

**The Impact of Social Movements on State Policy: Human Rights and Women Movements In Argentina, Chile And Uruguay**

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THE IMPACT OF SOCIAL MOVEMENTS ON STATE POLICY:  
HUMAN RIGHTS AND WOMEN MOVEMENTS IN  
ARGENTINA, CHILE AND URUGUAY

VOLUME II

A Dissertation

Submitted to the Graduate School  
of the University of Notre Dame  
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by

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PART II

STATE RESPONSES TO WOMEN'S MOVEMENTS

FOR THE DECRIMINALIZATION OF ABORTION

IN ARGENTINA, CHILE AND URUGUAY

Latin America has been characterized by the strictness of its laws that criminalize abortion. The only countries in the hemisphere in which the practice is legal are Cuba, the French Antilles and the Guyanas. The three countries studied here, Argentina, Chile and Uruguay, varied in the degree of this prohibition (from a complete ban in Chile to its authorization under certain conditions in Argentina and Uruguay), but the practice remains criminalized in all three. This policy has resulted in a health hazard for women in the region.

According to the World Health Organization 67,000 women die in the world each year (13% of all maternal deaths) for causes related to illegal and unsafe abortions and millions have serious complications such as chronic infections and sterility as a consequence (WHO 2007). In Latin America and the Caribbean, 12 percent of the maternal deaths are related to unsafe abortions and about one million women are hospitalized annually for complications from these procedures (Guttmacher 2009).

Table 6.1 shows the rates of maternal mortality in the three countries studied here. With 82 maternal deaths for every 100,000 live births, the rate in Argentina is almost

triple that of Chile (31) and Uruguay (27). However, the primary cause of maternal mortality in the three cases is the same: the practice of unsafe abortions (Blofield 2008). In Argentina this is the cause of 24.2 percent of maternal deaths,<sup>1</sup> in Uruguay of 27 percent (Abracinkas and López Gómez 2004) and in Chile of 15 percent.<sup>2</sup>

TABLE 6.1  
MATERNAL MORTALITY IN  
ARGENTINA, CHILE AND URUGUAY  
1997-2005

	Maternal mortality ( 100,000 live births)*	Percentage of maternal deaths caused by unsafe abortion**
Argentina	82	24.2
Chile	31	15
Uruguay	27	27

\* Source: UNICEF 2007

\*\* Sources: For Argentina, *Página 12*, May 19<sup>th</sup> 2009. For Uruguay, Abracinkas and López Gómez. For Chile, *Página 12*, May 13<sup>th</sup>, 2009.

Given this reality, women's movements have begun to mobilize demanding the decriminalization of abortion in all three countries. The strength the movement has reached, and the impact it has had, has varied largely among the cases. Only in Uruguay has the women's movement been able to twice have a bill proposing decriminalization

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<sup>1</sup> See *Página 12*, "Record argentino" May 29<sup>th</sup> 2009, Las 12. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on May 29<sup>th</sup> 2009.

<sup>2</sup> There is no certain data of the percentage of maternal deaths caused by illegal abortion in Chile (Valdes 2008). The 15% has been estimated by Rene Castro who directs the National Program for Women's Health in Chile. See *Página 12*, "Ya estamos muy cerca de Canadá" May 13<sup>th</sup>, 2009. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on May 13<sup>th</sup>, 2009.

debated in Congress and successfully passed the second time (only to have it later vetoed by President Vázquez). Chile and Argentina are still debating the widening of the exceptions for an abortion to be legal, and as of this writing only in Argentina is a complete decriminalization (whereby the decision to have an abortion would rest exclusively on a woman's choice) under consideration.

The goal of Part II is to analyze the interaction between the women's movement's campaign to decriminalize abortion and the governments in power from the time of the democratic transitions until 2007 in Uruguay, Argentina and Chile. The first three chapters (6, 7 and 8) analyze the emergence and evolution of the campaigns to decriminalize abortion and the response they got from the different administrations in each country. The women's movements' impact is analyzed through the measurement of each of the dimensions of state response defined in Chapter 1. As it was found for the case of the human rights movement, in the absence of a strong women's movement there was no abortion reform in any of the administrations. Chapter 9 presents the application of the theoretical model and offers a comparison across cases. When abortion was discussed and addressed by state policy it was due to the presence of a strong movement which had the support of key social actors. The availability of allies in power allowed the movement to advance abortion reform although not to achieve complete decriminalization yet.



## CHAPTER 6

### THE IMPACT OF THE WOMEN'S MOVEMENT ON STATE POLICY IN URUGUAY

In 1934 Uruguayan legislators reformed the Penal Code and decriminalized abortion which, at the time, made it the only country in all Latin America, and in most of the world, with such a law. The introduction of this reform was so controversial that it sparked debate on three different bills between 1934 and 1938 on the issue of abortion culminating in a 1938 law re-criminalizing the practice (Abracinskas and López Gómez 2007) that has remained in effect ever since.<sup>3</sup> Under the provisions of the law a woman that consents to an abortion receives a criminal sentence from three to nine months in prison. The law does allow the presiding judge to reduce or eliminate the sentence if the abortion was performed in the first trimester and was the result of a rape, a risk to the mother's health, the lack of economic means to support a child, or an intent to guard the honor of the woman. The law also requires that doctors treating a woman who has had an abortion to inform the Public Health Ministry within the first 48 hours without revealing the names of those involved.

This chapter follows the structure of those dedicated to the human rights movements in Part I. The chapter is divided in two. The first section offers a descriptive narrative of

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<sup>3</sup> In December 1933 during the dictatorship of Gabriel Terra Uruguay reformed its criminal code. Abortion and euthanasia were decriminalized. This created a major controversy and in 1938 this decision was reversed when conservative Catholic legislators threatened not to approve the national budget unless abortion was re-criminalized.

the history of the women's movement and their demand to decriminalize abortion in Uruguay. The second section aims to systematize this narrative and codes state response following the five dimensions discussed in Chapter 1: 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1).

The Chapter clearly shows the role of the women's movement in moving the abortion debate forward in Uruguay. Prior to 2001 there was no strong organized movement and the few bills introduced in Congress proposing abortion decriminalization received no attention and laid dormant failing to be discussed. Only after the movement mobilized and launched a campaign to advance this issue, the support they gained from key social actors such as unions, doctors and lawyers associations, universities and other social movements coupled with their close work with feminists in Congress, allowed for the passing of a bill decriminalizing abortion in November 2008.

## 6.1. Uruguay's Women's Movement

### 6.1.1. *First Steps*

During the military dictatorship (1973-84) the Uruguayan women's movement began to organize with the goal of assisting the basic needs of the population. Once the transition was in place in 1984 these women remained active but in two different spheres: Some continued to work within social movements while others became active in party politics.<sup>4</sup> Among both groups there were those who were committed to the decriminalization of abortion. This would be a key element for ensuring a fluid

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<sup>4</sup> Interview with Nikki Johnson, Universidad de la República, Montevideo, September 6<sup>th</sup> 2007

interaction between the movement and the politicians once the campaign for a legal abortion was launched two decades later.

The demand for decriminalization has been part of the women's movement agenda since the democratic transition of the mid-1980s (CLADEM 2002; Abracinskas and López Gómez 2007: 12).<sup>5</sup> On February 14, 1985 the *Concertación Nacional de Mujeres* (National Coordination of Women), a newly created organization comprised by women from all spheres of life (unions, professionals, arts, political parties), issued a statement calling for the issue of abortion to be discussed during the process of democratization (Abracinskas and López Gómez 2007: 193). A bill proposing the decriminalization of abortion has been introduced in every congressional session since 1985. However, in the mid-1980s and 1990s the movement to decriminalize abortion was weak, there were very few women in Congress, and as one female Senator told me, male legislators even on the left were generally reticent to push such topics as abortion.<sup>6</sup> It was not until 2002 that a bill on this issue was actually debated in Congress.

The women's movement in Uruguay is very broad and heterogeneous. There are eight network organizations<sup>7</sup> and at least 40 regional organizations within the country that deal with women's issues. Most had been part of successive campaigns to push for a legal, free, and safe abortion. Three organizations in particular have played a leading role in the campaign: the Uruguayan branch of the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM Uruguay), the *Comisión Nacional de*

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<sup>5</sup> Interview with Alejandra López Gómez, MYSU Uruguay, Montevideo, September 5<sup>th</sup> 2007. Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup> 2007.

<sup>6</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup> 2007.

<sup>7</sup> These are CLADEM Uruguay, DESYR, *Red de Grupos de Mujeres Rurales del Uruguay*, *Red de organizaciones contra la violencia domestica*, *Departamento de Genero y Equidad del PIT CNT*, MYSU, REPEM, *Red Género y Familia*.

*Seguimiento por Democracia, Equidad y Ciudadanía* (National Commission for Democracy, Equality and Citizenship , CNS), and *Mujer y Salud Uruguay* (Women and Health Uruguay, MYSU). This study focuses on these three groups.

CLADEM is a network of women's organizations throughout Latin America and the Caribbean fighting for women's rights in the region. It was created in 1987 in San José de Costa Rica, and has regional offices in at least fourteen countries, including Uruguay since 2001 (CLADEM 2002).

In 1996 a group of women organizations created the *Comisión Nacional de Seguimiento por Democracia, Equidad y Ciudadanía* (CNS). The main goal of CNS has been to follow up on the commitments assumed by the Uruguayan state in the different international conferences of the UN system. Given the fact that at the time Uruguay had not fulfilled its commitments in terms of sexual and reproductive rights, the struggle for a safe free and legal abortion became one of the main issues. In 1999 CNS presented the “*Agenda de las Mujeres*” (Women's Agenda), which included the need to prevent unsafe abortions and to assist women that had had one, and which called for the reigning law to be revised (CNS 1999).

One of the member organizations of the CNS was MYSU. It was also founded in 1996 by women already active in academic and/or other activist spaces, and by 2004 became an official NGO. This is the organization that will be followed more closely in this study since it is the only feminist organization in Uruguay dedicated exclusively to women's health issues<sup>8</sup> and it has played a leading role throughout the abortion campaign. The goal behind the organization was to act as a meeting space for all the

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<sup>8</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007.

players acting in the arena of women's health, the right to a safe free and legal abortion being one of their main priorities. In relationship to this issue they aimed to extend the social base of supporters for the decriminalization of abortion and to influence legislators in Congress.

*6.1.2. The road towards the 2002 bill on sexual and reproductive rights*

The first bill proposing the decriminalization of abortion to be discussed in Congress was introduced by Communist Party deputy Rafael Sanseviero in 1993 working together with feminist Graciela Duffau, director of CLADEM Uruguay. Sanseviero's strategy was two fold: first, to introduce the bill with the support of legislators from the other two main parties; and second, to mobilize the support of women's organizations, lawyers and doctors. In this process the bill was improved by the feedback of these other actors. The work done to ensure a broad consensus around this bill was, according to Rafael Sanseviero, the reason why the bill was debated and approved by the congressional committee on bioethics.<sup>9</sup> However, since 1994 was an electoral year, the bill never reached the plenary session.

The 1993 bill was an initiative of one legislator committed to the issue of the decriminalization of abortion. The women's movement had only a secondary role in this process, one limited to giving its input on the bill already in Congress. Although an important stepping stone, the movement had still to gain more strength by increasing its organization with the creation of specific organizations to advance this demand in order to become a major actor in the fight for abortion decriminalization. As will be discussed

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<sup>9</sup> Interview with Rafael Sanseviero, Montevideo, October 19<sup>th</sup>, 2007.

in Chapter 9, the presence of a strong movement is a necessary condition for advancing this kind of issue.

The issue of abortion gradually made its way onto the public agenda in Uruguay in 2001. While the demand had been present within the women's movement since the democratic transition and there had been four bills related to this issue in Congress ever since, the issue was absent in the media and in the public debate. Two events that year increased the visibility of the issue of abortion in the media. In February 2001 legislator Glenda Rondán (*Partido Colorado*) publicly expressed the need for a legal change in relation to the practice of abortion,<sup>10</sup> which generated discussion in the media for a while (Abracinskas and López Gómez 2001). By the end of that year, eleven deaths had been reported due to unsafe abortions in Montevideo's public hospital Pereira Rossell, a large increase over the previous three years when there had been only two such cases (Abracinskas and López Gómez 2004).

As the abortion issue made its way into the public debate, the women's movement was in a much stronger situation than before. Three strong organizations were working on the issue of abortion decriminalization -CLADEM, CNS and MYSU- and were well positioned to react to media reports of new maternal deaths throughout the year to highlight the need for a legal change in relation to the practice of abortion. On May 28<sup>th</sup>, 2001 MYSU and CNS launched the campaign to decriminalize abortion with a panel discussion held at the municipal building of Montevideo. In the month of July different women's organizations created a new space to discuss strategies and courses of action to achieve the decriminalization of abortion called *Iniciativa Ciudadana Contra el Aborto*

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<sup>10</sup> See interview with Glenda Rondán in the newspaper *Búsqueda*, February 15th, 2001.

*Inseguro* (Citizen Initiative against Unsafe Abortion), which evolved into the National Coordination Campaign in 2003.

Until this time, doctors had been silent on the issue of abortion. In 2001 they entered the debate. Doctors from the largest public maternity hospital in Montevideo, Pereira Rossell, wrote to the Health Minister stating that they found unacceptable any more cases of maternal deaths after having illegal abortions, and thus something had to be done.<sup>11</sup> The issue slowly began to gain some public relevance which was lacking before (CLADEM 2002).

Within Congress female legislators reacted in a similar way to the increase of maternal deaths. Through the Special Commission on Gender and Equality they called for the reintroduction of all previously archived abortion bills,<sup>12</sup> which happened on June 27th, 2001.<sup>13</sup> In March 2000 women deputies formed the “*Bancada Femenina*” (Female Caucus) made up of women legislators of all political parties, to push for the debate on bills on gender and women’s rights. Many of these women had worked together in the *Concertación Programática* during the transition to democracy, and were committed to advancing the agenda on gender issues they had agreed to at that time through the

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<sup>11</sup> See interview with Margarita Percovich by *Página 12*, “*El lobby fue impresionante. Margarita Percovich, diputada impulsora de la ley*” December 11, 2002. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on April 24th, 2007.

<sup>12</sup> See *La República*, “El Frente Amplio pediría desarchivo de proyecto sobre aborto,” May 25th 2001. Viewed at [www.larepublica.com.uy](http://www.larepublica.com.uy) on February 10th 2010.

<sup>13</sup> See Lower Chamber session, June 27<sup>th</sup>, 2001. Viewed at [www.parlamento.gub.uy](http://www.parlamento.gub.uy) on February 10<sup>th</sup> 2010.

*Bancada Femenina*.<sup>14</sup> This development was an important step for the issue of abortion to enter the political agenda (Moreira 2007).<sup>15</sup>

In July 2001 these women requested that the bills be sent to the Committee on Public Health, a petition which was granted to them.<sup>16</sup> At the time this committee was comprised only by men, six of them doctors whom the women knew to be in favor of the bill. Female legislators thought that the bill would have a better chance of being debated in the plenary session if it was introduced by the Public Health Committee rather than the Committee on Gender issues. Their calculation was based on the perception that bills written by “crazy feminists” were easily dismissed, in contrast to the high regard society conferred on doctors.<sup>17</sup>

In early 2002 and building on the existing bills on abortion the Public Health Committee of the Lower Chamber drafted a new bill entitled “*Defensa de la Salud Reproductiva*” (Defense of Reproductive Health). The bill was the result of the interaction between the women’s movement and legislators such as Margarita Percovich, Glenda Rondán, Luis Gallo and Guillermo Alvarez, all of whom were committed to reforming the 1938 abortion law.<sup>18</sup> The bill made the state responsible for the reproductive health of the population, and accordingly proposed that sexual education be taught at all educational program levels, guaranteed access to family planning services,

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<sup>14</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup>, 2007.

<sup>15</sup> Interview with an adviser to legislator Monica Xavier, Montevideo, September 10<sup>th</sup>, 2007

<sup>16</sup> See Lower Chamber session, July 3<sup>rd</sup>, 2001. Viewed at [www.parlamento.guy.uy](http://www.parlamento.guy.uy) on February 10<sup>th</sup> 2010.

<sup>17</sup> Interview with Nikki Johnson, *Universidad de la República*, Montevideo, September 6<sup>th</sup>, 2007.

<sup>18</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007



and expressed the need to reduce maternal mortality due to abortion. But unlike previous abortion laws, decriminalization was only one of the issues addressed (see article 4 of the law) in a wider framework of guarantees for sexual and reproductive rights. Abortion was allowed based on the women's decision until the 12<sup>th</sup> week of pregnancy. In case of fetal malformations it was permitted until the 24<sup>th</sup> week. The bill placed no time framework for the legal practice of abortion when the life of the mother was at risk. It also gave doctors the option of declaring themselves conscientious objectors, but required that the right to a safe, free and legal abortion had to be guaranteed by the presence of some doctor in public hospitals that would not object to its practice.

In 2002 a working group was created to press for congressional approval of the bill on sexual and reproductive rights. MYSU, CNS and CLADEM Uruguay became part of the coordinating committee. More than 25 organizations and experts were invited to give their opinion on the bill before the Public Health Committee. On July 16<sup>th</sup>, 2002 MYSU presented their arguments to the Committee.<sup>19</sup> In November of that same year, with the goal of widening the abortion debate the group wrote an open letter to Uruguayan citizens entitled "*Aborto: No mas silencios públicos!*" (Abortion: no more public silence) which received the support of more than 1,000 renowned people from different sectors of society.<sup>20</sup> The campaign received the official support of the main public university (Universidad de la República), the union of Doctors of Uruguay, the central workers'

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<sup>19</sup> See Commission of Public Health notes on the session of July 16<sup>th</sup>, 2002. Viewed at [www.parlamento.gub.uy](http://www.parlamento.gub.uy) on February 10<sup>th</sup>, 2010.

<sup>20</sup> See "*Carta Abierta a la Opinión Pública. Aborto: No mas silencios públicos!*", archivos MYSU, Montevideo.

union (PIT CNT), and the Methodist and the Valdese Churches<sup>21</sup> (Abracinskas and López Gómez 2004). The doctors' support would be key given the high levels of societal legitimacy enjoyed by the medical profession (Sanseviero 2007, Moreira 2007). It was the first time that an actor that had historically opposed against the practice of abortion lent its public support to such a bill (Abracinskas and López Gómez 2001). In a radio interview on April 2004, Senator Margarita Percovich stated that knowing the bill had the support of the medical community made its proponents believe that it was possible to pass it in Congress even though President Batlle had threatened to veto it.<sup>22</sup> The support of workers' unions was also important in gaining the inclusion of the decriminalization of abortion as one of the May 1<sup>st</sup> demands since 2003 (Castillo 2007).

In November 2002 the Committee on Public Health presented to the Lower Chamber an “*informe en mayoría*” (majority report) in support of the reproductive health bill, and an “*informe en minoría*” (a minority report) in which some legislators expressed their general support for the bill except for the article permitting abortion.<sup>23</sup> On December 10<sup>th</sup> the Chamber of Deputies passed the bill by a margin of 47 votes to 43. The bill was supported by 35 legislators from the *Frente Amplio*, 1 Christian Democrat, 8 from the *Partido Colorado*, 2 from the *Nuevo Espacio*, and 2 from the Independent Party.<sup>24</sup> The role of the “Women’s Caucus” was key to ensuring this positive result. Even though the

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<sup>21</sup> The Valdese Church is a Christian denomination that originated in Europe in the 12<sup>th</sup> century currently considered a protestant denomination. They first migrated to Uruguay in 1856.

<sup>22</sup> Interview with Margarita Percovich by Radio 36 on April 2004. Viewed at [http://www.radio36.com.uy/entrevistas/2004/04/120404\\_percovich.htm](http://www.radio36.com.uy/entrevistas/2004/04/120404_percovich.htm) on September 9th, 2007.

<sup>23</sup> See Lower Chamber session November 13rd, 2002. Viewed at [www.parlamento.gub.uy](http://www.parlamento.gub.uy) on February 10<sup>th</sup>, 2010

<sup>24</sup> See *Página 12*, “*Para que las mujeres sean dueñas de la decisión*” December 11<sup>th</sup>, 2002. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on May 5th 2007.

female legislators from the *Partido Blanco* could not vote in favor of the bill because of their party's historic relationship with the Catholic Church and its commitment to conservative values, they took action to ensure the bill would pass. At the time of the voting the *Blanco* party leader, Beatriz Argimón, left the session with the rest of her legislators in order to reduce the number of votes needed to pass the bill.<sup>25</sup>

#### *6.1.3. The women's movement's three legged strategy*

The women's movement stepped up its level of mobilization once the bill had passed the Chamber of Deputies, knowing that the struggle was going to be harder in the Senate. Their work focused on three fronts: public debate, coalition building, and congressional lobbying.

Their first goal was to keep the issue of abortion in the public debate and the media, in which they were very successful.<sup>26</sup> They traveled around the country to inform people about the abortion situation in Uruguay and what the bill would do to improve women's health and rights. They accepted invitations to talk from every town or group, no matter how small.<sup>27</sup> In addition, the movement designed an icon for their campaign, an orange hand that said "I vote in favor of reproductive health." In every demonstration each person would carry a cardboard orange hand. In a very short time the orange hand was present in every activity related not only to reproductive health in particular but also with

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<sup>25</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup>, 2007.

<sup>26</sup> Interview with Nikki Johnson, Universidad de la República, Montevideo, September 6<sup>th</sup> 2007.

<sup>27</sup> Interview with CNS activist, Montevideo, September 4<sup>th</sup>, 2007. Interview with Alejandra López Gómez from MYSU, Montevideo, September 5<sup>th</sup>, 2007.

human rights as a whole, or those on sexual diversity. The orange hand gave the campaign a broader visibility than before.<sup>28</sup>

The movement also launched a media campaign with three television spots that highlighted the fact that public opinion polls showed that 63% of the population supported the bill and called on the Senate to respect this majority with their votes.<sup>29</sup> The movement's media campaigns and their work with different communities was critical in diffusing the bill among the Uruguayan population (Moreira 2007).

The second goal was to strengthen their bonds with other social groups. In 2003 they created the *Coordinación Nacional de Organizaciones por la Defensa de la Salud Reproductiva* (National Coordination of Organizations for the Defense of Reproductive Health) which included different social, academic, workers', religious and professional organizations and was headed by MYSU, CLADEM and CNS.<sup>30</sup> The goal of the group was to provide accurate and detailed information about the bill on sexual and reproductive rights all around the country (Correa 2003; Abracinskas and López Gómez 2007: 168).

The National Coordination was a much wider coalition of such diverse groups as unions, professional organizations, and religious denominations pushing for the

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<sup>28</sup> Interview with Nikki Johnson, Universidad de la República, Montevideo, September 6<sup>th</sup> 2007.

<sup>29</sup> The TV spots can be seen in MYSU's website at <http://www.mysu.org.uy/ddssrr/television.php>

<sup>30</sup> The *Coordinadora* included the following organizations: MYSU (Mujer Y Salud en Uruguay); CNS (Comisión Nacional de Seguimiento Mujeres por Democracia, Equidad y Ciudadanía; CLADEM Uruguay, Cotidiano Mujer, Casa de la Mujer de la Unión; Mujer Ahora; PIT CNT, Consejo de Estudios y Difusión de las Culturas y Religiones Africanas y Amerindias; Iglesia Metodista del Uruguay; Católicas por el Derecho a Decidir; Iglesia Valdense; Red Género y Familia; Red de Jóvenes DESYR; Juventud Socialista y Juventud de la Vertiente Artiguista (Frente Amplio); Grupos de la Diversidad Sexual.

decriminalization of abortion than had ever mobilized before (Sansevierio 2007).<sup>31</sup>

Because each organization had its own logic and internal decision-making process, the big challenge was to reach a consensus. The Coordination did agree on four principles: 1) abortion was a public health problem and a social injustice, 2) respect for others' values and religious beliefs should be maintained 3) the right of women to control their own bodies was a matter of citizenship and democracy, and 4) sexual and reproductive rights should be acknowledged as a human rights issue (Abracinkas and López Gómez 2004: 104).<sup>32</sup>

The third leg of their strategy was to maintain regular contact with legislators supporting the bill. Apart from regular meetings, this included writing technical documents on abortion that legislators could use when debating the bill<sup>33</sup> (Abracinkas and López Gómez 2007: 201), talking to all parties and legislators to map how each was going to vote,<sup>34</sup> and organizing demonstrations when the legislators expressed the need for social support to back their bills and put pressure on other congressmen.<sup>35</sup> In addition, the movement made an effort to bring international experts such as Nélida Figueiras, Aníbal Facundez, and Carmen Barroso to testify before Congress.<sup>36</sup> Legislators confirmed the existence of this close relationship with the movement. An advisor to

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<sup>31</sup> Interview with Nikki Johnson, Universidad de la República, Montevideo, September 6th 2007.

<sup>32</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007.

<sup>33</sup> See for example Senate's session of April 13<sup>th</sup> 2004 in which Senator Monica Xavier quotes documents from MYSU. Viewed at [www.parlamento.gub.uy](http://www.parlamento.gub.uy) on February 10<sup>th</sup>, 2010

<sup>34</sup> Interview with women's movement activist, Montevideo, September 6<sup>th</sup>, 2007. Interview with CNS activist, Montevideo, September 4<sup>th</sup>, 2007.

<sup>35</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup>, 2007.

<sup>36</sup> See notes on the Congressional commissions' sessions at [www.parlamento.gub.uy](http://www.parlamento.gub.uy)

Senator Monica Xavier characterized the interaction between legislators advancing the bill and the movement as permanent.<sup>37</sup> Senator Margarita Percovich, the other main advocate of this bill, stated in an interview that there was a joint strategy between the legislators and the women's movement at all stages of the process.<sup>38</sup>

#### *6.1.4. The debate in the Senate*

Notwithstanding the fact that the Public Health Committee of the Chamber of Deputies had already called numerous experts to discuss the bill, the Senate Committee decided to invite them again. This was seen by the movement as a tactic to delay the consideration of the bill by the full Senate in a floor vote.<sup>39</sup> Presidential and legislative elections were scheduled for the end of 2004, and opponents calculated that by delaying until closer to the elections the arrival of the bill to the full legislature the higher the political costs associated with voting in favor of the bill would be. The Committee invited 24 organizations and/or experts. Among the women's movement MYSU, CLADEM and CNS were invited to present their arguments in favor of the bill in June, July and September of 2003.<sup>40</sup>

The vote was scheduled for early April, the week right after Easter, guaranteeing the Catholic Church an increased audience and media attention to oppose the bill at a very strategic time. The women's movement felt the need to counterbalance this message and

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<sup>37</sup> Interview with Advisor to Senator Monica Xavier, Montevideo, September 10<sup>th</sup>, 2007.

<sup>38</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup>, 2007.

<sup>39</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5th 2007.

<sup>40</sup> See notes of the sessions of the Commission of Public Health of the Senate. Viewed at [www.parlamento.guy.uy](http://www.parlamento.guy.uy) on February 10<sup>th</sup>, 2010.

it was then that MYSU released a TV spot and a print campaign to make their arguments heard.<sup>41</sup>

Unfortunately for the women's movement, on May 4<sup>th</sup> 2004 the Senate rejected the bill by 17 votes against and 13 in favor. The bill was supported by most legislators from the *Frente Amplio*, but opposed by all the senators from the *Partido Colorado*, in part because President Batlle (*Partido Colorado*) had already threatened to veto the bill if it passed (the Colorado vote in the Lower Chamber, before the announced veto threat, was divided). The *Partido Blanco* took an institutional position against the bill, leaving no freedom to decide to its legislators. Immediately after the bill was rejected, the movement and the legislators who actively supported it made a public commitment to re-introduce a new bill the following year (Sanseviero 2007). Senator Margarita Percovich credited the women's movement with the bill advancing as far as it did: "*Fue fantástico el trabajo que hizo el movimiento, trabajo de despacho por despacho. Si no, no hubiera salido la ley [en la Cámara de diputados]. El trabajo que hicieron con los legisladores del Frente Amplio y del Partido Colorado fue estupendo.*" (The work done by the movement was fantastic, they went office by office. If it wasn't for them, the law would not have been approved [in the Lower Chamber]. The work they did with the legislators from the *Frente Amplio* and the *Partido Colorado* was spectacular).<sup>42</sup>

#### 6.1.5. Reducing maternal mortality caused by unsafe abortions

While the bill was being discussed in Congress, maternal deaths related to unsafe abortions in 2001 increased. A group of doctors from public hospital Pereira Rossell,

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<sup>41</sup> See TV spot and graphic campaign at <http://www.mysu.org.uy/ddssrr/afiches.php>

<sup>42</sup> Interview with Senator Margarita Percovich, Montevideo, September 6<sup>th</sup>, 2007.

responsible for having alerted the population about this increase, came together and created the group “*Iniciativas Sanitarias contra el Aborto Provocado en Condiciones de Riesgo*” (Sanitary Initiatives against Unsafe Abortion). The group received the support of the Medical School of Universidad de la República, the doctors’ union, and the OBGYN society of Uruguay (Sanseviero et al 2008). Together with women’s groups such as MYSU and Ruda,<sup>43</sup> they wrote a guide for hospitals and doctors on how to humanely treat women with unwanted pregnancies and those that had already had an abortion.<sup>44</sup>

This guide was submitted to the Ministry of Public Health on March 8<sup>th</sup>, 2002, and was approved on August 6<sup>th</sup> 2004.<sup>45</sup> This meant that the guide would be disseminated and implemented in hospitals throughout the country. However, by 2006 the norm was only being applied in Montevideo. CNS monitored hospitals and concluded that outside Montevideo there was almost no knowledge of these new norms by the health directors and coordinators of each center (MYSU 2007; CNS 2005).

#### *6.1.6. The coming to power of the Frente Amplio*

After the congressional defeat of the decriminalization bill in May 2004, the women’s movement worked hard to maintain the topic in the public debate. The movement appointed special speakers for TV debates on abortion. They had one speaker specialized in legal arguments, one in medical, one in social issues depending on who the opponent

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<sup>43</sup> Ruda is an NGO fighting for the decriminalization of abortion. The name refers to a plant women use to induce an abortion. Ruda participated mainly in the first year of this initiative, since some disagreement emerged between them and the doctors. Interview with Rafael Sanseviero, member of Ruda, former legislator and author of a bill to decriminalize abortion in the 1990s, Montevideo, October 19<sup>th</sup> 2007.

<sup>44</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007.

<sup>45</sup> Ministry of Public Health, Ordenanza No 369/2004.



was in the debate, ensuring a strong defense of their arguments and positions.<sup>46</sup> Since presidential elections were to be held at the end of the year, the movement pushed the Women's Agenda into the electoral campaign (Abracinkas and López Gómez 2004). The topic was so entrenched in the public realm than even when the politicians tried to avoid it, people would bring it up demanding that candidates state their positions on abortion and sexual and reproductive rights.<sup>47</sup>

When the 2004 general elections were won by the leftist *Frente Amplio* the women's movement was hopeful that the next legislature would quickly pass the abortion bill. Many *Frente Amplio*'s legislators have promised the women's movement that once they became government the first law to be introduced and passed was going to be that of sexual and reproductive rights.<sup>48</sup> However, these early high expectations would be quickly met with a new obstacle. As early as February 2005, a month before assuming power, elected President Vázquez announced that if the abortion bill was passed by Congress he would veto it. This public statement was accompanied by the exclusion of a bill on reproductive and sexual rights from the legislative agenda of the new government (Sanseviero 2007). His opposition to the decriminalization of abortion was so strong that his vice-president Nin Novoa publicly stated that "*Vázquez esta dispuesto a recorrer todos los caminos constitucionales para impedir que la iniciativa prospere*" (Vázquez is willing to resort to all constitutional means to prevent the bill from passing). Nin Novoa even stated that if the bill were to be passed by Congress and his veto overridden, the

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<sup>46</sup> Interview with CNS activist, Montevideo, September 4<sup>th</sup>, 2007.

<sup>47</sup> Interview with CNS activist, Montevideo, September 4<sup>th</sup>, 2007.

<sup>48</sup> Interview with Lilian Abracinkas and Alejandra López Gómez from MYSU in 2005 by Cotidiano Mujer. Viewed at <http://www.cotidianomujer.org.uy/2005/41p6.htm> on April 8th, 2007.

President could dissolve both Chambers.<sup>49</sup> Tabaré Vázquez later denied he would take such an extreme measure.<sup>50</sup>

The President made his personal position on abortion known to the public before the electoral campaign. However, his decision to veto the bill if approved by Congress was a surprise both for those in his party and for the women's movement. The veto threat created a strong controversy within the *Frente Amplio*. The President made a political decision that ran against the program of his party based on his personal position on the issue of abortion. His decision was attributed to his conservative family values, and the influence of his deeply religious wife and his son, who is a Catholic priest. Those *Frente Amplio*'s legislators in favor of the bill such as Margarita Percovich and Monica Xavier, met with Tabaré Vázquez to discuss this tension and it was agreed that the bill would be introduced but not until 2006. The rationale for this decision was to avoid internal tensions during the first year of the leftist government.<sup>51</sup> The agreement to reduce the pressure on the government on gender issues during this initial period was also respected by the women's movement.<sup>52</sup> The coming to power of a leftist administration for the first time in the history of Uruguay created a new scenario for social movements' activists in all fields. Many of their members were appointed to government offices, and those who remained in the movement were still unsure on how to interact with a government they

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<sup>49</sup> See *El Espectador* "Legisladores insistirán con el debate sobre el aborto," March 7th, 2006. Viewed on February 6th, 2010 at [http://www.espectador.com/lv4\\_contenido.php?id=63757&sts=1](http://www.espectador.com/lv4_contenido.php?id=63757&sts=1)

<sup>50</sup> See *Página 12*, "Tabaré amenaza con el veto" March 9th, 2006. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on March 9th, 2006.

<sup>51</sup> See interview with Margarita Percovich by the Argentine newspaper *Página 12* on April 12, 2005. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on April 13, 2005.

<sup>52</sup> Interview with activist within the women's movement, Montevideo, September 6<sup>th</sup>, 2007. Rafael Sanseviero also refers to the paralysis of the movement during the first year of Vázquez's government. Interview with Rafael Sanseviero, Montevideo, October 19<sup>th</sup>, 2007.

had voted for and wanted to see succeed.<sup>53</sup> The paralysis of mobilization was an almost natural consequence of the need to adapt to a new order of things. Mobilization decreased during 2005, but by 2006 the women's campaign regained new strength.

*6.1.7. A second try: The Abortion Debate 2006-08*

In 2006 a bicameral Women's Caucus (*Bancada femenina*) was added to that of the Lower Chamber which had been working since the year 2000 and had been so influential in the advancement of the abortion bill. This development enlarged the potential allies the movement could count on. However, the relationship with the legislators committed to a gender agenda was not without tensions and some resentment grew between them. The female legislators thought those in the movement did not appreciate that their room for maneuver was smaller than for those in civil society and that each of their decisions carried a political cost those in the movement did not have to risk.<sup>54</sup>

On March 8<sup>th</sup>, 2006 in the context of Women's day, the Coordination of women organizations re-launched the campaign in favor of the Sexual and Reproductive Health bill. The movement met in front of the President's residency in Montevideo and from there marched down the Avenue *18 de Julio*<sup>55</sup> demanding the discussion and approval of the bill. This same day, President Vázquez had planned an event to launch the First National Plan for Equal Rights and Opportunities. Women present at the event recounted to me that nobody clapped when he entered the Government Palace. Everybody limited themselves to waving the "orange hand" with the slogan "I vote in favor of Reproductive

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<sup>53</sup> Interview with CNS activist, Montevideo, September 4<sup>th</sup>, 2007.

<sup>54</sup> Interview with Nikki Johnson, Universidad de la República, Montevideo, September 6<sup>th</sup> 2007.

<sup>55</sup> The main street in downtown Montevideo.

Health,” forcing President Vázquez to change his speech and address the issue of abortion.<sup>56</sup>

On May 28<sup>th</sup>, 2006, the International Day for Social Action in favor of Women’s Health, the movement met in front of Congress and handed a letter to all legislators asking for an interview and calling attention to the need to discuss a new abortion bill. On June 6<sup>th</sup> *Frente Amplio*’s legislators Margarita Percovich and Monica Xavier introduced in the Senate a new bill on Sexual and Reproductive Rights, very similar to the one that had been rejected by the previous legislature. However, under the threat of the presidential veto, the Senate’s Health Committee, the first venue for debating the bill, did not include it in its agenda despite the persistent demands of legislators Percovich and Xavier.

It took a new action from within civil society to break this paralysis. On May 16<sup>th</sup> 2007 the news of a woman who was reported to the authorities by her doctor and prosecuted for the crime of abortion was all over the media. On June 1<sup>st</sup> of that same year the women’s movement organized a solidarity campaign with her. The campaign was based on a blog called “*Yo aborté*” (I had an abortion), open for people to publicly admit they had had an abortion or supported somebody that did.<sup>57</sup> The media broadly covered the event ensuring the diffusion of the action beyond the initial feminist circles. In just one month 9,000 people had left their testimony on the blog. This action was effective in that it broke the abstract character of the legislative debates on abortion relating the issue

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<sup>56</sup> Interview with Alejandra López Gómez, MYSU, Montevideo September 5<sup>th</sup>, 2007. See also article by Lilian Celiberti on Cotidiano Mujer. Viewed at [www.cotidianomujer.org.uy](http://www.cotidianomujer.org.uy) on April 20<sup>th</sup>, 2007.

<sup>57</sup> See [www.despenalizar.blogspot.com](http://www.despenalizar.blogspot.com)

to specific personal experiences.<sup>58</sup> In addition, it radicalized the debate in that these 9,000 people were openly admitting they have violated the current law criminalizing abortion (Sanseviero 2007). It was a clear action of civil disobedience.

The blog's success was key to re-launching the debate in Congress in 2007 (Sanseviero 2007).<sup>59</sup> Among the 9,000 people that signed the statement were eight of President Vázquez's government ministers,<sup>60</sup> signaling dissension within the administration. On June 29<sup>th</sup> a document with 6,000 signatures was presented to Vice President Nin Novoa.<sup>61</sup> He sent the signatures to Congress with a call to re-open the debate on this issue. His public statement in favor of the decriminalization of abortion and his commitment to promoting its discussion by Congress was a new strike against Vázquez's threat. The following week, the Senate's Health Committee included the bill in the agenda (Sanseviero 2007).

When the Health Committee took up the bill, its members agreed to hear expert testimony from doctors and lawyers,<sup>62</sup> but not from representatives of MYSU, CNS, *Cotidiano Mujer* and some pro-life organizations, who the Committee decided had already been heard during the discussion in the previous congressional period. After

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<sup>58</sup> Interview with Rafael Sanseviero, member of Ruda and former legislator for the Communist Party, Montevideo, October 19, 2007.

<sup>59</sup> See interview with Dr. Lionel Briozzo by newspaper *Página 12* "Uruguay, el turno de discutir la legalización" October 15<sup>th</sup>, 2007. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on October 15, 2007.

<sup>60</sup> These were: Minister of Social Development (Marina Arismendi), Interior (Daisy Tourne), Housing (Mariano Arana) and Foreign Affairs (Reinaldo Gargano). Four vice ministers, including those of Defense (José A Bayardi) and Tourism (Lilian Kechichian), also signed.

<sup>61</sup> See *La República*, "Entregan hoy 6,000 firmas en solidaridad con procesada por abortar", June 29<sup>th</sup>, 2007. Viewed on July 30<sup>th</sup>, 2007 at [www.larepublica.com.uy](http://www.larepublica.com.uy)

<sup>62</sup> See Comisión de Salud Pública, notes on the session on August 28<sup>th</sup>, 2007.

studying the bill, Committee members proceeded directly to vote on September 11<sup>th</sup>, 2007, approving the bill by a 4-2 votes out of 6.

On the eve of the bill's introduction in the Senate's plenary session, MYSU published a leaflet on September 24<sup>th</sup> that detailed the abortion situation in Uruguay and the bill under discussion, which was inserted in *La Diaria*. The leaflet included information on the demonstration called for September 28<sup>th</sup>, the international day for the decriminalization of abortion, to support the bill.<sup>63</sup> On this date MYSU launched a new campaign called "*Sin la despenalización del aborto no hay ley de derechos sexuales y reproductivos*" (Without decriminalization of abortion there is no sexual and reproductive rights bill). The movement's goal in launching this campaign was to stop senators from negotiating to trade approval for the parts of the bill that dealt with other aspects and sexual and reproductive rights at the expense of excluding the provisions decriminalizing abortion. By calling attention to the bill as a whole, organizers hoped to bolster their argument that the bill would be undermined if any part were to be rejected.<sup>64</sup>

On October 17<sup>th</sup>, 2007 the Senate vote on the bill ended in a deadlock, with 15 votes in favor and 15 against. This situation generated a propitious context among the movement and the legislators introducing the bill to accept the idea of a referendum on the issue on abortion, a proposal that had been introduced by legislator Washington Abdala since 2004<sup>65</sup> (Abdala 2007).

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<sup>63</sup> See leaflet at [http://www.mysu.org.uy/publicaciones/pdf/cuadernos/separata\\_10.pdf](http://www.mysu.org.uy/publicaciones/pdf/cuadernos/separata_10.pdf)

<sup>64</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007.

<sup>65</sup> See *La República*, "Cobra fuerza la posibilidad de efectuar una consulta popular", October 18th 2007. Viewed at [www.larepublica.com.uy](http://www.larepublica.com.uy). on October 19th, 2007

In the meantime, the bill went back to the Senate Health Committee to debate some amendments. There, the change of heart of some Senators offered the bill new life. One of the *Frente Amplio*'s legislators, Alberto Cid, who although personally in favor of the decriminalization of abortion had voted against the bill in October to avoid creating problems for the Vázquez administration, hinted he might change his vote in a future election after the chief of this party, Dario Astori from *Asamblea Uruguay*, harshly criticized him and ordered him to change his vote. In addition, two legislators that were absent from their seats on October 17<sup>th</sup> stated they might vote in favor of the bill if re-introduced to the plenary session.<sup>66</sup> In the end, on November 6<sup>th</sup>, the Senate approved the bill by a margin of 18 to 13.<sup>67</sup> The bill was ready to move to the Lower Chamber.

The women's movement and the legislators sponsoring the bill were confident that the discussion in the Lower Chamber would end in a positive note given the *Frente Amplio*'s majority presence. However, the bill did not have as easy a time as expected. On July 2008 the bill was still being discussed in the Chamber's Health Committee. As some civil society organizations reported, at the time the bill had already been discussed in Congress for 208 hours, with 116 people – among them doctors, lawyers, psychologists, sexual educators, priests, rabbis, academics and activists -- having expressed their opinions.<sup>68</sup> On November 2008 finally the Lower Chamber was ready to vote on the bill. At this time, President Vázquez reminded the deputies that he would veto

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<sup>66</sup> These were former president Julio Maria Sanguinetti (Partido Colorado) and Julio Lara (Partido Blanco). See *Página 12*, “Una nueva chance legislativa para despenalizar el aborto en Uruguay” November 6th 2007. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on November 6th 2007.

<sup>67</sup> See Diario de Sesiones de la Cámara de Senadores No 181, Tomo 446, November 6, 2007.

<sup>68</sup> See *Página 12*, “Casi despenalizado (otra vez)”, July 18<sup>th</sup> 2008. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on July 18th 2008.

the bill if passed, and the archbishop of Montevideo, Nicolas Cotugno, threatened to excommunicate all those who voted in favor.<sup>69</sup>

After two days of congressional debate accompanied by outside demonstrations organized by both the women's movement and those identified as pro-life, on November 6<sup>th</sup> 2008 the Lower Chamber finally voted on the bill approving it by one vote (49 to 48). All the votes in favor of the bill were from the *Frente Amplio*'s legislators. After the bill was passed in Congress the *Frente Amplio* petitioned President Vázquez to refrain from vetoing it.

#### *6.1.8. Foretold Finale. President's Vázquez veto*

Ignoring the requests from his party, on November 13<sup>th</sup>, Vázquez vetoed the chapter of the bill which contained the provisions to decriminalize abortion, citing philosophical and biological reasons to justify his decision. Health Minister Maria Julia Munoz jointly signed the document.<sup>70</sup>

Immediately the women's movement organized a demonstration to reject the veto under the slogan "Defend freedom, defend democracy."<sup>71</sup> The CNS released a press release stating that "*Su voluntad no representa la voluntad del país*" (Your will does not represent the will of the country) and described the veto as an "authoritarian act."<sup>72</sup>

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<sup>69</sup> See *Página 12*, "Aborto entre el veto y la excomuni3n" November 4th 2008. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on November 4th, 2008.

<sup>70</sup> Presidential text accompanying the veto in Abracinskask and L3pez G3mez 2009. See also newspaper Clarin, "Uruguay: Tabar3 firm3 el veto al aborto legal" November 14<sup>th</sup>, 2008. Viewed at [www.clarin.com.ar](http://www.clarin.com.ar) on November 14<sup>th</sup> 2008.

<sup>71</sup> See *P3gina 12*, "El rechazo veloz para un derecho" November 14th, 2008. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on November 14th 2008.

<sup>72</sup> See *Clar3n*, "En Uruguay el veto a la ley de aborto enfrenta a Tabar3 con su partido" November 15<sup>th</sup>, 2008. Viewed at [www.clarin.com.ar](http://www.clarin.com.ar) on November 15th, 2008.



Constitutionally, the veto could be overridden if a bill receives in each chamber the support of 3/5 of the votes, approximately 18 senators and 60 deputies. At the time the *Frente Amplio* lacked this super majority, but still insisted on calling for a General Assembly session to discuss the veto. The result was as predicted, failing to repeal the veto by eight votes in the Lower Chamber and one vote in the Senate.<sup>73</sup> The *Frente Amplio* legislators promised to re-introduce the bill in the 2010 Congress.

## 6.2. Systematizing state response

To make more systematic the government response to the women's movement, I coded state responses, following Schumaker and Kitschelt's previous work, along five dimensions (Schumaker 1975; Kitschelt 1986): 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1). Table 4.1 summarizes the analysis of these dimensions for the Uruguayan case.

To review, although the women's movement in Uruguay had demanded the decriminalization of abortion since the democratic transition, it was not until 2001 that an articulate, organized, and focused campaign on this issue emerged within the movement.<sup>74</sup> Even though the campaign began relatively late in the period considered here (1985-2009), it is nonetheless important to analyze the early years in which the movement was very weak in order to compare its impact in different contexts. If the government had done something to advance the decriminalization of abortion in the

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<sup>73</sup> See *Página 12*, "La Asamblea que no pudo con el veto" November 21<sup>st</sup>, 2008. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on November 21st, 2008.

<sup>74</sup> On May 28<sup>th</sup> 2001 MYSU and CNS launch the campaign for the decriminalization of abortion with a panel on the topic in Montevideo's city government building.

absence of a strong movement, the hypothesis that the movement was needed for such a policy to be implemented would be disproved.

The first dimension of state response, *access*, is measured in two different ways: first by the number of times the women's movement met with the president, and second, by the number of incidents of repression the group suffered under each administration. As it is shown in Table 6.2, the women's movement got to meet with the president only once, under the Vázquez administration. Nonetheless, since the movement only launched a campaign for the decriminalization of abortion in 2002, only President Batlle can be considered to have ignored the movement. No information was found on the movement's request to meet with previous presidents.

MYSU, CNS CLADEM and 60 other women's organizations that formed part of the decriminalization of abortion campaign had been trying to meet with President Vázquez since he was elected to office in October 2004. When they requested an interview, they were referred to Vice President Nin Novoa, but no meeting with the Vice President ever took place. On March 2006 the movement wrote to the President, once again requesting an interview. They were again referred to the Vice President because the "busy presidential agenda could not accommodate them."<sup>75</sup> President Vázquez finally met with the women's organizations on March 2007. In accordance with his position against decriminalization, he was not very receptive to the movements' demands. He even asked the movement to delay the abortion debate until 2010 when he would have left office, which the movement obviously rejected (Sanseviero 2007).<sup>76</sup>

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<sup>75</sup> See letters sent to President Vázquez at <http://www.cladem.org/espanol/nacionales/uruguay/presidenteescuchar.asp>

<sup>76</sup> Interview with Alejandra López Gómez, MYSU, Montevideo, September 5<sup>th</sup>, 2007.

TABLE 6.2.

## STATE RESPONSE TO WOMEN'S MOVEMENT

## FOR THE DECRIMINALIZATION OF ABORTION IN URUGUAY. 1985-2010

<b>Dimensions</b>	<b>Sanguinetti 85-90</b>	<b>Lacalle 90-95</b>	<b>Sanguinetti 95-00</b>	<b>Battle 00-05</b>	<b>Vázquez 05-10</b>
1.1. Access. No of meetings with the President	0	0	0	0	1
1.2. Access. No of incidents of repression	0	0	0	0	0
2. 1. Agenda Setting. Inclusion of decriminalization of abortion in party's platform.	<i>Partido Colorado:</i> pro decriminalization	<i>Frente Amplio:</i> pro decriminalization		<i>Partido Blanco:</i> right to life from conception	
2.2. Agenda Setting. No. of bills related to abortion introduced in Congress	Pro: 1 Against: 0	Pro: 2 Against: 0	Pro: 1 Against: 0	Pro: 2 Against: 0	Pro: 1 Against: 1 Neutral: 1
3-Government Policy. Pro or against decriminalization of abortion		Pro: Cairo Conference declaration Against: Ministerial resolution on therapeutic abortion. Decree on doctor's conduct.		Pro: <i>Iniciativas Sanitarias</i> Against: Senate rejects bill.	Pro: Congress approves bill. Against: Presidential veto. Resolution on the use of misoprostol.
4-Policy Output. No of prosecutions for the crime of abortion	1989:8	1990-95: 105. Annual average: 17.5	1996-97: 11. Annual average: 5.5	200-01: 36. Annual average: 16	No data available.
5-Institutional Change: creation of government institutions related to sexual and reproductive rights	1987. National Institute for Women	1991. National Institute for the Family and Women. Command for the Fight Against Criminal Abortion.	1997. Honorary Commission on Norms on Sexual and Reproductive Health	2004. National Commission on Sexual and Reproductive Health	2005. National Institute of Women. National commission to monitor and reduction of maternal deaths. 2006. Commission on the Interruption of Pregnancy

The women's movement suffered no incidents of repression in the years in which it organized large public demonstrations to advance its cause during either the Batlle or the Vázquez administrations. Prior to the year 2000 there are no records of these events and therefore no repression of them either.

The second dimension of state response, agenda *setting*, is measured first by taking into account if the issue of abortion has been included in the platforms of the main political parties and alliances (*Partido Colorado*, *Partido Blanco* and *Frente Amplio*), and second, by counting the number of bills that were introduced in Congress (whether or not they were passed) that seek to legislate on the issue of abortion. This measure takes into account whether these bills would have advanced the movement's cause or to the contrary, set it back.

In terms of the first measurement, the issue of abortion has surprisingly been included in the platform of the three parties, although with different positions. In 1984, the *Partido Colorado* released a document called Program of Principles in which it stated that “*el Partido incentivara en todos los ámbitos la difusión de programas de información y educación sexual que pongan énfasis en la dignificación de las relaciones sexuales y en el deber de la paternidad responsable. Paulatinamente y con arreglo a criterios técnicos precisos, se consagrará el criterio de que el aborto consentido no es delito*” (The Party will encourage all programs of sexual education and information as long as they emphasize the dignity of sexual relations and the duties that go with responsible parenthood. In addition, attending to precise technical criteria, it will gradually seek that

consensual abortion should not be classified as a crime).<sup>77</sup> This document was voted and agreed on by the National Convention of the party in 1984. Nonetheless, even though the decriminalization of abortion has been part of the party's program of principles since the beginning of the democratic transition, the *Partido Colorado* as an institution has not done anything to advance the issue. Rather, the abortion issue has divided the party. The first bill introduced to Congress in 1985 that proposed the decriminalization of abortion was sponsored by two legislators from this party: Victor Vaillant and Daniel Lamas. However, it was never discussed in any congressional committee, even though the party had won the presidential elections and had a majority in congress. The issue had no priority on the party's congressional agenda. More recently, the most active member of this party on the issue of abortion has been legislator Glenda Rondán, a key member of the *Bancada Femenina*. However, the cases of these *Colorado* legislators have been the exception. A majority of the party opposes decriminalization, as evidenced in their votes against it when the various bills were discussed. President Jorge Batlle (2000-2005), a *Colorado*, threatened to veto the bill on sexual and reproductive rights being discussed in Congress during his administration. His threat strongly influenced the way the party's legislators voted. When the first bill was voted on in Congress in 2002, only eight of thirty-three *Colorado* deputies supported the bill. In the Senate, only one of eleven voted in favor (Jones 2007).

In 1989 the *Frente Amplio* stated in its electoral platform that the party “*estudiará un nuevo marco legal que respalde a la mujer ante la necesidad de interrupción del embarazo y que le garantice condiciones sanitarias adecuadas*” (will study a new legal framework to support women who need to interrupt their pregnancies and guarantee

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<sup>77</sup> See Programa de Principios Del Partido Colorado, 1984, pag. 85

adequate sanitary conditions for this practice).<sup>78</sup> The *Frente Amplio* has been, consistent with its platform, the most active party in Congress in advancing the decriminalization of abortion. As early as 1993 party legislators sponsored the first bill on this issue ever to be discussed in Congress (though it never reached the plenary session) as well as the 2002 and 2006 bills, and when these bills were voted on in Congress, most of the party voted in favor of them.

Finally, the *Partido Blanco* has consistently stated its opposition to abortion in its declaration of principles. In 2002, at the beginning of the abortion debate in Congress, former deputy Javier Garcia presented a motion at the party's National Convention to include the principle that "life starts right after conception" among the party's principles. The motion was approved and since then the party has mandated its legislators to vote against all bills that contradict this principle. Party discipline has been maintained in most cases. In 2004 only one deputy out of 22 of the *Partido Blanco* voted in favor of the bill on sexual and reproductive rights. In the Senate all of the party's legislators voted against it.

The fact that the three main parties have included some statement related to the issue of abortion in their platforms and principles shows the topic has been part of political debates since the democratic transition. Although this presence did not translate into congressional debates until the year 2002, it is a sign that politicians were more open to discuss the issue than in the neighboring countries in which no major political party had a reference to it in their platforms (See chapters 7 and 8).

The second way of measuring if abortion has been on the political agenda is to look at the number of bills introduced in Congress per administration and how far in the

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<sup>78</sup> Plataforma electoral del Frente Amplio, June 4<sup>th</sup> 1989, pag 11.

legislative process they reached. These bills are coded as being in favor, against or neutral in reference to the movement's demand of decriminalization. As seen in Table 4.1, in each congressional period since the democratic transition there was at least one bill proposing the decriminalization of abortion. The first bill was the above-mentioned one introduced in 1985 by the *Partido Colorado* that proposed the decriminalization of abortion based on a woman's decision. It was never discussed in any congressional committee (Abracinkas and López Gómez 2007). In the following congressional period (1990-95), two bills were introduced. The first, introduced by the *Frente Amplio* deputy Daniel Diaz Maynard, limited itself to the decriminalization of abortion in cases of rape. The other was introduced by legislators from the three major parties in the Lower Chamber. This bill was the result of the initiative of Communist Party deputy Rafael Sanseviero who began an extensive consultation with civil society groups such as feminist organizations, lawyers and doctors. The bill was the first one to be discussed in a congressional committee thanks to the previous work done by its sponsors to ensure a broad consensus around it.<sup>79</sup> Although it was approved by the congressional Committee on Bioethics, since 1994 was an electoral year the bill never reached the plenary session and was never voted on.

In the following congressional period (1995-00) a new bill was introduced to decriminalize abortion. However, it was never discussed in any congressional committee. It was only in 2001 that the first bill on this issue reached the plenary session and was actually approved by the Lower Chamber (it was rejected in the Senate).

In the last congressional period studied here (2005-10) a new bill on sexual and reproductive rights was introduced which proceeded even further in the legislative

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<sup>79</sup> Interview with Rafael Sanseviero, Montevideo, October 19, 2007.

process. This time the bill was approved by both the Lower Chamber and the Senate, but vetoed by President Vázquez. Two other bills related to abortion were introduced during this administration. For the first time there was a bill against the women's movements demands. On August 2008 five deputies from the *Partido Blanco* introduced a bill to protect the human embryo. The bill never reached the plenary session. Unlike in Argentina and Chile, where paradoxically the probability of having the decriminalization of abortion approved was much lower than in Uruguay, (no bill was ever discussed in Congress and all were archived; see Chapters 7 and 8), pro-life groups and legislators in those countries nonetheless introduced numerous bills to protect the sanctity of life from the time of conception. In Uruguay however, where the decriminalization of abortion is closer and closer each day, the opposition has not chosen to fight back through the introduction of new bills. Given that laws to decriminalize abortion have majority support in Congress, the opposition instead has relied mostly on public demonstrations, lobbying and threats of excommunication from the Catholic Church.

A third bill introduced during this last congressional period was sponsored by Deputy Washington Abdala from the *Partido Colorado*. It is here coded as neutral with respect to the women's movements' demands since it proposes a referendum to consult the population on the issue.

In the 25 years since the democratic transition, both legislators and the women's movement have pushed legislation along toward the decriminalization of abortion. Each legislative session saw a bill introduced, and in each the bill progressed one step further. Most observers actually expect that a bill will be introduced in this new congressional period (2010-15) and that finally the decriminalization of abortion will be a reality in



Uruguay. The *Frente Amplio* has enough legislators to approve it in Congress and newly President José Mujica has already expressed his support, eliminating the obstacle former President Vázquez presented with his veto.

The third dimension, *government policy*, deals with whether administrations have advanced the movements' demands or stalled them. To summarize briefly our earlier discussion, although the decriminalization of abortion has not yet been achieved some initiatives have been implemented. For instance, in 1994, under the Lacalle administration, Uruguay signed the final declaration of the International Conference on Population and Development in Cairo, which framed the issue of abortion as a public health problem and called on countries to reduce maternal mortality due to abortion.<sup>80</sup> This laid the grounds for the creation of the *Comisión Nacional de Seguimiento por Democracia, Equidad y Ciudadanía* (National Commission for Democracy, Equality and Citizenship, CNS), a group of women's organizations committed to Uruguay's compliance with all the international agreements signed related to women's rights. However, not much was accomplished in terms of fulfilling Cairo's goals under this administration. Uruguay's formal ratification was not motivated by an actual commitment to legislate and take measures to guarantee sexual and reproductive rights in Uruguay. Under Lacalle a 1991 ministerial resolution<sup>81</sup> on the issue of therapeutic abortions (those performed to preserve the health of the mother), for example, introduced new restrictions, not present in the 1938 law, on the practice of these kinds of abortions, such as the requirements that a father consent and the physician performing the abortion

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<sup>80</sup> See Cairo declaration 1994 at <http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm#chapter7>

<sup>81</sup> Ministry of Public Health, Ordenanza 5/1991

consult the Command for the Fight of Criminal Abortions before proceeding. In addition, this resolution contradicted the 1938 law since it required the doctor to report the name and personal information of the patient requesting the therapeutic abortion, while the law guarantees the patient's anonymity (Sanseviero and Rostagnol 2008).

A second measure of the Lacalle administration's actions to stall sexual and reproductive rights was a 1992 presidential decree to govern doctors' conduct in relationship to abortion.<sup>82</sup> Article 2 states that the doctor must defend human rights while practicing his profession in particular "*el derecho a la vida a partir del momento de la concepción*" (the right to life from the moment of conception). Doctors were directed to reject any direct or indirect participation in any violation of those rights.

On the positive side of the ledger, the Batlle administration via a ministerial resolution put the *Iniciativas Sanitarias* into effect in all public hospitals.<sup>83</sup> In 2004 the Health Ministry approved this guide designed to help hospitals provide humane and supportive treatment for women with unwanted pregnancies and those that had had an abortion. Although a positive step, the guide has been applied unevenly throughout the country, as we shall see in the next section. Also during the Batlle administration, a bill on sexual and reproductive rights including the decriminalization of abortion was discussed in Congress for the first time. Although the Lower Chamber approved it, it was rejected by the Senate in part due to Batlle's veto threat.

Under the Vázquez administration, a new bill on sexual and reproductive rights was introduced and approved by Congress, but was vetoed by the President. In addition, a

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<sup>82</sup> Decree 258/1992

<sup>83</sup> Ministry of Public Health, Ordenanza No 369/2004

new ministerial resolution limited access to safe abortions by prohibiting doctors from prescribing the drug Misoprostol, recommended by doctors as the safest way to induce an abortion,<sup>84</sup>, and instead leaving all decisions about its use to the chief of gynecology of the hospital where a patient is hospitalized (Sanseviero and Rostagnol 2008). Even under a leftist president such as Vázquez women's movements may have a hard time advancing their demands.

