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Constitutions and Gender Equality in Chile and Argentina

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Abstract

Gender equality provisions have become nearly standard in constitutional design for new democracies. How do such provisions affect the ability of women's rights advocates to achieve social change? To address this question, we compare the political use (legislation, policy, and judicial interpretation) of these provisions in Chile and Argentina, countries that differ with respect to how they have constitutionalised gender rights. The comparative analysis demonstrates how gender-specific constitutional provisions provide a legal basis and legitimacy for women's rights advocates to advance new policy, protect policy gains, and pursue rights-based cases through the courts.

Resumen

Las disposiciones constitucionales sobre igualdad de género se han convertido en casi un estándar en el diseño constitucional de las nuevas democracias. ¿Cómo afectan esas disposiciones la capacidad de los actores sociales defensores de los derechos de la mujer para lograr un cambio social? Para abordar esta pregunta, comparamos el uso político (legislación, política e interpretación judicial) de estas disposiciones en Chile y Argentina, países que difieren con respecto a cómo han constitucionalizado los derechos de género. El análisis comparativo demuestra cómo las disposiciones constitucionales específicas de género otorgan legitimidad y fundamento legal para que los defensores de los derechos de las mujeres promuevan nuevas políticas, protejan los logros de las políticas y persigan litigio en los tribunales.

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Introduction

Gender equality provisions have become nearly standard in the constitutional design for new democracies. Constitutional gender provisions span both "first-generation" liberal rights (negative rights, for example, the freedom from sex discrimination) and "second-generation" social rights (or positive rights, for example, the right to state services or positive action). In the last few decades, a number of countries have undertaken substantive reforms of the way gender equality and gender differences are treated in constitutions. Many countries now recognise formal gender equality in their constitutions. Some go further and obligate the state to take proactive measures to redress inequality and promote women's full participation in society, while others recognise gender difference but tie that difference to traditional caregiving and reproductive roles that require state protection. To what extent do such provisions matter for women's rights advocates and for policy change?

Constitutions structure political power and social power, including power in gender relations (Dobrowolsky and Hart, 2003; Irving, 2008; Williams, 2009). Gender provisions set the bar for judging whether policy-making is consistent with state goals and ideals concerning equality and the social, economic, and political position of women. Unlike legislation, constitutional provisions are difficult to alter; they provide rules for the regulation and limitation of state power and the protection of individual rights. In the hands of women's rights advocates, gender provisions have the potential to provide a legal basis and political legitimacy for their work to advance new policy, protect policy gains, and pursue rights-based cases through the courts.

To examine whether gender provisions affect efforts to achieve policy change, we compare Argentina and Chile, two countries that share many historical, political, and social experiences, but differ in the way gender equality is recognised in the constitution. The Argentine Constitution contains a number of specific provisions that recognise and seek to advance gender equality. It also recognises and incorporates international law. The Chilean Constitution was amended in 1999 to contain a gender equality statement; however, it does not promote gender equality, nor does it actively redress gender discrimination. Using archival data and interviews with women's rights advocates, we examine how gender has been constitutionalised, how constitutional provisions have informed the efforts and strategies of women's rights advocates, and affected advocates' efforts to secure legislative and judicial change. The comparative analysis demonstrates

that where egalitarian provisions are minimal, as in Chile, activists are more limited in their efforts to pursue policies that contribute to women's equality.

Argentina and Chile are similar in a number of important ways. They are among the most economically developed Latin American countries. Each is predominantly Catholic, and the Church has been, and remains, an important non-state political actor for issues affecting the family, especially reproductive health policies. Catholicism is also an important influence on culture. Cultural attitudes about gender roles are often a barrier to the legislation and implementation of policies that promote women's equality in both countries. Both countries experienced a prolonged period of repressive military rule in the 1970s (Chile from 1973 to 1990, Argentina from 1976 to 1983) followed by re-democratisation in the 1980s and early 1990s, and neo-liberal economic restructuring. Strong women's movements emerged in both countries and played a significant role in bringing down authoritarian regimes (Waylen, 2007). Women's rights organisations are professionalised and well connected to international networks of women's and human rights groups; these ties provide important resources and assistance to national actors. Both are exposed to global and regional pressures to implement policies and strengthen national gender machineries to improve the lives of women (Craske and Molyneux, 2002: 10–11). Finally, in both countries, the women's movement experienced periods of fragmentation after the democratic transition (Alvarez et al., 1998: 306–308).

There are also some important differences. The sum of these differences, however, does not strongly favour gender friendly outcomes in one country or the other. In Argentina, which has a gender quota, there are proportionally more women in parliament than in Chile; however, the degree to which this translates into substantive representation is debated (Franceschet and Piscopo, 2008).[1] The relative weakness of political parties in Argentina tempers the potential impact of the gender quota and left parties on gender policy. Chile's National Office of Women's Affairs (SERNAM, Servicio Nacional de la Mujer)[2] has been an important ally in achieving policy change and generally has been more influential than its Argentine counterpart, the National Women's Council (CNM, Consejo Nacional de la Mujer) (Franceschet, 2008, 2010). On the other hand, at times, SERNAM's ties to the conservative Christian Democratic Party and the political role of the Church dampened the scope of reform efforts in Chile (Blofield and Haas, 2005; Ríos Tobar, 2007).

Constitutional Provisions and Policy Change: Theory and Expectations

Constitutions by themselves do not constrain government power and do not produce social or legal change. Constitutional provisions must be taken up, claimed, and used by political and social actors in service of such goals in the political context of their time. We contend that constitutional provisions provide women's rights advocates with a constitutional anchor for legislative and judicial action and influence the content of legislation and judicial review of laws and policies (Lambert and Scribner, 2020). While we treat constitutional gender equality provisions as an institutional variable shaping

behaviour, strategies, and outcomes, we also recognise that the provisions themselves are the product of social and political change (Przeworski, 2004). Furthermore, "constitutional rights are never interpreted or implemented in a political or ideological vacuum" (Hirchl and Shachar, 2005: 228). Our goal is to explore the links between constitutional rights and mid-range legislative and judicial outcomes.

Enables Gender Policy Reforms

Scholars contend that constitutional provisions can be part of an enabling framework that facilitates legal change (Waylen, 2007: 201). Women's movements can use egalitarian constitutional provisions as a tool to fight gender discrimination and pursue policy changes that address gender-based power disparities. Where egalitarian constitutional provisions are weak or absent, rights advocates may have a limited capacity to pursue gender policy reform and/or rely more heavily on international laws and treaties.[3] Similarly, where provisions tie women's citizenship to traditional gender roles or ignore gender difference, women's organisations may find they are constrained by the constitutional discourse of gender neutrality or maternalism.

