables de la majorité des nominations – en réalité, davantage de femmes que d'hommes occupent des postes discrétionnaires. Ces résultats soulignent la pertinence des théorisations et des recommandations empiriques, ainsi que l'importance analytique de l'étude de contextes complexes tels que celui de la Colombie. Mon analyse approfondie démontre l'insuffisance des étiquettes simplificatrices telles que ‘clientélisme’ et ‘faiblesse institutionnelle’.

ACKNOWLEDGEMENTS

First and foremost, I am grateful to my supervisor, Professor Shauna Van Praagh, for her enthusiastic generosity and brilliant guidance. Thank you for encouraging me to explore my creative writing and sociological curiosity. I could not have found a more supportive and inspiring supervisor.

My thesis committee members, Professors Jonas-Sébastien Beaudry and Adelle Blackett, helped me over the years with their sharp and constructive comments. Not every day one finds readers who can genuinely engage with the frameworks of thought presented before them.

I would also like to thank the Centre for Human Rights and Legal Pluralism. The financial support that the Centre provided through the O'Brien Fellowship was crucial during my first two years in Canada. Above all, the Centre was an incomparable environment to learn from dozens of admirable colleagues, professors, and staff. I would like to thank Professors Frédéric Mégret and François Crépeau, as well as Ms. Sharon Webb. My special thanks go to Professor Nandini Ramanujam, who is the backbone of the Centre and an inspiring, witty, and empathetic woman scholar.

I am also grateful to the Social Sciences and Humanities Research Council (SSHRC), which, through the Vanier Canada Graduate Scholarship, provided generous funding for three of the five years of my doctoral programme. Obtaining this scholarship would not have been possible without the support of the Faculty of Law at McGill University and the vote of confidence of Vivian Newman and Marta Inés Villa in Colombia. The support of Professors Óscar Quintero and Rodrigo Uprimny was also crucial to pave the way to access McGill and its scholarship programs.

The graduate office of the Faculty of Law was an essential part of my process. I am immensely grateful for their help over the years. Thanks to former Associate Deans Richard Gold and Andrea Bjorklund and current Associate Dean Darren Rosenblum. I have no words to describe the kindness, patience, and commitment of Bianca Bourgeois, Pasqualina Chiarelli, Silvana Solitiero, and Dalia Charafeddine.

Thanks to my friends and classmates in the writing group: Amy Preston-Samson, Atagün Mert Kejanlıoğlu, and Vishakha Wijenayake. I do not doubt that the vibrant discussions we had in 2022 were the final push that allowed me to move the thesis forward, and for that I will be eternally grateful. Vishakha, in particular, knows I would have hardly survived this journey

without her calm, smart, and smiling company. Nivedita Raju's brightness and enthusiasm are also one of the highlights of my time at McGill.

Thanks to Professor René Provost for constantly sending me valuable research material and encouraging us to consolidate the "Colombian delegation". Within this delegation, I would especially like to thank Luisa Castañeda and Yuri Romaña for their comments on my thesis. Thank you, Laura Barón, for our countless coffees together and our camaraderie.

Throughout my doctoral process, I benefited from the insightful comments of Professors Swethaa S. Ballakrishnen, Monique Cardinal, Daniel Gómez-Mazo, Ignacio González, Rosemary Hunter, Isabel Cristina Jaramillo, Ana María Ramos, David Sandomierski, and Carolina Vergel. I would also like to thank the Graduate Student & Early Career Workshop, organized by the Law and Society Association, through which I received thorough feedback from other doctoral students, with Professor Toby Goldbach at the helm.

Other friends were generous enough to not only comment on my thesis but to support me along the way. Sandra Gómez, Esteban Hoyos, Nicolás Torres, and Carolina Villadiego stand out in this list of talented and tireless friends. My thanks also go to the champion of bureaucratic studies and sorority, Professor Lina Buchely. Some friends never read my drafts (and I will spare them that sacrifice), but I would still like to thank them for their company, especially in the gloomiest periods of the pandemic: Isabel Bernal, Luis Felipe Cruz, Viviana Peña, Isabel Pereira, and Ana María Tamayo. I must not fail to mention the friends who made Montreal a home for me: María del Carmen Suescún, who shared with me her Sanctuary, her most sacred place; Taylor Rouleau, who (along with Georgia) allowed me to join them in their quiet and happy life; and Lina Álvarez and Carlos Pérez, the best hosts and companions one can dream of.

I was fortunate to receive the collaboration of many officials within the judiciary, starting with Juan Carlos Vargas, Héctor Jiménez, and the staff of the Judicial Career Administration Unit. For reasons of confidentiality, I cannot name the people who helped me obtain information, but I hope they know how grateful and moved I am. Needless to say, this project would not have been possible without the help of the dozens of interviewees who shared their life experiences with me. Thank you for inviting me to reshape my prejudices and preconceptions, and for teaching me how accurate Gabriel García Márquez was when he said that we are "living to tell the tale".

With patience and intelligence, Sofía Carrerá Martínez helped me fill my statistical knowledge gap by assisting me in processing the more convoluted data on meritocratic

competencies and the distribution of the judiciary. I owe the most statistically sophisticated information in this dissertation to her. Along these same lines, I would like to thank Adriana Roque, who eagerly proofread this dissertation. Of course, any possible errors readers may find in this dissertation are exclusively attributable to me.

My gratitude to Mauricio García Villegas extends beyond the confines of this thesis. He is my gentle mentor; the guardian angel of all my academic endeavours.

My last and most ardent thanks and affection go to my family: to my mother Laura, a creative and energetic writer; to my father Elpidio, an example of discipline and probity; to my brother Nico, my brilliant Cavaradossi; to my brother Sebas, the most passionate jurist I will ever meet; to my niece and nephew, who, as my mother puts it, have brought a new colour to our lives; to my aunts, a powerful support network that even the best feminist literature could not conceive; to Flor María Sánchez, a vital and beloved part of this support network through which our family has flourished. I thank Piedad Rebolledo for her sweetness and for leaving me the best possible gift. You were all infinite sources of inspiration.

I benefited greatly from Javier Revelo's ingenious methodological and theoretical advice. But most of all, Javi helped me to stay physically and mentally healthy during the most strenuous times of the doctoral process. His laughter and serenity were my safe shores; my refuge amidst these years of personal and collective storm. Thank you, my accomplice.

To women jurists and judges: you are remembered.

CONTRIBUTION OF AUTHORS

All chapters of this dissertation were written exclusively by me, with no co-authors.

LIST OF FIGURES

List of Tables

LIST OF ABBREVIATIONS

These are the codes or abbreviations with which I identified and anonymized the interviewees throughout this dissertation:

- MANJNL: man justice at the national level.
- WOMANJNL: woman justice at the national level.
- MANJLL: man justice at the local level.
- WOMANJLL: woman justice at the local level.
- MANJMA: man judge with a meritocratic appointment.
- WOMANJMA:woman judge with a meritocratic appointment.
- MANJDA: man judge with a discretionary appointment.
- WOMANJDA: woman judge with a discretionary appointment.
- WOMANP: woman participant in the meritocratic competitions.
- MANP: man participant in the meritocratic competitions.

CHAPTER I. INTRODUCTION. IN SEARCH OF THE FACES OF WOMEN JUDGES

> *"And where the words of women are crying to be heard, we must each of us recognize our responsibility to seek those words out, to read them and share them and examine them in their pertinence to our lives."* −Audre Lorde −.[3]

> *"The Sultan summons the poor wife's husband and demands to know the secret of his wife's happiness. 'Very simple,' the villager replies. 'I feed her the meat of the tongue.' […] Of course, the tongue meat the poor husband feeds the women is not material, but rather that of fairy tales, stories, jokes, songs: he nourishes them on talk... he banishes melancholy by refusing silence. Storytelling makes women thrive – and not exclusively women, the Kenyan fable implies, but other sorts of people, too, even sultans. Even, perhaps, lawyers? It seems without the meat of the tongue we are destined to wither and fade."* − Erika Rackley −.[4]

An Introduction: Finding Faces, Sharing Stories

My grandfather passed away when I was about seven years old. I was sitting next to my father at the funeral when a woman approached him. My father turned to me and said: "Look, this is Fanny. She is a faceless judge". I looked at her and replied with puzzlement: "What do you mean? She does have a face!". Back then, I did not know that Colombian judges were being systematically persecuted and murdered by guerrillas, paramilitaries, drug cartels, and even the state. Under these circumstances, there was a 'faceless justice' policy (*Justicia sin rostro*) which, for more than a decade, allowed some judges to conceal and protect their identity in order to preserve their lives.[5]

The more I look at the history of the Colombian judiciary, the more I realize that Colombia has indeed had, in many ways, a faceless justice system. This is partly why academics have avoided

[3] Audre Lorde, "The Transformation of Silence into Language and Action" in *Sister outsider: essays and speeches* Crossing Press feminist series (Berkeley, Calif.: Crossing Press, 2007) 40 at 44.
[4] Erika Rackley, "Judicial diversity, the woman judge and fairy tale endings" (2007) 27:1 Legal Studies 74–94 at 75.
[5] It must be noted that the *Faceless Justice* policy was not only largely ineffective in real life, but it also brought problems in terms of the right to defence of the accused. According to some estimates, between 1989 and 2015, 308 members of the judiciary were killed and 608 received death threats. See Andrés García, "Los rostros de la justicia", (20 April 2015), online: *Verdad Abierta* <https://verdadabierta.com/los-rostros-de-la-justicia/>.

studying – and exposing – the lives of judges so as not to endanger them.[6] This judicial invisibility also occurs in a context in which women have historically received little scholarly attention, "as if, condemned to the obscurity of an unspeakable reproduction, they were outside of time or at least outside of events."[7] I wrote this dissertation motivated by the idea that women judges in Colombia have suffered a double invisibility: as judicial officers and as women. There is media interest in talking about women in high courts (mostly in the Constitutional Court and certainly not in lower judicial positions), but this interest is relatively recent and has rarely been seen in academia.[8] As a result of this accumulated invisibility, women judges have rarely been mentioned in official reports and in the local academic literature. With this context in mind, this dissertation studies women's experiences of inclusion in – or exclusion from – the judiciary with the overarching goal of enhancing their visibility.[9]

Women's underrepresentation in the judiciary – and their consequent lack of visibility – has been neglected in Colombia, yet it has been widely studied in other countries. Most of the legal literature on this matter refers to some countries of the Global North, where scholars tend to focus on the *formal rules*[10] of appointment systems that facilitate (or block) women's access, promotion,

---

[6] Such disregard has gone hand in hand, among other reasons, with a legal culture disinclined to ask questions about the profiles and life experiences of judicial officers. According to Pérez-Perdomo, the marginality of judges is a feature of the Latin American legal culture more generally. See Rogelio Pérez-Perdomo, "Lawyers in Late Twentieth-Century Latin America" in William Felstiner, ed, *Reorganization and Resistance: Legal Professions Confront a Changing World* (London: Bloomsbury Publishing Plc, 2005) 195 at 219. This characteristic would explain why in Colombia, as I suggest below, there are only a couple of judicial biographies, and all of them are about men high court justices.

[7] See Michelle Perrot, *Mon histoire des femmes* (Paris: Éditions du Seuil, 2006) at 17. [Translated by author]. Perrot notes how women have certainly been present in *history* but not in the *stories* that academics reproduce about them.

[8] In this regard, I respectfully disagree with Vergel's assertion that "[…] there is no Branch of Public Power in which interest —not only in the situation of women, but also in the integration of a gender perspective—is more visible than it is in the Judicial Power […]". See Carolina Vergel Tovar, "Gender and the legal profession in Colombia: analysis of the state of the art from a socio-legal perspective" in *China and Colombia: towards a legal comparison Constitutional justice and socioeconomic rights, judicial reform, gender and the legal profession, international investment arbitration* (Bogotá: Universidad Externado de Colombia, 2019) 145 at 153. Even judicial faces that should be more visible are unknown, as evidenced by the fact that only 13% of my interviewees recognized the names of the first woman justice of each high court (Constitutional Court, the Council of State, and the Supreme Court).

[9] Much more has been written (in academia and the media) about women in the legislative branch. See, for instance, Diana Esther Guzmán Rodríguez & Sylvia Cristina Prieto Dávila, *¿Legislar y representar? La agenda de las senadoas en el Congreso (2006-2010)* (Bogotá: Dejusticia, 2014); María Emma Wills Obregón & Florentina Cardozo García, "Los partidos colombianos y la representación de las mujeres (1990-2006)." (2010) 71 Colombia Internacional 127–149; Angélica Fabiola Bernal Olarte, *Las mujeres y el poder político: una investidura incompleta* (Doctoral Dissertation, Universidad Autónoma de Barcelona, 2014) [unpublished].

[10] Based on Helmke and Levitsky, I understand that informal rules are "socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels," whereas formal rules are usually "[…] created, communicated, and enforced through channels widely accepted as official", which in Colombia are usually written and often created by central state authorities. See Gretchen Helmke & Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda" (2004) 2:4 Perspective on Politics 725–740 at 727.

and tenure in the judiciary. Several scholars in this literature assume that meritocratic systems (referring to the systems based on objective, technical, formally predetermined, and ideally gender-blind criteria) tend to ensure equality of opportunity, thus favouring women's access to the judiciary. In this line of thought, meritocracy would also serve to advance other purposes, such as judicial independence and efficiency. In contrast, discretionary systems (with wide margins of discretion, informal processes, and where gender is visible) would not only jeopardize other democratic goals but also affect women's access, especially when appointers are men. These conclusions are often formulated with a universal scope. The same preconception was also prevalent among the participants in this doctoral research. In this dissertation, I challenge this common preconception by showing that it does not always hold true, as is the case of Colombia. Based on this idea, I make a case for the need to examine appointment systems beyond the confines of formal rules, in a new empirical setting (such as Colombia) and from a socio-legal perspective that is context-sensitive.

When I first became acquainted with this prevailing literature on judicial diversity, I was conducting a study in co-authorship with Mauricio García-Villegas. During our research, we found data suggesting not only that women were largely occupying poorly-valued judicial positions[11] but also that the common preconception might not be fulfilled in Colombia. Indeed, the data showed that women's presence was inversely proportional to the hierarchy, with a minority in the high courts.[12] Other preliminary reports suggested that more women than men entered the judiciary through *discretionary* appointments – which are unstable and low-status appointments, usually within lower hierarchies and peripheral municipalities.[13] However, if I wanted to engage in a dialogue with the existing literature, I still had to complete, verify, and qualitatively explore this preliminary information. My dissertation addresses this task by answering two interconnected questions. First, *where* exactly are women (and men) judges situated within the structure of the Colombian judiciary in terms of the appointment system, hierarchy, and territorial location.

[11] I understand that poorly-valued positions are those that have lower pay, less visibility, less stability, less status, and may be located in municipalities with low quality of life.

[12] See Mauricio García Villegas & María Adelaida Ceballos Bedoya, *Abogados sin reglas. Los profesionales del derecho en Colombia: mucho mercado y poco Estado* (Bogotá: Editorial Planeta, 2019) at 69.

[13] See Colombia, Consejo Superior de la Judicatura, "Unidad de Administración de Carrera Judicial", (14 January 2019), online: *Rama Judicial República de Colombia* <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/resultado-prueba-de-conocimientos-y-aptitudes>; Daniel Gómez-Mazo, *Afro-Descendant Representation on Latin American Courts* (Doctoral Dissertation, Fordham University - School of Law, 2020) [unpublished].

Second, *why* do women seem to be disproportionately accessing poorly-valued judicial positions rather than highly-valued positions. Specifically, I examine the *where* and the *why* of women's places[14] and appointments in lower and middle courts[15] through documentary research and semi-structured interviews.

My contribution consists of a socio-legal analysis that links empirical knowledge of appointment systems with interdisciplinary studies on gender inequalities and bureaucratic power. After examining the experiences of my interviewees, my analysis challenges the common preconception through three conclusions. First, not all women always lose (or win) in the same way, because the gendered impacts of appointment systems depend on many factors, such as the structural positions they occupy and the ways in which they navigate bureaucratic practices. Second, there is arguably no system that, in the abstract, guarantees women equal access to the judiciary. And third, no single appointment system is likely to satisfy, fully and simultaneously, all desirable political goals – i.e. judicial efficiency and independence, gender equality, access to justice, among others.

Going back to Audre Lorde's words, in this dissertation I seek out women's experiences in relation to each appointment system in order to make them visible in all their complexity. I will describe this endeavour in the seven sections that make up this introduction, as follows. The first section explains the common preconception and the reasons that lead me to challenge it. The second section unpacks some critical characteristics of the Colombian context. The third section presents my central findings and conclusions. The fourth section explains my research design. The fifth section reviews my main empirical and theoretical contributions. The sixth section justifies the relevance of my research questions. And the last section presents an overview of the content of the chapters that compose this dissertation.

1. The Common Preconception and My Research Questions

Promoting – and studying – judicial gender diversity is crucial for many reasons: first, because diversity contributes to guaranteeing equal treatment and equal opportunities for women; second,

[14] The title of this dissertation, "Women's Place(s)", was born out of the intersection between the popular saying "woman's place is in the home" and the multiple critical re-appropriations of that saying by scholars who question the idea that there is "a" place for women—usually outside the public arena.

[15] Each of the five high courts in Colombia has its own appointment system, all of them different from those of the middle and lower courts. The appointments in each high court are so complex and impenetrable that each would almost merit its own doctoral thesis.

it increases the democratic legitimacy of the judiciary; and third, it can *sometimes* improve judicial decisions and procedures, among other arguments. For these reasons, judicial diversity has been prioritized and extensively studied in other contexts for at least two decades. In particular, I have identified that a large strand of the legal literature refers to a few countries of the common law tradition located in the Global North (hereinafter CLGN countries). The literature primarily focuses on three of those countries: Canada, the United States, and the United Kingdom. As I explain in more detail in Section 5, this prevailing literature addresses judicial diversity from several angles, one of which is the gendered impacts of judicial appointment systems.

Broadly speaking, the CLGN countries are high-income states with stable democracies, high compliance with formal rules, an even reach of the state throughout the territory, and strong enforcement and accountability mechanisms.[16] It is possible that due to these characteristics, the academic debate usually refers to formal rules and it is taken for granted that such rules will be followed. In this context, the legal literature on judicial diversity identifies problems in the design (and sometimes the application) of formal rules relating to judicial appointments, while paying little attention to the socio-legal context.[17] Specifically, authors tend to reinforce a dichotomous conclusion with a universal scope, which I have called the common preconception. The conclusion is the following: meritocratic systems (with small margins of discretion and with objective, gender-neutral, technical, and highly regulated selection criteria) favour women's access to the judiciary, whereas discretionary systems (with highly discretional informal processes, and where gender is visible and accountability low) tend to limit women's chances of being selected, especially when

[16] I have consciously resisted the labels of "strong" and "weak" states for reasons I explain in chapters III and VI. For now, suffice it to say that these labels neglect the fact that "weakness" is often a strategy, rather than an institutional problem that cannot be solved. In this regard, see María Victoria Murillo, Steven Levitsky & Daniel Brinks, *La ley y la trampa en América Latina. Por qué optar por el debilitamiento institucional puede ser una estrategia política* (Buenos Aires: Siglo Veintiuno Editores, 2021)."

[17] A summary of this predominant perspective can be found in Erika Rackley, "Rethinking Judicial Diversity" in Ulrike Schultz & Gisela Shaw, eds, *Gender and Judging* (Oxford: Hart Publishing, 2014) 501. Some common recommendations focus, for instance, on the need to reduce discretion in the selection processes, increase the flexibility of mandatory prior legal experience, or to strengthen the accountability and to diversify the composition of selection commissions. See Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017); Kate Malleson & Peter H Russell, eds, *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (Toronto Buffalo London: University of Toronto Press, 2006); Ulrike Schultz & Gisela Shaw, eds, *Gender and Judging*, Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013); Cheryl Thomas, *Understanding Judicial Diversity. Research Report for the Advisory Panel on Judicial Diversity* (London: UCL Judicial Institute, 2009);

appointers are men. Although there there is a growing scepticism about the equalizing effects of meritocracy[18], the negative preconception against discretionary powers remains strong.

This common preconception can be found in several widely cited documents in the legal literature on judicial appointments. While the authors may not use the same language I use here about meritocratic and discretionary systems, their points of comparison are pretty similar to mine; that is, they contrast systems based on objective, merit-based criteria (ideally gender-blind) *with* systems with greater margins of discretion for appointers. Perhaps one of the most salient examples can be found in the introduction to the compilation *Gender and Judging*. The authors claim to present an overview of the gendered impacts of different appointment systems globally. They focus mainly on the comparison between countries in the civil law and common law traditions, concluding that "In civil law countries it is easier for women to enter the judiciary, as here key access criteria for judicial office, such as formal qualification and examination results, are more rational and transparent and therefore more easily met by women […]".[19] Their summary shows an association between lower levels of discretion and greater access for women. Their compilation, however, does not include any case studies on appointment systems in Latin America.

In the same vein is the comprehensive report and literature review by Cheryl Thomas. The author reviews judicial appointment policies and their impact on women's inclusion in a dozen jurisdictions. On the one hand, the author acknowledges that there is no clear or unambiguous evidence on how the judicial selection system affects women's access to the judiciary. However, after examining different studies, the author moves on to argue how merit-based systems work against women when they are impacted by informal criteria. Her conclusion is that "[…] women clearly succeed in gaining judicial appointments where competitions are anonymous and the

[18] See, among many other, John Morison, "Beyond merit: the new challenge for judicial appointments" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London and New York: Routledge, 2017) 223 at 235. Kate Malleson, "Rethinking the Merit Principle in Judicial Selection" (2006) 33:1 Journal of Law and Society 126–140; Hilary Sommerlad, "The 'Social Magic' of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession" (2015) 83:5 Fordham Law Review 2325–2347. A powerful reflection on the essentially political nature of judicial appointment can be found in Kate Malleson & Peter H Russell, eds, *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (Toronto Buffalo London: University of Toronto Press, 2006).

[19] See Ulrike Schultz & Gisela Shaw, eds, "Introduction: Gender and Judging: Overview and Synthesis" in *Gender and Judging* Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013) 3 at 6.

criteria for appointment are knowledge based, not experience based."[20] The author notes that it is vital to pay attention to context, yet she narrows the context to the differences between common law and civil law traditions. However, in making this contrast, she focuses almost exclusively on countries of the Global North.

This type of approach has been replicated by policymakers and international agencies, which, in turn, feed the preconceptions of judicial actors. A good example is the recent report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers. In line with the studies summarized above, this report emphasizes the importance of merit-based selection processes while stating that "[d]iscretionary and subjective criteria significantly affect the promotion and selection of women in leadership positions."[21]

The common preconception – which, incidentally, was endorsed by most of my interviewees – is often based on empirical evidence about a specific country (mainly about the high courts), and it is frequently based on universal assumptions about the institutional dangers of discretionary powers. More generally, I argue that this preconception tends to be grounded in what we may call *formal institutionalism*. This is a stream of institutionalism that overemphasizes the importance of formal rules and operates in "splendid isolation"[22] from contextual considerations. This stream examines the functioning of formal rules and attributes to them a direct or even causal impact on policy outcomes.

My dissertation takes issue with this preconception and its underlying assumptions considering that, as I explain below, it does not hold true empirically in all contexts, as is the case in Colombia. Moreover, I suggest that this preconception – and the studies that support it – holds weaknesses inherent in formal institutionalism, which is an approach that cannot fully account for

[20] *Judicial diversity in the United Kingdom and other jurisdictions. A review of research, policies and practices. Commissioned by Her Majesty's Commissioners for Judicial Appointments*, by Cheryl Thomas (Birmingham: The Commission for Judicial Appointments, 2005) at 66.

[21] The same conclusion was included in *Participation of women in the administration of justice - Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán*, by UN Special Rapporteur on the independence of judges and lawyers, A/76/142 (United Nations - General Assembly, 2021) at 67. Another example of the negative preconception against discretion can be found in Graham Gee, "Judging the JAC: how much judicial influence over judicial appointments is too much?" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London and New York: Routledge, 2017) 152 at 157.

[22] See Jane Jenson & Frédéric Mérand, "Sociology, institutionalism and the European Union" (2010) 8:1 Comp Eur Polit 74–92 at 76.

the concrete conditions under which women are included in (or excluded from) each appointment system.[23]

In contrast to this approach, I argue for the adoption of a *socio-legal analysis* that assumes: first, that appointment systems can have specific institutional designs in each country[24] and, second, that it is important neither to remove the rules from a broader socio-political context nor individuals from their circumstances.[25] Driven by this socio-legal approach, I wanted to identify how adequately the common preconception travelled to a country like Colombia, where gender diversity issues have been grossly underdiagnosed and where the socio-legal context is so different from that of the CLGN countries. Consequently, my dissertation asks *where* (the places women occupy) and *why* (the workings of the appointment systems that make it easier or harder for women to reach those places). I suggest that my main contribution is not only to fill a gap in the local literature but also to complement the existing broader literature by studying a new context (the Colombian one) while incorporating an analysis of the socio-legal context that goes beyond the study of formal rules.

The following section presents a brief description of some characteristics of the Colombian context, as they are at the basis of my findings and conclusions.

2. Broad Strokes: Some Contextual Characteristics

Like most Latin American countries, Colombia has significant contextual differences compared to the CLGN countries. As I explain in more detail in Chapter III, Colombia has paradoxical features: democratic and economic stability with an all-powerful executive branch, progressive high courts that are independent of the executive branch, weak accountability and enforcement mechanisms, a territorially and hierarchically fragmented state (including the judiciary), and a prevalence of informal rules. All this goes hand in hand with high levels of poverty, violence, and a ceaseless

[23] As Ingram & Kapiszewski state, "While most of the empirical work in this volume—like much of the comparative judicial politics literature— examines the formal, de jure aspects of justice institutions, we recognize that focus is incomplete." See Diana Kapiszewski & Matthew C Ingram, "Introduction: Beyond High Courts" in *Beyond High Courts: The Justice Complex in Latin America* (Notre Dame: University of Notre Dame Press, 2019) 1 at 9.

[24] "Certainly, selectors can have multiple criteria and motivations in mind when selecting a judge. Appointers, for instance, can seek judges using a combination of ideological, racial, geographic, and gender criteria. An important avenue for future research is to unpack more fully and with more finely grained data the differences among domestic institutions. Particular institutional designs may create opportunities or barriers for women in ways that we were not able to capture in this study." Maria C Escobar-Lemmon et al, "Breaking the Judicial Glass Ceiling: The Appointment of Women to High Courts Worldwide" (2021) 83:2 Journal of Politics 662–674 at 671.

[25] See Jenson & Mérand, *supra* note 22 at 77.

civil war "that does not allow us to turn the page of absence and grief."[26] With regard to gender issues specifically, we find, among other things, that women lead 84% of single-parent families,[27] have one of the highest levels of paid and unpaid working hours globally,[28] and experience one of the highest unemployment rates – and unemployment gender gaps – in Latin America. Additionally, meritocratic admissions processes disproportionately block women's access to top public law faculties[29] and women in the judiciary have greater caregiving responsibilities than their men peers.[30]

These features largely determine how the main appointment systems in Colombia (meritocratic and discretionary) work beyond the letter of formal rules.[31] On the one hand, *meritocratic appointments* offer great job stability and high status vis-à-vis the legal community, and they are usually located in central municipalities. In theory, the meritocratic process guarantees judicial independence, equal opportunities, and the selection of qualified jurists, which is why these appointments should be the rule. In practice, however, several internal and external factors cast doubt on its technical, transparent, and equalizing nature. For example, due to Colombia's territorial disparities, many participants must travel to distant cities – in precarious conditions and at their own expense – in order to attend the meritocratic competition.

Discretionary appointments, on the other hand, allow for total discretion in the appointment and dismissal of judges. There are neither predetermined selection processes for the appointees nor controls on the appointers (who are tribunal justices[32], mostly men). Discretionary and meritocratic appointees enjoy the same salary and status vis-à-vis citizens. The difference is that discretionary appointees have lower job stability and status within the judiciary, and they often work in peripheral municipalities – usually poor, violent, or distant. Discretionary appointments

[26] See Marta Pizzo, *Anclada al paraíso* (2010) l 4. [Translated by author].
[27] Ana María Iregui-Bohórquez et al, *El camino hacia la igualdad de género en Colombia: todavía hay mucho por hacer* (Bogota: Banco de la República, 2021) at 63.
[28] See Iregui-Bohórquez et al, *supra* note 27.
[29] See María Adelaida Ceballos Bedoya, "Inclusión de género, exclusión de clase. Las mujeres en la educación jurídica colombiana" (2018) 49 Revista de derecho 113.
[30] This information includes both women judges and women judicial employees, as an internal survey of the judiciary found during the pandemic (data on file with the author).
[31] There are, in fact, three appointment systems in Colombia: *nombramientos en propiedad* (that I call meritocratic appointments), *nombramientos en provisionalidad* (that I call discretionary appointments), and *nombramientos por encargo* (that could be translated as commissioned appointments and I have not included here because they are absolutely in the minority and are much less questioned than discretionary appointments). As I noted above, under the category of discretionary appointments I have not included the positions that are part of the judicial decongestion policies.
[32] Tribunal courts are the highest provincial courts (second in rank only to high courts).

might compromise judicial independence, open the door to corrupt practices, and lead to selecting "not the best, but the best friends."[33] Because of these risks, the formal rules mandate that such appointments be temporary and exceptional. However, data show that they are rather common and permanent (48% of all lower court judges in 2022).[34]

My research shows that both systems are intimately interdependent.[35] For instance, many jurists live under such structural constraints that they do not have time to wait for the long cycles of meritocratic competitions.[36] Therefore, they find in the discretionary path an immediate economic relief and professional reward. Another example is that discretion allows filling vacancies in violent municipalities where no meritocratic winner has ever wanted to go. Therefore – according to some interviewees –, choosing a discretionary appointee (with judicial experience and a willingness to go anywhere) can also be a matter of efficiency, access to justice, and quality.

3. Main Findings and Conclusions

This dissertation studies the current gender distribution of the Colombian judiciary as well as the gendered impacts of appointment systems that could explain such distribution. This study consists of a socio-legal analysis linking legal and empirical knowledge of appointment systems *with* interdisciplinary research on structural gender inequalities and bureaucratic power. As I explained earlier, my overarching argument (in response to the common preconception) is that a thorough understanding of appointment systems requires a context-sensitive and empirically grounded analysis.

Drawing on *field theory* and *heterodox approaches to bureaucratic power*, I show how women's experiences do not depend exclusively (not even mainly) on the letter of the law. Instead, women's experiences are powerfully tied to the structural *positions* they occupy within the bureaucratic judicial *field* and the resources they have (their forms of *capital*) to advance in that

[33] Cruz Silva Del Carpio & Luis Miguel Purizaga Vértiz, *"No entran los mejores, sino los mejores amigos". Una aproximación preliminar para identificar y prevenir la corrupción en el sistema de justicia* (Lima: Instituto de Defensa Legal, 2020).
[34] Colombia, *Informe al Congreso de la República. Gestión de la administración de justicia 2016*, by Superior Council of the Judiciary (Bogotá: Consejo Superior de la Judicatura, 2017) at 140.
[35] See Gladys Virginia Guevara Puentes, *La carrera judicial en Colombia* (Bogota: Editorial Temis, 2001) at 58; Margarita Almario Pantoja, "Estabilidad y garantías de los derechos laborales de los funcionarios y empleados del sector judicial en Colombia" (2016) 10:1 Novum Jus 93, at 105.
[36] The timeline of the competition is so lengthy that some candidates have waited eight years between the moment the competition started and the moment of their appointment. See Ana María Salazar, *La implementación de la carrera judicial en la jurisdicción ordinaria* (Master Thesis in Law, Universidad de los Andes, 2021) [unpublished] at 28.

field. In turn, women's positions determine how they perceive, navigate, and perform bureaucratic practices around appointment systems (which may or may not correspond to what formal rules dictate). My findings and conclusions largely contradict the common preconception. Let me elaborate.

3.1. Women's Experiences and Context-Bound Conclusions

As I mentioned earlier, Colombia lacks studies that comprehensively analyze women's distribution and the gendered impacts of appointment systems. My inquiry addresses this gap and shows that women do hold poorly-valued positions in greater proportions than men, at least in terms of hierarchy and appointment system. In terms of hierarchy, although women make up half of the licensed jurists in Colombia, they are a majority in the lower positions and a minority in the highest provincial courts (the tribunal courts). In terms of appointment systems and location, men tend to find it less difficult than women to enter the judiciary through the meritocratic path, and in fact, there is a statistically significant relationship between being a man and holding a meritocratic appointment. Data also show that both the meritocratic and discretionary paths tend to lead women to lower positions. Moreover, there is a statistically significant relationship between being a woman and holding a discretionary appointment – although it is men who tend to work in more challenging municipalities.

To grasp the depth and extent of this information, I decided to examine the experiences of my interviewees in each appointment system. After contrasting the stories of women and men (and among women), I imagined four ideal types[37] of women on their way to the judiciary. These types emerged after crossing two variables: first, the two appointment systems; and second, the result of women's experiences (negative or positive). Regarding *meritocratic appointments*, I found that they often exclude women with more care responsibilities, with low economic capital, and with academic professional skills that are different from those rewarded by the 'gender-neutral' selection process (*Type A – The Excluded*). Then, we find women who do overcome meritocratic competitions. These women often have more economic, social, and cultural capital – e.g. better support networks or better professional training – but tend to pay costs that most men do not, such

[37] An ideal type is "is not ideal in the sense that it is excellent, nor is it an average; it is, rather, a constructed ideal used to approximate reality by selecting and accentuating certain elements." See The Editors of Encyclopaedia Britannica, *Ideal type* (2018).

as sleep deprivation and filial resentment (*Type B – The Overcomers*). On the other hand, *discretionary appointments* are a path many women resort to considering the barriers of meritocracy. In this case, some women face disadvantages because they find obstacles in building political networks or in attending to their care responsibilities (*Type C – The Disadvantaged*). Other women obtain the favours of the appointers as a reward for having worked as their subordinates and for being in positions perceived as vulnerable or in need of help – as is the case of single mothers (*Type D – The Favourites*). For all four ideal types, I suggest that even when women occupy subordinate or poorly-valued positions, they may be deploying strategies of survival and resistance, and may even be exercising power in a meaningful way.

Based on these findings, my first conclusion is that not all women always lose, and they do not lose (or win) in the same way or in the same proportions as men or as other women. To put it more precisely, not all women – Colombian or otherwise – experience each appointment system in the same way, for at least two reasons: first, each system has its own bureaucratic practices; second, not all women approach (the practices of) appointment systems from the same structural positions. Put differently: women's opportunities and constraints will depend on different factors that are difficult to weigh universally or in an abstract manner, such as the specific workings of each system and the particular configurations of the gender structures in each context.

My second conclusion is tied to the previous one. In line with Sally Kenney's findings, I conclude that there is arguably no appointment system that, in the abstract, guarantees equal access for women to the judiciary[38] because such systems are context-bound. Indeed, the Colombian case shows not only that the formal design of appointment systems can take different forms but also that the bureaucratic practices and gender structures surrounding each system can change from context to context.[39] Therefore, I argue that universal conclusions about the gendered impacts of appointment systems are problematic because they undervalue the importance of context and they are empirically contested, as was proven in the Colombian case with regard to the common preconception.

[38] Kenney, *supra* note 17.

[39] Here, I include not only countries but even provinces and areas of law. For example, bureaucratic practices vary greatly when there is a vacancy in Bogota to when the vacancy is located in a dangerous region of the country (in which case, an applicant who is a mother has less chance of obtaining a discretionary appointment).

3.2. The Complex Picture of Appointment Systems

My findings also show that the portrait of appointment systems is far from simple. Indeed, data on meritocracy suggest that, even if meritocracy is governed by facially gender-neutral formal rules, it tends to reproduce the structural (gender) inequalities that already exist in society. But, in addition to not being entirely neutral, meritocracy often operates in anti-technical, improvised, and unpredictable manners. Regarding discretionary appointments, I found that contrary to what is commonly believed, it is precisely discretion (and even the fact that gender is not blind) that can open doors that would otherwise be closed to some women. Moreover, I suggest that perhaps discretionary appointments might not be clientelistic and inefficient, but may sometimes be efficient, technical, and even merit-based. In sum, both systems can work with a logic of objectivity/subjectivity, efficiency/inefficiency, and inclusion/exclusion, although in both of them there is an effort to respect the image of an objective, technical, and predictable bureaucracy. And more specifically, both systems are susceptible to critique from a feminist viewpoint.

In this case, my conclusion is that not all good things go together.[40] As a beautiful Taoist tale goes, "clouds bring the nourishing rain, and sometimes the devastating storm." Many scholars seem to assume that meritocracy satisfies all – or almost all – of the goals that appointment systems should pursue (e.g. the efficiency of justice, quality of judges, gender equality, judicial independence, and access to justice across territories). In contrast, I argue that all these goals are unlikely to be met entirely and simultaneously. The challenge for scholars is thus to identify the characteristics within each system that maximize these goals, and subsequently recommend interventions, both legal and social, that might contribute to striking a balance between them. The common preconception tends to ignore that different appointment systems can have different complexities, and I believe we do a disservice to gender equality when we oversimplify this characterization.

3.3. A Statement of Purpose

As I have insisted up to this point, one of my main analytical purposes is to conduct a socio-legal study that unveils and raises awareness about the complexities of the (gendered) impacts of judicial

[40] The assumption that "all good things go together" is generally associated with liberal (economics) thinking. See Albert O Hirschman, "The Rise and Decline of Development Economics" in Albert O Hirschman et al, eds, *The Essential Hirschman* (Princeton: Princeton University Press, 2013) 49 at 66.

appointments. Therefore, I do not intend to prove that one appointment system is better (in a moral sense) than the other, nor do I intend to draw concrete policy recommendations from my findings.

However, this dissertation does not merely describe a nuanced reality. Instead, I have been driven by a prescriptive impetus in at least two ways. First, as a feminist scholar, my reflections are inherently prescriptive to the extent that I assume that women occupy an oppressed position in society and that we should strive to end this oppression. Second, I hope that the women's stories I discuss here will be told and retold, and listeners (especially within the legal profession) will feel invited to reassess their perceptions and reshape their social world. And if listeners were policymakers, I hope they find in these complex stories valuable material for better designing future law reforms.

4. Research Design

In order to find answers to my research questions (about the *where* and the *why*), I adopt a feminist and predominantly qualitative methodology. In this section, I describe the main pillars of my research design, the information collection methods I employed, and the type of data I collected, with their corresponding limitations.

4.1. Feminist Methodology: What to Study and for What Purpose

Women have been kept out of the public sphere, and their stories (past and present) have been systematically invisibilized by academia. "In the theatre of memory, women are only shadows," says historian Michelle Perrot.[41] The feminist methodology seeks to change this state of affairs by putting women at the centre of research. This methodology entails a deep insight (a theory and analysis) into how research should be done in terms of *what to study* and *for what purpose*.[42] Indeed, feminism explicitly pursues women's equality through the identification of social phenomena that are problematic *for women* and finding answers and solutions that might be useful *for women* – understanding women as an intrinsically heterogeneous group.[43]

I empathically draw upon a tool commonly used by feminist legal scholars: storytelling. This tool entails listening, critically analyzing, and sharing in a narrative manner the stories of

[41] Perrot, *supra* note 7 at 25. [Translated by author].
[42] Sandra G Harding, ed, *Feminism and Methodology : Social Science Issues* (Milton Keynes [Buckinghamshire]: Indiana University Press, 1987) at 8.
[43] See Katharine T Bartlett, "Feminist Legal Methods" (1990) 103:4 Harvard Law Review 829–888 at 888.

concrete women while trying to connect them with more abstract reflections on gender power relations and the law.[44] Interviewees made sense of their lives through stories, while I tried to attribute meaning to their experiences by telling stories as well.[45] I also decided to accompany their personal stories with literary references – which are also stories. I am convinced that stories (personal and otherwise) have great political and persuasive potential, as they can powerfully render visible the commonality of certain experiences of exclusion and invisibility. They present the multilayered details of a life that seems utterly distant from our own and invite us to imagine other possible realities.[46] Even when the sample of participants is not representative (as in this dissertation), stories can be theoretically illustrative and empathy-arousing. As Shauna Van Praagh explains, *"*[b]eyond the effect of promoting group solidarity and encouraging unheard voices, storytelling by members of subordinate groups enriches the listener's reality and works to destroy entrenched ideologies."[47]

My interest in unearthing stories is closely linked to the conception that feminist research is "an exercise in the concrete".[48] For that reason, and in line with my criticisms of the common preconception, I implemented an inductive process through which I identified underlying factors of (dis)advantage for women in the judiciary and generated new hypotheses regarding why appointment systems work as they do.

4.2. Research Design: Blood and Mud

Statistics often treat people as if they were "drops in an undemarcated ocean"[49] where individualities are dissolved, and bare numbers often lack the subversive power of personal

---

[44] This is the type of exercise that Patricia Williams undertakes, for example, in Patricia Williams, "The Obliging Shell: An Informal Essay on Formal Equal Opportunity" (1989) 87:8 Michigan Law Review 2128–2151.

[45] See Patricia Hill Bailey & Stephen Tilley, "Storytelling and the interpretation of meaning in qualitative research" (2002) 38:6 Journal of Advanced Nursing 574–583 at 757.

[46] See Adelle Blackett, "Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill" (2017) 62:4 McGill Law Journal 1251 at 1275. 1275

[47] See Shauna Van Praagh, "Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education" (1992) 2 Colum J Gender & L 111–144 at 116. About the power of personal narratives and the importance of storytelling in the legal field, see, among many others: Bartlett, *supra* note 43; Angela Campbell, "Bountiful Voices" (2009) 47:2 Osgoode Hall Law Journal; Van Praagh, "Stories in Law School", *supra* note.

[48] Martha L Fineman, "Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship Women and the Law: Goals for the 1990s" (1990) 42 Fla L Rev 25–44 at 28.

[49] Martha C Nussbaum, "The Literary Imagination in Public Life" (1991) 22:4 New Literary History 877–910 at 884. With this expression, as she delves into the lessons taught by Dickens in *Hard Times*, Nussbaum explains that political economists tend to think that "[…] the question how the group is doing is a question whose economic resolution requires effacing the separate life and agency of each". *Ibid*.

narratives. With this warning in mind, I used a methodology that, in principle, could be labelled as mixed, but that I interpret as predominantly qualitative. I answered my first question using quantitative data considering that I wanted to both obtain an overall picture of the judiciary, as well as identify gender patterns in the results of meritocratic competitions. However, my reading of these data was primarily qualitative and, furthermore, I used that data mostly as a backdrop against which to answer my second question (about the reasons that explain the current gender distribution of the judiciary). This second question, in turn, required a qualitative methodology that would allow me to examine in depth the experiences of actors in the judicial field. In sum, I used quantitative data in order to understand better, rather than erase, the diverse experiences of the interviewees.

I used two information collection methods consecutively. First, given the absence of official disaggregated information, I undertook a documentary research and analysis of:

i) Statistical information about the gender distribution of the universe of Colombian judges in the year 2020.

ii) Statistical information on the results from the last two merit-based competitions (Competition 22 of the year 2013 and Competition 27 of the year 2018).

iii) Official reports that keep track of the proceedings implemented during past selection processes.

iv) The responses I obtained from tribunal courts concerning their selection processes in discretionary appointments.[50]

The comprehensive database I created served as input to design my interview questions and to confront the differences between what my interviewees perceived and what the data revealed. The more sophisticated statistical results on databases i) and ii) were produced by political scientist and mathematician Sofía Carrerá Martínez, who assisted me in 2021 in the process of filling my statistical knowledge gap.

My second collection method was the semi-structured interview. The one-on-one conversation sought to make sure that participants spoke as naturally as possible; or, as a famous

[50] It would be ideal to conduct a comprehensive census of the judiciary such as the one conducted in Brazil. See *Perfil sociodemográfico dos magistrados brasileiros 2018*, by Conselho Nacional de Justiça (Brasilia: Conselho Nacional de Justiça, 2018).

Colombian sociologist would put it, to ensure that they entered the text "dripping with blood and mud."[51] I interviewed three groups of participants (see Table 1). Group 1 included women and men judges from both appointment systems, Group 2 included state officials responsible for selecting and training judges from different hierarchies (a few of them retired),[52] and Group 3 included women and men jurists who have failed the meritocratic competition.

Table 1. Profiles and number of interviewees

	GROUP 1: Judges		**GROUP 2: Justices/Appointers and trainers**		**GROUP 3: Participants who failed the competition (now outside the judiciary)**
Gender	Meritocratic Appointment	Discretionary Appointment	High Courts	Tribunal Courts	
Cisgender Women	12 interviews	12 interviews	3 interviews	11 interviews	10 interviews
Cisgender Men	12 interviews	12 interviews	2 interviews	10 interviews	10 interviews
Total	**24**	**24**	**5**	**21**	**20**

I interviewed a total of 94 participants, preserving a similar number of women and men within each group, as I intended to analyze women's experiences within the framework of gender relations. I also tried to look for diversity among the participants in terms of hierarchy, territorial location, race, and gender. The main technique used to search for participants was snowballing, but I also sent 300 emails to random jurists and judges in order to diversify my sample. My intention was not to obtain a representative sample but to reach a number that would lead to a saturation point where I could no longer obtain new information.

Due to the pandemic, I conducted all interviews online using the Outlook platform. The interviews had an average duration of one hour and ten minutes. The shortest interview lasted

[51] Alfredo Molano, *Los años del tropel* (Bogota: Penguin Random House, 2017) at 11.
[52] This group included justices of the Superior Council of the Judiciary, the Sectional Councils of the Judiciary and the tribunals, some of which have been trainers of the Judicial School (charged with training the participants who pass the first stage of the merit competition).

thirty minutes, and the longest lasted two hours and forty-four minutes. With only a couple of exceptions, I conducted most interviews between February and November 2021. Most of the interviewees (84 of them) authorized me to record the audio of the interviews.

All interviews had a similar structure, with two main sections. The first section contained questions on self-identification (in terms of gender, race, and disability), educational profile (secondary school, law school, graduate school, and parents' educational level), care responsibilities, and other socio-demographic questions. The second section contained questions about the process of entry to – or exclusion from – the judiciary and about the participant's perception of each appointment system.[53] Annex 1 contains the interview questionnaire.

4.3. Limitations

The information I collected has multiple limitations, of which I highlight three. To begin with, due to the data gap I mentioned earlier, much of the official information on meritocratic competitions did not contain gender data. For that reason, I had to manually classify all participants according to the gender conventionally associated with their names, leaving doubtful cases (which were few) unclassified. This strategy can be problematic because it necessarily entails a binary categorization (with the consequent invisibility of gender-diverse jurists) that is also present in all official and academic reports that do contain gender data, all of which invisibilizes diverse gender identities, time and again.

My data also reflect the limited access to official information on this subject. The Superior Council of the Judiciary, which is responsible for administering the judiciary, was extremely generous in responding to my requests. However, there was information that they either did not have or would not release. For instance, no information was available on the current racial composition of the judiciary. As Ilex-Acción Jurídica puts it, this absence of data is not merely circumstantial or fortuitous, but is a manifestation of structural racial discrimination which is expressed, among many other ways, through statistical invisibility.[54]

---

[53] Although I should note that not all questions in the second section of the questionnaire were asked to all interviewees. Annex 1 also contains the consent form that participants signed. The codes I used to identify and anonymize participants were included in the list of abbreviations. In Annex 2, I have included a short reflection on the challenges and opportunities of conducting interviews via Outlook during the pandemic.

[54] *La invisibilidad estadística de la población afrocolombiana y su impacto en los derechos humanos*, by Ilex-Acción Jurídica (Bogotá: Ilex-Acción Jurídica, 2023).

Finally, although I tried to diversify my sample, I could only obtain a handful of interviews with racially diverse participants because there is no public data on the racial self-identification of judicial officials or jurists. In addition, it seems there are not many racially diverse jurists – at least within judicial circles – and not many judges self-identify as such.[55] Although almost half of the interviewees hesitated to respond to the question about racial self-identification, the vast majority of them self-identified as *white-mestizo*. There were also cases of jurists perceived by their colleagues (and me) as members of racial minorities but who did not self-identify as such. It is not my place, of course, to determine their identities for them. However, I believe that this possible disparity can say a great deal about the extent of the myth of *mestizaje,* the strategies that racial minorities deploy to fit in contexts of racial discrimination, and the relevance of considering the contexts from which participants speak.[56]

5. Identifying the Gap and My Contributions

In this section, I outline why this dissertation represents an empirical and theoretical contribution to the field of judicial studies. Regarding the studies produced elsewhere, I argue that my dissertation complements the existing literature by studying gender inequalities in the judiciary from a new context (the Colombian one) while going beyond the study of formal rules. In relation to the specific literature on Colombia, I claim that my dissertation makes a contribution by analyzing three understudied aspects: women; judicial appointment systems and the bureaucratic practices surrounding them; and middle and lower courts.

5.1. Judicial Gender Diversity in Other Shores: A Cross-Regional Dialogue

As I explained in the first section, most of the literature on judicial diversity focuses on some countries of the common law tradition in the Global North. Scholars mostly explore the difference that women (and other traditionally excluded groups) can make on the bench[57] and the reasons why it is important to have diverse courts. There is also a significant portion of this literature

[55] On the underrepresentation of racial minorities in the Colombian legal profession and the judiciary, see Gómez-Mazo, *supra* note 13.
[56] About the extent of the myth of mestizaje within the legal profession, see *Ibid*.
[57] Madam Justice Bertha Wilson, "Will women judges really make a difference? The Fourth Annual Barbara Betcherman Memorial Lecture" (2005) 30:1 Family Court Review 13–25; Rosemary Hunter, "More than Just a Different Face? Judicial Diversity and Decision-making" (2015) 68:1 Current Legal Problems 119–141; Ulrike Schultz & Gisela Shaw, eds, *Gender and Judging*, Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013).

devoted to the study of appointment systems and their impact on the diversity of judges. I will focus on this last group of studies, particularly on the ones produced by legal scholars. I previously characterized these studies as inscribed in – or close to – formal institutionalism, due to their focus on formal rules and their insufficient attention to the broader socio-legal context in which the judiciary operates.

In this framework, this dissertation makes a contribution to the field of judicial studies from an empirical viewpoint because I am studying a context different from the CLGN countries – the Colombian one. It also makes a contribution from a theoretical perspective to the extent that I adopt and defend the advantages of executing a *socio-legal analysis* that is context-sensitive and empirically grounded, and that includes informal rules as an element worth considering. In this sense, my research would fit into what Kellee Tsai calls an "implicit division of analytical labor," where it is mainly scholars from the Global South who are concerned with studying informal rules.[58] Moreover, in contrast to the strictly legal approach that many scholars implement, I propose an interdisciplinary theoretical framework which blends field theory and heterodox approaches to bureaucracy. This blend is useful for thinking about appointment systems in relation to broader structural inequalities and bureaucratic dynamics.

Additionally, I believe that this dissertation can also serve as a platform for a cross-regional dialogue. Although I will not provide a comparative study between Colombia and the CLGN countries, I sometimes highlight characteristics that are specific to the Colombian context (e.g. the culture of collaboration and discretionary appointments)[59] and some other characteristics that seem to be shared by Colombia and the CNGL countries (e.g. both contexts have meritocratic systems with facially gender-neutral rules that have disparate impacts on women). I hope that, amidst this peculiar relationship of proximity and distance, my dissertation opens the door to two opportunities. First, there is much that Colombia can draw from the literature on judicial diversity

[58] "[…] efforts to take informal institutions seriously have derived primarily from research on developing countries and transitional economies where certain types of formal institutions may be less institutionalized than informal ones. An implicit division of analytic labor has thus emerged between scholars of established capitalist democracies who regard formal institutions as the normative barometer for institutional analysis, and comparativists who specialize in countries where key political economic processes occur beyond the scope of formal institutions." Kellee S Tsai, "Adaptive Informal Institutions" in Orfeo Fioretos, Tulia G Falleti & Adam Sheingate, eds, *The Oxford Handbook of Historical Institutionalism* (Oxford University Press, 2016) 270 at 270.

[59] This legal figure (with variations) is common to several Latin American countries such as Venezuela, Peru and Mexico. For example, provisional judges have been key to consolidating the Chavista regime in Venezuela. See Allan R Brewer-Carías, *Dismantling Democracy in Venezuela: the Chávez Authoritarian Experiment* (Cambridge: Cambridge University Press, 2010) at 178.

produced in CLGN countries.[60] And second, the existing scholarship can be complemented or challenged when analyzed from new perspectives and new empirical cases that were not considered relevant before.[61] As Abel posited, the problems of the legal profession in the South offer academics from the North "a mirror in which [they] can discern features of [their] own professions that often are hidden or ignored".[62]

5.2. The Academic Literature on My Own Shore

Judicial studies on Colombia have focused mainly on four issues that may seem more urgent within the paradoxical context I described above: judicial independence; the counter-majority role of high courts; the potential for social change of court decisions (these three topics primarily in relation to the high courts); and the backlog and accessibility problems of the judicial system (mainly in relation to the lower and middle courts). These have also been the leading themes in Latin American academic literature.[63] In contrast, judicial gender diversity has barely received attention, particularly from legal scholars. My dissertation seeks to contribute to filling this gap from three angles.

---

[60] As Centeno and López-Alves suggests, "The imposition of academic models, much like that of their policy counterparts, rarely succeeds. Even if they prove to be useful or productive, they need to be tempered in a debate with those visions arising from local conditions". See Miguel Angel Centeno & Fernando López-Alves, *The Other Mirror. Grand Theory Through the Lens of Latin America* (Princeton: Princeton University Press, 2001) at 7.

[61] This is the type of conversation suggested by Centeno & López-Alves, *supra* note 60. In this same vein, see Peter Smith, ed, *Latin America in Comparative Perspective: New Approaches to Methods and Analysis* (Boulder: Westview Press, 1995).

[62] Richard Abel, "The Underdevelopment of Legal Professions: a Review Article on Third World Lawyers" (1982) 7:3 American Bar Foundation Research J 871 at 892. In a similar vein, Trubek & Galanter described in a heartfelt manner how learning more about the "Third World" allowed American legal scholars to "drive home the need to rethink the basic validity" of their own development models and values. See David Trubek & Marc Galanter, "Scholars in Self-Estrangement: Some Reflexions on the Crisis in Law and Development" (1974) Wisconsin Law Review 1062–1101 at 1080.

[63] This is the conclusion reached by Diana Kapiszewski & Matthew M Taylor, "Doing Courts Justice? Studying Judicial Politics in Latin America" (2008) 6:4 Perspectives on Politics 741–767. Among the literature on Colombia, I could mention among many others: César A Rodríguez Garavito & Diana Rodríguez Franco, *Cortes y cambio social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia* (Bogotá: Dejusticia, 2010); Sandra Botero Cabrera, *Courts that matter: Judges, litigants and the politics of rights enforcement in Latin America* (Ph.D., University of Notre Dame, 2015) [unpublished]; Carolina Guevara, "Independencia judicial. El caso de la Corte Suprema de Justicia Colombiana" (2011) 35 Revista de Derecho 145–179; Sebastián Rubiano, "La Corte Constitucional: entre la independencia judicial y la captura política" in Mauricio García Villegas & Javier Eduardo Revelo Rebolledo, eds, *Mayorías sin democracia Desequilibrio de poderes y Estado de derecho en Colombia, 2002-2009* (Bogotá: Dejusticia, 2009) 84; Mario Alberto Cajas Sarria, *La historia de la Corte Suprema de Justicia de Colombia, 1886-1991* (Bogotá-Cali: Universidad de los Andes, Universidad ICESI, 2015).

First, I study women in the judicial field. As I explained earlier, Colombia has traditionally had a marked "silence of the sources" concerning women in positions of power.[64] As a consequence of this silence, there is almost no historical or present information on the gender distribution or the characteristics of women in the judiciary, except in the high courts and in recent years.[65] Much less is known about their diverse experiences of access, promotion, and tenure in the judiciary. My dissertation contributes to filling this gap by collecting and producing qualitative and quantitative information regarding the places women occupy and the (dis)advantages they face in relation to each judicial appointment system.

Second, this dissertation explores the historically neglected topic of judicial appointment systems.[66] The local literature has been especially concerned with judicial decisions vis-à-vis citizens (particularly high courts decisions): how transformative, innovative, or independent they are. Scholars have also analyzed judicial decisions from a macro perspective: how many decisions are made annually, on what issues, or to what extent they are implemented.[67] However, we know little about how these decision-makers are selected, and even less about the administrative decisions they make in their capacity as judicial bureaucrats (e.g. in terms of their appointing powers). I attempt to respond to this gap by exploring bureaucratic practices around judicial appointment systems which, in turn, led me to adopt a theoretical framework on bureaucratic power that is also infrequent in the expert literature.

---

[64] Perrot, *supra* note 7.

[65] See, for instance, Diana Pineda, *Proceso de elección magistradas de la Corte Constitucional colombiana y la ley de cuotas (1991-2019)* (Undergraduate Thesis - Faculty of Political Science, Universidad ICESI, 2020) [unpublished]; Ana María Montoya, *Si no vas al Senado no te eligen magistrado: instituciones informales y criterios de selección de los magistrados de la Corte Constitucional colombiana en el Senado (1992-2009)* (Bogota: Ediciones Uniandes, 2015); Isabel Cristina Jaramillo Sierra, "Reforma legal, feminismo y patriarcado en Colombia: el caso de la Ley de Cuotas para mujeres en cargos de alto nivel de la Rama Ejecutiva" in Isabel Cristina Jaramillo Sierra & Luisa Cabal, eds, *Más allá del derecho: justicia y género en América Latina* (Bogota: Siglo del Hombre Editores, Universidad de los Andes, CESO, 2005) 59. See also Carolina Villadiego Burbano, "Más juezas y magistradas", *Ámbito Jurídico* (10 September 2020), online: <https://www.ambitojuridico.com/noticias/columnista-online/constitucional-y-derechos-humanos/mas-juezas-y-magistradas>; Felipe Morales Sierra, "Más mujeres en las Cortes, un llamado a saldar una deuda histórica", *El Espectador* (21 August 2020), online: <https://www.elespectador.com/noticias/judicial/mas-mujeres-en-las-altas-cortes-un-llamado-a-saldar-una-deuda-historica/>; El Espectador, "Las altas cortes se rajan en paridad y la tendencia es histórica", *El Espectador* (15 January 2023), online: <https://www.elespectador.com/judicial/la-deuda-de-paridad-de-las-altas-cortes-de-la-justicia/>.

[66] This trend is confirmed by Salazar, *supra* note 36.

[67] See, among many others, Boaventura de Sousa Santos & Mauricio García Villegas, eds, *El caleidoscopio de las justicias en Colombia. Análisis socio-jurídico* (Bogotá: Siglo del Hombre Editores y Universidad de los Andes, 2001); Mauricio García Villegas et al, *Los territorios de la paz. La construcción del Estado local en Colombia* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017).

Third, this dissertation pays attention to middle and lower courts. Shauna Van Praagh states that jurists appear to be "seduced by judges,"[68] but I would say that in Colombia we are specifically seduced by high courts (and the Constitutional Court above all), which have received sustained attention from academia and the media.[69] This obsession with high courts is, in fact, a phenomenon that goes beyond Colombia's borders.[70] In contrast, very little has been said about the lower and middle courts, and almost never from a feminist perspective. For my part, I decided to change the course of my fascination by focusing on the lower and middle courts, where appointment systems can operate radically differently from the high courts.

I must note, however, that the gaps I have identified here have been addressed by a handful of academic studies. Four of these studies were particularly helpful and illuminating for this dissertation. The first one is *A Judicial Glass Ceiling? The Selection of Buenos Aires Federal and State Judges*, by Paola Bergallo.[71] This pioneering study examines the role that gender plays in judicial selection processes in Buenos Aires. The author finds that there are several constraints for women arising from the institutional design, the implementation of selection processes, and the background conditions of the legal profession and the judiciary. She concludes that meritocratic

---

[68] Shauna Van Praagh, "Seduction of a Law Professor. Review of Allan C Hutchinson, Laughing at the Gods: Great Judges and How They Made the Common Law" (2013) 59:1 McGill Law Journal 211.

[69] See, among many others (some of them cited elsewhere in this dissertation), Yenny Carolina Guevara Rivera, *Recrutement, indépendance et responsabilité des magistrats en Colombie. Le cas de la Cour Suprême de Justice et du Conseil Supérieur de la Judicature* (Tesis doctoral, Université de Grenoble, 2015) [unpublished]; Isabel Cristina Jaramillo & Tatiana Alfonso, *Mujeres, cortes y medios: la reforma judicial del aborto* (Bogotá: Siglo del Hombre - Uniandes, 2008); Natalia Ángel-Cabo & Domingo Lovera Parmo, "Latin American Social Constitutionalism: Courts and Participation" in Helena Alviar García, Karl Klare & Lucy A Williams, eds, *Social and Economic Rights in Theory and Practice Critical Inquiries* (New York: Routledge, 2015) 85; Rodrigo Uprimny, "Should Courts Enforce Social Rights_ The Experience of the Colombian Constitutional Court" in fons Coomans, ed, *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Intersentia Uitgevers, 2006) 355'388. With regard to judicial biographies, as I mentioned earlier, there is only a handful of them and, as far as I know, all of them focus on the high courts: María Teresa Herrán, *Ciro Angarita, retador* (Bogotá: Icono, 2017); Fundación Universidad de Antioquia, ed, *La voz de Carlos Gaviria. Textos, conferencias y testimonios* (Medellín: Fundación Universidad de Antioquia, 2020); Ana Cristina Restrepo Jiménez & Santiago Pardo Rodríguez, *El Hereje: Carlos Gaviria* (Bogotá: Planeta, 2020). On the tragic death of Carlos Horacio Urán (auxiliary justice of the Council of State) in the Colombian Palace of Justice, see Helena Uran Bidegain, *Mi vida y el Palacio. 6 y 7 de noviembre de 1985* (Bogotá: Editorial Planeta, 2020). More specifically, I should note that there has been redoubled attention from academics, judicial officials, and the media on the life of Carlos Gaviria Díaz, university professor and Constitutional Court justice. See Juan Sebastián Ceballos Bedoya, "Un invitado incómodo. Carlos Gaviria y el origen de la desconfianza en la justicia", (3 April 2015), online: *Asuntos constitucionales* <http://miblogdeconstitucional.blogspot.com/2015/04/un-invitado-incomodo-carlos-gaviria-y.html>.

[70] In the same vein, Ingram and Kapiszewski say: "First, most work explores peak judicial institutions or national "high courts": supreme courts and constitutional courts occupy center stage. Far less attention has been paid to the "everyday justice" carried out by lower courts (and state courts in federal systems), […]." Kapiszewski & Ingram, *supra* note 23 at 4.

[71] Paola Bergallo, *A Judicial Glass Ceiling? The Selection of Buenos Aires Federal and State Judges* (Master Thesis, Stanford University, 2004) [unpublished].

selection processes (at least as they operate in Buenos Aires) are problematic for women from two perspectives: first, because there are multiple informal rules blocking women's access to the judiciary and, second, because the profiles rewarded by the meritocratic system are often more difficult for women to achieve in a vertically and horizontally segregated profession. At least in part, Bergallo seems to conclude that one of the underlying problems is that appointers have wide margins of discretion, and this conclusion conflicts with my arguments in this dissertation. However, her analysis is powerful in that it constantly invites us to think about the broader context in which her research takes place, thus highlighting the spatial and temporal contingency of her findings.

The second study, written by Daniel Gómez-Mazo, is a doctoral dissertation entitled *Afro-Descendant Representation on Latin American Courts*.[72] Gómez-Mazo studies the representation of Afro-descendant jurists in the Colombian middle and high courts and, within that framework, he explores the intersection between race and gender. It is the first research in Colombia and one of the first in Latin America to adopt this intersectional approach. This study is also pioneering in its intention to examine the distribution of judges in terms of the appointment system. Although Gómez-Mazo's analysis of the presence of women is mostly quantitative, his reflections on race are profound and thought-provoking. Indeed, he reflects on how the absence of Afro-descendant jurists is rooted in Latin American structural racism, arguing that the judicial world cannot be understood without considering this broader unequal context. The reader will note that I constantly stand on the shoulders of Gómez-Mazo's findings considering how difficult it was for me to obtain quantitative and qualitative information on racial minorities in the Colombian judiciary.

There are two other studies that go hand in hand because, in an innovative way, they approach the lower courts from an ethnographic perspective.[73] One of these studies, by Diana Solano, is entitled *Del Congreso al despacho: Prácticas judiciales de los trabajadores de la jurisdicción laboral de Cali,* and the other, by Claudia Abello, is entitled *'La ñaña del juez': una etnografía de la burocracia judicial caleña.* Both authors examine the detail of everyday life in two Colombian lower courts. They dissect the unfolding of petty disputes between colleagues, the

[72] Gómez-Mazo, *supra* note 13.
[73] See Diana Marcela Solano, *Del Congreso al despacho: Prácticas judiciales de los trabajadores de la jurisdicción laboral de Cali* (Master Thesis in Sociology, Universidad del Valle, 2015) [unpublished]; Claudia Jimena Abello Castiblanco, "'La ñaña del juez': una etnografía de la burocracia judicial caleña" in Isabel Cristina Jaramillo Sierra & Lina Fernanda Buchely Ibarra, eds, *Etnografías burocráticas: una nueva mirada a la construcción del estado en Colombia* (Bogotá: Universidad de los Andes, Facultad de Derecho, Ediciones Uniandes, 2019) 73.

relevance of files and physical elements, and the prevalence of job insecurity and burnout. Both studies reflect on how the type of appointment a person holds carries enormous weight in her everyday experiences and how those experiences are heavily gendered. The stories presented by both authors are eloquent evidence of the need to pay attention not only to the personal narratives of actors in the judicial field but also to the ways in which bureaucrats create law thanks to their distance from the centres of power and the inherent indetermination of formal rules. Abello's work, in particular, points to relations of favouritism between men superiors and women subordinates in the judiciary, something I explore in Chapter VI.[74]

6. Justification

In designing a research project, it is crucial to ask yourself why your research questions are important to you and why they are significant to others (what Booth et al. call the 'so what?' question).[75] In this section, I explain my personal justifications for this research, as well as the empirical, theoretical, and political relevance that others may find in this dissertation.

6.1. Memories of a Dark, Thick Beard: A Personal Justification

In 1997, my father participated in a meritocratic judicial competition. He dreamt of becoming a tribunal justice. Thanks to the fact that my mother and aunts took care of my brothers and me, my father had enough time to train intensely for the competition, obtaining the third highest score in the country. Despite this outstanding result, my father was not appointed. Instead, the Superior Council of the Judiciary selected the participant ranked 115th on the list. Other outstanding participants suffered a similar injustice. As a result, my father led a class action against the results of the competition that was finally ruled in his favour fourteen months later.[76] In the time between the filing of the class action and the final decision, my father grew a dark, thick beard. It was a visible political statement, he said when I interviewed him. I believe he was unaware of other

[74] I would also like to underline the importance of a few works that were pioneers in the study of the merit-based competitions of the Colombian judiciary, such as Lucía Arbeláez de Tobón, *Análisis de género en la carrera judicial y en el acceso a las altas corporaciones nacionales de la justicia en Colombia* (Medellín: Diké, 2009); Juan Manuel Dumez Arias, *El juez de la jurisdicción ordinaria* (Master Thesis in Law, Universidad Nacional de Colombia, 2013) [unpublished]; Manuel Alberto Restrepo Medina & Natalia Aprile, *Legitimidad de la justicia administrativa colombiana. Una mirada desde la percepción de su diseño institucional* (Bogotá: Universidad del Rosario, 2019).
[75] These are the terms that Booth, Colomb, and Williams put it. See Wayne C Booth, Gregory G Colomb & Joseph M Williams, *The craft of research* (Chicago and London: The University of Chicago Press, 2003) at 43.
[76] Constitutional Court, decision SU086/1999.

symbolism associated with the beard (courage, wisdom, virility, identity) that contributed to making his message even more powerful and memorable.[77]

In this context, I grew up marvelling at the halo of heroism and nobility of my father's office, but I was also constantly exposed to a narrative – problematic insofar as it was simplistic – of total support for meritocracy and vigorous questioning of the corruption behind discretionary appointments. However, I also grew up with two valuable certainties. First, the work of middle and lower-court judges is as fundamental as it is unacknowledged. Second, there is a complex personal story, a face − bearded, perhaps − that is hopelessly obscured when we merely study statistics about who obtained an appointment. My personal justification for this dissertation stems from the union of these personal circumstances and certainties with my political commitment to women's equality.

6.2. *So What?* An External Justification

My dissertation is relevant to me and others considering the empirical and theoretical contributions I listed in Section 5. But, perhaps more importantly, my research questions are worth asking due to the great *political* importance of gender judicial diversity. Throughout this dissertation, I take this political importance for granted and build all my conclusions on that basis. However, I am aware that this is still a contested issue in the Colombian context. In fact, as recently as 2021, a Colombian congressman stated that policies for the equal inclusion of women in the judiciary were "grotesque" and destructive of national unity.[78] Therefore, I will devote a few pages to flesh out the arguments in favour of promoting judicial (gender) diversity – and of any research that contributes to that end.[79]

---

[77] Michelle Perrot explains the symbolism of the beard and says something that struck me as being particularly accurate in describing my perception of my father's experience: "[La barbe] Elle répresente l'âge, la durée fondatrice, le temps. La paternité". See Perrot, *supra* note 7 at 66.

[78] See Bluradio, "Paridad entre hombres y mujeres en rama judicial es un 'esperpento': Gabriel Vallejo", (24 March 2021), online: *Bluradio* <https://www.bluradio.com/politica/paridad-entre-hombres-y-mujeres-en-rama-judicial-es-un-esperpento-gabriel-vallejo>.

[79] Hunter, *supra* note 57 at 122. See *Ibid* at 123; Kate Malleson, "Diversity in the Judiciary: The Case for Positive Action" (2009) 36:3 Journal of Law and Society 376–402 at 376.

Equality: Women Matter

Women's participation in political and public life is an essential component of gender justice.[80] When women are underrepresented in any level of government, their right to political equality is being violated.[81] Several international and national rules[82] recognize that the equal participation of women in public office, including the judiciary, is not only a fundamental right in itself but an essential step for protecting other rights. On the other hand, the unequal distribution of power in the judiciary is indicative that women's right to equal opportunity is being violated. In principle, the judiciary should reflect the gender composition of the society it serves, unless there are compelling quantitative or qualitative reasons to the contrary. None of these reasons exist in Colombia at present. As I will show in Chapter IV, in Colombia, women represent half of the jurists, have more graduate degrees than men, and are as well-suited for judicial office as them.[83] A balanced representation of women would signal that all jurists have the same opportunities to be appointed judges.

Women should be fairly treated and equally represented on the bench for the sake of it. Not because they can serve a secondary purpose but because equality is an end in itself. This first argument embodies the feminist premise that Chimamanda Ngozi Adichie eloquently summed up as follows: "I matter. I matter equally. Not 'if only'. Not 'as long as'. I *matter equally. Full stop.*"[84]

---

[80] *Policy Brief. Women in the Judiciary. A Stepping Stone towards Gender Justice*, by United Nations (United Nations - Economic and Social Commission for Western Asia, 2018) at 1.

