

Affect Theory and Gender Diversity in the Irish Judiciary

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Status of Irish women in the early 20th century

Pre-1918

Women regarded as legally incompetent for the most part; they could not vote or gain custody of their children

1918 to 1924

Women gained the right to vote, but the Executive Council of the Irish Free State began introducing a number of legislative acts that effectively established that the woman's place was 'firmly within the home sphere' (Redmond and Harford 2010, p.642)

1924 to 1935

Legislation introduced that banned married women from most workplaces, prohibited contraception and access to information about contraception, and excluded women from juries.

1937

Irish Constitution published. Allowed State to discriminate against women, introduced a ban on divorce and enshrined the special place of the woman within the home.

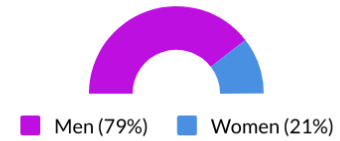
The Irish Judiciary in the Early 20th Century

- Between 1919 and 1924, women were expressly allowed to serve as judges on the Dáil Courts which operated during the Irish War of Independence (1919-1921) and for a short time afterwards (O'Donoghue 2017, p.84).
- Following Irish independence and the abolition of the Dáil Courts, few women remained in public view and very few 'were involved at a policy-making level in the first governments of the new state' (Bacik et al 2003, p.44). It was a 'political decision to remove the female voice from the law' (O'Donoghue 2017, p.92).
- No woman was appointed to the Free State Courts after the Irish judiciary was split into two jurisdictions, North and South (Enright 2017, p.29). Women were "rigidly excluded" from the legal profession and generally also from public office (Bacik et al 2003, p.51).

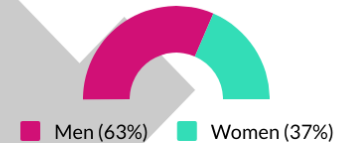
Representation has improved drastically since 1924. It continues to improve, going from 21% in 2003 to 37% in 2020 (Courts.ie 2020)

Women now account for 33% of superior court judicial positions and 39% of lower court judicial positions. There is still a long way to go until parity is achieved, however progress is being made.

Irish Judiciary (2003)



Irish Judiciary (2020)



Affect Theory: Catalyst and Affective Potential

- Affect theory is the study of the impact of affect. Affect extends beyond mere emotion; it is a type of gut instinct felt within the body but inspired by events both inside and outside the body.
- Scholars have used affect theory when exploring gender-related issues. Pedwell and Whitehead explain that: '(f)eminist scholars have been at the heart of these engagements with affect [theory], in part, because, for some, feminism itself is a politics 'suffused with feelings passions and emotions' (2012, pp.115-116).

Affect Theory as a Catalyst

- Prior to the discriminatory laws introduced from 1924, Irish women were beginning to actively participate in the 'judicial role and were directly engaged in debate as to how Irish law and legal structures ought to develop' (O'Donoghue 2017, pp.91-92).
- Eileen Kennedy was the first female judge appointed in the Republic of Ireland in 1963. This was seen as an 'extraordinary' action at the time, given that women were unable to sit on juries until 1976 (O'Donoghue 2017, p.86).
- Her appointment could not have occurred without the rising women's movement of the 1960's in Ireland, which was comprised of 'tiny brave arm[ies]' (Staggenborg, 1991, cited by Connolly 2003, p.71) which were steadily gaining strength.

- By utilising affect theory, one may theorise that experiencing affects such as shame, humiliation, fear and rage acted as a catalyst for the organisation of resistance movements in Ireland in the 1960's. These movements represent affect in action; while the catalyst was a negative affect, the outcome of these movements were positive.

The Affective Potential of the Introduction of the Female Judiciary

- Prior to the exclusion of women from the judiciary, the first female graduate of law was in 1888, the first female barristers were called to the bar in 1921 and the first female solicitor was on the roll in 1923 (O'Donoghue 2017, p.87).
- O'Donoghue (2017, p.87) highlights the affective potential of these 'early pioneers' when she states that they should 'act as catalysts in both re-imagining what might have been and also stressing the import of the feminist judicial voice to ensure it is never again removed from debates on the future' of our society.
- Applying affect theory, what affective potential can be drawn from the introduction of women into the judiciary and the swelling numbers of women in the judiciary? One could argue that the introduction of women into the judiciary was both inspired by, and creates, affect.
- Kennedy's appointment in 1963 could be (in-part) attributed to the rising women's rights organisations of the 1960's and to changing societal attitudes towards women's role in society and public life. At a time when women were as yet unable to sit on juries, one must accept that Kennedy's appointment had substantial affective potential; she may have been a beacon of hope for further change.

Conclusion and Future Research

The importance of gender diversity within the judiciary 'lies in a synthesis of arguments about representation' (Feenan 2008, p.519), among other important factors. Feminist legal projects, conducted in several jurisdictions, have demonstrated 'that judicial decision making is rarely detached from personal background and experience and that judicial interpretation is never purely neutral and objective' (Berger et al. 2018, p.1218).

An affective theory framework can be used to gain greater understanding of how gender impacts on judicial decision-making.

Future research in this area will include an empirical analysis of Irish judicial opinions and case law, along with interviews with members of the Irish judiciary.