The fourth dimension of state response, *policy output*, corresponds to the extent to which the policies described in the previous dimension are being implemented. Because the main demand of the women's movement in each of the three cases for the decriminalization of abortion has not been accomplished, it is not possible to measure how well this policy has been implemented. Instead, I will analyze the implementation of the current abortion law and of any initiatives that are paving the way towards easier access to a free, legal and safe abortion.

In Uruguay, the 1938 law criminalizes abortion in all situations, except if the abortion is performed during the first trimester to “guard the honor of the woman,” in cases of rape, risk to the mother's health, or the lack of economic means. However, it was left to the judge hearing the case to eliminate or reduce the penalty. In spite of this restrictive law, it is estimated that 33,000 abortions take place in Uruguay every year (Sanseviero and Rostagnol 2008). In addition, there have been almost no convictions for this crime in the history of the law. Table 4.2 shows just how few cases reach the judicial system -- an average of 13 out of an estimated total of 33,000 abortions per year.

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<sup>84</sup> Ministerial resolution 158/2006

The non-enforcement of the 1938 law was one of the main arguments used by the women's movement and those legislators advancing the bill on sexual and reproductive rights to push for reviewing and debating it in Congress.

TABLE 6.3  
NUMBER OF PROSECUTIONS FOR THE CRIME OF ABORTION  
IN URUGUAY  
1989-1997

Year	No of women prosecuted for having an abortion	No of those prosecuted for performing an abortion	No of those prosecuted for death or injury to a woman during an abortion	Total
1989	6	2	0	8
1990	13	1	0	14
1991	9	9	0	18
1992	29	8	0	37
1993	7	5	0	12
1994	8	7	1	16
1995	3	3	2	8
1996	3	1	0	4
1997	4	3	0	7
2000	-	-	-	16
2001	-	-	-	16

*Source: Instituto Técnico Forense in Sansevierio 2007: 174.*

Although Uruguay has not yet accomplished the decriminalization of abortion, two important initiatives have broadened access to a safe abortion (although still illegal) for many women. The first, the *Iniciativas Sanitarias*, was explained in detail in the first section of this chapter. This guide allows doctors to *inform* women of the much lower risks of inducing an abortion with the Misoprostol drug than having an unsafe abortion using traditional methods. However, doctors are not allowed to *suggest the use* of this

drug, *prescribe* it, or *give it* to their patients. The Batlle's government decision to embrace the guide written by doctors and women's organizations was a positive step in the struggle towards the decriminalization of abortion. However, the government counteracted this measure when the Health Minister took the cheapest form of this drug out of circulation, closing access to this option for many women. According to Senator Percovich, this was a negotiated agreement between the government and conservative religious sectors that were opposed to the approval of the guide.<sup>85</sup>

Since the implementation of the guide in the main maternity hospital of Montevideo, Pereira Rossell, Dr. Lionel Briozzo reported that no woman had died due to an unsafe abortion.<sup>86</sup> However, outside Montevideo the guide is not being implemented. The CNS monitored hospitals and concluded that outside the capital city there was almost no knowledge of these new norms by the health directors and coordinators of each center (MYSU 2007; CNS 2005). The CNS concluded in one study that the Vázquez government had displayed an “ambivalent” relationship to this guide, neither repealing it nor promoting it, allowing its use in the Pereira Rossell hospital but not pushing for its implementation in the rest of the country (CNS 2005).

Given this reality the women's movement came to the conclusion that the diffusion of information about this ministerial resolution was critical if the guide were to be implemented successfully: the more people that knew about it, the more they could demand better treatment in pre- and post-abortion situations. If the government was not going to do it, the movement had to. This was the reason behind MYSU's work to

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<sup>85</sup> See interview with Margarita Percovich by the Argentine newspaper *Página 12* on April 12, 2005. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on April 13, 2005.

<sup>86</sup> See *La República*, “Uruguay. El turno de discutir la despenalización” October 15, 2007.

promote this guide within approximately 200 neighborhood networks and organizations throughout the country.<sup>87</sup> However, even with this large civil society initiative, MYSU's 2008 annual report on sexual and reproductive rights reports that only one out of ten women were aware of the existence of consultation service for situations of unwanted pregnancies or post abortion (MYSU 2008).

Finally, the last dimension of state response corresponds to the *creation of government institutions* to address the women's movement demands. This section will analyze first the creation of state institutions to deal with women's issues in general and second, those specifically related to sexual and reproductive rights, focusing in particular on the role that women's movements had in their design, staffing, and policies.

In 1987, the Sanguinetti administration established the first institution related to gender issues in Uruguay, the National Institute for Women, which was located within the Ministry of Education and Culture. In 1991 the Lacalle government replaced this with a new national agency: the National Institute for the Family and Women (INFM). Its goals were to promote, plan, execute, and evaluate national policies related to women and the family. Although the INFM was created to respond to the women's movement demands for such an institution (CLADEM 2002), it did not appoint consultants from other government agencies or civil society groups (MYSU 2007). In a 2002 report on gender issues in Uruguay CLADEM charged that Uruguayan institutions created to protect women's rights since the democratic transition were underdeveloped, lacked

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<sup>87</sup> See MYSU's website for more information about this campaign at <http://www.mysu.org.uy/ddssrr/comunidad.php>

adequate budgets,<sup>88</sup> and had no institutional authority to organize meaningful activities to fulfill their goals (CLADEM 2002). The CEDAW Commission joined this criticism in its 2002 report.

The INFM was left unreformed throughout the Sanguinetti and Batlle administrations. In 2005, under President Vázquez, its name was changed to the National Institute for Women (INAMU), it began to work under the new Ministry of Social Development, and its goals were redefined to include not only the design and execution of gender policies but also their evaluation and coordination with other state agencies with responsibilities on gender issues (CNS 2007). Despite these changes, a 2008 joint report by CLADEM, CEDAW and the Uruguayan NGO Ruda still criticized the lack of adequate human and financial resources of the Institute. In addition it recommended granting INAMU ministerial rank so that it could actually comply with its stated mission and goals.

The first institution specifically designed to address the issue of sexual and reproductive rights, the Command for the Fight Against Criminal Abortion, was created in 1991 during the Lacalle administration. Although most of the documents related to the functioning of this commission are still not available, Rafael Sanseviero obtained information about the goals and activities of this entity through interviews with some of its members (Sanseviero and Rostagnol 2008). He reports that the goal of this commission was to authorize abortions requested by doctors as long as they conformed to the exceptions allowed in the 1938 law. This institution added a step not contemplated in this law. In allowing the hearing judge to reduce or eliminate the penalty for abortion in cases such as the honor of the woman, rape, the health of the mother and the lack of

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<sup>88</sup> According to CLADEM its budget during the period 1996-2000 has been of 0.001% of the GDP.

economic means, the law intended for the judge to consider the circumstances of an abortion only once the case had reached the courts. The creation of this commission, however, interjected a politicized moment which preceded the practice of the abortion (Sanseviero and Rostagnol 2008). According to the 1938 law all abortions are illegal and subject to prosecution, however this commission instituted the de-criminalization of the practice under some circumstances to be evaluated by its members. Sanseviero and Rostagnol report that since the creation of this commission in 1991 until 2008, the average number of cases referred to it were four per month. There is no information available regarding in how many of these cases the practice of an abortion was allowed. In 2006 under President Vázquez this commission changed its name to the “Commission on the Interruption of Pregnancy.”<sup>89</sup> Only its name and members have changed; its goals and functions remain the same. In 2006 the commission took a small step forward in allowing an abortion for the first time for lack of economic means <sup>90</sup>(Sanseviero and Rostagnol 2008).

In 1997 under President Sanguinetti the Ministry of Public Health created the Honorary Commission on Norms on Sexual and Reproductive Health. This institution reached out to different social, academic and government actors including the MYSU, which represented women’s organizations. However, the new Health Minister appointed by the Batlle administration in 2000 largely ignored the commission’s work (CLADEM 2002).

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<sup>89</sup> Ministry of Public Health, Ordenanza 890/2006.

<sup>90</sup> This was the case of a homeless woman which tried to commit suicide numerous times.



In February 2004, the Batlle administration created the National Commission on Sexual and Reproductive Health<sup>91</sup> to comply with the goals laid out by the newly created Mercosur Intergovernmental Commission on this topic. Like the 1997 commission, it incorporated such civil society organizations as the MYSU and CNS. In addition, the commission was comprised by representatives of the Ministry of Public Health, the School of Medicine, the School of Psychology, the Gynecology Society of Uruguay, the Congressional Commission on Equality and Gender, and the municipal governments. Although the Commission formally began its work in April 2004, it held no meetings between December 2004 and July 2005. This lapse was due in part to the change of government (Vázquez assumed power in March 2005), but it was also attributed to foot-dragging. CNS reported that it was necessary for women's organizations to pressure the Vázquez government to refocus the Commission to renew its work (CNS 2005). During the second half of 2005 the Commission met with the Minister of Public Health to discuss three priority problems: unsafe abortions, the need to promote the guide on pre- and post-abortion medical services, and the lack of public awareness about the work of the Command to Fight Criminal Abortions (CNS 2005). However, the government seems to have ignored the Commission's recommendations. As mentioned above, the guide is not being implemented in hospitals outside of Montevideo (MYSU 2008), and information about the Command is still limited (Sanseviero and Rostagnol 2008).

In 2005 the Vázquez administration created the National Commission to monitor and reduce maternal deaths caused by pregnancy, birth, C-section, post-partum

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<sup>91</sup> Ministry of Public Health, Ordenanza 147/2004.

complications, and abortion.<sup>92</sup> It was made up of representatives of governmental agencies and scholars from the Universidad de la República. The goals of this commission were clear from its title.

### 6.3. Conclusion

The Uruguayan women's movement has been the most active and successful of the three movements analyzed in this dissertation. The key to its success has been its close partnership with politicians in Congress and the broad alliances it managed to establish with other relevant social actors such as doctors and unions. However, despite its strength and how close it has come to winning the decriminalization of abortion, it has yet to reach its goal. The movement may have enjoyed a close working relationship with many members of Congress, but it lacked access to the President. Given the power of the Uruguayan president (like that of its Chilean and Argentine counterparts), presidential opposition is the last obstacle standing in the way of the decriminalization of abortion to become a reality in Uruguay. The prospects for the removal of this final hurdle under current President José Mujica are pointing in the right direction for the movement.

The women's campaign had a strong impact on particular state decisions, including the congressional discussion of the 2002 and 2006 bills on sexual and reproductive rights, as we saw in the first section of this chapter. Movement activists as well as legislators have acknowledged the key role the campaign played in these legislative successes.<sup>93</sup> These movement activists mapped out and influenced legislator's positions on the issue, provided legislators that sponsored the bill with the technical support, staged constant

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<sup>92</sup> Ministry of Public Health, Ordenanza 759/2005

<sup>93</sup> Interviews with Alejandra López Gómez, Nikki Johnson, CNS activist, and Margarita Percovich.

demonstrations outside Congress while the bills were being discussed, waged a campaign to make citizens aware of the issue of abortion, promoted the bill throughout the country, and forged strategic alliances with other social actors in their push to change abortion laws.

Beyond their influence in Congress, women's organizations also played a role in the creation and design of government institutions pertaining to women's issues in this field. In 1991 the Lacalle government created the National Institute for Women and Family in response to the women's movement demand for such an institution (CLADEM 2002). Although the institute lacked human and financial resources, it was nonetheless an important first step. In addition, since 1997 women organizations such as MYSU and CNS have participated in government institutions designed to promote sexual and reproductive rights such as Sanguinetti's Honorary Commission on Norms on Sexual and Reproductive Health and Batlle's National Commission on Sexual and Reproductive Health, and in 2005 when the commission was inactive, successfully pressed the Vázquez administration to convene it.

Finally, women's organizations such as MYSU and RUDA played a role in the writing of the *Iniciativas Sanitarias* to promote the humane treatment of women in pre- and post-abortion situations in hospitals, which sharply decreased the number of maternal deaths due to unsafe abortions in Montevideo. Although this guide has not been evenly promoted and implemented across the country by the Uruguayan government, the movement has taken this challenge on itself and it is reasonable to expect that its work with local communities will soon show similar results in the rest of the country.

In sum, the women's movement did not present a strong and organized front for the decriminalization of abortion until the year 2001. Although women's organizations had voiced such a demand earlier, they had not launched a dedicated campaign to advance this issue. The women's movement was significant in moving the abortion debate forward in Uruguay. In the 1980s and 1990s the abortion issue was mentioned in two of the major party's platforms and some legislators even introduced bills to liberalize abortion, but absent a strong movement there was a lack of general attention to the abortion issue and these bills failed. This changed once a strong partnership was established between the women's movement and some female legislators in 2001; the topic became increasingly more visible both in the political and social agenda, and legislative successes finally arrived. The fact that the movement only began its campaign for the decriminalization of abortion 15 years after the democratic transition allows us to compare the initial democratic period (1985-2000) in which the movement was weak with the post-2001 period when it was strong. This comparison illustrates the need for a strong movement in order for an issue such as abortion to be debated in the political and social realms. We return to this claim in Chapter 9.

## CHAPTER 7

### THE IMPACT OF THE WOMEN'S MOVEMENT ON STATE POLICY IN ARGENTINA.

In 1922 Argentina reformed its criminal code and within this process the issue of abortion was debated. It was not however, an open debate, but one carried out exclusively by elites, mainly upper class male lawyers, doctors and politicians who were influenced by new ideas in medicine and criminology (Htun 2003). Article 86 of this new code allowed the practice of abortion to be legal under two circumstances: a risk to the mother's health and if the pregnancy was a product of rape or an attack to the honor of a mentally disabled woman. The article was inspired by a Swiss law and thus, the ambiguities caused by the translation have generated controversies every since. Those against abortion have interpreted the article as allowing this practice only in the case of rape of a mentally disabled woman. Those in favor of the decriminalization have argued that the exception encompasses all cases of rape.

In 1966, the authoritarian government of Onganía clarified this article. While it added requirements that were not in the original article for an abortion to be legal –such as the need for a criminal suit to be initiated- and inserted the word “serious” when referring to the risk to the mother's health; at the same time, it ruled in favor of the more liberal interpretation of the article stating that all cases of rape were to be considered as a non

punishable abortion.<sup>94</sup> The Catholic Church did not oppose or criticize either the 1922 reform or this clarification of the article on abortion. This is a surprising fact considering the strong campaign and lobby it has displayed against the decriminalization of abortion in recent decades. According to Mala Htun, since at the time, abortion was being framed as a technical issue to be exclusively discussed by elites of professionals, the Church did not feel threatened by these reforms (Htun 2003).

The 1966 reform clarified the extension of article 86. However, in 1973 the newly elected democratic government revoked all of Onganía's reforms including this one.<sup>95</sup> Article 86 regained its original form. In March of 1976 a coup d'état ousted the 1973 democratic government. A new criminal code was promulgated and within it, Onganía's version of article 86 was included.<sup>96</sup> However, once again, after the 1983 democratic transition, the Alfonsín administration revoked all criminal reforms passed by the military regime, a measure that restored article 86 to its 1922 version.<sup>97</sup> Since then, the controversies about its interpretation resurfaced. As will be seen in the following sections, many bills have been introduced in Congress to clarify the exceptions to the criminalization of abortion, but none has passed as of this date.

The first section of this chapter analyzes the antecedents, beginnings and evolution of the National Campaign for safe and legal abortion carried out by the women's movement until present times. A second section measures the impact the Argentinean women's movement had on state policy based on the five dimensions identified in Chapter 1: 1)

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<sup>94</sup> Law No. 17,567

<sup>95</sup> Law No. 20,509

<sup>96</sup> Law No. 21,338

<sup>97</sup> Law No. 23,077

access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1).

This Chapter shows how the Argentine women's movement remains weak and its impact so far has been modest. It has been successful in introducing and keeping the issue of abortion in the political agenda, but has failed in moving forward the bills decriminalizing abortion that were introduced in Congress. The movement has only recently gained support for some key actors such as unions, lawyers associations and universities, which may improve his prospects for the future. It has to still however, get support from doctors which as in the case of Uruguay has been crucial to give legitimacy to its cause.

## 7.1. Argentina's women's movement

### 7.1.1. *Slow beginnings in an adverse context*

The Argentinean state has been historically absent in the field of sexual and reproductive health. In addition, each time the state acted on this issue area it was to add more obstacles to the exercise of reproductive rights and never to advance them (Gutierrez, Gogna and Ramos 1998: 186). It was necessary for the women's movement to start organizing and articulating their demands for the state to slowly begin addressing these issues.

In the 1970s, the newly born Argentinean feminist movement attempted to discuss the issue of abortion,<sup>98</sup> but two factors prevented them from moving forward: the national

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<sup>98</sup> The first feminist groups that emerged in Argentina in the early 1970s were: *Unión Feminista Argentina* (Argentine Feminist Union) and *Movimiento de Liberación Femenina* (Female Liberation Movement). Both began demanding the right to abortion during these years. In addition, feminist branches emerged within leftist organizations. In 1973 *Muchachas* (Girls) was created within the Socialist Party, and

context of political turmoil and the initial weakness of the movement (Bianco 2000). In addition, the 1973 Peronist government adopted a repressive policy towards sexual and reproductive rights. In 1974 President Isabel Perón issued a presidential decree banning all activities to control the number of births, imposing strict controls on the sales of contraceptives, and launching a public campaign emphasizing their risks (Gutierrez et al. 1998). The military dictatorship established in 1976 justified the continuation of this policy as a matter of national security: The deserted areas of the country should be populated since they represented a geopolitical weakness.<sup>99</sup> During the military regime some feminists continued to meet privately in their houses to discuss gender issues since this was the only political activity they were allowed to perform in such circumstances (Bonder 1989).<sup>100</sup>

#### *7.1.2. First Steps under the Alfonsín administration*

The *Multisectorial de la Mujer* was created after the democratic transition as an umbrella organization to embrace both organized and independent women from different backgrounds with the goal of introducing gender issues into the political agenda (Bonder 1989; Borland 2010). Their first mobilization took place on International Women's Day in 1984, occasion in which they presented the government with a list of demands related to women's issues. Unlike the case of Uruguay, the requests were very cautious and the

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in 1974 *Movimiento Feminista Popular* (Popular Feminist Movement) emerged within the *Frente de Izquierda Popular* (Popular Leftist Front).

<sup>99</sup> Presidential decree No. 3,938 banned all activities with the goal of limiting the number of births.

<sup>100</sup> Interview with Martha Rosenberg, Buenos Aires, October 1<sup>st</sup>, 2007.



decriminalization of abortion was not among them given internal differences around this issue.<sup>101</sup>

The Alfonsín administration brought forward a more receptive environment for women's movements. In 1985, Congress ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).<sup>102</sup> In 1986 a presidential decree revoked the military decree on birth control and acknowledged the "right of couples to freely decide the number of children they want." In addition, the Health ministry would give advice on the use of contraception methods (Gutierrez et al 1998).

In this more receptive context women's organizations reinitiated their activism for sexual and reproductive rights. Unlike the case of Uruguay, it is hard to identify a few women organizations that have led the struggle for the decriminalization of abortion continuously throughout these years. As will be seen throughout this section, in Argentina there have been women organizations created under specific circumstances to fight for the right to a legal and safe abortion at one point in time but most of them have disappeared. With the exception of *Católicas por el Derecho a Decidir* (Catholics for Choice), founded in 1989, organizations have been more unstable and ephemeral than in Uruguay. The movement's continuity was provided here not by organizations but by well-known feminists who have been active in this struggle since democratization and have been present in most of these instances of organization.

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<sup>101</sup> The *Multisectorial* presented the following demands: a) amendment of the *Patria potestad* law, b) the equality under the law of children born in and out of wedlock, c) ratification of the UN convention for the elimination of all forms of discrimination against women, d) implementation of the Day Nurseries Law, e) amendment of the Housewives' pension law, f) adherence to the principle of equal pay for equal work, and g) creation of the State Secretariat for Women. See Bonder 1989.

<sup>102</sup> Law No. 23,179.

The demand for the right to abortion was present from the beginning of the democratic transition in 1983 among some of the feminist groups (Dominguez 2004; Petracci and Ramos 2006). However, at many points in time the movement chose to privilege less controversial demands such as that of sexual education and access to contraception as part of a strategic decision to avoid losing support for their broader struggle (Bianco 2000). The 1980s was one of those times. There were some sporadic events organized by feminists to demand the right to an abortion, but they did not attract much social support or press coverage. In addition this demand was framed and expressed in a very indirect and subtle manner. For example, in 1984 the *Asociación de Trabajo y Estudio de la Mujer* (Association for the Work and Study of Women, ATEM) took advantage of International Women's Day (March 8<sup>th</sup>) to take to the streets to hand out a flyer that said: "We don't want to have an abortion, but we don't want to die from one either" (Rouco Perez and Schejter 1995). This marks an important difference in the movement's starting point when compared with the Uruguayan case in which abortion was high on the movement's agenda from the early years of democratization (See chapter 6). In Argentina, it was not until 2003 that the movement launched a clear national campaign for the decriminalization of abortion.

If the demand for the decriminalization of abortion was weak, so, too, was the government's attention to the issue. At the beginning of his administration President Alfonsín invited some renowned feminists like writer and composer María Helena Walsh to discuss the issue of women's rights. But as soon feminists brought up the issue of abortion and or violence against women, they were never called back. Alfonsín had

already antagonized the Armed Forces with his human rights policies (Chapter 2), and thus could not afford to open another front with the Catholic Church.<sup>103</sup>

Towards the end of the decade, the struggle for the decriminalization of abortion gained some momentum with the creation of spaces of discussion for gender issues such as the *Encuentro Nacional de Mujeres* (National Meeting of Women), and the launching of organizations specifically related to women's control over their own bodies (Aszkenazi 2007).

In 1986 the first *Encuentro Nacional de Mujeres* was held in Argentina. This has been a unique experience throughout the world and a very successful one; annual meetings, held every year since then, have continued to attract growing number of participants. The goal behind this initiative has been to encourage interaction and connections among all kinds of women's organizations focused on a variety of particular struggles that affect women, from domestic violence to reproductive rights, and labor discrimination to sexual identity. During two days women get together and choose to participate in approximately 40 workshops arranged by topic. After debating the issue in each workshop, the conclusions are presented in a final plenary session. If there is no consensus on them, a majority and a minority opinion are included in the conclusions of the annual meeting (Chejter et al 2002). This instance has been a key element in the organization of the women's movement at a national level, and as it will be seen in future sections, it offered the space for the campaign for the decriminalization of abortion to be born (Lorenzo 2007).

In 1988 the first women's organization related specifically to the issue of abortion was created: the *Comisión por el Derecho al Aborto* (Commission for the Right to

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<sup>103</sup> Interview with Eva Giberti, Buenos Aires, October 6<sup>th</sup>, 2007.

Abortion). Its origins can be traced to a panel about abortion within the 6<sup>th</sup> ATEM Feminist Conference that took place in 1987. It was an autonomous organization financed with the monetary contributions of its members, all of them professional women coming from a Marxist and radical feminist perspective.<sup>104</sup> The group's goals were to introduce the issue of abortion in the media, organize workshops about it, and to convince legislators of the need to discuss this topic in Congress (Chejter et al. 2002, 43). For this purpose they launched a trimestral bulletin entitled *Nuevos Aportes sobre Aborto* (New Contributions on Abortion) (Rouco Perez and Schejter 1995).

Their first action was the organization of a workshop on abortion in the III *Encuentro Nacional de Mujeres* held in Mendoza in 1988. On March 8<sup>th</sup>, 1989 the group made its first public appearance in the Plaza de Mayo with a stand offering information and publications on the issue of abortion. This same year, the press made public a case of a raped woman who asked the courts for the right to have an abortion. This was not granted to her, but the *Comisión por el Derecho al Aborto* took advantage of the topic being in the media and published a letter in the major newspapers explaining their demand for access to a legal and safe abortion (Bianco 2009).

In 1989 another group organized around the right to a legal and safe abortion: *Católicas por el Derecho a Decidir*. The fifth International Conference on Women and Health was held in 1987 in Costa Rica. The American branch of Catholics for a Free Choice was present and the Latin American delegations agreed that there was a need to create local chapters of this organization throughout the region. In 1989 a regional office was opened in Montevideo, Uruguay and local branches were created in other countries

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<sup>104</sup> The panelists and initial members of this commission were Susan Sommer (biologist), Dora Coledesky (labor lawyer), Sabina Newbery (anthropologist), Laura Klein (philosopher) and Erica Dummontel (lawyer).

of the region, one of them in Argentina. As Catholic women, members of this group insist on the idea that they can be faithful Catholics even when they might be divorced, be lesbians, might not want to have children, or might have had an abortion (Vasallo 2005, 11). Their main activities were oriented towards raising consciousness among women about their sexual and reproductive rights and the publication of reports about these issues (Chejter et al. 2002).

These were the earliest experiences of women organizations and their attempts to introduce a controversial topic into the political and social agenda. Even when for example, the *Comisión por el Derecho al Aborto* gained recognition within leftist circles, and managed to gain some access to the mainstream media, the issue of abortion was still only marginally discussed (Bianco 2009). There were some media that occasionally discussed the topic but overall the debate on the decriminalization of abortion remained for most part an exclusive initiative of feminist and women organizations.<sup>105</sup>

As we shall see later in this chapter, during the first democratic administration many bills were introduced in Congress related to the issue of abortion. Some sought to loosen the restrictions -on a legal abortion under certain circumstances, while others aimed at increasing them and even banning all exceptions. However, none were discussed at all. Former legislator Alberto Maglietti, sponsor of one of the bills to liberalize abortion stated “No one has demonstrated interest. It is an impolitic issue for the political environment of our country. To speak publicly in favor of abortion is impolitic” (Htun 2003: 152).

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<sup>105</sup> See interview with Mabel Gabarra by Rimaweb. Viewed on June 6<sup>th</sup> at <http://anterior.rimaweb.com.ar/aborto/camp-nac28sep.html>

### 7.1.3. *The Menem administration and its alignment with the Vatican*

In 1989 Carlos Menem became president. The women's movement continued with its activities unaware that the new government would change course and align itself with the Vatican and put obstacles in the way of all their gender struggles. In 1990, Argentinean movements participated in the Latin American and Caribbean Feminist Meeting in San Bernardo, Province of Buenos Aires, where it was agreed that September 28<sup>th</sup> would be from then onwards the Day for the Decriminalization of Abortion in the region. This same year, after the meeting of the World Network of Women for Reproductive Rights, held in Manila, the Forum for Reproductive Rights was created in Argentina. The Forum was integrated mostly by professional women from different fields (physicians, psychologists, nurses) but mostly sociologists.<sup>106</sup> Most of its activities were aimed at spreading information within academic and professional circles (Chejter et al. 2002).

On March 8<sup>th</sup>, 1991 these women's groups presented a petition to Congress demanding the decriminalization and legalization of abortion in public hospitals. It was the first time that there was consensus among all women organizations around including the decriminalization of abortion as one of the demands of the March 8<sup>th</sup> demonstration (Rouco and Schejter 1995). On September the *Comisión por el Derecho al Aborto* organized a public trial against illegal abortion. In 1992 the movement drafted a bill to be presented to the Lower Chamber that would grant women the right to interrupt their pregnancies during the first 12 weeks and require hospitals to give advice and information on birth control. A few legislators from the Socialist Party and UCR

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<sup>106</sup> Interview with Martha Rosenberg, Buenos Aires, October 1st, 2007.

supported the movement's bill.<sup>107</sup> In the following years, the *Comisión por el Derecho al Aborto* drafted other bills together with legislators Alfredo Bravo (Socialist Party), Martha Mercader (Radical Party, UCR) and Luis Zamora (Movement towards Socialism) (Bianco 2009). None of these bills were ever discussed in Congress.

In 1994 the alliance between Menem's government and the Vatican became visible. In March of that year Menem participated in the 4<sup>th</sup> Summit of Hispanic Chief of States in Cartagena de Indias, Colombia. On this occasion, he proposed signing a declaration condemning abortion and defending life from the moment of conception. This was the first time he had made public his clear support for the conservative views of the Vatican with respect to reproductive rights (Gutierrez 2000). Menem's attempt failed, but in return Pope John Paul II thanked him for his effort.

A convert to Catholicism from Islam, Menem liked to present himself as a devoted catholic. He frequently invoked the name of God, quoted the bible, and filled his office with religious images, something that has never been seen before in the presidential palace.<sup>108</sup> However, many perceived this posture as a strategic alliance to avoid the Church's criticism of the harsh social conditions created by his neoliberal economic program. Whether strategic or principled based, this alliance with the Catholic Church created an extremely adverse context to advance the struggle for sexual and reproductive rights, let alone, the right to a safe and legal abortion. This was the environment in which the women's movement had to act during the remainder of the 1990s.

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<sup>107</sup> These were Alfredo Bravo (Unidad Socialista), María José Lubertino and González Gass (Unión Cívica Radical).

<sup>108</sup> See *Revista Criterio*, "La Iglesia y el gobierno", May 1998. Viewed on June 24th, 2010 at <http://www.revistacriterio.com.ar/editoriales/la-iglesia-y-el-gobierno/>

Immediately after the Cartagena Summit, some feminists organized a private meeting in Buenos Aires to discuss what to do about the government's explicit opposition to reproductive rights. This was the origin of a new women's group called *Mujeres Autoconvocadas para Decidir en Libertad* (Self-Convoked Women for Free Choice, MADEL). It was a heterogeneous group made up of 108 women's organizations, among which there were union workers, politicians, activists, NGOs and even people from the government's Secretariat for Women (Gutierrez 2000; Gutierrez et al 1998; Checa and Rosenberg 1996). This diverse group was united in its strong opposition to Menem's conservative policies. They would later become crucial in the failure to include the right to life from the moment of conception in the National Constitution.

#### *7.1.3.1. The Right to Life in the 1994 Constitutional Convention*

In the 1990s, the Vatican pushed Latin American countries to include constitutional clauses criminalizing both abortion and euthanasia by defending life from the moment of conception until natural death. The goal was to eliminate all the exceptions in the national criminal codes which allowed for legal abortions and to prevent future laws that could decriminalize this practice all together. This initiative was successful in the case of Chile, Honduras, Ecuador, El Salvador and Bolivia (Vasallo 2005).

In Argentina President Menem was highly receptive to the Vatican's demands and tried to push for the inclusion of such an article during the 1994 constitutional reform. His Minister of Justice, Rodolfo Barra, a fervent Catholic and member of Opus Dei, was elected as a representative from the Peronist party to the Constitutional Convention. He was thus in charge of proposing the inclusion of the right to life from the moment of



conception in the reformed constitution.<sup>109</sup> Catholic bishops publicly demanded that the Convention support this proposal and met with the heads of the Peronist and Radical parties to push for its addition.<sup>110</sup> The proposal was supported by all the Peronist representatives, MODIN,<sup>111</sup> UCEDE,<sup>112</sup> the provincial parties and some members of UCR.

MADEL quickly mobilized to oppose the inclusion of this clause which would imply the almost complete closing of all channels to the decriminalization of abortion under any circumstance. The axis of MADEL's arguments were: 1) the illegitimacy of the convention to discuss this topic since it was not included in the congressional mandate or in the platforms of any of the elected representatives, 2) the need to broaden the debate on abortion to the whole society, 3) the framing of the issue of abortion as one of women's health, and 4) the need to legislate for all citizens and not only for a particular religious group (Gutierrez 2000: 87; Gutierrez 1998: 197, Chejter et al 2002). With this frame in mind MADEL carried out different actions. They sent open letters to the media, conventional representatives and Minister of Justice Barra expressing their demands. They organized demonstrations, open radios and petitions during the months of July and August in which the Convention met (Rouco and Schejter 1995). Finally they lobbied the representatives at the Constitutional Convention. This final action was very effective

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<sup>109</sup> See Minutes from the National Constitutional Convention. 23<sup>rd</sup> Meeting, 3<sup>rd</sup> session, August 3<sup>rd</sup> 1994, page 6.

<sup>110</sup> See *Clarín*, "La Iglesia quiere que la futura constitución rechace el aborto" July 8th, 1994.

<sup>111</sup> Movimiento por la Dignidad y la Independencia (Movement for Dignity and Independence). Nationalist and Right wing political party founded in 1991 by Aldo Rico, former *carapintada* (military group that raised up in arms against the democratic governments of Raul Alfonsín and Carlos Menem).

<sup>112</sup> Unión de Centro Democrático (Union of the Democratic Center). Right wing political party created by Alvaro Alsogaray in 1982.

among the female representatives. Thanks to the 1991 Quota law which stipulated that 30% of all elected representatives had to be women, 80 of the Convention's 302 members were women (Chejter et al 2002). These ensured that MADEL could find some representatives committed to the cause of sexual and reproductive rights. Most of those who spoke against the inclusion of Barra's clause were women.<sup>113</sup> However, they did not use feminist arguments to defend their position. The strongest point that garnered the widest support possible was to insist on the fact that there was no mandate to discuss the issue of abortion as part of this constitutional reform, and thus this was the argument they used almost exclusively in their speeches.

Thanks to the women's movement pressure and mobilization, Menem and Barra's clause was defeated. The final clause that was passed –which was drafted and agreed upon by Peronists and Radicals in the last minute- was sufficiently ambiguous so as to leave an open interpretation, allowing the Catholic Church to argue it defended the right to life from the moment of conception, and the women's movement to state that this was not the case.<sup>114</sup> However, this was considered as a failure for the Catholic Church.<sup>115</sup> In words of Cardinal Primates: “*Dios se quedó en el frontispicio no entro en la constitución. La vida comienza desde la concepción y decirlo con otras palabras se presta a diversas interpretaciones*” (God was left outside the Constitution. Life begins

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<sup>113</sup> See the interventions of representatives Graciela Fernandez Mejjide, Cecilia Norma Lipszyc, Elva Roulet, Maria Graciela Bercoff. Minutes from the National Constitutional Convention. 23<sup>rd</sup> Meeting, 3<sup>rd</sup> session, August 3<sup>rd</sup> 1994.

<sup>114</sup> See Art 75 inciso 23 as it appears in the Reformed Constitution: “...*Dictar un régimen de seguridad social especial e integral en protección del niño en situación de desamparo, desde el embarazo hasta la finalización del período de enseñanza elemental, y de la madre durante el embarazo y el tiempo de lactancia*” (To establish an integral and special social security regime to protect children at risk from pregnancy until the end of elementary school, and women during pregnancy and breastfeeding).

<sup>115</sup> The Church did manage to include such a clause in some provincial constitutions such as that of Tucuman and the province of Buenos Aires (Vasallo 2005).

from the moment of conception and saying this in other words lends itself to diverse interpretations) (Gutierrez et al 1998: 198).

*7.1.3.2. Argentina's position in International Conferences on population and gender*

In the mid-1990s two major international conferences took place that touched upon sexual and reproductive rights. In 1994, the Third Conference on Population and Development took place in Cairo. Its goal was to design a plan to stabilize the world's population. One of the means to do so was to empower women through training and education to control their own bodies and lives. The opposition to the final document was led by the Vatican and supported by 12 Muslim countries and 9 Latin American ones, among them Argentina. In 1995, the Fourth International Conference on Women was held in Beijing. Cairo's platform was ratified, and again the same coalition aligned behind the Vatican to oppose the main conclusions. The women's movement rejected the official discourse in both conferences and criticized the fact that Argentinean delegates were selected without any consultation (Gutierrez 2000).

The National Women's Council which depended on the executive branch openly opposed Menem's positions in the International Conferences. As a result, in 1995 its president Virginia Franganillo was asked to resign for refusing to take a position against abortion in international forums. In her place, non-feminist women were appointed to direct this institution.<sup>116</sup>

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<sup>116</sup> Interview with Eva Giberti, Buenos Aires, October 6<sup>th</sup>, 2007.

### *7.1.3.3. Leaving abortion aside. The decline of the women's movement*

In 1995 three female legislators<sup>117</sup> called MADEL to develop a unified strategy to support a bill on sexual and reproductive rights that they had introduced in the Congress. This bill did not include the issue of abortion, but restricted itself to demand the access to information and to contraceptives to avoid having to resort to such an extreme measure. This created an internal debate within MADEL, and those who privileged the strategic value of leaving abortion aside prevailed (Gutierrez 2000; Rouco and Schejter 1995). As in 1994 during the Constitutional convention MADEL organized demonstrations and national petitions, sought a place in the media and lobbied legislators to press for the passage of the bill. The bill was passed in the Lower Chamber on November 1995 with 124 votes in favor and 9 against. However, when it reached the Senate, Peronist legislators blocked the bill for two years until it finally expired and was archived.

A similar strategy was followed by MADEL during the drafting of the Constitution of the City of Buenos Aires in 1996. Some of MADEL's members were elected as representatives to the constitutional convention so they managed to include gender issues on the agenda. The group fought for the inclusion of sexual and reproductive rights, leaving abortion out of their demands. This campaign was a success since the constitution acknowledged the existence of sexual and reproductive rights, and the need to inform and educate the population to guarantee them, and promoted the inclusion of sexual education in the schools' curricula. However, this was accomplished at the expense of abandoning the demand for legal and safe abortion.

Meanwhile, Menem's government continued strengthening its alliance with the Vatican. In 1998 he passed a presidential decree declaring March 25<sup>th</sup> the "Day of the

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<sup>117</sup> Elisa Carca (UCR) Graciela Fernández Meijide (Frente Grande) and Cristina Zucardi (PAIS)

Unborn Child.”<sup>118</sup> In addition, in 1999 Menem agreed to host a summit of American politicians against abortion organized by the Vatican.<sup>119</sup> These gestures were valued by the Pope and in June 1999 the Vatican honored Menem with the Paths of Peace Prize because of his consistent condemnation of abortion.<sup>120</sup> However, the local Catholic hierarchy was not easily allured any more. Beginning in 1997 they drifted away from blindly supporting his administration due to the increasingly harsh social conditions imposed by the neoliberal economic policies (Gutierrez 2000). In this context, Menem’s latest gestures were perceived as a desperate means to regain the Church’s allegiance.

By the end of the 1990s MADEL began to lose support and in 1997 the group was dissolved. There were many reasons for this outcome. Because the group was created as a reaction to Menem’s alignment with the Catholic Church on issues related to women’s rights, the movement had a unifying cause and it flourished during the Constitutional Convention. But once the constitutional convention was over, each of the women’s organizations that were part of MADEL returned to their own work. The heterogeneous character of the group (it was made up of 108 organizations) created innumerable internal conflicts that became exacerbated once the unifying goal of defending women’s rights during the Constitutional Convention had disappeared (Bianco 2000, Gutierrez et al 1998). In particular, the debate over whether to support sexual and reproductive rights with or without an abortion clause ended up deeply wounding the group (Chejter et al 2002).

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<sup>118</sup> Decree No. 140/98

<sup>119</sup> See *Clarín*, “*Impulsan una nueva reunión de Menem con Juan Pablo II*”, March 7<sup>th</sup>, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>120</sup> See *Clarín*, “*Otra condena al aborto*”, June 18<sup>th</sup>, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

In addition, the movement was also weakened by its lack of alliances with other social actors and movements (Gutierrez 2000). Allies such as doctors and unions that were so relevant in the women's struggle in Uruguay did not come forward in the Argentinean case. To the contrary, during MADEL's campaign against including a clause guaranteeing the right to life from conception in the National Constitution, the Academy of Medicine came out in opposition to the decriminalization of abortion (Gutierrez 2000). In 1999 there was an ephemeral alliance with the *Confederación de Trabajadores Argentinos* (Argentine Workers Federation, CTA), which voted in favor of the decriminalization of abortion almost unanimously (of 8000 delegates there were only eight abstentions and one vote against it) (Chejter et al 2002). However, this was not publicized, not mentioned in the union's bulletin and no actions were taken to push for this demand,<sup>121</sup> a fact that might have been related to the union's general secretary Victor De Genaro being a strong Catholic. Silvia Chejter argues that the connection between women and this union was more formal than real and did not change the predominant view among union workers that an abortion is a punishment and not a voluntary decision made by women (Chejter et al 2002:49).

In 1999 a new umbrella group emerged under the name *Coordinadora por el Derecho al Aborto* (Coordination for the Right to Abortion), which was comprised by pre-existing groups such as the *Comisión por el Derecho al Aborto* and *Católicas por el Derecho a Decidir* (Chejter et al 2002).<sup>122</sup> In agreement with the more moderate approach the

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<sup>121</sup> Interview with Martha Rosenberg, Buenos Aires, October 1st, 2007.

<sup>122</sup> Other organizations that took part in the *Coordinadora por el Derecho al Aborto* were *Mujeres Socialistas Autoorganizadas*, *Mujeres de Izquierda*, *Plenario de Trabajadoras*, *Asociación de Especialistas Universitarias de Estudios de la Mujer* and *Casa de la Mujer Azucena Villaflor*.

women's movement had taken for the previous three years, the group drafted a bill not to decriminalize abortion under all situations but to strengthen Article 86 by clarifying the exceptions allowed under the law for an abortion to be legal. As with previous attempts, it was never debated in Congress (Bianco 2009).

#### *7.1.4. Abortion in the 1999 Presidential Elections*

Abortion was dragged into the 1999 presidential election debate by President Menem. Convinced of his successful political strategy of luring the support of the Church, he urged the Peronist presidential candidate Eduardo Duhalde to make the struggle against abortion a key element of his campaign.<sup>123</sup> Duhalde followed Menem's advice, assuring the Vatican that if he were elected he would continue the anti-abortion position of the previous administration, and denounced the opposition coalition (the *Alianza*) for defending a pro-choice position.<sup>124</sup> In addition, the government launched a billboard campaign around this issue.

The *Alianza* was an alliance of the centrist Radical party (UCR) and the recently created leftist party, Frepaso. Although Fernando De la Rúa (the presidential candidate) was known for his Catholic background and publicly expressed his position against abortion, some of the Frepaso candidates, such as Graciela Fernández Meijide (who ran for Governor of the Province of Buenos Aires), in the 1990s had supported a bill decriminalizing abortion. This was used by the Peronist party to back their accusations. Carlos Ruckauf, the Peronist candidate for the government of Buenos Aires accused his

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<sup>123</sup> See Clarín, "Conflicto Diplomático: Malestar del Presidente en la Reunión de Gabinete", September 10th, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>124</sup> See Clarín, "Duhalde, en contra del aborto", August 6th, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

competitor Fernández Meijide of being an atheist, an anti-Christian and an assassin of babies.<sup>125</sup>

However, Menem's strategy did not work as expected. In September 1999 his former wife and mother of his two children, Zulema Yoma, told the media that in 1968 Menem had supported her decision to have an abortion. President Menem replied: "*Yo no desmiento ni ratifico*" (I don't deny it or confirm it).<sup>126</sup> In addition, the Catholic Church expressed its preference for the issue of abortion not to be at the center of the presidential campaign.<sup>127</sup> Many bishops questioned and opposed the electoral use of religion.<sup>128</sup>

While the issue of abortion was frequently in the media because of its presence in the presidential campaign, it was never debated in depth. Most of the news merely reported the accusations the candidates traded. In addition, there was no report of increased activities by the women's movement to take advantage of the unexpected salience the topic had gained. Only one bill was introduced in Congress in 1999 on abortion, which suggests that the electoral debate did not spill over into a congressional discussion on this topic.

The 1999 presidential elections ended the 10-year administration of Carlos Menem. The *Alianza* candidate, Fernando de la Rúa won the elections and took power. The new president was against abortion as well, but in a more moderate way. Argentina's foreign

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<sup>125</sup> See *Clarín*, "Duhalde, en contra del aborto", August 6th, 1999, and "Ruckauf duro: Meijide is atea y anticristiana", October 19<sup>th</sup>, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>126</sup> See *Clarín*, "Yo tuve un aborto, dijo la esposa del presidente", September 17<sup>th</sup>, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>127</sup> See *Clarín*, "La Iglesia no entra en el debate", September 16th, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>128</sup> See *Clarín*, "Polémica por el ataque de Ruckauf a Graciela", October 20th, 1999. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)



policy shifted and the automatic alignment with the Vatican in all international forums came to an end. The Argentinean government still defended life from the moment of conception in the United Nations Conference on Women held in New York in the year 2000, but was more acceptant of the need of sexual education and the free access to birth control.<sup>129</sup> In addition, the City Council of Buenos Aires passed a law on reproductive health to distribute free contraceptives. This was possible thanks to the support of most of the *Alianza*'s legislators.<sup>130</sup>

#### *7.1.5. December 2001. The creation of new spaces for women's movements*

Throughout 2001 the economic crisis that had hit the country since 1997 took a turn for the worse when around US\$19 billion left the country (Bonasso 2002). The social consequences of ten years of neoliberal policies reached a breaking point with unemployment reaching historical highs and per capita income rapidly diminishing.<sup>131</sup> This was matched by a political crisis due to the inability of the government to deal with the critical economic and social situation. Politicians as a whole were seen as being completely unresponsive and non-accountable to those who they were supposed to represent. When on December 19<sup>th</sup> the President declared a state of siege to put an end to the food riots that have been going on for almost a week, thousands of Argentineans took

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<sup>129</sup> See *Clarín*, "La Argentina volvió a oponerse al aborto en la cumbre de la mujer", June 9, 2000. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>130</sup> See *Clarín*, "Anoche la Legislatura Porteña aprobó la Ley de Salud Reproductiva" June 23<sup>rd</sup>, 2000. Viewed on March 19<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>131</sup> In only ten years, from 1991 until 2001, 1.5 million jobs were lost, which, considering a 15.5% growth of the labor force implies a 422% growth in unemployment. The UNDP 2002 Report on Human Development shows that per capita income declined by an average of 19.6 percent between 1995 and 2002 in the whole country. This sustained drop in income deepened the gap between the 20% of the population at the top and the 20% at the bottom of the socio economic scale. The income breach between them doubled from 1995 (11.5) to 2002 (20.4). In this same time period the poverty line went from including 30% of the population to reaching 53% of it (PNUD 2002).

to the streets defying the president's orders to protest the government's economic and social policies and demanded his resignation. The next day both the Economy Minister and the President resigned.

The climate of social mobilization was propitious for the women's movement demand for the right to a legal and safe abortion. Women that began participating in Neighborhood Assemblies,<sup>132</sup> protests, and pickets, motivated by their economic needs, quickly became sensitized to other gender struggles such as that of abortion.<sup>133</sup> During the early months of 2002 the Buenos Aires Assembly for the right to abortion was born. This group met weekly throughout this year and was made up of feminists, members of the Neighborhood Assemblies, *piqueteras*,<sup>134</sup> students, and independent women.

The 2001 mobilization changed the character and composition of the women's movement and their struggle for the decriminalization of abortion (Borland 2010). As we have seen, in the 1980s and 1990s the movement was comprised mostly by professional women and feminist politicians, with no significant participation by grassroots and local

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<sup>132</sup> The Neighborhood Assemblies emerged approximately two weeks after the mobilization of December 19<sup>th</sup>, 2001 that took down the De la Rúa government. The Assemblies started as meetings organized by neighbors with the goal of discussing what to do about the political and economic crisis the country was going through at the time. In their ascendant moment, during the year 2002, they quickly spread around the city of Buenos Aires, its surrounding areas and through the most populated and wealthy cities around the country, getting to be approximately 300 in total. It is estimated that between 100 and 500 people took part in each of them. During 2002 they organized numerous demonstrations to protest against national issues such as the neoliberal and IMF-driven economic policies, the unresponsiveness of politicians, rising unemployment, the corrupt Supreme Court, the impunity of human rights abusers from the past dictatorship, etc; but they also focused on local issues and created cultural centers, micro-enterprises and recreational spaces for their own neighborhoods.

<sup>133</sup> See interview with Martha Rosenberg in 2005. Viewed on June 5<sup>th</sup>, 2007 at <http://anterior.rimaweb.com.ar/aborto/camp-nac28sep.html>

<sup>134</sup> *Piqueteros* is a movement of unemployed workers that was initially created in 1997 to protest the high levels of unemployment in the towns of General Mosconi and Cutral Co as a result of the privatization of the oil industry YPF. They were named for the flying pickets they carried into public demonstrations. It later grew into a national movement. Women took a prominent role in the movement and are known as *Piqueteras*.

groups. This began to change with the general mobilization of 2001. Since then the struggle for a safe and legal abortion included existing and newly created grassroots women's groups. In addition they received the support of student groups, the movement of worker-run factories and human rights movements. This support strengthened the women's movement. However, their members acknowledge that this is not enough and that they still need to work to get support from other relevant actors such as doctors and lawyers if their struggle is to succeed.<sup>135</sup>

In this context of general mobilization, within the frame of the 2003 *Encuentro Nacional de Mujeres* held in Rosario, the Buenos Aires Assembly for the right to abortion organized a meeting in which they decided to set up for the first time a workshop called 'Strategies to gain the right to abortion.'<sup>136</sup> From the beginning of the *Encuentros* there were workshops about abortion but they were focused on discussing the issue of abortion as such. As a result, these meetings usually became never ending debates between those who were in favor and against decriminalization, with no real progress. The goal of this new workshop was to move beyond the moral and ideological discussion. It created a space for those who were already in favor of decriminalization to discuss practical strategies to accomplish this goal. During this *Encuentro* the participants staged a large demonstration demanding the right to safe and legal abortion. Catholics for the Right to Choose created a symbol for their struggle and gave out green scarves to

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<sup>135</sup> Interview with Martha Rosenberg, Buenos Aires, October 1<sup>st</sup>, 2007

<sup>136</sup> Interview with Martha Rosenberg, Buenos Aires, October 1<sup>st</sup>, 2007.

all those demonstrating.<sup>137</sup> Since then, this has been the color of the campaign for decriminalization.

In the first half of 2004, the Assembly for the right to abortion suffered internal divisions over whether the struggle for the right to abortion was a “social issue” and thus not exclusive to women or whether this was a women’s struggle to control their own bodies, and whether abortion should be decriminalized or legalized. The intractable nature of these issues ended up dissolving the group (Grupo Feminista Autónomo 2006).

Initially the transitional government of Eduardo Duhalde<sup>138</sup> (2002-03) appeared more receptive to the demands for sexual and reproductive rights. In 2002 the bill on sexual and reproductive health that has been stalled in Congress since 1995 was finally passed.<sup>139</sup> The goal of this law was to require the public health system to provide access to birth control methods and information about them. However, the law explicitly stated that those methods have to be “reversible” and “non-abortive.”

In addition in 2002, President Duhalde sent a letter to Pope John Paul II guaranteeing the continuity of the country’s alignment with the views of the Vatican on abortion in all international forums.<sup>140</sup> Thus, the opening of the political system was limited to the access to contraception but did not go as far as allowing a discussion on the issue of abortion. During his administration three bills on the right to a legal and safe abortion

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<sup>137</sup> See interview with Mabel Garra. Viewed on June 5<sup>th</sup>, 2007 at <http://anterior.rimaweb.com.ar/aborto/camp-nac28sep.html>

<sup>138</sup> Given the fact that President De la Rúa resigned on December 20<sup>th</sup>, 2001, Congress chose a transitional president to occupy this position until new elections were called for on May 2003.

<sup>139</sup> Law No. 25,673

<sup>140</sup> See *Clarín*, “Duhalde le escribió a Juan Pablo II en contra del aborto”, May 19<sup>th</sup>, 2002. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

were introduced in Congress but once again none of them was ever debated in either Chamber.

#### *7.1.6. The Kirchner administration's ambiguous position towards abortion*

Upon President Kirchner's assumption of power on May 2003, it quickly became clear that he would be much more receptive to the demands of social movements than previous administrations. The human rights movement was the one that received the most attention, but there was a general attitude of respect for public demonstrations of all kinds instead of the usual repression with which these events were met in the past. This was thus a favorable environment for women to press for their own struggles. However, in terms of the particular demand for the right to abortion the government sent mixed signals. President Kirchner appointed people who publicly expressed their support for the decriminalization of abortion to highly positions such as the Supreme Court and Ministries. However, once and again he insisted his personal view was against the legalization of such a practice.

There were two episodes during his administration that spurred the debate on abortion all over the media and society. Figure 7.1. reports the number of articles published yearly in Newspaper Clarín on the issue of abortion. The year 2004 in which both episodes took place shows a clear spike. The first of this episode was Kirchner's nomination of Carmen Argibay to the Supreme Court. According to the newly established process the Senate had the right to hold a public audience in which citizens and NGOs could present their support or rejection of this nomination. Her popularity as a feminist and atheist did not sit

well with right-wing and religious groups, which tried to use her views in favor of abortion to disqualify her as a candidate.<sup>141</sup>

In the midst of this debate the Pope asked the Kirchner administration and Congress to oppose the decriminalization of abortion. Argentine Bishop Jorge Casaretto demanded that the government take a position on this issue. Immediately the chief of cabinet Alberto Fernández told the press that the government has done many things to avoid the practice of abortions and that it had never promoted its decriminalization.<sup>142</sup> A similar statement was made by Foreign minister Rafael Bielsa in his visit with the Pope on March 2004.<sup>143</sup> In spite of the strong lobby of the Catholic Church and catholic groups against Carmen Argibay, on July 2004 her candidacy was approved by Congress and thus she became the first woman to be appointed to the Supreme Court during democratic times.

The second episode that brought the abortion debate back into the media was the public statements of Kirchner's health Minister Ginés González García in November of 2004 during an interview with the newspaper *Página 12*. On this occasion the Minister stated that the decriminalization of abortion would eliminate the illegal practices with its attendant risks and thus would save many lives. When the Catholic Church complained and demanded to know if there was a government plan to decriminalize this practice,

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<sup>141</sup> See *Clarín*, "La Candidatura a la Corte Suprema. Argibay ya recibe objeciones y apoyos", January 10th, 2004, and "Argibay: record de cartas", February 9<sup>th</sup>, 2004. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>142</sup> See *Clarín*, "Aborto: Los obispos locales se suman a la polémica", March 1st, 2004. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>143</sup> See *Clarín*, "Bielsa explica al Papa el acuerdo con el FMI", March 11, 2004. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

President Kirchner declared “My rejection (of abortion) has always been clear,” but added that there was freedom of conscience within his party on this issue.<sup>144</sup> The

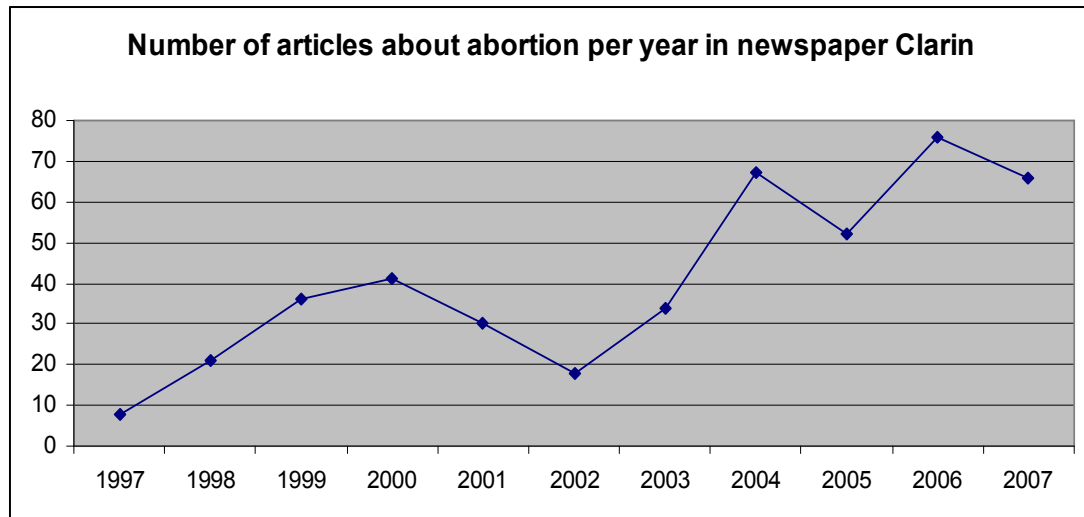


Figure 7.1. Media coverage of the issue of abortion in *Clarín*, 1997-2007.

discussion about abortion seemed to have come to an end when military bishop Antonio Baseotto wrote a letter to Minister González García accusing him of promoting a crime condemned by the criminal code. And quoting the Bible he added that “*los que encandalizan a los pequeños- por ejemplo repartiendo profilácticos entre los jóvenes- merecen que les cuelguen una piedra de molino al cuello y lo tiren al mar*” (those that cause the little ones to sin –for example by giving away condoms to the youth- deserve to be thrown into the sea with a millstone tied around their neck).<sup>145</sup> The Vatican and Argentine pro-life institutions supported the bishop’s letter and demanded Ginés García’s

<sup>144</sup> See *Clarín*, “Kirchner salió a cortar la polémica por la despenalización del aborto”, November 27, 2004. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>145</sup> See *Clarín*, “El Obispo castrense Baseotto dijo que el ministro de salud merecía ser tirado al mar”, February 19th, 2005. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

resignation. The Argentinean Church kept silence, and only later made public a letter stating that Baseotto's letter has been misinterpreted and that he was not calling for violence against the health minister.<sup>146</sup> At the same time, human rights organizations like CELS demanded that President Kirchner ask for Baseotto's resignation. The impact of these statements was huge, in particular given the history of the country in which many of those kidnapped during the past military dictatorship were thrown alive from airplanes into the sea in what came to be known as the "flights of death." Minister of Defense Pampurro called military bishop Baseotto to his office to express his discontent with his statements. President Kirchner proceeded later to demand Baseotto's removal to the Vatican.

It is not clear if Minister González García's statements were a spontaneous expression of his personal views or a government strategy to test the social reaction to a future government plan to decriminalize abortion. The health minister insists that this was his personal position and that President Kirchner did not tell him either to speak about it or to stop doing so.<sup>147</sup> Considering Kirchner's strategy of earning political support and legitimacy through alliances with social movements, the latter hypothesis seems viable. At the time the women's movement, although more a collection of heterogeneous organizations rather than a structured and disciplined organization, was slowly gaining more and more support for their struggle on sexual and reproductive rights. The annual demonstrations in the *Encuentros Nacionales de Mujeres* that had the issue of abortion as

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<sup>146</sup> See *Clarín*, "El Obispo castrense dice ahora que hay un plan a favor del aborto y contra la Iglesia", February 26th, 2005. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>147</sup> See *Clarín*, "Ginés González García: Me gusta ser provocador", July 24th, 2005. Viewed on March 10<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)



one of their main demands were gathering an increasing number of women. From an initial base of a few thousands, the *Encuentro* attracted 12,000 women in 2003, and in 2005, the number almost tripled again to 32,000 participants.<sup>148</sup> The government might have thought that advancing abortion decriminalization would be a way of gaining support from this movement, in the same way they did it with the human rights and the unemployed movements. However, the strong reaction from the Church and the weakness the women's movement manifested at the time might have been a reason for the Kirchner administration to maintain an ambiguous position towards the issue and wait for a more propitious moment to move in this direction. Support for this thesis also comes from events that took place later under the Cristina Fernández de Kirchner administration. When her party lost the mid-term legislative elections in June 2009 in key districts and her popularity and legitimacy fell, she reached out to two social movements for support: the gay and women's movement. Faced with a minority position in Congress, Cristina Fernández looked for the support of small leftist parties and thus decided to express her support for the discussion in Congress of gay marriage and the decriminalization of abortion.<sup>149</sup> As a result, the gay marriage bill was passed on July 15, 2010, and that on abortion is waiting to be debated.

#### *7.1.7. National Campaign for the Right to Legal, Safe and Free Abortion*

In the context of the abortion debate opened up by the two events described in the previous section, the women's movement decided to take advantage of the times to advance their struggle. Since 2003 the workshop on Strategies for the Decriminalization

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<sup>148</sup> The numbers of participants were reported by Clarín on August 17, 2003 and October 11, 2005.

<sup>149</sup> See Clarín, "Los K con una agenda de alto impacto para recuperar adhesiones", March 28<sup>th</sup>, 2010. Viewed on March 28<sup>th</sup>, 2010 at [www.clarin.com.ar](http://www.clarin.com.ar)

of Abortion was held annually during the *Encuentros Nacionales de Mujeres*, and in October 2004 during the *Encuentro* held in Mendoza the movement laid the groundwork for and approved a national campaign on the issue. The public statements by health minister Ginés González García in November of that year that grabbed media attention for the abortion issue afforded a perfect time to launch the campaign and guarantee wide press coverage (see Figure 7.1).<sup>150</sup> Thus, on May 28<sup>th</sup>, 2005 the National Campaign for the Right to a Legal, Safe, and Free Abortion was launched. It included 250 different organizations throughout the country that rallied behind the slogan “Sexual education to decide, contraceptives so as not to have an abortion, legal abortion so as not to die.”<sup>151</sup> During this year, the movement organized a petition drive in favor of this cause to be presented to Congress. The goal was to demonstrate that the support for legal abortion showed by public opinion polls was real. They collected approximately 10,000 signatures a month (Aszkenazi 2007). On November 2005 they presented this material to Congress,<sup>152</sup> and demanded the discussion and passage of the bills that were stalled in Congress.