[81] See Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995) c 2.

[82] See Article 7 of the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights, The Convention on the Political Rights of Women, and the resolution adopted by the United Nations General Assembly (A/RES/66/130) on women and political participation. In addition, substantially improving women's participation in public life is a key objective of the UN 2030 Agenda for Sustainable Development (goals #5 and 16). Also, the CEDAW General Recommendation No. 33, specifically recommends that states should "take steps, including temporary special measures, to ensure that women are equally represented in the judiciary". Recommendation No. 33 on women's access to justice.

[83] If there are no obvious explanations for women's underrepresentation, it is reasonable to argue that women are systematically given fewer opportunities and face additional constraints by virtue of their sex. Erika Rackley & Charlie Webb, "Three models of diversity" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 283 at 286. On the equity-based argument, see Kate Malleson, "Justifying Gender Equality on the Bench: Why Difference Won't Do" (2003) 11 Feminist Legal Studies 1–24 at 15–18.

[84] Chimamanda Ngozi Adichie, *Dear Ijeawele, or a feminist manifesto in fifteen suggestions* (Harper Collins Publishers, 2017).

Legitimacy: Feeling "A Little Outnumbered"

Canada Supreme Court Justice Beverley McLachlin was a trial judge when, "one slow afternoon," she was asked to take a family property division case. All the litigants and officials involved were women except the husband, who was representing himself. After repeatedly assuring him that there was no reason to be nervous, he finally "[…] struggled to his feet. With a look of umbrage, he said: —Frankly, your Honor, I feel a little outnumbered."[85] It was only when Justice McLachlin went home that she asked herself: "[…] how many times, for how many decades, had women stood before all-male tribunals with all-male lawyers at counsel table and in the body of the courtroom – if they had the courage even to enter them – and felt more than – a little outnumbered?".[86] How often has this happened to Afro-descendants, Indigenous peoples, or other minorities?

This anecdote brings to the fore two effects that might occur when citizens see themselves reflected in the judiciary. The first effect is that citizens feel the justice system is non-discriminatory and open to diversity, as it does not privilege some groups over others.[87] This reasoning is strongly connected to the notion of judicial independence because, according to the expert literature, a homogeneous bench will hardly be able to make impartial decisions that genuinely consider the (diverse) perspectives of the community it serves.[88] Dominant groups have historically claimed that they can stand in for others, but this – often paternalistic – justification is incompatible with the demands of excluded groups who understand that representation is also a matter of 'presence.'[89]

The second effect is that women citizens *perceive* that the judiciary is not biased against them and might even empathize with their different life experiences, all of which leads them to perceive that they are being judged fairly.[90] This heightened public confidence in the judiciary hardly arises when users feel "a little outnumbered."[91] This effect is more contested than the

---

[85] See *Judging: the Challenges of Diversity. Remarks of the Right Honourable Beverley McLachlin, Chief Justice of Canada*, by Beverley McLachlin (Edinburgh: Judicial Studies Committee Inaugural Annual Lecture, 2012) at 20.
[86] *Ibid* at 21.
[87] Hunter, *supra* note 57 at 123.
[88] See, for instance, Sonia Lawrence, "Reflections: On Judicial Diversity and Judicial Independence" in Lorne Sossin & Adam Dodek, eds, *Judicial Independence in Context* (Toronto: Irwin Law, 2010) 193.
[89] Phillips, *supra* note 81 at 60.
[90] P.H. Russell, 'Conclusion' in Kate Malleson and P.H. Russell (eds.), Appointing Judges in an Age of Judicial Power (2006); Dermot Feenan, "Women Judges: Gendering Judging, Justifying Diversity" (2008) 35:4 Journal of Law and Society 490–519 at 494.
[91] This effect is also contested to the extent that, as Lawrence warns, minorities (at least in most Western countries) may not perceive that a homogeneous judiciary is problematic precisely because they have been traditionally trained to associate the ideal of the good judge with all that is white, male, and able-bodied. See Lawrence, *supra* note 88 at

previous one because, as I discuss below, having more women judges does not always translate into a more gender-sensitive justice for women. However, some studies show that there is a correlation between low public confidence in the judiciary and the homogeneous composition of the courts.[92] And if women (and minority groups) perceive that they are not only underrepresented in the judiciary but also treated unfairly by it, then they are unlikely to trust the justice system or the rule of law more generally.[93]

Accordingly, the literature shows that a bench that mirrors the community it serves enhances the rule of law and the democratic legitimacy of the judiciary. The mere perception of representativeness (and fairness) makes citizens feel more encouraged to bring their conflicts to the courts, more comfortable during court proceedings, and more willing to abide by judicial decisions.[94] These elements are essential goals in countries transitioning to peace like Colombia, where institutional reconstruction will largely depend on citizens resolving their conflicts through official means and perceiving that judges are legitimate. Having a gender-diverse judiciary, especially in a country where women make up almost half of the war victims, is a sign of commitment to the new post-conflict social pact.[95]

198. Much more has been written on the relationship between public confidence and racial diversity. See, among others, Thomas, *supra* note 20 at 55–60. Unfortunately, I did not find studies on this subject in the Latin American context.

[92] See Thomas, *supra* note 20 at 55–60. For example, a study by the American Bar Association-ABA found that minority communities are suspicious of the courts largely because of their lack of diversity. Along the same lines as the ABA article, another US study shows that African Americans have the lowest confidence in the fairness of the American justice system, which has historically been overwhelmingly white. See *Justice in Jeopardy* ABA Report of the Committee on the 21st Century Judiciary (2003). See also David B. Rottman et al., "Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity. National Center for State Courts" (January 2003). Unfortunately, there are no studies on this subject in the Latin American context.

[93] Rackley & Webb, *supra* note 83 at 292; Samreen Beg & Lorne Sossin, "Diversity, Transparency & Inclusion in Canada's Judiciary" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London: Routledge, 2017) at 125.

[94] See United Nations, *supra* note 80 at 6. One eloquent manifestation of the effect that women officials have on women users occurred in India, where opening all-woman police stations increased crime reportage by a 22%, which in turn led to a rise in arrests of crimes. See Nirvikar Jassal, "Gender, Law Enforcement, and Access to Justice: Evidence from All-Women Police Stations in India" (2020) 114:4 American Political Science Review 1035–1054.

[95] This is what the South African experience has taught us. See, for instance, Cora Hoexter, "The Judicial Service Commission. Lessons from South Africa" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 83. About the diverse composition of the recently created Special Jurisdiction for Peace in Colombia, see Santiago Pardo Rodríguez, "A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace" (2020) 10:2 Notre Dame Journal of International & Comparative Law 209–266.

Difference: An Immobilizing Silence

A third type of argument to promote a more gender-balanced judiciary is that women judges can sometimes make a difference in at least three aspects. First, some studies demonstrate that women judges sometimes correct gender-biased norms,[96] make different decisions than men in conflicts involving women's issues (e.g. sex discrimination cases), and reach different outcomes in cases that do not require a particular gender sensitivity.[97] Second, other studies indicate that women do not make different decisions, but tend to use less confrontational techniques, have more gender-sensitive handling of processes, make more contextualized decisions, and they sometimes even dissent more.[98] Finally, the literature shows that, merely because they represent a diverse perspective, women produce a cultural and institutional change in the judiciary: their mere presence leads colleagues to refrain from exhibiting sexist behaviour and they often promote institutional reforms to create a more gender-sensitive judiciary vis-à-vis both women litigants and judicial officials.[99] Moreover, their diverse opinions lead to richer debates, fairer decisions, and more independent courts.[100]

---

[96] See, among many others, International Commission of Jurists, "Women and the judiciary", ICJ Geneva Forum Series, No. 1 (2013); Penelope Andrews, "Pursuing Gender Equality through the Courts: The Role of South Africa's Women Judges" (2020) 7:94 Public International Law: Human Rights eJournal 1–28. Other studies show that the meaningful participation of women in public institutions in general brings more gender-sensitive policies. See UNDP, Global Report on Gender Equality in Public Administration (New York, 2014).

[97] See, among others, David Terpstra, "The Influence of the Gender and Race of the Judge and the Type of Discrimination Charge on Court Case Outcomes" (2013) 55(4) Int JLM 318. Kimi Lynn King & Megan Greening, "Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia*" (2007) 88:5 Social Science Quarterly 1049–1071.

[98] Belleau & Johnson show how, in the Supreme Court of Canada, some of the judges most likely to dissent between 1990 and 1999 were precisely the first three women on this Court: Claire L'Heureux-Dubé, Bertha Wilson, and Beverley McLachlin. The authors suggest that these three women "[…] montrent un véritable besoin d'exprimer les nuances de leur raisonnement juridique et de faire valoir publiquement leur point de vue particulier. Possédant également une force de travail inusitée pour produire autant d'opinions distinctes, elles ont une plus grande propension que la moyenne à percevoir et, par la suite, à comprendre différemment de la majorité des juges ce qui est leur présenté." See Marie-Claire Belleau & Rebecca Johnson, "Les femmes juges feront-elles véritablement une différence? Réflexions sur leur présence depuis vingt ans à la Cour suprême du Canada" (2005) 17:1 Canadian Journal of Women and the Law 27–39 at 34.

[99] See UN Women, *Progress of the World's Women 2011-2012,* p. 118. Recently, for example, women justices of the Colombian Constitutional Court were the ones who most actively supported a study conducted by USAID on gender inequalities within the Court. This initiative was possible largely because it is the first time in history that there are three women sitting on the Court. See *Las capas del techo de cristal: equidad de género en la Corte Constitucional*, by USAID (Bogota: USAID, 2020). Similarly, associations of women judges in Jordan, Tunisia and Morocco have organized projects aimed at creating more gender-sensitive judiciaries. See United Nations, *supra* note 80 at 6.

[100] Hunter, *supra* note 57 at 123; Thomas, *supra* note 20 at 57; Lawrence, *supra* note 88; James Stribopoulos & Moin A Yahya, "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall LJ 315. More generally, some studies show a correlation between the diversity of public institutions and the improvement of users' experiences. See OECD, *Women, Government and Policy Making in OECD Countries (Paris, 2014).* In the private sector, some argue that the difference

This difference that women can bring to the bench does not always or automatically occur, but only when certain conditions are in place, for example and very noticeably, when judges are feminists. In this sense, I do not argue that women always make a difference for two reasons: on the one hand, that argument is empirically contested and, on the other hand, it is theoretically problematic as it seems to assume that all women share essential characteristics and are naturally feminists.[101]

Therefore, I support the difference-based argument but only on the basis that women are an internally diverse and complex social group. This acknowledgement not only does not weaken the feminist movement but can prevent feminism from reinforcing the marginalization of minority women within the movement. I bring Audre Lorde back to the scene: "it is not difference which immobilizes us, but silence. And there are so many silences to be broken".[102]

7. A Roadmap to My Face-Finding Enterprise

I have taken the license to unfold this dissertation at an unhurried pace. An impatient reader might say that the heart of my reflections lies in chapters V and VI (on meritocratic and discretionary appointments, respectively), while the other chapters are devoted to setting out in detail the theoretical framework and the multilayered context that serves as a niche for these reflections. The content of each chapter of this dissertation is as follows.

Chapter II outlines the theoretical framework. It contains three sections, each explaining the central premises of the components of my theoretical blend: feminist (legal) theories, field theory, and heterodox approaches to bureaucratic power.

Chapter III describes some critical features of the Colombian socio-legal context. It is divided into two sections. In the first one, I examine the characteristics of the Colombian paradox in order

---

can even be profitable and strategic for companies. See, for example, Darren Rosenblum, "Diversity and the Board of Directors: A Comparative Perspective" in Afra Afsharipour & Martin Gelter, eds, *Research Handbook on Comparative Corporate Governance* (Massachusetts: Edward Elgar Publishing, 2020) 179.

[101] Of course, even this statement requires some nuances. For example, when asked whether women judges would make a difference, Belleau and Johnson answer with an unequivocal 'Yes'. However, what is compelling about their conclusion is that they do not tie the idea of difference to one or several 'essential' characteristics associated with gender. Instead, they highlight the importance of bringing diverse approaches, experiences, and perspectives to the decisional process. In the Canadian case, "a considerable part of difference is located in an impressive production of dissenting opinions" from women justices, but that is just one of the many ways in which women or other underrepresented groups can occupy their role as judges. Marie-Claire Belleau & Rebecca Johnson, "Judging gender: difference and dissent at the Supreme Court of Canada" (2008) 15:1–2 International Journal of the Legal Profession 57–71 at 68.

[102] Lorde, *supra* note 3 at 2.

to show a general socio-legal picture of Colombia beyond the confines of the judiciary itself. In the second section, I describe the structure of the Colombian judiciary. In this section, I also describe the institutional design of the appointment systems under study (meritocratic and discretionary) and introduce some of their best-known bureaucratic practices.

Chapter IV zooms in on the specific object of my research questions. First, I provide quantitative data on the gender composition of the judiciary in terms of my three variables of interest: hierarchy, territorial location, and appointment system. Once I outline that picture, I unpack the characteristic and scope of the typology (a typology of four women in the judiciary) upon which I build the subsequent chapters.

Chapters V and VI address meritocratic and discretionary appointments, respectively. I have tried to make these chapters symmetrical, at least from two perspectives. First, they have a similar order and components: both chapters start with a general description of the workings and the prevailing stereotype for the respective appointment system, after which I present statistical data and conclude by examining the ideal types of women judges that correspond to each chapter (Types A and B in Chapter V; Types C and D in Chapter VI). Second, in both chapters, I seek to destabilize common preconceptions about each appointment system by suggesting that the two systems bring different (dis)advantages for different women. I wrote these chapters symmetrically to convey the idea that both appointment systems operate as two sides of the same phenomenon.

In the final chapter, I summarize my main findings and some of my overarching reflections. I also bring to the fore some issues I did not address in this dissertation, but that I believe are worthy of future exploration from both a theoretical and policy-making perspective.

❋ ❋ ❋

I once heard a Japanese legend about a Tokyo merchant who finds a young woman crying inconsolably. As she cries, she covers her face with her hands and the hanging sleeves of her dress. He repeatedly asks for the reasons for her despair, but she refuses to answer. At the merchant's insistence, the woman finally lifts her head, revealing that her face is invisible. The man flees in terror and soon comes across an older woman. He begins to tell her what has just happened, still trembling with dread. It is then that he discovers that this, too, is a faceless woman. Some interpret

that it is silence, suffering, and oblivion that lead all women to lose their faces at some point in their lives.[103]

In my seven-year-old mind, the story about my father's faceless friend sounded a lot like this fearsome Japanese legend. It still does. While writing this dissertation, I was constantly haunted by the image of faceless women jurists, whose traces were elusive in official reports, academic events, and classic textbooks. If, beyond the usefulness of my conclusions on appointment systems, this dissertation raises awareness about the importance of making women's experiences visible, then that will be a step in the right direction and, as such, an even more significant consequence.

[103] See Laura Cecilia Bedoya Ángel, "Tango y un cuerpo para otro", *Semana* (15 September 2021), online: <https://www.semana.com/cultura/articulo/tango-y-un-cuerpo-para-otro/202103/>. I refer to the facelessness of Latin American women legal academics in María Adelaida Ceballos-Bedoya, "(In)visible Legal Careers: Eliane Junqueira's Kaleidoscopic View of Latin America" in Daniel Newman, ed, *Leading Works on the Legal Profession* (London: Routledge, 2023) 105.

CHAPTER II. BEAUTIFUL BUREAUCRATS IN THE COLOMBIAN JUDICIAL FIELD: A THEORETICAL BLEND

> *-"Perhaps you will find this work tedious," The Person with Bad Breath said. "It is also highly confidential. Not to be discussed with anyone at all. Including* him*. The "him" added suggestively, almost aggressively.*
> *Josephine nodded. She would have nodded to anything.*
> *-"Good skin, good eyes," The Person with Bad Breath muttered, or maybe Josephine misheard, but, eager to please, she continued to nod. "HS89805242381, got it?"*
> *-"Yes," Josephine lied.*
> *Hourly rate $XX.XX (not so very much, but so very much more than nothing), benefits, tax paperwork, the stuff of life, direct deposit in case of a change of address, sign here, 9:00 a.m. Monday, and off she went, employed, regurgitated by the concrete compound out into the receding day."* – Helen Phillips –.[104]

I wrote this chapter in the surreal setting of a global pandemic while, in Colombia, social protests against hunger were being brutally silenced by state forces. I sought refuge in literature. As Irene Vallejo explains, literature saved many of us during the pandemic, as it was an incomparable resource to travel without moving and thus endure our confinement and uneasiness.[105] After reading a pile of stories about men bureaucrats, Helen Phillips' *The Beautiful Bureaucrat* came as a breath of fresh air. Her novel talks about a woman bureaucrat (Josephine) who enters and deletes information from a database, with the peculiarity that her work determines who is born and who dies, which ultimately prevents her from procreating. Although our specific stories differ, the heart of our concerns is quite similar. Phillips gives visibility to women's diverse experiences in an imagined bureaucracy, whereas I study a real one. She sarcastically underscores the absurdity of the comments women receive about their appearance, while I examine how sexual harassment

[104] This is an excerpt from Josephine's job interview after long months of unemployment. See Helen Phillips, *The Beautiful Bureaucrat. A Novel* (New York: Henry Holt and Company, 2015) at 8.
[105] See Irene Vallejo, *El infinito en un junco. La invención de los libros en el mundo antiguo* (Bogota: Penguin Random House, 2021) at 406.

impacts women's access to the judiciary. We both reflect on women's scope for individual action amid powerful bureaucratic structures, and we are both awed by the beauty of women's resistance. I devote this chapter to explaining the theoretical foundations I attribute to our shared concerns.

Putting women and judicial bureaucracy at the centre of my research required an interdisciplinary and multifaceted approach. Therefore, I conceived a feminist-infused framework combining field theory and heterodox approaches to bureaucratic power.[106] Indeed, this dissertation is broadly informed by and within feminist (legal) theories. Feminism infused the theoretical, methodological, and political situatedness of my inquiry. I perceived that feminism was too broad a framework that could take me in various directions, which is why I used it to illuminate my other two more specific and intersecting theoretical approaches. On the one hand, I drew on field theory to analyze judicial power dynamics and the structural gender inequalities that women experience inside and outside the judiciary. On the other hand, I used heterodox approaches to bureaucratic power, which provided more concrete conceptual tools to zoom in on bureaucratic judicial practices and their relationship to broader socio-legal and gender dynamics.[107]

I created this theoretical blend because it offered a robust guide for the kind of *socio-legal analysis* I was aiming to conduct. As I explained in the previous chapter, my dissertation challenges a common preconception found in the legal literature on judicial appointments. This preconception assumes that meritocracy tends to favour women's access to the judiciary along with advancing other democratic goals, whereas (and most importantly) discretionary appointment systems tend to have the opposite effects. I also explained that this preconception is usually based on a theoretical and methodological strand that overemphasizes the importance of formal rules while paying little attention to the broader socio-legal context. The theoretical blend I propose here

[106] "Heterodox approaches to bureaucratic power" is the label under which Buchely groups the approaches that conceptualize bureaucracy differently or even antithetically to the orthodox interpretation of Weber's notion of bureaucracy. Within this label, Buchely examines the theoretical proposals of Charles Wright Mills, Michael Lipsky, Akhil Gupta, and Aradhana Sharma. This dissertation was strongly influenced by Buchely's suggestive invitation to study bureaucracies from a feminist perspective. See Lina Fernanda Buchely Ibarra, "Bureaucracy, distribution and social change. A Critique of Colombian statelessness" (2012) 125 Vniversitas 121–148.

[107] It is worth noting that Bourdieu had his own reflections on the state, which are partially compatible with the heterodox approaches to bureaucratic power that I embrace here. However, I decided not to strictly follow Bourdieu's ideas on this issue, as I found them ambiguous and unhelpful for interpreting my fieldwork findings. As Arnholtz and Hammerslev say: "On the one hand, they [Bourdieu's writings] argue for an actor-centered approach to the state while, on the other hand, elaborating the power of the state as an institution transcending these actors." On the one hand, he begins "[…] his explicit discussions of the state by assuming that the state is a collective illusion. On the other hand, Bourdieu emphasized that the state was a well-founded illusion with very real effects." See Jens Arnholtz & Ole Hammerslev, "Transcended power of the state: the role of actors in Pierre Bourdieu's sociology of the state" (2013) 14:1 Distinktion: Scandinavian Journal of Social Theory 42–64 at 43.

allows me to react to this preconception and its foundation, as it provides me with the necessary toolkit to conduct a socio-legal analysis that is context-sensitive, empirically grounded, and grasps the complexities of informal rules.

Italo Calvino once said that "A writer's work is important to the extent that the ideal bookshelf on which he would like to be placed is still an improbable shelf, containing books that we do not usually put side by side, […]."[108] I have embraced Calvino's idea while constructing my theoretical framework. In that sense, I cherish the hope that, even if my theoretical blend is not so uncommon,[109] it might place my dissertation on an improbable bookshelf where disciplinary boundaries are blurred, theories find merging points, and women's stories are not located in a segregated corner.

In order to describe the components of my blend, I have divided the chapter into five sections. The first section introduces the premises of feminist (legal) theories upon which I designed this project. The second and third sections respectively outline the features of field theory and heterodox approaches to bureaucracy, and suggest possible interconnections between these approaches and feminism. The fourth section explains the conceptual basis of the typology I created in order to analyze my fieldwork findings. The final section summarizes the main ideas presented in this chapter. All these sections are, in sum, an attempt to make theoretical sense of the phenomena I found while studying Colombia's 'beautiful' bureaucrats.

1. Feminist (Legal) Theories

The adoption of the feminist umbrella came both from my political commitment to gender equality and the need to fill a gap in the local and regional literature on women in the judiciary. It could be said that this umbrella operated at a meta-level: it informed my research questions, it pre-existed the collection of empirical data, and it infused my conception of the other two theoretical

[108] See Italo Calvino, *The Uses of Literature* (New York: Harcourt Brace Jovanovich, 1986) at 82. I borrow this quote from Auyero's thought-provoking introduction to his book (based on his dissertation) See Javier Auyero, *Poor people's politics: Peronist survival networks and the legacy of Evita*, e-Duke books scholarly collection (Durham: Duke University Press, 2001) at 18.

[109] See, for instance, Simon Halliday et al, "Street-Level Bureaucracy, Interprofessional Relations, and Coping Mechanisms: A Study of Criminal Justice Social Workers in the Sentencing Process" (2009) 31:4 Law & Policy 405–428; Abello Castiblanco, *supra* note 73; Vincent Dubois, *The bureaucrat and the poor: encounters in French welfare offices*, translated by Jean-Yves Bart (London ; Routledge, 2016).

approaches I adopt here. In this section, I present, generally and briefly, my idea of what feminism brings to my dissertation.

1.1. Basic Premise: A Women-Focused Perspective

In her reflections on how literature rescued us during the pandemic, Vallejo speaks of the inextricable relationship between women and stories. Surely – says Vallejo – women were the first storytellers when they were weaving by the fireside. "They interlaced verbs, yarn, adjectives, and silk. This is why text and textiles share so many words: the thread of the story, the dénouement of the narrative, the fabric of the argument; weave a plot, embroider a tale, spin a yarn."[110] For me, feminism has essentially inherited this eagerness to tell stories, to care about making women's stories visible, and to put women's stories and problems at the centre of our interests. Let us think, for instance, about the opening scene of Phillips' novel, where Josephine receives comments about her physical appearance, her marital status, and her desire to become a mother.[111] Feminism (and Phillips herself) invites us to imagine how differently interviews develop when the interviewee is a woman rather than a man, and to subsequently reflect on the impact of those differences. It invites us to shift our gaze and focus on what women need, experience, and desire.

I argue that this women-focused perspective is one of the primary pillars of feminist (legal) theories.[112] I argue that this perspective has four main characteristics: it tries to understand women's experiences, it assumes that women occupy a subordinate or oppressed position in society, it pays attention to gender relations, and it aims to change or end women's oppression.[113]

Within the framework of these characteristics, I particularly follow a feminist approach that argues that women must have equal access to resources and opportunities in order to develop their capacities and take control of their lives. According to this approach, gender inequalities are the product, first, of the sexual division of productive and reproductive work, and second, of discriminatory practices and rules with disparate impacts on women in the workplace. In this sense, the relationship between gender and the capitalist order is at the heart of my concerns.[114] Readers

---

[110] See Irene Vallejo, *Papyrus. The Invention of Books in the Ancient World* (New York: Alfred A. Knopf, 2022) at 372.
[111] See Phillips, *supra* note 104 at 9.
[112] The concept of "an explicitly woman-focused perspective" comes form Fineman, “Challenging Law, Establishing Differences”, *supra* note 48 at 31.
[113] See Marie Withers Osmond & Barrie Thorne, “Feminist Theories” in Pauline Boss et al, eds, *Sourcebook of Family Theories and Methods: A Contextual Approach* (Boston, MA: Springer US, 1993) 591 at 592.
[114] See Mary Joe Frug, “A Postmodern Feminist Legal Manifesto” (1992) 105 Harvard Law Review 1045; Lina Fernanda Buchely Ibarra, *Activismo burocrático. La construcción cotidiana del principio de legalidad* (Bogotá:

will notice that this relationship is a golden thread running through my fieldwork findings in chapters V and VI.

In addition, this approach considers that formal state rules play a fundamental role in reproducing gender inequalities. Rules not only distribute resources unequally between men and women, but also legitimize the social association between women and the domestic sphere.[115] The legal discourse contributes to defining an identity for women that is grounded on motherhood, caregiving, and household responsibilities.[116] This approach also insists on the need to expose how gender biases and stereotypes are deeply rooted in the law because, even when the law is facially gender-neutral, it has been designed without considering women's perspectives. Similarly, even when rules are well-designed and progressive, they can affect women if institutions or individuals apply them with a patriarchal gaze. In chapters V and VI, I embrace these feminist premises in order to examine the disparate impact that formal and informal rules may have on women in each appointment system.

1.2. Women: *Sisters We Might Be…*

The feminist approach I just described seeks to transform the distribution of power in order to benefit a social group called *women*. But this idea is more complex than it might seem. Perhaps the best way to complicate it is by using the lenses of gender relations. Three basic premises underlie the category of gender: i) the characteristics associated with the sexes have been socially constructed; ii) these constructions are a primary way of organizing relationships of power; and

Ediciones Uniandes, 2015) at 123. In principle, this approach is aligned with what is known as socialist feminism. However, following Iris Marion Young, I try to avoid this label as I believe that the current concerns of feminism are much broader and draw from many more theoretical perspectives than what that label can convey. See Iris Marion Young, *Throwing like a girl and other essays in feminist philosophy and social theory* (Bloomington: Indiana University Press, 1990).

[115] Buchely Ibarra, *supra* note 114 at 122.

[116] As Frug put it, "legal discourse should be recognized as a site of political struggle over sex difference" to the extent that it "permit[s] and sometimes mandate[s] the maternalization of the female body." Frug, *supra* note 114 at 1050. On this discussion, see Helena Alviar García & Isabel C Jaramillo Sierra, *Feminismo y crítica jurídica: el análisis distributivo como alternativa crítica al legalismo liberal* (Bogotá: Siglo del Hombre Editores, Ediciones Uniandes, 2012) at 138. These two authors also discuss how the concept of "family" has been used as a tool to distribute resources. See Isabel Cristina Jaramillo Sierra & Helena Alviar García, "'Family' as a legal concept" (2015) 15 Revista CS 91–109; Isabel Cristina Jaramillo Sierra & Sergio Iván Anzola Rodríguez, eds, *La batalla por los alimentos : el papel del derecho civil en la construcción del género y la desigualdad* (Bogotá: Universidad de los Andes, 2018).

iii) the study of women is necessarily relational since it involves a comparison with men's experiences.[117]

These premises run through the veins of this dissertation in three main ways. Firstly, they pushed me to collect data on both men and women in order to ensure that I was capturing the relational nature of gender. Secondly, they made me aware of the fact that structural gender inequalities may have similarities globally, but they are strongly tied to specific historical and cultural contexts, so the boundaries that separate men and women are constantly transformed and negotiated.[118] In a way, as I emphasized in Chapter I, the study of the Colombian judiciary (which largely yields different results to those found in the prevailing literature) serves to highlight the contingency of women's behaviour and constraints.

Thirdly, those premises led me to explore differences between men and women, and among women. Throughout this thesis, I understand that 'women' is an unstable, contextual, and heterogenous category.[119] Specifically, as I explain in the next section, my dissertation suggests that different women encounter different possibilities and constraints depending on the position they occupy in the judicial field, and those positions are strongly determined by their social class, age, race, region of origin, and other categories. Therefore, I assume that there are no essential women's experiences or perceptions, which is why I included several questions about different social categories (besides gender) in my interviews. As the contrasting fates of women in fairy tales remind us, "sisters under the skin we might be, but that doesn't mean we've got much in common."[120]

I strive to sustain this intersectional awareness in all chapters. However, I often use the category of 'women' as a unitary group either because intersectional data were insufficient or because I wanted to acknowledge that social categories – even if mutable and relational – have a

---

[117] See Joan W Scott, "Gender: A Useful Category of Historical Analysis" (1986) 91:5 The American Historical Review 1053–1075 at 1067.

[118] See Maria da Gloria Bonelli, "Profissionalismo e diferença de gênero na magistratura paulista" (2010) 10:2 Civitas 270–292 at 274.

[119] As Harris put it, "Any 'essential self' is always an invention; the evil is in denying its artificiality." See Angela P Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42:3 Stanford Law Review 581–616 at 611. See also Elizabeth Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988). Denying the differences among women often silences minority voices, which represents an unfulfilled promise of feminism to listen to women's stories; all the stories. See Mara Viveros Vigoya & Marta Zambrano, "La diferencia: un concepto problemático para la antropología y el feminismo" in *El género: una categoría útil para las ciencias sociales* (Bogota: Universidad Nacional de Colombia, 2011) 143 at 157.

[120] Angela Carter, ed, "Tongue meat" in *The Virago Book of Fairy Tales* (London: Virago Press, 1990) at 215. Quoted by Rackley, *supra* note 4 at 75.

social reality and actual impacts on people's lives.[121] I would also like to note that this feminist framework is intimately tied to the feminist methodology described in Chapter I.

The following sections were conceived in light of this multi-layered feminist approach.

2. The Bureaucratic Judicial Field

Back in 2017, when I was preparing my doctoral applications, I had dreamt of visiting the working environment of judicial bureaucrats in person. I wanted to observe their clothes, detect unsaid personal codes, and identify "the atmosphere of the courtrooms, the sour smell of paper and sweat."[122] The pandemic disrupted this plan, forcing me to conduct the interviews remotely. And while I was unable to capture all these material and sensory dimensions of the bureaucratic field, I did collect many hours of stories that speak to the (gendered) power dynamics surrounding judicial appointments. As I explain here, *field theory* provides a valuable framework for reflecting on these dynamics.

2.1. Field Theory: *Life Is a Child Playing a Game*

We have been called *Homo Sapiens*. But perhaps it would be appropriate to think of our species as *Homo Ludens* (Man, The Player), considering that the need to play weighs immensely on our behaviour.[123] We enjoy playing, but more than that, life itself is *like* a game. "All human concerns are games," said Plotinus once.[124] Heraclitus put it even more beautifully: "Life is a child, being a child, playing a game."[125] Well: *field theory* also evokes the idea of social life as a game. According to this theory, social life is divided into several fields. Each field functions as a complex game with players who have accepted the rules of that game in order to play, and each one tries to win by using their capital (i.e. the resources available to them).

The fields where games take place are not material or physical places but conceptual devices to understand social life. Each field has its own rules that have been historically constituted

[121] As I acknowledged in Chapter I, I found it impossible to collect data on gender diversity in the judiciary, which makes my reflections insurmountably binary.
[122] This quote comes from *Divorce in Buda*, where a judicial bureaucrat is talking about everything that was familiar to him in a court of law. See Sándor Márai, *Divorcio en Buda*, 10ª ed (Barcelona: Salamandra, 2007). [Translated by author].
[123] Johan Huizinga, *Homo Ludens* (Buenos Aires: Alianza Editorial, 1968).
[124] Enneads III.2.15, AD 270.
[125] Heraclitus, Fragment 52, 500 BC.

and operate as a network of objective power relationships between agents in different positions.[126] It is a structure of power relations or competition between individuals (or between groups or organizations) who occupy different positions within the field according to their capital. The positions that individuals occupy enable and define the relationships between them.

Capital, on the other hand, is a resource that serves as a weapon to exert power or influence. Depending on the field where agents interact, capital can manifest itself in different forms (e.g. economic and political capital). The various forms of capital are often interconnected, and they define the chances of winning or obtaining profit. Returning to the idea of playing, Bourdieu explicitly compares the field to a game of roulette where everyone has different types and amounts of chips (their capital) that lead them to make different decisions within the game. Each person's capital is always a social relation that is defined in contrast to what other players possess in a given field.[127] Whoever starts the game with more or better chips has the greatest chance of accumulating chips and further progressing in the game. This is why individuals from the same group (who tend to have similar capital or chips) tend to have similar social trajectories.[128] That is, the possibilities for mobility within the field are primarily determined by the forms and amount of chips each individual possesses − and many of our chips are inherited or come from birth.[129]

In this context, a person's choice is relevant and meaningful, but it is constrained by the objective social-structural positions she occupies within the field. In other words, individuals have freedom and agency, and they encounter possibilities for action through which they can expand their structures of opportunity: some increase their capital through learning, luck, and effort, whereas a few others succeed in changing the forms of capital valued in the field so that their own capital is valued as well. However, a person's range of choices and possibilities for action are, in turn, largely tied to their position in the field. These conditions explain, for instance, why two

[126] Pierre Bourdieu & Loic JD Wacquant, *An Invitation to Reflexive Sociology* (Chicago: The University of Chicago Press., 1992) at 97.
[127] See Pierre Bourdieu, "The Forms of Capital" in JG Richardson, ed, *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, 1986) 15; Diane Reay, "Gendering Bourdieu's concepts of capitals? Emotional capital, women and social class" (2004) 52:2 The Sociological Review 57–74.
[128] The s*ocial trajectory* of an individual corresponds to the distance between his capital of origin and his capital of arrival at the end of his life.
[129] "[…] those with lots of red tokens and a few yellow tokens, that is lots of economic capital and a little cultural capital will not play in the same way as those who have many yellow tokens and a few red ones […] the more yellow tokens (cultural capital) they have, the more they will stake on the yellow squares (the educational system)". See Pierre Bourdieu, *Sociology in Question* (London: Sage, 1993) at 34.

persons can act similarly and obtain utterly different results. It all depends on the social positions each of them occupies.[130]

Gender, like other categories, is one of those conditions that put individuals in certain positions. These positions can either facilitate or block their access to certain forms of capital and, therefore, to certain social trajectories. In most professional fields, women tend to occupy social positions from which it is challenging to access high-rank jobs. Some women deploy all sorts of strategies to accumulate capital and improve their positions in the field. In contrast, others, no matter their strategies and effort, are structurally constrained to remain in their positions of origin.

2.2. Field Theory and the Judiciary: The Chips Women Play With

As I explain in chapters V and VI, I was struck by the epistemic difficulty or political resistance of women interviewees to frame their individual struggles as gendered, structural inequalities.[131] In this dissertation, I use field theory precisely to offer a macro-social view that unveils the connections between structural conditions and individual struggles in women's experiences in the judiciary. I seek to analyze that women's positions strongly determine how they navigate bureaucratic judicial practices around appointment systems and that, as a result, not all women have the same chances of obtaining an appointment. I also seek to explore how gender structural constraints are strongly tied to specific contextual considerations.

My chosen field of enquiry is the bureaucratic judicial field. This field is comprised of diverse individuals (justices, judges, clerks, secretaries, applicants, etc.) who create rules defining the administrative functioning of the judiciary, have the power to select personnel, seek to climb the judicial hierarchy, and strive for benefits from state resources.[132] The judicial field intersects with the legal field, in which actors struggle to have the last word in defining what law is.[133]

I identified four forms of capital that seem particularly helpful in interpreting women's (and individuals') possibilities for mobility within and into this particular field. The content of each

---

[130] See Iris Marion Young, "Structure as the Subject of Justice" in *Responsibility for Justice* (Oxford University Press, 2011) 44 at 46.

[131] *Ibid* at 53. From this idea comes Frye's famous analogy about how birds cannot understand the constraints that prevent them from flying if they only focus on a single wire of their birdcages. See Marilyn Frye, *The politics of reality: essays in feminist theory*, first edition ed, The Crossing Press feminist series (Trumansburg, New York: Crossing Press, 1983).

[132] See Pierre Bourdieu, Loic J D Wacquant & Samar Farage, "Rethinking the State: Genesis and Structure of the Bureaucratic Field" (1994) 12:1 Sociological Theory 1–18.

[133] Pierre Bourdieu, "La force du droit. Éléments pour une sociologie du champ juridique" (1986) 64 Actes de la recherche en sciences sociales 3–19 at 4.

form of capital is not self-evident, so I offer below a tentative and non-exhaustive definition of each:

- Economic capital: this concept refers to the economic or material resources jurists have. This form of capital enables them to afford better law schools, pay for postgraduate studies or training courses for meritocratic competitions, move to major cities, or hire assistance to delegate their care responsibilities.
- Social capital: it is the aggregate of networks or relationships of recognition, support, and group membership. The more social capital jurists have, the larger their networks are in terms of: the social groups to which they belong (as members of certain powerful universities or families), their access to information channels, and material or symbolic support from their families regarding their care responsibilities.[134]
- Political capital: although this form of capital has several components, I will use this concept to refer to the closeness that jurists have to powerful people and, in turn, to decision-making processes. I found this notion helpful in reflecting on the importance of jurists' connections to justices with the power of appointment.[135]
- Cultural capital: this form of capital refers to the skills, academic qualifications, tastes, cultural goods, social dispositions, and other material and symbolic elements. All these elements are strongly linked to the education we received, the region where we grew up, and the social class of our families, among other factors.[136] Some forms of cultural capital are more valued than others, usually those of more socially privileged groups, such as men, the upper classes, racial majorities, or urban dwellers. I will draw on this concept mainly when referring to the skills and professional profiles often rewarded by judicial selection processes.

All these forms of capital are instrumental because they give individuals certain advantages or disadvantages in the judicial field. However, they are also highly arbitrary (e.g. it is arbitrary that it is socially more advantageous for a jurist to have social connections with an appointing justice than to be a diligent worker). Due to these same characteristics, capital reproduces the

[134] For a reflection on why care networks (specifically, family networks and their support regarding care responsibilities) should be understood as a form of social capital, see Riccardo Prandini, "Family Relations as Social Capital" (2014) 45:2 Journal of Comparative Family Studies 221–234.
[135] See Eva Sorensen & Jacob Torfing, "Network politics, political capital, and democracy" (2003) 26:6 International Journal of Public Administration 609–634.
[136] Bourdieu, *supra* note 127 at 17.

structures of social inequality.[137] In the Colombian judiciary, for instance, current capital distribution tends to reproduce both the advantages of many men and the disadvantages of most women.

2.3. Re-Appropriating Bourdieu: Beautiful Bureaucrats in the Judicial Field

Field theory is mainly associated with Pierre Bourdieu. However, Bourdieu was "characteristically unclear"[138] about the concepts he created, and some of his positions either contain glaring inconsistencies or seem inadequate to make sense of my findings. For these reasons, I do not embrace Bourdieu's ideas unrestrictedly and uncritically. In particular, I have tried to combine Bourdieu's approach with Iris Marion Young's notion of structural injustice. Although both authors use different concepts to theorize structural social inequalities, I argue that they have a crucial viewpoint in common: they both think of social reality in terms of the *position* that individuals occupy, inviting us to think of their (dis)advantages in terms of their relationships with others rather than their individual preferences or decisions.[139] In the same vein, both authors suggest that, to understand inequality, we must identify how social-structural positions restrict or open a person's range of choices and mobility opportunities.

But Bourdieu's views not only need to be complemented by other authors. They should also be revisited or reframed for feminist purposes. Perhaps the main limitation of Bourdieu's approach is that he conceived gender as inseparable from social class, like "the yellowness of a lemon is from its acidity."[140] Gender is a constitutive element of class, but it is, in any case, subordinate or secondary. For most feminist theories, in contrast, gender is more important or at least as important as social class. Despite this essential difference, some feminist scholars have found in field theory a helpful conceptual toolkit for approaching gendered power structures.

Specifically, feminist authors have re-appropriated the notions of capital, symbolic domination, and field in ways I find particularly helpful in this dissertation. To begin with, abundant feminist literature draws on the concept of *capital* to better explore gender relations.

---

[137] Rob Moore, "Capital" in Michael Grenfell, ed, *Pierre Bourdieu: Key Concepts*, 2d ed (London: Routledge, 2014) 98 at 101.
[138] See Alice Sullivan, "Bourdieu and Education: How useful is Bourdieu's theory for researchers?" (2002) 38 The Netherlands' Journal of Social Sciences 144–166.
[139] Iris Marion Young herself acknowledges how close her ideas are to Bourdieu's. See Young, *supra* note 130 at 56.
[140] Pierre Bourdieu, *La distinction; critique social du jugement* (Paris: Minuit, 1979). In general, the vast majority of Bourdieu's work said little about women, with the exception of his text *Masculine Domination*.

Although Bourdieu was unclear about the relationship between women and capital,[141] some authors propose feminist re-readings of the best-known forms of capital, such as economic, cultural, and social capital.[142] Bourdieu and Waquant themselves were aware of the expansive and flexible character of the concept of capital. They even suggested that this character was "[…] indispensable to explain the structure and dynamics of differentiated societies."[143] As indicated before, in this dissertation I also use the flexibility of the concept of capital to explore the (lack of) resources that affect or facilitate women's access to the judicial field.

On the other hand, feminist theorists have used Bourdieu's notion of *symbolic domination*. For him, a paradigmatic case of symbolic domination lies in gender relations: the superiority of men over women is so entrenched that it is perceived as universal and self-evident, thus its legitimacy and persistence remain unquestioned. This is "the hypnotic power of domination" that Virginia Woolf spoke of.[144] Men's domination manifests itself not only in institutions, but also in mental and bodily dispositions that both men and women have incorporated. I use this concept in Chapter VI when exploring how both men and women reinforce gender stereotypes around women's care vocation in the workplace (although I argue that this domination can sometimes be strategically exploited by women to use it in their favour). Sometimes, just sometimes, women manage to alter the status quo in their workplaces, even when all the odds are against them.

Additionally, the concept of *field* is a promising arena to reflect on the tensions between structure and agency from a feminist perspective. Due to its complexity, I have dedicated the following subsection to this idea.

2.4. Structure and Agency: Powerful Women in Unhappy Families

"It could well be that all I have felt / was only whatever was never meant to be, / was only something forbidden and repressed, / from family to family, from woman to woman."[145] These

---

[141] Kate Huppatz, "Reworking Bourdieu's 'Capital': Feminine and Female Capitals in the Field of Paid Caring Work" (2009) 43:1 Sociology 45–66 at 47. More importantly, see Lisa Adkins & Beverley Skeggs, *Feminism after Bourdieu* (Oxford - Malden: Blackwell Publishing, 2004).

[142] Other scholars have even invented new forms, such as gender capital, emotional capital, or sexual capital. See Huppatz, "Reworking Bourdieu's 'Capital'", *supra* note 141.

[143] See Kate Huppatz, *Gender Capital at Work* (London: Palgrave Macmillan UK, 2012) at 25.

[144] Quoted by Pierre Bourdieu, "Masculine Domination Revisited" (1996) 41 Berkeley Journal of Sociology 189–203 at 2.

[145] See Alfonsina Storni, "It Could Well Be" (1987) 29 Minnesota Review 16. In Spanish, the poem is entitled *Pudiera Ser*: "Pudiera ser que todo lo que aquí he recogido / no fuera más que aquello que nunca pudo ser, / no fuera más que algo vedado y reprimido / de familia en familia, de mujer en mujer."

opening lines from the poem *It Could Well Be*, by Argentine writer Alfonsina Storni, reflect the tensions between two dimensions: on the one hand, "an overarching 'social structure' that determines our behaviour,"[146] and travels from family to family. And, on the other hand, agency. Agency refers to what could be, or "the ability of individuals to exercise their freedom in controlling their own actions […] with the resources available to them."[147] I argue that the notion of field bridges structure and agency because it provides a large-scale viewpoint that exposes the whole structure of women's constraints beyond their individual choices, but simultaneously underscores women's efforts to obtain desirable resources and expand their structures of opportunity. My dissertation assumes that examining both dimensions *is essential to* produce rich readings of women's experiences in the judiciary.[148] Structural factors may explain most women's (dis)advantages in appointment systems, but my fieldwork findings show that women consistently resist, modify, and resignify their subordinate positions when navigating bureaucratic practices.[149] Let me briefly reflect on both dimensions.

Structure and the Limits of Opportunity in the Bureaucratic Judicial Field

Gender as a social structure explains why women and men tend to occupy certain positions in the judicial field, are limited or enabled by certain circumstances, and obtain different results when they act in similar ways. Gender structures (hand in hand with other social categories) largely explain why men jurists in Colombia have historically had "a wide range of opportunities for developing and exercising capacities available to them,"[150] which would explain why they have had easier access to the best law schools and have traditionally occupied the top positions in most legal professions.[151] In contrast, women jurists have lived under the "systematic threat of

[146] Doyle Paul Johnson, *Contemporary Sociological Theory. An Integrated Multi-Level Approach* (Texas: Springer, 2008) at 12.
[147] *Ibid*.
[148] This is not a settled discussion. Much of the theoretical disputes among feminists still have to do with the problems of focusing only on structural oppression (which some label as "victim feminism") or on women's agency ("power feminism"). See, for example, Elizabeth M Schneider, "Feminism and the False Dichotomy of Victimization and Agency" (1993) 38 New York Law School Law Review 387–400 at 397.
[149] See Buchely Ibarra, *supra* note 114 at 16.
[150] Here I am using Iris Marion Young's terms in her definition of "structural injustice." See Iris Marion Young, *Responsibility for Justice* (Oxford University Press, 2011) at 9.
[151] On these facts, see María Adelaida Ceballos-Bedoya, "Unequal access to law school: a study of gender and class in Colombia" (2020) 28:3 International Journal of the Legal Profession 1–24; García Villegas & Ceballos Bedoya, *supra* note 12.

domination or deprivation of the means to develop and exercise their capacities."[152] One of the men interviewees put it more graphically: in the Colombian judiciary, "the strings of power are pulled by men."[153]

Throughout this dissertation, I refer to many gender structural dynamics that travel across generations, as in Storni's poem. One of the most salient dynamics I found in my fieldwork is connected to the feminist approach described in Section 1: many women jurists still have the primary responsibility for caregiving and housekeeping, and such unequal distribution hampers their access to both judicial appointment systems. Indeed, my qualitative findings suggest that, because of their disproportionate care burdens, some women have less time than men to study for merit competitions or have fewer mobility options than men when applying for a discretionary appointment.[154] These gender dynamics among jurists evoke the words that Helmer addressed to Nora in *A Doll's House*, "Before all else you are a wife and a mother," and that is women's most sacred duty.[155]

Unfortunately, there is no statistical data on the division of productive/reproductive work in the Colombian legal profession specifically. However, data about Colombia in general confirm that the unequal distribution of care work significantly affects career opportunities for women.[156] Admittedly, such unequal distribution is not exclusive to the Colombian judicial field. Yet my findings suggest that the Colombian judiciary might have some peculiarities worth considering. For instance, in Chapter VI, I suggest that appointers might have additional incentives to help single mothers in a context with high inequality and favouritism like the Colombian one. It appears that, just as "every unhappy family is unhappy in its own way," every judicial field reproduces and

[152] Here I am using Iris Marion Young's terms in her definition of "structural injustice". See Young, *supra* note 150 at 9.
[153] Participant ManP5.
[154] Costs such as the end of their marriages or the indifference of their children. See Nancy Fraser, "Struggle over needs: outline of a socialist-feminist critical theory of late-capitalist political culture" in Linda Gordon, ed, *Women, the State, and Welfare* (Wisconsin: University of Wisconsin Press, 1990) 199.
[155] Henrik Ibsen, *A doll's house* (London: T. Fisher Unwin, 1889) at 117.
[156] See Amy S Wharton, "Structure and agency in socialist-feminist theory" (1991) 5:3 Gender and Society 373–389 at 378. Colombian women have limited access to higher paying and more powerful positions because it is mostly women (76%) who are responsible for caregiving tasks and they spend more than twice as much time as men performing these tasks.

reinforces gender inequalities in different ways.[157] Field theory allows me to consider all these context-bound power dynamics.

Agency and Women's Scope for Action in the Judiciary

My dissertation studies not only the structures but also the possibilities of women's agency, even if performed in the fractures of those structures. I try to acknowledge the power of gender structures while trying not to lapse into determinism. As Marion Young would put it, "To say that structures constrain does not mean that they eliminate freedom; rather, social-structural processes produce differentials in the kinds and range of options that individuals have for their choices."[158] In that sense, women's agency sometimes (re)produces structures, but other times opens spaces for adaptation, resistance, and transformation of those structures.[159]

Like all social actors, women are creators of social reality. Therefore, many situations that could be perceived as a consequence of oppressive conditions could also be interpreted as the product of women's active efforts to protect their families, mobilize their resources, and even resist subordination.[160] For instance, for some women participants, it does not matter whether discretionary appointments are more unstable and criticized. What matters is that their salary and status vis-à-vis citizens are higher, and they achieved this improvement because they instrumentalized certain aspects of their subordination, such as being secretaries to the appointers. That is, women strategically find ways to improve their situation despite constraining gender structures. Even amid relationships of domination, there is room for women jurists to exercise power in a meaningful way.

Inevitable Tensions

It may be true that, in some cases, there is a blurred line between agency and structural constraints. In some situations, women might be taking control of their lives, whereas in others, they might

[157] I am borrowing this comparison between Tolstoy's famous line and workplace structures from Gabriella Gutiérrez y Muhs et al, *Presumed Incompetent: the Intersections of Race and Class for Women in Academia* (Utah: Utah State University Press, 2012) at 4.
[158] Young, *supra* note 130 at 56.
[159] Harris, *supra* note 119 at 613.
[160] See Schneider, *supra* note 148 at 389; Adelle Blackett, *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Ithaca: Cornell University Press, 2019) at 45. In fact, there is always room for agency, even in social spheres where structures are thought to be more powerful, such as in religious communities. See, for instance, Shauna Van Praagh, "The Chutzpah of Chasidism" (1996) 11:2 Canadian journal of law and society 193–215; Campbell, *supra* note 47 at 189.

just be normalizing their oppressive experiences, and over-adapting to or reinforcing certain gender expectations.[161] As Hull and Nelson explain, it is difficult to determine whether certain decisions that go against women's employment interests (such as giving up a promotion in order to spend more time with their children) are indeed an exercise of choice. But what seems clear is "[…] that men and women in the legal profession face a different set of choices,"[162] therefore certain life choices represent tensions (such as the work-family tension) but only for women jurists.

The stories of my interviewees are complex and can be fraught with ambivalence and contradictions. Sometimes even they cannot disentangle where their agency ends and the structural barriers begin. My challenge when interpreting their responses was manifold: to identify structural constraints where participants saw only individual failures; to recognize their agency yet avoid the liberal viewpoint that denies structural constraints; and to put women's struggles at the centre without overlooking their resistance and enormous diversity. Perhaps such entanglement is unavoidable. And perhaps embracing it is the only way to find meaningful explanations for the current imbalances of power in the Colombian judiciary.[163] To return to Storni's poem, women's account of what *could not be* and what *could well be* in their lives is polyvalent and disputed. That, I think, should be seen as an uncomfortably illuminating finding.

3. Judicial Bureaucracy: Political Action in Tedious Jobs

Field theory offered a macro-view of the judicial field that bridged structural constraints and individual agency in women's experiences. However, I needed to move one step further down the level of abstraction in search of a conceptual toolkit to interpret the specificities of bureaucracy. As I mentioned in Chapter I, there is abundant scholarship on judges as decision-makers, but little has been said about them as bureaucrats who administer a judicial office and have the power of appointment.[164] This is where heterodox approaches to bureaucratic power enter the scene to help

[161] Kathleen E Hull & Robert L Nelson, "Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers" (2000) 79:1 Social Forces 229–264 at 233. On women contributing to their own domination, see Bourdieu, *supra* note 144 at 191.
[162] Hull & Nelson, *supra* note 161 at 252.
[163] See Scott, *supra* note 117 at 1067.
[164] This gap occurs as a product of what Barrera describes as a functionalist conceptualization in which judicial power represents an entity with a doble subjectivity: adjudication, on the one hand, and bureaucratic activities on the other. See Leticia Barrera, *La Corte Suprema en escena. Una etnografía del mundo judicial* (Buenos Aires: Siglo Veintiuno Editores, 2012).

me articulate how the judiciary operates as a bureaucratic field and how women interact with bureaucratic practices.[165]

3.1. Orthodox versus Heterodox Approaches to Bureaucratic Power

"A toast" – says Josephine's husband. "He raised his coffee cup. 'To bureaucrats with boring office jobs'."[166] Every day, Josephine processes a "stack of gray, dizzying, and dusty files."[167] Her job is so dull and mechanical that she forgets that files represent citizens; flesh and blood.[168] She is a typical bureaucrat working in a windowless building full of half-dead employees who work "coldly, like someone who had never loved."[169] In Phillips' novel, bureaucrats are employees who perform routine, impersonal, technical tasks, while bureaucracy is a top-down structure where "the humanness of human condition gets lost in the files."[170] As a dystopian writer, Phillips could have created the most bizarre, unexpected bureaucratic world. Yet she chose to reinforce an image of bureaucracy that is powerfully installed not only in popular thinking and Western literature, but also among jurists. As I explain below, this image largely corresponds to the orthodox interpretation of Max Weber's ideas, and it is the image I seek to challenge by using the heterodox scholarship.

I will first describe the orthodox approach and then turn to its critics. Weber built an ideal type of the legal-rational system as a modern form of government. This system has a body of officials (a bureaucracy) with several characteristics: a) bureaucrats have a hierarchical organization; b) hierarchy is mediated by impersonal relationships among officials; c) a division of tasks determines the competence and jurisdiction of each bureaucrat; d) bureaucrats are governed by abstract, impersonal, and technical rules, making their behaviour predictable (meaning that bureaucrats are supervised by their superiors, but owe obedience to the impersonal rules that justify the authority of the entire organization); e) these rules define an unambiguous,

---

[165] Ferguson suggests that "there has always been an uneasy relationship between feminism and bureaucracy," but there are myriad ways to study bureaucracy and women bureaucrats from a feminist perspective. See Kathy E Ferguson, *The feminist case against bureaucracy* (Philadelphia: Temple University Press, 1984) at 3.
[166] Phillips, *supra* note 104 at 18.
[167] *Ibid* at 11, 13.
[168] *Ibid* at 59.
[169] *Ibid* at 24, 73.
[170] Anya Bernstein & Elizabeth Mertz, "Introduction. Bureaucracy: Ethnography of the State in Everyday Life" (2011) 34:1 PoLAR 6–10 at 6. This is also an image found in authors as diverse as Jose Saramago, Franz Kafka, Nikolay Gogol, and Charles Dickens.

uniform, and specific procedure for how bureaucracy should operate; and f) bureaucrats are selected and promoted based on their objectively demonstrated technical abilities.[171]

In sum, the orthodox view suggests that bureaucracies are or should be unitary, hierarchical, impersonal, predictable, and technical. These characteristics supposedly ensure a separation between the bureaucratic position and its possessor and, thus, between public administration and politics. Bureaucrats follow formal rules and technical considerations in order to guarantee their technical efficiency, high quality, and independence from political forces.[172]

Orthodox interpreters of Weber's ideas understand that he was either *describing* how the administration of the modern state operates or *prescribing* how it should operate in order to guarantee economic progress and institutional stability. Although without explicitly citing Weber, this orthodox interpretation is hegemonic in the way we conceive of the state, both globally and specifically in Colombia.[173] It is present in the collective imagination of writers, citizens, and bureaucrats, as well as in public administrative law and other state narratives (e.g. the principle of legality).[174] It is, moreover, the standard against which expert literature often characterizes bureaucracies in the Global South as inefficient or endemically corrupt.

Heterodox scholars, on the other hand, consider that Weber was neither describing reality nor prescribing a universal model of how states should operate.[175] As Lina Buchely points out, "The bureaucratic ideal as a Weberian dream is nothing more than the universalization of a misreading."[176] Although heterodox approaches are diverse, one overarching idea (that I adopt here and fits well with field theory) is that bureaucracy is a field marked by power struggles. Like Josephine's husband, most people imagine bureaucratic work to be so tedious and routine that they

---

[171] Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (Nueva York: Bedminster Press). These elements of bureaucratic power are also discussed extensively in Richard H Hall, "The Concept of Bureaucracy: An Empirical Assessment" (1963) 69:1 American Journal of Sociology 32–40.

[172] According to this definition, the Colombian judiciary is a bureaucracy insofar as it has been designed by the Constitution and the law to fulfil all the characteristics. However, as I intend to destabilize Weberian definitions, it is perhaps more appropriate to embrace Buchely's definition of bureaucracy as "the manifestation of public power on a day-to-day basis." See Buchely Ibarra, *supra* note 114 at 14. [Translated by author].

[173] See Lina Buchely Ibarra, *Activismo burocrático. Las burocracias callejeras y la construcción cotidiana del principio de legalidad* (Ph.D., Universidad de los Andes, 2014) [unpublished] at 61.

[174] The many ways in which this Weberian idea (albeit without citing Weber) is reflected in Colombian administrative law are analyzed by Carolina Moreno, *Nuevas tendencias en el derecho administrativo* (Bogotá: Ediciones Uniandes, 2016).

[175] Lina Buchely, "Más allá del modelo weberiano: el debate sobre las burocracias y el Estado" in *Las burocracias Una aproximación distinta a la manera en la que pensamos el Estado* (Bogotá: Siglo del Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, Instituto Pensar, 2014) 11 at 28–29.

[176] Buchely Ibarra, *supra* note 173 at 63. [Translated by author].

do not perceive it as a site for political action.[177] But heterodox scholars insist that bureaucracy is, indeed, a political arena where actors compete over power and state resources for their personal benefit. As a consequence of this political character, bureaucracy operates in disaggregated, decentralized, subjective, informal, and unpredictable manners.[178] According to this vision, subjective or fragmented bureaucratic behaviours should not necessarily be perceived as flaws but as part of the normal functioning of bureaucracies.

3.2. Three Claims of the Heterodox Approaches

Three claims stemming from the abovementioned overarching idea illuminate my fieldwork findings. First, all bureaucrats, even those closest to central power, enjoy high levels of discretion because formal rules are ambiguous, indeterminate, and multiple. Therefore, judicial bureaucrats constantly apply, adjudicate, and create state law.[179] This means that judicial state policies are largely constructed on these margins of discretion, amid subjective considerations and complex power struggles.[180] This claim will be helpful, for example, to reflect on why meritocratic competitions are often unpredictable and have disparate gendered impacts despite being highly regulated by gender-neutral formal rules.

Second, bureaucrats who are furthest from power enjoy the greatest margins of discretion and they use various criteria to decide how this discretion will be deployed.[181] The literature supporting this claim refers to "street-level bureaucrats", who are low-ranking bureaucrats in charge of delivering benefits and public sanctions to citizens. Although Colombian tribunal justices do not seem to fit this definition exactly, I find that the literature on street-level bureaucrats

[177] Bernstein and Mertz put it eloquently: "The work of administration takes place in the fluorescent-lit rooms of drab office buildings where thousands of bureaucrats type streams of information into outdated computers or file handwritten notes in inaccessible archives. From all appearances, this is not an arena of political action at all." See Bernstein & Mertz, "Bureaucracy", *supra* note 170 at 6.

[178] See Buchely, *supra* note 175 at 12. As Gupta puts it: "When one analyzes the manner in which villagers and officials encounter the state, it becomes clear that it must be conceptualized in terms far more decentralized and disaggregated than it has been the case so far." See Akhil Gupta, "Blurred Boundaries. The Discourse of Corruption, The Culture of Politics, and the Imagined State" (1995) 22:2 American Ethnologist 375–402 at 392.

[179] Buchely Ibarra, *supra* note 114 at 23.

[180] Sharma Aradhana & Akhil Gupta, eds, *The Anthropology of the State. A Reader* (Malden Massachusetts: Blackwell Publishing, 2006); Buchely Ibarra, *supra* note 173 at 10; Bourdieu, "La force du droit; éléments pour une sociologie du champ juridique", *supra* note 133. See also Michael Mann, *Las fuentes del poder social, II. El desarrollo de las clases y los Estados nacionales, 1760–1914* (Madrid: Alianza, 1997).

[181] Several factors open up this margin of discretion: bureaucrats are distant from the central authority, the rules are multiple and largely indeterminate, the objectives of public policies are ambiguous and changeable, and there is a deficit of control over the actions of bureaucrats.

resonates strongly with my findings regarding the broad appointing power of these justices.[182] Specifically, it is relevant how this literature describes that the law shapes but does not entirely predict what bureaucrats will decide because they have their own political agendas, constantly negotiate with citizens, and even use their discretion to redistribute benefits and power. Michael Lipsky reflects, for example, on how street-level bureaucrats work in contexts with few controls, challenging working conditions, and limited resources. And, under such circumstances, they find it possible to alter or actively shape public policies that do not suit their contexts or their own political agendas.[183] Studies also report that bureaucrats often help citizens from their same class, while citizens deploy all sorts of strategies to ingratiate themselves with bureaucrats.[184] "[…], the ambiguity of public employment definitions keeps alive the hope of finding a friend in the courts," says Lipsky.[185] As I show especially in Chapter VI, most of these findings also apply, *mutatis mutandis*, to how tribunal justices assign judicial appointments in a manner that is far from the impersonal, centralized, and apolitical Weberian script.

Third, bureaucratic practices may or may not match the image of bureaucracy.[186] What some heterodox studies show is that, on the one hand, the concrete practices of bureaucrats may follow formal or informal rules (or neither). They may reinforce or weaken the image of the state. However, there is also an aspiration and an effort to preserve the *image* of the bureaucracy mandated by the liberal script: a unified, centralized, technical machine; an abstract structure that functions beyond the persons that compose the organization. This aspiration explains why even bureaucratic practices that openly go against formal rules are often developed following the script

[182] It is important to remember that, in Colombia, tribunal justices (i.e. justices from the highest provincial courts) have total discretion to decide who gets appointed through the discretionary system and are also charged with appointing the winners of the meritocratic competitions. Although Lipsky's definition of street-level bureaucrat do include judges, the literature on this matter has studied judges as decision-makers (their adjudication powers) but not as bureaucrats managing their own offices. See Michael Lipsky, *Street-level bureaucracy : dilemmas of the individual in public services* (New York: Russell Sage Foundation, 2010) at xii.
[183] Lipsky, *supra* note 182.
[184] Buchely, *supra* note 175 at 65; Michael Lipsky, "El papel crucial de los burócratas cercanos al ciudadano" in *Las burocracias Una aproximación distinta a la manera en la que pensamos el Estado* (Bogotá: Siglo del Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, Instituto Pensar, 2014) 179 at 196.
[185] Lipsky, *supra* note 184 at 197.
[186] For me, preserving the image is also the result of a bureaucratic practice, but the distinction is analytically useful nonetheless. This distinction actually goes in line with Bourdieu's idea about how "[…] every field is the site of a more or less overt struggle over the definition of the legitimate principles of division of the field." And this division of the field is determined by symbolic elements (image) and material elements (practices), both of which are equally important. See Pierre Bourdieu, "The Social Space and the Genesis of Groups" (1985) 14:6 Theory and Society 723–744 at 734.

of the orthodox image of bureaucracy.[187] In fact, some bureaucratic ethnographies in Latin America reveal how, amid messy and ambiguous practices, bureaucrats comfortably continue to produce files, records, and statistics that reaffirm the image of a hierarchical, predictable, and technical institution.[188] Admittedly, in all fields there is a gap between the image of what actors pretend to do and what they actually do, but what is peculiar about bureaucracy is that their image corresponds to Weber's ideal type. This distinction between practice and image will be particularly relevant in chapters V and VI, where I underscore how the Superior Council of the Judiciary and tribunal justices try to preserve the image of a technical and impersonal selection system.

These three claims certainly destabilize the centralized, hierarchical, and predictable nature of bureaucracy – which suggests that, after all, Josephine's bureaucratic world was indeed bizarre. However, I do not conceive of bureaucracy as a space of absolute arbitrariness, unpredictability, and chaos, as some heterodox scholars contend.[189] Instead, I adopt an intermediate view between two extreme positions. On the one hand, I insist on the inadequacy of the orthodox interpretation to either fix a normative ideal or to describe the empirical reality of the Colombian bureaucracy. On the other hand, I acknowledge that bureaucratic practices in Colombia have significant pockets of arbitrariness and politicization, but sometimes attend to the liberal script – e.g. they can be relatively predictable and uniform, or follow technical guidelines.[190]

I use this intermediate view as a framework to explore appointment systems in the Colombian bureaucratic judicial field: how power struggles develop, what is the image they convey, what are the disparate impacts that diverse practices have on women jurists, and how these women (by using different forms of capital) navigate, perceive, and perform bureaucratic practices concerning appointment systems. This approach, as I mentioned earlier, is necessarily tied to a

---

[187] Some heterodox theorists talk about how one thing is actual bureaucratic practices and another is the "rational" forms through which bureaucracy legitimizes itself in the eyes of citizens. However, I draw this explicit language of *image* and *practices* as constitutive elements of the state from Joel S Migdal, *State in Society. Studying How States and Societies Transform and Constitute one Another* (Cambridge: Cambridge University Press, 2001) at 16.

[188] Buchely Ibarra, *supra* note 114 at 38.

[189] See Isabel Cristina Jaramillo Sierra & Lina Fernanda Buchely Ibarra, "La etnografía burocrática como herramienta crítica en el derecho administrativo" in Isabel Cristina Jaramillo Sierra & Lina Fernanda Buchely Ibarra, eds, *Etnografías burocráticas: una nueva mirada a la construcción del estado en Colombia* (Bogotá: Universidad de los Andes, Facultad de Derecho, CIJUS, Ediciones Uniandes, 2019) 9 at 16.

[190] My intermediate view generally fits within Maynard-Moody and Musheno's conception of street-level work: "A fundamental dilemma—perhaps the defining characteristic—of street-level work is that the needs of individual citizen-clients exist in tension with the demands and limits of rules. This does not mean that rules do not permeate all aspects of street-level work (they do) or that most street-level actions are not consistent with law and policy (they are)." See Steven Maynard-Moody & Michael C Musheno, *Cops, teachers, counselors: stories from the front lines of public service* (Ann Arbor: University of Michigan Press, 2003) at 93.

context-sensitive and empirically grounded research design that can account for how concrete bureaucratic practices operate in each specific context.

I also use this intermediate view to invite readers to be careful about analyzing Colombian bureaucracy in terms of weakness, absence, or corruption.[191] These labels tend to refer to a large gap between reality and the Weberian ideal type. But if we adopt a heterodox perspective, we will see that different bureaucracies operate differently, with their virtues and problems. As I further explain in the next chapter, we usually gain little analytically when we simplify or ignore the rich socio-legal interactions that occur in contexts traditionally labelled as flawed or failed. I must note, however, that in some sections of this dissertation I do use a revisited notion of institutional weakness that suggests that weakness is not necessarily a flaw in Latin American DNA, but is often a political strategy that is intentional and attractive to both the governing and the governed.[192] Overall, I try to explore the Colombian judiciary with a stronger desire to unpack complexities than to oversimplify realities.

3.3. Bureaucracy and Appointment Systems

Let me return to the powerful idea about bureaucracy rooted in legal imagination: bureaucracy is or should be objective, impersonal, and technical in order to guarantee efficiency, the high quality and independence of bureaucrats, and equal treatment to citizens. What I would like to argue is that this idea fits well with another equally powerful component of the liberal script: the idea that meritocracy is an objective, impersonal, and technical tool that also guarantees efficiency, equal treatment, high quality, and independence. Within this logic, meritocracy would be the most appropriate mechanism for the selection of bureaucrats and, in turn, bureaucracy is an ideal apolitical setting for meritocracy. The flip side of this view is that predominantly discretionary appointment systems are undesirable insofar as they break with the bureaucratic ideal by introducing political and subjective criteria into the selection process. This dichotomous view would correspond to what I have called the common preconception.

---

[191] On this invitation, see Buchely Ibarra, *supra* note 106 at 134. Many scholars continue to approach Colombian bureaucratic realities primarily in terms of weakness. See, for instance, Francisco Leal, "Debilidad del Estado en Colombia: ¿mito o realidad?" *Razón Pública* (3 April 2011), online: <http://www.razonpublica.com/index.php?option=com_content&view=article&id=1932:debilidad-del-estado-en-colombia-imito-o-realidad&catid=19:politica-y-gobierno-&Itemid=27>; Javier Revelo-Rebolledo & Mauricio García-Villegas, eds, *El Estado en la periferia. Historias locales de debilidad institucional* (Bogotá: Dejusticia, 2018).

[192] This revisited notion (from a Latin American perspective) comes from Murillo, Levitsky & Brinks, *supra* note 16.

The association between meritocracy and bureaucracy is not always explicit in the literature. However, it became evident to me in the opinion pieces written by representatives of the Pro-Merit Initiative. This is an initiative of Colombian jurists that promotes that all high-ranking state officials, including high court justices and the Attorney General, be selected through a meritocratic (public and ideally standardized) system.[193] This perspective was supported by most of my interviewees under the idea that objectivity, impersonality, and the technical character of meritocracy are the features that best correspond to bureaucracy.

In chapters V and VI, I seek to destabilize this association and the conclusions that stem from it. I argue that both appointment systems behave like the bureaucracy within which they operate; that is, they have features of objectivity/subjectivity, efficiency/inefficiency, etc. I also suggest that it is not objectivity, predictability, or technicality that guarantees women's access to the judiciary. The picture of judicial appointments is much more complex and richer than what the liberal script, some portions of the legal literature, and the Colombian judicial community tend to assume.

4. A Typology of Four Women

When I finished my fieldwork, I had overwhelming amounts of information. The analytical tool I employed to organize and better address this information was *typologies*. I imagined four ideal types of women or four types of women's experiences when accessing the judiciary. These types emerged after contrasting the experiences of women and men, and among women. In this section, I first examine the origin and components of my typology and then summarize the conceptual pillars of such an analytical exercise.

