

**Title:** Constitutionalizing Gender Difference: Implications for Women’s Rights Advocacy in the Southern Cone

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**Abstract:** This paper examines the use of gender in constitutions and its significance for gender equality. New democracies, and some older ones, are increasingly including gender provisions in their constitutions. How do women’s groups and rights advocates utilize these provisions as part of a wider strategy for policy change? Under what political conditions are such advocacy strategies successful in shaping policies that affect gender equality? To address these questions, we trace the political use of gendered constitutional provisions in Argentina, Chile, and Uruguay, countries that differ substantially with respect to how they have “constitutionalized” gender. Within the case studies we examine three policy areas— *family law*, *gender-based violence*, and *workplace equality and discrimination*—and analyze the interaction between constitutional provisions, national legislation, and local women’s movements. The three case studies demonstrate comparatively how various constitutional provisions provide a legal basis and legitimacy for women’s rights advocacy and influence the content of gender policy.

## Introduction

New democracies, and some older ones, increasingly include gender provisions in their constitutions. What is the impact of these provisions on women's political and economic status? Does constitutionalizing gender serve to empower women? If so, what kinds of provisions have an empowering effect and under what conditions do they matter? Feminists disagree whether women, and the political movements that represent them, should pursue policies based on their equality with men or if they should accept and embrace their differences with men and pursue policies that make allowances for women’s difference (Jaquette 2001). The former is consistent with the liberal feminist view that individuals should be treated equally irrespective of their descriptive differences. The latter approach is often called difference feminism or maternalism and argues for special rights and protections based upon women’s different needs. In this study we explore whether, and how, the way gender is ‘constitutionalized’ affects policy changes that impact women’s lives, and explore the political conditions that potentially shape the success of policy change efforts.

Drawing on a previous study we distinguish between three broad constitutional types with respect to gender (Lambert and Scribner 2009).<sup>1</sup> Reflecting the liberal feminist view, the first type is the gender-neutral constitution that does not recognize gender difference. A second broad type recognizes difference through provisions that primarily emphasize women's traditional care-giving role and value women as mothers and wives. The final type also recognizes women's difference, but primarily through provisions that proactively promote gender equality. In this paper we analyze three country cases in South America with constitutions that reflect these different approaches to gender—Argentina, Chile and Uruguay. We examine how gender has been constitutionalized and how specific constitutional provisions have informed and structured gender-specific policy outcomes in three areas: women's rights within the family, gender-based violence, and employment rights. Gender-specific policy affects “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). The case study analysis focuses on the policy implications of constitutional provisions, and speaks to a larger debate about recognizing gender difference in the law and the types of legal and political strategies that best promote gender equality and social change.

We begin with a very brief discussion of why, and potentially how, law can effect social change. Drawing on the law and social change literature, we argue that gendered constitutional provisions affect policy outcomes because they provide a legal basis and legitimacy for women's rights advocacy, help prevent policy reversal, and increase the likelihood of favorable decisions in the courts. The case studies detail both the incorporation of gender into the national constitutions of Argentina, Chile and Uruguay as well as the impact of gender equality provisions in the three

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<sup>1</sup> In the 2009 study we used these categories code the constitutions of 76 countries and test cross nationally whether one of these constitutional types had a significant effect on women's political, economic and social standing. We found that, all else equal, egalitarian constitutional provisions were associated with higher levels of gender equality (Lambert and Scribner 2009). The typology is explained in depth in the 2009 article.

policy areas considered here. The comparative analysis reveals a complex political picture in which constitutional provisions are one of several factors affecting policy outcomes. In each of the policy areas, the case studies illustrate how constitutional language that defines women's rights (and roles) influences the content of legislation.<sup>2</sup>

### **Why constitutions matter for social change**

The question of whether women's equality is best achieved by constitutional recognition is closely related to a fundamental debate about the effect of law on society and social change. One perspective is that the law is not transformative and does not independently affect or cause social change. Rather, the law simply reflects the ideology or interests of the dominant classes or groups at the time the law or constitution was written. For example, Strauss (2001) argues that constitutional amendments are "irrelevant" and serve only "to ratify changes that have already taken place in society" (1459).<sup>3</sup> Likewise, in his comparative analysis of constitutional development in four countries, Hirschl (2004) contends that the effect of constitutions on distributive justice is often "overrated if not outright negligible" and "appear to have only a limited capacity to advance progressive notions of social justice" (13). That is, other factors shape and influence social outcomes regardless of whether particular laws or constitutional provisions are in place.

Another perspective argues that law can influence social policy and rights and "has the potential to further progressive causes" (Rosenberg 1996). This potential, however, may be mediated by social and political forces (McCann 1994; Scheingold 2004). Thus constitutional law matters for women, but it is not a panacea (Baines and Rubio-Marin 2005), nor can a constitution "in itself secure rights for women" (Jagwanth & Murray 2005, 231). Instead, we might expect policy

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<sup>2</sup> This particular paper looks at legislation; however, it is important to keep in mind that unsuccessful bills (like legal mobilization attempts that do not result 'favorable' judicial resolution) still serve a strategic purpose for the bills' authors and legislative supporters, who may claim symbolic credit and ownership of policy change attempts.

<sup>3</sup> As quoted in Baldez, Epstein and Martin (2006, 250).

outcomes to be shaped by both constitutional provisions and activist legal agendas because constitutions “provide important constraining or enabling frameworks that can impact on attempts to achieve changes in gender policy” (Waylen 2007: 158). In their analysis of women and constitutions, Dobrowolsky and Hart (2003) agree that both constitutional provisions and activism are necessary, and “...remind us that while women must help write the constitutional text, [and] women’s citizenship and equality must be inscribed in the constitutional text, only constant vigilance and the hard grind of sustained activism ensure that over time textual promises are honoured and...women’s lives change for the better” (3).

Studies on constitutions, gender, and law suggest several reasons why gender equality provisions may matter for women’s social, economic and political status. First, constitutional gender equality provisions enhance the legitimacy of rights claims (Jagwanth & Murray 2005, O’Sullivan & Murray 2005). Second, an egalitarian constitution is part of an “enabling framework” that facilitates legal change (Waylen 2007, 538). Third, women’s rights provisions help establish a more solid legal foundation and “provide women with tools to challenge state activity in the courts” (Baines & Rubio-Marin 2005, 9). For example, Baldez, Epstein and Martin (2006) find that equal rights provisions increase the standard of the law that is applied and increase the likelihood of a favorable judicial decision for those asserting women’s rights.<sup>4</sup> The presence of constitutional rights may give courts greater leeway to interpret rights more broadly than legislated rights, whereas the absence of enumerated rights: “...puts pressure on the courts...to stretch their powers of statutory

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<sup>4</sup> Baldez, Epstein and Martin (2006) compare U.S. states with an Equal Rights Amendment to those without this provision to assess whether constitutional provisions had a direct, indirect or no effect on the adjudication of sex discrimination cases. They find that while an ERA does not directly influence the judiciary, “the presence of an ERA significantly increases the likelihood of a court applying a higher standard of law... [and] the likelihood of a decision favoring the equality claim” (246). That is, provisions exercise important indirect effects; however, other factors (women high court judges and liberal state government) explain a similar rate of success on equality claims.

interpretation to its limits” (Fombad 2004, 143). Finally, the presence of rights might encourage underrepresented groups to mobilize for social change (Scheingold 2004).

These studies suggest that constitutional gender equality provisions provide a legal basis for women’s rights advocacy and inspire the content of subsequent legislation and judicial interpretation of laws and constitutional rights. Where explicit egalitarian constitutional provisions are present, women’s movements can use them as a legal tool to fight gender discrimination and proactively push for women’s equality. Where these constitutional provisions are weak or absent, women’s movements (and the political and institutional machinery of which they are a part) may have a limited capacity to pursue policies that impact gender equality. Likewise, where provisions tie women’s citizenship to traditional gender roles, women’s organizations may find they are limited by the constitutional discourse of maternalist difference, and face incentives to reduce the scope of demands for policy change or frame proposals in terms of women’s maternal role rather than individual women’s rights. We would expect to see clear differences in policy change, content and framing depending on the extent and nature of constitutional gender provisions.<sup>5</sup>

### **Case Studies—Origins and implications of constitutional gender provisions**

**Case Selection:** We selected Argentina, Chile and Uruguay because these country cases exhibit variance on our independent variable of interest (constitutionalization of gender) while holding several alternative explanations nearly constant. Among these three cases the Argentine Constitution (1994) has the most comprehensive approach to gender, including an array of individual gender neutral rights, specific provisions that advance gender equality, and clear protections for motherhood. Chile and Uruguay on the other hand treat gender more minimally.

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<sup>5</sup> There is a significant gap between women’s rights on paper (whether at the constitutional or the policy level) and reality. Policy implementation and enforcement issues may undermine the overall effectiveness of constitutional and legal guarantees. These issues deserve much closer examination in future research. The analysis presented here, however, is limited to the relationship between constitutional provisions and national level policy (legislation).

The Chilean Constitution (1980) was amended 1999 to contain a single simple gender equality statement. However, the Chilean Constitution does not explicitly promote gender equality or redress gender discrimination, or actively promote or protect motherhood (though it does recognize the family as the fundamental unit in society). Thus we might classify the Chilean constitution as mostly, but not fully, neutral toward gender. The Uruguayan Constitution (1967), like Argentina's, enshrines clear protections for motherhood and family, and recognizes gender neutral individual rights, but does not recognize gender equality explicitly nor actively promote gender equality. As a result, the Uruguayan Constitution recognizes gender difference in a 'maternalist' rather than 'egalitarian' manner. In sum, the substantial differences between the three countries related to the constitutionalization of gender hinge on whether and how gender equality is explicitly treated in the national constitution and how it is potentially balanced with other constitutional values (such as the family in Chile; or the more explicit promotion of motherhood Uruguay and Argentina). We would expect these differences to be reflected in strategies for policy change as well as the resulting policies.

The Southern Cone countries of Argentina, Chile and Uruguay share some important similarities that make them ideal comparative cases. Historically, these are among the most socio-economically developed of the Latin American countries, with the largest historical welfare states, large homogeneous middle-classes and long and relatively stable (for Chile and Uruguay) democratic politics. All three encountered a prolonged period of repressive anti-leftist military rule in the 1970s, followed by re-democratization in the 1980s and early 1990s. Democratization has been accompanied by neo-liberal cutbacks in state spending on social services. Each is strongly catholic and relatively socially conservative (though Chile more so). These common factors combine with a shared regional and transnational network of women's groups and unique political party system

attributes in each country to present women's groups with opportunities and constraints for mobilization (Craske 1999: 186).

One of most important of these shared experiences is resistance to authoritarianism and central role of women's movements in the transitions to democracy of the 1980s and 1990s. The three southern cone countries each experienced repressive authoritarian regimes (Uruguay from 1973-1985; Chile from 1973-1990; Argentina 1976-1983) and "women's movements, both feminist and non-feminist, were significant and visible actors in the broad opposition coalitions that contributed to the breakdown of authoritarian rule" (Waylen 2007:66; Jaquette 2001). Moreover, women's organizing in opposition to these regimes connected motherhood and political action; often through the politicization of 'networks of everyday life' (Craske 1999: 17). The importance of "militant motherhood" is demonstrated in movements and organizations that harnessed the emphasis the authoritarian regimes placed on women's social and reproductive identities and moral authority to press for change in the political arena.<sup>6</sup> Motherhood itself was a starting point for organization in Latin America, a reference point for women's increased political participation in the struggle for democracy and human rights (Alvarez 1990; Perelli 1994). The Argentine Madres de la Plaza del Mayo and the Chilean Agrupaciones de Familiares de Detenidos Desaparecidos (AFDD) are clear examples of the political use of motherhood to press moral claims in the political arena.

Resistance to military regimes brought women into the public sphere with clear demands for regime accountability. On the other hand, women's movements increasingly "placed a special value on the 'right to have rights'" as they worked for the "restoration of the rule of law, democracy and basic civil liberties" (Molyneux & Craske 2002:1). Across the three countries there was a range of women's organizing from popular feminism, focused on survival and self-help, to middle-class

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<sup>6</sup> "Most military dictatorships advocated right-wing 'traditional values' including fairly traditional notions of women's roles" and elevated motherhood "as women's primary task, stressing women's charitable and self-sacrificing role in both [the] public and private sphere" (Waylen 2007: 54).

feminism attached to international NGOs and regional networks and concerned with consciousness-raising. “Tensions sometimes existed [between] feminist NGOs and popular women’s organizations over issues of class, race and the meaning of feminism” (Waylen 2007: 60). In cases such as Chile (as in South Africa and Brazil) women’s movements were able to overcome these differences and coalesce around the shared goal of transition to democracy. Having contributed to the breakdown of the authoritarian regime they wanted to see gender issues remain on the agenda (Waylen 2007:68). In Uruguay, the transition to democracy was not a significant moment of constitutional change; and the Uruguayan women’s movement under the military had consisted of party-specific women’s groups and fragmented popular organizations that tended to disintegrate once their goals had been attained (Perelli 1994). These groups did manage to gain representation in the National Consensus-Building Forum (CONAPRO) formed to ensure a smooth transition back to democracy, and manage to get some women’s issues but much of the transition agenda was not implemented (Johnson 2002). Argentine women’s groups played a significant role in the breakdown of the authoritarian regime, but for various reasons did not come together to put gender issues visibly on the transition agenda.<sup>7</sup> Moreover, constitutional change comes a full 10 years after the transition to democracy in Argentina. Thus, despite common forms of resistance to military regimes, the resulting women’s movements enjoyed different levels of success in getting women included transition politics and gender policy on the political agenda at the time of transition.