Health minister González García and Carmen Argibay’s statements spurred another initiative, independent of the movement’s campaign. Taking advantage of the fact that the issue of abortion was already in the media, a group of academics involved in human and women’s rights<sup>153</sup> decided to come together and published an open letter in the

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<sup>150</sup> Interview with Martha Rosenberg, Buenos Aires, October 1<sup>st</sup>, 2007.

<sup>151</sup> See the 2005 interview with Mabel Garra by Rimaweb. Viewed on June 6<sup>th</sup> at <http://anterior.rimaweb.com.ar/aborto/camp-nac28sep.html>

<sup>152</sup> See the full document presented to Congress in Aszenazi 2007, pag 113.

<sup>153</sup> Some of those that participated were Silvina Ramos, Victor Abramovich and Paola Bergallo.

newspaper *Clarín* in favor of the decriminalization of abortion. During this same year some of them launched a website called *despenalizar.org* to provide information on the issue.<sup>154</sup>

On May 28<sup>th</sup>, 2007, the International Day of Action for Women's Health the 250 organizations that form part of the National Campaign presented in Congress their own bill for the decriminalization of abortion. The bill proposed the right to a safe, legal and free abortion during the first trimester, and later in the pregnancy in cases of risk to the mothers' health, malformations of the fetus or rape. A few legislators from the Socialist Party, Radical party and the *Frente Para la Victoria* expressed their support for the campaign.<sup>155</sup> However, the bill had not been discussed in Congress as of 2010.

#### *7.1.8. Non-punishable Abortions*

The main demand of the women's movement has always been the decriminalization of abortion under all cases during the first three months, based only on the woman's choice. The Argentinean law allows the practice of an abortion in cases of risk to the mother's health and the rape of a mentally disabled woman. However, in many circumstances doctors have refused to perform these abortions –called non punishable abortions- without the authorization of a judge. This has created many problems for women asking for an abortion under these circumstances due to the delays caused by the judicial system while their pregnancies were advancing beyond the first trimester. On some occasions, the abortion was not authorized precisely because too much time had passed and the pregnancy was already in the final stages.

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<sup>154</sup> Interview with Paola Bergallo, Buenos Aires, September 18<sup>th</sup> 2007.

<sup>155</sup> Some of them were Graciela Rosso, Juliana Di Tuli, Diana Conti and Juliana Marino (Frente para la Victoria; Alicia Tate (UCR), Silvia Augsburgers, Laura Sesma (Socialist Party), and Claudio Lozano (Emancipación y Justicia).

The media coverage of these cases increased exponentially during 2006 and 2007. While in previous years one or two cases appeared in the press every year, during 2006 nine cases were covered. This is in part a consequence of the women's movement actions and of the public statements made by officials of the Kirchner administration in favor of the decriminalization of this practice. In addition, thanks to the work of the movement spreading information about the situation of abortion in Argentina, more and more women know they have the right to a legal abortion under certain circumstances. Thus, increasingly every year women that fall under the legal categories request abortions in public hospitals, only to have their rights denied.<sup>156</sup>

These cases appeared in the press scandalizing people on both sides of the abortion debate. Both women's movement and the right to life movement took advantage of these tragic events to advance their own struggle. In all these cases the women's movement has been extremely supportive of the woman demanding the access to legal abortion, organizing demonstrations to put pressure on judges, doctors and politicians, offering moral support to the victims, advising the women's lawyers, demanding the impeachment of judges that do not authorize these kind of abortions, and even paying themselves for a clandestine abortion in a private clinic when necessary.<sup>157</sup> The religious and right-to-life organizations, on the other hand, put pressure on the family of the victim to convince her not to request an abortion, organized demonstrations in front of hospitals, and even

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<sup>156</sup> Interview with Socialist Deputy Silvia Augsburger, Buenos Aires, September 19<sup>th</sup>, 2007.

<sup>157</sup> Interview with Socialist Deputy Silvia Augsburger, Buenos Aires, September 19<sup>th</sup>, 2007. Interview with member of Las Juanas in Encuentro 2007. See also *Clarín*, “Niegan el pedido de aborto a una discapacitada que fue violada” and “La Corte provincial estudia el pedido de aborto para una joven violada”, July 26<sup>th</sup>, 2006. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

interfered and delayed the judicial cases by presenting themselves as the defenders of the fetus.<sup>158</sup>

Legislators also reacted to these cases by introducing bills regulating Article 86 to explicitly state that there is no need for judicial authorization if these cases fall under the two exceptions in the criminal code. In addition, other bills have been presented to clarify the ambiguity of article 86 to state if the abortion is legal if any woman (not only a mentally disabled woman) has been raped (see sections below for a more detailed analysis of these bills). However, at the end of Nestor Kirchner's administration, only two bills had been discussed in a congressional committee, one introduced by socialist deputy Silvia Augsburger<sup>159</sup> and another by *Frente para la Victoria* deputy Juliana Marino.<sup>160</sup> They were both approved in the Health Committee of the Lower Chamber and then sent to the Criminal Law Committee where they were stalled by right-wing legislators.<sup>161</sup> In March 2008, during Cristina Fernández de Kirchner's administration, the Criminal Law Committee finally approved it.<sup>162</sup> However neither bill had reached the plenary session of either chamber as of 2010. The women's movement saluted these bills and usually supported them, but many within the movement believe that this is not

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<sup>158</sup> See *Clarín*, "Podrían impedir en Mendoza el aborto a la chica deficiente mental. Católicos reclamaron ante el gobernador Cobos quien se manifestó antiabortista", August 12, 2006. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>159</sup> Bill 5453 D 2006

<sup>160</sup> Bill 0028 D 2007

<sup>161</sup> See *Página 12*, "Dos proyectos paralizados. Reglamentan el alcance del antiguo 86 del CP", August 30<sup>th</sup>, 2007 and "Jugada legislativa para frenar un derecho. El PRO no quiere que se reglamente el aborto y convoca a católicos", September 16<sup>th</sup>, 2007. Viewed on August 30<sup>th</sup>, 2007 at [www.pagina12.com.ar](http://www.pagina12.com.ar).

<sup>162</sup> See *Página 12*, "Un derecho con dictamen a favor. Aprueban en comisión dos proyectos para reglamentar los abortos no punibles", March 12<sup>th</sup>, 2008. Viewed on March 12<sup>th</sup>, 2008 at [www.pagina12.com.ar](http://www.pagina12.com.ar).

enough and that a bill decriminalizing abortion during the first trimester based solely on the woman's choice is necessary. They thus perceive these bills as standing in the way of the biggest goal they have been fighting for all these years.<sup>163</sup>

The impact of the cases in which access to abortion is denied on the Congressional debates has been repeatedly acknowledged by the legislators themselves. Many of the legislators introducing these bills have cited in their presentations famous cases in which doctors and/or judges have denied the right to a legal abortions allowed by article 86. For example, in her statement that accompanied her bill extending the cases for legal abortion to all situations of rape and those of unviability of life outside the womb,<sup>164</sup> Socialist deputy Silvia Augsburger cited the cases of two mentally disabled girls who were raped (one in the neighborhood of Guernica and another in the city of Mendoza) in which doctors refused to perform an abortion.<sup>165</sup> Socialist Senator Ruben Giustiniani cited another case to illustrate the problems created by the criminalization of abortion in cases of rape.<sup>166</sup> This was the story of Romina Tejerina, a 17-year-old girl from the Province of Jujuy who was raped, got pregnant, and killed her baby right after giving birth. She was sentenced to 14 years in jail.<sup>167</sup>

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<sup>163</sup> Interview with Paola Bergallo, Buenos Aires, September 18<sup>th</sup>, 2007.

<sup>164</sup> See Bill 5453 D 2006.

<sup>165</sup> See *Clarín*, "La Corte Provincial estudia el pedido de aborto para una joven violada", July 26<sup>th</sup> 2006 and "Mendoza: debaten un posible aborto a una chica deficiente mental violada" August 17, 2006. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar).

<sup>166</sup> See Bill 2903 S 2004.

<sup>167</sup> See *Clarín* "Prisión de 14 años para la joven que mató a su hija recién nacida", June 11, 2005. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar).

These media cases have been functional to the women's movement's demands not only by promoting the introduction of new bills, but also by advancing their discussion in Congress. One critical case was the death of Ana Maria Acevedo, a 20-year-old woman from Santa Fe, who was the mother of three children and pregnant with the fourth one. On May 2007 she died of cancer after the local public hospital refused to perform an abortion that would have enabled treatment of her disease. In an interview, Deputy Silvia Augsburguer acknowledged the power of this particular case in moving Congressional debates forward. At the time that this was made public by the media and the women's movement actions, the Health Committee of the Lower Chamber finally began to discuss two bills on the clarification of article 86. The minutes of this commission's meeting on May 22<sup>nd</sup>, 2007 reveal constant references to this and other cases. Deputy Juliana Marino stated: "*En estos dos últimos años ha habido una enorme cantidad de casos que pese a estar absolutamente encuadrados dentro del Código Penal se pudieron llevar adelante en el sistema de salud a partir de su judicialización; y en términos generales, a partir de conductas muy decididas y muy valientes de las madres de las criaturas violadas o de las mujeres deficientes violadas*" (In the past two years there have been an enormous number of cases which, in spite of being included in the criminal code, were able to move forward only through the judicial system, and in general terms, due to the decisive and courageous attitude of the mothers of the raped children or of the mentally disabled women that were raped).<sup>168</sup> Similarly, Paola Bergallo, a consulting lawyer in the case of a mentally disabled girl from Entre Rios that was raped and denied a right to a legal

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<sup>168</sup> See Minutes of the Health Committee of the Lower Chamber, May 22<sup>nd</sup>, 2007.

abortion by doctors, stated that the repercussion this event had in the media activated the debate of the bills about non-punishable abortion in Congress.<sup>169</sup>

Since 2003 the state has been somewhat responsive to the issue of non-punishable abortion, in particular as compared with cases during the 1980s and 1990s in which most authorizations were denied by the judicial system. On July 2004 the Supreme Court of the Province of Buenos Aires authorized for the first time the interruption of a pregnancy in the case of anencephaly, interpreting that this situation implies a risk to the mother's mental health and thus falls under the exceptions allowed by Article 86.<sup>170</sup> On July 2006, when a 19-year-old mentally disabled girl that was raped was denied an authorization to a legal abortion, health Minister González García protested the decision and called for the application of the law.<sup>171</sup> Finally in August of that same year the Supreme Court of the Province of Buenos Aires authorized the abortion.<sup>172</sup> On May 2007, after the death of Ana Maria Acevedo, the National Institute against Discrimination, Xenophobia and Racism (INADI) presented a report to the National Congress and the Health Ministers of all the country recommending the application of a protocol to treat cases of non-punishable abortions.<sup>173</sup> On December of that year, before leaving his position as Health Minister, Ginés González García approved the distribution of a Guide for the Care of non-punishable Abortions to be implemented by all public hospitals.

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<sup>169</sup> Interview with Paola Bergallo, Buenos Aires, September 18<sup>th</sup>, 2007.

<sup>170</sup> See *Clarín*, “*Autorizan un aborto por anencefalia*”, July 21<sup>st</sup>, 2004.

<sup>171</sup> See *Página 12* “*Sola y Ginés piden por la chica violada para que pueda abortar*”, July 27<sup>th</sup>, 2006.

<sup>172</sup> See *Clarín*, “*Corte Suprema bonaerense autorizo el aborto a la joven discapacitada violada*”, August 1<sup>st</sup>, 2006.

<sup>173</sup> See María José Lubertino, President of INADI, and her statements in the Meeting of the Health Commission of the Lower Chamber on May 22<sup>nd</sup>, 2007.



#### *7.1.9. Slow initial responses*

The movement's actions did not lead to the decriminalization of abortion but did achieve some results. During these years there was a steep increase in the number of bills proposing access to safe and legal abortion in Congress. From one or two bills presented yearly during the 1990s, twelve bills were introduced between 2004 and 2005, many of them drafted with the movement's input (see more about this in the sections below).

There were also other small steps taken towards improving the access to safe and legal abortion. On October 2004 the health ministers of the country committed to reducing maternal mortality by 20% by the year 2007. They also stated that women that have had abortions should not be discriminated against and should receive adequate, fast and humane medical attention (Azskenazi 2007). In August 2005 a guide to improve the medical care in post abortion situations was approved by the Ministry of Health.<sup>174</sup>

In May 2006 within the Ministry of Justice a committee of jurists released a bill to reform the criminal code which they have been working on for a year and a half. One of the suggested reforms was that of Article 86, and it established the decriminalization of abortion during the first three months with the consent of the woman if there are “reasonable motives,” and at any time during the pregnancy in the case of rape.<sup>175</sup> When the project was released it generated controversy, not only because of the decriminalization of abortion during the first trimester but also due to the decriminalization of the use of drugs, and many other reforms that had been criticized by the right-wing sectors as being too lenient with criminals.

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<sup>174</sup> Resolution No. 989/2005. See document in Aszkenazi 2007, page 119.

<sup>175</sup> See *Clarín*, “Debate por el Nuevo Código Penal” June 24, 2006. Viewed on March 17th, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

The Campaign for the Decriminalization of Abortion considered this project as a positive step towards their goals. However, they did object that the right to an abortion during the first trimester would not be based solely on the woman's decision. The wording of the stipulation "need to have reasonable motives" was thought to be very ambiguous, to the point that it might allow the judge hearing the case to interpret it in a way that would lead to a ruling against the right to an abortion (Codelesky 2007). In addition, the academics behind the website [despenalizar.org](http://despenalizar.org) met and organized panels to discuss the reform to the criminal code and sent a document to the working committee in the Ministry of Justice.<sup>176</sup> In the end, in a context in which all parties were getting ready for the 2007 presidential elections, the government preferred to freeze the reform, arguing that it was not a top priority and that it needed to be discussed in depth by different sectors.<sup>177</sup>

This failure notwithstanding, other advances were made by the Kirchner administration on the wider issue of sexual and reproductive rights. In 2003 the Health Minister launched the Program on Sexual Health and Responsible Reproduction, which disseminated information on birth control methods and handed out contraceptives free of charge in public hospitals; in October 2006 the Senate passed a law on sexual education obliging all public and private schools to include the topic in their curricula; and in November of the same year the Senate passed a law ratifying the UN protocol on the non-discrimination of women (CEDAW), a main demand of the women's movement for decades.

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<sup>176</sup> Interview with Paola Bergallo, Buenos Aires, September 18<sup>th</sup>, 2007.

<sup>177</sup> See Clarín, "*El gobierno congeló el proyecto para reformar el código penal*", July 12<sup>th</sup>, 2006. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

## 7.2. Systematizing State Response

As it was done with the other cases, this section of the chapter will systematize the state response to the movement's demand for the decriminalization of abortion. As described in Chapter 1, I coded state responses, following Schumaker and Kitschelt's previous work, along five dimensions (Schumaker 1975; Kitschelt 1986): 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1). Table 7.1 summarizes the analysis of these dimensions for the Argentinean case.

The first dimension of state response is *access* and it is measured in two different ways: first by the number of times the women's movement met with the president, and second, by the number of incidents of repression the group suffered under each administration. As it is shown in Table 7.1, no president has ever met with the women's organizations demanding the decriminalization of abortion. Their interaction with government officials has been limited to meetings with sympathetic legislators as Luis Zamora, Alfredo Bravo, Maria Jose Lubertino, Silvia Augsburguer and Graciela Rosso.

The first time the executive branch received the movement was in 2008 under Cristina Fernández de Kirchner's administration. Early that year the National Campaign met with Health Minister Graciela Ocaña to inform her of the goals of their struggles,

TABLE 7.1  
STATE RESPONSE TO WOMEN'S MOVEMENT  
IN ARGENTINA  
1983-2007

<b>Dependent Variable. State Response to Argentinean Human Rights Movement</b>					
<b>Dimensions</b>	<b>Alfonsín 83-89</b>	<b>Menem 89- 99</b>	<b>De la Rúa 99-01</b>	<b>Duhalde 02-03</b>	<b>Kirchner 03-07</b>
1.1. Access. No of meetings with the President	0	0	0	0	0
1.2. Access. No of incidents of repression	0	0	0	0	0
2. 1. Agenda Setting. Inclusion of abortion in party's platform.	Not in PJ or UCR platform	Not in PJ or UCR platform	Not in PJ or Alianza platform	NA	Not in PJ or UCR platform
2.2. Agenda Setting. No. of bills related to abortion introduced in Congress	Pro: 2 Against: 3 Total: 5 Average per year: 0.8	Pro: 10 Against: 4 Total: 14 Average per year: 1.4	Pro: 4 Against: 0 Total: 4 Average per year: 2	Pro: 3 Against: 1 Total: 4 Average per year: 2	Pro: 28 Against: 8 Total: 36 Average per year: 9
3-Government Policy pro or against decriminalization of abortion		Against: Support of Vatican's view in international forums. 1998. Day of the Unborn Child			For: 2005 Guide for humane care of post abortion situations. 2007. Guide for care of non punishable abortions.
4-Policy Output. Implementation of initiatives advancing the right to abortion	None	None	None	None	Delays in the distribution and implementation of the guides for post abortion and non punishable abortions.
5-Institutional Change: creation of women's government institutions		National Council on Women			Health Minister Program on Sexual and Reproductive Rights.

demand the distribution and implementation of the guides for humane care in post abortion situations and that on non punishable abortions. The Minister committed herself to advance policies on reproductive health and to implement the two guides on the issue of abortion.<sup>178</sup> However, during her time in office she did not fulfill any of her promises.

While the women's movement has had no access to the President in any of the administrations, they have not been repressed either in any of their demonstrations.

The second dimension of state response is *agenda setting* and it is measured first by taking into account if the issue of abortion has been included in the platforms of the main political parties (Peronist Party (PJ), Radical Party (UCR), and second, by counting the number of bills that were introduced in Congress (whether or not they were passed) that seek to legislate on the issue of abortion. This measure takes into account whether these bills would have advanced the movement's cause or to the contrary, set it back.

Considering the first measurement, unlike Uruguay in which the three main parties have pronounced themselves either in favor or against the decriminalization of abortion, none of Argentinean main political parties has ever included their position on the abortion debate as part of their political platforms. Even today the societal and political debate on the issue of abortion is not as developed as in Uruguay.

The UCR platforms over the years have included a small section on Women's issues. In 1983 and 1989 they emphasized the need to incorporate women into political institutions, and their right to decide on the size of their family (UCR Platform 1983: 65-69; and 1989: 11). In 1995 their platform included the need to have sexual education in school's curricula and free access to birth control methods (Radical Platform 1995). In

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<sup>178</sup> See *Página 12*, "A la espera de señales claras. La Campaña por el Derecho al Aborto con Ocaña", January 19th, 2008. Viewed on January 19th, 2008 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

1999 the UCR allied with the leftist party FREPASO to ensure they would beat the Peronist candidate in the presidential elections. The 1999 platform of the *Alianza* called for gender equality and equal pay for equal work. But it made no mention of reproductive health issues as the UCR platform had in 1995 (Alianza platform 1999: 31). The 2003 UCR platform<sup>179</sup> was the first one to make any mention of the issue of abortion. It called for sexual education to prevent sexually transmitted diseases and abortion (UCR Platform 2003). However the platform made no reference to the party's positions on the decriminalization of abortion.. In addition the 2005-07 Legislative program of this party had no mention of this topic at all (UCR 2005).

Unlike the UCR Party's platforms, the Peronist Party's documents throughout the years made no reference to sexual and reproductive rights. Its 1983 platform had a section entitled "Women" that for most part recalled what Juan Domingo and Evita Perón had done for them. The only specific policies the documents referred to was the promotion of equality for women and the right of women to receive their partner's pension even when not legally married (Peronist Platform 1983: 56-57). The documents then moved to highlight the traditional links of Peronism with Christian values, in particular the Catholic Church's social doctrine (Peronist Platform 1983: 19). A similar approach was taken in the 1989 platform (Peronist Platform 1989:125). In the 2003 presidential elections the Peronist Party held no primaries and presented three different candidates. The platform of *Frente para la Victoria* (Front for Victory), the branch that supported Nestor Kirchner, made no mention of sexual and reproductive rights. The

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<sup>179</sup> After the resignation of President Fernando de la Rúa on December 2001 the Radical party almost collapsed. The electoral platform they presented for the 2003 presidential elections was so informal that it was actually very difficult to find. Members of the Party told me that given the internal crisis the institution was going through there was not much discussion and debate around it and the Party's committees that needed to approve it did not even meet.

platforms of the other two candidates (Carlos Menem and Adolfo Rodríguez Sáa) were not available.

The second way of measuring if abortion has been on the political agenda is to look at the number of bills introduced in Congress per administration and how far they proceeded in the legislative process. These bills are coded as being in favor or against in reference to the movement's demand of decriminalization. Table 7.1 shows the increase in number of bills related to the issue of abortion presented over the years. Given the irregular duration of presidential mandates in Argentina the total number of bills per administration plus the average of bills per year is presented. The absolute number of bills shows a large increase during this period of time: from 5 bills introduced in the first democratic administration (1983-89) to 36 during the Nestor Kirchner administration (2003-07). The average bills per year record a gradual increase: from 0.8 bills a year during Alfonsín's government, 1.4 during Menem's government, 2 during both De la Rúa and Duhalde's government, and 9 during Kirchner's government. Except for the first democratic administration, the number of bills introduced in favor of advancing the decriminalization of abortion has always been larger than those opposing it (See Table 7.1).

Within the pro-choice bills there have been those who have proposed, following the movement's demands, the decriminalization of abortion based solely on the women's choice, and those that have limited themselves to either expanding some of the exceptions or to clarify the exceptions for legal abortions already available under Article 86 of the Criminal Code. Table 7.2 distinguishes between these cases.

TABLE 7.2  
BILLS ADVANCING THE DECRIMINALIZATION OF ABORTION  
IN ARGENTINA  
1983-2007

	<b>Alfonsín 83-89</b>	<b>Menem 89-99</b>	<b>De la Rúa 99- 01</b>	<b>Duhalde 02-03</b>	<b>Kirchner 03-07</b>	<b>Total</b>
<b>Based on women's choice</b>		3	2	1	3	9
<b>Expansion of exceptions and clarification art. 86</b>	2	5	2	2	22	33
<b>Others</b>		2			3	5
<b>Total</b>	2	10	4	3	28	47

*Source: By Author based on Congressional database*

Table 7.2 shows that the number of bills that have proposed the decriminalization of abortion based solely on the choice of the woman are the minority. Also, their number has not increased significantly over time despite the increasing salience of the issue and the growing mobilization of the women's movement. These bills typically proposed the complete decriminalization of the right to a safe and legal abortion during the first trimester, and allowed it in the following trimesters only in case of risk to the mother's life or if the fetus had no chance of surviving outside the womb. On the contrary, the bills which proposed the expansion of exceptions or aimed to clarify the ambiguities of Article 86 grew exponentially during the Kirchner administration. The most common proposed new exceptions to Article 86 were rape of any woman (not just of the mentally disabled), a risk to a mother's physical and psychological health, and the impossibility of the fetus



to survive outside the womb (such as cases of anencephaly). In addition most of these bills explicitly establish there should be no need for judicial authorization for these abortions to be performed. In all these years there were only two bills to include the lack of economic means as a reason justifying a legal abortion.

The disparity between the increase of bills on non punishable abortions and the relatively stable number of bills proposing complete decriminalization during the first trimester show that the issue is still a controversial one. This has been the case despite the growing debate in the media about abortion, despite the generally favorable public opinion polls supporting decriminalization and the gradual growth and increasing visibility of the women's movement. Even those legislators sympathetic to the women's movements demands tended to limit themselves to introducing bills on non-punishable abortions in a way that showed their support for the movement while at the same time not running political risks. Members of the movement have complained that even those legislators that propose complete decriminalization limit themselves to introduce the bill but later do not work hard enough to push for the discussion of their proposed legislation.<sup>180</sup>

Although the bills on non-punishable abortions are considered an advance for the movement's struggle, many believe they are not enough and that the passage of these bills might imply the end of the abortion discussion and any hope of winning legislation that allows for the voluntary interruption of pregnancy based solely on the woman's choice. Despite this general view, given the crude reality of numerous women being denied the rights that the law protects, the movement has lately incorporated the demand for the regulation of non-punishable abortions into their demands.

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<sup>180</sup> Interview with Martha Rosenberg,

TABLE 7.3  
BILLS ADVANCING DECRIMINALIZATION  
OF ABORTION BY GENDER  
1983-2007

Year	Introduced by women	Introduced by men	Introduced by a group of women and men	Total
1983				0
1984				0
1985				0
1986				0
1987				0
1988				0
1989	1	1		2
1990				0
1991	1	1		2
1992		1		1
1993		1		1
1994	1	1		2
1995		1		1
1996				0
1997		1		1
1998				0
1999				0
2000		1		1
2001	1	1	1	3
2002		1	1	2
2003	3			3
2004	2	1	2	5
2005	4		3	7
2006	5	2	3	10
2007	2	1		3
<b>Total</b>	20	14	10	44

*Source: By author based on Congressional database*

I also coded the gender and partisan affiliation of bill sponsors. In terms of gender, more women (20) than men (14) advanced legislation towards the decriminalization of

abortion over the course of the entire period analyzed here (see Table 5.4). Although more bills on abortion were introduced by men (8) than women (3) during the 1980s and 1990s, we should keep in mind that that a significant number of women were elected to Congress only after 1993 thanks to the gender quota law.<sup>181</sup> After the year 2000, when the distribution of congressional seats between men and women became relatively more balanced,<sup>182</sup> 17 bills were introduced by women but only 6 were by men.

As shown in Table 7.4 the initial bills advancing the right to legal and safe abortion during the 1980s were introduced by individual legislators from the Radical Party (UCR). In the 1990s, the tendency of presenting individual bills continue, but we see leftist parties such as *Frente Grande*, *Frepaso*, the Socialist Party and *Movimiento Socialista de Trabajadores* coming forward with bills on this issue. After the year 2000 the issue of abortion began to cut through political parties. From then onwards it is common to see coalitions of legislators of different political parties signing bills to advance the decriminalization of abortion. Legislators from the Socialist Party, *Frepaso*, the Radical party and now for the first time the Peronist Party -through its branch *Frente Para la Victoria* led by Nestor Kirchner- sponsored most of these bills.

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<sup>181</sup> Law No. 24,012

<sup>182</sup> The distribution of seats became more balanced but it's still at the 30% rate requested by the law. Instead of being the minimum required participation this 30% has become the limit of participation which women seem not to be able to overcome.

TABLE 7.4  
BILLS ADVANCING THE  
DECRIMINALIZATION OF ABORTION BY PARTY. 1983-2007

Year	UCR	PJ	Frepaso/ Frente Grande	Socialist Party	Other leftist parties	Coalition of parties	Total
1983							0
1984							0
1985							0
1986							0
1987							0
1988							0
1989	2						2
1990							0
1991	2						2
1992		1					1
1993					1 <sup>i</sup>		1
1994			1	1			2
1995	1						1
1996							0
1997	1						1
1998							0
1999							0
2000			1				1
2001	1					2 <sup>ii</sup>	3
2002					1 <sup>iii</sup>	1 <sup>iv</sup>	2
2003	1	1		1			3
2004		1	1	1		2 <sup>v</sup>	5
2005	1	1 (FPV) 1(PJ)				4 <sup>vi</sup>	7
2006	1	4 (FPV)1 (PJ)		1		3 <sup>vii</sup>	10
2007		2 (FPV)			1 <sup>viii</sup>		3
<b>Total</b>	10	12	3	4	3	12	44

i Movimiento Socialista de Trabajadores (Socialist Movement of Workers)

ii Radical Party (UCR), Frepaso, Socialist Party.

iii Autodeterminación y Libertad (Self determination and Freedom)

iv Socialist Party, Peronist Party (PJ), Frente Grande, Radical Party (UCR), Frepaso

v Socialist Party, Peronist Party (PJ), Radical Party (UCR), Izquierda Unida (United Left), Encuentro (Encounter)

vi Frente para la Victoria (Front for Victory, branch of Peronism), Encuentro (Encounter), Afirmación para una República Igualitaria (Affirmation for an Equal Republic, ARI), Izquierda Unida (United Left, IU), Radical Party (UCR), Peronist Party (PJ), Socialist Party

viii Peronist Party (PJ), Socialist Party, Radical Party (UCR), Frente para la Victoria (Front for Victory, FPV branch of Peronism)

Redes (Networks)

Of all the bills introduced in Congress, some were drafted with the input of the women's movement. During the early 1990s legislators Luis Zamora (*Movimiento*

*Socialista de Trabajadores*), Alfredo Bravo and Hector Polino (Socialist Party) met with the *Comisión por el Derecho al Aborto* to introduce these bills.<sup>183</sup> After 2000, Socialist legislator Silvia Augsburger, in close relationship with the women's movement since her time in the city council in Rosario, introduced two bills addressing the demands of the movement: one called for the establishment of a tri-partite commission (Congress, Executive branch and women's movement) to discuss the issue of abortion,<sup>184</sup> and the other replicated the National Campaign's bill presented on May 2007. The Zamora and the Augsburger's bills proposed the total decriminalization of the practice of abortion during the first trimester. This ambitious goal prevented them from being ever discussed in Congress.

The third dimension, *government policy*, deals with whether administrations have advanced the movements' demands or stalled them. This particular dimension has been analyzed in depth in the previous section, but a brief summary will be given here. The decriminalization of abortion has not been accomplished, and not much has been done to even begin to move in this direction. As we have seen, the Argentinean state has been historically absent in the field of sexual and reproductive health, and in particular in the issue of abortion. On top of this, with the exception of small initiatives under the Kirchner administration, each time the state acted on this issue area it was to add more obstacles to the exercise of reproductive rights and never to advance them (Gutierrez, Gogna and Ramos 1998, 186).

The year 1983 marked the return of democracy to the country. The Alfonsín administration had its plate full with issues such as the need to exercise civilian control

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<sup>183</sup> See Bills 4112 D 1993 and 1322 D 1994.

<sup>184</sup> Interview with Silvia Augsburger, Buenos Aires, September 19<sup>th</sup>, 2007. See Bill 0468 D 2006.

over the armed forces and the debt crisis. Sexual and reproductive rights were definitely not a top priority. The few steps taken in this field was the annulment of the restrictive laws prohibiting birth control passed by the last Peronist government and maintained during the military dictatorship.

During the 1990s the Menem administration established a strategic alliance with the Vatican which prevented any advancement on sexual and reproductive rights. There was a clear alignment with the Catholic Church in all international forums and the Day of the Unborn Child was established on March 25<sup>th</sup>, 1998.

It's been only under the Kirchner administration that sexual and reproductive rights began to gain some priority. In 2003 the Health Minister launched the Program on Sexual Health and Responsible Reproduction with the goal of spreading information on birth control methods and giving free contraceptives in public hospitals. On October 2006 the Senate passed a law on sexual education obliging all public and private schools to include the topic in their curricula.

The advances that have been made towards the decriminalization of abortion have been small, but worth mentioning. These relate to the publication of two guides for public hospitals to follow when caring for women in post-abortion situations and in cases of non punishable abortions.

In Argentina doctors usually mistreat women that come to the emergency room with evidence of having an induced abortion. They use humiliating words to refer to them, interrogate women seeking a confession and later scold them for what they have done. There have been many reports of doctors who let women wait for a while before treating them as a form of punishment (Ramos and Viladrich 1993:23; Checa et al 2006:270;

Human Rights Watch 2006). Human Rights Watch has reported cases of women being denied medical treatment for having induced their own abortion and those of doctors treating their patients without anesthesia (Human Rights Watch 2006:60).

This is the kind of situation that Health Minister Ginés González García wanted to avoid when in August 2005 a guide to improve medical care in post-abortion situations was published for distribution to public hospitals.<sup>185</sup> This document stipulated the need for the use of general anesthesia where incomplete abortions are treated with curettage, and recommended the use of less invasive methods such as manual vacuum aspiration instead of curettage. It also emphasized the need to respect the doctor-patient confidentiality and explained how doctors should humanely treat women including talking to them in private about their choices.

A second guide was published by the Health Ministry on December 2007, this time to regulate the care given in cases of non-punishable abortions. The goal behind this guide was to prevent doctors from requesting prior judicial authorization to interrupt a pregnancy in the cases in which the law is clear. The guide clarified Article 86 of the criminal code establishing that there are three cases in which abortion is legal: 1) when there is risk to the physical or psychological health of the woman, 2) in all cases of rape, and 3) in cases of rape of a mentally disabled woman. To prove the rape it stated it is only necessary to report the crime to the police or to present an affidavit stating the facts. Women older than 14 years old would not require parental consent to request an abortion. The following sections will evaluate the implementation of these two guides.

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<sup>185</sup> Resolution No. 989/2005. See document in Aszkenazi 2007, page 119.

The fourth dimension of state response, *policy output*, analyzes the way the policies described in the previous dimension are being implemented, pointing out any deficiency in the process. As explained in Chapter 1, the problem with measuring this dimension for the women's movement in the three cases is that the main demand of decriminalizing abortion has not been accomplished in either of them. It is thus not possible to measure how well this policy has been implemented. Due to this situation, the implementation of the current abortion law, and of initiatives that fall short of the final goal of decriminalization but are paving the way towards an easier access to a free, legal and safe abortion will be analyzed instead.

As we saw earlier in this chapter, the Argentinean criminal code penalizes abortion in most situations. There are however, two circumstances in which this practice is considered legal: 1) if the mother's health is at risk and 2) if the pregnancy is the result of rape of a mentally disabled woman. In spite of this restrictive law, it is estimated that between 300,000 and 500,000 abortions take place every year (Gutierrez et al 1993: 193). These numbers come from extrapolating the number of hospitalizations due to post abortion complications. In 2004 there were 79,800 hospitalizations caused by abortions. The Argentinean Health Minister estimates that for every person that seeks a doctor, there are around five or six that do not do so.<sup>186</sup> If these estimations are correct, there is one abortion for every two births (Gutierrez 2000: 85).

Despite the complete disregard for the law criminalizing abortion, there have been almost no convictions of women or doctors that had performed an abortion. According to

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<sup>186</sup> See statements by Health Minister Ginés González García under the Kirchner administration in *Clarín* "Ginés González García. El ministro de las polémicas" July 24<sup>th</sup> 2005. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)



a study conducted in 2001 60% of doctors believe they have the obligation to report cases of induced abortions (Ramos et al. 2001). However, many of them stated that they do not report them unless the women are in imminent danger of dying to protect themselves from legal action (Human Rights Watch 2006).

The few judicial prosecutions that were initiated did not go forward given the impossibility of proving the existence of an abortion (Ramos and Viladrich 1993). Even in the exceptional circumstances in which the crime is reported and prosecuted, there is rarely a situation in which a woman serves time in prison for it.<sup>187</sup> There is no available data on the annual number of convictions. Human Rights Watch reports that between 2002 and 2003 only nine women were convicted and sentenced for having an abortion, an insignificant number compared to the estimations of annual abortions throughout the country (Human Rights Watch 2006: 65). However, the existence of the law carries the threat of being punished and sentenced to prison, preventing many women from seeking medical care when needed. Even if they were to be reported these women would likely not be jailed. However, their criminal record could prevent them from collecting social security pensions. This is a serious issue given that most of the women that end up being prosecuted are poor.

There have been only two steps taken towards improving the conditions under which abortions are performed in the country. The first is the Guide on Humane Care for Women in Post-Abortion Situations released in 2005. No reports evaluating the implementation of this guide to measure improvements or deficiencies have been found. Women from the National Campaign have complained that it has not been properly

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<sup>187</sup> See *Clarín*, “Interrupción del embarazo: proponen legalizar el aborto para los primeros tres meses de gestación”, May 2006. Viewed on March 17<sup>th</sup>, 2007 at [www.clarin.com.ar](http://www.clarin.com.ar)

distributed or publicized<sup>188</sup> and voiced their demands in their meeting with Cristina Fernández de Kirchner's Health Minister Graciela Ocaña in 2008. Ocaña has been known to prevent the distribution of this material around public hospitals and not given the issue the priority it needed.

Meanwhile, some provincial and local legislators have enacted local laws to enforce the implementation of this guide. The Province of Santa Fe was the first to do so in May of 2009,<sup>189</sup> and the city council of Rosario did so as early as 2005.<sup>190</sup> However, in most places, its implementation depends on the individual running the OBGYN service of each hospital and their personal position on the abortion issue. Public hospitals Alvarez and Argerich in the city of Buenos Aires are known as pioneers in the application of this guide.<sup>191</sup> Outside Buenos Aires, Bahia Blanca's hospital Dr. José Penna began a similar program in 2005.<sup>192</sup>

A second guide released by Health Minister Ginés González García in December 2007 regulated the care given by public hospitals in cases of non-punishable abortions. As mentioned in previous sections, even when the Argentine law allows abortion to be legal in case the mother's health is at risk or when the pregnancy was the result of the

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<sup>188</sup> See interview with Estela Díaz, member of the National Campaign for the Right to a Legal, Safe and Free Abortion, May 28<sup>th</sup>, 2008. Viewed on July, 20<sup>th</sup>, 2010 at <http://www.artemisanoticias.com.ar/site/notas.asp?id=22&idnota=5727>

<sup>189</sup> See *Página 12*, "Atención post aborto. Santa Fe tiene la primera ley", May 29<sup>th</sup>, 2009. Viewed on May 29<sup>th</sup>, 2009 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>190</sup> See *Página 12*, "Protocolo en marcha" December 9<sup>th</sup>, 2005. Viewed on March 17<sup>th</sup>, 2007 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>191</sup> See *Página 12*, "Programas post aborto" June 26<sup>th</sup>, 2008 and "Hospital Público Argerich implementó asesoramiento pre y post aborto" July 15<sup>th</sup>, 2007. Viewed on June 26<sup>th</sup> 2008 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>192</sup> See *Página 12*, "Oportuna humanidad", May 13<sup>th</sup>, 2005. Viewed on March 17<sup>th</sup>, 2007 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

rape of a mentally disabled woman, in the practice, there is a total prohibition of abortion (Chiarotti 2006). It is very common to hear about doctors and judges denying access to an abortion even in the cases that clearly fall under the exceptions allowed by Article 86 of the criminal code. The guide aims to address this problem.

However, as with the first guide, the implementation of this one has been uneven at best. Even after its publication in 2007 many cases of legal abortions having been denied have been reported in the press.<sup>193</sup> Due to Health Minister Ocaña's opposition to the more liberal interpretation of article 86 provided by the guide, she made no effort to distribute it among public hospitals. Thus, the women's movement made this issue a key demand of their struggle. In January 2008 they met with the Health Minister and demanded the distribution and implementation of both guides. In July 2008 a group of experts in reproductive health wrote a letter to her requesting its distribution and offering their cooperation to organize workshops and other activities to train hospital personnel in this respect.<sup>194</sup>

Again, as with the first guide, given the inactivity of the National Health Minister some provincial and local legislatures began to discuss the regulation of non-punishable abortions. The Provinces of Buenos Aires, Neuquén, and Santa Fe have passed protocols to promote and distribute this guide.<sup>195</sup> Experts have reported that these are the only places in which non-punishable abortions are treated according to the new rulings and

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<sup>193</sup> See *Clarín*, "Antecedentes", July 21<sup>st</sup>, 2010. Viewed on July 21<sup>st</sup>, 2010 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>194</sup> See *Página 12*, "Una carta a Ocaña para la difusión de un protocolo", July 7th, 2008. Viewed on July 7th, 2008 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>195</sup> See *Página 12*, "Guías para garantizar el acceso a la salud. Cuatro provincias implementan con éxito protocolos para la atención de abortos permitidos por la ley", July 27th, 2010. Viewed on July 27th, 2010 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

thus may proceed without prior judicial authorization.<sup>196</sup> Recently, the province of Chubut has joined them by passing its own law on this issue.<sup>197</sup> The city of Buenos Aires has been debating a similar bill since 2008, but the right-wing party PRO, which holds the majority of seats, has blocked this initiative time and again.

On July 21<sup>st</sup>, 2010 Health Minister Juan Manzur lent the guide full support by elevating it to the rank of a ministerial resolution.<sup>198</sup> This had been a consistent demand of the women's movement since the guide was first published in 2007. However, for some unknown reason the following day the Minister publicly retracted and the resolution was not signed.<sup>199</sup> The women's movement and human rights NGOs harshly criticized this misstep.

In the meantime and given the government's inactivity, in 2009 the organization Lesbians and Feminists for the Decriminalization of Abortion set up a toll free number to give out information about the way to have access to a safe abortion. One of their suggestions is the use of Misoprostol, an obstetric drug that can be used to interrupt a pregnancy without the damaging consequences of other clandestine methods. During 2009 they have received one call every 22 minutes.<sup>200</sup>

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<sup>196</sup> See *Página 12*, "En la provincia de Buenos Aires si pueden hacerlo", March 12th, 2010. Viewed on March 12th, 2010 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>197</sup> See *Página 12*, "Acceso al aborto no punible. Chubut es la primera provincia que reglamenta la interrupción del embarazo" June 2nd, 2010. Viewed on June 2nd 2010 at [www.paginawe.com.ar](http://www.paginawe.com.ar)

<sup>198</sup> See *Página 12*, "Un gran avance que elimina dudas," July 21<sup>st</sup>, 2010. Viewed on July 21<sup>st</sup>, 2010 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>199</sup> *Clarín* stated that a call by President Cristina Fernandez de Kirchner was responsible for Minister Manzur's retraction of this decision. See "Un llamado de Cristina a Manzur freno la resolución sobre el aborto," July 23, 2010. Viewed on July 23rd, 2010 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>200</sup> See *Página 12*, "En línea con la información" November 27<sup>th</sup>, 2009. Viewed on November 27th 2009 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

Finally, with respect to the *creation of government institutions* to address the women's movement demands, unlike in Uruguay, there have not been in Argentina any institution created specifically to address the issue of abortion, but some have been created to deal with women's issues more generally.

The *Consejo Nacional de la Mujer* (National Council on Women) was created in 1992 to comply with the Convention on the Elimination of Discrimination against Women (CEDAW). At that time its head reported directly to the office of the President and held the rank of an Undersecretary. Virginia Franganillo, the first woman appointed to lead this Council, quickly clashed with President Menem because of his administration's conservative policies and left the institution. Since then the Council has been weakened and downgraded, and has lost budget and staff. In 2002 it was transferred to the Minister of Social Policies by President Duhalde, losing authority to discuss how other area policies affected women's rights with other Ministers (Dominguez 2004).

At the provincial and local levels, five of the 24 Argentine provinces have no specific organism to protect the rights of women,<sup>201</sup> and only a third of the municipalities have one, although most of these municipal institutes lack adequate rank, budget, authority and staff (Domínguez 2004). Moreover, there are very few mechanisms to articulate the different state agencies that work on women issues.

The year after Congress passed the bill on Sexual and Reproductive rights of 2002, the Health Minister launched a program to carry out its implementation. The main goals were the distribution of free birth control methods, the training of hospital personnel, and the organization of public campaigns on these issues. However, the implementation of these goals has been uneven, and many times provincial authorities have stored the

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<sup>201</sup> These are Formosa, Jujuy, Corrientes, Tucumán and Santa Fe.

contraceptives sent by the national government due to their opposition to these methods. In addition, it was only in 2007 that a director for this program was appointed. Given the lack of human and financial resources, nobody wanted to be responsible for such an important task.<sup>202</sup> These problems seem to be a constant within certain areas that are not assigned their due priority within the Argentine state.

One government organism -- the *Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo* (National Institute against Discrimination, Xenophobia and Racism, INADI) -- has been very outspoken on women's rights and in particular on sexual and reproductive rights. Although created in 1995,<sup>203</sup> it only began functioning in 1997. In 2005 a presidential decree situated it under the umbrella of the Minister of Justice, Security and Human Rights. In 2006 the Kirchner administration appointed María José Lubertino, a well-known feminist and long time activist for sexual and reproductive rights, to head this organization. Since then, this institute has been supportive of the women's movement's demands, in particular abortion. In May 2007 INADI demanded that Congress and the Health Minister implement the guide on non-punishable abortions so as to protect the rights of women that fall under the cases in which abortion is legal. It has also accompanied and defended women and their families when their right to a legal abortion has been denied.<sup>204</sup> Lubertino has also personally supported the National Campaign for the Decriminalization of Abortion launched by the women's movement.

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<sup>202</sup> Interview with Paola Bergallo, Buenos Aires, September 18<sup>th</sup>, 2007.

<sup>203</sup> Law No. 24,515

<sup>204</sup> See *Página 12*, "Se recupera bien la joven de Paraná tras realizarse el aborto terapéutico en Mar del Plata", September 24<sup>th</sup>, 2007. Viewed on September 24<sup>th</sup>, 2007 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

### 7.3. Conclusions

The Argentine women's movement is still weak and its impact has been modest at best. There are three main instances in which it had some impact on state policy. First, the movement was successful in keeping the issue of abortion on the agenda. Although it has not been the only entity pushing in this direction, its massive demonstrations in the *Encuentros de Mujeres* since the year 2000 and its National Campaign launched in 2007 have been influential in maintaining abortion's visibility on the political agenda.

Second, by quickly organizing and mobilizing the movement was instrumental at the time of the 1994 Constitutional Convention in blocking President Menem's proposed clause that would have inserted the right to life from the moment of conception until natural death into Argentina's constitution.

Finally, the movement has impacted government policies by collaborating with legislators in the drafting of abortion bills, and even by introducing their own bill in 2007.

However, most of the movement's actions have been reactive taking advantage of opportunities instead of creating them. The creation of MADEL to fight the Constitutional Reform is a clear case of a reactive stance. Their use of the media cases in which women are denied their right to legal abortions and of public statements of government officials in favor of the decriminalization of abortion, are other examples of their reactive attitude.

One source of their weakness has been the lack of strong alliances with other key social actors such as unions, lawyers and doctors. This has been a clear strength of the

women's movement in Uruguay in which the Argentinean movement has still to work on. In addition, the movement usually gets support from a small group of leftist legislators (mostly women), but this usually depends on the individuals elected in each period and their sympathies towards sexual and reproductive rights. In Uruguay, by contrast, the creation of the *Bancada Femenina* gives the women's movement a more stable and established entity with which to interact in their struggle for the decriminalization of abortion. Finally, unlike the case of Uruguay, the Argentine women's movement has not had any input in the creation of government institutions to deal with women and specifically sexual and reproductive rights issues.

The weakness of the movement can be held partly responsible for the lack of action of the Argentinean government in the field of sexual and reproductive rights and of abortion in particular. This is especially true under the Kirchner administration, which has shown itself be very receptive to those social movements that could give him legitimacy and political power. No bill on abortion has ever been discussed in the Congress plenary session, and the only progress made to improve the situation of abortion has been the release of the two ministerial guides, which, as we have seen, have been only applied in a few locations around the country.



CHAPTER 8  
THE IMPACT OF THE WOMEN'S MOVEMENT  
ON STATE POLICY IN CHILE.

The 1874 Chilean Criminal Code defines abortion as a crime in all cases. The penalty for this practice ranges from 3 to 5 years for having an abortion, and from 541 days to 3 years for providing one.<sup>205</sup> Between 1931 and 1989 the Sanitary Code authorized the practice of therapeutic abortions –those in which the life of the woman is at risk- when authorized by two doctors.<sup>206</sup>

In 1973 during the last months of the Allende government, the public hospital Barros Luco in Santiago began to interpret the sanitary code in a more liberal fashion: since illegal abortions were a threat to a woman's health and life, their practice in a public hospital could be considered a "therapeutic abortion." In addition a program was launched to provide contraceptives to women in post-abortion situations. In the eight-month period of this experiment, 2,000 abortions were performed, fewer women were treated for complications due to abortions, and none died (in 1972 the hospital had registered 15 cases of maternal deaths due to abortions). Unfortunately, the September 11<sup>th</sup> coup d'état brought a halt to this experience, which was never re-launched (Lagos Lira 2001).

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<sup>205</sup> See articles 342 and 345.

<sup>206</sup> Sanitary Code, art 119.

In 1980 the Pinochet regime sanctioned a new Constitution which protected the life of the unborn. Once Pinochet lost the plebiscite to continue in power in 1988, many military officers feared that the end of their rule would lead to a liberalization of society in all its realms such as the one that took place in Spain after Franco's death. They equated democracy with the loss of moral values.<sup>207</sup> One of the most vocal anti-abortion officers was José Toribio Merino, Commander-in-Chief of the Navy, who decided to convene a group of navy officers, priests, economists, and physicians linked to the Catholic University to propose the ban of therapeutic abortion, which Pinochet later approved. Before leaving power in 1989, he passed a law eliminating the exception of therapeutic abortion in the Sanitary Code.<sup>208</sup> No women or experts in sexuality or public health had been represented in the group that informed this proposal (Lagos Lira 2001).

Since then Chilean law has established a complete prohibition of abortion under all circumstances. No exceptions exist for the practice to be legal, leaving Chile as one of the countries with the most restrictive legislation on abortion in the world. Women's lives are entirely subordinated to that of the fetus.

One of the challenges of writing a chapter on Chile's women's movement and the demand for legal abortion is the fact that this issue has not been a priority for the movement. Despite the restrictive Chilean law on the issue, there has not been a strong campaign in favor of the decriminalization of abortion in this country since the democratic transition. Only a few voices within the women's movement have organized a few sporadic actions towards the advancement of this cause. In addition, unlike in the

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<sup>207</sup> Interview with Camila Maturana, Santiago de Chile, October 29<sup>th</sup>, 2007.

<sup>208</sup> Law No. 18,826, September 15th, 1989

other two cases in which it is possible to trace positive policy steps toward decriminalization even if it has not been achieved, in Chile since the democratic transition the prospects for this to happen have actually diminished with the passage of time.

Even though there are 53 women's organizations within the Forum for Sexual and Reproductive Rights -which is the local chapter of the Latin American Campaign "November 28" for safe and legal abortion- the visibility of this organization and the level of activism at a national level in this particular issue has been low and sometimes non-existent.<sup>209</sup> There is no national strategy to guide the struggle.<sup>210</sup> The group has mounted much stronger campaigns for access to contraceptives and sexual education than for the right to a legal and safe abortion (Borland 2004).<sup>211</sup>

However, this "negative case" in which there is hardly a movement demanding the right to abortion represents a good opportunity to compare Chile with the cases of Argentina and Uruguay. This chapter will trace the origins and development of the women's movement in Chile and the causes behind their weakness in their struggle for abortion. The lack of agreement within the movement on whether to demand abortion decriminalization, legalization or liberalization<sup>212</sup> only under certain circumstances prevented the organization of a solid and coherent campaign. In addition, the drying up of

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<sup>209</sup> Most of those interviewed for this case study coincide in this statement.

<sup>210</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007

<sup>211</sup> Interview with Marcela Ríos, Santiago de Chile, November 2<sup>nd</sup>, 2007.

<sup>212</sup> Even when sometimes these terms are mixed there are substantial differences between them. Demanding abortion decriminalization implies asking for the repeal of the laws that punish women for having abortions. Legalization encompasses decriminalization and also adds the guarantee of universal and free access to safe abortions. Liberalization is usually used to refer to the decriminalization of abortion under certain circumstances such as rape, incest or threat to the mother's health and life.

foreign financing and the lack of strong links with political parties or individual politicians contributed to this weakness. The fact that in spite of the restrictive abortion policy maternal mortality due to unsafe abortion is relatively low (15% of maternal deaths as compared to 24% in Argentina and 27% in Uruguay), has prevented the movement from using the frame of abortion as a health issue that has been so successful in Uruguay and Argentina. The chapter analyzes the government policies in the field of sexual and reproductive rights and of abortion in particular. It shows the lack of priority given to the issue of abortion by the four administrations from the *Concertación* and the consequential lack of initiatives to even debate the possibility of decriminalizing therapeutic abortion. It thus show how in the absence of a strong women's movement demanding the decriminalization of abortion, politicians in power do not push for reform even when they might have sympathies for such policies.

#### 8. 1. Chile's Women's movement

The women's movement in Chile emerged in the 1970s closely linked to the leftist activism around Allende's socialist government (Ríos Tobar et al 2003).<sup>213</sup> Similar to the trajectory of women in Argentina and Uruguay, during the military dictatorship women's organizations were very active in the opposition movement to the regime (Valdés 2000; Ríos Tobar et al 2003). The movement combined their activism against the regime with their views on gender and women's rights. This was reflected in their rejection of all authoritarianisms: at the political, economic and family level (Ríos Tobar 2006). At the

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<sup>213</sup> There was a first wave of feminist/women's movement during the first half of the 20<sup>th</sup> century which was exclusively linked to the suffragist struggle. If this one is taken into account, the 1970s saw a re-emergence of the movement.

time there were two kinds of organizations: 1) feminist groups with a socialist affiliation made up of professional middle class women, and 2) popular women's groups organized around economic needs like those of the *pobladoras* (women in shantytowns).<sup>214</sup>

The women's movement remained highly active during the 1980s when the open opposition towards the military regime began to grow. At the time of the 1988 plebiscite to decide if Pinochet should continue in power until 1997 the women's movement played a major role in the campaign to say "No" to Pinochet. This opportunity was used by women to say "No" to other things they opposed such as the patriarchal and authoritarian character of Chilean society (Ríos Tobar et al. 2003). In July 1988, 22 women's organizations drafted a document known as *Demandas de las Mujeres a la Democracia* (Women's Demands to Democracy) with the goal of presenting these demands to the new government. They elaborated a program in which they proposed the creation of a government office with ministerial rank to address women's issues (Gabarra 1995) and that 30% of decision-making positions in government should be reserved for women. Their main concerns at the time were the creation of government mechanisms to address problems such as women's citizenship and civil rights, women's rights as mothers, and the rights of female workers (Pieper Mooney 2009). The issue of abortion was not present.

In December of that same year women from political parties, feminist, and women's organizations created the *Concertación* of Women for Democracy (Baldez 2002). The goal was to influence the policies of the political coalition that became the *Concertación*.

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<sup>214</sup> Movimiento de Mujeres Pobladoras, MOMUPO

The group prepared a government program in all policy areas focusing on gender.<sup>215</sup> But once again, controversial demands such as that of abortion were excluded (Baldez 2002; Piepper 2009). Since there was not an agreement within the women's movement as to which stance to take on this issue –both in terms of principle and strategy-, it was left outside their program (Piepper Mooney and Campbell 2008). In 1989 20,000 women met in Santa Laura Stadium to commemorate Women's day and celebrate the return of democracy; the high turnout is indicative of the strength of the movement at the time (Baldez 2002).

The restoration of democracy did not give the issue of abortion a larger space within the movement's activities. After the intense mobilization of the 1980s, the women's movement as a whole gradually weakened (Ríos Tobar 2006; Valdés 2002; Ríos Tobar et al 2003; Alvarez et al. 1998; Baldez 2002). As stated by many political scientists, democratic transitions brought political parties back to the main stage, decreasing the field of action of civil society actors (O'Donnell and Schmitter 1986, Oxhorn 1995, Garretón 1993). Once democracy was re-established some women activists went back to work within the political parties and the state; others continued to work in civil society associations but less with popular organizations than through NGOs. While the trend towards the "NGOization" of feminist and women's movements has been universal (Alvarez 1999), in Chile this tendency was particularly strong (Ríos 2006). NGOs interacted with the successive governments in issues of sexual and reproductive rights but always as technicians and experts, and not as representatives of the rights of women in civil society (Ríos Tobar et al 2003).

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<sup>215</sup> See Sonia Montecino and Josefina Rossetti, 1990, "*Tramas para un Nuevo destino. Propuestas de la Concertación de Mujeres por la Democracia*"

During the 1990s, instead of a broad movement with a common struggle based on women's rights, the movement fractured and different groups began to work towards specific goals -violence against women, equal job opportunities, and sexual and reproductive rights- with little articulation or coordination among themselves. There was a proliferation of *colectivos* of feminist women, but these remained focused on creating spaces to reflect, develop and strengthen their feminist identities. Only a few situated in Valparaíso developed activities to influence the public sphere (Ríos Tobar et al 2003).

Among the groups interested in sexual and reproductive rights, the issue of abortion was never a priority.<sup>216</sup> The wider issues of contraceptives and sexual education kept taking the center stage. During the 1990s the movement internally debated the issue of abortion and found once again that there was no agreement on which position to take. The movement thus limited itself to talking about the issue internally and did not debate the merits of decriminalization with opponents or those who were still undecided. Feminist leaders acknowledged having declined interviews and not responding to right-wing editorials on the issue given that in the past they had been ridiculed for doing so (Blofield 2006). As a result, internal discussions produced neither a bill to introduce in Congress nor a political strategy to move the issue forward.<sup>217</sup>

The demobilization was even stronger after 2000 when the external funding these groups had received during the 1990s dried up. For example, during these years the Ford Foundation, one of the women's organizations' main sources of funding, closed its program on sexual and reproductive rights in Chile. One of the reasons for the decrease in

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<sup>216</sup> Interview with Marcela Ríos Tobar, Santiago de Chile, November 2nd, 2007.

<sup>217</sup> Interview with Lidia Casas, Santiago de Chile, November 2nd, 2007

international funding could be that despite an absolute ban on abortion in Chile, maternal mortality levels are one of the lowest in the region. Although many women resort to illegal abortions, “only” five die each year from having one.<sup>218</sup> Given the conservative stance of most of the owners of the large Chilean companies,<sup>219</sup> there is little chance of finding domestic funding (Blofield 2006).

The main group that has worked in the area of sexual and reproductive rights is the *Foro de Salud y Derechos Sexuales y Reproductivos* (Health and Sexual and Reproductive Rights Forum). Created in 1989, it is currently made up of 53 organizations that include NGOs, women collectives, social organizations, and professionals from different fields. The Forum has been the local chapter of the Latin American campaign “September 28<sup>th</sup>” for the decriminalization of abortion. Their web page states that one of the issues they have focused on is to keep the abortion issue on the public agenda as a health issue. According to them, this has been done by organizing debates, conferences and demonstrations to spread consciousness on the right of women to a voluntary motherhood.<sup>220</sup> However, as it will be described in the following sections, they have mobilized very few street appearances and they have had almost no interaction whatsoever with legislators sympathetic to the decriminalization of abortion. They have also received very little media coverage (Blofield 2006).

Two other organizations have been involved in the issue of sexual and reproductive rights. One, which was part of the Forum until 2002 and which has been particularly

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<sup>218</sup> Interview with Camila Maturana, Corporación Humanas, Santiago de Chile, October 29<sup>th</sup>, 2007.

<sup>219</sup> For example, the owners of the two largest media companies –Agustin Edwards and Ricardo Claro– belong to the Legionaries of Christ and the Opus Dei respectively.

<sup>220</sup> See their website at [www.forosalud.cl](http://www.forosalud.cl)



active on the issue of abortion, is *Católicas por el Derecho a Decidir* (Catholics for the Right to Choose). While the group's local offices in Montevideo and Buenos Aires were opened as early as 1989, the Chilean branch was launched only in 1995. In that year a couple of feminists from the Uruguayan branch of this organization visited Chile to evaluate the possibility of starting a group in this country. Given the common prejudice among some feminists that one cannot be a Catholic and a feminist at the same time, the two Uruguayan activists were not well received among Santiago's feminist organizations. They later made contact with some local women's organizations in Valparaíso, which were much more receptive.<sup>221</sup> The group thus settled in this city and began to work with local Catholic women. In the context of a weak movement, they have been a relevant organization in the struggle for the decriminalization of abortion ever since.

Finally, APROFA (*Asociación Chilena de Protección de la Familia*, an NGO created in 1965, is an affiliate of the International Planned Parenthood Federation (IPPF). Since 2006 it has defined itself as an organization focused on sexual and reproductive rights. Its goals are to empower Chileans to take free and informed decisions and to facilitate access to medical services in this area. They are in favor of the decriminalization of abortion under some circumstances and push for the discussion and approval of laws in this direction. The difficulties of the struggle for the decriminalization of abortion in Chile are clear when even an organization whose major cause is the promotion of sexual and reproductive rights makes it clear on their website that they support legal abortion only under three circumstances: 1) risk to the health or life of the mother, 2) malformations of

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<sup>221</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el derecho a decidir*, Valparaíso, October 31st, 2007.

the fetus that makes life outside the womb impossible, 3) cases of rape or incest.<sup>222</sup> Even some of those fighting for decriminalization do not justify the right to a legal abortion based only on the women's choice.

Feminist and women's organizations have become much less prominent in the last 20 years than during the transition to democracy (Blofield 2006), but they are especially invisible on the issue of abortion. The reasons for the movement's weakness are many. First and most important, there is a lack of agreement on whether to demand decriminalization or legalization, and under which circumstances (all or some specific ones) any liberalization of the laws should apply. Second, the drying up of foreign financing, especially when compared with the affluent financial situation of pro-life groups, has not helped their situation either. Third, they lack strong links with political parties or even individual legislators and the lack of coordination among different women's organizations.<sup>223</sup>

## 8.2. The *Concertación* and the issue of abortion

After the democratic transition, the center-left *Concertación* coalition won four consecutive presidential elections and was in power from 1990 to 2009. The coalition is comprised of two parties from the left -*Partido por la Democracia* (Party for Democracy, PPD) and the Socialist Party (PS) - and two center parties – the Christian Democratic Party (DC), and *Partido Radical Social Demócrata* (Radical Social Democratic Party, PRSD).