4.1. Origin and Components: "Not Just a Walk Through the Rain"

This typology is the result of crossing two variables: on the one hand, Colombia's two main appointment systems (meritocratic or discretionary) and, on the other hand, the result of women's experiences (negative or positive) with each one of these systems. The ideal types referring to

[193] This initiative is trying to collect signatures from citizens in order to present a popular legislative initiative called *Merit in high positions in the Colombian state*. One of the slogans of this initiative is "Mérito sí, palanca no," which could be translatable as "Yes to merit, no to favouritism." See SieteDíasBoyacá, "Luz verde a la iniciativa que pretende revolucionar el empleo público en Colombia #LaEntrevista7días", (8 September 2021), online: *SieteDíasBoyacá* <https://boyaca7dias.com.co/2021/09/08/luz-verde-a-la-iniciativa-que-pretende-revolucionar-el-empleo-publico-en-colombia-laentrevista7dias/>.

meritocratic appointments are called *The Excluded* and *The Overcomers*. The types referring to discretionary appointments are *The Disadvantaged* and *The Favourites* (see Table 2).[194]

Table 2. Typology of women's experiences facing appointment systems

	Meritocratic Appointments	**Discretionary Appointments**
Negative experience	Type A. The Excluded	Type C. The Disadvantaged
Positive experience	Type B. The Overcomers	Type D. The Favourites

I chose the first variable because I argue that appointment systems are vital to understanding women's place(s) in the judiciary. That is, to understand why women find it less or more difficult to access (or be promoted to) certain judicial positions. The choice of the second variable responds to my conviction about the need to strike a balance between views that emphasize only women's success or only women's struggles. Revealing the strategies that enable women to become 'successful' – whatever they mean by this term – is crucial because it allows other women to replicate those experiences and contributes to breaking down the social imagination of women's victimization.[195] But, following Audre Lorde's lessons, it is equally important to portray the failures and pain that often accompany women's trajectories. Feminist scholars have the duty to show how women "know survival is survival and not just a walk through the rain."[196]

Typologies are widely used in social science literature to refer to socio-political or epistemological phenomena (e.g. types of dictatorships, nation-states, knowledge, educational

[194] The names I assigned to each type are not without problems. For example, while the term *Overcomers* conveys an image of empowerment, the term *Disadvantaged* can convey a lack of agency. Refinement of these names will surely be a pending task after the submission of this dissertation. In any case, the names are my own creation and I do not intend to make women feel identified with them.

[195] On the importance of exploring how "women successfully navigate gender unequal professional and personal landscapes," see Swethaa Ballakrishnen, Priya Fielding-Singh & Devon Magliozzi, "Intentional Invisibility: Professional Women and the Navigation of Workplace Constraints" (2019) 62:1 Sociological Perspectives 23–41 at 23.

[196] The complete quote says: "I have a duty to speak the truth as I see it and share not just my triumphs, not just the things that felt good, but the pain, the intense, often unmitigated pain. It is important to share how I know survival is survival and not just a walk through the rain." See Audre Lorde, *Conversations with Audre Lorde*, Joan Wylie Hall, ed (Mississippi: University Press of Mississippi, 2004) at 89.

interactions, judicial behaviour).[197] We also find typologies of people, profiles, or trajectories (e.g. types of presidents, but also types of judges[198] and bureaucrats).[199] Typologies about women are frequently used as well.[200] In this sense, my typology is perhaps only novel in the study of women in the judiciary. As I explain in Chapter IV, I imagined this typology inspired by the achingly beautiful song called *Four Women*. In this song, Nina Simone presents the possible stories of four African American women, representing four ideal types or archetypes. The song is powerful, eloquent, and compelling, therefore I tried − albeit with much less poetic force − to propose a similar analytical exercise in the field of judicial bureaucracy.

4.2. The Conceptual Pillars of Typologies: A Map-Like Analytical Exercise

Typologies can serve many functions, but I used them mainly as data containers. They are analytical tools to create categories for classification and to capture or explain the convergence of different dimensions of a problem.[201] Using a typology allowed me to highlight the main characteristics of a complex social phenomenon (the diverse gendered impacts of appointment systems) so that it could be more easily analyzed once presented in a simpler form.

Examining complex problems always requires a significant degree of simplification. Jorge Luis Borges expressed this idea eloquently in his short story *On Exactitude in Science*. He tells the story of a map of an Empire that was so detailed and precise that it occupied the entire Empire. The map was perfect and yet utterly useless. Something similar happens with typologies such as the one I propose here: their usefulness as analytical diagrams lies in their ability to simplify complex realities, even if this means omitting an infinite number of details or creating categories that do not entirely match the phenomenon they represent. The *ideal types* that make up a typology are not 'ideal' because they are perfect, but because they correspond "[…] philosophically, to an

---

[197] For a (non-comprehensive) list of studies that use typologies to analyze socio-political phenomena, see David Collier, Jody LaPorte & Jason Seawright, "Putting Typologies to Work: Concept Formation, Measurement, and Analytic Rigor" (2012) 65:1 Political Research Quarterly 217–232.

[198] Two classic texts that have proposed typologies of judges are Duncan Kennedy, *A Critique of Adjudication* (Cambridge: Harvard University Press, 1997); J Woodford Howard, "Role Perceptions and Behavior in Three U.S. Courts of Appeals" (1977) 39:4 The Journal of Politics 916–938.

[199] Other authors have also proposed typologies of bureaucrats (although more in terms of their application of norms than as recipients of norms). See Ferguson, *supra* note 165 at 100. A classification of women civil servants is found in Buchely Ibarra, *supra* note 114.

[200] See, among many others, Suzanne C Swan & David L Snow, "A Typology of Women's Use of Violence in Intimate Relationships" (2002) 8:3 Violence Against Women 286–319; Catherine Hakim, "Grateful Slaves and Self-Made Women: Fact and Fantasy in Women's Work Orientations" (1991) 7:2 European Sociological Review 101–121.

[201] See Collier, LaPorte & Seawright, "Putting Typologies to Work", *supra* note 197 at 217.

'idea'. In this way, we can regard ideal types as generalizations or mental representations of a social phenomenon that will never be identical with reality, but which will help to make that reality understandable."[202]

Like maps, typologies are not free of limitations. Some critics argue that typologies are not conceptually and methodologically rigorous tools because they do not quantify reality and are, hence, not sufficiently precise. For other scholars, typologies wrongly convey that experiences within each type are homogeneous, trajectories are static, and the social world can be reduced to a pair of boxes. However, a sea of studies suggests that typologies (like qualitative approaches more generally) have great conceptual, classificatory, and explanatory strengths.[203] I, for one, consider that typologies allow for methodologically rigorous "conceptual work," that not everything can or must be measured quantitatively, and that conceptual composites are always unable to capture social reality entirely. Not even the largest world maps can contain the whole world.[204]

In the specific case of this thesis, the typology allowed for an in-depth analysis of women's experiences in each appointment system. In Chapter IV, I reintroduce this typology, underscoring that my ideal types constantly overlap and are not meant to force people into boxes. In chapters V and VI, I analyze each ideal type through the theoretical lens I presented in this chapter. I explore how women in each ideal type navigate bureaucratic practices depending on their positions in the bureaucratic field and their forms of capital.

In sum, my typology seeks to highlight the main barriers and advantages that women encounter in each appointment system, while considering the nuances and overlaps between systems. The typology shows that both appointment systems are susceptible to critique from a feminist viewpoint and, as explained in the previous section, they share more similarities than meets the eye. Consequently, although my chapters and ideal types are formulated in dichotomous terms (meritocracy versus discretion), they constitute an invitation to avoid reductionist or dichotomous conclusions.

---

[202] See Emily Stapley, Sally O'Keeffe & Nick Midgley, "Developing Typologies in Qualitative Research: The Use of Ideal-type Analysis" (2022) 21 International Journal of Qualitative Methods 1–9 at 2. "From a critical realist perspective, the researcher would develop ideal types as an attempt to make sense of or explain some aspect of reality, without considering these types to be an 'objective' version of the world." *Ibid*.

[203] See, among others, Stapley, O'Keeffe & Midgley, "Developing Typologies in Qualitative Research", *supra* note 202; D Harold Doty & William H Glick, "Typologies as a Unique Form of Theory Building: Toward Improved Understanding and Modeling" (1994) 19:2 The Academy of Management Review 230–251.

[204] See Collier, LaPorte & Seawright, "Putting Typologies to Work", *supra* note 197 at 221.

5. Conclusions

In this chapter, I stated that I adopt a feminist-infused combination between field theory and heterodox approaches to bureaucratic power. In the first section, I explained the essential components of a women-focused perspective and examined the importance of understanding 'women' as a contingent, contextual, and relational concept. I suggested that these feminist premises operate at a sort of meta-level, infusing all my research decisions.

In the second section, I outlined the main characteristics of field theory. I described how this theory invites us to think that social life is like a game (a *field*) in which players occupy different positions and have different types and amounts of resources (*capital*). These notions are helpful in reflecting on the (dis)advantages women encounter when seeking access to the judiciary. I stated that my field of interest is the *bureaucratic* judicial field. I clarified that I do not uncritically follow Pierre Bourdieu's approaches, but I try to complement his ideas with those of other authors who have re-appropriated his concepts in a new (feminist) light. Lastly, I referred to the tensions between structure and agency, and suggested that the concept of *field* was useful to bridge both dimensions. I emphasized the importance of analyzing women's (unequal) presence in the judiciary from a structural viewpoint but without ignoring that women sometimes exercise power in meaningful ways.

The third section refers to heterodox approaches to bureaucratic power, a framework that allows me to zoom in on the concrete dynamics of judicial bureaucracy. I contrasted the orthodox and heterodox approaches to bureaucratic power. I argued that the orthodox approach (which asserts that bureaucracy is or should be technical, unitary, hierarchical, impersonal, and predictable) is a misreading of the Weberian ideal type. Heterodox approaches, in contrast, claim that bureaucracy is a field marked by power struggles, therefore it might be subjective, unpredictable, fragmented, and decentralized. I adopt an intermediate vision that criticizes the orthodox interpretation, but without asserting that bureaucracies are entirely subjective and chaotic. I also subscribe to the heterodox approaches in stating that: bureaucrats tend to have large margins of discretion and normative creativity; bureaucrats operating far from the centre of power have even greater margins of discretion to implement their own political agendas and redistribute power; and bureaucratic practices may or may not conform to formal rules, but bureaucrats constantly strive to preserve the technical and objective image of bureaucracy.

In the fourth section, I described that I imagined a typology with four ideal types of women (or women's experiences in the judiciary), based on which I have structured chapters IV to VI. I also outlined typologies' main conceptual characteristics and strengths, suggesting that they are similar to maps: they must simplify reality in order to be analytically useful, but we know that reality can never be reduced to a cartographic representation.

* * *

At some point in the book, Josephine fears she has made a mistake. "She had been so meticulous with the Database. She never wanted to return to those nineteen months of unemployment, that desperate feeling. She didn't need to understand her job; she just needed to keep it."[205] As I reach the end of this chapter, I think that becoming a judicial bureaucrat is, for many women, more than a personal ambition, a physical necessity for survival. Women's stories often speak of unemployment and meagre wages. They speak of being unable to provide better living conditions for their children or parents. For me, their stories are not remote like Josephine's, but as palpable as hunger and frustration. The next chapter provides a socio-legal context for this precariousness behind judicial appointments.

[205] Phillips, *supra* note 104 at 43.

CHAPTER III. JUDICIAL APPOINTMENTS IN A PARADOXICAL SOCIO-LEGAL CONTEXT

> *"For we are two countries: one on paper and the other in reality. […] Justice and impunity cohabit inside each of us in the most arbitrary way; we are fanatical legalists but carry in our souls a sharp-witted lawyer skilled at sidestepping laws without breaking them, or breaking them without being caught."* – Gabriel García Márquez –.[206]

Lieutenant Niño was escorting his girlfriend home through the narrow alleys of a small Colombian town on a cold evening in 1961. Suddenly, the Lieutenant fell to the ground with a bullet wound in his left eye. With exceptional accuracy, a man standing in the opposite corner shot him using a gun he pulled out from under his poncho. The following day, the town's mayor solemnly banned the use of ponchos. The tailor soon amassed a small fortune by turning ponchos into coats, under which criminals continued hiding the guns they used to kill citizens in the narrow alleys of the town.

As portrayed by this true story, Colombia is a country of stark socio-legal contrasts, where high levels of violence coexist with great trust in the letter of the law, and where prolonged internal armed conflicts coexist with almost uninterrupted democratic elections. It is a country where progressive and independent judicial decisions go hand in hand with rising impunity and backlogs. It is a country where women jurists celebrate the existence of a vibrant Commission for Gender Equality in the judiciary, but are still not guaranteed equal access to the bench. In this chapter, I describe some of the main features of this paradoxical socio-legal context and their connections with the judicial appointment systems in Colombia. My three central arguments are intimately interconnected: the broader features of the Colombian context are essential to understand better the (gendered) impacts of appointment systems; the meritocratic and discretionary appointment systems are mutually reinforcing within the Colombian context; and our analysis falls short when we read the Colombian context merely in terms of weakness, state absence, or corruption.

[206] Gabriel García Márquez, *For the sake of a country within reach of the children*, 2nd ed. ed (Bogota: Villegas Editores, 1998).

I have divided this chapter into four sections. First, I analyze some relevant characteristics of the Colombian socio-legal context. Second, I contrast the two sides of justice: on the one hand, dramatic justice, which mainly refers to the high courts; on the other hand, routine justice, which mainly refers to middle and lower courts. Third, I describe the structure of the judicial branch and characterize the workings of the judicial appointment systems of middle and lower court judges. In the final section, I summarize the main ideas of this chapter that will serve as background for the rest of this dissertation.

1. Main Features of a Paradoxical Context

Despite the abundant literature dedicated to the study of the Colombian socio-legal context, scholars still struggle to find the words to name what happens in this country. They are still grappling to understand how contrasting phenomena can coexist for decades: democratic elections and armed conflict; judicial independence and impunity; economic stability and prominent social and gender inequality. This peculiar combination of phenomena perhaps explains why Colombia rarely fits the theoretical generalizations about peripheral capitalism or Latin America.[207] This difficulty in characterizing the Colombian context is referred to as the 'Colombian paradox'. I will examine and problematize some of the features associated with this paradox that are most relevant to this dissertation.

1.1. Violence, Inequality, and the Judicialization of Politics

Colombia has had practically uninterrupted democratic elections, a remarkably solid political system with very few years of military dictatorships, and a stable economic system with relatively moderate economic cycles.[208] But, contrary to what is commonly assumed, economic stability and relative democratic openness have been insufficient to bring peace.[209] As Alfredo Molano would put it, the war in Colombia "is an animal that is still alive."[210] In the last five decades, the country

[207] See César Rodríguez Garavito, Mauricio García Villegas & Rodrigo Uprimny, "Justice and Society in Colombia: A Sociolegal Analysis of Colombian Courts" in Lawrence M Friedman & Rogelio Pérez Perdomo, eds, *Legal Culture in the Age of Globalization: Latin Europe and Latin America* (Stanford: Stanford University Press, 2003) 134 at 136.
[208] *Ibid* at 136, 137.
[209] In fact, according to Gutiérrez, in Colombia there has been an inverse relationship between lethal violence and democratic openness. See Francisco Gutiérrez, "La Constitución de 1991 como pacto de paz: discutiendo las anomalías" (2011) 13:1 Estudios Socio-Jurídicos 419–447.
[210] Molano, *supra* note 51 at 90. [Translated by author].

experienced an intense armed conflict in which guerrilla groups, paramilitary groups, and drug traffickers threatened the very existence of the state legal order. In 2022, the homicide rate was 27 per 100,000 population, which is six times more than the global average.[211] There are at least 8 million victims of forced displacement, of which almost half are women.[212] Entire regions are often forcibly confined by non-state armed groups, exposing civilians to hunger, death, and despair.[213] It is also worth noting that, of the total number of social leaders killed worldwide in 2022, almost half lived in Colombia.[214] Under these circumstances, upholding the rule of law (as is the duty of judges) is a risky endeavour in Colombia, especially in certain regions.

According to some authors, structural social inequality is a fundamental reason to explain why democratic openness has not resulted in a decrease in the levels of violence.[215] In 2018, Colombia had a Gini coefficient of 0,517 and the poverty rate, which was already worrying before the pandemic, rose to 42.5% in 2020.[216] In 2022, the unemployment rate was 11.2%, reaching almost 30% in some regions.[217] Due to this pronounced social inequality, Colombia has one of the lowest social mobility rates in the world.

Regarding gender inequalities specifically, we find that women lead 84% of single-parent families,[218] suffer higher levels of poverty than men, have one of the highest levels of paid and unpaid working hours globally,[219] and experience one of the highest unemployment rates – and

---

[211] See Andrés González Díaz, "12.221 homicidios en Colombia durante el 2022", (2022), online: *Delfos - Centro de Análisis de Datos* <https://www.uexternado.edu.co/delfos-centro-analisis-datos/homicidios-en-colombia-durante-el-2022/#:~:text=Los%20homicidios%20bajan%20aproximadamente%20en,por%20cada%20cien%20mil%20habitantes.&text=Durante%20el%202022%20desciende%20levemente,la%20intensidad%20de%20la%20violencia.>.

[212] This figure is exceeded only by Syria. See *Global Trends. Forced Displacement in 2018*, by UNHCR (UNHCR, 2018) at 6.

[213] See, for instance, Reuters, "Colombian government calls on rebel group to suspend planned armed strike", *Reuters* (14 December 2022), online: <https://www.reuters.com/world/americas/colombian-government-calls-rebel-group-suspend-planned-armed-strike-2022-12-14/>.

[214] Iñigo Alexander, "Almost half of human rights defenders killed last year were in Colombia", *The Guardian* (4 April 2023), online: <https://www.theguardian.com/world/2023/apr/04/colombia-human-rights-defenders-killings-2022>.

[215] Gutiérrez, *supra* note 209 at 439.

[216] *Boletín técnico. Pobreza monetaria en Colombia. Año 2018*, by DANE (Departamento Administrativo Nacional de Estadística (DANE), 2019) at 26; Portafolio, "Por pandemia, la pobreza monetaria en Colombia subió a 42,5% en 2020", *Portafolio* (2020), online: <https://www.portafolio.co/economia/dane-revela-impacto-de-la-pandemia-en-la-pobreza-del-pais-551470>.

[217] See Laura Lucía Becerra Elejalde, "Desempleo en Colombia: el panorama del 2022 y lo que viene para 2023", *Portafolio* (1 February 2023), online: <https://www.portafolio.co/economia/empleo/desempleo-en-colombia-como-le-fue-al-pais-en-2022-y-proyecciones-para-2023-577786#:~:text=Desempleo%20en%20Colombia%3A%20el%20panorama%20del%202022%20y%20lo%20que%20viene%20para%202023>.

[218] Iregui-Bohórquez et al, *supra* note 27 at 63.

[219] *Ibid* at 68.

unemployment gender gaps – in all of Latin America.[220] There are also salient differences among women regarding race, class, and other categories. For instance, the unemployment rate for Afro-descendant women is almost 5 points higher than the rate for white-mestizo women, and women in certain peripheral provinces have a life expectancy that is 15 years lower than women in Bogota.[221] These conditions offer initial clues to interpreting the obstacles and conundrums that women face in their journey to becoming judges. As I indicated at the end of Chapter II, for many women (jurists), unemployment is a palpable threat that confronts them with the impossibility of surviving and providing for their families, especially in certain regions with fewer job opportunities.

One salient consequence of these conditions is the judicialization of politics.[222] Indeed, millions of citizens seek to address violations of their fundamental rights or unmet basic needs through judicial instruments. Although this phenomenon has multiple roots, several scholars argue that citizens resort to the judicial arena because they find no better avenues to satisfy their political needs and grievances, considering that there has been a historical weakness of social movements and a deficit of political representation.[223] Women have also had to seek refuge in the judiciary because the political agenda of women has traditionally been sidelined with each new cycle of violence and war.[224] And while this judicialization of politics is not essentially negative, it can be

[220] In March 2021, the unemployment rate for men was 12% while for women it was 21%. See Ángela Gaitán Murillo & Tatiana Gélvez Rubio, "Ser mujer en Colombia significa más pobreza y más tiempo de trabajo que ser hombre", (17 May 2021), online: *Razón Pública* <https://razonpublica.com/mujer-colombia-significa-mas-pobreza-mas-tiempo-trabajo-hombre/.>.

[221] See Paula Andrea Gaviria Aucique, "Población afro en Colombia: dos de cada tres viven en el estrato 1", *El Tiempo* (21 May 2022), online: <https://www.eltiempo.com/colombia/dia-de-la-afrocolombianidad-una-radiografia-a-esta-poblacion-del-pais-674102>.

[222] Hirschl defines the judicialization of politics as "[…] the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies […]". See Ran Hirschl, "The Judicialization of Politics" in Robert E Goodin, ed, *The Oxford Handbook of Political Science* (Oxford: Oxford University Press, 2011) at 1.

[223] Social movements have been contained by the state through repressive measures disguised under democratic forms (e.g. through consecutive declarations of states of emergency). The distinction that heterodox approaches to bureaucratic power make between bureaucratic image and bureaucratic practices resonates with this state strategy. See Mauricio García Villegas, *La eficacia simbólica del derecho. Sociología política del campo jurídico en América Latina*, segunda edición ed (Bogotá: IEPRI, Debate, 2014) at 140. See Rodrigo Uprimny, "Judicialization of Politics in Colombia: Cases, Merits and Risks" (2007) 6 Sur Revista Internacional de Derechos Humanos 48–65 at 58. See Mauricio García Villegas, "Derecho a falta de democracia: la juridización del régimen político colombiano" (2014) 82 Análisis político 167–195 at 170.

[224] See María Emma Wills, *Las trayectorias femeninas y feministas hacia lo público en Colombia (1970-2000). ¿Inclusión sin representación?* (Doctoral Dissertation, University of Texas at Austin, at 70, 94.

problematic insofar as it disproportionately overloads the middle and lower courts with social demands that could be structurally resolved in other arenas.

1.2. The Uneven Reach of the State and the Proliferation of Informal Rules

The Colombian context is also marked by other phenomena that have traditionally been perceived as negative but that I suggest are much more complex. I will mention two of these phenomena, which are relevant to this research.

The first phenomenon is known as the uneven reach of the state. This means that the presence of the Colombian state is uneven across the territory in terms of the presence of state officials, the provision of public goods and services, and, above all, the capacity of the state armed forces to preserve the monopoly of violence over non-state armed groups or organized crime. In this regard, abundant studies reveal, for instance, that violence and poverty are unevenly distributed across the country.[225] The disparity is also present within the judiciary, where judges in certain peripheral municipalities do not have clean water, let alone the power to impose their decisions over illegal actors.

The second phenomenon is the gap between formal rules and reality. Colombians seem to have a rare faith in the law and governments often take advantage of this excessive legalism: they create laws that will barely have material effects but give an illusion of effectiveness – as in Lieutenant Niño's story.[226] Colombia has laws and, above all, judicial decisions that are globally praised for their progressive and innovative character, yet there is a significant distance between the goals set by these legal documents and what happens in reality. For instance, despite progressive jurisprudence on labour rights, women still find it challenging to move up from low-ranking jobs and face countless obstacles to advance to the higher-income echelons of Colombian society.[227]

---

[225] See, for instance, Revelo-Rebolledo & García-Villegas, *supra* note 191. On territorial imbalances and the challenges of decentralization in Colombia, see Liliana Estupiñán Achury, *Desequilibrios territoriales : estudio sobre la descentralización y el ordenamiento territorial colombiano. Una mirada desde el nivel intermedio de gobierno* (Bogotá: Universidad del Rosario, 2012).

[226] About "legal fetishism" in Colombia, see Julieta Lemaitre, *El derecho como conjuro. Fetichismo legal, violencia y movimientos sociales* (Bogotá: Siglo del Hombre Editores y Uniandes, 2009).

[227] See *Sticky Floors and Glass Ceilings in Latin America*, SSRN Scholarly Paper, by Paul E Carrillo, Nestor Gandelman & Virginia Robano, papers.ssrn.com, SSRN Scholarly Paper ID 2297547 (Rochester, NY: Social Science Research Network, 2013) at 3, 11.

Both phenomena are interconnected and have traditionally been interpreted in terms of state absence or weakness. Traditional scholars speak of 'godless and lawless' regions, centres of barbarism crying out for greater state presence. They also focus on how the gap between formal rules and reality requires stronger or better-designed norms.[228] This interpretation echoes the words of Gabriel García Márquez in the epigraph, as it claims that Colombia is like "[…] two countries: one where force reigns, another based on the rule of law."[229] Recently, however, other scholars have questioned this traditional interpretation. In this critical turn to which I subscribe, the literature suggests that the state is always present in the territory through diverse kinds of bureaucrats – even if they are not soldiers –, that the feeling of absence is often intentionally produced by the state itself, and that 'weakness' can be a political strategy rather than a defect in institutional architecture.[230] Moreover, this literature argues that state law is that which is constructed "in the middle" of the gap; meaning that state law is also created through concrete, everyday bureaucratic practices.[231]

Consequently, critical scholars invite us to think of these two phenomena, not in terms of absence and weakness, but in terms of the predominance of informal rules within a state configuration that – often strategically – operates in asymmetrical and territorially fragmented manners.[232] It is within this framework of informality and normative creativity that favouritism in judicial selections occurs, as I will examine in Chapter VI. It is also in this framework that women must make decisions and adopt strategies to navigate judicial appointment systems.

---

[228] Leal, *supra* note 191; Mauricio García Villegas, ed, *Jueces sin Estado: la justicia colombiana en zonas de conflicto armado* (Bogotá: Siglo del Hombre Editores, Dejusticia, Fundación Konrad Adenauer, The John Merck Fund, 2008).
[229] See Manuel José Cepeda Espinosa, "The Judicialization of Politics in Colombia: The Old and the New" in Rachel Sieder, Line Schjolden & Alan Angell, eds, *The Judicialization of Politics in Latin America* (New York-Hampshire: Palgrave Macmillan, 2005) 67 at 67.
[230] Julieta Lemaitre Ripoll, "¿Constitución o barbarie? Cómo repensar el derecho en las zonas 'sin ley'" in César Rodríguez Garavito, ed, *El derecho en América Latina Un mapa para el pensamiento jurídico del siglo XXI* (Buenos Aires: Siglo XXI Editores, 2011) 47; Jaramillo Sierra & Buchely Ibarra, *supra* note 189 at 14; Daniel Brinks, Steven Levitsky & María Victoria Murillo, *Understanding Institutional Weakness. Power and Design in Latin American Institutions*, Cambridge Elements (Cambridge, New York: Cambridge University Press, 2019); Julieta Lemaitre Ripoll, *El Estado siempre llega tarde. La reconstrucción de la vida cotidiana después de la guerra* (Bogotá: Ediciones Uniandes, Siglo XXI Editores, 2019).
[231] Jaramillo Sierra & Buchely Ibarra, *supra* note 189 at 20.
[232] These authors also argue that certain undesirable phenomena, such as inequality, are not the effect of the non-application of the law or of the gap between law-in-books and law-in-action. Instead, those phenomena are precisely the result of the effectiveness of a law that has been designed to distribute resources inequitably. See Alviar García & Jaramillo Sierra, *supra* note 116.

2. A Two-Sided Judiciary

The previous section provided clues as to how the Colombian judiciary has contrasting characteristics. Some scholars analyze these contrasts by referring to the existence of two sides of justice in Colombia. On the one hand, there is a *dramatic* and visible side of justice. This side renders the most progressive decisions and is fiercely independent vis-à-vis the other branches of power.[233] On the other hand, there is a *routine* and invisible side of justice that is marked by impunity, delays, and backlogs, thus failing to resolve citizens' everyday conflicts.[234] Dramatic justice refers mainly to the high courts, whereas routine justice refers mainly to the middle and lower courts. Although I do not study the high courts in this dissertation, I will examine both sides of justice in order to emphasize the necessary contrasts between them.

2.1. Dramatic Justice: "There Are Still Judges in Bogota"

Colombia's high courts have been increasingly visible for the last three decades. They have been at the centre of the most critical constitutional reforms and have been nationally and internationally praised for their progressive, innovative, and bravely independent decisions. Due to their political power and prominence in the public debate, high courts not only have a large budget and staff but also enjoy the undivided attention of academics.[235]

There are several examples of the dramatic character of the Constitutional Court and the Supreme Court, as they have confirmed time and again their independence from the other branches of power. For instance, in 2010, Congress created a law seeking to hold a referendum through which citizens could approve the second re-election of former president Álvaro Uribe, who

---

[233] I am referring here to 'independence' understood as "political insularity", in Fiss's terms. See Owen M Fiss, "The Limits of Judicial Independence" (1993) 25:1 The University of Miami Inter-American Law Review 57–76 at 59.

[234] The distinction between dramatic and routine justice comes from Rodrigo Uprimny, "The Constitutional Court and Control of Presidential Extraordinary Powers in Colombia" in Siri Glippen, Roberto Gargarella & Elin Skaar, eds, *Democratization and the Judiciary* (Londres: Frank Cass, 2004); Rodrigo Uprimny, "Justicia rutinaria y protagónica: una caracterización de la justicia colombiana" in Mauricio García Villegas & Ceballos Bedoya, eds, *Democracia, justicia y sociedad Diez años de investigación en Dejusticia* (Bogotá: Dejusticia, 2016) 181; Rodrigo Uprimny, Cesar Rodríguez & Mauricio García Villegas, "Entre el protagonismo y la rutina: análisis sociojurídico de la justicia en Colombia" in Héctor Fix-Fierro, Lawrence Friedman & Rogelio Pérez Perdomo, eds, *Culturas Jurídicas latinas y América en tiempos de globalización* (Mexico: Universidad Nacional Autónoma de México, 2003) 231.

[235] As I mentioned in Chapter I, there has been an increasing academic interest in the study of high courts, particularly the progressive decisions of the Constitutional Court, whereas middle and lower courts remain utterly understudied. The invisibility of women judges is doubly pronounced. This silence in the academic literature is unfortunate considering that routine justice faces the most serious problems while deciding the vast majority of conflicts, many of which concern vulnerable populations who are unlikely to take their cases to the high courts.

enjoyed unprecedented popularity. Despite intense political pressure, the Constitutional Court decided that the law in question was unconstitutional; a decision in which, incidentally, the vote of the only woman on the bench was crucial.[236] For the general public, this decision proved that "there are still judges in Bogota."[237] Equally brave were the Supreme Court justices who investigated dozens of Congress members for their alleged political connections with paramilitary groups. This phenomenon was known as the *parapolitics* scandal.

Dramatic justice has been not only independent but also progressive. The Constitutional Court, in particular, has made numerous ground-breaking decisions to strengthen the protection of fundamental rights. In one of its most renowned decisions, the Court considered that the situation of millions of forcibly displaced people, who lived in such dreadful conditions, constituted an "unconstitutional state of affairs."[238] To remediate the human rights violations that this population was suffering, the Court adopted structural measures and implemented an ambitious follow-up process that is still ongoing.[239] With regard to gender issues specifically, we find that the Constitutional Court has issued progressive decisions such as the decriminalization of abortion up to 24 weeks of pregnancy, the protection of women against economic violence, and the determination that the state is considered a second aggressor in cases where state authorities fail to prevent gender-based violence.[240] In addition, the Superior Council of the Judiciary created the National Gender Commission of the Judicial Branch, which actively and successfully promotes gender mainstreaming in judicial decisions.

Colombian justice, or at least part of it, thus enjoys an extraordinary centrality. However, one could argue that judicial prominence is not rare in the international arena. In multiple countries globally, there has been an increasing awareness of the legal and judicial dimension of politics, as

[236] See decision C-141 of 2010. The only woman on the bench was Justice María Victoria Calle Correa.
[237] See Héctor Abad Faciolince, "Todavía hay jueces en Berlín", *El Espectador* (27 February 2010), online: <https://www.elespectador.com/opinion/todavia-hay-jueces-en-berlin-columna-190130>. This opinion piece paraphrases the famous quote "Il ya des juges à Berlin" from *Le Meunier de Sans-Souci* written by François Andrieux.
[238] See decision T-025 of 2004.
[239] César Rodríguez-Garavito & Diana Rodríguez-Franco, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (New York: Cambridge University Press, 2015).
[240] See Ámbito Jurídico, "13 sentencias hito de la Corte constitucional sobre género", *Ámbito Jurídico* (2 November 2018), online: <https://www.ambitojuridico.com/noticias/general/constitucional-y-derechos-humanos/13-sentencias-hito-de-la-corte-constitucional>. Claudia Patricia Alvarado Bedoya, *El trabajo doméstico y del cuidado: informalidad y fronteras de laboralidad* (Doctoral Dissertation in Law, Universitat Pompeu Fabra, 2017) [unpublished].

well as of the political dimension of judicial decisions.[241] This awareness has, in turn, increased the visibility of courts, judges, and jurists. Nevertheless, there are reasons to believe that this process of judicialization of politics has been particularly pronounced in Colombia for the above reasons (i.e. the deficit of political representation and the weakness of social movements). Moreover, in a country riddled with violence but with effective and simple judicial procedures (such as the *tutela*),[242] it is significantly safer to resort to judicial protection than to the dangerous and uncertain road of political action.[243]

2.2. Routine Justice: "Here, we are the law"

The routine side of justice refers to the segments of the judiciary that must solve the vast majority of conflicts. Although in some cases high courts can also be part of the routine justice, the main actors of this side of justice are middle and lower court judges, many of whom work in precarious institutional conditions, with low visibility and insufficient results.

One first salient characteristic of the routine side of justice is its geographical fragmentation and disparity. Some municipal courts are so poor and neglected by the central state that judges do not even have furniture to store their files, judicial buildings are literally falling apart, and judges have no alternative but to buy their own computers and pay for their office's internet connection with their own salary.[244] Additionally, most judges are utterly understaffed. This precariousness is one of the multiple causes of the worrying backlogs in many middle courts and lower courts. In years like 2020, multiple judges received more than 150 new cases per month and others closed the year with a backlog of more than 4,000 unresolved cases (although there is also a portion of courts with only a dozen cases per year). In line with these data, we find that justice system users often have to wait for years to obtain a final decision.[245] When García Márquez talked about "the

[241] See Martin Belov, *Courts, Politics and Constitutional Law : Judicialization of Politics and Politicization of the Judiciary* (Routledge, 2019); Hirschl, *supra* note 222; Rachel Sieder, Line Schjolden & Alan Angell, eds, *The Judicialization of Politics in Latin America* (New York-Hampshire: Palgrave Macmillan, 2005).

[242] The tutela is an action which citizens, without any need for a legal representative, may bring before any judge in order to seek the immediate protection of their fundamental rights. This action is fast, effective, easy, and inexpensive.

[243] Uprimny, *supra* note 223 at 58.

[244] See, for example, García Villegas et al, *supra* note 6 at 55; Javier Revelo Rebolledo, "Puerto Asís: la disputa de largo aliento" in Javier Revelo Rebolledo & Mauricio García Villegas, eds, *El Estado En Periferia Historias Locales de Debilidad Institucional* (Bogota: Dejusticia, 2018) 102 at 123.

[245] In the administrative jurisdiction, for example, it takes on average almost two years to obtain a decision only in the first instance—in some cases, it has taken almost five years. See *Resultados del estudio de tiempos procesales*, by Consejo Superior de la Judicatura & Corporación Excelencia en la Justicia (Bogota: Consejo Superior de la Judicatura y Corporación Excelencia en la Justicia, 2016) at 205.

unpled briefs whose normal course had been slower than the pace of the driest of lives," he certainly had the Colombian judiciary as a source of literary inspiration.

This situation of precariousness and inefficacy is predominant throughout the national territory. A recent study combined two dimensions of judicial power (presence and efficacy) to create an *indicator of local justice performance*. The study concludes that 53% of Colombian municipalities have low or very low performance, 22% have medium performance, and 26% have high or very high performance.[246] Courts with a lower performance indicator are overwhelmingly located in peripheral municipalities, usually the same that are labelled as 'godless and lawless.' A similar study reveals that, in many of those peripheral regions where justice performance is low, it is not the judges who resolve disputes among citizens. Illegal armed groups or local political powers are the ones who decide how conflicts are resolved and who has the power to resolve them. Judges in at least a third of the Colombian territory operate with a semblance of normality. However, in reality, their decisions either are rarely obeyed or must circumvent the interests of dominant political actors.[247] "Nobody goes to the courts here. Here, we are the law," said a member of a paramilitary group to a judge.[248]

Precariousness is, hence, intimately tied to danger. Colombian history is filled with tragic stories about the defencelessness of local judges and judicial employees. For example, between 1989 and 2008, 270 members of the judicial branch were killed and 38 were forcefully disappeared.[249] In fact, as I recounted in Chapter I, many Colombian judges were made intentionally invisible for years due to the Faceless Justice policy, which hid their identities in order to protect their lives.

---

[246] Revelo-Rebolledo & García-Villegas, *supra* note 191.

[247] For a study of the regions in which state institutions are particularly weak, see García Villegas et al, *supra* note 67. See also García Villegas, *supra* note 228; Revelo-Rebolledo & García-Villegas, *supra* note 191; Mauricio García Villegas & José Rafael Espinosa, *El derecho al Estado. Los efectos legales del apartheid institucional en Colombia* (Bogotá: Dejusticia, 2013).

[248] García Villegas, *supra* note 228 at 95.

[249] See Camila González, "Los héroes de la justicia", (30 June 2009), online: *Verdad Abierta* <https://verdadabierta.com/los-heroes-de-la-justicia/>. Perhaps one of the most appalling tragedies was that of La Rochela, in 1989, in which twelve out of fifteen members of a judicial commission were assassinated by members of an alliance of drug traffickers, paramilitaries, and members of the security forces. See Grupo de Memoria Histórica, *La Rochela. Memorias de un crimen contra la justicia* (Bogota: Taurus, 2010).

2.3. Intricate Relationships between Dramatic and Routine Justice

Admittedly, the differences between the high courts and the other courts are more nuanced than these two sides suggest. High courts can also be slow, are backlogged, and have suffered infamous violent and political attacks.[250] Conversely, lower courts have occasionally been in the public spotlight for their courageous and innovative decisions.[251] And on both sides we find cases where, as the German saying puts it, "the murderer's dagger was hidden under the jurists' robes," which means that both sides shelter judges who contribute to the perpetuation of injustice.[252] Perhaps most importantly, both sides still fail to ensure equal access for women jurists.

Furthermore, it could be argued that many of the problems on both sides of justice have a common source: the political insularity of the judiciary. Indeed, under the guise of preserving its independence vis-à-vis the other branches of power, the judiciary in general (and the Superior Council in particular) has become less accountable and more impervious to external criticism, whether in relation to appointment systems or other issues. In many ways, judicial independence has turned into judicial corporatism.[253]

Despite these overlaps, the distinction between dramatic and routine justice is helpful to underscore the following: in contrast to the high courts, the middle and lower courts are generally less visible – therefore, even less accountable –, and their work takes place primarily outside the centres of power in Bogota, sometimes in precarious conditions. These characteristics provide crucial background for interpreting, for instance, the constraints faced by appointing justices outside Bogota, or to understand the calculations that (women) jurists make when applying for a judicial position.

[250] See Centro de Memoria Histórica, *supra* note 10 at 199).
[251] See, for instance, Rodrigo Uprimny Yepes, "Todavía hay jueces en Colombia", *El Espectador* (1 May 2022), online: <https://www.elespectador.com/opinion/columnistas/rodrigo-uprimny/todavia-hay-jueces-en-colombia/>.
[252] "Der Dolch des Mörders war unter der Robe des Juristen verborgen." Uran Bidegain, *supra* note 69 at 154. For instance, justices of the Supreme Court and the Constitutional Court were accused of participating in a corruption network through which favourable decisions were exchanged for money. Drawing upon a language that is painfully familiar to Colombians, this network was known as the *robe cartel* (el cartel de la toga). See El Tiempo, "Las claves en el caso contra el magistrado Jorge Pretelt", *El Tiempo* (18 August 2016); El Tiempo, "Estas son las 26 personas contra las que declarará Gustavo Moreno", *El Tiempo* (11 November 2017).
[253] See Rodrigo Uprimny, "Independencia judicial, ¿democrática o corporativa?", *El Espectador* (22 June 2013), online: <http://www.elespectador.com/opinion/independencia-judicial-democratica-o-corporativa-columna-429433>.

3. Unpacking the Colombian Judicial Appointment Systems

Now that I have examined some contextual conditions under which middle and lower-court judges work, it is time to move on to the dense but inescapably necessary details of how judicial appointment systems should operate and have operated in Colombia.

As I explained in Chapter I, there is a common preconception in the legal literature that assumes that, on the one hand, meritocratic systems (public, centralized, and based on objective and technical criteria) tend to benefit women's access to the judiciary besides advancing other bureaucratic ends (i.e. independence and efficiency). In contrast, the preconception assumes that, predominantly, discretionary systems tend to have the opposite effect. In what follows, I will show that Colombia's institutional design combines quite extreme versions of those two appointment systems, based on which I intend to challenge the common preconception.

3.1. The Structure of the Judiciary

The Colombian judicial branch is composed of three parts (see Figure 1):[254]

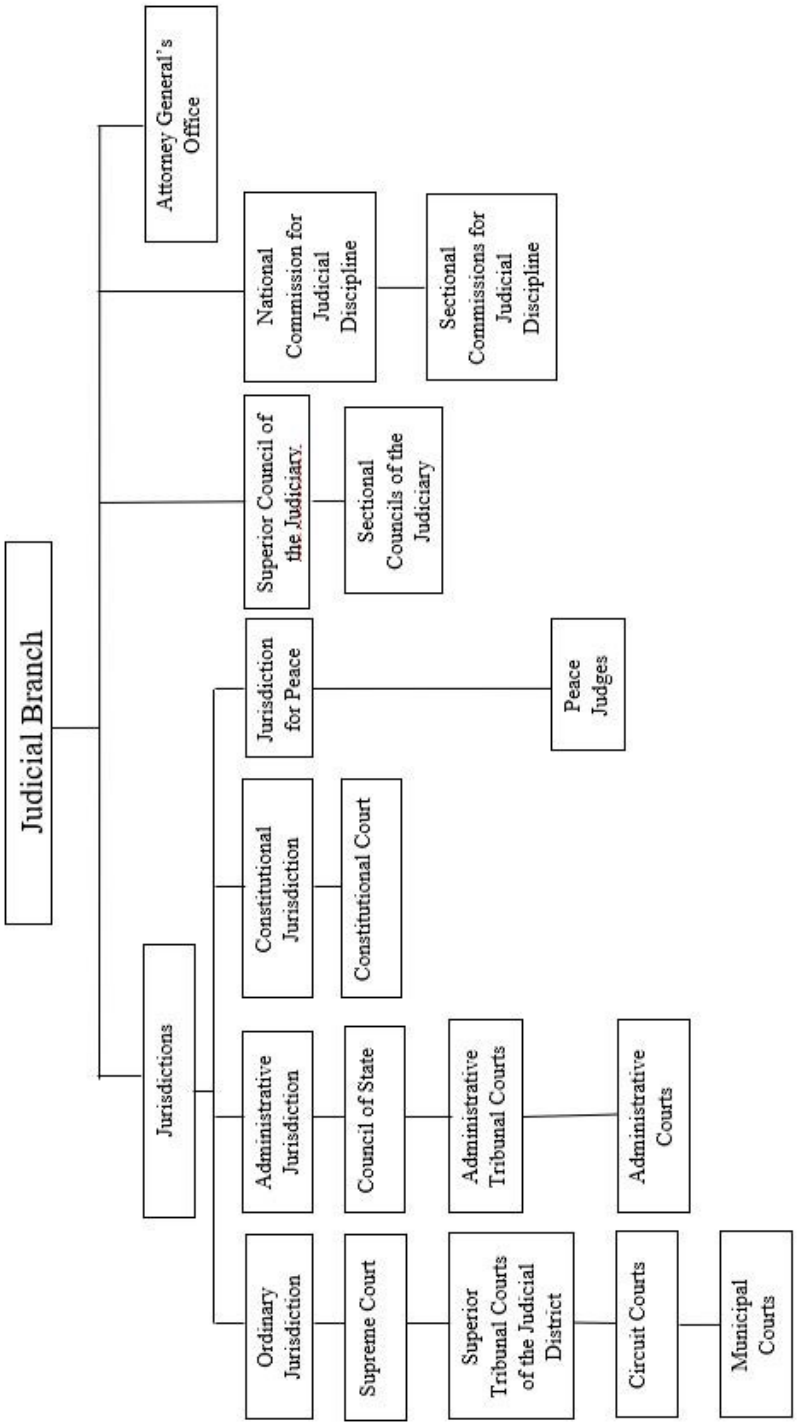
- Five jurisdictions: ordinary (headed by the Supreme Court), administrative (headed by the Council of State), constitutional (headed by the Constitutional Court), disciplinary (headed by the National Commission of Judicial Discipline) and the peace jurisdiction.[255]
- Superior Council of the Judiciary
- Attorney General's Office

The Attorney General's Office is the state agency in charge of conducting criminal prosecutions. Despite being part of the judicial branch, it does not have the power to solve conflicts or administer justice. Therefore, this institution is not considered part of the judiciary and will not be analyzed in this dissertation.

[254] Art. 11, Law 270 of 1996, modified by article 4, Law 1285 of 2009.

[255] There is also a Military Criminal Jurisdiction and an Indigenous Jurisdiction, but they are not considered part of the judicial branch (Constitutional Court of Colombia, Decision C-713 of 2008). I have not included the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz – JEP) considering that it is a transitional court and therefore meant to be temporary.

Figure 1. Organizational Chart of the Colombian Judicial Branch



Source: prepared by the author.

The judiciary has five permanent high courts:[256] the Supreme Court, the Council of State, the Constitutional Court, the National Commission for Judicial Discipline, and the Superior Council of the Judiciary. All high courts have jurisdiction throughout the entire national territory. The Superior Council is the court responsible for ensuring the organic and economic independence of judges. This court also coordinates judicial appointments of middle and lower court judges and, in particular, administers merit-based judicial selection (which I explain in more detail below). There is also a temporary high court called the Special Jurisdiction for Peace, a transitional justice mechanism that came into being as a result of the peace agreement signed in 2016 between the Colombian state and the former guerrilla known as FARC-EP.

The judiciary is distributed throughout the national territory in different ways according to the jurisdiction. On the one hand, administrative and ordinary jurisdictions are present throughout the territory in the form of administrative tribunals and superior tribunals of the judicial district, which in turn branch out into administrative courts, circuit courts, and municipal courts (see Figure 1). On the other hand, the Superior Council of the Judiciary and the National Commission for Judicial Discipline are subdivided in the territories into sectional units. Finally, the constitutional jurisdiction does not have lower-ranking constitutional courts. Instead, all Colombian judges are considered constitutional judges.

For the purposes of the data I present in this dissertation, it is worth making three clarifications. First, I did not disaggregate the data in terms of jurisdictions or areas of law. Instead, I divided the judiciary in terms of levels or hierarchies: first, the lowest-ranking courts, referred to as *municipal courts;* followed by *circuit courts* (which include administrative courts and circuit courts from the ordinary jurisdiction); and finally *tribunal courts* (which include administrative tribunal courts, superior tribunal courts of the judicial district, sectional councils of the judiciary, and sectional commissions for judicial discipline). I labelled municipal and circuit courts as the *lower courts,* and tribunal courts as the *middle courts*.

Second, all judges from the same level – e.g. all municipal judges – receive the same salary and have the same power regardless of their territorial location. In addition, the requirements to apply for each level are very similar in terms of years of experience or academic qualifications.

[256] I do not include here the Special Jurisdiction for Peace (JEP) considering that is a a transitional and, therefore, temporary high court..

Third, in theory, there is no labour hierarchy between judicial levels. Even when tribunal justices revoke the decisions made by circuit judges, this revocation should not be understood as a reprehension from a superior to an inferior judge – i.e. municipal judges should not be punished for thinking differently than tribunal justices. In reality, however, the relationships between judicial levels are much more entangled. To begin with, there is a functional hierarchy because tribunal courts deal with more complex and costly cases than municipal courts. There is also a social hierarchy because the higher the judicial level, the higher the wages and social prestige. And finally, as I explain below, there is a *de facto* labour subordination because: on the one hand, justices are charged with evaluating inferior judges; and on the other hand, within the discretionary system, tribunal or high court justices are the ones who decide who will be appointed or dismissed.

3.2. Meritocratic Appointments: The Struggle to Impose Meritocratic Selections

There are three appointment systems through which lower-court judges and middle-court justices can be selected and appointed: meritocratic, commissioned, and discretionary appointments.[257] According to the Constitution, the meritocratic system should be the normal form of appointment of judges and justices that enter via merit-based competitions, assume a permanent position, and access a judicial career.[258] The other two systems should be absolutely exceptional and temporary. Regardless of the appointment system, all judges and justices at the same level earn the same salary and enjoy the same prestige in the eyes of the citizens. However, meritocratic appointees are the ones with higher prestige within the legal community, as well as stronger job stability given that, according to the interviewees, it is almost impossible to dismiss a meritocratic appointee.

The process of creating and implementing meritocracy has been fraught with setbacks.[259] For years, the executive and legislative branches issued norms that surreptitiously allowed candidates to access public office without passing the required competition, or norms that

---

[257] Meritocratic appointments refer to what in Colombia is known as *nombramientos en propiedad*, commissioned appointments refer to *nombramientos por encargo*, and discretionary appointments refer to *nombramientos en provisionalidad*. I chose not to make a literal translation of each name because I wanted to emphasize the nature of the selection of the process so as to facilitate my comparison with the assumptions of the common preconception. In case readers would like to have a broader picture of how appointments work, I have included a summary of the selection systems of the high courts in Appendix 4.

[258] Articles 130 of the Colombian Political Constitution and Article 156 of the Law 270/1996. The judicial career has its own special career regulations that differ from the ones that govern other public institutions (Article 256, Political Constitution).

[259] See Dumez Arias, *supra* note 74 c 3.

supposedly defended merit-based selections but did not offer the conditions for their implementation.[260] Even the Superior Council created special regulations circumventing the merit principle.[261] Due to this lack of political will regarding merit selections, and after decades of struggle, the first public merit-based competition for judges and justices could only be implemented in 1994.[262]

All jurists who want a meritocratic appointment as judges and justices must pass the public meritocratic competitions, even if they already hold another position within the judiciary. This means that there are no internal promotion opportunities. The competition has four stages: public call for applications, academic competition, the publication of the list of eligible candidates, and the appointment.[263] Today, the academic competition includes a standardized test and a judicial training course. The specific components of the competition have varied slightly over time. The latest competition, for example, included an interview but did not include a training course.

Each competition has brought its own issues and gendered impacts, as I further examine in Chapter V. For instance, there have been controversies regarding the standardized test: some of the questions are irrelevant, the supposedly correct answers to the exam questions are perceived by experts as fundamentally incorrect, and the university that designs the test is not considered renowned or transparent enough.[264] Other times, the problem lies in the judicial training course: candidates have to take the course while working full time in another job and have to pay for their own travel expenses to attend the course, which is offered only in a handful of main cities. Most importantly, the whole process is excessively long. Data shows that seven years may elapse from

[260] This strategy was used in relation to the access to public office in general, not only to the judiciary. Some examples can be found, among others, in: Decree 1698/1964, Law Decree 2400/1968, and Legislative Act 1/2008. See Eduardo Gómez Adaime, *Análisis del proceso de institucionalidad de la carrera administratriva en Colombia durante el período comprendido entre 1991 y 2010* (Master Thesis in Political Studies, Pontificia Universidad Javeriana, 2011) [unpublished]; Hernán Darío Vergara Mesa, "Empleo público y corrupción en Colombia" (2011) 8 Revista Electrónica Facultad de derecho y ciencias política U de A 1–21.
[261] See Acuerdo 106/1996.
[262] See Dumez Arias, *supra* note 74 at 45. To know more about the legislative background of the judicial career and merit competitions, see *Estructura y cultura organizacional de la rama judicial*, by Escuela Judicial Rodrigo Lara Bonilla (Bogota: Consejo Superior de la Judicatura, 2004) c 2.
[263] Articles 162, 164, and 165 of the Law 270/1996.
[264] See María Jimena Díaz Baquero, Juan Diego Mojica Restrepo & John Marcos Torres Cabeza, *El perfil del juez: una verdadera reforma a la justicia* (Undergraduate Thesis - Faculty of Law, Pontificia Universidad Javeriana, 2015) [unpublished] at 134; Semana, "¿Trampa en el concurso de jueces y magistrados?" *Semana* (15 April 2016); Ana María Cuesta, "Denuncian preguntas 'absurdas' de la Universidad Nacional en concurso de jueces y magistrados", (29 April 2019).

the beginning of the competition until the lists of eligible candidates are exhausted.[265] Moreover, the average waiting time once the list of eligible candidates is ready is four years.[266] Among other undesirable consequences, all these problems discourage the best jurists and exclude those who do not have the necessary resources to wait for such lengthy processes.

The latest competition, called Competition 27, brings together and magnifies all these problems. This competition started in 2018, and the participants (almost 45,000) took the standardized academic test and obtained an initial score. Months later, the test was re-graded due to technical issues that still need clarification. In October 2020, the Superior Council annulled the results of this test and announced that all participants had to retake the test. At the time of submitting this dissertation, it is estimated that the results of the judicial training course (not even the final list of eligible candidates) will be published in March 2025. That is, almost seven years after the start of the competition. The perception of improvisation and lack of technical rigour has spread, and many competitors have expressed frustration and distrust. In fact, almost 35% of registered participants decided not to retake the test—many of whom are likely to resort to the discretionary system.[267]

Other problems of meritocratic competition have been the (un)intentional consequence of corrupt or borderline illegal practices. For example, many discretionary judges and jurists who have failed the competition make every effort to torpedo each stage of the selection process through innumerable legal actions and smear campaigns against the competition.[268] On other occasions, the Superior Council or some sectional councils have appointed jurists who were not at the top of the list but were the protégés of one of the justices.[269]

---

[265] Salazar, *supra* note 36 at 29.

[266] *Ibid* at 22. See also Mauricio García Villegas & María Adelaida Ceballos Bedoya, *La profesión jurídica en Colombia. Falta de reglas y exceso de mercado* (Bogotá: Dejusticia, 2019) at 118. See also Yuly Anamaría Villareal, "¿Qué pasa con la meritocracia en la Rama Judicial?", *Ámbito Juríd* (20 April 2016).

[267] Yo misma calculé estos datos con base en la información sobre la Competencia 27 publicada en el portal sobre competencias meritocráticas del Consejo Superior.

[268] García Villegas & Ceballos Bedoya, *supra* note 266 at 118.

[269] In the first merit competition to select the justices of the sectional councils of the judiciary, the Superior Council appointed the person who ranked #105 in the competition instead of appointing the jurists in the first and second places on the list. The intricacies of this story were ever present during my adolescence because, as I recounted in Chapter I, the jurist who ranked second was none other than my father. See decision SU-086 of 1999 and El Tiempo, "Por tutela ordenan nombrar a magistrado", *El Tiempo* (12 June 1998), online: <https://www.eltiempo.com/archivo/documento/MAM-764710>.

As I have insisted throughout this dissertation, legal literature tends to agree in its defence of meritocracy in the bureaucracy in general and the judicial bureaucracy in particular. The underlying justification is that meritocracy is crucial for the judiciary as it guarantees equal opportunities for all candidates, while also protecting the independence, quality, and efficiency of justice.[270] In this sense, it tends to be assumed that meritocracy is conducive to women's equal access to the judiciary. In Colombia, however, the concrete workings of meritocracy challenge this common preconception from many angles, at least in terms of efficiency, quality, predictability, and technical nature. The effects of meritocracy on equality of opportunity in Colombia have yet to be tested, which is what I attempt to do in Chapter V.

3.3. Discretionary Appointments: Nothing is More Permanent than the Temporary

Besides meritocratic appointments, there are also commissioned and discretionary appointments. Commissioned appointments are used whenever there is a judicial vacancy for less than one month—extendable for another month—in which case a judicial employee or a judge with a meritocratic appointment can be commissioned to hold said vacant position temporarily. On the other hand, discretionary appointments are used, first, when there is a temporal vacancy that has not or cannot be filled with a commissioned appointment. Second, when there is a permanent vacancy that needs to be provisionally filled while the respective meritocratic appointment takes place. Discretionary appointments should not last more than six months and they do not require jurists to have passed the meritocratic competition.[271] High court justices select the appointees to the tribunal courts, whereas tribunal justices select the appointees to the municipal and circuit courts.[272]

Commissioned appointments are extremely rare at all judicial levels (0.1% in 2020) and the time limit defined by law is usually respected. Moreover, commissioned appointees are selected for a specific commission, but they have initially accessed the judiciary through the meritocratic competition. In this regard, commissioned appointments are rarely problematic. Due to its minor quantitative and qualitative significance, I have excluded this appointment system from my

[270] See Articles 40, 125, 228, 230 of the Colombian Political Constitution and Article 156 of Law 270/1996.
[271] Article 132, Law 270/1996.
[272] Tribunal courts usually have very few discretionary appointees because, given the high demand for these positions, long vacancies are rare. Vacancies in the administrative tribunals are filled by the Council of State and vacancies in the superior tribunals are filled by the Supreme Court.

analysis and will concentrate instead on the contrasts between the meritocratic and discretionary systems.

Something different occurs with discretionary appointments. Contrary to what the Constitution requires, these appointments are common. For instance, in 2020, 41% of municipal judges and 40% of circuit judges held discretionary appointments. However, these appointments they are quite rare in the tribunal courts. Moreover, although discretionary appointments should not last for more than six months, many discretionary appointees retain their positions for extended periods, often for years, subsequently demanding automatic entry to the meritocratic path without having entered, let alone passed, the merit competition.[273] After all, as one interviewee told me, nothing is more permanent in the judiciary than what is supposed to be temporary.[274] I address these data in detail in Chapter VI.

Several socio-legal factors explain and facilitate the expansion of discretionary appointments. I will only mention three of them. First, many municipalities are too poor, inaccessible, or dangerous, and some of them are controlled by illegal armed groups. For these reasons, candidates who have passed the merit competitions often refuse to be appointed in this kind of municipality, preferring instead to wait for a vacancy in a better location. This situation forces tribunal courts to indefinitely appoint discretionary judges in those positions.[275] In fact, a study shows that, in 2013, discretionary appointments were not an exception but a rule in at least 40 percent of Colombian municipalities and the vast majority of those municipalities were located in peripheral regions.[276] The study concludes that the meritocratic system is inoperative in large portions of the national territory.

Second, administrative and operational deficiencies in the Superior Council, possibly combined with the lack of political will of some justices, open the door to multiple and prolonged judicial vacancies. For instance, as it takes years for the Superior Council to bring meritocratic

[273] See, for example, El Tiempo, "Hoy, se reunirán Asonal, Gobierno y Judicatura", *El Tiempo* (19 September 2008), online: <https://www.eltiempo.com/archivo/documento/MAM-3100364>; Semana, "A las puertas de nuevo paro judicial" *Semana* (11 March 2015), online: <https://www.semana.com/nacion/articulo/un-nuevo-paro-judicial-estaria-por-conjurarse/448511-3>. The exact extent and length of discretionary appointments has usually been hard to determine because the Superior Council does not publish (and sometimes has claimed not to have) this information. See García Villegas & Espinosa, *supra* note 247 at 57.
[274] Participant ManJLL5.
[275] Dumez Arias, *supra* note 74 at 69.
[276] García Villegas et al, *supra* note 67 at 55.

competitions to fruition,[277] the lists of eligible candidates from past competitions expire. It also occurs that candidates who won a previous competition are no longer interested in a meritocratic appointment because, after so many years, they found a better job or because their professional profile considerably improved during that period. And, of course, if the previous lists have expired, there are no new lists, and there are no willing candidates, then there is no alternative but to select discretionary appointees. Hundreds of vacancies are filled with discretionary appointees as a result of these problems of the meritocratic path.

Third, the historical and massive backlog of pending cases has forced the Superior Council to create provisional courts whose sole purpose is to help decongest the permanent courts. Due to their provisional nature, these courts have usually been filled with hundreds of discretionary judges. In the year 2013, for example, the Superior Council opened 1,136 judicial posts through provisional courts.[278]

According to the expert literature on judicial appointments, discretionary appointments combine elements that make them particularly fertile to opaque practices: only one or few officers monopolize appointment decisions, the selection method is entirely discretional, and accountability is insufficient.[279] Under these conditions, judges with appointing power might use discretionary appointments for their own economic, political, or social gain.[280] Closely linked to this risk, discretionary appointments might also threaten judicial independence, understood as the bureaucratic autonomy of judges from their superiors or colleagues.[281] Scholars argue that discretionary appointees lack this type of autonomy not only because they owe their appointment to their superiors but also because they can be instantly dismissed if they behave in ways that dissatisfy their appointers. Catastrophic consequences might result from this judicial subordination

[277] Dumez Arias, *supra* note 74 at 8, 70.
[278] These provisional courts, called *juzgados de descongestión*, were created by the Law 1285/2009. See Ricardo Andrés Ricardo Ezqueda, "La política de descongestión judicial 2009-2014, un costoso e ineficiente esfuerzo" (2016) 36 Revista de Derecho Público 1–36 at 13.
[279] For an analysis of the factors that facilitate corrupt practices in Colombia, see *Sobre la corrupción en Colombia. Marco conceptual, diagnóstico y propuesta de política*, by Vivian Newman Pont & María Paula Ángel Arango, Cuadernos Fedesarollo 56 (Bogota: Dejusticia - Federsarrollo, 2017) at 42. See also Vergara Mesa, *supra* note 260 at 5, 15.
[280] These behaviours perfectly fit the most basic definition of corruption. That is, using public goods (such as public employment) for personal benefit and not in pursuit of the general interest. See Andrei Schleifer & Robert W Vishny, "Corruption" (1993) 108:3 The Quarterly Journal of Economics 599–617 at 599.
[281] This is a form of independence that Fiss calls individual autonomy. Fiss, *supra* note 233 at 58.

when it is abused by high courts that have been co-opted by the executive branch.[282] Additionally, some scholars and most of my interviewees usually perceive that discretionary appointments also undermine the quality of judges, considering that discretionary appointees do not pass any public, standardized quality filter.

In sum, discretionary appointments are permitted by law, they are far more widespread and permanent than they should be, and are regarded with suspicion by the expert literature. However, the concrete realities of discretionary appointments suggest that this system has been sustained and expanded largely due to underlying structural problems, not only by corrupt ambitions. Moreover, some interviewees argue that discretionary appointments are an efficient and quality option, given the contextual constraints that judges face in peripheral regions. I will address these arguments in Chapter VI. Suffice it to say here that much remains to be explored regarding the concrete effects of discretionary appointments in terms of efficiency, quality, and equality of opportunities for women.

So far, I have referred to Colombia's appointment systems in a dichotomous way considering that these systems are enshrined in a dichotomous manner in the formal rules and are often perceived in such a way. However, in the following chapters I seek to highlight the overlaps and connections between the meritocratic and discretionary paths. For instance, I show that these systems are mutually reinforcing because jurists constantly turn to one in reaction to obstacles they encounter in the other. Furthermore, I suggest that there is a permanent correspondence between the two systems: meritocracy probably spreads gradually thanks to the fact that discretionary appointments function as their backup system. Conversely, the discretionary system survives largely because meritocracy sustains public confidence in the judiciary. Discretion thrives because of its large doses of informality and because it feeds on the shortcomings of meritocracy without openly transgressing it. To return to García Márquez's words, perhaps it is all a matter of "sidestepping laws without breaking them."

[282] For example, discretionary judges have been key to consolidating the Chavista regime in Venezuela. See Allan R Brewer-Carías, *Dismantling Democracy in Venezuela: the Chávez Authoritarian Experiment* (Cambridge: Cambridge University Press, 2010) at 178.

4. A Summary

Even though Colombia's convoluted socio-legal context cannot be reduced to a few pages, in the first section of this chapter I summarized some of its main features as a way of contextualizing the reader in the specificity and peculiarity of the Colombian judiciary and its workings. Specifically, I highlighted two positive features (i.e. uninterrupted democratic elections and a stable economic system) and three negative ones (i.e. violence, social and gender inequality, and the judicialization of politics). I then examined two phenomena that bear profound complexity: the uneven reach of the state throughout the territory and the proliferation of informal rules. I argued that it was problematic to interpret the latter two phenomena merely in terms of state absence or weakness. I insisted instead on the need to think about how, in a way, certain bureaucratic practices filled the supposed gap between what the formal rules mandate and what happens in reality.

In the second section, I explained that, like Colombia in general, the judiciary is also full of contrasts. To better analyze these contrasts, I compared the two sides of justice: dramatic justice and routine justice. The former refers to a visible and robust form of justice particular to the high courts, while the latter refers to less visible and more inefficient and precarious side of justice, specific to the middle and lower courts. I emphasized the delays, backlogs, and violence many judges encounter in the dramatic side of justice. I also noted that these factors directly impact the decisions of (women) jurists when applying for a judicial position, as will be further explored in chapters V and VI. I also underscored that the political insularity of the judiciary fosters corporative judicial independence[283], which hinders the external demands for accountability and protects the group interests of the justices. Indeed, pressure to hold the Superior Council accountable for the problems of the judicial appointment system is extremely low and this institutional silence is condoned, even promoted, by other high courts and tribunal courts. This assertion brings us back to the idea that weakness is often an intentional consequence of state action, not necessarily its absence.

In the third section, I explained that the meritocratic and discretionary systems are the two main appointment systems for middle and lower-court judges. Meritocratic appointees must pass an open, public, and merit-based competition, whereas discretionary appointees have been selected

[283] The distinction between these two types of judicial independence comes from Boaventura de Sousa Santos, *Derecho y emancipación* (Quito: Corte Constitucional para el Período de Transición, 2012) at 211. See also Uprimny, *supra* note 253.

at the discretion of their superiors. I described how, in theory, discretionary appointments should be exceptional and temporary, when in reality they are numerous and permanent. This is due to either systematic deficiencies in the meritocratic system or to the chameleonic presence of the state throughout the territory. I also suggested that both systems are mutually reinforcing because the perceived shortcomings of one system appear to strengthen the other.

* * *

A Colombian historian once said that it was necessary to "find the women behind the thick smoke of black gunpowder."[284] War in Colombia has always been a man's business and women have been pushed aside, as if they were obstacles or, at best, accessories. It is only now, when Colombians are beginning to embrace the comforting hope of peace, that we are allowing ourselves to examine topics that used to be marginal, such as gender issues. I have done my best to put women at the centre of my reflections and to dispel the thick smoke of war. However, the reader will notice that war and violence are omnipresent in this dissertation, along with other characteristics of the Colombian context. The conclusion I draw from this realization is that the broader socio-legal context is inseparable not only from judicial appointment systems, but also from the specific configurations of gender inequalities. These gender inequalities are configured by the conditions set by the context in which they came to be, and thus cannot be understood in a vacuum. In other words, exploring the context and making it explicit is essential to better understand the gendered impacts of judicial appointments. In that sense, I hope this chapter has provided a useful contextual basis for critically interpreting my fieldwork findings and further analysis presented in the following chapters.

[284] The historian is Carlos Eduardo Jaramillo and is quoted by Magdala Velásquez, "Reflexiones sobre el conflicto armado colombiano desde una mirada feminista" (2001) 8 En otras palabras 20–31 at 29. Unfortunately, Velásquez does not provide the original reference.

CHAPTER IV. SETTING THE JUDICIAL CONTEXT: WOMEN'S PLACE(S) AND EXPERIENCES IN THE JUDICIAL MACHINE

> *"The mechanisms learned by his father and his ancestors were at work in his nerves, his mind, perhaps even in his dreams. The machine of the administration of justice, that complex and grandiose machine, was surely imperfect, it creaked, it had rust and dust in every corner, but nothing better was known, there was no one capable of inventing something more perfect, so one had to resign oneself to it and accept it. In any case, it was the judges who made it work with their spirit and their strength".* −Sándor Márai −.[285]

I first read *Divorce in Buda* by Sándor Márai when I was starting law school. The book tells the story of Kristóf Kömives, a judge in Budapest who receives a divorce case from a couple he knew back in his youth. The case triggers reflections on the intricacies of justice and social change and, of course, lost time and thwarted love. I found the novel particularly striking, though at the time it was not clear to me why. Now that I am trying to understand the past in the clearer light of the present, I realize I saw myself reflected in Judge Kömives' story. Like me, Kömives came from a family of jurists and judges, he had also chosen the path of law almost by hereditary inertia; and he, too, pondered the function of law in a volatile political context: for him, it was Budapest in the interwar period; for me, Medellin at the height of criminal activity by illegal groups. But above all, the novel struck me because it eloquently depicted the duality of a judicial world that felt all too familiar. One side of this duality is the idea that the judiciary is a complex bureaucratic machine that is perceived as a collective, monolithic actor that persists over time, even if its members change. On the other side, we find thousands of civil servants with diverse experiences and whose individualities matter. They are individual social actors who, like my father, make the machine work. These two sides are mutually reinforcing: one can hardly understand the dust of the judicial gears without inquiring about the spirits of the judges who make them operate, and vice versa.

Márai's reflection on this duality should not come as a surprise to readers. As I argued in chapters I and II, there is a permanent tension between the intention to preserve the image of the

[285] Márai, *supra* note 122 at 55. [Translated by author].

bureaucracy as a machine (a unitary body in which individualities dissolve) and the concrete practices of the parts of that machine (where the *spirit and strength* of individuals are essential and unity is destabilized).[286] Additionally, the machine analogy is also helpful for reflecting on the importance of anchoring individuals' experiences to the broader contexts or structures in which those experiences are shaped.[287] Under this premise, in this chapter I examine both sides of the judicial duality.[288] I devote the first section to present an overview of the composition of the judicial machine, thereby addressing the first of my research questions: *where* are women located in the judiciary. Against this panoramic picture, the second section introduces the individual pieces of the machine. I use this section to summarize the main characteristics and interconnections between four ideal types of women according to their experiences of access to – exclusion from – the judiciary, both with meritocratic and discretionary appointments. In the third and final section, I summarize the findings that emerge from both sides of the judicial duality.

1. Exploring the Numbers of the Judicial Machine

To borrow Michelle Perrot's words, women in the legal profession and the judiciary in Colombia have been "buried under the silence of an abyssal sea."[289] Their history is marked by the *silence of the sources*, as they have been almost invisible in official reports, media, and scholarly literature.[290] Their faces and stories remain unrecorded either because authors focus explicitly on men or because reports are written in a generic masculine that conceals both women's presence and absence.[291]

---

[286] The comparison between state bureaucracy and machines is hardly Márái's invention. As Berman recounts, "This striking use of technological metaphors comes down to us today in the still common references to the bureaucratic 'machine' or the 'apparatus' of the state. These images express the continuing quest to replicate in social forms the controlled and ordered predictability of an engineered mechanical system." In many ways, this analogy persists to this day in collective imagination, even in the Colombian context. See Bruce J Berman, "Perfecting the machine: Instrumental rationality and the bureaucratic ideologies of the state" (1990) 28:1–4 World Futures 141–161 at 141, 142.

[287] See Norbert Elias & John Scotson, *The Established and the Outsiders: A Sociological Enquiry into Community Problems*, 2d ed (London: SAGE Publications, 1994).

[288] In Chapter III I described several of the main political and institutional features of the judicial machine.

[289] "[…] enfouies dans le silence d'une mer abyssale". This is an expression that Perrot uses to refer to women's invisibility in Western history in general. See Perrot, *supra* note 7 at 17.

[290] Vergel Tovar, *supra* note 8 at 152. The only exception to this invisibility is that of women in the high courts, who have begun to be studied in the last decade, mainly by the media, and from a quantitative perspective.

[291] Indeed, official reports usually refer to *abogados* and *jueces* (the masculine generics for *lawyers* and *judges* in Spanish).

