

Can affects inspired by the global feminist judgment projects influence the gender composition of judiciaries?

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The Ideal Judge

- In 1975, Ronald Dworkin introduced Hercules as the ideal judge
- The ideal judge was white, male, with no personal feelings or emotions
- The ideal judge was superhuman in his control, in the difficult decisions he made, and in application of the law



The Little Mermaid

- Rackley (2002) challenged this view as inherently flawed
- Rackley introduced the concept of the woman judge as the little mermaid
- Women judges experience exclusion and marginalisation
- Hickey (2020) disagreed with Rackley's interpretation of Hercules



The Research Question

If the mythical judge is perceived as male and white, can global feminist judgments projects, and the affects they inspire, help mitigate this perception and influence gender diversity in common law judiciaries?

The Conceptual Framework

This research uses an affective, feminist framework, against the background of the competing ideals of the mythical judge and the little mermaid.



Affect

- Affect theory is the study of the impact of affect.
- Affect is found at or near the very beginning of something, concerning the 'first stirrings' of any movement (Massumi 2015).
- Nine innate affects (Tomkins 1984).
- Affective potential can be found in nearly all things.
- Scholars have used affect theory when exploring gender-related issues (Pedwell and Whitehead 2012).



Findings

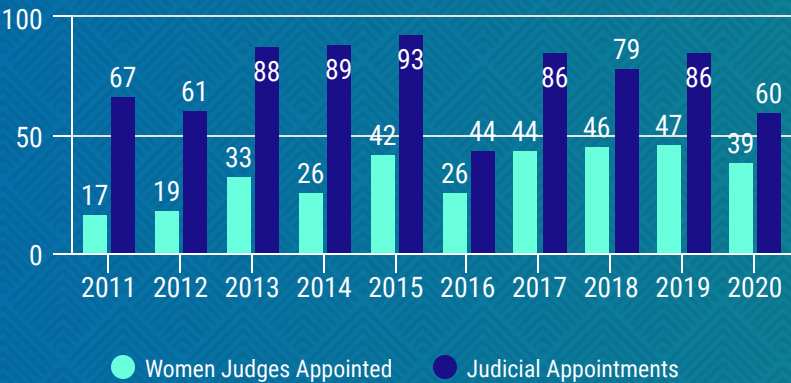
A Different Voice....

- Hickey seems to correlate the feminist judgments projects with Gilligan's 'ethic of care' theory
- Essentialism argument: women are more empathetic, more emotional; that women speak in a 'different voice' to their male counterparts

...Or a Different Perspective?

- The 'signature achievement' of these projects has been to demonstrate that judicial decision-making is rarely detached from personal background
- Judicial opinions are influenced by affect and create affect
- Feminist judgments projects show that judges can come to different decisions by utilizing a different perspective
- Canadian judicial reform in 2016 showed how valuable dedication to diversity can be

Canadian Federal Judicial Appointments 2011-2020

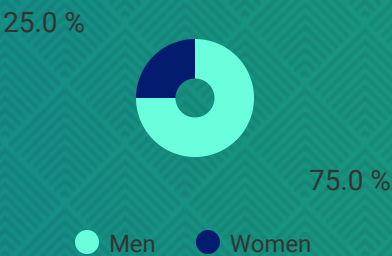


Women Judges Appointed Judicial Appointments

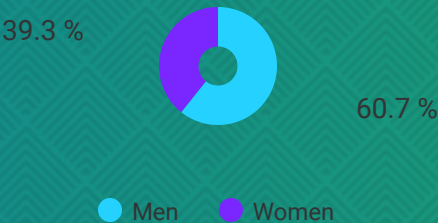
Background and Contribution to Knowledge

- Global feminist judgment projects are being organised by legal scholars to re-imagine judicial decisions using feminist theory
- By using a feminist perspective, a different outcome in historical cases was reached, still within the bounds of historical legislation and jurisprudence
- What affects do these projects inspire? Rage, Joy, Fear, Hope, etc
- By identifying the affects inspired by the projects, one can see how these can be practically drawn upon

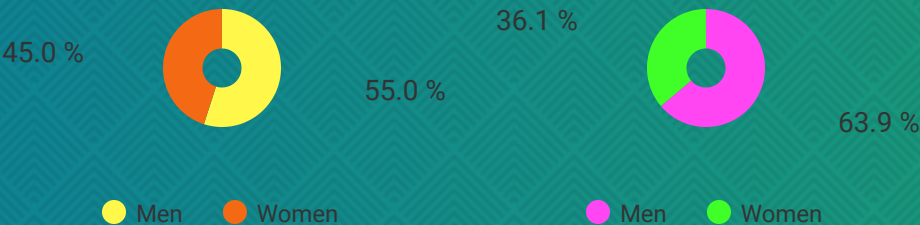
Scottish Judiciary



Irish Judiciary



Canadian Federal Judiciary South African Judiciary



Conclusion: how can affects be utilised?

Judicial appointment committees can see the value in diverse perspectives:

1. Through the feminist judgments projects; and
2. Inspired by the affects they create

The necessity of a diverse judiciary doesn't have to be an essentialist argument. It can be one of:

- Perspective;
- Fairness; and,
- Ensuring public confidence in the judiciary

Who is the woman judge in 2021?

- Hercules, or the little mermaid? Maybe neither
- Women judges live in two worlds
- Women belong in both worlds
- Women judges are no longer silenced
- What about the woman judge as Persephone?

Further research

- A paper exploring the duality of judging, how Persephone could be a perfect example of the woman judge in 2021.
- A comparative study of judicial diversity policies
- An empirical analysis of Irish judicial opinions and case law
- Interviews with members of the judiciary
- Surveys with members of the legal profession regarding the importance of gender diversity within the Irish judiciary.

