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Maria Da Gloria Bonelli
University of Sao Carlos, gbonelli@uol.com.br

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Gender and Difference Among Brazilian Lawyers and Judges: Public and Private Practice in the Global Periphery

MARIA DA GLORIA BONELLI*

ABSTRACT

This article examines the ways in which Brazilian lawyers and judges experience difference. It focuses on how gender and diversity intersect in identity formation among women and men in public and private practice in the state of São Paulo, Brazil. In attempting not to attach one fixed meaning to the concept of difference, the research works with Avtar Brah's typology, which aids in detecting how difference is perceived and experienced by the interviewees. The results provide a look at the specificities of professional practice in the global periphery, comparing the gender composition of law firms and gender stratification within legal and judicial careers, as well as respective perceptions of exclusion and prejudice or inclusion and diversity. The field work collected data on public and private practice and interviewed twenty-four lawyers, eighteen state judges, and ten federal court judges (women and men) in the both the capital and smaller cities of the state of São Paulo.

INTRODUCTION

How do elite men and women in the legal profession and lawyers who work in small law firms in the state of São Paulo view gender difference and diversity within professional careers? Do the perceptions of lawyers differ from the perceptions of judges? Does discourse on

* Full professor of Sociology, Federal University of São Carlos, Brazil. Research sponsored by CNPq (National Council of Scientific and Technological Development). The research team was composed of Audria Helena Perez Osoreo, Camila de Pieri Benedito, Carolina Barbisan, Dafne Araújo, Fabiana Luci de Oliveira, Gessé Marques Jr., Juliana Tonche, Maria Natalia Barboza da Silveira, and Renné Martins Barbalho. Translated to English by Prof. Meryl Adelman. This analysis explores lines of arguments that will be published in Portuguese in Bonelli's book on professionalism, gender, and difference.

difference and identity vary according to whether legal professionals are employed in public or private sectors?

The aforementioned questions guide the present study comparing São Paulo lawyers and judges. This article is divided into five sections. In the introduction, the article provides a brief sketch of changes that have taken place within the Brazilian legal profession over the last few decades, including women's careers, and presents the research hypothesis. The second section reveals the originality of the approach adopted here, grounded in theoretical discussions of difference rather than gender relations. The third section focuses on stratification among and within law firms based on quantitative data that was put together on close to 200 law firms in São Paulo. The fourth section analyzes interviews with male and female lawyers, comparing them to the study of female and male judges. The last section looks at the major conclusions that resulted from this research.

The investigative approach to the impact of women's participation in the legal profession is different from that of scholars who have identified the persistence of particular inequalities such as the "glass ceiling,"¹ gendered strategies of closure,² and the gap between men and women.³ This approach places priority on the ways in which male and female lawyers perceive gender and sexual difference operating within their peer group. The article hypothesizes that within private practice, and particularly within large law firms, the ideology of professional neutrality is more likely to succumb to market logic and to their production of stereotypes regarding difference. Professionals working within this sector are more likely to perceive markers of difference and are more likely to incorporate them into their own identities.

1. See John Hagan & Fiona Kay, *The Persistent Glass Ceiling: Gendered Inequalities in the Earnings of Lawyers*, 46 BRIT. J. SOC. 279 (1995); see generally MARGARET THORTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996) (examining the legal profession in Australia); Celia Davies, *The Sociology of Professions and the Profession of Gender*, 30 SOCIOLOGY 661 (1996) (emphasizing not the exclusion of women from professional work but rather a routine inclusion of women in ill-defined support roles).

2. See Davies, *supra* note 1; MARY JANE MOSSMAN, *Engendering the Legal Profession: The Education Strategy*, in *WOMEN IN THE WORLD'S LEGAL PROFESSIONS* 77 (Ulrike Schultz & Gisela Shaw eds., 2003) (suggesting change will not happen in the legal profession without "directly confronting the powerful demands of lawyer's work").

3. See generally Carrie Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in *LAWYERS IN SOCIETY: COMPARATIVE PERSPECTIVES* 196 (Richard L. Abel & Phillip S.C. Lewis eds., 1989) (examining current and historical perspectives of the gender gap); Cynthia F. Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995) (examining integration and mobility of women in large corporate law practices).