A paradigmatic proof of the silence of the sources in relation to women judges can be found, paradoxically, in one of the most visible stories of the Colombian war. In 1985, nearly 100 people were killed amid a guerrilla and a subsequent military raid on the Palace of Justice. Among the dead were eleven justices, including Justice Alfonso Reyes, President of the Supreme Court, whose courageous decisions are still commemorated and whose name is written in large letters on one of the Palace walls. Few jurists know, however, that Justice Fanny González, the first woman to be appointed to the Colombian Supreme Court, was also murdered along with Reyes.[292] She had a ground-breaking career, but little is known about her outstanding background or the impact she had on a traditionally men-dominated judicial community. It took 16 years before the next woman was appointed to the Supreme Court, a period that further fueled the invisibility of González's existence and death.

Due to women's historical invisibility, it is not easy to find comprehensive and complex data (i.e. disaggregating different variables) on the participation of women jurists and judges. With the available information, I built two datasets to which I devote this section. First, data on the legal profession in Colombia, which show that women outnumber men and yet are under-represented at the top of most legal professions. Second, data on the judiciary regarding my three variables of interest: hierarchy, territory, and the appointment system.[293] My findings are three-fold: i) women constitute a majority among judicial employees in the lowest echelon of the judiciary – judicial employees – but their representation decreases as the hierarchy increases; ii) women have higher levels of job instability as they hold discretionary positions in slightly higher proportions than their men colleagues; iii) men tend to work in more challenging municipalities than women in the lower courts (municipal and circuit courts), but the trend is reversed in the middle courts (tribunal courts).

I collected these quantitative data under the premise that bare numbers are insufficient to understand complex realities and might conceal the peculiarities of individual struggles. I thus assume that the individual experiences of jurists should not vanish in the turmoil of collective life or behind the illusion of the unitary machine. My intention with this analysis is that the quantitative

[292] Ámbito Jurídico, "'Muero defendiendo la justicia': Fanny González", *Ámbito Jurídico* (5 November 2013), online: <https://www.ambitojuridico.com/noticias/general/educacion-y-cultura/muero-defendiendo-la-justicia-fanny-gonzalez>.

[293] I realize that the literature tends to pay attention to gender dynamics within each area of law. However, in this dissertation, I wanted to study more unexplored variables such as the type of appointment and geographical distribution. In any case, in Annex 3, I present some raw data regarding the area of law that could perhaps be further elaborated by future research. The data show that the sharpest contrast occurs between criminal law (with a majority of men) and family law (with a majority of women).

data will contribute to a better understanding, rather than an effacement, of the personal experiences analyzed in the coming sections and chapters.

1.1. Vertical Segregation in the Profession: A Sense of Belonging

Law schools (and higher education in general) were a stronghold of the economic and political masculine elites up until the first half of the 20th century.[294] The number of women who were law students and graduates in Colombia increased gradually during the second half of the century, and then rapidly from the 1970s onwards.[295] Women already represented almost half (45%) of the law students in the mid-eighties.[296] Following this trend, women went from holding 13% of the professional licenses in the mid-seventies to 37% in the mid-nineties.[297] In 2018, women held 49% of the professional licenses in a country where 51,2% of the population are women.[298] Unfortunately, there is no information—either official or academic—on other socio-demographic characteristics of law students and professional license holders.[299]

The increasingly feminized composition of the profession, however, should not lead us to draw overly optimistic conclusions. As I have demonstrated in previous work, women with low levels of economic capital tend to be the most disadvantaged: on the one hand, they cannot afford the best private law programs; on the other hand, due to disparities in cultural capital, women encounter more obstacles than men of their same class in passing the admission tests of the best

---

[294] See Luz Gabriela Arango Gaviria, *Jóvenes en la universidad: género, clase e identidad profesional* (Bogotá: Siglo del Hombre Editores, Universidad Nacional de Colombia, 2006) at 75.

[295] Rogelio Pérez Perdomo, *Los Abogados de América Latina. Una Introducción Histórica* (Bogotá: Universidad del Externado, 2004) at 148, 182. For an analysis of the entry of women into the legal profession in Latin America more generally, see María Eugenia Gastiazoro, *Género y trabajo. Mujeres en el poder judicial* (Córdoba: Universidad Nacional de Córdoba - Centro de Estudios Avanzados, 2013) at 75; María Inés Bergoglio, "Diversidad y desigualdad en la profesión jurídica: consecuencias sobre el papel del Derecho en América Latina" (2009) 6 Revista Via Iuris 10–28.

[296] Jaramillo Sierra, *supra* note 65 at 125.

[297] Unidad de Registro Nacional de Abogados, *Respuesta a derecho de petición de la Unidad de Registro Nacional de Abogados y Auxiliares de la Justicia sobre los datos históricos de las tarjetas profesionales de abogados* (2017). Data for 2019 came from Gómez-Mazo, *supra* note 13 at 95.

[298] The data I present here come from a variety of sources: data on licenses in 2018 came from Gómez-Mazo, *supra* note 13 at 95. Data on the Colombian population came from DANE, "Censo Nacional de Población y Vivienda 2018", (2018), online: *DANE* <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivenda-2018/cuantos-somos>. Women have been receiving the majority of professional licenses issued each year, therefore it is likely that they will soon outnumber men. See Ceballos-Bedoya, "Unequal access to law school", *supra* note 151 at 2.

[299] Gómez-Mazo, *supra* note 13 at 96, 180. This author was only able to collect gender and race data on the students of three (out of almost 200) law schools. One of them was the University of Cartagena, where only 2.5% of the students were Afro-descendant women, in a city where 36.1% of the population is Afro-descendant.

public programs.[300] Meanwhile, women with high economic capital have easy access to high-quality programs because they have the economic capital to enter the best private law schools without having to overcome major academic filters. Therefore, it could be argued that the increase in the number of women in Colombian legal education occurred at the expense of lower-class women who have no other option but to study in low-quality programs.

These gender inequalities in legal education are reflected in the world of the legal profession. As I have also shown elsewhere, women tend to be the majority in the lower echelons of the profession but are rarely found in the highest and most powerful positions. For instance, women hold only 28% of the highest positions in the Attorney General's Office, 19% of ministerial positions, and 15% of managing partner positions in the biggest law firms.[301] Women (and men) in top positions in most of these institutions usually attended high-cost private law schools in major cities. As is the case in the legal profession in many other countries, data on Colombia show that glass ceilings are pervasive and are just beginning to break down. Women do belong in all places where decisions are being made, but the gap between belonging and actually accessing those places is vast and painfully enduring.[302]

---

[300] Ceballos-Bedoya, "Unequal access to law school", *supra* note 151. These difficulties in passing standardized tests are also present in the judiciary, as I show in the next chapter. For another reflection from Colombia on how legal education functions as a space for the reproduction of social differences, see Gabriel Ignacio Gómez Sánchez, "¿Abogados para la democracia o para el mercado?: Repensar la educación jurídica" (2016) 46 Revista de derecho 225–256. And for a Latin American perspective on the politics of legal education, see Martín Böhmer, *Imagining the State: The Politics of Legal Education in Argentina, USA and Chile* (Doctoral Dissertation in Law, Yale University, 2012) [unpublished].

[301] See García Villegas & Ceballos Bedoya, *supra* note 266 at 211. The information reported here refers to different time frames: data on law firms refer to the year 2014, data on the executive branch covers the period 2002-2017, data on academia refers to 2020 and data on the Attorney General's Office refer to the year 2015. About gender discrimination in law firms, see also Ámbito Jurídico, "¿Existe discriminación de género en las firmas de abogados?", *Ámbito Jurídico* (15 May 2012), online: <https://www.ambitojuridico.com/noticias/educacion-y-cultura/existe-discriminacion-de-genero-en-las-firmas-de-abogados>; María del Pilar Carmona, "Mujer vs. Abogada: sobre la cuestión de género en la profesión legal" (2015) 35 Revista de Derecho Público Universidad de los Andes 1–32. No information is available in terms of the race, ethnicity, or abilities of the jurists who reach the top positions in these sub-professions. The information on managing partners came from: Ximena González, "El poder femenino en el sector de los servicios legales en Colombia", *La República* (20 June 2019), online: <https://www.larepublica.co/especiales/los-bufetes-detras-de-los-grandes-negocios/el-poder-femenino-en-el-sector-de-los-servicios-legales-en-colombia-2875751>.

[302] Here I am using the famous expression coined by US Supreme Court Justice Ruth Bader Ginsburg. "Women belong in all places where decisions are being made. It shouldn't be that women are the exception." See "The Supreme Court," USA Today (October 6, 2010): 8A.

1.2. Vertical Segregation in the Judiciary: Who Are These Glass Ceilings Made For?

As Chapter I explains, the Colombian judicial hierarchy comprises municipal judges, circuit judges, tribunal justices, and high court justices. Only the first three categories will be analyzed in depth in this dissertation. The data for 2020 show that women are in the majority (54%) in the universe of the judiciary staff, but they are distributed in a pyramidal manner: they represent 56% of judicial employees, 49% of municipal courts, 46% of circuit courts, and 34% of tribunal courts (Figures 2 and 3).[303] It is worth contrasting the two extremes of this pyramid: women are not only in the majority among judicial employees in general, but they are especially numerous in tribunal courts, where they work under the supervision of predominantly men justices.

Figure 2. Number of employees, judges, and justices by gender (2020)

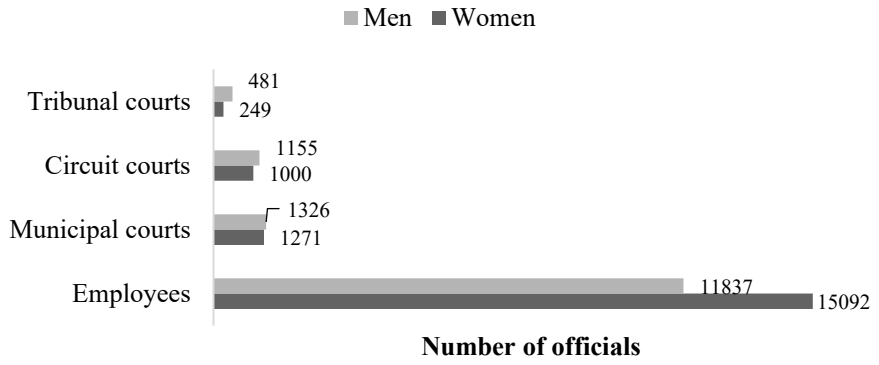
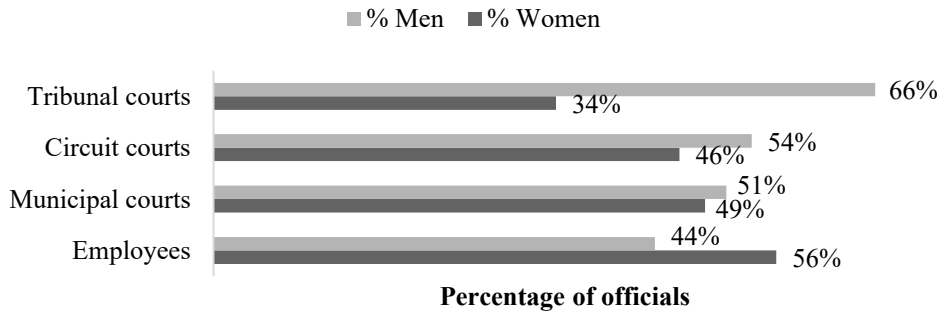


Figure 3. Percentage of employees, judges, and justices by gender (2020)



Source of figures 2 and 3: prepared by the author based on data provided by the Superior Council of the Judiciary.[304] Data on file with the author.

[303] The pyramidal structure of the judiciary I describe here was one of Dumez's findings on a research project with a small sample of Colombian judges and justices. See Dumez Arias, *supra* note 74 at 6.

[304] Superior Council of the Judiciary, *Response to information request to the request number PCSJO20-957* (Superior Council of the Judiciary, 2020).

These glass ceilings have barely been scratched over time. In 1998, right after meritocratic competitions began, women accounted for 50% of judges and 30% of tribunal justices. This means that, for 22 years, women's participation at the lowest levels remained flat and grew by only 4% in the tribunal courts.[305] Several of my interviewees stated that the number of women municipal judges was high since the 1980s and that the progressive entry of women has been reflected mainly – and slowly – in the high courts. Their perception is that the under-representation of racial minorities has also been sustained over time. Unfortunately, I could not find historical information to confirm these perceptions. However, the 1998 data serve to argue (at least for now) that neither the passing of time, nor merit-based competitions, have been sufficient to guarantee the increasing and proportional entry of women to the judiciary.[306] Incidentally, this persistent glass ceiling is not unique to the Colombian context. The alluring promise that equality will be spontaneously fulfilled has been defeated in many countries, time and again.[307]

If we try to explore these glass ceilings in the light of other variables, we find that only 1.9% of the tribunal justices self-identify as Afro-descendant women.[308] This information means that the underrepresentation of Afro-descendant women in the upper levels is even higher than in the case of *white-mestizo* women. The glass ceiling turns into concrete ceilings before our eyes.[309] Both women and men Afro-descendant justices tend to work in regions with large portions of racialized populations, which have been historically stricken by poverty and state neglect.[310] There

[305] In 1998, the percentage of women judges was 30%, while in 2021 it was 33%.
[306] The assumption that the passage of time will ensure women's equal entry is known as the *trickle up* effect and has already been disproved in many other contexts. See, for example, Malleson, "Diversity in the Judiciary", *supra* note 79 at 378; Ulrike Schultz, "Introduction: Women in the World's Legal Professions: Overview and Synthesis" in Ulrike Schultz & Gisela Shaw, eds, *Women in the World's Legal Professions* (Portland: Oxford - Hart Publishing, 2003) xxv at xlvii.
[307] I should note that, although the type of jurisdiction is not one of my variables of interest, I compared the distribution of women and men in the administrative jurisdiction and the ordinary jurisdiction, and found no significant differences.
[308] Of a total of 467 ordinary tribunal court justices, Gómez-Mazo was able to collect information on 245 (52% of the total): 9 self-identified as Afro-descendant; 5 of them were women. Of the 175 administrative tribunal court justices, Gómez-Mazo collected information on 110 (63% of the total): 3 of them self-identified as Afro-descendants; 2 of them were women. This means that Afro-descendant women have a slightly higher representation than Afro-descendant men, but they all appear to be clearly underrepresented in a country where approximately 10.6% of the population self-identify as Afro-descendant. See Gómez-Mazo, *supra* note 13 at 112, 121.
[309] The concept of "concrete ceilings" refers to the exacerbated barriers faced by racialized women.
[310] Gómez-Mazo found that, in the ordinary jurisdiction, "There is an Afro-descendant magistrate in each of the Superior Tribunals of Arauca, Buga, Quibdó, San Andrés, Providencia and Santa Catalina, and Sincelejo", whereas in the administrative jurisdiction, Afro-descendent men are located only in San Andrés y Providencia y Magdalena. "Not a single tribunal informed having indigenous magistrates". Gómez-Mazo, *supra* note 13 at 114.

is no public information on the race of municipal and circuit judges,[311] just as there is no publicly available information on other socio-demographic characteristics of members of the judiciary more generally.

Even though I am not studying the high courts in this dissertation, it is important to note that the glass ceiling is even thicker in these courts. When Justice Clara Inés Vargas was appointed in 2001 as the first woman justice on the Colombian Constitutional Court, she discovered that the building – recently reconstructed after the Palace siege – only had restrooms for men justices for plenary sessions. "When they built the Constitutional Court, they never thought women would get here," she said.[312] More women have become justices in the last two decades, but their presence has varied over time and has changed from one court to the other. In 2020, for instance, women had an average representation of 23% (the exact average representation they had between 1991 and 2017), with a majority of men in three out of the five permanent high courts.[313] Once again, there is no public data on the composition of the high courts in terms of other socio-demographic categories.[314] It is essential to remember here, however, that the appointment system of each high court is different and, in turn, all of them differ from the meritocratic and discretionary systems that operate in the lower and middle courts.[315]

These data on vertical segregation are relevant because they confirm the under-representation of women in top positions.[316] Moreover, they are relevant for two reasons that I will

---

[311] According to Gómez-Mazo, the limited information on racial diversity in the judiciary in Latin America "is a direct consequence of the myth of *mestizaje*: As racial discrimination in the region was believed to be inexistent, there was no apparent reason to collect data on race." Gómez-Mazo also explains that the judiciary sometimes even considers that data on race is sensitive information that cannot be disclosed to the public. See *Ibid* at 37.

[312] *Informe Colombia. Diagnóstico de la situación de las mujeres en la administración de justicia en Colombia*, by Sisma Mujer (Bogota: Sisma Mujer, 2007) at 15. [Translated by author]. Something similar happened to Justice Bertha Wilson in the Supreme Court of Canada. See Ellen Anderson, *Judging Bertha Wilson: Law As Large As Life* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2001). Historical glass ceilings and structural gender inequality in the Constitutional Court were also documented by USAID, *supra* note 99.

[313] García Villegas & Ceballos Bedoya, *supra* note 266 at 122.

[314] Gómez-Mazo found that the Constitutional Court (in 2018) had no indigenous or Afro-descendant justices. See Gómez-Mazo, *supra* note 13 at 100. The study also refers to the gender and racial diversity of the Special Jurisdiction for Peace, a court I have not included in my analysis for reasons explained in Chapter III. According to Gómez-Mazo, in 2018, of the 38 justices of the Special Jurisdiction for Peace, 4 were Afro-descendant (3 of them women) and 4 were indigenous (2 of them women). *Ibid*.

[315] Annex 4 shows the representation of women in each high court in the year 2020.

[316] This vertical segregation is certainly not unique to the Colombian context. See, among others, Andrea Gastron, *Situación actual de la mujer en el poder judicial argentino* (Argentina: Premio Coca-Cola en las Artes y Ciencias, 1993); Beatriz Kohen, *The Family Law Judges of the City of Buenos Aires, A View from Within* (Baltimore, 2006); Eliane Junqueira, "A mulher juíza e a juíza mulher" in Cristina Bruschini & Heloisa Buarque Holanda, eds, *Horizontes Plurais* (Sao Paulo: Editora 34, 1998) 136; Eliane Junqueira, "Mulheres advogadas: espaços ocupados" in Maria Cristina Bruschini & Céli Regina, eds, *Tempos e lugares de gênero* (Sao Paulo: Fundaçao Carlos Changas - Editora

discuss in the following chapters. First, as stated earlier, these data show that meritocratic competitions do not automatically guarantee women's entry. Particularly in top positions, several gender-related barriers lead women to either exclude themselves from the competition, or perform worse than their men colleagues. Second, I will use these data to suggest that, since women are in the majority among tribunal employees, then they are well positioned to obtain discretionary appointments from their bosses, i.e. the (mostly men) appointing justices. As I explain in Chapter VI, it is in this game of hierarchical and gender subordination that the puzzle of discretionary appointments deepens.[317]

1.3. Horizontal Segregation: Putting the Foot in Which Doors?

Due to the silence of the sources regarding women judges, society remains oblivious not only to their presence but also to their stories and struggles. For this reason, if data on their hierarchical distribution is scarce, information on their specific working conditions within the judiciary is even scarcer.

As I explained in Chapter I, I am focusing on two appointment systems: meritocratic (stable and with a high prestige) and discretionary (unstable and with lower prestige vis-à-vis the legal community).[318] The Constitution requires meritocracy to be the rule and discretion the exception. However, the data show a quite different picture. Meritocratic appointments are less prevalent than they should be, at least in the lower courts. In 2020, for example, only 57% of municipal judges and 61% of circuit judges held meritocratic appointments. Tribunal courts do enjoy high levels of meritocratic appointments, with 96% meritocratic justices (Figure 4). As I show in more detail in

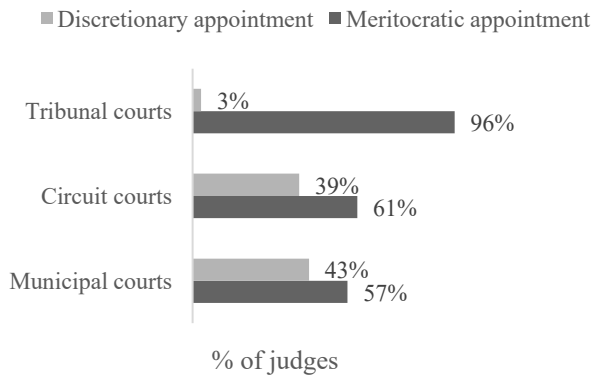
34, 2001) 185; María Inés Bergoglio, Andrea Gastron & Silvana Sagués, "La investigación sobre la administración de justicia" in Manuela González & Carlos Lista, eds, *Sociología del derecho en Argentina* (Buenos Aires: Eudeba, 2011); Maria da Gloria Bonelli, "Gender and Difference Among Brazilian Lawyers and Judges: Public and Private Practice in the Global Periphery" (2013) 20:2 Indiana Journal of Global Legal Studies 1291; Úrsula Indacochea, "Más mujeres para la Corte Suprema de Justicia en Honduras: el nuevo sistema a prueba", (4 August 2022), online: *Justicia en las Américas Blog de la Fundación para el Debido Proceso (DPLF)* <https://dplfblog.com/2022/08/04/mas-mujeres-para-la-corte-suprema-de-justicia-en-honduras-el-nuevo-sistema-a-prueba/>; Núcleo de Estudios Interdisciplinarios en torno a la Desigualdad y Derechos Humanos de la Universidad Austral de Chile, *La participación de las mujeres en los sistemas de justicia en América Latina* (2021).

[317] The original expression is "The puzzle deepens; the mystery thickens." This is an expression used by Virginia Woolf in *Three Guineas* when referring to women who manage to climb the social ladder through men (mainly their husbands, at the time). Virginia Woolf, "Three Guineas" in *A Room of One's Own and Three Guineas* Oxford World's Classics (Oxford: Oxford University Press, 2015) 122 at 52.

[318] It is important to remember that there is also a third appointment system that I have decided to exclude from my analysis. This third type is called "commissioned appointment" (*nombramientos por encargo*) and it is received by judicial officials who have been commissioned to fill a vacancy for a short period of time.

Chapter VI, levels of discretionary appointments have remained high since at least 2016 and are unlikely to improve in the short-term considering that dozens of new judicial positions have been created recently and meritocratic competitions have been held back since 2018.

Figure 4. Appointment system by judicial level (2020)



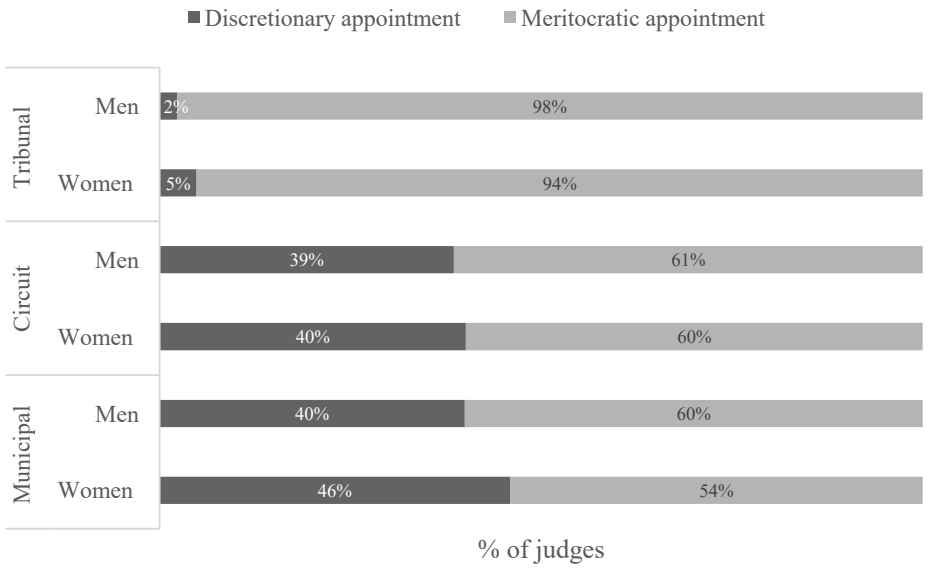
Source: prepared by the author based on data provided by the Superior Council of the Judiciary.[319] Data on file with the author.

These percentages are not evenly distributed among women and men. In the municipal courts, the percentage of *discretionary appointments* among women is slightly higher than the percentage of discretionary appointments among men.[320] As shown in Figure 5, in 2020, 46% of municipal women judges held discretionary appointments, whereas in the case of men this percentage was "only" 40%. A more detailed analysis of this information indicates that there are, indeed, critical statistical trends between gender and appointment systems: in the *municipal courts*, there is a statistically significant relationship between, on the one hand, being a man and holding a meritocratic appointment and, on the other hand, a slight relationship between being a woman and holding a discretionary appointment.[321] In *circuit courts*, there is a statistically significant relationship between being a man and having both a meritocratic and a discretionary appointment,

[319] Superior Council of the Judiciary, *supra* note 307.
[320] Although his research does not focus on gender judicial diversity, Daniel Gómez also concludes that women are disproportionately receiving discretionary appointments. See Gómez-Mazo, *supra* note 13 at 132.
[321] In terms of meritocratic appointments, there is a difference of 3% to 11% favouring men. In terms of discretionary appointments, there is a statistically significant difference of 0,5% to 4% favouring women. This means that meritocratic appointments favour men, whereas discretionary appointments tend to favour women slightly.

although the relationship is higher in meritocratic appointments.[322] In the *tribunal courts*, there is a very high significant relationship between men and meritocratic appointments.[323]

Figure 5. Appointments by gender and judicial level (2020)



Source: prepared by the author based on data provided by the Superior Council of the Judiciary.[324] Data on file with the author.

While data on hierarchy reveal vertical segregation within the judiciary, data on appointment systems reveal a sort of horizontal segregation, at least at the municipal level, where discretionary appointments are more numerous.[325] In this case, horizontal segregation means that even when women are at the same hierarchical level and earn the same wage as men, they occupy positions with different social and occupational values. As I explain in the following chapters, horizontal segregation and its gendered roots were invisible to most of my interviewees. Some of them perceive that appointers tend to choose women for discretionary positions. "I have not

[322] In discretionary appointments, there is a small difference (of 0,3% to 1%) favouring men. In meritocratic appointments, there is a much larger difference (of 4% to 12%) favouring men as well.
[323] There are no differences in terms of discretionary appointments in tribunal courts (where the levels of discretion are very low anyway). However, there is a high relationship favouring men in meritocratic appointments with a difference of 28% to 38%.
[324] Superior Council of the Judiciary, *supra* note 307.
[325] The term "glass walls" is commonly used to describe the segregation of women in traditionally feminized or feminine areas or occupations (such as family law), which in many cases affects their prestige and limits their possibilities for advancement. I consider that the kind of horizontal segregation I am describing here is a different phenomenon and have therefore intentionally avoided the term "glass walls".

managed to become a [discretionary] judge—a man interviewee told me – only because I am not a woman."[326] Yet, most interviewees do not perceive that women are underrepresented in meritocratic positions, partly because they assume (in line with the common preconception in the literature) that meritocracy guarantees women's equal access. The data I have presented here begin to destabilize that assumption.

It is undeniable that women's access to the judiciary is socially significant *per se*, even beyond the appointment system that got them there. As several interviewees also expressed, one is no less a judge for not having gained access through the meritocratic path. In fact, it may be known within the legal community who is or is not a meritocratic appointee (with the associated prestige impacts), but this fact is generally unknown to users of the judicial system. Furthermore, when the Superior Council of the Judiciary boasts about women's participation in the judiciary, it does not disaggregate the information in terms of appointment systems. And every time these data are published, the feminist community in Colombia celebrates how women have put one foot in the door of the judiciary, to paraphrase a famous expression from U. S. Justice Ruth Bader Ginsburg.[327] However, it would be more precise to conceive the Colombian judiciary in terms of *multiple doors* leading to rooms of varying splendour. Perhaps we will only have solid reasons to boast when women jurists definitively put their foot through not only one, but all doors.

1.4. Geographical Fragmentation: A Privilege or a Disadvantage for Women?

The previous two subsections have shown two types of segregation: vertical segregation, which blocks women's equal access to top positions (tribunal courts), and horizontal segregation, which situates men in more stable and prestigious positions. Considering that power struggles are never detached from geography and the socio-institutional context, I studied the territorial distribution of judges according to their hierarchy and appointment system in search of gender patterns. Once again, I could not find historical data or information regarding other categories besides gender.

I collected information on the institutional and socio-demographic characteristics of all municipalities in Colombia (as all of them must have at least one judge). My initial hypothesis was that women tended to work in municipalities with low state capacity. This hypothesis was based on a combination of two facts: on the one hand, as I showed in Chapter III, it has been proven that

[326] Participant ManP1.
[327] See Nichola D Gutgold, *The rhetoric of Supreme Court women: from obstacles to options* (Lanham: Lexington Books, 2012) at 19.

municipalities with lower state capacity have higher levels of discretionary appointments; and, on the other hand, I found that women in municipal courts held more discretionary appointments than men. In order to explore this hypothesis, I studied two institutional indicators: i) the global indicator of local justice performance, which measures the presence of judges and the effectiveness of the judicial system, and ii) the local capacity indicator, which combines different indicators of judicial, tax, and bureaucratic capacity.[328] However, my hypothesis was not supported by the data. In both cases, the analysis showed a difference in proportions favouring men judges (meritocratic and discretionary) in municipalities with both less and more capacity.

I finished reviewing the aforementioned institutional indicators when I was in the middle of my interview process. It was only then that I noticed that women participants—mothers, more precisely—were primarily concerned about the conditions that the municipalities offered for their children regarding basic services, education, or security. I had been chasing the wrong lead (an error that perhaps a mother-researcher might have spotted much earlier, I thought afterwards with reflective resignation). I thus decided to review five socio-demographic indicators: i) distance to the nearest capital city, ii) rurality index; iii) multidimensional poverty index; iv) homicide rates; and v) forced displacement rates (in terms of the people who have been expelled from that municipality). My findings were the following.

In the *municipal* courts, there is a slight difference in favour of women in the more populated municipalities and in favour of men in the less populated municipalities.[329] Men also tend to live in poorer municipalities.[330] In particular, men *discretionary judges* are more likely to live in the poorest municipalities than women in this same hierarchy.[331] When exploring violence indicators (homicides and forced displacement), no significant gender differences were found.

---

[328] The local capacity index arises from the combination of three indicators: 1) The integral performance index, which measures the public management of the municipalities; 2) The local tax capacity index, which measures the relationship between the value of the properties and the revenues that the municipality obtained from the collection of the tax corresponding to those properties; and 3) The global indicator of local justice performance, which, as I explained before, measures the presence and effectiveness of the judicial system. See García Villegas et al, *supra* note 67.

[329] This analysis of population size is based on the Law 1551 of 2012. This Law divides the Colombian territory according to seven categories of municipalities according to their population, ranging from "special category" municipalities (with 500,001 or more inhabitants) to "sixth category" municipalities (with 10,000 or fewer inhabitants). At the level of municipal courts, I found that there is a difference in proportions from 0.01% to 11% favouring women in the special category municipalities, and with a difference between 6% and 16% in the sixth category municipalities favouring men.

[330] Men tend to work in municipalities with a higher multidimensional poverty index, with a difference in means between men and women of 0.54 points to 3.25 points.

[331] Men tend to live in municipalities with a poverty rate 0.17 to 3.37 points higher than women.

In the *circuit courts*, on the other hand, the tendency for men to work in more violent municipalities persists, but there are no gender differences in terms of poverty. We also find that men predominate in both large and small municipalities. The gender differences in terms of rurality or distance to the capital in either municipal or circuit courts were too small to be important.

Tribunal courts present different trends because these courts are located only in major cities that are less rural and less poor than the other municipalities. Here, we find a clear predominance of men in the larger municipalities. Something peculiar occurs concerning violence: although tribunal courts show no gender differences in terms of homicide rates, women justices do tend to work in places with higher rates of forced displacement.[332] Reinforcing this same idea, I found that some of the tribunal courts with the highest concentration of women are usually located in areas affected by the internal armed conflict or with the highest representation of racial minorities, thus being historically neglected regions. This information suggests that glass ceilings are not equally fractured throughout the national territory. As I explore in the next chapter, it appears that, in order to break the glass ceiling, women seem more willing than men to work in municipalities that have been most affected by war and dispossession.

In sum, data reveal a geographical fragmentation in which men are more likely to go to municipal and circuit courts located in challenging municipalities with worse socio-institutional indicators. One possible conclusion from these data is that men lose out in this case. However, as I argue in the next two chapters, these data also speak to how women's mobility opportunities face tighter constraints than men's.

This information, together with media coverage, reminds us that the Colombian war still breathes. However, the threat of war—or violence, more generally—for judges is almost invisible in official reports and was mentioned only a couple of times in interviews.[333] Some participants referred to it as a matter of the past,[334] while a couple of others incidentally spoke of the strategies they have internalized to mitigate the risks. Consequently, it was virtually impossible for me to

[332] In tribunal courts, there is a difference in the average IDP rate between municipalities where men and women live: women live in municipalities with, on average, 1.16 to 40.66 more IDPs per 100,000 inhabitants than men. This may be due to the fact that they are mostly capital cities and correspond with men at the circuit level. Among the cases of regions with armed conflict, this distribution we find, for example, that women represent 100% and 60% in the superior tribunal courts of Arauca and Florencia respectively, two cities that have historically been battlegrounds between the national armed forces and the guerrillas.

[333] For example, the latest report of the Superior Council of the Judiciary devotes only a page and a half to discussing the security risks for judges. *Informe de gestión de la rama judicial al Congreso de la República 2021*, by Consejo Superior de la Judicatura (Bogota: Consejo Superior de la Judicatura, 2022) at 118.

[334] For instance, participants WomanJLL1, ManJLL5 and WomanP4.

trace the relationships between gender, appointment systems, and war, however promising this line of research may be. In any case, my inquiry into the territorial component of the judiciary poignantly showed me that judges have normalized terror to the point of not even naming it and, what is more, they have learned to live with it – by minimizing their visibility or disregarding the impact of large armed groups.[335] I interpreted (and respected) their silence as a survival mechanism; supreme proof of their courage, their vocation for justice, and, perhaps, their necessity.[336]

* * *

In sum, four interconnected findings result from the overview of the judicial machine. First, women represent more than half of the student body in law schools and half of the jurists with professional licenses. Second, women's access has been unequal in all legal professions, including the judiciary. Women represent a majority among judicial employees, and their presence decreases as the judicial position increases in the hierarchy, to the point that they constitute a clear minority in the high courts (a *vertical segregation* phenomenon). Third, men receive meritocratic appointments in much higher proportions than women, which generally places the latter in (more unstable and less prestigious) discretionary positions, especially in the lower courts (a *horizontal segregation* phenomenon). Fourth, women tend to work in less violent and less poor municipalities than men, except in the case of women in tribunal courts.

These four quantitative findings will be used as a background against which to interpret the qualitative data in the next section and following chapters. Numbers can illuminate complex social realities, but personal stories explain why things got to be the way they are and why numbers matter at all.[337]

[335] Participants WomanJMA1 and ManJDA4.
[336] In this line of research, see for example Monique C Cardinal, "The disempowerment of the judiciary in Syria since the March revolution of 2011 and the emergence of off-bench resistance to authoritarian rule: What role for women judges and prosecutors? | Oñati Socio-Legal Series" (2021) Oñati Socio-Legal Series 1–36.
[337] See Alexander Prescott-Couch, "Why social science needs stories", *The New Statesman* (14 December 2021), online: <https://www.newstatesman.com/ideas/agora/2021/12/why-social-science-needs-stories>.

2. Four Women's Experiences in the Judiciary

"My skin is yellow / My hair is long / Between two worlds / I do belong."[338] Saffronia utters these words. She is one of the characters described by Nina Simone in her memorable song *Four Women*. Saffronia is a yellow-skinned woman, born as the product of rape. Simone also tells the story of a black woman who has been physically abused (Aunt Sarah), a woman with tan skin that belongs to "anyone who has money to buy" (Sweet Thing), and of yet another brown-skinned woman whose parents were enslaved (Peaches). These are four African American archetypes of women: four types of African American women that possibly resemble the stories of countless women, while they do not necessarily correspond to any of them in particular. Saffronia may not exist, yet many women will see themselves reflected in her life story and what she represents. The typology is so powerful that it has been described as "an instantly accessible analysis of the damning legacy of slavery, that made iconographic the real women we knew and would become."[339] By identifying – and naming – these selected four patterns in African American women's struggles, Simone's song constitutes an act of resistance against invisibility.

Inspired by the bewitching power and beauty of Nina Simone's song, I propose to imagine *four ideal types* of women in the Colombian judiciary, which I already introduced more abstractly in Chapter II (see Table 3). My typology presents two types of women who have either negative or positive experiences with meritocratic appointments (which I call *The Excluded* and *The Overcomers*, respectively) and two types of women with either negative or positive experiences with discretionary appointments (which I call *The Disadvantaged* and *The Favourites*, respectively). These four types resulted from contrasting different experiences between women and men, and among women. By trying to grasp the depth and extent of these four types, I provide initial answers to my second research question about *why* women (do not) occupy certain positions in the judiciary.

---

[338] "Four Women" Nina Simone, (1966). Although this chapter is not devoted to an analysis of this song, I agree with Daniel Newman when he states that there are popular music themes "[…] that could be of interest to legal scholars and may help inform academic debate". See Daniel Carl Newman, "Law and Justice in Popular Music: Murder Ballads" (2018) 24:1 European Journal of Current Legal Issues, online: <http://webjcli.org/index.php/webjcli/article/view/596>.

[339] The quote continues: "For African American women it became an anthem affirming our existence, our sanity, and our struggle to survive a culture which regards us as anti-feminine. It acknowledged the loss of childhoods among African American women, our invisibility, exploitation, defiance, and even subtly reminded that in slavery and patriarchy, your name is what *they* call you." Thulani Davis, "Nina Simone, 1933-2003" *The Village Voice* (29 April 2003), online: <https://www.villagevoice.com/2003/04/29/nina-simone-1933-2003/>.

Table 3. Typology of women's experiences facing each appointment system

	Meritocratic Appointments	**Discretionary Appointments**
Negative experience	Type A. The Excluded	Type C. The Disadvantaged
Positive experience	Type B. The Overcomers	Type D. The Favourites

Source: created by the author.

To elaborate on this typology, in this section I first present the main features of the four ideal types and then reflect on the empirical and theoretical overlaps between them.

2.1. The Typology

My typology is primarily grounded on material from interviews.[340] In that sense, the typology is inspired by inductive rather than deductive criteria, and is a tentative exercise of theoretical construction in a bottom-up approach. With this typology, I seek not only to give visibility to women's stories, but also to delve into their immense diversity and the contrasts with their men colleagues. As I explained in Chapter II, my typology is an analytical construction that emphasizes certain features of a complex social phenomenon, in order to facilitate its analysis. Consequently, my ideal types do not correspond to specific empirical realities.[341] As in Nina Simone's song, I use ideal types to talk about imaginary yet vividly real women, for they are born from the fusion of concrete stories heard during my fieldwork. I created this typology guided by their voices, always under the assumption that no archetype can contain the truth of a lifetime.

I have built and analyzed each type within the framework of a feminist-infused theoretical blend between field theory and heterodox approaches to bureaucratic power. I examine the positions that each type of woman occupies in the bureaucratic judicial field, the forms of capital they have according to their positions, and the ways in which their positions and capital enable them to navigate and perceive the bureaucratic practices of each appointment system. Within this framework, my main findings (which I will further develop in the next two chapters) are as follows:

[340] I conducted a total of 94 semi-structured interviews with women and men judges, justices and participants outside the judiciary who have faced both meritocratic and discretionary appointment systems. For more details about my methodology, see Chapter I.

[341] See Britannica, *supra* note 37.In Chapter II, I compared typologies with maps, which must simplify reality in order to apprehend it. This analogy is inspired by a short story by Jorge Luis Borges entitled *On Exactitude in Science.*

Type A. The Excluded

This type refers to women who, despite their efforts and abilities, have not been able to succeed in meritocratic competitions. The outcome of their experience with meritocratic appointments is negative, insofar as they did not overcome the competition. In addition, their narratives and trajectories are predominantly negative to the extent that they—albeit not always explicitly—reveal the disparate impacts that meritocracy can have on (certain) women. In some cases, the differences experienced by women are due to the fact that they have less economic capital than their men counterparts. This disparity entails that women do not have enough money to delegate their care responsibilities—which in Colombia are overwhelmingly entrusted to women—, therefore affecting their chances of adequately preparing for meritocratic competitions. In other cases, gender differences lie mainly in cultural capital: women have cultural capital that is either lower than that of men due to accumulated gender inequalities, or that is undervalued by a merit system that has been built on skills often cultivated in men.

Meritocratic competitions are supposed to be neutral, technical, and predictable, but I intend to use this Type A to challenge that assumption. I argue that meritocratic competitions have exclusionary effects on certain groups and do not necessarily serve to select those with the best technical skills to become judges. Jorge Luis Borges wrote that "the rose is in the letters that spell rose,"[342] but the opposite is true for the concept of merit. As I will show in the next chapter, the definition of 'merit' and the ways in which it is measured are neither obvious nor uncontroversial but are largely the product of power and gender struggles within the judiciary.

Type B. The Overcomers

These women have entered—or have been promoted within—the judiciary thanks to their ability to overcome merit-based competitions. Hence, they have had positive results in their experiences with meritocratic appointments. In fact, most of my interviewees (especially those who fit into this category) find meritocracy the best and perhaps the only way to access the judiciary without having clientelistic connections, in a country with few possibilities of social mobility for those with low economic or political capital. Moreover, for many women, meritocracy is the only way to enter the

[342] This idea comes from the poem *The Golem*, by Borges: "If (as the Greek asserts in the Cratylus) / The name is archetype to the thing, / The rose is in the letters of 'rose' / and the length of the Nile in 'Nile'". See Jorge Luis Borges, *A Personal Anthology*, Anthony Kerrigan, ed (New York: Grove/Atlantic, Incorporated, 1967) at 62.

judiciary without being exposed to sexual harassment by (mostly men) appointers. Some women manage to overcome meritocratic competitions because they have sufficient cultural, economic, and social capital to study at the best universities or to delegate their care responsibilities. These conditions, in turn, give them the time and energy to prepare for meritocratic competitions. In this type, we also find women who do have a deficit of different types of capital, which explains why they have to make greater efforts and pay higher costs than men to overcome the competitions.

This type will be helpful to delve not only into the characteristics that enable women to succeed in meritocratic competitions, but also into the structural gender inequalities that underlie women's successful careers. In this case, I also intend to underline (with greater emphasis than in Type A) a narrative gap: on the one hand, women participants with meritocratic positions *explicitly* perceive that it was the neutrality and technical nature of the meritocratic system that enabled them to succeed. In contrast, their trajectories *implicitly* reveal that the difficulties they experienced were structural gender inequalities at the heart of the competitions. The gap lies precisely in the fact that the majority of participants do not acknowledge that the problems women face in meritocratic competitions are not merely individual issues but structural ones. As I show in Chapter V, even when 'successful' women acknowledge how difficult their journey has been, they often believe they are alone in such a tenacious struggle.

Type C. The Disadvantaged

This type refers to women who have not been successful in gaining access to—or promotion in—the judiciary through the discretionary path. That is, they have had negative outcomes. Like *Excluded* women, the negative outcome often comes with a negative perception of their experiences. The origin of the negative result obtained by women in this ideal type varies. In some cases, women's 'disadvantage' is due to the fact that they have few connections (i.e. little social and political capital) with the appointing justices. In other cases, women had to reject job offers because they were subject to requests for sexual, economic, or political favours. Moreover, sometimes women abstain from applying in the first place out of fear of being harassed. Many of these women have in common that they seek discretionary appointments as a reaction to the barriers they encounter in meritocratic competitions.

This ideal type will help examine the barriers women face in a system where appointers have wide margins of discretion. Some interviewees perceive that women are preferred by

appointers, but are oblivious about the burdens associated with these supposed preferences. As I mentioned in Chapter III and will explain in Chapter VI, each tribunal court is charged with defining both the selection process, as well as the dismissal, of discretionary appointees. These wide margins of discretion speak volumes of the territorial and hierarchical fragmentation of the judiciary which, in turn, opens up a space for discriminatory, non-technical, and even clientelistic decisions.

Type D. The Favourites

These women have gained access to—or promotion in—the judiciary through discretionary appointments. Despite this positive outcome, participants tend to have mixed reviews about the benefits of discretionary mechanisms. They do agree on how discretionary appointments are often the only possible option in the face of an inefficient and exclusionary meritocratic system. I was able to identify two main trajectories of *Favourite* women. First, women who have worked in lower and subordinate positions within the judiciary, thereby building social and political capital with the appointing justices from below. Their appointments are a reward for the effort and skills they deployed while they were in subordinate positions. These women tend to view their appointers as their mentors. Second, women perceived by appointers as vulnerable, such as (lower-class) young women and single mothers, who have often also been subordinate to the appointers. In both categories, we find women who build and mobilize their political capital (even if it is from below) to make themselves visible to appointers. In many cases, these women find in discretion a form of resistance and power within a structure of domination.

Through this type, I aim to explore how women's subordinate position can play out in their favour in highly hierarchical contexts in terms of work (with women having men as their employers) and gender (with men perceiving women as vulnerable individuals in need of help). Interviews make it clear that, in such a power arrangement, some appointers engage in harassing behaviours. Yet interviewees also suggest that many appointers merely seek to do *favours* for those they perceive as their mentees or as persons deserving protection (and who are, in principle, people they trust). I suggest that women's chances of successfully navigating discretionary appointments are very much tied to the motivations of the appointers, which may be multiple and indecipherable, such as the motivation to reassert power, redistribute benefits, or ensure a loyal lower judge.

2.2. Connecting the Remaining Chapters

Both appointment systems might be conceived as two sides of the same coin to the extent that they are intimately connected empirically and conceptually. Chapters V and VI deal separately with each system, but I would like to highlight the following connections as a reader's guide of sorts.

Overlapping and Fluctuating Trajectories

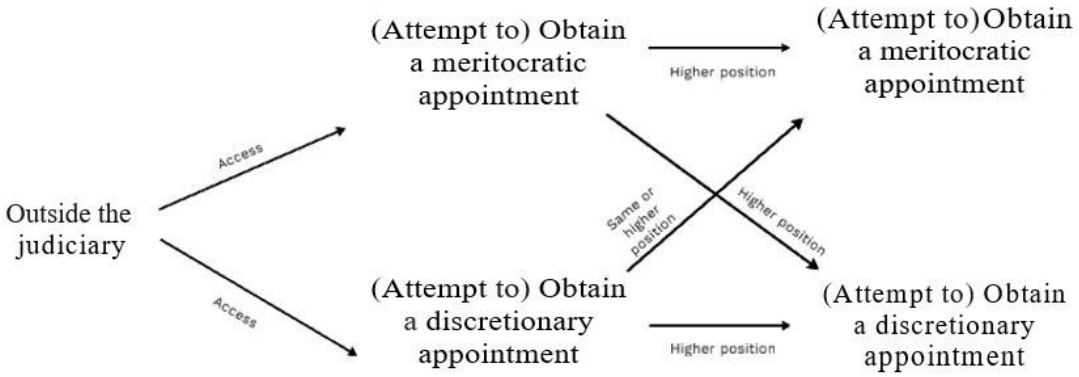
Since ideal types do not seek to represent reality exactly as it is, few real women are likely to fit only or entirely into one type. As I discuss at length in the following two chapters, not only is there an enormous diversity of experiences within each type, but there are also constant overlaps and connections between them all. Just as many (African American) women may see themselves reflected simultaneously in Peaches and Saffronia, most women jurists probably have fit several of my ideal types at *different* or *simultaneous* points in their lives.

My fieldwork showed, indeed, that judicial trajectories are dynamic and tend to overlap. Most interviewees (women and men) have tried to access the judiciary through both appointment systems and have had varied experiences (negative and positive) throughout their judicial careers. Figure 6 represents the trajectories I detected in my interviews. For instance, some judges gain access to low-level positions through meritocratic appointments and immediately obtain a higher position through a discretionary appointment (i.e. they are simultaneously *Overcomers* and *Favourites*). I also found that thousands of jurists pass the meritocratic competition once, but do not manage to pass it again in order to gain access to higher positions. For this reason, they strive for promotion through the discretionary path (i.e. they are concurrently *Overcomers* and *Excluded*, and frequently *Disadvantaged*). And in many cases, I found that some judges passed the meritocratic competition primarily because they had previously obtained training and network connections through the discretionary path. Many of them cling to their current status as *Overcomers*, denying how much they owe to having been *Favourites*. Very much like Saffronia, whether they admit it or not, most jurists belong to many worlds.

In many ways, meritocratic and discretionary appointments are two sides of the same coin to which jurists turn successively or simultaneously in reaction to the problems they encounter in

one or the other.[343] As I mentioned concerning Type D, many jurists turn to the discretionary path because of their sense of disappointment and injustice in the face of a meritocratic system that they perceive as slow, technically flawed, and unrewarding of their abilities. Conversely, many jurists turn to meritocracy because of their frustration with a discretionary system that they perceive as opaque and conducive to harassment and favouritism.

Figure 6. Trajectories in the judiciary



Source: created by the author.

Finally, my fieldwork findings show that my ideal types are tied together due to the structural inequalities that women experience in each of them. For instance, we will see that the unequal distribution of care work explains not only the barriers that women face in both systems (Types A and C) but also the high costs paid by some women who do enter the judiciary (Types B and D). In addition, I will show that intersectional inequalities are pronounced in both appointment systems as evidenced, for example, by the predominantly negative experiences of racial minority women. With my typology, I seek neither to flatten women's trajectories, nor to obscure these threads of inequality that cut across all types. Nor do I seek to exalt one appointment system over the other. My intention is, instead, to provide an analytical tool that I believe will facilitate a deeper understanding and critique of all these complexities.

[343] In this vein, Hull and Nelson refer to the notion of "emerging preferences" to reflect on how jurists' preferences (decisions and strategies) might change throughout their careers, according to their concrete needs and experiences. Hull & Nelson, *supra* note 161 at 236.

Contrasting Appointment Systems

As I described in chapters I and II, there is a predominant view about bureaucracies that can be found in constitutional administrative law and in the collective imagination, influenced mainly by an orthodox interpretation of Weber. According to this view, bureaucracies operate (or should operate) in a unitary, hierarchical, technical, predictable, and impersonal manner. And bureaucracies operate separately from society and politics thanks to the fact that bureaucrats abide by formal rules. These characteristics guarantee efficiency, technocracy, and equal treatment of those who interact with bureaucrats. Well then, meritocracy, too, selects personnel based on criteria considered objective, impersonal (not tied to politics), technical and neutral, all of which guarantee efficiency, quality, exclusion of political dynamics, and equal opportunities for all. Put this way, meritocracy would fit well as an entry mechanism into bureaucracies, whereas any appointment system that disrupts the pillars of bureaucracy should be avoided, as is the case with discretionary appointments, with their wide margins of discretion and their decentralized and subjective character.

These ideas are the foundation of the common preconception that I described in Chapter I, and that I will confirm empirically in chapters V and VI. This preconception assumes that thanks to its supposed objectivity and technical nature, *meritocracy* is conducive to achieving women's equal judicial representation, alongside other goals associated with bureaucracy. Even if participants were personally excluded from the meritocratic process, they rarely question the objective and technical foundations of this system. In contrast, it is assumed that due to its wide margins of subjectivity, *discretionary* appointments not only hinder women's access, but also torpedo other bureaucratic goals. That is, except in their own personal cases: when it is they who received a discretionary appointment, then they considered that the process was impersonal, technical, and undoubtedly detached from political dynamics.

However, the data I collected challenge this preconception and the premise upon which it is based. In the next two chapters, I show two things. First, the meritocratic path does not always guarantee women's access (as shown in Type A) and, furthermore, it does not necessarily operate in an objective, unitary, or technical manner that fulfills other bureaucratic goals. Second, the discretionary path not only offers a flexibility that can sometimes open the door to some women (as shown in Type D), but it also seems to operate in a technical, efficient, predictable manner occasionally. In sum, based on participants' experiences, I argue that in both systems we find

concrete bureaucratic practices that are not always or entirely objective and technical, and that it is not the claim to objectivity that guarantees women's access or other goals. However, in both systems there appears to be a permanent intention to preserve an *image* of a unitary, technical, impersonal machine. Both appointment systems are thus full of complexities and complementary elements.

3. Preliminary Conclusions

In this chapter I proposed a dual exploration of the judiciary: one that examines its composition as a whole and another one that refers to the experiences of the individuals who (seek to) make up the judiciary. Both perspectives are necessary to set the context for the following two chapters, in which I elaborate on the (dis)advantages that women encounter in both meritocratic and discretionary appointments.

In the first section, I presented four findings. First, women's participation has increased significantly in both legal education and the legal profession, but women continue to have limited access to the top positions in the profession. Second, this vertical segregation is also present in the judiciary, where women are underrepresented both in the high courts and tribunal courts. Third, there is a correlation between being a man and having a meritocratic appointment at all levels, and a slight correlation between being a woman and holding a discretionary appointment at the municipal level. Fourth, in municipal and circuit courts, men tend to work in the poorest and most violent municipalities. This trend partially changes in tribunal courts, where it is women who tend to work in regions most affected by war. In sum, even though meritocratic competitions have been in place for many years, women still have not fully broken through regional glass ceilings, do not have equal participation in meritocratic positions, and do not have access – for better or worse – to the same territories as men.

These quantitative findings served to construct and illuminate a typology of four women in (or four types of women's experiences of access to) the judiciary. I highlighted multiple interconnections between meritocratic and discretionary systems in at least two ways. First, empirically, we find that many women can belong to several ideal types simultaneously or over time, mainly because the barriers of one system of appointment at one point lead them to seek the other later on. Second, both appointment systems are conceptually connected: one the one hand, the meritocratic path is assumed to be objective, predictable, and technical, and therefore,

compatible with the bureaucratic structure and a guarantor of women's equal access to the judiciary. On the other, discretionary appointments are assumed as subjective and non-technical, therefore endangering the efficiency and impersonality of the bureaucratic power and women's access to the judiciary. My fieldwork findings, however, challenge these assumptions.

In sum, my findings largely contradict the common preconception found in the judicial literature and among my interviewees, by showing how both appointment systems harbour potential barriers for women. We have thus seen that the gears of the bureaucratic machine are not always properly balanced, as I seek to show in the following chapters.

CHAPTER V. GENDERED CONSTRAINTS AND POSSIBILITIES IN THE MERITOCRATIC RACE

" 'Then let me die at once'—
Achilles burst out, despairing—'since it was not my fate
to save my dearest comrade from his death! Look,
a world away from his fatherland he's perished,
lacking me, my fighting strength, to defend him.
But now, since I shall not return to my fatherland…
nor did I bring one ray of hope to my Patroclus,
nor to the rest of all my steadfast comrades,
countless ranks struck down by mighty Hector—
No, no, here I sit by the ships...
a useless, dead weight on the good green earth—
I, no man my equal among the bronze-armed Achaeans,
not in battle, only in wars of words that others win.' "
– Homer –.[344]

"Where there is a will, there is a way." This is the dogma that governs almost all social spheres in most contemporary Western societies. If you put all your efforts and skills into action, you can succeed in whatever you set out to do or conquer. Only your hand begets the plot of your destiny.[345] Society rewards those who are objectively the best and work harder than others to achieve their dreams. The emphasis here is on individual work and not on structural conditions. Most people agree on the importance and virtues of this dogma as it promotes laudable values, such as effort and self-esteem.

Yet reality shows, time and again, the limitations and delusions of this axis of positive thinking. It is enough to look around you to see that skills are not consistently rewarded, individual effort is insufficient to overcome structural barriers, and positions reserved for *the best* are often occupied by unworthy candidates. Conditions beyond our power are more defining of social reality

[344] See Homer, *The Iliad*, translated by Robert Fagles (New York: Penguin Books, 1991) bk 18, p. 470.
[345] Here I am evoking the poem *Chess*, where Borges refers to the god behind God who begets the plot. I will return soon to this idea of life as a game of chess. See Borges, *supra* note 342 at 60.

than we are willing to admit and we often "run into walls higher than our strength."[346] Even Achilles decided to withdraw from combat in the face of Agamemnon's offences and after nine years of frustrating battles. He was the best of the Greek warriors, but his effort and skills could not conquer all. In tears, Achilles feels that he is nothing more than "a useless, dead weight on the good green earth." I would like to think that Homer was reflecting on the futility of war but also on the frustrating burden that failure brings when we attribute it solely to ourselves.[347]

Meritocratic judicial competitions are part of these tensions between what individuals desire and what they can achieve. On the one hand, they promise to reward nothing more than individual effort and ability. One of its aims is for jurists with poor backgrounds or without political connections to reach high dignities within the judiciary. This window of opportunities becomes especially significant in a country with one of the world's highest levels of social immobility.[348] On the other hand, however, evidence reveals that the jurists best qualified to be judges are not always rewarded, as various structural barriers beyond their power place them at a disadvantageous position in the meritocratic race. Some will pay disproportionate costs to win the competition, whereas others will feel discouraged from the outset and will not even attempt to compete. More often than others, these groups tend to carry the "useless weight" of their failure. They may have *the will*, yet it does not necessarily translate into finding *a way* to fulfill their desires.

To analyze these internal tensions of meritocratic competitions and based on my fieldwork findings, I created a typology of four ideal types of women according to their experiences of access to – or exclusion from – the judiciary. I described this typology at length in the previous chapter. In this chapter, I focus on the two ideal types that refer to meritocratic appointments. First, Type A (*The Excluded*) represents women who have not succeeded in the meritocratic competitions. Second, Type B (*The Overcomers*) represents women who have succeeded in these competitions. The remaining two ideal types, which I will discuss in the next chapter, concern women's experiences with discretionary appointments. As I noted in Chapter IV, these ideal types simplify the experiences of jurists solely for analytical purposes, but the reality is necessarily more complex. In that sense, ideal types tend to overlap in real life, and many jurists may have fit into several types at some point in their lives or even fit simultaneously into different types. Moreover,

[346] See Irene Vallejo. Hambre, sudor y lágrimas. Irene Vallejo, "Hambre, sudor y lágrimas", *El País* (5 March 2022). [Translated by autor].
[347] I have borrowed the connection between Achilles and the dogma of the individual effort from *Ibid*.
[348] See OECD, *A Broken Social Elevator? How to Promote Social Mobility* (Paris: OECD Publishing, 2018).

meritocratic and discretionary appointments are two sides of the same coin, with mutually reinforcing problems.

I have divided this chapter into five parts. First, I introduce the main theoretical discussions around the notions of meritocracy and merit. In this first section, I outline how the debates on meritocracy – and the power struggles that the concept embodies – connect to my theoretical frameworks. Second, I present quantitative data on performance by gender at each stage of the latest meritocratic competitions. We will see that, in general, it is more difficult for women to access the judiciary through the meritocratic route. The obstacles lie mainly in the fact that women tend to perform worse than men on standardized tests and 'self-exclude' themselves in higher proportions than men from competing for the top positions. From a qualitative perspective, the third and fourth sections deal with the gendered constraints and possibilities of ideal types A and B. Both quantitative and qualitative evidence show how facially gender-neutral meritocratic policies have disparate impacts on women. In the final section, I draw some conclusions about the data and narratives discussed throughout this chapter.

1. Meritocratic Competitions: A Chess Game or a Race?

In theory, meritocracy seeks to serve as a "principle of justice for the allocation of reward"[349]: it determines that positions should be awarded only to those who have proven to have the necessary competencies, regardless of their background conditions. It is presumed to be an objective and neutral tool for selecting 'the best' or, at least, the 'skilled' ones. This principle is designed to work as an antidote to nepotism, bribery, mediocrity, and social immobility. Meritocracy also pursues other commendable objectives, at least according to the liberal script: it stimulates individual effort and responsibility, promotes efficiency, and reaffirms that our success is in our hands.[350] In this sense, meritocracy also combats discrimination based on gender and other categories – such as race, class, religion, or sexual orientation. Who you are or where you come from is irrelevant; what matters is how hard you have worked and how competent you are. It is your 'merit' that is rewarded and the content of that notion ('merit') tends to be perceived as evident.[351] Standardized tests are

[349] Jonathan J B Mijs, "The Unfulfillable Promise of Meritocracy: Three Lessons and Their Implications for Justice in Education" (2016) 29:1 Social Justice Research 14–34 at 17.
[350] See Michael J Sandel, *The Tyranny of Merit. What's Become of the Common Good?* (Dublin: Penguin Random House, 2020) at 36.
[351] In fact, while conducting this research, several participants advised me not to promote the inclusion of more women in the judiciary, and to focus instead on demanding the inclusion of the "best jurists" in the judiciary.

one of the favourite tools of the meritocratic promise, as they are supposedly neutral, gender-blind mechanisms to quantify the participants' skills and ensure their equal opportunities.[352]

These liberal principles of meritocracy sought to reverse the dynamics of the *Ancien Régime*. Indeed, what mattered during the *Ancien Régime* was precisely where you came from, who you were, and what privileges you had since birth. Hence Sancho Panza's famous analogy between life and a chess game: like chess pieces, in the *Ancien Régime* the destiny and roles of individuals were immutable from the beginning to the end of the game of life.[353] The queen was queen from start to finish, as were the pawns, and each of them knew what kind of moves they could make on the board. Liberal states aimed to turn social life from a game of chess into a race: the track and the finish line are the same for everyone, and everyone starts the competition from the same starting point. Those who win the race deserve it because they are the best and have worked hard enough.

In the case of competitions for public office, this alluring promise is further supported by state rules, in which citizens tend to place even higher expectations of social transformation and emancipation.[354] Furthermore, as I argued in Chapter II, the liberal discourse on meritocracy is intimately tied to the liberal discourse on bureaucracy. Both modern bureaucracy and meritocracy are essentially associated with the need for objectivity, efficiency, independence, equality, and high quality beyond personal or political ties.[355] In fact, merit-based selections are at the heart of the orthodox definition of bureaucracy. Consequently, although meritocracy is praised in many social spheres, it is perceived as particularly conducive to the realization of the bureaucracy's goals, at

---

[352] On the origin of meritocracy see Lani Guinier, *The Tyranny of the Meritocracy. Democratizing Higher Education in America* (Boston: Beacon Press, 2016) at 8; Amartya Sen, "Merit and Justice" in Kenneth Arrow, Samuel Bowles & Steven N Durlauf, eds, *Meritocracy and Economic Inequality* (Princeton: Princeton University Press, 2000) 5. The term "meritocracy" was coined by Michael Young in his satire *The rise of meritocracy*. He imagined a world in which "test scores (or other suitable substitutes for innate talent or aptitude) would matter the most […]. To Young, such a testocracy would not be a shining vision but rather a nightmare", states Guinier. See Guinier, *supra* note at 9.

[353] "A brave comparison! —quoth Sancho—; though not so new but that I have heard it many times, as well as that of the game of chess; which is that, while the game is going, every piece has its office, and when it is ended, they are all huddled together, and put into a bag: just as we are put together into the ground when we are dead." Don Quixote, Miguel de Cervantes (part. II, p. 299). For another literary approach to the stratified society of the *Ancien Régime*, see the analysis of Cinderella by Nicolás Ceballos. Nicolás Ceballos Bedoya, "'La Cenicienta'. La igualdad ante la ley" in Alejandro Gaviria Cardona, ed, *Una mirada crítica a los cuentos de los hermanos Grimm* (Editorial EAFIT, 2022) 140.

[354] In Chapter II, I had already referred to the enormous faith in the transformative power of law that characterizes Colombia, and Latin American societies more generally. In this regard, see, among others, Lemaitre, *supra* note 226; García Villegas, *supra* note 223; Boaventura de Sousa Santos & Mauricio García Villegas, *Emancipación social y violencia en Colombia.*, norma ed (Bogota, 2004).

[355] David Delfs Erbo Andersen, "Does Meritocracy Lead to Bureaucratic Quality? Revisiting the Experience of Prussia and Imperial and Weimar Germany" (2018) 42:2 Social Science History 245–268.

least in the abstract. And conversely, the supposedly apolitical environment of bureaucracies seems to be conducive to the implementation of the objectivity and neutrality of meritocracy.

In reality, however, meritocratic competitions largely contradict these premises, and I will show that it is specifically the case in Colombian judicial competitions. To begin with, participants do not compete on a levelled field. Data show that, however hard-working or talented they may be, some social groups – such as women and racial minorities – face structural barriers that make it extremely difficult for them to reach the final goal. Or, as Mijs eloquently put it, "the meritocratic race starts from unequal and non-meritocratic starting positions."[356] Of course, individuals have some agency to fight against structural (gendered) constraints. Yet, structural constraints tend to keep them in their original positions, which explains why inequality and privilege tend to be reproduced across different generations. In many ways, the dynamics of a chess game have not been entirely altered. This diagnosis is particularly true in a context such as Colombia, a country with a very low social mobility rate. In sum, meritocratic policies seem to disregard all these background conditions and structural barriers, assuming that it is possible to equalize the starting positions of all participants.

In addition to structural barriers, a second major feature lies at the heart of meritocratic competitions. 'Merit' is **not** in the letters of 'merit,' as Jorge Luis Borges would have put it. There is no obvious, neutral, let alone a univocal definition of 'merit' or 'the best'. The definition of merit changes significantly across cultures, regions, social groups, and over time.[357] Therefore, the notion of merit – or 'the best judge' in this case – is a largely indeterminate and unstable concept. As such, it is often filled arbitrarily, hence the frequency with which we find competitions with requirements unrelated to the advertised (judicial) positions. Moreover, as an indeterminate concept, '(judicial) merit' is necessarily filled by those who have the power to create meritocratic policies. Those in power often include in the definition of merit precisely the characteristics that they or members of

[356] See Mijs, *supra* note 349 at 19.

[357] Mijs reviews how the notion of merit has changed over time and across cultures. "There is No Neutral Definition of 'Merit' […]. Manliness, aggression, asceticism and (bi)sexuality, for instance, were considered important traits for men to have in Sparta, 400 B.C., and display of such traits was rewarded with social status. In Western Europe anno 479, in contrast, pacifism, vegetarianism and asexuality were considered meritocratic traits (ibid.). […] what constitutes merit is historically shaped and institutionally specific". See *Ibid* at 20.

their social group possess.[358] Therefore, in some countries, expert literature identifies a correlation between the career paths of (upper-class) men and the requirements to enter the judiciary.[359]

These two main characteristics of meritocracy (the disregard for background conditions and the non-neutral character of its definition) show how meritocratic competitions in particular, and the judicial bureaucracy in general, are marked by power struggles. Contrary to the orthodox interpretation of Weber's ideas, the judicial bureaucracy reveals itself as a politicized social space. As I explained at length in Chapter II, high bureaucrats have wide margins of discretion, and the competitions contain selection standards that largely stem from such discretion. Formal rules on meritocracy are necessarily ambiguous and indeterminate, hence there is plenty of room for the heads of the judiciary and other powerful sectors to fight to impose their own visions of what merit is and how it should be measured. Potential candidates, on the other hand, strive to increase their different forms of capital (social, cultural, political, etc.) in order to improve their position within the judicial field and, in turn, take full advantage of meritocratic policies.

The data I describe below show these power struggles, the myriad of bureaucratic practices surrounding meritocratic appointments, and the limitations of individuals in the field. Interestingly, as we will see, these power struggles were rarely acknowledged by my interviewees, leading them to deny the arbitrary nature of social inequalities and to perceive that the failures of disadvantaged groups were natural and deserved.[360]

2. Analyzing the Race from a Quantitative Viewpoint: Where Does the Pipe Leak?

Before I started writing this chapter, I had three clues in mind. First, in my master's thesis, I showed that women perform worse than men in the meritocratic admission filters of the best Colombian

[358] Hilary Sommerlad, for example, puts it this way: "As a result, those in the judiciary with the power to allocate rewards and status do not need deliberately to discriminate since the possibility of the majority of outsiders being viewed as capable of achieving significant status on the basis of merit is slight." See Hilary Sommerlad, "Judicial Diversity. Complexity, continuity and change" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 205 at 218.

[359] Bergallo, *supra* note 71.

[360] This is what Bourdieu would understand as *symbolic domination*. As explained by Luz Gabriela Arango: "[…] symbolic domination allows the power relations and the arbitrary nature of social inequalities to be concealed (ignored) and the place of the dominant to be recognized as 'natural' and self-evident." [Translated by author]. See Luz Gabriela Arango, "Sobre dominación y luchas: Clase y género en el programa de Bourdieu" (2002) 7:1 Revista colombiana de sociología 99–118 at 103.

public law schools.[361] Second, as shown in Chapter IV, I had found that there is a correlation between being a man and receiving a meritocratic appointment. I had also found that the percentage of women tribunal justices has barely increased in the last two decades despite ongoing meritocratic competitions.[362] Third, I had read several studies from other fields suggesting that meritocratic competitions in general, and standardized tests in particular, exclude women at a higher rate than men.[363] And, even more specifically, I had found a few studies suggesting that women were not benefiting from meritocratic competitions in Colombia. All three clues pointed to the idea that meritocratic competitions, however neutral they claimed to be, had disparate impacts on specific groups with lower capital, such as women. I wanted to inquire how these disparate impacts were present in the different stages of meritocratic judicial competitions. In this section, I will present the results of such an inquiry.

This, I know, is a journey reserved for patient travellers: the data are dense and the descriptions long. However, I trust that this information will be a helpful background against which to interpret the qualitative – hopefully, lighter – narratives that will follow.

2.1. The Structure and Setbacks of the Competition

Meritocratic competitions consist of four general stages: public call for applications, academic competition, publication of the list of eligible candidates, and the meritocratic appointment of the winners. Between the call for applications and the actual appointments, there are five essential subcomponents:

a) Stage of open registration: all interested individuals can register for the competition by submitting a set of basic documents.

---

[361] These differences appeared primarily when the filters consisted of standardized tests. I also found gender differences in the more academically selective and expensive Colombian law schools. In fact, a study about the National University of Colombia (the country's largest and most prestigious public university) shows that women are disproportionately excluded in the university admissions process in general, not just in law schools. See Óscar Alejandro Quintero, "La creciente exclusión de las mujeres de la Universidad Nacional de Colombia" (2016) 44 Revista Nómadas 123–145.

[362] As I showed in the previous chapter, the proportion of women has remained stable in the municipal and circuit courts and has grown very little in the tribunal courts over the last 24 years.

[363] The most relevant study in this case is the master's thesis of Juan Manuel Dumez, justice of a tribunal court (Tribunal Superior de Cundinamarca). His study revealed that in the competition conducted in 2008 the presence of women decreased at the municipal and circuit courts, and remained the same at the tribunal level. The data collected by Dumez refer only to seven districts of the ordinary jurisdiction, but his analysis is nonetheless important as it concludes that women occupied 42% of the judgeships before the competition, while among new appointees women represented 38%. In the case of the tribunal courts, men were twice as numerous as women both before and after the competition (19 women were appointed versus 39 men). See Dumez Arias, *supra* note 74 at 64.

b) Stage of admissions: the Superior Council of the Judiciary verifies that each participant meets the minimum requirements.

c) Standardized academic test: this is a multiple-choice closed-question test with two sections: one assessing general aptitude[364] and the other assessing legal knowledge (general and specific).[365] This test has eliminatory effects, and it is the component with the highest weight in the final score of the competition.

d) Training course with three sections: a general section (for all participants), a specialized section (bringing together participants from related areas of law), and a research paper.[366] The courses take place on weekends and are only offered in a few major cities. Participants must cover all travel and accommodation costs.

e) Inclusion on the list of eligible candidates: the position on the list comes from the sum of the scores obtained in several items: the academic test, the training course, the psycho-technical test[367], professional and teaching experience, additional training, and publications.[368] There is a list for each position in each municipality or district, and participants choose on which list they would like to register their names.[369] The list of eligible candidates is valid for four years. If a participant fails to obtain a meritocratic appointment before the list expires, she will have to participate again in the next competition.