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<sup>222</sup> See their website at [www.aprofa.org](http://www.aprofa.org)

<sup>223</sup> Most of the interviewees coincide in this diagnosis of the situation of the women's movement.

The *Concertación* has been deeply divided over the issue of abortion, and this is one of the reasons that explain why the topic has never been part of the government's agenda in any of the four administrations. While the Socialist Party was inclined at the beginning of the 1990s to at least reverse the prohibition of therapeutic abortion installed by Pinochet, the DC, which follows the Catholic's church doctrine on moral issues, has been mostly opposed to changing the status quo on this issue. The PPD and the PRSD present a more heterogeneous position on the topic.

Lisa Baldez has explained the lack of attention to women's issues during the governments of the *Concertación* (particularly the first two) as a strategy of the DC to maintain their dominant position within the coalition. According to her reasoning, because the women's movement primarily identifies with the leftist parties, strengthening the coalition's alliance with women's groups could empower the leftist parties within the coalition at the expense of the DC's dominant position (Baldez 2002).

However, some scholars believe this is not the whole story. Marcela Ríos questions the fact that the PS chooses not to discuss the issue of abortion only to protect their political alliance with the DC. In her view, the PS is a male dominated traditional leftist party that has been reluctant to deal with gender and women's rights issues disregarding of the DC's position.<sup>224</sup> If Baldez's thesis would be accurate, you would expect the PS to reach out to the women's movement so as to strengthen their position against the DC within the *Concertación*. However, this chapter shows that this has not been the case at all. Contrary to what Baldez claims and consistent with the claims of this dissertation, what is more likely is that the movement has not been strong enough for the Socialist

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<sup>224</sup> Interview with Marcela Ríos, Santiago de Chile, November 2<sup>nd</sup>, 2007.

Party to see it as a valuable ally in the first place. Moreover, as Lidia Casas points out, the DC is less homogeneous than typically recognized in its views towards abortion, and particularly, therapeutic abortion.<sup>225</sup>

Thus, while it is true that some DC politicians have threatened to break the political alliance if the PS supports an abortion law, there are actually only a few socialist legislators that have attempted to move this issue forward. There seems to be no open conflict among these parties on this issue. In addition, all the bills introduced by the socialists proposed only lifting the ban on therapeutic abortion. The only exception was the bill introduced by deputies Marco Enriquez Ominami (PS) and René Alinco (PPD) - which would decriminalize abortion under all circumstances during the first trimester of pregnancy.

The official position of the DC against changing the total prohibition on abortion added to the lack of priority of this topic among the PS politicians has resulted in the indifference of the *Concertación*'s administrations towards this issue. In addition, the lack of a strong women's movement to push the government on addressing sexual and reproductive rights allowed the *Concertación* and in particular the leftist parties to continue ignoring these issues. The only government initiatives in this respect have been the introduction of a few bills in Congress, which in any case were never even debated in the congressional committees, showing once again the government's lack of political will to discuss this issue area. The following sections discuss more in detail the developments in this field in each of the *Concertación*'s administrations.

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<sup>225</sup> Interview with Lidia Casas, Santiago de Chile, November 2nd, 2007.

### *8.2.1. Therapeutic Abortion in the Aylwin administration (1990-1994)*

The topics of abortion and divorce entered the 1989 presidential campaign but the *Concertación* insisted on ignoring these controversial issues (Baldez 2002). Its candidate, Patricio Aylwin (DC), was the first president elected in Chile after the democratic transition. In terms of moral issues, his government shared the Catholic Church's views and as a result there was no debate about abortion, divorce or sexual education (Lagos Lira 2001). His focus on the main topics of the democratic transition such as that of human rights and the relationship with the armed forces left no room in the government agenda for these issues (Díaz and Schiappacasse 2009).

Although Aylwin gave in to the women's movements demands of creating a government institution to protect women's rights, the resulting entity –National Women's Service, SERNAM- concentrated on issues of equal opportunities and did not give priority to sexual and reproductive rights.<sup>226</sup> Its creation and focus engendered strong divisions within the women's movement between those who saw this institute as their "child" and those who criticized the institution because of its elitist character and the heavy participation of Christian Democratic women who did not belong to the movement (Baldez 2002).

At the beginning of the Aylwin administration there was some support within the Socialist Party, the PPD and the PRSD to discuss the re-establishment of therapeutic abortion (Blofield 2006). In 1991 Socialist Legislators Adriana Muñoz, Armando Arancibia, Juan Pablo Letelier, Carlos Smok, and Carlos Montes introduced a bill in Congress to legalize therapeutic abortion, which had been banned by Pinochet before leaving power. The legislators framed this bill in the context of the increasing number of

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<sup>226</sup> See more about SERNAM in the following sections.

women who were infected with the AIDS virus and had to continue with their pregnancies (Lagos Lira 2001). Surprisingly, the women's movement was not supportive of this initiative. The internal debate between those who perceived this bill as a step on the path towards complete decriminalization and those who saw it as preempting future possibilities for a more liberal policy ended up paralyzing the movement. Moreover, some opposed the bill because they perceived it as a continuation of the patriarchal system since the decision to have an abortion was left not to the woman but to her doctor.<sup>227</sup> Legislator Muñoz was vilified by right-wing legislators, the Catholic Church and the media, and even by other legislators of the *Concertación* who rejected the bill because the issue was not on the government's agenda (Lagos Lira 2001). Even when the bill was sponsored by many legislators, most of the criticisms targeted the only woman among them. Adriana Muñoz reported that she was left completely isolated and later blamed the women's movement for not supporting her when faced with these attacks.<sup>228</sup> The bill was not even discussed in the relevant congressional committees (Diego Portales 2003).

Divisions within the women's movement around the issue of abortion continued, making it incapable of organizing a campaign for the decriminalization of this practice. Believing that not one of the female legislators at the time was representing women's interests, in 1993 the movement decided to organize a campaign to elect one feminist to Congress. With this goal in mind the movement planned to choose a woman to run as an independent candidate. At the time, two nurses who worked in this campaign were jailed for performing an illegal abortion. The campaign leaders, fearing that these nurses would

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<sup>227</sup> Interview with Camila Maturana, Santiago de Chile, October 29<sup>th</sup>, 2007

<sup>228</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007.

bring them negative publicity during the elections, decided to fire them from their organization (Baldez 2002). This not only led to permanent splits within the movement but also reflects the lack of agreement and commitment to abortion decriminalization from the part of the movement's leadership.

*8.2.2. Eduardo Frei (1994-2000): the strong attack of the conservative forces.*

Initially the Frei administration raised the hopes of feminist and women's organizations when the government program addressed issues such as women's inequality and the protection of women's rights. The document "*Bases programáticas del Segundo Gobierno de la Concertación*" (Program Bases for the Second Government of the *Concertación*) had a section dedicated to women's issues which was based on the CEDAW's (Committee on the Elimination of Discrimination Against Women) recommendations and the Equal Opportunities Plan 1994-1999 drafted by SERNAM (Valdés 2002). One of the goals was to design a program on reproductive health to make parenthood a shared responsibility.

However, during his administration the advance on women's rights was focused mainly on increasing their participation and gender equality, and on welfare programs that targeted poor women. The issue of reproductive health was not a priority. The only initiative linked to this field were the JOCAS (*Jornadas de Conversación sobre Afectividad y Sexualidad*), a space to talk about sexuality in schools.

The conservative forces in Chilean society strongly opposed any discussion of sexual and reproductive rights at every level. For example the JOCAS experience was short-lived because it incurred strong criticisms from the Catholic Church and right-wing parties (Díaz and Schiappacasse 2009). In another instance, when the government was

preparing its position to attend the 4<sup>th</sup> UN World Conference for Women (Beijing 1995), these same right-wing groups questioned the government report which, although taking a stand against abortion, favored the prevention of unwanted pregnancies through access to contraception and information. These groups proposed instead a new document, which was approved by the Senate (in which parties of the right held a majority), that rejected the use of the concept of “gender” and agreed that there was only one kind of family that was acceptable in Chile (Valdés 2002). The level of rejection of any initiative that favored women’s rights reached its highest point when, in 1995, Chile became the only nation in the world to prohibit the use of the word gender in Congress. On this occasion right-wing Senators “voiced fears that the term might introduce the notion that there are not only two distinct sexes but various or diffused and uncertain boundaries” (Pieper Mooney 2009: 196).

From the very beginning of the Frei administration right-wing forces launched a campaign to prevent any bill proposing the issue of abortion from ever being discussed. In 1994, three bills that were introduced in Congress by UDI and RN legislators proposed raising the penalties for women having abortions and for those providing them; defining abortion as “homicide” and not just as “a crime against morality” as the then current law read; and introducing the legal concept of “repentance” that would reduce sentences for women who denounced their providers. Two of these three bills were never discussed, but the one introduced by UDI legislator Larraín Fernández in the Senate in 1994 was approved by the Congressional Committee on Constitution, Legislation, and Justice and debated in plenary session from July to September of 1998.<sup>229</sup> The Congressional

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<sup>229</sup> Bill No. 422



Committee met during 1995 and consulted the opinion of mostly government institutions such as the Ministries of Justice, Health and Education, SERNAM and the Chilean Police. The civil society organizations that were contacted were the Chilean Medical Association and the Center for Legislative Studies from the Catholic University of Valparaíso.<sup>230</sup> There were no consultations with the women's movement or any organization specialized in sexual and reproductive rights. In addition the only academic institution that was received by the Committee was a Catholic university. Those consulted were mostly in favor of the bill, or at least did not openly present any opposition to it. They criticized the proposal to increase penalties as no guarantee that the number of abortions practiced in the country would be reduced, and they suggested minor revisions. Not even SERNAM, the government institution in charge of protecting women's rights, rejected the increased criminalization of women. Surprisingly the only institution that suggested the need to incorporate the notion of therapeutic abortion for exceptional circumstances was the Chilean Police (though it supported the bill's passage).<sup>231</sup> The Committee ended up unanimously approving the bill. With the exception of one senator who belonged to the Radical Party (PR), the rest were members of either the right-wing parties (UDI and RN) or the PDC.

In 1998, the Senate's Health Committee reviewed the bill. Again, no women's organizations were ever consulted. The committee received three doctors from public hospitals, a midwife, and two doctors representing the Health Minister. All of them,

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<sup>230</sup> See *Informe de la Comisión de Constitución, Legislación, Justicia y Reglamento*, Bulletin No. 1302-07, June 6th, 1995.

<sup>231</sup> See *Informe de la Comisión de Constitución, Legislación, Justicia y Reglamento*, Bulletin No. 1302-07, June 6th, 1995.

while condemning the practice of abortion, stated that the way to decrease the number of abortions was to prevent unwanted pregnancies, not through its increased criminalization. The only voice to strongly oppose the bill was that of Dr. María Isabel Matamala, Coordinator of the Chilean Association for the United Nations on Women, Health and Social Medicine.<sup>232</sup> The Health Committee unanimously recommended that the bill be discussed in plenary session. Again, the members of this Committee were from the right-wing parties, the UDI and RN, and one was a non-elected, “institutional” Senator.

The participation of the women’s movement in this debate was not only reactive but also extremely late. The bill had been introduced in 1994, debated in the Congressional committees beginning in 1995, and only in 1998 when the full Congress was poised to debate the bill did the women’s movement intervene. A last-minute meeting to organize a demonstration opposing the bill was convened, but there were no particular efforts to lobby the legislators that might at that point have been swayed in the movement’s direction. The movement did not take any initiative to exploit the visibility of the topic in the media to launch a campaign in favor of the decriminalization or to introduce a bill of their own on this issue.<sup>233</sup>

The indifference towards the conservative bill did not come only from the women’s movement but also from leftist legislators. Unlike in neighboring countries where leftist parties and individual legislators were sympathetic to the decriminalization of abortion and supported the women’s movement’s demands in Congress, in Chile the Socialist Party and the PPD were completely unprepared to lead the struggle against this bill. Lidia

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<sup>232</sup> See *Informe de la Comisión de Salud*, Bulletin No. 1302-07, June 2nd, 1998.

<sup>233</sup> Interview with Camilia Maturana, Corporación Humanas, Santiago de Chile, October 29<sup>th</sup>, 2007.

Casas, an expert on sexual and reproductive rights, recalls how a leftist senator called a personal friend in the feminist world four days before the debate to solicit her arguments against the bill. This feminist friend and Lidia Casas spent an entire weekend drafting a document which was later sent to that legislator and many others.<sup>234</sup> It is interesting to note that the legislator made contact with the women's movement only indirectly, through a mutual friend. When finally the debate took place in the Senate on September 15, 1998, the bill was rejected by two votes (15 against and 13 for).<sup>235</sup> All the members of right-wing parties (UDI and RN) voted in favor, while those that belonged to the *Concertación* voted against it with the exception of one Christian Democratic senator. The non-elected institutional senators were divided in their votes. Throughout the debate most of those who opposed the bill made explicit that they were opposed to the right to abortion and were voting against the bill because they believed policies to prevent unwanted pregnancies could be more effective than the punitive measures proposed.<sup>236</sup> There was no reference to the women's movement throughout the debate and there is no proof that the movement had any influence on the failure of the bill.

The women's movement remained silent during the discussion of the bill in Congress but did increase its activism with respect to preparations for the international conferences held in the 1990s. In 1994, women's NGOs got together to evaluate the situation of women in Chile in preparation for Beijing 1995, and they presented a report to the Regional Forum held in Mar del Plata, Argentina prior to the world conference. This

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<sup>234</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007

<sup>235</sup> See *Diario de Sesiones del Senado*, 14<sup>th</sup> Session, July 15<sup>th</sup>, 1998; 20<sup>th</sup> Session, August 12<sup>th</sup>, 1998 and 30<sup>th</sup> Session, September 15<sup>th</sup>, 1998

<sup>236</sup> See *Diario de Sesiones del Senado*, 14<sup>th</sup> Session, July 15<sup>th</sup>, 1998; 20<sup>th</sup> Session, August 12<sup>th</sup>, 1998 and 30<sup>th</sup> Session, September 15<sup>th</sup>, 1998

process slowly brought the movement closer to SERNAM, which opened up to grassroots organizations and set up spaces to discuss women's issues throughout the country. In addition the Frei government invited some representatives of women's civil society to join the official delegation to the UN 1995 conference (Valdés 2002).

After the 1995 Beijing conference, a new group within civil society was created to follow up on the government's progress in implementing its international commitments. In a similar vein, the Forum on Health and Sexual and Reproductive Rights decided to follow up on the implementation of the agreements reached at the World Conference on Population and Development held in Cairo in 1994. Despite the efforts of these organizations, however, in the field of sexual and reproductive rights, international recommendations did not seem to influence the government's policies at all.

The Forum took a couple of initiatives during the mid-nineties, although both failed to make their demands heard by politicians and society in general. An attempt was made to gather signatures of people admitting to having had an abortion. Unlike a similar campaign in Uruguay in 2007 that collected 9,000 signatures in only one month, in Chile the Forum could not persuade more than five people to sign. Around this same time the Forum began to organize monthly protests in the Plaza de Armas in Santiago to remember the women who died from illegal abortions. However, they could not mobilize a significant number of supporters and those passing by paid no attention to them. The Forum decided to halt these protests after a couple of months (Blofield 2006).

#### *8.2.3. Ricardo Lagos (2000-2006): therapeutic abortion in debate.*

During the 1999 presidential elections the issue of abortion entered the electoral campaign. Initially, the presidential candidate for the *Concertación*, the socialist Ricardo

Lagos publicly expressed his support for re-installing therapeutic abortion.<sup>237</sup> However, after the first round of elections in which he and the right-wing candidate Joaquin Lavín were left standing to go for a second round, Lagos changed his discourse (Lagos Lira 2001; Diego Portales 2003). Although a declared agnostic with no special ties with the Catholic Church, he publicly stated his commitment to the right to life from conception until death, omitting any reference to abortion. After winning the election and assuming power, this latter position prevailed during his administration. Only two months after being appointed by Lagos as Minister of SERNAM, Adriana Delpiano stated this government was not going to legislate on abortion and that its focus would be on preventing this practice (Lagos Lira 2001).

However, some tragic events reported in the media re-opened the debate on therapeutic abortion that the Lagos administration had tried to close. On April 2002 Gladys Pavez, a 42-year-old woman, requested an abortion on the grounds that her lack of amniotic fluid caused serious malformations in her baby, who had no chance to live outside the womb. The doctors denied her request and forced her to continue her pregnancy. The baby was born and died within hours. As a consequence, the media once again took up the debate on therapeutic abortion. Socialist legislators such as Isabel Allende and Fanny Pollarolo, and María Antonieta Sáa from the PPD, called for a Congressional debate on the issue.<sup>238</sup> On the other side of the abortion debate, right-wing legislators also reacted to the media case. On June 20<sup>th</sup>, 2002, the UDI introduced a bill

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<sup>237</sup> See his statements in *La Segunda*, May 12<sup>th</sup>, 1999 and *El Mercurio*, November 11<sup>th</sup>, 1999.

<sup>238</sup> See *La Nación*, “Médicos asisten a mujer que solicito aborto terapéutico”, April, 21<sup>st</sup>, 2002 and “Diputada Allende llama a discutir ley de aborto terapéutico”, April 22<sup>nd</sup>, 2002. See also *La Tercera*, “¿Debe restablecerse en Chile el aborto terapéutico?” and “Martirio femenino”, articles by legislator María Antonieta Sáa, April 20<sup>th</sup> 2002; and *La Nación*, “Quieren reactivar proyecto de aborto terapéutico” April 20<sup>th</sup>, 2002. Quoted in Diego Portales 2003: 292.

again proposing that abortion be redefined as a crime with increased penalties for abortion providers and reduced penalties for women who “repented.”<sup>239</sup>

On January 15<sup>th</sup> 2003, Griselle Rojas, a 27-year-old woman and mother of two, requested a therapeutic abortion because her pregnancy was seriously threatening her health and her child had no chance to live outside the womb. In this case, the Chilean Medical Association supported her and requested authorization from the Health Minister to induce labor.<sup>240</sup> The controversy sparked by the sole mention of the word abortion was such in Chile that doctors stated that this was not a case of “therapeutic abortion” but one of “interruption of a pregnancy,”<sup>241</sup> the difference being that in the latter the goal of the intervention was not to end the life of the fetus to save the mother, but to try to save both lives.<sup>242</sup>

On January 20<sup>th</sup>, Health Minister Artaza stated that the case of Rojas was not one of abortion and repeated that this issue was not on the government’s agenda (Diego Portales 2004).<sup>243</sup> In spite of this, these two media cases prompted some legislators from the *Concertación* (among them deputies Allende and Sáa) to introduce a new bill on January 23<sup>rd</sup> proposing the legalization of therapeutic abortion when the procedure was

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<sup>239</sup> See bill No.3275, Bulletin No. 2978-07.

<sup>240</sup> See *La Nación*, “Médicos apoyan aborto terapéutico”, January, 15<sup>th</sup>, 2003.

<sup>241</sup> See *La Nación*, “Médicos decidirán interrumpir el embarazo”, and “Artaza felicita al equipo médico que intervino en el caso de Griselle Rojas”, January 17<sup>th</sup>, 2003.

<sup>242</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el Derecho a Decidir*, Valparaíso, October 31<sup>st</sup>, 2007.

<sup>243</sup> See *La Nación*, “Artaza: Aborto no esta en agenda gubernamental, pero que es necesario generar un debate”, January 20<sup>th</sup>, 2007.

recommended by two doctors. Even two legislators of the right-wing RN signed onto the bill.<sup>244</sup> The bill, however, was never discussed.

This bill, like the previous one in 1991, did not have any input or participation from the women's movement.<sup>245</sup> In early 2003 after the case of Giselle Rojas was publicized, the youth of the Socialist Party began a campaign to gather 10,000 signatures to revoke article 119 of the Sanitary Code which in 1989 had eliminated the right to a therapeutic abortion (Diego Portales 2004). Even actions that would be expected to originate within the women's movement were organized in Chile by political parties. Unlike in Argentina where the women's movement took advantage of these dramatic cases to advance their demands and support the women suffering through these situations, there are no reports of the movement in Chile acting in a similar way.

In 2003 a group of women under the name "*Mujeres por la despenalización del aborto*" (Women for the decriminalization of abortion) launched a campaign to gather signatures of women and men that had had or supported the decision to have an abortion, similar to the one attempted during the mid-1990s. This time the group was more successful and managed to collect close to 250 signatures. However, the campaign was mostly ignored by the media, politicians and Chilean society in general.<sup>246</sup>

Starting in 2004 *Católicas por el Derecho a Decidir* organized demonstrations in Valparaíso every year on September 28th, to coincide with the regional campaign's

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<sup>244</sup> See bill No. 3442, Bulletin No. 3197-11 presented by legislators Enrique Accorsi Opazo (PPD), Isabel Allende Bussi (PS), Guido Girardi Lavín (PPD), Carmen Ibañez Soto (independent), Carlos Abel Jara (PRSD), Arturo Longton Guerrero (RN), Adriana Muñoz (PS), Osvaldo Palma Flores (RN), Fulvio Rossi Ciocca (independent) and María Antonieta Sáa (PPD).

<sup>245</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007.

<sup>246</sup> See *Red de Salud de las Mujeres Latinoamericanas y del Caribe* at <http://www.mujereshoy.com/secciones/1453.shtml>

designation of that day as the day for the decriminalization of abortion. Every year the organization gathered around 100 people, which was considered by the membership to be a good turnout considering Valparaíso is a very conservative city, the base of the Navy and Navy School.<sup>247</sup> However, during these years the group did not take to the streets to support those women going through dramatic circumstances. They did not pressure congressmen to legislate on the issue either. Moreover, rather than beginning at the Cathedral and marching to the Congress to stage a protest, these annual demonstrations followed the opposite route, beginning at the Congress and marching towards the Cathedral. In addition, the last week of September happens to be a time when legislators are not in Valparaíso, thus, no matter how many women would have gathered across the street from the building, nobody would have seen or heard them.<sup>248</sup>

Whereas the issue of the decriminalization of abortion was mostly ignored during the Lagos administration, the marketing and availability of the morning-after-pill was hugely controversial throughout his term in office. In 2001, the conservative group *Centro Juvenil AGES* filed a motion with the courts for this pill to be banned from the market alleging it induced abortions. At the time Chile was one of the countries with the most restrictive access to this medication in the world. The pill was still not one of the contraceptives offered in public hospitals, and pharmacies were imposing conditions on its sale (Diego Portales 2005). By the end of 2005 the Supreme Court ruled in favor of the commercialization of this pill. Nonetheless, this did not translate automatically into an

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<sup>247</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el Derecho a Decidir*, Valparaíso, October 31st, 2007.

<sup>248</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el Derecho a Decidir*, Valparaíso, October 31st, 2007.



easier access to it for women. In 2006 only 350 doses of the 35,000 the public health system held in storage were distributed (Diego Portales 2006).

*8.2.4. Michelle Bachelet (2006-2009): a new deception.*

On March 2006, Michel Bachelet, the first woman ever to be elected president of Chile, assumed office. Her government gave sexual and reproductive rights a place on the government agenda by designing programs on responsible parenthood and supporting the distribution of the morning-after-pill in public hospitals. However, she explicitly stated that the issue of abortion was not on the government's agenda. Early on in her administration, on May 19<sup>th</sup>, 2006, Minister General Secretary of Government Ricardo Lagos stated that: *"No es material que el Ejecutivo va a empujar y poner en la agenda legislativa durante su mandato"* ("It is not an issue that the Executive branch will push for and introduce onto the legislative agenda during this term").<sup>249</sup>

During the first year of Bachelet's mandate, four bills sponsored by the RN and UDI were introduced in Congress to restrict not only the practice of abortions but also the congressional debate about this issue (Diego Portales 2007). The bills restricting the practice even more were similar to those proposed in the 1990s, suggesting the redefinition of abortion as a crime against the human being in the womb. The other bills proposed to increase the necessary quorum to decriminalize abortion in Congress and the need for a Constitutional reform in order to change abortion laws.<sup>250</sup> None of these bills were debated in plenary sessions.

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<sup>249</sup> See *La Nación*, "La fuerte advertencia de Schilling a Ominami", May 19<sup>th</sup>, 2006.

<sup>250</sup> Bill No. 4121-07 and 4122-07 respectively.

Meanwhile, even when the *Concertación* government preferred not to legislate on the issue of abortion, two government legislators –Marco Enriquez Ominami (PS) and René Alinco (PPD) decided to push for this debate, this time on much ambitious terms than the 2003 bill limited to therapeutic abortion. On November 2006 they introduced a bill proposing the complete decriminalization of abortion up to the 12<sup>th</sup> week, and beyond that time frame in cases of risk to the mother’s life, malformations of the fetus, or rape. This was the first bill ever introduced in the Chilean Congress to propose decriminalization based on women’s choice. It sparked an immediate controversy. Soledad Alvear, President of the DC, rejected the bill and questioned the action of these two legislators in introducing a bill on such a controversial issue without first consulting with all the parties of the *Concertación*.<sup>251</sup> PPD legislators Enrique Acorssi and Jorge Tarud also lamented that the issue had not been debated within the coalition in advance.<sup>252</sup> Taking a more extreme position, DC deputy Patricio Walker stated that: “*Si un día se llega a aprobar esta ley del aborto con los votos del PS y el PPD, no quedaría otra alternativa que retirarse de la Concertación*” (If there comes a day that this bill is approved with the support of the PS and PPD, there would be no other choice but to leave the *Concertación*).<sup>253</sup> The reaction against this bill was so intense that sixty-one deputies drafted a document creating the *Frente Parlamentario por la Vida* (Parliamentary Front for Life), committing themselves to reject any bill that proposed the decriminalization of any type of abortion, the practice of eugenics, or euthanasia. This front was made up of

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<sup>251</sup> See *La Nación* “DC rechaza proyecto de ley que despenaliza el aborto” November 10th, 2006.

<sup>252</sup> See *La Nación*, “Diputados DC piden más claridad al gobierno sobre despenalización del aborto”, November 11<sup>th</sup>, 2006.

<sup>253</sup> See *La Nación*, “Diputado Walker revisara permanencia de DC en Concertación si se despenaliza aborto” November 17<sup>th</sup>, 2006.

legislators from the right-wing UDI and RN, the Christian Democrats, and two deputies of the PRSD.

In the following days UDI deputy Felipe Ward asked the President of the Lower Chamber, Antonio Leal (DC) to stop the bill from making it onto the congressional agenda given its incompatibility with the right to life protected under the Constitution. Leal agreed, and declared the bill “inadmissible.” In principle Leal favored sexual and reproductive rights -- he had voted in favor of previous bills on this issue although they did not include the issue of abortion. His motivation might have been to avoid dividing the *Concertación*.<sup>254</sup> His decision was confirmed by 61 deputies. Only twenty one voted in favor of discussing the bill and three abstained from voting (Diego Portales 2007). On this occasion the executive branch re-stated that the issue was not on the government’s agenda. Many DC legislators expressed that they would sustain this position against those who in order to gain media attention do not worry about dividing the government coalition with their proposals.

In spite of this outcome on December 19<sup>th</sup> a PRSD senator, Nelson Avila Contreras, introduced a new bill proposing the decriminalization of abortion in cases of a risk to the mother’s life or health, malformations of the fetus, and rape.<sup>255</sup> On January 17<sup>th</sup>, 2007, Ominami, Alinco and five other legislators introduced a new bill limited to therapeutic abortion.<sup>256</sup> These bills were admitted but have never been discussed. In an interview,

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<sup>254</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007.

<sup>255</sup> See Bill No 5129, Bulletin No. 4751-11

<sup>256</sup> See Bill No.5231, Bulletin No. 4845-11

Legislator Alinco stated they were trying to get support from the executive branch to assign priority to the bill, but so far had not received a response.<sup>257</sup>

Once again, these bills were drafted without the input of any women's organization.<sup>258</sup> *Corporación Humanas* sent Ominami and Alinco some data to ground their bill,<sup>259</sup> but this was all the interaction they had. Women's organizations had no influence in the drafting process.<sup>260</sup> When asked about their motivation to introduce the issue of abortion on the legislative agenda, Congressman Ominami stated he believed he had a mandate to innovate Chilean legislation, and that this was one of the areas that needed change.<sup>261</sup> Alinco stated that his origins as a construction worker made him aware of the tragedy of abortion among poor people, whom he felt he needed to represent in the Congress. None saw their actions as a response to the demands of the women's movement, although Alinco did mention that he had met with some local unions to discuss the issue.<sup>262</sup>

In addition, during this time when the issue of abortion was constantly in the media, there were no reports of major public activities sponsored by the women's movement to support the bill. The director of *Católicas por el Derecho a Decidir* recalled in an

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<sup>257</sup> Interview with legislator René Alinco, Santiago de Chile, October 29<sup>th</sup>, 2007.

<sup>258</sup> Interview with Camila Maturana, Lidia Casas,

<sup>259</sup> Interview with advisor to legislator Marco Enriquez Ominami, Valparaíso, October 31<sup>st</sup>, 2007.

<sup>260</sup> Interview with Camila Maturana, *Corporación Humanas*, Santiago de Chile, October 29<sup>th</sup>, 2007.

<sup>261</sup> Internet interview with legislator Marco Enriquez Ominami, November 14<sup>th</sup>, 2007. Ominami, a former legislator for the Socialist Party, decided in June 2009 to resign from the PS, left the *Concertación*, and ran on an innovative platform that included topics such as the legalization of marijuana, same-sex marriage, and the decriminalization of abortion. His bills on abortion decriminalization seem to be one of the issues he pushed forward to distinguish himself from the *Concertación* and show that unlike this coalition, he was really committed to a government of the left.

<sup>262</sup> Interview with legislator René Alinco, Santiago de Chile, October 29<sup>th</sup>, 2007.

interview that there were no actions at the time. Their organization, however, did contact Ominami and Alinco after they introduced their bills to offer their support.<sup>263</sup> On March 8<sup>th</sup>, 2007 they participated in a press conference on the issue together with the legislators. She stated to me that the media focused on the congressmen and ignored their presence.<sup>264</sup> In spite of these initial interactions, there has been no concrete strategic plan to work together in the struggle for the right to a legal and safe abortion.

While the women's movement did not mobilize strong actions in favor of the decriminalization of abortion, it did get more involved in the fight for access to the morning-after-pill. As was described in the previous section, the controversy around its marketing during the Lagos administration had been solved when the Supreme Court ruled against the desire of right-wing groups' to stop its distribution. In September 2006 Bachelet drafted the National Norms to Regulate Fertility which provided for the free distribution of contraceptives and the morning-after-pill in public hospitals to women as young as 14. The conservative forces in power in most of the municipal districts initially ignored the government's measure and did not distribute the contraceptives. In addition, 36 legislators from the right brought a case to the Constitutional Tribunal (which has authority over the Supreme Court) to prohibit the distribution of these contraceptives. On April 2008 the Tribunal ruled in their favor, stating that public health services were not allowed to suggest, prescribe or distribute this contraceptive. To makes matters worse, the prohibition was applied only to their distribution within public hospitals. The ruling still allowed the drug to be marketed in pharmacies, implying that women who had the

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<sup>263</sup> Internet interview with legislator Marco Enriquez Ominami, November 14<sup>th</sup>, 2007.

<sup>264</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el Derecho a Decidir*, Valparaíso, October 31st, 2007.

money to pay for the pill would still have access to it, while poor women who relied on the public distribution of contraceptives were left out. The opposition to this ruling was widespread. On April 22<sup>nd</sup> there was a large demonstration in which 20,000 people protested against it (Diego Portales 2008). President Bachelet rejected the ruling and stated that “*el fallo....es una profunda herida en la construcción de una sociedad mas justa*” (the ruling...is a deep wound in the building of a more just society).<sup>265</sup> On January 2010, in the last months of the Bachelet administration Congress passed a law rebutting the Constitutional Tribunal ruling and affirming the legality of the free distribution of the morning-after-pill in public hospitals.<sup>266</sup>

#### *8.2.5. Abortion in the 2009 presidential campaign*

During 2009 the issue of therapeutic abortion seemed slowly began to be discussed among politicians and the media. In that year four bills allowing therapeutic abortion were introduced by leftist legislators in Congress. In addition, the issue entered the presidential campaign. For the first time in Chile a presidential candidate publicly favored the decriminalization of abortion. Marcos Enriquez Ominami, a former legislator for the Socialist Party, decided in June 2009 to resign from the PS, leave the *Concertación*, and run on an innovative platform that included topics such as the legalization of marijuana, same-sex marriage, and the decriminalization of abortion. In terms of abortion, his electoral platform did not go as far as his first bill in which he proposed the decriminalization of the practice in all circumstances within the first

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<sup>265</sup> See *Clarín*, “Bachelet, contra el fallo que restringe un anticonceptivo”, April 6<sup>th</sup>, 2008. Viewed on April 6<sup>th</sup>, 2008 at [www.clarin.com.ar](http://www.clarin.com.ar)

<sup>266</sup> See *Página 12*, “Una ley para el día después”, January 7<sup>th</sup>, 2010. Viewed on January 7<sup>th</sup>, 2010 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

trimester. His position on this issue was not defined in detail since he proposed to “*reinstaurar el aborto terapéutico por diversas causales, garantizando el derecho de las mujeres a recibir un trato digno en centros hospitalarios*” (restore therapeutic abortion for diverse causes, ensuring the right of women to receive a humane treatment in hospitals).<sup>267</sup>

In an attempt to attract young voters who were abandoning the *Concertación* and supporting Enriquez Ominami, Eduardo Frei (DC), the *Concertación*’s presidential candidate stated that “*estamos en el siglo XXI y no en la Edad Media y por lo tanto aquí no hay ningún tema tabú*” (we are in the 21<sup>st</sup> century and not in the Middle Ages, there is thus no topic that is taboo).<sup>268</sup> These statements which implied his willingness to discuss the issue of abortion if he were to be elected opened up a debate within the *Concertación*. The PS, PPD and PRSD stated their support for the legalization of therapeutic abortion while the DC insisted on the complete opposition to this practice. After many ambiguous public declarations in which his position was not quite clear, Eduardo Frei finally explicitly came out in favor of the decriminalization of therapeutic abortion.<sup>269</sup>

The sudden openness to talk about abortion reached not only the DC, but also the right-wing parties. Sebastian Piñera (RN), presidential candidate for the rightist *Alianza* coalition stated he was in favor of having a debate on this issue, although later he denied his disposition to do so.<sup>270</sup> Two RN legislators who were doctors supported the

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<sup>267</sup> See Marco Enriquez Ominami’s Program of Government. Viewed on August 6<sup>th</sup>, 2010 at <http://marcoporti.marco2010.cl/>

<sup>268</sup> See *Página 12*, “*Despenalización, después de veinte años de prohibición*”, March, 19<sup>th</sup>, 2009. Viewed on March 19<sup>th</sup>, 2009 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>269</sup> See *La Nación*, “*Frei a favor de despenalizar aborto terapéutico*” October 16<sup>th</sup>, 2009.

<sup>270</sup> See *La Nación*, “*Piñera rechaza debate sobre aborto terapéutico*”, March 16<sup>th</sup>, 2009.

legalization of therapeutic abortion in opposition to the official position of their own party and the UDI.<sup>271</sup> At the end of 2009 presidential elections were held and the right-wing candidate Sebastian Piñera was elected to govern the country for the next four years. As of this writing, therapeutic abortion is still prohibited in Chile.

### 8.3. Systematizing State Response

In the previous five cases, to characterize the government response to the women's movement in a more systematic fashion, I coded state responses, following Schumaker and Kitschelt's previous work, along five dimensions (Schumaker 1975; Kitschelt 1986): 1) access, 2) agenda setting, 3) government policy, 4) policy output; and 5) institutional change (see Table 1.1). The problem with this exercise for the Chilean case is that there has not been an active and strong women's movement pushing for the demand of decriminalization of abortion in any of these time periods. Thus measuring the impact of a non-existent movement might be a worthless exercise. The study of the Chilean case is motivated by the need to show that in the absence of a movement even a government with theoretical sympathies towards abortion reform (because of its ideological position and the implementation of broader policies in the field of sexual and reproductive rights) would not push for decriminalization. This section will thus systematize state policies in the field of sexual and reproductive rights and of abortion in particular with the goal of showing that there has been no state policy on abortion from the transition until the present. The issue has not been in the agenda, the number of bills introduced in Congress has been minimal in comparison with the cases of Argentina and Uruguay. Similarly,

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<sup>271</sup> See *Página 12*, "Despenalización, después de veinte años de prohibición", March, 19<sup>th</sup>, 2009. Viewed on March 19<sup>th</sup>, 2009 at [www.pagina12.com.ar](http://www.pagina12.com.ar)



there have been no government programs to address abortion reform and the only government institution created to address women's issues –SERNAM- has not included the issue of abortion in its agenda either.

TABLE 8.1  
STATE POLICIES IN THE FIELD OF  
SEXUAL AND REPRODUCTIVE RIGHTS  
IN CHILE  
1990-2010

<b>Dimensions of State Policy</b>	<b>Aylwin 1990-94</b>	<b>Frei 1994-2000</b>	<b>Lagos 2000-06</b>	<b>Bachelet 2006-10</b>
Agenda Setting: Inclusion of abortion in party's platform.	UDI and RN: right to life from the moment of conception			
Agenda Setting: No. of bills related to abortion introduced in Congress	Pro: 1 Against: 0	Pro: 0 Against: 3	Pro: 2 Against: 2	Pro: 6 Against: 5
Government Policy: pro or against abortion rights	No policy	No policy	No policy	2009. Guide to ensure doctor-patient confidentiality
Policy Output: No. of judicial convictions	1990-1998: 474	1990-1998: 474	2000-2005: 27	NA
Institutional Change: creation of government institutions	SERNAM			

The first way of measuring if an issue is in the government agenda is to analyze the platforms of the main political parties and coalitions (UDI and RN from the *Alianza* and DC, PS, PPD from the *Concertación*). The more active stance of the pro-life side of the abortion debate is evident here. The two right-wing parties (UDI and RN) included in their declaration of principles the right to life from the moment of conception (UDI 1991; RN 1987). On the left, none of the parties of the *Concertación* have included the issue of abortion in their declaration of principles. The only time it was mentioned in a government program was in that of President Lagos and in the context of developing policies to *prevent* the practice of abortion (Lagos 2000). As was mentioned in the section above, all the *Concertación* administrations stated that legislating on the issue of abortion was not on their governmental agendas. The DC has taken a general Christian humanist perspective on women's issues and when forced to take a position on conflictive themes the party has always addressed them from the perspective of the Catholic Church (Valenzuela 2001). Although known for its opposition to the decriminalization of abortion, the party has made no explicit statement to this effect in its declaration of principles. The reason behind the silence of the parties that make up the *Concertación* on this issue is most likely attributable to the fact that the abortion issue is known to split the alliance in two with the DC against decriminalization and the PS, PPD and PRSD mostly in favor of it (with some exceptions). The only party that has included the decriminalization of abortion in its program was an alliance of leftist parties called PAIS (*Partido Amplio de Izquierda Socialista*, Broad Party of Socialist Left)<sup>272</sup> that came together for the 1989 elections and quickly dissolved after this (Valenzuela 1991). In

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<sup>272</sup> PAIS was integrated by the Chilean Communist Party, the *Movimiento de Accion Popular Unitaria*, the Socialist Party following Clodomiro Almeyda, and the MIR. It was dissolved after 1990 when many of its members got integrated into the Socialist Party.

addition, in the 2009 presidential election, candidate Enriquez Ominami who split from the *Concertación* and the PS to run as an independent, included the restoration of therapeutic abortion as one of the policies in his government program.

The second way of measuring if abortion has been on the political agenda is to look at the number of bills introduced in Congress per administration and how far they proceeded in the legislative process. These bills are coded as being in favor, against, or neutral with respect to the movement's demand of decriminalization.

The low number of bills presented, both in favor of and against the right to an abortion throughout the first three governments of the *Concertación*, confirms that the issue has not been prominently featured on the legislative agenda (See Table 8.1). In addition, in comparison with Argentina and Uruguay, Chile is striking for the strong presence of bills introduced against the right to a legal and safe abortion, especially in light of the fact that the Chilean abortion is the most restrictive to begin with. Whereas there have been nine bills in favor of decriminalization in Chile since the democratic transition and 10 against, in Uruguay the proportion has been 7 to 1, and in Argentina 47 to 16.

Most of the times when bills were introduced it was right-wing parties with the purpose of restricting even more one of the strictest series of laws in the entire world. Again, the pro-life legislators have been more active than those in favor of decriminalization, in particular during the first three presidential administrations. The only bill on abortion to reach the plenary session was the 1994 bill introduced by Senator Larraín (UDI) which increased penalties and redefined abortion as a homicide. No bill in favor of extending the right to legal and safe abortion was ever discussed even in a

congressional committee. In addition, as was discussed in the previous section, Chile is the only country of the three cases in which a bill proposing the decriminalization of abortion based on the women's choice during the first trimester was declared inadmissible by the president of the Lower Chamber. The reluctance to deal with the issue of abortion has been so extreme that legislators do not even want to discuss it and prefer to censor the debate.

The bills in favor of the decriminalization of abortion during the 1990s and early 2000s were sponsored mainly by two female legislators: Adriana Muñoz (PS) and María Antonieta Sáa (PPD). Both of them had been part of the *Concertación* of Women for Democracy, the group created during the democratic transition to develop a program of government embracing gender issues. Both party and civil society women participated in this group. During those days these two women from the PS and PPD respectively were in constant interaction with women from feminist and women's organizations which remained in the movement. However, those close contacts seem to not have held beyond the transition. The bills they proposed were not drafted with the input of the women's movement, and in addition, both women were highly criticized by the movement for not going far enough to achieve the decriminalization of abortion.

Since 2006 the most vocal legislator in favor of decriminalization has been Marco Enriquez Ominami (PS). Together with the deputy Alinco, he introduced the first and only bill proposing decriminalization based on the women's choice during the first trimester. In addition, he introduced the issue of abortion into the 2009 presidential campaign in which he was a candidate. However, as was described above, his only interaction with the women's movement came after he introduced his bills and was

relatively short-lived. There has been no strategic plan between Ominami and the women's movement to push for the advance of the right to a safe and legal abortion.

In terms of which parties have introduced which bills, the division is clear. The bills in favor of the decriminalization have been introduced mostly by the leftist parties: the PS and the PPD. On the other hand, the bills against decriminalization have been almost exclusively sponsored by the rightist UDI and RN. The Christian Democrats have been mostly absent from the debate and seem to agree with the status quo –the prohibition of abortion in all circumstances. DC legislators have mostly avoided sponsoring bills increasing the prohibition on abortion –only two DC legislators signed onto one bill classifying abortion as a crime that injures the unborn. On the other hand, none has ever sponsored a bill advancing the cause of legal abortion, even limited to therapeutic abortion.

In terms of *government policy*, abortion is prohibited under all circumstances to the present day. In addition, no policies to advance towards a future decriminalization have been put in place by any government since the democratic transition. The executive branch has repeatedly stated that legislating on this issue was not on the government agenda. In spite of this, *Concertación* legislators have attempted to introduce some bills mostly on therapeutic abortion, though none have advanced in the legislative process. On top of this, as we saw in previous sections, the only bill introduced proposing the complete decriminalization during the first trimester was declared “inadmissible.”

There has been thus no advancement on this issue during the four governments of the *Concertación*. Although the right attempted to restrict even more the access to abortions by defining this practice as homicide, increasing penalties, and raising the required

quorum to pass any bill addressing this issue, these congressional initiatives have also failed. In consequence, on this issue the status quo of complete prohibition established by Pinochet in 1989 before leaving power has been maintained.

In terms of the broader issue of sexual and reproductive rights, the first two administrations -that of Aylwin and Frei- did not assign the issue any relevance. Even though Frei included in his government program the goal of designing a program of reproductive health, he made no real commitment to these issues. There were no massive and systematic information campaigns on contraceptives or sexual education (Valdés 2002). The *Jornadas de Conversación sobre Afectividad y Sexualidad* (Days for Conversations on Affection and Sexuality), known as JOCAS, were spaces created in schools to talk about sexuality. However, the controversy this created among the right and the Catholic Church threatened the continuity of the program (Diego Portales 2003).

The Lagos administration launched a program of responsible parenthood which was limited only to the promotion of information and services through hospitals but not in schools. This national program relied on local authorities for its implementation and financing, which resulted in a diverse set of results depending on each municipal district (Diego Portales 2003). Another initiative of his government was passing a bill that protects the right of pregnant high school students to remain in their educational institutions.<sup>273</sup> The Health minister also approved the sale of the morning-after-pill and guaranteed access to regulated voluntary sterilization practices by men and women who requested them (Díaz and Schiappacasse 2009).

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<sup>273</sup> Law No. 19,688

The Bachelet administration has shown a stronger commitment than her predecessor in this policy area. Her government designed a program on responsible parenthood and supported the distribution of the morning-after-pill in public hospitals, fighting the restrictions imposed by the Constitutional Tribunal and right-wing groups. In addition, on April 2009 the Health Minister released a guide to ensure confidentiality between the doctor and the woman seeking medical assistance after complications from an unsafe abortion.<sup>274</sup> However, despite mention in her presidential campaign, her government did not support the discussion of the bill on sexual and reproductive rights (Díaz and Schiappacasse 2009). Finally, as was the case with previous *Concertación* governments, the issue of abortion was still excluded from the agenda.

*Policy output* analyzes the way the policies described in the previous dimension are being implemented, pointing out any deficiency in the process. The problem with measuring this dimension for Chile is not merely that the decriminalization of abortion has not been accomplished (this was also true in the other cases), but also that there were no new policies implemented with respect to the issue. The issue of abortion has been just ignored since the democratic transition; Chilean governments have not even issued a guide to improve the medical treatment of women in post-abortion situations. The only step they have taken in this direction has been to issue a guideline guaranteeing medical confidentiality in post-abortion situations. The fact that this guide was issued so recently (it was released only in 2009) prevents a proper evaluation of its implementation. Given the absence of legislation favoring the liberalization of laws governing abortion, here I

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<sup>274</sup> See *La Nación*, “Garantizan derechos humanos de mujeres que abortan”, July 9th, 2009. Viewed at [www.lanacion.cl](http://www.lanacion.cl) on August 30th, 2010.

will measure the implementation of the 1989 law that prohibited abortion in all circumstances without exception.

The highly restrictive law currently on the book does not appear to have stopped women from having abortions. According to the latest data from the Alan Guttmacher Institute, 124,800 abortions are performed in Chile each year, one of the highest rates in South America. However, Chile has the lowest maternal mortality for abortion in the region (Hexagrama 2008). As in the other two countries, the rates of those prosecuted and sentenced to jail for abortion is low in comparison to the actual practice. However, Chile's abortion laws are enforced to a greater degree than in Argentina and Uruguay, though the rate of prosecutions and convictions appears to be declining. Between 1990 and 1998, 474 people were convicted for practicing abortions, of whom 80% were women (Lagos Lira 2001). According to a report written by the *Foro de Salud y Derechos Reproductivos*, only 38% of the convicted women had had access to a lawyer.<sup>275</sup> Fifty seven percent of women that had an abortion spent on average 31.3 days in detention (Center for Reproductive Law and Policy et al 1998). Since 2000, however, fewer women have been sentenced to prison: 18 women were prosecuted in 2003, 6 in 2004 and 4 in 2005 (Pieper Mooney 2009).

Women are usually reported by doctors, mainly when their life is at risk (Lagos Lira 2001). All of the reports come from public hospitals. No report has been found that originated in a private clinic, which illustrates the pattern of inequality between rich and

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<sup>275</sup> See report at [http://www.forosalud.cl/forosalud/revista/uploaded/abortoenchile.htm#\\_edn1](http://www.forosalud.cl/forosalud/revista/uploaded/abortoenchile.htm#_edn1)



poor women engendered by the prohibition of abortion.<sup>276</sup> Even though, as in Argentina, women that come to public hospitals after having complications for an unsafe abortion are usually mistreated by doctors and nurses (Lagos Lira 2001), Chile has not yet drafted a guide for humane treatment in these situations. The only progress made in this respect has been the 2009 guide to ensure medical confidentiality when a woman goes to the hospital in a post-abortion situation. If this guide is actually applied, the number of denunciations should drop drastically in the coming years.

Finally, the last dimension of state policy refers to the *creation of government institutions* to deal with the issue at stake. This section will analyze the creation of state institutions to deal with women's issues in general, and those aimed at protecting sexual and reproductive rights. Unlike the case of Uruguay and similar to that of Argentina, there has not been in Chile any institution created specifically to address the issue of abortion.

In 1991 responding to the women's movement's demand for a state institution to protect women's rights, President Aylwin created the National Women's Service (SERNAM) (Valenzuela 1998; Chuchryk 1994; Ríos 2006; Pieper Mooney 2009).<sup>277</sup> The main goal of this institution was to promote the participation of women in all spheres of life and to work towards the equality of opportunity between the sexes (Ríos 2006). Its director had ministerial rank and one of its missions was to evaluate the government's fulfillment of the CEDAW. The definition of its mission and goals has been a source of political conflict since its creation. Right-wing parties wanted to limit its power and

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<sup>276</sup> See *La Nación*, "Enriquez Ominami defendió proyecto de ley sobre despenalización del aborto", November 10<sup>th</sup>, 2006

<sup>277</sup> Law No. 19.023, January 3rd, 1991

mission, and even the *Concertación*'s government was not open to including in the institute's mandate all the demands of the women's movement. As a result SERNAM's relationship with the women's movement was poor. The institute interacted with women's civil society organizations, mostly with NGOs, at a technical level but not as valid representatives of women (Valdés 2002; Ríos 2004; Pieper Mooney 2009). In this sense, SERNAM created many divisions within the women's movement. Some of them prioritized the autonomy of the movement and refused to interact extensively with the state, while others supported the institute's policies towards women in agreement with CEDAW commitments.

According to Lidia Casas, SERNAM has played no role whatsoever in government policy toward reproductive rights. The government had made a political decision to leave the issue of contraceptives to the Minister of Health and that SERNAM should not interfere.<sup>278</sup> This was also true with abortion.

#### 8.4. Conclusion

The case of Chile shows the lack of both an active women's movement and a government committed to developing policies on the issue of abortion. Scholars have signaled many obstacles to explain why the *Concertación* administrations have not legislated on this issue: 1) abortion is a divisive issue within their political coalition with the DC against decriminalization and the PS, PPD and PRSD mostly in favor of it (with some exceptions among their legislators) (Baldez); 2) the control of the Senate by the right thanks to the non elective senators up to 2006; 3) the conservative media (Blofield 2006); and 4) the strong power of the Catholic Church and its influence in politics

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<sup>278</sup> Interview with Lidia Casas, Santiago de Chile, November 2<sup>nd</sup>, 2007.

(Blofield 2006). These are in part real obstacles that had an impact on the lack of policies in this issue area. However, as was pointed out by Marcela Ríos, the most important one is that there has been no political will from within the *Concertación* governments or any of the parties within the coalition to advance this issue. While the lack of initiative by the *Concertación* may be explained in part by the lack of propitious political circumstances, the lack of a strong women's movement asking for it may be a better explanation. Why in this hard political context would the *Concertación* risk the political cost of splitting apart and even losing power by raising such a controversial issue when nobody is even demanding it? Even if some individual leftist legislators might have had a personal commitment to the decriminalization of abortion, they would have no incentive to move forward on this issue when, as demonstrated by the case of Adriana Muñoz, they received no support from the women's movement and the end result was the personal political cost of not being re-elected.

While it is true that the Chilean political system and some external factors such as the strength of the Catholic Church and the conservative media threw up obstacles to advancing the right to a safe and legal abortion, the fact that there was no movement strongly asking for it allowed the *Concertación* to ignore the issue and keep it off of the government agenda with no political cost. Scholars have already shown that even leftist legislators would not deal with sexual and reproductive issues that are deemed controversial if there is no women's movement demanding that they do so (Blofield 2006; Weldon 2002).

A weak movement can have no impact on state policy. The only impact the Chilean women's movement had was the creation in 1990 by the Aylwin administration of an

institution to protect women's rights (SERNAM). This shows that when the women's movement was strong, as it was in Chile during the 1980s, it had the chance of having its demands addressed even in a political and societal context that did not seem conducive towards women's rights. When the movement began to decline during the 1990s and even more after the year 2000, it had no impact even on pushing SERNAM to address the issue of abortion. The few bills that have attempted to deal with this issue were initiated by Socialist and PPD legislators. None had any input from women's organizations. The movement did not even organize in the aftermath of the introduction of these bills to push for them in Congress. It did not even take advantage of the tragic cases the media reported of women being denied therapeutic abortions.

While the re-emergence of a strong women's movement is no guarantee that the decriminalization of abortion would be accomplished, it would definitely increase the visibility of the issue and might introduce it on the government's agenda. This would be the first step needed to begin the struggle to push for advances towards the final goal of complete decriminalization.

## CHAPTER 9

### CONDITIONS FOR WOMEN'S MOVEMENTS' SUCCESS

As explained in the introductory chapter, this dissertation argues that for a social movement to have their demands addressed two things are required. First the movement has to be strong in terms of its power to attract supporters and introduce their demands into the political and societal agenda. The first section measures movement strength both in terms of the number of people the movement has been able to gather in their demonstrations and the amount of support they have gathered from other social actors such as unions, professional associations, universities, churches and other social movements. Second, the movement needs political allies in power for their demands to move forward: for bills to be discussed, programs to be designed and implemented, and for institutions to be created. Section two analyzes movement's potential allies which are determined by their ideology and position towards the movement's demands. The availability of allies is also explored in terms of the number of women in power positions, the percentage of those that have a commitment to gender issues, and whether politicians attended catholic or secular universities.

Chapter 6, 7 and 8 identified the moments in which the women's movements in Uruguay, Argentina and Chile were influential in defining state policy. The goal of this chapter is to apply the theoretical model and compare across these cases.

### 9.1. Movement Strength

Non “bread and butter” issues such as that of the decriminalization of abortion have no weight in people’s decision making at the time of voting, as seen in the public opinion polls reported in Chapter 10. It follows that in the absence of a social movement that defines the issue, organizes around it and demands government attention, politicians see no electoral value in addressing these issues. This reasoning lays the ground for the first hypothesis:

*Hyp 1: A strong social movement is a necessary condition for issues that affect a minority of the population to be introduced onto the political agenda. The stronger the movement, the greater the likelihood it will have an impact on state policy.*

As it was described in the introductory chapter, movement strength is measured in two different ways. An initial account of this variable will be given based on academic sources and their characterization of the movement in each country as strong or weak throughout the years. A second measure of movement strength will be provided by a movement’s power to convene, meaning the amount of people they have been able to gather in their main annual demonstrations. Data for this was gathered both from national newspapers, OSAL chronologies and movement self reports when available. The problem with this measurement for the women’s movement is that, unlike for the human rights movement, there is no continuous data on either their demonstrations or the amount of people attending. The available data will still be analyzed but it will be complemented by looking at which social actors, if any, have supported their demands: examples of these

are unions, doctors, educational institutions, human rights movements and gay rights movements.

#### *9.1.1. Movement Strength according to academic sources*

As it was described in Part 1 of this dissertation, the women's movement in the three cases studied here had their origins during the military dictatorships that ruled these countries during the 1970s and 80s. Scholars agree that women began organizing for basic economic needs and to oppose the military regimes (Valdes 2000; Baldez 2002; Jaquette 2009).<sup>279</sup> Within this general emergence of women's mobilization, feminist groups were created, in particular among leftist women (Valdes 2000; Ríos Tobar et al 2003). The movements were strong in all three countries and played an important role in advancing the democratic transition (Feijoo 1994; Jaquette and Wolchik 1998; Valdes 2000; Jaquette 2009). At this time women's groups organized to draft a government program with a gender perspective for the future democratic government to take into consideration. In the three countries women from all spheres of life including unions, professional associations, the arts, political parties, feminist and women organizations came together and created umbrella organizations to push for their agendas:

*Multisectorial de la Mujer* in Argentina, *Concertación Nacional de Mujeres* (National Coordination of Women) in Uruguay and *Concertación* of Women for Democracy in Chile. The difference between these initiatives was that in Uruguay it included the issue of abortion as one of the topics to be discussed during the process of democratization (Abracinskas and López Gómez 2007, 193). On the contrary, the issue was not present neither in the Argentinean or Chilean case. So while the women's movement as a whole

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<sup>279</sup> The three countries saw the emergence of earlier women's movements related to the right to vote, but the 70s saw the development of a much wider activist linked to general social and political issues these countries were going through.

was strong in the three countries at the time of the democratic transitions, the fact that the Uruguayan was the only one that had added the issue of abortion to its agenda, already placed this country a step ahead from the other two in the path towards decriminalization.

After the democratic transition was over, there was a general demobilization of all social movements including women's movements in the three countries (Jaquette 2009). The spaces of participation which movements had created in their struggle against the dictatorship were now, during democracy, occupied by the re-emerging political parties (O'Donnell and Schmitter 1986, Oxhorn 1995, Garreton 1993). However, not all three women's movements saw their roles diminished in the same way or degree. There is wide consensus among scholars around the fact that since the democratic transition until these days Chile has had the weakest women's movement for sexual and reproductive rights (Schild 1998).<sup>280</sup> Chilean feminists have acknowledged the movements' failures, in particular in organizing around the demand for legal and safe abortion.<sup>281</sup> On the other hand, the Uruguayan case has been the most organized and developed women's movement for abortion decriminalization, while Argentina lies in between the two countries.

Internal divisions have been a source of weakness for the Chilean and Argentine women's movement. As opposed to the case of Uruguay in which there was a clearly stated demand to decriminalize abortion from the early 1990s, Chilean women could not agree among themselves around the need to demand complete or partial decriminalization, or just abandon the issue and work towards other less controversial

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<sup>280</sup> All scholars and activists interviewed in Chile agree with this statement.

<sup>281</sup> See interview to Gloria Maira, renowned Chilean feminist at <http://argenlibre.blogspot.com/2010/07/michelle-bachelet-entre-lo-femenino-las.html>



goals. The context of moral conservatism that the Menem administration introduced in Argentina during the 1990s with his tight alliance with the Catholic Church generated internal discussions around the strategic value of continue demanding the right to safe and legal abortion instead of concentrating on other issues within the sexual and reproductive rights agenda that generated less opposition (Gutierrez 2000; Rouco and Schejter 1995). However, after the year 2000, the commitment towards the decriminalization of abortion was clear again and the only major internal conflict that appeared was either to work with the government or to assume a more autonomous strategy towards this goal.<sup>282</sup>

The final factor pointed by scholars as responsible for making the Chilean movement weakest has been the drying up of foreign aid for the area of sexual and reproductive rights (Blofield 2006, Schild 1998; Ríos 2003). Uruguay and Argentina on the contrary continued to receive international funding throughout the 1990s and the 2000s (Blofield 2006).

#### *9.1.2. The Power to convene*

For the cases of human rights movements the way to measure the power to convene was to identify the main annual protest held by each of them and then count the number of participants that these events attracted every year. I will do the same for the women's movement even though there is less available information about these cases.

The *Observatorio Social de America Latina* (OSAL) provides annual chronologies of protests for most Latin American countries based on analysis of national newspapers beginning in the year 2000. Table 8.1 was constructed based on this information. Table

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<sup>282</sup> I witnessed these discussions in the 2007 *Encuentro Nacional de Mujeres* held in Cordoba.

8.2 presents the number of demonstrations reported by newspapers *Clarín* and *Página 12* for the case of Argentina, *La Nación* for the case of Chile and *La Republica* for that of Uruguay. The selection of newspapers was done based on the availability of search engines and access to old editions on line. The first conclusion that can be drawn from both tables is that protests on this issue have become more common from the year 2006 onwards, which coincides with the description of the increasing activism of women's movement in the recent years. Both tables show a lack of strong activity in the case of Chile in agreement both with the academic views of a weak movement and its lack of impact on state policy analyzed in Chapter 8. When comparing the other two cases, the Argentinean movement seems to be more active than the Uruguayan in terms of number of protests, even though the latter has been much more successful on influencing state policy. A similar finding is evident on Table 9.3 which presents the number of people attending those demonstrations when this information is available.

Table 9.3 shows how the Argentinean women's movement has been able to not only organize more demonstrations than the other two cases but also attract more people to each of them. Argentina is the only country in which the women's movement managed to gather up to 30,000 people in a protest demanding the decriminalization of abortion.