The legal profession was carried out primarily within solo practice or in small firms until the 1990s when university programs in law underwent a veritable boom. In 1998, there were sixty-two law schools in São Paulo state.⁴ By 2006, the number of law schools jumped to 222.⁵ This law school phenomenon has been accompanied by the expansion of women's participation in the legal practice. According to the official rosters of the state branch of *Ordem dos Advogados Brasileiros* (Brazilian Bar Association (OAB)), in 2006 São Paulo boasted 116,948 men and 93,245 women lawyers.⁶

During this period, the economic effervescence wrought by the privatization of large public enterprises led to continuing specialization, particularly in the area of corporate law. Small firms expanded within a scenario of economic globalization and were obliged to hire more lawyers in order to deal with the legal interests of an expanding corporate clientele.⁷ This expansion generated demand for specialized work and for tasks that were routine and repetitive.

The more homogeneous organization of legal work as a profession, carried out through solo practice or law firms shared amongst colleagues, began to change. In Brazil, the introduction of the new structure centered around the social division of labor, which created a separation between traditional contents and new specializations and between routine work and work that requires greater expertise, was facilitated by women's entrance into the legal profession. While solo practices and small law firms deal primarily with individual clients, medium and large law firms tend to focus on corporate clientele. Rather than feminization creating a professional "reserve army," as has been observed in other countries,⁸ women's incorporation has been facilitated through internal stratification processes.

The expansion of the large law firm model can be observed through the growth of the Center of Study of Law Firms (Centro de Estudos das Sociedades Advogados (CESA)), an association that represents and

4. See Frederico N. R. de Almeida, *A Advocacia e o Acesso à Justiça no Estado de São Paulo (1980-2005)* (2006) (Dissertation, Universidade de São Paulo).

5. See *Brasil Tem Mais de 1, 9 Milhão de Bacharéis Sem Carteira da OAB*, *CONSULTOR JURÍDICO* (June 2, 2007), http://www.conjur.com.br/2007-jun-02/brasil_19_milhao_bachareis_carteira.

6. See Rennê Martins Barbalho, *A Feminização das Carreiras Jurídicas e Seus Reflexos No Profissionalismo* (2008) (Ph.D Thesis, Universidade Federal de São Carlos) (on file with author).

7. See Maria da Gloria Bonelli, Luciana G. Cunha, Fabiana L. de Oliveira & Maria Natalia B. da Silveira, *Profissionalização por Gênero em Escritórios Paulistas de Advocacia*, 20 *TEMPO SOCIAL* 265 (2008).

8. Ulrike Schultz, *Introduction: Women in the World's Legal Professions: Overview and Synthesis*, in *WOMEN IN THE WORLD'S LEGAL PROFESSIONS*, *supra* note 2, at xlii.

articulates the interests of 900 Brazilian law firms. In April 2011, Brazil had 657,000 OAB-registered lawyers.⁹ São Paulo state was responsible for 224,000 of these lawyers, 50 percent of which were women.¹⁰

The feminization of the legal practice converges with the above-mentioned transformations in traditional ways of organizing the profession in Brazil. The intensification of the social division of labor has been accompanied by the sexual division of labor, with women heavily concentrated within traditional areas and more routine activities while men are more likely to be involved in more specialized and innovative activities.¹¹ However, this is not the pattern observed in the research on judges, among whom gender differentiation was less evident than among lawyers in private practice. In this regard, perception of prejudice is stronger in law firms and takes its toll on the ways in which professionalism, gender, and sexuality intersect. On the other hand, judges enjoy a degree of autonomy that strengthens the ideology of professionalism as an occupational value,¹² thus giving salience to discourses of inclusion and diversity in the career.

As explained above, the analysis found that within private legal practice, particularly within large law firms, the normative value of professional neutrality is most vulnerable to market logic and their production of stereotypes regarding difference. In this regard, my analysis takes the position that prejudice exists and takes its toll on the ways in which professionalism, gender, and sexuality intersect, producing gendered closure and exclusion of difference.

I. FROM SOCIAL RELATIONS OF GENDER TO DIFFERENCE WITHIN THE PROFESSION

The growing number of women lawyers is a phenomenon that has been analyzed in numerous studies focusing on social relations of gender within the profession. Particular approaches have singled out the inequalities in promotions and income levels accompanying these processes.

9. See *Institucional/Quadro de Advogados, Quantitativo Total*, OAB, <http://www.oab.org.br/institucionalconselhofederal/quadroadvogados> (last visited Aug. 25, 2013).

10. *Id.*

11. See Nicky Le Feuvre & Nathalie Lapeyere, *Les 'Scripts Sexues' de Carriere dans les Professions Juridique em France*, 3 KNOWLEDGE, WORK & SOC'Y 101 (2005).