Each competition has had multiple variations within this general framework. For instance, the first competition had no training course, but it did have an interview, while the opposite occurred in the last competition. Additionally, in each competition, the standardized academic test

[364] This section includes: reading comprehension, mathematical analysis, interpretation of graphical information, verbal symbolic reasoning, and language skills.

[365] The *general* component includes general questions (e.g. on the structure of the state or the functions of judicial institutions) and the *specific* component refers to the areas in which the participant aspires to work (e.g. civil law, criminal law, labour law).

[366] The general part is assessed through reading quizzes, forum participation and oral assessments. In the specific part, these assessment tools are taken up again and a virtual internship and a face-to-face internship are added. In Competition 22 (which I will analyze below), the final score for the training course was obtained as follows: the general part weighed 50%, the specialized part 30%, and the final paper 20%.

[367] This standardized test measures the emotional and psychological aptitude of the participants. Participants take the psycho-technical test on the same day as the academic test. This psycho-technical test is not an elimination test but only a qualifying test. According to the interviewees, Participants take the psycho-technical test on the same day as the academic test. This psycho-technical test is not an elimination test but only a qualifying test. According to my interviewees, participants tend to pay little attention to the psychometric test because they prefer to spend more time on the (much more important) academic test.

[368] The weight assigned to each of these components in the final score of the competition varies with each competition. In the penultimate round, out of 1000 points, the academic test could weigh up to 500, the training course 200, the psycho-technical test 200, the experience 60, the training 30 and the publications 10.

[369] Participants can change their territorial preference on the list each month.

has included a different number of mathematical questions or has had a different – but consistently high – weight in the final score. These variations show the extent to which bureaucrats in office have broad powers to define what will be evaluated and how. In particular, I would argue that none of the stages and their subcomponents are self-evident. For example, it is debatable whether mathematical skills are required to be a good judge, just as whether a standardized test is ideal for measuring a participant's ethical behaviour.

It is also worth noting that the law indicates that there should be a new competition every two years. However, the actual average lapse between one competition and another is five years. In fact, as I explained in Chapter III, the latest competition (Competition 27) was temporarily suspended in 2020. All participants had to retake the standardized test and the results of the new test were only published at the beginning of 2023. It is estimated that it will take about eight years for the competition to be finalized. These delays are due to many factors: a sea of lawsuits from disgruntled participants, technical errors in the evaluations, suspicions of corruption throughout the competition, or operational difficulties within the Superior Council of the Judiciary. Whatever the cause, the result is that the legitimacy of competitions is constantly undermined, while waiting times become endless. The popular adage is that the lifespan of a Colombian jurist is only two judicial competitions.

2.2. The Findings

Women represent half of the active members of the legal profession in Colombia. How is this qualified labour pool reflected in the competition data? If women were not half of those selected at the end of the competition, at what exact point are we losing women's participation? Where is the pipeline leaking?[370] With these questions in mind, I collected information on the last two merit-based competitions: Competition 22 of 2013 and Competition 27 of 2018. I studied all stages of Competition 22. In the case of Competition 27, I was only able to review the first two stages (registration and the first round of standardized academic test scores) before it was suspended.[371]

[370] The *leaking pipeline* is a metaphor regularly used to refer to the process in which women abandon or are excluded from a certain educational or professional path, especially before reaching senior positions. In STEM careers, for instance, the pipeline metaphor seeks to visualize women's journey—interrupted in many stages—from primary school to the highest positions in the profession.

[371] Annex 5 describes in more detail each stage of the competition and contrasts the differences between Competitions 22 and 27. It is important to remember here, as I explained earlier, that the first round of the standardized test in Competition 27 was cancelled and all participants had to retake the test. In this thesis, I only examined the scores of the first round, although I must say that the results of the second round were quite similar to those of the first round or even more worrisome in terms of gender disparities. For instance, as in the first round, it was also true in the second

After analyzing these two competitions, my findings are threefold. First, women perform worse than men in the academic standardized tests. Second, women perform slightly better than men in the general section of the training course. The last finding is a phenomenon of "self-exclusion": women do not compete for the highest positions (tribunal courts) in the same proportions as they do for the lower positions. Let us look at the results of each stage to identify the source of these findings.

Open Registration

Since the registration is open and the legal profession is quite big (334,508 jurists with professional licenses in 2021), the initial pool of competitors is considerable. Competition 22 had 36,281 registered participants (53% women) and Competition 27 had 44,824 (53% women). As we can see, women were in the majority in both competitions. Nevertheless, they are unevenly distributed at the different judicial levels. Women represent a majority in municipal and circuit courts, whereas men represent a majority in tribunal courts. For instance, in Competition 22, women represent 56% and 55% in municipal and circuit courts, respectively, whereas in the tribunal courts, they represent 42% (Figure 7). Hence, there appears to be a "self-exclusion" of women for tribunal positions because there are no apparent reasons to explain such a significant difference (14%) between the lower courts and the tribunal courts.[372] There is no public data on non-binary or transgender participants.

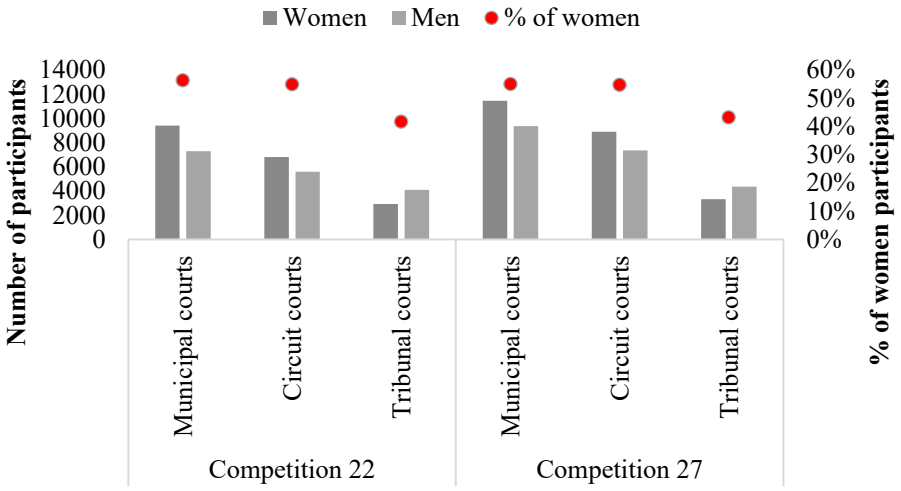
Admission

Information on admissions is available only for Competition 22 because Competition 27 was suspended before the stage of admission. In this case, I found no significant difference between women and men regarding the percentage of admitted participants (76% admitted women and 77% admitted men). Nor did I find that the admissions stage changed the proportional participation of women in the competition: women represented 47% of the participants before admissions and 46% after admissions.

round that the proportion of registered women (53%) was much higher than the proportion of women who passed the test (38%). In the same vein, in the second round, 17% of men passed the test, whereas only 11% of women passed.

[372] To apply to the tribunal courts, a participant needs only eight years of experience. There are plenty of women to meet this requirement if we consider, for example, that women have made up half of all law students since the 1980s. See Chapter IV in this regard.

Figure 7. Gender distribution by judicial levels in competitions 22 and 27



Source: prepared by the author, based on data from the Superior Council of the Judiciary.[373]

Standardized Academic Tests

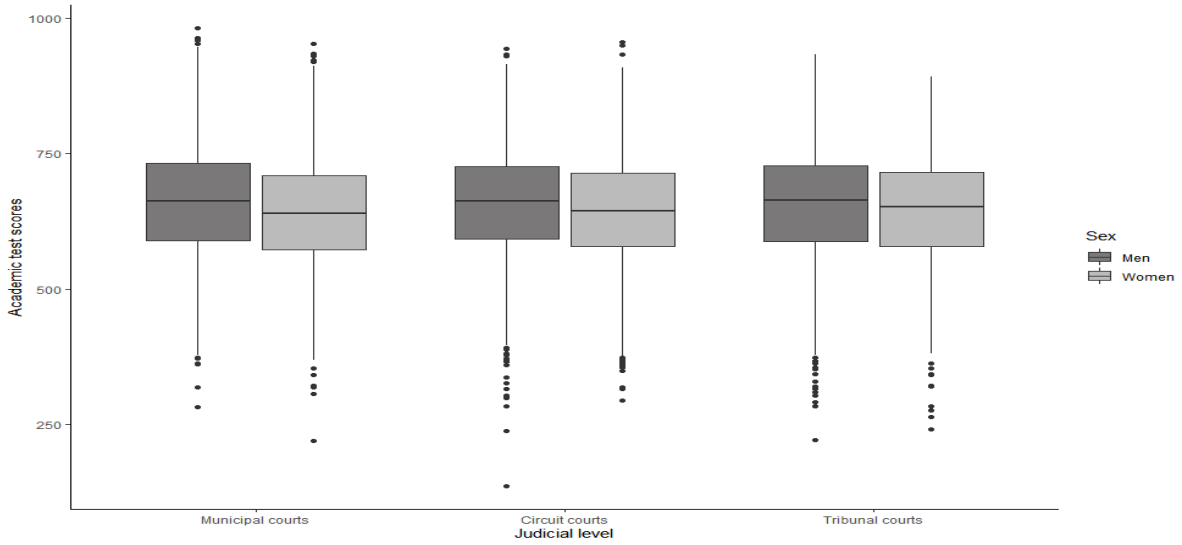
These tests are eliminatory and take place at the start of the competition. This means that those who fail the test cannot continue to the next stages of the competition. The final weight of the standardized tests varies according to each competition, but it has usually been worth between 40% and 50% of the final score. This weight is exceptionally high if we consider that it is a test that only assesses a specific type of reasoning: that of those who know how to race against time and choose between closed multiple-choice questions. This kind of reasoning is arguably not even that fundamental for selecting judges who should mainly have high writing and oral skills. The passing score for the tests has also varied over time, but it was higher than ever before in the last two competitions, with a passing score of 800/1000. For these reasons, the tests have always been highly selective. The general passing rate in Competition 22 was 3,7% (3% among women and 4,6% among men) and 8% in Competition 27 (5,7% among women and 10% among men).[374]

[373] Superior Council of the Judiciary, "Funcionarios de carerra de la rama judicial - Convocatoria N° 22", (2018), online: *Unidad de Administración de Carrera Judicial - Consejo Superior de la Judicatura* <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/funcionarios-de-carrera-de-la-rama-judicial-conv.-no-22>; Superior Council of the Judiciary, "Convocatoria 27: Funcionarios de Carrera de la Rama Judicial", (2022), online: *Unidad de Administración de Carrera Judicial - Consejo Superior de la Judicatura* <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/convocatoria-27-funcionarios-de-carrera-de-la-rama-judicial>.

[374] Studies by Arbeláez and Dumez refer to the high selectivity of previous competitions. See Arbeláez de Tobón, *supra* note 74 at 141; Dumez Arias, *supra* note 74 at 58.

Data reveal that women performed worse than men in this eliminatory stage of the competition. Figure 8 shows that the median score (represented by the line inside each box) for men was higher than the median score for women in Competition 22.[375] For instance, the median was 662,25 for men and 640,01 for women in municipal courts. The higher performance of men is also reflected in their passing rates: in the municipal and circuit courts, more men passed the test than women. Interestingly, in tribunal courts, more men passed the test and more men failed it.[376] Unfortunately, the Superior Council of the Judiciary did not have disaggregated information on the performance of women and men in the different sub-components of the test.[377]

Figure 8. Mean difference by gender in academic tests – Competition 22



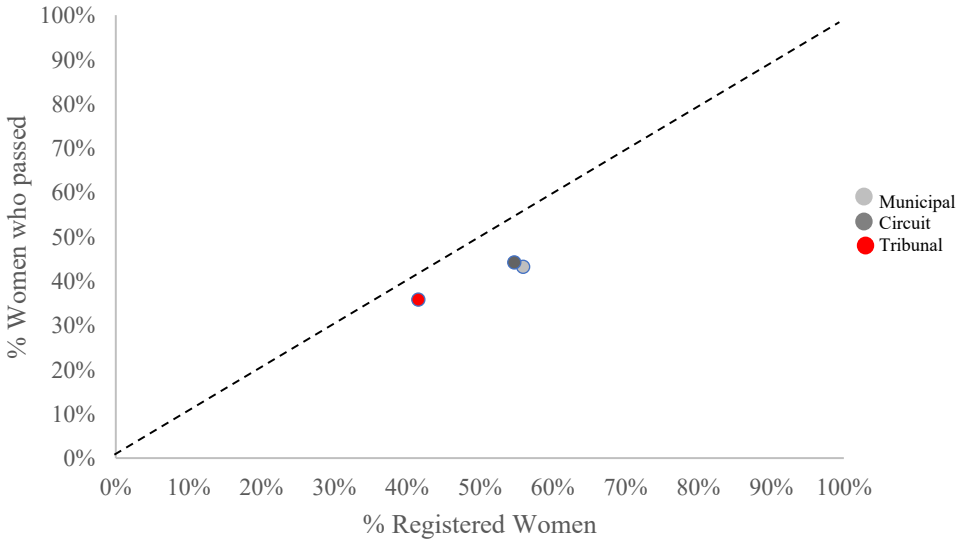
Source: prepared in co-authorship with Sofía Carrerá Martínez, based on data from the Superior Council of the Judiciary. [378]

These performance differences produce a gap between the proportion of registered women and the proportion of women who passed the test, particularly in the tribunal courts. Figures 9 and

[375] In municipal courts, the mean difference favouring men is between 15,7 and 23,6 points. In circuit courts, the mean difference is between 9,6 and 19 points, with men having a higher average performance than women. And in tribunal courts, the mean difference (favouring men again) is between 5,5 and 17 points.
[376] In municipal courts, more men passed the test than women with a difference in proportions between 8% and 18%, and more women failed the test than men with a difference between 15% and 17%. In circuit courts, more men passed the test with a difference between 4% and 18%, and more women failed the test than men with a difference between 10% and 13%. In tribunal courts, more men passed the test than women with a difference in proportions between 19% and 37%, and more men failed the test with a difference between 13% and 17%.
[377] Superior Council of the Judiciary, *Response to information request CJO22-3196* (2022).
[378] Superior Council of the Judiciary, *supra* note 373.

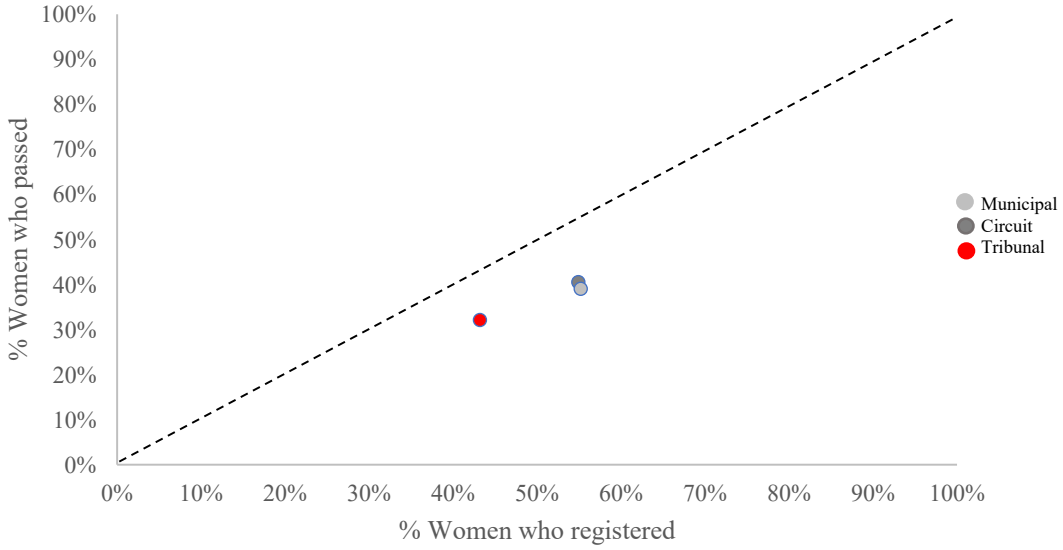
10 compare the percentage of registered women (*x*-axis) with the percentage of women who passed the academic test (*y*-axis). The line that crosses the graphs shows an ideal relationship between both axes, where the percentage of women who passed is similar to the percentage of registered women. When the dots appear below the line, it means that the test is blocking more women than men applicants, as is the case here. For instance, in Competition 22, women represent 42% of the pool of registered participants for tribunal courts and 36% of the participants who passed the test. Similarly, in Competition 27, women were 43% of the registered participants for the tribunal courts, but only 32% of those who passed the test.[379] In simpler terms, the municipal and circuit courts had a clear majority of women before the exam and had a majority of men *after* the exam. Tribunal courts already had a markedly men majority at the registration stage that increased further after the exam.

Figure 9. Registered women versus women who passed the academic test – Competition 22



[379] As I have insisted before, I chose not to focus on gender differences by area of law, but I would invite future researchers to add such variables to the findings presented here.

Figure 10. Registered women versus women who passed the academic test – Competition 27



Source – Figures 9 and 10: prepared by the author based on data by the Superior Council of the Judiciary.[380]

Some judicial positions within these hierarchies show particularly pronounced differences. For example, for the *specialized circuit criminal judge* position in Competition 27, women represent 41% of the registered applicants and only 20% of the participants who passed the test. Another example is that of *civil circuit judge* positions, where women represent almost half (48%) of the registered participants, but their participation decreases substantially (to 31%) after the test. Perhaps the most transparent case is that of the *single-chamber tribunal justices*: women were already a minority among those registered (35%) and their proportion was significantly reduced (to 7%) after the test. In fact, among the 25 positions open to competition, only one (*tribunal justices for family chambers*) shows a difference in favour of women (of only 1%).

These findings on the differential selectivity of the standardized tests are hardly novel. A 2009 study conducted by Lucía Arbeláez, who was a justice of the Superior Council of the Judiciary at the time, contains similar results. The data she collected on previous competitions (from 1996, 1997, 2002, and 2006) show that the proportion of registered women was always much higher than the proportion of women who passed the standardized tests.[381] Her study also

[380] Superior Council of the Judiciary, *supra* note 373.

[381] Arbeláez also shows particularly marked cases. For example, in the standardised test for justice of the disciplinary chamber (Magistrado de sala disciplinaria del consejo seccional) in the 2002 competition, women represented 49% among registered participants and 19% among those who passed the test. Something similar (though less pronounced)

shows that women's average test scores were, for almost all positions, slightly lower than that of the men participants.[382]

Remaining Stages: Psychotechnical Test, Training Course, and Inclusion on the List of Eligible Candidates

Gender differences are less marked in the remaining stages of Competition 22.[383] Regarding the training course, I found that a fraction of the participants who passed the test were unable to attend all the sessions, but it seems there are no gender differences in this respect. Moreover, although the training course is not selective (very few participants do not pass the course), I did find that women had, on average, a slightly better performance than men in the scores they received throughout the course (Figure 11). In particular, I found that the difference in means was significant in the general section (a section worth 50% of the course), with women obtaining on average higher scores than men in the municipal and circuit courts.[384] However, these performance differences are minor and do not contribute to significantly improving women's positioning in the list of eligible candidates.[385] I found no differences in the other components of the course.

On the other hand, there are no significant differences in performance for any of the other components of the competition (i.e. psychotechnical test scores, publications, professional, and additional training). The only exception is the professional experience item, where women tend to score slightly higher than men among participants for circuit positions. Concerning the list of eligible candidates, I found no differences between men and women in terms of the place they occupy on the list for municipal and tribunal courts. However, I did find significant differences among candidates for circuit courts, favouring men.[386]

occurred in the competition for the same position in 1996, where women represented 38% among registered participants and 27% among those who passed the test. Arbeláez de Tobón, *supra* note 74 at 141.

[382] *Ibid* at 143.

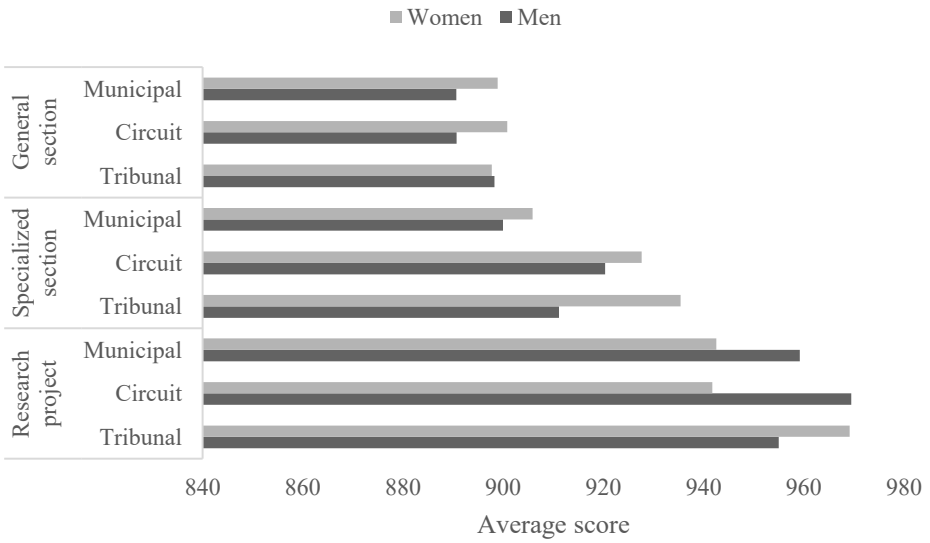
[383] The training course has a general section and a special section. Grades come from: several reading quizzes, participation grades, oral exams, a virtual internship, an in-person internship, and a research paper.

[384] In municipal courts, the mean difference was between 2,57 and 13,93 points, favouring women. In circuit courts, the difference was between 1,5 and 18,6 points favouring women as well. In tribunal courts, there were no significant mean differences.

[385] The composition of the instructors of the Competition 22 training course was as follows: 65% were men, 87% were tribunal court justices and 55% were men tribunal court justices. Escuela Judicial Rodrigo Lara Bonilla, *Response to information request EJO20-1452* (Escuela Judicial Rodrigo Lara Bonilla, 2020).

[386] In circuit courts, the differences in means for men are between 1,9 and 13 points higher than for women.

Figure 11. Scores by gender and hierarchy in the judicial training course (Competition 22)



Source: prepared by the author, based on data from the Superior Council of the Judiciary.[387]

The final step of the process goes from being included in the list of eligible candidates to actually being appointed. Many participants are included in the list of eligible candidates but occupy very distant positions or put their names forward for highly sought-after municipalities. These conditions make it unlikely that they will ever get an appointment. Put another way: the position on the list and the chosen municipality are crucial. Unfortunately, I was not able to obtain information on this matter in time, but it is certainly an aspect that deserves careful examination.

The study by Justice Arbeláez provides information in line with these findings. She shows that women tend to score slightly higher than men in terms of experience, publications, and additional training. Furthermore, women score slightly higher than men in the interview stage – a stage eliminated after the 2007 and 2008 competitions.[388] On the other hand, Justice Arbeláez did collect data on the participants that were finally appointed after being included in the list of eligible candidates. Her findings are inconclusive: sometimes, the percentage of appointed women is lower than the percentage of women who passed the exam, and sometimes the data points to the opposite

[387] Superior Council of the Judiciary, *supra* note 373.
[388] Arbeláez de Tobón, *supra* note 74 at 143.

trend. In any case, the percentage of *appointed* women was always lower than the percentage of *registered* women.[389]

Overview of the Results

After reviewing all stages of the competition, my conclusion is that the pipeline leaks mainly at the academic test stage. In general, there is not much difference between men and women who do pass the academic test in terms of their scores, but the problem is that far more women than men fail the test (which, as I mentioned earlier, is an eliminatory stage). The test is by far the most selective filter of the competition and it is the exact stage in which the gender composition changes from a majority of women to a majority of men, as shown in Figures 12 and 13.

This overview takes me back to the three clues that opened this section. All three clues pointed to the same conclusion: although formally neutral, meritocratic competitions could have disparate impacts on women. The data I presented here follow this same thread: first, women perform worse than men in what is supposed to be the most objective or (gender)blind component of the competition, namely the standardized test. Second, contrary to what is sometimes assumed in the legal literature, women perform better than men in some components with higher margins of subjectivity and where the gender of the participants is known to the examiners (i.e. the interviews and the general section of the training course). Third, there is a 'self-exclusion' of women for tribunal positions.[390]

[389] There was only one exception to this trend, and that was the case of the participants for the position of justice at the administrative chamber (Magistrado de sala administrativa de consejo seccional) in the 2002 competition. Women represented 49% of registered participants, 68% among those who passed the test, and 70% among those who were finally appointed. *Ibid* at 144.

[390] There is still much to understand about this self-exclusion from court positions, but we do know a little more about the (even more marked) self-exclusion for high courts. See, for example, Isabel Cristina Jaramillo Sierra, "'Serán los mejores': un mal argumento para explicar por qué no debería contar el género en la elección de magistrados en la Corte Suprema de Justicia", *Semana* (15 October 2021), online: <https://www.semana.com/opinion/articulo/seran-los-mejores-un-mal-argumento-para-explicar-por-que-no-deberia-contar-el-genero-en-la-eleccion-de-magistrados-en-la-corte-suprema-de-justicia/202100/>; María Adelaida Ceballos-Bedoya, "Mujeres y altas cortes: reflexión sobre una ausencia", *Ámbito Jurídico* (9 June 2022), online: <https://www.ambitojuridico.com/noticias/columnista-impreso/mujeres-y-altas-cortes-reflexion-sobre-una-ausencia>. Similar patterns of exclusion of women have been found in relation to the meritocratic competitions of some public universities, the office of the Comptroller General and the National Registrar's Office. See Carlos Arciniegas et al, "Cambios en la Registraduría: ¿y las mujeres?", (23 July 2023), online: Razón Pública <https://razonpublica.com/cambios-la-registraduria-las-mujeres/>.

Figure 12. Number of participants by gender in each stage – Competition 22

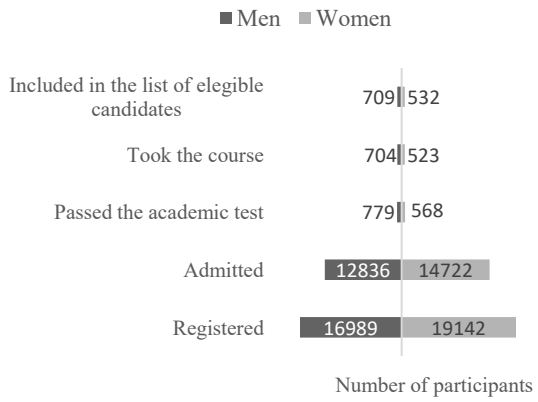
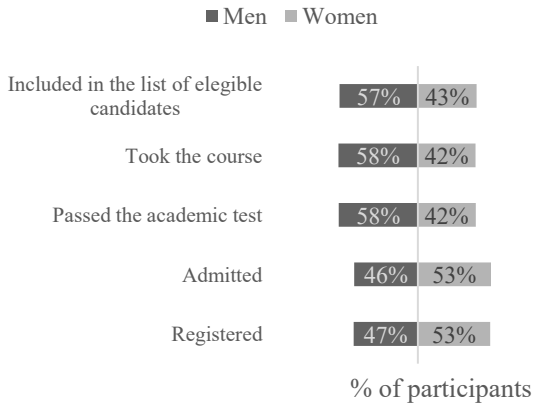


Figure 13. Percentage of participants in each stage – Competition 22



Source – Figures 12 and 13: prepared by the author, based on data from the Superior Council of the Judiciary.[391]

However, the scope of these results and the conclusions drawn from them are necessarily limited. To begin with, there is no data available either on participants with diverse gender identities or on other critical socio-demographic characteristics of participants, such as race, age, or disabilities. Moreover, the data do not tell us why there might be disparities in performance between men and women. Nevertheless, these limitations should not disturb our inquiry. They are, on the contrary, the warning call that invites the qualitative approach to enter the scene. Indeed, the qualitative data I discuss below allow us to understand why it is important to remember that there is a concrete story of triumph or misfortune behind every number.

[391] Superior Council of the Judiciary, *supra* note 373.

3. The Excluded (Type A)

I spoke to a woman municipal judge from a small town in the Andean mountains. Although she obtained her current position through meritocratic means, she has not been able to pass the competition again in order to reach a higher position. She tells me that she urgently needs to improve her economic status and social prestige. Not only was she recently divorced, but she was also involved in a local (amorous) gossip that discredited her reputation in the eyes of the appointing justices – something that did not happen to men colleagues who were involved in a similar situation. "Why did nothing ever happen to them? […]. I say: it was because it was me! But if I had been a man, nothing would have happened. Everything would still be the same."[392] For her, the meritocratic competition appears to be her only chance of promotion because appointers will never forget what they once heard about her.

Another woman interviewee spoke about the perplexing dissonance between her professional career and her *individual* performance in the competitions. She has been often hired by the judiciary to write textbooks or teach training courses for new judges, yet she has not been able to pass the standardized test to become a tribunal justice. Her diagnosis is the following:

> It seems to me that I have been inadequately graded because I study, and when I study, I am sure why the correct answer is one and not the other four. [...] I spend every hearing risking everything, so I am very hard on myself all the time. I think there has been a poor level in the way the questions are formulated, the way the questions are posed and the options, so sometimes you see that the answer is not there [in the test]. [...] In other words, the fact that the National University had, so to speak, reversed its position, that is not for free. This is because several of the contestants, supported by experts, made the University see that many, many, almost 70% of the questions were wrongly posed.[393]

The two interviewees may seem radically different, but they both shared the shadow of dismay at the failures they have faced despite their individual efforts. These are two of the many stories I collected about *Excluded* women – i.e. women who have not succeeded in meritocratic competitions. I selected these two opening stories because they mirror the two essential features of meritocracy described at the beginning of this chapter: the disregard for background conditions and the politicized nature of 'merit.' In this section, I will delve deeper into these problems, but

[392] Participant WomanJMA9.
[393] Participant WomanJMA10. She is referring to the Competition 27 standardized test whose quality (according to her) was so poor that it had to be annulled.

this time narrating how they become palpable in the daily lives of participants. I argue that many outstanding women, as well as other members of disadvantaged groups, are disproportionately excluded from the competitions. This is due to two factors: a) although they have the talents that the judiciary rewards, they lack the (social and economic) capital to prepare for the competition adequately; or b) they have professional skills (i.e. cultural capital) that simply do not fit the current definition of judicial merit.

3.1. Time Poverty and Care Responsibilities: Perfect While Sleeping

Not all individuals – as is the case of women caregivers – have the same time and energy to adequately prepare for meritocratic competitions. The time constraints that many women experience have both long and short-term effects on their chances of passing the meritocratic competition. In the long term, they face many obstacles in accessing postgraduate programs that allow them to strengthen their legal knowledge and networks.[394] In the short term, women find it challenging to study for and during the competition. Consequently, many women fail to pass the competition or get low scores, hence affecting their chances of being appointed. And even when they pass with outstanding scores, their achievements are often associated with high personal costs that men in the same position do not have to pay (e.g. less sleep or more marital problems).

Time poverty primarily stems from the sexual division of labour that I described in Chapter II: there is a collective expectation that women will fulfill the dual work/domestic role, which necessarily entails that they have less time to rest and study than men. Although I do not have specific data on the distribution of work in the legal profession, it is helpful to review the national data: 90% of Colombian women participate in unpaid work activities, with an average of 7:46 hours per day, which is in stark contrast to the situation of men with 63% participation and 3:06 hours per day.[395] In fact, as I have insisted throughout this thesis, Colombia has one of the highest levels of paid and unpaid female working hours globally.[396]

---

[394] One might think that these differences also affect their professional experience and publications, but I found no difference in that regard either in the quantitative data or in the interviews.

[395] See *Encuesta Nacional de Uso del Tiempo*, by Departamento Administrativo Nacional de Estadística (Bogotá: DANE, 2021).

[396] Iregui-Bohórquez et al, *supra* note 27 at 68. The same report quotes: "Olarte & Peña (2010) find that having children in Colombia increases women's unpaid care time and domestic work, even if they are already in full-time employment.". *Ibid* at 70. [Translated by author].

The burden of the 'double shift' seems particularly overwhelming for women already in the judiciary, where working hours are very long and procedural deadlines cannot wait. Moreover, the number of assigned cases is often "inhumane", as a woman interviewee said.[397] But even with these time and energy constraints, women in the judiciary take on more care responsibilities than their men colleagues. This situation became particularly evident during the pandemic: 64% of women in the judiciary state that working from home generated more care work for women, whereas only 20% of men shared this view. In contrast, only 0.3% of women and 16% of men believe that the pandemic generated more care work for men.[398]

As many interviewees confirmed, the unequal division of domestic labour brings very high costs for women. Some women feel that they have to "steal" time,[399] as it were, from their work and professional training in order to attend to their domestic duties (e.g. they miss work on Friday afternoons or constantly ask for permission to leave early or arrive late, and they then have to find ways to compensate for that time). These limitations explain why some women choose judicial positions in intermediate or small municipalities, as this allows them to take care of their children or elderly parents more easily. A woman participant told me about her experience as a discretionary judge and a single mother in a small municipality:

> The value of being in these small municipalities is that, because it was so small, I worked at the courthouse and I had the intercom (that's what it was called back then) here in the courthouse and when [my son] cried I would run out, bottle-feed him, give him I don't know what, give him food, and I would go back to the courthouse, and leave him there because it was two, three houses away.[400]

The workload in this court office was light, but domestic burdens of this kind imposed many obstacles for a woman seeking a meritocratic appointment. [401]

"A woman in the [judicial] branch cannot marry or have children" if she wants to succeed and live a comfortable life, said a man participant.[402] And if she is a woman who already has care

---

[397] Some judicial offices handle more than 1,000 cases.
[398] *Experiencia del trabajo en casa en la rama judicial con perspectiva de género*, by Consejo Superior de la Judicatura (Bogota: Consejo Superior de la Judicatura, 2021). On file with the author.
[399] Participant WomanJLL2.
[400] Participant WomanP4.
[401] It should be noted that studies show that, although many women pay to delegate their caregiving tasks, it does not mean that they do not bear all the "mental load", the exhaustion, and the guilt. See Anne Revillard et al, "Gender, class and bureaucratic power. The production of inequalities in the French civil service" (2018) 20:20 Revista Internacional de Organizaciones 39–57 at 52. These authors also underscore that "[…] this care work does not taper off as children get older. To the contrary, the norm of the mother-educator expected to supervise her children's homework […] is a significant burden on this population." *Ibid*.
[402] Participant ManJLL2.

responsibilities, she will face the meritocratic competition under very different conditions than her men colleagues. For example, a justice shared his recipe for passing the competitions with one of my interviewees: he booked a hotel room every weekend so that he could study in silence, while his wife took care of the children at home. It is unlikely that a woman could tell the same story. In fact, very few men talked about their caregiving tasks unless explicitly asked about them in the interviews. In contrast, among women, the subject came up spontaneously, and many even defined their work trajectory based on the stages of their children's growth (e.g. "I started working when my second child was born").

Additionally, it is more difficult for women not only to study before the competition but also to study for the judicial training courses. These courses are held for a whole year on weekends and are only offered in a few major cities, which puts a particular strain on women caregivers from peripheral municipalities. The training course is so demanding in terms of time and energy that several interviewees described it as "an endurance test",[403] exhausting for pregnant women, and extremely challenging for "women who don't have supportive husbands."[404] Another interviewee said: "the [judicial] branch forgets that you just... no matter how many aspirations you have, you can't stop being a mom anyway."[405]

Unfortunately, the formal rules of the judiciary are silent regarding these exclusions. In general, there are no conditions for caregivers to attend to their domestic roles; and, in particular, current meritocratic policies do not establish differential measures for people with economic needs, with care responsibilities, or residing in remote regions. Moreover, formal rules are reinforced by informal rules in the judiciary – and the legal profession – that exclude women caregivers and discourage men who seek to take on their share of domestic duties. In Chapter II, I referred to the role of law in the construction of these gender identities that associate women with care and dependency,[406] and the internal rules of the judiciary and the merit competition do not lie outside this pattern.

I thus argue that, although meritocratic policies establish facially neutral conditions for all participants, they have discriminatory effects (disparate impacts) on certain groups.[407] Among

[403] Participant WomanJMA11.
[404] Participant ManJMA2.
[405] Participant WomanJMA9.
[406] Buchely Ibarra, *supra* note 173 at 192.
[407] As Kenney explains: "Employment discrimination analysis uses two categories, disparate impact and disparate treatment. […]. Employers can justify using such a criterion, once it is shown to have a disparate impact on women,

these disadvantaged groups are men and women from lower-class backgrounds and certain territories. But, as the above analysis shows, these impacts are exacerbated for women caregivers. This disparate impact also reveals that the merit competitions are not governed by entirely neutral criteria that ensure the selection of 'the best': a sea of excellent jurists is excluded from the judiciary, not due to their lesser talents but a sum of unequal opportunities.

Time poverty and the unequal distribution of domestic work are widespread problems in the profession, as is widespread the negative impact of these phenomena on women's performance in merit competitions. However, jurists tend to perceive women's 'failures' as individual problems.[408] I have tried to show here and will continue to explain below that these so-called failures are, in most cases, a consequence of the disadvantaged positions of women in the bureaucratic field. As Wright Mills would put it, *private troubles* often reflect *public issues* that are extremely difficult to combat individually. Perhaps this is why it was frustrating to return to my field notes and find them shrouded in the dense fog of women's disappointment at their *individual* 'failures'. Women are burdened by expectations that demand them (but not men) to succeed in their multiple roles:

> Women have always been demanded much more. Women have to be more disciplined, women have to take care of their families, be good housewives, play a role [in the workplace], be good mothers, okay? Be good at everything, be good at everything! […] It's not fair because you realize the freedom with which men behave. They don't play all those roles that we play. We have to be... Ah, if the house is not well tidy, whose fault is it? The woman's! So the woman is being forced to do that. To be good all the time. I don't even think we rest when we sleep. Even when we are asleep we have to be good at everything. [409]

I should note that the obstacles I have described so far do not affect all women equally. Single caregivers, from lower classes and peripheral regions mostly bear the brunt of merit competitions. For instance, women with greater economic capital can hire someone to help them with their care duties while working, preparing for the competition, or attending training courses. The situation is also more favourable for women who have high social capital even without considerable economic

---

if it is a business necessity for the job." See Sally J Kenney, "Choosing judges: a bumpy road to women's equality and a long way to go" (2012) 2012:5 Michigan State Law Review 1499–1528 at 1504.

[408] Although these are contexts with different characteristics from Colombia's, other studies on the legal profession have also documented the effect of the double shift on women. See, for example, Hilary Sommerlad, "The Myth of Feminism: Women and Cultural Change in the Legal Profession" (1994) 1:1 Int'l J Legal Prof 31–54 at 42.

[409] Participant WomanJLL2.

capital. That is: they have strong support networks of friends and family who help to ease their care responsibilities.[410] But some women do not have enough of either form of capital, as confirmed by several interviewees.

3.2. The Rise of "Testocracy": Accumulated Educational Inequalities and Diverse Kinds of Cultural Capital

Time poverty affects women caregivers, but this reason does not seem to be sufficient to explain the systematic access problems of women (caregivers or not) that the quantitative data revealed. There are at least two additional explanations for these problems. First, women often have a cultural capital that is not adequately valued by meritocratic competitions in general, and standardized tests in particular. Second, most women accumulate educational inequalities associated with their gender (and other characteristics). The two explanations are intimately connected, to the point that it is not always possible to separate one from the other.

Let us begin with the debate on undervalued cultural capital. As I suggested above, the definition of merit is rich in its diversity. Therefore, there is no univocal or obvious definition of what we mean by merit (or by competence, talent, and much less by 'good judge'). Nevertheless, meritocratic competitions in general – and standardized tests in particular – tend to privilege a certain type of merit and certain type of abilities. Consequently, most of the competitions only manage to make a partial, incomplete assessment of the participants' skills. Not only that: these skills are neither the most common in underprivileged groups, nor the most indicative of an individual's suitability to excel in a particular job.[411] In the specific case of standardized tests, research has largely shown – not without a Gilliganesque fragrance – that they primarily reward the ability to choose quickly and under pressure among a few superficial options. These strengths are not usually encouraged in women's upbringing. Existing studies in this regard do not seek to be essentialist, but simply to show that women are often socialized with different standards than men and, hence, different skills.[412]

---

[410] Several of my interviewees said that many women in the judiciary would not have been able to advance professionally had it not been for the ongoing support of their mothers, something I discuss again in the next section.
[411] In a previous study on administrative jurisdiction in Colombia, several interviewees also stated that judicial meritocratic competition (and the test in particular) were not suitable tools for selecting the best judges. See Restrepo Medina & Aprile, *supra* note 74 at 146–147.
[412] See, for example, Katherine Baldiga, "Gender Differences in Willingness to Guess" (2013) 60:2 Management Science 434–448; Jo Littler, *Against Meritocracy. Culture, power and Myths of Mobility* (London and New York: Routledge, 2018).

But meritocratic competitions not only fail to adequately value the skills that are usually cultivated in women, but they also exclude those who had fewer educational opportunities. These individuals may be intelligent and hard-working, but a sum of inequalities related to their origin did not allow them to acquire the cultural capital that is usually found in the best educational institutions. These inequalities are associated with their social class, gender, and race, among other categories. Here we also find plenty of evidence showing that the children (especially girls) of families with less economic and cultural capital are less likely to receive a good quality education. Therefore, they are less well-equipped to pass merit-based competitions and access the best job positions. The possibilities for mobility are even more remote for racialized women, whose social and educational inequalities are deeper than those of other more privileged social groups. There will be those who will win the meritocratic race despite these adverse conditions, but they will be few, and they will do so with disproportionate sacrifices.

It is difficult, perhaps impossible, to discern which of these explanations (time poverty, diverse cultural capitals, and educational inequalities) cause women to perform worse than men in merit competitions. What seems clear is that standardized tests, in particular, deserve vigorous scrutiny because their disparate impacts on women and other underprivileged groups have been demonstrated in many countries. This is the case for the SAT, Pisa tests, IQ tests, LSAT, and the bar exams in other contexts, as well as the *Saber 11* tests and the admission tests to public universities in the Colombian context.[413] The data described earlier on Competitions 22 and 27 in the Colombian judiciary provides new evidence in this regard.[414]

---

[413] *Saber 11* is the test required to graduate from high school in Colombia. For other criticisms of the disparate impact of standardized tests, see, among many others, Jo Littler, *Against Meritocracy. Culture, power and myths of mobility* (Abingdon, UK: Routledge, 2017)., Mauricio García Villegas & José Rafael Espinosa, *Separados y desiguales. Educación y clases sociales en Colombia* (Bogotá: Dejusticia, 2013); Elizabeth Guerrero Caviedes, Patricia Provoste Fernández & Alejandra Valdés Barrientos, "Acceso a la educación y socialización de género en un contexto de reformas educativas" in *Equidad de género y reformas educativas Argentina, Chile, Colombia, Perú* (Santiago de Chile: Facultad Latinoamericana de Ciencias Sociales –FLACSO– Buenos Aires y Instituto de Estudios Sociales Contemporáneos –IESCO– Universidad Central de Bogotá, 2006) 7. Guinier states that a thorough study by Hiss and Franks "found that students who perform well in college were the ones who had gotten strong grades in high school, even if they had weak SAT scores. They also found that students with weaker high school grades did less well in college-even if they had stronger SAT scores", therefore the SAT "is actually more reliable as a "wealth test" tan a test of potential" See Guinier, *supra* note 352 at 30.

[414] Standardized tests not only tend to disadvantage women (especially women from lower classes), but also underpredict women's performance in the training course. This is known as the *female underprediction effect.* Several studies demonstrate that standardized tests not only tend to disproportionately exclude women but also underpredict their academic or professional performance. This *underprediction effect* was found, for instance, in relation to the SAT: although women tend to score lower than men on these tests, they typically earn higher grades throughout college than their men classmates. See Kristen C Kling, Erik E Noftle & Richard W Robins, "Why Do Standardized Tests

Due to their incompleteness and systematic unequal effects, standardized tests should not be used as ultimate indicators of academic excellence or as elimination criteria in any selection process. Especially in an institution as important as the judiciary, these tests should not be implemented without an initial critical analysis of: what skills are being tested (and why); what weight the test should have in the final score; which groups are being excluded; and what can be done to ensure equal opportunity for those groups. Otherwise, to put it in Lani Guinier's words, we are perpetuating a *testocratic* instead of a democratic type of merit.[415] That is: a merit system that privileges test results, with little concern for considerations of suitability and inclusion.

The vast majority of my interviewees are not aware of the evidence on the disparate impacts of standardized tests. However, many of them believe that the current design of the test is not suitable for selecting 'the best' or even good judges. For them, the test is insufficient because it does not measure the ethics, oral and written skills, or social abilities of the participants, all of which are essential components of judicial duties. Many even believe that the winners of competitions are not the more experienced and knowledgeable jurists, but rather those who have learned the tricks for answering multiple-choice questions. For them, the winners are those who best know the test, not the law. Moreover, many participants say they are not even clear about which skills the judiciary would like to privilege systematically, considering that the content of the standardized tests varies substantially from one competition to another. All this without delving deeper into many of their other complaints about the test: poorly formulated questions, misinformation about the content, transparency issues in the grading process, and a long etcetera.

These responses reveal that, after all, participants do recognize that bureaucratic practices surrounding meritocracy do not always operate in a predictable and technical manner, nor do they necessarily serve the purpose of choosing the best judges. On the contrary, these policies are often marked by improvisation, chance, and the interests of dominant groups. However, almost all interviewees were reluctant to acknowledge the possibility that, either in the abstract or in practice, meritocratic competitions could have unequal effects on some individuals who belong to traditionally disadvantaged social groups. Despite all its setbacks, competitions retain an image of objectivity and neutrality that remains remarkably powerful. This image is reinforced by the

Underpredict Women's Academic Performance? The Role of Conscientiousness" (2013) 4:5 Social Psychological and Personality Science 600–606.

[415] See Guinier, *supra* note 352 at 12.

Superior Council: the calls for applications are published on the institutional website, the tests are designed by a university unrelated to the judiciary, and the scores are public and anonymized. The entire ritual of objective and technical competitions is preserved.

3.3. Those Excluded among the Excluded

As I have insisted throughout this dissertation, there is immense diversity among women. Some of them have many forms of capital that help them bear the burden or even free themselves from many gendered constraints. Other women possess other characteristics that make their journey through the meritocratic race particularly difficult, such as women with care responsibilities and women with a deficit of cultural capital, as I have explained above. However, I would like to close this sub-section by referring to racial minority women – many of them from peripheral regions – for whom meritocracy's neutral rules are particularly insufficient to guarantee equal opportunities.[416]

Very few of my interviewees – both men and women – self-identified as racial minorities. The general impression among my interviewees is that there are few racialized women competitors and very few racialized women judges. And although many participants could not even remember meeting one of them in their entire careers, their perception is that competition itself is neutral and, therefore, cannot discriminate against racial minorities. Yet, taking into account the literature on racial inequality, we can assume that it is doubly challenging for racialized women to overcome meritocratic competitions. A sound basis for this conclusion is that these women tend to have higher poverty levels and unemployment rates than their men peers or white women. This circumstance alone has multiple implications that I have already discussed – e.g. access to lower quality legal education, inability to enrol in postgraduate studies, or difficulties in delegating care responsibilities.

Perhaps one of the most dramatic cases I found in this regard is that of the jurists from San Andres, an island in the Caribbean Sea. Many of these jurists belong to the island's racial minority called *Raizal*. No one on the island manages to pass the standardized test. And, when they do pass, they have to travel to the mainland (paying for their airplane tickets and accommodation)[417] to take

[416] Very little has been written about the intersection between gender and race in the legal profession, not only in Latin America, but in the Americas more generally. However, Meera Deo's approach to women of colour in the US legal academia is useful for reflecting on the immense challenges that this intersection brings. See Meera E Deo, *Unequal Profession: Race and Gender in Legal Academia.* (Redwood City: Stanford University Press, 2019).
[417] Air tickets alone from San Andres to Bogota can cost a third of a minimum monthly salary.

the training course. As of today, no one on the island has been able to win the competition. Therefore, *all* current judges and justices on the island hold discretionary appointments.[418] Of course, men are also severely affected by these exclusions. However, coupling these facts with the reasons I have outlined here, in this case, inequalities tend to accumulate more markedly for women.

The islanders are still waiting for the Superior Council of the Judiciary to take structural measures that will help them win the competition. They still do not give up despite the institutional neglect they have historically endured. As a man justice told me: "We [the islanders] are *Hijos del Cañaveral*." He was referring to an honest song by Puerto Rican singer Residente: "We are all that survives / We are the fermented cane of the Caribbean / But though history lashes us / We are like a glass bottle that knows how to float."[419]

* * *

Before moving on to the next section, I would like to emphasize the high cost that failing in the competition brings for any participant. Each competition takes a long time, therefore failing can postpone a person's mobility dreams for at least seven to ten years. For people in precarious conditions, these waiting times seem infinite. It is precisely because of the likelihood of failure and the length of each competition that many jurists seek discretionary appointments. As I suggested in the previous chapter, the closeness between meritocratic and discretionary appointments – and the trajectories of their protagonists – is denser than most interviewees are willing to admit.

But *Excluded* women are not only connected to discretionary appointees. They are also connected to what I have called *The Overcomers*. There is, indeed, a flip side to the narrative of *The Excluded* women: the stories of those who succeed in meritocratic competitions, even though they face the same – sometimes less insurmountable – gender barriers. These stories are the focus of the next section.

[418] To be a judge or justice on the island, you have to live there and speak the local language (Creole).
[419] *Hijos del Cañaveral* would translate to *sons (and daughters) of the cane* or a place full of cane. The original lyrics of the song say: "[Somos] Todo lo que sobrevive / Somos la caña fermentada del Caribe / Pero aunque la historia nos azota / Somos como una botella de vidrio que flota".

4. The Overcomers (Type B)

One of the many fortunes this research brought me was the opportunity to interview some of my father's acquaintances. One of them, a (former) woman justice, insisted that being a woman had no impact on her career. The distance of our perceptions moved me: in her story, I could not but see the indelible trace of gender relations.

> I was a single mother, so I had to leave my baby in my mother's care. But well... she died when my baby was only three, and that was very hard because I had to take my baby with me to the town [where I worked], living in precarious conditions. She even got very sick because the water there wasn't even drinkable. [...] When the [meritocratic] competitions began, I already occupied a judicial position through a discretionary appointment. Afterwards, I participated in the competition and won the position I already held. [...] Now I decided to retire to enjoy the time with my grandchildren...because I couldn't enjoy my daughter.[420]

I collected many stories of exclusion and defeat. However, I also found stories of professional success, such as the one of this skeptical participant. It might be true that meritocracy cannot equalize the opportunities throughout the race, but that does not mean that it has not brought benefits for some jurists. Since Chapter I, I have insisted on how this positive side of meritocracy is advocated by some portions of the literature and by most interviewees (although I also mentioned how more and more legal scholars are becoming skeptical of the equalizing power of meritocracy). This section will focus on the reasons or capital accumulation strategies that allow women to *overcome* meritocratic barriers. I will not talk about the most privileged women – whose success perhaps deserves little explanation –, but about women who found in meritocracy a platform for upward social mobility. Analyzing the positive outcomes of meritocracy will be helpful in destabilizing representations that reduce women to mere victims and identifying successful strategies to replicate in the future. At the same time, this analysis should also serve the purpose of showing the costs of success. Costs that are often unacknowledged and imponderable.

4.1. Studying and Working Twice as Hard: Bumpy, Dangerous Roads

One of the most common characteristics among women participants was the time and effort they put into their careers and the competition. This, coupled with their care duties, leaves them less leisure time and less energy than men. A woman justice told me how difficult it was to find time

[420] Participant WomanJLL1.

to study while taking care of her baby boy. She would not allow me to record the interview, but she told me the story of how when she was younger, every day she had to take a bus that took two hours to get to the courthouse and two hours to get back to the city. During those trips, she used to listen to cassette tapes with recordings of classes from a diploma course she had recently taken. That was how she studied for the competition, while only sleeping two hours a day.[421] I close my eyes and think of the Colombian roads in the region where she lives: curvy, bumpy, with guerrillas hiding in every other mountain. Those are hardly the right conditions to concentrate. I heard many other such stories: stories of women who sleep little, study at night and on weekends, and who have to attend night law schools or work in distant villages. It is also important to note that many *Overcomers* bear the scars of the *Excluded:* they have a track record of years of training for (and losing in) competitions. This is an essential part of their recipe for success.

For some interviewees (women and men), the key is, rather than studying hard in general, to study hard for the standardized test. As I explained in the previous section, the test is the first and most selective elimination filter, and it also has a very high weight in the final score of the competition. Those who can become proficient in the test techniques have a much better chance of winning the competition. The problem is that the time required to train for these tests is often unevenly distributed between men and women. In the same vein, some interviewees acknowledged how hard they studied or how talented they are, but also how lucky they have been. Lucky, for instance, because they guessed the correct answers in the test or were assigned the least difficult questions in oral exams. As an ethnographic study by Diana Solano in Cali stated, "the belief about the possibility of winning the competition by luck in several jurisdictions may coincide with the idea held by several interviewees (all justices included) that there is no link between being a good judge and winning competitions […]."[422] Luck may explain why some women with similar profiles and similar amounts of effort obtain different results in the framework of an unpredictable competition. Yet, it must also be said that 'luck' is often how privileged groups call their unacknowledged privileges.

[421] Participant WomanJLL8.
[422] Solano, *supra* note 73 at 128. [Translated by author].

4.2. Taking on the Double Shift and Having Support Networks: Don't Ask Me How I Did It!

My narrative would be incomplete if I did not return to my reflections on the *Excluded*: the recipe for success becomes even more complex for women with care responsibilities. In addition to studying and working hard, they are required to attend to work and domestic tasks equally in order to pass the competitions. For instance, a woman justice recalled how she struggled to train for the meritocratic competitions while raising a child as a single mother and running a judicial office with 1,700 files. "Don't ask me how I did it because I don't know!",[423] she said with bitter laughter. The double shift means that women who want to overcome meritocratic barriers must work twice as hard as their competing colleagues. Moreover, these extra efforts have long-lasting effects: women are so exhausted that they have little energy to move up the judicial hierarchy afterwards.[424] Many of today's *Overcomers* are the "self-excluded" of the future.

Women reduce or eliminate their dual work/domestic role by delegating their care responsibilities to other women. Some can do so because they have the economic capital to hire a nanny or a nurse. Many others turn to their mothers for support while they work, study for the competition, or travel to other cities to take the training course. One interviewee knew that this support was her only option to attend to her daughter and career: "I had to turn to my mother for support. You know that in our culture and I don't know how many others (I think this is universal) one turns to mothers for support." In this vein, the latest United Nations report on judicial diversity emphasized the importance of effective support networks (social capital) in promoting the appointment of more women judges.[425]

In the same line, several interviewees (including some *Overcomers*) pointed to the challenges posed by the fact that competitors have to take the judicial training course while holding other jobs and also have to pay their own travel expenses to the main cities where the courses are held. These challenges are great for many competitors, but are especially marked among women with care responsibilities. One woman interviewed, who was immensely successful in her passage through judicial competition, told me about her struggles to attend the training course, travelling periodically with colleagues from X city to Cúcuta (where the course was taking place), but passing through Venezuela:

---

[423] Participant WomanJLL2.
[424] Participant WomanJLL8.
[425] See UN Special Rapporteur on the independence of judges and lawyers, *supra* note 21 at para 33.

> I travelled with three colleagues in an express car from [X city], passing through Venezuela and arriving in Cúcuta. I'm going to tell you something: at that time, I was an attorney in precarious economic conditions and my mother was with me looking after my daughters, who were studying at school. I am a single mother and I had difficulties because there was a time when I had no money to travel, to stay there [in Cúcuta] or anything else. I even told the [fellow] attorneys: "I'm going to have to withdraw from the competition" and some attorneys told me: "Are you serious?! No, we'll lend you money. You're not going to withdraw from the competition". Those attorneys lent me money and so I went [to the course].[426]

4.3. Focusing Predominantly on Work: A Very High Price to Pay

Especially when they have strong support networks, some women opt for a marked distance from the domestic sphere. Many women who struggle to enter and remain in the judiciary find that an effective strategy is to devote most of their efforts to their work. This strategy helps them reinforce or increase their legal knowledge (cultural capital) and professional networks (social and political capital). The downside of this strategy is that it almost inevitably involves distancing themselves from both their children and their partners, or other persons under their care. Several older women interviewees referred to the "pain of being absent from their children's lives [...] That is very painful. It is a very high price to pay."[427] This statement brings us back to the response of my father's acquaintance. She was a successful justice who now enjoys a good pension, yet she keeps trying to find in her grandchildren the balm for the nostalgia of past (and lost) opportunities with her daughter. As I listen to her interview, I feel that her experience resonates with what Marguerite Yourcenar once said about how happiness is so fragile that *"*quand les hommes ou les circonstances ne le détruisent pas, il est menacé par des fantômes."[428]

Something similar is true for couples. According to my interviewees, marital problems and divorce are quite common in the judiciary for both women and men due to high stress levels and excessive workloads. However, it was the women (particularly women justices) who organically brought these problems to the table during the interviews.[429] For them, the decision to focus on their work may have been effective, but it certainly affected their relationships. In retrospect,

[426] Participant WomanJMA1.
[427] Participant WomanJLL2.
[428] See Marguerite Yourcenar, "L'homme qui a aimé les Néréides" in *Nouvelles Orientales* (Paris: Gallimard, 1981).
[429] Although my sample is not representative, it was interesting to note that 15% of the women interviewees with meritocratic appointments are married, in contrast to 60% of men in the same circumstance.

several of them perceive that their marital problems were not so much due to the fact that they "abandoned" their homes, but because their partners felt somehow threatened by their positions of power. "Here in the house, you are not the judge;" "Do you want me to walk behind you around the house? Behind 'the justice'?".[430] These were some of the phrases their partners would blurt out amid a dispute.

Aware of the cost of having a family and wanting to succeed in the judiciary, many women choose not to have children. This fact has not gone unnoticed by many of the interviewees. One of them had even done the math in her head about the unbalanced composition of the tribunal court where she works: out of 16 justices, 7 are women (4 without children and 3 with children) and 9 are men (3 of them without children). Unfortunately, there is no available data on the universe of judges in this respect. Still, the impression among several interviewees is that many women who achieve higher-rank positions in the judiciary either do not have children, or they compete only when their children have grown up. Other types of care work are yet to be studied.

4.4. Geographical and Hierarchical Position: Not All of Us Want to be High Court Justices

For some women, the possibility of winning meritocratic competitions came from their decision to relocate geographically to smaller or less sought-after municipalities. This decision distances them from their families. In many ways, this type of decision has paradoxical effects: it might undermine their political capital because it distances them from the centres of power, but at the same time it allows them to obtain a meritocratic appointment with the social and symbolic capital it represents; a position that they would not be able to access if they stayed in a major city.[431] The socio-economic effects are also paradoxical: although a judge can have a good life with less money in a small town, the access to primary and luxury services is more limited.

Many men also decide to move away and, as shown in the previous chapter, they tend to be located in poorer and more violent municipalities than women. Nevertheless, the decision to move away does not usually bring as many family problems because it is taken for granted that

[430] Participant WomanJNL1.

[431] As Arango, Quintero, and Mendoza put it: "[…] the position in a historically delimited and hierarchical geographical space [...] defines to a large extent the possibilities of accessing certain goods and services that are unequally distributed within a specific political-administrative territory." Luz Gabriela Arango Gaviria, Óscar Quintero & Ivonne Paola Mendoza, "Género y origen social en el acceso a la Universidad Nacional: trayectorias de estudiantes de sociología y de ingeniería de sistemas" (2004) 22 Revista Colombiana de Sociología 87–110 at 90. [Translated by author].

their wives will either come with them without hesitation or will stay in a major city caring for the children. That said, it is undeniable that some of these men also miss their families profoundly and make enormous efforts to visit them frequently and provide for them financially.

In the specific case of women tribunal justices and some circuit judges, I found that some of them chose less sought-after cities in order to access higher meritocratic positions, considering that all higher positions in major cities were already full. This is particularly the case for racial minority women, as Gómez-Mazo also suggests.[432] My findings are consistent with the quantitative data I described in Chapter IV. Moreover, among my interviewees, I found some women who were able to pass the competition because, in the past, they had accepted positions in small municipalities with few files to process. These conditions gave them the time and energy to prepare for meritocratic competitions or take care of their families.

According to the above, working in less sought-after cities is often a well-considered decision that women make because they believe it is best for their careers or families. This realization applies not only to geographical locations but also to hierarchical positions. Some women with high professional profiles deliberately seek to compete for positions that are below their capabilities for many reasons: lower positions (or in smaller cities) give them more time, put them under less pressure, and offer them a salary that is sufficiently decent to guarantee a good quality of life. And it is not that women are not interested in power, but that they try to juggle their different roles and interests. One woman interviewee put it in particularly radical terms: "For men it is an obsession to reach the high courts. For women, it is not. Women consider Bogota to be very hostile, very expensive. They don't want to move from where they are [...]. No friend of mine wanted to get to the high courts, and we don't all have to want to be high court justices".[433]

In this vein, the last two competitions, which started in 2013 and 2018, established the rule that each contestant could only compete for a single position. However, this policy might have had disparate impacts on women. According to my findings, many overqualified women refrain from competing for tribunal positions because they think they are much more likely to win if they compete for circuit court positions. Their strategy for success is none other than to choose what

[432] That was the case for participant WomanJLL11. See Gómez-Mazo, *supra* note 13.
[433] Participant WomanJLL3. In this vein, the latest report from the UN Rapport states that "The Special Rapporteur has also received information stating that, as women are the ones who mostly take maternity leave, they often end up being less interested in being appointed to higher positions." See UN Special Rapporteur on the Independence of Judges and Lawyers, *supra* note 71 at para 57.

seems more strategic. According to my interviewees, women do this type of reasoning much more often than men competitors, possibly due to either lack of self-confidence or necessity. These reflections bring us back to Chapter III, where I insisted on the need to consider Colombian women's choices in a context of high rates of unemployment, poverty, and instability for women in general, and for women caregivers and racial minorities in particular.

These findings on 'self-exclusion' have been particularly illuminating because they show that the decision to stay in less valued positions – with lower status or in precarious municipalities – can sometimes be part of women's life plans. Of course, when women choose not to compete or stay in less powerful positions, their decisions may be highly determined by structural barriers. Yet such decisions can also be ways of exercising agency in a meaningful way and re-signifying the importance of positions traditionally perceived as less valuable. Where I insisted on seeing gendered constraints or exclusion, some women saw acts of self-preservation and even resistance. However, I was only able to understand the perspective of these women after listening to them, attentively and genuinely. I believe this is what Chimamanda Ngozi Adichie meant when she warned us about the dangers of listening to only one side of a story. This is why "stories matter. *Many* stories matter."[434]

4.5. Mentorship

Many women spoke about the importance of their mentors who, in almost all cases, were senior men. Mentors taught them how to be better judicial officers, gave them time to study, or were sympathetic to their care responsibilities. In addition, some mentors gave them a vote of confidence to become discretionary appointees, which helped them accumulate the experience necessary to improve their performance in meritocratic competitions. These mentoring relationships, which I classify as political capital, are another axis where meritocratic and discretionary appointments are connected. I will return to this idea about the role of mentors in the next chapter.

4.6. Those Who Find the Most Benefit in Meritocratic Competitions

For some interviewees, meritocratic competitions are the only possible way to become judges, have their abilities recognized, and secure a stable job. Meritocracy is not without problems, but it

[434] See *The danger of a single story* (2009). The emphasis is mine.

is a mechanism that, because of the distance between appointers and potential appointees, supposedly offers guarantees that the discretionary system does not. I identified three groups of jurists who feel that they benefit the most from meritocratic competitions. The experiences and expectations of these three groups are directly connected to the reflections on discretionary appointments in the following chapter.

In the first group, we find participants with political ideologies that are uncomfortable for, or condemned by, those in power. This circumstance makes them unlikely to receive a discretionary appointment. The most obvious case is that of union members and women who are willing to criticize the judiciary or report situations of harassment.[435] It must be noted, however, that some of those who expressed this idea have, nevertheless, obtained discretionary appointments. I explore this dissonance in the next chapter.

In the second group, we find individuals who, more generally, have no social networks or political acquaintances (i.e. social and political capital). Women and minority candidates tend to be excluded from most spheres of influence in the judiciary as they are not part of what is commonly known as the 'old-boy' networks. The sense of lack of political capital and, in turn, the sense of needing meritocracy, was especially pronounced among the interviewees from peripheral regions. The farther someone is located from major cities, the more unlikely she is to build the political connections necessary to secure a (good) discretionary appointment. In this vein, a 2011 survey found that 43% of judicial officials considered the region of origin an important reason for discrimination within the judiciary.[436]

In the third group, we find women who have most explicitly experienced discrimination in the judiciary on the basis of their physical appearance. On the one hand, women who feel perceived as ugly think that they cannot obtain a discretionary appointment because appointers (who are mostly men) will not like them. In contrast, some women who feel perceived as pretty avoid discretionary appointments because they feel exposed to sexual harassment. For both types of women, meritocracy is the only possible or admissible way to enter the judiciary. In the specific case of young, beautiful women, meritocratic competitions help them not only to avoid

[435] For instance, participants WomanJMA3 and WomanJMA4.
[436] In fact, the region of origin was the factor on which the largest number of respondents agreed that it was a reason for discrimination in the judiciary (women 46% and men 41%). See *Aproximación al conocimiento, percepciones y prácticas sobre igualdad y género en la rama judicial. Encuesta a jueces/az y magistrados/as*, by Comisión Nacional de Género de la Rama Judicial (Comisión Nacional de Género de la Rama Judicial, 2011) at 38.

harassment, but also to legitimize their presence. Meritocracy allows them to demonstrate that they have the merit to be judges and have not obtained their positions merely because of their beauty or personal relationships with appointers.[437] As I explore in more detail in the next chapter, beauty is both a "prize of nature" and a "short-lived tyranny" that is experienced differently by women than by men in the judiciary.[438]

* * *

In one of his books, Gabriel García Márquez talks about "the static and marginal time of memories."[439] Instead, as I reread my interviews, I have come to think of memories as intensely dynamic. In the particular case of *The Overcomers*, I believe that many of them reinterpret their past struggles in light of the success they experience today. Many of the stories told in this section can be seen as sacrifices; as painful renunciations. I know that many women perceive them as such. Others, however, either do not remember their previous struggles or do not recognize the magnitude of the costs they paid. And still, for others, these were not sacrifices but steps in their life plans for which they ought to be grateful. One interviewee put it in a way that perhaps sums up the feeling of many: "People sometimes complain saying 'I gave my life to the judiciary.' But I say instead: 'I have lived thanks to the judiciary!'"[440]

I thus found that many *Overcomers* perhaps sugar-coat their past. Moreover, they rarely acknowledge the structural (gender) barriers faced by *The Excluded* and even the barriers they faced themselves. This phenomenon is commonly referred to as the survivorship bias. Men interviewees, particularly the older ones, were even more blind to the structural gender inequalities of meritocratic competitions. However, this lack of acknowledgement does not make it any less true that meritocratic competitions allow (certain) women to improve their position in the social and judicial field, even when all the odds are stacked against them.

---

[437] Junqueira found something similar in Brazil: "[…], my respondents represented the acceptance of women for judicial office as a victory, not so much because of the constitutional demands of sexual equality or because of the changes in social life, but because men judges had, in a way, been 'forced to acknowledge' the intellectual ability of women." See Eliane Junqueira, "Women in the Judiciary: A Perspective from Brazil" in Ulrike Schultz & Gisela Shaw, eds, *Women in the World's Legal Professions* (Portland: Oxford - Hart Publishing, 2003) 445 at 444.

[438] According to Diogenes, the idea of beauty as a gift comes from Aristotle and the idea of beauty as a tyranny comes from Socrates. See Stephen White, ed, "Book 5: Aristotle and Peripatetics" in *Diogenes Laertius: Lives of Eminent Philosophers: An Edited Translation* (Cambridge: Cambridge University Press, 2021) 197.

[439] See Gabriel García Márquez, *One Hundred Years of Solitude* (New York: Avon, 1971) at 363.

[440] Participant WomanJLL1.

These stories of social mobility destabilize the monolithic view of some of the critical literature on meritocracy and, above all, confront my prejudices about women's (weak) agency. Nevertheless, the empirical evidence shows that most women can follow the same strategies and pay the same costs (even more) as *The Overcomers*, and still not succeed in the competition. Specifically, this is the case for women from racial minorities and other disadvantaged groups for whom most barriers are exacerbated. Agency can only do so much.

5. Conclusions

In January 2020, I met with a woman who has held positions of power in the Ministry of Justice and the high courts. "Please don't tell me that!," was her first reaction when I told her I had found that women tend to perform worse than men in meritocratic competitions. Her reaction mirrors the common preconception and expectation of the vast majority of my interviewees: women are as capable as men, and we just need an objective, ideally anonymous, opportunity to prove it. "All [we] ask of our brethren is that they take their feet off our necks," as Sarah Grimké put it. Most of us grew up believing in the meritocratic promise and the transformative power of the law, therefore it seems natural to hope that meritocracy will, at last, allow women's talents to prevail. In this chapter, I explored the complexities underlying this assumption, as it disregards the *blood, toil, tears and sweat* that meritocracy entails.

With this purpose in mind, I started the chapter by referring to the contrasts between the theory and the reality of meritocracy. Meritocracy seeks (or pretends) to be an objective mechanism to reward merit and to set all competitors of the meritocratic race in equal starting positions. In contrast to discretionary or purely political appointments, meritocracy promises to promote individual effort, fight corruption, and guarantee equal opportunities. Nevertheless, many studies show that competitors start the race from unequal positions, something I analyzed here in terms of an unequal distribution of capital. This inequality means that many contestants are unable to win the competition or, if they do win, they do so with far greater effort than other contestants with more capital. Most women are in disadvantaged positions from the outset, even before the race begins. Some women among women bear the brunt of these problems, such as single mothers, racialized women, or women from peripheral regions.

In the other sections of the chapter, I provided quantitative and qualitative data supporting how meritocracy has disparate impacts and poses particular difficulties – and some benefits – for

women. To begin with, I presented quantitative data on the latest meritocratic competitions. This quantitative overview revealed at least four findings: first, the structure of competitions constantly varies, and its content is far from obvious. I argued that this is indicative of the broad discretionary and policy-making powers of the Superior Council of the Judiciary, as well as of the unpredictable, non-technical, inefficient, and politicized manner in which bureaucratic practices can operate. Second, the higher the position, the lower the proportion of women participants ('self-exclusion'). Third, women perform worse than men on standardized tests, which is supposed to be the competition's blind – and thus, impartial – component. This performance gap disproportionately affects women's journey to becoming judges and justices. And fourth, women tend to perform slightly better than men in components with higher levels of subjectivity, such as the interviews or the general part of the training course.