In Argentina, constitutional gender equality provisions provide a foundation for women's rights claims; thus, we expect policy-makers and women's rights advocates to identify egalitarian constitutional provisions as a central tool to pursue policy change in Argentina. We also expect to see more gender policy, comparatively. Likewise, we expect legislative discourse around policy change to draw on egalitarian language in the constitution. In the Chilean case, we would expect the absence of egalitarian provisions to be constraining for advocates seeking policy change. Because Chile amended its constitution to include a sex equality statement in 1999, we can also examine the extent to which advocates see this constitutional change as helpful for achieving policy change.

Provides Legal Tools and Arguments

Constitutional language affects judicial interpretation of laws and the protection and advancement of constitutional rights by courts. Constitutional provisions can "create or limit opportunities for NGOS (Non-Governmental Organizations)," provide rights activists with "tools to challenge the state," and shape "the kinds of legal claims that can be made as well as the persuasiveness of those claims" (Baines and Rubio-Marin, 2005: 9; Vanhala, 2018: 384). As Baldez et al. (2006) demonstrate, equal rights provisions increase the standard of the law that is applied and increase the likelihood of a favourable judicial decision. If gender provisions in the national constitution improve the opportunity to advance litigation on women's rights or the chances of "women-friendly" decisions, we would expect to see more judicial decisions favouring women's rights in Argentina.

Enhances the Legitimacy of Rights Claims

Clearly articulated constitutional rights and duties can enhance the legitimacy of rights claims (O'Sullivan and Murray, 2005). Constitutional provisions are a source of legitimacy because they are "reflections of shared values" (Ginsberg and Huq, 2014: 121). Thus, the presence of a stated constitutional commitment to gender equality should increase the legitimacy of gender rights and ground arguments for gender policy change.

We would expect a discourse of constitutionally recognised gender rights to be reflected in the language introducing, framing, and debating gender policy. Women's rights-based arguments and proposals should be more common in Argentina where constitutional values about gender equality are explicit and thus provide more constitutional legitimacy than in Chile. We expect to see greater reliance on international law arguments in Chile, as its Constitution does not provide a strong legal platform for gender equality.[4]

Comparing Constitutions and Gender Equality

In each country, we conducted in-depth interviews with several types of individuals: leaders of non-governmental organisations and women's movement activists; legislators; scholars and researchers working on women's issues and gender justice; and government officials in ministries involved in gender.[5]

In the first part of the case study, we review the constitutional provisions and how interviewees view the constitution as informing their work and providing greater legitimacy for women's rights-based claims. The second half of the analysis considers gender provisions and policy outcomes in three areas: gender-based violence, sexual and reproductive health, and employment rights. We examine the discourse, content, and framing of key gender policy bills, committee and floor debates, and the text of the law. In our interviews with individuals (some of whom were closely involved with specific pieces of legislation), we solicited their informed opinion about the scope of policy and its passage. With respect to litigation, we examined the record of high court decisions during the same timeframe. We also discussed litigation strategies and individual cases with our interviewees, asking if and how gender provisions were reflected in judicial decisions.

Part I: Gender in the Constitution

Argentina

The Argentine Constitution dates to 1853. Significant constitutional reform was enacted in 1994 and included a number of changes with respect to gender. The changes incorporated three key provisions promoting gender equality: a constitutional electoral quota (Article 37), equal pay for equal work (Article 14 bis), and affirmative action where Congress has the power to "legislate and promote positive measures guaranteeing true equality of opportunity and treatment" (Article 75, No. 23). According to one lawyer,

these provisions "were adopted with a clear political intention to overcome obstacles in the road to equality…Affirmative action is a very important point in this regard…It has had a transformative effect" (AL1329). In addition, and perhaps most importantly, Argentina's 1994 Constitution explicitly names and incorporates core provisions of the UN Convention on the Elimination of All Forms of Discrimination against Women or CEDAW (Article 75, No. 22). This was a "crucial advance" because it provides the legal tools for getting women's issues on the agenda and opens the "way for women and women's organisations to use the courts to gain the enforcement of women's rights nationally" (Kohen, 2009: 95; AMW4405). One legal scholar and activist noted that the inclusion of CEDAW in the Constitution had resulted in a major cultural shift in legislative discourse and in legislation: "Legislative discourse, in Congress… has been transformed. Numerous [laws] capture the development and evolution of international human rights law…in the justification of laws, in parliamentary debates, and in the justifications for administrative decisions" (ALS13414).

At the same time, many viewed the implementation of law as problematic. Difficulties stem from many factors including low administrative capacity, lack of funding, lack of accountability, failure to ensure access to state services, and gender stereotyping within state agencies (particularly the judiciary). Women's organisations reported that they divide their efforts between holding the state accountable for implementing policy that has already been passed and advocating for new policy. In both cases, constitutional provisions aided their efforts.

Chile

Chile transitioned to democracy with the 1980 "Constitution in Liberty," a document written by the military regime and "inspired by right-wing philosopher Friedrich Hayek" (Waylen, 2007: 158). Given its roots in the military dictatorship (1973–1989), those on the political left have long contested the legitimacy of the constitution itself; more on this below. Article 1 of the Constitution contains a neutral statement of equality ("all persons are born free and equal")[6]; it also singles out the family as the fundamental unit of society and obligates the state to take steps to protect and strengthen the family. In 1999, the Constitution was amended to explicitly include a statement that men and women are equal before the law (Article 19, No. 2). The Chilean Constitution, however, does not promote gender equality or address gender discrimination, nor does it actively promote or protect motherhood.

When we asked how constitutional provisions and values shape policy, many interviewees said the Constitution was more of an obstacle than a tool to achieving progress on gender policy. While a few subjects felt the equality statement could be leveraged to revise laws that were explicitly discriminatory, most felt it was symbolic. Many suggested that the political right had been more active and adept at using the Constitution to block gender policy change and that the family provision was the more commonly used constitutional provision (CG1041, CL2072, CL4309, CG12318). Gender policy proposals face a stiff bargaining environment in Chile – the result of coalition politics.

According to interviewees in both governmental and non-governmental positions, this often means that a discourse of women's rights and gender equality is strategically dropped for the more palatable and legislatively successful discourse of family and motherhood. As one legislator put it, "A discourse based on family, women as mothers, in the end has much more weight and support than a discourse of women's rights" (CM14320).