12. Julia Evetts, *A New Professionalism? Challenges and Opportunities*, 59 CURRENT SOC. 406 (2011) (explaining professionalism as an occupational value within organizational contexts, specifically looking at the public sector).

Fiona Kay and Elizabeth Gorman produce a synthesis of three theoretical perspectives that explain the “gender gap” in lawyers' salaries. In their view,

The human capital perspective posits that gender differences in labor supply (e.g., work hours, career interruptions, and part-time work arrangements), related to women's orientation to their families, are the major cause of gender-based earnings differences. The structural perspective assumes that women and men are channeled into (or they themselves select) different structural locations (sectors, practice settings, areas of specialization) and that men's locations receive more lucrative salaries. The discrimination approach claims that legal employers engage in various forms of bias or discrimination that can generally only be detected as either a residual effect of gender on earnings and/or an interaction between gender and human capital (i.e., women and men receive different returns for their investments in, for example, hours worked, years of experience, area of specialization, or legal training).¹³

Other approaches have looked at stratification and segmentation within the career. Sharon Bolton and Daniel Muzio¹⁴ summed up studies on gender stratification in the legal profession and have suggested that a mechanism of gendered closure persists within the legal professions, characterized by three distinct patterns for the barriers women face: stratification, segmentation, and sedimentation. Stratification occurs vertically by denying women access to the highest occupational levels; segmentation operates horizontally, forming ghettos in which women are confined to areas of lesser value (e.g. family law versus business law); and sedimentation occurs wherein professional women resort to essentialism as a way of organizing gender identity through enclaves in an attempt at empowerment.¹⁵

Taking a critical perspective on common approaches to the social relations of gender, Dermot Feenan has focused on difference in the legal profession and has pointed out the risks of reifying gender stereotypes through the theoretical frameworks employed to analyze

13. Elizabeth Gorman & Fiona Kay, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 313 (2008).

14. See Sharon C. Bolton & Daniel Muzio, *Can't Live with 'Em; Can't Live without 'Em: Gendered Segregation in the Legal Profession*, 41 SOCIOLOGY 47 (2007).

15. *Id.*

them. She considers the studies on gender and judging often poorly theorized, and to improve the debate the insistence on whether women judge differently could give place to the analysis of how questions about difference are framed and why such questions are asked.¹⁶

The approach to difference in this article finds sustenance in Avtar Brah's notion that "refers to the variety of ways in which specific discourses of difference are constructed, contested, reproduced and resignified."¹⁷ This approach uses the typology that she suggests when she states that "it is useful to distinguish between difference as a marker of the distinctiveness of our collective 'histories' from difference as the personal experience that inscribes individual biography. These sets of difference are constantly articulated but cannot be 'read' directly from each other."¹⁸

For Brah, difference as experience refers to that which is inscribed within individual biography and appears as the site where the subject is formed and always constituted as process.¹⁹ The "notion that these categories are unified, fixed and pre-existing categories, rather than modes of multiple localities continuously marked by cultural practices and the politics of daily life, disappears."²⁰ The subject of experience is not a preexisting being upon whom experiences are thrust. Difference as experience holds all the contradictions of subjectivity and identity.

Difference as a social relation refers to the way this relation is constituted by systematic discourses of contingency—whether the latter are economic, political, or cultural—and by institutional practices.²¹ A particular group articulates this type of difference by narrating historical, collective experiences as a common past, for example, the legacy of slavery. This in turn produces the conditions for collective identities and shared discourse but does not necessarily lead to the building of community.

Difference as subjectivity is perceived as interiority, yet the subject as a process is constituted in and through "internal" and "external" experience.²² This process of construction of subjectivity is both social and subjective, "where the subject is understood as decentered and heterogeneous in terms of qualities and dynamics. Subjectivity, then, is neither unified nor fixed but fragmented and constantly in process."²³

16. See Dermot Feenan, *Editorial Introduction: Women and Judging*, 17 FEMINIST LEGAL STUD. 1, 6 (2009).

17. AVTAR BRAH, CARTOGRAPHIES OF DIASPORA: CONTESTING IDENTITIES 125 (1996).

18. *Id.* at 117.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 121.

23. *Id.*

Regarding difference as identity, “identity may be understood as that very process by which the multiplicity, contradiction and instability of subjectivity is signified as having coherence, continuity and stability; as having a core—a continually changing core but the sense of a core nonetheless—that at any given moment is enunciated as the ‘I.’”²⁴ For Brah, if identity refers to a process, to speak of it as existing and constituted is problematic; thus, it becomes more appropriate to speak of “identification.”²⁵ The proclaimed identity is in effect our making or a construction; a specific collective identity is a political process, in contrast to identity as a process in and of subjectivity.²⁶

The typology that Brah proposes starts from the notion that there is no singular identification of difference in which one particular marker—such as social class, gender, sexuality, or race—prevails.²⁷ She gives salience to the intersectionality of social markers and how they come together to provide meaning to the self.