To better understand the dynamics behind these numbers, I explained the characteristics of two ideal types of women. Concerning *The Excluded*, I highlighted two main barriers. First, women disproportionately take on care responsibilities, hence they have less time and energy to participate in or prepare for meritocratic competitions. Second, women's cultural capital is either undervalued by meritocratic competitions or lower than men's due to accumulated educational inequalities. No matter how talented, intelligent, or hard-working they are, many women are unable to overcome these barriers. Most men were already several steps ahead of them when the race began, driving many women to seek a place in the judiciary through discretionary appointments.

In the second ideal type, dedicated to *The Overcomers*, I emphasized the profiles of women who *do* manage to win meritocratic competitions. More specifically, I talked about the kinds of capital or strategies that women deploy to use meritocracy as a platform for social mobility. I described several sets of capital/strategies: first, studying and working hard, which often goes hand in hand with the privilege of a good education and a good dose of luck. Second, having support networks that help them cope with the double work/domestic role. Third, focusing almost entirely on work and training for competitions. Fourth, seeking (geographically and hierarchically) less sought-after positions. Fifth, having good mentors. I suggested that some women pay high costs to win meritocratic competitions, while at the same time many women pay similar – even higher – costs and still fail.

Both ideal types have multiple overlaps that point to the same problems of meritocracy. Indeed, both types allow us to appreciate that facially neutral meritocratic policies hide the participants' structural barriers (or privileges), thus creating the illusion that failure (or success) is solely a product of individual behaviour. This is what Michael Sandel calls the "tyrannical turn" of the principle of merit.[441] However, such an illusion quickly vanishes in the face of evidence. Women's concrete experiences in the judiciary help us understand that individuals are not entirely responsible for their future because there are structural conditions that lie beyond the reach of their individual control. The dogma "where there is a will, there is a way", with which I began this chapter, seems untenable within the judiciary. Agency is valuable and individuals sometimes succeed in significantly changing their positions. But, as the data confirm, agency can only do so much if there is no genuine political will to level the starting points of the meritocratic race. In this sense, although meritocratic competitions do enable success and even social mobility for a few, they are also platforms that reproduce existing exclusions and privileges in the social field.[442]

Consequently, like the judicial bureaucracy in general, every meritocratic competition is a site of intense power struggles. The political nature of meritocratic appointments becomes evident through their disparate impacts on women and other underrepresented groups. But it is also evident in other features that show that it does not always operate in an objective, technical, and predictable manner, nor does it always ensure the efficiency or high quality of the appointment process. As I explained in Chapter II, these are, in fact, characteristics of all bureaucratic phenomena, not only judicial appointments.[443] Having said this, a clarification is in order: I am not suggesting that the margins of discretion of the justices of the Superior Council are necessarily what causes the exclusion of women or the inefficiency of bureaucratic practices.[444] Nor am I saying that

---

[441] Sandel, *supra* note 350 at 36. For a thorough reflection on the risks and virtues of the merit principle, as well as on the need to make it compatible with the right to equality, see Pedro Javier Barrera Varela, *El principio del mérito incluyente: una reformulación del sistema de ingreso al empleo público en Colombia* (Doctoral Dissertation in Law, Universidad Externado de Colombia).

[442] Many of the reflections presented in this chapter resonate with the findings of Blay and González in Spain, for example, in terms of how interviewees perceive the definition of merit to be gendered or how women exclude themselves from higher positions in the judiciary because of their caring responsibilities. See Ester Blay & Ignacio González Sánchez, "El techo de cristal en la judicatura española: hipótesis explicativas a partir de las vivencias de las magistradas" (2022) 20:2 Revista Española de Investigación Criminológica 1–18.

[443] On the essentially political nature of all judicial appointment systems, see Malleson & Russell, *supra* note 18.

[444] As I examine in the next chapter and as some concrete experiences show, discretion sometimes greatly helps women's access to the judiciary. See, for instance, the Peruvian case. La pasión por el derecho, "De los 16 magistrados provisionales que integrarán la Corte Suprema, 14 son mujeres", (5 January 2021), online: <https://lpderecho.pe/jueces-provisionales-integraran-corte-suprema-2021/>.

anonymous or clearly less discretionary selection systems are always detrimental to women. I simply seek to highlight the risks of believing uncritically in the liberal script that assumes that the potential or real 'objectivity' of meritocracy (and bureaucracy) will automatically guarantee an equal race for women or will foster other ends. Meritocracy is, too, susceptible to critique from a feminist viewpoint.

My reflections throughout this chapter do not constitute a call to eliminate merit-based selections. Meritocracy is a tool that has, indeed, proven to be effective in protecting judicial independence, limiting patronage and nepotism, and strengthening the legitimacy of the judiciary in the eyes of citizens. Moreover, it may help advance the interests of *some* women. However, I believe that (especially in the Latin American context) scholars and policymakers have been unwilling to diagnose and address the possible disparate impacts of meritocracy, even though they are present in many major competitions: from the admission tests of public universities, to the entry systems of the judiciary, the Comptroller General's office, the National Registrar, the Foreign Ministry, and who knows how many other competitions that have yet to be studied. And, above all, I do not believe that the Superior Council of the Judiciary should remain indifferent to the exclusionary effects of the competitions it coordinates. If we have adopted meritocracy as a way of showing our commitment to merit and judicial independence, then we should revisit our meritocratic standards as a way of showing our commitment to equality and inclusion.

Ultimately, my broader purpose in this chapter was to destabilize two common narratives around meritocratic competitions. The first narrative, associated with the common preconception, assumes that meritocracy in general – and standardized tests in particular – will promote equal opportunity and the entry of more women into the judiciary. This is a narrative that, among other things, is often constructed with little attention to the bureaucratic practices in each context. I hope that the data I offer here will at least serve to revisit or reconsider the limitations of such a narrative.[445] The second narrative argues that individuals govern their future entirely. In this case, I insisted on how important it is to reflect on the power of structural barriers in the lives of women and jurists. I have been particularly emphatic on this second 'counter-narrative', considering that most of my interviewees did not acknowledge the role of structural inequalities in their careers,

[445] In this vein, Bergallo states that factual assertions and the probability of correlations between selection systems and the gender of the bench must be empirically explored. In practice, whether a certain selection system may foster or hinder sex diversity and desegregation on the bench may be highly contingent upon some of the system's design features and the concrete contextual conditions in which it operates". Bergallo, *supra* note 71.

thus infusing their stories with the disheartening tone of individual failure. This, no doubt, was the most poignant finding of this chapter, as I am convinced that any Achilles would succumb to the overwhelming weight of a defeat perceived in such a burdensome way.

CHAPTER VI. THE PRICE OF VICTORY: THE COMPLEX WEB OF GENDERED RELATIONSHIPS IN DISCRETIONARY APPOINTMENTS

The Price of Victory

"What is the price, silent and foolish,
that must be paid to win,
to save one's skin, to strike first,
always winning, no matter against whom.
What is the price?... To kill the rose,
to cheat things and the law,
to throw oneself into the smoke if, in life,
any cheater is king.
How costly is the price of victory,
to let yourself be groped, to sell yourself to eat.
To make a pact with Lucifer, from January to January,
and leave a suffocated cry at the bottom of the inkwell.
And continue with nothing but your ambition in pursuit
because the one who comes behind you is pushing you.
Sleeping on a pillow without conscience,
stripping away your innocence and mocking God."
– Eladia Blázquez –[446]

As I suggested in the first chapter, I have written this thesis under the sweet shade of my childhood memories. Memories of all that was present: my father's halo of judicial nobility, the virtues of the meritocratic competition through which he became a justice, and our unwavering repudiation of

[446] *El precio de vencer* (The Price of Victory) is a tango song with lyrics and music by Eladia Blázquez. [Translated by author]. The original lyrics of the song say: "Cuál es el precio, callado y necio, / que hay que pagar para vencer, / salvar el cuero, golpear primero, / ganando siempre, no importa a quién. / ¿Cuál es el precio?... matar la rosa,/ trampear las cosas y la ley,/ tirarse al humo si en el consumo, / cualquier "chantún" es rey. / Qué caro hay que pagar el precio de vencer, / dejarse manosear, venderse por comer. / Pactar con lucifer, de enero a enero, / y dejar ahogado un grito en el fondo del tintero. / Y continuar sin más, que tu ambición en pos, / porque el que viene atrás te va empujando a vos. / Dormir en una almohada sin conciencia, / deshojando la inocencia y burlando a dios". I have chosen this tango not only because of the eloquence and fire of its lyrics, but also because its composer is one of the (few) outstanding women lyricists in the history of tango. In the field of tango, as in the case of women judges, there is also a double process of invisibility of women. This phenomenon is highlighted by Laura Cecilia Bedoya Ángel, *Decime bandoneón. Un viaje por el tango y la cultura* (Medellín: Editorial Libros para Pensar, 2022).

corruption. I also have memories of what was absent: the stories of women judges, the experiences of the jurists who failed in the competition, and the resistance strategies of those excluded by formal rules. I have revisited these memories in light of the empirical evidence on that strange machine: the judicial bureaucracy. To facilitate this exploration, in Chapter IV I proposed four ideal types of experiences of women's access to the Colombian judiciary. The first two types (A and B) refer to women's positive and negative experiences with the meritocratic system (see Chapter V). In the present chapter, I study the two remaining types (C and D), which explore the complexities of discretionary appointments: Type C – *The Disadvantaged* – represents women who have not succeeded in the discretionary process, whereas Type D – *The Favourites* – represents women who have succeeded in this process.

Before addressing types C and D, it is worth mentioning that they occur in a context where negative assumptions regarding discretion prevail. These negative assumptions are aligned with a preconception in the legal literature that assumes that predominantly discretionary systems affect equal opportunities for women jurists, besides affecting other goals (e.g. efficiency and independence). Colombia is a good case to test this preconception as the discretionary system is indeed strongly discretionary: appointing justices have almost total freedom to define selection criteria, processes tend to be highly informal, and there are no accountability mechanisms. Additionally, in the vast majority of cases, we are talking about tribunal justices who work away from the centre of power. The contrast with the formal, centralized, and facially neutral process of the meritocratic system is sharp.

For these reasons, as my interviews revealed, there is an explicit negative stereotype about discretionary appointees, namely: they are low-quality jurists who, unable to win in meritocratic competitions, resort to corrupt practices. They step over the rights of others under the invitation of high-profile appointers, who also obtain a good share in the transaction. This stereotype embodies a narrative that is painfully well expressed in Eladia Blázquez's song The Price of Victory (*El precio de vencer*). A narrative about exalted ambition and decayed souls; the triumph of mediocrity and dishonesty. In contexts where (perceived) corruption is pervasive, anything lacking an aura of objectivity is presumed rotten. I, too, was raised to incorporate such an assumption.

However, as Chimamanda Ngozi Adichie says, "the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story."[447] The prevalent perception may hold some truth, but it certainly lacks nuance. The stereotype does not acknowledge that discretionary appointments often have justifications, nor that the motivations of the actors involved are incredibly diverse and not necessarily corrupt. The stereotype also overlooks the benefits that more informal normative contexts – often perceived as corrupt – can bring to women. These nuances emerged from the experiences of my interviewees, even when they explicitly expressed a negative perception of the discretionary system. As I did in the previous chapter on meritocracy, in this chapter I seek to unpack the complexities of discretionary appointments and the necessary incompleteness of the stereotype or negative preconception surrounding them.

I have divided this chapter into five sections. In the first section, I argue that discretionary appointments have both problems and advantages (or justifications). For example, they may threaten judicial independence, but they allow for the filling of vacant positions that would otherwise be difficult to fill. Discretionary appointments are legal, but they tend to be governed by highly informal rules that are fertile ground for corruption. In this regard, I also argue that, before jumping to conclusions about the potential corruption behind these appointments, it is crucial to consider the backdrop of the Colombian institutional and cultural context.

In the second section, I present quantitative and qualitative data regarding the percentage of discretionary appointments according to gender and territory, and the guidelines that tribunal courts declare to follow when selecting discretionary appointees. These data reveal that discretion is prevalent and, contrary to what the preconception assumes, might favour women's access, at least in municipal courts. The data also show that discretionary appointments largely happen due to the uneven reach of the state and that, even on paper, there is a considerable diversity of appointment criteria – among which gender is rarely included.

The third and fourth sections deal with the gendered constraints and possibilities of ideal types C and D – *The Disadvantaged* and *The Favourites*. The evidence I collected seems to show that discretionary appointments do not necessarily affect women's opportunities to access certain judicial positions, although they do put them at greater risk of instability and harassment. I use

[447] TEDx Talks, "The danger of a single story" (2009) at 00h:12m:45s, online (video): <https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story>.

here the same theoretical framework as in the previous chapter. That is, I will show how women's experiences are tied to their different forms of capital and how different women differently navigate bureaucratic practices around discretionary appointments. More specifically, I intend to show the multiple overlaps between types C and D, and between these types and types A and B.

In the final section, I suggest paths for further exploration regarding discretionary appointments.

1. Discretionary Appointments: Making Cheaters Kings?

1.1. Why Not Simply Ban Discretionary Appointments

After a discussion with me about appointment systems in Colombia, one British feminist scholar asked me: "Why not simply ban discretionary appointments?". My answer was, more or less, the summary of this entire dissertation: things are not that simple. It may be true that discretionary appointments bring some risks[448] but also some advantages to the Colombian judicial system as a whole. Although I explained some of these characteristics in Chapter III, I will present them here again in a nutshell.

Regarding the problems of discretionary appointments, it is argued that appointees may feel they owe their appointers a favour and thus, that it is not unusual for appointers to feel they deserve something in return. This opens the door for appointers to instruct appointees to rule cases in certain ways, which directly threatens judicial independence.[449] And even if appointers do not manipulate the decisions of their appointees, they sometimes abuse their power to demand other types of compensation, such as money or sex. Another problem is that discretion opens the door to corrupt practices, as appointers can trade judicial appointments for political favours. Favours that might someday help them reach the highest courts, or help them repay personal debts. Some justices may also use their power to appoint their family and friends.[450]

---

[448] For a summary of these risks, see Carolina Villadiego, "Justicia en provisionalidad", *Ámbito Jurídico* (14 April 2021), online: <https://www.ambitojuridico.com/noticias/columnista-online/justicia-en-provisionalidad>; Ana María Ramos, "Colombia" in Alberto Binder & Leonel González, eds, *Gobierno judicial Independencia y fortalecimiento del Poder Judicial en América Latina*, centro de estudios de justicia de las américas, ceja ed (Santiago de Chile, 2015) 153.

[449] Villadiego, *supra* note 448; Brewer-Carías, *supra* note 59. Although lacking a gender focus, Pásara presents a thorough review of the effects of merit-based appointments in Latin America and their impact on judicial independence. See Luis Pásara, *Una reforma imposible. La justicia latinoamericana en el banquillo* (Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú, 2014).

[450] Some of these problems were analyzed by Salazar, *supra* note 36 at 47.

Nevertheless, recalling the question posed by the British scholar, there are also several reasons why discretionary appointments are, at least, justifiable. First, discretionary appointments make it possible to fill vacancies in challenging municipalities (poor, distant, or violent) that no winner of the meritocratic competition wants to select.[451] Second, discretionary appointments help fill the gaps of vacancies left by meritocratic competitions, which take, on average, four years and five months to be filled.[452] During these long waiting periods, lists of eligible meritocratic candidates expire or are exhausted, or the winners find other jobs. Third, as I found in my fieldwork, the quickest and most efficient way for some appointers to fill a (short) temporary vacancy is to appoint, through a discretionary process, someone who already works within the judiciary, even if they did not pass the meritocratic competition. Unlike most external (meritocratic) candidates, these appointees already know the judicial craft and usually already live in the region.

Thus far, I have referred to the problems and advantages discretion brings to the judicial system. However, discretion also brings problems and advantages for (potential) appointees in general, and women in particular. On the one hand, discretionary appointments are unstable and frequently perceived as second-rate and corrupt. The negative stereotype prevails. Moreover, as I explain below, they can expose women to sexual harassment. Yet, as I also explore below, discretion enables subordinates to improve their salary, status, and experience; circumvent the barriers of meritocratic competition; and obtain rewards for their service within the judiciary.[453] For these reasons, people inside and outside the judiciary yearn for what is commonly known as a *palomita* (small dove): the opportunity to occupy a judicial position temporarily. This yearning is particularly strong within the judiciary, where existing wide salary gaps drive officers to seek promotion, no matter the conditions.[454]

The common preconception might assume that women lose when looking for a *palomita*. It is assumed that broad discretion in a men-dominated system will not benefit women, just as it is assumed that women may win in a meritocratic system, as I explained in the previous chapter. We

[451] See García Villegas et al, *supra* note 67.
[452] See Salazar, *supra* note 36 at 29.
[453] They might be seen by their peers as second-category judges, but judges nonetheless.
[454] For example, in 2018, a tribunal court justice earned more than three times as much (32 minimum wages) as a municipal judge (10 minimum wages). The salary gap between a judge and a court clerk is even wider. Ámbito Jurídico, "Conozca cuál es el sueldo de los magistrados y jueces de Colombia", *Ámbito Jurídico* (11 January 2018), online: <https://www.ambitojuridico.com/noticias/general/administracion-publica/conozca-cual-es-el-sueldo-de-los-magistrados-y-jueces-de.>.

will see that this is not always the case and that the price of victory varies significantly from case to case.

1.2. Putting Stereotypes (or Preconceptions) in Context

The advantages or justifications of discretionary appointments, which are rarely explored and studied, can help us redress the incompleteness of the stereotype about discretionary appointees. However, discretion cannot be fully understood without bringing the Colombian socio-legal context into the equation. Although I described some salient features of this context in Chapter III, I will describe three of them that are particularly illuminating for this chapter.

The first feature is the uneven reach of the Colombian state across the territory. This uneven reach partly accounts for its numerous war-torn and inaccessible municipalities – those "dying places" that seem more like purgatories, as Juan Rulfo would describe some Latin American towns.[455] This feature is closely connected to the second one: there are structural problems in the workings of the meritocratic system. For instance, there is a lack of mechanisms to ensure that competitions are held periodically or that winners promptly accept their appointments in different parts of the territory. Furthermore, most actions that occur in the judiciary outside Bogota seem to escape the control of the central state. "Each judge is a small world" were the words a high court justice used when describing how autonomous judges and justices are when making discretionary appointments.[456]

Given its high informality, discretion may be in itself characterized as a weak institution that comes to life precisely in this territorially fragmented context where appointers have enormous powers beyond the control of the central state. It would be a weak institution to the extent that it conflicts with the orthodox notion about how bureaucracy is (or should be) entirely unitary, hierarchical, and impersonal. However, I argued in Chapter III that weak institutions often operate as political strategies to achieve other ends, so their 'weakness' is not only useful but even voluntary. Because of its strategic qualities, incentives to create weak institutions are endemic in the Global South – and, in some cases, in the Global North.[457] In the specific case of discretionary appointments, we are dealing with a political strategy to dodge 'obstacles' imposed by the merit

[455] See Juan Rulfo, "Luvina" in *Pedro Páramo y El llano en llamas* (Barcelona: Planeta, 2003) at 232.
[456] Participant WomanJLN1.
[457] See Murillo, Levitsky & Brinks, *supra* note 16 at 13.

system, – e.g. delays, structural exclusion, paperwork, selection of novice judges. In fact, I would say that discretion has thrived precisely because it mainly persists in informality and feeds on the shortcomings of formal state laws without openly transgressing them. As I show below, my participants perceive that it is precisely informality, fragmentation, and resistance to the merit system that open doors for women's access via discretion.

The third contextual feature is a culture that highly values community connections. This is a culture that finds in *collaboration* the foundation of the moral economy of everyday life.[458] Collaboration is a mechanism to help or do a favour to those we hold dear, or to provide mobility opportunities for those who start the social game from the bottom, in a society filled with closed doors and excessive red tape. Collaboration does not always entail an immediate exchange of favours or a clear commitment to reciprocity, which are features that clientelism does require.[459] Sometimes favours are simply based on the intention to help a fellow human being coming from our own personal/professional networks, without asking for something in return. The possibility of asking for the favour in return is exactly that: a possibility. Much of Colombian life (including bureaucratic dynamics) unfolds this way, with countless reciprocal favours to be collected, floating in the fog of an uncertain future.

Without denying its problems, my findings reveal that the world of discretion is, to an extent, embedded in these dynamics of collaboration and favouritism. These findings are intimately connected to what the literature on street-level bureaucracy shows, as described in Chapter II. Indeed, participants' stories suggest that bureaucrats working far from the centres of power may be using their wide margins of discretion to advance their own political agendas, redistribute power among those who occupy subordinate positions, and help those who belong to their own class (or, rather, the class to which they belonged before they became justices). These dynamics are not adequately represented, or are even distorted, if viewed merely through the lens of clientelism.

---

[458] See Lemaitre Ripoll, *supra* note 230.

[459] I understand clientelism as an instrumental relationship in which one person with higher status (which would be the patron) uses their power to provide benefits for another person with lower status (client), with an underlying expectation of reciprocity. This reciprocity can be material or symbolic (personal services or loyalty). When the benefit that is being transacted is a public sector job, it is often referred to as patronage. See Susan Stokes, "Political clientelism" in Robert Goodin, ed, *The Oxford Handbook of Political Science* (Oxford - New York: Oxford University Press, 2011) 648 at 606.

In the same line of thought, as I argued in Chapter III, neither of these features should necessarily be understood as pre-modern or essentially flawed. They are simply conditions that have made it possible to shape the judiciary that exists today in Colombia, with all its strengths and shortcomings. Similarly, a contextual reading of discretion shows how it is much more than a mechanism that turns cheaters into kings (or queens).

2. Data on Discretionary Appointments: 'Temporary' Repairs to the Judicial Machine

When something broke in the house – taps, hinges, handles –, we would rush to invent makeshift repairs: a drop of glue here, a couple of strips of adhesive tape there. My father would grumble. We were wrong to use this type of solution, he would say, more as a prediction than a scolding. We would soon see that things that are only half repaired tend to stay that way because there is no longer any urgency to repair what has been broken. In my father's mind, a house looked a lot like the judicial machine where he came from, where "there is nothing more permanent than the temporary" (a phrase that is commonly heard in the Colombian public sector).

Having collected much data on discretionary appointments, it is only now that I can fully understand how my father felt. For him, the Colombian judiciary is like a house with patches in the absence of more structural repairs. Discretionary appointments were created by law as exceptional and temporary tools, [460] but in reality they are quite common and permanent. I described this reality in Chapter III, and I will complement it further with gender data in this section. I will focus specifically on three datasets. First, data showing the recent evolution in the number and gender of discretionary appointees. Second, data on the territorial and gender distribution of discretionary appointments. And third, information on the criteria that tribunal courts claim to adopt when making discretionary appointments.

Before moving on, it is first necessary to revisit a clarification. Discretionary appointments were created by a formal state law. They are legal. However, the law is silent on how they should operate and be controlled. For instance, the law determines who is charged with discretionary appointments (tribunal and high court justices)[461] and the minimum years of experience required.

[460] Discretionary appointments should not last more than six months. Article 132, Law 270 of 1996 (Statutory Law on the Administration of Justice).

[461] Article 131, Ley 270 de 1996 (Statutory Law on the Administration of Justice). It is important to remember that tribunal court justices are charged with the discretionary appointments of municipal and circuit judges (the lower courts) in their respective provinces and jurisdictions. High court justices are in charge of discretionary appointments of tribunal court justices in their jurisdictions and areas of law.

Yet the same law is silent on how the selection should work. A couple of high court pronouncements *recommend* that appointers prefer candidates who passed the meritocratic competition, but these recommendations are not mandatory.[462] In this context of informality coupled with a lack of checks and balances, each appointing justice has wide margins to create its own discretionary selection process.

2.1. Normalized Exceptionality

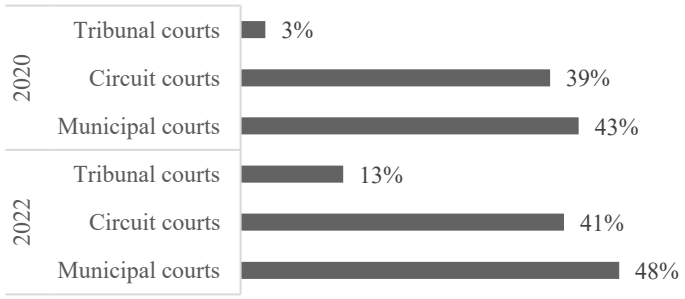
The law states that discretionary appointments must be temporary and exceptional. However, as the law does not include controls or sanctions in this regard, discretion is usually rather permanent and common. Through an information request to the Superior Council of the Judiciary, I obtained disaggregated information on the number of discretionary appointments in the years 2020 and 2022. Figure 14 shows that these appointments were particularly widespread among municipal judges, with a percentage of 43% and 48% in the aforementioned years, respectively. Circuit judges have slightly lower percentages than municipal courts, although both still rank very high (close to 40% in both years studied).[463] These percentages may be higher than official reports suggest, as there are often 'hidden' discretionary appointments. These are the ones that occur when someone fills a temporary vacancy or when an official with a meritocratic appointment is temporarily promoted.[464]

Besides not being exceptional, discretionary appointments do not seem to be temporary either. I have no statistical data on this, but this is the perception and experience of many interviewees. In fact, some interviewees have held their discretionary positions for years. One of them, for instance, was close to obtaining his pension after holding a discretionary appointment for more than six years.[465]

---

[462] The two high courts that have made these recommendations are the Superior Council of the Judiciary and the Constitutional Court.
[463] Annex 6 shows the percentage of discretionary appointees between 2010 and 2021.
[464] Judges with meritocratic appointments are allowed to take a leave of absence for up to two years in order to go to another position within the judiciary. During those two years, the "empty" position can only be filled by a discretionary appointee. In many cases, that position may be filled by a person that, in turn, has a meritocratic appointment in another position and who also requested a leave of absence, and so on. That is, the temporary absence of one person results in a sequence of empty spots that are all filled via discretionary appointments. This practice is known as 'the ladder' (*la escalera*).
[465] Participant ManJLL2.

Figure 14. Percentage of discretionary appointees according to the judicial hierarchy (2020 and 2022)



Source: prepared by the author based on data provided by the Superior Council of the Judiciary.[466]

How does gender come into play here? Data show that the percentage of discretionary appointments is always slightly higher among women, with a specially marked difference among municipal judges (see Figures 15 and 16).[467] For instance, in 2020, 46% of municipal women judges had discretionary appointments, whereas for men judges this percentage was 'only' 40%. At the tribunal level, the difference is 5% (in women justices) versus 2% (in men). Regarding tribunal courts, we can see in Figure 16 that the number of women and men with discretionary appointments is almost equal, which contrasts with the fact that women represent a clear minority among meritocratic appointees. Based on these data, it is possible to speculate that, if Colombia only had the meritocratic system, women would be a clear minority in the judiciary, even at the lower courts.

[466] Superior Council of the Judiciary, *supra* note 307; Superior Council of the Judiciary, "Participación de la mujer en la Rama Judicial", (October 2022), online: *Participación de la mujer en la Rama Judicial* <https://app.powerbi.com/view?r=eyJrIjoiNDA5YmViODItYmJkZS00MTUxLThmNDAtYWEzNWIwNDc3MDVkIiwidCI6IjYyMmNiYTk4LTgwZjgtNDFmMy04ZGY1LThlYjk5OTAxNTk4YiIsImMiOjR9>.

[467] Daniel Gómez-Mazo also provides information on gender and the appointment system, but he does not disaggregate the data by judicial level. However, his conclusion is also that it is women who mostly hold discretionary appointments. He does not provide any data on race and gender of the discretionary judges. See Gómez-Mazo, *supra* note 13 at 132.

Figure 15. Percentage of discretionary appointees according to gender and hierarchy (2020)

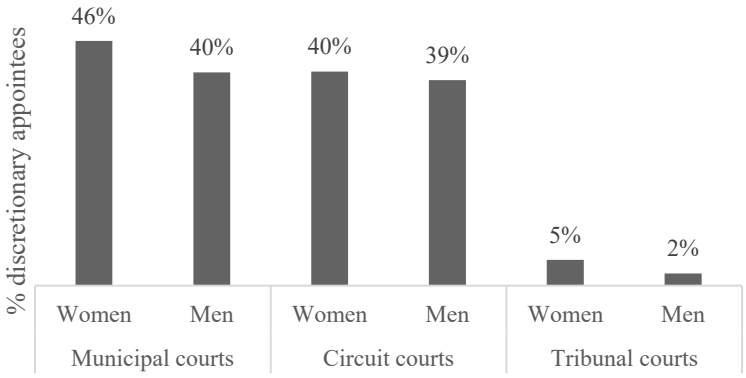
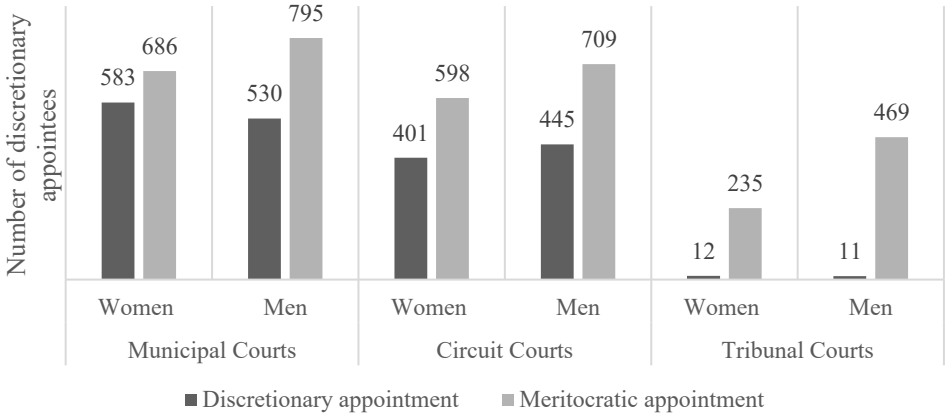


Figure 16. Number of appointees according to gender, hierarchy, and appointment system (2020)



Source figures 15 and 16: prepared by the author based on information provided by the Superior Council of the Judiciary.[468] Data on file with the author.

A more detailed analysis of the 2020 database reveals a statistically significant relationship between being a woman and receiving a discretionary appointment at the municipal level. In the circuit courts, the trend is reversed: there is a *slightly* significant relationship between being men and receiving a discretionary appointment. In tribunal courts, there is no statistical difference between men and women.[469]

[468] *Ibid*.

[469] At the municipal level, there is a statistically significant difference between 0.5% and 4% favouring women. In other words, discretion favours women (even if only slightly). In circuit courts, there is a higher proportion of men discretionary appointees. The difference is 0.3% and 1% more men on discretionary appointments (a proportion which is also statistically significant).

Rather than being an exceptional and temporary mechanism, discretionary appointments have become normalized. In that context, largely contradicting the common preconception, men tend to have greater access than women through the meritocratic route (as shown in Chapter V), whereas women are finding a slightly wider entry door through the discretionary route, at least at the municipal level. This is a door maintained with glue and adhesive tape, but a wider door nonetheless.

2.2. National Territory and Historic Neglect

Some municipalities are inaccessible, violent, extremely poor, or operate under the control of illegal armed groups. These are what I have called challenging municipalities. Candidates who have passed the merit competitions frequently refuse to be appointed in these kinds of municipalities, preferring instead to wait for a vacancy in a better location. For instance, in the province of Antioquia (of which Medellin is the capital), 42 of the 125 municipalities never have meritocratic appointees, mainly due to the challenging conditions in these territories.[470] Only discretionary appointees, who are almost always in need of improved pay and status, take on these Herculean tasks.

There is insufficient data to speak of causality between territorial precariousness and discretion, but there are strong correlations between the two phenomena. Indeed, more than a third of Colombian municipalities have a majority of discretionary judges and these municipalities tend to be located in peripheral regions. I referred to these correlations in Chapter III, while in Chapter IV, I examined the relationship between territorial distribution and gender. Here, I will focus on the territorial distribution by gender among discretionary appointees.

We find that, in circuit and municipal courts, discretionary men appointees tend to work in municipalities with a higher rate of homicides.[471] In municipal courts, men appointees also tend to work in poorer municipalities, which contrasts with the fact that there are more women working in municipalities with higher justice performance indicators.[472] In circuit courts, men tend to be

[470] This information on Antioquia was shared with me by one of my interviewees from the Superior Council of the Judiciary.

[471] In relation to the homicide rate, in the municipal courts, there is a difference between the average homicide rates where men and women live. Men live in municipalities with a higher homicide rate, with differences of 1.79 to 32.19 homicides per 100,000 inhabitants. In the circuit courts, men live in municipalities with higher homicide rates. The difference is between 1.8 and 18.28 homicides per 100,000 inhabitants. There is no difference in the tribunal courts.

[472] In relation to multidimensional poverty, in the municipal courts, on average men live in municipalities with a higher multidimensional poverty index. The difference ranges from 0.63 to 5.21 points. There is no difference in circuit and

located in municipalities with much higher levels of forced displacement.[473] Also, more men than women work both in municipalities with both high and low indicators of justice performance.[474] In sum, more discretionary men appointees work in precarious locations than women, which is a similar trend to the one described in the previous two chapters. I also found that some circuits prefer men discretionary appointees, while others prefer women. However, I did not identify clear territorial or institutional patterns in these findings.

There is no data available on these territorial variables in intersection with other categories of judges, such as their race, age, or regions of origin.[475]

2.3. Territorial and Normative Fragmentation

The uneven reach of the Colombian state explains the existence of many, but not all, discretionary appointments. Other institutional weaknesses of meritocratic competition also serve to explain discretionary appointments. For instance, as I described in Chapter III, meritocratic competitions take a long time, sometimes up to eight years.[476] This delay generates long periods without new lists of eligible meritocratic candidates and pushes the winners of the meritocratic competition to accept other jobs. In these circumstances, appointers resort to discretionary appointments. Appointers also resort to discretion on many other occasions (e.g. to cover study, illness, or maternity leaves). Precisely because tribunal courts use discretion so frequently and have so much flexibility in their policy-making, I inquired into the criteria that they (claim to) use when selecting discretionary appointees.

I sent requests for information to each of the 59 tribunal courts in Colombia, asking for their judicial selection criteria in discretionary processes.[477] I received responses from 43 courts (73%

---

tribunal courts. Regarding justice indicators, I found that municipalities with a *very high* justice performance indicator had more women than men judges (2.03% to 36.85% more women than men). There are also more women than men in municipalities with a *medium* justice performance indicator (with 5,9% to 20,79% more women than men).

[473] In terms of forced displacement, data show no differences in municipal and tribunal courts. In circuit courts, however, they show that, on average, men live in municipalities with a higher rate of IDPs per 100,000 inhabitants than women. The difference is 19.97 to 491.47 IDPs per 100,000 inhabitants.

[474] At the circuit level, more men than women work in municipalities with a *high* justice performance indicator (18.66% to 54.33% more men than women) and there are also more men working in municipalities with a *very low* indicator (with 2.02% to 71.66% more men than women).

[475] Gómez-Mazo refers to the relations between territory and Afro-descendant representation in the Colombian judiciary. See Gómez-Mazo, *supra* note 13 at 137.

[476] Eight years from the beginning to the end of the competition. Salazar, *supra* note 36 at 29.

[477] 33 tribunal courts from the ordinary jurisdiction and 26 from the administrative jurisdiction. I am not including here the sectional councils of the judiciary because they do not have power of appointment over discretionary judges.

of the total).[478] In sum, these answers point to three phenomena. First, almost half (47%) of the tribunal courts follow the guidelines of the high courts recommending them to respect the lists of eligible meritocratic candidates.[479] Only 20 tribunal courts answered that they did follow the recommendations issued by the high courts (3 of them with less emphasis).[480] The remaining tribunal courts asserted that the law gives them ample power to select flexibly, as long as the candidates meet the minimum requirements.

Second, there is considerable heterogeneity in selection processes, which is indicative of the territorial and normative fragmentation of the judiciary. Under the wide margin of discretion that the law provides, tribunal courts claim to follow all sorts of selection processes. For example, among the tribunal courts that follow the recommendations of the high courts, some issue public calls for applications and then prefer those on the list of meritocratic eligible candidates. Others disseminate the calls only to members of this list.[481] In tribunal courts that do not respect the meritocratic list, selection processes and criteria are even more heterogeneous. Within such heterogeneity, most tribunal courts claim to be committed to transparent, CV-based selections. At the same time, 34% of respondents acknowledged their great appointing powers, and 12% admitted that justices take turns appointing their preferred candidates.[482] Whether what they stated is true or not, I would argue that the processes they have created constitute sets of informal rules governing appointments within their own territory.

Third, only four tribunal courts claimed to take gender into account either in the applications or at the time of selection. Most tribunal courts either did not answer my question regarding their gender considerations (33% of respondents) or answered that gender was not within their selection criteria (58%). In some cases, courts that do not adopt gender criteria explained that merit

[478] The response rate in the administrative jurisdiction was much lower (17 out of 26) than in the ordinary jurisdiction (26 out of 33).
[479] One of the administrative tribunal courts (in the province of Meta) offered a particularly interesting answer, as they have created a whole points system to rank the CVs they receive after a public call for applications (only in cases where there is no list of eligible candidates available).
[480] 10 from each jurisdiction.
[481] In any case, the process is usually fairly standard: they issue a short call for applications (for between 3 and 5 working days) which is usually publicized on the website of the judicial branch and the respective court, as well as in visible places in the respective courthouses.
[482] In the ordinary jurisdiction, five tribunal courts admitted they take turns to *nominate* candidates and eight others claim they are open to receiving applications (but do not open a specific call for applications every time there is a vacancy). In the administrative jurisdiction, no court claimed to use the rotation system, but two of them did respond that their judges had the power to *nominate* their own candidates.

guarantees non-discrimination and that, in any case, women are in the majority in the judiciary.[483] Some even provided data to prove that women constituted a majority among discretionary judges in their region.

Interestingly, perceptions expressed by participants tend to cast doubt on these responses, partly because of their personal experience and partly because they cling to the negative stereotype surrounding discretionary appointments. For example, for most participants, some tribunal courts publicly declare their respect for the meritocratic results, but they do not honour – or do so only formally – that promise. Participants also perceive that the custom of assigning turns to appointers (so they can select their favourite candidate) is more common than the courts' responses suggest. In the same vein, most participants do not believe that transparent selections exist, but rather that justices have chosen their preferred candidates (their *favourites*) in advance.

What participants perceive fits well within the distinction between image and bureaucratic practices I proposed in Chapter II. The appointment practices behind the discretionary system may sometimes be in line with what the formal rules prescribe or may sometimes be borderline illegal. But, in any case, judicial bureaucrats strive to preserve the image that the judiciary operates in an impersonal, hierarchical, and technical manner. Even if the appointment has already been arbitrarily decided by a single justice, most tribunal courts continue to publish calls for applications, post advertisements in the corridors of courthouses, and receive résumés.

Although the broad appointing powers of the discretionary system are not illegal, most tribunal courts were unwilling to openly acknowledge the extent of that discretion and what they do with it. As suggested in Chapter II, discretion remains powerfully associated with inefficiency, lack of technical rigour, and even corruption. Therefore, it tends to be perceived as antithetical to bureaucracy as per the tenets of the liberal script (or what I described as the orthodox interpretation of bureaucracy). Consequently, we could say that both the image conveyed by the tribunal courts and the interviewees' perception have a common root in a negative preconception of the role of discretion within the bureaucratic field.

As I write down these ideas, especially after having processed my interviews, I think that perhaps a house full of tape and glue is not such a bad thing after all. Perhaps there are houses

[483] In the ordinary jurisdiction, 9 courts did not answer the question, 15 replied that it was not a relevant criterium and 2 (Arauca and Yopal) said they have gender considerations when making discretionary appointments. In the administrative jurisdiction, 5 courts did not answer the question, 10 said gender was not a relevant criterium, and 2 replied that it was relevant in their selection process.

(judicial machines) that need more flexible hinges with wider entry portals. Virginia Woolf's suggestive invitation comes to mind: "Think – one of these days, you may wear a judge's wig on your head, […]. We who now agitate these humble pens may in another century or two speak from a pulpit. Nobody will dare contradict us then; we shall be the mouthpieces of the divine spirit – a solemn thought, is it not?".[484] In a way, the 'temporary' reparations of discretion have allowed this solemn thought to materialize because they open an alternative access route for women in the Colombian judiciary, even if it is merely for the lower courts. Using this past section as background, in what follows I will explore the difficulties and advantages of this alternative access route for women in all their diversity.

3. The Disadvantaged (Type C):

"There is an adage that says that everyone talks about the party according to how much fun they had," said a man interviewee when asked about his experience with the judicial selection mechanisms.[485] Indeed, most of the participants have been at some point frustrated in their attempts to obtain a discretionary appointment, so the interviews were fraught with complaints about the non-transparent nature of discretion and the arbitrary conditions that limit their access to that world, especially if you are a woman. One discretionary justice, like many of my women interviewees, was keenly aware of her limitations when approaching appointers:

> But, Dr. Ceballos, I cannot sit down and drink whisky with [men] State Councillors! I don't see that as something possible. And to travel around with them. No, that doesn't work from my perspective. And I've seen that perhaps it's easier for men, for gentlemen, for my men colleagues. They do it: a State Councillor arrives in [my city] or in other parts of the country, and they can go out, they can sit down, they accompany them, they have a few drinks together, they talk, they walk around. When they, for example, have come to [my city], I have been able to interact with the State Councillors who come with their wives, with their spouses. It's easier for me in that sense, one on one, to relate to them and talk to them and serve them.

This and other stories from my fieldwork show that the judicial field is filled with power struggles, which challenges the idea that bureaucracy is entirely objective, technical, impersonal, and unitary.

[484] See Woolf, *supra* note 317 at 173.
[485] Participant ManJLL2.

Actors in the bureaucratic field (both appointees and appointers) have diverse and often competing interests that they defend for their own sake. The challenge for jurists is, on the one hand, to learn to navigate the bureaucratic practices of discretionary appointments in each region and jurisdiction. On the other hand, they have to try their best to acquire the capital that meets the interests of appointers. In what follows, I seek to explore how this challenge is not the same for men and women – even though the vast majority of my interviewees did not identify gender structural patterns in their exclusion stories.

What follows is thus an attempt to approach the experiences of my interviewees under the illuminating lamp of feminism, interpreting those experiences in terms of women's amount and forms of capital. I argue that many women have little chance of being selected in the discretionary system for two reasons. First, they tend to have little political capital or it is very costly for them to acquire such capital. Second, some women have deficits in symbolic, social, and economic capital that limit their options for geographic movement within the justice system. There are also women in whom several capital shortfalls converge, making their journey into the discretionary world disproportionately strenuous. The stories I collected for this section confront us with the intricate nature of exclusion.

3.1 Obstacles to Accumulating Political Capital in Men-Dominated Social Spaces: Avoidance of "Uncomfortable" Situations

A couple of days after I sent the information requests to the tribunal courts, I received a call from an unknown number. It was a man's voice. In a nervous and hurried tone, he said he clerked for a tribunal court in a peripheral region.[486] He was upset and frustrated because he had never gotten a *palomita*. Justices at his court took turns to choose whomever they wanted in the discretionary process but, he said, they had not dared to acknowledge this in their response to my request. The key in the process was to be close to the appointers, although in his case that closeness had not worked, which only added to his frustration. After hanging up, I thought that if the saying in the United States is that a judge is a lawyer who knows a senator, in Colombia it would surely be that a discretionary judge is a lawyer who knows a justice. One justice bluntly confirmed this idea: "Of course there is influence peddling. That's inevitable. Nobody is going to appoint an enemy! Surely

[486] Participant ManP12. His words are not exact because he did not give me permission to record the interview. He found my cellphone number in the information request I had sent to the court where he worked.

[the position] will be filled with a capable person, but you still have to have some knowledge of the person. To put it otherwise would be lying."[487]

Networks with powerful people – what might be called political capital – are key to accessing a discretionary appointment. Such political capital is difficult to build for almost everyone, but especially for women. The literature from Colombia and other contexts shows that women are commonly excluded from all spheres of influence, which makes it more challenging for them to build connections within powerful circles.[488] This exclusion is particularly marked if those circles are dominated by men, as is the case of the "macho" world that is the Colombian judiciary.[489] My interviews confirm this gender pattern. Thus, it is pertinent to expand on two salient factors that are intimately connected and that might explain women's difficulties in accumulating (or deploying their) political capital: first, women do not participate in men's activities or circles on a daily basis. Second, women fear exposure to sexual harassment.

Let us begin with the first factor. Appointers tend to build networks with those who look like them, behave like them, or share their social spaces. Especially within the context of tribunal court work, some participants underlined that justices (who, as I mentioned, are mostly men) had better relations with their men employees because they felt comfortable having a drink with them or watching a football match together. As I describe in the next section, some women compensate for this lack of common interests by being excellent or subservient. Another way to compensate for this imbalance is to get closer to, or to create spaces with, the justices' wives. Otherwise, women are generally in a disadvantaged position.

Postgraduate courses, conferences, or professional cocktail parties are also crucial spaces to enter into the networks of appointers, sometimes in crudely explicit ways. One of my interviewees told me that he went to many judicial conferences with the sole purpose of lobbying. After having a pleasant conversation with a high court justice and expressing his eager interest in obtaining a discretionary appointment, my interviewee was told by the justice: "You didn't have friends in the Supreme [Court], but now you do."[490] The problem in this case is that it can be difficult for women with care responsibilities to find the extra time to attend such social events,

[487] Participant ManJLL1.
[488] See, for instance, Sonia Pitre, "Women's struggle for Legislative Power: The Role of Political Parties" (2003) 27:2 Atlantis 102–109.
[489] Participant WomanJLN1: "[the judiciary] is a men's world. It's a world of machos".
[490] Participant ManJMA5.

many of which take place in the evening or involve travelling to other cities. Therefore, some women find it challenging to approach appointers, while appointers often preserve the masculine predominance of their networks.

Most of the participants did not identify gender patterns in these experiences. They perceive that it is, in principle, difficult for anyone to approach the appointers. What my interviewees did explicitly identify was the second factor: the exposure to sexual harassment that lobbying can bring (or is perceived to bring) for women. Both men and women interviewees experienced cocktail parties and conferences as aggressive spaces for women to navigate. Liquor is involved and conversations become informal, both being conditions that might work against women's integrity.[491] Several women participants said they consciously do not attend meetings and parties at the judiciary to avoid "uncomfortable" situations.[492] Some of them reported experiencing several situations of harassment. One of them recalls her experience at academic events in the following terms:

> This is always the case when there are meetings of the [administrative] jurisdiction and this has brought me limitations. I'll explain it to you: a speaker referred to a topic I was researching. I think I was completing my master's [dissertation]. So when he came down [from the stage] (he was a State Counsellor), when he came down, I told him that I was interested in that topic and I started to talk to him about it. Then he asked for my email address to send me information. But he didn't use the email for that. He used it to start flirting with me. [...] I mean… No, no! I mean, imagine subjecting yourself to that when you're just looking for academic support. So this has represented many limitations for me at judicial meetings. […] I can't go there [to those meetings] because I already have it in my head that if I go, I'm going to be exposed to…What?! To be asked for my phone number?! To be flirted with?! To be groped?!

Women do not feel "uncomfortable" only at parties and conferences. They feel the same when they do what is known as *la ronda* (the round). 'The round' consists of paying visits to the appointing justices at their chambers so that candidates can introduce themselves and express their interest in being appointed. This is possibly the quintessential form of lobbying for a discretionary appointment. In some large tribunal courts, the round may entail a separate visit, behind closed

[491] Sometimes there are cocktail parties organized by the judiciary, but mostly there are social gatherings in the framework of conferences (often in the coastal region of the country).
[492] For instance, participants WomanJMA3, WomanJMA4 and WomanJDA3. "Uncomfortable" is the word that many of them used.

doors, to more than 30 justices. Under these circumstances, some women said they felt incapable of doing rounds, unless rounds were done via Zoom, something that happened during the pandemic.[493] Some men interviewees were also aware of this situation, among other reasons, because appointers sometimes confide in them about their taste in women. One of those interviewees said: "I have heard from women who have told me: 'I go into the [justices'] office and they undress me with their eyes [...]'. So, no: I am absolutely convinced that women's experience in that kind of lobby is much more unpleasant than men's experience."[494]

My interviewees mentioned that another effective route to obtain a discretionary appointment is to know someone who knows the appointer, so that they can exchange benefits. For instance: if you give my sister a discretionary appointment, I will help you reach the high courts in the coming selection process.[495] In many of these cases, the anointed candidate gains direct access to the position, whereas, in many others, lobbying is still required. Ultimately, lobbying is part of the informal rules of this bureaucratic field, hence women may be set to experience harassment even within an entirely clientelistic logic.

Sexual harassment in the judiciary has historically been a muted explosion: a roaring phenomenon hidden by the complicit secrecy of superiors and the fearful silence of its victims. Today, the judiciary seems to be increasingly aware of the phenomenon of harassment within their institution and it has been the women judges themselves who have driven this process of awareness-raising.[496] However, judges and justices recognize their powerlessness vis-à-vis persistent obstacles to tackling harassment. At least a couple of women in positions of power admitted that, although they sometimes received private complaints about sexual harassment, they had no alternative but to recommend that the victim request a transfer so she would not have to be near her aggressor.[497] The burden of proof on women in these cases is high and dismissing justices accused of harassment remains a titanic task. In this sense, not only informal rules – such as lobbying – have disparate impacts on women, but also formal rules on disciplinary sanctions

[493] Participant WomanJLL13.
[494] Participant ManJMA3.
[495] This situation was mentioned, for instance, by ManP5, ManJLL5, ManJLL2, ManJDA11, and WomanJDA12.
[496] See, for instance, USAID, *supra* note 99. This was an investigation conducted by USAID at the request of the women justices of the Constitutional Court and was highly controversial because it exposed, for the first time, cases of sexual harassment within the Court.
[497] Participants ManJMA3 and WomanJNL1.

continue to downplay women's everyday realities. As in the case of meritocracy, the gender lens allows us to reveal that seemingly neutral rules can sometimes have adverse effects on women.

I am acutely aware of the gravity of these harassment allegations and of my responsibility as an academic regarding the potential impact of my findings. Perhaps harassment is not as widespread as my interviewees report. After all, my sample is not representative and I am reporting the *perceptions* of my respondents, which may be magnified by the outrageous nature of the issue. Yet, even if sexual harassment is not pervasive, it is nevertheless an alarming phenomenon that constitutes a form of discrimination against women and a form of gender-based violence in the workplace.[498] Moreover, harassment is indicative of an institutional culture that puts women down, thereby preserving men's hegemony and giving rise to other types of discrimination, both sexual and non-sexual.[499] Having said this, although neither fear nor complaints of harassment from men emerged during my interviews, I acknowledge it is possible that sexual harassment against men also exists in the judiciary.

The expert literature suggests that some women are less disadvantaged when building political capital. For example, women with greater economic capital (and fewer pressing needs) may be better positioned to resist or report harassing behaviour. In the same vein, women from higher social classes or with greater cultural capital are socialized to have greater self-confidence when approaching powerful men and to advocate for better jobs. I found no evidence about the effect of these other forms of capital in my interviews, but it is certainly an intersection of categories that deserves future exploration.

According to what I described above, in many cases, women perceive that conditions are not in place for building or deploying their political capital. And if discretionary appointments are so strongly tied to this form of capital, then women (especially certain women) are at a disadvantage in relation to men. Given these disadvantages, some women feel that their only possible option to access the judiciary is the meritocratic competition. Bureaucracy is a playing field where players gamble to win using their capital, but there are certain moves in the game that

[498] ILO Discrimination (Employment and Occupation) Convention 1958 (No. 111) and Article 6 of Convention on the Elimination of Discrimination against Women and Committee on the Elimination of Discrimination against Women, General Recommendation 19 of CEDAW on Violence Against Women (11th session, 1992), U.N. Doc. A/47/38 at 1 (1993).
[499] Vicki Schultz, "Reconceptualizing Sexual Harassment, Again" (2018) 128 The Yale Law Journal at 46.

seem too costly for certain women, even when immobility is equivalent to losing the game. "How costly is the price of victory", as Blázquez would put it, but not everyone pays the same cost.

This disparate gender effect of lobbying is a telling indicator of how the Colombian judiciary is a field of power struggles marked by personal networks, favours, and affections. It is a political arena with actors pursuing diverse goals, where the defence of personal and political interests is endemic. There is no drastic separation between a position and its possessor: working far from the controls of the central authority, appointers use their positions to create rules that benefit their own interests or implement their own political agendas.[500] As Bourdieu, Wacquant, and Farage posited, bureaucrats are much more than institutional representatives, as they have their own affections, biographies, and strategies.[501] All these reflections bring us back to the discussion about the importance of collaboration in Colombian culture, something I will discuss in more detail in the next section.

3.2. Deficit of Symbolic and Social Capital When Choosing Geographical Placements: Women "Staring into Their Own Countries"

In an (in)famous essay, Arthur Schopenhauer said of women that "[s]he is not granted the most vehement sufferings, joys and expressions of power, but her life is supposed to glide by more quietly, less significantly and more gently than that of a man, […]."[502] My interviews present a rather different picture: women are willing to accept positions in distant or dangerous places, certainly far from what we might understand as the sites for a gentle and quiet life. However, many women cannot undertake this challenge because they face practical difficulties relating mainly to their role as wives and caregivers. I argue that these difficulties restrict the access of certain women to the world of discretion.

I asked my participants whether they identified gendered territorial patterns in the distribution of discretionary appointees, considering the challenging conditions of the municipalities where discretionary appointments tend to be located. The majority of my interviewees responded that, in principle, they did not perceive clear patterns. They knew stories

[500] Buchely Ibarra, *supra* note 114.
[501] Bourdieu, Wacquant & Farage, "Rethinking the State", *supra* note 132 at 3.
[502] See Schopenhauer, "On women" in *Parerga and Paralipomena Short philosophical Essays* (Cambridge: Cambridge University Press) 550 at 550.

of both men and women who were willing to go anywhere for the sake of improving their salaries, status, and experience. Some added that although the demanding conditions of a place do not translate into differences in terms of access, those conditions are not equally challenging for both sexes. "Very few come to live amid these difficulties. They don't, they don't. So these forms of access... yes, they are not attractive to either men or women, and even more so for women who have a very difficult time here!".[503]

After asking my interviewees about these gender patterns, I asked if they identified differences in the profiles of the people who accepted positions in challenging municipalities. In this case, most of them added that the flexibility to go anywhere referred predominantly to young women. When women grow older, marry and take on care responsibilities, they are unlikely to move to distant or poor regions. Some women do take on the challenge without renouncing their care duties, but I would like to focus here on those who reject the position or do not even receive the offer in the first place. There are several gender-related factors that I would like to unpack in terms of symbolic and social capital deficits. These factors (some of which I discussed in the previous chapter) were mentioned by interviewees and coincide with the gendered mobility patterns already diagnosed by feminist literature.[504]

On the one hand, women disproportionately take on the burden of caring for their children's welfare. When they are offered discretionary appointments in challenging municipalities, they face a false dilemma: they can either separate from their families (leaving their children behind) or take their children with them. I argue that this is a false dilemma because my interviewees perceive that many women are unwilling to take on either of these alternatives, partly because of their social capital deficit. The first option requires strong support networks (mainly family members) who can take care of children while women are away. Few women have such robust networks. The second option can be even more burdensome: travelling with children to a new place where they lose entirely the support of primary networks. These challenges are present in any mobility decision, but they are amplified in the case of challenging municipalities, where the precariousness and risks mean that children require more supervision and support. Of course, much of the care responsibilities can be delegated to paid staff. But this requires economic capital that many women,

[503] Participant WomanJLL11. Justice from Chocó (a province with numerous challenging municipalities).
[504] See, for example, Hendrik Jürges, "Gender ideology, division of housework, and the geographic mobility of families" (2006) 4:4 Rev Econ Household 299–323.

often single mothers, do not have. As I identified in the chapter on meritocracy, the predominance of women's role as caregivers was also clear in this case.

On the other hand, even beyond their care responsibilities, women also have the gendered role of housewives. Some participants referred to how women feel that they either have to stay where their husbands are or they do not feel good about "disturbing" their families by moving residence.[505] It is men's careers that, in most cases, determine the location of the family, as women tend to have less symbolic capital within the couple to discuss – let alone impose – their life plans. It was utterly refreshing to note how my questions led a man participant to question himself about these naturalized gender roles in couples. "Today my wife got an offer, a job offer, and it [the position] was far away. And the first thing I thought was: 'Oh, no, but how is she going to go there with the children?' And I said to myself: 'so idiotic, so sexist of me!'. Because if they had made the offer to me, I would have discussed with her how we would maintain the family union. But since they're making it to her, I'm already saying no".[506]

I think of Alice Munro's short story about the outrageous idea of a woman having an office where she can be *alone*. "A woman who sits staring into space, into a country that is not her husband's or her children's is likewise known to be an offence against nature."[507] The territorial mobility required for many discretionary appointments poses substantial obstacles for certain women precisely because it entails that women have the freedom and power to look into their own country. Towards their own dreams and life plans.[508] These differences in women's geographic mobility have been diagnosed in other countries,[509] with the aggravating circumstance in Colombia that many of our municipalities have particularly challenging conditions.

I have no intention or statistical data to identify causal links between care duties and discretionary appointments. Still, it is worth suggesting that there may be interesting correlations

---

[505] Participants WomanJDA12, ManJDA11, WomanJDA1, and ManJDA3. I chose "disturb" for lack of a better translation, but the term that participant WomanJDA12 used was "desacomodar," which means something like "disarranging" or destabilizing something that feels comfortable.
[506] Participant ManP5.
[507] See Alice Munro, "The Office" in *Dance of the happy shades and other stories* (New York: Vintage International, 1998) 56 at 57.
[508] "I try to remind my own law students, who may contemplate becoming parents in the future, or, in some cases, come to law school with young children, that it's not possible to balance absolute dedication to family with total perfection in a career. But it is possible to be dedicated to parenting on one hand and to excellence at paid work on the other as long as you reach out to, and lean on, and share with, others." Shauna Van Praagh, *Building Justice: Frank Iacobucci and the Life Cycles of Law* (Toronto: University of Toronto Press, 2022) at 283.
[509] See, for instance, Sylvia Fuller, "Job Mobility and Wage Trajectories for Men and Women in the United States" (2008) 73:1 Am Sociol Rev 158–183.

between two of the findings described in this chapter. The first finding is that discretionary men appointees tend to work in more challenging municipalities than women. The second one is that many women encounter more gendered obstacles that prevent them from accepting or being offered positions in such municipalities. The combination of these findings shows, once again, a scenario full of complexities: men tend to live in more difficult conditions, which would mean that they are worse positioned than women. Yet, at the same time, men are obtaining a job that women jurists covet (Woolf's "solemn thought" of becoming a judge) but which they are not accessing because of structural gender inequalities.

I do not want to close this sub-section without mentioning that I also heard heartbreaking stories of discretionary men appointees. Men who take jobs far away in challenging municipalities and drive for hours every couple of weeks to meet their children – who stayed with their mothers – at a midway point in a dusty road.[510] Fathers who, every day, breathe the thick air of precariousness and nostalgia. It is clear that no judge (no citizen) should be exposed to working in inaccessible places without drinking water, where extreme poverty is the norm. I perceive, however, that these men had more flexibility in choosing their judicial avenues. Some women jurists not only lack that choice, but their role as committed mothers, wives, and caregivers is taken for granted. These are women who, in Munro's words, stare into their husband's or children's country. It is in this sense that I characterize them as *disadvantaged*.

3.3. Disadvantaged from Many Angles

As in the case of meritocracy, when inquiring about women's access via discretion, I found two groups of women who face disproportionate obstacles: unionists and racial minorities.

Although this idea was not prevalent in my interviews, some participants emphatically underlined the barriers that unionists face in the discretionary system. They feel that being a unionist works to your disadvantage. My hypothesis is that this characteristic may affect women more than men for two reasons. The first one is that outspoken and critical women tend to be more socially sanctioned than men of the same character. Women are expected to be obedient and silent. The women unionists I interviewed feel that they are perceived as uncomfortable and difficult by everyone in the judiciary, including (or starting with) the appointers. "Those of us who have a

[510] For instance, participant ManJDA8.

character like mine, so crossed and so politically incorrect, know that if it's not by merit, nobody would even invite us for a cup of coffee. So, if we don't pass the exam, how [do we access the judiciary]?".[511] The second reason is that, although women are a minority within unions –especially in leadership positions –, they are often more visible than their men colleagues.[512] That is, at least, what a unionist leader said: "The truth is that, on strike days, women are more committed and consistent. Men leave and women stay behind, guarding the buildings, and they are very active in seeking approaches [to employers]".[513]

Consequently, for unionists in general, and women active in unions in particular, the meritocratic system seems to be the only real alternative to access the judiciary. Their possibilities of building political capital are limited because their relationship with the appointers is (or is perceived as being) wounded by the animosity or mistrust of past confrontations.

The second group is racialized women. The judiciary is plagued with biases that lead to the undervaluing of the skills of racialized women from two perspectives: as women and as racial minorities. This phenomenon could be framed as a deficit of symbolic capital. In fact, as shown by a study on judicial racial diversity in Colombia by Daniel Gómez-Mazo, Afro-descendant women judges are repeatedly mistaken for domestic workers within judicial buildings. It appears that, for many, it is unthinkable that these women have the merits to hold a position of power.[514] Racialized women have less chance of fitting into generally undisputed perceptions of what is required to be 'a good judge', therefore they are also less likely to be perceived by justices as worthy of being appointed. The only strategy that might be effective for them is to be outstanding and work twice as hard, even more than racialized men. An Afro-descendant man put it this way in the interview: "I think black women perhaps have a harder time [than black men], don't you? She would have to be an excellent black woman. [...] I feel it. In order for me to achieve things, I

[511] Participant WomanJMA5. Since Colombians drink coffee all the time, the expression "he wouldn't even invite me for a cup of coffee" means that the other person would make no effort to socialize with the person who is emitting the expression.
[512] I was unable to obtain complete information on the composition of the unions either from the Superior Council of the Judiciary or from the unions themselves. However, I was able to talk to the director of one of the largest unions who gave me tentative information: the union has 21 subgroups (*subdirectivas*), and only three of them have women presidents. Women are also a minority in the national board (*junta nacional*): they are 29% of the main members, 33% of the substitute members, and 20% of the members of the 'central core' of the board.
[513] Participant ManJMA2.
[514] See Gómez-Mazo, *supra* note 13 at 196.

have to be very superior. [...] if we are going to compete as equals, the one who is not black will have a better chance than me."[515]

I have insisted throughout this thesis on the multiple interconnections between the worlds of meritocracy and discretion. For those for whom discretion is not an option, merit is a possible path. Others seek to circumvent the barriers of the meritocratic system through discretion. However, racialized women face problems in both systems. As I showed in the previous chapter, it tends to be harder for these women to overcome meritocratic competitions. Racialized women always seem to lose out, almost regardless of the appointment system.

The scarce presence of racialized women judges speaks volumes about their exclusion from both the meritocratic and discretionary systems.[516] However, unlike the meritocratic system (which, again, is presumed to be objective and neutral), discretionary selection often raises questions about whether appointers hold implicit or explicit racial biases. The majority of white-*mestizo* participants found it strange that there were so few racialized judges around them. This feeling was even more pronounced among participants in regions with large numbers of Afro-descendant or indigenous citizens. Yet, for them, one will never hear that X or Y candidate was excluded on the basis of race. Racial discrimination in the discretionary system is a hard-to-grasp phenomenon. As one of my interviewees put it, it is just something "in the air".[517]

For my racial minority participants, in contrast, discrimination is a rather ubiquitous, palpable experience. Racism starts with the lack of access to better legal education, the lack of personal and social recognition they encounter in the profession, the violence of everyday life, and the lack of role models in the judiciary.[518] In the specific case of discretionary appointments, not only are appointers likely to be racially biased, but racial minorities tend to be under-represented in the spaces inhabited by powerful officials, such as their schools, their universities, or even their regions. For instance, the connection between region, discretion, and race became quite apparent in my conversation with a Raizal woman.[519] She highlighted that the appointment of tribunal justices of San Andrés is made by high court justices in Bogota and, for her, it is clear that appointers prefer white-*mestizo* jurists who share their own background. And those white-*mestizo*

[515] Participant ManP6.
[516] Gómez-Mazo's thesis on judicial racial diversity in Colombia shows that racial minorities are almost absent in both meritocratic and discretionary appointments. See Gómez-Mazo, *supra* note 13.
[517] Participant ManJLL5.
[518] Participants ManP6 and WomanJLL4.
[519] Raizal is the racial minority from San Andres Islands.

tribunal justices, in turn, tend to select white-*mestizo* appointees for the island.[520] Thus, the territorial and racial exclusion of the island leads to the exclusion of Raizales, the native population. Again, this combination can have disproportionate impacts on women.[521]

4. The Favourites (Type D)

I want to turn now to other aspects of discretion. To that end, I begin by drawing upon the words of one very young woman participant:

> When I went to replace someone who was on maternity leave, I obviously didn't go with the expectation of anything, because I was 23 years old at the time; 23 years old when I got to the tribunal court. So my boss said to me (she is a woman and she said to me): 'tell the tribunal justice to help you, to help you get a discretionary appointment'. […] I told her 'I mean, they're not going to appoint a 23-year-old to a... to be a judge. Never!'. […] But when I left the tribunal court, the justice congratulated me for my work and told me that he was going to see how he could collaborate [help me].

Stories like this abound in my interviews, creating a thought-provoking contrast between the explicit narrative and the underlying stories around discretion. As I mentioned above, the negative stereotype against discretionary appointments appeared explicitly and frequently in my interviews. A vast majority of participants perceive that discretion is entirely determined by corrupt practices: appointers always obtain their share, the best candidates are rarely chosen, and appointments have unfair effects. However, as I dug deeper into their stories, I found all sorts of experiences that, I think, indicate that there may be more than meets the eye behind this explicit narrative.

I found a cognitive dissonance between the structural perceptions of the participants towards discretion (mainly negative, reproachful), and their assessment of their personal experience as discretionary appointees (mainly positive, non-corrupt). Many of those who structurally condemn the discretionary system, justify their own discretionary appointments. Discretionary appointments are generally corrupt and iniquitous – hence undesirable –, except for their own. Participants perceive that their appointments were absolutely extraordinary: a stroke of luck; a story I will not find twice in the judiciary; the reward for their excellent performance; the

[520] See Gómez-Mazo, *supra* note 13 at 149.
[521] Participants ManJLL3 and WomanJLL4.

recognition given by an appointer with an exceptionally generous heart. Almost all of my interviewees have held a discretionary appointment at some point in their careers, and they tend to refer to it as a "fortune" or a "huge blessing".[522] And even if this dissonance is unreal, and they were just saying what they thought I wanted to hear, it is an interesting and telling dissonance nonetheless.[523]

Amid this dissonance, participants had *personal* stories that they framed as non-corrupt, as well as stories *of others* that they usually framed as corrupt or immoral. Through these stories, I learned about two closely connected trajectories through which women find good access options to discretionary appointments. First, when they have worked in the tribunal courts as subordinates of the appointers. Second, when women have characteristics that make them appear to appointers as vulnerable or in need of special support. In both cases, they seem to have found help or mentorship from both men and women appointers (although it is important to remember that most appointers are men). In this section, I explore these two trajectories or experiences along with their underlying gender assumptions and dynamics of domination.

Since I am from a country where corruption as well as its perception abound, I grew up assuming that everyone was willing to "kill the rose", as the tango song goes. I assumed that everyone was willing to cheat in order to get ahead, unless proven otherwise. Well, I found myself confronting the bleak echoes of this (incomplete) stereotype at every step of this thesis. As I suggested in Chapter IV, I named this Type D *The Favourites* because I would like to suggest that many discretionary appointments occur in the framework of favours and collaboration networks. Having listened to my interviewees as openly as I could, I consider that *collaboration* would be hopelessly stripped of meaning if it were to be reduced to the idea of corruption or clientelism. I also consider that we gain little in our understanding of judicial bureaucratic practices if we label every discretional decision as corrupt, rather than striving to discern the socio-legal dynamics that continue to fuel those practices.

[522] For instance, ManJLL2, ManJMA2, WomanJDA1, WomanJMA7.

[523] García Villegas and Torres found something similar when they surveyed university professors in Colombia: respondents' perception of their colleagues' academic transparency was negative, whereas their self-perception was positive. See Mauricio García Villegas et al, *Academia y ciudadanía. Profesores universitarios cumpliendo y violando normas*, Documentos Dejusticia 34 (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017).

4.1. Political and Cultural Capital from Below: The Fruits of One's Effort

As I suggested in the previous section, women tend to encounter more obstacles than men in accumulating political capital in certain social spaces that are overwhelmingly men-dominated. However, according to the narratives of my interviewees, there is a space into which women often enter more easily than men and from which they can (from a subordinate but nonetheless privileged position) approach appointers. That space is none other than the tribunal and high courts, where many women take on the role of subordinates, or what is commonly known as judicial employees. These positions open a window of opportunity that allows women to showcase their social and professional skills and allows appointers to empathize with the life stories of their employees.[524] A former tribunal employee, a woman, took full advantage of this window of opportunity. This is how she made her way into her judicial discretionary position:

> I worked with X, a tribunal justice [...]. It was very beneficial for me to have worked with him. But I've also learned how to move in the field, right? So I've become friends with the justices. [...] I asked to be given a little office space that was literally a basement. A pit. But it turned out that all the justices parked their cars there, so they all passed by my office, and it was almost mandatory to greet me when they passed by.[525]

Working under the appointers appears to be an important factor in obtaining a discretionary appointment. This applies to both men and women: of the total number of my respondents who have held a discretionary appointment, more than 70% had previously worked for a tribunal or high court, with a slightly higher proportion of women than men. This trend seems to align with the fact that women represent a majority of tribunal court employees. Unfortunately, I do not have sufficient data to determine whether women justices have fewer or more women employees than their men peers. However, participants perceive that both have largely female work teams.

[524] An interesting finding from Competition 22 that is worth exploring further is that gender differences in standardized test scores are much more marked among competitors who are not judicial employees than among competitors who are judicial employees, at least in the lower courts. For instance, in the competition for municipal judge, among non-judicial employees, on average men fared better than women by 19.8 to 30.3 points; in contrast, among judicial employees, men fared better than women by between 6.7 and 18.2 points. In the competition for circuit courts, among non-judicial employees, on average men scored higher than women by 13.6 and 24.52 points, whereas among judicial employees there were no gender differences. Finally, in the competition for tribunal courts, among non-employees, men scored on average higher than women by 4.67 to 16.8 points, whereas among judicial employees men scored on average higher by 3 to 52.8 points.

[525] Participant WomanJDA12.

