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## Gender Equity & Rhetoric in Chile

“Promoting progress towards building a more equitable and just world, that guarantees the rights of women and girls, is more than a challenge. It’s a necessity and an obligation.”

Michelle Bachelet at the International Peace Institute  
September 26, 2015<sup>1</sup>

### I. Introduction

In 1951, Veronica Michelle Bachelet Jeria was born in a middle-class suburb of Santiago, Chile. Fifty-five years later, in 2006, she would be elected President of Chile and become the first woman to hold this office in Chilean history. This was not her first historic position. In 2002, she was appointed Minister of National Defense and was the first woman to hold that office in Chilean—and Latin American—history. She served as President from 2006 to 2010. Following her first presidency, Bachelet served as the first Executive Director of United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).<sup>2</sup>

Bachelet was reelected president in 2013 and served as president from 2014 to 2018. During this time, much of her domestic agenda focused on efforts to improve the lives of the women of Chile. However, this was not the first time the government targeted gender inequality in Chile. In 1991, El Servicio Nacional de la Mujer (known as SERNAM), or the National Women’s Service, was created by law in 1991 to provide a “study and proposal of

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<sup>1</sup> *Bachelet: Achieving Gender Equality is “a Necessity and an Obligation”* (published September 26, 2015), available at <https://www.ipinst.org/2015/09/accelerating-efforts-to-promote-gender-equality-and-womens-rights-2#8>.

<sup>2</sup> Michelle Bachelet, available at <https://www.britannica.com/biography/Michelle-Bachelet>.

general plans and measures that lead to women enjoying equal rights and opportunity with respect to men.”<sup>3</sup>

But even with SERNAM and other national programs to improve the position of women’s rights in Chile, Chile faces a difficult situation achieving true equality between the sexes. As of 2015, female workers earn between 18-23% less than male workers.<sup>4</sup> Despite increased investment in education and legislative changes related to divorce, child custody, maternal health care, and sex crimes, Chile still faces substantial obstacles in achieving gender equity.

This paper will outline the unique situation of gender relations in Chile, especially in relation to economic participation and development. It will then analyze the role of law in shaping this situation and the efforts to improve it. Finally, it will suggest areas for future research.

## **II. The Current Situation in Chile: A Gender Paradox**

Chile has made remarkable political and economic progress over the last few decades, which is truly commendable given the political upheavals of the 1970s. Along with these changes has come achievements in gender equality in terms of educational and political opportunities. However, despite these improvements, Chile faces an obstacle in improving the economic lives of women.

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<sup>3</sup> See Public Law 19,023 (published January 3, 1991); available at <https://www.leychile.cl/Navegar?idNorma=30390&tipoVersion=0>.

<sup>4</sup> Gabriel Cruz and Tomás Rau, *The Effects of Firms’ Pay Policies and Equal Pay Laws on the Gender Wage Gap in Chile* (published May 30, 2017), at 5.

In her article, *Chile: Reconciling the Gender Paradox*, Lucia Fort identifies three paradoxes that Chile is grappling with.<sup>5</sup> First, an increase in education has not led to a proportional increase in female labor force participation. The typical observation is that as women earn more education, they increase their participation in the job market. However, Chile has one of the lowest rates of women's participation in the labor force.<sup>6</sup> According to the Global Gender Gap Report, Chile ranks 117th for economic participation and opportunity.<sup>7</sup> This represents a decrease of 27 spots since 2006.

Second, Chile faces an extreme income gap between men and women. As of Fort's report in 2006, Chilean women made 67% of the salaries men made.<sup>8</sup> Again, there has been little improvement. In the Global Gender Gap Report, Chile now ranks 127th for wage equality, again down 27 spots since 2006.<sup>9</sup>

Third, there is limited labor force participation for women with higher poverty rates in Chile. Again, this represents an anomaly from the traditional observation that high poverty rates positively correlate to higher levels of female labor force participation.<sup>10</sup>

Fort attributes these paradoxes to several factors: inadequate job training, traditional attitudes toward gender roles, and limited childcare options. She further identifies the gender pay gap as a deterrent, discouraging women from entering the workforce.<sup>11</sup> Lisa Roemhildt, who studies women's political representation in Chile, reinforces the role of Chile's social and cultural context in creating these paradoxes. In her article, *Understanding Women's*

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<sup>5</sup> Lucia Fort, Indu John-Abraham, Maria Beatriz Orlando and Claudia Piras, *Chile: Reconciling the Gender Paradox* (published April 2007) at 1.