The present study attempts to identify the ways in which female and male lawyers and judges perceive career differences. The field research sought to locate lawyers and judges who would be willing to participate in the project through contacts made at law firms, courts, and through peer indications. A research team of four women and one man conducted the interviews, guided by a semistructured interview schedule in which participants authorized anonymous recording. The interviews were carried out at participants’ workplaces and took between fifty minutes and two hours to complete. The research team selected male and female professionals who were currently situated within different phases of their careers in the state capital and other parts of the state. Interviews were transcribed and analyzed with the aid of the NVivo 9 software.

The research team completed fifty-two interviews: twenty-four with lawyers, eighteen with state judges, and ten with federal court judges. This article focuses on the study of lawyers, analyzing data on legal firms in São Paulo and interviews with practitioners from elite law firms in the capital city of eleven million habitants and with lawyers who work in small law firms in two smaller cities within the state (one with 80,000 and the other with 110,000 inhabitants). Comparing the capital city with two smaller cities reveals a significant social distance between them—in other words, the existence of two distinct patterns of legal practice.

24. *Id.* at 124.

25. *Id.*

26. *Id.*

27. *Id.* at 96.

The interviews examine profile and professional trajectory, gender relations, and sociability among colleagues, emphasizing difference, discrimination, diversity, performance, and professional stance. I have previously provided a detailed account that examines the features of the judicial career as well as the testimony of male and female judges.²⁸ The following sections will first provide a summary of the conclusions of the aforementioned study and then go on to compare it to the perceptions of the lawyers who are the present focus.

II. THE STRATIFICATION OF BRAZILIAN LAW FIRMS

CESA provides a list of 385 law firms in the state of São Paulo, and 511 in other states of the union.²⁹ The firms' websites provide profiles for the firms used for this research. Data was available on 198 firms in the state of São Paulo and 261 in other parts of the country. The firms were divided into three categories: small (one to nine partners/associates), medium (ten to forty-nine partners/associates), and large (fifty or more partners/associates). Among the 198 law firms in the state of São Paulo that were analyzed, 61 were classified as small, 116 as medium, and 21 as large.

The researchers classified the lawyers in these firms according to their positions. Several of the sites provided a hierarchy regarding members, distinguishing between partners and associates. Yet, other firms presented themselves differently, referring to all lawyers as a "team." This article has attempted to preserve the terms that the law firms used in providing their own classification. The stratification of firms and their professionals follows the general organization of the career today, especially CESA-affiliated law firms, which concentrate the elites of the profession. Thus, the research collected a sample of firms whose self-image is associated with business law, even if in practice the situation is otherwise. In this regard, these results reflect a reality that contrasts with that of the profession as a whole.

Data from São Paulo refer to 4,278 lawyers, which includes 2,032 women. Of these professionals, 1,311 worked in large law firms, 2,544 in medium firms, and 424 in small ones. Women are underrepresented as partners regardless of the firm size (see Tables 1, 2, and 3). Yet it is within the smaller firms, organized according to traditional patterns of legal practice, that the asymmetry between male and female positions as partners is greater. Few women (a mere 17 percent) are in solo

28. Maria da Gloria Bonelli, *Gender, Difference and Professionalism Among Brazilian Judges*, at the Law and Society Association Annual Meeting (2011).

29. Data collected in March of 2011.

practice or in the provision of services to individual clients in CESA-affiliated firms.

Table 1. Distribution of CESA-Affiliated Law Firm Partner, São Paulo State, by Gender and by Firm Size

Law Firms	Men	Women	Total
1 – 9	73 (83%)	15 (17%)	88
10 – 49	389 (71%)	162 (29%)	551
50 or more	163 (72%)	62 (28%)	225
TOTAL	625 (72%)	239 (28%)	864

Source: CESA (2011).

Table 2. Distribution of CESA-Affiliated Law Firm Associates, São Paulo State, by Gender and Firm Size

Law Firms	Men	Women	Total
1 – 9	84 (48%)	91 (52%)	175
10 – 49	675 (46%)	798 (54%)	1473
50 or more	354 (44%)	455 (56%)	809
TOTAL	1113 (45%)	1344 (55%)	2457

Source: CESA (2011).