Those involved in human rights litigation echoed the view that the Constitution was "not particularly helpful" for pursuing gender policy reform. Litigators explained that "very few women are using the courts to press inequality claims," though this is due in part to a legal culture that prefers arguments and judgements based on statute, rather than the Constitution (CS5309, CG7310, CS3308). Similarly, a UN working group observed that "the courts do not provide a realistic recourse for women on issues of equality" nor are they "known for demonstrating gender sensitivity."[7] In short, "Women haven't used the…judicial tools to protect the principle of equality or to protect or amplify their rights" (CM9315). In recent years, scholars have seen a gender perspective in judicial reasoning beginning to develop[8] and some "incipient activism in rights adjudication in Chile" as a result of judicial training and institutional changes, but thus far there is no clear trend towards a "rights revolution" (Couso and Hilbink, 2011: 100–112).

Recognising the limitations of the current Constitution, activists have devoted considerable energy to reforming it. As part of his "Women's Agenda," President Sebastian Piñera proposed to revise Article 1 of the Constitution to include the following statement: "It is also the duty of the State to promote equality of rights and dignity between women and men, avoiding all forms of violence, abuse or arbitrary discrimination."[9] Those supporting the reform noted the importance of constitutional recognition and state promotion of gender equality, and the impact it would have on future legislation and jurisprudence. For example, Congresswoman Carmen Hertz stated that approval of the reform will "give a legal imperative to the state's power, its 'duty' to 'respect' and 'promote' equality [between men and women] that goes beyond equality before the law." Similarly, Congresswoman Loreto Carvajal argued that constitutional reform would create a new baseline and "condition all aspects of our legislative work in areas such as education, health, social, economic, wage, work and, of course, protection." Congressman Osvaldo Urrutia added that the reform "opens the possibility of standardised jurisprudence to establish or ratify that men and women are equal before the law."[10] These comments mirror our main theoretical expectations: that constitutional provisions matter for the legitimacy of rights claims, as an enabling framework for legislation, and as a legal anchor for judicial decisions.

Major constitutional changes are on the horizon. In October 2020, Chileans went to the polls and overwhelmingly voted in favour of a new constitution that will be drawn up by a commission elected by the people. Although this vote was driven by frustration and protests against economic inequality, the new Constitution is likely to include many gender provisions as the commission must have equal numbers of men and women.

Part II: Gender Policy

In this section, we compare legislative reforms and judicial decisions in three key gender policy areas: gender-based violence, sexual and reproductive health, and employment rights. We pay particular attention to laws that address common issues or appear similar in content in both countries. In Argentina, legislation, policy debates, and reforms often reflect the constitutional commitment to gender equality and are more likely to obligate the state to act and fulfil constitutional guarantees. In Chile, legislative debates reflect competing frames of reference, one stressing a gender-neutral equality, and the other stressing protection of the family. Gender-specific bills that emphasise women's role within the family (rather than gender equality) have a better chance of getting passed.

With respect to litigation, the picture is mixed and partial in both countries. The judiciary is a conservative institution, and it has not been a major player defining gender-based rights. In both countries, the law or courts are not seen as a positive venue for women's rights organisations, and gender equality arguments have not been a winning strategy for litigators. A lack of interest and capacity to take on women's rights arguments among lawyers and judges is another significant hurdle for legal mobilisation (Ruibal, 2015). While there are few gender equality cases litigated in either country, the number of cases is especially small and gender equality claims are even fewer in number in Chile. The Argentine courts have been more active, increasingly incorporating international treaties that obligate judges to take women's rights more seriously; this has produced some landmark decisions.[11]

Gender-Based Violence

Gender-based violence is arguably the most serious threat confronting women in any country; Chile and Argentina are no exception. Neither the Chilean Constitution nor the Argentine Constitution include specific provisions about gender-based violence. However, both ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (commonly known as the Convention Belém do Pará) in 1996, and both are obligated to introduce measures to eliminate or limit violence against women and to monitor it. In Argentina, Belém do Pará and CEDAW have constitutional status. Argentina's Violence Against Women (VAW) law explicitly draws upon constitutional rights, the principle of gender equality, and international law. In Chile, the framing of legislative debates and the law itself is oriented towards the family and women's role within the family.

In Argentina, the 1994 Protection from Family Violence Law "constituted a major victory for the feminist movement, which had campaigned for this legal tool for years" (Kohen, 2009: 87). Nonetheless, it suffered from numerous weaknesses including lack of enforcement, not being considered part of criminal law, and failure to take a comprehensive view of the causes of violence against women. The Law for the Comprehensive Protection of Women (No. 26.485), passed in 2009, represented a major legal advance. In particular, the law draws on the constitutional right to equality between men and women and incorporates the language and standards set by international agreements

referenced in Article 75 of the Constitution. The language of rights and gender equality permeates both the text of the 2009 statute and the legislative floor debates. For example, Representative Juliana Tullio declared, "finally we will have a standard to protect women's rights, sanction violence, and promote the right of women to live free from violence," and Representative Silvia Storni emphasised that "advancing and attaining equality between women and men is a question of human rights."[12] However, implementation has been hampered by Argentina's federal system and a weak CNM, which is in charge of oversight (Franceschet, 2010; Smulovitz, 2010).

Two other important laws have increased punishments for violent crimes against women. In 2012, Argentina revised the penal code to include femicide and made homicide for gender-related reasons an offence punishable by prison for life.[13] Large public protests against femicide and violence against women took place in 2015 and 2016 under the slogan *#NiUnaMenos* ("NotOneLess") and helped raise awareness and push for legal reforms. The Rights and Guarantees of Crime Victims (No. 27.372/2017) goes further: it recognises and guarantees the rights of victims and empowers authorities to prevent, investigate, and punish crimes including crimes against sexual integrity and gender violence. Constitutional recognition of international law is central: the law's first objective is to "guarantee the rights of victims of crimes and violations of human rights…as enshrined in the Argentine Constitution and international treaties of human rights that Argentina has ratified…" (Article 3a).

When individuals and advocates have turned to the courts in Argentina, they have run up against entrenched conservatism and gender bias. Judges may fail to investigate, dismiss cases of violence against women as a "private matter," require the victim to provide additional proof, and "re-victimize" the victim by focusing the investigation on a woman's body or character (Asensio, 2010). A prominent example is *L.N.P. v. Argentina* (2007). L.N.P., a 15-year-old indigenous girl, was raped in a northern province by three men. Her injuries were extensive and verified, yet the judge doubted her lack of consent, suggesting that she did not resist seriously enough, that rape can be confused with violence common to the sexual act, and that the injuries were due to the nature of the act (anal penetration) and the youth of the subject. The UN Human Rights Committee found the state in violation of the International Covenant of Civil and Political Rights. The case was followed in the national and local media and demonstrates the contradictions between legislation that incorporates international definitions and standards of women's human rights, and a conservative judiciary (ELA Equipo Latinoamericano de Justicia y Género, 2009: 514).