<sup>6</sup> Fort at 2.

<sup>7</sup> World Economic Forum, 2017 Global Gender Gap Report: Chile (published 2017).

<sup>8</sup> Fort at 2.

<sup>9</sup> Compare World Economic Forum, 2006 Global Gender Gap Report: Chile (published 2006) and 2017 Global Gender Gap Report: Chile.

<sup>10</sup> Fort at 2.

<sup>11</sup> Fort at 3.

*Representation in Chile*, she notes that the election of President Bachelet meant that “[c]hileans may be in favor of having a female president; however, a feminist agenda is not desirable amongst Chileans.”<sup>12</sup> She traces attitudes toward women from Allende through the Bachelet era. While Allende socialist agenda focused on equalizing Chilean society, his regime characterized the role of women as confined to the domestic sphere, specifically as wives and mothers.<sup>13</sup> Pinochet’s authoritarian regime did little to change this, especially with its patriarchal discourse.<sup>14</sup> During Bachelet’s campaign, these attitudes were present in full force. One exemplification was a survey that found her male opponents were seen as more competent and more paternal, suggesting the lasting impact of the Pinochet patriarchal discourse.<sup>15</sup>

Bachelet’s presidency may have represented a conceptual turning point. In Roenhildt’s own research, she found “there does not appear to be a gender bias towards women’s representation in government and politics.”<sup>16</sup> However, this does not mean the practical realities of women’s lives in Chile are vastly improved. Yes, in the 2017 Global Gender Gap Report, Chile moved up in the rankings to 63. Chile made small improvements in the economic participation and opportunity and political empowerment scores. However, Chile made only moderate increases in health and survival improvements, moving from 39th to 47th in the rankings. In the snapshot of economic data, Chile made little improvement between 2016 and 2017. In 2016, Chile ranked 133 for wage equality for similar work. Despite rising 6 positions in the ranking, the score barely changed, moving from 0.482 to 0.485.

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<sup>12</sup> Lisa Roenhildt, *Understanding Women’s Representation in Chile* (published 2016) at 3.

<sup>13</sup> Roenhildt at 1.

<sup>14</sup> Roenhildt at 1.

<sup>15</sup> Roenhildt at 2.

<sup>16</sup> Roenhildt at 9.

### **GLOBAL GENDER GAP REPORT RANKING: CHILE<sup>17</sup>**

	<b>2006 Ranking</b>	<b>2006 Score</b>	<b>2016 Ranking</b>	<b>2016 Score</b>	<b>2017 Ranking</b>	<b>2017 Score</b>
<b>Global Gender Gap Index</b>	78	0.645	70	0.699	63	0.704
<b>Economic Participation and Opportunity</b>	90	0.514	119	0.565	117	0.573
<b>Educational Attainment</b>	69	0.980	38	0.999	39	0.999
<b>Health and Survival</b>	1	0.980	39	0.979	47	0.978
<b>Political Empowerment</b>	56	0.109	39	0.254	36	0.266

### **III. Chilean Legal Institutions: Gender Blindness as Gender Ignorance**

The Chilean legal system may also have a role to play in creating the gender paradoxes that hinder women's economic development in Chile. The Chilean constitution was written in 1980 while the country was still ruled by Augusto Pinochet.<sup>18</sup> Therefore, it is understandable that the patriarchal values identified in Chilean society under Pinochet would be found within the document.