A second related similarity between the three countries is that they are majority catholic countries and in each case this interacted with the military experience to affect women’s social, political and economic status. In “all these states, explicitly anticommunist authoritarian regimes sought to undermine the left and to reinforce class privileges and the institutional power of the

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<sup>7</sup> Argentina experienced a rapid transition; where as in Chile (and in Uruguay) the transition was “pacted” (negotiated between the opposition and the outgoing regime). In the case of Chile, this presented an opportunity for women’s groups within and outside of parties on the right and the left to press gender specific demands on the agenda.

Catholic Church. [Authoritarian regimes] not only froze reform on redistributive issues, but also put a stop to secularization of legislation and reform on women's rights" (Blofield and Haas 2005: 38). Htun (2003) demonstrates how Latin American military regimes displayed different ideological positions on gender (Waylen 2007:141). Policy in areas affecting women reflects these differences. The moderately conservative military in Argentina (in 1968) moved to modernize family law through reforms to the civil code affecting marriage and property and giving women equal property rights. In Chile, however, the military regime was much more conservative on gender issues and such reforms (largely "symbolic") did not materialize until 1989 (Waylen 2007). The same patterns emerge with respect to reproductive rights; in particular, the extremely socially conservative Chilean military reversed the gains in access to contraception that had been achieved in the 1960s and 1970s and outlawed therapeutic abortion in 1989 (Waylen 2007). In neither country was the military willing to entertain the possibility of divorce. Military perspectives on gender as well as the political power of the Catholic Church before and after the transition to democracy affected the policy context and shaped the nature of policy demands.<sup>8</sup>

Our country cases also share similar exposure to global and regional pressures to implement policies and create national gender machineries to improve the lives of women Latin America. As Molyneux and Craske (2002) note, Latin American women have been active and influential within transnational networks since the mid 1970s in conjunction with UN Decade for Women (1976-1985) and the numerous international conferences and declarations that followed, including the adoption of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1979, the 1994 UN Population and Development Conference, the 1995 Fourth World Conference on Women in Beijing, and subsequent follow-up "Beijing plus" meetings. Participation

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<sup>8</sup> The link between the authoritarian state/polity and the authoritarian household was articulated by Julieta Kirkwood, Chilean feminist theorist in her 1990 work: *Ser Política en Chile: Los Nudos de la Sabiduría Feminista*. Santiago: Editorial Cuarto Propio.

in these global processes led to additional regional organizing and has impacted policy content of local activism as well as the character of local state institutions designed to support gender mainstreaming.<sup>9</sup> Ties to transnational and regional advocacy networks such as CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights) lends national levels actors organizational capacity in the form of campaign strategies, resources, information, and reporting mechanisms. In particular, governments are required to report periodically to international bodies on their policy actions and intentions. These reporting requirements provide NGOs and social actors with opportunities for monitoring, advocacy, and lobbying at the national level (Molyneux and Craske 2002:10-11).

Thus, women's movements in the three countries faced similar domestic and international pressures and opportunities in the 1990s. Movements that had been relatively unified in their opposition to military regimes began to fragment in the new open political context. By the 1990s and 2000s, with democracy firmly established in all three countries, a rights-based discourse emerged that was supported by international and regional networks from above and from below by local women's movements saw the state as a site for the struggle for women's rights (rather than a simply a site of opposition). In the post-authoritarian political context, concerted struggles to gain access to state power and to influence policy content were part of a multiplicity of strategies undertaken by increasingly divergent women's organizations.

Because the importance of acting with and within the state, one of the most significant issues facing post-transition women's movements in these countries was how they would navigate and negotiate the state, including relatively new women's agencies (gender machinery), to define governmental and legislative agendas affecting women while maintaining the autonomy from

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<sup>9</sup> Regional level network examples include the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the Latin American and Caribbean Women's Health Network (RSMLAC), the Organization of American States (OAS)'s Commission on Women (CIM).

government, institutions and parties necessary to be “transformative” social actors (Vargas 2002: 206). Waylen (2007: 154) suggests that the Chilean case, the women’s machinery beheaded the feminist movement as activists moved into paid positions within the state. Moreover, the responsibility that women’s agencies have for distributing funds can create clientelistic relationships with local NGOs, usually professional NGOs, thus excluding grass-roots groups from the “emerging policy networks” (Franceschet 2004: 23). Alvarez (1998: 306-308) links the fragmentation of national women’s movements to what she terms the “NGO-ization” of feminist organizations in the 1990s. Feminist NGOs employed full time professionals, engaged with the state institutions to achieve concrete project or policy goals, and depended on external financing. In the second half of the 1990s external funding rapidly began drying up. The result of an orientation toward engagement with the state, as well “NGO-ization,” has been a reduction in the space for other transformative work: consciousness raising, challenges to social-gender stereotypes, and the construction of inter-sectional alliances with other social actors.

In sum, there are inherent risks for women’s movements (particularly for autonomy and transformative potential) in pursuing a rights-based strategy of policy reform and engagement with the state (Vargas 2002). However, given the centrality of state-provided rights and policy change in the struggle for women’s equality our concern here is with the role that constitutional commitments about gender play in mediating and informing these struggles, and ultimately in shaping the legal product. A number of other factors can impact and shape gender policy. These factors are highlighted in the individual case studies below and include: the strength and autonomy (typically from parties) of the women’s movement, the strength of the political role of the Catholic Church, the scope of national gender machineries at the highest levels of government and civil society; and the presence of leftwing political parties in positions of power.

Moreover, these factors interact, as indicated in the discussion above with respect to authoritarian regimes and the Church, in ways that limit the opportunities for women's organization to achieve substantive policy change and political representation. For example, all three countries have national gender machineries (also termed models of "state feminism") though each country follows a somewhat different model as discussed in the case studies.<sup>10</sup> Craske (1999, 187) suggests that the central institution of gender machineries, women's ministries, had limited influence in the 1990s because of the nature of the Latin American state itself. Legacies of authoritarianism, corporatism, and clientelism made it difficult for interest groups to access decision-making structures; and women's groups themselves have a mixed relationship with political parties and the state. Leftist parties in power are seen as more beneficial for state feminism – to the extent that Latin America's "pink tide" brought the left to power in past decade (as it has in each of the country cases), we should expect women's ministries or offices to be more effective and influential in policy and more accessible to social organizations in the 2000s. In short, these domestic level political and institutional factors affect the legislative climate for passing gender policy. In the case studies below, we explore these factors further (a comparative summary is provided in Table 1) and stress that constitutional provisions concerning gender are one among multiple factors that structure opportunities for achieving gender policy change and shape policy outcomes.

**Argentina:** The Argentine Constitution dates to 1853; significant constitutional reform was introduced in 1994; roughly ten years after the transition to democracy. The 1994 reform included a number of changes with respect to gender in the constitution that were achieved through the efforts and alliances of constituent assembly members and women's movements (Waylen 2000). In 1991 women's groups in concert with women legislators had succeeded in having a legislative quota law

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<sup>10</sup> Gender machineries include government bodies such as ministries of women's affairs, a national women's bureau, and gender focal points within ministries relevant to gender issues (e.g. health).

passed. With this law in place women were 100 of the 300 members of the constituent assembly that amended the constitution in 1994. Substantial changes included the incorporation of the quota law at the constitutional level (Art. 37), explicit constitutional rank for the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women (Art. 75, section 22), and concrete recognition of the constitutionality of positive actions to guarantee equal opportunity and treatment (Art. 75, section 23).<sup>11</sup> These provisions have since served as a protective umbrella for women and served as a defense against claims that position/affirmative actions are a violation of the right to equality before the law (Lubertino 2003).<sup>12</sup> Of the three southern Cone cases considered here, Argentina has the most comprehensive approach to gender, that includes an array of individual gender neutral rights, specific provisions that advance gender equality, as well as clear protections for motherhood (similar to those in Uruguay).

Women were fundamental players in resistance to the authoritarian regime and the eventual transition back to democracy in Argentina. Women joined three types of organizations during this time: human rights organizations, of which the Madres de Plaza de Mayo are the best known;<sup>13</sup>

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<sup>11</sup> The commitment to gender equality implied by the incorporation of CEDAW provisions into the constitution is a repeated theme in the literature on Argentina as well as in the State's reporting to international bodies. However, those reports also note that while CEDAW provisions have informed policy, "In the resolution of administrative and judicial cases, the rulings handed down generally do not take account of the provisions of the [CEDAW]. In fact the parties themselves reveal a lack of knowledge of such provisions when filing their complaints" ("Questionnaire on Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000) available at: <http://www.un.org/womenwatch/daw/Review/responses/ARGENTINA-English.pdf>).

<sup>12</sup> It is important to note that Argentina is a federal system with all the complexities that entails. This case study deals only with the national constitutional and federal law. Some states, cities, etc. have moved beyond the national constitution with respect to gender equality; this is the case with the City Buenos Aires (Lubertino 2003).

<sup>13</sup> Other organizations associated with the human rights movement included: the Permanent Assembly for Human Rights (Asamblea Permanente para los Derechos Humanos, or APDH), Families of the Detained and Disappeared (Las Familias de los Detenidos y Desaparecidos), the Ecumenical Movement for Human Rights (Movimiento Ecueménico para los Derechos Humanos, or MEDH), and the Service of Peace and Justice (El Servicio de Paz y Justicia) (Feijoo and Nari 1994: 112).

popular ‘housewives’ organizations concerned with daily survival;<sup>14</sup> and feminist groups. Many feminist groups that had been active in the 1970s disbanded after the 1976 military coup. A few continued to exist such as the Centro de Estudios de Mujer (Center for Study of Argentine Women, or CESMA), and gained strength toward the end of the dictatorship. Organizations such as the Argentine Feminist Organization (Organización Feminista Argentina, or OFA) and the Association for the Work and Study of Women (Asociación para el Trabajo y el Estudio de la Mujer Noviembre 25 or ATEM Noviembre 25) set out to lobby political actors and parties as the politics began to open in the early 1980s (Feijoo and Nari 1994). Specific goals for the ATEM November 25 included achieving compliance with the CEDAW. However, once elections were achieved in 1983, “the day-to-day politics of democracy relegated them to traditional roles and limited their political participation” (Feijoo and Nari 1994: 109). Thus, feminist mobilization for policy reform at the time of democratic transition was less visible in Argentina (and Uruguay) than in Chile.

Much of the scholarship on the women’s movement in Argentina has been overshadowed by accounts of the role of the Madres de la Plaza de Mayo in the breakdown of the authoritarian regime and advances in human rights prosecutions (Feijoo and Nari 1994) (Htun 2003). The Madres, as noted earlier, deployed women’s traditional roles as wives and mothers (and grandmothers) in their resistance to the regime. While the Madres agenda has expanded with time, stressing a broader array of human rights issues and social justice issues associated with neo-liberalism, motherhood continues to shape and frame a maturing political agenda (Borland 2006). Some have argued that the (conservative) veneration of motherhood has impeded the achievement of a pro-equality feminist agenda. The discourse of motherhood can become a trap for women “as

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<sup>14</sup> Neighborhood women’s associations that were not associated with traditional political actors (political parties or the Church for example) led strong urban protests, known as *vecinazos*, in 1982 protesting the cost of living.

the most traditional aspects of that discourse are appropriated by a political class dominated by men” (Feijoo and Nari 1994: 121).

However, Htun (2003: 120) suggests that liberal feminists, lawyers, legal scholars and jurists, legislators and officials in state women’s agencies moved behind the scenes in Argentina to produce legal changes affecting women’s rights, particularly in the area of family law. Much of the impetus for gender-specific policy change came from within parties, rather than from a sustained and coherent women’s movement. According to Feijoo and Nari (1994) women’s resistance had contributed to heightened awareness of women’s issues and the power women’s votes within the traditional political parties. Each of the “parties rushed to constitute its own women’s front... [producing] the first modern women’s sectors within the party structures. [T]he positive response to feminist issues was ... an effort to win the women’s vote in a close electoral race” (Feijoo and Nari 1994: 116). “[P]ressure from elite feminist groups convinced political parties to address gender discrimination in their election platforms” (Htun 2003: 118).

The Argentine transition to democracy stands apart from the experiences in Chile and Uruguay for the weakness of the military regime at the time of transition (Waylen 2000). Having lost control of the economy, and a war with the UK (over the Falkland Islands), the military vacated national political space and was quickly replaced by the traditional parties. Elections in 1983 produced a convincing win for the Radical Party (Unión Cívica Radical, UCR) over the Peronist Party (Partido Justicialista, PJ). The UCR, under the leadership of Raul Alfonsín, was secular with an agenda for transition that included prosecution of members of the former regime for human rights abuses as well as reforms that would reduce the political role of the Catholic Church (Htun 2003). The Radical Party, especially, called for the elimination of legal discrimination against women, and included equal parental rights in its platform (Htun 2003). Once installed in office Alfonsín’s Radical Party was under pressure to make good on promises to women with respect to a human

rights agenda, an economic social justice agenda, and a feminist agenda that included issues such as divorce, the rights and obligations of parents over their minor children (as separate from custody issues), contraception and ratification of the CEDAW. While human rights issues, represented by the Madres, took center stage politically, the gains for feminists were substantial. Policy changes come on the heels of CEDAW ratification (which immediately gained constitutional status) and are the result of a supportive party in power, a politically weakened Catholic Church, and the sustained efforts of legal issue networks that drew on international law and changing international norms about women's equality within the family.