Few gender-based violence cases make it to Argentina's Supreme Court. Most are heard in family courts or civil courts and then may be appealed to an appellate court. The decisions at these levels are mixed. As seen in *L.N.P.*, some are highly discriminatory. However, a shift has been occurring. Increasingly, the judiciary is actively drawing on constitutional rights and international law, changing its sentencing, "gradually modifying its practices to adapt to the requirements of international regulatory frameworks," and finding in favour of the victim (ELA, 2011: 77).[14] Interviewees confirmed this trend and said that the responsibility of judges to investigate was being taken seriously at the

appeals court level (AL1329). Higher courts in particular reflect these changes and a number draw on constitutional and international law to justify their judgements in gender-based violence cases.[15]

Chile also passed anti-violence legislation in the mid-1990s and subsequently reformed the law in the 2000s. Although the original bill focused on gender and constitutional rights to life and equality before the law, the Family Violence Law (1994) faced a conservative political environment (over-representation of the right and a central role played by the Christian Democrats in the ruling collation), was more moderate than activists wanted, and hamstrung by an inadequate budget, deficient judicial procedures and weak penalties for perpetrators (Franceschet, 2008).

A review of the floor debates over modifications to the 2005 Family Violence Law demonstrate the rhetorical power of the constitutional provision regarding family, which is cited more frequently than arguments based on women's rights. Representative María Angélica Cristi's remarks, for example, clearly echo the constitutional provision on family: "We must recognise that the family is the fundamental unit in which humans socialise. A weak or unprotected family is at risk for violence."[16] Other legislators, including members of the progressive Socialist Party, couched their support in similar terms. The improvements to the 2005 law include increased penalties, the addition of physical and psychological violence to the criminal code, overhaul of family tribunals, increased budget for shelters and data collection, and creation and maintenance of national data registries to track the incidence and handling of domestic violence cases. Following enactment, arrests more than doubled (Franceschet, 2008). Despite these improvements, interviewees working in this area remained critical. They noted that the Chilean law continues to be limited to family violence and centred on a discourse of domestic violence, rather than the broader human rights discourse of gender-based violence that informs the Convention of Belém do Pará (CW11318, CG1041).

The judiciary, and the criminal justice system in general, has not taken VAW seriously.[17] Stereotyping continues to be an issue in the judiciary, particularly at lower court levels. An example of this was demonstrated in a 2016 "crime of passion" defence for attempted femicide.[18] When police officers responded, the woman's partner was brutally beating and stabbing her in their home and did not desist from the attack until one of the officers shot him. The partner was convicted of attempted femicide, but the trial court reduced the sentence to probation because the partner acted in a "fit of rage" over the victim's alleged infidelity.[19]

As noted above, there are few cases that make it to the high courts, and litigation based on equality claims has rarely been a winning strategy. Activists that do litigate VAW cases rely heavily on international law, particularly CEDAW and Belém do Pará, to ground their legal arguments and seek policy change in areas where the state was not meeting its international obligations (CW6309).[20] "International law is used frequently by the women's movement and women in government. And it has been [used] effectively, in the Violence Against Women law for example,…It is the tool we use most often in discourse, in political argumentation, in projects" (CG7310). But others contended that the equality clause has also been important and that it has been utilised "by the

courts in their decisions and to support subsequent reforms...Moreover, the criminal courts, in cases of violence against women, have applied this article" (CM 9315).

Workplace Equality

Recognising and promoting gender equality and equal opportunities in the workplace, including equal pay legislation, has been on the reform agenda for women's organisations in both countries during the three decades in our study. Unlike Chile, Argentina's Constitution includes several provisions that concern workplace equality: the equal pay for equal work provision (Artice 14 bis), Congress' power to legislate positive measures to ensure equal opportunity (Article 75, No. 23), and international treaties (Article 75, No. 22).[21] Rights advocates pursuing workplace equality have drawn on the constitution and international commitments, but with different degrees of success and different discourses.

Under the National Plan for Equal Opportunity in the Workplace (1998), women are entitled to equal opportunity and equal treatment, equal pay for equal value, and protection from discrimination and sexual harassment in the workplace. The National Plan draws heavily on the discourse of gender equality in the Constitution and repeatedly refers to the constitutional status of CEDAW. Subsequent employment laws also draw upon constitutional rights, CEDAW, and ILO (International Labour Organization) conventions in the text of the law and in legislative debates. For example, the preamble of the Trade Union Quota Act explains that the Constitution provides for legislation to promote equal opportunity and that the law "aims to give effect to this guarantee, so that women workers are represented in the discussion of their work conditions." Similarly, in legislative debates, senators referred to constitutional rights, equality of opportunity, and rights enshrined in ILO treaties that Argentina ratified.[22]

One of the most significant pieces of legislation affecting women's employment is the Domestic Worker Law (Law 26, 844, 2013). This law granted numerous rights and protections to domestic workers that were enjoyed by regular workers under the Labour Contract Law including maternity leave, paid holidays, yearly bonuses, compensation for dismissal, social security contributions, and limits on working hours. A unique feature of this law, and one that is important for ensuring representation of domestic workers, is that it establishes the National Commission of Household Staff – a tripartite commission with union and government representatives charged with regulating minimum wages and working conditions for domestic workers (Gorban and Tizziani, 2018). The law closely follows the principles and recommendations laid out in the ILO's Decent Work for Domestic Workers Convention No. 189 and Recommendation No. 201 that Argentina ratified in the same year. The incorporation of international treaties into the Constitution, along with mobilisation by international and domestic workers' unions, were important factors that helped get this law on the agenda (Poblete, 2018; AG9411).

In legislative debates, representatives and senators framed their arguments in terms of equality among workers, arguing that the disconnect between domestic workers' rights and those of other workers went against constitutional norms and/or referred to their

obligations to meet the standards of the ILO Convention. For example, Representative Juan Mario Pais argued,

> Today is an historic day... because we are legislating for inclusion and eliminating discrimination that was an affront to the National Constitution. Obviously, we are beginning to work fully in pursuit of the protection imposed by article 14 bis of our Basic Law.[23]

Court decisions on employment policy reflect, to some extent, the egalitarian Constitution. *Asociación Mujeres en Igualdad v. Freddo S.A* (16 December 2002) is a landmark sex discrimination case involving discriminatory hiring practices. The judge cited the constitutional right to "real equality of opportunities" (Article 75) and international commitments in his decision and imposed fines and affirmative action measures on Freddo to correct the discrimination. This was the first case in which the Argentine judicial branch imposed this remedy. In *Mirtha Graciela and others v. Taldelva SRL and others / amparo* (20 May 2014), a woman in Salta Province, who met all the requirements to be hired as a bus driver, claimed she was not given a job because she was a woman.[24] Her suit made important rights-based arguments about gender equality, discrimination on the basis of gender, and the violation of women's rights. The Court of Salta (province) imposed a quota (30 per cent) for female driver positions, a decision that was vacated by the Court of Appeals. However, the Supreme Court sided with the provincial high court, basing its decision on constitutional rights to equality and non-discrimination and international commitments. These two decisions are particularly important because they impose affirmative action remedies on private sector businesses. That is, instead of obligating the state to act, the court obligated private actors to take proactive measures.