Article 1 of the Constitution sets the tone: "Persons are born free and equal in dignity and rights. The family is the fundamental nucleus of society."<sup>19</sup> While the opening line may appear to be a gender-neutral assertion of equality for all, it is quickly followed with a subtler picture of what values Chile seeks to uphold: those of the family, where traditionally gender plays a large role in the allocation of opportunities.

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<sup>17</sup> Assembled by the author from the 2016 and 2017 Global Gender Gap Reports.

<sup>18</sup> Priscilla Lambert and Druscilla Scribner, *The Constitutional Recognition of Gender Equality in Chile and Argentina* (prepared for conference from April 13-15, 2017) at 11.

<sup>19</sup> Chilean Constitution (1980), Chapter I, Article 1. In the original, the language is "Las personas nacen libres e iguales en dignidad y derechos. La familia es el núcleo fundamental de la sociedad."

The original constitution included language related to equal protection before the law.<sup>20</sup> However, in 1990, an amendment added the phrase, “[m]en and women are equal before the law.”<sup>21</sup> This is the only articulation of gender within the constitution and involved “long and arduous” debate before its inclusion.<sup>22</sup>

Research has shown that the Chilean constitution actually has a critical role to play in shaping gender equality in contemporary Chilean society. In their article, *The Constitutional Recognition of Gender Equality in Chile and Argentina*, Priscilla Lambert and Druscilla Scribner interviewed government members and women rights advocates and compared constitutional rights between Chile and Argentina to show that “constitutionalizing gender” corresponds with improvements for women in society.<sup>23</sup> In regards to the creation of the constitution and its facially neutral language, Lambert and Scribner found that “neutrality masked and perpetuated patriarchy: the test is neutral, [but] the debate and thinking behind was not.”<sup>24</sup> They even found the neutrality to serve as “the main obstacle to achieving progress.”<sup>25</sup> In regards to the preeminence of the family within the constitution, an interviewee noted that “[a] discourse based on family, women as mothers, in the end has much more weight and support than a discourse of women’s rights.”<sup>26</sup>

Lambert and Scribner found that social policy designed to improve the position of women in society fared worse against this constitutional backdrop than similar policy did in Argentina, which had more supportive language toward gender in its constitution. The effect of

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<sup>20</sup> Chilean Constitution (1980) Chapter III, Article 19.

<sup>21</sup> Lambert at 11; the original language is “Hombres y mujeres son iguales antes la ley.”

<sup>22</sup> Lambert at 11.

<sup>23</sup> Lambert at 1.

<sup>24</sup> Lambert at 12 (internal citation omitted).

<sup>25</sup> Lambert at 12 (internal citation omitted).

<sup>26</sup> Lambert at 13.

this is that the courts were rarely used as a tool for change in Chile.<sup>27</sup> For example, the case of *María Angela Salazar v. Universidad San Sebastián* (19 May 2009) dealt with the harassment and dismissal of a pregnant university professor. In that case, the court found that “employers are limited by the constitutional rights of the workers as individuals, particularly with respect to their private intimate lives and dignity.”<sup>28</sup> While this decision might reach a positive outcome for female workers, it mimics the neutral language of the constitution by not reaching the issue of sex discrimination. It is possible to imagine other situations in which sex discrimination in the workforce may not violate the rights of workers as individuals and thus not afford relief through the judicial system.

Ultimately Lambert and Scribner conclude that “in Chile, the constitution often thwarted the efforts [of activists and policy makers]; not one individual interviewed in Chile identified the neutral constitution as helpful.”<sup>29</sup> Furthermore, “the constitutional provision on family often dominates and is used to justify gender policy, even when it is directly related to women’s rights. That is, although there is an equality statement in the Chilean constitution, it has not been enough to justify or push through a feminist agenda.” Therefore, “[t]he supposed neutrality of the constitution, and the family provision, appear to have been a serious hindrance to rights advocates.”<sup>30</sup>

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<sup>27</sup> Lambert at 12.

<sup>28</sup> Lambert at 31.

<sup>29</sup> Lambert at 40.