Feijoo and Nari (1994) caution that these gains occurred during a brief window in the early 1980s under Alfonsín and “in the absence of a women's movement capable of mobilizing public opinion effectively, the promised legislation was delayed and then weakened by endless bureaucratic wrangling.” This time period (mid to late 1980s) was the “heyday” of political parties, and particularly of the UCR and the PJ, which together accounted for 86 percent of the vote. Between 1983 and 1999 Argentina could be characterized as basically a two party system. However, parties in Argentina have not been reliable allies for women's groups; many issue networks attract support (and opposition) from across the political spectrum. Moreover, the party system does not neatly unfold on a left-right ideological continuum. Both the major parties (the UCR and the PJ) contain traditionally progressive and conservative elements. The shift in 1989 from UCR to the PJ, which had been traditionally more left and associated with the trade union movement, turned out to be less women-friendly because a more conservative faction of the party had come to power under Carlos Menem.<sup>15</sup> Argentine parties are known for their lack of ideological consistency, lack of international organization, and clientelism (and in some cases, corruption) (Szusterman 2007). By the mid 1990s,

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<sup>15</sup> The PJ alienated the Catholic Church during the Presidency of Juan Perón by legalizing divorce; the party is significantly more conservative and closer to the Church during the presidency of Carlos Menem in the 1990s.

the public had become disenchanted with party politics and the political situation deteriorated. Instability was particularly pronounced in the early 2000s. In this context, no one party appears to be “responsible” for a women’s agenda (Franceschet and Piscopo 2008).

Argentina was the first country in the world to legislate candidate gender quotas, passing Law 24.012 in 1991 (Carrio 2002).<sup>16</sup> This law was the result of a concerted and unified effort by women legislators across political parities and women’s groups through the Network of Feminist Politicians (Red de Feministas Políticas, created in 1990 at the 5<sup>th</sup> Latin American and Caribbean Feminist encounter in San Bernardo, Argentina) (Lubertino 2003; Archenti and Johnson 2006). The bill passed the Senate first and then Chamber of Deputies in 1991 and was regulated by presidential decree in 1992 (revised in 2001), but faced resistance and non-compliance in the first years of operation.<sup>17</sup> Women groups organized to challenge the non-compliance but faced a less than favorable legal environment: “electoral judges did not accept the argument that it was a ‘public’ law. Accordingly, only the candidates themselves could legally challenge the lists” (Lubertino 2003). With the 1994 Constitutional amendment the legal foundation of the candidate quota was altered and provided both women’s groups and candidates with new legal and political tools. In contrast to the 1993 elections, the 1995 election lists all had at least one woman in the third slot (Lubertino 2003) and women’s share of seats rose dramatically to 27 percent in 1995 and to 36 percent after the 2005 elections (Franceschet and Piscopo 2008; Archenti and Johnson 2006).

In short, the numerical impact of the Argentine candidate quotas has, over time, been impressive for the descriptive representation of women in the Argentine Congress. There is less

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<sup>16</sup> Introduced by UCR senator Margarita Malharro de Torres in 1989, and passed in 1991, the law requires party lists to include 30 percent women candidates.

<sup>17</sup> The 1991 *Ley de Cupos* initially only applied to the lower house its full effects were not felt until 1995 (by which time the full house membership had faced an election cycle). The Quota Law was not applied to the Senate until 2001, “when the provisions of the constitutional amendment that provided for the direct and simultaneous election of three senators per district entered into force” (Lubertino 2003).

agreement (and indeed it is more difficult to assess) about the impact of the quota for women's substantive representation. Franceschet and Piscopo (2008) paint a complex picture of the consequences of candidate quotas for the substantive representation of women. Their research suggests that women have been successful at "gendering the legislative agenda" but not successful at "gendering legislative outcomes" (9). For a variety of reasons women legislators in Argentina propose more gender specific legislation,<sup>18</sup> but their bills are less likely than others to pass (or even make it out of committee to the floor) (Franceschet and Piscopo 2008: 14).<sup>19</sup> Women legislators point to reproductive health legislation (in 2001 and 2006), and the Labor Union Quota Law (2002), as the result of female representation.

Women's machinery has in Argentina, as in Uruguay, been subject to political whim and change, particularly at the executive level. In 1983 the newly elected democratic government of President Alfonsín created the National Women's Directorate within the Ministry of Health of Social Action. These changes gave women's issues a place in the state structure but also meant that some issues were potentially co-opted by state actors and faced negative reactions from feminist groups (Feijoo and Nari 1994: 122). In 1987, the UCR government established a Sub-secretary of Women. President Menem, who comes to office in 1989 and governs through the 1990s, established his own women's machinery, the National Women's Council (the Consejo Nacional de la Mujer, CNM) in 1992. The Consejo was part of the office of the president (and was not a permanent body) charged with helping to monitor CEDAW achievements and was active in developing Argentina's platform going into the Beijing Conference. "Initially when Menem was still

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<sup>18</sup> Franceschet and Piscopo (2008: 11) demonstrate that between 1989 and 2007 women legislators introduced 80 percent of the bills on gender quotas, 80 percent of the bills on reproductive rights, 69 percent of bills dealing with violence against women, and 73 percent of the bills associated with sexual harassment. This finding indicates that women take on the responsibility for gender specific bills; though as Archenti and Johnson (2006) demonstrate, gender-specific bills are a minority of the bills women propose as individual legislators.

<sup>19</sup> Archenti and Johnson (2006: 139) find that bills with gender content were most likely to be introduced by women legislators in their first year of office.

sympathetic, the Consejo had quite a large budget that reached its peak in 1993” (Waylen 2000: 779). The (feminist) head of the Consejo, however, fell out with Menem over resistance to the inclusion of an explicitly anti-abortion clause in the 1994 Constitutional reform and was replaced by a “Menemista” who was “fiercely opposed to reproductive rights” (Waylen 2000, 2007: 156).<sup>20</sup> As a result few feminist NGOs maintained their links with the Consejo it was seen as marginalized politically (Waylen 2000: 779). In 2002, President Duhalde created the National Council for Social Policy Coordination, which was headed by his wife; the CNM was placed under this new body (still within the presidency) and suffered budget cuts affecting the performance of its mandate and functions. The budget situation for CNM improved in the second half of the 2000s under the Kirchner administrations. In this political context (political instability, weak fragmented parties, and gender machinery dependent on the office of the president), policy change has been achieved through the work of issue networks that have included feminist activists, lawyers and legal scholars, as well as various state agencies involved in women’s issues and rights (sometimes with a coordinating role for CNM).

Gender-specific policy changes from the 1990s forward are summarized in Table 2 and there are important policy achievements through the mid-1980’s forward that reflect the commitment to CEDAW language that was incorporated in the Constitution in 1994. For example, the Divorce Law (1987) is a major win for women’s groups, and places men and women on equal footing in the dissolution of marital property. Additionally the Anti-Discrimination Act of 1988, which provides an avenue to punish discriminatory acts or omissions that are based on a host of specific characteristics, including gender, the National Quota Act of 1991, and the Labor Union Quota Act

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<sup>20</sup> In fact there was substantial organizing on the part of women’s groups to defensively prevent the new constitution from including a ‘right to life’ provision that would have constitutionalized President Menem’s pro-life agenda. Outside of the constituent assembly “109 women’s organizations came together as “Mujeres Autoconvocados por el Derecho a Elegir la Libertad (MADEL) and campaigned against the clause” (Petracci and Pecheny 2007: 33; Waylen 2007: 162).

of 1992, clearly draws on an explicit constitutional level commitment to redressing gender discrimination. This is true as well for a 2003 decree (No. 222) requiring Supreme Court appointments to reflect gender diversity (Beijing +15 Country Report, 2009).

**Chile:** Chile transitioned to democracy under the tutelage of the 1980 “Constitution in Liberty,” a document written by the military regime and “inspired by right-wing philosopher Friedrich Hayek” (Waylen 2007: 158). Article 1 of the Constitution contains a neutral statement of equality (all persons). In several places (including Art. 1) the “family” is singled out for protection by the state and recognized as the fundamental unit in society. In 1999, nearly ten years after the transition to democracy, the Constitution was amended to explicitly include statement about equality between men and women (Law 19,611) (now part of, Art. 19).<sup>21</sup> However, the Constitution does not promote gender equality nor redress gender discrimination (or actively promote or protect motherhood), and thus we might classify the Chilean constitution as mostly, but not fully, neutral toward gender (Lambert and Scribner 2009). The 1980 Constitution, contained a number of non-democratic elements (such as non-elected senators) that biased the political system toward the political right and made constitutional reform difficult. However, a major reform was achieved in 2005.

The transition to democracy in 1988-1990 was a high point for women’s organizing in Chile. As in the other two cases, broader women’s movements were united in their resistance to the authoritarian regime. Similar to the Argentine case women’s mobilization under the dictatorship was united by a common emphasis on motherhood as a basis for public activism. Three main types of organizations characterized the broader women’s movement: human rights organizations, survival

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<sup>21</sup> Chile ratified CEDAW in 1989, but the Constitution did not expressly establish the principle of equality of men and women until 1999.

or self-help groups, and feminist political organizations (Franceschet 2005).<sup>22</sup> The ‘motherhood’ frame of reference, however, did not preclude the articulation of feminist agenda either before or after the transition (Franceschet 2005). Resistance to the regime picked up after 1983. At this time women’s movements that had enjoyed a great deal of organizational autonomy, faced the increased presence of political parties and the formalization of opposition politics.

Women’s organizations divided over how to cope strategically with decreased autonomy from political parties during and after the transition to democracy. When it became clear that the opposition be successful some women’s groups (primarily feminist organizations) argued for a strategy of placing feminist demands on the transition agenda. The “Demandas de Mujeres a la Democracia in 1988” pressed for the inclusion of a 30% quota for government and parliament (Franceschet 2004) and for an executive level state agency. Some women entered politics and chose to pursue a strategy of ‘double militancy’ seeking to push a feminist agenda from inside political parties and the state. As in Argentina, “Women’s roles in the parties and the prominence of the women’s movement [at the time of the transition] led all political parties to express concern with women’s gender issues during the 1989 electoral campaign” (Franceschet 2005: 78).

In 1988 women’s groups formed the “Concertación Nacional de Mujeres por al Democracia” to influence policy and process of the center-left parties of the Concertación in the run up to the plebiscite (an up-or-down vote on the continuation of the military regime) and the subsequent elections. The women’s Concertación was an attempt (and a successful one) to be ‘at the table’ during the transition. Its members pressed for legal changes that improved women’s legal position, the incorporation of women into the political system and labor market, and the creation of a national gender machinery at the state level that would propose gender policy and oversee its

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<sup>22</sup> Some of the most important examples include: Women for Life (Mujeres por la Vida) a human rights group; The Chilean Women’s Pro-emancipation Movement ’83 (Movimiento Pro-Emancipación de Mujeres de Chile, MEMCH’ 83); and the Feminist Movement (Movimiento Feminista, MF).

implementation by other ministries (Waylen 1998: 158; 2007: 76).<sup>23</sup> The clearest ‘win’ for the women’s movement was the establishment of the National Office of Women's Affairs (Servicio Nacional de la Mujer, SERNAM) in 1991.

SERNAM was modeled in part after the women’s ministries in Spain and Brazil and is state agency that enjoys cabinet level representation and ministerial rank (Dandavati 1996). It was originally established with a small budget and relied on funding from foreign governments and international organizations, as such it was “hampered by its limited budget ... and lack of formal machinery to oversee the operations of other government departments” (Craske 1999, citing Waylen 1996, 129). SERNAM is now an important state agency responsible for policy creation and monitoring and a site for advocacy efforts.<sup>24</sup> The relationship between women’s organizations and SERNAM has been mixed. Women’s organizations have argued that the state agency has co-opted the agenda and professional personnel of the women’s movement Waylen (2007: 154), that the agency is too conservative, and that SERNAM discourse focuses on women in terms of the family rather than as individuals (Dandavati 1996: 112; Lambert and Scribner 2009; Franceschet 2005; Craske 1999). Nonetheless, SERNAM had a number of early policy successes, including reform to the Labor Code to eliminate the exclusion of women from some occupations and establish rights for temporary and domestic workers. SERNAM was also instrumental in passing the law on family

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<sup>23</sup> Waylen (2007) notes the similarities between the Chilean and South African contexts in which left of center political parties were central to the transition and women’s movements had already placed gender concerns on the political agenda within those parties (149). As a result of the efforts of women’s organizations in these countries, SWMs (state women’s machineries) were set up as part of the transition process.

<sup>24</sup> To tackle gender discrimination and comply with reporting requirements and follow up the Fourth World Conference on Women in Beijing in 1995, SERNAM has prepared two national action plans. The first Equal Opportunities Plan (1994-1999) focused on legislative change. Among the gender-specific policies cited by Chile’s 2005 Report on Implementation of the Beijing Platform for Action are changes to family law and employment law (see the Appendix). The second Equal Opportunities Plan (2000-2010) engaged public agencies in gender mainstreaming. Ministries of government must report on their commitment to gender related policies to a new Council of Ministers on Equal Opportunity and a gender focus has been included in aspects of the budgetary process (2005 Beijing Report).

violence in 1994. The state agency was not successful; however, in getting support for an equal rights amendment to the Constitution until 1999 (Dandavati 1996: 111).