Changes in Chilean labour law reflect a tension between the constitutional commitments to family and to equality before the law. As Casas and Herrera (2012) note, protection of motherhood is desirable and accepted, while claiming maternity rights is not. Some important legislation advancing women's rights in the workplace has been passed – for example, the Sexual Harassment Law and the Equal Pay Law. At the same time, even policy changes that are potentially supportive of gender equality in the workplace are often framed in terms of women's traditional caregiving role and constitutional protection of the family.[25]

The passage of the Act on Sexual Harassment in the Workplace is a good example. In justifying the amendments to the labour code to make sexual harassment illegal and set up a complaint mechanism, SERNAM and the main sponsor, Representative Adriana Muñoz, made direct reference to women's rights: "If the bill is passed in Congress, it will… send a powerful signal that…women can enter the employment world confident in the knowledge that their rights will be respected."[26] However, the final version of the bill contains no mention of women's rights or constitutional rights. It is interesting to note that, in her final defence of the law, Adriana Muñoz herself does not refer to rights or even dignity, but returns to the theme of family: "Considering the proportion of female headed households with dependent children, the fact that their jobs are constantly in question because of abuse of power makes their situation all the more dramatic."[27]

The Equal Pay Law (2009) is clearly oriented to advancing equality and based on gender equality arguments. This represented a departure from the previous emphasis on women's role in the family by explicitly tying the legislation to gender equality and non-discrimination provisions in the Constitution as well as international law and practice.[28] One legislator went so far as to say that the constitutional equality provision was key to getting this law (CM14320). On the occasion of its passage, President Bachelet declared that Chile was now "fulfilling an ethical obligation to demonstrate that men and women are equal before the law" (Silva Irarrázaval and Arab Massuh, 2014: 254).[29] Proponents, however, hastened to add that women's rights were not the only issue at stake, but also family stability since women contribute significantly to family income: "Wage discrimination, not only undermines the rights of women…. [it] is contrary to the interests, and even the stability of the family."[30]

Finally, Chile also passed reforms to improve the status of domestic workers. These changes came about as a result of mobilisation by domestic workers associations and the ILO's Convention No. 189. Ratification of C189 and the domestic worker bill were debated together and approved on the same day in October 2014. In legislative debates, representatives in favour of the bill made reference to equal rights, non-discrimination, and C189 (Blofield, 2012; Poblete, 2018).

In Chile, there are very few constitutional claims to women's equality made in the courts. As one interviewee put it, "there really isn't a culture of claiming rights for discrimination. And there are not very good mechanisms for doing so either" (CG7310). Moreover, when women do litigate, they use the statute, not the Constitution, as the starting point. As a result, many labour- and employment-related cases in Chile concern dismissal without just cause, and the majority of gender cases deal with pregnancy discrimination. Generally, the questions raised do not require the application of constitutional law to be resolved. For example, in *Maria Riesco Loyola v. Colegio Alicante del Rosal S.A*. (1 June 2011), a female employee sought to have her dismissal by her employers during her maternity leave declared unjustified; on appeal, the Supreme Court upheld lower court rulings against the employer on the basis of the labour code.[31] In a few cases, constitutional questions are raised. For example, in *María Angela Salazar v. Universidad San Sebastián* (19 May 2009), concerning the harassment and dismissal of a pregnant university professor and dean, the Court, on appeal, found that employers are limited by the constitutional rights of workers, particularly with respect to their private lives and dignity.

Sexual and Reproductive Health

Legislation and process in this policy area is perhaps more divergent than the other two. Reform in sexual and reproductive health has been very limited in Chile and generally has not been oriented towards gender equality. Argentina has passed more laws in this policy area, and the laws have been far more comprehensive. Although the Argentine Constitution does not have specific provisions on sexual health and reproductive rights, constitutional rights have proven useful to advocacy efforts. A researcher on sexual and reproductive health rights in Argentina clarified that:

> Precisely because of the Constitution, which introduced the strategies and language of Nairobi and the International Women's Conferences…reforms such as the reproductive health act, the national law on sexual and reproductive health, voluntary surgical contraception, emergency contraception, and the comprehensive sexual health law were all based on these commitments (AS5405).

At the same time, conservatives have also utilised Article 75 and the constitutional status of international treaties, particularly the American Convention on Human Rights and the Convention on the Rights of the Child, which recognises a right to life from conception.[32] The Supreme Court's interpretation of this provision is that it should not conflict with women's health and right to equality, but conservatives, especially conservative judges in the lower courts, have referred to this treaty to justify their stance against contraception and abortion in all cases.

The language of women's constitutional rights, human rights, and international treaties that have constitutional status, appears in most of the laws in this policy area as well as in legislative floor debates in Argentina. That is, legislators draw on arguments related to public health, reduction of poverty, and equality of men and women, but they also draw upon constitutional rights frequently to make their case. In debates in the Senate and Chamber of Deputies on the Law on Sexual Health and Responsible Parenthood (No. 25,673/2003) for example, legislators repeatedly referred to constitutional rights, and the rights enumerated in international treaties.[33] In her opening statement introducing the bill, Representative Cristina Guevara argued that sexual health and responsible parenthood are basic human rights and that the state must guarantee and ensure that citizens can fully exercise them. She went on to list all of the international treaties and conventions that pertained to this law, especially CEDAW and Article 75, and section 22 of the Constitution. Representatives frequently cited equality of opportunity and women's rights as reasons to support the law.[34] Similarly, in the Senate, Senator Eduardo Menem cited constitutional rights, international treaties such as CEDAW and their constitutional status, and also referred to comparative constitutional law in his arguments in favour of the Law on Sexual Health and Responsible Parenthood. Among other arguments, Menem noted that the right to sexual and reproductive health is already "consecrated" in CEDAW, "today all we are doing is regulating it."[35] Floor debates concerning the Law on Surgical Contraception, which entitles adults to tubal ligation or vasectomy through the healthcare system, as well as the debates from the Law on Comprehensive Sexual Education, repeatedly refer to gender equality as provided in the Constitution.