Table 3. Distribution CESA-Affiliated Law Firm Teams, São Paulo State, by Gender and Firm Size

Law Firms	Men	Women	Total
1 – 9	92 (57%)	69 (43%)	161
10 – 49	280 (54%)	240 (46%)	520
50 or more	137 (49%)	140 (51%)	277
TOTAL	509 (53%)	449 (47%)	958

Source: CESA (2011).

In the field work carried out in two small cities in the state of São Paulo, the researchers observed a high frequency of female lawyers in solo practice. Some women manifested interest in affiliation with other law firms but encountered obstacles in the way. In their regions, clients are largely obtained through an OAB-SP (The São Paulo Bar Association) agreement with the state government for providing legal aid to low income persons.

III. PERCEPTIONS OF DIFFERENCE AMONG MALE AND FEMALE LAWYERS

The research team conducted interviews with female and male partners and associates in elite law firms and with lawyers of both gender working in small firms or in solo practices, examining the relationship between professional profile and perception of difference as it is played out within legal careers. Among the twenty-four lawyers interviewed for this research, fourteen were women. Most of the lawyers (62 percent) were between thirty and forty years of age. While 54 percent of those in this sample were married, only one lawyer had a spouse also working in the legal profession. Yet, 25 percent had fathers who were linked to the law practice. Most of those who reported having children were women. Of those who were single, two declared themselves gay. Most (92 percent) were born in the state of São Paulo.

The population interviewed is composed of professionals working in the state capital (38 percent) and in smaller cities within the state. Larger law firms within the capital contrasted with smaller ones, particular those located in smaller cities. One of the firms within the capital was small but highly specialized and is considered a “boutique

law firm" in the field of administrative law. In large and middle-sized firms, interviewees worked with entrepreneurial clientele and businesses and in capital and finance markets, contract, and tax law. Outside the state capital, less specialized firms prevailed, engaged in civil, labor, commercial, and criminal law.

Half of all professionals completed their law degree during the 1990s, while 37 percent concluded their studies during the 2000s. Three of these professionals had degrees from public universities while twenty-one (87 percent) had degrees from private colleges, including ten from outside the state capital. There were three women lawyers who had university degrees in other professional or academic fields. Thirty-six percent (three women and two men) had completed some type of post-graduate work as well. Difference within the career is more accentuated for professionals in law firms than for judges, though apparently less relevant for lawyers who practice in smaller cities, either in solo practice or small firms.

In the places where the study was carried out, the prevailing point of view on gender difference within the legal profession attributed it to the "nature" of women and men and their respective preferences, linked in turn to a "human capital" explanatory current. Young women lawyers mentioned clients' lack of trust in their abilities, but attributed such attitudes to age rather than gender. There were only two women lawyers working in small cities who pointed to the existence of gender prejudice as a problem affecting them, but one of them added that this problem was specific to large firms in the city of São Paulo. Discrimination in relation to sexual difference was seen as more of a problem, promoting a "logic of the closet" played out through the adoption of a "professional stance," which makes such markers invisible.

Within large law firms, both the perception and their cognition of difference are more accentuated. Analyzing interviews with the aid of the NVivo software program, the theme that was most frequently evoked was prejudice. All interviewees, male and female, unanimously identified prejudice as a factor that has an impact on professional careers within the field. Those who were firm partners were the most emphatic in their accounts of subtle or overt discrimination in response to visible markers of difference, whether those of gender, sexuality, race, class, or appearance (including, in this case, being "fat" or overweight).

From this expressive reference to prejudice flow several different ways of perceiving difference. The interview passages transcribed below illustrate discourse on difference as social relation and difference as experience. The research finds "difference as a social relation" expressed in testimonies in which the interviewees narrate a social situation of discrimination as experienced by someone else. In the passages in which

the person elaborates a narrative on himself denoting exclusion, the study considers this as “difference as experience.” Some excerpts contain both types of references.