The Chilean women's movement has long suffered from left-right political divisions as well as class divisions (Franceschet 2005; Baldez 2002; Blofield 2006; Pribble 2006; Dandavati 1996; Ríos Tobar, Godoy, and Guerrero 2003). These divisions, along with social conservatism, have been a key obstacle to feminist mobilization for women's equality in Chile. Moreover the issue of autonomy versus some form of double militancy (working with political parties and the state) for women's organizations is complicated in Chile by the much stronger role (than in Argentina or Uruguay) played by the gender machinery of the state, specifically SERNAM. As Franceschet (2005) demonstrates the migration of (primarily middle and upper class professional) women from feminist organizations to the state has contributed to fragmenting the women's movement. At the same time, that migration has led to the development of gender policy networks, but these networks have not succeeded in framing women's issues in a progressive individualist way. There are several impediments in the legislative arena. One is simply the institutional protection and overrepresentation of rightist parties (particularly in the Senate) as a result of Chile's binomial electoral system and the "institutional" (non-elected senators) (Siavelis 1999; Htun 2003). This situation helped "the conservative alliance [RN and UDI] block the creation and reform of several gender-friendly social policy proposals" (Pribble 2006: 101) particularly in areas of concern for the Catholic Church (family law and reproductive rights) (Htun 2003; Htun and Weldon 2010).

Additionally important is the political strength of Chile's Christian Democratic Party (the Partido Demócrata Cristiano, PDC). As Esping-Andersen (1999) has noted of European welfare regimes, Christian Democratic regimes tend to be more oriented toward family values and traditional gender roles and influenced by Catholic social teaching. As a consequence social policy tends to be oriented to provide services when the family is unable to fulfill its care-giving role and intervene in

the private sphere minimally. Women PDC militants “have been criticized by other feminists for being more loyal to the party than to the women’s agenda” and for framing gender issues in terms of the family (rather than individual rights) (Dandavati 1996: 119). The dominance of the PDC in Chile’s transition to democracy through the 1990s has clearly defined the opportunity structure for women’s organizations in Chile in all of the policy areas considered here, but most clearly in the areas of family law and employment rights where legislation has tended to reinforce a gendered view of women’s citizenship rather rooted in traditional women’s roles in the family and society (Pribble 2006; Blofield 2006; Blofield and Haas 2005; Htun 2003; Waylen 2007).<sup>25</sup>

Moreover, Chile is one of the few countries in the region (along with Uruguay) that did not introduce gender quotas into electoral processes and politics. In the five parliamentary elections occurring from 1989-2005, men accounted for over 90 percent of party candidates and Chile remains below world and regional averages for women’s representation (Fernández Ramil 2008). Several unsuccessful quota proposals were presented to the governing parties and to congress and included reforms to the electoral system as a whole as well as quota system. These proposals did not succeed, however. Public opinion data suggests that Chileans do not favor quotas (or other affirmative actions) to redress discrimination and favor a meritocratic system (Fernández Ramil 2008: 225). Moreover in Chile, women legislators have not succeeded in forming a legislative bloc as they have in Uruguay (Pribble 2006).

Low levels of female representation, the policy presence of SERNAM its relationship with more conservative PDC, have complicated the policy making terrain for women’s groups in Chile. Blofield and Haas (2005) evaluate 38 different bills introduced in Chile between 1990 and 2002 that sought to expand women's rights. They found that the most successful bills are those that originate

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<sup>25</sup> The PDC itself was often split on these issues. Londregan (2000) demonstrates different alignments within the PDC depending on issue areas with alignment with left on issues of human rights, and alignment (though not universally) with the right on social issues such as those involved with divorce, family equality and reproductive rights.

with SERNAM, “do not fundamentally challenge existing definitions of gender roles, and do not require redistributive functions on the part of the state” (36). The election of Michelle Bachelet, Chile’s first female president, in 2006 has not necessarily altered this political opportunity structure significantly. SERNAM continues to be considered “one of the biggest, best-funded and highest-ranked national women’s agencies in Latin America” with a commitment to eliminating gender discrimination and marginalization (Ríos Tobar 2007: 28). Bachelet’s concerted effort to achieve policy change in the area of reproductive rights was subject to similar barriers as in other legislative areas: the role of the Church, the right wing, as well as the conservatism of the Christian Democrats. Summing up the political situation in 2007, Ríos Tobar states “political parties, including those of the left, have shown little interest in supporting her gender agenda [and] the feminist movement and women’s organizations are weak and divided.” (29).

Table 2 outlines legislative changes in Chile since 1990. Those changes demonstrate, as does the above discussion, that policy change largely has been oriented toward the constitutional values of “family” protection and promotion. “[O]n a wide-ranging number of issues, including domestic violence, day care, paternity, divorce, and abortion, the left began to defend its proposals on the basis of what was good for the family as a whole and what would allow women to fulfill their traditional roles in it (often while they took on additional roles outside the home)” (Blofield and Haas 2005: 47). In sum, the Chilean Constitution recognizes equality (neutrally in Art. 1) and after 1999, gender equality (Art. 19.2); at the same time, constitutional promotion of family has constitutionalized gender, at least partly, in strongly maternal role terms. In the political context described above, this combination has structured strategies for both policy change and defense of the status quo that largely draw on women’s traditional roles.

**Uruguay:** After twelve years of military rule (1973-1985) Uruguay transitioned back to democracy. The Uruguayan Constitution dates to 1967 – it was temporarily amended under the

military regime, but re-instated with the transition to democracy. Prior the authoritarian period, Uruguay already had in place women-friendly policies in the areas of divorce, equal paternal rights, maternity leave, and equal opportunity labor and education rights (Johnson 2002:102; Perelli 1994:133). These policies were supported by state intervention and the development of a welfare state after the 1930s. Pribble (2006: citing Ehrick 2001) suggests that the traditional and well-development welfare state in Uruguay benefitted both middle and lower-class women and thus there developed a cross class and broad based coalition in support of social policy that this in turn “facilitated a united mobilization of gendered demands” (Pribble 2006: 100). Women friendly policies in the labor market particularly benefitted white middle and upper class Uruguayan women. However, such state intervention in support of women did not stretch into the private sphere and second wave feminist activists in the 1980s pushed for specific measures to tackle the less visible issues such as domestic violence.

The constitutionalization of gender in Uruguay reflects welfare state politics. The Constitution protects gender neutral individual rights and recognizes women’s difference along maternalist lines, including clear protections for motherhood and family that are designed to allow women to participate in labor market, while also protecting and advancing the interests of the family. In short, constitution recognizes women reproductive and familial roles, but does not explicitly distinguish gender equality or actively promote gender equality. As a result, the Uruguayan Constitution recognizes gender difference in a ‘maternalist’ rather than ‘egalitarian’ manner. Known as the “model country” and the “Switzerland of America” Uruguay had a deep, though conservative, democratic past that was resurrected and reconstructed in the post authoritarian 1990s. As in Chile and Argentina, women, as mothers and wives, organized against the regime. In Uruguay, however, these efforts remained small, disparate and conservative; and did not have the effect of galvanizing a unified women’s movement that would make significant demands on

the state for inclusion or policy change at the time of (or after) transition to democracy (Perelli 1994). “Following the transition back to democracy, Uruguayan women have continued to create organizational spaces within political parties and labor unions to advance their interests” (Pribble 2006: 100). In short, women have achieved policy change through their work in civil society groups and political parties.

The Uruguayan party system is one of (if not the) the oldest in Latin America with two historical catch-all parties, the Colorado (Red) and Blanco (White) that are highly factionalized. The fragmented two party system has given way to a multi-party system in which these two parties still occupy the political center (González 1995). The first democratic government oversaw a fairly smooth transition to democracy backed by a National Accord that included parties across the political spectrum in support of broad public interest measures.<sup>26</sup> The 1989 elections brought the Blancos to power under President Lacalle (1990-1995), who unsuccessfully pursued neo-liberal economic reforms. Power shifted back to the Colorado Party in 1995; and the party held the presidency in 2000. Fall out from neo-liberal economic policies, an increasingly stressed welfare state, and severe economic crisis (particularly in 2002) helped to usher in the leftwing Progressive Encounter-Broad Front coalition in 2005 with promises to tackle poverty and reform the welfare state, under the leadership of Vázquez (2005-2010). The Broad Front Coalition (Encuentro Progresista-Frente Amplio-Nueva Mayoría, EP-FA-NM) retained the presidency in the 2009 elections and President Mujica, co-founder of the 1960s Tupamaros urban guerrilla movement, was inaugurated in March 2010.

Consistent with the ideological positions of the parties, a women’s equality agenda is framed differently across parties. The PC for example takes a classic liberal position on gender equality that

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<sup>26</sup> The Sanguinetti’s administration (1985-1990, 1995-2000) of the Colorado Party (CP) backed the 1986 National Accord that included the center-right CP, the National Party (the Blancos), the center-left Broad Front (Frente Amplio or FA), and the more conservative Civic Union (Unión Cívica or UC).

negates the political relevance of difference (Johnson 2005: 19). In the programmatic agendas of the PN (Blanco) and the EP-FA-NM, on the other hand, social inequalities (including gender-based inequality) are recognized, but concrete actions are typically framed in the context of economic inequality and class relations (Johnson 2005). In contrast to Chile, the Uruguayan Christian Democratic Party has not been a significant political player and is now represented in the FA and NE coalitions. The EP-FA-NM is the first truly left leaning governing in power in Uruguay and its “secular nature ... has granted the coalition leeway in pursuing policies that recognize the changing nature of the family and women’s roles in society” (Pribble 2006: 102). Pérez (2006: 75-76) analyzes party positions on women’s equality utilizing parliamentary debate and finds that the Colorado Party (PC) and the National (Blanco) Party (PN) exhibit traditional positions on gender roles that stress women’s “natural” reproductive and social care giving roles. Likewise members of the PC and PN expressed traditional conceptions of gender roles within the family. In contrast members of the FA emphasized individual rights as well as gender difference as a starting point for policy position that would give women more power and choice (for example in the context of reproductive rights). Nonetheless Johnson (2005) suggests the EP-FA-NM (the political left) has not articulated a complex understanding of gender inequality and the intersectionality of gender difference.

The political swings between the Colorado and Blanco (and now the Broad Front) parties have had important impacts on the women’s machinery in Uruguay. Changes of government and turnover at the executive level contributed across the 1990s to a situation in which programs and institutions dedicated to women’s interests depended on the good will decision makers. During the first democratic administration (1985-1990) the Colorado Party set up the National Women’s Institute in 1987 with a mandate to “design, coordinate and monitor policy on women.” In 1990 National Party came to power during which time the Women’s Institute fell into inaction for several years and was reorganized as the National Institute for the Family and Women (INFM) in 1992.

INFM was not funded, however, until the Colorado Party came back into power in 1995 (Johnson 2002:105).

The INFM, housed until 2005 in the Ministry of Education and Culture, has been characterized as institutionally weak, unable to fulfill its mandate, and reluctant initially to work with the women's movement, which was politically linked to the political left. Its influence in promoting a gender agenda was limited by its organizational position in the Ministry of Education and lack of funding (Beijing+10 Country Response 2005). In 2005 the INFM was renamed the National Women's Institute (INAMU), moved to the new Ministry of Social Development, and given a new mandate to promote, plane, design, formulate, execute and evaluate national policies relating to women and families, among other institutional objectives (Beijing+15 Country Response 2009). As in Chile, additional machinery was added in the late 2000s. In 2009 a National Gender Policy Commission was established to coordinate public policy across ministries. The coordinating body is headed by a representative from INAMU.

As in the case of Chile, Uruguay remains one of the few countries in Latin America not to have adopted some form of quota legislation (Archenti and Johnson 2006). As a result, among Latin American countries, Uruguay exhibits the worst indicators for inclusion of women in politics, with a combined 4% female participation in executive, legislative, and local political office (Valdés, Muñoz & Donoso 2005). There is some small movement in these numbers. After the 2004 elections women represented 11.1 percent of the Chamber of Deputies membership and only 9.7 percent of the senate (Pérez 2006); however the move to the left in 2005 ushered in the highest representation of women in the cabinet in history (23.1% cabinet ministers and 15.4% sub-secretaries) (Johnson 2005). One of the contributing factors to low female representation is the fractionalization of the

main parties and the multiplicity of party lists (Johnson 2005).<sup>27</sup> Several quota bills have been introduced in Uruguay since 1988 when quotas first are registered on the legislative agenda (Pérez 2006). A 2002 bill garnered majority support, but not the super majority required to amend electoral law (Archenti and Johnson 2006). Ultimately a non-binding recommendation to political parties to promote equitable participation was passed.<sup>28</sup> In 2009 a quota law was adopted, but the legislation is not strong and will not take effect immediately.

In contrast to the cases of Chile and Argentina, women representatives of the various parties formed the Women's Bench (Bancada Feminina, BF) in the Uruguayan legislature following the 1999 elections to push substantive policy changes. The BF grew out of a cross-party network of women's women party activists and politicians created in 1992, the Network of Women Politicians (Red de Mujeres Políticas, RMP).<sup>29</sup> The BF has become "the vehicle for the cross-party promotion of gender issues on the legislative agenda" and has been 'institutionalized' within the Chamber of Deputies as the Special Committee on Gender and Equity (Archenti and Johnson 2006: 143). Members of the BF have supported each other's bills; the result is often bi-partisan authorship of gender-specific legislative proposals. Moreover the BF has strategically lobbied for certain bills that members did not author (such as the reproductive health bill). The strength of the Uruguayan BF

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<sup>27</sup> In general women candidates are relegated to the bottom of party lists. Given the fractured nature of Uruguayan parties each party generates multiple lists, women fall to the bottom of each of these, and are less likely to be elected. For example, the PC and the PN presented 125 and 127 lists respectively, while the EP-FA-NM, which is less fragmented, produced 95 lists. Johnson (2005: 16) argues that it is this factor (less fragmentation in EP-FA-NM) that explains its better performance for women candidates.