Argentina's larger street activism than Uruguay might be explained by the following factors. The general wave of mobilization that Argentina went through starting in the late 1990s with its peak during the 2001 economic and political crisis made the organization of street pickets and demonstrations the chosen repertoire of all social movements in the country. In comparison with Argentina's more confrontational style of politics, Uruguay

has a stronger tradition of searching for consensus,<sup>283</sup> and these different ways of managing politics have also characterized social movements' strategies.

TABLE 9.1  
NUMBER OF PROTESTS FOR THE DECRIMINALIZATION OF ABORTION  
IN ARGENTINA, CHILE AND URUGUAY  
2000-2007

	<b>Argentina</b>	<b>Chile</b>	<b>Uruguay</b>
2000	0	0	0
2001	2	0	0
2002	0	0	0
2003	1	0	0
2004	0	0	0
2005	2	1	0
2006	2	0	3
2007	5	1	2
<b>Total</b>	<b>12</b>	<b>2</b>	<b>5</b>

*Source: by Author based on OSAL chronologies*

The Uruguayan movement while more successful in having its demands addressed, did so not so much by mobilizing large masses into the streets but by gaining the support of other movements and social actors and by tightly working together with sympathetic legislators.<sup>284</sup> In addition, in Argentina the demonstrations that gathered the largest number of people were those organized during the annual national *Encuentros de Mujeres* (Women's meetings). Since these gatherings convene women from all over the country to discuss gender issues they allowed the concentration in one place of all those

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<sup>283</sup> The consensus seeking political culture of Uruguay has been mentioned by most of my interviewees in this country.

<sup>284</sup> Interview with Rafael Sanseviero, Montevideo, October 19<sup>th</sup>, 2007

committed to the right to safe and legal abortion which would otherwise be dispersed throughout the country, making them more visible.

TABLE 9.2  
NUMBER OF PROTESTS FOR THE DECRIMINALIZATION OF ABORTION  
IN ARGENTINA, CHILE AND URUGUAY  
1999-2007

	Argentina	Chile	Uruguay
1999	1	0	0
2000	1	0	0
2001	0	0	2
2002	0	0	1
2003	3	1	0
2004	3	0	3
2005	5	0	1
2006	7	0	4
2007	7	0	1
<b>Total</b>	<b>27</b>	<b>1</b>	<b>12</b>

*Source: by Author based on: Clarín and Página 12 for Argentina, La Nación for Chile and La República for Uruguay.*

For women's movements demanding the decriminalization of abortion there are three main dates in which demonstrations are organized: September 28<sup>th</sup>, March 8<sup>th</sup> and May 28<sup>th</sup>. The most important one is September 28<sup>th</sup>, which was established as the Day for the Decriminalization of Abortion by the 1994 5<sup>th</sup> Feminist Meeting of Latin America and the Caribbean in San Bernardo, Argentina. However, OSAL and the national newspapers report activities around that date only in Argentina, whereas in Uruguay and Chile the date had not produced large protests. In Uruguay Table 9.3 reports only two years in

TABLE 9.3

NUMBER OF PARTICIPANTS IN PROTESTS  
FOR THE DECRIMINALIZATION OF ABORTION

2000-2007

	Argentina	Chile	Uruguay
1999	- Feb. 14 <sup>th</sup> Escrache <sup>i</sup> : NA		
2000	-March 8 <sup>th</sup> : NA -Sept. 28 <sup>th</sup> : <b>20</b> <sup>ii</sup>		
2001	-March 8 <sup>th</sup> : <b>1,000</b> -Encuentro Nac. Mujeres <sup>iii</sup> : <b>2,000</b>		-March 8 <sup>th</sup> : NA -May 28 <sup>th</sup> : NA
2003	-Encuentro Nac. Mujeres: <b>10,000</b> - Sept. 28th: <b>8,000</b> - Dec. 31 <sup>st</sup> Escrache <sup>iv</sup>	-Sept.28th: <b>50</b>	
2004	-March 8 <sup>th</sup> : NA - Sept. 28 <sup>th</sup> : NA - Encuentro Nac. Mujeres: <b>20,000</b>		-March 8th: NA -Apr 13th Campaign: NA -May 4 <sup>th</sup> Campaign: NA
2005	-March 8 <sup>th</sup> : NA -May 28 <sup>th</sup> v Campaign <sup>vi</sup> : NA -Sept.28 <sup>th</sup> : NA -Encuentro Nac. Mujeres: <b>30,000</b> -Nov 26th <sup>vii</sup> : <b>thousands</b>	-Sept.28th: <b>tens</b>	-Feb 15 <sup>th</sup> Campaign: NA
2006	-March 8 <sup>th</sup> : NA -May 28 <sup>th</sup> : NA - Aug 4 <sup>th</sup> Campaign: 200 -Non punishable abortion <sup>viii</sup> : NA -Non punishable abortion: NA -Sept 28 <sup>th</sup> : NA -Encuentro Nac. Mujeres: <b>10,000</b>		-March 8th: NA Campaign: <b>hundreds</b> -May 28: <b>hundreds</b> -Sept. 28th: <b>more than 1,000</b> -Diversity March: NA

TABLE 9.3 (CONTINUED)

	Argentina	Chile	Uruguay
2007	-March 8 <sup>th</sup> : NA -Ana Maria Acevedo: <sup>ix</sup> NA -May 28 <sup>th</sup> Campaign: NA -Non punishable abortion: NA <sup>x</sup> - Non punishable abortion: NA <sup>xi</sup> -Sept. 28 <sup>th</sup> : <b>hundreds</b> - <i>Encuentro Nac Mujeres</i> : <b>20,000</b> - Non punishable abortion: NA <sup>xii</sup>	-March 8 <sup>th</sup> : NA	-Campaign: <b>more than 100</b> -September 28th: <b>more than 3,000</b>
<b>Total of protests</b>	<b>31</b>	<b>3</b>	<b>12</b>

Source: by author based on OSAL and newspapers reports

<sup>i</sup> “Escrache” refers to the shaming of a person or institution with whom the movement disagrees. In this case they organized this action against the director of the Santojanni Hospital, Alberto Eunekian who refused to perform an abortion on a disabled teenager who had been raped.

<sup>ii</sup> The information of the number of people attending this demonstration was gathered from Blofield 2006.

<sup>iii</sup> This refers to the annual Women’s National Meetings that have been held in Argentina since 1986.

<sup>iv</sup> This *escrache* was organized against the judge that rejected the petition of the family of a 14-year-old girl who was raped in Bahia Blanca.

<sup>v</sup> This date was established as the International Day of Action for Women’s Health by the V International Meeting on Women’s Health in 1987

<sup>vi</sup> When the word “Campaign” is used it describes demonstrations organized by the Campaign for the decriminalization of abortion to push for the bills in Congress in each of these countries.

<sup>vii</sup> This date was established as the International Day for the Elimination of Violence Against Women by the UN General Assembly on December 17<sup>th</sup>, 1999

<sup>viii</sup> Women organizations protested demanding the right to a legal abortion for the case of a disabled girl who was raped in Mar del Plata.

<sup>ix</sup> This refers to a demonstration organized to shame the hospital that let Ana Maria Acevedo die. She was pregnant and had cancer. She requested an abortion based on the risk to her health but was denied.

<sup>x</sup> This refers to a demonstration organized to demand a legal abortion for a girl raped in Jujuy

<sup>xi</sup> This was a protest across from the House of the Province of Entre Ríos, in Buenos Aires to demand a legal abortion for a disabled girl that was raped in this province.

<sup>xii</sup> Women organizations protest in Mendoza because the Provincial Health Minister decided not to sign the Guide for the treatment of non punishable abortions

which there were large demonstrations around this date (2006 and 2007). However these were the events that congregated the largest amount of people in this country (1,000 and 3,000 respectively). In Chile there are also only two protests held on September 28<sup>th</sup> (2003 and 2005) which convened only 50 and dozens of people respectively. Argentina's women's movement is the only one that has held large enough activities to be reported by national media on this date from the year 2000 onwards (only skipping 2001 and 2002). Unfortunately there is not continuous information on the number of people attending to allow for a proper comparison. However, the peak of activity that began in 2003 after the first Workshop on Strategies for the Decriminalization of Abortion within the *Encuentros* in the city of Rosario is reflected in the large number of participants in the September 28<sup>th</sup> march of that year: 8,000. This number is evidence of the increased mobilization in particular if we take into account that the protests on this date on the year 2000 only gathered 20 people.

Another date in which women mobilize is March 8<sup>th</sup>, international women's day. However, these are usually demonstrations organized by different women's organizations with diverse gender issues such as equality of salaries or stopping domestic violence, with sexual and reproductive rights being only one among many. Thus, it is tricky to consider the number of participants in these demonstrations as supporting the decriminalization of abortion since so many other demands draw people to participate.

A final date for women's movements to take to the streets is that of May 28<sup>th</sup>, which is the International Day of Action for Women's Health established by the 5th International Meeting on Women's Health in 1987. Again, here Argentina is the one that has held more street actions on this date (2005, 2006 and 2007), followed by Uruguay

(2001 and 2006) and finally by Chile with zero protests. Unfortunately there is no data on how large these events were in terms of number of participants.

To summarize, the analysis of these tables show that Chile presents the least active movement of the three cases. Argentina and Uruguay's women's movements for the decriminalization of abortion have been much more active. Argentina's more confrontational political culture and the predominance of streets demonstrations in the repertoire of all social movements explains why this country's women's movement has a higher level of street activism than Uruguay, even though the impact on state policy has been weaker in the former than the latter.

#### *9.1.3. Gathering support from social actors*

As mentioned before, to supplement the poor data found on street demonstrations, an additional way of measuring the power to convene is added in the case of the women's movements. Chapters 6, 7 and 8, which analyzed this movement in detail in the three countries, show how gathering support from other key social actors increased the impact of the women's movement on state policy. Table 9.4 summarizes this information for each of the cases.

In terms of social allies Uruguay has the strongest movement. Chapter 6 described how key the support of social actors was for this movement's success in placing the issue of abortion on the political agenda and pushing forward the bills introduced in Congress on these issues. Argentina follows with some successes in establishing social allies, but still with much work ahead to be done, in particular to involve actors such as doctors and unions in their struggle. Also, the support of lawyer associations and universities for the campaign on abortion decriminalization is very recent -2010- and thus the impact that



this will have on abortion reform is still to be seen. The Chilean women's organizations have been the least successful in developing these key alliances, not surprising when the movement has proven to be so weak.

TABLE 9.4  
SOCIAL ACTORS SUPPORT FOR WOMEN'S MOVEMENT  
DEMAND FOR THE DECRIMINALIZATION OF ABORTION  
IN ARGENTINA, URUGUAY AND CHILE.

	<b>Argentina</b>	<b>Uruguay</b>	<b>Chile</b>
<b>Medical associations and schools</b>	No	Yes (2001)	No
<b>Lawyers' associations and schools</b>	Yes (2010)	Yes (1993)	No
<b>Unions</b>	Partly (2009)*	Yes (1996)	No
<b>Universities</b>	Yes (2010)	Yes (2002)	No
<b>Social movements</b>	HR (2001), students (2001), workers run factories and unemployed workers ( <i>Piqueteros</i> ) (2001), GLBT (2003)	GLBT (2007)	No
<b>Churches</b>	Methodist and Lutheran churches and Jewish community Bet el (2011)	Methodist and Valdese churches (2002)	No

\*Only CTA, not CGT

#### *9.1.3.1. Medical Associations*

The first actor that has been considered key in the struggle for abortion decriminalization is the medical community. Doctors have a social legitimacy and moral authority on health issues that make society listen to them more than other social actors

when it comes to issues such as that of abortion (Sanseviero 2007, Moreira 2007). The history of the struggle for the right to legal abortion in other countries show that if doctors allow authorities to imprison them for practicing abortions –as in Belgium-, if they organize rounds of itinerant abortions –as in Italy- or at least try to find loopholes in the current restrictive laws, governments will pay more attention to women’s demands.<sup>285</sup> Thus having the support of medical professional associations and medical schools is a very important asset for the women’s movement in their struggle for the decriminalization of this practice.

Doctors in Uruguay have been supportive of the demand to decriminalize abortion since as early as 2001. At that time, a group of doctors from public hospital Pereira Rossell, responsible for having alerted the population about the increase of maternal mortality due to abortion, came together with women’s organizations and created the group “*Iniciativas Sanitarias contra el Aborto Provocado en Condiciones de Riesgo*” (Sanitary Initiatives against Unsafe Abortion). This group received the support of the Medical School of *Universidad de la República*, the doctors’ union, and the OBGYN society of Uruguay (Sanseviero et al 2008).

In Argentina medical associations and schools have traditionally opposed the decriminalization of abortion or mostly ignored the issue. During the 1994 Constitutional Convention when the Menem administration attempted to include the right to life from the moment of conception as one of the items to be discussed, the Academy of Medicine expressed their support (Gutierrez 2000).

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<sup>285</sup> See *Pagina 12*, “*Otro peldaño en la escalera*” September 24, 2004. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 10th, 2010.

A 2001 study conducted by CEDES found out that 8 out of 10 OBGYNs that work in public hospitals in the city of Buenos Aires agree that the decriminalization of abortion would reduce maternal mortality: 83% supports decriminalization in cases of rape or incest, and 82% in cases of inviability of the fetus to live outside the womb. However, only 38.5% supports decriminalization based on the woman's choice.<sup>286</sup> Still, the support for decriminalization in certain cases shown in the survey did not translate in them taking a public stance on this issue. Doctors continue to report women that resort to public hospitals after having illegal and unsafe abortion, and many of them continue to reject the application of article 86 in cases of non punishable abortions (See Chapter 7). In an interview with *Página 12* in 2004 an Argentine doctor stated that “*es más fácil crecer dentro de una institución científica estando en contra de la despenalización que a favor*” (it is easier to rise within a scientific institution being against decriminalization than in favor of it).<sup>287</sup> When in August 2010 the University of Buenos Aires expressed its institutional support for the decriminalization of abortion and the National Campaign for the right to a legal, safe and free abortion, the only dean that did not vote for this resolution was Alfredo Buzzi of the School of Medicine.<sup>288</sup> When a similar stance took place in the Universidad de la Plata, the dean of the School of Medicine expressed that “*la cuestión ya esta resuelta en la génesis del juramento (...) que se refiere a la obligación de mantener absoluto respeto por la vida humana desde su concepción*” (the issue is

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<sup>286</sup> See *Página 12*, “*El acuerdo de los médicos*”, November 9th, 2002. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 10th, 2010.

<sup>287</sup> See *Página 12*, “*Otro peldaño en la escalera*” September 24, 2004. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 10th, 2010.

<sup>288</sup> See *Página 12*, “*Apoyo de la Universidad a un derecho. Resolución de la UBA a favor de la despenalización*”, August 13th, 2010. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 13th, 2010

already solved in our pledge (...) which refers to our obligation of maintaining absolute respect for human life since the moment of conception).<sup>289</sup> In this context, Martha Rosenberg from the National Campaign acknowledged the women's movement needs to work harder to get doctors associations involved in their struggle.<sup>290</sup>

Finally, in Chile the situation is even worse for the women's movement. In 1998 the Chilean Medical Association expressed their support for a bill to increase the penalties for abortion and redefine this practice as homicide. While in Argentina, in spite of the institutional opposition of medical associations to the decriminalization of abortion, some doctors have publicly expressed their support for the right to a legal and safe abortion,<sup>291</sup> in Chile this has not been the case. In 2003 a 27-year-old woman and mother of two requested a therapeutic abortion given that her pregnancy was causing a serious threat to her health and her child had no chance of living outside the womb. In this case, the Chilean Medical Association supported her and requested the Health Minister authorization to induce labor.<sup>292</sup> However, the controversy sparked by the sole mention of the word abortion was such that doctors stated that this was not a case of "therapeutic abortion" but one of "interruption of a pregnancy",<sup>293</sup> the difference being that in the

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<sup>289</sup> See "*La Medicina alza su voz contra el apoyo al aborto en la Universidad de la Plata*". Viewed at [www.hazteoir.org](http://www.hazteoir.org) on September 10th, 2010.

<sup>290</sup> See *Página 12*, "*Estrategias para lograr el aborto legal y seguro*" August 18<sup>th</sup>, 2003. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 10th, 2010.

<sup>291</sup> See *Página 12*, "*Otro peldaño en la escalera*" September 24, 2004. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 10th, 2010.

<sup>292</sup> See *La Nación*, "*Médicos apoyan aborto terapéutico*," January, 15<sup>th</sup>, 2003.

<sup>293</sup> See *La Nación*, "*Médicos decidirán interrumpir el embarazo*", and "*Artaza felicita al equipo médico que intervino en el caso de Griselle Rojas*", January 17<sup>th</sup>, 2003.

latter the goal of the intervention was not to end the life of the fetus to save the mother, but to try to save both lives.<sup>294</sup>

#### *9.1.3.2. Lawyers Associations*

A second relevant social actor that can help women's movements increase general support and legitimacy for their campaign is that of lawyers' professional associations and law schools, since the status of abortion is defined in criminal codes.

Uruguay again provides the earliest involvement of lawyers with the issue of the decriminalization of abortion. Already in 1993 when legislator Rafael Sanseviero called for the participation of different social actors to give input to his bill to decriminalize abortion, the Association of Judges of Montevideo, the *Universidad de la República* Law School and a group of renowned jurists took part in this debate and expressed a very liberal view on the issue of abortion.<sup>295</sup>

In Argentina there has not been agreement on the issue of abortion among different lawyers' associations and law schools. In 2002 the National Academy of Law and Social Sciences from Buenos Aires drafted a document stating that the bills introduced to ensure the practice of non punishable abortions were unconstitutional. The rationale was that the National constitution guarantees the right to life from the moment of conception.<sup>296</sup> On the other hand, in July 2010 the Lawyers' Association of Buenos Aires expressed its

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<sup>294</sup> Interview with Verónica Díaz Ramos, director of *Católicas por el Derecho a Decidir*, Valparaíso, October 31<sup>st</sup>, 2007.

<sup>295</sup> Interview with Rafael Sanseviero, Montevideo, October 19<sup>th</sup>, 2007.

<sup>296</sup> See *Clarín*, November 9<sup>th</sup>, 2002. Viewed at [www.clarin.com.ar](http://www.clarin.com.ar) on September 7<sup>th</sup>, 2008. This statement is in the Pacto de San Jose de Costa Rica included in the National Constitution. However, there is no agreement in the interpretation of this international treaty defending life from the moment of conception.

support for the legalization of the practice of abortions.<sup>297</sup> In addition in September of the same year the Argentine Association of Professors of Criminal Law released a document defining the reach of article 86 on non punishable abortions. They provided a liberal interpretation which coincided with that of the National campaign for the right to a legal, safe and free abortion.<sup>298</sup> However these supportive statements contrast with the attitude of other professional associations. In August 2010 the Lawyers Association of Bariloche denounced Judge Martín Lozada and requested his removal for having ruled in favor of the request of a non punishable abortion by a teenager that had been raped.<sup>299</sup>

In Chile again, the struggle for the decriminalization of abortion has received no support from legal associations or law schools.

#### 9.1.3.3. Unions

In Uruguay unions were active on gender issues from as early as the 1980s. In 1986 the Committee for Women –currently called Department of Gender and Equity- was created within the central worker’s organization, PIT CNT. That same year the union held the first meeting on women’s issues. In 1996 they became part of the *Comisión Nacional de Seguimiento por Democracia, Equidad y Ciudadanía* (CNS), created to follow up on the commitments assumed by the Uruguayan state in the international conferences of the UN system on gender issues. Since 2002 the PIT CNT has been

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<sup>297</sup> See *Página 12*, “Pronunciamiento de los abogados” August, 13th, 2010. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 13th, 2010.

<sup>298</sup> Non punishable abortions include the cases of: threat to the mental or physical health of the mother and rape whether the woman is mentally disabled or not. In these cases there is no need to request judicial authorization or that of a Committee on Bioethics. In the case of rape the woman does not need to show proof of having reported the crime to the police. See *Página 12*, “El dictamen que aclara todas las dudas. Pronunciamiento de los mas prestigiosos académicos del derecho sobre los abortos no punibles” September 8th, 2010. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on September 8th, 2010

<sup>299</sup> See *Página 12*, “El juez acusado por avalar un derecho. Buscan destituir a un magistrado que autorizo un aborto no punible en Bariloche” August, 4th, 2010. Viewed on [www.pagina12.com.ar](http://www.pagina12.com.ar) on August 4th, 2010.

actively supporting the campaign for abortion decriminalization. From 2003 onwards unions have included the fight for a legal and safe abortion as one of their demands in the May 1<sup>st</sup> demonstrations (Castillo 2007). In addition the PIT CNT has recently participated in the main demonstrations organized by the campaign for abortion decriminalization.

The Argentinean women's movement has only recently managed to gain some support from unions for their struggle. Unlike in Uruguay when there is only one central workers' union, in Argentina President Menem's neoliberal economic policies led to the split of the traditional CGT (*Confederación General del Trabajo*, General Confederation of Workers). In the early 1990s the CTA (*Central de Trabajadores Argentinos*, Argentine Workers' Center) was created to gather all those workers opposed to Menem's policies; however, it has not yet been officially recognized by the state.

The CGT has not supported the women's movements demands for the decriminalization of abortion. In the goals described by their Secretariat for Gender and Equal Opportunities there is no mention of this issue.<sup>300</sup> Given its origins the CTA is positioned to the left of the CGT, and this is one of the reasons it has been closer to the women's movement actions than the CGT. However, this proximity has been only a recent development.

In 1999 there was an ephemeral alliance between the women's movement and the CTA. That year the union voted in its annual congress in favor of the decriminalization of abortion almost unanimously (from 8,000 delegates there were only eight abstentions and one vote against it) (Chejter et al 2002). However, this was not publicized in the

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<sup>300</sup> See their webpage at [http://www.cgtra.org.ar/htdocs/index.php?id\\_seccion=60&id\\_seccion\\_padre=10&id\\_pagina=1](http://www.cgtra.org.ar/htdocs/index.php?id_seccion=60&id_seccion_padre=10&id_pagina=1)

union's bulletin and no actions were taken to push for this demand,<sup>301</sup> a fact that might have been related to the fact that the union's general secretary, Victor De Genaro, was a devout Catholic. Scholars consider that the connection between women and the CTA was more formal than real and did not change the predominant view among union workers that an abortion is an imposition or a punishment and not a voluntary decision made by women (Chejter et al 2002:49).

This has begun to change since 2009. Although there is still not a tight relationship between the CTA and the Campaign for a legal safe and free abortion, the union has publicly supported this struggle and even participated in some of the street actions through their Secretariat on Gender and Equal Opportunities. In 2009 it took part in the demonstrations for the International Day for the Decriminalization of Abortion held on September 28. On March 2010 it expressed its support for the bill proposing the decriminalization of abortion introduced by the National Campaign in Congress.<sup>302</sup>

Finally, unions in Chile have all together ignored the issue of abortion.

#### *9.1.3.4. Universities*

Another social actor that has played a role in the abortion debate has been universities. In this case I refer not to specific Medical or Law Schools but to whether the women's movement received the support of the main public university in each country as a whole.

In Uruguay, in 2002 the Campaign for the Decriminalization of Abortion received the official support of the main public university, *Universidad de la República* (Abracinskas

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<sup>301</sup> Interview with Martha Rosenberg, Buenos Aires, October 1st, 2007.

<sup>302</sup> See their website at <http://www.cta.org.ar/base/article15061.html>



and López Gómez 2004). In Argentina the *Universidad de Buenos Aires* expressed its support for the National Campaign only in 2010. The *Universidad de Chile* has not taken an official position on the issue as of this date.

#### 9.1.3.5. Social movements

It is common for social movements to support each other's causes. Some of the movements that have offered their solidarity to the women's campaign for legal abortion have been the human rights and GLTB movement. In Uruguay the movement that has been closer to the campaign has been the GLTB. In recent years both movements have held demonstrations together to demand both sexual and reproductive rights and the respect of sexual diversity.<sup>303</sup>

In Argentina, after the 2001 crisis that led to massive mobilizations, human rights and student movements showed their solidarity with the women's demand for safe and legal abortion. Originally the *Madres de Plaza de Mayo* preferred to avoid the issue of abortion since there were diverse opinions within the group. In addition, the fact that their symbolic power was given by the fact of being "Mothers" and "givers of life", defending abortion decriminalization could have been interpreted as contradictory.<sup>304</sup> However, currently the *Madres* support the National Campaign<sup>305</sup> and even participated in some of their demonstrations.<sup>306</sup> In addition, new movements born in the late 1990s such as that of

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<sup>303</sup> See *La República*, September 29<sup>th</sup>, 2007.

<sup>304</sup> Interview with Nora Cortinas, *Madres de Plaza de Mayo Línea Fundadora*. Viewed at <http://www.unsam.edu.ar/escuelas/humanidades/centros/cedehu/material/%2834%29%20Entrevista%20Corti%C3%BIas.pdf> on September 3<sup>rd</sup>, 2010.

<sup>305</sup> See *Página 12*, "Matrimonio igualitario y aborto. Entrevista a Hebe de Bonafini." July 25<sup>th</sup>, 2010. Viewed at [www.pagina12.com.ar](http://www.pagina12.com.ar) on July 25<sup>th</sup>, 2010.

<sup>306</sup> See *Clarín*, May 28<sup>th</sup>, 2005.

*Piqueteros* (unemployed workers) and the worker-run factories also expressed their support for the right to a legal and safe abortion. Finally, one of the main GLTB organizations in Argentina, the *Comunidad Homosexual Argentina* (Argentine Homosexual Community, CHA) has been part of the struggle for legal abortion as early as 2003 when it took part in the First National Meeting on Abortion. In 2005 it joined the launching of the National Campaign for legal, safe and free abortion.<sup>307</sup>

#### 9.1.3.6. Churches

In Uruguay the Methodist and Valdese churches have been in solidarity with the campaign to decriminalize abortion since 2002 (Abracinkas and López Gómez 2004).

In Argentina the support given by some religious communities has been a recent development. In May 2011 the Methodist and Lutheran churches and the Rabbi Daniel Goldman from the community Bet El made a public pronouncement in favor of the campaign for the decriminalization of abortion.<sup>308</sup>

To summarize, Uruguay's women's movement is the one that marshaled wider support from the three main actors that have the greatest weight in the debate on abortion: doctors, lawyers and unions. Argentina comes close in that the National Campaign for legal abortion has received solidarity from two of these (lawyers and unions) and in addition from various social movements. However, the fact that the medical community is still reluctant to openly support decriminalization, that the lawyers' expression of solidarity has been only a recent event- 2010-, and that only one of the workers' unions – the CTA- has offered its support, puts this movement at disadvantage in relation to that of

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<sup>307</sup> See CHA's public statements at their website at <http://www.cha.org.ar/articulo.php?art=57&cat=16>

<sup>308</sup> See *Página 12*, “*Credos con otra Mirada*” May 31<sup>st</sup>, 2011. Viewed on May 31<sup>st</sup>, 2011 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

Uruguay. Since 2010 more social actors have openly supported the campaign to decriminalize abortion in Argentina so the next few years will be a good ground to test if this model's predictions hold. Finally, in coincidence with the other measures of movement strength Chile lies far behind than the other two countries. Chilean feminist Gloria Maira has acknowledged that one of the challenges of the movement now is to explore sustainable and more permanent alliances with other movements such as the GLTB, unions, peasants, and *mapuches*.<sup>309</sup>

#### *9.1.3.7. Conclusion*

The three measures used to evaluate the strength of the movement –scholars' views, the power to convene defined both in terms of number of participants in demonstrations and as the support of other social actors-coincide in ranking Uruguay as the country with the strongest women's movement, followed closely by Argentina and Chile lying further behind.

There are some trends in the women's movement as a whole that are similar in the three countries. During the dictatorship the three cases presented a similarly strong women's movement fighting for both the return of democracy and the fulfillment of basic economic needs. Once the transition to democracy took place all of these movements lost visibility and weakened. However the three movements do differ in some aspects quite significantly. While in Uruguay the movement held the demand to decriminalize abortion without hesitation from the beginning, this was not the case in Argentina and even less so in Chile. However, for even the strongest movements, such as that of Uruguay, it took

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<sup>309</sup> See interview with Gloria Maira, renowned Chilean feminist at <http://argenlibre.blogspot.com/2010/07/michelle-bachelet-entre-lo-femenino-las.html>

some years until the national campaigns for decriminalization of abortion were launched and took shape.

## 9.2. Political Allies

A strong social movement is a necessary but not sufficient condition for a movement to have an impact on state policy. A social movement also needs political allies in power to press its demands within the political system. While the existence of a movement is critical for the second dimension of state response –placing the issue on the political agenda- the presence of political allies is necessary for the following dimensions: for bills to be introduced, for laws to be passed, for programs to be implemented, and for government agencies to be created.

Faced with a strong social movement, some governments are more receptive than others towards its demands. What, then, explains why some governments are more likely to respond to these social movements than others? What characteristics should politicians have in order to be considered potential movement allies?

My first hypothesis is:

*H1. Leftist governments are more likely to respond to women's movements' demands for abortion decriminalization than right-wing ones.*

Ideology is a general predictor of government responsiveness to social movements. In the cases of the three human rights movement analyzed in Chapter 5, this hypothesis was confirmed. However, given the problems of coding some of the political parties in the left-right ideological spectrum (see discussion in Chapter 5) I complement this measure with three others.

I first code presidents, ministers and political parties in Congress on their views on abortion in three categories: a) those who have expressed support for decriminalization, b) those who have strongly opposed this demand, and c) those who have either ignored the issue or have been ambiguous about it.

*H2a: Presidents and ministers who have vocally expressed their support for the decriminalization of abortion are more likely to be sympathetic to the women's movements demands than those who have expressed their opposition or have remained indifferent or ambiguous on this issue.*

*H2b: Presidents and legislators from parties who have expressed support for the decriminalization of abortion in their platforms are likely to be more sympathetic to the women's movements demands than those who have expressed their opposition.*

Second, when studying gender policies, some scholars have looked at what they refer to as “the structure of gendered opportunities” (Soule & Olzak 2004) measured, for example, by the number of women in the executive and legislative branches. Based on these theories, I developed the second hypothesis:

*H3: Female politicians will be more likely to respond to women's movements' demands than male politicians.*

However, there is a debate in the field of women's studies about whether the increase of women in power positions leads to more policies with gender content or not (Htun and Jones 2002; Chant & Craske 2007). Not all women in power are committed to gender policies and thus the fact of being a “woman” does not automatically make someone a potential ally for the movement for the decriminalization of abortion. Thus, I also code women based on their past commitment to these issues in the following categories:

- 1) very committed: legislator that fits at least one of these descriptions:
  - has been part of the women's movement before being elected
  - defines herself as a feminist
  - when asked about her interests in Congress mentions gender as one of them<sup>310</sup>
  - has introduced more than one bill on sexual and reproductive rights other than those on abortion (to prevent conflating the independent with the dependent variable).
- 2) committed: legislator that fits at least one of these descriptions:
  - has introduced one bill on sexual and reproductive rights other than those on abortion
  - has introduced a bill to sign into the CEDAW
  - has introduced a bill to create a Commission on Gender Issues and/or establish a gender agenda.
- 3) Somewhat committed: legislator that has introduced bills on gender issues other than sexual and reproductive rights such as the political participation of women, women's rights within the family and violence against women.
- 4) Indifferent: legislator that has introduced no bill related to any gender or women's issues.
- 5) Opposed: legislator that fits at least one of the following descriptions:
  - has voted against key gender bills (other than those related to abortion) such as the ratification of CEDAW, voluntary sterilization, access to contraceptives and sexual education.
  - has introduced at least one bill restricting sexual and reproductive rights (other than those related to abortion).

This coding laid the ground for the third hypothesis:

H4a: *Women politicians with a history of commitment to gender policies are prone to sympathize with the women's movements demands for abortion decriminalization and become their allies.*

H4b: *Women politicians that have been indifferent to gender issues or have opposed them are expected to be against the women's movements demands for abortion decriminalization and stall their efforts.*

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<sup>310</sup> This description applies only to Argentinean politicians since they are asked about their main area of interest in the annual booklet of legislators in Congress.

Finally, based on the common claim in the literature that the political influence of the Catholic Church is partly responsible for Latin American strict laws penalizing abortion (Htun 2003; Borland 2004; Blofield 2007), I code politicians based on whether they had a secular or religious university education. I identify university education of the political elite as a key mechanism through which the Church influences government policies blocking the availability of allies to the movement for decriminalization.

Some scholars have measured the influence of the Catholic Church by examining state-church relations as defined by the constitution (Borland 2004), the relationship of particular governments with the Catholic Church (Htun 2003), the reach the Church has in society as a whole (Borland 2004) or its reach within the economic elite (Blofield 2007). However, these ways of examining the Catholic Church's influence does not explain the differences in abortion policies among the three countries. When defining abortion politics, on the other hand, what matters most is the influence the Church has among the political elite. The Church is known for its lobbying to prevent the passage of legislation that goes against their doctrine, in particular when it is related to what it characterizes as moral and family issues. However, these interventions would not be received in the same way by politicians who share the Church's beliefs than by those who do not. For example, when abortion, divorce or birth control are discussed in Congress the Church usually threatens politicians with excommunication if they were to vote in favor of these issues. This threat would only be effective among those who care about the sacrament of communion. In light of this reasoning, I hypothesize that:

*H5: Politicians who were educated in Catholic universities are less likely to be allies of the women's movement and more likely to share the Church's views on abortion and to be receptive to its lobbying than those who attended public secular universities.*

#### *9.2.1. Ideology and Presidential Allies*

Chapter 5 has already discussed the variable “ideology” and coded the administrations of the three countries in terms of the left-right ideological spectrum. Table 5.2 is reproduced here.

The hypothesis that states that leftist governments will be more receptive to women's movements' demands for the decriminalization of abortion holds for the cases of Argentina and Uruguay. While none of the administrations –whether right or left wing– have actually decriminalized the practice of abortion, there are large differences in their attitudes towards the movement. During the leftist governments of Nestor Kirchner in Argentina and Tabaré Vázquez in Uruguay the demand for legal abortion was better received than it had been in previous right-wing administrations in these countries, which either strongly opposed the issue (like Menem in Argentina) or mostly ignored it (like Sanguinetti's and Lacalle's in Uruguay) (See chapters 6 and 7 for more details). Guides for the humane treatment of women in post-abortion situations were drafted under leftist governments in both countries. Uruguay came very close to approving the right to a legal and safe abortion in 2008 under Vázquez (See chapter 6), and the Argentinean congress



TABLE 5.2  
 IDEOLOGY OF THE DEMOCRATIC GOVERNMENTS  
 IN ARGENTINA, CHILE AND URUGUAY  
 1983-2007\* \*\*

	<b>Left</b>	<b>Center Left</b>	<b>Center Right</b>	<b>Right</b>
<b>Argentina</b>	Kirchner (PJ 2003-07)	Alfonsín (UCR 1983-89)	De la Rúa (UCR 1999-01)	Menem (PJ 1989-99)
<b>Chile</b>	Lagos (PS 2000-06) Bachelet (PS 2006-10)	Aylwin (DC 1990-94) Frei (DC 1995-00)		Piñera (RN 2010-14)
<b>Uruguay</b>	Vázquez (FA 2005-10) Mujica (FA 2010-2015)		Sanguinetti (PC 1985-90 1995-2000) Lacalle (PB 1990-95) Batlle (PC 2000-05)	

\* The squares in grey show the administrations that have been comparatively more receptive to the demand for the decriminalization of abortion as analyzed in Chapters 6 to 8.

\*\* Argentina: UCR (Radical Civic Union); PJ (Justicialist Party/Peronism); Chile: PS (Socialist Party); DC (Christian Democratic Party); RN (National Renewal); Uruguay: PC (Partido Colorado); PN (Partido Blanco/ National Party); FA (Frente Amplio/Broad Front)

has seen a significant increase in the number of bills introduced to ensure non-punishable abortions and to legalize the practice during Nestor Kirchner's administration (See Chapter 7). Moreover, the current Uruguayan administration under President Mujica (2010-15), also from the leftist coalition *Frente Amplio*, seems to be open to the advancement of abortion decriminalization. Although it is too soon to tell, there is

currently a bill in congress to push for abortion reform and President Mujica has already stated he will respect Congress' will and would refrain from using his veto power.<sup>311</sup>

All measures towards abortion reform have been initiated by legislators and health ministries but not by presidents. In Uruguay the passage in Congress of the sexual and reproductive rights bill in 2008 which included the decriminalization of abortion took place against President's Vázquez will. This may imply that leftist administrations are more likely to offer more allies to the women's movement, but mostly in less powerful positions than that of the president. It seems to still be considered electorally risky for a president to come out openly in support of abortion decriminalization or to campaign on such a specific issue. In Congress ideology and abortion reform correlate more strongly. As explained in detail in chapters 6 and 7, all bills on abortion decriminalization have always been introduced by left or center left parties.

The hypothesis also holds in terms of those administrations on the right and center right opposing abortion decriminalization. There has been no progress towards abortion reform during their mandates and in some cases, such as the Menem administration in Argentina, policies preventing decriminalization were strengthened (See Chapter 7).

Before moving to the other hypotheses, a word on the case of Chile is merited. As was widely described in Chapter 8, Chile has only timidly begun to discuss the re-establishment of therapeutic abortion in recent years. The Lagos and Bachelet leftist administrations did nothing to address the issue of abortion and purposely left it off their government agendas. However, this is consistent with the proposed theoretical model. The presence of a strong movement is necessary for leftist governments to react to their

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<sup>311</sup> See *La República*, "Por aborto legal en 2010" March 7, 2010. Viewed on [www.larepublica.com.uy](http://www.larepublica.com.uy) on May 22nd, 2011.

demands and become allies. In the absence of a movement leftist administrations would not necessarily pass policies towards abortion reform. Since the first necessary cause is not present, it follows that the second one (potential allies) is not self sufficient to lead to a policy change in this realm.

### *9.2.2 Presidents and the abortion debate*

Hypothesis 2a argues that those presidents who have publicly stated their support for abortion decriminalization will be more likely to address the women's movement demand for safe and legal abortion than those who oppose this policy. As discussed in chapter 5, the presidential system in the three case studies gives the institution of the presidency a key role in defining government policy. Thus, president's positions in the abortion debate are extremely relevant to predict if governments would address women's movements' demands or not.

When testing this hypothesis at the presidential level, the problem is that there is not enough variance within our universe of presidents. None of them has openly supported this demand. No administration has decriminalized abortion. While we have plenty of negative cases that confirm Hypothesis 2a –presidents who strongly opposed abortion decriminalization and their administrations did not do anything to advance this cause such as Menem, Batlle, Aylwin and Frei- there are no positive cases to compare them with.

However, there is a difference between those presidents who have expressed a strong opposition to abortion and those who have been mostly indifferent towards the topic, or their statements have been somewhat ambiguous. The lack of a strong opposition from the president has given the movement more leeway and space to advance their demands.

Presidents that have an ambiguous position towards abortion decriminalization have not pushed for the discussion and approval of abortion reform in Congress, but have usually given the green light to their legislators and/or ministers to work with the women's movement to introduce bills or vote in favor of sexual and reproductive rights including the issue of abortion if they desire to do so. These are the cases of Nestor Kirchner in Argentina and the current president in Uruguay, Pepe Mujica.

The coding of the views on abortion is based on President's public statements on abortion and not on policy measures that have been taken under their administration so as to have a clear separation between the independent and dependent variable. Table 8.4 shows the coding of presidents' views.

#### *9.2.2.1. Argentina*

In the case of Argentina, two presidents expressed strong opposition to the issue of abortion and four others either did not prioritize the issue or were ambivalent. Starting with the first group, Menem was the president who most strongly voiced his opposition to this practice and vehemently defended the right to life from the moment of conception. Some of his public statements that justify positioning him in this cell are the following: *"Soy antiabortista, por principio y convicción"* (I am anti-abortion by principle and based on my convictions)<sup>312</sup> and *"Yo, desde siempre, he defendido la idea de la vida desde el momento de la concepción. La vida viene de Dios y esto lo seguiré planteando siempre y trabajaré en una campaña de divulgación aquí y en el exterior."* (From the beginning I have always defended the right to life from the moment of conception. Life comes from

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<sup>312</sup> See Clarín, "Yo tuve un aborto, dijo la ex esposa del presidente", September 17th, 1999. Viewed at [www.clarin.com.ar](http://www.clarin.com.ar) on September 17th, 2008.

TABLE 9.5  
PRESIDENTS VIEWS ON ABORTION  
IN ARGENTINA, CHILE AND URUGUAY  
1983-2007\*

	<b>Strong Opposition</b>	<b>Ambiguous Opposition</b>
<b>Argentina</b>	Menem (1989-99)	Alfonsín (1983-89)
		De la Rúa (1999-01)
	Duhalde (2002-03)	Kirchner (2003-07)
		Fernández de Kirchner (2007-11)
<b>Chile</b>	Aylwin (1990-94)	Lagos (2000-06)
	Frei (1994-00)	Bachelet (2006-10)
	Piñera (2010-14)	
<b>Uruguay</b>	Batlle (2000-05)	Sanguinetti (1985-90 & 1995-00)
	Lacalle (1990-95)	Mujica (2010-15)
	Vázquez (2005-10)	

\* The squares in grey show the administrations that have been comparatively more receptive to the demand for the decriminalization of abortion.

God and I would always state this and would advocate it in a campaign both domestically and abroad.”<sup>313</sup> In the 1999 presidential campaign peronist candidate Eduardo Duhalde – who in 2002 became the transitional president after the 2001 crisis- clearly stated his strong opposition against abortion and his firm commitment to follow Menem’s policies (See Chapter 7 for more details).<sup>314</sup>

In the second group we find the two presidents from the Radical Party (UCR) and the two last Peronist presidents. Coding Alfonsín is complicated. Since the topic was not on

<sup>313</sup> See *Clarín*, “Conflicto diplomático: malestar del presidente en la reunión de gabinete”, September 10th, 1999. Viewed at [www.clarin.com.ar](http://www.clarin.com.ar) on September 17th, 2008.

<sup>314</sup> See *Clarín*, “Duhalde en contra del aborto” August 6<sup>th</sup>, 1999.

the political or societal agenda before or during his presidential mandate I found no public statements regarding the issue of abortion while he was president. This is why he is coded as indifferent. In 2004, fifteen years after leaving office, he stated his support for the decriminalization of abortion under certain circumstances: "*Soy católico, pero no puedo aceptar moralmente que en caso de grave riesgo de muerte para la madre, que incluso puede tener otros hijos que la necesitan para su educación, se opte por dejarla morir. Tampoco puedo aceptar que en caso de violación, la futura madre no tenga derecho a abortar*" (I am a Catholic but I cannot morally accept that in the case of a serious risk to the mother's life, who might even have other children that need her for their education, we would opt to let her die. I cannot accept that in the case of rape the future mother would have no right to have an abortion).<sup>315</sup> However, given that these were statements made two decades after coming to power, they cannot be counted as his public position during his administration.

During the 1999 presidential campaign the issue of abortion entered the electoral debate (See Chapter 7) and radical candidate De la Rúa was forced to make his position public. In those circumstances he stated that he was against abortion, followed by the clarification that this was not on the government agenda of any of the presidential candidates.<sup>316</sup> This is clearly different from Menem's position of militant opposition and commitment to work towards preventing abortion decriminalization. A similar position is clear in both Nestor Kirchner and Cristina Fernandez de Kirchner's public statements. When in 2004 Health Minister Ginés González García made a public statement in favor

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<sup>315</sup> See Infobae, "Alfonsín reconoció que en Cuba se violan los derechos humanos", February 26<sup>th</sup> 2004. Viewed at <http://www.cubanet.org/CNews/y04/feb04/27o6.htm> on August 30<sup>th</sup>, 2010.

<sup>316</sup> See Clarín, "La Iglesia no entra en el debate", September 16<sup>th</sup>, 1999.

of abortion decriminalization, President Kirchner stated that he was against the practice of abortion although he immediately added that: “*en el tema hay libertad de conciencia*” (in this topic there is freedom of conscience).<sup>317</sup> In 2007 when asked about her view on this issue his wife and current President Cristina Fernandez de Kirchner replied: “*Siempre me he definido en contra del aborto. (Pero) no creo que los que abogan por la despenalización del aborto estén a favor del aborto: eso seria una simplificación*” (I have always defined myself as being against abortion. (But) I do not believe that those who advocate in favor of abortion decriminalization are actually in favor of abortion: that would be an oversimplification).<sup>318</sup>

#### 9.2.2.2. Chile

In the case of Chile, the two Christian Democratic presidents –Aylwin and Frei– followed the party’s line strongly opposing decriminalization of abortion. The DC follows the Catholic Church’s doctrine on social issues. While during his first term as president (1994-2000) Eduardo Frei opposed even therapeutic abortion, when he ran again in 2009 and the issue entered the presidential campaign he was ambiguous (See Chapter 8). However, here he is coded based on his position when he was elected president in 1994 which was in agreement with his party’s strong stance against abortion under all circumstances.

Lagos offered a very ambiguous position towards abortion. During the 1999 presidential campaign he initially expressed his support for re-establishing therapeutic

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<sup>317</sup> See *Clarín*, “*Bielsa explica al Papa el acuerdo con el FMP*”, March 11<sup>th</sup>, 2004

<sup>318</sup> See *Perfil*, “*En el final Cristina hablo sobre aborto, marihuana, gays y cirugías*” October 25<sup>th</sup>, 2007. Viewed at [http://www.perfil.com/contenidos/2007/10/25/noticia\\_0023.html](http://www.perfil.com/contenidos/2007/10/25/noticia_0023.html) on September 3rd, 2010.

abortion.<sup>319</sup> However, after the first round of elections in which he and the right wing candidate Joaquín Lavín were left standing for a second round, Lagos changed his position (Lagos Lira 2001; Diego Portales 2003) and publicly stated his commitment for the right to life from conception until death omitting any reference to abortion. Bachelet's position has also been ambiguous but will be analyzed more in detail in the following section that deals with women in power.

The only right-wing president Chile had had since the democratic transition, Sebastián Piñera, has been faithful to his party's strong opposition to the decriminalization of abortion under any circumstance. During the 2009 presidential campaign he rejected even the possibility of debating a change to the ban on therapeutic abortion and stated that "*Jamás vamos a transar nuestros principios por razones electorales*" (We will never compromise our principles for electoral reasons).<sup>320</sup>

#### 9.2.2.3. Uruguay

In Uruguay most presidents have strongly opposed abortion decriminalization whether they were on the right or left of the ideological spectrum. On the right both Lacalle (*Partido Blanco*) and Batlle (*Partido Colorado*) strongly opposed abortion. Lacalle's position on abortion conformed to his party's line, which defends the right to life from the moment of conception until death. While running as a presidential candidate in the 2009 elections Lacalle clearly stated that if elected he would veto any legislation in favor of abortion decriminalization.<sup>321</sup> Under Batlle's administration a bill

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<sup>319</sup> See his statements in *La Segunda*, May 12<sup>th</sup>, 1999 and *El Mercurio*, November 11<sup>th</sup>, 1999.

<sup>320</sup> See *La Tercera*, "Piñera rechaza debate sobre aborto terapéutico y arremete contra Frei", March 16<sup>th</sup>, 2009. Viewed on [www.latercera.com](http://www.latercera.com) on May 22<sup>nd</sup>, 2011.

<sup>321</sup> See *El País*, "El matrimonio está definido para pareja entre varón y mujer" March 22, 2009. Viewed on March 30<sup>th</sup>, 2011 at [www.elpais.com.uy](http://www.elpais.com.uy)



decriminalizing abortion was discussed in Congress. At the time he stated numerous times that if passed he would use his veto power.<sup>322</sup> Similarly but on the left, Tabaré Vázquez (*Frente Amplio*) stated once and again his willingness to veto any legislation passed for this purpose even when going against his party's position. In November 2008 he fulfilled his promise and vetoed the chapter on abortion of the then recently passed law on sexual and reproductive rights.

Those Uruguayan presidents who either ignored or were ambiguous on the issue of abortion also come from different ideological views. While in power, two times president Julio Sanguinetti (*Partido Colorado*) made no public statement on the issue of abortion. In 2007 when the topic was being discussed in Congress he stated his support for the decriminalization of abortion arguing that the 1938 law that bans this practice has been completely ineffective in reducing the number of illegal abortions.<sup>323</sup> In fact, in 2008 when he was a Senator and the bill on sexual and reproductive rights which included the decriminalization of abortion was debated, he voted in favor of it. However these views were not public during his time in power. Current president Mujica (*Frente Amplio*) has stated numerous times that if Congress passes a law decriminalizing abortion he would respect the decision and not use his veto power. However, he expressed his preference for the Uruguayan people to decide directly on this issue through a popular referendum.<sup>324</sup>

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<sup>322</sup> See *El País*, “Batlle se comprometió a vetar la ley sobre aborto”, November 1<sup>st</sup>, 2002. Viewed on March 30<sup>th</sup>, 2011 at [www.elpais.com.uy](http://www.elpais.com.uy)

<sup>323</sup> See Congressional sessions in *Diario de Sesiones* 181, volume 446, November 6, 2007. Viewed on March 21<sup>st</sup>, 2008 at [www.parlamento.gub.uy](http://www.parlamento.gub.uy)

<sup>324</sup> See *La República*, “Aborto: a favor de consulta popular” October 8<sup>th</sup>, 2010. Viewed on [www.larepublica.com.uy](http://www.larepublica.com.uy) on May 22<sup>nd</sup>, 2011.

Given the power of the president in these three countries, the president's view on the abortion debate is a key factor in influencing the possibilities of the movement for abortion decriminalization of achieving its goals. The case of Uruguay under the Tabaré Vázquez administration is illustrative of this fact. Even when most factors were aligned to allow for abortion reform—a strong women's movement combined with sympathetic allies in Congress; the opposition of the president prevented it from happening. However, as these cases show, it is hard to find a president that will openly support abortion decriminalization. The closest show of support was President Mujica's statements that he would not interfere with Congress' decision. The timidity of presidents as candidates and chief executives in supporting abortion decriminalization suggests that it is still perceived as politically risky for a president to come across as supporting abortion decriminalization, and it is too specific an issue on which to campaign. It seems, then, that the most plausible scenario for abortion decriminalization to happen is that of a strong women's movement coupled with the availability of allies in Congress and a president who does not strongly oppose and thus would tolerate reform. This is the current situation in Uruguay. There are two new bills in Congress pushing for abortion decriminalization that have begun to be discussed.<sup>325</sup> The future of these bills will be a good case to test the predictions of the present model.

### *9.2.3. Ministers and position on the abortion debate*

While no president has come out openly in favor of abortion decriminalization, there have been Ministers that have done so. In face of the lack of presidential support, this has provided the women's movement with potential allies in the Executive branch. In

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<sup>325</sup> See La República, "Aborto y despenalización: PS y el MPP presentaron iniciativas", September 28<sup>th</sup>, 2010. Viewed on [www.republica.com.uy](http://www.republica.com.uy) on May 22nd 2011.

Argentina the only Minister to have openly supported abortion decriminalization has been Health Minister Ginés González García under Nestor Kirchner's presidency. During his time in power his office launched two ministerial guides on the issue of abortion to be distributed and implemented in all public hospitals across the country: the 2005 Guide for Humane Care in Post-Abortion Situations and the 2007 Guide for Care of Non-Punishable Abortions.

In 2007 in Uruguay, four of Tabaré Vázquez's ministers publicly admitted to have had an abortion or have supported their partners in having one when they added their names to the blog "Yo aborté" (I had an abortion). These were the Minister of Social Development Marina Arismendi, Daisy Tourné of Interior, Mariano Arana of Housing and Reinaldo Gargano of Foreign Affairs. Given Vázquez's open opposition to abortion decriminalization the public stance made by his ministers was a big step for the women's movement in their struggle for abortion reform. This was key for the re-launching of the abortion debate in Congress after a year of impasse (See Chapter 6).

#### *92.4. Parties and positions on the abortion debate*

Hypothesis H2b states that legislators from parties who have expressed their support for the decriminalization of abortion in their platforms will be more sympathetic to the women's movements demands than those who have expressed their opposition. Some political parties in Uruguay and Chile have defined an official stance on the abortion debate and thus it is easier to see the availability of allies for the movement in Congress at any given point in time. In Argentina however, none of the major parties have made explicit their position on abortion and thus each legislator is either free to hold their personal views on the matter (as with Kirchner) or follows the President's view on this

topic (as with Menem). This makes it harder for the movement to identify potential allies and opponents. However, this ambiguity may be beneficial for the movement if it comes at a time when decriminalizing abortion becomes electorally convenient for some of the main parties. If this is the case, since they have no official stance on the debate, these parties will face no problem supporting the women's demands.

In Uruguay, the *Partido Blanco* has included in its declaration of principles the defense of life from the moment of conception until natural death since 2002. Table 9.6 shows the percentage of congressional seats they held since the democratic transition, which given the party's views on abortion and the high degree of party discipline, equals the percentage of those opposing abortion decriminalization in Congress.

Similarly, the same table shows the percentage of congressional seats the *Frente Amplio* held since the democratic transition, which given this party's support for the decriminalization of abortion, equals the percentage of the potential allies of the women's movement in Congress.

On the two occasions in which a bill decriminalizing abortion reached the floor (2002-04 and 2007-08), most of the legislators from the *Partido Blanco* and *Frente Amplio* were loyal to their party's official stance on abortion. In 2004 in the Lower Chamber only one out of 22 legislators of the *Partido Blanco* voted in favor of the bill, and none of seven in the Senate. Similarly, only four out of 40 legislators from the *Frente Amplio* voted against the bill in the Lower Chamber and only one out of 12 in the Senate (Jones 2007). In 2007 when a new bill was voted, only one Senator out of 11 from the *Partido Blanco* voted in favor of the bill and in 2008 none in the Lower

Chamber. As for the *Frente Amplio*, only one out of 17 voted against it in the Senate and none in the Lower Chamber.

TABLE 9.6  
PERCENTAGE OF LEGISLATORS AGAINST AND  
IN FAVOR OF ABORTION DECRIMINALIZATION IN CONGRESS  
IN URUGUAY  
1985-2010

Senate	Partido Blanco (opposed to decriminalization) (%)	Frente Amplio (In favor of decriminalization) (%)
1985	33 %	0 %
1990	40 %	20 %
1995	33 %	30 %
2000	26 %	40 %
2005	36 %	50 %
2010	30 %	53 %
Deputies		
1985	35 %	0 %
1990	39 %	15 %
1995	32 %	28 %
2000	22 %	40 %
2005	36 %	52 %
2010	30 %	50 %

The *Partido Colorado* has also stated in its platform its support for abortion decriminalization. However, as explained in Chapter 6, its politicians have not acted in agreement with this statement and have for most part voted against these bills, showing that a party's platform is not always a good predictor of movement's potential allies. In 2002 in the Lower Chamber 8 out of 33 legislators voted for the bill and only one out of

11 in the Senate. In 2007 only one out of 3 senators voted in favor of the bill and none in the Lower Chamber.

Figures 9.1 and 9.2 illustrate how both congressional chambers show similar trends. While those opposed to abortion decriminalization fluctuated between 20 to 40% throughout the years, there is a clear increasing trend of those in favor of decriminalization. The percentage of those in favor reached more than 50% in both chambers during both *Frente Amplio*'s administrations. With the *Frente Amplio* holding the majority of seats in Congress it would be expected that abortion would have been decriminalized already. The fact that a law was passed to this effect by Congress in 2008 shows that party position is a good indicator of movement's allies in the case of Uruguay. The consequent veto of President Tabaré Vázquez which prevented abortion from being decriminalized does not invalidate this finding. It points to the fact that the movement needs allies or at least an absence of strong opponents in both the legislative and executive branch in order for abortion reform to happen.

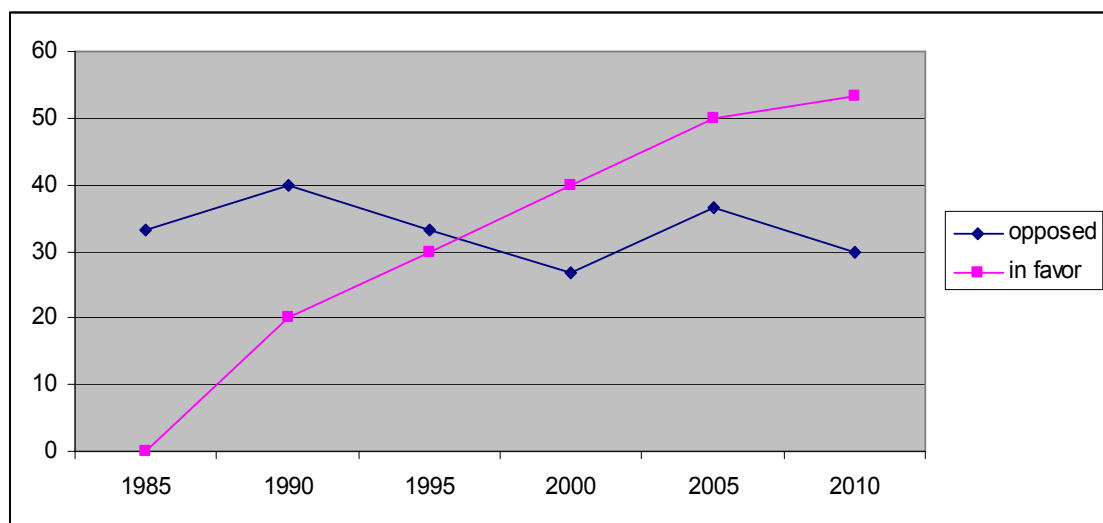


Figure 9.1: Percentage of those opposed and in favor of abortion decriminalization in the Uruguayan Senate, 1985-2010

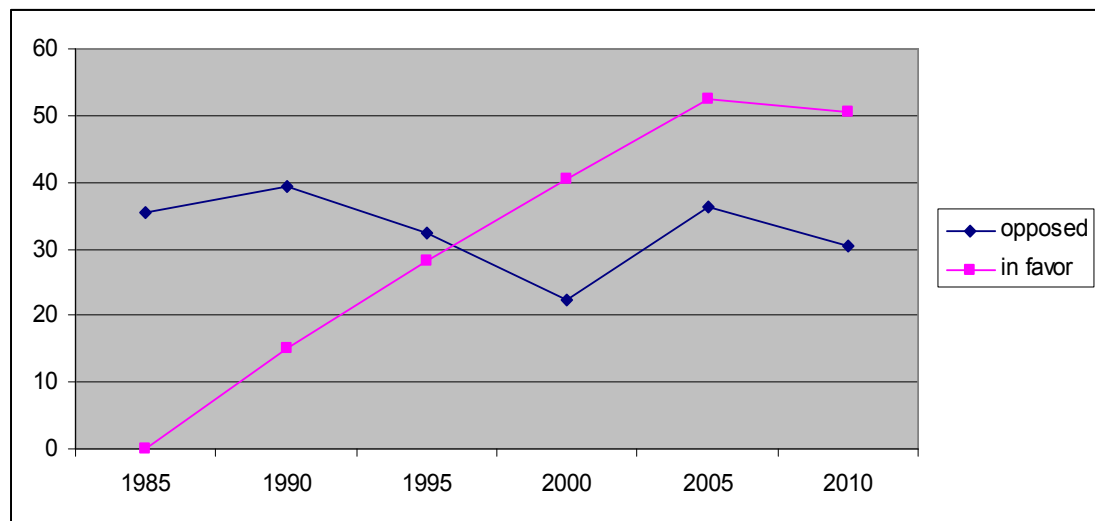


Figure 9.2: Percentage of those opposed and in favor of abortion decriminalization in the Uruguayan Lower Chamber. 1985-2010.

In Chile three parties have official stances on the abortion debate, all of them against decriminalization. Both Chilean right wing parties –UDI and RN- have included in their declaration of principles their defense of the right to life from the moment of conception until natural death. In addition, the Christian Democrat Party (DC), part of the center left coalition *Concertación*, also holds a position against abortion decriminalization. While the party has not made its views on abortion explicit, it is known to hold a general Christian humanist perspective on women’s issues. Thus, when forced to take a position on conflicting themes the party has always addressed them from the perspective of the Catholic Church, and thus holds a position against abortion decriminalization (Valenzuela 2001). Table 9.7 shows the percentage of those opposed to decriminalization in each Chamber from the democratic transition onwards. The high percentage equals the congressional seats held by RN, UDI and DC. However large the percentages of

opponents to abortion decriminalization are even in recent years, a decreasing trend is visible from the time of the first democratic election until today.