There are those who look and say: I don't want to work with a woman. [Or] That one was born with a problem and why should we have to deal with it? Unbelievable, unbelievable! . . . The worst are the guys that say: Oh, ok, a woman is fine with me. But then he does everything he can not to promote her. That to me is the worst, because at least the other one is being honest, right? He says I don't want any problems in my life. The other one, the one who says ok, we have to be politically correct, accepts men and women, but then the time comes when [he starts up]: are you on top of that case? What are you planning to do with your life? Are you planning to study abroad? What is it you want? Do you want to become a judge? And you, when are you going to have a second child? You see what I mean? I think that's the worst because it's false. (Partner, woman, 36-40 years of age, married, has a child)

I think that my sexual orientation always made me work harder, harder, because of my fear of discrimination and so forth you look for how to protect your professional success. If you are a successful professional it is harder for someone to use that against you and so forth . . . I have a friend who worked here with me, on the same team and at the time I didn't even know, that is, I didn't know that he was gay, and he didn't know I was gay, but I think he suffered prejudice here. At the time he was fired, obviously they weren't up front about it, but I think he was fired because he was gay. I think perhaps that was because he was more effeminate, which could have caused such a prejudice, something I really see people doing. I think that today sexual orientation is much less of a taboo as long as people don't bear the visible markers, something which is really sad. What's wrong with it? (Partner, man, 36-40 years of age, single, no children)

Perception of prejudice was manifested less among judges than within legal practice, and within large law firms in particular. If, within

this latter career, there was greater reference to prejudice, which was at the top of the list of the issues discussed during the interviews, it was only number five on the list of judges' concerns. Among the twenty-eight judges whom the research team interviewed, ten made no reference at all to issues of prejudice within the career.

There are also several accounts that deny the workings of discrimination within their career, claiming that diversity and inclusion prevail. This negation is made in reference to a lawyer's experience within his professional trajectory. In the passage below, difference is perceived as subjectivity, encapsulated within the self and externalized principally through identification with one's profession:

It is the same, I think that for entrance into apprenticeship it's the same, there is no difference and no preference for hiring men or women or with regard to race. I don't think sexual orientation makes a difference either. Obviously, since I am maintaining a professional stance, there is no problem in terms of hiring, although within the firm—I'm gay, ok, just for the record there—I've never faced any problems in that regard, my private life is my private life, I'm here to do my job period. I have friends here who are my friends at work, not "in life." Many friends here know [that I'm gay] and that's not an issue for them. I think that the shareholder partners and the bosses also know. I never said anything, but I think people end up picking up on it, suspecting, because at social events, wedding, parties, I'm always alone, and also because of my stance that business about people loving soccer, and I hate it, and everyone knows that, that boring game and so on. So I've never had any problems in that regard. . . . Look, I have friends who are partners in major law offices who are quite well-situated and others who are senior and junior partners, apprentices as well, all my friends are well-positioned and many are very successful, so I don't see any problems there. (Revenue partner,³⁰ man, 26-30 years of age, single, no children).

30. In the firm in which he works, the team is hierarchically divided into shareholding partners and partners who share revenues. The latter do not enjoy voting privileges.

The experience of being a gay professional in a large São Paulo law firm contrasts with the accounts that were provided regarding smaller cities of the state.

Lawyer X [gives name] is coming out of the closet now. He hasn't said anything to us yet, that's not a problem, his attitude has to be different. The problem is his parent. I myself knew from the day he was hired . . . That's not a problem, his attitude has to be different, as long as he doesn't offend anyone, he just can't show up around here in pigtailed or that sort of thing because that would be out of place. If I show up in a GLS ["gay, lesbian, and sympathizers"] environment, I can't act like this, right (makes gestures with her hands), like a homosexual person comes into an environment and has to be respectful of that environment, a [gay] couple that goes into a corner bar can't keep kissing, making out, sitting on each other's laps in public. That depends on a person's stance, not their sexual orientation. (Partner, woman, family firm in small city, 46-50 years of age, divorced, has children)

This testimony reaffirms the type of stereotypes that disqualify different sexualities and place them within the category of the subaltern, even when the person who is being interviewed claims not to be prejudiced. The concern with protecting the law firm from stigma by not contracting a homosexual is counterbalanced by an emphasis on "professional demeanor": in this case, behavior that does not stain the sacredness of the professional environment with profane conduct.

The issue that evoked the second highest number of manifestations on the part of male and female lawyers was professional performance. The analysis places narratives on competence, performance, posture, and demeanor within this category. It is an issue that all those interviewed commented on, although there were fewer accounts of this type than there were in the case of prejudice.