<sup>28</sup> In Uruguay only the Socialist Party (part the Frente Amplio coalition) has instituted a voluntary party quota (in 1993). No other party followed this trend. Opposition to the quota bills, particularly from the traditional parties, has been rooted in concerns about reverse discrimination as anathema to liberal democracy (Pérez 2006).

<sup>29</sup> The stated aim of the Red de Mujeres Políticas was to "exchange ideas, initiatives and positions among women representatives from the different political parties in order to analyze, study and propose policies and legislation to defend women's rights, and coordinate actions at national and international levels" (Archenti and Johnson 2006: 142).

stands contrast to Chilean and Argentine cases where no women's bench or women's caucus emerged in the national legislatures.<sup>30</sup>

The Uruguayan Constitution protects gender neutral individual rights and recognizes women's difference with respect to their traditional role including clear protections for motherhood and family. Women previously enjoyed many role-based welfare state policies, including maternity leave and an array of social rights designed to allow women to participate in labor market, while also protecting and advancing the interests of the family. The absence of an explicit constitutional commitment to gender equality and recognition of women's difference along egalitarian lines has been a focal point for legal change as have reproductive rights. Changes have occurred (as outlined in Table 2), but they have come generally after 2000, and many after the clear turn to the political left in 2005. Moreover many of these pieces of legislation are partial and rhetorical: policy that 'recognizes the value of gender equality' or sees equal opportunity for women as of 'general interest' and sets in motion a 'national plan.' The lack of specificity of the law stands in contrast to policy development in Argentina in the same issue areas.

### **Argentina, Chile and Uruguay compared**

While a more nuanced discussion of how provisions figure into the strategy and work of specific issue networks in each country is beyond this introductory study, we can evaluate the expectation that the way gender difference is constitutionalized affects the character of legislation. We would expect legislators to make reference to gender provisions both in legislative floor and committee debate of bills as well as in the final text of legislation. In short, we expect the way

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<sup>30</sup> In Argentina the Network of Women Politicians that was impetus behind the 1991 quota law dissolved once that goal was achieved and women began to compete for spaces on the party lists. Recently (2008) a women's bench (*banca de mujeres*) has been created in the Argentine Congress and includes all 55 female senators. Its formation was based explicitly Art.75 (no. 19 and 23), which gives Congress the power to create law that assures and promotes 'real' equality of opportunities and treatment (Beijing +15 Country Report Argentina, 2009).

gender is framed in legislation to reflect constitutional language about gender. Where gender discourse in the constitution is role-based (recognizing women's difference through 'maternalist' provisions that reinforce traditional conceptions of women's social roles) this should be reflected the discourse surrounding the justifications for legal change, parliamentary debate, and in legislation. Conversely, where women's difference is recognized as a jumping off point for explicit pursuit of gender equality we would expect a rights-based gender equality discourse to permeate legislative proposals and debate. Secondly, we might expect a clear constitutional anchor in gender equality to provide the basis for legislation that is comprehensive and multidisciplinary, providing mechanisms for enforcement and compliance, mechanisms to redress violations of the law, assign ministerial responsibility and allocate resources. Finally, given the multiple factors (highlighted comparatively in Table 1) affecting the legal opportunity structure for gender policy change, we would expect that the type of constitutional gender provisions is more or less influential under different political contexts. To evaluate these expectations, we look to the relationship between constitutional provisions and gender-specific legislation (Table 2 provides an extensive list of policy change from 1990 forward). Across the policy areas analyzed here, advocates for policy change (or for the status quo) utilized constitutional provisions as well as international law (particularly CEDAW, the Rights of the Child, the Inter-American Convention on Human Rights, and the Convention of Belém do Pará) to justify, legitimize, or thwart concrete policy changes.

***Family law:*** Issues in family law across the three countries have centered on divorce (especially in Chile and Argentina), parental authority and children's rights (Chile and Argentina), and child support (Argentina). In Chile and Argentina, at the time of the transition to democracy divorce was prohibited. In both countries lawyers, feminists and legislators campaigned for the introduction of legal divorce and faced stiff opposition from the Catholic Church (Htun 2003); however, moral conservatism has not been strong among the economic elite in Argentina, and the

Church has not been able to dominate the debate of family law in Argentina, as it has in Chile (Blofield 2006: 122).

Divorce had been on the political agenda in Argentina since 1888 and was legalized briefly under Peronist government in 1954, but repealed after a military coup in 1955. Divorce was not made legal in Argentina until after the return of democracy when changes in international attitudes and law toward divorce, social changes and high levels support for divorce among the middle class in Argentina prompted lawyers, feminists and legislators to circulate legislative proposals beginning in 1984 (Htun 2003: 97).<sup>31</sup> A new public debate emerged between women's groups and academics in civil society and members of Congress about family policy reform (divorce as well as reforming the *patria potestad*).

Htun (2003: 84) argues that two central factors account for the passage of the divorce law in Argentina in 1987: the presence of reformist coalitions in Congress that favored divorce (Alfonsín's radical party had a majority in Congress and the Peronist opposition was fragmented) and conflict between the government and the Church. In Argentina, the Church was politically isolated and criticized for its role in the military regime. Moreover, President Alfonsín publically supported the legalization of divorce and refused to support the Church's position. The divorce bill passed the lower house, but stalled in the Senate. While the bill was pending in the upper house, the Supreme Court issued an historic ruling that found the historic civil marriage law unconstitutional; declaring that the prohibition on divorce essentially "imposed one religious doctrine on the whole country, violated the right of citizens freely to follow their personal life plan, and amounted to an unjust invasion of privacy" (Htun 2003: 101). The 1986 ruling made opposition in the Senate futile and the new civil law sanctioning divorce was approved and promulgated in 1987. The specifics of the new

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<sup>31</sup> While formal law did not permit divorce, it was already installed in social life and a number of informal practices contributed to a web of judicially formulated protections for women and children based on liberal interpretation of existing codes (Htun 2003).

law were “broadly egalitarian.” (Htun 2003: 102). In the Argentine case, then, strong executive and judicial support for policy change that drew on the government’s stated constitutional and legislative commitment to gender equality and a politically weak Church are key factors explaining the timing and framing of divorce policy.

The comparison with Chile is stark. The Catholic Church remained a strong political actor in Chile before, during and after the democratic transition. Crucially, the Church had powerful allies in the center-left governing coalition as discussed above, particularly the Christian Democrats, who in the 1990s dominated the *Concertación* Coalition and state, including the leadership of SERNAM. This fact together with the overrepresentation of the political right, especially in the Senate, meant that divorce bills were not able to advance through Congress until after 2000, when there is a political shift in the *Concertación* from the socially conservative Christian Democrats to the Socialist party with the election of Presidents Lagos and Bachelet (Htun 2003; Blofield and Haas 2005: 39-40). Eighteen separate bills were initiated and defeated in Chile prior to passage of the divorce law in 2004 (Waylen 2007: 167).

“With the legalization of divorce in Ireland in 1996, Chile became the only major nation to lack some type of legal divorce” (Blofield and Haas 2005: 57). Chileans had long practiced a formal practice of having civil marriages annulled in court. For the middle and upper classes who could afford the legal procedure, the equivalent of divorce had long (since at least the early 1930s) been possible and practiced, but without protection and clear regulations regarding the distribution of marital property. Mobilization around policy change on divorce began as the new democratic government was installed in power in 1990. After several defeated bills, a multiparty group of legal experts and legislators organized in 1994 and 1995 to draft a new compromise bill; with concessions to the Christian Democrats pushing the bill’s language in a more conservative direction. This civil

marriage bill passes the Chamber of Deputies in 1997; however, the legislation stalled in the Senate and was not passed until 2004.

Blofield and Haas (2005) argue that final Chilean divorce legislation promulgated in 2004 reinforces traditional family values and has resulted in a formal legal regime that makes divorce more difficult to come by than under the previous system of judicial annulments. The increasingly socially conservative political right argued that divorce was “bad for women” because it increased economic insecurity and violated women’s dignity (Htun 2003: 110). “The bill’s very title, the “New Civil Marriage Law,” reflects efforts to avoid even using the word divorce. As explained by Christian Democrat Ignacio Walker, one of bill’s sponsors, “It’s not a divorce bill, it’s a marriage bill” (Walker 2000). He explicitly rejected the idea of individual rights as justification for legal divorce” (Blofield and Haas 2005: 58). In fact, consideration and debate on the bill centered on constitutional recognition and protection of the family whether and how the Constitution defined the family, with the bill’s sponsors and supporters arguing that the Constitution does not provide a narrow definition of family, and those opposing the bill suggesting ‘harm’ to the traditional family was unconstitutional.<sup>32</sup>

A similar pattern emerges in the context of family equality. In both Argentina and Chile the lack of legal divorce laws had contributed (in part) to a large number of “illegitimate children” who furthermore did not enjoy the same legal rights as children born within marriage. In the 1980s parental rights remained unequal in Argentina: fathers retained primary legal guardianship of children (*patria potestad*) even when the mother had custody, children born out of wedlock were legally distinguished from “marital” children and treated unequally in terms of inheritance, support, and social services. Thus in addition, to legalizing divorce, the feminist family law agenda in

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<sup>32</sup> Committee and floor debates are provided for select laws are provided by the Chilean Congressional Library: The ‘history’ of the Civil Marriage bill is available at: <http://www.bcn.cl/histley/lfs/hdl-19947/HL19947.pdf>.

Argentina included changes to parental and children's rights (Htun 2003). Central to getting these issues on the political agenda (and passed) was support from the party in power (the Radical Party) and the executive branch (President Alfonsín) as well as support from prominent civil law jurists, lack of serious opposition from the Church, and a commitment to equality provisions as defined by CEDAW. The government ratified CEDAW in 1984 and set to work with women's groups, the head of the Women's Directorate, and civil law jurists to revise Argentina family law in-line with CEDAW provisions which now enjoyed constitutional level protection. The executive presented a bill to Congress granting shared parental power and equalizing children's rights under law that was passed in 1985.

Chile's family laws at the time of transition to democracy (1990) were more restrictive than in Argentina: men exercised *patria potestad* and controlled marital property as discussed above. As indicated earlier, over-representation of the political right and the powerful role of the Christian Democrats in the governing *Concertación* coalition made reform to family law difficult. SERNAM was particularly active in drafting and proposing reforms with respect to family equality (and other policy issue areas) early in the transition years, but self-censored its agenda under PDC leadership. Htun (2003: 137) suggests that opposition to divorce legislation and proposals to decriminalize adultery spilled over into opposition to family equality legislation, stalling significant change in this area.<sup>33</sup> In 1993 SERNAM proposed a second bill on equal children's rights and equal legal parental guardianship. The state agency based in the proposal in the constitutional principle of equality before the law (Art 19.2) and Chile's international law obligations (Art. 5). The bill was approved in 1994 in the Chamber of Deputies, but ran into opposition in the Senate because the bill "threatened

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<sup>33</sup> In the Chilean Criminal Code, the act of adultery was differently defined for men (as a long term relationship with a mistress) than for women (as a single act of extramarital sexual relations). SERNAM wanted to equalize this definition under the law; the Chamber of Deputies, however passed a bill to decriminalize adultery altogether. The Chamber's bill was modified in line with the more conservative SERNAM proposal.

to devalue the family in society” and “reduce the importance of marriage.” In fact, Htun (2003: 139) notes that some opposition leaders argued that the bill was unconstitutional because it “contradicted the constitutional principle establishing the family as the essential nucleus of society.”<sup>34</sup> As in the case of divorce, the definition of family in the Constitution is fundamental to the legislative debate and to conservative strategies to defend the legislative status quo.<sup>35</sup> The law was finally approved by the Senate in 1998.

In the case of family law changes, the framing of family policy reflect the constitutional commitment toward gender comparatively. In Argentina, policy debate and changes in the area of divorce and children’s rights reflected the government’s commitment to CEDAW provisions and language, which were incorporated into the constitution at the time of ratification (and then more explicitly in 1994, after this legislation is passed). In Chile, legislative debate reflects competing frames of reference: one stressing equality and one stressing preservation of the ‘family’. Blofield and Haas (2005) argue that ultimately, in Chile’s political environment, passage of gender specific legislation requires a “family” and role-based gender frame.

***Gender-based violence:*** The 1993 *UN Declaration on the Elimination of Violence Against Women* provided a definition of violence against women that included both physical and psychological violence. These provisions were reinforced in the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, also known as the “Convention of

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<sup>34</sup> According to Libertad y Desarrollo, a conservative think tank in Chile, there is a constitutional imperative to defend and promote the family that is founded in Art. 1 of the Constitution (the family is the fundamental nucleus of society), but not just any ‘family’, rather a distinct and traditional definition of family. Libertad y Desarrollo BOLETÍN 1060-07, March 21, 2007. Available at: [http://www.lyd.com/lyd/centro\\_doc/documents/rl-326-1060-07-act%20filiacion.pdf](http://www.lyd.com/lyd/centro_doc/documents/rl-326-1060-07-act%20filiacion.pdf). [accessed April 11 2010].