Constitutional rights also are written directly into the text to justify the need for the law and to obligate the state to act. For example, Article 2 of the Law on Comprehensive Sexual Education and Article 4 of the Law on Sexual Health and Responsible Parenthood specifically refer to CEDAW, the Convention on the Rights of the Child, their constitutional rank, and the need to bring education into compliance with these treaties. Importantly, these rights are also drawn upon to require the state to ensure access for all women. Thus, the Sexual Health and Responsible Parenthood Law not only removed legal bans to access, but it also obligated the state to fund these services. A national

decree (No. 1.282/2003) issued soon after legislation noted that the rights enshrined in international treaties and in Article 75 of the National Constitution required the state to "promote and implement positive action measures in order to guarantee the full enjoyment and exercise of the rights and freedoms" recognised therein. Similarly, the Law on Surgical Contraception also placed financial obligations on the state to ensure that it is covered by insurance and provided free of charge.

Not surprisingly, these programmes faced opposition in some provinces and significant opposition from conservative groups, especially the Catholic Church, that challenged aspects of the national health programme in different domestic judicial venues (Piscopo, 2014). In particular, legal challenges were lodged against the distribution of emergency contraception and sex education programmes (ELA Equipo Latinoamericano de Justicia y Género, 2009: 269–270).

Abortion policy has followed a similar pattern: the Supreme Court has taken a relatively progressive approach grounded in constitutional rights and international law, but its decisions are routinely ignored by conservative judges and officials in the provinces. Article 86 of the National Criminal Code made abortion a criminal act in all cases except for when the mother's health is at stake, or in the case of rape of a mentally incapacitated woman. In a landmark decision in 2012, the Argentine Supreme Court ruled that abortion was legal in all cases of rape including for minors.[36] In the F.A.L. case, the Court argued that interpretation of Article 86 needed to be consistent with international treaties that Argentina had ratified and thus had constitutional status. It went on to consider the right of the pregnant woman to choose against the right to life of the foetus. The Court ruled that Article 1 of the American Declaration of the Rights and Duties of Man and Articles 3 and 4 of the American Convention on Human Rights[37] were limited and must be balanced against the right to liberty, equality, and the dignity of every person, and that "no absolute right to prenatal life exists" (Noguera, 2019: 366). The Court further argued that Article 75 of the Argentine Constitution obligated the legislature to go beyond decriminalisation and to take steps to ensure that women had access to abortion. That is, the Supreme Court not only ruled that the state could not trample individual rights but also cited constitutional and international law to require the state to take proactive measures to ensure that women have access to abortion. Challenges from lower courts have greatly limited the impact of this ruling.[38] However, many of these same arguments made their way into the legislative debates that came a few years later.

Since the transition to democracy, over 50 legislative bills concerning abortion have been proposed; none made it to the floor for debate in the National Congress until 2018 (ELA Equipo Latinoamericano de Justicia y Género, 2009: 276). In 2018, women's rights activists mobilised in large numbers to get abortion legalised up to fourteen weeks. The movement and the legislative debates generated conversations throughout the country. The Congressional debate for legalisation mirrored many of the arguments made by the Supreme Court in the F.A.L. case and the Inter-American Court of Human Rights ruling in *Artavia Murillo v. Costa Rica*. In Arta Murillo, the Inter-American Court ruled that the right to life shall be protected "in general," but the embryo could not enjoy the same rights as a person and that the right to prenatal life is not absolute. "The Arta

Murillo decision was constantly cited during Argentina's Congressional debate" (Noguera, 2019: 379). Although the bill passed in the lower house, it failed in the Senate. Just as conservative groups, especially members of the Catholic Church, interfered with the implementation of the Sexual Health Law and the F.A.L. ruling, they were able to prevent reform of the abortion law. However, women's organisations continued to press for change and, just two years later, the bill passed.

Chile has lagged behind with respect to reproductive rights. In 1989, in the twilight of the authoritarian regime, abortion was criminalised.[39] Other areas of reproductive health such as sterilisation, education, and comprehensive access to family planning were already quite restrictive. Moreover, any discussion of reproductive health, particularly the decriminalisation of abortion, sterilisation, and the approval of the morning-after pill, has been dominated by references to Article 19 (1.2) of the Chilean Constitution, which "protects the life of those about to be born." As one health sector researcher explained, "the Constitution makes it difficult to guarantee women's rights to reproductive health" (CS3308). The most significant reproductive health laws are the Fertility Law and the legalisation of abortion on some grounds.

The Fertility Law (No. 20,418/2010) deals with sexual and reproductive health information including emergency contraception. Proponents of this law drew upon the language of human rights and even women's rights far more often than they did in other legislative debates. For example, Representative Osvaldo Palma stated that "we're dealing with the freedom to choose, non-discrimination, the rights of women, the rights of families, the right to a free and informed decision as to when and how many children they want and can have,…their sexual freedom."[40] The law is limited to providing information about contraception and family planning to women and girls over fourteen years of age. The most controversial part of the law is allowing emergency contraception which conservatives, and the Constitutional Court in 2007, argued was abortive and thus violated the constitutional right to life.[41] In contrast, Argentina's laws are far more comprehensive and include education on sexuality, consent, and gender equality. Moreover, unlike the Argentine law on sexual health and responsible parenthood, Chilean laws do not obligate the state to ensure access or to provide contraceptives free of charge through the healthcare system.

Chile was one of the six countries to ban abortion in all cases and one of the strictest – imprisoning women and doctors for seeking or performing an abortion. Thus, the partial decriminalisation of abortion was a milestone in women's reproductive rights. In 2017, the legislature passed a law decriminalising abortion on three limited grounds: risk to the mother's life, fatal foetal malformation, and in cases of rape. In the floor debates, legislators cited women's rights to equality, non-discrimination, dignity, privacy, and physical integrity in the Constitution and international law. At the same time, conservatives challenged the constitutionality of the law on the grounds that it violated Article 19, No.1, which protects the life of the unborn.[42]

The Constitutional Court upheld the constitutionality of the law in a complex and divided decision (Rol 3729 (3751)–17). In its reasoning, the majority states that questions regarding pregnancy and motherhood should be interpreted in the context of

gender equality as it has been defined by the Constitution, the legislative branch, and international law. It devotes significant space to constitutional and legislative changes that support gender equality (particularly the 1999 sex equality provision), and also refers to developments in international law regarding gender-based violence and gender discrimination. Furthermore, the decision finds the legislature has reasonably balanced the fundamental constitutional rights of the mother with a legally protected interest in the potential life of the unborn.[43] The Court's decision meant the law could be promulgated.[44] However, the decision also expands the circumstances for the exercise of conscientious objection, and may make accessing the procedure difficult.