<sup>30</sup> Lambert at 41.

#### IV. Chilean Institutions: A Tool for Change?

Despite the neutrality of the Constitution, the government has recognized the need for social policy designed for the unique situation of women in society and implemented several novel programs.

The National Service of Women (or SERNAM as it is abbreviated in Spanish) is one example of this. Created in 1991, SERNAM was a decentralized public service designed to work with the Executive through the Ministry of Planning and Cooperation.<sup>31</sup> The function of the Service, as set forth in the law, was to be,

the body in charge of collaborating with the Executive in the study and proposal of general plans and measures that lead to women enjoying equal rights and opportunity with respect to men, in the process of political, social, economic and cultural development of the country, respecting the nature and specificity of the woman that emanates from the natural diversity of the sexes, including its adequate projection to the relations of the family.<sup>32</sup>

SERNAM's achievements include the "recognition of discrimination against women, strengthening of SERNAM's institutional mechanisms and the recognition of some persistent realities such as domestic violence."<sup>33</sup>

Yet, despite being a "site for advocacy and an ally in achieving policy,"<sup>34</sup>

SERNAM was a product of the society that created it. Critics have argued that the agencies goals were too broad, "presenting the notion that success in these areas was naturally limited by

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<sup>31</sup> See Public Law 19,023 (published January 3, 1991); available at <https://www.leychile.cl/Navegar?idNorma=30390&tipoVersion=0>.

<sup>32</sup> See Public Law 19,023 (published January 3, 1991); available at <https://www.leychile.cl/Navegar?idNorma=30390&tipoVersion=0>.

<sup>33</sup> Committee on the Elimination of Discrimination against Women, Fourteenth session, 16 January – 3 February 1995, excerpted from: Supplement No. 38 (A/50/38), at ¶ 112.

<sup>34</sup> Lambert at 8.

their vague nature.”<sup>35</sup> Lambert and Scribner’s research revealed that “SERNAM’s ties to the conservative Christian Democratic Party and the political role of the Church have dampened reform efforts in Chile.”<sup>36</sup> The conservatism of the Service can be seen in its original nine-part mission, which included the goals of “encourage[ing] and propos[ing] measures to strengthen the family, providing the social conditions for its development as a human group and the growth of each of its members,” and “promot[ing] concrete measures that highlight the fundamental value of motherhood for society, ensuring its effective protection.”<sup>37</sup> These seem tied to the values expressed in the constitution, harkening back to Lambert and Scribner’s research.

Gender equity, and institutions that can achieve meaningful progress toward achieving it, was a major part of President Bachelet’s agenda while in office. In 2016, the Bachelet administration created the Ministry of Women and Gender Equality.<sup>38</sup> Public Law 19,023, which created the National Service for Women, was then amended, reorganizing the National Service of Women into the National Service for Women and Gender Equity that would work with the new Ministry to report to the Executive.<sup>39</sup> The mission of the Service was far more direct than the prior Service, including goals such as:

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<sup>35</sup> Georgina Waylen, *Gender and Democratic Politics: A Comparative Analysis of Consolidation in Argentina and Chile* (published 2000), available at <http://www.coha.org/chile-coha%E2%80%99s-women%E2%80%99s-studies-series-ernam-and-the-underrepresentation-of-women-in-chile/>.

<sup>36</sup> Lambert at 8.

<sup>37</sup> See Public Law 19,023 (published January 3, 1991); available at <https://www.leychile.cl/Navegar?idNorma=30390&tipoVersion=0>; Article 2.

<sup>38</sup> Chile creates Ministry of Woman and Gender Equality (published June 3, 2016), available at <http://www.sandiegouniontribune.com/hoy-san-diego/sdhoy-chile-creates-ministry-of-woman-and-gender-2016jun03-story.html>.

<sup>39</sup> See Public Law 19,023 (published June 1, 2016), available at <https://www.leychile.cl/Navegar?idNorma=30390>.