<sup>35</sup> As quoted in Blofield and Haas (2005: 62), UDI Senator Carlos Bombal summarized the right’s position: “As people, both types of children enjoy equal rights; but this is not the issue. It’s not about the rights that correspond to children as individuals, but in consideration of them in relation to the institution that the very Constitution recognizes as fundamental in our society, that is to say the family, understood—it could not be otherwise—as that relationship which is born of the conjugal union of the spouses (Senate 1997).”

Belém do Pará” adopted by the Organization of American States (OAS) in 1994 and ratified by Argentina, Chile and Uruguay in 1996.<sup>36</sup> Transnational advocacy networks and international campaigns have increased awareness and provided regional and international opportunities for organizing and advocacy.<sup>37</sup> Violence against women is recognized internationally as both a cause and consequence of gender inequality. Gender-based violence (violence against women generally and domestic or partner violence specifically) are significant social problems in all three countries, and each has passed legislation in this area in the last two decades. Moreover, this is a policy area that does not necessarily challenge the political or cultural power of the Church, an actor that has been much more influential in debates over family policy and reproductive rights (Htun and Weldon 2010). Finally, each country is under obligation, due to its international commitments, to introduce measures to eliminate or limit the violence against women and to monitor violence against women.

In Argentina gender-based violence was on political agenda of the UCR in the mid 1980s, but legislative initiatives were tabled and not reintroduced until 1994. The first major piece of legislation was passed in January 1995, the Protection against Domestic Violence Act, but was not regulated until March of 1996. The legislation is tied to Argentina’s constitutional commitments as outlined above; however, the Protection against Domestic Violence Act enforcement mechanisms are weak and provide no punishment for failure to comply to judicial orders (of restraint for example). Moreover, the Domestic Violence Act, did not recognize pervasive violence against women outside of the home. The main criticism launched against legislation on gender based

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<sup>36</sup> Available at: <http://www.oas.org/cim/english/Convention%20Violence%20Against%20Women.htm>

<sup>37</sup> The Network of Women Parliamentarians of the Americas the explicitly recognizes “violence against women [as] a manifestation of the inequality that persists between women and men” (<http://www.feminamericas.net/EN/activities/2009/RES-violence-Salta-a.pdf> [accessed April 13, 2010].

violence in Argentina is that it is fragmentary and does not take a comprehensive view of the causes or consequences of violence in women's lives.<sup>38</sup>

Legislation passed in 2009 (but still in implementation stages at various levels of government) goes much further than previous legislation to incorporate a frame of reference based in gender equality. The law makes the switch from 'violence against women' to 'gender based violence' discourse and incorporates the definition provided in the Convention of Belém do Pará.<sup>39</sup> Thus the law recognizes five types of violence (Art. 4): physical, psychological, sexual, economic, and symbolic in both private and public spheres; including marital rape. Importantly among the law's stated objectives are the elimination of discrimination between men and women (Art. 2.a), the removal of socio-cultural patterns that promote and sustain gender inequality (Art. 2.e), and guarantee international rights including reproductive choice (Art. 3.e) and gender equality and equal opportunity and treatment between men and women (Art. 3.j).<sup>40</sup> "The Argentine legislation foresees a national action plan to combat violence against women, guarantees access to justice by providing for free legal assistance and expedited legal proceedings, ensures comprehensive assistance for the victims, and makes a commitment to tear down socio-cultural patterns that foment gender

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<sup>38</sup> Senator Maria Cristina Perceval (head of the Women's Bench in the Argentine Congress) and a sponsor of the 2009 bill (Interview with the Senator by Gabriel Conte March 27, 2009 for "Bill targets violence against women" (Comunidad Segura). Available at: <http://www.comunidadesegura.org/en/node/42118> [accessed April 13, 2010]:

<sup>39</sup> The Convention of Belém do Pará defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere. Violence against women shall be understood to include physical, sexual and psychological violence: (a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; (b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and (c) that is perpetrated or condoned by the State or its agents regardless of where it occurs."

<sup>40</sup> The bill incorporated Opposition to the bill centered on whether recognizing reproductive rights would open the door to decriminalizing abortion.

violence.”<sup>41</sup> The Consejo Nacional de Mujer (CNM) is charged with oversight and implementation of the law; and it faces serious challenges of interagency coordination and budgetary constraints.<sup>42</sup> Over all, the 2009 law is a major legal advance in the area of gender-based violence and clearly frames the violence against women in gender equality discourse consistent with Argentina’s constitutional and international commitments to gender equality.

Chile passed the “Intra Family Violence Law” in 1994. This is one of the earliest pieces of gender legislation in re-democratized Chile and is the result of a “sometimes troubled alliance” between SERNAM, activists and legislators. The legislation demonstrated (as in the case of family legislation discussed above) that in the political context of over-representation of the right and dominance of the centrist, but conservative, Christian Democrats, policy change required support by the executive (also Christian Democrat) and this meant the bill would be more moderate than activists had wanted (Waylen 2007: 168). Notably, the bill was reframed—discourse on “domestic violence” was dropped and replaced by “family violence” and there was a reduction of punishment for offenders (Blofield and Haas 2005).<sup>43</sup> In 1999 a new domestic violence bill was introduced in the lower house to address some of the deficiencies in the 1994 law associated with judicial procedures and weak sanctions that left victims vulnerable. The second law was eventually passed in 2005 after extensive debate, and after the passage of the Family Courts Act. Within the debate over modifications to the 1994 family violence law, gender equality is mentioned infrequently and the

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<sup>41</sup> “Bold New Law on Violence against Women” by Marcela Valente, March 12, 2009. (IPS). Available at: <http://ipsnews.net/news.asp?idnews=46092> [accessed April 13, 2010].

<sup>42</sup> Ibid. The “National Women’s Council’s global budget is less than one-sixth of what is dedicated to promoting tourism, and that only a small fraction of the funds goes towards addressing violence.”

<sup>43</sup> Chilean government passed a law extending the legal definition of rape and increasing punishments for offenders. The 1999 law also dropped the requirement that women be of “good character” to be considered a “victim.” Chilean law also recognizes and punishes spousal rape.

final legislation mentions inequality of relations and power as foundation for familial violence, but does not identify gender inequality.

In the case of Uruguay, mobilization around the issue of domestic violence policy change takes place early in the transition to democracy as the result of a collaborative endeavor involving women's activism within political parties and autonomous women's groups in civil society (Johnson 2002). In the mid 1980s, in the context of democratic transition, and international and regional organizing around the issue of violence against women more broadly, the left-wing Broad Front included legislative change concerning violence against women and children in its election manifesto; but no concrete actions materialized under the first democratic administration (1985-1990). Moreover, despite Uruguay's international obligations to address violence against women, few concrete legislative changes have been achieved that bring national law inline with these international commitments. In 1995 domestic violence was incorporated in the penal code and considered a crime. In 2002 Uruguay approved a domestic violence law (Law 17,514) that declared activities oriented towards the prevention, early detection, attention and eradication of domestic violence to be of national general interest.

The 2002 law led to the creation of National Advisory Council against Domestic Violence and called for the development of a National Plan on Domestic Violence. In 2004 the government sought World Bank assistance and funding to address its "delayed country reporting under the Belem do Para and the CEDAW Conventions" and to develop the National Plan to Combat Domestic Violence 2004-2010 (Lundwall, Genta Fons & Sanchez de Boado 2009:2).<sup>44</sup> The 2002 domestic violence law and the national plan have had a number of secondary effects in the legal and

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<sup>44</sup> Domestic violence specifically is a large social problem in Uruguay: "According to the statistics published by the Violence and Crime Observatory, a total of 10,680 cases of domestic violence were reported in Uruguay in 2007 which amounts to 46% of all reports filed on crime against persons" (Lundwall, Genta Fons & Sanchez de Boado 2009:1).

administrative structures at the national and municipal level, including the creation of night courts, awareness and training courses for police (beginning in 2009), and health sector regulations affecting the treatment of victims of domestic violence (CEDAW Country Report 2007). The administration of the National Plan to Combat Domestic Violence has been centralized in INAMU, strengthening its “institutional role as the lead agency for gender mainstreaming and the eradication of violence against women” (Lundwall, Genta Fons & Sanchez de Boado 2009:3).

### ***Workplace equality***

Similar to the cases of family law and violence against women legislation, the impetus for legal change labor law comes in large part from the pressure to modernize labor law to comply with international commitments to both CEDAW and ILO agreements. Nonetheless, the timing of legal change and shape of the law is associated with a number of the factors including earlier, including the way gender has been constitutionalized in each country. Advocates for gender policy change draw on both international and national commitments to gender equality with various degrees of success. Most notably, where gender equality provisions are weak and/or compete with role-oriented definitions of gender, labor law changes have tended to focus on protecting women’s reproductive and familial role. This is most pronounced in Chile, but also clear in Uruguay, which are the two cases with strongest provisions recognizing gender difference along ‘maternal’ lines. .

In Argentina, the Law on Employment Contracts (No. 20,744/1976) regulates employment policy, including leave, wage, and retirement regulations, as well as protections for female works and maternity leave. After the transition to democracy, various pieces of legislation are passed that modify the Law on Employment Contracts in an egalitarian direction. These disparate changes are recognized in 1998 National *Plan for Equal Opportunity in the Workplace* (Decree No. 254/1998). The national plan lists the following previous legislative advances for gender equality including: equal opportunities and treatment for workers with family responsibilities (Law No. 23, 451); right of all

workers to upgrade their skills without discrimination (Law No. 24,576), the right to equal pay for work of equal value (Law No. 14,467, which approves Convention No. 100 of the International Labor Organization), and the adoption of the Convention on the Prevention, Punishment and Eradication of Violence (No. 24,632, which recognizes sexual harassment in the workplace). The National Plan (adopted by presidential decree) is a response, explicitly, to CEDAW monitoring and reporting obligations. It draws heavily on a discourse of gender equality in the constitution (noting repeatedly the constitutional status of CEDAW) and calls on the CNM to coordinate and implement prior legislation.

Chilean legislative changes in labor law reflect the tension between the commitment to family and the amended commitment to gender equality. For example, the authors of the 2002 Childcare Act passed framed the discourse of childcare (nursery) provision as “an important support for motherhood. ... Because the bill implicitly accepts child care as solely a woman’s responsibility, it is framed to reflect rather than to challenge existing gender relations” (Blofield and Haas 2005: 54). Two laws in Chile extending maternity benefits to fathers are explicitly framed in terms of the family rather than gender equality. The stated rationale for a bill providing fathers with a five day paternity leave (passed in 2005 as a four day leave) is based in the family values provided Chilean Constitution (Art. 1).<sup>45</sup> The preamble to the bill argues paternity leave will ‘support the mother and child precisely in the moment in which they need additional care and contribute to stronger bonds of affection within the nuclear family.’ Similarly, a worker’s right to on-site nursery care for young children was extended to fathers in 2009. The bill proposed that this right be extended to fathers when the mother was absent or unable to care for a child under two. The final law as passed applies only to fathers sole custody (by judicial order) or in the case of the death of the mother. In both of

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<sup>45</sup> Available at: <http://www.bcn.cl/histley/lfs/hdl-20047/HL20047.pdf>

these examples, the policy change toward gender equality is partial and continues to be framed in terms of women's traditional care giving role and anchored to the constitutional family of family (Art. 1) rather than gender equality (Art 19.2).

Blofield and Haas (2005) present the framing of these laws with respect to 'family values' and women's traditional gender roles as a conscience strategy by legislators (and SERNAM) to gain passage of gender policy in the Chilean political context. For example, with respect to the 2002 bill on nursery care they argue "the role-based framing of the bill, which allowed the left to present itself as a defender of women's roles as mothers, made it politically unfeasible for conservatives to oppose the bill on purely economic grounds; [and] facilitated the building of conservative support for the proposal. The bill passed both houses of Congress within a year of introduction" (54-55).

In 2009 the Chilean legislature passed an equal pay for equal work law. The bill, introduced in the lower house, enjoyed broad political support from the both Bachelet administration as well as members of the opposition. The bill introduced a discourse on pay equity clearly rooted in gender equality. Nonetheless, in legislative debate, several congressional members suggested one of key reasons for supporting equal pay for women was the role of women as caregivers.<sup>46</sup> Increasingly, women are heads of households, financially solely responsible for their family. The bill itself, however, represents a departure from previous role-based gender policy in the workplace, by explicitly tying the legislative proposal to gender equality in Chile (Art 19.2) and elsewhere (international law and practice, including in Europe).<sup>47</sup> Finally, the bill includes clear language on mechanisms for filing complaints and seeking redress for violation.

Equality in the workplace legislative change in Uruguay somewhat mirrors the experience with domestic violence legislation – the development of national plans and interagency coordination,

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<sup>46</sup> Cámara de Diputados. Legislatura 356, Sesión 16. Fecha 09 de abril, 2008. Historia de la Ley N° 20.348. Pg. 214.