Chile and Argentina draw on the same international human rights treaties and case law to make the argument for balancing and a woman's right trumping the rights of the foetus in some cases. Can we see a difference based on the status of international law in the constitution? One notable difference is that Argentina's Supreme Court and members of the legislature do not simply require the state to refrain from trampling individual rights, but also take a proactive stance: "Argentine Constitutional law often places obligations on the state modelling itself after international human rights law" (Noguera, 2019: 369). Both lawmakers and high courts require the Argentine state to take steps to ensure that citizens have access to services and benefits that the legislature has provided for in law.

Conclusion

We have sought to clarify some of the claims in the literature that link constitutional provisions to differences in outcomes, focusing on legislation and constitutional court cases from 1990 to 2020 in Argentina and Chile. Constitutional provisions are part of an institutional framework that may enable (or thwart) women's rights advocacy, and shape the content of subsequent legislation. We expected that the way gender is framed in the national constitution will be reflected in policy change strategies, proposals, debates, and ultimately in the law itself. The literature also claims that constitutional rights can lead to more favourable judicial outcomes and enhance the legitimacy of rights claims.

Constitutional provisions do appear to be part of an enabling framework. Activists in Argentina repeatedly indicated that the constitutional gender provisions informed and "assisted" their efforts. In Argentina, advocates use the Constitution to legitimise their claims, and the language of constitutional rights and equality is frequently used in debates, the text of the law, and court decisions. In particular, the presence of positive (or substantive) rights in the Constitution are frequently referenced in laws and judicial decisions to obligate the state, and even the private sector, to act. This dovetails with Williams (2009) who concluded that "perhaps the single most important issue from the perspective of promoting gender equality is whether the constitutional provisions adopt a substantive model of equality rather than a formal one" (9).

Whereas in Chile, the Constitution often thwarted their efforts; not one individual interviewed in Chile identified the Constitution as helpful. Although government officials or activists may, at first, justify legislation by referring to the equal rights provision,

these references are often dropped, even by feminists, and the content of the law is subsequently weakened. The constitutional provision on family often has dominated and is used to justify gender policy, even when policy is directly related to women's rights. The supposed neutrality of the Constitution, and the family provision, have often been an obstacle.

At the same time, the sex equality statement in the Chilean Constitution has not been meaningless. Notably, some of the most progressive reforms in Chile have come after the 1999 sex equality provision was passed. In addition, while women's rights activists have had to counter the often effective strategy of conservative groups employing the family provision, the equality provision has enabled them to achieve legislative changes such as the equal pay law. The sex equality provision has been perhaps most useful to reverse or remove discriminatory legislation: "to [be able to] say to those most opposed to gender advances...you can't be 'unconstitutional.' That's when it can be a powerful tool" (CG7310). The sex equality provision also figured prominently in the Constitutional Tribunal's reasoning in the 2017 decision to decriminalise abortion.

Regarding the relationship between constitutional provisions and judicial outcomes, in both countries, gender discrimination cases are rare. In Argentina though, having constitutional rights makes it possible to make rights-based claims and adjudicate them in the court system. In the area of gender-based violence, for example, the high courts are more apt to reference international law and regional agreements, resulting in a more developed national jurisprudence on gender equality. Litigation is part of a larger, multi-pronged strategy: constitutional provisions enable mutually reinforcing strategies of litigation, lobbying, and social mobilisation. As one scholar stated,

> the fight for justice is done on four legs...a case is put to a judge, it becomes official public record and that serves to mobilise social movements, [it] serves as an event for the press to cover. Then, judges…have said that parliament needs to resolve the issue. [Ultimately] changes have come with legislation. (AS12413).

The legal grounds for rights-based claims are less favourable in Chile, and very few constitutional claims to women's equality are made in the courts. Chilean activists can and do seek to legitimise rights claims using international law, but the position of international law in the legal hierarchy is unclear.

This analysis focuses on how women's rights advocates perceive and use constitutional provisions in their political struggles. We do not claim that constitutional provisions have an independent effect on policy outcomes. Rather, constitutional rights have to be taken up, claimed, and used by political and social actors in service of their goals. Gender rights provisions are neither necessary nor sufficient for policy change, but very helpful. If Chile writes a new constitution that includes gender rights provisions, how will these new constitutional provisions facilitate, shape and enable advocacy and policy change in the future?

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Supplemental Material

Supplemental material for this article is available online.

Notes

1. Chile's electoral reform in 2015 introduced a gender quota.
2. Renamed the National Ministry of Women and Gender Equality in 2016.
3. Gender policy refers to policies that affect "women's access to education and employment, their ability to care for their families, and their chances to escape poverty and enjoy good health" (Htun and Weldon, 2010: 207).
4. In previous research, activists agreed that constitutional provisions enhanced the legitimacy of rights claims. We also found that when countries didn't have constitutional rights, activists relied more heavily on international law and treaties (Lambert and Scribner, 2020).
5. Twenty-eight semi-structured interviews were conducted in 2011 with women's rights advocates (fourteen interviews in each country). They are coded by country (e.g. C for Chile) and position:
   G: Government. Acting or former official in a ministry such as labour or justice.
   L: Lawyer associated with legal advocacy or a litigation focused organisation.
   M: Member of parliament or congress (former or current).
   P: Press. Reporter working on gender issues nationally.
   S: Scholar in an academic or national research institute.
   W: Women's movement member/leader.
6. Originally, Article 1 stated that "Men are born free and equal, in dignity and rights."
7. UNHCR. 2014. "UN Working Group on the issue of discrimination against women in law and in practice finalises country mission to Chile." (9 September 2014). Available at: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15005&LangID=E
8. Sanhueza, Anna Maria, "Los fallos y jueces que han impulsado la 'justicia de género.'" *Pauta*. 8 March 2019. Available at: www.pauta.cl/nacional/juzgar-con-perspectiva-de-genero-los-fallos-y-jueces-que-han-sido-clave
9. Proyecto de ley. Available at: https://www.camara.cl/pley/pley_detalle.aspx?prmID=12272&prmBoletin=11758-07
10. Chamber of Deputies session 51, 31 July 2018. Available at: www.camara.cl/pdf.aspx?prmID=13163%20&prmTIPO=TEXTOSESION