- a) Implement policies, plans and programs with cultural relevance, geared towards gender equity, equality of rights and seek to eliminate all forms of arbitrary discrimination against women, including the National Plan for Equality between men and women.
- b) Execute programs that promote the integral development of women and gender equity in the different areas of national life.
- c) Carry out programs that ensure the full participation of women in the labor, social, economic and cultural life of the country, and in positions of popular election and public functions, as well as those that promote the development and autonomy of women.

The new Service does include a set of goals related to motherhood and “recognizing the diversity of women and their different life options.”<sup>40</sup> However, the functions of the Service do not mention the family, other than to address domestic violence.<sup>41</sup>

Another action taken under Bachelet’s administration was the Equal Pay Law. It was enacted in 2009 and stated that employers “must comply with the principle of equal remuneration between men and women who provide the same work, not being considered arbitrary objective differences in remunerations that are based, among other reasons, on skills, qualifications, suitability, responsibility or productivity.”<sup>42</sup> It requires “firms with 10 or more permanent workers to establish a grievance procedure for any employee who feels discriminated against because of their gender.”<sup>43</sup> Eventually, if an employee is not satisfied with the results of the grievance procedure, he or she may then go to the courts.<sup>44</sup> Lambert and Scribner note that “[t]he bill’s language on pay equity was clearly rooted in gender equality arguments and represents a departure from the previous emphasis on women’s role in the family by explicitly

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<sup>40</sup> See Public Law 19,023 (published June 1, 2016), available at <https://www.leychile.cl/Navegar?idNorma=30390>.

<sup>41</sup> See Public Law 19,023 (published June 1, 2016), available at <https://www.leychile.cl/Navegar?idNorma=30390>.

<sup>42</sup> See Public Law 20,348 (published June 19, 2009), available at <https://www.leychile.cl/Navegar?idNorma=1003601>.

<sup>43</sup> Cruz at 5.

<sup>44</sup> Daniela Estrada, Chile: Goodbye to the Gender Wage Gap? (published June 6, 2009), available at <http://www.ipsnews.net/2009/06/chile-goodbye-to-the-gender-wage-gap/>.

tying the legislation to gender equality and non-discrimination provisions in the Constitution as well as international law and practice.”<sup>45</sup>

However, while a clear symbolic victory for the women’s movement in Chile, the actual effect on the day-to-day lives of women in the country is unclear. Critics of the law have noted that, under the law, “it is not discriminatory to pay a male employee more if he proves to be more suitable, qualified or responsible than his female counterparts,” despite this potentially opening a door for bias.<sup>46</sup> In 2010, the UNDP found that “more than 60 percent of Chilean surveyed ... [were] opposed to full equality between women and men.”<sup>47</sup> In 2012, an article emphasized that women did not make use of the grievance mechanisms, choosing not to report unequal pay.<sup>48</sup> The author noted that a common argument “given for paying women less and hiring fewer women is that they play so many roles: they are responsible for raising the children and taking care of the home, while men are seen as providers and workers.”<sup>49</sup> These reports appear to be supported by quantitative research. A working paper published in mid-2017 argues that the gender wage gap actually slightly increased after the law went into effect.<sup>50</sup>

## V. A New Presidency: What’s Next for Chile?

In 2018, President Bachelet was replaced by President Piñera. Piñera, the leader of the opposing coalition from Bachelet, represents a change in political views for Chile. Therefore,

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<sup>45</sup> Lambert at 32.

<sup>46</sup> Marianela Jarroud, Many Chilean Women Keep Mum About Unequal Wages (published Aug. 2, 2012), available at <http://www.ipsnews.net/2012/08/many-chilean-women-keep-mum-about-unequal-wages/>.

<sup>47</sup> Daniela Estrada, Chile: Gender Equity Progress Blocked by Hard-Core “Machismo” (published May 14, 2010), available at <http://www.ipsnews.net/2010/05/chile-gender-equity-progress-blocked-by-hard-core-machismo/>.