<sup>47</sup> Moción Parlamentaria. Historia de la Ley N° 20.348. Pg. 7.

without concrete policy change. Much of the change in this area also takes place well after 2000, reflecting political changes at the executive level as well as the strengthening of the national gender machinery, particularly after 2005. The Tripartite Commission for Equal Opportunities and Treatment in Employment (CTIOTE) was created in 2005. As a neo-corporatist mechanism of labor policy negotiation, the Commission is composed of the peak employer association, the National Convention of Workers, the Ministry of Labor and Social Security, and the National Institute for Women.<sup>48</sup> In 2007, the legislature approved the Promotion of Equality Opportunities and Rights. The law was developed by the National Women's Institute and provides the legal and policy framework to implement the National Plan for Equal Opportunities and Rights (2007-2011).<sup>49</sup> In March of 2008 the Tripartite Commission committed itself to promote a gender equality clause, which includes equal pay for equal work, as a guideline for negotiation.<sup>50</sup>

### **Tentative/Preliminary Comparative Conclusions**

The cases of Argentina, Chile and Uruguay underscore the ways in which constitutional provisions can provide an enabling framework for women's rights advocacy and inspire and shape the content of subsequent legislation and judicial revision of discriminatory laws and policies. There are important differences with respect to policy change and legislation on behalf of women's equality that are related to the extent and nature of constitutional provisions concerning gender equality rights. Our first expectation for the comparative cases of issue areas is that the way gender is framed in the national constitution will be reflected policy change strategies, proposals, debates, and ultimately in the law itself.

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<sup>48</sup> PIT-CMT (the umbrella labor union body), the largest employers' organizations and the major business organizations (National Chamber of Commerce and the Chamber of Industry of Uruguay).

<sup>49</sup> The law and the plan build on the efforts of broad and structured participatory process that included representation from civil society, government and departmental ministries, legislators, and various organizations associated with the women's movement (Beijing+15 Country Response 2009).

<sup>50</sup> A sexual harassment law has been introduced by the Government in the Senate.

Where women's difference is recognized as a jumping off point for explicit pursuit of gender equality we would expect a rights-based discourse to permeate legislative proposals and debate. This expectation is largely born out in the Argentine case where constitutional provisions recognize women as a category of individuals who require protection and promotion to achieve equality. Gender equality and the promotion of substantive equality is a stated constitutional value in Argentina. As demonstrated above in the context of gender-specific legislation in the areas of family law, gender based violence, and employment law, legal change in Argentina has drawn on these constitutional ideals and concrete provisions to actively promote gender equality and non-discrimination.

Where gender difference is framed in role-based terms, recognizing women's difference through 'maternalist' provisions that reinforce traditional conceptions of women's social roles, this should be reflected the discourse surrounding the justifications for legal change, parliamentary debate, and in legislation. This is hard to assess in the Uruguay case, largely because legislative change is partial and delayed. Much of recent the labor legislation, for example, extends traditional welfare state benefits (which already recognize a care giving role). Likewise, in the area of gender-based violence, legislation is constrained to domestic violence. In Chile, where the treatment of gender is minimal, a more recent provision to guarantee gender equality competes with an entrenched constitutional commitment to promote and protect the family. As repeatedly demonstrated above across all issue areas, the result is the framing of gender-specific bills, debate, and legislation through of discourse of "family" protection and women's traditional care-giving role.

Second, we might expect a clear constitutional anchor in gender equality to provide the basis for legislation that comprehensive and multidisciplinary, providing mechanisms for enforcement and compliance, mechanism to redress violation of the law, and allocation of resources. This is born out in both the Argentine and Chilean cases in comparison with Uruguay. Across the issue areas,

legislation is more specific with respect to objectives, scope and enforcement in Chile and Argentina than in Uruguay, where legislative change has indicated state commitment to policy change and provides the bases for the development of National Plans. These processes have not yet translated into comprehensive legal change. Though, the National Plans in Uruguay on Violence against Women and on Equal Opportunities have engendered projects, reforms in administrative practices, new data gathering and reporting facilitates, and increased cooperation between the state and civil society. Reforms have been slower, less far reaching and vague in Uruguay than elsewhere.

Third, given the multiple factors (highlighted comparatively in Table 1) affecting the legal opportunity structure for gender policy change, we would expect that the type of constitutional gender provisions are more or less influential under different political contexts. There are a number of interesting lessons that can we draw from these three cases. First, while all three had ratified CEDAW and comparatively faced internal and external pressure to bring national law and practices into line with CEDAW provisions and reporting requirements, in the Argentine case early constitutional status, and later explicit incorporation in the 1994 Constitution, gave a constitutional anchor to policy projects across the issue areas. Second, the strength of the national gender machinery varies across the three country cases. In both Uruguay and Argentina is it initially weak and politicized; and remains dependent on the executive branch. Chile on the other hand, has one of the strongest gender machineries in the region. SERNAM enjoys cabinet level representation and is a permanent agency with greater resources. It has enjoyed a great deal of policy success; however, its agenda was somewhat circumscribed by its relationship to the major party in power (the Christian Democrats) from 1990-2000 (Blofield and Haas 2005). The move further left from 2000-2010 has come with some shift in how bills are framed, at least in the example of labor rights (the equal pay law). The Chilean case, and the three country comparison generally, supports the argument that left parties in power tend to be more supportive of a gender equality agenda. All three countries move

left after 2000; and all experience somewhat greater policy change as a result. However, in each, the framing of gender-specific policy change reflects the constitutional language and commitments about gender – the contrast in framing is particularly stark in the comparison of Chile and Argentina. In Chile, a weak constitutional commitment to gender equality (with the 1999 amendment) co-exists with the fundamental constitutional value of the family; and the latter has often served as an anchor to defend the status quo.

In sum, the case studies reveal a complex political context in which constitutional provisions are one of several factors affecting policy, including the strength of women's movements, the nature of gender machinery, and the ruling party's commitment to gender equality (and its relationship to the Catholic Church). Constitutional provisions are neither self-enforcing nor self-interpreting--they do not by themselves produce policy change. The efforts of women's organizations and their allies in and out of government have been instrumental in driving policy change, but have enjoyed very different degrees of success. Here we have explored the role of how gender is framed and valued at the constitutional level as one factor in understanding the shape of gender policy change. Nonetheless, the answer here is very partial and is part of a larger research agenda that addresses the more interesting question of how constitutional gender provisions shape the legal and political strategies of individual organizations and advocacy networks.

**Table 1: Summary case comparisons**

	Argentina			Uruguay			Chile		
<i>Date of the Constitution</i>	1853; 1994			1967			1980; 2005		
<i>Ratification of CEDAW (year)</i>	1985			1981			1989		
<i>Constitutionalization of gender</i>	Promotes gender equality Recognizes maternal difference “Mixed Egalitarian”			Neutral equality Recognizes maternal difference “Weakly Maternal”			Neutral equality, Simple statement of Gender Equality Recognition of family “Mostly Neutral”		
<i>Women’s involvement in transition and constitutional change</i>	Present in 1994, but not strong / unified			Not present			Present and nearly unified at transition to democracy (1990)		
<i>Left party in power that is supportive of women’s agenda</i>	Partially 1983-1989; Partially 2002-1010			Yes 2005-2010			Partially 1990-2000 Yes 2000-2010		
<i>Percent of women in legislature (lower house)<sup>51</sup></i>	1990	2000	2009	1990	2000	2009	1990	2000	2009
	6.3	28.0	40.0	6.1	12.1	12.1	--	10.8	15.0
<i>Gender Machinery (Women’s Ministry / Office)</i>	National Women’s Council Marginalized			National Women’s Institute Marginalized			SERNAM (1990) Cabinet level		
<i>Strength of the women’s movement</i>	Divided by class and political affiliation, strong issue specific advocacy			Issue specific advocacy			Divided by class and political affiliation, strong issue specific advocacy		
<i>Influence of non-state actors (Church)</i>	1983-1989 weak 1989-2010 stronger			Comparatively weak			1990 – 2010 strong		
<i>Gender Empowerment Rank, 2009</i>	24 <sup>th</sup>			63 <sup>rd</sup>			75 <sup>th</sup>		
<i>Gender Gap Rank, 2009</i>	24 <sup>th</sup>			57 <sup>th</sup>			64 <sup>th</sup>		

**Table 2. Constitutional gender provisions and gender-specific legislation in Argentina, Chile and Uruguay (1990-2009)**

Gender provisions in the constitution	Gender-specific laws
<b>Argentina</b>	
<b>Gender equality/nondiscrimination</b> <b>Article 37:</b> True equal access to elected offices and party positions will be guaranteed through affirmative action regulations found in party and electoral rules. <sup>52</sup>	<i>National Quota Act</i> (No. 24.012/1991): amended Art. 60 of the National Electoral Code. Party lists must include women in a minimum of 30% of the electable positions with real possibilities of being elected. <sup>53</sup>

<sup>51</sup> Millennium Development Goals Database “Seats held by women in national parliament, percentage.” Available at: <http://unstats.un.org/unsd/> Last updated September 2009.

<sup>52</sup> <http://www.cepal.org/cgi-bin/getprod.asp?xml=/oig/noticias/paginas/2/36362/P36362.xml&xsl=/oig/tpl-i/p18f.xsl&base=/oig/tpl-i/top-bottom-decisiones.xsl> (accessed Feb. 4, 2010)

<p><b>Article 75:</b> indicates that positive action is not discriminatory; and provides Congress with the power to adopt and promote affirmative action measures to guarantee real equality of opportunity and equal treatment, and the full enjoyment and exercise of constitutional rights as well as rights in international human rights treaties in force. Accords constitutional rank to the Convention on the Elimination of All Forms of Discrimination Against Women (section 22).</p>	<p><i>Trade Union Quota Act</i> (No. 25,674/2002): establishes procedures for Women's Trade Union Quotas.<sup>54</sup></p>
<p><b>Gender-based violence</b></p>	<p><i>Ordinance on Sexual Harassment in Public Administration</i> (No.2385/1993): it ensures protection against sexual harassment from a hierarchical superior.</p> <p><i>Protection Act against Domestic Violence</i> (No. 24.417/1994): provides protection against physical or mental abuse by a member of the family group.</p> <p><i>Crimes Against Sexual Integrity</i> (No. 25, 087/1999): raises the penalty for cases of sexual abuses, punishes the promotion and/or facilitation of prostitution and the production of pornographic images.</p> <p><i>Prevention and Punishment of Trafficking in Persons and Assistance to Victims</i> (No. 26,364/2008): provides measures to prevent and punish human trafficking and to assist and protect the victims of such activities.</p> <p><i>Comprehensive Protection for the Prevention, Punishment and Eradication of Violence against Women</i> (No. 26, 485/2009): it provides measures to raise awareness of violence against women and promote values of equality between women and men.<sup>55</sup></p>
<p><b>Family law</b></p> <p><b>Article 14(3):</b> stipulates the provision full family protection, protection of homestead; family allowances and access to a worthy housing.<sup>56</sup></p> <p><b>Article 75(23):</b> Congress has powers to create social security legislation to protect children and mothers through pregnancy and the period of lactation.</p>	<p><i>Family Equality Act</i> (No. 23.264/1985): grants shared parental power to mothers and fathers and rendering “marital” and “extra marital” children equal under the law.</p> <p><i>Divorce Act</i> (No. 23,515/1987): ceases the prerogative of men as the head of household; both spouses are granted equal legal rights.<sup>57</sup></p>

<sup>53</sup> <http://www.cepal.org/cgi-bin/getprod.asp?xml=/oig/noticias/paginas/2/36362/P36362.xml&xsl=/oig/tpl-i/p18f.xsl&base=/oig/tpl-i/top-bottom-decisiones.xsl> (accessed Feb. 4, 2010)

<sup>54</sup> [http://www.ispm.org.ar/legislacion\\_nacional\\_equidad.html](http://www.ispm.org.ar/legislacion_nacional_equidad.html) (accessed 3/23/10)

<sup>55</sup> <http://webapps01.un.org/vawdatabase/countryInd.action?countryId=143> (accessed Sep. 25, 2009)

<sup>56</sup> [http://www.servat.unibe.ch/icl/ar00000\\_.html](http://www.servat.unibe.ch/icl/ar00000_.html) (accessed March 26, 2010)

<sup>57</sup> [http://www.ispm.org.ar/legislacion\\_nacional\\_equidad.html](http://www.ispm.org.ar/legislacion_nacional_equidad.html) (accessed March 23, 2010)

<p><b>Workplace equality</b></p> <p><b>Article 14(1):</b> recognizes the rights to equitable and dignified working conditions for men and women, limited working hours, equal pay for equal work, protection against arbitrary dismissal.<sup>58</sup></p> <p><b>Article 16:</b> provides for equal access to employment, free of discrimination and for the employee's "ability" as the sole criteria for selection.<sup>59</sup></p>	<p><i>Act on Employment Contracts</i> (No. 20,744/1976, amended by Act No. 26,474/2008): it protects women against any form of discrimination based on gender or marital status.<sup>60</sup></p> <p><i>Housewives Retirement Act</i> (No. 24,828/1997): enables housewives to become part of the Integrated Retirement and Pensions System.<sup>61</sup></p> <p><i>Plan for Equal Opportunity in the Workplace</i> (Decree No. 254/1998): creates a national plan for equal opportunity, recognizing existing legislative advances for gender equality including.<sup>62</sup></p> <p><i>Special Social Security Regime for Domestic Workers</i> (No. 25,239/2000): provides basic medical insurance, retirement pensions and disability benefits for domestic workers.</p> <p><i>Act on Justified Absences for Students</i> (No. 25,273/2000): it entitles female students to justified absences due to pregnancy.<sup>63</sup></p> <p><i>Retirement with no contribution Law</i> (No. 24,476/2006) and the <i>Early Retirement Law</i> (No. 25,994) both recognize the unpaid work of women in the home and provide a right to a state pension and other social services.</p>
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Chile	
<p><b>Gender equality/nondiscrimination</b></p> <p><b>Article 1:</b> stipulates the right of all people to participate in the national life with equal</p>	<p><i>Act Amending the Constitution</i> (No. 19,611/1999): establishes legal equality between men and women.<sup>65</sup></p> <p><i>Law Amending the Constitutional Organic Law of Teaching</i> (No.</p>

<sup>58</sup> [http://www.ispm.org.ar/legislacion\\_nacional\\_trabajo.html](http://www.ispm.org.ar/legislacion_nacional_trabajo.html) (accessed March 23, 2010)

<sup>59</sup> [http://www.servat.unibe.ch/icl/ar00000\\_.html](http://www.servat.unibe.ch/icl/ar00000_.html) (accessed March 26, 2010)

<sup>60</sup> [http://www.ilo.org/dyn/travail/travmain.sectionReport1?p\\_lang=en&p\\_countries=AR&p\\_sc\\_id=2000&p\\_year=2009&p\\_structure=3](http://www.ilo.org/dyn/travail/travmain.sectionReport1?p_lang=en&p_countries=AR&p_sc_id=2000&p_year=2009&p_structure=3) (accessed Feb. 4, 2010)

<sup>61</sup> UNCEDAW. 2000. "Fourth Periodic Reports of States Parties: Argentina." Division for the Advancement of Women, Department of Economic and Social Affairs. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/285/86/PDF/N0028586.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 8, 2009).