Respondents also perceive that men and women appointers like to have – or "have more *feeling*"[526] working with – women as subordinates. There seem to be several underlying gendered assumptions in this preference, such as that women are more reliable, responsible, and organized. Women subordinates, for their part, strive to gain the trust of their superiors through different strategies. In the absence of other social ties with their bosses, some of them strive to be excellent and work overtime. Others, however, take on tasks that men tend to neglect and which are nothing more than an extension of their domestic functions.[527] It is a form of care work within the workplace. They take care of their bosses, their colleagues, and the office.

The caregiving role of women does not appear to be a mere assumption of the appointers, but, according to interviewees, it is a role that many women do perform. Some women employees become private secretaries to the justices, taking charge of their wallets and personal agenda.[528] Another participant (the same one who worked in the basement) said that all the justices liked her because she was willing to serve them, bringing them coffee and aspirin whenever it was needed. Performing caregiving tasks can serve many women as a weapon to win the judicial game. If *capital* is that which allows actors to move within a given field, then we might argue that certain gender dispositions can actually be understood as cultural capital, insofar as they allow actors to have more chances of advancing in the field. Ultimately, to reinterpret Virginia Woolf's words, "[w]hat charms and consoles in the private house may distract and exacerbate" but may also become appealing "in the public office".[529]

Some women may deploy these gendered dispositions unconsciously, but in other cases those dispositions appear to be part of a larger and conscious strategy. For some women participants, it is clear that the key to obtaining a discretionary appointment is "to be liked";[530] this means, to be perceived not only as a good employee, but also as a kind, gentle person, something often tied to certain gendered expectations. A woman participant said she felt she had to constantly greet the justices and always appear friendly in their eyes: "It's a crazy world. But well, I thought that in the future, in the future, I would see the fruits".[531] And she did see them.

---

[526] Participant ManJDA4.
[527] Bourdieu, *supra* note 144.
[528] Participant WomanJMA4.
[529] See Woolf, *supra* note 317 at 165.
[530] Participant WomanJDA3.
[531] Participant WomanJDA3.

Whether women identify gender inequalities around them or not, most of them organically adjust their behaviours to the environment. In this case, my findings suggest that women use gender performance to adapt to what (they perceive) the environment expects and rewards. They have learned to navigate the bureaucratic practices of discretion and to *jouer le jeu* of the sexual division of labour in an environment where they have traditionally encountered many barriers.

I must note that participants talked about the behaviour of women employees, but also about the behaviour of the appointers, who sometimes play the role of mentors. These mentorships are a display of political capital in themselves, as well as platforms through which women acquire more political, cultural, and social capital. I cited above the experience of a woman who found a justice who was supportive of her work despite her youth. Other participants also spoke about men justices who had previously been their professors and who had always been committed, selflessly, to their professional growth.[532] I came across stories about women mentors, which were particularly powerful because they destabilize the imaginary about the essentially competitive relationship among women. But I heard even more stories about supportive men mentors who behaved like "gentlemen, in every sense of the word."[533]

By appointing their women employees to low-level positions, the appointers (who have first-hand knowledge of their professional and social strengths) are achieving several objectives at the same time. To begin with, they might be reducing informational friction and looking for motivated officials. They are also rewarding a good employee who knows the craft. Sometimes, they are being pragmatic and efficient: it is easier to appoint your secretary (who knows the job and already lives in the region) than to call each of the winners of the meritocratic competition (who will probably refuse the appointment because it is not permanent). In many cases, appointers are being sympathetic to the difficulties that women subordinates encounter in meritocratic competitions: they know first-hand the care responsibilities of their women subordinates, as well as their lack of time and energy necessary to study for the merit exam. In this line, although he was not referring specifically to women, a tribunal justice stated the following about his criteria for selecting discretionary appointees: "I try to help those I know are good and have been working [in the judiciary] for many years, but didn't pass the competition."[534] And, of course, it is possible that

[532] Participants WomanJLL1, WomanJMA6, WomanJDA12, WomanJDA14
[533] Participant WomanJDA3. Participants reported having men mentors in higher proportions than women mentors, probably because men appointers are in the majority.
[534] Participant ManJMA5.

appointers simply want to have someone they trust (have their own people) in a position of power, but at a lower rank than themselves.

So far, I have talked about women's behaviour and strategies to deal with bureaucratic practices. I have also referred to the support networks they find in their bosses. I would argue, following Javier Auyero's reflection, that using a category such as *corruption* or *clientelism* flattens the cultural complexity of these phenomena, obscures the richness of women's experiences, and contributes little to our understanding of how discretion works.[535] For these reasons, the notion of *collaboration* appeared to be much more illuminating, as well as a much less politically (negatively) charged term. As suggested earlier, for most Colombians, collaboration is a "central concept of the moral economy of life."[536] It entails an exchange between the strongest and the weakest, the *strongest* being the ones in a position to help.

Collaboration is part of the moral construction of everyday life, thereby turning into a much stronger driving force than formal rules that command appointers to disregard their personal ties.[537] It is possible that those who help (the strongest ones, who are the appointers in this case) may not be strong over time or in different social fields, so there is an underlying expectation that the one who receives the help may one day help back. There is a potential for reciprocity.[538] But that is all it is: a potentiality that may never materialize. These circumstances create a difference between collaboration and the classical definition of clientelism, where it is clear that patrons expect a concrete response, be that political support or other benefits, from their clients.

Moreover, I would argue that discretionary appointments frequently not only lack definite reciprocity, but are bestowed on a specific person. A *favourite* person. Most participants talk about how their bosses recognized *their* effort, *their* skills. They were appointed because *they* deserved to be favoured. And although they explained their discretionary appointments in terms of respect, recognition, and gratitude for their work, I sense that favouritism is often driven by a variety of sentiments. Favouritism may be prompted by the appointers' desire to deploy their power or by the seductive promise of increased self-worth.[539] It might also be prompted by the perception that

[535] Auyero, *supra* note 108 at 20.
[536] See Lemaitre Ripoll, *supra* note 230 at 21.
[537] See Robert M Price, *Society and Bureaucracy in Contemporary Ghana* (Berkeley/Los Angeles/London: University of California Press, 1975) at 63.
[538] See Lemaitre Ripoll, *supra* note 230 at 21.
[539] Caroline Humphrey, "Favors and 'normal heroes'. The case of postsocialist higher education" (2012) 2:2 Journal of Ethnographic Theory 22–41 at 23.

personalized interactions are warmer and more flexible, as opposed to the estranged, cold approach to appointments that the high courts recommend adopting.[540] In the case of women employees, appointments may be partially prompted by paternalistic feelings or a form of sexist benevolence, perpetuating the typical scheme of an older, higher-ranking man who feels a duty to protect the women below him – though not to make them his peers. However, none of these background sentiments clash with the possibility that selfless favours are given and discretionary appointments do help women improve their salary and status.

Participants' narratives illustrate that appointers can be understood as rule-creating agents who, operating far from the central state, assess who around them is best equipped or who deserves to receive a discretionary appointment. Justices thus develop their own local appointment rules according to their personal interpretation of what the official mandate requires of them.[541] Being in the majority among employees, it is possible that women do benefit from this interpretation – although this may not be the case in all tribunal courts and with all justices. Participants' narratives also raise the possibility that women sometimes see the fruits of their efforts without being asked for anything in return, especially when they face disproportionate barriers in the meritocratic system. They bring to the table the possibility of finding women who contradict the lyrics of Blázquez's tango: women who have gotten ahead, leaving no dead roses in their wake.

4.2. Deficit of Capitals: Getting Ahead (and Resisting) in a Context of Symbolic Domination

I once read that, since peasant women used to put their "sick boys in women's dresses to dodge Fever," Thetis dressed Achilles in her tunics with the purpose of misleading Death.[542] Women occupied a secondary place in Ancient Greece, but perhaps it was not without its perks. In a patriarchal society, being (perceived as) a person in need can bring benefits, and the Colombian judiciary sometimes seems to be an example of this. And while Colombian women might not be able to mislead Death, some of them can obtain favours on the basis of their perceived or actual vulnerability. Based on the narratives of my participants, there are two groups of women who sometimes benefit from this intention to help those (perceived to be) in need: first, young women,

[540] *Ibid* at 24. "The official impersonal manner of doing things" (in my case, appointments through the meritocratic path) "is perceived to be lacking in possibilities for personal intervention, in space to maneuver, or recognition of one's person, and therefore unpleasantly 'cold'."
[541] Buchely Ibarra, *supra* note 114; Lipsky, *supra* note 182.
[542] See Marguerite Yourcenar, "Achilles or The Lie" in *Fires* (New York: Farrar, 1981) 13 at 14.

especially from lower classes; and, second, single mothers. These women may be but are not necessarily direct employees of the appointers, meaning there may be some overlap between this subsection and the previous one.

On the one hand, some perceive that justices are willing to help the lower classes if they, too, come from below and are aware of the difficulties of advancing in the judiciary.[543] It is important to note that many appointers are university professors, women form the majority of law students in Colombia, and most of these women students come from lower classes.[544] Some appointers sponsor (lower-class) women students within this context. There is also a perception that appointers tend to favour women who seem overwhelmed by their caring responsibilities and, in particular, single mothers. In fact, four women participants referred to this preference with a complaining tone.[545] They are not mothers but feel that they have been good at their work and have other needs. They perceive it as unfair that their efforts are not recognized through a discretionary appointment. "I had a colleague or an acquaintance who was a mother, a single mother. So they [the appointers] said 'she must have priority because, well… her husband left her. That is, the father of her kid. Poor woman!' And I would think: I don't have kids, so no 'poor me'?".[546]

In either case, the underlying narrative is that there are vulnerable women (or perceived as such) who are frequent subjects of the favours of appointers. This narrative entails two contradictory yet overlapping dynamics in the judiciary: women with care responsibilities face disproportionate challenges (in passing the meritocratic competition, building political capital, or moving geographically), but at the same time may have some advantage when accessing a discretionary appointment.

The purpose of helping women with these profiles may come from the public service vocation of the appointers. Some of them referred, for instance, to their commitment to better distributing the opportunities offered by discretionary appointments[547] or adopting a gender approach when making these appointments.[548] In principle, there is reason to believe in their intentions: society has assigned them the task of making judicial decisions (with wide margins of discretion) based, among other things, on their own intuitions of justice. In the case of discretionary

[543] Participant WomanJDA3.
[544] See Ceballos-Bedoya, "Unequal access to law school", *supra* note 151.
[545] For instance, participants WomanJMA12, WomanP3, and WomanJDA3.
[546] Participant WomanJDA3.
[547] Participant WomanJLL2.
[548] Participant ManJLL8.

appointments, their drive for justice may be particularly intense considering that they work with a myriad of subordinates afflicted by inequality. The fact that "every judge is a small world" gives justices the freedom to develop their own social and political agendas, even if these agendas bend or elude what is mandated by formal rules. One appointer put it bluntly: "We all try to circumvent the rules of the [merit-based] competition, sometimes in good faith."[549] This good faith comes from their intention to help people who urgently need to improve their wages and to compensate for the limited access that the meritocratic path provides. In a way, justices are using their discretionary power to redistribute power.

As in the previous subsection, it is extremely difficult to discern whether women's advantage in these cases stems from a sense of justice, from a positive discrimination approach to appointing powers, or from mere paternalistic, sexist, and corrupt sentiments. Or, connected to the latter, it could also stem from the appointers' ambition to entrench their symbolic dominance over appointees. In a way, choosing the most vulnerable actors may bring back higher levels of gratitude and loyalty: the greater the need for help, the higher the personal debt. Perhaps we are dealing with a form of the "accidental feminism" of which Swethaa Ballakrishnen speaks, in which women's trajectories are not the product of an intentional strategy to promote women's success, but the collateral product of other internal dynamics within the judiciary aimed at favouring those in power.[550] I do not rule out any of these possible motivations that appointers may have – all of which risk reinforcing stereotypes about women's fragility, and are only helping women to reach the lower courts. However, I would argue that even in a context of symbolic domination and low-ranking options, taking advantage of discretionary appointments can be a valuable tool of mobility and resistance for women.

It is important to remember how tough it is to overcome meritocratic competition for certain women (Type A women: *The Excluded*). But even when women succeed at the meritocratic competition, it may take them eight years to take up their new position. And some women have neither the time nor the conditions to wait for a meritocratic appointment to lift them out of their financial straits. If they are being appointed because of this constraint, then they are somehow instrumentalizing their capital deficit. Admittedly, such instrumentalization would not be

[549] Participant ManJMA5.
[550] Swethaa S Ballakrishnen, "Accidental Feminism: Gender Parity and Selective Mobility among India's Professional Elite" in *Accidental Feminism* (Princeton University Press, 2021).

particularly strange: in Colombia, it is commonly understood that precariousness becomes both a tragedy and an opportunity.[551] Moreover, this experience or trajectory aligns with much of the literature on women's survival strategies or, more generally, a strategy in the framework of which national policies are "translated" according to local dynamics.[552] Accordingly, entering the world of discretion is not necessarily a matter of making a pact with Lucifer, as the tango would have it. But it is a strategy to save one's skin in a context where achieving that goal is no mean feat.

From a bottom-up perspective, gaining access through the discretionary system can also be interpreted as a form of resistance, particularly in the case of women (such as caregivers and racial minorities) who are disproportionately affected by the meritocratic system.[553] My interpretation is that, in a country with profound economic and gender inequalities, women and other vulnerable groups often negotiate their access to rights and services with (other) bureaucrats when confronted with formal legal structures that give them few options for mobility or survival. Their resistance lies in the fact that they are becoming judges through the cracks of formal rules. Moreover, if their appointments are the result of a conscious strategy of being included, then I would even say that they are exercising power in a meaningful way. And I believe that the negative stereotyping of discretionary appointments remains incomplete largely because of the lack of recognition of this agency and resistance that women deploy. The lack of recognition of all their attempts to advance in a field where they encounter countless obstacles.

It is essential to add here an obvious reaction to all these reflections: that the idea of doing "favours" to people we trust or perceive as vulnerable may put judicial independence at risk. I do not mean to deny that risk, nor am I suggesting that the inclusion of women should take precedence over judicial independence.[554] I simply wish, once again, to underline the complexity behind

---

[551] This was the situation I found in my undergraduate thesis on forced displacement in Colombia: structural poverty is so deep and widespread that, for some people, becoming victims of displacement ends up giving them access to goods and services they did not have access to when they were 'simply' poor citizens. See María Adelaida Ceballos Bedoya, "Protección diferenciada de derechos en Colombia. La condición de desplazado como clave de acceso al derecho a la vivienda" in Gloria María Gallego García & María José González Ordovás, eds, *Conflicto armado, justicia y reconciliación* (Bogotá: Siglo del Hombre Editores, Universidad EAFIT, Universidad de Zaragoza, AECID, 2012) 219.

[552] See Auyero, *supra* note 108; Lemaitre Ripoll, *supra* note 230. See also Gloria Isabel Ocampo, *Poderes regionales, clientelismo y Estado. Etnografías del poder y la política en Córdoba, Colombia* (Bogotá: CINEP, 2014) at 34.

[553] Participant WomanP12 and WomanJDA10.

[554] Similar tensions between judicial selection mechanisms and judicial independence can be found throughout Latin America. For example, in Mexico, de la Rosa Xochitiotzi and Velasco Rivera suggest that, although levels of judicial nepotism are high, there is no clear evidence that this is undermining judicial independence and impartiality. I believe that a similar call for empirical research is also applicable to the Colombian context. See, for instance, Carlos de la Rosa Xochitiotzi & Mariana Velasco Rivera, "La iniciativa de rotación judicial: mucho ruido y pocas nueces", (11

discretionary appointments and to insist on the importance of understanding that complexity in order to address it adequately.

* * *

Before closing this subsection, I should note that in my interviews I found a powerful and recurring narrative about *Favourite* women. This is, that women, especially young women, use their erotic capital to seduce appointers and obtain a discretionary appointment. To become *Favourites*. According to this narrative, many women who take the discretionary path to the judiciary do so because of their beauty and seduction, in a context dominated by men who react to these stimuli. In my opinion, it is indeed possible for some women (and men) to benefit from their erotic capital. "All orators are dumb when beauty pleadeth"[555] and different studies confirm that being beautiful – whatever that means, with all its racial and class connotations – does give individuals advantages in the social field. I have purposefully decided not to delve into this erotic capital narrative for three reasons, all of which are intimately connected.

First, it could end up reinforcing a negative narrative, based on a stereotype, that leaves women in untenable multiple binds: if they are not selected by their bosses, it is because they do not deserve to be rewarded; if they are in fact selected, it is only due to their seductive powers. If they conform to the social norm that requires them to be feminine and beautiful, their careers are called into question and they are more heavily exposed to sexual harassment. If they do not behave according to the codes of gender symbolism, they are also socially sanctioned in other ways. That is why in the judiciary we can find, simultaneously, women who say that "being ugly is a tragedy"[556] and others who think that "being good-looking is the worst thing that could've happened to me."[557] None of these forms of symbolic violence weigh on the shoulders of men, who of course also have and enjoy their erotic capital.

Second, the narrative around erotic capital is dangerous because it casts a shadow of doubt over the appointments of all women, beautiful or not. I do not believe that this narrative should be excluded from scholarly reflections on the grounds of its dangers. But what is clear from the

October 2018), online: *Nexos* <https://eljuegodelacorte.nexos.com.mx/la-iniciativa-de-rotacion-judicial-mucho-ruido-y-pocas-nueces/>.

[555] William Shakespeare, *Rape of Lucrece*, Israel Gollancz, ed, The Temple Shakespeare (London: J.M. Dent and co., 1896) at 18.

[556] See Sisma Mujer, *supra* note 312.

[557] Participant WomanJDA1.

viewpoint of a feminist methodology is that this topic deserved more in-depth critical attention than was possible within the parameters of my project. It would also have required fieldwork that specifically collected more clues in that direction, ideally with additional triangulation techniques.

Third, as with the *corruption* label, the erotic capital narrative also tends to flatten the cultural complexities behind women's experiences. For instance, such a narrative negates the possibility of women having real mentors who are willing to help or reward them beyond any intention of sexual exchange. Sex roles are infinitely reduced or simplified: women subordinates are powerful seducers, whereas men appointers are passive agents who have no power to resist their charms. Up to a point, this simplification evokes Silvia Federici's descriptions of how women were perceived in witch-hunting times:

> Not only were women accused of making men impotent; even their sexuality was turned into an object of fear, a dangerous, demonic force, as men were taught that a witch could enslave them and chain them to her will. […] witches were also accused of generating an excessive erotic passion in men, so that it was an easy step for men caught in an illicit affair to claim they had been bewitched […].[558]

This reductionist approach demeans women, strips actors of agency, and erases the richness of social relations between women and men. It is a narrative that does not help women advance their claims for equality. Finally, I believe that the careless reproduction of this narrative is tantamount to disbelieving women's words, which would be tantamount to allowing their stories to be "crunched into other people's fantasies […] and eaten alive".[559]

5. Paths for Further Exploration

In this chapter, I have addressed four overarching ideas through which I tried to show the complexities of discretionary appointments. These ideas are intended to be descriptive and analytical, rather than prescriptive in the sense that I do not intend to draw conclusions about what is morally right or what should be enshrined in a formal state rule. In this section, I summarize

[558] See Silvia Federici, *Caliban and the Witch* (Brooklyn: Autonomedia, 2009) at 190.
[559] The complete quote, by Audre Lorde, is: "That is how I learned that if I didn't define myself for myself, I would be crunched into other people's fantasies for me and eaten alive." See Audre Lorde, *Learning from the 60's* (Folger Shakespeare Library, 1982) at 3.

these ideas both to review the work and analysis of this chapter and to suggest paths for further exploration of the nuances of discretionary appointments.

First, the world of discretion is an excellent example of how judicial bureaucracy is a field of power struggles in which applicants, appointers, and appointees try to advance their own interests and have their own political and personal agendas. In particular, appointers have wide margins of discretion to impose their preferences and to manifest themselves in the bureaucratic field. Judicial bureaucracy is led by agents who have multiple and not always coherent wills,[560] who cannot be completely detached from social and political dynamics, and whose behaviour gives rise to territorial and normative fragmentation. I sought to explore these characteristics through the multiple selection processes that tribunal courts claim to apply (Section 2.3) and the various criteria of favouritism reported by my interviewees. I argued that these characteristics are inherent to the functioning of the Colombian judicial bureaucracy rather than dysfunctional qualities.

Second, the informal rules that emerge from that kaleidoscope of micro-powers play out very differently for women than for men, or for young women or racialized women. In fact, they play differently for women in subaltern positions and those in higher positions, and can play differently for the same woman at different moments over time. Some women participants have had both painful and empowering experiences while chasing after the elusive consequences of discretion. Discretion appears to expose women to harassment, yet it can also turn into a mobility and resistance strategy: more often than not, the only one available at hand. This means that women might acquire relative power to navigate and negotiate their professional path through informal rules. I also referred to how discretion, while facilitating women's access, could contribute to reinforcing stereotypes about gender dispositions or dynamics of symbolic domination of men over women subordinates. This context often creates multiple binds in which a systematic discrediting of women becomes part of the code.

Third, several studies in other contexts have argued that women tend to be disadvantaged where highly informal and discretionary appointing practices are in place.[561] On that basis, one would assume that women in Colombia would have less chance than men to gain access to the judicial office through the discretionary system. But the quantitative data reveal that this is not the

[560] See Loic JD Wacquant, "From ruling class to field of power: an interview with Pierre Bourdieu on la noblesse d'état" (1993) 10:3 Theory, Culture & Society 19–44 at 41.
[561] See Bergallo, *supra* note 71; UN Special Rapporteur on the independence of judges and lawyers, *supra* note 21; Irene Padavic & Barbara F Reskin, *Women and Men at Work* (Thousand Oaks, CA: Pine Forge Press, 2002).

case and that, at least at the municipal level, women have a slight advantage over men in this system. I have shown that this advantage favouring women, along with other characteristics of their judicial presence, is tied to the context in many ways. In Colombia, for example, it is tied to cultural practices of *collaboration*, the weaknesses of meritocratic competitions, the fragmentation of the judiciary, and the challenging conditions of much of the national territory.

This reflection echoes Paola Bergallo's warning in her study on the Argentine judiciary: "[T]he probability of correlations between selection systems and the gender of the bench must be empirically explored. In practice, whether a certain selection system may foster or hinder sex diversity and desegregation on the bench may be highly contingent upon some of the system's design features and the concrete contextual conditions in which it operates".[562] I argue that the common preconception or stereotype about discretion is conceptually problematic and empirically contested precisely because it seems to overlook Bergallo's warning.

Fourth, the intricacies of discretion are unregulated in the formal rules but informally regulated in the everyday practices of judicial bureaucracy. We gain little analytical insight when we lose sight of the complexities behind these intricacies and label them, without nuance, as corrupt or clientelistic. Moreover, such labels prove to be quite useless in imagining future political or regulatory strategies that guarantee equal entry and permanence for all. In my opinion, empirical information on the narratives and experiences of women (and jurists in general) should ignite layered conversations about how judicial selection really operates, what the actors involved feel regarding the adequacy of its processes, and what we should aim to change.[563] This is also an invitation to be open to listening to women's stories and to be willing to consider alternative readings of how they face bureaucratic judicial practices. As I suggest in the next chapter, this process of listening to and reflecting on women's stories is a powerful exercise that can effectively reshape not only the judicial field but our own worldviews. I, for one, found that women have diverse perceptions of how much victory costs, and that those perceptions do not correspond neatly to the tune of corruption discourse I was raised to sing without question.

---

[562] Bergallo, *supra* note 71 at 78.

[563] Research on Mexico showed that 51% of circuit magistrates and district judges had at least one family member working in the judiciary. See Julio Ríos Figueroa, "El déficit meritocrático. Nepotismo y redes familiares en el Poder Judicial de la Federación", (27 August 2018), online: *Nexos* <https://anticorrupcion.nexos.com.mx/el-deficit-meritocratico-nepotismo-y-redes-familiares-en-el-poder-judicial-de-la-federacion/>. It would be interesting and relevant to conduct this type of research in Colombia, although I must say that only a couple of my interviewees referred to the existence of this type of nepotism in Colombia. The preponderant perception refers instead to cronyism or favouritism beyond family ties.

CHAPTER VII. CONCLUSIONS. KILLING PHANTOMS, OPENING AVENUES

> *"And while I was writing this review, I discovered that if I were going to review books I should need to do battle with a certain phantom. And the phantom was a woman, and when I came to know her better I called her after the heroine of a famous poem,* The Angel in the House. *It was she who used to come between me and my paper when I was writing reviews. It was she who bothered me and wasted my time and so tormented me that at last I killed her."* –Virginia Woolf –.[564]

I chose the title of this dissertation, *Women's Place(s): A Socio-Legal Analysis of Gender Inequalities in the Colombian Judiciary*, with the intention of giving visibility to women's places: the places they actually occupy, the places they should occupy, the places they would like to occupy in the Colombian judiciary. Throughout the process of writing, I always felt haunted by what Virginia Woolf called "The Angel in the House". For Woolf, this phantom whispers in women's ears that their place is in the home or in certain undervalued job positions. The Angel reminds them to be charming and self-sacrificing. More generally, the Angel represents the power structures that still hinder women's access to the same positions and under the same conditions as men. "Even when the path is nominally open – when there is nothing to prevent a woman from being a doctor, a lawyer, a civil servant – there are many phantoms and obstacles, as I believe, looming in her way."[565]

Throughout this thesis, I have tried to reveal the often-unacknowledged presence of such phantoms in the Colombian judiciary. In this concluding chapter, I summarize my main findings and conclusions, I refer to some underlying implications of my work, and finally I suggest future avenues for battling further the phantoms that still hinder women's equal access to the judiciary.

---

[564] See Virginia Woolf, "Professions for women" in Joy S Ritchie & Kate Ronald, eds, *Available means: an anthology of women's rhetoric(s)* Pittsburgh series in composition, literacy, and culture (Pittsburgh: University of Pittsburgh Press, 2001) 241 at 243. Woolf borrows the name "The Angel in the House" from a narrative poem written by Coventry Patmore in the mid-19th century.

[565] *Ibid* at 246.

1. Questions, Findings, and Conclusions

1.1. Two Questions Challenging a Common Preconception

My research questions asked *where* women and men are currently located in the Colombian judiciary and *why* women seem to be disproportionately accessing poorly-valued judicial positions rather than highly-valued positions. Both questions focused on Colombia's two main appointment systems (meritocratic and discretionary) and on lower and middle courts.[566] I suggest that my main contribution is twofold. On the one hand, I contribute to filling a gap in the local literature where gender inequalities in the judiciary remain understudied. On the other hand, I complement the existing literature produced in other countries by studying a new context (the Colombian one) while incorporating an analysis of the socio-legal context that takes seriously the in-depth study of context and informal rules.

Specifically, my dissertation challenges a common preconception in the prevailing legal literature produced in the Global North – a preconception that is also present among my interviewees. The preconception claims that meritocratic systems (impersonal, public, and ideally gender-blind) guarantee women's equal access to the judiciary, while securing other ends (such as efficiency and independence). In contrast, still part of the preconception, predominantly discretionary systems tend to affect other democratic goals in addition to hindering women's access, especially when appointers are men. I argue that this preconception is problematic because it is either based on a narrow analysis of formal rules, or assumes that what happens in specific contexts is universally applicable. In confronting this preconception, my dissertation proposed a socio-legal analysis linking legal and empirical knowledge of appointment systems *with* interdisciplinary research on structural gender inequalities and bureaucratic power. This analysis entailed conducting empirically grounded and context-sensitive research that paid attention to how jurists navigate judicial bureaucratic practices (which may or may not conform to formal rules). Through this analysis, my dissertation shows that the preconception does not entirely hold true in a context like the Colombian one. Rather, both judicial appointment systems are susceptible to critique from a feminist viewpoint.

[566] As I explained in Chapter III, meritocracy in Colombia is governed by public and gender neutral (some of them anonymous) selection processes, whereas discretionary selections processes are entirely determined by the justices from each provincial court (and gender is visible). Discretionary appointments should be exceptional and temporary, but in reality they are pretty common and permanent.

1.2. Findings and Conclusions

My first group of findings reveals that women are, indeed, located in poorly-valued positions in higher proportion than men. Women represent half of the judges in the lowest courts and a minority among the middle or tribunal courts.[567] Women also constitute a majority among discretionary appointees. Men, on the other hand, tend to work in challenging municipalities in higher proportion than women. In terms of appointment systems, contrary to the common preconception, I found that men are able to access the judiciary through the merit system in a larger proportion than women. In fact, there is a statistically significant relationship between being a man and holding a meritocratic appointment, as well as a slightly statistically significant relationship between being a woman and holding a discretionary appointment (at least in the lowest courts).[568]

These predominantly quantitative findings were complemented with qualitative data. For this purpose, I imagined a typology of four ideal types of women or four types of women's experiences accessing the judiciary. In each type, I analyzed how women's forms of capital and positions in the judicial field determine how they navigate the bureaucratic practices of each appointment system. The typology resulted from crossing two variables: first, Colombia's two main appointment systems (meritocratic and discretionary) and, second, the result of women's experiences with each system (negative or positive). Type A (called *The Excluded*) showed how meritocratic competitions tend to exclude women with greater care responsibilities and women with a form of cultural capital that is not rewarded by meritocratic competitions. Type B (*The Overcomers*) explored how women manage to overcome meritocratic competitions, always acknowledging that many women try their best but still fail to make it through the meritocratic path. Type C (*The Disadvantaged*) described the reasons why women tend to find it more difficult than men to build the political capital necessary to gain the favours of appointers. The most salient of those reasons is the fear of being sexually harassed. Through Type C, I also reflected on how women's care work limits their mobility options when applying for discretionary appointments in challenging municipalities. Type D (called *The Favourites*) suggested that women who work as subordinates of appointers or who are perceived by them as vulnerable subjects manage to build political capital from below and thus obtain discretionary appointments. Many of them bypass

[567] In Colombia, the lowest courts are the municipal courts, followed by the circuit courts, then the tribunal courts (which are the highest courts in each province) and finally the high courts.

[568] A detailed description of the data regarding meritocratic appointments appears in Chapter V, whereas data on discretionary appointments appear in Chapter VI.

meritocratic filters as a strategy of survival and resistance, and as a way of exercising power in a meaningful way within a relationship of domination. In sum, both systems are accessed by women with certain forms of capital, but in both, women who succeed in navigating the system tend to pay higher costs than their men peers.

Based on these findings, I draw two interconnected conclusions. The first one is that not all women always lose, and they lose or win neither in the same way nor in the same proportions. However, it is also clear that many women pay high costs regardless of system. Both systems are thus susceptible to critique, resistance, and transformation grounded in awareness of how diverse women experience them. This conclusion also underscores differences found among Colombian women, and those found between Colombian women and women from the Global North. In order to identify the who and how of 'losing', it is crucial to examine the specific bureaucratic practices around appointment systems, as well as the structural positions from which different women navigate these practices in each context.

My second conclusion is that there may be no appointment system that, in the abstract, guarantees women equal access to the judiciary.[569] Stating categorically that "women clearly succeed in gaining judicial appointments where competitions are anonymous and the criteria for appointment are knowledge based"[570], is to ignore that competitions can adopt infinite forms, that anonymous competitions can reproduce inequalities in highly unequal societies, and that bureaucratic practices around competitions change from country to country, among other relevant contextual factors. I have used the Colombian case precisely to show that the workings of appointment systems are highly context-bound and that the common preconception does not necessarily hold in all contexts, as is the case in Colombia.

A second group of findings suggests that the picture of appointment systems is far more complex than what the common preconception indicates and what participants may assume. On the one hand, I have shown that meritocracy, in addition to having unequal gender impacts, often operates in anti-technical, subjective, and inefficient manners. On the other hand, contrary to what is assumed, discretionary appointments sometimes appear to be objective, technical, and even merit-based. I do not deny that the discretionary path poses more risks to judicial independence than meritocracy and is a more fertile ground for corrupt practices. However, I argue that when we

[569] Kenney, *supra* note 17.
[570] Thomas, *supra* note 20 at 67.

assume that all discretionary appointments are corrupt, we close the door to a plausible scenario in which non-corrupt motivations and selection processes are opening doors for women's access to the judiciary. Similar nuances apply to meritocracy, which undeniably brings more job stability and less public distrust, but is having disparate impacts on women without necessarily meeting the judicial needs of a challenging country like Colombia. In sum, a dichotomous reading of reality flattens the fact that both systems exhibit contrasting features, namely: objectivity/subjectivity, efficiency/inefficiency, inclusion/exclusion. It also overlooks the fact that each system feeds on the perceived weaknesses of the other, and that, in any case, both systems try to preserve the 'image' of objectivity, neutrality, predictability, and technical nature associated to bureaucracy.

My conclusion about these findings is that not all good things go together. Perhaps, as Voltaire warned, we should be wary of narratives that claim that "everything necessarily serves the best end,"[571] for it is clear that even well intentioned and well-designed tools can end up having some negative effects. For instance, meritocracy might seem better at protecting judicial independence or transparency, but that does not guarantee that it will necessarily include women, and vice versa. In fact, a recent study demonstrated that the relation between women's presence and judicial independence in Latin American high courts is inversely proportional.[572] We do little to advance the cause of women when we obscure these complexities. Therefore, our challenge is to strengthen what works and repair what does not work in each system in ways that satisfy different goals to the greatest extent possible.

2. Implications and Reflections

The above findings and conclusions bring to the table some broader reflections on the value of unpacking socio-legal complexities, the importance of putting women at the centre of our reflections, and the possible dialogue between Colombia and other contexts.

2.1. Unpacking Complexities

As I close this dissertation, I resist offering policy recommendations or strong statements about what works better or worse for women. As I set out in the introduction, I have conceived this project primarily as an invitation to diagnose an unexplored reality and reflect on preconceptions

[571] See Voltaire, *Candide* (New York: W.W. Norton, 2016) at 2.
[572] See Santiago Besabe-Serrano, "¿En qué medida la independencia judicial incide sobre la presencia de mujeres en altas cortes de justicia? América Latina en perspectiva comparada" (2020) XXVII:1 Política y gobierno 1–15.

we take for granted. This dissertation is also an invitation to tell and retell stories. Through the participants' stories (intertwined with my own stories), I have explored the understudied topic of women judges in Colombia, destabilized a dichotomous view of appointment systems, and unpacked the complexities and overlaps of those systems. This exercise has been valuable from three interconnected perspectives.

First, this project fulfills one of the purposes of feminism, to the extent that it unearths women's experiences and studies what constitutes a problem *for* women. In particular, I sought to acknowledge women's narratives; what they say they perceive, want, and strategize. Virginia Woolf spoke of her perplexity when she compared the abundant existing stories about men with all the yet-to-be-told stories about women. Women judges in Colombia are part of "all these infinitely obscure lives [that] remain to be recorded"[573], and this dissertation records and brings those lives into the public debate. After a long tradition of obscurity and facelessness of women judges, the stories included in this thesis represent precious albeit incipient material: a spark amid the darkness.

Second, if actors in the judicial field I have studied were to read this dissertation, perhaps it would serve to transform or destabilize their own narratives. Stories can reproduce power structures and strengthen the phantoms. But they are also powerful tools to reshape the beliefs of tellers and readers. Moreover, stories "provide openings for creativity and invention in reshaping the social world."[574] Therefore, I hope that such readers will be able to take their colleagues' stories seriously, reassess their own perceptions, and reflect on how their personal experiences are embedded in complex gender structures.[575] By unpacking "the multiple and complex ways in which power gets exercised,"[576] I have tried to expose the underlying problems of hegemonic assumptions and to invite readers to imagine how the judiciary could work in the future. In particular, I have imagined the possible impact of this dissertation through the reading and retelling by the very people who participated in it and who breathed life into these pages.

---

[573] Virginia Woolf, *A Room of One's Own* (Surrey: Alma Classics, 2019) at 107.
[574] See Patricia Ewick & Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative" (1995) 29:2 Law & Society Review 197–226 at 222. In the same line, Maynard-Moody and Musheno say: "Stories are powerfully descriptive, but they are also profoundly normative: they shape and alter the views and beliefs of the teller and the listener; they simultaneously reveal and modify preferences and reasoning […]. Narratives are not passive artifacts reflecting organizational culture but active elements in forming and reforming organizational culture." Maynard-Moody & Musheno, *supra* note 190 at 158.
[575] See Van Praagh, "Stories in Law School", *supra* note 47 at 129.
[576] Ewick & Silbey, *supra* note 575 at 222.

Third, although I have not claimed control over how change should be pursued, my dissertation does emphasize the need for change in judicial appointments and provides material for appropriately designing such a change. I suggest that this dissertation can bring about transformation from at least two sources. On the one hand, it may trigger transformations in bureaucratic practices from within the judicial field, as I suggested in the previous paragraph. On the other hand, my findings and arguments might serve as a basis for future policies regarding (gender) diversity in the judiciary. Exposing the complexity of the operation of specific institutions in law is a prerequisite to transforming them and challenging "already-established solutions" to multilayered problems.[577] As Kathy Abrams put it, *"*complex narratives are, first and foremost, a promising vehicle for introducing legal decision-makers to a more complex, ambiguous legal subject."[578]

2.2. Highlighting the Role of (Women's) Stories

Gender inequalities in the Colombian judiciary may manifest themselves in different ways and affect women differently, but they are a palpable and persistent reality. One of the woman interviewees put it in words that I felt like a thorn in my throat: women often lose their right to dream.[579] Gender arrangements undermine women jurists' self-confidence and trust in the judiciary, hurting their dreams of becoming judges or getting promoted. This dissertation thus could be interpreted as an invitation to reclaim women's right to dream, or, in Woolf's terms, to understand the conditions under which the phantoms can be killed.[580] It is a call to reflect on what can be changed and how. I suggest that there are three underlying reflections to this dissertation that could be helpful for future legal reforms concerning appointment systems, judicial or otherwise.

The first reflection is that when judicial reforms fail to take into account a gender and intersectional perspective, they can actually work against women and minorities.[581] As I have

[577] This is the power that Van Praagh attributes to Patricia Williams' narratives. See Van Praagh, "Stories in Law School", *supra* note 47 at 132.
[578] Kathy Abrams, "Unity, Narrative and Law" in *Studies in Law, Politics & Society 3* (Greenwich: JAI Press, 1993) at 30. Quoted by Ewick & Silbey, *supra* note 575 at 198.
[579] Participant WomanJMA4.
[580] See Woolf, *supra* note 565 at 243.
[581] As Bergallo put it, "[…] devising institutional arrangements that do not take into account the current gender composition of the bench and the need to improve women's presence in institutional realms contributes to the perpetuation of the unfair arrangements that have disadvantaged women's situation throughout the country's history". See Bergallo, *supra* note 71 at 85.

insisted throughout this thesis, neither meritocratic systems – even if their processes are anonymous – nor discretionary systems guarantee women's equal inclusion in the abstract. In chapters V and VI, I tried to show that both systems are susceptible to critique and transformation through a focus on women. It is not enough that some women manage to slip through the cracks of the status quo or to create facially gender-neutral rules. Instead, it is urgent to transform exclusionary power structures through a genuine and gender-sensitive political will to remedy unequal access and working conditions for all women.[582]

The second reflection is that we tend to think we know what women jurists need and desire. Yet many stories in this dissertation show that this may not be the case. I, for one, dramatically reshaped my perceptions after listening to and critically analyzing the experiences I collected. My conclusion after the fieldwork is that the current appointment systems in Colombia have been created and implemented with insufficient attention to women's voices. This situation reminds me of what occurs with endometriosis, a painful disease of the uterus that doctors take too long to diagnose because they do not take their patients' narratives seriously.[583] Neglecting women's perceptions is so widespread and counterproductive that, for example, the English government was forced to issue guidance to physicians when treating this disease. The main recommendation was: "listen to women".[584] Connected to my previous point and my ideas from Chapter I, there is no true gender perspective unless we listen to what women have to say; unless we see their faces.

The third reflection is that, when listening to women, it is essential to *truly* listen to what their stories implicitly say about their experiences. As I mentioned in chapters V and VI, most women participants spoke of their difficulties in accessing the judiciary as merely individual issues, but there was either an epistemic difficulty or a political resistance to categorize their struggles as gender inequalities or discrimination.[585] In a similar vein, I identified cognitive

---

[582] This is, for example, the main pillar of the GQual Campaign, a global campaign working for the inclusion of gender criteria in the selection process of international tribunals and monitoring bodies. Kenney reached this same conclusion in the United States. See Kenney, *supra* note 407.

[583] This story could be interpreted as a case of testimonial injustice, a type of injustice "[…] wherein a speaker receives an unfair deficit of credibility from a hearer owing to prejudice on the hearer's part." See Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007) at 9.

[584] This information on endometriosis comes from Criado Perez as part of a broader reflection on how doctors tend to disbelieve women's descriptions of their illnesses and pain. See Caroline Criado Perez, *Invisible Women. Data Bias in a World Designed by Men* (London: Abrams Press, 2019) at 242.

[585] For instance, Hull and Nelson suggest that "[…] much of the discrimination that occurs in the legal profession may go unperceived by its victims. As other research has suggested, processes of discrimination often are subtle and hidden. Individuals may believe that discrimination exists in the abstract but underestimate its impact on their own lives." See Hull & Nelson, *supra* note 161 at 253.

dissonance among many participants – both men and women. This dissonance means that there is a gap between what participants think about appointment systems in the abstract and what they think regarding their concrete or personal cases. On the one hand, most participants tend to value meritocracy positively in the abstract (its equalizing power, its guarantee of independence) but perceive that meritocratic competitions did not reward their personal skills. On the other hand, most participants are wary of discretionary appointments in the abstract or when those appointments are offered to their colleagues, but most narrate their own discretionary appointments as merit-based and transparent. These epistemic, political, and cognitive difficulties must be taken into account when designing research questions that can adequately capture what women really want, understand, and perceive – e.g. what words should we use when designing a survey that asks women about the 'gender discrimination' they have experienced?[586]

2.3. Identifying the Scope Conditions

Many scholars in other contexts reach conclusions about appointment systems that may be valuable, empirically grounded, and true in their own contexts. Problems arise when these conclusions are presented as universal when they are, in fact, particular. As I suggested in Chapter I, overly formalistic or supposedly universal reflections are usually insufficient and problematic, insofar as they deprive us of understanding the context in which they were born. In line with this type of reflection, my findings underscore precisely the significance of paying attention to the particular contours of the context in which women are telling their stories and navigating the judiciary.

By highlighting the relevance of context, I am not implying that each context is absolutely exceptional and that there is no possible learning or dialogue across contexts. What I am saying is that we need to consider the *scope conditions* of the conclusions we reach. That is, we should identify the socio-legal conditions under which similar conclusions could emerge. For instance, although this thesis is by no means a comparative study, I speculate that my conclusions might also emerge in Mexico, Brazil, and Peru, considering that these countries share some socio-legal features with Colombia. This is the case, in broad strokes, for the following general contextual elements: the hierarchical and territorial fragmentation of the judiciary; a culture of non-

[586] I frame it as an epistemic issue to the extent that most women find it difficult to make sense and conceptualize their experiences in terms of broader gender inequalities. On epistemic injustice, see Fricker, *supra* note 584.

compliance with formal rules; a powerful culture of favouritism; and meritocratic devices that reproduce the gender inequalities that exist in our societies. In fact, my initial reservations about the applicability of the common preconception in the Colombian context came from reflections on other Latin American countries along the same lines.[587]

There is also a potential dialogue with literature produced in some countries of the Global North. As I suggested in Chapter I, some problems may be particular to the Colombian context, but there are also problems we share with the Global North. It is crucial to properly identify what we share and what separates us, in terms of both concrete problems and contextual conditions. Paradoxically, the more we specify what is particular to our findings, the more we open the door to their appropriate applicability to other contexts.

3. Future Avenues

According to Alessandro Baricco, books are like mountains: once you have reached the top, "the sublime art of the descent awaits."[588] I would like to believe that what comes next is not a descent but a continuation, as I hope to continue studying gender inequalities in the judiciary in Colombia and beyond. I will mention only four of the many avenues through which this dissertation could be further expanded and improved.

A first avenue is to track participants' mobility and changes in narratives over time. This dissertation is, in many ways, a static snapshot because interviews necessarily reflect the interviewees' perceptions at a specific moment in their lives. A diachronic analysis, in contrast, would allow me to verify how contingent (or stable) my conclusions are and to draw more robust conclusions about the opportunities provided by different forms of access to the judiciary. It would be interesting to inquire, for example, whether women retain their discretionary appointments longer than men, or if the perceptions of participants who were outside the judiciary change once they become judges. In this analysis, I would emphasize how the COVID-19 pandemic impacted

[587] See, among other, Guillermo Toral, "How Patronage Delivers: Political Appointments, Bureaucratic Accountability, and Service Delivery in Brazil" (2023) 0:0 American Journal of Political Science 1–19; La pasión por el derecho, *supra* note 444; Andrea Parra Lozano, *Por siempre secretarias: la brecha de género en el poder judicial mexicano* (Undergraduate Thesis - Faculty of Political Science, Centro de Investigación y Docencia Económicas - CIDE, 2019) [unpublished].

[588] See Alessandro Baricco, *The barbarians. An essay on the mutation of culture* (New York: Rizzoli Exlibris, 2013) at 96.

specific trajectories. The effects of the pandemic on women's careers (especially on women who simultaneously care for elderly parents and children) are yet to be evaluated.[589]

A second avenue is to fill data gaps in the judiciary with an intersectional approach. As I explained in Chapter I, my access to information on various social categories was limited either by the data gaps in the Superior Council of the Judiciary or by difficulties in finding interviewees with more diverse profiles. Doubtless, better quantitative and qualitative information on relevant social categories would greatly enrich the reflections I presented here. For that purpose, it is pressing to collect thorough data on the racial composition of the judiciary and the legal profession, as it is clear that racial minorities experience access to the judiciary differently from non-racialized groups.[590] It is equally necessary to obtain information on the geographical origin and mobility of jurists, in order to identify how geography determines access to opportunities that are unevenly distributed across the territory. There is also an immense data gap to be filled in terms of gender diversity, disabilities, and social class.

A third avenue is to reconceptualize power hierarchies from women's perspectives. In this dissertation, I argued that some positions are poorly valued in that they have lower pay, less visibility, less stability, less status, and may be located in municipalities with low quality of life. However, women's stories revealed that what may be perceived from the outside as a poor position could in turn be, for them, a position that offers particular advantages. For example, some women reported that they apply for lower-rank meritocratic appointments in smaller municipalities because these positions leave them more non-work time or allow them to juggle their work and care responsibilities better. Admittedly, as I mentioned in Chapter II, it is extremely difficult to determine the scope for women's agency within a context of gender oppression. Nevertheless, it is essential to design research projects that acknowledge that women might strategically build life plans that do not include reaching top positions. The underlying challenge of such research would be to contribute to transforming our definition of power within the judiciary. To paraphrase Mary Beard's words, if women are not fitting entirely into power structures, then perhaps we need to change power, not women.[591]

---

[589] This is known as the "sandwich generation", in which most of my women colleagues are included.

[590] Available data on racial minorities is insufficient, which explains why most of my reflections stand on the shoulders of Gómez-Mazo's valuable research on Afro-descendant judges in Colombia Gómez-Mazo, *supra* note 13. Gómez-Mazo has, in fact, repeatedly denounced the data gap on racial minorities in the Colombian legal profession and judiciary.

[591] Mary Beard, *Women & Power. A Manifesto* (London: Profile Books LTD, 2017) at 60.

A fourth avenue, mentioned in Chapter VI, is that of exploring sexual harassment. Several participants organically spoke about how sexual harassment is ubiquitous in the Colombian judiciary. Sadly, according to a recent UN report, the risk of sexual harassment is actually pervasive in many judiciaries globally.[592] Future research on gender inequalities in the judiciary should delve deeper into this phenomenon: the paralyzing effect it has on women; the multiple binds it imposes on them (because women lose whether they are victims or perceived as seducers); the conditions that allow it to grow and be normalized; the unacceptable absence of social and institutional mechanisms to prevent and punish it.

There is a short story by Amparo Dávila that, for me, evokes how sexual harassment operates in the judiciary. The story, entitled *The Houseguest*, is about a husband bringing home a sinister guest. We do not know who or what the guest is. The women of the household are frightened by this constant and inescapable presence, but even so, everyday life seems to go on as normal. The woman narrator says: "Guadalupe and I never referred to him by name. It seemed to us that doing so would lend greater reality to that shadowy being".[593] The latent fear turns into "the most terrible nightmare a person could endure" when the guest comes out of his room and the women see him up close. As with Woolf's phantoms, the women in this tale find no alternative but to kill the houseguest. For me, this story evokes sexual harassment in the judiciary to the extent that harassment is a frightening presence that we know has entered the house, but we are paralyzed by both its normalization and the fear of repelling or even naming it. Future research should overcome such paralysis and unpack this phenomenon with all its pain, risks, and complexities.

❋ ❋ ❋

I wrote most of this dissertation during a pandemic that led me to make unexpected comparisons. "The plague brought an element of insolent equality to the lives of all"[594] and yet I was conducting

[592] "Regardless of their region, women judges have reported being victims of workplace or sexual harassment at some point in their careers. There is a widespread reluctance to talk about such experiences because, in many cases, a report could aggravate the problem and prevent any possibility of career advancement." See UN Special Rapporteur on the independence of judges and lawyers, *supra* note 21 at para 61.

[593] Amparo Dávila, "The Houseguest" in *The houseguest and other stories* (New York: New Directions Publishing Corporation, 2018) 12 at 14.

[594] Regarding the plague, the original text says: "Penchée sur le verre du buveur, soufflant la chandelle du savant assis parmi ses livres, servant la messe du prêtre, cachée comme une puce dans la chemise des filles de joie, la peste apportait à la vie de tous un élément d'insolente égalité, un âcre et dangereux ferment d'aventure." See Marguerite Yourcenar, *L'Œuvre au noir* (Paris: Gallimard, 1968) at 99. [Translated by author].

a study on inequality. As the months passed, I realized that, both in the pandemic and the situation of women judges, progress was neither inevitable nor irreversible. Everything about COVID-19 seemed hopelessly insoluble, whereas the exclusions of women were all avoidable.

I am not suggesting that gender inequalities in the judiciary are comparable to the pandemic, but I cannot be insensitive to fate's witty gestures. This is why I close this dissertation by insisting on the need to battle gender inequalities which are, indeed, avoidable. Phantoms vanish when we expose who women jurists and judges are, when we map where they are and where they should be, when we listen to and share their stories, and when we strive to transform social and institutional realities through those same stories. Judicial diversity is such an important democratic goal and encounters so much resistance that it must not be left to chance or to the mere passage of time. Instead, it requires permanent collective work, large doses of imagination, and unshakable political will. I trust my readers will join me in these commitments. "A solemn thought, is it not?"[595]

[595] See Woolf, *supra* note 317 at 173.

ANNEXES

ANNEX 1. INTERVIEW QUESTIONNAIRE AND CONSENT FORM

1. Sample questionnaire

A. Socio-demographic characterization of the participant:

- What is your age and city of birth?
- Did you obtain your high school diploma from a public or public school?
- How do you self-identify in terms of gender?
- How do you self-identify in terms of race and/or ethnicity?
- Do you consider that you have "long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, prevent your full participation in society on an equal basis with others"[596]?
- What is your mother's level of education?
- What is your father's level of education?
- What is your marital status?
- Do you have care responsibilities?
- On average, how many hours a day do you spend doing unpaid work to care for or look after other people?
- What kind of people do you have under your care? (e.g. elders, persons with disabilities, and children).

B. The academic and professional background of the participant:

- Where and in what period did you go to law school?
- Did you go to law school in the day or evening?
- Do you have any postgraduate degrees? If so, when and where did you undertake your postgraduate studies?
- How long have you been in this position?

[596] This question was designed using the terms of the United Nations Convention on the Rights of Persons with Disabilities.

- Where have you worked since you graduated from law school?
- Do you think the fact of being [a man / a woman] has affected your career in any way?

C. Experience of access to the judiciary:

- What type of appointment do you currently have?
- How exactly did your appointment process work?
- Who did you talk to or what sort of procedures did you have to follow in order to get a discretionary appointment? / How was your experience in the meritocratic competition? [This question varied according to the judicial hierarchy and the type of appointment]
- Have you ever participated in the meritocratic competition? If yes, what was the result? If no, why? [Only for discretionary appointees]
- Did you participate in meritocratic competitions or were you a discretionary appointee in the past? [only for meritocratic appointees]

D. Rules and practices governing judicial appointments:

- Have you found or can you identify any structural problems in the systems of entry to the judiciary?
- Have you found or do you think there are any obstacles or advantages for women jurists when trying to enter the judiciary? What are those obstacles or advantages?
- What factors matter the most for justices when selecting a discretionary appointee?
- What factors are essential to succeed in the meritocratic competition?
- Do you think there are any underlying requirements or characteristics (not explicit or not written in state laws) based on which judicial authorities decide who will be appointed?

E. Perceptions of gender equality in the judiciary:

- What is your overall perception of gender equality in the judiciary?
- Is there a stage in the judicial career in which you think women judges experience more challenges than their men colleagues?
- What do you think is the main factor that affects gender equality in the judiciary?

- What measures or policies have been implemented within the judiciary to guarantee gender equality?

2. Sample questionnaire for group II participants (justices, appointers, and trainers)

A. Socio-demographic characterization of the participant:

- What is your age and city of birth?
- Did you obtain your high school diploma from a public or public school?
- How do you self-identify in terms of gender?
- How do you self-identify in terms of race and/or ethnicity?
- Do you consider that you have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, prevent your full participation in society on an equal basis with others?
- What is your mother's level of education?
- What is your father's level of education?
- What is your marital status?
- Do you have care responsibilities?
- On average, how many hours a day do you spend doing unpaid work to care for or look after other people?
- What kind of people do you have under your care?

B. The academic and professional background of the participant:

- Where and in what period did you go to law school?
- Do you have any postgraduate degrees? If so, when and where did you undertake your postgraduate studies?
- Did you receive training with the specific purpose of selecting/training judges?
- Where have you worked since you graduated from law school?
- What is the title of your current position and how long have you held it?
- How exactly did your appointment process work (e.g. who was in charge of appointing you)?

C. Internal Dynamics of the Selection/Training Process:

- What are the main components and stages of the meritocratic competition?
- Can you identify any structural problems in the systems of entry to the judiciary?
- Have you found or do you think there are any obstacles or advantages for women jurists when trying to enter the judiciary? What are those obstacles or advantages?
- What factors are essential to succeed in the meritocratic competition? Are any of those factors associated with the candidate's gender?
- Do you think there are any underlying requirements or characteristics (not explicit or not written in state laws) based on which appointments are made?
- Do you think there is a relationship between the problems of the meritocratic competition and the high levels of discretion in the judiciary?
- Do you think there is a relationship between the high number of women discretionary appointees and the low number of women in certain judicial positions?

D. Perceptions of gender equality in the judiciary:

- What is your overall perception of gender equality in the judiciary?
- Is there a stage in the judicial career in which you think women judges experience more challenges than their men colleagues?
- Do you think the meritocratic competition was designed in a way that gives the same opportunities to men and women jurists? Why?
- What do you think is the main factor that affects gender equality in the judiciary?
- What measures or policies have been implemented within the judiciary to guarantee gender equality?

3. Sample questionnaire for group III participants (jurists outside the judiciary who have failed the meritocratic competition)

A. Socio-demographic characterization of the participant:

- What is your age and city of birth?
- Did you obtain your high school diploma from a public or public school?
- How do you self-identify in terms of gender?

- How do you self-identify in terms of race and/or ethnicity?
- Do you consider that you have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, prevent your full participation in society on an equal basis with others?
- What is your mother's level of education?
- What is your father's level of education?
- What is your marital status?
- Do you have care responsibilities?
- On average, how many hours a day do you spend doing unpaid work to care for or look after other people?
- What kind of people do you have under your care?

B. The academic and professional background of the participant:

- Where and in what period did you go to law school?
- Do you have any postgraduate degrees? If so, when and where did you undertake your postgraduate studies?
- What type of job do you currently have (organization, position, hierarchy)?
- How long have you been in this position?
- Where have you worked since you graduated from law school?
- Do you think the fact of being [a man / a woman] has affected your career in any way?

C. Experience of exclusion from the judiciary:

- How many times and in which years have you applied for a position in the judiciary?
- For which types of positions have you applied?
- Do you know why you were not selected on each of those occasions?
- What conditions would have had to be different for you to be selected?
- How would you characterize your overall experience of applying for a judicial position?

D. Rules and practices governing judicial appointments:

- Can you identify any structural problems in the systems of entry to the judiciary?

- Do you think there are any obstacles or advantages for women jurists when trying to enter the judiciary? What are those obstacles or advantages?
- What factors are essential to succeed in the meritocratic competition?
- Do you think there are any underlying requirements or characteristics (not explicit or not written in state laws) based on which judicial authorities decide who will be appointed?

E. Perceptions of gender equality in the judiciary:

- What is your overall perception of gender equality in the judiciary?
- Is there a stage in the judicial career in which you think women judges experience more challenges than their men colleagues?
- What do you think is the main factor that affects gender equality in the judiciary?
- Do you know of any measures or policies that have been implemented within the judiciary in order to guarantee gender equality?

4. Participant Consent Form

Researcher: Maria Adelaida Ceballos Bedoya, doctoral candidate, McGill University, Faculty of Law. Telephone: +57 316 257 25 26 (Colombia) and +1 438 969 05 90 (Canada). Email: maria.ceballos@mail.mcgill.ca.

Supervisor: Shauna Van Praagh, Faculty of Law. Telephone: 514-398-6626 (Canada). Email: shauna.vanpraagh@mail.mcgill.ca

Title of Project: Women's Place(s): A Socio-Legal Analysis of Gender Inequalities in the Colombian Judiciary. Research Ethics Board file number 20-05-019.

Purpose of the Study: You have been invited to participate as an interviewee for this research project. The purpose of this project is to study the gender inequalities in the Colombian judiciary. In particular, this project aims to identify the factors that explain why women's access to less prestigious judicial positions seems to be facilitated, whereas their access to higher or more prestigious positions seems to be hindered.

Study Procedures: Your participation in the study will involve orally answering questions during a [insert the approximate duration of the interview] minute interview. The questions will ask about your professional and academic background, as well as your experiences and expertise as [describe here the participant's profile: groups I, II, or III)]. Only with your permission, the interview will be recorded with an audio recorder and then transcribed into textual data in order to ensure that all the information you provide is accurately quoted in the research findings. If you prefer not to be recorded, the researcher will only be allowed to take notes of your answers during or after the interview. Whether the interview is recorded or not, a code will be assigned to all the documents or recordings associated with you, in a way that only the principal researcher will be able to link your identity to the answers you provided. Information from this interview may be paraphrased or quoted in my research results, but it will not be connected to your name or any other personal information that might reveal your identity. The research findings will be disseminated through conferences, academic articles, and the publication of the researcher's doctoral thesis.

Voluntary Participation: Participation in this study is completely voluntary. You are free to refuse to participate in this research, you may decline to answer any question, and may withdraw from the study at any time, for any reason. If you decide to withdraw from the study before publication, the information you provided will be destroyed and will not be included in the research findings. Following publication, data cannot be destroyed but will be withdrawn from further analysis and publication.

Potential Risks: Some of the questions in the interview will ask about your experiences of exclusion from the judiciary. This sort of question might cause you emotional distress. If you are feeling uncomfortable or stressed with these questions, you may decline to answers them, you may ask the interviewer to change the line of questioning, or you can put an end to the interview at any time.

[The following paragraph was be included only in the consent forms of group I and II participants] Additionally, you will be asked questions about the institution where you currently work, therefore your participation in this project might expose you to social and economic sanctions by your colleagues or superiors. However, three precautions will be adopted to minimize these risks: all

the information you provide will be safely stored, your identity will not be revealed, and none of your superiors or colleagues will be notified of your participation in this project.

There are no foreseeable physical, legal, or political risks. None of the questions in the interview will place you at risk of criminal or civil liability, nor be damaging to your financial standing, or reputation.

Potential Benefits: Although this study will not benefit you personally, this research will benefit the judiciary and the legal community in general because it will contribute to a better understanding of how gender dynamics operate in the judiciary. Moreover, this research project will serve to formulate public policies that contribute to creating a more gender-balanced judiciary and fairer judicial selection processes.

Institutional Approval: This research project has already received academic approval from the principal researcher's doctoral committee and ethical approval from McGill University Research Ethics Board Office.

Compensation: You will not receive any compensation for participating in this interview.

Confidentiality: All your personal information will remain completely confidential during and after the research process. Four measures will be taken to ensure that confidentiality is protected. First, instead of your name, a code will be assigned to all the research documents and recordings associated with you. There will be a list containing the names of all interviewees and codes assigned to each of them. Second, in any publication or conference resulting from this research, unique alphanumeric codes and generic descriptions of the subjects will be used when quoting excerpts from the interviews [for instance, "WomanJLL1 for woman justice from the local level #1]. This means that nothing you say during the interview will be attributed to you by name. Third, only if and when you allow it, your interview will be audio-recorded, but the recordings will never be disseminated in public. Fourth, all information obtained in this interview may be used only with your consent in future related studies developed by the principal researcher.

The research results will be disseminated through three channels. First, they will be presented in academic conferences and non-academic forums. Second, they will be part of the researcher's doctoral thesis, which will be published in McGill's repository as well as in the form of a book and several journal articles. Third, the research findings will be disseminated through executive

summaries that will be shared with Colombian or international public officials and NGOs who might be interested in promoting judicial transparency.

Do you consent to be audio-recorded?

Yes:___No:___

Questions: If you have any questions/ clarifications about the project, please contact the principal researcher, Maria Ceballos-Bedoya, at +573162572526 (Colombia) or maria.ceballos@mail.mcgill.ca.

If you have any ethical concerns or complaints about your participation in this study, and want to speak with someone not on the research team, please contact the McGill Ethics Manager at 514-398-6831 or lynda.mcneil@mcgill.ca.

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Participant's Name: (please print) _____

Participant's Signature: _____

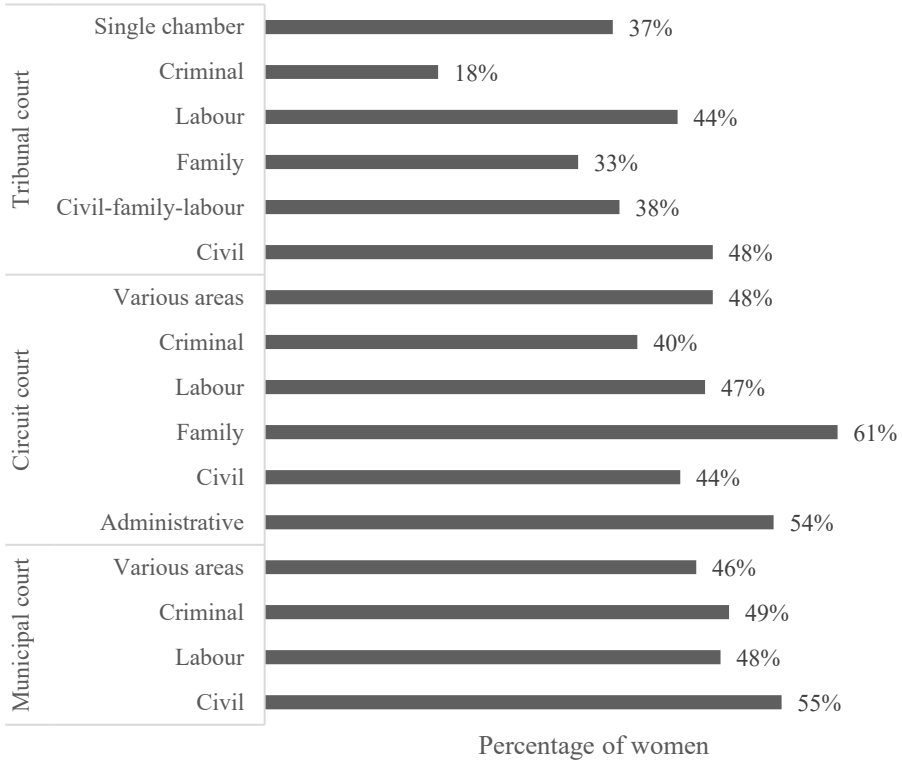
ANNEX 2. A SHORT REFLECTION ON ONLINE INTERVIEWS DURING THE PANDEMIC

Due to the pandemic, all interviews were conducted online using the Outlook platform, with all its bittersweetness. On the one hand, this circumstance deprived me of examining everything that breathes outside the screen. I was not able to examine such important issues as the body languages of the interviewees and their surroundings, the dress codes of the courthouses, the precariousness or richness of the judicial facilities, the way participants treat their women and men subordinates. The organization of the files, the smell of the offices, the taste of their coffee, the behaviour of the users of justice. All these elements and many more would have given me relevant clues to guide the interview or to interpret the participants' responses.

On the other hand, however, online interviews opened the door to valuable opportunities, at least from three perspectives: geographical, emotional, and quantitative. First, it allowed me to interview jurists from different and distant corners of the country, whom I might not otherwise have been able to reach. Second, although I initially feared that the on-screen conversations would necessarily be cold and distant, most of the interviews felt warm and familiar. On many occasions, the remote conversation offered silence, privacy, and intimacy that perhaps would have been difficult to find in the noisy day-to-day dynamics of a courtroom or law firm. This was, after all, the great paradox that the pandemic taught us: distance as an excuse for closeness. And third, being able to conduct my fieldwork online allowed me to interview many more jurists than I would have been able to interview in the pre-pandemic times. In this case, I think two fortunate facts converged: the cost and time of my mobility was reduced to zero, but also many interviewees felt isolated, wanted to talk to someone about their experiences in the judiciary, and in any case were already sitting in front of their screens all day.

ANNEX 3. GENDER COMPOSITION AND AREA OF LAW

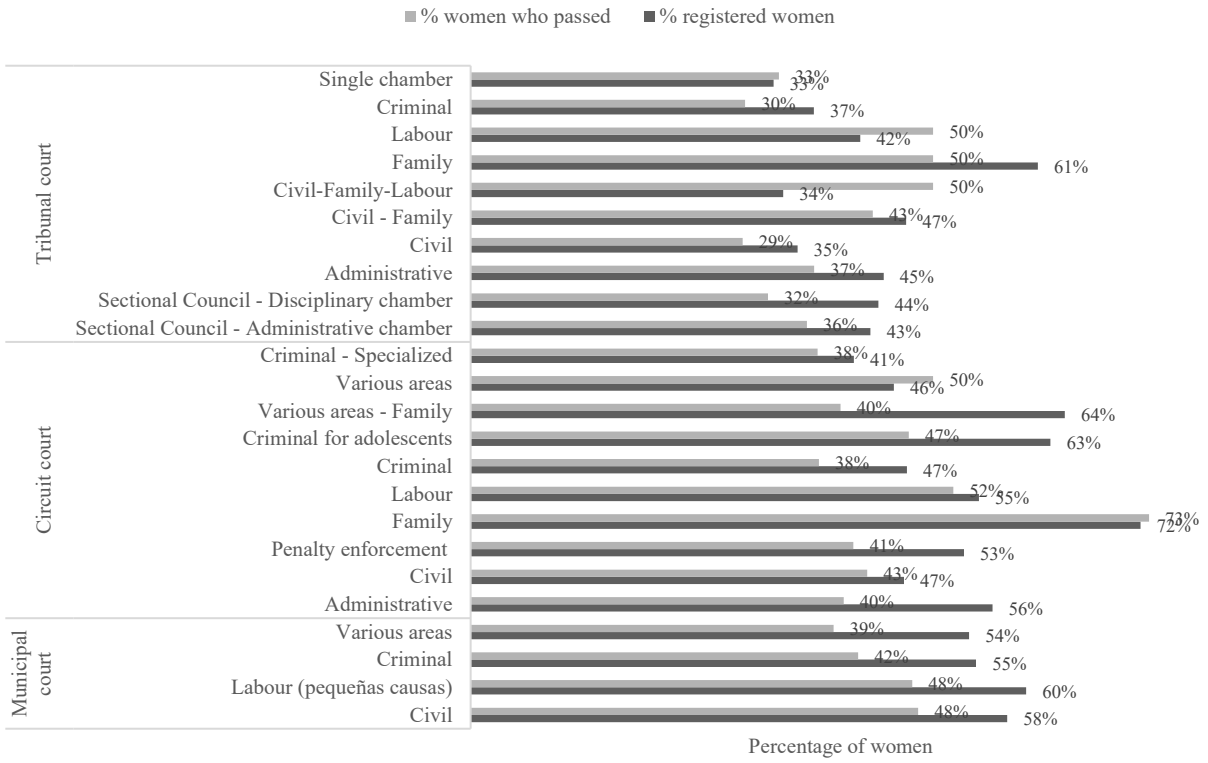
Figure 17. Percentage of women in the judiciary according to hierarchy and area of law (2020)[597]



Source: prepared by the author based on data provided by the Superior Council of the Judiciary.[598] Data on file with the author.

[597] I have grouped under the name "various areas" what is known in Colombia as "juzgados promiscuos".
[598] Superior Council of the Judiciary, *supra* note 307.

Figure 18. Percentage of registered women and women who passed the standardized test - Competition 22

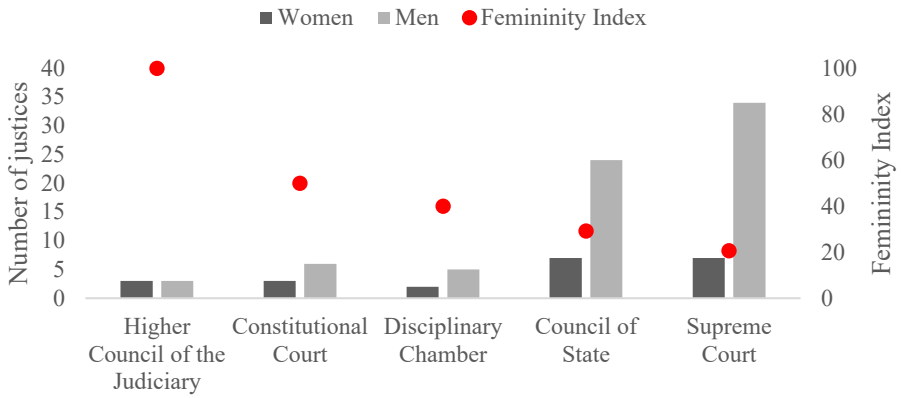


Source: prepared by the author based on data provided by the Superior Council of the Judiciary.[599]

[599] Superior Council of the Judiciary, *supra* note 373.

ANNEX 4. GENDER DIVERSITY IN COLOMBIAN HIGH COURTS (2020)

Figure 19. Gender diversity in the high courts (2020)



Source: prepared by the author, based on data by Corporación Excelencia en la Justicia.[600]

[600] *Paridad de género en las Altas Cortes*, by Corporación Excelencia en la Justicia (Bogotá: Corporación Excelencia en la Justicia, 2021).