<sup>48</sup> Marianela Jarroud, Many Chilean Women Keep Mum About Unequal Wages (published Aug. 2, 2012), available at <http://www.ipsnews.net/2012/08/many-chilean-women-keep-mum-about-unequal-wages/>.

<sup>49</sup> Marianela Jarroud, Many Chilean Women Keep Mum About Unequal Wages (published Aug. 2, 2012), available at <http://www.ipsnews.net/2012/08/many-chilean-women-keep-mum-about-unequal-wages/>.

<sup>50</sup> Cruz at 1.

the future of gender equity law in Chile is unknown. The National Human Rights Plan, created by law under President Bachelet's administration, continues to include an entire section on women and includes the goal of "strengthen[ing] the economic and political autonomy of women in all decision-making spaces, both public and private."<sup>51</sup> One of the "actions" identified is to

[c]oordinate and coordinate with public, private and union-union labor organizations to implement policies and measures that aim to reduce gender gaps and promote equal rights between men and women at work: working conditions, wage gap, participation in spaces of decision making. Encourage dialogue and agreements with various public-private entities to develop good practices and proactive actions to increase participation and representation of women.<sup>52</sup>

The estimated compliance term for this action is 2018 – 2021.<sup>53</sup> Therefore, more improvements may be in Chilean women's future, but whether they will be prioritized under the Piñera administration has yet to be seen.<sup>54</sup>

## **VI. Conclusion: Next Steps for Research**

Despite being one of the most economically successful countries in Latin America, Chile continues to face obstacles in ensuring that success is shared across its society. The gender pay gap represents a tangible problem facing the country in its quest to continue to develop its economy to compete on a global stage.

Of course, Chile is not alone in having this problem. The gender wage gap is a global problem, facing women in almost all countries and all industries. As reported by UN

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<sup>51</sup> For more on the National Human Rights Plan, see Public Law 20,885 (published January 5, 2016), available at <https://www.leychile.cl/Navegar?idNorma=1086063>; for more on the goals related to women, see <http://planderechoshumanos.cl/tema/Mujeres>.

<sup>52</sup> See <http://planderechoshumanos.cl/tema/Mujeres>.

<sup>53</sup> See <http://planderechoshumanos.cl/tema/Mujeres>.

<sup>54</sup> For more on changes made during Piñera's first term in office, see Gwynn Thomas, *Promoting Gender Equality: Michelle Bachelet and Formal and Informal Institutional Change within the Chilean Presidency* (published 2016).

Women (the organization formerly headed by President Bachelet), “women only make 77 cents for every dollar earned by men.”<sup>55</sup> The active discussion of the gender wage gap and the need for governmental action to address it can give hope that change may be possible in the near future. However, the legacy of the conceptualization of women as defined by the family and the lack of a recognition of gender in the country’s constitution continue to pose an obstacle to meaningful change.

This topic is ripe for more research. First, more analysis should be done on the effect of laws and social programs on the day-to-day realities of women in Chile. Given the paradoxes identified by authors such as Fort, plans will need to be targeted at the unique realities of Chilean women in order to have any meaningful effect. For example, given the lack of responsiveness of the Chilean judicial system to arguments based on gender, how effective is the judicial remedy incorporated into the Equal Pay Law?<sup>56</sup> What other remedies might be more effective in its place?

Second, more work should go into analyzing the role of rhetoric on society and legal institutions. For example, in what ways does rhetoric continue to shape the discussion on women’s roles, especially in the private sector, which might not be as influenced by constitutional language? A comparison might also be made to the United States and the history of judicial responses to women-focused litigation. For example, in *Muller v. Oregon*, the Supreme Court upheld an Oregon law limiting women to ten hours of work in certain industries.<sup>57</sup> Louis Brandeis submitted a brief in support of the state’s law restricting the number

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<sup>55</sup> See <http://www.unwomen.org/en/news/in-focus/csw61/equal-pay> for more information.

<sup>56</sup> See Lambert at 12.