TABLE 9.7  
PERCENTAGE OF LEGISLATORS OPPOSED  
TO ABORTION DECRIMINALIZATION  
IN CHILE  
1990-2006

Senate	opposed to decriminalization (%)
1990	57 %
1994	57 %
1998	60 %
2000	60 %
2006	46 %
Deputies	
1990-94	71 %
1994-98	68 %
1998-02	66 %
2002-06	57 %
2006-10	58 %

No bill introducing abortion decriminalization has been ever discussed in Chile so, unlike in Uruguay, it is not possible to adequately test if official party position on this issue is a good predictor for legislator's voting behavior. The only bill on abortion that reached the voting stage was introduced in 1994 by UDI senator Larrain Fernandez. It proposed to increase prison sentences for women having abortion and their providers. In 1998 the Senate rejected the bill by two votes (15 to 13). While voting against this bill does not imply support for abortion decriminalization it is still interesting to see the voting distribution. Party discipline was strong among right wing parties. All UDI and



RN senators voted in favor, those from the *Concertación* voted against it except for one senator from the Christian Democrats.<sup>326</sup>

The lack of strong initiatives to decriminalize at least therapeutic abortion in Chile is no surprise when the presence of potential movement allies in Congress is taken into consideration. While based on party's platforms the movement has no allies in Congress, based on this same criteria the opposition to abortion decriminalization is overwhelming. Similar to the case of the human rights movement, the Chilean women's movement has been faced with a Congress with a strong stance against its main demands. When taking into account both the weakness of the women's movement and the strong opposition to abortion decriminalization in Congress it is not surprising that the ban on abortion under all cases is still the current law in this country. Not even the election of Michelle Bachelet - a socialist and agnostic woman as president could overcome these forces.

In Argentina none of the main parties has an official stance on the abortion debate. Thus, ideology is the only predictor of the parties being potential allies or opponents of the women's movement in their demand for abortion decriminalization.

#### *9.2.5. Women presidents and their commitments to gender issues*

In the period analyzed there was only one women president in the three countries: Michelle Bachelet in Chile. She is not a feminist and was not involved in the women's movement prior to coming to power. However, in comparison with other presidential candidates that ran against her in 2005, and with former Chilean presidents, she did have an electoral platform with a wider focus on gender issues such as: equality between sexes, sexual and reproductive rights (excluding abortion) and violence against women.

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<sup>326</sup> See *Diario de Sesiones del Senado*, 14<sup>th</sup> Session, July 15<sup>th</sup>, 1998; 20<sup>th</sup> Session, August 12<sup>th</sup>, 1998 and 30<sup>th</sup> Session, September 15<sup>th</sup>, 1998

In the year 2000 President Lagos appointed her as Health Minister where she remained until 2002. During her mandate, the Health Ministry approved the commercialization of the “morning after pill” and regulated voluntary sterilization practices so as to guarantee access (Diaz and Schiappacasse 2009). However, as mentioned before, Bachelet left the issue of abortion outside the government agenda. I believe that had there been a stronger women’s movement demanding the decriminalization of abortion this situation would have been different. Bachelet, although not a feminist, did show signs of commitment towards women’s issues prior to her presidency and later while in power. If a stronger movement for abortion decriminalization had been present she would have been forced to at least support the opening of the congressional debate on therapeutic abortion and to clarify her personal views on the matter. However, when faced with such a controversial issue such as that of abortion within Chilean society, the political cost was too high and the benefits too little so as to make a move in this direction in the absence of a movement demanding for it.

As President, feminists agree on the fact that while Bachelet developed policies targeting women, she mostly saw women as mothers, workers, and housewives and did not address the issue of the structural subordination of women in society.<sup>327</sup> In addition, many of her initiatives on sexual and reproductive rights have remained in writing, not being implemented because of lack of budget, human resources, and training workshops for medical personnel (Diaz and Schiappacasse 2009).

The presidency of Cristina Fernandez de Kirchner in Argentina (2007-2011) is outside the scope of this study. However, a short analysis of her administration so far will

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<sup>327</sup> See interview to Gloria Maira, renowned Chilean feminist at <http://argenlibre.blogspot.com/2010/07/michelle-bachelet-entre-lo-femenino-las.html>

be developed here. Like Bachelet, Cristina Fernandez is not a feminist. However they differ in that Fernandez de Kirchner has shown no commitment on gender issues during the periods she was elected as deputy (1997-2001) or as senator (1995-97, 2001-05, 2005-07). While in Congress she introduced 45 bills, none of which were related to gender issues. In line with her lack of interest in these topics, her administration has so far implemented no policy or sponsored the passing of any bill addressing the demand to decriminalize the practice of abortion.

Testing the hypotheses about women in politics (H3) and women with gender commitments (H4) is hard when limited to the position of the president since there have only been two positive cases. Cristina Fernandez de Kirchner has shown that being a woman is not sufficient to become a potential ally of the women's movement contradicting the expectations of Hypothesis 3. Since she lacked a commitment to gender issues, once in power she was not receptive towards the movements' demands supporting hypothesis 4. However, we lack an example of a woman president with commitment with gender issues that has actually acted as a political ally for the women's movement. While Bachelet had a commitment to gender issues, the lack of a strong women's movement in Chile makes it impossible to test her receptivity. These hypotheses will thus be better tested at the level of ministries and legislators.

#### *9.2.6. Women as movement allies at the ministerial and congressional level*

This section will test hypotheses 3 and 4 at the ministerial and congressional level where the greater number of politicians will allow for more variance than at the presidential level. With this goal in mind ministers and legislators have been coded based on their gender (H3) and their commitment to a gender agenda (H4). The results of this

coding scheme are presented in a series of graphs showing the percentage of each of these groups in each administration over time.

#### 9.2.6.1. *Women in power in Argentina*

Figure 9.3 shows the percentage of women in ministerial positions over the total number of ministerial appointments during each administration from 1983 until 2007. A clear increasing trend is visible when looking at the graph. However, once we analyze the absolute numbers there is not much change, with the lowest number being one woman appointed to the ministerial cabinet and the highest number, three (See Table 9.8). The participation of women, although increasing, still remains very low.

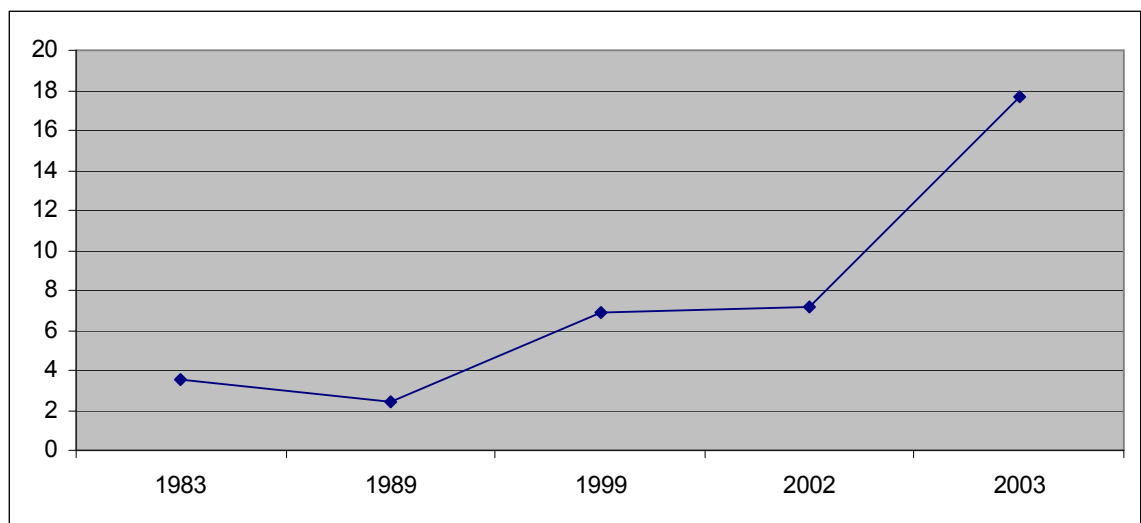


Figure 9.3. Percentage of women in ministerial cabinets in Argentina. 1983-2007.<sup>328</sup>

In Congress more women have come to power since the democratic transition. Since the 1991 legislative quota law<sup>329</sup> (*ley de cupos*) which stated that the list of candidates for both chambers of Congress has to include 30% women, the percentage of female

<sup>328</sup> Percentage is calculated over the total number of ministers appointed during the total years of the administration.

<sup>329</sup> Law No. 24012, November 1991.

legislators has increased dramatically. The law was first applied in the 1993 elections for the Chamber of Deputies. Figure 9.4 shows that since 1993 there has been an increasing participation of women in the lower chamber. The increase was not automatic and did not reach the required 30% during the first elections, since initially some parties were reluctant to abide by the new law. It was common for example for parties to include 30% of women among all the candidates on their list, as opposed to among the candidates that were more likely to be elected (Krook 2009). As a consequence women were included in the last spots, which made them unlikely to win any seat. Presidential decrees were needed to ensure that the spirit of the law was respected. In addition, women activists

TABLE 9.8  
NUMBER OF WOMEN APPOINTED TO MINISTERIAL POSITIONS  
IN ARGENTINA  
1983-2007

	<b>No. of women appointed</b>	<b>Total No. of ministers appointed</b>
<b>Alfonsín (1983-89)</b>	1	28
<b>Menem (1989-99)</b>	1	41
<b>De la Rúa (1999-01)</b>	2	29
<b>Duhalde (2002-03)</b>	1	10
<b>Kirchner (2003-07)</b>	3	17

took political parties to court to guarantee their compliance with the law (Htun and Jones 2002). From 1995 onwards, women have occupied between 25 and 35% of the seats in the lower chamber.

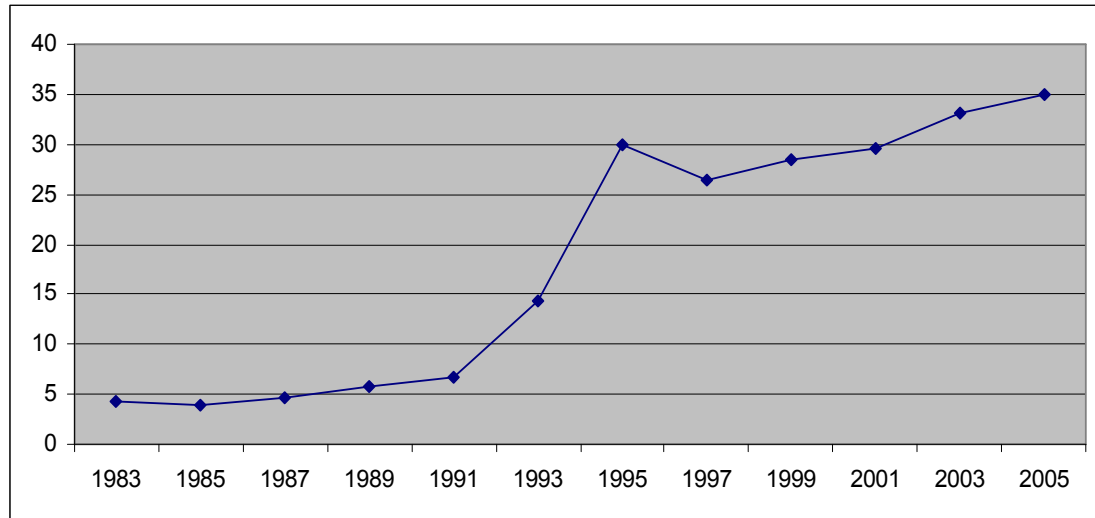


Figure 9.4. Percentage of women in the Lower Chamber in Argentina.1983-2007.

In the Senate the law was first applied in 2001, the year in which the entire chamber was up for election. In that year, the percentage of women in the Senate rose from less than 5% to 35% (see Figure 9.5).

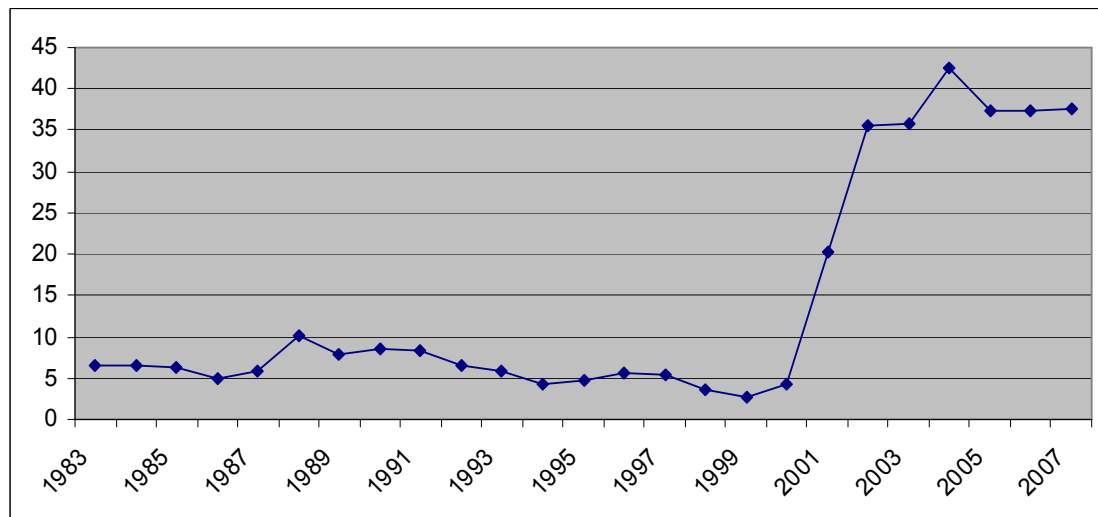


Figure 9.5. Percentage of women in the Senate in Argentina. 1983-2007.

While the implementation of gender quotas in Argentina led to an increase in the introduction of bills with gender content, Htun and Jones note that this does not mean that women legislators were the ones sponsoring the bills. In fact, in the period 1993-94 just a

third of female legislators presented more than one-third of the bills related to women's rights, and 58% presented no bills in this area at all (Htun and Jones 2002:48). In terms of the particular issue of abortion, results are more mixed. More bills have been introduced to decriminalize this practice completely or under certain circumstances after the percentage of women had increased significantly in both Chambers, and it has been female legislators who have sponsored most of these bills (see Chapter 7). However, the larger presence of women has not been enough to have these bills debated in plenary sessions let alone passed. In addition, the bills on abortion decriminalization were usually introduced by the same few female legislators. The general increase in the number of bills is not related to having more women in Congress in general, but to the increased chances women committed to gender issues had of gaining seats in Congress once the quotas were implemented.

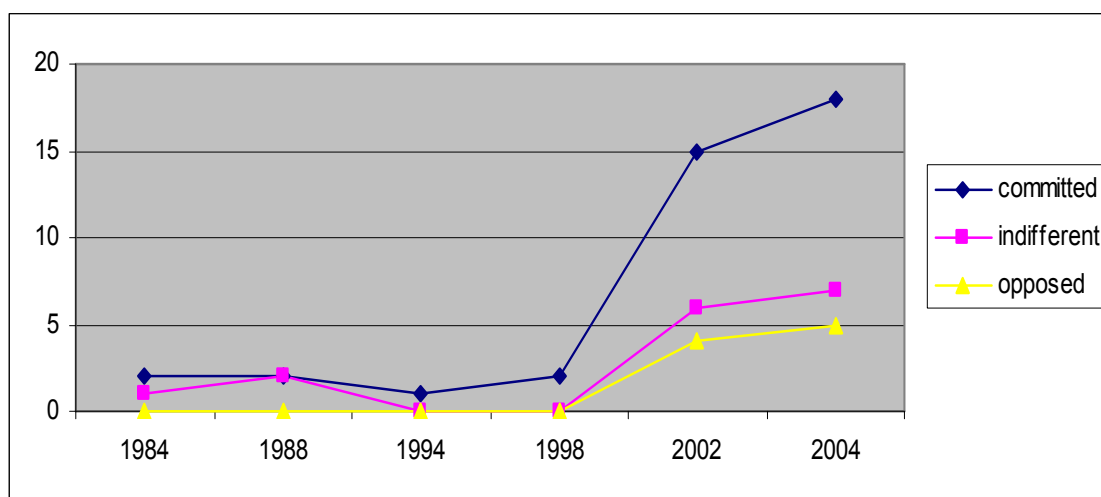


Figure 9.6. Commitment to gender issues among women senators in Argentina. 1983-2007.

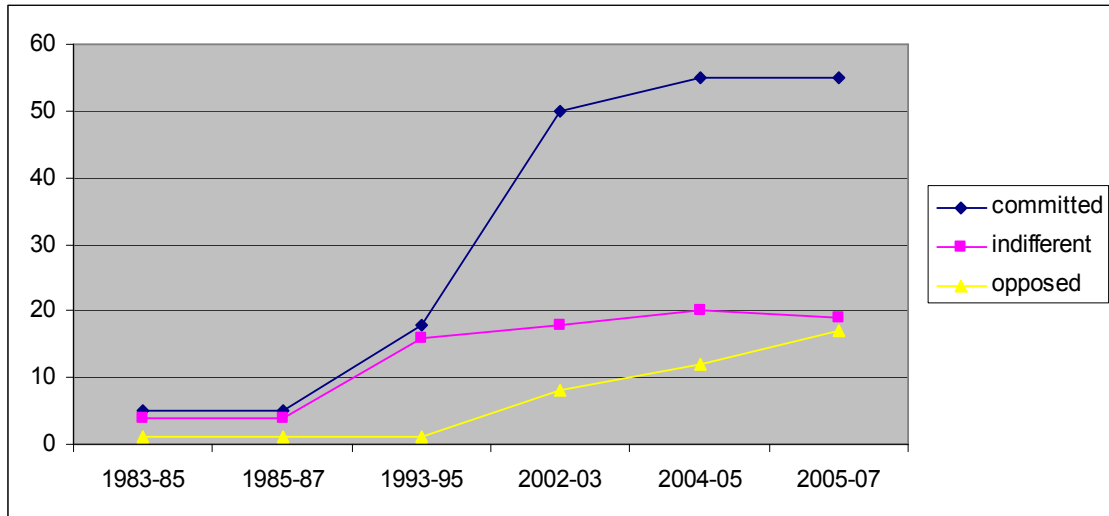


Figure 9.7. Commitment to gender issues among women deputies in Argentina. 1983-2007.

Figures 9.6 and 9.7 present the level of gender commitment in each congressional chamber from the return of democracy to the late 2000s. Both figures group the categories “very committed”, “committed” and “somewhat committed” under the label “committed.” There seems to be similar trends in both chambers: an overall increase in the number of women, and among them, the biggest increase is among those committed to gender issues. However, among those committed there are varying degrees of commitment. Those who are coded as “very committed” and who represent the natural allies of the women’s movement are a tiny minority. In the Senate there has been only one in all democratic administration. In the Lower Chamber, the very committed were at most 11% of the women in Congress (9 out of 76 women deputies) in the period 2002-03.

Another interesting fact is that a large proportion of those who are not committed to gender issues have entered politics due to having family links with some male politician. Of the eight women senators that were coded as not being committed to gender issues, five are either wives or sisters of male politicians. One way parties circumvented gender



quotas requirement without opening leading roles to women within their parties has been to appoint their wives, sisters or daughters as candidates. On the other hand, all who were coded as very committed rose to positions of political leadership within their parties in their own right. To the extent that female relatives of male politicians who received their party's nominations brought a traditional view of gender roles to Congress, the implementation of gender quotas may have had the unintended consequence of stalling rather than moving forward gender issues such as that of sexual and reproductive rights. In conclusion, quotas have had mixed consequences for the advancement of abortion decriminalization increasing both the number of women committed and those opposed to gender issues.

#### *9.2.6.2. Women in power in Chile*

The number of women in presidential cabinets in Chile rose over time to an even greater degree than in Argentina. From a mere 5% during the Aylwin and Frei administration, women represented 15% and 35% of the ministerial appointments in the Lagos and Bachelet administrations respectively. The sharp increase under Bachelet's government can be understood in the context of the implementation of a parity policy. Unlike the case of Argentina, in Chile when we look at absolute numbers, the increase is also noticeable (See Table 9.3). Under Bachelet 11 out of 31 appointed ministers were women.

However, this parity policy did not reach Congress under any of the *Concertacion's* administrations. Unlike the case of Argentina, Chile has not implemented gender quotas and thus the level of participation of women in both Chambers remains quite low. Figure

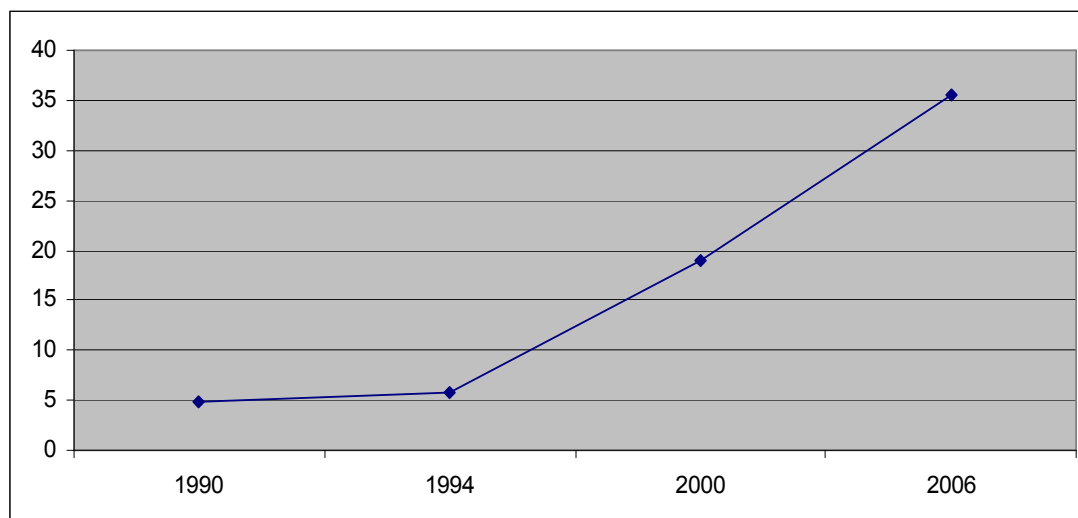


Figure 9.8. Percentage of women in ministerial cabinets in Chile.1990-2010.

9.9 shows the percentage of women in Congress in Chile from the return to democracy until the year 2010. While the increasing trend is clear in the Lower Chamber –going from 6% in 1990 up to 15% in the year 2006-, the Senate shows a declining trend. The Higher Chamber has seen an almost stable participation of 4 to 6% of women throughout the years.

TABLE 9.9  
NUMBER OF WOMEN APPOINTED TO MINISTERIAL CABINETS  
IN CHILE. 1990-2010.

	Number of women appointed	Total number of ministers appointed
Aylwin (1990-94)	1	21
Frei (1994-2000)	3	52
Lagos (2000-06)	8	43
Bachelet (2006-10)	11	31

The increase in the number of women, although meager, brought in more women committed to gender issues than those against them (See Figure 9.10). The number of committed women in the lower chamber went from 3 in 1990 to 12 in 2006. The number of those indifferent to gender issues remained quite stable shifting between 2 and 4. Those opposing gender issues have been the minority, only one for most of the years except for a small increase to two in the year 2006.

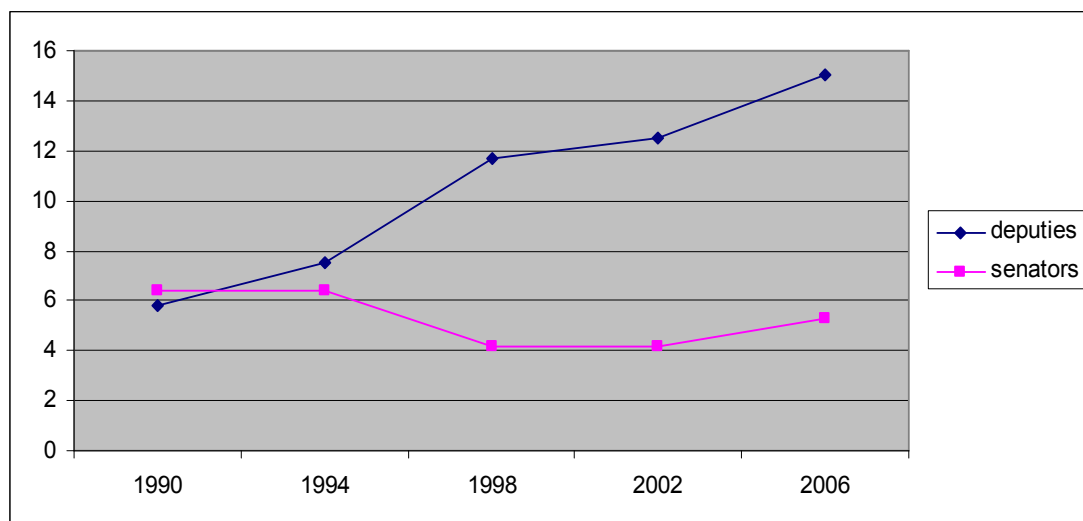


Figure 9.9. Percentage of women in congress in Chile. 1990-2010.

In the Senate the number of women is so small that presenting a figure which divides them according to level of gender commitment may be misleading. Thus, Table 9.10 shows the number of women in each of the categories. There have been no women coded as being against gender issues in the Senate. However, since there were no bills voted on sexual and reproductive rights, it is not possible to know if any woman was against gender issues in the first place.

The number of those committed has remained quite small too, only one except for the year 1994 when it reached two. The lack of gender quotas has prevented more women for

entering Congress and with this the increasing chances of having more women committed to gender issues in the country's legislature.

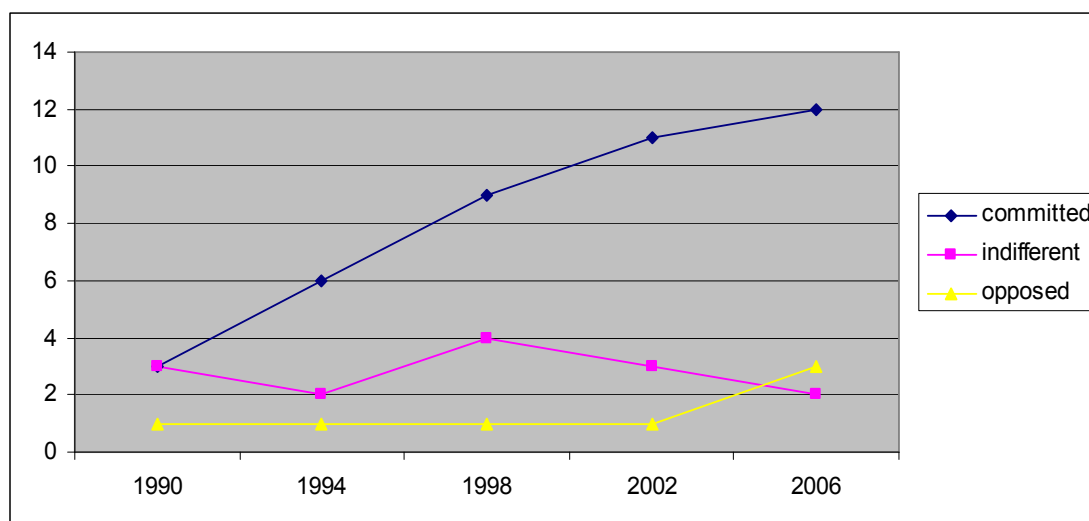


Figure 9.10: Commitment to gender issues among women deputies in Chile. 1990-2006.

TABLE 9.10

COMMITMENT TO GENDER ISSUES IN THE SENATE  
IN CHILE  
1990-2006

	committed	indifferent	opposed	total n of women
1990	1	2	0	3
1994	2	1	0	3
1998	1	1	0	2
2002	1	1	0	2
2006	1	1	0	2

### 9.2.6.3. Women in power in Uruguay

Compared to the growing representation of women in the Argentine and Chilean Congresses and ministerial cabinets, the presence of women in power in Uruguay has been insignificant. The trend in the percentage of women in ministerial cabinets appointed since the democratic transition has not increased steadily, if gradually, as in Argentina and Chile, but rather has varied depending on which president was in power (see Figure 9.11). During both the Lacalle (1990-95) and the Batlle (2000-05) administrations no women were appointed to the presidential cabinets. During that of Sanguinetti (1995-2000) and Tabaré Vázquez (2005-2010) the percentages were 10% and

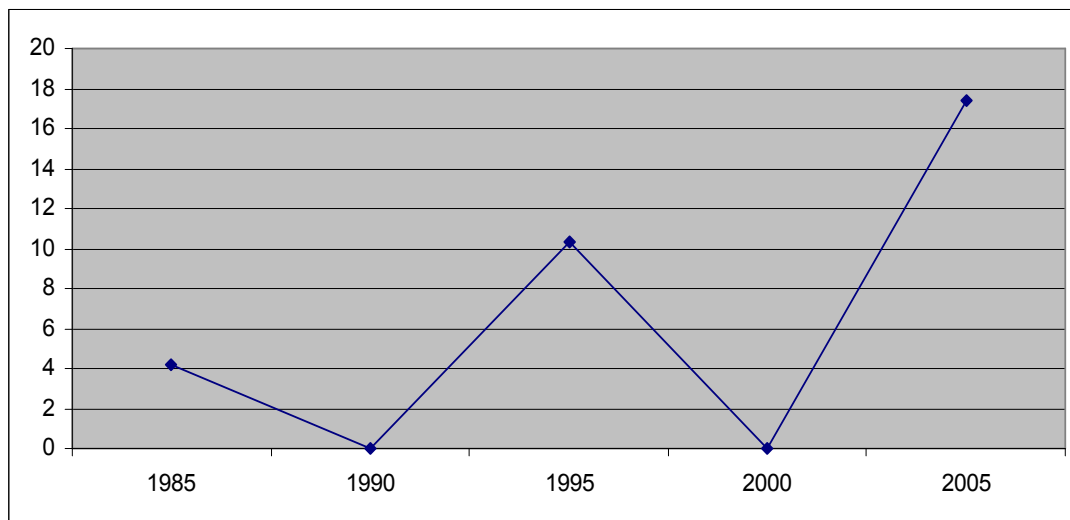


Figure 9.11: Percentage of women in ministerial cabinets in Uruguay. 1985-2010.<sup>330</sup>

17% respectively. However, when we take into consideration the number of women appointed as a proportion of all ministerial appointments made during each administration, a picture similar to that of Argentina emerges. The greatest number of women ministers (4 of 23) were appointed under Tabaré Vázquez.

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<sup>330</sup> Percentage is calculated over the total number of ministers appointed during the total years of the administration.

In terms of women's access to congressional seats, the situation is also not very encouraging. The lack of gender quotas has prevented more women from running and gaining access to the legislative branch. While Figure 9.12 shows an increasing representation of women in Congress, the numbers remain quite low, with 12% and 10% being the highest percentages attained in the lower chamber and Senate, respectively.

TABLE 9.11  
NUMBER OF WOMEN APPOINTED TO MINISTRIES  
IN URUGUAY  
1985-2010

	N. of women appointed	Total n. of ministers appointed
Sanguinetti (1985-90)	1	24
Lacalle (1990-95)	0	35
Sanguinetti (1995-00)	3	29
Batlle (2000-05)	0	34
Vázquez (2005-10)	4	23

Fewer women have reached leadership positions in Uruguay than in the other countries under study. Nevertheless, Uruguay is where abortion decriminalization has come the closest to being passed. This suggests that the number of women does not matter as much for gender issues to be advanced (Hypothesis 3) as the commitment to these causes that women in power –no matter how few- display (Hypothesis 4).

In Uruguay none of the women in power has opposed gender issues either in the Lower Chamber or the Senate. In addition, the number of those committed to them in the Lower Chamber increased significantly from 4 in 1995 to 10 in 2000 and 2005. While

lacking a gender quota, the fact that none of the women in power—even those belonging to the conservative *Partido Blanco*- opposed gender issues allowed female legislators to

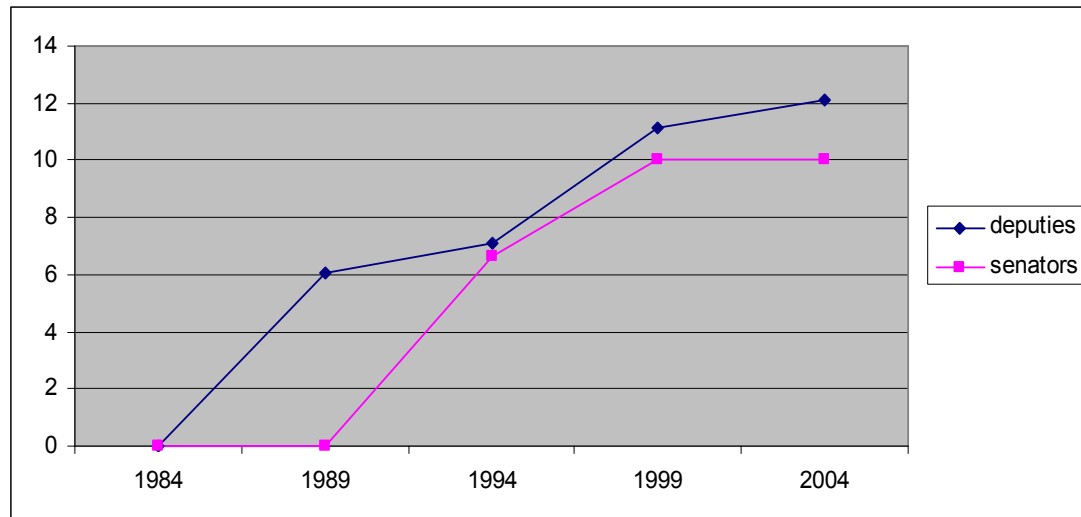


Figure 9.12: Percentage of women in Congress in Uruguay. 1985-2010.

form the *Bancada Femenina* (Women’s Caucus). Since 2000 in the Lower Chamber and 2006 in the Senate, the Caucus has mobilized female legislators of all political parties around the goal of pushing the debate on bills on gender and women’s rights. The lack of opposition to gender issues from any women legislators has allowed for the debate of many gender issues in the Uruguayan Congress, including the bills which introduced abortion decriminalization. The creation of a similar institution which facilitated the congressional debates of controversial bills such as that on sexual and reproductive rights and abortion has not been possible either in Argentina or Chile.

#### 9.2.6.4. *Women in Power. Conclusions:*

The implementation of gender quotas in Argentina has increased the number of women in power and with this the chances that more feminists –women’s movements allies- have access to congressional seats. However, quotas have also brought women

opposed to gender issues to power. In Uruguay where gender quotas have not been implemented, the fact that there are no women in power who actively opposed a gender agenda has allowed for the creation of the *Bancada Femenina*, an institution that has been key in pushing for the introduction and debate of bills on sexual and reproductive rights and abortion. This suggests that the women's movement can benefit more from a situation in which there are only a small number of women in power but none posits a

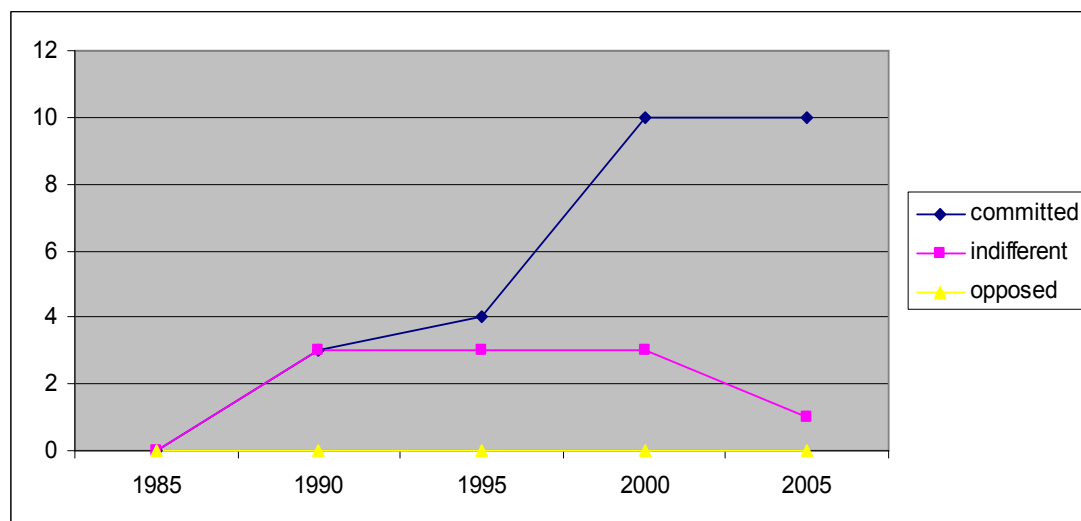


Figure 9.13: Commitment to Gender Issues in the Lower Chamber in Uruguay. 1985-2010.

strong opposition to their demands (as is the case in Uruguay), than that in which there are larger number of women in power but some head a strong campaign against their cause (as in Argentina). In Chile, there are neither gender quotas nor a *Bancada Femenina*, making it even harder for the women's movement to find any sympathetic allies in Congress. Thus, the lack of women in power with a strong stance against gender issues is the condition that best explains the different abortion policies in the three cases.



TABLE 9.12  
COMMITMENT TO GENDER ISSUES IN THE SENATE  
IN URUGUAY  
1985-2005

	Committed	Indifferent	Opposed	Total n of women
1985	0	0	0	0
1990	0	0	0	0
1995	1	1	0	2
2000	1	2	0	3
2005	2	1	0	3

*9.2.7. Religious or secular university education*

Finally, Hypothesis 5 considers the religious background of politicians as a possible factor influencing their probability of becoming allies of the women's movement. In order to identify those politicians susceptible to push for and/or be influenced by the Catholic Church's position on abortion, I coded politicians based on whether they had been educated in Catholic or secular universities. While attending a Catholic school for elementary or secondary education may have also had a deeper influence on politicians' religious beliefs, for the most part these have been educational choices made by their parents and as such they are not taken into consideration here. It is here assumed that those who chose to attend a Catholic university share or at a minimum are not strongly opposed to Catholic's religious and moral values, being more receptive to the Church's influence.

Table 9.13 shows that in Chile 22.1% of deputies and 25.5% of senators attended Catholic Universities. In contrast, in Argentina only 9.1% of deputies and 8.4% of Senators did so. Unfortunately, it was not possible to make this determination systematically for due to missing data. However, based on the information that was found, only one legislator had attended a Catholic university: Luis Lacalle Pou, son of the former president of Uruguay, Luis Alberto Lacalle, who was elected deputy in 2000 and re-elected in 2004.

TABLE 9.13  
PERCENTAGE OF LEGISLATORS WHO ATTENDED  
CATHOLIC UNIVERSITIES  
IN ARGENTINA AND CHILE<sup>331</sup>

	Argentina	Chile
Deputies	9.10 %	22.05%
Senators	8.4%	25.49%

*Source: by author based on legislator's bios on Congressional websites.*

The difference in the percentages of politicians attending Catholic universities among the three countries is very significant and coincides with each of the country's advancement towards the decriminalization of abortion.

When cross-tabulating university education with ideology and party membership in Chile, the parties on the right which defend the right to life from the moment of conception have a larger percentage of their legislators educated in religious universities. Table 9.14 shows how whereas 18.3% of deputies and 9% of senators of the center-left

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<sup>331</sup> Data from Chile is from 1990-2006 and from Argentina is from 2002-07.

*Concertación* attended religious universities (including the relatively high percentage of Christian Democratic legislators who attended Catholic universities [23% of deputies and 19% of senators]), 35.6% of deputies and 41% of senators of the right-wing *Alianza por Chile* fell into this category. This finding is in line with scholarly research that found that religious Chileans tend to vote for the right wing alliance while secular ones do so for the Concertación (Valenzuela et al. 2007). Unfortunately the same analysis cannot be done for Argentina given that political parties are not ideologically defined and have not openly taken a position in favor of or against the decriminalization of abortion.

TABLE 9.14  
PERCENTAGE OF LEGISLATORS WHO ATTENDED CATHOLIC  
UNIVERSITIES BY POLITICAL PARTY  
IN CHILE

	Deputies	Senators
Concertación	18.29	9
Alianza por Chile	32.56	41

#### 9. 2.8. Conclusion: Allies in Power: Argentina, Chile and Uruguay

Overall when a strong women's movement finds allies in power, the chances that abortion reform will happen increase significantly. Because the Uruguayan movement found key allies among Uruguay's *Frente Amplio*'s legislators and received support from the *Bancada Femenina* in particular, a bill decriminalizing abortion was successfully passed in November 2008. The Argentinean women's movement working together with women legislators from leftist parties committed to gender issues and having the support

of a pro-choice Health Ministry under the Kirchner administration was able to introduce more bills in Congress on this issue than at any time in the past.

In this sense, the ideology of those in government overall predicts the receptiveness of politicians to the women's movement's demands. It was during the first leftist administration in Uruguay and that of Nestor Kirchner in Argentina that the women's movement managed to come the closest to decriminalizing abortion. These examples notwithstanding, ideology<sup>332</sup> is a better predictor of the presence of opponents than the availability of allies. While all right and center-right presidents opposed the women's movements' demands for decriminalization in the three countries,<sup>333</sup> Tabaré Vázquez's veto of the law passed by Congress decriminalizing abortion shows that being on the left does not guarantee support for women's movements demands. Similarly, socialist presidents Lagos and Bachelet in Chile showed indifference towards this issue. The analysis of the parties' platforms and their official stances on the abortion debate confirm this finding. Right-wing parties such as the *Partido Nacional* in Uruguay, and UDI and RN in Chile had included the defense of life from the moment of conception in their platforms. However, this was not the case among the leftist and center left parties. The only leftist party that has embraced the cause of abortion decriminalization was the Uruguayan *Frente Amplio*. In Chile none of the leftist parties of the *Concertación* have done so, and one of them, the DC, supports the Catholic Church's view on this issue.

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<sup>332</sup> As explained in Chapter 1, ideology is defined based on membership to a political party, and in the case of Argentina in which parties are not defined ideologically based on the economic policies implemented while in power.

<sup>333</sup> The exception is Julio Maria Sanguinetti who although ideologically on the center right, voted in favor of the bill for decriminalization. However, this was not his position when he was president.

Given the strong presidential systems ruling the three countries, as expected, the president's view on abortion has strong implications for the women's movement. Uruguay's case is the clearest example in that even when the two main conditions of this theoretical model were present –a strong women's movement and presence of allies in government (in this case particularly in Congress)- if the President strongly opposes abortion decriminalization, the reform cannot happen. However, if these two initial conditions are present, all that is needed is a President that is ambivalent on the abortion debate for the reform to pass. A president to the decriminalization of abortion is not necessary. Current Uruguayan president Pepe Mujica has already stated that even though he would not sponsor a bill to decriminalize abortion, he would not make use of his veto power if such a bill were passed in Congress. Whatever happens with the current bill proposing the decriminalization of abortion in the Uruguayan Congress will be a good case to test this finding.

While in theory abortion reform can be initiated both by Congress and the Executive branch, in reality, no president has ever been openly supportive of this issue in any of these three countries. Thus, the women's movement has a greater chance of achieving decriminalization via the legislative route where it is possible to find allies among leftists and/or women committed to gender issues. If there are allies available in Congress, a president that is indifferent or ambivalent about the issue of abortion is enough for abortion reform to happen.<sup>334</sup> An ambivalent or indifferent president will allow enough space for the movement to work its demands through Congress.

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<sup>334</sup> The other option is presenting a case to the Supreme Court showing the ban on abortion is either unconstitutional or goes against basic human rights. This was done in Colombia. See Chapter 11 for a longer analysis of this route.

As for the role of women in power positions, this seems not to be a significant factor on abortion reform. It is the increase of women committed to gender issues that makes a difference. In this sense, gender quotas do not guarantee a strong gender agenda. The case of Argentina showed how quotas can increase the number of women that are committed to gender issues but also of those that embrace traditional roles for women. However, the larger availability of seats for women does increase the chances that more feminists will be elected to Congress and thus provide allies to the women's movement for abortion decriminalization. On the other hand, the *Bancada Femenina* created in Uruguay proved to be a more efficient way to push for a gender agenda than the quotas. This was possible given that there were no women opposing gender issues in Uruguay at the time of its creation. Finally, having attended a secular university was found to be a good predictor of the availability of allies and thus of abortion reform in the three countries.

### 9. 3. Conclusion

The model presented here has been able to explain the impact that the women's movement has had in each of the countries. Both movement strength and availability of allies have proven to be important factors explaining the advancement towards abortion decriminalization. Table 9.15 summarizes the analysis presented in this chapter.

Consistent with the theoretical model presented in this dissertation Table 9.15 shows how abortion reform is most likely when there is a strong movement that works with allies in power to achieve this. This is the case of the Vázquez and Kirchner administrations in Uruguay and Argentina respectively. When there is a weak movement,

even when leftist administrations are in power, no abortion reform would take place, as in the case of the Lagos and Bachelet administrations in Chile. This table also shows how the presence of a strong movement is not a sufficient condition for abortion reform to take place. This is the case of the women's movement during the Batlle administration in Uruguay, occasion in which abortion decriminalization failed to pass in Congress. Finally, when there is a weak movement and no allies in power, abortion would probably not even be in the government's or societal agenda at all, as was the case during the 1980s and 1990s in the three countries.

TABLE 9.15  
APPLIED THEORETICAL MODEL TO THE WOMEN'S MOVEMENT  
IN ARGENTINA, CHILE AND URUGUAY\*

	<b>Strong movement</b>	<b>Medium strength movement</b>	<b>Weak movement</b>
<b>Presence of movement allies</b>	Vázquez 05-10	Kirchner 03-07	Aylwin 90-94 Frei 94-00 <sup>335</sup> Lagos 00-06 Bachelet 06-10 Alfonsín 83-89
<b>Absence of movement allies</b>	Batlle 00-05	Menem 89-95	Sanguinetti 85-90 Sanguinetti 95-00 Lacalle 90-95 Menem 95-99 De la Rúa 99-01

\* Shaded sections show those governments that have been more responsive to the human rights movement. Presence of movement allies is coded here based on ideology.

<sup>335</sup> The Aylwin and Frei administrations are coded as potential allies of the women's movement given their position in the ideological spectrum. However, if their Christian affiliation is taken into account they would not qualify as allies of the women's movement in an issue such as abortion.

The theoretical model introduced here explain the situation of each of the countries in terms of their abortion policies and the impact the women's movement was able to attain in each of them. The lack of progress towards lifting the ban on abortion in Chile is consistent with the model's predictions. To begin with, the women's movement for abortion decriminalization has been extremely weak. Thus even though a center-left coalition was in power for four consecutive administrations (a total of twenty years), the issue of abortion did not enter the political agenda. Since there was no pressure to advance abortion reform, leftist legislators chose to omit such a controversial issue from their platform, with no major repercussions. At the same time this position has prevented the split of their coalition given the DC's opposition to any change to the status quo.

In addition those opposed to abortion decriminalization (RN, UDI and DC) have had a strong hold in Congress during the different administrations, and there have been only a few women committed to gender issues in positions of power. Finally, the large percentage of legislators that have attended Catholic universities offered the Church a large pool of potential allies to fight any attempt to change the restrictive abortion law.

In Uruguay the combination of a strong women's movement together with the coming to power in 2004 of a leftist administration and the existence of the *Bancada Femenina* committed to move forward a gender agenda allowed for a bill decriminalizing abortion to pass the legislature in November 2008. However, the presence of a president strongly opposed to abortion prevented the bill from being enacted into law. Although the leftist *Frente Amplio* coalition had an official position in favor of decriminalization, Tabaré Vázquez chose to put his personal beliefs ahead of those of his party. Elected with 51.70% of the votes, he was a strong president throughout his mandate and at the time of



his veto he had already decided he would not run for a second term.<sup>336</sup> Thus, he was able to act in line with his beliefs without risking any electoral backlash. In any case, the satisfaction with his presidency was so high by the end of his mandate – his approval ratings in November 2008 were 62%<sup>337</sup> - that even if he had decided to run he would have had a good chance of winning. In my interviews with many women from the campaign to decriminalize abortion, most admitted to having voted for him despite their knowledge of his personal views against decriminalization.

The case of Argentina lies between these two cases in terms of how much impact the women's movement had in advancing abortion reform. An increasingly stronger movement behind the campaign for decriminalization, added to the coming to power of a leftist administration under Nestor Kirchner explains this middle of the road situation. In addition the greater opportunities for feminist legislators to gain power due to the implementation of gender quotas have granted the women's movement valuable allies in Congress. Both under Nestor and Cristina Kirchner social movements in general have received special attention. Popular protests have not been repressed and many social movements have enjoyed a special relationship with the presidency, as explained in the case of the human rights movement (See chapter 5). Given his initial weakness upon assuming power, Nestor Kirchner reached out to strong social movements, such as the *Piqueteros* (unemployed workers) and the human rights movement, as a strategy to increase his government's legitimacy. Why did he not do the same with the women's movement and the campaign for abortion decriminalization? The fact that in 2003 the

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<sup>336</sup> Tabaré Vázquez announce on June 4 2007 he would not run for reelection. See *El País*, "Mieres la reelección es inconstitucional" October 21, 2008. Viewed on [www.elpais.com.uy](http://www.elpais.com.uy) on May 28, 2011

<sup>337</sup> See *Perfil*, "Tabaré Vázquez rompe records de popularidad" November 15<sup>th</sup>, 2008. Viewed on [www.perfil.com](http://www.perfil.com) on May 28<sup>th</sup>, 2011.

campaign was still young and lacking broad support from other social actors might explain why President Kirchner did not consider this a strong movement that would help him to build a broader base of support. Nonetheless, Kirchner did take some decisions that could suggest he was exploring the possibility of decriminalizing abortion as another progressive policy to increase his popular support. The appointment of the first woman to the Supreme Court who was a declared agnostic and openly in favor of decriminalization, together with the appointment of a health minister –Ginés González García- the first in the history of the country to admit his support for abortion reform, can be interpreted as two decisions to test society's reaction –and in particular that of the Catholic Church- in this debate. However, the strong reaction from the Church and the weakness of the women's movement at the time might explain why the Kirchner administration chose to maintain an ambiguous position towards the issue and wait for a more propitious moment to move in this direction.

A similar situation is apparent in the administration of his wife, Cristina Fernandez de Kirchner. In 2008 a large mobilization of the rural sectors destabilized her government to the point that there were rampant rumors she would resign. In addition, in 2009 her party (FPV) lost the mid-term legislative elections in key electoral districts and her popularity and legitimacy fell significantly. It was then that she decided to reach out to two social movements for support: the gay and women's movements. Faced with a minority position in Congress, Cristina Fernandez looked for the support of small leftist parties and thus decided to push for the discussion in Congress of same-sex marriage and the decriminalization of abortion.<sup>338</sup> As a result, the gay marriage bill was passed on July 15,

2010, and that on abortion is waiting to be debated. The sudden death of her husband, former President Kirchner, in October of 2010 showed a surprisingly high level of support from the population for her government and since then her image and popularity began to increase again. She is now the favorite candidate in all polls for the 2011 presidential elections. Debate began on the bill decriminalizing abortion in congressional committees in December of 2010. The President has recently been silent about this issue but has on the other hand given a green light to the legislators of her party that are behind this initiative. It remains to be seen if now that she has overcome the challenges to her government and is in a much stronger political situation, she will continue to support the discussion of this bill in Congress.

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<sup>338</sup> See *Clarín*, “*Los K con una agenda de alto impacto para recuperar adhesiones*”, March 28<sup>th</sup>, 2010. Viewed on March 28<sup>th</sup>, 2010 at [www.clarin.com.ar](http://www.clarin.com.ar)

## CHAPTER 10

### ALTERNATIVE EXPLANATIONS

As anticipated in the introductory chapter, the main competing explanation to that provided by this dissertation is that which claims that social movements have no impact on state policy. If movements have no influence, what other factors might be responsible for the differences across countries and administrations in their human rights and abortion policies? There are three alternative explanations to the model presented here which focus on 1) public opinion, 2) international factors; and 4) the role of institutions such as the Armed Forces and the Catholic Church.

This project does not deny that these three variables have exercised some influence on government policy. In this sense, these factors might be considered complementary to the role of social movements. However, this investigation has found that their role is much smaller than expected and advanced by other scholars. They are usually conditions that are considered in the strategic calculation of a government deciding whether or not to address the demands of social movements. But they cannot account by themselves for government policies in these issue areas. This project found no direct influence between these variables and government response. Public opinion polls show that neither human rights trials nor abortion reform has been a priority for any of these societies since the return of democracy. Policy changes in these issue areas do not correlate with public opinion views and shifts. Second, if international factors were a main factor influencing

state policy in these issue areas differences among countries would be less significant. Finally, the strength of the armed forces in each country does not directly reflect the presence or lack of human rights trials for the abuses of the military dictatorships. Neither the reach of the Catholic Church has in society nor the state-church relations established in the constitution were found to be relevant factors to explain the countries' different abortion policies. This chapter considers the possibility of these factors interacting with social movements to produce state response but always highlighting the central role movements have in these processes.

#### 10.1. The role of public opinion

Scholars have considered public opinion as a key factor influencing state policy based on the assumption that the main goal of politicians is to be re-elected (Mayhew 1974, Downs 1957) or to progress in their careers as politicians (Morgenstern and Nacif 2002; Samuels 2003) and that following public opinion is one way of enhancing their chances for re-election. This relationship can be direct or indirect. Those who argue there is a direct relationship state that governments are responsive to visible shifts in public opinion (Bartels 1991; Burstein 1998; Burstein and Freuenberg 1978; Costain and Majstorovic 1994; Jones 1994; Page and Shapiro 1983; Stimson, MacKuen and Erikson 1995). Since governments respond to what the majority of the population wants, given that social movements represent a minority they would have no impact, if any, on state policy (Burstein and Linton 2002).

Alternatively, some scholars take public opinion into account as a mechanism through which social movements can achieve policy impact (Burstein and Freudenberg 1978;

Burstein 1999; Burstein and Lipton 2002; Giugni 2004). From this perspective social movements are thought to be unable to influence policies directly and are more likely to have an impact on state policy when they manage to capture public support (McAdam 1982).

This dissertation found no correlation between public opinion shifts in the issue areas of study (human rights and abortion) and the policies adopted by the different administrations in the three countries. When analyzing the relevance of public opinion I consider two different ways of measuring this: a) salience and b) preferences of the issue at stake. It is not only important to consider what people think about human rights trials and abortion reform but also to take into account what priority they assign to these issues in the government agenda. Neither measurement of public opinion in the three countries revealed a significant correlation with the policies of each administration in these areas. People's support for human rights trials and abortion reform does not vary significantly from country to country. In addition, at most times both issues rank low in the list of priorities of the three societies. The lack of significant variance in public opinion's views on human rights and abortion cannot explain these countries' diverse policies in these issue areas. The following sections analyze public opinion polls in Argentina, Chile and Uruguay to provide evidence for this claim.

#### *10.1.1. Human Rights and Public Opinion*

Public opinion was found not to be a relevant factor influencing human rights policies. While it is necessary for a movement to advance its demands to have some level of public support, this does not seem to be a major driving force in shaping state responses to social movements. For the most part, human rights trials enjoy wide support

among public opinion in the three countries. However, the issue of human rights is not regarded as particularly salient by the public, who rank it low or not at all when asked about the main problems that concern them and which define their political position. The following graphs provide evidence of this statement for each of the cases.

#### *10.1.1.1. The case of Chile*

Figure 10.1 graphs the response by Chileans to the question: “what are the main three problems the government should address?” from 1989 until 2008. The figure shows that, not even in 1989 when the democratic transition was taking place and the issue of human rights abuses by the military was fresh in people’s minds did Chileans rank human rights as a priority for the government. Of seven options from which to choose human rights was ranked the lowest throughout the years. In addition, the more time passed since the democratic transition, the less of a priority this issue was for people. Figure 2.1 shows the decreasing trend in which in 1989 20% of respondents thought that human rights was one of the main problems, in 1992 this rate dropped to 10% and in 1994 to less than 10%. This percentage did not increase even in 1998 after Pinochet’s detention in the U.K. Reinforcing the lack of salience of the issue of human rights, when in June 1990 a public opinion poll asked Chileans what they thought most notable about the first 60 days of democratic government 33% mentioned the level of robberies and armed violence and only 13.3% referenced the Rettig commission (De Brito 1997:168).

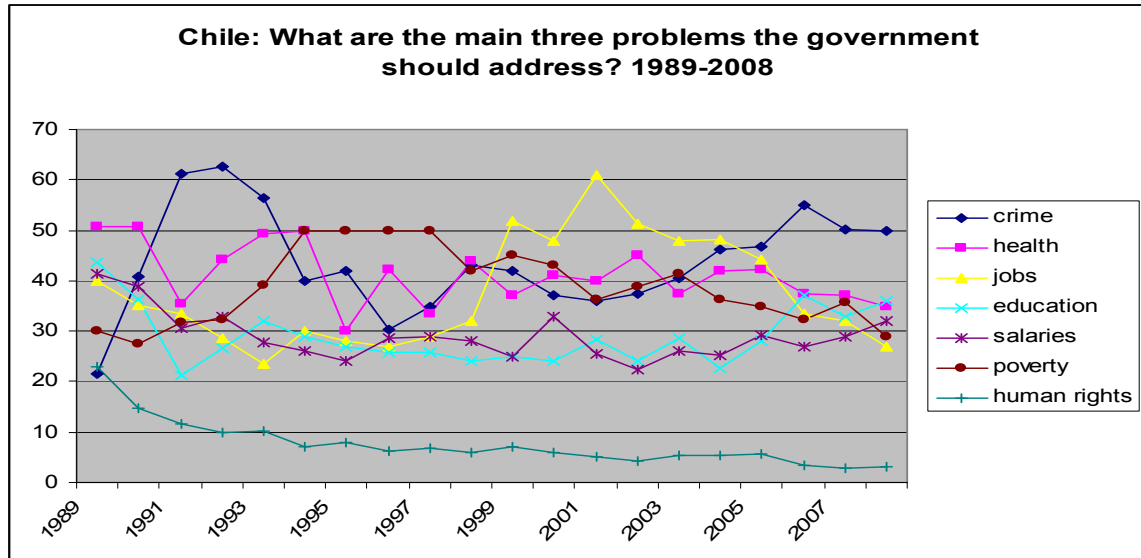


Figure 10.1: Public opinion poll on the main three problems the government should address in Chile, 1989-2008. Source: by author based on data provided by CEP

However, when asked about human rights policies and issues in particular, a majority tends to agree with policies that address human rights movements' demands. For example, Table 10.1 shows that in June 1990 at the beginning of the first democratic government after the Pinochet dictatorship, when asked if in order to achieve national reconciliation the government should forget the past, only 17% supported this position while 65% expressed support for the search of truth and justice. Figure 2.2 shows how in 2003 53% disagreed with the statement "13 years later we should not insist on the problem of human rights violations." Barometro CERC asked the same question from 1995 till 2003 allowing for a better comparison of public opinion throughout the years. Figure 2.3 shows how when asked about the solutions to the issue of human rights abuses the overwhelming majority of the population (a range of 52 to 62%) agreed with policies of truth and justice.



TABLE 10.1  
PUBLIC OPINION ON HUMAN RIGHTS POLICIES  
IN CHILE IN 1990

Some people think that when faced with the issue of human rights in order to achieve national reconciliation the government should “turn the page” and forget the past. Which should be the government’s attitude to achieve national reconciliation?	
Turn the page and forget the past	17.3%
Truth and forgiveness	16.8%
Truth and trials	65%
Don’t know	0.8%

*Source: CEP, June 1990.*

The previous surveys show that at all times since the democratic transition the majority of the population favored truth and trials of those responsible for human rights abuses in line with the human rights movement’s demands. While the demand for truth was addressed by the government from the beginning, that of justice was not. It was only in 1997 that trials began to take place in Chile and thanks to legal loopholes exploited by human rights lawyers, and not because of a government policy that favored the search for judicial accountability. Moreover, the amnesty law that protects the perpetrators had not yet been repealed as of July 2011.

#### *10.1.1.2. The case of Argentina*

In Argentina, there are no consistent data available that have tracked the question of the main problems government should address throughout the period of this research, but varying polling firms posed this question at different times. They always arrived at the same conclusion: as in the case of Chile, economic problems and crime have always

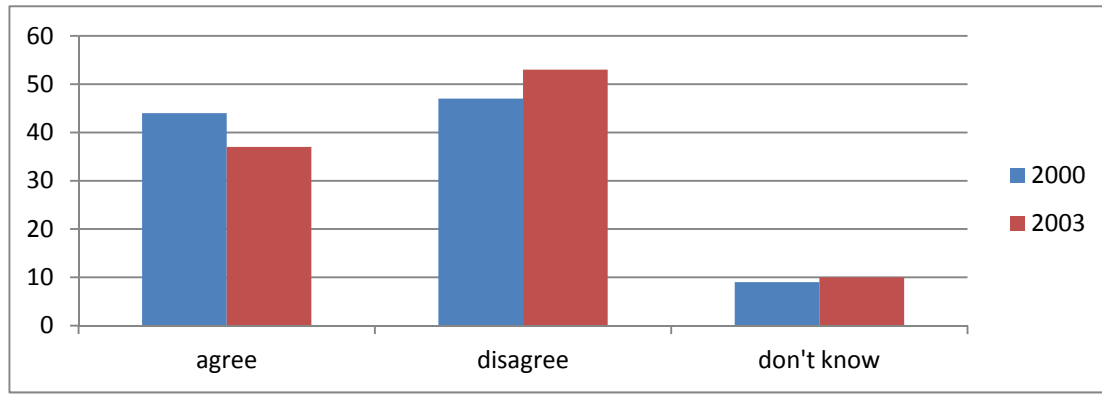


Figure 10.2. Public opinion on Human Rights Policies in Chile. 2000-2003.