<sup>62</sup> [http://www.ispm.org.ar/legislacion\\_nacional\\_trabajo.html](http://www.ispm.org.ar/legislacion_nacional_trabajo.html) (accessed March 23, 2010)

<sup>63</sup> UNCEDAW. 2002. "Fifth Periodic Reports of States Parties: Argentina." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/249/12/PDF/N0224912.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 14, 2009).

opportunities. <sup>64</sup> <b>Article 19.2:</b> Men and women are equal before the law.	19,688/2000): sets the right of access to educational establishments for pregnant or nursing female students. <sup>66</sup>
<b>Gender-based violence</b>	<i>Law on Family Violence</i> (No. 19,325/1994): establishes procedures and penalties for acts of family violence. <sup>67</sup> <i>Law Regarding Sexual Offences</i> (Law No. 19,617/1999): amends the criminal definition of rape and it criminalized marital rape. <sup>68</sup> <i>Law on Family Violence</i> (No. 20,006/2005): establishes procedures and penalties for acts of family violence. <sup>69</sup>
<b>Family law</b> <b>Article 1:</b> provides protection for the family and measures to strengthen it. <sup>70</sup>	<i>Act Regarding Marital Property</i> (No. 19,335/1994): establishes an alternative marital property regime. <sup>71</sup> <i>Filiation Act</i> (No. 19,585/1998): Modifies norms concerning paternity, inheritance and equality of children. <i>Law on Maternity Rights</i> (No. 19,670/2000): extends maternity rights for adoption. <sup>72</sup> <i>Family Courts Act</i> (No. 19,968/2004): establishes family courts. <i>Civil Marriage Law</i> (No. 19,947/2004): regulates marriage and divorce (legalizes divorce)
<b>Workplace equality</b> <b>Article 19.16:</b> prohibits any form of discrimination which is not based on personal skills or capability.	<i>Act Establishing the National Service for Women</i> (No. 19,023/1990): proposes plans and measures designed to ensure that women enjoy equal rights in all spheres of their lives. <sup>74</sup>

<sup>64</sup> <http://confinder.richmond.edu/admin/docs/Chile.pdf> (accessed March 29, 2010)

<sup>65</sup> <http://www.leychile.cl/Navegar?idNorma=137783&idParte=&idVersion=1999-06-16>

<sup>66</sup> UNCEDAW. 2002. "Fifth Periodic Reports of States Parties: Argentina." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/249/12/PDF/N0224912.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 14, 2009).

<sup>67</sup> <http://webapps01.un.org/vawdatabase/countryInd.action?countryId=339> (accessed Sep. 25, 2009)

<sup>68</sup> Ibid.

<sup>69</sup> <http://www.leychile.cl/Navegar?idNorma=242648&idParte=&idVersion=2010-03-18>

<sup>70</sup> <http://confinder.richmond.edu/admin/docs/Chile.pdf> (accessed March 29, 2010)

<sup>71</sup> UNCEDAW. 1999. "Third Periodic Reports of States Parties: Chile." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/025/99/PDF/N9902599.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (accessed Oct. 24, 2009).

<sup>72</sup> Ibid.

<p><b>Article 38:</b> it ensures equality of opportunities for entering the civil service and the training and improvement of such officers.<sup>73</sup></p>	<p><i>Act on Maternity Benefits</i> (No. 19,299/1994): sets a new basis for calculating maternity benefits that equates them with the female workers real salaries.<sup>75</sup></p> <p><i>Act Amending the Labor Code</i> (No. 19,250/1996): repealed Article 15 which prohibited women from certain jobs deemed to be beyond their strength and/or dangerous for their physical and moral well-being.<sup>76</sup></p> <p><i>Child Sick Leave Act</i> (No. 19.505/1997): grants leave to either the father or the mother in the event of serious illness of a child.</p> <p><i>Act Amending the Labor Code</i> (No. 19,591/1998): prohibits employers from discriminating on the basis of pregnancy for hiring, promoting and renewal of contracts.<sup>77</sup></p> <p><i>Civil Status Discrimination Act</i> (No. 19,739/2001): prohibits discrimination in hiring on the basis of marital status.</p> <p><i>Childcare Act</i> (No. 19,824/2002): requires businesses to establish on-site nurseries.</p> <p><i>Act on Sexual Harassment in the Workplace</i> (Act No. 20,005/2005): amends the Labor Code by defining and sanctioning sexual harassment.<sup>78</sup></p> <p><i>Paternity Leave</i> (No. 20.047/2005) gives fathers four days of paternity leave for a birth of a child.</p> <p><i>Nursing Mothers Act</i> (No. 20,166/2007) gives mothers the right to short leave to nurse/feed their child, when there is no on-site nursery.</p> <p><i>Act Regarding Equal Pay</i> (No. 20,348/2009): amends the Labor Code by including provisions regarding the observance of the principle of equal pay of men and women for equal work.<sup>79</sup></p> <p><i>Childcare Act Extension</i> (No. 20.399/2009): extends the</p>
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<sup>73</sup> <http://confinder.richmond.edu/admin/docs/Chile.pdf> (accessed March 29, 2010)

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> UNCEDAW. 1999. "Third Periodic Reports of States Parties: Chile." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/025/99/PDF/N9902599.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm> (accessed Oct. 24, 2009).

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>79</sup> [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=CHL&p\\_classification=05&p\\_origin=COUNTRY&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CHL&p_classification=05&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY) (accessed Feb. 10, 2010)

	right to on-site nursery care for children under two to single fathers.
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<b>Uruguay</b>	
<p><b>Gender equality/nondiscrimination</b></p> <p><b>Article 8:</b> All persons are equal before the law.</p>	<p><i>Crimes related to Discrimination</i> (No. 17.677/2003): recognizes the right to non-discrimination on the basis of race, sexual orientation, and sexual identity.<sup>80</sup></p> <p><i>Act to Combat Racism, Xenophobia and Discrimination</i> (No. 17,817/2004): declares of national interest to fight against racism, xenophobia, and any form of discrimination, including based on gender.<sup>81</sup></p> <p><i>Law on the Juvenile Code</i> (No. 17, 823/2004): recognizes the right of juveniles to be treated under conditions of equality regardless of their sex, religion, ethnic origin or social condition.<sup>82</sup></p> <p><i>Law on Equality of Opportunities and Rights</i> (No. 18,104/2007): establishes a general interest in the promotion of gender equality. Charges the National Women's Institute with overseeing the National Plan on Equal Opportunity and creates a national coordinating commission on public policy and gender equality.<sup>83</sup></p> <p><i>Quota Law</i> (No. 18,476; modified by No. 18,487/2009): establishes a general interest in equitable political participation of both sexes.<sup>84</sup></p>
<p><b>Gender-based violence</b></p>	<p><i>Citizen Security Act</i> (No. 16,707/1995): introduces the concept of domestic violence into the Uruguayan legal order and penalties for such type of violence.<sup>85</sup></p> <p><i>Domestic Violence Law</i> (No. 17,514/2002): introduces</p>

<sup>80</sup> Uruguay Country Report, Beijing +15, 2009: 6.

<sup>81</sup>[http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=URY&p\\_classification=05.01&p\\_origin=COUNTRY&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=URY&p_classification=05.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY) (accessed Feb. 10, 2010)

<sup>82</sup> UNCEDAW. 1999. "Second and Third Periodic Reports of States Parties: Uruguay." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://>

[daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement), from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

<sup>83</sup> Ibid.

<sup>84</sup> Uruguay Country Report, Beijing +15, 2009: 17. The law suggests that parties should have candidates of both gender on their party lists, or both genders within the top 15 slots on the lists.

<sup>85</sup> UNCEDAW. 1999. "Second and Third Periodic Reports of States Parties: Uruguay." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://>

[daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement), from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

	<p>measures designed to improve the prevention, early detection, attention, and eradication of domestic violence.<sup>86</sup></p> <p><i>Law Repealing Article 16 of the Penal Code</i> (No. 17,938/2005): removed former article 116 which had exculpated perpetrators of sexual violence if they married the victim.<sup>87</sup></p>
<p><b>Family law</b></p> <p><b>Article 40:</b> The family is the foundation of society; the state will support the moral and material stability of the family.</p> <p><b>Article 42:</b> Parents have the same duties toward legitimate and illegitimate children. Mothers (regardless of civil status) have the right to social projection and assistance.</p> <p><b>Article 49:</b> The public good of the family, its constitution, conservation, and enjoyment will be the object of special protective legislation.</p>	<p><i>National Institute for Women and the Family</i> (No. 16320/1992) (former Institute for Women created in 1991): its responsibilities include advising government agencies on women and family issues at national and departmental level.<sup>88</sup></p> <p><i>The Budget Act</i> (No. 17,930/2005): amends the maternity and paternity leave system for civil servants and adoptive parents.<sup>89</sup></p> <p><i>Physical Punishment of Children Act</i> (No. 18,214/2007): prohibits physical and humiliating punishments against children as a form of discipline by those who care for or educate children.</p> <p><i>Migration Act</i> (No. 18.250/2007) guarantees the right of family unification to migrants.</p>
<p><b>Workplace equality</b></p> <p><b>Article 54:</b> The law should recognize “just” pay, limited working hours, weekly leave, and hygienic working conditions. The work of women and children under 18 will be limited and regulated.</p>	<p>Decree No. 37/1997 <i>Implementing Act</i> No.10,045 of 1989: states that sexual harassment that occurs in the workplace or is work-related is a serious form of discrimination.<sup>90</sup></p> <p>Decree No. 28/1992: grants maternity leave to women in the military.<sup>91</sup></p> <p>Decree relating to Sexual Harassment in the Workplace (No. 28,942/1999): requires respect for the dignity and moral integrity of all workers.<sup>92</sup></p> <p><i>Law 17,242/2000</i>: establishes the right of female workers</p>

<sup>86</sup> <http://webapps01.un.org/vawdatabase/countryInd.action?countryId=1389> (accessed Sep. 25, 2009).

<sup>87</sup> Ibid.

<sup>88</sup> Response to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995) and the Outcome of the 23rd Special Session of the General Assembly (2000), p. 15.

<sup>89</sup> Ibid.

<sup>90</sup> <http://webapps01.un.org/vawdatabase/countryInd.action?countryId=1389> (accessed Sep. 25, 2009)

<sup>91</sup> UNCEDAW. 1999. “Second and Third Periodic Reports of States Parties: Uruguay.” *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://>

[daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/076/26/PDF/N9807626.pdf?OpenElement), from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

<sup>92</sup> [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=URY&p\\_classification=05.01&p\\_origin=COUNTRY&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=URY&p_classification=05.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY) (accessed Feb. 10, 2010)

	<p>in the public and private sectors to take one day's paid leave a year for Pap tests and mammography examinations.<sup>93</sup></p> <p><i>Law 17,292/2001</i>: establishes leave for adoption for public and private sector workers (modified by 18,436/2008).<sup>94</sup></p> <p><i>Law 17,474/2002</i>: provides prenatal allowance for multiple pregnancies.<sup>95</sup></p> <p><i>Law 17,827/2004</i>: provides leave for legislators for grounds that include maternity.<sup>96</sup></p> <p><i>Domestic Workers Act</i> (No. 18,065/2006): accords female domestic workers labor rights.<sup>97</sup></p> <p><i>Special Leave Act</i> (No. 18,345/2008) establishes additional reasons for leave for private sector employees.</p>
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<sup>93</sup> Response to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995) and the Outcome of the 23rd Special Session of the General Assembly (2000), p. 6.

<sup>94</sup> UNCEDAW. 2007. "Combined Fourth, Fifth, Sixth, and Seventh Periodic Reports of States Parties: Uruguay." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/408/93/PDF/N0740893.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

<sup>95</sup> UNCEDAW. 2007. "Combined Fourth, Fifth, Sixth, and Seventh Periodic Reports of States Parties: Uruguay." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/408/93/PDF/N0740893.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

<sup>96</sup> UNCEDAW. 2007. "Combined Fourth, Fifth, Sixth, and Seventh Periodic Reports of States Parties: Uruguay." *Division for the Advancement of Women, Department of Economic and Social Affairs*. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/408/93/PDF/N0740893.pdf?OpenElement>, from <http://www.un.org/womenwatch/daw/cedaw/reports.htm#c> (accessed Jan. 17, 2009).

<sup>97</sup> Ibid.

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