11. The creation of the Women's Office of the Supreme Court of Argentina in 2009 has contributed significantly to this trend by focusing on cases involving women, training judges to incorporate a gender perspective, and increasing representation of women in the judiciary.
12. Versión Taquigráfica, Cámara de Diputados. Expediente No: 0250 S-2007. http://www.diputados.gov.ar/secparl/dtaqui/versiones/
13. No. 26.791 Penal Code Addendum.
14. For example, in *B., M.P. v. G., R.A*., a family court ruled in favour of an abused spouse citing Argentinian statutes as well as international human rights law. Legal Information Institute. Available at: https://www.law.cornell.edu/women-and-justice/location/argentina
15. This is based on the assessment of experts at Observatorio de Sentencias Judiciales. Available at: http://www.articulacionfeminista.org/a2/index.cfm?cnl=41&opc=9its . More recently, in D., L.A. s/causa No. 4112/2018, the higher courts instructed judges in the lower courts that they are required to take a gender perspective because of Supreme Court rulings, international treaties on human rights, and national laws that recognise women's right to a life free from violence and discrimination.
16. Historia de la Ley 20.066, p. 177. Available at: http://www.bcn.cl/histley/historias-de-la-ley-ordenadas-por-numero. See similar comments by other representatives on pp. 119, 172.
17. Evidence of this can be seen in the low number of convictions and the status of the institutions themselves. The UNHCR (2014) reported that although one in three Chilean women reported intimate partner violence, only 30 per cent of them filed complaints and 8.8 per cent of these resulted in convictions. Moreover, the institutions that deal with VAW also suffer from low status: "family courts and the inter-family violence judicial processes have a low value in the judiciary. No one wants to work there" (CW11318).
18. In 2010, the Chilean penal code was amended to recognise the crime of femicide (Law 20.480).
19. See Critican fallo que acoge infidelidad como atenuante de femicidio, La Tercera (7 April 2016).
20. For example, in a case concerning obstetric violence while in state custody, the Supreme Court based its decision on Belem do Para, noting the rights of all women to live free from violence (para 13), including violence perpetrated by State authorities (CEDAW, para 14). Supreme Court, Rol N° 92.795–2016 (01/12/16) Available at: https://www.pjud.cl/documents/396729/0/AMPARO+LORENZA+CAYUHAN.pdf/b4c0a036-ee59-419b-8b42-f04ae12531c6
21. In addition to CEDAW, Argentina has ratified the ILO Discrimination (Employment and Occupation) Convention and the Equal Remuneration Convention.
22. See for example statements made by Senator Passo, Senator Paz and Senator Barrionnuevo. Versiones Taquigrafica, Camara de Senado, Expediente No. CD 163/01. Available at: https://www.hcdn.gob.ar/secparl/dtaqui/versiones/
23. Similar statements were made by Representatives Recalde, Giubergia, Iturraspe, pp. 2–5. Versiones Taquigrafica, Camara de Diputados. Expediente 0001-PE-2010. Available at: https://www.hcdn.gob.ar/secparl/dtaqui/versiones/
24. Since no women had ever been hired by the bus company, the Court of Salta ruled that no other proof of discrimination was needed.

25. There are no constitutional rights on gender and employment, but like Argentina, Chile has ratified ILO Convention No. 100 and the CEDAW optional protocol which addresses workplace equality.
26. Moción Parlamentaria. Historia de la Ley N° 20.005, p. 44.
27. Historia de la Ley N° 20.005, p. 351.
28. Moción Parlamentaria. Historia de la Ley *N*° 20.348, p. 7.
29. However, the Equal Pay Law does not ensure equal pay for work of *equal value* (the language used by ILO Convention 100). Interviewees criticised the equal pay law as being weak and favouring employers (CW6309, CP10317). Moreover, under this law it is not discriminatory "to pay a male employee more if he proves more suitable, qualified or responsible than his female counterparts." IPS News. Available at: http://www.ipsnews.net/2012/08/many-chilean-women-keep-mum-about-unequal-wages/
30. Eduardo Diaz, Independent Regionalist Party. Historia de la Ley 20.348, p. 77, Similar quotes on pp. 112, 214. Available at http://www.bcn.cl/histley/historias-de-la-ley-ordenadas-por-numero
31. However in *Elizabeth Galaz Cuadra v. Fisco de Chile* (19 November 2010), the Court upheld the dismissal of a judge during pregnancy on the grounds that judicial personnel are not covered by the labour law, but by a separate law.
32. Article 75, No. 23 states that Congress shall have the power to "enact a special and integral social security system that protects needy children, from gestation through the end of elementary schooling, and that protects the mother during pregnancy and nursing."
33. There were many references to the CEDAW, the Convention on the Rights of the Child, Article 75, and the International Women's Conferences made by Senators Muller, Menem, Falco, and Gomez de Bertone and others. See pp. 4–5, 10–16, 20–21, 34, and 72–73. Versión Taquigráfica, Cámara de Senadores. Available at: https://www.senado.gob.ar/parlamentario/sesiones/busquedaTac
34. Versión Taquigráfica, Cámara de Diputados. Expediente No: 1196-D-1999/0016 CD-2001. http://www.diputados.gov.ar/secparl/dtaqui/versiones/ p. 2. See also statements by Representative Silvia Marta Milesi and Senator Mabel Caparros.
35. Versión Taquigráfica, Cámara de Senadores, Expediente No: 1196-D-1999/0016 CD-2001, p. 11–12.
36. F.A.L. 2012. The 1921 law stated that abortion was legal for all three, but the changing of a comma in 1984 reduced the exceptions to health or rape of an insane woman.
37. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
38. See "El aborto legal en Argentina: la justicia después de la sentencia de la Corte Suprema de Justicia en el caso 'F.A.L.'" Available at: http://www.ela.org.ar/a2/index.cfm?muestra&codcontenido=2147&plcontampl=43&aplicacion=app187&cnl=87&opc=53.
39. From 1931 to 1989, abortion to save the life or preserve the health of the mother was legal. General Augusto Pinochet, in a conciliatory gesture to the Catholic Church, revised the penal code in 1989 as transition to democracy was imminent.
40. Historia de la Ley 20.418, pp. 97, 116. Available at: www.bcn.cl/historiadelaley/
41. Historia de la Ley No. 20.418. Available at: www.bcn.cl/historiadelaley/

42. Historia de la Ley 21.030. Available at: www.bcn.cl/historiadelaley/
43. See pages 76–79, and 98 of the full decision. Available at: http://www.tribunalconstitucional.cl/expediente?rol=3729wsdefrtg.
44. It also reverses the Tribunal's earlier ban of the morning-after pill. That decision did not engage in a balancing of rights and interests – in fact, the decision did not even mention women! (CS3308).

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