ANNEX 5. STAGES OF MERITOCRATIC COMPETITIONS

Participants in the merit competitions must pass six stages in order to receive a meritocratic appointment:

i) Open registration.

ii) Admission: the Superior Council verifies that participants meet the minimum requirements.

iii) Standardized academic test: the test is composed of multiple-choice questions that measure the participant's general and legal knowledge. Participants must obtain a certain score to pass to the next stage of the competition.

iv) A psychotechnical test: this test seeks to measure the participant's psychological ability to perform well in a job. The results are only classificatory, not eliminatory.

v) Judicial training course: this is a one-year-long course with a general section (for all candidates) and a specialized section (according to the participant's area of law). This course is only for those who passed the academic test. The final grade for the course is obtained from several reading quizzes, participation grades, oral exams, a virtual internship, an in-person internship, and a research paper. Participants must pass all these evaluations and attend all sessions.

vi) Inclusion on the final list of eligible candidates: candidates who passed the training course are ranked in descending order according to their final score in the competition. This order is crucial because empty spots are limited, therefore not all the names on the list end up being appointed. Permanent judicial vacancies must be filled in strict accordance with the order of this list. The final score is the sum of the scores obtained in the academic tests, the psychotechnical test, and the training course, plus the scores assigned to the participant for her/his publications, professional experience, and additional training. The exam accounts for half of the final score.

Competitions 22 and 27 differ with regard to the moment in which they verified if the participants met the minimum requirements. In Competition 22, as it was traditionally done, verification occurred right after registration. In Competition 27, the Superior Council decided to verify the requirements only of those participants who did pass the academic test (although there was also a cursory check to verify that participants provided all requested documents)[601]. This disparity might have had an impact on the number and quality of test-takers in each competition

[601] Additionally, in a very Colombian attachment to legal forms, participants were also required to swear that they met the requirements when they registered.

(see Table 4). Additionally, Competition 27 was initially interrupted due to the Covid-19 health crisis in March 2020. Then, in October 2020, the Superior Council decided to annul the results of the academic test due to multiple irregularities in the scoring process. The new test took place in May 2021. This explains why there is no available information on the training course and the remaining stages of this competition.

Table 4. Differences between Competitions 22 and 27

Differences	**Competition 22**	**Competition 27**
Number of registered participants	36,281	44,824
Number of test-takers	27,668 (76% of the registered jurists)	37,345 (83% of the registered jurists)
Verification of minimum requirements	Before the academic test	After the academic test
Competition period	2013 – 2018	2018 – Today
Status	Concluded	Interrupted before the judicial course

Source: prepared by the author, based on data from the Superior Council of the Judiciary.[602]

[602] Information contained in the yearly reports presented by the Superior Council of the Judiciary to the Colombian Congress.

ANNEX 6. DISCRETIONARY APPOINTEES (2010-2021)

Table 5. Percentage of discretionary appointees among judges and tribunal justices (2010- 2021)

Position	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Judges - Ordinary jurisdiction	16%	1%	8%	12%	16%	16%	43%	46%	40%	31%	33%	36%
Judges - Administrative jurisdiction	0%	0%	0%	0%	0%	0%	38%	45%	39%	22%	25%	25%
Tribunal justices	7%	0%	0%	0%	0%	0%	11%	15%	5%	3%	5%	6%

Source: prepared by the author, based on data from the Superior Council of the Judiciary.[603]

[603] Information contained in the yearly reports presented by the Superior Council of the Judiciary to the Colombian Congress.

BIBLIOGRAPHY

Abad Faciolince, Héctor, "Todavía hay jueces en Berlín", El Espectador (27 February 2010), online: <https://www.elespectador.com/opinion/todavia-hay-jueces-en-berlin-columna-190130>.

Abel, Richard, "The Underdevelopment of Legal Professions: a Review Article on Third World Lawyers" (1982) 7:3 American Bar Foundation Research Journal 871–893.

Abello Castiblanco, Claudia Jimena, "'La ñaña del juez': una etnografía de la burocracia judicial caleña" in Isabel Cristina Jaramillo Sierra & Lina Fernanda Buchely Ibarra, eds, *Etnografías burocráticas: una nueva mirada a la construcción del estado en Colombia* (Bogotá: Universidad de los Andes, Facultad de Derecho, Ediciones Uniandes, 2019) 73.

Abrams, Kathy, "Unity, Narrative and Law" in Studies in Law, Politics & Society 3 (Greenwich: JAI Press, 1993).

Adichie, Chimamanda Ngozi, *Dear Ijeawele, or a feminist manifesto in fifteen suggestions* (Harper Collins Publishers, 2017).

Adkins, Lisa & Beverley Skeggs, *Feminism after Bourdieu* (Oxford - Malden: Blackwell Publishing, 2004).

Alexander, Iñigo, "Almost half of human rights defenders killed last year were in Colombia", The Guardian (4 April 2023), online: <https://www.theguardian.com/world/2023/apr/04/colombia-human-rights-defenders-killings-2022>.

Almario Pantoja, Margarita, "Estabilidad y garantías de los derechos laborales de los funcionarios y empleados del sector judicial en Colombia" (2016) 10:1 Novum Jus 93–112.

Alvarado Bedoya, Claudia Patricia, *El trabajo doméstico y del cuidado: informalidad y fronteras de laboralidad* (Doctoral Dissertation in Law, Universitat Pompeu Fabra, 2017) [unpublished].

Alviar García, Helena & Isabel C Jaramillo Sierra, *Feminismo y crítica jurídica: el análisis distributivo como alternativa crítica al legalismo liberal* (Bogotá: Siglo del Hombre Editores, Ediciones Uniandes, 2012).

Ámbito Jurídico, “13 sentencias hito de la Corte constitucional sobre género”, *Ámbito Jurídico* (2 November 2018), online: <https://www.ambitojuridico.com/noticias/general/constitucional-y-derechos-humanos/13-sentencias-hito-de-la-corte-constitucional>.

———, “Conozca cuál es el sueldo de los magistrados y jueces de Colombia”, *Ámbito Jurídico* (11 January 2018), online: <https://www.ambitojuridico.com/noticias/general/administracion-publica/conozca-cual-es-el-sueldo-de-los-magistrados-y-jueces-de.>.

———, “¿Existe discriminación de género en las firmas de abogados?”, *Ámbito Jurídico* (15 May 2012), online: <https://www.ambitojuridico.com/noticias/educacion-y-cultura/existe-discriminacion-de-genero-en-las-firmas-de-abogados>.

———, “‘Muero defendiendo la justicia’: Fanny González”, *Ámbito Jurídico* (5 November 2013), online: <https://www.ambitojuridico.com/noticias/general/educacion-y-cultura/muero-defendiendo-la-justicia-fanny-gonzalez>.

Andersen, David Delfs Erbo, “Does Meritocracy Lead to Bureaucratic Quality? Revisiting the Experience of Prussia and Imperial and Weimar Germany” (2018) 42:2 Social Science History 245–268.

Andrews, Penelope, “Pursuing Gender Equality through the Courts: The Role of South Africa’s Women Judges” (2020) 7:94 Public International Law: Human Rights eJournal 1–28.

Ángel-Cabo, Natalia & Domingo Lovera Parmo, “Latin American Social Constitutionalism: Courts and Participation” in Helena Alviar García, Karl Klare & Lucy A Williams, eds, *Social and Economic Rights in Theory and Practice Critical Inquiries* (New York: Routledge, 2015) 85.

Aradhana, Sharma & Akhil Gupta, eds, *The Anthropology of the State. A Reader* (Malden Massachusetts: Blackwell Publishing, 2006).

Arango Gaviria, Luz Gabriela, “Sobre dominación y luchas: Clase y género en el programa de Bourdieu” (2002) 7:1 Revista colombiana de sociología 99–118.

Arango Gaviria, Luz Gabriela, *Jóvenes en la universidad: género, clase e identidad profesional* (Bogotá: Siglo del Hombre Editores, Universidad Nacional de Colombia, 2006).

Arango Gaviria, Luz Gabriela, Óscar Quintero & Ivonne Paola Mendoza, "Género y origen social en el acceso a la Universidad Nacional: trayectorias de estudiantes de sociología y de ingeniería de sistemas" (2004) 22 Revista Colombiana de Sociología 87–110.

Arbeláez de Tobón, Lucía, *Análisis de género en la carrera judicial y en el acceso a las altas corporaciones nacionales de la justicia en Colombia* (Medellín: Diké, 2009).

Arciniegas, Carlos et al, "Cambios en la Registraduría: ¿y las mujeres?", (23 July 2023), online: *Razón Pública* <https://razonpublica.com/cambios-la-registraduria-las-mujeres/>.

Arnholtz, Jens & Ole Hammerslev, "Transcended power of the state: the role of actors in Pierre Bourdieu's sociology of the state" (2013) 14:1 Distinktion: Scandinavian Journal of Social Theory 42–64.

Auyero, Javier, Poor people's politics: Peronist survival networks and the legacy of Evita, (Durham: Duke University Press, 2001).

Bailey, Patricia Hill & Stephen Tilley, "Storytelling and the interpretation of meaning in qualitative research" (2002) 38:6 Journal of Advanced Nursing 574–583.

Baldiga, Katherine, "Gender Differences in Willingness to Guess" (2013) 60:2 Management Science 434–448.

Ballakrishnen, Swethaa, "Accidental Feminism: Gender Parity and Selective Mobility among India's Professional Elite" in *Accidental Feminism* (Princeton University Press, 2021).

Ballakrishnen, Swethaa, Priya Fielding-Singh & Devon Magliozzi, "Intentional Invisibility: Professional Women and the Navigation of Workplace Constraints" (2019) 62:1 Sociological Perspectives 23–41.

Baricco, Alessandro, *The barbarians. An essay on the mutation of culture* (New York: Rizzoli Exlibris, 2013).

Barrera, Leticia, *La Corte Suprema en escena. Una etnografía del mundo judicial* (Buenos Aires: Siglo Veintiuno Editores, 2012).

Barrera Varela, Pedro Javier, *El principio del mérito incluyente: una reformulación del sistema de ingreso al empleo público en Colombia* (Doctoral Dissertation in Law, Universidad Externado de Colombia).

Bartlett, Katharine T, "Feminist Legal Methods" (1990) 103:4 Harvard Law Review 829–888.

Beard, Mary, *Women & Power. A Manifesto* (London: Profile Books LTD, 2017).

Becerra Elejalde, Laura Lucía, "Desempleo en Colombia: el panorama del 2022 y lo que viene para 2023", *Portafolio* (1 February 2023), online: <https://www.portafolio.co/economia/empleo/desempleo-en-colombia-como-le-fue-al-pais-en-2022-y-proyecciones-para-2023-577786#:~:text=Desempleo%20en%20Colombia%3A%20el%20panorama%20del%202022%20y%20lo%20que%20viene%20para%202023>.

Bedoya Ángel, Laura Cecilia, *Decime bandoneón. Un viaje por el tango y la cultura* (Medellín: Editorial Libros para Pensar, 2022).

Bedoya Ángel, Laura Cecilia, "Tango y un cuerpo para otro", *Semana* (15 September 2021), online: <https://www.semana.com/cultura/articulo/tango-y-un-cuerpo-para-otro/202103/>.

Beg, Samreen & Lorne Sossin, "Diversity, Transparency & Inclusion in Canada's Judiciary" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London: Routledge, 2017).

Belleau, Marie-Claire & Rebecca Johnson, "Judging gender: difference and dissent at the Supreme Court of Canada" (2008) 15:1–2 International Journal of the Legal Profession 57–71.

———, "Les femmes juges feront-elles véritablement une différence? Réflexions sur leur présence depuis vingt ans à la Cour suprême du Canada" (2005) 17:1 Canadian Journal of Women and the Law 27–39.

Belov, Martin, Courts, *Politics and Constitutional Law: Judicialization of Politics and Politicization of the Judiciary* (New York: Routledge, 2019).

Bergallo, Paola, *A Judicial Glass Ceiling? The Selection of Buenos Aires Federal and State Judges* (Master Thesis, Stanford University, 2004) [unpublished].

Bergoglio, María Inés, "Diversidad y desigualdad en la profesión jurídica: consecuencias sobre el papel del Derecho en América Latina" (2009) 6 Revista Via Iuris 10–28.

Bergoglio, María Inés, Andrea Gastron & Silvana Sagués, "La investigación sobre la administración de justicia" in Manuela González & Carlos Lista, eds, *Sociología del derecho en Argentina* (Buenos Aires: Eudeba, 2011).

Berman, Bruce J, "Perfecting the machine: Instrumental rationality and the bureaucratic ideologies of the state" (1990) 28:1–4 World Futures 141–161.

Bernal Olarte, Angélica Fabiola, *Las mujeres y el poder político: una investidura incompleta* (Doctoral Dissertation, Universidad Autónoma de Barcelona, 2014) [unpublished].

Bernstein, Anya & Elizabeth Mertz, "Introduction. Bureaucracy: Ethnography of the State in Everyday Life" (2011) 34:1 PoLAR 6–10.

Besabe-Serrano, Santiago, "¿En qué medida la independencia judicial incide sobre la presencia de mujeres en altas cortes de justicia? América Latina en perspectiva comparada" (2020) XXVII:1 Política y gobierno 1–15.

Blackett, Adelle, *Everyday Transgressions: Domestic Workers' Transnational Challenge to International Labor Law* (Ithaca: Cornell University Press, 2019).

———, "Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill" (2017) 62:4 McGill Law Journal 1251.

Blay, Ester & Ignacio González Sánchez, "El techo de cristal en la judicatura española: hipótesis explicativas a partir de las vivencias de las magistradas" (2022) 20:2 Revista Española de Investigación Criminológica 1–18.

Bluradio, "Paridad entre hombres y mujeres en rama judicial es un 'esperpento': Gabriel Vallejo", (24 March 2021), online: *Bluradio* <https://www.bluradio.com/politica/paridad-entre-hombres-y-mujeres-en-rama-judicial-es-un-esperpento-gabriel-vallejo>.

Böhmer, Martín, *Imagining the State: The Politics of Legal Education in Argentina, USA and Chile* (Doctoral Dissertation in Law, Yale University, 2012) [unpublished].

Bonelli, Maria da Gloria, "Gender and Difference Among Brazilian Lawyers and Judges: Public and Private Practice in the Global Periphery" (2013) 20:2 Indiana Journal of Global Legal Studies 1291.

———, "Profissionalismo e diferença de gênero na magistratura paulista" (2010) 10:2 Civitas 270–292.

Booth, Wayne C, Gregory G Colomb & Joseph M Williams, *The craft of research* (Chicago and London: The University of Chicago Press, 2003).

Borges, Jorge Luis, *A Personal Anthology*, Anthony Kerrigan, ed (New York: Grove/Atlantic, Incorporated, 1967).

Botero Cabrera, Sandra, *Courts that matter: Judges, litigants and the politics of rights enforcement in Latin America* (Ph.D., University of Notre Dame, 2015) [unpublished].

Bourdieu, Pierre, *La distinction; critique social du jugement* (Paris: Minuit, 1979).

———, "La force du droit. Éléments pour une sociologie du champ juridique" (1986) 64 Actes de la recherche en sciences sociales 3–19.

———, "Masculine Domination Revisited" (1996) 41 Berkeley Journal of Sociology 189–203.

———, *Sociology in Question* (London: Sage, 1993).

———, "The Forms of Capital" in JG Richardson, ed, *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood Press, 1986) 15.

———, "The Social Space and the Genesis of Groups" (1985) 14:6 Theory and Society 723–744.

Bourdieu, Pierre & Loic JD Wacquant, *An Invitation to Reflexive Sociology* (Chicago: The University of Chicago Press., 1992).

Bourdieu, Pierre, Loic J D Wacquant & Samar Farage, "Rethinking the State: Genesis and Structure of the Bureaucratic Field" (1994) 12:1 Sociological Theory 1–18.

Brewer-Carías, Allan R, *Dismantling Democracy in Venezuela: the Chávez Authoritarian Experiment* (Cambridge: Cambridge University Press, 2010).

Brinks, Daniel, Steven Levitsky & María Victoria Murillo, *Understanding Institutional Weakness. Power and Design in Latin American Institutions, Cambridge Elements* (Cambridge, New York: Cambridge University Press, 2019).

Britannica, The Editors of Encyclopaedia, Ideal type (2018).

Buchely Ibarra, Lina, *Activismo burocrático. Las burocracias callejeras y la construcción cotidiana del principio de legalidad* (Ph.D., Universidad de los Andes, 2014) [unpublished].

———, *Activismo burocrático. La construcción cotidiana del principio de legalidad* (Bogotá: Ediciones Uniandes, 2015).

———, "Bureaucracy, distribution and social change. A Critique of Colombian statelessness" (2012) 125 Vniversitas 121–148.

———, "Más allá del modelo weberiano: el debate sobre las burocracias y el Estado" in *Las burocracias. Una aproximación distinta a la manera en la que pensamos el Estado* (Bogotá: Siglo del Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, Instituto Pensar, 2014) 11.

Cajas Sarria, Mario Alberto, *La historia de la Corte Suprema de Justicia de Colombia, 1886-1991* (Bogotá-Cali: Universidad de los Andes, Universidad ICESI, 2015).

Calvino, Italo, *The Uses of Literature* (New York: Harcourt Brace Jovanovich, 1986).

Campbell, Angela, "Bountiful Voices" (2009) 47:2 Osgoode Hall Law Journal.

Cardinal, Monique C, "The disempowerment of the judiciary in Syria since the March revolution of 2011 and the emergence of off-bench resistance to authoritarian rule: What role for women judges and prosecutors? | Oñati Socio-Legal Series" (2021) Oñati Socio-Legal Series 1–36.

Carmona, María del Pilar, "Mujer vs. Abogada: sobre la cuestión de género en la profesión legal" (2015) 35 Revista de Derecho Público Universidad de los Andes 1–32.

Carrillo, Paul E, Nestor Gandelman & Virginia Robano, *Sticky Floors and Glass Ceilings in Latin America*, (Rochester, NY: Social Science Research Network, 2013).

Carter, Angela, ed, “Tongue meat” in *The Virago Book of Fairy Tales* (London: Virago Press, 1990).

Ceballos Bedoya, Juan Sebastián, “Un invitado incómodo. Carlos Gaviria y el origen de la desconfianza en la justicia”, (3 April 2015), online: Asuntos constitucionales <http://miblogdeconstitucional.blogspot.com/2015/04/un-invitado-incomodo-carlos-gaviria-y.html>.

Ceballos Bedoya, María Adelaida, “Inclusión de género, exclusión de clase. Las mujeres en la educación jurídica colombiana” (2018) 49 Revista de derecho 113–141.

———, “Protección diferenciada de derechos en Colombia. La condición de desplazado como clave de acceso al derecho a la vivienda” in Gloria María Gallego García & María José González Ordovás, eds, *Conflicto armado, justicia y reconciliación* (Bogotá: Siglo del Hombre Editores, Universidad EAFIT, Universidad de Zaragoza, AECID, 2012) 219.

Ceballos Bedoya, Nicolás, “‘La Cenicienta’. La igualdad ante la ley” in Alejandro Gaviria Cardona, ed, *Una mirada crítica a los cuentos de los hermanos Grimm* (Medellín: Editorial EAFIT, 2022) 140.

Ceballos-Bedoya, María Adelaida, “(In)visible Legal Careers: Eliane Junqueira’s Kaleidoscopic View of Latin America” in Daniel Newman, ed, *Leading Works on the Legal Profession* (London: Routledge, 2023) 105.

———, “Mujeres y altas cortes: reflexión sobre una ausencia”, *Ámbito Jurídico* (9 June 2022), online: <https://www.ambitojuridico.com/noticias/columnista-impreso/mujeres-y-altas-cortes-reflexion-sobre-una-ausencia>.

———, “Unequal access to law school: a study of gender and class in Colombia” (2020) 28:3 International Journal of the Legal Profession 1–24.

Centeno, Miguel Angel & Fernando López-Alves, *The Other Mirror. Grand Theory Through the Lens of Latin America* (Princeton: Princeton University Press, 2001).

Centro de Memoria Histórica, Martha Nubia, *¡Basta ya! Colombia: memorias de guerra y dignidad* (Bogotá: Imprenta Nacional, 2013).

Cepeda Espinosa, Manuel José, "The Judicialization of Politics in Colombia: The Old and the New" in Rachel Sieder, Line Schjolden & Alan Angell, eds, *The Judicialization of Politics in Latin America* (New York-Hampshire: Palgrave Macmillan, 2005) 67.

Collier, David, Jody LaPorte & Jason Seawright, "Putting Typologies to Work: Concept Formation, Measurement, and Analytic Rigor" (2012) 65:1 Political Research Quarterly 217–232.

Comisión Nacional de Género de la Rama Judicial, *Aproximación al conocimiento, percepciones y prácticas sobre igualdad y género en la rama judicial. Encuesta a jueces/az y magistrados/as, by Comisión Nacional de Género de la Rama Judicial* (Bogotá: Comisión Nacional de Género de la Rama Judicial, 2011).

Consejo Superior de la Judicatura, *Experiencia del trabajo en casa en la rama judicial con perspectiva de género*, by Consejo Superior de la Judicatura (Bogota: Consejo Superior de la Judicatura, 2021).

———, *Informe de gestión de la rama judicial al Congreso de la República 2021*, by Consejo Superior de la Judicatura (Bogota: Consejo Superior de la Judicatura, 2022).

———, "Unidad de Administración de Carrera Judicial", (14 January 2019), online: Rama Judicial República de Colombia <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/resultado-prueba-de-conocimientos-y-aptitudes>.

Consejo Superior de la Judicatura & Corporación Excelencia en la Justicia, Resultados del estudio de tiempos procesales, by Consejo Superior de la Judicatura & Corporación Excelencia en la Justicia (Bogota: Consejo Superior de la Judicatura y Corporación Excelencia en la Justicia, 2016).

Conselho Nacional de Justiça, *Perfil sociodemográfico dos magistrados brasileiros 2018*, by Conselho Nacional de Justiça (Brasilia: Conselho Nacional de Justiça, 2018).

Corporación Excelencia en la Justicia, *Paridad de género en las Altas Cortes,* by Corporación Excelencia en la Justicia (Bogotá: Corporación Excelencia en la Justicia, 2021).

Criado Perez, Caroline, *Invisible Women. Data Bias in a World Designed by Men* (London: Abrams Press, 2019).

Cuesta, Ana María, “Denuncian preguntas ‘absurdas’ de la Universidad Nacional en concurso de jueces y magistrados”, (29 April 2019), online: *La FM* <https://www.lafm.com.co/educacion/denuncian-preguntas-absurdas-de-la-universidad-nacional-en-concurso-de-jueces-y>.

DANE, Boletín técnico. *Pobreza monetaria en Colombia. Año 2018*, by DANE (Departamento Administrativo Nacional de Estadística (DANE), 2019).

———, “Censo Nacional de Población y Vivienda 2018”, (2018), online: DANE <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivenda-2018/cuantos-somos>.

Dávila, Amparo, “The Houseguest” in *The houseguest and other stories* (New York: New Directions Publishing Corporation, 2018) 12.

Davis, Thulani, “Nina Simone, 1933-2003” *The Village Voice* (29 April 2003), online: <https://www.villagevoice.com/2003/04/29/nina-simone-1933-2003/>.

De la Rosa Xochitiotzi, Carlos & Mariana Velasco Rivera, “La iniciativa de rotación judicial: mucho ruido y pocas nueces”, (11 October 2018), online: *Nexos* <https://eljuegodelacorte.nexos.com.mx/la-iniciativa-de-rotacion-judicial-mucho-ruido-y-pocas-nueces/>.

Deo, Meera E, *Unequal Profession: Race and Gender in Legal Academia*. (Redwood City: Stanford University Press, 2019).

Departamento Administrativo Nacional de Estadística, *Encuesta Nacional de Uso del Tiempo*, by Departamento Administrativo Nacional de Estadística (Bogotá: DANE, 2021).

Díaz Baquero, María Jimena, Juan Diego Mojica Restrepo & John Marcos Torres Cabeza, *El perfil del juez: una verdadera reforma a la justicia* (Undergraduate Thesis - Faculty of Law, Pontificia Universidad Javeriana, 2015) [unpublished].

Doty, D Harold & William H Glick, “Typologies as a Unique Form of Theory Building: Toward Improved Understanding and Modeling” (1994) 19:2 The Academy of Management Review 230–251.

DuBois, Francois, “Judicial selection in Pots-apartheid South Africa” in Kate Malleson & Peter H Russell, eds, *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (Toronto Buffalo London: University of Toronto Press, 2006).

Dubois, Vincent, *The bureaucrat and the poor: encounters in French welfare offices*, translated by Jean-Yves Bart (London ; Routledge, 2016).

Dumez Arias, Juan Manuel, *El juez de la jurisdicción ordinaria* (Master Thesis in Law, Universidad Nacional de Colombia, 2013) [unpublished].

El Espectador, “Las altas cortes se rajan en paridad y la tendencia es histórica”, *El Espectador* (15 January 2023), online: <https://www.elespectador.com/judicial/la-deuda-de-paridad-de-las-altas-cortes-de-la-justicia/>.

El Tiempo, “Estas son las 26 personas contra las que declarará Gustavo Moreno”, *El Tiempo* (11 November 2017), online: <https://www.eltiempo.com/justicia/delitos/salpicados-por-exfiscal-gustavo-moreno-por-cartel-de-la-toga-150286>.

———, “Hoy, se reunirán Asonal, Gobierno y Judicatura”, *El Tiempo* (19 September 2008), online: <https://www.eltiempo.com/archivo/documento/MAM-3100364>.

———, “Las claves en el caso contra el magistrado Jorge Pretelt”, *El Tiempo* (18 August 2016), online: <https://www.eltiempo.com/justicia/cortes/claves-en-el-caso-contra-el-magistrado-jorge-pretelt-37858>.

———, “Por tutela ordenan nombrar a magistrado”, *El Tiempo* (12 June 1998), online: <https://www.eltiempo.com/archivo/documento/MAM-764710>.

Elias, Norbert & John Scotson, *The Established and the Outsiders: A Sociological Enquiry into Community Problems*, 2d ed (London: SAGE Publications, 1994).

Escobar-Lemmon, Maria C et al, “Breaking the Judicial Glass Ceiling: The Appointment of Women to High Courts Worldwide” (2021) 83:2 Journal of Politics 662–674

Escuela Judicial Rodrigo Lara Bonilla, Estructura y cultura organizacional de la rama judicial, by Escuela Judicial Rodrigo Lara Bonilla (Bogota: Consejo Superior de la Judicatura, 2004).

———, *Response to information request EJO20-1452* (Escuela Judicial Rodrigo Lara Bonilla, 2020).

Estupiñán Achury, Liliana, *Desequilibrios territoriales : estudio sobre la descentralización y el ordenamiento territorial colombiano. Una mirada desde el nivel intermedio de gobierno* (Bogotá: Universidad del Rosario, 2012).

Ewick, Patricia & Susan Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative" (1995) 29:2 Law & Society Review 197–226.

Federici, Silvia, *Caliban and the Witch* (Brooklyn: Autonomedia, 2009).

Feenan, Dermot, "Women Judges: Gendering Judging, Justifying Diversity" (2008) 35:4 Journal of Law and Society 490–519.

Ferguson, Kathy E, *The feminist case against bureaucracy* (Philadelphia: Temple University Press, 1984).

Fineman, Martha L, "Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship Women and the Law: Goals for the 1990s" (1990) 42 Fla L Rev 25–44.

Fiss, Owen M, "The Limits of Judicial Independence" (1993) 25:1 The University of Miami Inter-American Law Review 57–76.

Fraser, Nancy, "Struggle over needs: outline of a socialist-feminist critical theory of late-capitalist political culture" in Linda Gordon, ed, *Women, the State, and Welfare* (Wisconsin: University of Wisconsin Press, 1990) 199.

Fricker, Miranda, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007).

Frug, Mary Joe, "A Postmodern Feminist Legal Manifesto" (1992) 105 Harvard Law Review 1045.

Frye, Marilyn, *The politics of reality: essays in feminist theory*, first edition ed, The Crossing Press feminist series (Trumansburg, New York: Crossing Press, 1983).

Fuller, Sylvia, "Job Mobility and Wage Trajectories for Men and Women in the United States" (2008) 73:1 Am Sociol Rev 158–183.

Fundación Universidad de Antioquia, ed, *La voz de Carlos Gaviria. Textos, conferencias y testimonios* (Medellín: Fundación Universidad de Antioquia, 2020).

Gaitán Murillo, Ángela & Tatiana Gélvez Rubio, "Ser mujer en Colombia significa más pobreza y más tiempo de trabajo que ser hombre", (17 May 2021), online: *Razón Pública* <https://razonpublica.com/mujer-colombia-significa-mas-pobreza-mas-tiempo-trabajo-hombre/.>.

García, Andrés, "Los rostros de la justicia", (20 April 2015), online: *Verdad Abierta* <https://verdadabierta.com/los-rostros-de-la-justicia/>.

García Márquez, Gabriel*, For the sake of a country within reach of the children*, 2nd ed. ed (Bogoa: Villegas Editores, 1998).

———, *One Hundred Years of Solitude* (New York: Avon, 1971).

García Villegas, Mauricio et al, *Academia y ciudadanía. Profesores universitarios cumpliendo y violando normas*, Documentos Dejusticia 34 (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017).

García Villegas, Mauricio, "Derecho a falta de democracia: la juridización del régimen político colombiano" (2014) 82 Análisis político 167–195.

———, ed, *Jueces sin Estado: la justicia colombiana en zonas de conflicto armado* (Bogotá: Siglo del Hombre Editores, Dejusticia, Fundación Konrad Adenauer, The John Merck Fund, 2008).

———, *La eficacia simbólica del derecho. Sociología política del campo jurídico en América Latina*, segunda edición ed (Bogotá: IEPRI, Debate, 2014).

———, *Los territorios de la paz. La construcción del Estado local en Colombia* (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2017).

García Villegas, Mauricio & María Adelaida Ceballos Bedoya, *Abogados sin reglas. Los profesionales del derecho en Colombia: mucho mercado y poco Estado* (Bogotá: Editorial Planeta, 2019).

———, *La profesión jurídica en Colombia. Falta de reglas y exceso de mercado* (Bogotá: Dejusticia, 2019).

García Villegas, Mauricio & José Rafael Espinosa, *El derecho al Estado. Los efectos legales del apartheid institucional en Colombia* (Bogotá: Dejusticia, 2013).

———, *Separados y desiguales. Educación y clases sociales en Colombia* (Bogotá: Dejusticia, 2013).

Gastiazoro, María Eugenia, *Género y trabajo. Mujeres en el poder judicial* (Córdoba: Universidad Nacional de Córdoba - Centro de Estudios Avanzados, 2013).

Gastron, Andrea, *Situación actual de la mujer en el poder judicial argentino* (Argentina: Premio Coca-Cola en las Artes y Ciencias, 1993).

Gaviria Aucique, Paula Andrea, "Población afro en Colombia: dos de cada tres viven en el estrato 1", *El Tiempo* (21 May 2022), online: <https://www.eltiempo.com/colombia/dia-de-la-afrocolombianidad-una-radiografia-a-esta-poblacion-del-pais-674102>.

Gee, Graham & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London and New York: Routledge, 2017).

Gee, Graham, "Judging the JAC: how much judicial influence over judicial appointments is too much?" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London and New York: Routledge, 2017) 152.

Gómez Adaime, Eduardo, *Análisis del proceso de institucionalidad de la carrera administratriva en Colombia durante el período comprendido entre 1991 y 2010* (Master Thesis in Political Studies, Pontificia Universidad Javeriana, 2011) [unpublished].

Gómez Mazo, Daniel, *Afro-Descendant Representation on Latin American Courts* (Doctoral Dissertation, Fordham University - School of Law, 2020) [unpublished].

Gómez Sánchez, Gabriel Ignacio, "¿Abogados para la democracia o para el mercado?: Repensar la educación jurídica" (2016) 46 Revista de derecho 225–256.

González Díaz, Andrés, "12.221 homicidios en Colombia durante el 2022", (2022), online: *Delfos - Centro de Análisis de Datos* <https://www.uexternado.edu.co/delfos-centro-analisis-datos/homicidios-en-colombia-durante-el-

2022/#:~:text=Los%20homicidios%20bajan%20aproximadamente%20en,por%20cada%20cien%20mil%20habitantes.&text=Durante%20el%202022%20desciende%20levemente,la%20intensidad%20de%20la%20violencia.>.

González, Camila, "Los héroes de la justicia", (30 June 2009), online: *Verdad Abierta* <https://verdadabierta.com/los-heroes-de-la-justicia/>.

González, Ximena, "El poder femenino en el sector de los servicios legales en Colombia", *La República* (20 June 2019), online: <https://www.larepublica.co/especiales/los-bufetes-detras-de-los-grandes-negocios/el-poder-femenino-en-el-sector-de-los-servicios-legales-en-colombia-2875751>.

Grupo de Memoria Histórica*, La Rochela. Memorias de un crimen contra la justicia* (Bogota: Taurus, 2010).

Guerrero Caviedes, Elizabeth, Patricia Provoste Fernández & Alejandra Valdés Barrientos, "Acceso a la educación y socialización de género en un contexto de reformas educativas" in *Equidad de género y reformas educativas Argentina, Chile, Colombia, Perú* (Santiago de Chile: Facultad Latinoamericana de Ciencias Sociales –FLACSO– Buenos Aires y Instituto de Estudios Sociales Contemporáneos –IESCO– Universidad Central de Bogotá, 2006) 7.

Guevara Puentes, Gladys Virginia, *La carrera judicial en Colombia* (Bogota: Editorial Temis, 2001).

Guevara Rivera, Carolina, "Independencia judicial. El caso de la Corte Suprema de Justicia Colombiana" (2011) 35 Revista de Derecho 145–179.

———, *Recrutement, indépendance et responsabilité des magistrats en Colombie. Le cas de la Cour Suprême de Justice et du Conseil Supérieur de la Judicature* (Tesis doctoral, Université de Grenoble, 2015) [unpublished].

Guinier, Lani, *The Tyranny of the Meritocracy. Democratizing Higher Education in America* (Boston: Beacon Press, 2016).

Gupta, Akhil, "Blurred Boundaries. The Discourse of Corruption, The Culture of Politics, and the Imagined State" (1995) 22:2 American Ethnologist 375–402.

Gutgold, Nichola D, *The rhetoric of Supreme Court women: from obstacles to options* (Lanham: Lexington Books, 2012).

Gutiérrez y Muhs, Gabriella et al, *Presumed Incompetent: The Intersections of Race and Class for Women in Academia* (Utah: Utah State University Press, 2012).

Gutiérrez, Francisco, "La Constitución de 1991 como pacto de paz: discutiendo las anomalías" (2011) 13:1 Estudios Socio-Jurídicos 419–447.

Guzmán Rodríguez, Diana Esther & Sylvia Cristina Prieto Dávila, *¿Legislar y representar? La agenda de las senadoras en el Congreso (2006-2010)* (Bogotá: Dejusticia, 2014).

Hakim, Catherine, "Grateful Slaves and Self-Made Women: Fact and Fantasy in Women's Work Orientations" (1991) 7:2 European Sociological Review 101–121.

Hall, Richard H, "The Concept of Bureaucracy: An Empirical Assessment" (1963) 69:1 American Journal of Sociology 32–40.

Halliday, Simon et al, "Street-Level Bureaucracy, Interprofessional Relations, and Coping Mechanisms: A Study of Criminal Justice Social Workers in the Sentencing Process" (2009) 31:4 Law & Policy 405–428.

Harding, Sandra G, ed, *Feminism and Methodology : Social Science Issues* (Milton Keynes (Buckinghamshire): Indiana University Press, 1987).

Harris, Angela P, "Race and Essentialism in Feminist Legal Theory" (1990) 42:3 Stanford Law Review 581–616.

Helmke, Gretchen & Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda" (2004) 2:4 Perspective on Politics 725–740.

Herrán, María Teresa, *Ciro Angarita, retador* (Bogotá: Icono, 2017).

Hirschl, Ran, "The Judicialization of Politics" in Robert E Goodin, ed, *The Oxford Handbook of Political Science* (Oxford: Oxford University Press, 2011).

Hirschman, Albert O, "The Rise and Decline of Development Economics" in Albert O Hirschman et al, eds, *The Essential Hirschman* (Princeton: Princeton University Press, 2013) 49.

Hoexter, Cora, “The Judicial Service Commission. Lessons from South Africa” in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 83.

Homer, *The Iliad*, translated by Robert Fagles (New York: Penguin Books, 1991).

Howard, J Woodford, “Role Perceptions and Behavior in Three U.S. Courts of Appeals” (1977) 39:4 The Journal of Politics 916–938.

Huizinga, Johan, *Homo Ludens* (Buenos Aires: Alianza Editorial, 1968).

Hull, Kathleen E & Robert L Nelson, “Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers” (2000) 79:1 Social Forces 229–264.

Humphrey, Caroline, “Favors and ‘normal heroes’. The case of postsocialist higher education” (2012) 2:2 Journal of Ethnographic Theory 22–41.

Hunter, Rosemary, “More than Just a Different Face? Judicial Diversity and Decision-making” (2015) 68:1 Current Legal Problems 119–141.

Huppatz, Kate, *Gender Capital at Work* (London: Palgrave Macmillan UK, 2012).

———, “Reworking Bourdieu’s ‘Capital’: Feminine and Female Capitals in the Field of Paid Caring Work” (2009) 43:1 Sociology 45–66.

Ibsen, Henrik, *A doll’s house* (London: T. Fisher Unwin, 1889).

Ilex-Acción Jurídica, *La invisibilidad estadística de la población afrocolombiana y su impacto en los derechos humanos*, by Ilex-Acción Jurídica (Bogotá: Ilex-Acción Jurídica, 2023).

Indacochea, Úrsula, “Más mujeres para la Corte Suprema de Justicia en Honduras: el nuevo sistema a prueba”, (4 August 2022), online: *Justicia en las Américas Blog de la Fundación para el Debido Proceso (DPLF)* <https://dplfblog.com/2022/08/04/mas-mujeres-para-la-corte-suprema-de-justicia-en-honduras-el-nuevo-sistema-a-prueba/>.

Iregui-Bohórquez, Ana María et al, *El camino hacia la igualdad de género en Colombia: todavía hay mucho por hacer* (Bogota: Banco de la República, 2021).

Jaramillo Sierra, Isabel Cristina, "Reforma legal, feminismo y patriarcado en Colombia: el caso de la Ley de Cuotas para mujeres en cargos de alto nivel de la Rama Ejecutiva" in Isabel Cristina Jaramillo Sierra & Luisa Cabal, eds, *Más allá del derecho: justicia y género en América Latina* (Bogota: Siglo del Hombre Editores, Universidad de los Andes, CESO, 2005) 59.

———, "'Serán los mejores': un mal argumento para explicar por qué no debería contar el género en la elección de magistrados en la Corte Suprema de Justicia", *Semana* (15 October 2021), online: <https://www.semana.com/opinion/articulo/seran-los-mejores-un-mal-argumento-para-explicar-por-que-no-deberia-contar-el-genero-en-la-eleccion-de-magistrados-en-la-corte-suprema-de-justicia/202100/>.

Jaramillo Sierra, Isabel Cristina & Helena Alviar García, "'Family' as a legal concept" (2015) 15 Revista CS 91–109.

Jaramillo Sierra, Isabel Cristina & Lina Fernanda Buchely Ibarra, "La etnografía burocrática como herramienta crítica en el derecho administrativo" in Isabel Cristina Jaramillo Sierra & Lina Fernanda Buchely Ibarra, eds, *Etnografías burocráticas: una nueva mirada a la construcción del estado en Colombia* (Bogotá: Universidad de los Andes, Facultad de Derecho, CIJUS, Ediciones Uniandes, 2019) 9.

Jaramillo Sierra, Isabel Cristina & Sergio Iván Anzola Rodríguez, eds, *La batalla por los alimentos: el papel del derecho civil en la construcción del género y la desigualdad* (Bogotá: Universidad de los Andes, 2018).

Jaramillo Sierra, Isabel Cristina & Tatiana Alfonso, *Mujeres, cortes y medios: la reforma judicial del aborto* (Bogotá: Siglo del Hombre - Uniandes, 2008).

Jassal, Nirvikar, "Gender, Law Enforcement, and Access to Justice: Evidence from All-Women Police Stations in India" (2020) 114:4 American Political Science Review 1035–1054.

Jenson, Jane & Frédéric Mérand, "Sociology, institutionalism and the European Union" (2010) 8:1 Comp Eur Polit 74–92.

Johnson, Doyle Paul, *Contemporary Sociological Theory. An Integrated Multi-Level Approach* (Texas: Springer, 2008).

Junqueira, Eliane, “A mulher juíza e a juíza mulher” in Cristina Bruschini & Heloisa Buarque Holanda, eds, Horizontes Plurais (Sao Paulo: Editora 34, 1998) 136.

———, “Mulheres advogadas: espaços ocupados” in Maria Cristina Bruschini & Céli Regina, eds, *Tempos e lugares de gênero* (Sao Paulo: Fundaçao Carlos Changas - Editora 34, 2001) 185.

———, “Women in the Judiciary: A Perspective from Brazil” in Ulrike Schultz & Gisela Shaw, eds, *Women in the World’s Legal Professions* (Portland: Oxford - Hart Publishing, 2003) 445.

Jürges, Hendrik, “Gender ideology, division of housework, and the geographic mobility of families” (2006) 4:4 Rev Econ Household 299–323.

Kapiszewski, Diana & Matthew C Ingram, “Introduction: Beyond High Courts” in Beyond High Courts: The Justice Complex in Latin America (Notre Dame: University of Notre Dame Press, 2019) 1.

Kapiszewski, Diana & Matthew M Taylor, “Doing Courts Justice? Studying Judicial Politics in Latin America” (2008) 6:4 Perspectives on Politics 741–767.

Kennedy, Duncan, *A Critique of Adjudication* (Cambridge: Harvard University Press, 1997).

Kenney, Sally J, “Choosing judges: a bumpy road to women’s equality and a long way to go” (2012) 2012:5 Michigan State Law Review 1499–1528.

———, *Which Judicial Selection Systems Generate the Most Women Judges? Lessons from the United States* (2013).

King, Kimi Lynn & Megan Greening, “Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for the Former Yugoslavia*” (2007) 88:5 Social Science Quarterly 1049–1071.

Kling, Kristen C, Erik E Noftle & Richard W Robins, “Why Do Standardized Tests Underpredict Women’s Academic Performance? The Role of Conscientiousness” (2013) 4:5 Social Psychological and Personality Science 600–606.

Kohen, Beatriz, *The Family Law Judges of the City of Buenos Aires, A View from Within* (Contribución to the Law and Society Association Annual Meeting, Baltimore, 2006).

La pasión por el derecho, “De los 16 magistrados provisionales que integrarán la Corte Suprema, 14 son mujeres”, (5 January 2021), online: <https://lpderecho.pe/jueces-provisionales-integraran-corte-suprema-2021/>.

La Rota, Miguel Emilio et al, *Gobierno y nominaciones de la Rama Jurisdiccional: hacia una mayor rendición de cuentas. Propuestas acerca de la reforma de la cúpula del Consejo Superior de la Judicatura y la designación de magistrados de la Corte Suprema de Justicia y el Consejo de Estado* (Bogotá: Dejusticia, 2012).

Lawrence, Sonia, “Reflections: On Judicial Diversity and Judicial Independence” in Lorne Sossin & Adam Dodek, eds, Judicial Independence in Context (Toronto: Irwin Law, 2010) 193.

Leal, Francisco, “Debilidad del Estado en Colombia: ¿mito o realidad?” Razón Pública (3 April 2011), online: <http://www.razonpublica.com/index.php?option=com_content&view=article&id=1932:debilidad-del-estado-en-colombia-imito-o-realidad&catid=19:politica-y-gobierno-&Itemid=27>.

Lemaitre Ripoll, Julieta, “¿Constitución o barbarie? Cómo repensar el derecho en las zonas ‘sin ley’” in César Rodríguez Garavito, ed, *El derecho en América Latina Un mapa para el pensamiento jurídico del siglo XXI* (Buenos Aires: Siglo XXI Editores, 2011) 47.

———, *El derecho como conjuro. Fetichismo legal, violencia y movimientos sociales* (Bogotá: Siglo del Hombre Editores y Uniandes, 2009).

———, *El Estado siempre llega tarde. La reconstrucción de la vida cotidiana después de la guerra* (Bogotá: Ediciones Uniandes, Siglo XXI Editores, 2019).

Lipsky, Michael, “El papel crucial de los burócratas cercanos al ciudadano” in *Las burocracias Una aproximación distinta a la manera en la que pensamos el Estado* (Bogotá: Siglo del Hombre Editores, Universidad de los Andes, Pontificia Universidad Javeriana, Instituto Pensar, 2014) 179.

———, *Street-level bureaucracy : dilemmas of the individual in public services* (New York: Russell Sage Foundation, 2010).

Littler, Jo, *Against Meritocracy. Culture, power and Myths of Mobility* (London and New York: Routledge, 2018).

Lorde, Audre, *Conversations with Audre Lorde*, Joan Wylie Hall, ed (Mississippi: University Press of Mississippi, 2004).

———, *Learning from the 60's* (Folger Shakespeare Library, 1982).

———, "The Transformation of Silence into Language and Action" in *Sister outsider: essays and speeches* (Berkeley: Crossing Press, 2007) 40.

Malleson, Kate, "Diversity in the Judiciary: The Case for Positive Action" (2009) 36:3 Journal of Law and Society 376–402.

———, "Justifying Gender Equality on the Bench: Why Difference Won't Do" (2003) 11 Feminist Legal Studies 1–24.

———, "Rethinking the Merit Principle in Judicial Selection" (2006) 33:1 Journal of Law and Society 126–140.

Malleson, Kate & Peter H Russell, eds, *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (Toronto Buffalo London: University of Toronto Press, 2006).

Mann, Michael, *Las fuentes del poder social, II. El desarrollo de las clases y los Estados nacionales, 1760–1914* (Madrid: Alianza, 1997).

Márai, Sándor, Divorcio en Buda, 10a ed (Barcelona: Salamandra, 2007).

Maynard-Moody, Steven & Michael C Musheno, *Cops, teachers, counselors: stories from the front lines of public service* (Ann Arbor: University of Michigan Press, 2003).

McLachlin, Beverley, *Judging: the Challenges of Diversity. Remarks of the Right Honourable Beverley McLachlin, Chief Justice of Canada*, by Beverley McLachlin (Edinburgh: Judicial Studies Committee Inaugural Annual Lecture, 2012).

Migdal, Joel S, *State in Society. Studying How States and Societies Transform and Constitute One Another* (Cambridge: Cambridge University Press, 2001).

Mijs, Jonathan J B, "The Unfulfillable Promise of Meritocracy: Three Lessons and Their Implications for Justice in Education" (2016) 29:1 Social Justice Research 14–34.

Molano, Alfredo, Los años del tropel (Bogota: Penguin Random House, 2017).

Montoya, Ana María, *Si no vas al Senado no te eligen magistrado: instituciones informales y criterios de selección de los magistrados de la Corte Constitucional colombiana en el Senado (1992-2009)* (Bogota: Ediciones Uniandes, 2015).

Moore, Rob, "Capital" in Michael Grenfell, ed, *Pierre Bourdieu: Key Concepts*, 2d ed (London: Routledge, 2014) 98.

Morales Sierra, Felipe, "Más mujeres en las Cortes, un llamado a saldar una deuda histórica", *El Espectador* (21 August 2020), online: <https://www.elespectador.com/noticias/judicial/mas-mujeres-en-las-altas-cortes-un-llamado-a-saldar-una-deuda-historica/>.

Morison, John, "Beyond merit: the new challenge for judicial appointments" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointments in an Age of Diversity* (London and New York: Routledge, 2017) 223.

Munro, Alice, "The Office" in *Dance of the happy shades and other stories* (New York: Vintage International, 1998) 56.

Murillo, María Victoria, Steven Levitsky & Daniel Brinks, *La ley y la trampa en América Latina. Por qué optar por el debilitamiento institucional puede ser una estrategia política* (Buenos Aires: Siglo Veintiuno Editores, 2021).

Newman Pont, Vivian & María Paula Ángel Arango, *Sobre la corrupción en Colombia. Marco conceptual, diagnóstico y propuesta de política*, by Vivian Newman Pont & María Paula Ángel Arango, Cuadernos Fedesarollo 56 (Bogota: Dejusticia - Federsarrollo, 2017).

Newman, Daniel Carl, "Law and Justice in Popular Music: Murder Ballads" (2018) 24:1 European Journal of Current Legal Issues, online: <http://webjcli.org/index.php/webjcli/article/view/596>.

Núcleo de Estudios Interdisciplinarios en torno a la Desigualdad y Derechos Humanos de la Universidad Austral de Chile, *La participación de las mujeres en los sistemas de justicia en América Latina* (2021).

Nussbaum, Martha C, "The Literary Imagination in Public Life" (1991) 22:4 New Literary History 877–910.

Ocampo, Gloria Isabel, *Poderes regionales, clientelismo y Estado. Etnografías del poder y la política en Córdoba, Colombia* (Bogotá: CINEP, 2014).

OECD, *A Broken Social Elevator? How to Promote Social Mobility* (Paris: OECD Publishing, 2018).

Osmond, Marie Withers & Barrie Thorne, "Feminist Theories" in Pauline Boss et al, eds, *Sourcebook of Family Theories and Methods: A Contextual Approach* (Boston, MA: Springer US, 1993) 591.

Padavic, Irene & Barbara F Reskin, *Women and Men at Work* (Thousand Oaks, CA: Pine Forge Press, 2002).

Pardo Rodríguez, Santiago, "A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace" (2020) 10:2 Notre Dame Journal of International & Comparative Law 209–266.

Parra Lozano, Andrea, *Por siempre secretarias: la brecha de género en el poder judicial mexicano* (Undergraduate Thesis - Faculty of Political Science, Centro de Investigación y Docencia Económicas - CIDE, 2019) [unpublished].

Pásara, Luis, *Una reforma imposible. La justicia latinoamericana en el banquillo* (Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú, 2014).

Pérez-Perdomo, Rogelio, "Lawyers in Late Twentieth-Century Latin America" in William Felstiner, ed, *Reorganization and Resistance: Legal Professions Confront a Changing World* (London: Bloomsbury Publishing Plc, 2005) 195.

———, *Los abogados de América Latina. Una Introducción Histórica* (Bogotá: Universidad del Externado, 2004).

Perrot, Michelle, *Mon histoire des femmes* (Paris: Éditions du Seuil, 2006).

Phillips, Anne, *The Politics of Presence* (Oxford: Clarendon Press, 1995).

Phillips, Helen, *The Beautiful Bureaucrat. A Novel* (New York: Henry Holt and Company, 2015).

Pineda, Diana*, Proceso de elección magistradas de la Corte Constitucional colombiana y la ley de cuotas (1991-2019)* (Undergraduate Thesis - Faculty of Political Science, Universidad ICESI, 2020) [unpublished].

Pitre, Sonia, "Women's struggle for Legislative Power: The Role of Political Parties" (2003) 27:2 Atlantis 102–109.

Pizzo, Marta*, Anclada al paraíso* (2010).

Portafolio, "Por pandemia, la pobreza monetaria en Colombia subió a 42,5% en 2020", *Portafolio* (2020), online: <https://www.portafolio.co/economia/dane-revela-impacto-de-la-pandemia-en-la-pobreza-del-pais-551470>.

Prandini, Riccardo, "Family Relations as Social Capital" (2014) 45:2 Journal of Comparative Family Studies 221–234.

Prescott-Couch, Alexander, "Why social science needs stories", *The New Statesman* (14 December 2021), online: <https://www.newstatesman.com/ideas/agora/2021/12/why-social-science-needs-stories>.

Price, Robert M, *Society and Bureaucracy in Contemporary Ghana* (Berkeley/Los Angeles/London: University of California Press, 1975).

Quintero, Óscar Alejandro, "La creciente exclusión de las mujeres de la Universidad Nacional de Colombia" (2016) 44 Revista Nómadas 123–145.

Rackley, Erika, "Judicial diversity, the woman judge and fairy tale endings" (2007) 27:1 Legal Studies 74–94.

———, "Rethinking Judicial Diversity" in Ulrike Schultz & Gisela Shaw, eds, *Gender and Judging* (Oxford: Hart Publishing, 2014) 501.

Rackley, Erika & Charlie Webb, "Three models of diversity" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 283.

Ramos, Ana María, "Colombia" in Alberto Binder & Leonel González, eds, G*obierno judicial Independencia y fortalecimiento del Poder Judicial en América Latina*, (Santiago de Chile: Centro de Estudios de Justicia de las Américas, 2015) 153.

Reay, Diane, "Gendering Bourdieu's concepts of capitals? Emotional capital, women and social class" (2004) 52:2 The Sociological Review 57–74.

Restrepo Jiménez, Ana Cristina & Santiago Pardo Rodríguez, *El Hereje: Carlos Gaviria* (Bogotá: Planeta, 2020).

Restrepo Medina, Manuel Alberto & Natalia Aprile, *Legitimidad de la justicia administrativa colombiana. Una mirada desde la percepción de su diseño institucional* (Bogotá: Universidad del Rosario, 2019).

Reuters, "Colombian government calls on rebel group to suspend planned armed strike", *Reuters* (14 December 2022), online: <https://www.reuters.com/world/americas/colombian-government-calls-rebel-group-suspend-planned-armed-strike-2022-12-14/>.

Revelo-Rebolledo, Javier, "Puerto Asís: la disputa de largo aliento" in Javier Revelo Rebolledo & Mauricio García Villegas, eds, *El Estado en la periferia. Historias locales de debilidad institucional* (Bogota: Dejusticia, 2018) 102.

Revelo-Rebolledo, Javier & Mauricio García-Villegas, eds, *El Estado en la periferia. Historias locales de debilidad institucional* (Bogotá: Dejusticia, 2018).

Revillard, Anne et al, "Gender, class and bureaucratic power. The production of inequalities in the French civil service" (2018) 20:20 Revista Internacional de Organizaciones 39–57.

Ricardo Ezqueda, Ricardo Andrés, "La política de descongestión judicial 2009-2014, un costoso e ineficiente esfuerzo" (2016) 36 Revista de Derecho Público 1–36.

Ríos Figueroa, Julio, "El déficit meritocrático. Nepotismo y redes familiares en el Poder Judicial de la Federación", (27 August 2018), online: *Nexos* <https://anticorrupcion.nexos.com.mx/el-deficit-meritocratico-nepotismo-y-redes-familiares-en-el-poder-judicial-de-la-federacion/>.

Rodríguez Garavito, César & Diana Rodríguez Franco, *Cortes y cambio social. Cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia* (Bogotá: Dejusticia, 2010).

———, *Radical Deprivation on Trial: The Impact of Judicial Activism on Socioeconomic Rights in the Global South* (New York: Cambridge University Press, 2015).

Rodríguez Garavito, César, Mauricio García Villegas & Rodrigo Uprimny, "Justice and Society in Colombia: A Sociolegal Analysis of Colombian Courts" in Lawrence M Friedman & Rogelio Pérez Perdomo, eds, *Legal Culture in the Age of Globalization: Latin Europe and Latin America* (Stanford: Stanford University Press, 2003) 134.

Rosenblum, Darren, "Diversity and the Board of Directors: A Comparative Perspective" in Afra Afsharipour & Martin Gelter, eds, *Research Handbook on Comparative Corporate Governance* (Massachusetts: Edward Elgar Publishing, 2020) 179.

Rubiano, Sebastián, "La Corte Constitucional: entre la independencia judicial y la captura política" in Mauricio García Villegas & Javier Eduardo Revelo Rebolledo, eds, *Mayorías sin democracia Desequilibrio de poderes y Estado de derecho en Colombia, 2002-2009* (Bogotá: Dejusticia, 2009) 84.

Rulfo, Juan, "Luvina" in *Pedro Páramo y El llano en llamas* (Barcelona: Planeta, 2003).

Salazar, Ana María, *La implementación de la carrera judicial en la jurisdicción ordinaria* (Master Thesis in Law, Universidad de los Andes, 2021) [unpublished].

Sandel, Michael J, *The Tyranny of Merit. What's Become of the Common Good?* (Dublin: Penguin Random House, 2020).

Santos, Boaventura de Sousa, *Derecho y emancipación* (Quito: Corte Constitucional para el Período de Transición, 2012).

Santos, Boaventura de Sousa & Mauricio García Villegas, eds, *El caleidoscopio de las justicias en Colombia. Análisis socio-jurídico* (Bogotá: Siglo del Hombre Editores y Universidad de los Andes, 2001).

———, *Emancipación social y violencia en Colombia*., (Bogota: Norma, 2004).

Sappho of Lesbos, *The Complete Poems of Sappho*, Willis Barnstone, ed (Boston: Shambhala Publications, 2009).

Schleifer, Andrei & Robert W Vishny, “Corruption” (1993) 108:3 The Quarterly Journal of Economics 599–617.

Schneider, Elizabeth M, “Feminism and the False Dichotomy of Victimization and Agency” (1993) 38 New York Law School Law Review 387–400.

Schopenhauer, “On women” in Parerga and Paralipomena Short Philosophical Essays (Cambridge: Cambridge University Press) 550.

Schultz, Ulrike, “Introduction: Women in the World’s Legal Professions: Overview and Synthesis” in Ulrike Schultz & Gisela Shaw, eds, *Women in the World’s Legal Professions* (Portland: Oxford - Hart Publishing, 2003) xxv.

Schultz, Ulrike & Gisela Shaw, eds, “Introduction: Gender and Judging: Overview and Synthesis” in Gender and Judging Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013) 3.

———, eds, Gender and Judging, Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013).

———, eds, “The impact of women on the administration of justice in Syria and the judicial selection process” in Gender and Judging Oñati International Series in Law and Society (Oxford and Portland Oregon: Hart Publishing, 2013).

Schultz, Vicki, “Reconceptualizing Sexual Harassment, Again” (2018) 128 The Yale Law Journal.

Scott, Joan W, “Gender: A Useful Category of Historical Analysis” (1986) 91:5 The American Historical Review 1053–1075.

Semana, “A las puertas de nuevo paro judicial” *Semana* (11 March 2015), online: <https://www.semana.com/nacion/articulo/un-nuevo-paro-judicial-estaria-por-conjurarse/448511-3>.

———, “¿Trampa en el concurso de jueces y magistrados?” *Semana* (15 April 2016).

Sen, Amartya, “Merit and Justice” in Kenneth Arrow, Samuel Bowles & Steven N Durlauf, eds, *Meritocracy and Economic Inequality* (Princeton: Princeton University Press, 2000) 5.

Shakespeare, William, *Rape of Lucrece*, Israel Gollancz, ed, The Temple Shakespeare (London: J.M. Dent and co., 1896).

Sieder, Rachel, Line Schjolden & Alan Angell, eds, *The Judicialization of Politics in Latin America* (New York-Hampshire: Palgrave Macmillan, 2005).

SieteDíasBoyacá, "Luz verde a la iniciativa que pretende revolucionar el empleo público en Colombia #LaEntrevista7días", (8 September 2021), online: *SieteDíasBoyacá* <https://boyaca7dias.com.co/2021/09/08/luz-verde-a-la-iniciativa-que-pretende-revolucionar-el-empleo-publico-en-colombia-laentrevista7dias/>.

Silva Del Carpio, Cruz & Luis Miguel Purizaga Vértiz, "*No entran los mejores, sino los mejores amigos". Una aproximación preliminar para identificar y prevenir la corrupción en el sistema de justicia* (Lima: Instituto de Defensa Legal, 2020).

Sisma Mujer, Informe Colombia. *Diagnóstico de la situación de las mujeres en la administración de justicia en Colombia*, by Sisma Mujer (Bogota: Sisma Mujer, 2007).

Smith, Peter, ed, *Latin America in Comparative Perspective: New Approaches to Methods and Analysis* (Boulder: Westview Press, 1995).

Solano, Diana Marcela, *Del Congreso al despacho: Prácticas judiciales de los trabajadores de la jurisdicción laboral de Cali* (Master Thesis in Sociology, Universidad del Valle, 2015) [unpublished].

Sommerlad, Hilary, "Judicial Diversity. Complexity, continuity and change" in Graham Gee & Erika Rackley, eds, *Debating Judicial Appointment in an Age of Diversity* (London and New York: Routledge, 2017) 205.

———, "The Myth of Feminism: Women and Cultural Change in the Legal Profession" (1994) 1:1 Int'l J Legal Prof 31–54.

———, "The 'Social Magic' of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession" (2015) 83:5 Fordham Law Review 2325–2347.

Sorensen, Eva & Jacob Torfing, "Network politics, political capital, and democracy" (2003) 26:6 International Journal of Public Administration 609–634.

Spelman, Elizabeth, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988).

Stapley, Emily, Sally O'Keeffe & Nick Midgley, "Developing Typologies in Qualitative Research: The Use of Ideal-type Analysis" (2022) 21 International Journal of Qualitative Methods 1–9.

Stokes, Susan, "Political clientelism" in Robert Goodin, ed, *The Oxford Handbook of Political Science* (Oxford - New York: Oxford University Press, 2011) 648.

Storni, Alfonsina, "It Could Well Be" (1987) 29 Minnesota Review 16.

Stribopoulos, James & Moin A Yahya, "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 Osgoode Hall LJ 315.

Sullivan, Alice, "Bourdieu and Education: How useful is Bourdieu's theory for researchers?" (2002) 38 The Netherlands' Journal of Social Sciences 144–166.

Superior Council of the Judiciary, "Convocatoria 27: Funcionarios de Carrera de la Rama Judicial", (2022), online: Unidad de Administración de Carrera Judicial - Consejo Superior de la Judicatura <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/convocatoria-27-funcionarios-de-carrera-de-la-rama-judicial>.

———, "Funcionarios de carerra de la rama judicial - Convocatoria N° 22", (2018), online: Unidad de Administración de Carrera Judicial - Consejo Superior de la Judicatura <https://www.ramajudicial.gov.co/web/unidad-de-administracion-de-carrera-judicial/funcionarios-de-carrera-de-la-rama-judicial-conv.-no-22>.

———, *Informe al Congreso de la República. Gestión de la administración de justicia 2016*, by Superior Council of the Judiciary (Bogotá: Consejo Superior de la Judicatura, 2017).

———, "Participación de la mujer en la Rama Judicial", (October 2022), online: Participación de la mujer en la Rama Judicial <https://app.powerbi.com/view?r=eyJrIjoiNDA5YmViODItYmJkZS00MTUxLThmNDAtYWEzNWIwNDc3MDVkIiwidCI6IjYyMmNiYTk4LTgwZjgtNDFmMy04ZGY1LThlYjk5OTAxNTk4YiIsImMiOjR9>.

———, *Response to information request CJO22-3196* (2022).

———, *Response to information request to the request number PCSJO20-957* (Superior Council of the Judiciary, 2020).

Swan, Suzanne C & David L Snow, "A Typology of Women's Use of Violence in Intimate Relationships" (2002) 8:3 Violence Against Women 286–319.

Thomas, Cheryl, *Judicial diversity in the United Kingdom and other jurisdictions. A review of research, policies and practices*. Commissioned by Her Majesty's Commissioners for Judicial Appointments, by Cheryl Thomas (Birmingham: The Commission for Judicial Appointments, 2005).

———, *Understanding Judicial Diversity. Research Report for the Advisory Panel on Judicial Diversity*, by Cheryl Thomas (London: UCL Judicial Institute, 2009).

Toral, Guillermo, "How Patronage Delivers: Political Appointments, Bureaucratic Accountability, and Service Delivery in Brazil" (2023) 0:0 American Journal of Political Science 1–19.

Trubek, David & Marc Galanter, "Scholars in Self-Estrangement: Some Reflexions on the Crisis in Law and Development" (1974) Wisconsin Law Review 1062–1101.

Tsai, Kellee S, "Adaptive Informal Institutions" in Orfeo Fioretos, Tulia G Falleti & Adam Sheingate, eds, The Oxford Handbook of Historical Institutionalism (Oxford University Press, 2016) 270.

UN Special Rapporteur on the independence of judges and lawyers, Participation of women in the administration of justice - Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, by UN Special Rapporteur on the independence of judges and lawyers, A/76/142 (United Nations - General Assembly, 2021).

UNHCR, *Global Trends. Forced Displacement in 2018*, by UNHCR (UNHCR, 2018).

Unidad de Registro Nacional de Abogados, *Respuesta a derecho de petición de la Unidad de Registro Nacional de Abogados y Auxiliares de la Justicia sobre los datos históricos de las tarjetas profesionales de abogados* (2017).

United Nations, *Policy Brief. Women in the Judiciary. A Stepping Stone towards Gender Justice, by United Nations* (United Nations - Economic and Social Commission for Western Asia, 2018).

Uprimny, Rodrigo, "Independencia judicial, ¿democrática o corporativa?", *El Espectador* (22 June 2013), online: <http://www.elespectador.com/opinion/independencia-judicial-democratica-o-corporativa-columna-429433>.

———, "Judicialization of Politics in Colombia: Cases, Merits and Risks" (2007) 6 Sur Revista Internacional de Derechos Humanos 48–65.

———, "Justicia rutinaria y protagónica: una caracterización de la justicia colombiana" in Mauricio García Villegas & Ceballos Bedoya, eds, *Democracia, justicia y sociedad. Diez años de investigación en Dejusticia* (Bogotá: Dejusticia, 2016) 181.

———, "Should Courts Enforce Social Rights_ The Experience of the Colombian Constitutional Court" in fons Coomans, ed, Justiciability of Economic and Social Rights: Experiences from Domestic Systems (Intersentia Uitgevers, 2006) 355'388.

———, "The Constitutional Court and Control of Presidential Extraordinary Powers in Colombia" in Siri Glippen, Roberto Gargarella & Elin Skaar, eds, *Democratization and the Judiciary* (Londres: Frank Cass, 2004).

Uprimny, Rodrigo, Cesar Rodríguez & Mauricio García Villegas, "Entre el protagonismo y la rutina: análisis sociojurídico de la justicia en Colombia" in Héctor Fix-Fierro, Lawrence Friedman & Rogelio Pérez Perdomo, eds, *Culturas Jurídicas latinas y América en tiempos de globalización* (Mexico: Universidad Nacional Autónoma de México, 2003) 231.

Uprimny Yepes, Rodrigo, "Todavía hay jueces en Colombia", *El Espectador* (1 May 2022), online: <https://www.elespectador.com/opinion/columnistas/rodrigo-uprimny/todavia-hay-jueces-en-colombia/>.

Uran Bidegain, Helena, *Mi vida y el Palacio. 6 y 7 de noviembre de 1985* (Bogotá: Editorial Planeta, 2020).

USAID, *Las capas del techo de cristal: equidad de género en la Corte Constitucional*, by USAID (Bogota: USAID, 2020).

Vallejo, Irene, *El infinito en un junco. La invención de los libros en el mundo antiguo* (Bogota: Penguin Random House, 2021).

———, “Hambre, sudor y lágrimas”, *El País* (5 March 2022).

———, *Papyrus. The Invention of Books in the Ancient World* (New York: Alfred A. Knopf, 2022).

Van Praagh, Shauna, *Building Justice: Frank Iacobucci and the Life Cycles of Law* (Toronto: University of Toronto Press, 2022).

———, “Seduction of a Law Professor. Review of Allan C Hutchinson, Laughing at the Gods: Great Judges and How They Made the Common Law” (2013) 59:1 McGill Law Journal 211.

———, “Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education” (1992) 2 Colum J Gender & L 111–144.

———, “The Chutzpah of Chasidism” (1996) 11:2 Canadian journal of law and society 193–215.

Velásquez, Magdala, “Reflexiones sobre el conflicto armado colombiano desde una mirada feminista” (2001) 8 En otras palabras 20–31.

Vergara Mesa, Hernán Darío, “Empleo público y corrupción en Colombia” (2011) 8 Revista Electrónica Facultad de derecho y ciencias política U de A 1–21.

Vergel Tovar, Carolina, “Gender and the legal profession in Colombia: analysis of the state of the art from a socio-legal perspective” *in China and Colombia: towards a legal comparison Constitutional justice and socioeconomic rights, judicial reform, gender and the legal profession, international investment arbitration* (Bogotá: Universidad Externado de Colombia, 2019) 145.

Villadiego Burbano, Carolina, “Justicia en provisionalidad”, *Ámbito Jurídico* (14 April 2021), online: <https://www.ambitojuridico.com/noticias/columnista-online/justicia-en-provisionalidad>.

———, “Más juezas y magistradas”, *Ámbito Jurídico* (10 September 2020), online: <https://www.ambitojuridico.com/noticias/columnista-online/constitucional-y-derechos-humanos/mas-juezas-y-magistradas>.

Villareal, Yuly Anamaría, "¿Qué pasa con la meritocracia en la Rama Judicial?", *Ámbito Jurídico* (20 April 2016), online: <https://www.ambitojuridico.com/noticias/general/administracion-publica/que-pasa-con-la-meritocracia-en-la-rama-judicial>.

Viveros Vigoya, Mara & Marta Zambrano, "La diferencia: un concepto problemático para la antropología y el feminismo" in *El género: una categoría útil para las ciencias sociales* (Bogota: Universidad Nacional de Colombia, 2011) 143.

Voltaire, *Candide* (New York: W.W. Norton, 2016).

Wacquant, Loic JD, "From ruling class to field of power: an interview with Pierre Bourdieu on la noblesse d'état" (1993) 10:3 Theory, Culture & Society 19–44.

Way, Rosemary Cairns, "Deliberate Disregard: Judicial Appointments Under the Harper Government" (2014) 67 The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference 43–71.

Wharton, Amy S, "Structure and agency in socialist-feminist theory" (1991) 5:3 Gender and Society 373–389.

White, Stephen, ed, "Book 5: Aristotle and Peripatetics" in *Diogenes Laertius: Lives of Eminent Philosophers: An Edited Translation* (Cambridge: Cambridge University Press, 2021) 197.

Williams, Patricia, "The Obliging Shell: An Informal Essay on Formal Equal Opportunity" (1989) 87:8 Michigan Law Review 2128–2151.

Wills Obregón, María Emma & Florentina Cardozo García, "Los partidos colombianos y la representación de las mujeres (1990-2006)." (2010) 71 Colombia Internacional 127–149.

Wills Obregón, María Emma, *Las trayectorias femeninas y feministas hacia lo público en Colombia (1970-2000). ¿Inclusión sin representación?* (Doctoral Dissertation, University of Texas at Austin,.

Wilson, Madam Justice Bertha, "Will women judges really make a difference? The Fourth Annual Barbara Betcherman Memorial Lecture" (2005) 30:1 Family Court Review 13–25.

Woolf, Virginia, *A Room of One's Own* (Surrey: Alma Classics, 2019).

———, “Professions for women” in Joy S Ritchie & Kate Ronald, eds, *Available means: an anthology of women’s rhetoric(s).* Pittsburgh series in composition, literacy, and culture (Pittsburgh: University of Pittsburgh Press, 2001) 241.

———, “Three Guineas” in *A Room of One’s Own and Three Guineas - Oxford World’s Classics* (Oxford: Oxford University Press, 2015) 122.

Young, Iris Marion, *Responsibility for Justice* (Oxford University Press, 2011).

———, “Structure as the Subject of Justice” in *Responsibility for Justice* (Oxford University Press, 2011) 44.

———, *Throwing like a girl and other essays in feminist philosophy and social theory* (Bloomington: Indiana University Press, 1990).

Yourcenar, Marguerite, “Achilles or The Lie” in *Fires* (New York: Farrar, 1981) 13.

———, *L’Œuvre au noir* (Paris: Gallimard, 1968).

———, “L’homme qui a aimé les Néréides” in *Nouvelles Orientales* (Paris: Gallimard, 1981).