Source: Huneus 2003

\* Responses to the question: Do you agree with the statement “13 years later we should not insist on the problems of human rights violations.”

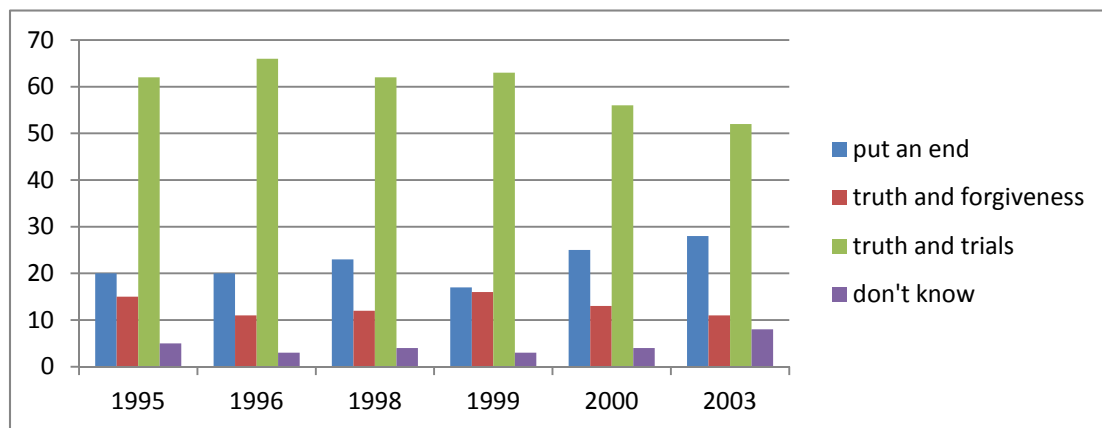


Figure 10.3. Solutions to human rights abuses in Chile. 1995-2003.

Source: Huneus 2003

\* Response to the question: There are different views on how to solve the problem of human rights abuses during the military dictatorship. With which statement do you agree: Put an end to the problem of human rights, truth and forgive those responsible, truth and try those responsible.

topped the list, while human rights remained at the bottom and sometimes was not even mentioned or even offered as an option by the survey. Figure 10.4 shows data from surveys conducted by the polling firm Nueva Mayoria asking what were the main

problems facing the country in 1990, 2001 and 2002. Human rights were mentioned by less than 5 percent of respondents.

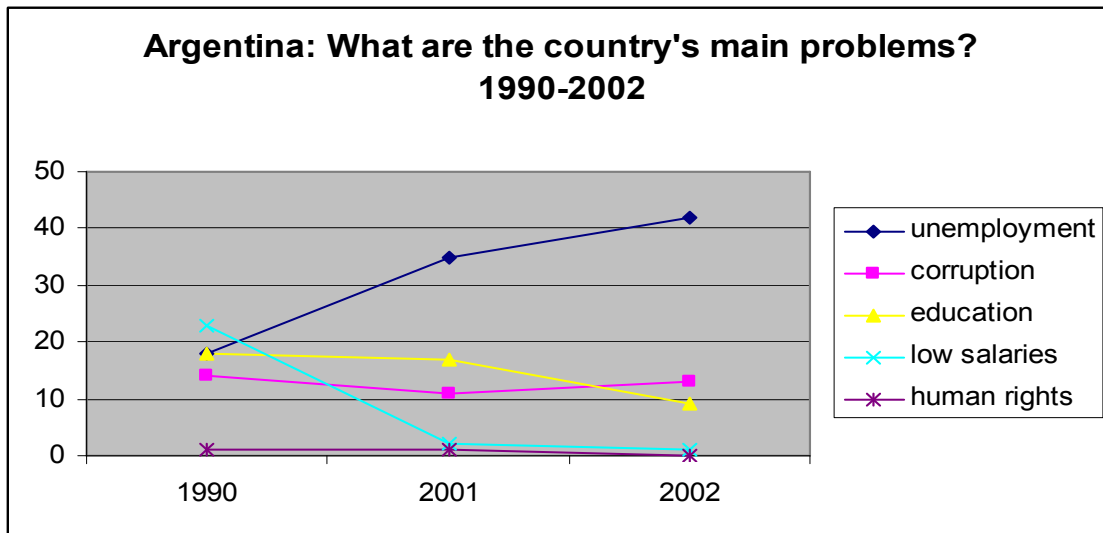


Figure 10.4. Public opinion on the country's main problems in Argentina. 1990-2002.  
Source: by author based on Nueva Mayoría data.

Figure 10.5 analyses public opinion at a key time in Argentina, after the 2001 crisis and right before the beginning of Nestor Kirchner's administration when human rights became a priority in the government's agenda. Human rights are not even mentioned as an option in the survey. This is strong evidence that the Kirchner administration (2003-2007) assigned a key place to the issue of human rights notwithstanding public opinion and not because of it. In a 2008 survey done by the same polling firm, the main problems remained almost the same: crime is at the top of the list with 56.4% of the answers, followed by inflation with 32.4% and unemployment with 29.9%.<sup>339</sup> From 2003 on, the main problems reported in all surveys conducted by *Nueva Mayoría* are crime and

<sup>339</sup>See *Página 12*, "La preocupación es la inflación" March 21<sup>st</sup>, 2008. Viewed in [www.pagina12.com](http://www.pagina12.com) on March 21<sup>st</sup>, 2008.

unemployment, and beginning in 2007, inflation,<sup>340</sup> human rights do not appear on the list at all.

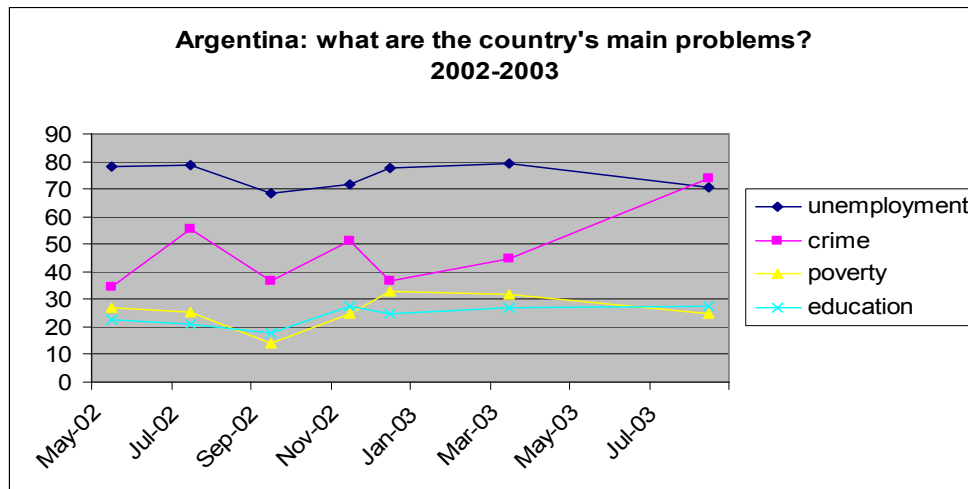


Figure 10.5. Public opinion on the country's main problems in Argentina. 2002-2003.  
Source: by author based on data provided by Analogías.

However, as in Chile, when asked about specific human rights policies, public opinion seems to be supportive of the movement's demands. In 1984 during the Alfonsín's administration more than half of the population expected a strong action from the judiciary in the prosecution of human rights abuses (Leis 1989:47). More than 68% of the population opposed Menem's pardons of the military commanders in the early 1990s (Acuña and Smulovitz 1995:81). In light of the re-initiation of human rights trials by the Kirchner administration in April 2007 OPSM conducted a survey that asked people their views on this policy: 26.2% answered it was very positive, 44.2% that it was positive, 18.8% a little positive, 10% not positive, and 0.8 did not know.<sup>341</sup>

Similar to the case of Chile, at most times the majority of the population has supported the investigation and prosecution of those responsible for human rights abuses

<sup>340</sup> See Nueva Mayoria website: [www.nuevamayoria.com](http://www.nuevamayoria.com)

<sup>341</sup> See *Página 12*, "La hinchada con Kirchner" April 1 2007, Viewed on April 1, 2007 at [www.pagina12.com](http://www.pagina12.com).

as demanded by the human rights movement. The constant character of public opinion does not correlate with the extremely different human rights policies implemented by the successive administrations since the democratic transition.

#### *10.1.1.3. The case of Uruguay*

Unlike the cases of Chile and Argentina, survey analysts from Equipos Mori found that in Uruguay at the beginning of the democratic transition the issue of human rights was mentioned most of the time as one of the main problems facing the country in public opinion surveys. After the 1989 popular referendum that ratified the law that granted amnesty to those responsible for human rights abuses (*Ley de Caducidad*) the issue of human rights stopped being mentioned in surveys.<sup>342</sup> This was so even after 2000 when President Batlle launched a Truth commission (*Comisión para la Paz*) and the issue of human rights took center stage in the government agenda and later in 2004 when President Vazquez excluded some cases from the *Ley de Caducidad* to allow judicial prosecution. Figure 10.6 shows that in 1998 the issue of human rights was not on the list of the most important problems and in 2008 only 3% of respondents mentioned it. A survey conducted by the Barometer of the Americas shows similar results (See Figure 10.7).

This surveys show that, as in the other two cases, the Uruguayan administrations have not respected public opinion's views on the issue of human rights either. When public opinion considered human rights was one of the main problems facing the country the Sanguinetti administration chose to oppose any truth or justice initiative. Yet, at the time

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<sup>342</sup> See El país, "71% cree que no es posible cerrar el tema de los desaparecidos", October 9th, 2005. Viewed at [www.elpais.com](http://www.elpais.com) on May 25th, 2009.

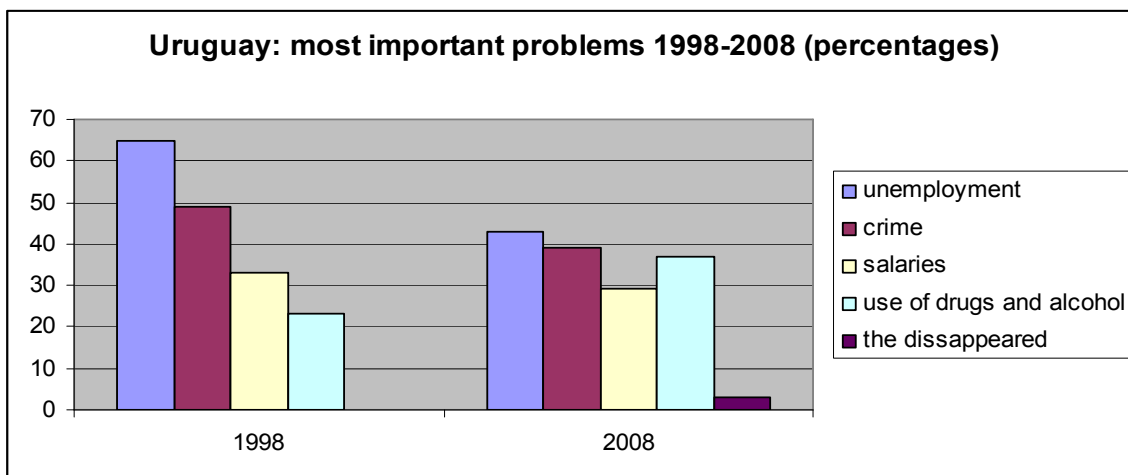


Figure 10.6: Public opinion on the country's most important problems in Uruguay. 1998-2008.

*Source: by author based on Interconsult data.*

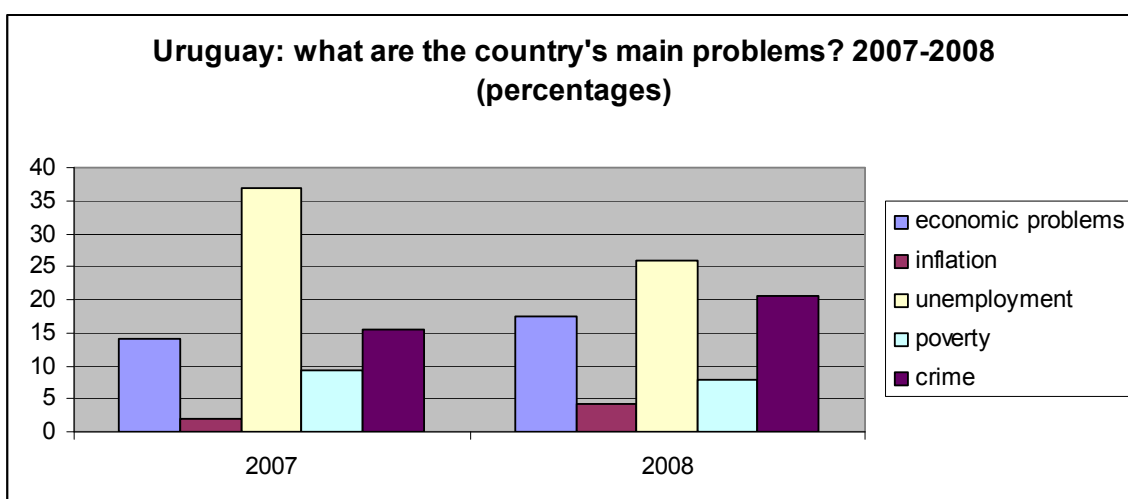


Figure 10.7. Public opinion on the country's main problems in Uruguay. 2001-2008.

*Source: by author based on Barometer of the Americas data.*

when public opinion did not mention the issue of human rights as a relevant issue, President Batlle and Vazquez included it on their government agendas.

In terms of preferences, public opinion surveys show that throughout the years most Uruguayans supported the investigation of human rights abuses committed during the dictatorial regime. Surveys conducted by different companies agree on this (See Table

10.2). However, when the *Ley de Caducidad* was submitted to popular referendum both in 1989 and again in 2010, the population chose to ratify it and put an end to the investigation of these crimes.

TABLE 10.2  
PUBLIC OPINION ON INVESTIGATION OF HUMAN RIGHT ABUSES.  
URUGUAY  
1997-2011

Survey company	Year	Support investigation of human rights abuses
Factum	April 1997	54%
Interconsult	June 2000	79%
Interconsult	June 2003	52%
Interconsult	September 2005	57%
Factum	May 2011	73%

#### *10.1.2. Abortion and Public Opinion*

Scholars have been aware of the lack of correspondence between public opinion on abortion and government policies in this area in Latin America. A 2006 article reviewed 26 public opinion studies on abortion in Latin America and concluded that the continent's restrictive laws did not reflect the general support for decriminalization (Yam et al 2006). In her book on gender policies in Catholic countries Mericke Blofield found that public opinion on abortion was remarkably similar and supportive of decriminalization in Argentina, Chile and Spain in spite of their different abortion laws (Blofield 2006). This project agrees with these findings. The previous sections showed that when asked about the main problems of the country, abortion reform does not figure among people's

priorities. Below I show that the similar percentages of support for abortion reform across time and countries do not reflect the diverse abortion policies of different administrations.

Argentina and Chile show similar public opinion views on the issue of abortion over time (See Tables 10.3 and 10.4) in spite of the fact that Argentina allows abortion under certain circumstances and Chile prohibits it under all cases. Both countries show strong support for legal abortion when the mother's health is at risk, in cases of rape and the malformation of the fetus. They also share much lower levels of support for abortion based on the woman's decision (shifting between 13 and 25%), the only difference being that whereas in Argentina public support for abortion on demand is decreasing, in Chile it is increasing. This is such even though Argentina has a stronger women's movement for abortion decriminalization and more bills have been introduced in Congress to address this issue than in Chile.

TABLE 10.3  
PUBLIC OPINION ON ABORTION  
IN ARGENTINA  
1981-2008.

	<b>1981</b>	<b>1990</b>	<b>2004</b>	<b>2006</b>	<b>2008</b>
Mother's health at risk	82%	77%	-	65%	63.9%
Rape	58.3%	-	-	76%	63.9%
Malformation of fetus	66%	59%	-	69%	63.9%
Woman's decision	25%	25%	18.6%	19%	14%

*Sources: 1981 and 1990 World Value Survey, 2004 CEDES, 2006 Knack, 2008 Conicet.*

*\*Reponse to: "In which cases should abortion be legal?"*



Given that in Uruguay two bills to decriminalize abortion were discussed in Congress, public opinion polls asked directly whether people supported or rejected this bill. Table 10.5 shows majoritarian support for the bill throughout the years in spite the fact that the bill was rejected by Congress in 2004 and vetoed by President Vazquez in 2008. As in Chile and Argentina, Uruguayan governments do not seem to follow public opinion views when legislating on the issue of abortion.

TABLE 10.4  
PUBLIC OPINION ON ABORTION  
IN CHILE  
1990-2006.

	<b>1990</b>	<b>2002</b>	<b>2006</b>
Mother's health at risk	75.3%	65.6%	75%
Rape	-	-	71%
Malformation of fetus	40.8%	56.3%	68%
Woman's decision	13.9%	21.3%	20%

*Sources: 1990 World Value Survey, 2002 Flacso, 2006 Corporación Humanas*

Note: reponse to: in which cases should abortion be legal?

### *10.1.3. Conclusion*

Public opinion is not a significant factor in influencing government policies on non bread and butter issues. As it is clear from the study of these three countries, human rights trials and abortion decriminalization will not happen only because the majority of society supports these issues. Since they are not people's priorities there is a need for social movements to organize around and push for these issues for governments to

address them. Social movements do target the public to increase awareness of their causes and social support for their campaigns. In addition, social movements can use public opinion polls to show governments that their demands are widely supported (sometimes like the women's movement in Uruguay they ordered surveys themselves to use this information in their campaigns). However, without an organized movement around these causes societal support for these issues alone is not enough for reform to take place.

TABLE 10.5  
PUBLIC OPINION ON ABORTION  
URUGUAY  
1993-2008

	<b>1993</b>	<b>2001</b>	<b>2004</b>	<b>2006</b>	<b>2008</b>
In favor	55%	61%	55%	58%	56%
Against	38%	27%	41%	39%	35%
No opinion	7%	12%	4%	35	9%

*Sources: 1993, 2001 and 2008 Factum, 2004 and 2006 Interconsult.*

Note: response to: Are you in favor or against the bill in Congress that allows women to decide to have an abortion within the first 12 months of a pregnancy?

## 10. 2. The role of international factors

Scholars have studied the influence of international factors in both human rights and gender policies (Sikkink 1996; Brysk 1994; Sikkink and Booth Walling 2007; Blofield 2006). Sikkink and Brysk have looked at how international human rights networks have accomplished domestic change in human rights policies. Others like Htun (2003) and Blofield (2006) have looked not only at the role of feminist transnational movements but also at shifts in the Vatican and how both of these external factors influence gender

policies at the national level. The model advanced in this dissertation does not deny the role that international factors may play in the larger impact of social movements on state policies. Isolating the domestic sphere from international influences in the age of globalization would be absurd. However, if international factors were highly significant in explaining public policies, we would expect to see less of a difference in human rights and abortion policies across our three cases.

In addition, even those scholars who point to the role international factors play in these policy arenas recognize that these factors do not work directly, but through the decision making calculus of politicians (Sikkink 1996: 75; Sikkink and Booth Walling 2007; Blofield 2006: 31). In this sense, there is thus no contradiction with the theoretical model introduced in this dissertation which relies in the availability of national allies for human rights demands to be addressed.

#### *10.2.1. Human rights movements*

Kathyn Sikkink is one of the social movements' scholars that has called attention to the influence of international factors in the emergence and impact of social movements. In order to understand the actions and successes of social movements she claims it is necessary to look both at the domestic and international structure of political opportunities as well as their interaction (Sikkink 2000). While other scholars have identified the impact of international pressures on the structure of national political opportunities (McAdam 1996; Tarrow 1998), Sikkink believes they see international factors as "external shocks" and not as permanent structures that continuously interact with national politics (Sikkink 2000:53). For example, a closing of national political opportunities leads to social movements demanding their rights in the transnational arena.

This was the case of the human rights movement in Argentina during the 1990s. When President Menem's pardons closed the possibility of national trials for those responsible for human rights abuses, activists pushed for international trials in Europe. Sikkink's concepts do not contradict the model advanced in this dissertation. The national social movement remains the key player, which when faced with the lack of allies at the national level, continues its struggle at the international level.

A further question is whether the movements' international strategy had an impact on domestic human rights policies. The example of Argentina shows that taking the fight to the international level was instrumental in helping the movement stay together and alive during the 1990s when there were no allies in power at the national level. However, changes in domestic policies were not possible until the domestic situation was reversed and potential allies came to power. Moreover, the trials in Europe had to be conducted "in absentia" because the Argentine governments at the time (the Menem and De la Rúa administrations) did not allow the extradition of those accused. Similarly, the detention of Pinochet in London in 1998 was a re-energizing and unifying factor for the Chilean human rights movement. However, scholars have already shown that the increase in the number of indictments at the national level took place prior to this event and cannot be attributed exclusively to external developments (Collins 2005).

At times when domestic political opportunities were closed human rights movements have also resorted to international tribunals. In 1998 CELS took the Argentine state to the Interamerican Court of Human Rights for denying victims' families the right to know what happened to their loved ones. In 1999 the Argentinean state under the Menem administration was forced to agree to respect the right to truth. After this, cases were

opened in the Federal Courts in the cities of La Plata, Bahía Blanca and Cordoba (CELS 2000). However, this international strategy has not always been successful. Although the Interamerican Court of Human Rights ruled in 1992 that the Uruguayan amnesty law (*Ley de Caducidad*) was unconstitutional and needed to be repealed, the law was still in effect as of July 2011.

Another international argument, advanced by Sikkink and Booth Walling, contends that human rights trials were possible from the 1980s onwards because norms and expectations about what to do with human rights abuses after democratic transitions have changed worldwide (2007). Prior to this date the expectation was for newly democratic governments to pass amnesty laws and pardon all previous criminal behavior. It was in the 1980s that the possibility of prosecuting human rights abuses became possible. While this argument is strong it is not useful to understand our cases. As Sikkink and Booth Walling acknowledge, Latin American human rights activists have been the “norm entrepreneurs pushing for truth commissions and human rights trials” and the 1985 Argentine trials against the military junta was the case that led the change of international norms regarding transitional justice (2007). The causal relationship is thus reversed.

In addition, Sikkink and Booth Walling argue that countries in a region are more likely to implement mechanisms of transitional justice when they have seen their neighboring countries do so. One possibility is that the use of truth commissions and trials in Argentina and Chile influenced their later adoption by Uruguay. But then again, the time when the country chooses to emulate its neighbors is a matter of how strong their domestic human rights movement is to demand this emulation and of the availability of allies in power that choose to address the movements’ demands. The Argentine and

Chilean examples had been available to Uruguay since 1985 and 1990 respectively. The fact that Uruguay emulated Argentina and Chile only after the year 2000 suggests that Uruguayan policy changed as a reflection of domestic factors, not diffusion and emulation. In accordance with this model, prior to 2000 the human rights movement was not sufficiently strong nor did it have allies in power to adopt pro-rights policies.

Finally, the role of transnational human rights networks are much more effective during dictatorial than democratic times. When the democratic transitions begin, the attention of these networks is redirected to other more extreme cases of human rights violations and thus the pressure for changes in these newly democratic countries' policies diminishes (Brysk 1993: 280). Since this dissertation is dealing exclusively with democratic times, the role of these networks is thus less relevant.

#### *10.2.2. Women's movements for the decriminalization of abortion*

Scholars have focused on different international factors to explain abortion policy changes. Some have considered the role of UN conferences on women and population issues in strengthening domestic women's movements (Sikkink 2000; Blofield 2006; Htun 2003) while others have looked at Vatican policies and anti-abortion campaign that began in the 1980s (Blofield 2006; Htun 2003).

UN conferences on women began in 1975 and have since then become a place for activists to meet, make contacts, share strategies, lobby for international standards, and strengthen their domestic movements. This was so especially after the 1995 Beijing conference when NGOs were allowed to participate alongside government delegations (Blofield 2006). The 1994 Cairo Conference on Population and Development brought together renowned feminists from across the world who drafted a list of demands to

ensure respect for women's sexual and reproductive rights (Goldberg 2009). While the Cairo and Beijing conferences did not commit governments to decriminalize abortion, they did stipulate that governments should address the consequences of unsafe abortions, help prevent unwanted pregnancies and review punitive measures against women having abortions (Htun 2003). The main contribution of UN conferences to the struggle for abortion decriminalization was the definition of access to contraceptives and abortion as women's rights. The concept of sexual and reproductive rights gave legitimacy to the struggles of women's movements at the national level (Htun 2003). The language of rights has been particularly useful for Latin American women's movements given that it resonated with a long tradition of human rights movements and struggles. However, while a global context of a stronger transnational women's movement for sexual and reproductive rights played a role in the launching of domestic campaigns for abortion decriminalization at the national level, this factor cannot explain the diverse abortion policies and responses to the domestic women's movements in our three country cases.

Similarly, Blofield and Htun point to the emphasis the Vatican has assigned to what the Church defines as family and moral issues since the 1980s. After having lost the battle for legal abortion in Catholic Europe, the Vatican has focused their efforts in the largest Catholic region in the world: Latin America. Scholars believe this policy has been partly responsible for the region's restrictive policies towards abortion and the reticence for change. While this variable explains why for example abortion reform in the first half of the 20<sup>th</sup> century took place in Argentina and Uruguay without Church's opposition, it does not explain why in recent decades some governments have chosen to support Vatican views while others have ignored these same lobby's efforts. This question calls

for an analysis of domestic variables such as those proposed by the current theoretical model.

### 10. 3. The strength of institutions opposing social movements' demands

Scholars studying the fields of human rights and gender policies usually analyze the role of key institutions such as the Armed Forces or the Catholic Church in public policy. This study acknowledges that a social movement does not act in isolation, but in a context in which there are other players that compete for political influence. However, my research has shown that both institutions are less influential than might be expected. While the power of the armed forces and the level of civilian control over the military are relevant conditions governments take into account when deciding whether or not to address human rights movement's demands for justice, these factors have not proven to be as influential as the literature on transitions suggests. Similarly, the influence the Catholic Church has over society and its relationship with the state as stated in the national constitution do not explain the diversity of abortion policies in each of our countries. The following sections analyze and measure both the power of the armed forces and the Catholic Church in each of the country cases to support these statements.

#### *10.3.1. The power of the Armed Forces*

The literature on democratic transitions emphasizes the role that the type of transition had on explaining how further the government was allowed to go in terms of human rights accountability for the abuses committed under the military dictatorship (Acuña and Smulovitz 1995; Pion Berlin 1993; Barahona de Brito 1997; Roniger 1999; Roniger&Sznadjer 1997). From this perspective, the trials of the military junta were



possible in Argentina because the military left power after a humiliating defeat in the Malvinas/Falklands war. On the other hand, Chile and Uruguay implemented more moderate human rights policies because they went through pacted transitions which were controlled by the military.

There are many problems with these statements. Pacted transitions have been able to delay human rights trials in Latin America – as shown by the cases of Chile and Uruguay- but have not eliminated them, except for the case of Brazil (Sikkink and Booth Walling 2007). As Wendy Hunter acknowledges (Hunter 1997), the type of transition may be influential in determining the starting point, but the more time that passes, the power of the military at that particular point in time becomes a less influential factor in explaining human rights policies. It is thus necessary to trace the power of the military throughout the successive democratic administrations and analyze how this factor impacted the chances of human rights movements having their demands addressed. To measure the power of the armed forces I looked at the evolution of the military budget and at the level of civilian control over the military in each of the countries.

Chile's armed forces have remained the most powerful out of the three countries as seen in their larger military budgets and the government's low level of civilian control over the military. However, Chile has achieved the largest number of convictions of those responsible for human rights abuses during the military dictatorship. Argentina under President Menem strengthened civilian control over the military and passed large cuts to the military budget while putting an end to human rights trials and pardoning the officers that had already been convicted. The power of the armed forces has not proven to be a clear predictor of human rights policies in the Southern Cone.

### 10.3.1.1. Military Budgets

Figure 10.12 shows the evolution of military expenditures from 1988 to 2008 for Argentina, Chile and Uruguay (figures are in constant 2005 \$US(SIPRI). Uruguay's level of military expenditures is lower but more consistent over time than the other two countries. Argentina's military expenditure dropped sharply at the end of the 1980s and after that the budget stabilized at around US\$ 2 billion per year. By contrast, the Chilean military budget increased significantly starting in 1996 until 2006, as Chilean democratic governments respected Pinochet's Organic Law of the Armed Forces which stipulated that the military budget could not fall below its 1989 allocation (Hunter 1997).

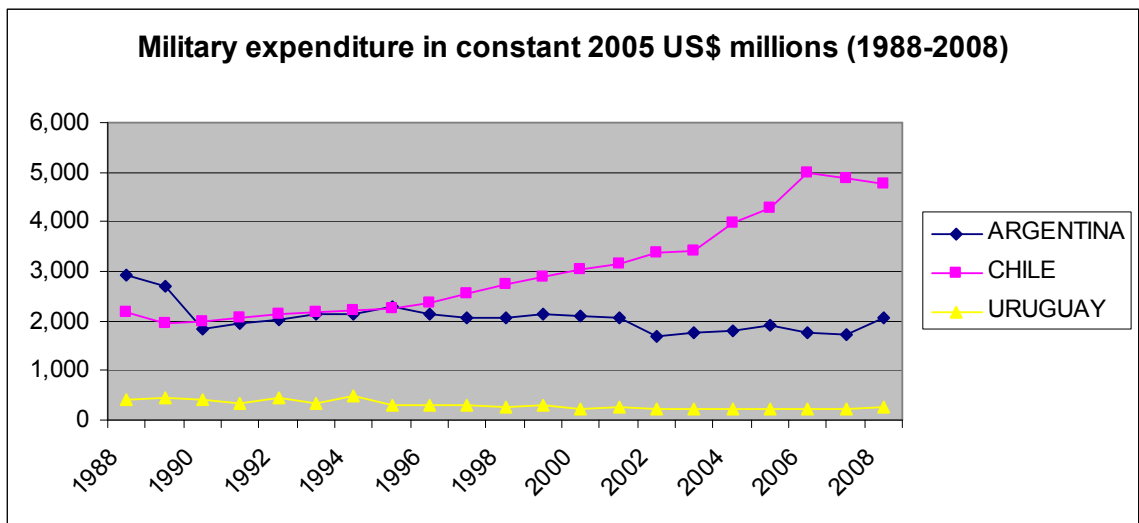


Figure 10.8: Military expenditure in Argentina, Chile and Uruguay. 1988-2008.  
*Source: by author based on data from SIPRI*

Figure 10.9 shows changes over time in military expenditure as a percentage of these countries GDP (SIPRI). Argentina is the country with the smallest military budget as percentage of GDP and the percentage had declined from 1.5 to less than 1% over the years. Uruguay shows sharp shifts in its military expenditure which went from 3 to 2%

and back several times from 1990 until 1996, when the trendline begins to decline. In Chile, although absolute spending increased (See Figure 2.12), the budget as a percentage of GDP declined over this period from a high of 5% at the end of the military regime. Its lowest point was 3% in 1995, when it increased slightly, although it remained under 4% for the rest of the period.

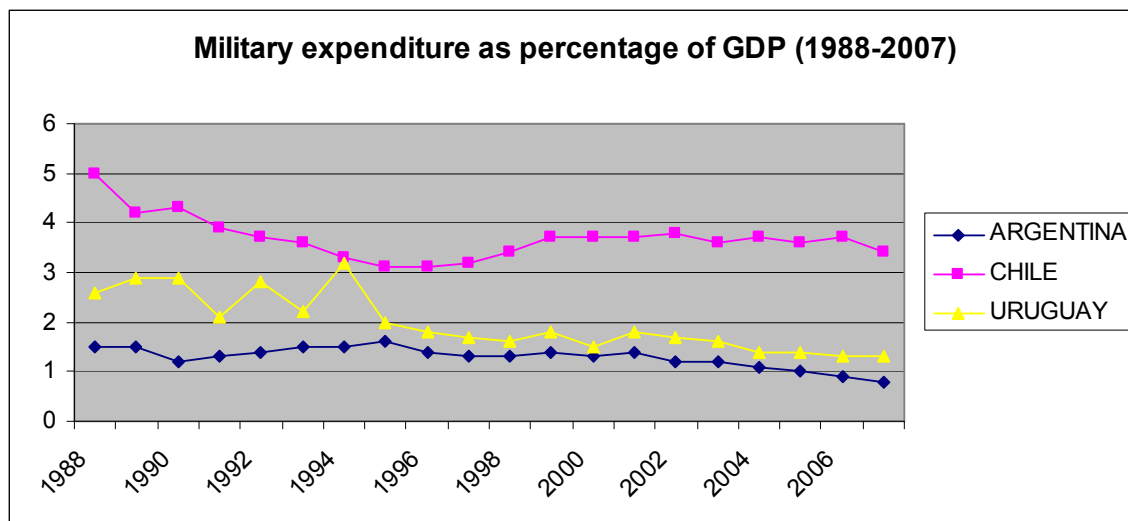


Figure 10.9: Military expenditure as percentage of GDP in Argentina, Chile and Uruguay. 1988-2007.

*Source: by author based on data from SIPRI.*

To supplement these measures I include an analysis of the military expenditure increase compared to the annual GDP growth in each of the countries to search for pro-cyclical or non-cyclical expenditures. Pro-cyclical behavior is that in which military expenditure varies together with GDP growth. This is evidence that there are no non-economic forces that succeeded at pushing for larger or smaller military spending. The shifts in military budgets follow business cycles, which implies that the power of the military is weak. Non-cyclical behavior is that in which military expenditure evolves independently from the business cycle. If there is an increase in the military budget it

implies that there are forces that succeeded in demanding sustenance of certain expenditure, evidence of a stronger military.

Figure 10.10 shows that Argentina's military expenditures clearly conformed to the pro-cyclical pattern until the year 2003. From this year onwards, GDP growth stabilized at around 9% but the military expenditure dropped 15 percentage points in 2005, and increased close to 30 percentage points towards 2007. This last increase is not a reflection of a stronger military but the high inflation, which in 2007 may have reached as high as 26.2%.<sup>343</sup> The current military budget is the lowest in the history of the country. The increase seen in figure 2.14 is a reflection of salary increases adjusted for inflation.<sup>344</sup>

Figure 10.11 shows Uruguay has a similar pro cyclical behavior, with military expenditure following the ups and downs of the GDP growth. This is evidence of the lack of military pressure to sustain or increase the military budgets independently of the behavior of the national economy. Finally, Figure 2.16 shows that Chile has a non-cyclical behavior. Military expenditure is clearly independent from GDP growth. This is an indicator of a strong pressure from the military to sustain its budget even in bad times, such as the year 2000 when there was negative growth in Chile. After 2004 the military budget increased by almost 15% and remained high until 2007 when it dropped again. This erratic behavior may be explained by the evolution of the price of copper. Apart from the budget allocated in congress that could not drop from the absolute amount of 1989, the armed forces are entitled to 10% of all profits of the state-owned copper

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<sup>343</sup>See Clarin, "Inflación: para los técnicos en conflicto supero el 20%" January 30th, 2008. Viewed on March 25th, 2011 at [www.clarin.com.ar](http://www.clarin.com.ar). The government inflation index for 2007 was of 8.5% but it has been questioned ever since the beginning of that year. The inflation data reported here is that released by the statisticians that were fired from the government's statistic institute INDEC.

<sup>344</sup>See "La Argentina no aguantaría una guerra de mas de dos horas. El presupuesto de defensa mas bajo de la historia", in El Observador. Viewed on June 28th, 2011 at <http://www.scribd.com/doc/35869089/El-presupuesto-militar-de-Argentina-es-el-mas-bajo-de-su-historia>

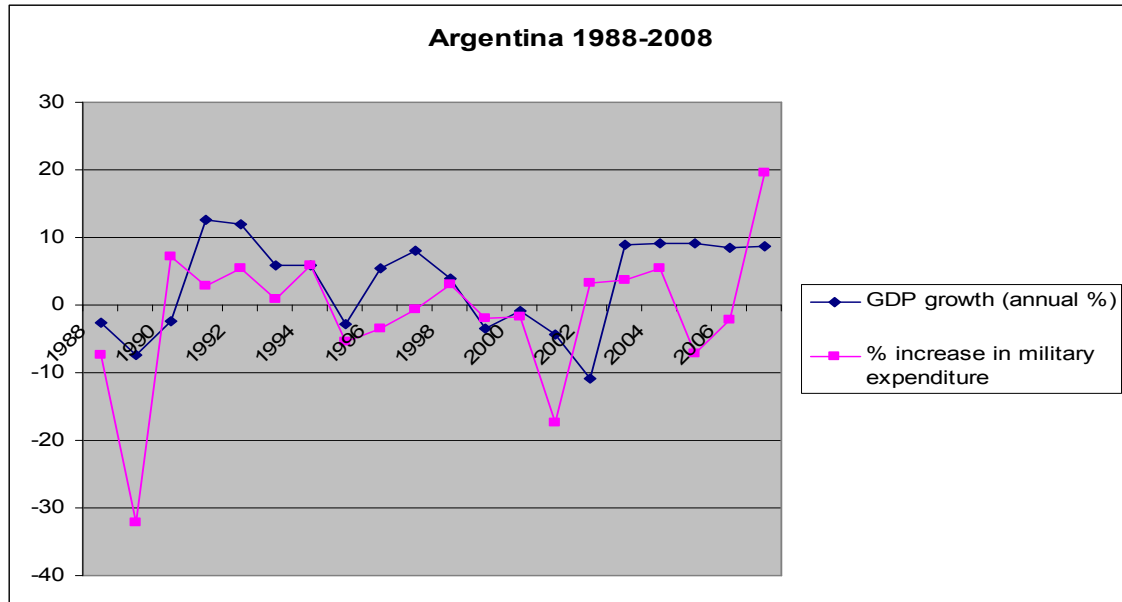


Figure 10.10: Percentage increase of military expenditure compared to annual GDP growth in Argentina. 1988-2008.

*Source: by author based on military data from SIPRI and economic data from World Development Indicators*

company CODELCO (Hunter 1997). Pinochet's measures to prevent shrinkage in the military budget after handing in power and the impossibility of the democratic government to change these regulations demonstrate the larger power of the Chilean armed forces in comparison to those of Argentina and Uruguay. A bill to put an end to Pinochet's Copper law was introduced under the Bachelet administration in 2009 and again under Pinera in 2011 but so far Congress has not approved it.<sup>345</sup>

In sum, Chile's armed forces have the largest military budget both in absolute numbers and as a percentage of the country's GDP. In addition, the Copper Law provides its military with extra resources that are not available in the other two countries.

<sup>345</sup>SeePágina 12, "Bachelet anularia la Ley del Cobre", September 9<sup>th</sup>, 2009. Viewed on September 9<sup>th</sup>, 2009 at [www.pagina12.com.ar](http://www.pagina12.com.ar) and Cambio 21, "Sebastián Pinera presenta proyecto para derogar Ley del Cobre y que ofrece un financiamiento plurianual a las Fuerzas Armadas" June 20<sup>th</sup>, 2011. Viewed on June 20<sup>th</sup>, 2011 at [www.cambio21.cl](http://www.cambio21.cl)

Argentina's armed forces have suffered the largest budget cuts, which reduced the power of the armed forces significantly (Hunter 1994).

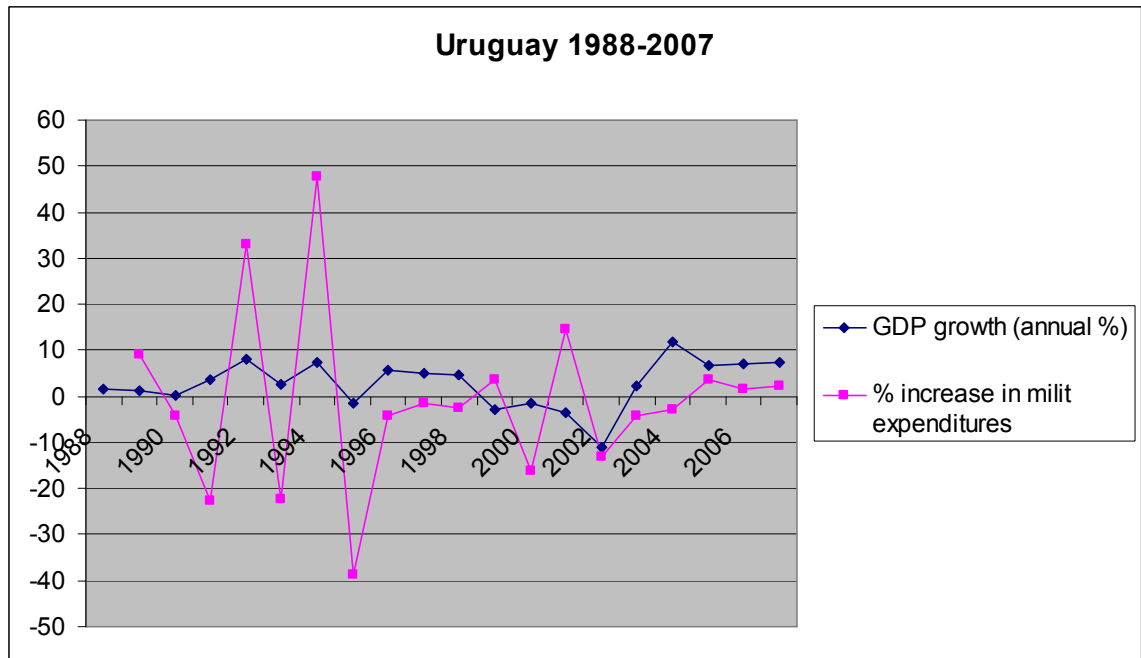


Figure 10.11: Percentage increase of military expenditure compared to annual GDP growth in Uruguay. 1988-2007.

*Source: by author based on military data from SIPRI and economic data from World Development Indicators*

### 10.3.1.2. Civilian control over the military

The notion of civilian control over the military is defined here as “the capacity of a democratic government to define its national defense policy and supervise the implementation of military policies without the interference of the armed forces” (Diamint 2008:96). The index to measure civilian control over the military was constructed based on seven dimensions that the literature acknowledges as important to account for this concept (Stepan 1988; Hunter 1994; Flacso 2006 and 2007; Weeks 2003; Pion Berlin 2009). They were weighted differently according to how central they are to

ensure civilian control. They are the following: 1) the presence of a civilian as head of the defense minister (10%), 2) the presence of civilian staff in this ministry (10%), 3) the

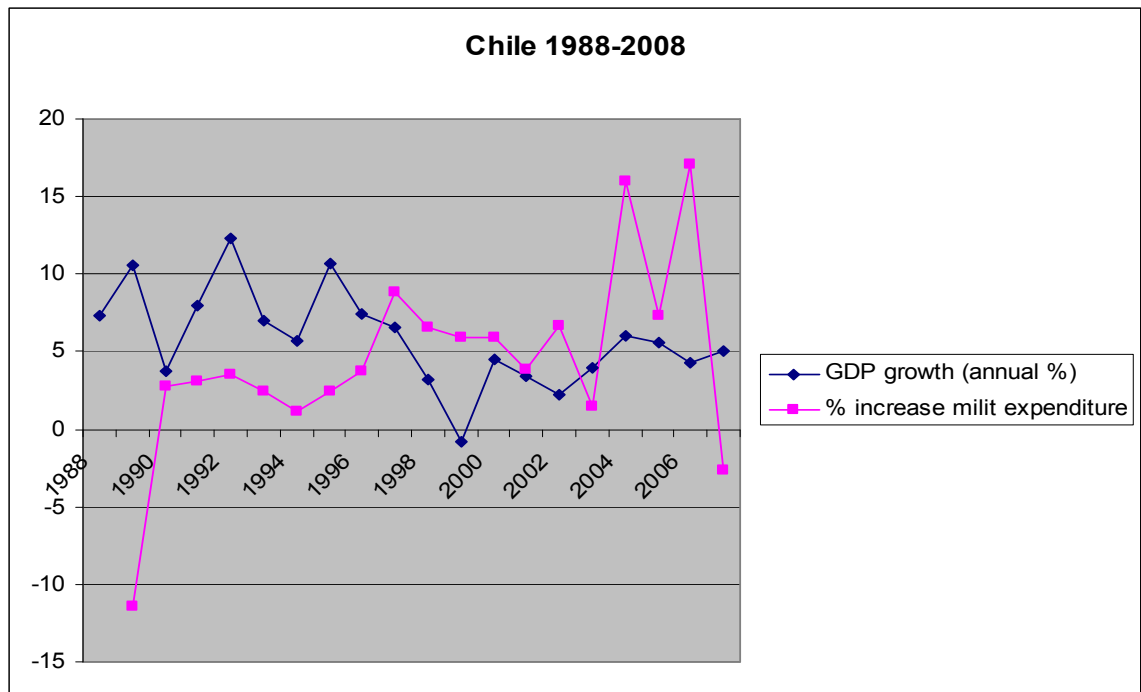


Figure 10.12: Percentage increase of military expenditure compared to annual GDP growth in Chile.198-2008.

*Source: by author based on military data from SIPRI and economic data from World Development Indicators*

absence of military enclaves in civilian institutions (20%), 4) the explicit legal restriction for the armed forces to be involved in internal security activities (20%), 5) the power of the president to appoint the military commanders (15%), 6) the power of the president to remove the military commanders (15%),<sup>346</sup> and 7) the reform to limit military justice to military crimes (10%). The existence of coups attempts or military rebellions is not included as an indicator of civilian control. The lack of rebellions may be interpreted as

<sup>346</sup>Flasco 2007 report on Latin American armed forces states that one of the main indicators of the level of political authority over the armed forces is the capacity of the president to appoint and remove the military commanders (2007: 39).

the existence of civilian control over the military but also as a situation in which the military have enough influence so as to not require violent intervention. The index goes from 0 which equals no civilian control over the military to 10 which equals the highest level of control.

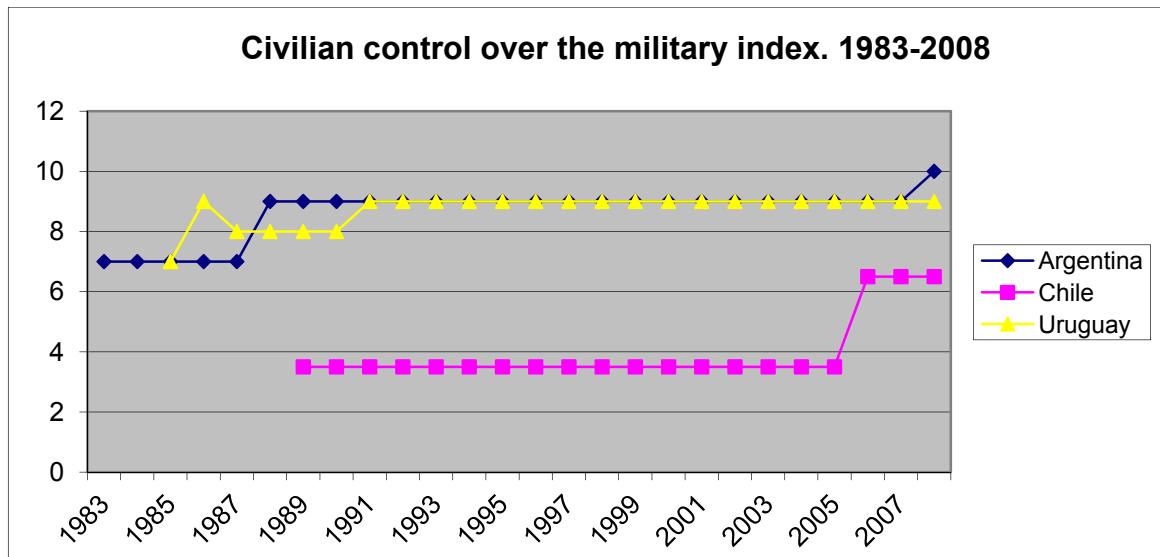


Figure 10.13: Level of civilian control over the military in Argentina, Chile and Uruguay. 1983-2008.

*Source: by author.*

The resulting graph confirms the scholarly consensus, which agrees that among these three cases, Argentina has developed the highest level of civilian control over the military (Hunter 1994 and 1997; Flacso 2007; Vargas Velazquez 2008; Diamint 2008) and Chile the lowest, in particular prior to the 2005 Constitutional reform<sup>347</sup> (Hunter 1994 and 1997; FLACSO 2007). The case of Uruguay having such a high level of civilian control over the armed forces is more controversial. The quantitative index is limited since it takes into account only the legal changes done to ensure wider civilian control over the military. The index reflects the fact that Uruguay's first democratic government rapidly

<sup>347</sup> Law No. 20050



implemented legal changes to ensure control over the military based on pre-dictatorship standards (Gillespie 1991, Barahona de Brito 1997). However, it is true that aside from the legal changes implemented the military retained a relatively strong de facto power. However, this was also the case in Argentina in which real subordination to the Defense Ministry did not happen until the Kirchner administration.<sup>348</sup>

TABLE 10.6  
CIVILIAN CONTROL OVER THE ARMED FORCES.  
ARGENTINA, CHILE AND URUGUAY

	<b>Argentina</b>	<b>Uruguay</b>	<b>Chile</b>
Ministry of defense is a civilian	Yes since democratic transition.	Not required. Military minister from 1987-1990	Yes since democratic transition
Ministry of defense has civilian staff	Yes	No. Only in 2005 were some civilians appointed to the ministry	Yes, but until 2010 Ministry had no control over design of defense policy
Lack of military enclaves	Yes	Yes	Military enclaves in Senate
Armed forces not involved in internal security	Yes, since passage of 1988 National Defense Law	Yes since passage of 1986 Armed Forces Organic Law	No. 1988 decree 272 still in force.
Military commanders appointed by president	Yes	Yes	Yes
Military commanders removed by president	Yes	Yes	Yes since 2005
Military justice reform eliminating military jurisdiction	Yes since 2008	Yes, in constitution	No

<sup>348</sup>Email exchange with Julián González, Universidad de la República, Montevideo, Uruguay.

#### *10.3.1.2.1. Civilians in the Ministry of Defense*

The first two indicators deal with whether the Ministry of Defense is headed by a civilian leader and whether its staff is mostly made up of civilians, which ensures civilian involvement in the design and planning of defense policies. Civilian defense ministers are important but are “handicapped if they do not have a well trained civilian advisory staff at their disposal” (Pion Berlin 2009: 574). Since the ministers are usually political appointees lacking strong defense training, they must rely on the permanent staff to assist them. If this staff does not include civilians, they will be advised by the armed forces and thus, the importance of having a civilian as the head of the Ministry is significantly diminished. The three countries have had civilian defense ministers since the beginning of the democratic transitions until the present with the exception of Uruguay under President Sanguinetti who appointed retired general Hugo Medina to this position in 1987. Only Argentina and Chile had Ministries of Defense with mostly civilian staffs (Flacso 2007). In Uruguay staff is comprised of military officers “on loan” from the armed forces (Pion Berlin 2009: 577). This implies that the Ministry of Defense is mainly an institution that implements decisions adopted by the armed forces (Flacso 2006b: 6). Since 2005 the Ministry has increased the number of civilians in its staff although in a very limited way.<sup>349</sup> However, the fact that Chile has civilian staff does not automatically imply that civilians have the power to design defense policy. The Chilean Ministry of Defense was originally thought of as an administrative institution limited to implementing defense policies (Flacso 2007, Navarro 2009). An indicator of the lack of power of the ministry is that the Minister of Defense has no vote in the National Security

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<sup>349</sup> Email Exchange with Julian Gonzalez, Universidad de la República, Montevideo, Uruguay.

Council, while the Military Commanders do. It was only in February 2010 that Chile passed a Ministry of Defense Law which restructured its internal organization to give it more decision-making power (Navarro 2009). In Argentina while laws and regulations give the Minister of Defense control over the design of defense policy, in practice this had not happened until Minister Nilda Garre came to power in 2005 under the Kirchner administration.<sup>350</sup>

#### *10.3.1.2.2. Military Enclaves*

The lack of military enclaves –the presence of military personnel in civilian democratic institutions- has been the main indicator used in the literature when measuring civilian control over the military. Argentina and Uruguay have had no enclaves since the democratic transition. In Chile however the military had strong enclaves until the 2005 constitutional reform. Through the 1980 constitution and the 1989 Organic Law of the Armed Forces General Pinochet sought to tie the hands of his civilian successors. He established provisions for designated senators and a binomial electoral system which benefitted the political right. Nine seats in the Senate were reserved for non-elected officials appointed by the outgoing military regime, four of which could be retired military officers (Hunter 1994). These provisions ensured that one-third of the Senate would be filled with right-wing politicians sympathetic to the interests of the armed forces.

#### *10.3.1.2.3. End of the National Security Doctrine:*

National Security Doctrine defined the military's role towards domestic security in Latin America for decades. It defined a role for the armed forces which included the fight against the “internal enemy” represented by guerrilla groups active in the 1970s. Since

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<sup>350</sup>Email Exchange with Julian Gonzalez, Universidad de la República, Montevideo, Uruguay.

the time of the democratic transitions, the governments in the Southern Cone have tried to limit the rule of the armed forces to the defense of the country against external enemies as a key element of gaining control over the military. Uruguay was the first of the three countries to pass a specific law explicitly ending this doctrine. The 1986 law no. 15.808 modified the Armed forces' organic law and stated that the military's mission was to defend the "independence and peace of the republic, its territorial integrity, constitution and laws, acting under the superior command of the President." In Argentina, two laws restricted the role of the armed forces in this way. In 1988, the National Defense Law explicitly stated that the military should limit itself to fighting external aggressors and be subordinated to democratic governments.<sup>351</sup> In 1992, the Law of Domestic Security confirmed this statement.<sup>352</sup> In Chile, Article No 101 of the 1980 Constitution stipulated that the forces in charge of domestic security are *Carabineros* (Chilean Police), leaving the Armed Forces out of this role. However, the 1985 decree no. 272 established norms for involvement of the Armed Forces in both external and internal security matters. This decree is still in place and has not been repealed even though it contradicts the aforementioned constitutional clause (Flacso 2006c).

#### *10.3.1.2.4. Military Commanders' Appointment and Removal:*

In the three countries presidents have the authority to appoint military commanders, who are chosen from officers with the highest level of seniority (Flacso 2007: 41). All presidents also have the right to remove commanders. However, Chilean presidents gained this right only after the 2005 constitutional reform. Until then, the term of the

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<sup>351</sup>Law 23.554, 1988.

<sup>352</sup>Law 24.059, 1992.

military commanders was fixed and the president had no authority to remove them (Flacso 2006c: 20).

#### *10.3.1.2.5. Military Justice Reform*

The scope and regulations of the Military Justice speak also to the level of civilian control over the armed forces. This indicator is measured in terms of when each country eliminated the military jurisdiction for all crimes committed by or against their forces, with the exception of those related to internal military affairs such as violations of discipline, obedience and honor. Uruguay had no need for a new military justice reform after the return of democracy since its laws were already consistent with a high level of civilian control in this regard. According to Article 253 of the Uruguayan Constitution, military jurisdiction is limited to military crimes and the event of war. In 1984 in Argentina military jurisdiction was restricted when civilian judicial review of military sentences was established,<sup>353</sup> but it was not until 2008 that Congress completely eliminated military jurisdiction for any crime committed by or against the armed forces.<sup>354</sup> In 1991 Chile also introduced a reform to the military justice system that excluded from military jurisdiction the commission of terrorist acts when the victim was a member of the armed forces and the insult of officers by civilians. However, as in the case of Argentina, the reform did not go as far as excluding all criminal acts found in the national penal code from its jurisdiction; for this reason Chile is coded as lacking a military reform even now. In addition, in Chile military tribunals frequently prosecute civilians that acted against military officers (Flacso 2007). In 2007 after the

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<sup>353</sup>Law 23.049, 1984.

<sup>354</sup>Law 26.394, 2008.

Interamerican Court on Human Rights ordered Chile to reform its military justice system,<sup>355</sup> the government introduced a bill in Congress in this regard, but most specialists considered it still to be lacking (Universidad Diego Portales 2008 and 2009).<sup>356</sup> Two new bills were introduced in Congress in 2009 with this same goal but as of June 2011 neither had won passage in Congress (Universidad Diego Portales 2010).

*10. 3.1.4. Conclusion: The power of the military and human rights policies*

Both the analysis of the military budget and of the civilian control over the military show that the relationship between military power and human rights policies is more complex than expected. Table 10.7 shows that different administrations chose to address or ignore the human rights movements' demands regardless of whether the armed forces retained a strong hold or their power has been weakened. The fact that Chile has the largest number of military officers convicted for human rights abuses despite its relatively recent constitutional reform (2005) eliminating some military privileges is strong evidence in this respect. In addition the Menem administration in Argentina and the Sanguinetti administration in Uruguay both chose to establish civilian control over the military while ignoring human rights demands for truth and justice. President Menem pardoned the military officers that were convicted under Alfonsín in exchange for their subordination and acceptance of cuts to the military budget. President Sanguinetti supported a reduction of military institutional prerogatives while condoning military insubordination related to human rights investigations (Barahona De Brito 1997:135).

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<sup>355</sup> Interamerican Court on Human Rights, *Palamara Iribarne vs. Chile*, November 22nd, 2005, Serie C 135, parte dispositiva, punto 14.

<sup>356</sup> For more information on the situation of military justice in Chile and an analysis of the government's bill of reform see the 2008, 2009 and 2010 *Informe de Derechos Humanos de la Universidad Diego Portales*. Viewed on June 30<sup>th</sup>, 2011 at [http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe\\_08/JusticiaMilitar.pdf](http://www.udp.cl/derecho/derechoshumanos/informesddhh/informe_08/JusticiaMilitar.pdf)

TABLE 10.7

THE POWER OF THE ARMED FORCES AND HUMAN RIGHTS POLICIES  
IN ARGENTINA, CHILE AND URUGUAY

	<b>Strong armed forces</b>	<b>Intermediate strength</b>	<b>Weak armed forces</b>
<b>Human rights demands addressed</b>	Aylwin Lagos Bachelet	Batlle Vazquez	Alfonsín Kirchner
<b>Human rights demands ignored</b>	Frei	Sanguinetti Lacalle	Menem De la Rúa

### *10.3.2 The power of the Catholic Church*

One of the commonly used arguments to explain the criminalization of abortion across Latin America (with the exception of Cuba and Mexico City) is the position of privilege enjoyed by the Catholic Church in the region (Htun 2003; Borland 2004; Blofield 2007). However, it is not always clear how is this influence projected or what the power of the Church really means. Different scholars have defined church influence in different ways. Some have focused on church-state relations, others on the relationship between specific governments and the Church while others have analyzed the reach the Church has in society. To explore the relationship between the power of the Catholic Church and abortion policies this section measures the power of this institution in three different ways: 1) the level of religious hegemony enjoyed by the Catholic Church (Hagopian 2009); 2) the reach the Church has in society and 3) the level of influence it has in state affairs.

While the Church has a significant role in the abortion debate in Latin America, this project found that its influence is exerted mostly indirectly through the political allies they have in power rather than through their reach in society or the constitutional mechanisms that rule church-state relations. Their indirect power is measured through coding the university education of politicians: whether they attended Catholic or secular institutions. Chile has the largest percentage of politicians attending Catholic universities which correlates with the strict abortion laws of the country. Uruguay's politicians have been mostly trained in secular public universities and have been very close to pass abortion decriminalization in their country. A more in depth analysis of the relationship between university education and abortion policies is provided in Chapter 9. The relevant issue here is that the influence of the Catholic Church on the abortion debate is mediated by the political allies it has in power, a finding that is coherent with the theoretical model advanced by this dissertation.

#### *10.3.2.1. Catholic's Church hegemony*

The level of Church hegemony attempts to capture both the number of Catholics in the population and the intensity of commitment of its members (Hagopian 2009: 275). This index results from multiplying the percentage of self-defined Catholics times the percentage of those attending services at least once a week (both sets of data are provided by the World Values Survey). Figures 10.14 and 10.15 show the two indicators used to create this index separately. The year taken was 1995-96 since that was the only World Values Survey wave that included Uruguay. Figure 10.14 shows that there is not that much of a difference between the three countries in the number of self-identified



Catholics. When asked about their religious denomination 89.7% of Argentines, 81.4% of Chileans and 77.9 % of Uruguayans identified themselves as Roman Catholics.