<sup>57</sup> *Muller v. Oregon*, 208 US 412 (1908).

of hours women could work.<sup>58</sup> His brief summarized “the World’s Experience upon which the Legislation Limiting the Hours of Labor for Women is Based,” which took the form of quotes from various medical and scientific-related texts. Many of these quotes used rhetoric emphasizing a woman’s role as a mother and as a part of the family.<sup>59</sup> Comparative research might look into the history of such language in American jurisprudence and how it shaped the development of women’s rights and especially gender equity policy. Similarly, research could also look into the role of other policies on gender equity. For example, Chile just recently legalized abortion under a limited set of circumstances.<sup>60</sup> Another line of research might ask: how has rhetoric and constitutional conceptions of gender shaped the development of this area of the law and how does it compare to the American example?<sup>61</sup>

Finally, more research could be done into the effect of women in government, and especially in the presidency, for women in the workforce. Chile also has electoral gender quota

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<sup>58</sup> Louis Brandeis, Brief for the State of Oregon, *Muller v. Oregon*, 1908 WL 27605 (U.S. 1908).

<sup>59</sup> See, for example, the Proceedings of the French Senate (Session of July 7, 1891): “When I ask, when we ask, for a lessening of the daily toil of women, it is not only of the women that we think; it is not principally of the women, it is of the whole human race. It is of the father, it is of the child, it is of society, which we wish to re-establish on its foundation, from which we believe it has perhaps swerved a little.”; see also Report of the New York Bureau of Labor Statistics, 1900: “The family furnishes the really fundamental education of the growing generation – the education of character; and the family life thus really determines the quality of the rising generation as efficient or non-efficient wealth producers.”

<sup>60</sup> Pascale Bonnefoy and Ernesto Londoño, Chile’s Congress Approves Abortion in Limited Cases (published August 3, 2017), available at <https://www.nytimes.com/2017/08/03/world/americas/chile-abortion-michelle-bachelet.html>.

<sup>61</sup> See Jack M. Balkin, What Roe v. Wade Should Have Said (published 2005). For a summary, see Jack Balkin, What Roe v. Wade Should Have Said (published July 18, 2005), available at <https://balkin.blogspot.com/2005/07/what-roe-v-wade-should-have-said.html>. For example, Balkin himself argues that “abortion statutes violate both women’s liberty and their equality. Restrictions on abortion compel women to become mothers, with all of the social expectations and duties that come with motherhood. Whether fairly or not, women in American society still bear most of the responsibility for childcare. They are expected to make sacrifices for their children and they feel most of the brunt of social condemnation if their children are not properly cared for. Moreover, because of the strong social expectations about the duties of motherhood, women suffer stigma and shame if they give their children up for adoption. The right to abortion is the right to have a reasonable time to decide whether to take on the responsibilities of motherhood.” Another contributor, Reva Siegel, takes a different tact: “the proper basis of the abortion right is women’s equality, and that the Court’s heightened scrutiny for laws imposing sex discrimination should have begun with Roe v. Wade. Abortion is a constitutional right necessary to secure women’s equal citizenship.”

legislation to increase political representation.<sup>62</sup> It would be interesting to see the effect of women in political positions on the rate of women in business positions, such as the C-suite.<sup>63</sup>

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<sup>62</sup> See Javier Sajuria, Chile just went to the polls – and transformed its legislature (published November 21, 2017), available at [https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/21/chile-just-went-to-the-polls-and-transformed-its-legislature/?noredirect=on&utm\\_term=.bd51255b0ff8](https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/21/chile-just-went-to-the-polls-and-transformed-its-legislature/?noredirect=on&utm_term=.bd51255b0ff8).

<sup>63</sup> For a discussion on gender quotas success in Latin America, see Tricia Gray, *Electoral Gender Quotas: Lessons from Argentina and Chile* (published 2003); for a debate on gender quotas in the boardroom, see Ruth Sealy and Michel Ferrary, *Are gender quotas needed?* (published June 14, 2015), available at <https://www.ft.com/content/d65795f2-0de6-11e5-9a65-00144feabdc0>.