In the career in general, but with some exceptions, in firms where there are better facilities, and where it is more professional, a strictly technical person can become a partner . . . A person who is excellent from a technical point of view but from a practical point of view may not be a good negotiator. Not a good business person. An example of this is the lawyer who is good at arguing,

that is, the old style lawyer who doesn't know how to talk to clients, doesn't know about finances, and only knows how to act in court and speak to judges and prosecutors. (Associate, man, 31-35 years of age, married, no children)

Most large firms have their own manicurist who styles hair and does people's nails. Because the firms want to keep up their image in the eyes of the public, and it seems like in a big office, where you have some one-hundred lawyers, it's hard to control everyone, there are people who will fall short, you know, in terms of fashion, people, not all people know how to present themselves. Why was this dress code business invented? Well, because sometimes right when summer is ending some woman will come into work with a short skirt and flat sandals. Now is that adequate? It's really a lack of awareness . . . [The way people act is distinguished] by their abilities. I am not selling images. I sell results, not images, while those firms sell image and results. So you see, there are some reasons for that. (Boutique law firm partner, woman, 31-35 years of age, married, no children)

Performance and demeanor take on a place of prominence within professional identity and the construction of otherness, particularly within the careers that hold greatest social prestige. Markers that may work detrimentally to this status reinforce the centrality that professional neutrality has for the self. The passage below speaks to the issue of "neutral professional demeanor" in the eyes of a gay lawyer.

I think that the question of having effeminate ways or not implies an issue of trust that I think society in general has. For example, I think you feel more comfortable being taken care of by a professional if he maintains that middle ground that is, not that typical macho, vulgar, nor a man who wants to be [a] woman, you know. I think that just ends up creating a problem of professional confidence, people find it a little strange. I'm not prejudiced like that, I don't think it makes a difference, but for most people it does . . . I think that to put an end to the issue of prejudice is to stop giving importance to whether a person is gay, lesbian, or

whatever. You aren't anything in that sense, just a human being who works and that's it. (Revenue partner, man, 26-30 years of age, single, no children)

The effacement of visible markers of sexual difference that the abovementioned interviewee has put into practice is accompanied by an emphasis on professional identification rather than recognition of belonging to another community (in this case, a community based on homo-affectivity). Professionalism substitutes the social status that gays are denied in virtue of their sexuality and brings rewards in terms of the recognition awarded for mastery of a field of social expertise.

Nick Rumens and Deborah Kerfoot analyze the situation of gay men who work within "gay-friendly" organizations.³¹ They suggest that even within such environments, gay men perform active work on the self in order to identify as professionals and, in doing so, experience empowerment.³² Thus, they do not cease to be affected by norms that treat sexuality and professionalism as polar opposites. The authors deal with the dilemmas that emerge regarding which identifications these men assume as dilemmas of professional identity.

Testimonies on professional performance took a key position among both lawyers and judges but held different meanings within each one of these careers. The visibility of law firms through business abilities, consulting excellence, and an elitized image contrasted with the position of judges, marked by social recognition, authority, and concern with discretion. Among judges, the issue of professional performance remained in third place, while for lawyers it was the second-most emphasized issue.

Diversity was another issue that mobilized interviewees' attention, with the majority of interviewees restricting themselves to commentaries on homosexuals within the career. The number of testimonies classified on this theme was slightly higher than those related to the perception of gender difference within the career. Difference in sexuality took third place and gender came in fourth in testimonies of male and female lawyers. The fact that this interviewing process included lawyers who identified themselves as gay contrasts with the absence of this type of narrative among judges, yet the latter believe that their career admits diversity, and the number of references made gave it a first place ranking on the list of themes that the judges interviewed brought to the forefront.

31. See Nick Rumeens & Deborah Kerfoot, *Gay Men at Work: (Re)constructing the Self as Professional*, 62 HUM. REL. 736 (2009).

32. *Id.* at 775.

I believe that in our case it is quite the opposite, that in Brazil we are a step behind other societies, the United States or North America or Europe, in the sense of . . . partners really accepting that I am openly gay. I think that here people, partners are gay but nobody really deals with that, you see? We exist, the firm considers itself inclusive and our website claims we seek diversity and soon and everyone knows but there is no inside group of gay lawyers here. We don't openly seek to hire gay lawyers, in spite of the fact that is supposedly a firm policy. (Partner, man, 36-40 years of age, no children)

Although some law firms identify market potential in the politics of diversity, attending to the demands of entrepreneurial clientele and, in particular, those of large firms of foreign lawyers with whom they wish to establish partnerships, the socially constructed alternative for same-sex sexualities involves remaining in the closet within the professional environment.

According to Eve Sedgwick, "the closet" is a fundamental characteristic of social life and one that pertains not only to gay people.³³ The linking of heterosexuality to the public and homosexuality to the private sphere is produced within the profession studied here, insofar as discretion is imposed on gay persons and the peers who are aware of their colleagues' sexual orientation. In contrast, heterosexual desire enjoys sample visibility within the professional environment.