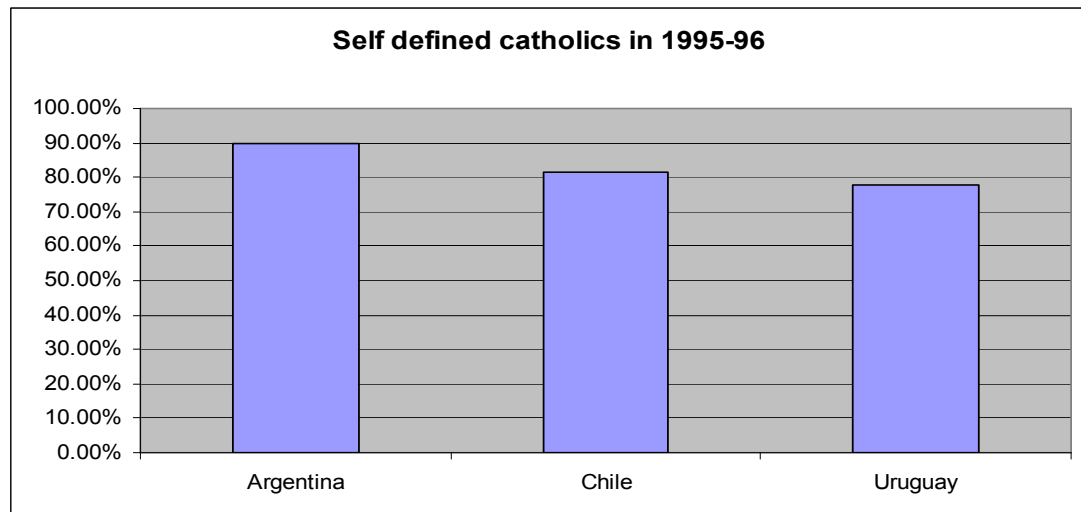


Figure 10.14: Percentage of Catholics in Argentina, Chile and Uruguay. 1995-96.  
*Source: by author based on World Value Survey. Percentages based on the response to the question on religious denomination.*

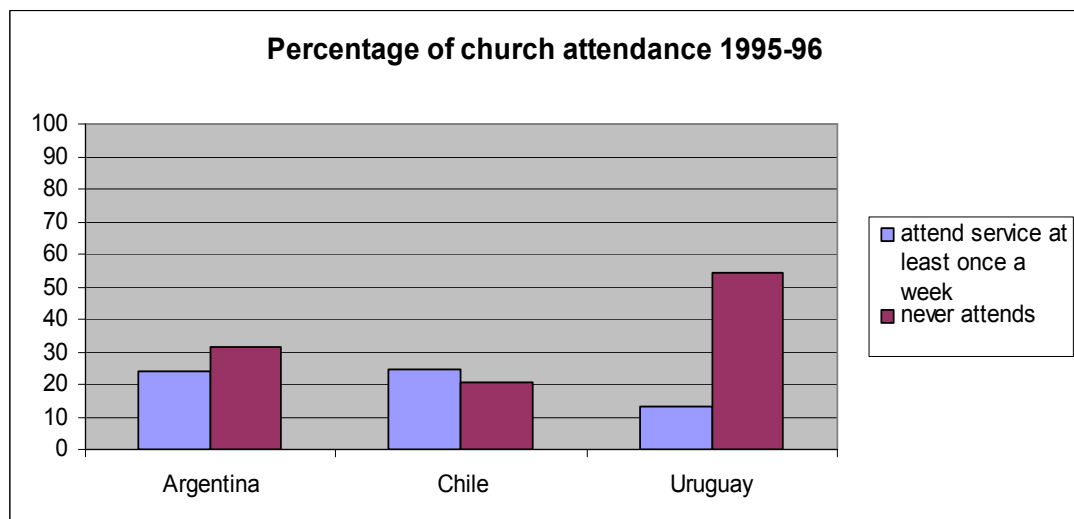


Figure 10.15: Percentage of Church attendance in Argentina, Chile and Uruguay. 1995-96  
*Source: by author based on World Value Survey. Percentages based on the response to the question on how often they attend church services.*

Figure 10.15 shows the answers to the question about the frequency of attendance to church services. Those who attend service once a week or more are the same in Argentina

(24.2%) and Chile (24.4%). In Uruguay the percentage is lower with 13.2% of the population doing so. However, the big difference between the first two countries and Uruguay is more evident in the percentages of those who never attend church services. While in Chile 20.6% and in Argentina 31.4% never attends mass, in Uruguay 54.4% never does.

The multiplication of both indicators result in the Catholic Church hegemony index which reinforces this distinction between Argentina and Chile with a higher level of church hegemony, 21 and 19 index points respectively, and Uruguay with only 10 points (see Figure 10.16). However, it is worth placing this information in the wider regional context and take into consideration that the three countries of this study are those in which the Catholic Church shows the lowest level of hegemony in the region with Mexico and Colombia showing the highest levels (Hagopian 2009: 276). Thus, the sample of cases chosen for this study is biased towards those with a lower level of Church hegemony in the region.

Given the similarities among the Catholic Church hegemony in Argentina and Chile in 1995, Figure 10.17 explores this index comparatively through the years. Although Argentina had a higher level of Church hegemony in 1990 than Chile (its level was five percentage points higher), its hegemony clearly eroded over the years, falling from 28 to 18 percent in fifteen years. In Chile, by contrast, levels of religious hegemony fluctuated over the years between 20 and 25 percentage points, with an important increase in the year 2000 (when it peaked at 25.3 percent).

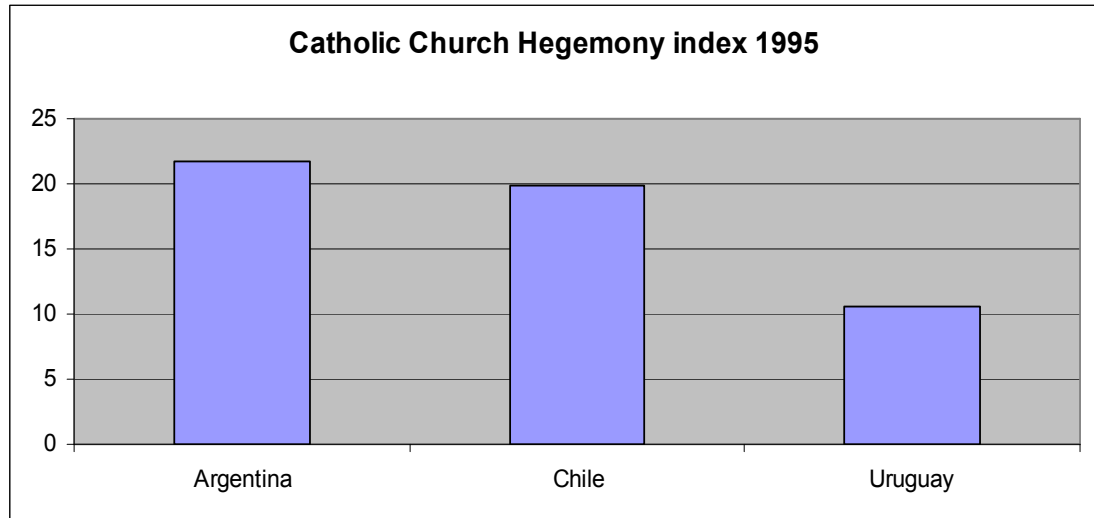


Figure 10.16. Catholic Church Hegemony Index. Argentina, Chile and Uruguay 1995.  
*Source: by author based on World Value Survey data.*

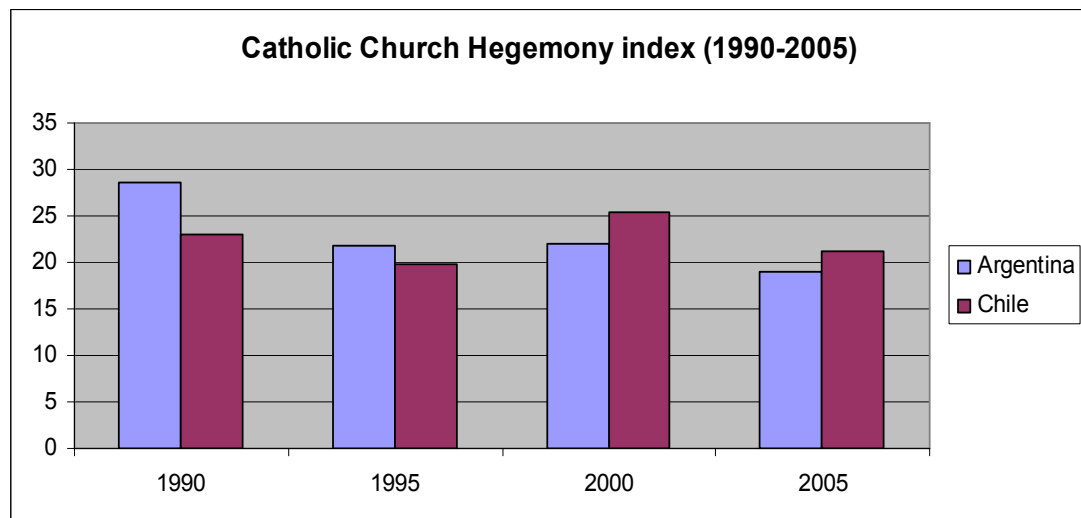


Figure 10.17. Catholic Church Hegemony Index. Argentina and Chile. 1990-2005  
*Source: by author based on World Values Survey data.*

The Catholic Church hegemony index can explain some of the differences in these countries' abortion policies. Uruguay has a significantly lower hegemony index (10) than the other two countries, and it is here where the decriminalization of abortion was passed in Congress and only failed because of President Vazquez's veto. However, it does not explain the large differences between Argentina and Chile's abortion policies. Both

countries show similar figures in the Church's hegemony index but Chile has a much more restrictive abortion policy and no apparent prospects of change in the near future. By contrast, Argentina allows exceptions to the criminalization of abortion and the number of bills introduced in Congress that would permit either partial or complete decriminalization have significantly increased in recent years (See Chapter 7).

#### *10.3.2.2. The Catholic Church's reach in society*

To measure the reach of the Catholic Church in society I provide statistics of the percentage of students attending primary and secondary Catholic schools in each of our country cases (Hagopian 2009: 21) (See Figure 10.18). While in the previous section Uruguay showed a more secular profile with a significantly lower hegemony index, it is surprising that in 1985 more students were attending Catholic primary schools in this country (14.8%) than in the other two countries (around 13% for both Argentina and Chile). This was not the case in secondary schools, however. In Uruguay only about 10% of students attended Catholic institutions in both years, a level much lower than in the other two countries.

The trend in Figure 10.18 shows that in Uruguay there is a decreasing percentage of students attending Catholic schools, at both the primary and secondary level. In Chile the opposite is true, while in Argentina attendance at Catholic primary schools has remained stable. Unfortunately the data on secondary schools for 1999 is missing, which prevents a comparison in this respect.

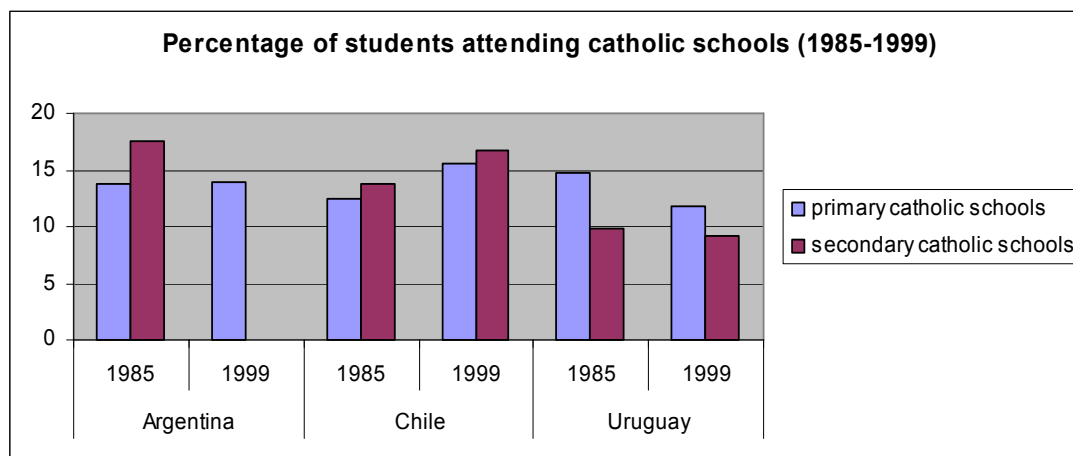


Figure 10.18. The reach of the Catholic Church in Society.  
Argentina. Chile and Uruguay 1985-1999.

Source: By author based on data from Hagopian 2009.

\*There is no data available on Argentina's secondary catholic schools in 1999.

The inclusion of this measurement to analyze the influence of the Catholic Church in these countries brings Uruguay closer to the cases of Argentina and Chile. Thus, if no large differences are found between the reach the Catholic Church has in society, this cannot explain variation in abortion policies in the three cases.

#### 10.3.2.3. The Influence of the Catholic Church in State Affairs

In order to measure the level of influence of the Catholic Church in state affairs I constructed an index that includes six indicators coded as 1 if the specific characteristic was present and 0 if it was absent. Thus the best possible score for Church influence in state affairs is 6, and the lowest is 0. The five indicators are the following: 1) Catholicism is defined as the official religion, 2) there is direct state support for the Catholic Church, 3) there are tax exemptions for the Catholic Church, 4) there is religious education in public schools, 5) there is a requirement that the president has to be Catholic, and 6) the country celebrates Tedeums.<sup>357</sup> Table 10.8 shows the coding of these characteristics for

<sup>357</sup> Explain what they are.

each country based on the information given by the Reports of Religious Freedom of each country. Figure 10.19 shows the ranking resulted from the index.

TABLE 10.8  
LEVEL OF CHURCH INFLUENCE IN STATE AFFAIRS  
IN ARGENTINA, CHILE AND URUGUAY.

	<b>Argentina</b>	<b>Chile</b>	<b>Uruguay</b>
Catholicism is official religion	No	No	No
Church receives direct state support	Yes	No	No
Church receives tax exemptions	Yes	Yes	Yes
There is religious education in public schools	No	Yes	No
The President has to be Catholic	Yes, until the Constitutional reform of 1994	No	No
Celebration of Tedeums	Yes. Ecumenical since 2008.	Yes. Ecumenical since 1970s	No

The results of this index reinforce the fact that Uruguay is a much more secular society than the other two, which is in consistent with the common wisdom. However, Chilean society is usually considered much more Catholic than the Argentinean, and while the previous figures indicate the two societies are closer in terms of Catholic hegemony than otherwise believed, this index suggests an Argentine Catholic Church that is more influential in state affairs than the Chilean, at least for most of the period analyzed in this study.

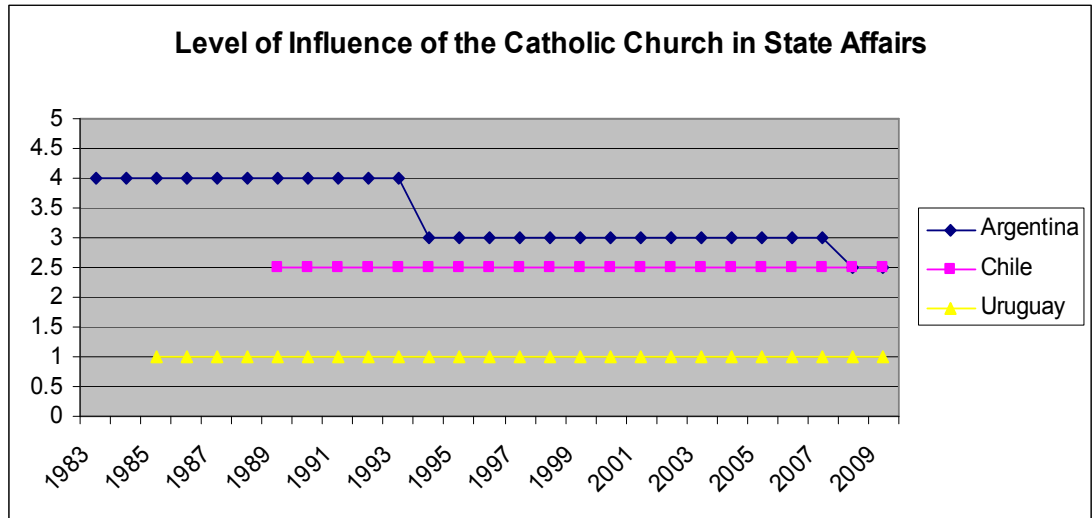


Figure 10.19. Index of Church Influence on Politics in Argentina, Chile and Uruguay. 1983-2008.

*Source: by author based on information provided by Report of Religious Freedom.*

Of the indicators considered to build this index there are three that deserve more explanation. One of the traits that make the separation between state and church blurrier in Argentina is the fact that Article 2 of the Argentinean constitution requires that the state “sustain” the Roman Catholic worship. This constitutional obligation has been interpreted as the need of the state to pay for the salaries and pensions of priests and bishops. Figure 10.20 and 10.21 show the amount of the yearly state budget that has been devoted to the Catholic Church. While the three countries have tax exemptions for most Catholic Church activities, these are equal to all other religions that register with the state, and thus, Argentina is the only one that offers certain benefits to only one religion.

The second item that makes the Argentinean Church more influential than the Chilean one is that until the 1994 Constitutional Reform the president of the country had to be Roman Catholic. Finally, it is worth considering the importance of the celebration of Tedeums: in Latin “to you, God.” This is a special Catholic ceremony to thank God on the occasion of presidential inaugurations or national holidays. This ceremony has been

in place in Argentina and Chile since independence. While in Chile in the 1970s President Salvador Allende decided to make this an ecumenical celebration inviting other faiths to participate, in Argentina this was an exclusively Catholic celebration until 2008 when President Cristina Kirchner called for the inclusion of other creeds. However, even in this case the involvement of other religions is limited to the participation of one major representative since the main ceremony has not been changed to accommodate non-Catholic rituals. While the celebration of Tedeums may appear to play a purely symbolic function, in Argentina the Catholic cardinal or bishop in charge of the ceremony usually takes advantage of having the president as his audience to make major criticisms of the government's economic, political and moral policies. Evidence of this has been the fact that in 2005 president Kirchner decided to move the May revolution celebration to the province of Santiago del Estero to avoid Cardinal Bergoglio's criticism in the Tedeum to be celebrated in the Buenos Aires Cathedral. In 2006 and 2007 in the context of a confrontation with the Church, he was the first President ever not to attend the Tedeum to be celebrated on July 9<sup>th</sup>, Argentina's Independence Day.

While these three characteristics make Argentina's church more influential in state affairs than the Chilean, it is worth noting that the trend in Argentina converges with Chile in recent years. There seems to be an erosion of the Church's influence in Argentinean politics, as evidenced by the 1994 constitutional reform and the participation of other creeds in the Tedeums, while the level of church influence in Chile has been quite stable. A bill was also introduced in Congress in 2006 that would have put an end to



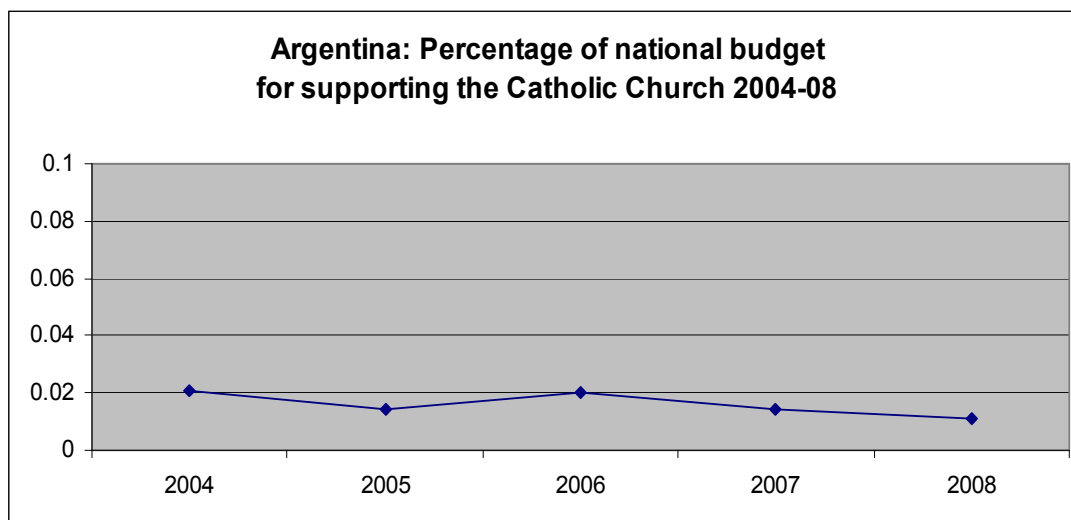


Figure 10.20. Percentage of National Budget for Supporting the Catholic Church in Argentina. 2004-08

*Source: by author based on data from the Conferencia Episcopal Argentina*

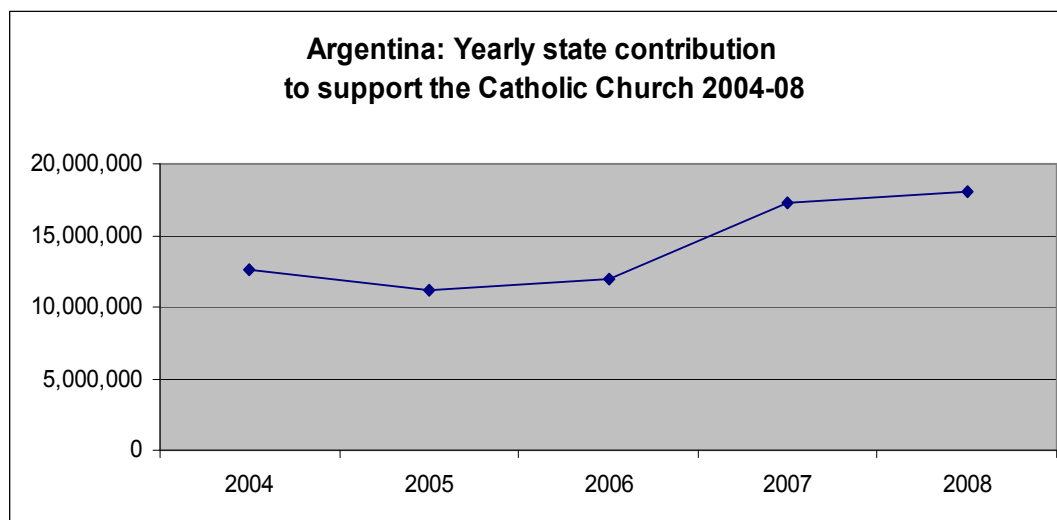


Figure 10.21. Argentina's Yearly State Contribution to Support the Catholic Church 2004-08.

*Source: by author based on data from the Conferencia Episcopal Argentina*

the funding of church activities through the national budget,<sup>358</sup> which may indicate a deepening of the erosion of the Church's influence. However, the threat to Church's

<sup>358</sup>In 2006 legislators Franco and Dellepiane introduced a bill (6389-D-2006) which states that the "sustaining" of the worship should rely only on the faithful and not on all Argentines.

power is not yet real, since the bill has not only not been voted on in a plenary session of Congress, it has not yet even been debated in the relevant congressional committees.

In addition, only in Chile is it required that public schools offer religious education; Argentina and Uruguay, by contrast, have completely secular public school systems. While participation in these classes is optional, with parents having the option to waive their children's participation, and schools are also expected to offer the creed requested by parents, in practice 92% of them offer Catholic instruction (Hagopian 2009).

#### *10. 3.2.4. Conclusion: The Power of the Catholic Church and Abortion*

Uruguay has the least hegemonic Catholic Church of the three cases and a clear separation of Church and State, which correlate with being the country which has come the closest to decriminalizing abortion. However, surprisingly the reach the Church has in society is very similar to that of Argentina and Chile.

Argentina and Chile showed similar results in terms of Church hegemony notwithstanding their different abortion policies. In addition, contrary to what might be expected based on Chile's highly restrictive abortion laws, it is not Chile but Argentina that has the least separation of church and state. The analysis of the Church's indirect influence through elites in power provided in Chapter 9 provides a better explanation to the position of each of these cases in the road towards abortion decriminalization.

## CHAPTER 11

### CONCLUSION

When do non-bread and butter issues get addressed by governments? Confirming the initial hypotheses posed in the introductory chapter, a strong social movement was found to be a necessary condition for these issues to be framed as such and be introduced in the government agenda. When and how will movements' demands be advanced by the state? Social movements need to work with allies in power for bills to be introduced, debated and passed, for government programs to be implemented and for institutions to be created to address the movements' demands.

The present study was set up to make contributions at multiple levels. On the more general level the goal was to understand whether social movements matter and if so, under what conditions they would increase their chances of having an impact on state policy. The theoretical model presented here aimed at overcoming the debate in the literature on social movements' outcomes between internal and external conditions for movement success. Both the movement's internal strength (measured in terms of supporters) and the availability of allies in power were found to be relevant. In addition, working with allies was found to be not only an external characteristic to the movement, but one that implies internal strategic decisions on the part of the movement.

Second, the variables used in the theoretical model had been until now applied mainly to understand cases of social movements in the developed world. The topic of

movements' outcomes in Latin America has not received enough attention from scholars. This project was aimed at filling the void for a systematic comparative study of movements across time and countries.

Third, whereas most studies on social movements' outcomes focus on one or at most two dimensions of state response, this project studies the impact of movements along all five dimensions of state response: access to government, setting the agenda, government policy, policy implementation, and institutional change. This made it possible to analyze the impact of the movement not only in the setting up of the government agenda, but also at the level of monitoring the implementation of government programs and the setting up of government institutions to advance its demands. The human rights movement in Argentina has been active monitoring trials of human rights abuses and has been ready to quickly demand the acceleration of the judicial proceedings or the elimination of privileges in prison for those convicted when activists believed these situations were undermining the achievement of "real" justice. These demands were addressed by the creation of two government programs.<sup>359</sup> The women's movement in Uruguay has been influential in drafting the post abortion care guides that were later adopted by the Health Ministry. In addition, the movement has been monitoring the guide's implementation in hospitals nationwide.

A more specific contribution to the case studies analyzed in this project is the systematic description of each of these movements' history of interactions with each democratic government. While there have been chronicles of the human rights movement in the three countries (in particular in the Argentinean case given the relevance of the

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<sup>359</sup> Program Truth and Justice and Unit of Assistance and Following of Human Rights trials

trials to the military junta to the field of human rights and the well known case of the Madres de Plaza de Mayo), most of these studies focus on the first elected governments and do not deal with more recent events. In terms of the women's movement and their campaign to decriminalize abortion I have found no study surveying the evolution of this process in these countries in the English language. In addition, the systematic character of the analysis of these movements' impact provides a better basis for comparison than a mere chronology of events.

Finally, this dissertation also makes a methodological contribution. It moves beyond descriptive accounts of movement's outcomes and the use of statistical methods that show correlations between movements' goals and state policies to *explain how* movements impact state policy by making a self-conscious attempt to lay out the casual mechanisms in place.

The research showed findings at different levels. The first section synthesizes the theoretical model and shows how it explains the different cases. A second section explores the different routes social movements can take to work with allies in power and have their demands addressed. The third section summarizes the findings specifically related to the human rights and women's movement. A final section presents the limitations of this study and avenues for future research.

### 11.1. Theoretical model

There are two conditions for a social movement to increase its impact on state policy. The movement has to be strong in terms of their ability to attract supporters, and allies have to be available in power to work with towards advancing its demands. Tables 11.1 and 11.2 apply the theoretical model to the human rights and women's movement in Argentina, Chile and Uruguay since the time of the democratic transitions until 2007. Based on the two social movements analyzed here, allies are defined in both tables based on ideology, with leftist and center left governments coded as allies and right and center right governments as non-allies.

The tables show how when both conditions –strong movement and allies in government- were present, the movements' demands were more likely to be addressed by the state and reform took place in each issue area. The shaded areas show the governments that were most responsive to each of the movements.

The cross tabulation of these two variables explain also the difference of degree between those administrations that were highly responsive to the movement from those that were only moderately responsive. A strong movement and the presence of allies ensured a strong response to the movements' demands in the cases of the Alfonsín and Kirchner administrations for the human rights movement in Argentina and that of the Vázquez administration for the women's movement in Uruguay. When the movement was only moderately strong, even when allies were available in government, the impact on state policy was only moderate, such as the response of the administrations from the *Concertacion* to the human rights movement in Chile and that of the Kirchner administration to the women's movement in Argentina.

TABLE 11.1

THEORETICAL MODEL APPLIED TO THE CASE OF

THE HUMAN RIGHTS MOVEMENT

IN ARGENTINA, CHILE AND URUGUAY

1983-2007 \*

	<b>Strong movement</b>	<b>Medium strength movement</b>	<b>Weak movement</b>
<b>Presence of movement allies</b>	Alfonsín 83-89 Kirchner 03-07 Vázquez 04-09	Aylwin 90-94 Frei 94-00 Lagos 00-06 Bachelet 06-10	
<b>Absence of movement allies</b>	Batlle 00-05  Menem 95-99 De la Rúa 99-01	Sanguinetti 85-90 Sanguinetti 95-00 Menem 89-95	Lacalle 90-95

The third variable of the model –presidential weakness- helps explain the difference of degree of response among the different leftist administrations. Weaker presidents in need for support from leftist constituencies were more likely to address movements’ demands in exchange for increasing the legitimacy and support for their administration. This was the case of Néstor Kirchner in Argentina (elected with only 22% of the vote) who made the issue of human rights one of the pillars of his administration in exchange for increased support from leftist constituencies. This variable also explains Kirchner’s appointment of a Health Minister and a female Supreme Court judge who publicly admitted to favor the decriminalization of abortion.

TABLE 11.2

THEORETICAL MODEL APPLIED TO THE CASE OF

THE WOMEN'S MOVEMENT

IN ARGENTINA, CHILE AND URUGUAY

1983-2007

	Strong movement	Medium strength movement	Weak movement
<b>Presence of movement allies</b>	Vázquez 04-09	Kirchner 03-07	Aylwin 90-94 Frei 94-00 <sup>360</sup> Lagos 00-06 Bachelet 06-10 Alfonsín 83-89
<b>Absence of movement allies</b>	Batlle 00-05	Menem 89-95	Sanguinetti 85-90 Sanguinetti 95-00 Lacalle 90-95 Menem 95-99 De la Rúa 99-01

\* *Allies are defined here based on ideology. Shaded sections show those governments that have been more responsive to the human rights movement*

Presidential weakness also explains the outlier in this model: the case of President Jorge Batlle in Uruguay -who although he was towards the right of the ideological spectrum and was the candidate of the *Partido Colorado* closely associated with the military dictatorship- addressed the human rights movement's demand for truth for the first time since the democratic transition. In the first round of the presidential elections he was outvoted by the *Frente Amplio*'s candidate Tabaré Vázquez, who received 40.1% of

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<sup>360</sup> The Aylwin and Frei administrations are coded as potential allies of the women's movement given their position in the ideological spectrum. However, if their Christian affiliation is taken into account they would not qualify as allies of the women's movement in an issue such as abortion.



the vote (Batlle came in second with 32.8%). Batlle won the second round of balloting with 54.13% thanks to the support of the *Partido Blanco* (who preferred a president from the *Partido Colorado* than from the leftist *Frente Amplio*). Thus, even when Batlle won with 54% of the vote, he could not have been oblivious to the fact that almost half of the country had voted for Vázquez and that Uruguayan society was veering towards the left. His moderate human rights policy of addressing the ‘demand of truth’ but ignoring the claims for justice can be interpreted as a strategic move to gain some legitimacy and support among leftist constituencies, which were a majority in the country at the time.<sup>361</sup> The case of President Batlle shows that in a situation in which a social movement is strong and the government is weak and needs support from the left, even ideological opposition to the movement can be overcome in the search for political legitimacy from the leftist electorate.

#### 11. 2. Working through allies in power: three different routes.

The theoretical model emphasizes the importance for social movements to work with allies in power for their demands to be addressed. The analysis of our six cases across time has shown that there are two different ways social movements can forge such alliances to meet their goals: a) movements can find allies in Congress and work with them to pass legislation that will advance their demands as in the case of the women’s movement in Uruguay, or b) movements can find an ally in the president as in the case of the human rights movement in Argentina. When a movement finds no close political allies in neither the legislative or executive branch, it has two other options: a) to fight its cause in court as in the case of the human rights movement in Chile, or b) if the

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<sup>361</sup> Interview with Jaime Yaffe, Universidad de la República, Montevideo, September 2nd, 2008.

constitution allows it, to resort directly to the population by putting their demands through a popular vote, as in the case of the human rights movement in Uruguay. The next sections analyses each of these scenarios and suggests the possibility of generalizing these findings to other similar cases.

#### *11.2.1. The Congress' route: Abortion decriminalization in Uruguay*

When the left reached power in Uruguay in 2004 social movements expected to have better access to government officials and to gradually have their demands addressed. This was only partly the case, at least for the women's movement. *Frente Amplio* legislators have always worked closely with women activists but after the 2004 elections they enjoyed majorities in both chambers which increased the chances of the women's movement of finally passing abortion reform. The close collaboration between Senators like Monica Xavier and Margarita Percovich and the campaign to decriminalize abortion is described in detail in Chapter 7. In addition the creation of the *Bancada Femenina* (Women Caucus) in 2000 made up of female legislators of all parties was another key ally to push for the debate of the decriminalization of abortion in Congress.

However, this close relationship with Congress was contrasted by the opposition the movement faced within the executive branch. During his administration Tabaré Vázquez met only once with the women's organizations heading the campaign for decriminalization, in which he re-stated his opposition to abortion and asked the movement to postpone their struggle until he was out of office. This lack of access to the presidency was coupled with initiatives aimed at stalling the movements' demands. After the law decriminalizing abortion was passed in Congress on November 2008 Tabaré Vázquez exercised his veto power.

The Uruguayan case is an example of the limitations of the strategy of working solely with allies in Congress in the presence of a president with a strong opposition to the movements' demands. The strong presidential system present in our three countries make winning the president's favor or at least avoiding his or her strong opposition a necessary step towards ensuring a movement's cause is advanced. Current President Pepe Mujica has already stated that even though he would not sponsor a bill to decriminalize abortion, he would not make use of his veto power if such a bill were passed in Congress. This scenario indicates that the presence of allies in Congress plus a president that is indifferent about the issue at stake might be enough for the movement to have their demands addressed. Following the evolution of the current bill proposing abortion reform in Uruguay under the Mujica administration will be a good test to see if this finding holds.

#### *11.2.2. The President's route: Justice for Human Rights Abuses in Argentina.*

The demand for justice for human rights abuses has been fully addressed only by the President in Argentina. This was the case on two occasions: during the first democratic government when President Raúl Alfonsín launched the trials of the members of the military juntas, and when Néstor Kirchner assumed power in 2003 and made his alliance with the human rights movement one of the defining traits of his presidency. Having a president strongly committed to justice for human rights abuses made it fairly "easy" for the movement to have their demands addressed. While a bill to nullify the impunity laws had been in the Argentine Congress for years, it was passed only after President Kirchner gave his full support to this initiative. Similarly, President Kirchner's decision to impeach the Supreme Court inherited from Menem's mandate was what allowed the impunity

laws and the presidential pardons to be declared unconstitutional by the newly elected Court (See Chapter 2). The close alliance with a president enabled the human rights movement to have its demands addressed in a manner and speed that was unimaginable until that time. It also made a relationship with legislators for the most part unnecessary. It was Kirchner's signal in favor of the movement that was key for his party to vote for these bills. A similar dynamic was present in the approval of gay marriage in July 2010. The bill has been in Congress for a while, sponsored by a small group of leftist legislators who did not have the support of the majoritarian party (Kirchner's *Frente para la Victoria*) and thus was not accorded priority status on the congressional agenda and was not even debated in plenary session. It was only when President Cristina Fernandez de Kirchner expressed her support for the bill that her party aligned behind her to vote in favor of the initiative. It is the hope of the women's movement that a similar process will follow in the case of the decriminalization of abortion. President Fernandez de Kirchner has not expressed her support for abortion reform but has given her party green light to discuss and vote on the initiative. The current bill, sponsored by an alliance of more than 50 legislators from different parties (mostly leftists), has begun to be discussed in December 2010.

Unlike the demand for justice, that of truth was always addressed by presidential initiatives in the three countries. Argentina and Chile did so immediately after their democratic transitions. In Uruguay however, it took fifteen years for President Batlle in 2000 to launch the *Comisión para la Paz* (See Chapters 2, 3 and 4).<sup>362</sup> The less

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<sup>362</sup> Uruguay had a congressional truth commission in 1985 previous to Batlle's *Comisión para la Paz*. However, the final report was not as significant as that of the other two countries. The commission did not produce a "national truth" in that the findings were not acknowledged by the government and drew no reactions or statements from the armed forces.

confrontational and controversial character of the demand for truth in comparison with that of justice allowed Presidents to launch truth commissions without excessively antagonizing conservative sectors with ties to the military dictatorship and the armed forces.

Presidential sympathies for the movement's cause are not a necessary condition for the president to display policies favorable to the movement. President Alfonsín was a well known human rights activist and member of one of the main human rights organizations –APDH- before coming to power. Although his government implemented courageous human rights policies like the launching of the trials against the military junta, its goal was always to deliver limited justice and thus it differed with that of the human rights movement which always demanded accountability for every single abuse. This became clearer towards the end of his mandate with the passing of the *Punto Final* and Due Obedience laws. By contrast President Kirchner had no history of a strong commitment with human rights issues but made them one of the defining traits of his administration once in power. While pre-existing sympathies with a movement would obviously not hurt the movements' cause these examples show that they are not necessary or sufficient.

#### *11.2.3. The judicial route: Human Rights trials in Chile*

Chile presents a situation in which the human rights movement found no support for its demand for justice either in the executive or the legislative branch. The Senate has been packed with legislators who had held positions of power during the Pinochet dictatorship ever since the democratic transition took place, making it impossible for any bill calling for trials to advance in the legislative process. The movement received

support from Socialist legislators but only enough to stall government proposals against their interests, not to push forward positive measures such as their main demand: the repeal of the amnesty law.

Given that the political route was closed, the movement tried going directly through the courts. In spite of the presence of the amnesty law human rights lawyers found legal loopholes that allowed the cases of the disappeared to proceed (See Chapter 3). The paradox is that the Chilean case is the example of the movement taking the court's route even though the country's judicial system prohibits human rights organizations from being the complainants of cases since only victims or relatives of victims could play this role. However, if not as a direct complainant the movement played a key role in gathering and preserving all the relevant information and documents for the judicial cases to proceed and lending the emotional support necessary for relatives to endure lengthy judicial processes.

The court's route was also taken by the human rights movement in Argentina during the 1990s when Menem's pardons to the convicted military juntas closed all political instances for accountability for human rights abuses. In this case the initiation of international human rights trials and domestic trials based solely on cases of children's abduction (which had been left outside the scope of the impunity laws and pardons) allowed the movement to remain active, motivated, and strong in a period in which it was hard to be hopeful.

The women's movement has not tried the court's route in any of the cases studied in this project. It has been however a successful option in other Latin American countries such as the Colombian case. Relying on the work done by the women's movement until

that time, in 2005 NGO Women's Link Worldwide presented a case to the Supreme Court to decide on the constitutionality of the complete ban on abortion. In May of 2006 the Court ruled in favor of legal abortion in cases of risk to the woman's life or health, rape, incest, and serious fetal malformations (Roa 2008). Given the absence of political allies in power to push for abortion decriminalization in Chile, this could be an avenue for reform if the women's movement were to introduce a legal case against the complete ban on abortion. However, in Colombia the movement carefully studied the available judicial opportunities before introducing their claim. Monica Roa, the lead attorney on the case, explained how they chose the time to move forward based on two circumstances: the first female magistrate and other progressive judges had been appointed and the court had recently recognized the legal value of international human rights arguments and used them in its rulings (Roa 2008). Consistent with the findings of this dissertation, the availability of allies in power –in this case in the judiciary- is one necessary condition for reform to take place. If this route were to be tried in Chile the timing of the initiative would be crucial in achieving a favorable ruling.

#### *11.2.4. A route to avoid: popular referendums*

When all avenues seem closed to a social movement and there are no allies available either in the legislative, executive or judicial branch it may be tempting to resort to consulting the citizenry directly, in particular if public opinion shows a wide support for the movement's demands. This was the case with the human rights movement in Uruguay after the democratic transition. The Sanguinetti administration showed only indifference towards the movement followed in 1986 with the passage of an amnesty law (*Ley de Caducidad*) preventing the prosecution of those responsible for human rights abuses.

Given the wide support that human rights trials had among the population (see public opinion polls in Chapter 10) the human rights movement decided to call for a popular referendum to challenge the *Ley de Caducidad*. The movement was able to gather enough signatures as mandated by Article 79 of the national constitution for the referendum to take place (See Chapter 4). However, the referendum was lost and the amnesty law was ratified by the citizenry giving the law a legitimacy that it had lacked before.

In 2009 the human rights movement tried the referendum route again. Although a leftist government sympathetic with the human rights movement had come to power in 2004, Tabaré Vázquez made it clear from the start that he would not repeal the amnesty law and instead would work for truth and justice within the existing legal framework (See Chapter 4). In 2007 human rights activists decided to call for a second referendum to accomplish their long held demand of repealing the *Ley de Caducidad*. The idea behind this decision was that in 1989 people's votes were influenced by the threats of the Sanguinetti administration that lifting the amnesty law might lead to a new coup d'état. It was thought that twenty years later the likelihood of such an event was nil and people would be able to express their support for the repeal without any fear. However, on October 2009 the movement suffered a new defeat and Uruguayans once again ratified the *Ley de Caducidad*.

The consequences of this double failure for the demand for justice for human rights abuses have been devastating. In 2009 Pepe Mujica, a former guerrilla member and political prisoner, was elected president in Uruguay. With the *Frente Amplio* having congressional majorities and a President who was a victim of the military dictatorship, the human rights movement expected Congress to finally repeal the *Ley de Caducidad*



with no opposition. However, when *Frente Amplio* legislators introduced a bill in Congress to put an end to the amnesty law, President Mujica expressed his opposition to the initiative since it went against the people's will as expressed in two referendums. In the end, the bill failed to pass in the Lower Chamber due to one of the government's party own legislators, Victor Semproni, who in line with Mujica's views voted against the repeal.<sup>363</sup>

There is a fundamental problem with using popular referendums to decide on human rights issues. According to Italian philosopher Luigi Ferrajoli human rights cannot be subject to political decisions and cannot be limited by others: neither by the state nor by any democratic majority no matter how large it might be. No majority can decide on the rights of a minority (Ferrajoli 2006). In this case, the right to know the truth and have access to justice for human rights abuses cannot be trumped by the decision of the majority of citizens. The Interamerican Court of Human Rights agreed with this principle in its ruling against the state of Uruguay in which it stated that in cases of serious violations of international law the protection of human rights represent a limit to the rule of majorities. In line with this view, in 2009 the Uruguayan Supreme Court ruled against the *Ley de Caducidad* in the case Sabalsagaray Curuchet stating that human rights cannot be sacrificed in the name of the will of the majority, the general interest or the common good.<sup>364</sup> It is in the interest of human rights movements to respect this principle and rely on means other than referendums to have their demands addressed, no matter how tempting it may be to have a majority of the population support their cause. The lessons

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<sup>363</sup> See *Página 12*, “El Congreso de Uruguay extendió la impunidad” May 21st, 2011. Viewed on May 21st, 2011 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>364</sup> See *Página 12* “Los Límites de la Voluntad Popular” May 24<sup>th</sup>, 2011. Viewed on May 21st, 2011 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

from Uruguay show how laws that go against human rights principles, such as the *Ley de Caducidad*, can gain an otherwise unimaginable legitimacy through this route, which makes them stronger and harder to repeal in the future.

#### *11.2.5. Working with allies in power: A recipe for cooptation?*

The availability of allies in power is usually identified in the literature as a characteristic of the context in which the social movement exists. However, the mere availability of potential allies does not imply that the movement will choose to push for their demands through political insiders. In a context in which politicians are questioned and have lost credibility, social movements in the developing world could perceive more disruptive and intransigent strategies to be a better tool. In addition, one of the dangers of working too closely with allies in power that is always lurking among activists is that of being used and/or co-opted by political parties, a main reason why movements might choose to avoid this route. By cooptation I mean the appropriation of the movements' struggle in a way that betrays the original goals of the movement. While this is a real risk, it is one that movements need to face since working together with allies in power has proven in these cases a necessary step to increase their chances of having their demands addressed.

The relationship between social movements and political parties is a complex one and varies across the cases based on the level of institutionalization of the party system. Chile and Uruguay have historically had a more institutionalized party system as compared to Argentina.<sup>365</sup> In addition, the economic and political crisis Argentina faced in 2001

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<sup>365</sup> In their 1995 study of party system institutionalization Mainwaring and Scully classify Argentina as a case of an institutionalized party system. However, they make it clear that it is not a clear cut case, in particular when compared with the highly institutionalized cases of Uruguay and Chile. After the 2001 economic and political crises when one of the historic parties –UCR– almost disappeared and the other

further eroded the party system and the general credibility and legitimacy of all political parties and politicians alike. Chilean and Uruguay parties have traditionally “encapsulated” social organizations as unions and social movements (Mainwaring and Scully 1995). This has not been the case in Argentina in which parties have been much weaker than unions for example. This has meant that social movements had in Argentina a wider space to emerge, develop and exert their influence than in Chile and Uruguay. This can also be part of the explanation of why a weak president such as Néstor Kirchner decided to find a source of legitimacy in alliances with social movements and not among other political parties. While this is a topic for further exploration beyond this dissertation, it does speak to the issue of cooptation. The stronger the parties, the larger the risks of this happening, and the more careful movements should be when working closely with allies in power.

### 11.3. Dissecting the findings

The previous sections have analyzed general findings which can be applicable to other social movements and country cases. This section synthesizes the findings specific to the human rights and women’s movements.

The goal of this project was to provide evidence of how these two general conditions –movement strength and allies in power- were able to explain state policies in the area of human rights and abortion in Argentina, Chile and Uruguay. But, how does a social movement display its strength? And how do we identify the availability of allies?

Through the detailed exploration of these cases this project was also able to identify more

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main party –PJ- ran divided in three different parties, Argentina’s party system is showing signs of weaker institutionalization.

specific descriptions of how these conditions work. This is the topic of the following sections.

#### *11.3.1. Movement strength*

In terms of movement strength, a difference was found between the two types of social movements. The human rights movements relied more on their power to mobilize people for their cause while the women's movements gained strength from the support of key social actors such as unions, professional associations, universities and other social movements. Women's movements have not been able to mobilize numbers of people similar to those of the human rights movement. Human rights demonstrations have gathered a hundred thousand people at some point in time both in Argentina and Uruguay, while the maximum the women's movement have been able to gather in any of the three countries was twenty thousand people during the *Encuentros Nacionales de Mujeres* in Argentina (see Chapters 6 and 7). In the case of the women's movement the support given by key actors has been a better indicator of movement's strength and a good predictor of which women's movements had a larger impact on state policy.

#### *11.3.2. Allies in power*

Identifying the movement's potential allies led to the identification of its opponents and showed how crucial the latter might be in determining the success or failure of the social movement.

This dissertation has found that potential allies for both human rights and women's movements can be identified based on ideology. Leftist governments are more likely to address the demands of both movements while right-wing governments are more likely to oppose them or at least ignore them. In fact, ideology has proven to be even better at

predicting opposition to the movements than the availability of allies. All right-wing governments opposed abortion decriminalization and almost of all them (with the exception of the Batlle administration in Uruguay) ignored the human rights movements' demands for truth and justice. By contrast, the Frente Amplio in Uruguay was the only leftist party that has included abortion decriminalization in its platform, while all right wing parties in Uruguay and Chile have introduced a clause defending life from the moment of conception in their platforms, although leftist president Tabaré Vázquez vetoed the bill decriminalizing abortion passed by Congress in November 2008.

When measuring the availability of allies in other ways similar findings followed. In the case of the human rights movement politicians were coded based on their relationship with the military dictatorship (whether they have been victims, human rights activists, guerrilla members or occupied key power positions). Contrary to expectations, victims of the dictatorship and guerrilla members have not always fully supported the demands of the human rights movement. This was the case of Argentine president Carlos Menem who, having been imprisoned by the military regime, pardoned the military junta members convicted for human rights abuses during the administration of Raúl Alfonsín. In addition, this has been the position of current Uruguayan president Pepe Mujica who was a member of the *Tupamaros* and a political prisoner of the dictatorial regime but has notwithstanding recently opposed the repeal of the amnesty law by Congress. By contrast, those who have held positions of power during the military dictatorship have rejected the human rights movements' demands without exception. The presence of politicians with links with the dictatorships has stalled many initiatives to address human rights movements' demands in all three countries. The case of Chile in which the Senate

has been packed with supporters of Pinochet shows how the strong presence of opponents can trump human rights initiatives to favor the movements' cause even when leftist administrations are in power.

In the case of the women's movements' campaign to decriminalize abortion, the increase of women in power positions does not imply an automatic increase of allies. It is the increase of women committed to gender issues that matters the most. Gender quotas in Argentina have had the effect of increasing the general number of women in Congress, both of those with strong gender consciousness and those who embrace traditional gender roles. In this sense, quotas have increased the availability of both allies and opponents to abortion decriminalization. Notwithstanding this fact, the movement in Argentina has made good use so far of the presence of feminists in Congress, gradually increasing joint work with them. On the other hand the creation in Uruguay of a women's caucus has resulted in a strong support base for the women's movement. Even those female legislators who belong to the conservative *Partido Blanco* have expressed their will to, if not vote in favor of, at least discuss the issue of abortion.

### *11.3.3. Movement Strength, Ideology and Opposition.*

The absence of a strong opposition to the movements' demands is as important as the availability of allies. For a leftist government to be able to act in agreement with its ideological principles, addressing the movements' demands should be considered a strategically sound move: it should either gather support among current or new constituents or at least should not imply large political costs in terms of either losing constituents or antagonizing previously indifferent ones. Herein lays the reason why the strength of the movement matters in the first place. Movement strength matters not just

for the power to call attention to a new rights issue, but also for mobilizing support for those politicians that address their demands.

This is where the weakness of an elected president comes to play a role. A leftist president elected with less than 30% of the votes –as was the case of Néstor Kirchner in Argentina- would find it attractive to address social movements’ demands in order to increase his legitimacy and support among leftist constituents. This is particularly so in a non- ideologically defined party system as the Argentinean one. If Kirchner wanted to differentiate himself from the former president from his same party –Carlos Menem- which had situated his administration at the right of the ideological spectrum, one way of doing so was to show his commitment to leftist ideologies. Addressing social movements’ demands such as those of the human rights movements and the unemployed workers showed that his commitment with a leftist program of government was real and that he was not merely paying lip service to leftist constituents. While he tested the idea of decriminalizing abortion by appointing the first female judge to the Supreme Court and a Health Minister, both of whom publicly stated their support for this cause, he ultimately decided against backing decriminalization given that the movement was not as sufficiently strong at the time to incur the risk of a major confrontation with the Catholic Church.

#### 11.4. Negative findings

Another important contribution of this dissertation is the rebuttal of alternative hypotheses offered in chapter 10. I gave other factors that might have influenced state

policies in the field of human rights accountability and abortion reform serious consideration.

Public opinion was found not to be a relevant variable to explain the diverse policies implemented by each administration in each of our country cases. While it might be absurd to deny that it is useful for social movements to gain public opinion support for their causes since it contributes to the strength and legitimacy of their cause (hence movements usually quote surveys that show public opinion support for their campaigns), or that politicians consider it when deciding whether to address movements' demands, there is not a direct relationship between public opinion views and state policy.

The fact that these two policy issues were found not to be a priority for constituents in any of the three countries at any time (with the exception of human rights in Uruguay right after the democratic transition) explains why many politicians have been able to ignore people's support for these movements' demands at no political cost.

Second, the role of international factors was found to be less relevant than otherwise expected. In the case of the human rights movements, Argentina and Chile have been at the forefront of the international trend towards demanding accountability for human rights abuses. In particular Argentina has been considered a worldwide leader in transitional justice processes and scholars have acknowledged the crucial role of the domestic human rights movement in this endeavor. Uruguay, having addressed human rights abuses much later, could have been influenced by the new developments of international law and by the examples of its neighbors. However, the timing of when to international factors exert their influence is determined by domestic variables such as movement strength and allies in power.



A similar situation is true of the UN conferences on women's rights and the abortion debate in the three countries. While a global context of a stronger transnational women's movement for sexual and reproductive rights played a role in the launching of domestic campaigns for abortion decriminalization at the national level, this factor cannot explain the diverse abortion policies and responses to the domestic women's movements in our three country cases. If international factors were highly significant in explaining public policies in these two issue areas, we would expect to see less of a difference in human rights and abortion policies across our three cases. International events such as the UN conferences on women or international human rights conventions may provide an ambience conducive to the emergence of a domestic social movement rallying around women or human rights issues such as those studied here. However, whether the state responds to this movement or not is more a matter of domestic variables.

More surprising was the finding that the power of the armed forces is not a good predictor of human rights policies. The analysis of the military budget and of the civilian control over the military in each of the countries shows that the relationship between military power and human rights policies is more complex than expected. Chile has the largest number of military officers convicted for human rights abuses despite being the country in which the armed forces have been most powerful since the democratic transition. In addition the Menem administration in Argentina and the Sanguinetti administration in Uruguay chose to establish a strong civilian control over the military while ignoring human rights demands for truth and justice. Menem exchanged pardons for control over the military, while Sanguinetti chose to favor military amnesty due to his close relationship with the armed forces and the outgoing military regime.

Finally, the analysis of the role of the Catholic Church in the abortion debate showed its influence is exerted through indirect means such as the elite's education, and not through their overall reach in society or the constitutional mechanisms that rule Church-state relations.

#### 11.5. Limitations of this study

Many of the strengths of this study are also part of its limitations. This project chose to study two very different social movements in order for the theoretical model to be generalizable and able to travel to other contexts. The original question which motivated this study was whether social movements were relevant at all, and as such, the more general the theoretical model the better it would provide an answer to this broad question.

However, it is true that in the attempt to explain such different movements the theoretical model might be perceived as too general and intuitive in the sense of not offering enough information about how movements actually get their demands addressed. To counter this problem the project did two things. It tried to explore how these two very general variables worked in each of these cases: how strength can be defined in different ways, and how allies can be identified in the different contexts. The definition of these variables would of course need to be adjusted for each different movement and national context to be analyzed in the future. Second, it added a third variable to explain the difference in degree of state response to social movements that offers an element which is counterintuitive: that of presidential weakness. While it is true that this notion may be too tied to the case of Argentina and President Kirchner in particular, it was also used to explain other cases such as that of President Batlle in Uruguay and his relationship with

the human rights movement, and that of Cristina Kirchner and the case of the gay movement. Would any weak president in need of leftist constituencies' support resort to addressing social movements' demands? Is there anything in particular about Argentina and the aftermath of the December 2001 crisis that made this policy a preferred solution? Is this related to the lack of a highly institutionalized party system and the relevance that in such a space movements gain? While these questions deserve more exploration in the future some initial thoughts follow here. I believe that the existence of an economic and political crisis in Argentina in 2001 was an important factor for the electorate to veer to the left and thus for Néstor Kirchner to need support from this sector of the ideological spectrum. While these may initially look as conditions unique to the Argentine case, in the last couple of years economic crises in both the developing and developed world have led to similar social upheavals which questioned the legitimacy and credibility of those parties in power. The similarities between the social revolts against neoliberal policies and restructuring programs in Greece, Spain and Israel with that of the 2001 Argentine uprising make these countries interesting cases for comparison. Would these countries' future governments be in a similar position of weakness given the strong questioning of all political parties and their role representing the people's voices? Would these administrations seek alliances with social movements to increase their legitimacy as Néstor Kirchner did in Argentina or would they prefer other strategies to strengthen their governments after such social crises? It is in the interest of this project to continue exploring if the notion of "presidential weakness" travels to other contexts aside from these three countries.

There are also problems of endogeneity that need to be acknowledged. While the dissertation tried hard to be very precise and systematic about defining the independent and dependent variables, it is true that at times in these national stories causal relations can be traced in the opposite direction. For example, although movement strength has been identified as one of the main independent variables affecting state response, it is true that the way the state responds to the movement may in fact affect how many supporters the movement is able to gather in a demonstration or how many social actors would sign into the movement's campaign. This was the case for example of the Uruguayan human rights movement in the 1990s. The loss of strength of the movement was related to the defeat in the 1989 referendum. Similarly, the decrease in strength of the human rights movement in Argentina in the 1990s was partly a reflection of Menem's pardons of the convicted members of the military juntas. This project did its best to try to analyze in detail the sequence of events to identify what happened first, but it is necessary to acknowledge that at times both processes –the evolution of movement strength and government's response- were too interrelated for a clear unidirectional causal relation to be established.

#### 11.6. Final thoughts

Future research is needed to test the viability of this theoretical model. A place to start would be to research human rights and women's movements in other Latin American countries. Brazil and Paraguay, which had a legacy of human rights abuses during their military dictatorships similar to that of the three countries analyzed here, would be good

cases with which to begin. Both countries held truth commissions but only Paraguay has recently begun prosecuting those responsible for human rights abuses (although the judicial processes are very limited and advancing very slowly). Brazil is actually the only South American country in which no military officer has ever been prosecuted for human rights abuses. Current Brazilian President Dilma Rousseff, who was imprisoned and tortured by the military regime, promised to initiate trials during her electoral campaign, but since coming to power this initiative has faced a strong opposition from the armed forces. The role, if any, of the domestic human rights movements had in each of these countries' human rights policies (or lack of) can be illuminated using the dimensions of state response defined in this dissertation.

Similarly, researching the campaigns to decriminalize abortion in other Latin American countries would be another step to follow. The theoretical model advanced in this dissertation seems to be able to explain, for example, the decriminalization of abortion in Mexico City in 2007. The combination of a strong women's movement together with the coming to power of a leftist party (*Partido de la Revolución Democrática, PRD*) in the city legislature enabled the passing of such legislation (Villa Torres 2008; Amuchástegui 2010). The close work between the movement and leftist legislators remind us of the case of Uruguay.

In addition, I believe that given the fact that this theoretical model was able to explain the interaction of social movements and state policy in arenas as diverse as that of accountability for human rights abuses and abortion reform, increases the chances that the model can travel to other non bread and butter issues and to other countries outside of the Southern Cone. The situation of gay rights movements in both developing and

developed countries is one issue that may be explained by this theoretical model. The passage of gay marriage in Argentina in 2010 under the administration of Cristina Fernandez de Kirchner fits the model quite well.

As I finish writing these lines news from Argentina, Chile and Uruguay, and from the rest of the world make the initial question –whether social movements matter at all- more relevant than ever. In terms of the specific movements followed here, many new developments are taking place every day. A bill proposing the decriminalization of abortion during the first trimester based on the woman’s decision is being debated in Congressional committees in Argentina for the first time. In the past only bills clarifying the cases of non-punitive abortion have been discussed in Congress. Meanwhile, the campaign conveys increasing support from new social actors –such as public universities and human rights organizations like CELS- and legislators –more than 50 currently support the bill.

In Uruguay a new attempt to repeal the amnesty law –this time through Congress- failed to pass in May in spite of the *Frente Amplio* having a majority in both congressional chambers. The day after, 100,000 Uruguayans took to the streets for their traditional May 20<sup>th</sup> March of Silence and once again demanded the repeal of the *Ley de Caducidad*.<sup>366</sup> In February 2010 the Valech Commission was reopened in Chile and has recently drafted a new report accounting for 8,900 new cases of political imprisonment and torture and 30 new cases of disappearances and executions.<sup>367</sup> The policy of truth seeking pursued by the governments of the *Concertación* seems to have experienced no

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<sup>366</sup> See *Página 12*, “Analizaremos otros caminos. Joge Brovetto, presidente del FA sobre la ley de caducidad” May 22<sup>nd</sup> 2011. Viewed on May 22nd 2011 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

<sup>367</sup> See *Página 12*, “Para seguir buscando justicia”, August 27th, 2011. Viewed on August 27th, 2011 at [www.pagina12.com.ar](http://www.pagina12.com.ar)

interruption under right-wing president Piñera. However, it is not the issue of justice for human rights abuses which is shaking Chile these days, but students' mobilization demanding the reform of the system of higher education. Unions have recently joined the struggle and have paralyzed the country with a nation-wide strike.

More broadly, the time has come for Arab dictators to step down and for democratization processes to take place in Tunisia, Egypt, Libya and possibly in the near future in Syria. It is too soon to tell whether there would be a thorough investigation and criminal prosecution for the legacy of human rights abuses all these regimes are leaving behind. Former President Mubarak is currently being tried for the killings of demonstrators during the mass mobilization which led to his demise. This is a promising step. However, it is still to be seen if a more thorough investigation of the abuses committed by him and his security apparatus during his 30 years in power would take place. Based on the experience of the Southern Cone, it will be interesting to watch the role the domestic human rights movements will have in these decisions.

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