Perceptions of gender difference are brought up more within law firms than in judicial careers, mentioned by 93 percent of the lawyers interviewed as compared to 75 percent of judges. In this latter case, more emphasis was given to gender as a factor that does *not* explain career differences. The professionals interviewed also mention gendered closure in terms of stratification and segmentation of feminine enclaves through specialization.

Family law is more a woman's area. It engages women more . . . Because family law is psychology. A petition that you write up in family law has two phrases of law and thirty lines of pure psychology, and women understand that. (Associate, woman, 21-25 years of age, single, no children).

33. EVE K. SEDGWICK, *THE EPISTEMOLOGY OF THE CLOSET* 67 (1990).

It's more common for a man to engage in prospecting activity, it's more common because men use their social milieu for that purpose. So there's soccer, there's the happy hour and the environment they share with their friends. (Partner, woman, 31-35 years of age, married, no children).

Yet, when a group of lawyers from a large firm sees gender difference as identity and organizes a women lawyers' commission, this movement is not presented as the transformation of a feminine enclave into a gendered segment. Rather, gender essentialism is misused to create the notion of a space where gender differences are recognized within the career.

So we decided to create a committee [women lawyers], that was in July, to create a commission here. "Oh, what are you going to do? A Girl's Society? A tea hour? What are you up to?" Can you believe it!? We had to deal with much more than you can imagine, so we put together a discussion forum to talk about this, and it was funny that in order to get our partners to accept it—the guys—we had to invent a strategy, saying that on a day to day basis we have difficulties in dealing with numbers, obtaining clients. (Partner, woman, 36-40 years of age, married, one child).

CONCLUSION

In analyzing interviews, the article points out that both male and female lawyers attribute meanings to difference within the career. This particular angle of vision revealed its fecundity in capturing the hybrid ways in which social markers and professionalism intersect the self and identity construction. This approach found that the idea of a fixed, single gender, professional, or sexual identity was eschewed; rather, a variety of ways of giving meaning to similarity and difference within the career was narrated.

This is revealed by the scale of priorities emerging from the issues that take center stage in lawyers' discourse. The four issues that are highest on the list of priorities were the same for men and women. Prejudice was the most emphasized, followed by performance, diversity, and the perception that gender makes a difference. After this point, the classification begins to diverge. For women lawyers, the fifth concern on the list refers to career and children, the sixth to the emotional costs of

career, and the seventh to issues of gender and promotion. For male lawyers, the perception that gender does not explain career difference is in fifth place and sharing sixth place are the negation of prejudice within the career, emotional costs of professional trajectory, and the question of career and children.

In comparing judges and lawyers, the research suggests more accounts of difficulties among judges within the profession, such as the challenge of reconciling private life, children and work, academic activity and the office, difficulties in earning money or moving up in the career for those of humble social origins, and so on. Among judges, the difficulties that the need for spatial mobility brought in terms of family life and the heavy burdens of work were the most salient issues. Moving up the ladder as a judge meant moving to different districts or circuits of judicial power, something that was harder for women who must juggle professional and family concerns. The emotional costs that career places on personal and social life puts more pressure on judges than on lawyers, yet the former express greater career satisfaction. In this case, difference is not restricted to the social markers of gender, sexuality, and race. Being a judge is also, in itself, signified as difference.

The contrast between working in public and private sectors has an impact on discourses of difference. If in the discourse of male and female lawyers, prejudice takes precedence over other issues, in interviews with judges, diversity comes to the forefront. Lawyers prioritize exclusion, while judges speak of inclusion. Law firms produce gendered stratification and segmentation, accompanied by heightened gender identity manifested in the responses that recognize that, in the legal profession, women are marked as different. Within the judiciary, the view that gender does not make a difference in professional results prevails, and no tendency toward the production of female enclaves can be noted. This results in lesser perception of gender identity as difference within the judicial career, confirming the working hypothesis.

The approach that guided this work sees difference through a variety of discourses that construct, contest, reproduce, and resignify it. The passages from the interviews that have been reproduced here demonstrate these plural ways of constructing and contesting difference, both in the narratives that claim that gender makes a difference in career and those that, to the contrary, pose it as negligible. Other discourses reproduce difference by reaffirming them, such as in the essentializing of the masculine and the feminine, which leads to the constitution of gendered enclaves sometimes signified as "preferences." With regard to excerpts that resignify difference, salience should be given to the perception that being a judge is, in itself, difference.

